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4 Rose Wallis
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6 Defendants In Pro Per
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF TUOLUMNE

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11 CHARLES P. VARVAYANIS,) Case No. SC 19352
12 Plaintiff,)
13 vs.) POINTS AND AUTHORITIES IN SUPPORT
14) OF MOTION TO STRIKE COMPLAINT AS
15 DELWYN WALLIS, an individual;) TO DELWYN WALLIS, AN INDIVIDUAL,
ROSE MARIE WALLIS, an individual;) AND AS TO ROSE WALLIS, AN INDIVIDUAL
16 ODD FELLOWS SIERRA RECREATION)
ASSOCIATION, INC.) DATE: July 15, 2016
17 Defendants.) TIME: 8:30 a.m.
) DEPT: 5, Commissioner Pimentel
)

18
19 COME NOW Defendants DELWYN WALLIS, an individual (“Del”) and ROSE WALLIS, an
20 individual (“Rose”) who bring this Motion to Strike the Small Claims Complaint filed by Plaintiff
21 CHARLES VARVAYANIS (“Plaintiff” or “Varvayanis”) as to DELWYN WALLIS, an individual,
22 and ROSE WALLIS, an individual as follows:

23 I.

24 INTRODUCTION AND RELIEF REQUESTED

25 Varvayanis filed the complaint in this matter and **makes only one allegation** therein.
26 Specifically, Varvayanis alleges that he is owed TWELVE UNITED STATES DOLLARS AND
27 SIXTY NINE CENTS (\$12.69) because he claims (as set forth on page 2, paragraph 3(a)): “CPUC
28 Decision 16-01-047 dated January 28, 2016 orders 20 payments of \$15.57 totaling~ \$311.33. The

1 Defendants fraudulently, mistakenly or incompetently paid me \$2.88 as the first 1/20 payment.”

2 However, although “CPUC Decision 16-01-047 dated January 28, 2016” (the “CPUC
3 Decision”) does identify and discuss the liability of Defendant ODD FELLOWS SIERRA
4 RECREATION ASSOCIATION, INC., the CPUC Decision makes **absolutely no reference to Del or**
5 **Rose as individuals.**

6 Therefore, by virtue of the terms of the CPUC Decision, as a matter of law, Rose and Del, as
7 individuals cannot be and are not liable to Varvayanis for payment of \$12.69 under the CPUC Decision
8 document which is the sole basis of liability identified by Varvayanis.

9 Therefore, Del and Rose request that the Complaint be stricken as to Del as an individual and as
10 to Rose as an individual.

11 II.

12 ARGUMENT

13 A. **The CPUC Decision cannot, as a matter of law, be the basis for claims by Varvayanis that**
14 **Del and Rose owe him money as individuals.**

15 Del and Rose request that the Court take judicial notice of the existence and content of
16 “CPUC Decision 16-01-047 dated January 28, 2016” pursuant to California Evidence Code Section 452
17 inasmuch as it is regulation and/or legislative enactment issued by or under the authority of a public
18 entity in the United States (See Request for Judicial Notice in Support of Motion to Strike filed
19 herewith).

20 Attached as **Exhibit A** to the Request for Judicial Notice filed in support herewith is a true
21 and correct copy of the CPUC Decision.

22 **The CPUC Decision makes no reference whatsoever to Del or Rose as individuals. As**
23 **such, the CPUC Decision cannot, as a matter of law, be the basis for claims by Varvayanis that**
24 **Del and Rose owe him money as individuals.**

25 However, Varvayanis relies on the CPUC Decision exclusively and offers no other basis for
26 the liability of Rose and Del as individuals.

27 Therefore, the Complaint should be stricken as to Del and Rose as individuals.

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1 **B. The Court has authority to strike the complaint as to Del and Rose as individuals.**

2 Unless otherwise provided by statute or rule, the statutes or rules applicable to limited civil
3 cases are applicable to small claims cases. *General Electric Capital Auto Financial Services, Inc. v.*
4 *Appellate Division* (App. 2 Dist. 2001) 105 Cal.Rptr.2d 552, 88 Cal.App.4th 136.

5 A judge may, on a motion to strike made under CCP §435 or at any time at his or her discretion,
6 strike out any irrelevant, false, or improper matter in a pleading, on terms the judge deems proper. CCP
7 §436(a); *La Jolla Village Homeowners Ass'n v Superior Court* (1989) 212 CA3d 1131, 1141, 261 CR
8 146. These may include conclusory allegations not supported by any facts. *Bartling v Glendale*
9 *Adventist Med. Ctr.* (1986) 184 CA3d 961, 969-971, 229 CR 360.

10 In the instant case, Varvayanis' claim that Del and/or Rose owe him money based on the CPUC
11 Decision is a conclusory allegation not supported by any facts. As set forth above, the CPUC Decision
12 does not provide any basis for liability as to Del and Rose as individuals. Therefore, the court should
13 strike the Complaint as to Rose and Del as individuals.

14 III.

15 CONCLUSION

16 Based on the foregoing, Defendants respectfully request that the Court strike the claims by the
17 Plaintiff against DELWYN WALLIS and ROSE WALLIS as individuals, because there is no basis for
18 the claims given the sole allegation made by Plaintiff in his Complaint and his exclusive reliance on the
19 CPUC Decision which makes no reference to DELWYN WALLIS or ROSE WALLIS as individuals.

20 Dated: June 15, 2016

21
22 
Defendant DELWYN WALLIS, In Propria Persona

23 Dated: June 15, 2016

24
25 
Defendant ROSE WALLIS, In Propria Persona