

Clerk stamps date here when form is filed.

**FILED****AUG 07 2012**Superior Court of California  
County of TuolumneBy: Laura Kuffler Clerk

Fill in court name and street address:

Superior Court of California, County of  
County of Tuolumne  
41 West Yaney Avenue  
Sonora, CA 95370

Fill in your case number and case name below.

Case Number:

SC18553

Case Name:

**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: Charles P. Varvayanis and Patricia T. JonesAddress: P.O. Box 395, Long Barn, CA 95335Check 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):*

See Attachment 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): 8/7/2012**⑩** I declare under penalty of perjury under California state law that the information above and on all attachments is true and correct.Date: 8/7/2012Charles P. Varvayanis*Type or print your name***① 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](http://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

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

7 CHARLES P. VARVAYANIS,	)	No.: SC 18553
PATRICIA T. JONES,	)	
	)	<b>PLAINTIFFS' ANSWER TO</b>
8 Plaintiffs,	)	<b>UNVERIFIED REQUEST FOR COURT</b>
	)	<b>ORDER</b>
9 vs.	)	Dept: 5
	)	JUDGE: Honorable Kim Knowles
10 ODD FELLOWS SIERRA RECREATION	)	
11 ASSOCIATION, INC.,	)	
	)	
12 Defendant	)	

13  
14 Comes now Plaintiffs CHARLES P. VARVAYANIS AND PATRICIA T. JONES, natural  
15 persons, and answers to Defendant's unverified request for court order.

16  
17 **I. Answers to: Statement of the Facts.**

18 **A. Plaintiffs' Claims.**

19 Defendant fraudulently directly billed and collected assessments, special assessments and  
20 late fees from Plaintiffs for two lots that did not exist.

21 **B. Defendant and the HOA.**

22 The description of Plaintiffs is incomplete. Plaintiffs are members of Odd Fellows Sierra  
23 Homeowners' Association (OFSHA) since April 18, 2011 and Plaintiff Charles Varvayanis is a  
24 former member of both the OFSHA and Odd Fellows Sierra Recreation Association (OFSRA)  
25 board of directors and served as OFSRA's President.

1 Although Defendant frequently mentions relationships between Defendant, OFSHA and  
2 Plaintiffs throughout the request for order, the relationships with OFSHA have no relevance in  
3 this case, as will be evidenced in the answers that follow. It is uncertain why Defendant  
4 mentions OFSHA at all.

5 **C. The Park and the Subject Property.**

6 I.O.O.F. Odd Fellows Sierra Camp Subdivision No.1 and I.O.O.F. Odd Fellows Sierra  
7 Camp Subdivision No.2 (collectively, "Sierra Park") presently consists of 360 lots and not the  
8 364 alleged by Defendant. Plaintiffs own two (2) lots within Sierra Park and not four (4) lots as  
9 alleged by Defendant.

10 The legal owner of some of the certain areas within and adjacent to Sierra Park and the  
11 improvements is unclear.

12 Defendant has not paid its Annual Assessments on the one (1) lot it owns within Sierra  
13 Park since about 1990.

14 **D. The Subject Agreements.**

15 The water passes through a system of pipes of which approximately half of which are  
16 located on the Subject Property.

17 The License Agreement was **not** subsequently modified by the parties so that OFSHA  
18 would pay in advance for the estimated cost of the expenses incurred by Defendant.

19 Between October 12, 1986 and May 31, 2011, Defendant and OFSHA did **not** formally  
20 enter into the alleged other agreements or agree to pay, in advance, for the estimated cost of  
21 providing the forgoing.

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

23 During the period between June 1, 2005 and May 31, 2011 Defendant did **not** inform  
24 OFSHA of any Annual Fee and OFSHA did **not** assess any lot owner within Sierra Park. Also  
25 during the above period OFSHA did **not** make special assessments.

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

1 During the period between June 1, 2005 and May 31, 2011 OFSHA did **not** pay  
2 Defendant any amount (zero paid (\$0.00)).

3 Tuolumne County Superior Court, Case No. CV57297, OFSRA v. OFSHA for the period  
4 beginning on June 1, 2011 and ending on May 31, 2012 (the "2011-12 Annual Fee") is beyond  
5 the time period covered by this action and in no way relevant to this action.  
6

**G. Plaintiffs' Lots.**

7 Plaintiffs own only two (2) lots in Sierra Park and **not** four (4) lots as alleged by  
8 Defendant. The OFSHA articles and bylaws are **not** recorded on any of Plaintiff's lots as alleged  
9 by Defendant. OFSHA CC&Rs are recorded on both of Plaintiff's lots.  
10

11 Defendant includes the phrase "based on the original subdivision maps of the Park"  
12 which has **no** relevance in this case.

13 Plaintiffs merged four (4) lots in Sierra Park via the County of Tuolumne so that there are  
14 now only two (2) APNs for the resulting two (2) lots in Sierra Park and **not** the two (2) APNs for  
15 four (4) lots in Sierra Park as alleged by Defendant.  
16

**II. Answers to: This Court Does not Have Jurisdiction to Grant Declaratory Relief.**

17 A small claims court's jurisdiction is granted by Code of Civil Procedure<sup>1</sup> Sections  
18 116.220 and 116.221. Section 116.220 grants equitable relief in the form of restitution. In  
19 addition Section 116.221 grants jurisdiction in an action brought by a natural person to ten  
20 thousand dollars (\$10,000).  
21

22 Defendant fraudulently directly billed and collected assessments, special assessments and  
23 late fees from Plaintiffs for two lots that did not exist.  
24

25  

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<sup>1</sup> Further statutory references are to the Code of Civil Procedure unless otherwise noted.

1 OFSHA, its articles and bylaws and the CC&R are of no relevance in regard to the  
2 aforementioned directly billed and collected assessments, special assessments and late fees.

3 Plaintiffs seek equitable relief in the form of restitution from Defendant's unjust  
4 enrichment.

5  
6 **III. Answers to: The Amount Demanded by Plaintiffs in this Matter Exceeds Small  
7 Claims Jurisdictional Limits (for Equitable Relief)**

8 Section 116.220, subdivision (b) specifies that equitable powers apply in any action  
9 seeking relief authorized by section 116.220, subdivisions (a)(1) through (a)(4).

10 Section 116.221 specifies that in addition to the jurisdiction conferred by Section  
11 116.220, the small claims court has jurisdiction in an action brought by a natural person, if the  
12 amount of the demand does not exceed ten thousand dollars (\$10,000).

13 Plaintiffs ask for recovery of \$8,460.00 in this matter. \$8,460.00 is within the  
14 jurisdictional limits of this court for equitable relief.

15  
16 **IV. Answers to: The Sum of the Three Small Claims Actions filed Against Defendant by  
17 Plaintiffs Exceeds Small Claims Jurisdictional Limits**

18 Section 116.221 grants a small claims court jurisdiction over actions brought by natural  
19 persons for amounts not more than \$10,000.00.

20 Section 116.220 (D) grants that in any case in which the lack of jurisdiction is due solely  
21 to an excess in the amount of the demand, the excess may be waived, but any waiver is not  
22 operative until judgment.

23 As set forth above, this action is one of three (3) small claims actions filed by Plaintiffs  
24 against Defendant that are set for trial on August 23, 2012 in Dept. 5 of this court. Plaintiffs ask  
25 for recovery of \$8,460.00 in this matter. In SC18563 (contrary to Defendant's statement, was

1 originally filed the one month after this action), Plaintiffs seek recovery of \$2,048.00. In  
2 SC18586, Plaintiffs seek recovery of \$270.00. The total damages requested by Plaintiffs in all  
3 three actions are \$10,778.00

4 Plaintiffs will wave \$778.00 from SC18553 to be within the "total sum test of  
5 jurisdiction" of \$10,000.00

6  
7 **V. Answers to: Conclusion.**

8 Plaintiffs' case is appropriate for resolution in small claims court because it asks for  
9 equitable relief, which is statutorily authorized, and also because it seeks recovery of \$8,460.00,  
10 which is within the small claims jurisdictional limits (for natural persons), and because Plaintiffs  
11 have filed three (3) separate small claims actions, Plaintiffs will wave \$778.00 to keep the  
12 aggregate from exceeding \$10,000.00. Plaintiffs accordingly ask that this case proceed.

13 In addition to the foregoing, Plaintiffs' case could **not** be brought against OSHA as set  
14 forth above.

15  
16 DATED: August 7, 2012

Respectfully submitted,

17 *Charles P. Varvayanis*  
18 By: *Pat Jones*  
19 Charles Varvayanis  
20 Patricia T. Jones  
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