

Clerk stamps date here when form is filed.

Request

This form is used to ask the court to make an order before or after the trial in a small claims case. The court will notify all plaintiffs and defendants in this case about its decision by mail, at the trial, or at a hearing (depending on when the request is filed).

If you are the person asking the court to make an order, ask the Small Claims Advisor if this is the right form for the kind of order you want. If so, follow these steps:

- Fill out page 1 of this form and file it at the clerk's office.
- If you are making this request *before* your trial, you must mail (or deliver in person) a copy of this form to all other plaintiffs and defendants in your case. *Exception:* If the plaintiff's claim has not been served, you do not have to serve this request on the other plaintiffs and defendants in your case.
- If you are making this request *after* the judge has decided your case, the clerk will mail a copy of this form to all other plaintiffs and defendants in your case. The court will give the other plaintiffs and defendants at least 10 days to answer this *Request*.

If you receive this form, read below, then fill out ⑦–⑩ on page 2.

① The person asking the court to make an order is:Name: Odd Fellows Sierra Recreation Assoc.Address: P.O. Box 116, Long Barn CA 95335

Check one: A defendant in this case A plaintiff in this case
 Other (explain): _____

② Notice to: (List names and addresses of all other defendants and plaintiffs in your case.)

a.	Name <u>Charles Varvayanis</u>	Address <u>P.O. Box 395, Long Barn, CA 95335</u>
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b.	<u>Patricia Jones</u>	<u>P.O. Box 395, Long Barn, CA 95335</u>
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c. _____

Check here if you need more space. Use Form MC-031 or a plain sheet of paper. Write "SC-105, Item 2" on top.

If your request is made before the trial and after the claim was served, fill out below:

I mailed delivered in person a copy of this form to everyone listed in ② on (date): 08/02/12

③ I ask the court to make the following order (specify):

Dismissal for Lack of Jurisdiction as set forth on SC-103, Items 3 and 4

Check here if you need more space. Use Form MC-031 or a plain sheet of paper. Write "SC-105, Item 3" on top.

④ I ask for this order because (explain and give facts of your case here):


See attachment.

Check here if you need more space. Use Form MC-031 or a plain sheet of paper. Write "SC-105, Item 4" on top.

⑤ In making its order, I ask the court to consider the information on this form, any records on file, and, if the court holds a hearing, the evidence presented at that hearing.**⑥** I declare under penalty of perjury under California state law that the information above and on all attachments is true and correct.Date: 08/02/12

Del Wallis, President of Defendant

Type or print your name


Sign your name

Fill in court name and street address:

**Superior Court of California, County of
Tuolumne**
41 W. Yaney Ave.
Sonora, CA 95370

Fill in your case number and case name below:

Case Number:

SC18553

Case Name:

Varvayanis v. OFSRA

Clerk stamps date here when form is filed.

Answer

The person listed in ① on page 1 of this form has asked the court to make an order in your small claims case.

Follow these steps to tell the court what you want to do about this request:

- Read page 1 to see what the person in ① is asking for.
- Fill out ⑦–⑩ below.
- Mail your completed form to the court right away.
- Mail a copy of this form to each plaintiff and defendant listed in ① and ② on page 1 of this form.

The court will mail its decision to all plaintiffs and defendants in this case or will make a decision at a court hearing or trial.

If you do nothing, the court may make the order without hearing from you.

⑦ The person filing this answer is:

Name: _____

Address: _____

Check one: A defendant in this case A plaintiff in this case

⑧ Tell the court what you want to do about this request.

(Check all that apply):

- a. I agree to the order requested in ③.
- b. I do not agree to the order requested in ③. *(Explain below):*

Check here if you need more space. Use Form MC-031 or a plain sheet of paper. Write "SC-105, Item 8" on top.

c. I ask the court to have a hearing to decide this matter.

⑨ I mailed a copy of this form to everyone listed in ① and ② of this form on (date): _____

⑩ I declare under penalty of perjury under California state law that the information above and on all attachments is true and correct.

Date: _____

Type or print your name



Need help?

For free help, contact your county's Small Claims Advisor:

Or, go to "County-Specific Court Information" at www.courtinfo.ca.gov/selfhelp/smallclaims

Sign your name

If the request on page 1 was made after the hearing, the clerk fills out below.

— Clerk's Certificate of Mailing —

I certify that I am not involved in this case and (check one):

- A Certificate of Mailing is attached.
- The Request for Court Order and Answer was mailed first class, postage paid, to all parties at the addresses listed in ②.

On (date): _____

From (city): _____, California

Clerk, by _____, Deputy

Fill in court name and street address:

Superior Court of California, County of Tuolumne
41 W. Yaney Ave.
Sonora, CA 95370

Fill in your case number and case name below.

Case Number:

SC18553

Case Name:

Varvayanis v. OFSRA

1 SC 105, Items 3 and 4

2 I. Statement of the Facts

3 A. Plaintiffs' Claims.

4 Plaintiffs CHARLES VARVAYANIS and PATRICIA JONES allege that Defendant
5 fraudulently billed Plaintiffs for assessments and late fees regarding two parcels that Plaintiffs allege do
6 not exist. Plaintiffs allege damages in the sum of \$8,460.00. This is one of three (3) small claims
7 actions filed by Plaintiffs against Defendant that are set for trial on August 23, 2012 in Dept. 5 of this
8 court.
9

10 B. Defendant and the HOA.

11 Defendant is a California corporation with its principal place of business in Tuolumne County,
12 California. Defendant was incorporated on January 19, 1949. Defendant is in good standing with the
13 California Secretary of State.
14

15 ODD FELLOWS SIERRA HOMEOWNERS' ASSOCIATION ("HOA") is a California non-
16 profit corporation with its principal place of business in Tuolumne County, California. HOA was
17 incorporated on October 10, 1986.
18

19 Upon information and belief, Plaintiffs are members of the HOA and Plaintiff Charles
20 Varvayanis is a former member of the board of directors and former assistant to the President of the
21 HOA.

22 C. The Park and the Subject Property.

23 There currently exist in Tuolumne County, California certain subdivisions known as I.O.O.F.
24 Odd Fellows Sierra Camp Subdivision No. 1 and I.O.O.F. Odd Fellows Sierra Camp Subdivision No. 2
25 (collectively, the "Park"). The Park consists of approximately 364 subdivision lots. Upon information
26 and belief, Plaintiffs own four (4) subdivision lots.

27 At all times referenced herein, Defendant was the legal owner of certain areas within and
28 adjacent to the Park (collectively, the "Subject Property").

1 Defendant is also the owner of certain improvements to the Subject Property, including, without
2 limitation, gates, streets/roadways, signage, lighting, drainage systems, wells, water storage systems,
3 water supply systems, lake, picnic area, baseball field, playground area, etc. Defendant also owns one
4 (1) lot within the Park that is used for a caretaker's cabin.

5 Upon information and belief, HOA does not hold legal title to any real property in Tuolumne
6 County, California. However, upon information and belief, certain members of HOA, including
7 Plaintiffs, hold legal title to various lots within the Park.

8 D. **The Subject Agreements.**

9 On or around October 12, 1986, Defendant and HOA entered into that certain Water Use
10 Agreement (the "Water Agreement"), pursuant to which, among other things, Defendant agreed to
11 provide water to HOA on a wholesale basis provided that HOA pay for all expenses associated with the
12 provision of such water. The term of the Water Agreement was set to expire by its own terms on
13 October 11, 2011.

14 The water that is and was provided by Defendant to HOA is provided from various wells and
15 related water storage system that are located on the Subject Property and through a system of pipes that
16 are also located on the Subject Property. As set forth above, Defendant is the legal owner of the Subject
17 Property and all improvements thereto.

18 On or around October 12, 1986, Defendant and HOA also entered into that certain License
19 Agreement (the "License Agreement"), pursuant to which, among other things, Defendant agreed to
20 permit HOA to use the streets and roads on the Subject Property for access purposes and maintain such
21 streets and roads provided that HOA pay for all expenses associated therewith. The term of the License
22 Agreement was set to expire by its own terms on October 11, 2011. The License Agreement was
23 subsequently modified by the parties so that HOA would pay in advance for the estimated cost of the
24 expenses incurred by Defendant pursuant to the License Agreement.

25 Between October 12, 1986 and May 31, 2011, Defendant and HOA also entered into various
26 other agreements pursuant to which, among other things, Defendant agreed to provide the following
27 services or improve and provide use of certain areas of the Subject Property: access gate maintenance
28 and repair; pine needle disposal; improvement and use (and maintenance (and repair as applicable)) of

1 lake, recreation hall, picnic area, baseball field, playground, and other similar types of areas on the
2 Subject Property; maintenance and repair of vehicles used in connection with the foregoing; services of
3 an onsite caretaker to assist in providing the aforementioned services; and certain other services (the
4 “Other Agreements”). HOA agreed to pay, in advance, for the estimated cost of providing the foregoing
5 pursuant to the Other Agreements. The parties agreed that the term of the Other Agreement would
6 expire upon expiration of the Water Use Agreement and License Agreement. The Water Agreement,
7 License Agreement and Other Agreements may hereinafter be collectively referred to as the “Subject
8 Agreements”.

9 E. **Determination and Payment of Amounts Due Pursuant to Subject Agreements.**

10 During each May between October 12, 1986 and May 31, 2011, Defendant, at its annual meeting
11 of shareholders, would determine, based on the previous fiscal year’s costs, the estimated cost of the
12 services to be provided by Defendant to HOA pursuant to the Subject Agreements for the upcoming
13 fiscal period of June 1 through May 31 (the “Annual Fee”).

14 Defendant would then promptly inform HOA of the Annual Fee for the fiscal period of June 1
15 through May 31. HOA would then divide such Annual Fee by the number of lots in the Park and assess
16 each lot owner of the Park for their prorata share of such Annual Fee. From time to time the HOA
17 would also make special assessments. Upon information and belief, HOA’s governing documents permit
18 the charging of late fees if annual assessments or special assessments were not promptly paid.

19 F. **Payment of Annual Fees/Judgment Against HOA.**

20 Between October 12, 1986 and May 31, 2011, HOA promptly paid the Annual Fees due.
21 However, HOA failed to pay the entire Annual Fee due for the period beginning on June 1, 2011 and
22 ending on May 31, 2012 (the “2011-12 Annual Fee”). As a result thereof, Defendant filed an action in
23 Tuolumne County Superior Court, Case No. CV57297, against HOA. HOA defaulted in such matter
24 and at a prove-up hearing held on July 13, 2012, the court determined that Defendant was entitled to
25 judgment against HOA in the amount of \$213,770.00 plus attorneys’ fees and costs.

26
27 G. **Plaintiffs’ Lots.**
28

1 As set forth above, Plaintiffs own four (4) separate subdivision lots within the Park. HOA's
2 articles and bylaws and the Covenants, Conditions and Restrictions recorded on each of Plaintiff's lots
3 (the "CC&Rs") permit assessments, special assessments and late charges for each lot of the Park (based
4 on the original subdivision maps of the Park).

5
6 Upon information and belief, Plaintiffs merged their four (4) lots with the County of Tuolumne
7 so that there are now only two (2) APNs for their four (4) subdivision lots.

8
9
10 **II. This Court Does not Have Jurisdiction to Grant Declaratory Relief**

11 A small claims court's jurisdiction is constrained by Code of Civil Procedure¹ Sections 116.220
12 and 116.221. Section 116.220, subdivision (b), allows a small claims court some equitable powers:
13 rescission, restitution, reformation, and specific performance. Sections 116.220 and 116.221 do not
14 permit declaratory relief.

15 Although it is not entirely clear from Plaintiffs' claim filed in this action, Defendant believes that
16 Plaintiffs are claiming, that, as a result of the merger of their four (4) lots with the County of Tuolumne,
17 Defendant (rather than HOA) should now recognize their four (4) original subdivision lots as two (2)
18 lots under HOA's articles and bylaws and the CC&Rs since the date of merger.²

19
20 It would appear that Plaintiffs are further claiming that, as a result of such lot mergers with the
21 County of Tuolumne, Defendant (rather than HOA) owes Plaintiffs for \$8,860.00 (\$5,275.00 for one
22 allegedly merged lot for the period beginning on June 1, 2004 and ending on May 31, 2011 and

23
24
25 ¹Further statutory references are to the Code of Civil Procedure unless otherwise noted.

26 ² Plaintiffs do not indicate when such mergers occurred in their claim. Upon information and belief, HOA's articles and
27 bylaws and the CC&Rs do not recognize such merged lots as single lots for assessment purposes. Upon information and
28 belief, HOA has also not made a determination whether or not it will recognize merged lots as single lots for assessment
purposes as of the date hereof.

1 \$3,585.00 for one allegedly merged lot for the period beginning on June 1, 2007 and ending on May 31,
2 2011) allegedly paid by Plaintiffs to HOA.³

3 While Plaintiffs' claims and the proper defendant in this matter are less than certain, what is
4 certain is that in order to grant Plaintiffs the relief requested, this court must first determine whether or
5 not by merging lots with the County of Tuolumne, Defendant (not HOA as this action was filed against
6 Defendant only) must recognize Plaintiff's four (4) original subdivision lots as two (2) lots under HOA's
7 articles and bylaws and the CC&Rs. Plaintiffs are clearly asking for declaratory relief with regard to the
8 foregoing.
9

10 Assuming that this court were even able to make the determination set forth above, the court
11 must then determine whether or not the mergers have a retroactive effect (as the assessments/special
12 assessments/late fees allegedly paid by Plaintiffs are for periods beginning in 2004 and ending in 2011).
13 Plaintiffs are clearly again asking for declaratory relief with regard to the foregoing.
14

15 Given the constraints of Sections 116.220 and 116.221, this court does not have jurisdiction in
16 this matter to grant the relief requested by Plaintiffs.
17

18
19 **III. The Amount Demanded by Plaintiffs in this Matter Exceeds**
20 **Small Claims Jurisdictional Limits (for Equitable Relief)**

21 Section 116.220, subdivision (b) specifies that equitable powers apply in any action seeking
22 relief authorized by section 116.220, subdivisions (a)(1) through (a)(4), which for current purposes
23 means a case where the amount of demand does not exceed \$5,000.00.
24

25 _____
26 ³ It is unclear to Defendant why Plaintiffs brought this action against Defendant instead of HOA as HOA, not Defendant,
27 collected the assessments, special assessments and late fees as set forth above (and then paid such amounts to Defendant as
28 part of the Annual Fees (as referenced above)).

1 Plaintiffs ask for recovery of \$8,460.00 in this matter. Thus even if this court had the equitable
2 powers necessary to grant the relief requested by Plaintiffs (which it does not as set forth above), the
3 amount of Plaintiffs' demand (\$8,460.00) exceeds the jurisdictional limits of this court for equitable
4 relief.
5

6
7 **IV. The Sum of the Three Small Claims Actions filed Against Defendant by**
8 **Plaintiffs Exceeds Small Claims Jurisdictional Limits**
9

10 Section 116.221 grants a small claims court jurisdiction over actions brought by natural persons
11 for amounts not more than \$10,000.00. Where a single plaintiff has several small claims against a
12 defendant, the total sum is the test of jurisdiction. (*Emery v. Pacific Employers Ins. Co.* (1937) 8 Cal.2d
13 663, 666 [67 P.2d 1046]; *City and County of San Francisco v. Small Claims Court* (1983) 141
14 Cal.App.3d 470, 477 [190 Cal.Rptr. 340].)

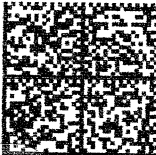
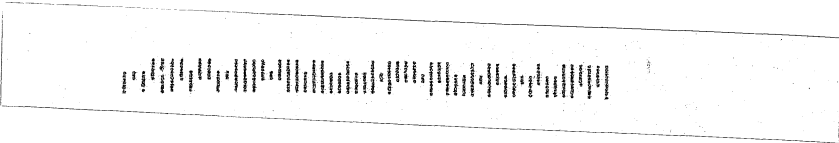
15 As set forth above, this action is one of three (3) small claims actions filed by Plaintiffs against
16 Defendant that are set for trial on August 23, 2012 in Dept. 5 of this court. Plaintiffs ask for recovery of
17 \$8,460.00 in this matter. In SC18563 (filed the same day as this action), Plaintiffs seek recovery of
18 \$2,048. In SC18586, Plaintiffs seek recovery of \$270. The total damages requested by Plaintiffs in all
19 three actions are \$10,778.
20

21 Thus, even if this court had jurisdiction to grant declaratory relief and even if the jurisdictional
22 limit for equitable relief (\$5,000) was not applicable, Plaintiffs by filing three (3) separate small claims
23 actions against Defendant have exceeded the jurisdictional amount of this court for natural persons.
24
25
26
27

28 **V. Conclusion**

1 Plaintiffs' case is not appropriate for resolution in small claims court because it asks for
2 declaratory relief, which is not statutorily authorized, and also because it seeks recovery of \$8,460.00,
3 which exceeds the small claims jurisdictional limits (for equitable relief), and because Plaintiffs have
4 filed three (3) separate small claims actions, the aggregate of which exceeds \$10,000.00. Defendant
5 accordingly asks that Plaintiffs' case be dismissed for lack of jurisdiction.
6

7 In addition to the foregoing, Plaintiffs' case should have been brought against the HOA and not
8 Defendant as set forth above.
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