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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MILTON CHARLES VAN NOLAND
and JOY GARNER,

No. 2:09-cv-02035-MCE-DAD

Plaintiffs,

v.

ORDER

ERIC S. PELLETIER and "GRRR!
LIMITED,"

Defendants.

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In bringing the present Motion for Reconsideration,
Plaintiffs Milton Charles Van Noland and Joy Garner, both
proceeding pro se, ask this Court to reverse the magistrate
judge's February 24, 2010 Order denying Plaintiffs' Motion to
Remand. Plaintiffs also ask this Court to reconsider the
magistrate judge's denial of their Motion for Recusal in this
matter.

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1 With respect to the Motion to Remand, Plaintiffs give a laundry
2 list of claimed errors. Plaintiffs' contentions, however, all
3 stem from the magistrate judge's ultimate determination that the
4 principal place of business, if any, of the Defendant
5 corporation, Grrr! Limited, was located in the island of
6 Guernsey, not California. As for the Motion for Recusal,
7 Plaintiffs contend that recusal is warranted due to the
8 magistrate judge's various adverse rulings.

9
10 **A. The Magistrate Judge Properly Denied the Motion to**
11 **Remand**

12 Plaintiffs argue that the magistrate judge's denial of the
13 Motion for Remand (Doc. #78) was erroneous as a matter of fact
14 and law. Plaintiffs advance seven specific arguments. First,
15 they allege that the Supreme Court's recent decision in Hertz
16 Corp. v. Friend, 130 S. Ct. 1181, 2010 WL 605601 (Feb. 23, 2010),
17 changed the prevailing law so that citizenship is no longer
18 determined by the state of incorporation. Second, Plaintiffs
19 contend that incorporation is not the only way of forming a
20 company. Third, they allege that the "start up" theory as
21 applied to this case was incorrect. Fourth, according to
22 Plaintiffs, the magistrate judge failed to make a definitive
23 finding that the Defendant corporation, Grrr! Limited, was active
24 or inactive and that under the proper analysis, the court should
25 have found evidence of substantial activity by the company in
26 California during the relevant time period. Plaintiffs' fifth
27 area of alleged error rests with their contention that there was
28 in fact no evidence of substantial activity in Guernsey.

1 Sixth, Plaintiffs claim that the "naked assertions" considered by
2 the magistrate judge in making his determination were not
3 evidence. Finally, according to Plaintiffs, the magistrate judge
4 improperly reversed the burden applicable to their Motion in any
5 event.

6 A defendant may remove any civil action from state court to
7 federal district court if the district court has original
8 jurisdiction over the matter. 28 U.S.C. § 1441(a). Generally,
9 district courts have original jurisdiction over civil actions in
10 two instances: (1) where there is complete diversity between the
11 parties, or (2) where a federal question is presented in an
12 action arising under the Constitution, federal law, or treaty.
13 28 U.S.C. §§ 1331 and 1332.

14 To determine where a corporation is a citizen, the Court
15 looks to where the corporation has been incorporated and where
16 its principal place of business exists. 28 U.S.C. § 1332(c)(1).
17 "Subject matter jurisdiction is determined on the basis of the
18 facts that existed at the time the action was filed." Stock West
19 Corp. v. Taylor, 964 F.2d 912, 917 (9th Cir. 1992) (citing
20 Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 830 (1989)).
21 Here, there is no dispute that Defendant Grrr! Limited was
22 incorporated in Guernsey on December 29, 2008. Therefore, the
23 dispositive question is whether Grrr! Limited has its principal
24 place of business in California or in Guernsey.

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1 The record suggests that Defendant Grrr! Limited has
2 remained an inactive corporation since the time of its creation.
3 Consequently, the only relevant inquiry in determining its
4 citizenship would appear to be its place of incorporation. "[A]s
5 a general matter, an 'inactive' corporation (that is, a
6 corporation conducting no business activities) has no principal
7 place of business, and is instead a citizen of its state of
8 incorporation only." Midlantic National Bank v. Hansen, 48 F.3d
9 693, 696 (3rd Cir. 1995); Stock West Corp., 964 F.2d at 917. See
10 also Harris v. Black, 961 F.2d 547, 551 (5th Cir. 1992) (a
11 corporation is a citizen of the state of its last place of
12 business unless a "substantial amount of time" has passed since
13 it became inactive). According to Defendants, Grrr! Limited has
14 been inactive since inception because Plaintiffs failed to turn
15 over certain intellectual property. Opp. to Pls.' Mot. for
16 Recons. 5:8-9.

17 Even if Defendant Grrr! Limited is an "active" corporation,
18 its principal place of business is in Guernsey, not California.
19 In an effort to establish a single, uniform standard, the Supreme
20 Court recently clarified that "'principal place of business' is
21 best read as referring to the place where a corporation's
22 officers direct, control, and coordinate the corporation's
23 activities." Hertz Corp., 2010 WL 605601, at *11. This so-
24 called "nerve center" test, as applied to the case at bar, leads
25 to the determination that Guernsey is the principal place of
26 business for Defendants. Defendants have directors in Europe
27 (including two in Guernsey) and no directors in California.

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1 The corporate and financial records are maintained in Guernsey
2 and decisions regarding the present litigation are being made by
3 the directors in Europe.

4 Plaintiffs nonetheless argue that the court should look at
5 pre-incorporation activities, including two meetings held in
6 California. However, looking at the plain language of the
7 statute, that argument lacks merit. Pursuant to 28 U.S.C.
8 § 1332(c)(1), a *corporation* is a citizen where the *corporation*
9 has been incorporated and where its principal place of business
10 exists. Grrr! Limited was not a "corporation" at the time of the
11 meetings because it had yet to be incorporated. Plaintiffs fail
12 to cite any case law to the contrary and the assigned magistrate
13 judge properly excluded the pre-incorporation activities as proof
14 of California citizenship. Moreover, as the Supreme Court's
15 recent Hertz decision makes clear, in the event of a difficult
16 case, a court should look to a "single direction, toward the
17 center of overall direction, control, and coordination." Hertz
18 Corp., 2010 WL 605601, at *13. Here, that place is in Guernsey,
19 not in California.

20 After reviewing the entire file, this Court cannot say that
21 the magistrate judge's decision on the motion to remand was
22 clearly erroneous as that standard has been defined.

23
24 **B. The Magistrate Judge Properly Denied the Motion for**
25 **Recusal**

26 Notwithstanding Plaintiffs' assertions to the contrary, they
27 have not established that the assigned magistrate judge is either
28 unbiased or unfair.


1 Plaintiffs contend that the magistrate judge has displayed a
2 "clear pattern" of abuse in areas "where the court has no
3 discretion", and that consequently Plaintiffs' "right to due
4 process" has been abridged. Mot. for Recons. 16:7-9. Plaintiffs
5 point to alleged instances where the magistrate judge's decisions
6 created excessive and legally prohibited delays in favor of
7 Defendants. Plaintiffs further allege that the magistrate judge
8 voided a preliminary injunction in this matter without due
9 process. Both these assertions relate to orders issued by the
10 magistrate judge. Allegations that stem entirely from the
11 magistrate judge's adverse rulings are not an adequate basis for
12 recusal. Leslie v. Grouo ICA, 198 F.3d 1152, 1160 (9th Cir.
13 1999). Therefore, Plaintiffs' Motion for Reconsideration of the
14 Magistrate Judge's Order denying the Motion for Recusal is
15 denied.

16
17 **CONCLUSION**

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19 For all these reasons, Plaintiffs' Motion for
20 Reconsideration (Docket No. 83) is DENIED.

21 IT IS SO ORDERED.

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23 Dated: April 5, 2010

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26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
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