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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**FOX HOLLOW OF TURLOCK  
OWNER’S ASSOCIATION, a California  
Nonprofit Mutual Benefit Corporation,**  
  
                  **Plaintiff,**  
  
                  **v.**  
  
**MAUCTRST, LLC et al.,**  
  
                  **Defendants.**

**CASE NO. 1:03-CV-5439 AWI SAB**  
  
**ORDER VACATING HEARING  
DATE OF JUNE 17, 2013 AND  
REQUESTING ADDITIONAL  
BRIEFING**

Plaintiffs have made a motion for reconsideration. Doc. 897. Plaintiffs had originally made a motion to have claims by Mauctrst dismissed and for default judgment against Mauctrst based on the theory that Mauctrst lacked the capacity “to sue, or to defend itself.” Doc. 870, 2:14-15. This court’s order stated that the more natural conclusion was that Mauctrst lost the power “to sue and be sued” and so dismissed all claims by and against Mauctrst. Doc. 892, 5:10-11.

Plaintiffs now seek to differentiate between “be sued” and “defend” arguing that under California law the two terms are distinct and the term “be sued” was not applicable to the situation. Specifically, relevant California law lists as different actions “sue, be sued, complain, and defend.” See Cal. Corp. Code § 17003(b). The court is prepared to reconsider the entire prior order. Additional briefing is required.

In the initial motion Plaintiffs asserted Mauctrst lost the capacity “to sue, or to defend itself.” Do Plaintiffs wish to modify their assertion to Mauctrst lost the capacity “to complain, or

1 to defend itself”? Plaintiffs must provide briefing on what each of the terms “sue, be sued,  
2 complain, and defend” mean under California law and how they are treated differently. Then,  
3 Plaintiffs must provide briefing as to how those terms (the California law or analogous law from  
4 other states) are given effect in federal court under Fed. Rule Civ. Proc. 17(b). Plaintiffs must  
5 file their additional briefing by 4:00 PM on Wednesday, July 10, 2013. Mautrst (though  
6 dismissed from this case) is invited but not required to file a response; any briefing from  
7 Mautrst must be filed by 4:00 PM on Wednesday, July 31, 2013.

8 The hearing scheduled for June 17, 2013 is VACATED. The clerk of the court is directed  
9 to mail a paper copy of this order to Mautrst’s former attorney, Curtis D. Rindlesbacher of  
10 Perkins, Mann, & Everett at 7815 N. Palm Avenue, Suite 200; Fresno, California 93711 and e-  
11 mail an electronic copy of this order to crindlisbacher@pmelaw.com.

12 IT IS SO ORDERED.

13 Dated: June 14, 2013



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15 SENIOR DISTRICT JUDGE  
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