

1 Odd Fellows Sierra Recreation Association
2 Post Office Box 116
3 Mi Wuk Village, California 95346
4 (209) 586-4065

5 Defendant In Pro Per
6
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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.

) Case No. SC 19463

) **NOTICE OF MOTION AND MOTION TO**
) **STRIKE COMPLAINT; POINTS AND**
) **AUTHORITIES IN SUPPORT**
) **OF MOTION TO STRIKE COMPLAINT**
) **PROPOSED ORDER**

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

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19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 NOTICE IS HEREBY GIVEN that on January 6, 2017, at 8:30 a.m. or as soon thereafter as the
21 matter may be heard in Department 5 of this Court, located at 41 West Yaney Avenue, Sonora,
22 California, Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION will move to strike
23 the Small Claims complaint filed by Plaintiff CHARLES VARVAYANIS.

24 **TENTATIVE RULINGS**

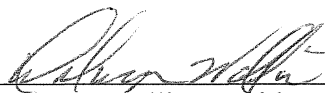
25 Pursuant to Tuolumne County Superior Court Local Rule 3.11.00, the court follows the
26 tentative ruling procedure set forth in California Rules of Court, rule 3.1308(a)(1). Please note that
27 tentative rulings are only available for Department 4, and occasionally other departments, and they are
28 only available for civil law and motion matters. This does not include civil harassment petitions, any

1 family law matters, or case management conferences. The tentative rulings are available online at
2 www.tuolumne.courts.ca.gov, or by telephone at (209) 533-6633 no later than 3:00 p.m. the court day
3 before the hearing. If you wish to appear for oral argument, pursuant to CRC 3.1308, you must so
4 notify the court and opposing counsel by 4:00 p.m., the court day before the hearing. The court
5 telephone number for such notification to Dept. 4 is (209) 533-6524 and to Dept. 3 is (209) 533-5974.
6 Absent a request for oral argument, the tentative ruling will be adopted as final at the time set for
7 hearing.

8 The motion will be based upon this Notice of Motion, the Memorandum of Points and
9 Authorities filed herewith, the pleadings and papers on file with this court, matters of which this court
10 is requested to take judicial notice, and such further oral and documentary evidence as may be
11 presented to the Court at the time of the hearing of this matter.

12 Dated: December 7, 2016

ODD FELLOWS SIERRA RECREATION ASSOCIATION

13
14 
15 _____
16 By: Delwyn Wallis, President

1 Odd Fellows Sierra Recreation Association
Post Office Box 116
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF TUOLUMNE**
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11 CHARLES P. VARVAYANIS,)

Case No. SC 19463

12 Plaintiff,)

**POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO STRIKE COMPLAINT**

13 vs.)

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

) DATE: January 6, 2017
) TIME: 8:30 a.m.
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)

17 Defendants.)
18

19 COMES NOW Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION
20 (hereafter "Defendant" or "Odd Fellows") which brings this Motion to Strike the Small Claims
21 Complaint filed by Plaintiff CHARLES VARVAYANIS as follows:

22 **I**

23 **INTRODUCTION AND RELIEF REQUESTED**

24 Plaintiff filed the complaint in this matter and **makes only one allegation** therein. Specifically,
25 Plaintiff alleges that he is owed \$81.78 because he claims (as set forth on page 2, paragraph 3(a)): "
26 CPUC Decision 16-01-047 dated January 28, 2016 orders 20 payments of \$15.57 totaling~\$311.33 per
27 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.
28 \$2.88 (9/25/2016)."

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II

ARGUMENTS

A. **Plaintiff's complaint is irrelevant and moot.**

1. The California Public Utilities Commission (the "Commission") issued its Decision No. 16-01-047 (the "Original Decision") on January 29, 2016.

2. The Original Decision conditionally granted Sierra Park Water Company, Inc. ("Water Company") a certificate of public convenience and necessity conditioned on certain transfers by Odd Fellows described in Ordering Paragraph 1.

3. As pertinent to the Complaint, the Original Decision also ordered certain refunds to be made by Odd Fellows. Ordering Paragraph 3.b on page 37 of the Original Decision originally specifically provided as follows:

3.b Odd Fellows must make a full refund of \$109,432, allocated proportionately to the improved and unimproved lots as otherwise shown in the Division of Water and Audits Staff Report, its adjusted share prior to spinning-off Water Company. Odd Fellows must make the refund over five years (for a total of twenty payments by the dates set forth in Ordering Paragraph 3.a above by paying Water Company who, in turn, must refund customers as proposed in the Division of Water and Audits Staff Report. Additionally, Odd Fellows must refund to the Water Company no later than June 30, 2016, \$1,200 to reflect the \$600 per year it received from the Water Company for the use of easements on six miles of pipe for Fiscal Years 2013 and 2014, and any monies received from Water Company for the six miles of pipe easements for Fiscal Year 2015.

4. On June 29, 2016, Odd Fellows filed a Petition for Modification of the Original Decision with the Commission specifically seeking a modification of Ordering Paragraph 3.b of the Original Decision (the "Petition for Modification of the Original Decision"). Water Company also filed a separate Petition for Modification of the Original Decision with the Commission on June 10, 2016.

5. Odd Fellows' Petition for Modification of the Original Decision specifically provided as follows on pages 3 and 4:

As set forth above, Ordering Paragraph 3.b specified a specific dollar amount to be refunded by Odd Fellows: \$109,432, allocated \$94,957 for improved lots and \$14,475 for unimproved lots for FY 2012. (Decision, p. 20 and p. 37.) These specific dollar amounts were "backcast" by the Water Division for FY 2012 (See Decision, p. 17; Attachment A to Decision, p. 25, Table 3, dollar amounts stated in 3rd and 4th Rows in Column labeled "Total.")

*Odd Fellows recognizes that the Water Division was attempting to determine a reasonable rate for water for FY 2012 by "backcasting". However, Odd Fellows did not bill \$825 for water for improved lots or \$759 for water for unimproved lots in FY 2012 as set forth in Attachment A to Decision, p. 25, Table 3. **Instead, Odd Fellows***

1 *actually billed \$571.60 for water for all (improved and unimproved) lots for FY*
2 *2012.¹ As Odd Fellows did not collect (or bill) \$825 for water for improved lots or*
3 *\$759 for water for unimproved lots, if Odd Fellows were to refund \$109,432, this would*
4 *result in a windfall of \$253.40 for improved lots and \$187.40 for unimproved lots for*
5 *FY2012!*

6 *Furthermore, Odd Fellows did not collect all amounts it billed for FY2012 (at a*
7 *rate of \$571.60). The Decision recognizes that fact in stating customers who did not*
8 *pay the actual rates charged "would not be entitled to a refund." (Decision, p. 24.)*

9 *Finally, the Decision also recognizes that "the actual refund amount" may be*
10 *"less than what we order" because customers who did not pay in full would not be*
11 *entitled to a refund. (Decision, p. 24.)*

12 *Unfortunately, the foregoing are not reflected in Ordering Paragraph 3.b. As a*
13 *result, under current Ordering Paragraph 3.b, despite the clear intent of the Decision,*
14 *customers will receive windfalls unless Ordering Paragraph 3.b is revised. This would*
15 *lead to an unfair result.*

16 *Odd Fellows therefore requests that Ordering Paragraph 3.b be revised to*
17 *make it clear refunds need be made subject to the amount actually collected for each*
18 *customer for water for FY 2012. Odd Fellows kept very detailed records of all*
19 *payments made by customers for FY 2012 and therefore is able to determine the*
20 *customers who fully paid the amount billed (\$571.60), made partial payments or made*
21 *no payments at all.*

22 6. Odd Fellows also attached its proposed calculation of refunds to customers if its Petition
23 for Modification of the Original Decision was granted. Such calculations were for refunds only to
24 customers who paid in full (\$571.60) as set forth in Odd Fellows' Petition for Modification of the
25 Original Decision.

26 7. On July 19, 2016, the Commission issued a Proposed Decision Granting Petitions to
27 Modify Decision 16-01-047 and Clarifying Ordering Paragraphs 3.a and 3.b.

28 8. No comments were filed by Plaintiff or any other person in response to the Proposed
Decision Granting Petitions to Modify Decision 16-01-047 and Clarifying Ordering Paragraphs 3.a and
3.b and thus on August 19, 2016 the Commission issued its Decision Granting Petitions to Modify
Decision 16-01-047 and Clarifying Ordering Paragraphs 3.a and 3.b (the "Decision to Modify").

9. The Decision to Modify specifically modified paragraph 3.b of the Original Decision as
follows:

*3.b. Odd Fellows must make a refund to all customers whom made payments in excess
of reasonable rates only, of up to \$109,432, allocated proportionately to the improved
and unimproved lots as otherwise shown in the Division of Water and Audits Staff
Report, as its adjusted share prior to spinning-off Water Company. Odd Fellows must
make the refund over five years (for a total of twenty payments) by the dates set forth in*

¹ See February 14, 2013, Joint Scoping Memo Ruling of Assigned Commissioner and Administrative Law Judge
filed in C-1203017, p. 4., subparagraph 3. See also, "Report of the Odd Fellows Sierra Recreation Association"
filed on December 7, 2012, in C-1203017, p. 2-3 . Footnote in quoted text.

1 *Ordering Paragraph 3.a above by paying Water Company who, in turn, must refund*
2 *customers as proposed in the Division of Water and Audits Staff Report). **Odd Fellows***
3 *may prepay all or any portion of the refund payments then due in full at any time.*
4 *Additionally, Odd Fellows must refund to the Water Company no later than June 30,*
5 *2016, \$1,200 to reflect the \$600 per year it received from the Water Company for the*
6 *use of easements on six miles of pipe for Fiscal Years 2013 and 2014, and any monies*
7 *received from Water Company for the six miles of pipe easements for Fiscal Year 2015.*

8 10. As set forth above, Odd Fellows billed \$571.60 for water for FY2012. After the
9 Decision to Modify was issued, Odd Fellows continued to calculate refunds as shown on the
10 spreadsheet attached as Appendix B to its Petition to Modify Decision. Those who did not pay at all or
11 only partially paid were rebilled as if the rate adopted by the Commission for FY 2012 (\$514) was
12 already in place. As set forth in Appendix B to its Petition to Modify Decision, Odd Fellows calculated
13 a refund of \$2.88 for each lot owner who had paid \$571.60 for water.

14 11. On or about March 25, 2016, Odd Fellows' agent sent Plaintiff a refund of \$2.88 for
15 each of the two lots owned by Plaintiff. Plaintiff received such refunds.

16 12. On or about June 24, 2016, Odd Fellows' agent sent Plaintiff a refund of \$2.88 for each
17 of the two lots owned by Plaintiff.

18 13. On or about July 15, 2016, Plaintiff informed Mr. Del Wallis, President of Odd Fellows,
19 that he had not received the June 24, 2016 refund checks from Odd Fellows in the amount of \$2.88
20 each and asked Odd Fellows to reissue such checks to Plaintiff.

21 14. On or about August 17, 2016, Odd Fellows' agent informed Plaintiff that they could put
22 a stop payment on the June 24, 2016 refunds checks previously sent to Plaintiff, that the fee for such
23 stop payment would be \$24.00 for each check and that Odd Fellows' agent could reissue such refund
24 checks once the stop payment fees were paid by Plaintiff.

25 15. On or about September 28, 2016, Odd Fellows' agent sent Plaintiff a refund of \$2.88 for
26 each of the two lots owned by Plaintiff. Plaintiff received such refunds.

27 16. Odd Fellows requests that the Court take judicial notice of the existence and content of
28 the CPUC "Decision 16-01-047 dated January 28, 2016" (hereafter the "CPUC Decision") pursuant to
 California Evidence Code Section 452 inasmuch as it is regulation and/or legislative enactment issued
 by or under the authority of a public entity in the United States (see Request for Judicial Notice in

1 Support of Motion to Strike filed herewith).

2 A true and correct copy of the CPUC Decision is attached as **Exhibit A** to the Request for
3 Judicial Notice filed concurrently herewith by Del and Rose Wallis in support of their Motion to Strike
4 the complaint.

5 17. Odd Fellows requests that the Court take judicial notice of the existence and content of
6 the CPUC "Decision Granting Petitions to Modify Decision 16-01-047 and Clarifying Ordering
7 Paragraphs 3.a and 3.b dated August 19, 2016 (hereafter the "Decision to Modify") pursuant to
8 California Evidence Code Section 452 inasmuch as it is regulation and/or legislative enactment issued
9 by or under the authority of a public entity in the United States (see Request for Judicial Notice in
10 Support of Motion to Strike filed herewith).

11 A true and correct copy of the Decision to Modify is attached as **Exhibit B** to the Request for
12 Judicial Notice filed concurrently herewith by Del and Rose Wallis in support of their Motion to Strike
13 the complaint.

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

16 **B. The Court has authority to strike the complaint.**

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

20 A judge may, on a motion to strike made under CCP §435 or at any time at his or her discretion,
21 strike out any irrelevant, false, or improper matter in a pleading, on terms the judge deems proper. CCP
22 §436(a); *La Jolla Village Homeowners Ass'n v Superior Court* (1989) 212 CA3d 1131, 1141, 261 CR
23 146. These may include conclusory allegations not supported by any facts. *Bartling v Glendale*
24 *Adventist Med. Ctr.* (1986) 184 CA3d 961, 969-971, 229 CR 360.

25 As set forth above, the Court was asked to take judicial notice of the existence and content of
26 the Original Decision and the Decision to Modify which make Plaintiff's complaint "irrelevant."
27 Plaintiff has failed to recognize the Decision to Modify in his Complaint to his detriment.
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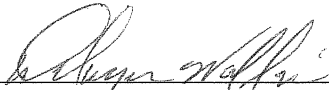
IV

CONCLUSION

Based on the foregoing, Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION respectfully requests that the Court strike the Plaintiff's complaint in its entirety.

Dated: December 7, 2016

ODD FELLOWS SIERRA RECREATION ASSOCIATION



By: Delwyn Wallis, President

1 Odd Fellows Sierra Recreation Association
2 Post Office Box 116
3 Mi Wuk Village, California 95346
4 (209) 586-4065

5 Defendant In Pro Per

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

11 CHARLES P. VARVAYANIS,) Case No. SC 19463
12 Plaintiff,)
13 vs.) **[PROPOSED]**
14) **ORDER STRIKING COMPLAINT**
15 DELWYN WALLIS, an individual;)
16 ROSE MARIE WALLIS, an individual;) DATE: January 6, 2017
17 ODD FELLOWS SIERRA RECREATION) TIME: 8:30 a.m.
18 ASSOCIATION, INC.) DEPT: 5, Commissioner Pimentel
19 Defendants.) TRIAL DATE: January 6, 2017

20 Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION's motion to strike the
21 Complaint came on for hearing on January 6, 2017, in Department 5 of this court, located at 41 West
22 Yaney Avenue, Sonora, California, before the Honorable Commissioner Philip Pimentel.

23 Plaintiff CHARLES VARVAYANIS RICHARD appeared personally. Defendant ODD
24 FELLOWS SIERRA RECREATION ASSOCIATION appeared personally via its president Del Wallis.

25 After considering the moving, opposition and papers, together with the evidence and arguments
26 of the parties presented at the hearing of the motion, and GOOD CAUSE APPEARING THEREFOR,

27 IT IS HEREBY ORDERED that:

28 1. Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION's motion is
GRANTED.

1 2. The Complaint which initiated the litigation in this matter is stricken in its entirety as to
2 Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION.

3 3. Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION is the prevailing
4 party with respect to its Motion to Strike for the purposes of California Code of Civil Procedure Section
5 1032.

6 **IT IS SO ORDERED.**

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8 DATED: _____

COMMISSIONER OF THE SUPERIOR COURT

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<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Odd Fellows Sierra Recreation Association P. O. Box 116 Mi Wuk Village, California 95346</p> <p>TELEPHONE NO.: (209) 586-4065 FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>ATTORNEY FOR (Name): Defendant, In Pro Per</p>	<p style="text-align: center;">FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Tuolumne</p> <p>STREET ADDRESS: 41 West Yaney Avenue</p> <p>MAILING ADDRESS: 41 West Yaney Avenue</p> <p>CITY AND ZIP CODE: Sonora, California 95370</p> <p>BRANCH NAME:</p>	
<p>PETITIONER/PLAINTIFF: CHARLES P. VARVAYANIS</p> <p>RESPONDENT/DEFENDANT: DELWYN WALLIS, et al.</p>	
<p style="text-align: center;">PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL</p>	<p>CASE NUMBER: <p style="text-align: center;">SC19463</p> </p>

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
 32 N. Washington Street
 Sonora, California 95370
3. On (date): December 8, 2016 I mailed from (city and state): Sonora, California the following **documents** (specify):
NOTICE OF MOTION AND MOTION TO STRIKE COMPLAINT AS TO ODD FELLOWS SIERRA RECREATION ASSOCIATION; POINTS AND AUTHORITIES IN SUPPORT; AND PROPOSED ORDER
 The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).
4. I served the documents by enclosing them in an envelope and (check one):
 - a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
 - a. **Name** of person served: Charles P. Varvayanis
 - b. **Address** of person served:
 P. O. Box 395
 Long Barn, California 95335-0395

The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 8, 2016

 Tricia Lenox
 (TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

▶ 
 (SIGNATURE OF PERSON COMPLETING THIS FORM)