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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

JOHN GEREMIA)	
LYNN GEREMIA)	
)	
Plaintiff(s))	CV-S-99-1703-JBR-(RLH)
)	
vs.)	ORDER
)	(Motion for Sanctions-#39)
COLORADO BELLE CORP. et al..)	(Motion for Sanctions-#47)
)	
Defendant(s).)	

Before the Court are opposing motions for sanctions by Plaintiffs against Defendant and Defendant against Plaintiffs.

Defendant Colorado Belle Corp.'s Motion for Sanctions (#39) was filed March 29, 2000. Plaintiffs' Opposition ... (#45) was filed April 4, 2000. Defendant's Reply ... (#53) was filed April 17, 2000.

Plaintiffs' Motion for Sanctions (#47) was filed April 4, 2000, in connection with their objection to Magistrate's orders, motion for extraordinary relief and motion to disqualify Magistrate Judge Roger Hunt. Defendant's Opposition ... (#54) was filed April 17, 2000. The Court is not aware of a reply.

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1 The nature and tenor of the Plaintiffs' motion (and the other motions filed
2 therewith), together with a recent change in the status of the undersigned, require the Court to
3 provide to the parties, and particularly the Plaintiffs, some explanation.
4

5 After serving nearly eight years as a United States Magistrate Judge in the District
6 of Nevada, the undersigned was nominated and confirmed by the U.S. Senate to be a U.S. District
7 Judge. Accordingly, I was sworn in as a U.S. District Judge on May 26, 2000.

8 These two motions were submitted to the undersigned in late April and early May,
9 respectively. They were submitted for consideration by the U.S. Magistrate Judge assigned to the
10 case. Each case filed in the southern part of the District of Nevada is automatically assigned to
11 both a District Judge and a Magistrate Judge. The Magistrate Judge's responsibilities are to
12 handle all pretrial motions and other matters. Plaintiffs' assumption that the undersigned had
13 made the decision to handle motions herein because of some desire to do so, or some prejudice
14 against the Plaintiffs is incorrect. The undersigned addressed these motions because it was his
15 duty to do so and he could not avoid fulfilling his responsibilities merely because one of the
16 parties did not like his decisions. Plaintiffs' suggestion that a judge must be prejudiced if the
17 judge rules against a party, would disqualify every judge in every case because every judge, in
18 making a ruling, will find in favor on one party and against another. That is the nature of
19 litigation. It is not evidence of prejudice or conspiracy. As is demonstrated by Judge Rawlinson's
20 recent decision, there is no evidence of either in this matter.
21

22 In addition to the foregoing, it should be explained that following my becoming a
23 U.S. District Judge, rather than a Magistrate Judge, it has been determined by the Chief Judge of
24
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26

1 the District of Nevada, that I should proceed to address any motions that had been submitted to me
2 prior to being sworn in as a District Judge, but should address them as a referral from one District
3 Judge to another, rather than as a Magistrate Judge, under 28 U.S.C. § 636, which authorizes
4 action by Magistrate Judges. Future pretrial motions in cases where the undersigned is the
5 designated Magistrate Judge, will be submitted to the assigned District Judge for decision.
6

7 Having made the foregoing explanation, the Court will address the two motions for
8 sanctions.
9

10 DEFENDANT'S MOTION FOR SANCTIONS

11 Defendant seeks sanctions for Plaintiff Lynn Geremia's failure to appear for her
12 deposition on two occasions. It seeks both monetary sanctions for expenses and attorneys' fees. It
13 also seeks dismissal of her complaint. It notes that this Court had previously denied Plaintiff's
14 motion for a protective order, in which the Court stated that she must attend her deposition in Las
15 Vegas, yet Plaintiff had failed to attend not only the first deposition (from which she sought the
16 protective order), but also failed to attend the second noticed deposition, although Defendant had
17 attempted to accommodate her schedule.
18

19 Defendant correctly notes that filing a motion for protection under Rule 26(c) (Fed.
20 R. Civ. P.) does not stay a deposition or excuse appearance thereto. *See* Fed. R. Civ. P. 37(d) and
21 Advisory Committee Notes of the 1993 Amendments. However, the Court notes that the language
22 of Rule 37(d) does give the Court some discretion in assessing sanctions where a motion for
23 protection is pending.
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1 In this case, although the Court endeavored to move quickly to consider Plaintiffs'
2 motion for protection¹, in order for a decision to be made before the parties were faced with the
3 dilemma of not knowing what they should do, it apparently was not quickly enough for the Court
4 to feel comfortable that Plaintiffs had notice of its action. After the Court had made its determina-
5 tion, Plaintiffs objected to its decision. Although that technically does not mean that the motion is
6 still pending, the Court understands the Plaintiffs' assumption that it did, thus justifying the refusal
7 to appear until the matter was resolved.
8

9 Furthermore, the Court notes that a third notice to take Lynn Geremia's deposition
10 directed that her deposition be taken on April 24, 2000. See exhibit to Defendant's reply. Since
11 the Defendant's reply was filed before the deposition, the Court is unaware whether Plaintiff
12 appeared for that deposition. The Court is inclined to overlook Plaintiff's first two failures to
13 appear for her deposition, but specifically does not address here any failure to appear a third time.
14 Furthermore, if Plaintiff failed to appear for a third time, without justification, and Defendant is
15 compelled to renew its motions for sanctions, it may ask the Court to consider, in that motion, the
16 actions of Plaintiff with respect to the first two failures to appear.
17

18 This Court, however, will not at this time sanction Plaintiffs for the failure to
19 appear at the first two noticed depositions, but does so without prejudice to pursue sanctions for
20 further failures.
21

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23
24 ¹
25 The Plaintiffs thought the Court moved too quickly. However, a moving party cannot be
26 heard to complain that the Court moved quickly on its motion without giving the opposing party
an opportunity to be heard. Such action cannot be said to prejudice the moving party. It either has
grounds worthy of consideration or it does not. Waiting for the Defendant's opposition would
have made no difference in the Court's decision. It would only have bolstered it.

1 PLAINTIFFS' MOTION FOR SANCTIONS

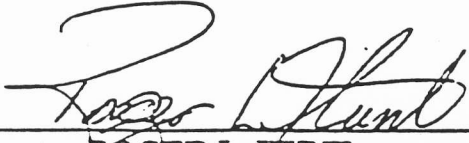
2 Plaintiffs seek sanctions against the Defendant for failure to produce payroll
3 records. They seek relief pursuant to Fed. R. Civ. P. 45, which is inapplicable to their request for
4 production. Furthermore, they seek sanctions despite the Court's refusal to compel the production
5 they requested. Finally, they seek sanctions against Defendants although Defendants have made a
6 good faith effort to resolve the dispute by providing information Plaintiffs need without divulging
7 information that is not discoverable or which would violate the privacy of nonparties. It is
8 Plaintiffs who have apparently refused to consider production with confidentiality provisions.
9 Accordingly, no grounds for sanctions exist and not will be granted.
10

11
12 Accordingly, for the reasons stated above,

13 IT IS HEREBY ORDERED that Defendant Colorado Belle Corp.'s Motion for
14 Sanctions (#39) is DENIED, without prejudice.

15 IT IS FURTHER ORDERED that Plaintiffs' Motion for Sanctions (#47) is
16 DENIED.
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18 Dated: June 6, 2000.
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21 
22 _____
23 ROGER L. HUNT
24 U.S. District Judge
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