

FILED

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**Superior Court of California
County of Tuolumne**

By: Donna Benz Clerk

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5 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE**
41 West Yaney Avenue, Sonora, CA 95370
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8 ODD FELLOWS SIERRA RECREATION)
ASSOCIATION, a California corporation,)

9 Plaintiff,)

10 vs.)

11 ODD FELLOWS SIERRA HOMEOWNERS')
12 ASSOCIATION, a California non-profit)
corporation; and DOES 1 through 500,)
13 inclusive,)

14 Defendants)

No.: CV 57297

**Reply to Request for Dismissal of
DOES 1-500 Without Prejudice Filed
October 25, 2012**

) MOTION HEARING DATE: Nov. 29, 2012
) JUDGMENT DATE: September 18, 2012
) DEFAULT HEARING DATE: July 13, 2012
) Dept: 3
) JUDGE: Honorable Donald Segerstrom

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16 Charles Varvayanis and Patricia Jones reply to the Request for Dismissal of DOES 1-500
17 without prejudice:
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19 **I.**

20 **Related Motion and the Request for Dismissal**

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22 **A. Motion to Set-A-Side Judgment was filed on October 22, 2012.**

23 1. Charles Varvayanis and Patricia Jones filed a Motion to Set-A-Side Judgment on
24 October 22, 2012 that is scheduled to be heard on November 29, 2012.

25 **B. The Request for Dismissal.**

1 2. The Request for Dismissal of DOES 1 through 500 was drafted less than 48 hours
2 after the aforementioned Motion to Set-A-Side and three and a half months after the Judgment
3 on July 13, 2012.

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5 **II.**

6 **Introduction**

7
8 **A. Request for the “Request for Dismissal of DOES 1-500 without prejudice” be**
9 **deferred, Set-A-Side or Denied.**

10 3. Charles Varvayanis and Patricia Jones Request the Request for Dismissal of
11 DOES 1-500 without prejudice be deferred, Set-A-Side or denied until after the Motion to Set-A-
12 Side Judgment filed on October 22, 2012 and set to be heard on November 29, 2012 is heard and
13 decided.

14 **B. Request for the “Request for Dismissal of DOES 1-500 without prejudice” to be**
15 **modified to “with prejudice” if not deferred, Set-A-Side or Denied.**

16 4. Charles Varvayanis and Patricia Jones further request that if at any time, the
17 Request for Dismissal of DOES 1-500 is granted, that it be modified to be “with prejudice”.

18 **C. Defendant Odd Fellows Sierra Homeowners Association, Inc. is Defunct and Can**
19 **Not Defend Itself or Those Affected by the Judgment and Judgment after Prove-Up**
20 **Hearing.**

21 5. Defendant Odd Fellows Sierra Homeowners Association, Inc. is Defunct and can
22 not defend itself or those affected by the Judgment and Judgment after Prove-Up Hearing.

23 **D. The Judgment and Judgment after Prove-Up Hearing have Wide Ranging and**
24 **Profound Effects Upon the I.O.O.F. Odd Fellows Sierra Camp Subdivisions No.1 & No.2**
25 **Community and Certain Individuals Within the Community.**

6. The Judgment and Judgment after Prove-Up Hearing and information and text contained within are being used liberally; i) by Plaintiff in the formation of a Community Services District (CSD), at CSD formation meetings and in the CSD application, ii) in Plaintiff's defense in multiple laws suits in which Plaintiff is named as Defendant, iii) in Plaintiff's misleading and misdirecting communications to both Plaintiff's members and the Odd Fellows Sierra I.O.O.F. Subdivisions No.1 & No.2 subdivision lot owners, iv) and in threats of lawsuit by third parties sympathetic with Plaintiff against certain members of the Defendant's former board of Directors.

III.

Statement of Facts

A. **The DOES 1-500 were Not Aware They were DOES and were Not Aware Defendant Odd Fellows Sierra Homeowners' Association, Inc. Would Not Answer the Complaint.**

7. The Does were not aware they were Does.

8. The Does were not aware Defendant Odd Fellows Sierra Homeowners' Association, Inc. would not answer the complaint.

B. **Charles Varvayanis First Attempted to Address the Court at the July 13, 2012 Default Prove-Up Hearing.**

9. Charles Varvayanis as a concerned Lot owner in the I.O.O.F. Odd Fellows Sierra Camp Subdivision and upon leaning Defendant did not answer the complaint, first attempted to address the court at the July 13, 2012 Default Prove-Up Hearing, but was informed by Honorable Donald Segerstrom that this was a default hearing, that only the Plaintiff could address the court at the hearing and that the Default Judgment can be set-a-side during a period of one year.

C. **Defendant Odd Fellows Sierra Homeowners Association, Inc. is Defunct.**

1 10. Defendant Odd Fellows Sierra Homeowners Association, Inc. was illegally
2 formed by Plaintiff, Odd Fellows Sierra Recreation Association, Inc.

3 11. Defendant Odd Fellows Sierra Homeowners' Association, Inc.'s supposed board
4 of directors disbanded upon learning its board members were not eligible to be board of directors
5 members and that action by the board of directors is invalid as a result.

6 12. Defendant Odd Fellows Sierra Homeowners' Association, Inc. has no board of
7 directors.

8 13. Defendant Odd Fellows Sierra Homeowners' Association, Inc. has no scheduled
9 meetings.

10 14. Defendant Odd Fellows Sierra Homeowners' Association, Inc. is out of
11 conformance with the Secretary of State.

12 15. Defendant Odd Fellows Sierra Homeowners' Association, Inc. CC&R is invalid.

13 16. Defendant Odd Fellows Sierra Homeowners' Association, Inc. by-laws are
14 invalid.

15 17. Defendant Odd Fellows Sierra Homeowners' Association, Inc. has no Members.

16 **D. The Judgment and Judgment after Prove-Up Hearing.**

17 18. July, 13, 2012 a Default Hearing was held and Judgment was issued. The court
18 minutes of that hearing indicate "**The Court states that it will not make any orders with
19 respect to declaratory relief**"¹.

20 19. September 13, 2012 Plaintiff's Counsel submitted the Proposed Judgment for
21 review.

22 20. September 18, 2012 the Judgment after Prove-Up Hearing was filed.
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24
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¹ Bolded for emphasis.

1
2 E. **The Judgment after Prove-Up Hearing Contains “Declaratory Relief” or**
3 **“Declaratory Relief” like content.**

4 21. A portion, if not all of the aforementioned effects (item 6 above), stem from the
5 “Declaratory Relief” or “Declaratory Relief” like content embedded in the Judgment after Prove-
6 Up Hearing. Specifically, sections “II. Factual Findings by Court” and “II. Legal Findings and
7 Orders by Court” which are declaratory in nature. Note: Both sections are labeled “II”. The “II.
8 Factual Findings by Court” were based solely on the contents of the complaint whereas no
9 substantial supporting evidence or testimony was presented. The “II. Legal Findings and Orders
10 by Court” were based on **fraudulent, misleading and incomplete information**² provided in the
11 complaint, evidence and testimony.

12 F. **The Judgment and Judgment after Prove-Up Hearing are Based on Fraudulent,**
13 **Misleading and Incomplete Information.**

14 22. The Judgment and Judgment after Prove-Up Hearing are based on fraudulent,
15 misleading and incomplete information provided in the complaint, evidence and testimony.

16 G. **Charles Varvayanis was one of Defendant’s past board of directors.**

17 23. Charles Varvayanis was a member of Defendant’s past board of directors.

18 24. Charles Varvayanis resigned from Defendant’s board of directors two months
19 prior to the Plaintiff’s Complaint being filed.

20 H. **References to the Judgment by Plaintiff or in Plaintiff’s Interest.**

21 25. Plaintiff refers to Judgment in many venues since it was issued.
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² Bolded for emphasis.

1 26. On August 2, 2012, Odd Fellows Sierra Recreation Association, Inc. the
2 Defendant in Tuolumne County Small Claims case SC 18553 made mention of the CV 57297
3 Judgment in a Request for Order for Dismissal in SC 18553.

4 27. On August 15, 2012, Odd Fellows Sierra Recreation Association, Inc. the
5 Defendant in Tuolumne County Small Claims case SC 18553, testified it had evidence in the
6 form of a Judgment from CV 57297 and further testified SC 18553 should be dismissed based
7 partially on the findings in the CV 57297 Judgment. A copy of the August 15, 2012 "Minutes"
8 for SC 18553 is attached hereto as Exhibit "A" and incorporated by this reference. (Note: CV
9 57297 is inadvertently referenced as CV 57207 in the August 15, 2012 Minutes).

10 28. On August 23, 2012, Odd Fellows Sierra Recreation Association, Inc. the
11 Defendant in Tuolumne County Small Claims case SC 18586, a second and separate Small
12 Claims case, testified it had evidence in the form of a Judgment from CV 57297 and further
13 testified the CV 57297 Judgment is relevant to SC 18586.

14 29. On August 30, 2012, Odd Fellows Sierra Recreation Association, Inc., the
15 Defendant in Public Utilities Commission of the State of California, case C-1203017, reported
16 CV 57297 as Judgment "relevant": "On July 13, 2012, judgment was entered was entered in
17 favor of the Recreation Association and against the Odd Fellows Sierra Homeowners'
18 Association in the amount of \$213,770.00 plus attorneys fees and costs in Tuolumne County
19 Superior Court, Case No. CV 57297."

20 30. On September 13, 2012, Odd Fellows Sierra Recreation Association, Inc. the
21 Defendant in Tuolumne County Small Claims case SC 18553, testified it had submitted the
22 Judgment after Prove-Up Hearing for CV 57297 and the findings are relevant to SC 18553.

23 31. On October 9, 2012, nine or ten of the members of Defendant's past board of
24 directors were mailed letters claiming each board member personally shares joint and severable
25 liability for \$213,770.00 payable to Plaintiff, the exact amount of the of the Judgment. Further

1 the letter threatens lawsuit against nine or ten of the members of Defendant's board of directors
2 if the members of Defendant's board of directors members do not pay the \$213,770.00. Charles
3 Varvayanis is one of the threatened members.

4 32. On October 18, 2012, Odd Fellows Sierra Recreation Association, Inc. the
5 Defendant in Tuolumne County Small Claims case SC 18553, testified the Judgment after Prove-
6 Up Hearing CV 57297 had been signed and filed and reiterated it is relevant to SC 18553.

7 33. On October 19, 2012, the Odd Fellows Sierra Recreation Association, Inc. filed
8 an application with the County of Tuolumne, Local Area Formation Commission (LAFCo). The
9 application contains verbatim portions of the Judgment after Prove-Up Hearing.

10 34. On October 20, 2012, Plaintiff's Community Service District Formation
11 Committee informed the I.O.O.F. Sierra Camp Subdivisions No. 1 and No.2 subdivision lot
12 owners that Plaintiff had set a contingency that a Judgment had to be obtained against Defendant
13 before it allow the committee to move forward with filing the LAFCo application.

14 15 IV.

16 Conclusion

17 35. Based on the forgoing information and the previously unknown effects it would
18 have on Charles Varvayanis, Patricia Jones and the I.O.O.F. Odd Fellows Sierra Camp
19 Subdivisions No.1 & No.2 community, Charles Varvayanis and Patricia Jones accordingly ask
20 the Request for Dismissal of DOES 1-500 without prejudice be deferred, Set-A-Side or denied
21 until after the Motion to Set-A-Side Judgment filed on October 22, 2012 is heard and decided.
22 Further Charles Varvayanis and Patricia Jones request that if at any time, the Request for
23 Dismissal of DOES 1-500 is granted, that it be modified to be "with prejudice".
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1 DATED: November 2, 2012

Respectfully submitted,

Charles Varvayanis

By: Pat T. Jones

Charles Varvayanis
Patricia T. Jones

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**Superior Court of California
County of Tuolumne**

Charles Varvayanis, et al vs. OFSRA	Judge: Kim M. Knowles Clerk: Susan Fischer CSR: Interpreter:
Type of Hearing: Hearing: Other Motion/OSC Detail: Other Additional Information: Request for Dismissal w/out appr	CASE NO.: SC18553 DATE: August 15, 2012

Plaintiff(s): Charles Varvayanis <input checked="" type="checkbox"/> Present <input type="checkbox"/> Not Present Patricia T. Jones <input type="checkbox"/> Present <input checked="" type="checkbox"/> Not Present	
Defendant(s): OFSRA by Del Wallis <input checked="" type="checkbox"/> Present <input type="checkbox"/> Not Present _____ <input type="checkbox"/> Present <input type="checkbox"/> Not Present	
<input type="checkbox"/> All parties sworn <input type="checkbox"/> Witnesses Testifying:	
Plaintiff(s) _____	Defendant(s) _____
_____	_____
_____	_____
<input type="checkbox"/> The following exhibits were marked:	
Plaintiff(s) _____	Defendant(s) _____
_____	_____
_____	_____
<input type="checkbox"/> Proof of Service on file <input checked="" type="checkbox"/> Authorization to Appear on file <input type="checkbox"/> Non-Military Declaration on file <input type="checkbox"/> Judgment entered according to proof	
<input type="checkbox"/> Exhibits submitted. <input type="checkbox"/> Exhibits returned to the parties. <input type="checkbox"/> Exhibits retained in the file. <input type="checkbox"/> See attached list	

Defendant's Request for Dismissal is argued and answered.

FINDINGS & BY ORDER OF THE COURT:

Small Claims Court finds it has jurisdiction in this case and denies the Request for Order filed by Defendant.

Court Trial set on 8-23-2012 in Department 5 is hereby vacated.

Plaintiff to file an amended claim by adding Odd Fellows Homeowner's Association as a Defendant. When he does so a new date for trial is to be assigned.

OTHER ORDERS/STIPULATIONS: Related file CV57207 is to accompany this case for the next hearing.