

FILED

OCT 22 2012

Superior Court of California
County of Tuolumne
By: Vicki F. Boone clerk

1 Charles Varvayanis
Patricia T. Jones
2 P. O. Box 395
Long Barn, CA 95335
3 Telephone: (209) 586-3782
Facsimile: (209) 586-3761
4

5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE

6
7 ODD FELLOWS SIERRA RECREATION)
ASSOCIATION, a California corporation,)

No.: CV 57297

Motion to Set-A-Side Judgment

8 Plaintiff,

) DEFAULT HEARING DATE: July 13, 2012

9 vs.

) JUDGMENT DATE: September 18, 2012

) Dept: 3

) JUDGE: Honorable Donald Segerstrom

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

11/29/12
9:30AM
D-03

13 Defendants)

14
15 Defendants Charles Varvayanis and Patricia Jones move to Set-A-Side Judgment and
16 Judgment after Prove-Up Hearing:

17
18 **I.**

19 **The Parties**

20
21 **A. Plaintiff Odd Fellows Sierra Recreation Association, Inc. ("Plaintiff").**

22 1. Odd Fellows Sierra Recreation Association, Inc. is a California corporation with
23 its principal place of business in Tuolumne County, California. Plaintiff was incorporated on
24 January 19, 1949 and restated its Articles of Incorporation on October 15, 1986.
25

1 **B. Defendant Odd Fellows Sierra Homeowners' Association, Inc.**

2 2. Odd Fellows Sierra Homeowners' Association, Inc. is a California non-profit
3 corporation with its principal place of business in Tuolumne County, California. Odd Fellows
4 Sierra Homeowners' Association, Inc. was incorporated on October 10, 1986.

5 3. Odd Fellows Sierra Homeowners' Association, Inc. is out of conformance with
6 the Secretary of State.

7 4. The Odd Fellows Sierra Homeowners' Association, Inc. CC&R is invalid.

8 5. The Odd Fellows Sierra Homeowners' Association, Inc. by-laws are invalid
9 because the referenced and integral CC&R is invalid.

10 6. Whereas Odd Fellows Sierra Homeowners' Association, Inc.'s CC&R is invalid,
11 Odd Fellows Sierra Homeowners' Association, Inc. has No Members.

12
13 **C. Defendants, DOES Charles Varvayanis and Patricia Jones.**

14 7. On August 15, 2012 Charles Varvayanis and Patricia Jones began to suspect they
15 may be Defendants as DOES in CV 57297 when Plaintiff, Odd Fellows Sierra Recreation, Inc.,
16 the Defendant in SC 18553, an unrelated case, testified it had evidence in the form of a Judgment
17 from CV 57297 and further testified SC 18553 should be dismissed based on the findings in the
18 CV 57297 Judgment. A copy of the August 15, 2012 "Minutes" for SC 18553 is attached hereto
19 as Exhibit "A" and incorporated by this reference. (Note: CV 57297 is inadvertently referenced
20 as CV 57207 in the August 15, 2012 Minutes)

21 8. At trial SC 18553 on September 13, 2012, Plaintiff, Odd Fellows Sierra
22 Recreation, Inc., the Defendant in SC 18553, testified it had submitted the Judgment after Prove-
23 Up Hearing for CV 57297 and the findings are relevant to SC 18553.

1 9. On October 18, 2012, Plaintiff, Odd Fellows Sierra Recreation, Inc., the
2 Defendant in SC 18553 testified the Judgment after Prove-Up Hearing CV 57297 had been
3 signed and filed and reiterated it is relevant to SC 18553.

4 10. Charles Varvayanis and Patricia Jones further concluded they may be one or more
5 of the Defendants as DOES in CV 57297 because:

6 a. Charles Varvayanis and Patricia Jones own lots in the I.O.O.F. Odd
7 Fellows Sierra Camp Subdivision.

8 b. The number of lots in the I.O.O.F. Odd Fellows Sierra Camp Subdivision
9 falls within the number of DOES specified in CV 57297.

10 c. No other known or suspected accumulation of DOES fit within the
11 number of DOES specified.

12 11. Charles Varvayanis was a member of the Odd Fellows Sierra Homeowners'
13 Association, Inc. board of directors from May 29, 2011 through December 10, 2011.

14 12. Charles Varvayanis was the assistant to the Odd Fellows Sierra Homeowners'
15 Association, Inc.'s President and board of directors since December 10, 2011 and was paid to
16 perform clerical and administrative functions in support of Odd Fellows Sierra Homeowners'
17 Association, Inc.

18 13. Charles Varvayanis was a member of Plaintiff's board of directors from May 29,
19 2005 through May 29, 2011 and served as President from May 25, 2006 through May 27, 2007.

20 14. During the 2010-2011 fiscal year Charles Varvayanis was engaged in multiple
21 projects in support of the Odd Fellows Sierra Camp No.1 and No.2 Subdivision:

22 a. Member of the License Agreements Renewal Committee.

23 b. Electrification and preservation of historical documents.

- 1 c. Member of the financial reform group known as Concerned Members of
2 Odd Fellows Sierra Homeowners' Association, Inc. and Odd Fellows
3 Sierra Recreation Association, Inc.

4 15. As a result of his activity in the aforementioned projects, Charles Varvayanis
5 learned of improprieties by Plaintiff, notified Plaintiff of the improprieties, and requested
6 Plaintiff resolve the improprieties. Plaintiff refused to resolve the improprieties and attempted a
7 cover-up.

8 16. As a direct result of the of the cover-up, some of the individual members of the
9 Plaintiff's Board of Directors and the Plaintiff's Board of Directors as a whole began a
10 fraudulent slander campaign against Charles Varvayanis that included:

- 11 a. One or more individual members of the Plaintiff's Board of Directors
12 personally convincing and initially funding the Caretaker for Odd Fellows
13 Sierra Recreation Association, Inc. to file Civil Harassment Suite CV
14 56718 against Charles Varvayanis and Patricia Jones based on fraudulent
15 allegations.
- 16 b. The Plaintiff paying the Caretaker's hours spent on the proceedings of CV
17 56718.
- 18 c. The Plaintiff providing large and unusual perks to the Caretaker in
19 addition to regular and typical compensation.
- 20 d. The members of the Plaintiff's Board of Directors mounting a slander
21 campaign against Charles Varvayanis based on fraudulent allegations.
22 This went as far as a direct mailing to all of the lot owners in the
23 subdivision and Plaintiff mailing a Proxy to remove Director Charles
24 Varvayanis without following the procedures defined in the Odd Fellows
25 Sierra Recreation Association, Inc. By-Laws or California Law.

1
2 **II.**

3 **Statement of Facts**

4
5 **A. Filings and Submissions.**

6 17. February 23, 2012 Plaintiff filed Complaint and Summons for CV 57297.

7 18. February 28, 2012 the first Case management Conference hearing date was set for
8 June, 28, 2012.

9 19. March 12, 2012 Plaintiff Completed the Notice and Acknowledgment Receipt –
10 Civil for CV 57297.

11 20. June 1, 2012 Plaintiff filed Request for Entry of Default for CV 57297.

12 21. July, 13, 2012 a Default Hearing and Further Case Management Conference were
13 held.

14 22. September 7, 2012 a Case Management Statement was filed for a Case
15 Management Conference on September 13, 2012 at 2:00 PM.

16 23. September 13, 2012 Plaintiffs Counsel submitted the Proposed Judgment for
17 review.

18 24. September 18, 2012 Honorable Donald Segerstrom signed the Judgment after
19 Prove-Up Hearing and the Judgment after Prove-Up Hearing was filed.

20
21
22 **B. About the Complaint.**

23 25. The complaint provided by Plaintiff includes fraudulent, mistaken, fabricated,
24 invalid, misleading and incomplete information as follows:
25

1 26. Complaint item 10 provides misleading and incomplete information by omitting
2 the fact that Odd Fellows Sierra Homeowners' Association, Inc. had no members or if Odd
3 Fellows Sierra Homeowners' Association, Inc. had members, from October 10, 1986 through
4 April 2011\ Plaintiff was Odd Fellows Sierra Homeowners' Association, Inc. single, exclusive
5 and only member.

6 27. Complaint item 10 also provides fraudulent, mistaken or fabricated information
7 by alleging the agreement was between the Plaintiff and Defendant, whereas the agreement was
8 exclusively between Plaintiff and Odd Fellows Sierra Homeowners' Association, Inc. and did
9 not include DOES.

10 28. Complaint item 12 provides misleading and incomplete information by omitting
11 the fact that Odd Fellows Sierra Homeowners' Association, Inc. had no members or if Odd
12 Fellows Sierra Homeowners' Association, Inc. had members, from October 10, 1986 through
13 April 2011, Plaintiff was Odd Fellows Sierra Homeowners' Association, Inc. single, exclusive
14 and only member.

15 29. Complaint item 12 also provides fraudulent, mistaken or fabricated information
16 by alleging the agreement was between the Plaintiff and Defendant, whereas the agreement was
17 exclusively between Plaintiff and Odd Fellows Sierra Homeowners' Association, Inc. and did
18 not include DOES.

19 30. Complaint item 12 provides fraudulent, mistaken or fabricated information by
20 stating "The License Agreement was subsequently modified by the parties so that Defendant
21 would pay in advance for the estimated cost of the expenses incurred by Plaintiff pursuant to the
22 License Agreement.", whereas no such modification occurred.

23 31. Complaint item 13 provides fraudulent, mistaken or fabricated information
24 whereas some or all of the "Other Agreements" never occurred.
25

1 32. Complaint item 13 provides fraudulent, mistaken or fabricated information,
2 whereas Defendant never agreed to pay, in advance, for the estimated cost of providing the
3 forgoing pursuant to the Other Agreements.

4 33. Complaint item 13 provides fraudulent, mistaken or fabricated information
5 whereas the parties never agreed that the term of the “Other Agreement(s)” would expire upon
6 expiration of the Water Use Agreement and License Agreement.

7 34. Complaint item 14 provides invalid information, whereas the “Declaration
8 Relating to the Roads and Streets Located in and Appurtenant to the L.O.F. Odd Fellows Sierra
9 Camp Subdivision #1 and Subdivision #2” referred to as the “Declaration” recorded by the
10 Plaintiff on May 9, 1996 is fraudulent. A copy of the “Declaration” is attached hereto as Exhibit
11 "B" and incorporated by this reference.

12 35. Complaint item 16 provides fraudulent, mistaken or fabricated information
13 whereas Plaintiff did not inform Defendant of the Annual Fee for the period of June 1, 1991
14 through May 31, 2011.

15 36. Complaint item 16 also provides fraudulent, mistaken or fabricated information,
16 whereas Defendant did not bill Plaintiff for its prorata share of the “Annual Fee” during the
17 period June 1, 1991 through May 31, 2011 although it was a (the only) member of Odd Fellows
18 Sierra Homeowners’ Association, Inc.

19 37. Complaint item 17 provides misleading information whereas the lot owners of the
20 Park paid Odd Fellows Sierra Homeowners’ Association, Inc. administration fees in addition to
21 “Annual Fee” during the period June 1, 1986 through May 31, 1991.

22 38. Complaint item 18 provides fraudulent, mistaken or fabricated information
23 whereas the Defendant did not pay any “Annual Fees” due during the period June 1, 2005
24 through May 31, 2011.

1 39. Complaint item 19 provides misleading and incomplete information whereas the
2 Defendant pays a large portion of the Plaintiff's bills that are unrelated to the subdivision. The
3 bills that are unrelated to the subdivision offset a portion, if not all, of the \$460,000.00.

4 40. Complaint item 19 also provides misleading and incomplete information whereas
5 the Defendant never asked for any portion of the \$460,000.00 to be reimbursed and it would
6 have been inappropriate to do so.

7 41. Complaint item 20 provides fraudulent, mistaken or fabricated information
8 whereas Defendants not Plaintiff's shareholders rejected the budget proposed by Plaintiff and
9 Defendants approved a total Odd Fellows Sierra Homeowners' Association, Inc. assessment
10 amount, not a budget, per lot for the fiscal period of June 1, 2011 to May 31, 2012.

11 42. Complaint item 21 provides fraudulent, mistaken or fabricated information,
12 whereas Defendant Odd Fellows Sierra Homeowners' Association, Inc. invoiced the lot owners
13 on June 9, 2011 while Plaintiff did not bill Defendant Odd Fellows Sierra Homeowners'
14 Association, Inc. until September 15, 2011.

15 43. Complaint item 24 provides misleading and incomplete information whereas
16 Defendant completed its obligation of \$69,350.00 per the "Water License Agreement".

17 44. Complaint item 26 provides fraudulent, mistaken or fabricated, information
18 whereas Defendant owed Plaintiff \$0.00 (zero) on December 10, 2011.

19 45. Complaint item 28 provides invalid and misleading information whereas Plaintiff
20 provided fraudulent, mistaken, fabricated, inaccurate and misleading information to its
21 shareholders causing the shareholders vote to be based on the fraudulent, mistaken, fabricated,
22 inaccurate and misleading information.

23
24 C. **About the Evidence.**

25 46. The evidence provided by Plaintiff includes fraudulent information as follows:

1 47. The evidence provided by reference, the "Declaration" recorded by the Plaintiff
2 on May 9, 1996 is fraudulent.

3
4 **D. About the Testimony.**

5 48. The testimony provided by Del Wallis for Plaintiff at the Default Prove-Up
6 Hearing included fraudulent, mistaken, fabricated, invalid, inaccurate, misleading, and/or
7 incomplete information as follows:

8 49. Del testified the number of lots in the I.O.O.F Sierra Camp Subdivisions no. 1 and
9 2 is 365. The actual number is 360.

10 50. Del testified other agreements for additional services including Lake
11 Maintenance, Recreation Hall, Base Ball Field, Picnic Grounds, and Caretaker were added.
12 These agreements were not added.

13 51. In response the Judge's question "Do you have these agreements?", Del testified
14 "We are in possession of these agreements." The agreements do not exist.

15
16 **III.**

17 **Plaintiff has a History of Deceiving the Courts and Subdivision Lot Owners**

18 52. The Plaintiff has fraudulently obtained Judgments from the Courts, placed liens
19 on the subdivision lots and foreclosed on at least one subdivision lot by claiming it is a non-
20 profit homeowners association and fraudulently exercising the rights bestowed to non-profit
21 homeowners associations via California Civil Codes 1366 and 1367. A copy of "Notice of
22 Trustee's Sale" is attached hereto as Exhibit "D" and incorporated by this reference.

23 53. The Plaintiff has fraudulently coursed certain subdivision lot owners into paying
24 assessments on lots that do not exist and lots that are not developed in manners inconsistent with
25 its By-Laws, California Government Code, California Civil Code and the I.O.O.F. Sierra Camp

1 Subdivision Final Report issued by the California Department of Real Estate by threatening
2 judgment, lien and foreclose.

3 54. SC 18553 is a suite now in progress and previously mentioned in this document.
4 Plaintiff, Odd Fellows Sierra Recreation, Inc., the Defendant in SC 18553 is on trial for unjust
5 assessment practices. Plaintiff, Odd Fellows Sierra Recreation, Inc., the Defendant in SC 18553
6 is using the CV 57297 Judgment in its defense. A copy of the "Plaintiffs Trial Brief" for SC
7 18553 was submitted to the court on October 18, 2012 and is attached hereto as Exhibit "C" and
8 incorporated by this reference.

9 55. C1203017 is another suite also now in progress at the Public Utilities
10 Commission. Plaintiff, Odd Fellows Sierra Recreation, Inc., the Defendant in C1203017 is on
11 trial for unjust practices in the operation of the water system. Plaintiff, Odd Fellows Sierra
12 Recreation, Inc., the Defendant in C1203017 is using the CV 57297 Judgment in its defense.

13 56. Under the auspices of correcting the matter above, Plaintiff is attempting to
14 execute a long desired by plan by some of Plaintiff's approximately 89 members to separate the
15 income generating assets of the Park, to be shared only by Plaintiff's members, from the cost
16 centers already shared by all 360 of the lot owners. Plaintiff is attempting to spin off the cost
17 centers of the park, including the water system, to the subdivision lot owners in the form of a
18 Community Service District and retain only the income generating assets including the
19 Caretakers Cabin, which used exclusively for subdivision operation. This is contrary to the
20 intent of the founders and beyond the comprehension of most of Plaintiff's members and the lot
21 owners in I.O.O.F Odd Fellows Sierra Camp Subdivisions No.1 and No.2.

22 57. On October 20, 2012, the Sierra Park Community Service District Formation
23 Committee authorized by Plaintiff, announced that Plaintiff previously set a contingency of the
24 CV 57297 Judgment being handed down before moving forward with establishing a Community
25

1 Service District. On October 19, 2012 Plaintiff filed an application with LAFCo that includes
2 verbiage from the CV 57297 Judgment.

3
4 **IV.**

5 **Judgment and Judgment after Prove-Up Hearing were Obtained Using Fraudulent and**
6 **Deceptive Means**

7 58. The Plaintiff obtained the Judgment and Judgment after Prove-Up Hearing using
8 fraudulent, mistaken, fabricated, invalid, inaccurate, misleading and incomplete information in
9 its complaint, evidence and testimony.


10
11 **V.**

12 **Conclusion**

13 59. Whereas Plaintiff obtained the Judgment and Judgment after Prove-Up Hearing
14 using fraudulent and deceptive means, Defendants Charles Varvayanis and Patricia Jones
15 accordingly ask the Judgment and Judgment after Prove-Up Hearing be Set-A-Side.

16
17 DATED: October 22, 2012

Respectfully submitted,

18 
19 By: Pat T Jones
Charles Varvayanis
Patricia T. Jones

**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 Present Not Present **Patricia T. Jones** Present Not Present
Defendant(s): OFSRA by Del Wallis Present Not Present _____ Present Not Present

All parties sworn Witnesses Testifying:

Plaintiff(s) _____

Defendant(s) _____

The following exhibits were marked:

Plaintiff(s) _____

Defendant(s) _____

Proof of Service on file Authorization to Appear on file Non-Military Declaration on file Judgment entered according to proof
 Exhibits submitted. Exhibits returned to the parties. Exhibits retained in the file. 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.

DOCUMENT # BOOK PAGE
 006657 1391 0719
 TUOLUMNE COUNTY OFFICIAL RECORDS

**RECORDING REQUESTED BY
 AND WHEN RECORDED MAIL TO:**

LAW OFFICES OF GARY P. DAMBACHER
 A Professional Corporation
 24 West Yaney Avenue
 Sonora, California 95370

RECORDED AT THE REQUEST OF
 EDWARD L SMITH, JR

MAY 09, 1996 3:23:49 PM
 DAVID G MYRNE, RECORDER
 # OF PAGES: 7
 FEE REC'D : \$25.00

SEND TAX STATEMENT TO:
 ODD FELLOWS SIERRA HOMEOWNERS' ASSOCIATION
 P. O. Box 116
 Long Barn, CA 95335

Documentary Transfer Tax Due: None

Edward L. Smith, Pres. B.O.D.

**DECLARATION RELATING TO THE ROADS AND STREETS
 LOCATED IN AND APPURTENANT TO THE I.O.O.F.
 ODD FELLOWS SIERRA CAMP SUBDIVISION #1,
 AND SUBDIVISION #2**

THIS DECLARATION, is made on the date hereinafter set forth by
 ODD FELLOWS SIERRA RECREATION ASSOCIATION, INC., a California
 corporation.

Recitals

A. Declarant is the President of Odd Fellows Sierra
 Recreation Association, Inc., a non-profit mutual benefit
 corporation, incorporated on October 10, 1986.

B. Declarant is the owner of the streets and roadways ("the
 roadways") located within that certain real property ("the
 subdivisions") located in the County of Tuolumne, State of
 California, commonly referred to as Odd Fellows Sierra Camp
 Subdivision No. 1, Old Fellows Sierra Camp Subdivision No. 2, and
 portions of Sections 30 and 31, T.B.N. R17 E. M.D.B. & N which is
 more particularly described in Exhibit A attached hereto and
 incorporated herein by reference.

C. WHEREAS, all of the streets and roadways located within
 the above described subdivision are owned by Declarant and are
 private streets and roadways. All that portion of the Long Barn-
 Sugarpine Road crossing the Odd Fellows Sierra Camp Subdivision No.
 1 was removed from the County Maintained Road System and abandoned
 for public use on February 11, 1992 under County of Tuolumne

Resolution No. 33-92 and recorded on February 18, 1992 at Vol. 1105, Page 769 of the Official Records of Tuolumne County. A copy of said Resolution is attached hereto and marked Exhibit B and incorporated herein by reference.

D. All of the owners of lots in the subdivisions have no ownership rights in and to the streets and roadways located therein, but do have the use of said streets and roadways for general ingress and egress purposes.

E. The purpose of this Declaration is to set forth and declare the rights, responsibilities, easements, covenants and restrictions relating to the streets and roadways within the subdivisions which shall be set forth herein and shall run with the lots located within the subdivisions and shall be binding upon all parties having or acquiring any right, title or interest in those lots or any portion thereof, and shall inure to the benefit of each owner thereof.

Article I

Street and Roadway Easements

The following easements are granted to the lots located within the subdivisions for the benefit of the owners of those lots which include rights of ingress and egress to the extent reasonably necessary to exercise such easement:

1. Streets and Roadways: A non-exclusive right to each owner on and over all streets and roadways within the subdivisions for street, roadway and vehicular traffic purposes and for general ingress and egress to the extent reasonably necessary to exercise such easements.

Article II

Declarant's Rights and Duties

1. Declarant, as owner of all streets and roadways within the subdivisions shall be responsible for maintenance, snow removal and drainage of all streets and roadways located within the subdivisions.

Article III

No Incidental Rights

1. No owner of any lot or lots within the subdivisions shall acquire any other rights or benefits in or to the streets and roadways located within the subdivisions other than as herein set forth.

Article IV

General Provisions

1. No public rights in the properties. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the streets or roadways to the general public or for any public use or purpose whatsoever.

2. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement and rights shall run with, and shall benefit and burden the lots within the subdivisions as herein provided, and shall inure to and be binding upon the owners, the Declarant, its Board of Directors, and its officers and agents and their respective successors in interest until such time as Declarant amends or revokes any of the terms or conditions contained herein.

3. Construction. All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the rights and responsibilities with respect to all streets and roadways located within the subdivisions as set forth in this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision at anytime hereafter.

4. Singular shall include the Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

5. Attorney's Fees. If it is necessary to enforce any of the terms, conditions or covenants contained in this Declaration, the prevailing party in any such litigation shall be entitled to reasonable attorney's fees, costs and expenses.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this 7th day of MAY, 1996.

Odd Fellows Sierra Recreation
Association, Inc.


Edward L. Smith, Jr. President

EXHIBIT "A"

- (1) I.O.O.F. ODD FELLOWS SIERRA CAMP SUBDIVISION NO. 1, according to the Official Map thereof, recorded in the Office of the County Recorder, Tuolumne County, California on March 8, 1949 in Book 10 of Maps, at Pages 44, 45, 46, 47 and 48.
- (2) ODD FELLOWS SIERRA CAMP SUBDIVISION NO. 2, according to the Official Map thereof, recorded in the Office of the County Recorder, Tuolumne County, California on April 27, 1959 in Book 14 of Maps, at Page 99.
- (3) THOSE PORTIONS of Sections 30 and 31, T. 3 N., R. 17 E., M.D.B. & M., conveyed to ODD FELLOWS SIERRA RECREATION ASSOCIATION, INC., a California Corporation Corporation by Deeds recorded April 15, 1949 in Volume 37 of Official Records, at Page 420; March 3, 1950 in Volume 48 of Official Records, at Pages 85 and 86; December 2, 1977 in Volume 515 of Official Records, at Page 424 and July 23, 1993 in Volume 1212 of Official Records, at Page 91, less portions heretofore conveyed.
- (4) PARCEL NO. 4 (LOWER MEADOW)

A NON-EXCLUSIVE EASEMENT, 60 feet in width for road purposes, on Jordon Way, as it currently exists across (Lower Meadow) more particularly described as follows:

BEGINNING AT A POINT which bears North 63° 33' East 2754 feet from the Section Corner common to Sections 30 and 31, Township 3 North, Range 17 East, and Sections 25 and 36, Township 3 North, Range 16 East, M.D.M.; thence South 29° 18' East 82.5 feet; thence South 52° 45' East 340 feet; thence South 83° 58' East 200.7 feet; thence South 79° 39' East 228.4 feet; thence North 79° 53' East 99 feet; thence South 78° 42' East 64.1 feet; thence South 15° 33' West 89.5 feet; thence South 43° 22' West 146.5 feet; thence South 38° 00' West 99.6 feet; thence South 42° 12' West 79.7 feet; thence South 31° 16' West 145.5 feet; thence South 26° 57' West 191.4 feet; thence South 21° 08' West 98.7 feet; thence South 0° 28' East 383.5 feet; thence South 12° 57' West 172.3 feet; thence South 4° 56' West 199.4 feet; thence South 10° 31' West 16.3 feet; thence North

79° 29' West 100 feet; thence South 10° 31' West 350.2 feet; thence South 2° 36' West 492.5 feet; thence North 74° 01' West 495.2 feet; thence North 36° 48' West 280.9 feet; thence North 0° 48' East 322.9 feet; thence North 0° 46' East 196.9 feet; thence North 1° 13' West 646.5 feet; thence North 2° 38' West 124.4 feet; thence North 6° 15' West 255.7 feet; thence North 6° 56' West 104.4 feet; thence North 11° 41' East 609.5 feet; thence North 24° 55' East 478.3 feet; thence South 21° 20' East 234.2 feet; thence South 14° 09' East 253.3 feet, to POINT OF BEGINNING, containing 51.02 acres.

(5) PARCEL NO. 2 (UPPER MEADOW)

A NON-EXCLUSIVE EASEMENT, 60 feet in width for road purposes on Jordon Way as it currently exists across (Upper Meadow) more particularly described as follows:

BEGINNING AT A POINT which bears North 52° 17' East 2892 feet from the Section Corner common to Sections 25 and 36, Township 3 North, Range 16 East and Sections 30 and 31, Township 3 North, Range 17 East, M.D.M.; thence South 24° 55' West 542.4 feet; thence South 11° 41' West 614.7 feet; thence North 37° 52' West 152.2 feet; thence North 1° 14' West 241.6 feet; thence North 7° 15' West 114.4 feet; thence North 36° 41' West 337.5 feet; thence North 51° 22' West 207.6 feet; thence North 17° 56' West 173.4 feet; thence North 60° 45' West 115.6 feet; thence North 71° 16' West 91.9 feet; thence North 24° 03' East 70.4 feet; thence North 0° 26' West 122.5 feet; thence North 36° 34' East 129.6 feet; thence North 60° 42' East 29.5 feet; thence South 29° 18' East 100 feet; thence North 60° 42' East 273 feet; thence North 57° 15' East 168 feet; thence North 12° 15' East 70.7 feet; thence North 32° 45' West 50 feet; thence North 57° 15' East 2.4 feet; thence North 48° 35' East 129.7 feet; thence North 35° 03' East 99.4 feet; thence North 65° 24' East 115.9 feet; thence South 53° 25' East 75.5 feet; thence South 57° 01' East 45 feet; thence South 32° 59' West 100 feet; thence South 57° 01' East 118.2 feet; thence South 16° 44' East 259.4 feet; thence South 19° 43' West 156.5 feet; thence South 1° 22' West 186.1 feet; thence South 88° 38' East 100 feet, TO POINT OF BEGINNING, containing 20.54 acres.

- (6) A NON-EXCLUSIVE EASEMENT, 40 feet in width for road purposes on Wheeler Road, as it currently exists across the lands of the declarant as more particularly described in the Patent, recorded December 2, 1977 in Book 515 of Official Records, at Page 424, Tuolumne County Records.

Page 3

- (7) A NON-EXCLUSIVE EASEMENT, 40 feet in width for road purposes on Wheeler Road, as it currently exists as contained in the Easement Deed from William H. Smith, et.ux. to declarant, recorded March 31, 1995 in Volume 1325 of Official Records, at Page 290, Tuolumne County Records.
- (8) A NON-EXCLUSIVE EASEMENT, 40 feet in width for road purposes on Wheeler Road, as it currently exists as contained in the Easement Deed from Joseph Freitas, et.ux. to declarant, recorded March 31, 1995 in Volume 1325 of Official Records, at Page 294, Tuolumne County Records.

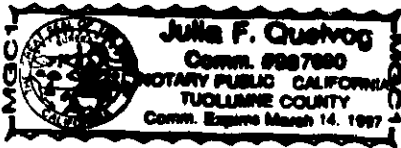
State of CALIFORNIA

County of TUOLUMNE

On May 9, 1996 before me, Julia F. Quelvog, a Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Edward L. Smith, Jr.
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Julia F. Quelvog
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration relating to Road and Streets

Document Date: May 9, 1996 Number of Pages: 6

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Edward L. Smith, Jr.

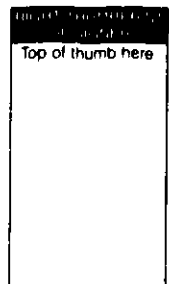
- Individual
- Corporate Officer
Title(s): President
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

1 Charles Varvayanis
 Patricia T. Jones
 2 P. O. Box 395
 Long Barn, CA 95335
 3 Telephone: (209) 586-3782
 Facsimile: (209) 586-3761
 4

5 SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE

)	No.: SC 18553
7 CHARLES P. VARVAYANIS,)	
PATRICIA T. JONES,)	PLAINTIFFS' TRIAL BRIEF
)	
8 Plaintiffs,)	DATE: October 18, 2012
)	TIME: 1:30 p.m.
9 vs.)	Dept: 5
)	JUDGE: Honorable Kim Knowles
10 ODD FELLOWS SIERRA RECREATION)	
11 ASSOCIATION, INC.,)	
ODD FELLOWS SIERRA HOMEOWNERS')	
12 ASSOCIATION, INC.,)	
)	
13 Defendants)	

14 **I. INTRODUCTION.**

15 As the pertinent chronology and admissible evidence before the court will establish, the
 16 request before this Court does prove, by providing the preponderance of evidence, that justice
 17 requires defendant Odd Fellows Sierra Recreation Association, Inc. (OFSRA) to reimburse the
 18 Plaintiffs for all fraudulently or mistakenly invoiced and collected assessments, special
 19 assessments and late fees for two parcels that did not exist as separate parcels.

20 The admissible evidence will also establish defendants OFSRA and Odd Fellows Sierra
 21 Homeowners' Association, Inc. (OFSHA) lacked the authority or power to bill and collect
 22 assessments, special assessments and late fees as to the parcels in question.
 23
 24
 25

1 **II. BASIS FOR LIABILITY AND DAMAGES.**

2 In his capacity as a member of the OFSRA License (renewal) Committee, on January 13,
3 2011, Charles received a call from OFSRA's counsel regarding a water matter related to a lot.
4 While discussing the matter, counsel advised that although the lot being discussed was originally
5 comprised of two lots, since they had been merged and were considered a single lot per
6 California Government Code so the lot owner was responsible for only one assessment. Counsel
7 also advised Charles that Defendant(s) had no authority or power to create obligations on the
8 I.O.O.F. Sierra Camp Subdivision No. 1 & 2 (hereafter referred to as "the subdivision") lot
9 owners in the absence of a CC&R or other instrument recorded against the individual lots.

10 Having learned in January 2011 of defendant OFSRA's admittedly wrongful billing
11 practices, as set fourth in the above, this action seeks recovery from OFSRA for deceptive
12 assessment practices based on the following:

- 13
- 14 • Subject Property – The Subject Property is I.O.O.F. Odd Fellows Sierra Camp
15 Subdivision Parcel 7-A PM 50-25 A.K.A. 031-101-36 A.K.A. 24982 Jordan Way West
(see **Exhibit Tube – Tuolumne County Community Resources Agency – Planning
Department – GIS Map – October 16, 2012**).
 - 16 • Jurisdiction – California Code of Procedure allows for the commencement of actions in
17 cases of fraud or mistake within a period of three years of discovery:
 - 18 ○ California Code of Procedure section 335. – “The periods prescribed for the
19 commencement of actions other than for the recovery of real property, are as
20 follows:” (see **Exhibit A – Section 335 – Page 1** attached hereto).
 - 21 ○ California Code of Procedure section 338. – “Within three years:” (see **Exhibit A
– Section 338 – Page 4** attached hereto).
 - 22 ○ California Code of Procedure section 338 (d). – “An action for relief on the
23 ground of fraud or mistake. The cause of action in that case is not deemed to have
24 accrued until the discovery, by the aggrieved party, of the facts constituting the
25 fraud or mistake.” (see **Exhibit A – Section 338 (d) – Page 5** attached hereto).
 - 26 • California Law prevails in cases of:
 - 27 ○ Absence of definition elsewhere.
 - 28 ○ Conflict of definition with California Law.
 - 29 • Regulation and control of the design and improvement of subdivisions are vested in the
30 legislative bodies of local agencies. The local agency is the County of Tuolumne:

- 1 ○ California Government Code section 66411. – Regulation and control of the
2 design and improvement of subdivisions are vested in the legislative bodies of
3 local agencies (see **Exhibit AAA – Section 66411** attached hereto).
- 4 ○ California Government Code section 66420. – "Local agency" means a city,
5 county or city and county (see **Exhibit B – Section 66420** attached hereto).
- 6 ● The board of supervisors adopted map is lawful and sufficient to describe the lots in any
7 deeds, conveyances, contracts, or obligations affecting any of the lots or blocks as
8 designated on the official map:
- 9 ○ California Government Code section 66499.57. – Whenever the city council or
10 board of supervisors adopts a map prepared under this division as the official map
11 of the subdivision, town, city or county, it shall be lawful and sufficient to
12 describe the lots or blocks in any deeds, conveyances, contracts, or obligations
13 affecting any of the lots or blocks as designated on the official map (see **Exhibit
14 C – Section 66499.57** attached hereto).
- 15 ● The OFSHA CC&R and Bylaws rely solely on the Office of the Recorder of Tuolumne
16 County for lot descriptions:
- 17 ○ 8/29/1986 – OFSHA CC&R, recorded against Lot 21.067 **only** (see **Exhibit D –
18 Section 1.2 which references “Witnesseth” lots “recorded in the Office of the
19 Recorder of Tuolumne County”** attached hereto).
- 20 ○ 10/12/1986 – OFSHA adopts Bylaws. The OFSHA Bylaws directly reference the
21 recorded CC&R and relies on the CC&R for lot descriptions, membership and
22 assessment practices (see **Exhibit E – Sections 1.02, 3.01 & 5.11** attached
23 hereto).
- 24 ● The OFSRA bylaws specify the maximum number of memberships a person may hold
25 and the assessability of members:
- “The Shareholders of this corporation shall be referred to as Members. All rights
 granted by law to Shareholders of the corporation in respect to their shares shall
 accrue to the Members in respect to their memberships.” (see **Exhibit S – Page 1
 – Article II – Section 1** attached hereto).
- “No person may hold more than one (1) membership in the corporation” (see
 Exhibit S – Page 2 – Article II – Section 2 – d attached hereto).
- “Subject to the approval of the Members of the corporation as that term is
 defined in California Corporations Code section 153, the Directors of the
 corporation shall have the power and authority to levy and collect from time to
 time, as in their discretion they may deem advisable, assessments upon all of the
 memberships of the corporation at any time issued and outstanding...” (see
 Exhibit S – Page 3 – Article II – Section 3 attached hereto):
- California Corporations Code Section 153: ““Approved by (or approval
 of) the shareholders" means approved or ratified by the affirmative vote of
 a majority of the shares represented and voting at a duly held meeting at
 which a quorum is present (which shares voting affirmatively also
 constitute at least a majority of the required quorum) or by the written
 consent of shareholders (Section 603) or by the affirmative vote or written
 consent of such greater proportion (including all) of the shares of any class
 or series as may be provided in the articles or in this division for all or any
 specified shareholder action.” (see **Exhibit EA – Section 153** attached
 hereto).

- 1 ▪ The budget is presented as “Assessment Per Lot” and approved at the
2 annual meetings (see **Exhibits EB – Page 7 – New Business – 4 & EC –
3 Page 4 – “Assessments Per Lot”** attached hereto).
- 4 • Plaintiffs purchased and merged lots in the subdivision. Mergers were completed by both
5 the County Surveyor under the authority of the Board of Supervisors and the Assessor’s
6 Office:
- 7 ○ 9/2/1999 – Plaintiffs purchase Lot 09.006 with no existing water connection or
8 hook-up (see **Exhibits F & G** attached hereto and **Tube –Water System As Built
9 Section Map**).
- 10 ○ 9/21/1999 – Plaintiffs purchase Lot 09.007 with an existing water connection or
11 hook-up (see **Exhibits F, G & H** attached hereto and **Tube –Water System As
12 Built Section Map**).
- 13 ○ 2/8/2004 – Plaintiffs merge Lots 09.006 & 09.007 forming a single Parcel 7 PM
14 45-63 (see **Exhibits I, J, K & L** attached hereto and **Tube – Parcel Map Merger
15 – Parcel 7 PM 45-63 {See “County Surveyor’s Statement”, “Approval
16 Statement” & “Surveyor’s Statement”}** & **Tube – Tuolumne County
17 Assessor’s Map – Section Map 31-10 – Revision 10/19/2004**).
- 18 ○ 1/7/2007 – Plaintiffs purchase Lot 09.014 with no existing water connection or
19 hook-up (see **Exhibits F & G** attached hereto and **Tube –Water System As Built
20 Section Map**).
- 21 ○ 5/31/2007 – Plaintiffs merge Parcel 7 PM 45-63 & Lot 09.014 forming single
22 Parcel 7-A PM 50-25 with one water connection or hook-up total (see **Exhibits
23 M, N, O & P** attached hereto and **Tube – Parcel Map Merger – Parcel 7-A PM
24 50-25 {See “County Surveyor’s Statement”, “Approval Statement” &
25 “Surveyor’s Statement”}** & **Tube – Tuolumne County Assessor’s Map –
Section Map 31-10 – Revision 7/16/2007**).
- Defendant OFSRA has referenced Tuolumne County Superior Court, Case No. CV57297
in its testimony and motions. (Note: This is inadvertently referenced as CV57207 in the
August 15, 2012 Court Minutes for SC18553). The complaint, testimonies and evidence
provided by OFSRA and the Judgment should not be considered while deciding this case
because:
- The judgment rendered was a Default Judgment without the benefit of answer,
testimony or evidence from the CV57297 Defendant (OFSHA).
- Some of the items in the complaint, testimonies and evidence provided by the
CV57297 Plaintiff (OFSRA) are fraudulent, mistaken, fabricated, inaccurate,
misleading or inappropriate. An example of a fraudulent or mistaken item is the
“Declaration Relating to the Roads and Streets Located In and Appurtenant to the
L.O.O.F. Odd Fellows Sierra Camp Subdivision #1 and Subdivision #2” (see
Exhibit PB – Page 1 attached hereto).
- The linkage between the CV57297 Plaintiff (OFSRA) and CV57297 Defendant
(OFSHA) is alleged by items in the complaint, testimonies and evidence that
include fraudulent, mistaken, fabricated, inaccurate, misleading or inappropriate
information. An example of a fraudulent or mistaken item is the “Declaration
Relating to the Roads and Streets Located In and Appurtenant to the L.O.O.F. Odd
Fellows Sierra Camp Subdivision #1 and Subdivision #2” (see **Exhibit PB – Page
1** attached hereto).
- The matter of this case, SC18553, is separate and unrelated to CV57297.
- The period CV57297 is suing for is outside the period of this case.

- 1 ○ The operating modes, if any, of CV57297 Defendant OFSHA was vastly different
2 during the period covered by CV57297 and the period covered by SC18553.
- 3 ● Plaintiffs and other merged lot owners were fraudulently or mistakenly informed by
4 OFSRA that they were obligated to pay assessments for lots that no longer existed:
- 5 ○ 2/9/1992 – Doug Kelly attended the OFSRA Board of Directors meeting to
6 discuss plans to merge lots. The board of directors told informed him
7 “Combining of lots or changing lot lines are not allowed by our bylaws.” (see
8 **Exhibits Q – Page 1 – Correspondence – 1 & R** attached hereto).
- 9 ○ 7/12/1998 – Arlen Santos wrote the OFSRA Board of Directors regarding his
10 merged lot, requesting his assessment be adjusted to one lots. President Del
11 Wallis replied to Arlen that the bylaws require that he continue paying two
12 assessments (see **Exhibits RA – Page 2 – Correspondence – 6 & RB** attached
13 hereto).
- 14 ○ 9/14/2002 – Plaintiffs begin attending OFSRA Board of Directors meetings to
15 discuss merged lots. President Del Wallis informs Plaintiffs that the bylaws
16 require that Plaintiffs continue paying two assessments and otherwise refuse to
17 acknowledge or discuss the matter.
- 18 ▪ Defendants By-Laws are silent in regard to Lot merger, Lot line
19 adjustments and like, although State law is not (see **Exhibits E, S, A –**
20 **Section 66411, B – Section 66420 & C – Section 66499.57** attached
21 hereto).
- 22 ○ In 2003 and every year thereafter Plaintiffs addressed Defendant OFSRA’s board
23 of directors regarding merged lots and assessments. Defendant OFSRA’s board
24 of directors simply stated that merged lots were not allowed in the Bylaws Rules
25 and Regulations and otherwise refused to acknowledge or discuss the matter until
2011.
- 1/20/2007 – Plaintiff, Charles Varvayanis, discussed with the OFSRA Board of
Directors plans to merge lots. Treasurer Doris Selman informed Plaintiff she was
told by Del Wallis and the Board of Directors that the Rules and Regulations
require that merged lots continue paying multiple assessments and otherwise
refuse to acknowledge or discuss the matter.
- Defendants Rules and Regulations are silent in regard to Lot merger, lot
line adjustments and like, although State law is not (see **Exhibits T – Page**
3 – Section XI, U – Page 4 – Section XII, A – Section 66411, B –
Section 66420 & C – Section 66499.57 attached hereto).
- 2002 –Michael Kagay attended an OFSRA Board of Directors meeting to discuss
plans to merge lots. The board of directors told him merging lots is not allowed
by the bylaws.
- Plaintiffs were fraudulently or mistakenly invoiced assessments, special assessments and
late fees for lots that no longer existed (see **Exhibit V** attached hereto):
- 2010-2011 \$25.00 Invoiced as Late fee for Lot 9.006
- 2010-2011 \$25.00 Invoiced as Late fee for Lot 9.014
- 2010-2011 \$830.00 Invoiced as Assessment for Lot 9.006
- 2010-2011 \$830.00 Invoiced as Assessment for Lot 9.014
- 2009-2010 \$865.00 Invoiced as Assessment for Lot 9.006
- 2009-2010 \$865.00 Invoiced as Assessment for Lot 9.014

- 1 ○ 9/2008 \$200.00 Invoiced as Special Assessment for Lot 9.006
- 2 ○ 9/2008 \$200.00 Invoiced as Special Assessment for Lot 9.014
- 3 ○ 2008-2009 \$865.00 Invoiced as Assessment for Lot 9.006
- 4 ○ 2008-2009 \$865.00 Invoiced as Assessment for Lot 9.014
- 5 ○ 2007-2008 \$800.00 Invoiced as Assessment for Lot 9.006
- 6 ○ 2007-2008 \$800.00 Invoiced as Assessment for Lot 9.014
- 7 ○ 2006-2007 \$600.00 Invoiced as Assessment for Lot 9.006
- 8 ○ 2005-2006 \$545.00 Invoiced as Assessment for Lot 9.006
- 9 ○ 2004-2005 \$545.00 Invoiced as Assessment for Lot 9.006
- 10 ● Defendant OFSRA fraudulently or mistakenly directly billed assessments and special
- 11 assessments to the property owners and beginning in 2005, identified itself only as the
- 12 entity on the invoices and statements, making no references to the HOA (see **Exhibit V**
- 13 attached hereto).
- 14 ● Beginning in 2005, Defendant OFSRA fraudulently or mistakenly directly collected
- 15 assessments and special assessments from the property owners and directly deposited the
- 16 funds to its checking accounts, savings and money market accounts (see **Exhibit VA**
- 17 attached hereto).
- 18 ● OFSRA, formerly a non-profit corporation in the form of a homeowners association,
- 19 became a for-profit general corporation on 10/15/1986 and created the shell corporation
- 20 OFSHA, a non-profit corporation in the form of a homeowners association, on
- 21 10/10/1986:
- 22 ○ 10/10/1986 – OFSHA Articles of Incorporation filed with the California Secretary
- 23 of State (see **Exhibit Z** attached hereto).
- 24 ○ 10/15/1986 – OFSRA Restated Articles of Incorporation filed with the California
- 25 Secretary of State (see **Exhibit AA** attached hereto).
- OFSRA fraudulently or mistakenly retained its exclusive control over OFSHA by:
- Not creating the short form Covenants, Conditions, and Restrictions as described
- in the Recorded CC&R (see **Exhibit D – Section 1.4** attached hereto).
- Not distributing the CC&R or the short form CC&R to the subdivision lot owners
- for recordation as promised at OFSRA’s meetings (see **Exhibit AB – Page 3 –**
- Members before the Board – Item 1** attached hereto).
- Not servicing requests to join the Homeowners Association made by
- Homeowners (see **Exhibits AC & AD – Page 5 – New Business – 5** attached
- hereto).
- OFSRA fraudulently or mistakenly abused its exclusive control over OFSHA and
- operated as a sham by simultaneously:
- Operating as OFSRA, the **for-profit corporation** for the purpose of retaining
- profits and gaining exclusive ownership of assets that were purchased and/or paid
- for, by the lot owners for the betterment of the subdivision (see **Exhibit AA**
- attached hereto).
- Calling itself OFSHA but not conducting OFSHA business (see **Exhibit Z**
- attached).

- 1 ○ Operating as OFSRA and claiming and acting as if it was the Homeowners
2 Association and a California Civil Code section 1352 type **non-profit**
3 **Homeowner’s Association** as described in California Civil Code section 1351,
4 organized as a Nonprofit Mutual Benefit Corporation with CC&R and the right to
5 assess, lien and foreclose pursuant California Civil Code sections 1366, 1367 and
6 2924 (see **Exhibits ZA, ZB, ZC & ZD** attached hereto and an **Additional**
7 **Exhibit** is in the court room and available upon request [Folder 11] & AMA,
8 AMB).
- 9 ○ Declaring itself as the Homeowners Association on Federal and State of
10 California tax forms (see **Exhibits ZE & ZF** attached).
- 11 ● Plaintiffs and the subdivision lot owners were fraudulently or mistakenly misled by
12 Defendant OFSRA of its duty, authority, power and scope including assessments, fees
13 and enforcement:
- 14 ○ OFSRA Financial Statements (**Exhibits** are in the court room and available upon
15 request [Folder 19]).
- 16 ○ OFSRA Delinquent Assessment Policy (**Exhibits** are in the court room and
17 available upon request [Folder 14]).
- 18 ○ OFSRA Rules and Regulations (**Exhibits T – Page 3 – Section XI, U – Page 4 –**
19 **Section XII** attached hereto and an **Additional Exhibit** is in the court room and
20 available upon request [Folder 21]).
- 21 ○ OFSRA Newsletters (**Exhibit Q – Page 1 – Correspondence – 1** attached hereto
22 and **Additional Exhibits** are in the court room and available upon request [Folder
23 12]).
- 24 ○ Association meetings (**Exhibit** is in the court room and available upon request
25 [Folder 41]).
- In person
- Defendant(s) have inconsistent assessment practices, both past and present, allowing
 certain merged lots to pay a single assessment while demanding other merged lots pay
 multiple assessments. Example of a merged lot to paying a single assessment:
- 4/1/1958 – Harmon & Echo Mundt purchase Lot 31-021-19 (23.034), 0.22 acre
 (see **Exhibits AE, AF & AG** attached hereto).
- 7/15/1959 – Harmon & Echo Mundt purchase adjacent Lot 31-021-22, 0.47 acre
 (see **Exhibits AF, AH, & AI** attached hereto).
- 9/30/1998 – John S. & Ruth Steward purchase merged Lot 31-021-23 (23.034),
 0.67 acre (see **Exhibits AJ, AK & AL** attached hereto and **Tube – Tuolumne**
 County Community Resources Agency – Planning Department – GIS Map –
 October 16, 2012 & Tube – Tuolumne County Assessor’s Map – Section Map
 31-02 – Revision 2/22/1996).
- 1998 through present – John S. & Ruth Steward are invoiced only one lot
 assessment (see **Exhibit ALA** attached hereto).
- Defendant(s)’ Articles of Incorporation and By-Laws and the CC&R are silent in regard
 to Lot merger, Lot line adjustments and like, although State law is not.
- 12/1/1984 – OFSRA Bylaws (see **Exhibit S** attached hereto).

- 1 ○ 7/6/1986 – OFSRA Restated Articles of Incorporation (see **Exhibit AA** attached
2 hereto).
3 ○ 8/29/1986 – OFSHA CC&R, recorded against Lot 21.067 **only** (see **Exhibit D**
4 attached hereto).
5 ○ 10/1/1986 – OFSHA Articles of Incorporation (see **Exhibit Z** attached hereto).
6 ○ 10/12/1986 – OFSHA Bylaws (see **Exhibit E** attached hereto).
- 7 ● Plaintiffs were fraudulently or mistakenly invoiced because the no longer existent lots
8 never had water connections or hook-ups:
9 ○ 5/31/1959 – The Final Subdivision Public Report states: “Nominal annual water
10 assessment charge is made to lot owner after water hook-up is made” (see **Exhibit**
11 **W – Page 2, Water** attached hereto).
12 ○ 10/12/1986 – OFSRA & OFSHA enter into a Water Use Agreement (see **Exhibit**
13 **X** attached hereto).
14 ▪ The OFSRA Board of Directors refers to the assessment as the “water
15 assessment” in the HOA IRS filings and at its OFSRA monthly, annual
16 and special meetings since 1986 through 2011 (see **Exhibit XA** attached
17 hereto).
18 ▪ The lot assessment is based on the dollar figure of the Water Use
19 Agreement including the annual increase defined in the Water Use
20 Agreement, and a small per lot Homeowner billing fee, plus a small
21 uncollectable assessment (bad debt) buffer (see **Exhibit Y** attached hereto
22 and **Backup Exhibits to Exhibit Y** are in the court room and available on
23 request [Folder 40]).
- 24 ● Plaintiffs were fraudulently or mistakenly invoiced because OFSRA charged for lots that
25 had been eliminated via merger authorized by the County of Tuolumne via the
26 Subdivision Map Act:
27 ○ 2/8/2004 – Plaintiffs merge Lots 09.006 & 09.007 forming a single Parcel 7 PM
28 45-63 (see **Exhibits I, J, K & L** attached hereto).
29 ○ 5/31/2007 – Plaintiffs merge Parcel 7 PM 45-63 & Lot 09.014 forming single
30 Parcel 7-A PM 50-25 with one water connection or hook-up total (see **Exhibits**
31 **M, N, O & P** attached hereto).
- 32 ● Plaintiffs were fraudulently or mistakenly invoiced because OFSRA lacked the authority
33 and power to create obligations with the subdivision lot owners, because the OFSRA
34 CC&R was not recorded and expired without automatic extensions:
35 ○ 2/27/1950 – OFSRA CC&R was not recorded (see **Exhibit AM** attached hereto).
36 ○ 2/27/1975 – OFSRA CC&R expired without automatic extensions (see **Exhibit**
37 **AM** attached hereto).
- 38 ● Plaintiffs were fraudulently or mistakenly invoiced because OFSRA lacked the authority
39 it claimed it had to assess, collect, enforce or foreclose via California Civil Code sections
40 1366 and 1367:
41 ○ It did not meet the criteria defined in California Civil Code section 1351.
42 Specifically the requirement to be a “nonprofit corporation or unincorporated
43 association” (see **Exhibit AMA – Section 1351** attached hereto).

- 1 ○ It did not meet the criteria defined in California Civil Code section 1352.
2 Specifically the requirement to have a declaration (CC&R) (**Exhibit AMB – Page 1 – Section 1352** attached hereto).
- 3 ○ It did not meet the criteria defined in California Civil Code section 1352.5. (a)
4 Specifically it is in violation of California Government Code section 12955 by
5 including the following text in its Bylaws: “No person may be issued a
6 membership in the corporation unless he is a Member of a duly constituted
7 Subordinate or Rebekah Lodge of the Independent Order of Odd Fellows, or any
8 lodge which is a branch of the Independent Order of Odd Fellows...”. The Odd
9 Fellows application includes the text “It requires acknowledgment of God and
10 complete obedience of civil laws.” (**Exhibit Exhibit AMB – Page 1 – Section 1352.5 (a), AMC – Page 2 – Section 12955 (j), Exhibit S – Page 1 - Section 2 – a & Exhibit AMD – Page 2 - WHO MAY BECOME A MEMBER?** attached
11 hereto).
- 12 ● Plaintiffs were fraudulently or mistakenly invoiced because OFSHA lacked the authority
13 and power to create obligations with the subdivision lot owners, because the lot owners
14 did not have CC&Rs recorded against their individual lots:
15 ○ 4/18/2011 – OFSHA CC&R recorded against Parcel 7-A PM 50-25 only (see
16 **Exhibit AN** attached hereto).
- 17 ● Plaintiffs were fraudulently or mistakenly invoiced because OFSHA lacked the authority
18 and power to create obligations with the subdivision lot owners, because the recorded
19 CC&R referenced by the Bylaws was invalid:
20 ○ The CC&R does not meet the criteria set fourth in California Civil Code section
21 1353. Specifically the requirement to “contain a legal description of the common
22 interest development, and a statement that the common interest development is a
23 community apartment project, condominium project, planned development, stock
24 cooperative, or combination thereof” (see **Exhibit AMB – Section 1353 & D**
25 attached hereto).

18 **III. ADDITIONAL INFORMATION.**

19 Plaintiffs have instructed Defendant OFSRA to apply \$2,098.00 of the fraudulently or
20 mistakenly invoiced and collected assessments, special assessments and late fees for the two
21 parcels that did not exist to Parcel 7-A PM 50-25 and Lot 24.041 as voluntarily contributions to
22 the 2012-2013 operation of the subdivision (see **Exhibits AO & AP** attached hereto).

- 23 ● The amount was calculated as follows:
24 ○ 2012-2013 -\$25.00 Late fee payment for Lot 9.007
25 ○ 2012-2013 -\$25.00 Late fee payment for 7-A PM 50-25
 ○ 2012-2013 -\$1,024.00 Assessment payment for Lot 9.007
 ○ 2012-2013 -\$1,024.00 Assessment payment Parcel 7-A PM 50-25

1 **IV. CONCLUSION.**

2 Whereas Defendant(s) fraudulently or mistakenly misrepresented themselves, their
3 authority and power, Defendant(s) did not have the authority or power to invoice or collect
4 assessments, special assessments and late fees.

5
6 **V. PRAYER FOR RELIEF.**

7 WHEREFORE, Plaintiffs pray for judgment against Defendant(s) as follows:

- 8 1. For actual damages in the amount proven no less than \$8,860.00.
9 2. Less voluntarily contribution of \$2,098.00 to Defendant OFSRA for the 2012-2013
10 operation of the subdivision. The revised principal amount sought is \$6,762.00
11 3. Interest thereon since each Payment was made by Plaintiffs to Defendant(s).
12 4. For all court costs of suit incurred by Plaintiffs including copy costs; and
13 5. For such other and further relief as this court may deem just and proper.
14

15 DATED: October 17, 2012

Respectfully submitted,

16 *Charles P. Varvayanis*
17 By: *Pat Jones*
18 Charles Varvayanis
19 Patricia T. Jones
20
21
22
23
24
25

FIRST AMERICAN TITLE INSURANCE COMPANY

WHEN RECORDED MAIL TO

CIMARRON SERVICE CORP.
909 14th STREET
MODESTO, CA 95354
(209) 544-9658

Attn: Trustee Department

TITLE ORDER #: 800693

TRUSTEE SALE # AL-95-4771

#35921-TSG-

DOCUMENT # BOOK PAGE
003353 1381 0246
TUOLUMNE COUNTY OFFICIAL RECORDS

RECORDED AT THE REQUEST OF
FIRST AMERICAN TITLE INS CO

MAR 11, 1996 8:47:28 AM
DAVID W WYNNE, RECORDER
OF PAGES: 1
FEE REC'D: \$7.00
REF/LIEN #:9536

NOTICE OF TRUSTEE'S SALE

YOU ARE IN DEFAULT UNDER A NOTICE OF ASSESSMENT LIEN RECORDED, 03/08/95, AS INST. #2852 BK 1321 PG 613 OFFICIAL RECORDS, TOULUMNE COUNTY, CALIFORNIA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

On APRIL 03, 1996 at 04:30 P.M., CIMARRON SERVICE CORPORATION as the duly appointed Trustee under and pursuant to Covenants, Conditions and Restrictions executed for the the benefit and security of ODD FELLOWS SIERRA RECREATION ASSN, INC., as Association, recorded on 01/03/85 as Document No. 0051, Book 771, Page 659, Official Records in the office of the Recorder of TOULUMNE County, California.

WILL SELL AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH, (payable at time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a check drawn by a state of federal credit union, or a check drawn by a state of federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.) At:

AT THE FRONT ENTRANCE TO THE ADMINISTRATION CENTER, 2 SOUTH GREEN STREET, SONORA, CA

all right, title and interest conveyed to and now held by it under said Covenants, Conditions and Restrictions in the property situated in said County, California, describing the land therein:

BLOCK 14
Lot 59, of Tract ODD FELLOWS SIERRA CAMP NO 1, per Map recorded in Book 10, Page 44-48, Official Records of TOULUMNE County, California.
FILED MARCH 8, 1950 IN VOLUMNE 10 OF MAPS OR PLATS, AT PAGES 44 TO 48 INCLUSIVE.
A.P.N. 31-081-26

The street address and other common designation, if any, of the real property described above is purported to be:

25185 REBEKAH RD., LONG BARN, CA

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

THAT said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, or as to insurability of title.

THE total amount of the unpaid balance of said obligations together with advances, and estimated costs and expenses, is:

\$3,114.53

Accrued interest and additional payments if any, will increase this amount prior to sale

THAT notice of breach of said obligation and election to sell said real property was recorded on 06/23/95 as Document No. 8132 BK 1338 PG 546, Official Records in the office of the Recorder of TOULUMNE County, California, against MANUEL SOARES, the purported owner/s of record.

DATE: March 4, 1996

CIMARRON SERVICE CORPORATION / TRUSTEE
909 14TH STREET
MODESTO, CA. 95354
(209) 544-9658

BY:


CATHEY B. LATNER,
SR. TRUSTEE SALE OFFICER