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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AT&T MOBILITY LLC,  
  
Plaintiff,  
  
v.  
  
GENERAL CHARLES E.  
"CHUCK" YEAGER (RET.), et al.,  
  
Defendants.

No. 2:13-cv-0007-KJM-DAD

ORDER

On June 2, 2015, the court held a hearing to determine whether General Charles E. "Chuck" Yeager (Ret.) would consent to the appointment of a guardian ad litem to represent him in this litigation. General Yeager did not give consent. For the reasons below, a hearing and briefing schedule are set on General Yeager's competence to continue in this case without representation.

I. BACKGROUND

A. Procedural History

On October 10, 2014, Intervenor Parsons Behle & Latimer moved to enforce its settlement agreement with General Yeager and his wife, Victoria Yeager. ECF No. 128. In a previous order, the court concluded the agreement is enforceable if the attorney who signed it on

1 General Yeager's behalf, Parker White, had authority to do so. Order Nov. 21, 2014, ECF  
2 No. 139.

3 The court held an evidentiary hearing on March 24, 2015, to allow the parties to  
4 present evidence on White's authority. *See* Minutes, ECF No. 167. At that hearing, General  
5 Yeager represented himself, and Victoria Yeager represented herself. Based on General Yeager's  
6 demeanor and responses to the court's questions at the hearing, the court developed a concern that  
7 he is not competent to continue without representation. Order Mar. 26, 2015, ECF No. 169. The  
8 court ordered the parties to address the court's impression that a hearing on General Yeager's  
9 competency is required. *Id.* The parties submitted responsive briefs on May 12, 2015. ECF Nos.  
10 180, 182, 183.

11 After reviewing the parties' briefs and the transcript of the evidentiary hearing, the  
12 court found that substantial evidence cast doubt on General Yeager's competence. Order May 21,  
13 2015, ECF No. 185. The court set a hearing for June 2, 2015, at which General Yeager was to  
14 appear and (1) advise the court whether he would consent to the appointment of a guardian ad  
15 litem; (2) identify the names of two persons who are able to serve as guardian ad litem; and  
16 (3) explain each proposed guardian ad litem's qualifications and say whether each would consent  
17 to fulfilling that role. *Id.*

18 On May 26, 2015, General and Mrs. Yeager requested the June 2 hearing be  
19 continued for forty-three days, citing medical appointments and a busy hearing schedule in other  
20 pending cases. *Ex Parte App. Continue*, ECF No. 186. Parsons Behle filed an opposition, *Opp'n*,  
21 ECF No. 190, and the court denied the request, *Minute Order*, ECF No. 191.

22 B. Consent Hearing

23 The hearing went forward as scheduled. General Yeager and Victoria Yeager  
24 appeared, each pro se. Kennedy Luvai appeared on behalf of Parsons Behle, and Mark Serlin  
25 appeared on behalf of the Bowlin parties. General Yeager was provided with a headset to amplify  
26 the court's and the parties' speech. The court's staff also provided simultaneous written  
27 transcription of the hearing, which was displayed on a screen General Yeager could see and read.  
28 A few minutes into the hearing, in an effort to ensure General Yeager could hear and see the court

1 and understand its questions, the court stepped down from the bench and stood at the lectern  
2 immediately in front of General Yeager.

3           General Yeager confirmed several times that he could hear the court’s questions  
4 and could read them on the screen. When asked whether he understood the purpose of the  
5 hearing, he expressed confusion and did not respond. When asked whether he understood what a  
6 guardian or guardian ad litem was, he was again confused and did not answer. When asked  
7 whether he was willing to have the court appoint someone to assist him with the litigation, he  
8 said, “Next question.” When asked again, he said he would appoint Mrs. Yeager. The court’s  
9 previous order clarified that because Mrs. Yeager’s interests in this litigation differ from those of  
10 General Yeager, she cannot be appointed as his guardian ad litem. Order May 21, 2015, at 6,  
11 ECF No. 185. When the court asked whether General Yeager would agree to the appointment of  
12 some other person, he did not respond.

13           Mrs. Yeager informed the court General Yeager had brought a written declaration  
14 to the hearing, and the court asked General Yeager whether he wanted to read it. He read the  
15 names of the some of the parties in this case, apparently from the caption, and then read the  
16 following:

17                       I, Charles E. Yeager, declare I object to the court stopping me from  
18                       assigning Victoria Yeager as guardian ad litem. I’m quite able to  
                          make decisions such as whichever<sup>1</sup> to settle and on what terms.

19 Rough Tr. 15:11–14. General Yeager expressed surprise after reading these sentences and asked  
20 the court, “Are you objecting if Victoria helps me?” *Id.* at 15:18. The court asked General  
21 Yeager whether he wanted to read anything else from the declaration, and he responded “Other  
22 than ‘I, Charles E. Yeager declare’ and a couple of sentences.” *Id.* at 15:23–24. After a  
23 discussion with the other parties, the court again asked General Yeager whether he had anything  
24 else to say, and he said no. *Id.* at 18:12–14.

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27           <sup>1</sup> In the copy of the declaration filed after the hearing, this sentence reads, “I am quite able  
28 to make decisions such as whether to settle and on what terms.” Gen. Yeager Decl. ¶¶ 1–2, ECF  
No. 194.

1           The court allowed the written declaration to be filed after the hearing. The  
2 sentences General Yeager read at the hearing appear on its first page. *See* Gen. Yeager Decl.  
3 ¶¶ 1–2, ECF No. 194. On the declaration’s second page, it continues:

4           I have hearing loss which prevents me from being able to hear all  
5 the details and keep up with the speed of Court.

6           If I get to still make my own decisions and the guardian for this  
7 Federal case is only to help the Court and me in Court hearings,  
8 procedures, and communications; I consent to Victoria Yeager,  
9 Jerry Karnow, and/or Tammy Karnow, as my guardian, in that  
10 order.

11           All three have agreed to serve as guardian for this case.

12           Jerry Karnow is Game Warden for California Fish and Game.

13           Tammy Karnow is a registered nurse.

14 *Id.* ¶¶ 3–7. General Yeager’s signature follows, declaring “the foregoing to be true and correct  
15 under the laws of perjury of the State of California.” *Id.* at 2.

## 16 II.     DISCUSSION

17           A person’s capacity to sue is measured by the standard of the law of his domicile,  
18 Fed. R. Civ. P. 17(b)(1), here California state law, but federal law governs questions of  
19 appropriate procedure, *Estate of Escobedo v. City of Redwood City*, No. 03-03204, 2006 WL  
20 571354, at \*7–9 (N.D. Cal. Mar. 2, 2006) (citing, *inter alia*, *Gibbs v. Carnival Cruise Lines*,  
21 314 F.3d 125, 134–35 (3rd Cir. 2002), *M.S. v. Wermers*, 557 F.2d 170, 174 n.4 (8th Cir. 1977)).

22           The appointment of a guardian ad litem may affect a litigant’s due process rights.  
23 *See, e.g., United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cnty., State of*  
24 *Wash.*, 795 F.2d 796, 805 (9th Cir. 1986) (holding a guardian ad litem has authority to hire a  
25 lawyer, hire expert witnesses, settle the case, and generally control the litigation); *see also*  
26 *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971); *Neilson v. Colgate-Palmolive Co.*,  
27 199 F.3d 642, 651 (2d Cir. 1999); *Thomas v. Humfield*, 916 F.2d 1032, 1033–34 (5th Cir. 1990).  
28 To determine what process is due, the court must consider (1) the interest affected, (2) the risk of  
an erroneous deprivation of that interest without an appropriate safeguard, and (3) the  
government’s interest, here the court’s interest in the just and efficient resolution of this case. *See*

1 *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976); *see also Nielson*, 199 F.3d at 651 (applying  
2 these factors to the appointment of a guardian ad litem); *Thomas*, 916 F.2d at 1034 (same).  
3 Federal courts have generally concluded that notice and a hearing are the minimum required. *See*,  
4 *e.g.*, *Sturdza v. United Arab Emirates*, 562 F.3d 1186, 1188 (D.C. Cir. 2009); *Golden Gate Way,*  
5 *LLC v. Stewart*, No. 09-04458, 2012 WL 4482053, at \*3 (N.D. Cal. Sept. 28, 2012). Otherwise,  
6 the details may vary from one case to the next. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 481  
7 (1972) (“[D]ue process is flexible and calls for such procedural protections as the particular  
8 situation demands.”); *Sturdza*, 562 F.2d at 1188 (“When the party for whom the guardian is  
9 sought claims to be competent, at least ‘some hearing’ is required. Although this need not always  
10 take the form of a ‘full adversary hearing,’ at a minimum it entails ‘notice and an opportunity to  
11 be heard.’” (quoting *Thomas* 916 F.2d at 1033)); *accord Nielson*, 199 F.3d at 651.

12           Here, General Yeager’s due process interest is his control of the litigation. Should  
13 the court conclude General Yeager is not competent to continue in this litigation pro se and  
14 appoint a guardian ad litem, his personal control of this litigation may be diminished. If the court  
15 underestimates his competence in error, he may be deprived of control of the litigation without  
16 justification. On the other side of the scale, as noted, the court’s interest is the just and efficient  
17 resolution of this litigation. The case cannot be resolved justly and efficiently if General Yeager  
18 cannot comprehend, prosecute, and control his case. He must have notice and an opportunity to  
19 be heard on the question.

20           The court’s previous orders have informed General Yeager of the court’s concern  
21 that he is not competent to continue without representation. *See* ECF Nos. 169, 185. His  
22 behavior, demeanor, and answers to questions at the hearings on March 24, 2015 and June 2,  
23 2015 reaffirmed the court’s concerns. He was given notice and an opportunity to advise the court  
24 whether he would consent to the appointment of a guardian, but he could not answer the court’s  
25 questions, did not understand the purpose of the June 2 hearing, and did not consent to the  
26 appointment of a guardian. Although General Yeager’s written declaration describes his  
27 purported consent to the appointment of certain persons as guardians, he seemed unfamiliar with  
28 that document at the hearing, chose not to read the second page, and he appears not to have

1 known the critical second page existed. The court cannot rely on the declaration as reflecting his  
2 personal knowledge or accurately describing his consent.

3 A hearing is therefore set below to receive evidence of General Yeager's  
4 competence.

5 **III. CONCLUSION**

6 The court orders as follows:

7 (1) A hearing is SET for Tuesday, **August 25, 2015, at 10:00 a.m.** General  
8 Yeager shall appear and be prepared to answer the court's questions regarding his competence to  
9 proceed further without representation. Other parties may also appear at the hearing. The court  
10 credits General Yeager's presence at hearings in this case to date. Should General Yeager not  
11 appear at the hearing set in this order, the court will consider his absence as consent to the  
12 appointment of any qualified guardian ad litem without further notice

13 (2) By Friday, **August 21, 2015**, General Yeager shall submit any evidence of his  
14 competency for the court's *in camera* review, without filing it on the docket. General Yeager  
15 may submit any such evidence by email to [kjmorders@caed.uscourts.gov](mailto:kjmorders@caed.uscourts.gov). By the same date,  
16 General Yeager shall file any requests for partial closure of the August 25 hearing or the sealing  
17 of documents.

18 IT IS SO ORDERED.

19 DATED: August 11, 2015.

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22 UNITED STATES DISTRICT JUDGE  
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