

1 Cam Ferenbach, Esq.  
2 Joanna L. Blake, Esq.  
3 LIONEL SAWYER & COLLINS  
4 1700 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101  
(702) 383-8888

5 Attorneys for Defendant  
6 COLORADO BELLE CORP.

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9  
10 LYNN GEREMIA and )  
11 JOHN GEREMIA, ) CV-S-99-1703-JBR-RLH  
12 Plaintiffs, )  
13 v. )  
14 COLORADO BELLE CORP., et al., )  
15 Defendants. )

16 DEFENDANT COLORADO BELLE CORP.'S OPPOSITION TO  
17 PLAINTIFFS' MOTION FOR FACTS AND CONCLUSIONS

18 Defendant Colorado Belle Corp. ("Colorado Belle") files this  
19 Opposition to Plaintiffs' Motion for Facts and Conclusions  
20 ("Motion"). This Court should deny Plaintiffs' Motion on the  
21 following grounds:

22 1. Plaintiffs provide no points and authorities upon which  
23 their Motion is based and no authority exists to seek "Facts and  
24 Conclusions" from the Court; and

25 2. Plaintiffs fail to demonstrate any grounds upon which  
26 "facts and conclusions" should be required.

27 ///

28  
Ex. 1

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

## 2

## 3

4  
5  
6  
7  
8  
9  
10  
11  
12  
13

14  
15  
16  
17  
18  
19  
20

21  
22  
23  
24  
25

26

27

1 review of the decision, Docket No. 25, which Colorado Belle  
2 opposed, Docket No. 33. This Court affirmed Magistrate Judge  
3 Hunt's Order. Docket No. 44.

4 Plaintiffs filed a Motion to Request Magistrate Roger Hunt's  
5 Recusal on March 31, 2000. Docket No. 42.<sup>1</sup> Colorado Belle opposed  
6 the Motion. Docket No. 51. This Court denied the Motion for  
7 Recusal on June 5, 2000. Docket No. 66.

8 Plaintiffs filed a Motion for Sanctions against Colorado Belle  
9 on April 4, 2000 due to Colorado Belle's alleged failure to produce  
10 required payroll records to Plaintiffs. Docket No. 47. Colorado  
11 Belle opposed the Motion for Sanctions. Docket No. 54. Judge Hunt  
12 denied Plaintiffs' Motion for Sanctions on June 7, 2000. Docket  
13 No. 69.

14 Plaintiffs now apparently request that this Court provide  
15 "Facts and Conclusions" for the following:  
16

17 1. Order denying Plaintiffs' Motion to Compel (# 8) -  
18 Docket No. 32;

19 2. Order denying Plaintiffs' Motion to Request Magistrate  
20 Roger Hunt's Recusal (# 42) - Docket No. 69; and

21 ///

22  
23 <sup>1</sup> On March 21, 2000, Plaintiffs filed an Emergency Motion  
24 for Extraordinary Relief seeking to prevent Magistrate Judge  
25 Hunt's further involvement in this case. Docket No. 27. This  
Court referred the Motion to Magistrate Judge Hunt by considering  
the Motion as a disqualification motion. Docket No. 30.

26 On March 29, 2000, Magistrate Judge Hunt denied Plaintiffs'  
27 Motion for Extraordinary Relief. Plaintiffs then filed an  
28 Objection to that denial, Docket No. 46, which Colorado Belle  
opposed. Docket No. 52. This Court denied that Objection and  
affirmed Magistrate Judge Hunt's Order. Docket No. 62.

1           3.    Order denying Plaintiffs' Motion for Sanctions (#47) -  
2   Docket No. 69.

3                               II.

4                               ARGUMENT

5   A.   Plaintiffs Provide No Points and Authorities in Support of  
6       Their Motion and There Exists No Authority upon which  
7       Plaintiffs Can Seek "Facts and Conclusions."

8           Plaintiffs fail to provide points and authorities in support  
9   of their Motion. Pursuant to Local Rule 7-2(d), "The failure of a  
10   moving party to file points and authorities in support of the  
11   motion shall constitute consent to the denial of the motion."  
12   Therefore, Plaintiffs' Motion should fail. Moreover, there exists  
13   no authority upon which Plaintiffs can seek "Facts and Conclusions"  
14   from the Court. This Court should, therefore, deny Plaintiffs'  
15   Motion.

16   B.   Plaintiffs Fail to Demonstrate Any Grounds Upon which "Facts  
17       and Conclusions" Should be Required.

18           In their Motion, Plaintiffs find the denial of their Motion to  
19   Request Magistrate Hunt's Recusal (#42) "troubling" because,  
20   according to Plaintiffs, 28 U.S.C. § 144 does not require proof but  
21   merely requires "facts and the reasons for the belief." Motion, p.  
22   2 citing 28 U.S.C. § 144 referring to Order, Docket No. 66.  
23   Plaintiffs, however, fail to read 28 U.S.C. § 144 in its entirety.  
24   The statute requires that the complaining party file a "sufficient  
25   affidavit," by which a determination regarding recusal can be made.  
26   See 28 U.S.C. § 144 (emphasis added). Thus, there exist no grounds  
27   upon which this Court should have to justify its denial of  
28

1 Plaintiffs' Recusal Motion, where both then-Magistrate Judge Hunt  
2 and this Court reviewed and denied both Plaintiffs' Motion for  
3 Extraordinary Relief (#27) and Plaintiffs' Recusal Motion (#42) on  
4 their merits. Docket Nos. 32, 62 and 66.

5 Plaintiffs apparently again challenge the denial of their  
6 Motion for Protective Order (#14) on the grounds that Colorado  
7 Belle did not oppose that Motion. Docket No. 19. As has been  
8 extensively explained by then-Magistrate Judge Hunt, the Magistrate  
9 Judge expedited his decision on the Motion for Protective Order  
10 based on his knowledge that the deposition at issue was scheduled  
11 for just a few days later. Docket Nos. 32 and 69. As to  
12 Plaintiffs' complaints about not being properly noticed for or  
13 having an opportunity to participate in a "26.1" conference, those  
14 issues have also been addressed repeatedly in prior motion practice  
15 before this Court and this Court's orders. Docket Nos. 19, 20, 32,  
16 33, 34, 35, 39, 43, 47, 51, 52, 53, 62. Finally, Plaintiffs  
17 apparently continue to allege that Magistrate Judge Hunt has  
18 improperly appeared in the instant matter casting "doubt as to just  
19 intentions." Motion, p. 2. Colorado Belle and this Court have  
20 explained the grounds upon which a Magistrate Judge could properly  
21 decide pre-trial matters pursuant to 28 U.S.C. § 636(b)(1) and LR  
22 IB 3-1. Docket Nos. 30, 53, 66, 69. Plaintiffs complaints,  
23 therefore, are meritless.

25 In their Motion, Plaintiffs allege improper ex parte  
26 communications between District Judge Hunt and Colorado Belle's  
27 counsel. Motion, pp. 2-3. If one carefully and completely reads  
28

1 the Order to which Plaintiffs refer, however, it does not  
2 demonstrate that Judge Hunt obtained information regarding  
3 discovery received by Plaintiffs from Colorado Belle. Instead, the  
4 Order merely indicates that sanctions against Colorado Belle were  
5 not appropriate because Colorado Belle had made a "good faith  
6 effort to resolve the dispute" by its offering to provide  
7 information subject to a confidentiality stipulation, which  
8 Plaintiffs rejected. Docket No. 69.

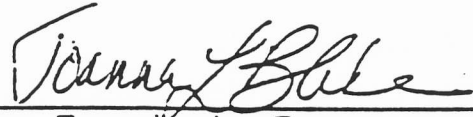
9 III.

10 CONCLUSION

11 Plaintiffs fail to provide points and authorities in support  
12 of their Motion and therefore, consent to denial of their Motion.  
13 Moreover, no authority exists whereby Plaintiffs can seek "facts  
14 and conclusions" from this Court. Finally, Plaintiffs' challenges  
15 to the Court's Orders are without merit. Thus, this Court should  
16 deny Plaintiffs' Motion for Facts and Conclusions.  
17

18 LIONEL SAWYER & COLLINS

19  
20 By:

  
Cam Ferenbach, Esq.  
Joanna L. Blake, Esq.  
1700 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101

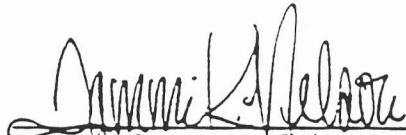
21  
22  
23  
24 Attorneys for Defendant  
COLORADO BELLE CORP.

CERTIFICATE OF MAILING

I hereby certify that on this 16<sup>th</sup> day of June, 2000, I placed  
a true and correct copy of the above and foregoing DEFENDANT  
COLORADO BELLE CORP.'S OPPOSITION TO PLAINTIFFS' MOTION FOR FACTS  
AND CONCLUSIONS in the United States Mail, postage prepaid, to the  
last known address of:

Lynn Geremia  
3105 Palo Verde  
Laughlin, Nevada 89029  
Plaintiff

John Geremia  
3105 Palo Verde  
Laughlin, Nevada 89029  
Plaintiff

  
An employee of  
LIONEL SAWYER & COLLINS