

1 Delwyn Wallis
Post Office Box 279
2 Mi Wuk Village, California 95346
(209) 586-4065

3
4 Rose Wallis
Post Office Box 279
5 Mi Wuk Village, California 95346
(209) 586-4065

6 Defendants In Pro Per
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF TUOLUMNE**
10

11 CHARLES P. VARVAYANIS,

12 Plaintiff,

13 vs.

14 DELWYN WALLIS, an individual;
15 ROSE MARIE WALLIS, an individual;
16 ODD FELLOWS SIERRA RECREATION
ASSOCIATION, INC.

17 Defendants.
18

) Case No. SC 19463
)

) **POINTS AND AUTHORITIES IN SUPPORT**
) **OF MOTION TO STRIKE COMPLAINT AS**
) **TO DELWYN WALLIS, AN INDIVIDUAL,**
) **AND AS TO ROSE WALLIS, AN**
) **INDIVIDUAL**

) DATE: January 6, 2017
) TIME: 8:30 a.m.
) DEPT: 5, Commissioner Pimentel
) TRIAL DATE: January 6, 2017
)

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, and
22 ROSE WALLIS, an individual as follows:

23 **I: INTRODUCTION AND RELIEF REQUESTED**

24 Varvayanis filed the complaint in this matter and **makes only one allegation** therein.
25 Specifically, Varvayanis alleges that he is owed EIGHTY-ONE UNITED STATES DOLLARS AND
26 SEVENTY-EIGHT CENTS (\$81.78) because he claims (as set forth on page 2, paragraph 3(a)):
27 "CPUC Decision 16-01-047 dated January 28, 2016 orders 20 payments of \$15.57 totaling~\$311.33 per
28 lot. I have two lots. The Defendant has paid me 2 x \$2.88 (3/25/2016) 2x \$0.00 (6/24/2016) and 2 x

1 \$2.88 (9/25/2016)."

2 However, although "CPUC Decision 16-01-047 dated January 28, 2016" (the "CPUC
3 Decision") references Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION, INC.,
4 the CPUC Decision makes **absolutely no reference to Del or Rose as individuals.**

5 Therefore, by virtue of the terms of the CPUC Decision, as a matter of law, Rose and Del, as
6 individuals cannot be and are not liable to Varvayanis for payment of \$81.78 under the CPUC Decision
7 which is the sole basis of liability identified by Varvayanis.

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

10 **II: ARGUMENTS**

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

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

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

20 Del and Rose request that the Court take judicial notice of the existence and content of the
21 CPUC "Decision Granting Petitions to Modify Decision 16-01-047 and Clarifying Ordering Paragraphs
22 3.a and 3.b and thus on August 19, 2016 the Commission issued its Decision Granting Petitions to
23 Modify Decision 16-01-047 and Clarifying Ordering Paragraphs 3.a and 3.b" (hereafter the "Decision
24 to Modify") pursuant to California Evidence Code Section 452 inasmuch as it is regulation and/or
25 legislative enactment issued by or under the authority of a public entity in the United States (see
26 Request for Judicial Notice in Support of Motion to Strike filed herewith).

27 Attached as **Exhibit B** to the Request for Judicial Notice filed in support herewith is a true
28 and correct copy of the CPUC Decision to Modify.

1 **The CPUC Decision and the Decision to Modify make no reference whatsoever to Del or**
 2 **Rose as individuals. As such, the CPUC Decision and the Decision to Modify cannot, as a matter**
 3 **of law, be the basis for claims by Varvayanis that Del and Rose owe him money as individuals.**

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

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

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

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

11 A judge may, on a motion to strike made under CCP §435 or at any time at his or her discretion,
 12 strike out any irrelevant, false, or improper matter in a pleading, on terms the judge deems proper. CCP
 13 §436(a); *La Jolla Village Homeowners Ass'n v Superior Court* (1989) 212 CA3d 1131, 1141, 261 CR
 14 146. These may include conclusory allegations not supported by any facts. *Bartling v Glendale*
 15 *Adventist Med. Ctr.* (1986) 184 CA3d 961, 969-971, 229 CR 360.

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

20 **III: CONCLUSION**

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

25 DATED: December 7, 2016

26 
 Defendant DELWYN WALLIS, In Propria Persona

27
 28 DATED: December 7, 2016

29 
 Defendant ROSE WALLIS, In Propria Persona