

1 In a related case, *AT&T Mobility LLC v. Yeager, et al.*, No. 13-007 (E.D. Cal. filed
2 Jan. 2, 2013), also pending before the undersigned, the court recently held an evidentiary hearing
3 on the question of General Yeager’s ability to proceed without counsel. *See* Minutes Sept. 14,
4 2015, Case No. 13-007, ECF No. 218. The court has not yet issued an order on that question;
5 however, the court concludes it may decide the question before it in this motion because the
6 court’s order does not serve as a judgment on the merits of the parties’ dispute. *Cf. Allen v.*
7 *Calderon*, 408 F.3d 1150, 1153 (9th Cir. 2005) (holding that in a non-habeas civil case, if an
8 incompetent person is unrepresented, the court may not enter a judgment on the merits without
9 complying with Rule 17(c)); *Nutter v. Monongahela Power Co.*, 4 F.3d 319, 322 (4th Cir. 1993)
10 (“[A] district court’s findings incident to an order of remand have no preclusive effect.” (citing,
11 *inter alia*, *Whitman v. Raley’s Inc.*, 886 F.2d 1177, 1181 (9th Cir. 1989))).

12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304,
13 this court has conducted a de novo review of this case. Having reviewed the file, the court finds
14 the findings and recommendations to be supported by the record and by the proper analysis, and
15 adopts them in full. The court writes separately here only to address two points raised in
16 objection to the findings and recommendations.

17 First, the Yeagers argue, as they did in their motion, that the defendants owed them
18 a fiduciary duty (1) to inform them that should a dispute arise, and should they later file an action
19 in state court, federal law could potentially allow removal of the case to federal district court, and
20 (2) not to remove the case to federal district court should adjudication in federal court be less
21 favorable to the Yeagers. Other than general statements of an attorney’s fiduciary duty to his or
22 her client, the Yeagers cite no authority to support these arguments, and the court is aware of
23 none.


24 Second, the Yeagers argue public policy favors remand to state court. “[F]ederal
25 courts have a ‘virtually unflagging obligation’ to exercise their jurisdiction except in those
26 extraordinary circumstances ‘where the order to the parties to repair to the State court would
27 clearly serve an important countervailing interest.’” *Deakins v. Monaghan*, 484 U.S. 193, 203
28 (1988) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813

1 (1976)). The Yeagers have pointed to no circumstances that require adjudication in state courts.
2 Moreover, the defendants have a legitimate interest in this court's jurisdiction. *See Lively v. Wild*
3 *Oats Markets*, 456 F.3d 933 (9th Cir. 2006) ("Removal based on diversity jurisdiction is intended
4 to protect out-of-state defendants from possible prejudices in state court.").

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The findings and recommendations filed August 4, 2015 (Dkt. No. 43) are
7 adopted in full;
- 8 2. Plaintiff's December 16, 2014 motion to remand (Dkt. No. 13) is denied; and
- 9 3. This case is STAYED pending the issuance of an order in the related case,
10 No. 13-0007, on the question of General Yeager's competency to proceed without representation.

11 DATED: September 24, 2015.

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UNITED STATES DISTRICT JUDGE