

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: Charles P. Varvayanis & Patricia T. Jones

Address: P. O. Box 395, Long Barn, CA 95335-0395

Check one: [] A defendant in this case [x] 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: Odd Fellows Sierra Rec. Ass. Address: P. O. Box 116, Long Barn, CA 95335
b. Name: Odd Fellows Sierra Homeowner's Address: P. O. Box 236, Long Barn, CA 95335
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 [x] mailed [] delivered in person a copy of this form to everyone listed in 2 on (date): 10/1/2012

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

Dismiss Defendant Odd Fellows Sierra Homeowner's Association, Inc. (OFSHA / HOA) as set forth on SC-105, Items 3 and 4. Attached.

[x] 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.

[x] 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: 10/1/2012

Charles P. Varvayanis
Type or print your name

Sign your name

Clerk stamps date here when form is filed.
FILED
OCT 01 2012
Superior Court of California
County of Tuolumne
By: Donna Benz Clerk

Fill in court name and street address:
Superior Court of California, County of Tuolumne
County of Tuolumne
41 West Yaney Avenue
Sonora, CA 95370

Fill in your case number and case name below:
Case Number: SC18553
Case Name:



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

Sign 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

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
County of Tuolumne
41 West Yaney Avenue
Sonora, CA 95370**

Fill in your case number and case name below.

Case Number:

SC18553

Case Name:

1 **SC-105, Items 3 and 4**

2
3 **I. Statement of Facts**

4 **A. Defendant's Claims.**

5 Defendant's motion of 8/2/2012, Attachment for items 3 and 4, on Page 5, Line 26 allege:
6 "It is unclear to Defendant why Plaintiffs brought this action against Defendant instead of HOA
7 as HOA, not Defendant, collected the assessments, special assessments and late fees as set forth
8 above (and then paid such amounts to Defendant as part of the Annual Fees (as referenced
9 above))."

10 At the 8/15/2012 hearing on this action, Defendant alleged that it was the HOA's
11 responsibility to collect assessments and as a result the HOA should be the defendant and not
12 Odd Fellows Sierra Recreation Association (OFSRA).

13 **B. Defendant OFSRA and the HOA.**

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

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

20 Upon information and belief, Defendant OFSRA was the sole member of the HOA from
21 inception through April 2011. At the August 15, 2012 hearing on this action, Defendant
22 OFSRA informed the court of the same.

23 In 1986, Defendant OFSRA and the HOA entered into water and road use and
24 maintenance agreements that expired in 2011.

1 Defendant OFSRA did not produce, post, address, name, deliver, transmit or refer any
2 bill to the HOA related to the License Agreements during the period covered by this action.

3 Defendant OFSRA has not paid its Annual Assessment to the HOA for the one (1) lot it
4 owns within the subdivision since 1990.

5 On April 16, 2011, Defendant OFSRA, acting as the HOA's board of directors, claims it
6 amended the HOA Bylaws to admit all property owners, without consent from the property
7 owners, into the HOA by removing the following clause from the HOA Bylaws: "The sole
8 qualification for membership shall be ownership of a lot in the Project and the recording with the
9 Recorder of the County of Tuolumne a short form of the Covenants, Conditions, and Restrictions
10 described in Section 1.02 hereof with respect to each lot owned."

11 Defendant OFSRA sued the HOA for an Annual Fee due for the period beginning on
12 June 1, 2011 and ending on May 31, 2012 (Tuolumne County Superior Court, Case No.
13 CV57297). The HOA defaulted on the matter because it did not attend the prove-up hearing held
14 on July 13, 2012 because the HOA was not viable and not functioning due to the actions of
15 Defendant OFSRA.

16 C. **Plaintiffs and the HOA.**

17 Plaintiffs were not members of the HOA when billed by Defendant OFSRA during the
18 period covered by this action.

19 Plaintiff Charles Varvayanis was a member of the HOA's board of directors from May
20 29, 2011 through December 10, 2011 only, a period not covered by this action.

21 Plaintiff Charles Varvayanis was the assistant to the HOA's President and board of
22 directors since December 10, 2011 and was paid to perform clerical and administrative functions
23 in support of the HOA, a period not covered by this action.

24 D. **Plaintiffs and Defendant OFSRA.**

25

1 Plaintiff Charles Varvayanis was a member of Defendant OFSRA's board of directors
2 and served as President.

3 Each year beginning in 2002, Plaintiffs addressed Defendant OFSRA's board of directors
4 regarding merged lots and assessments. Defendant OFSRA's board of directors simply stated
5 that merged lots were not allowed in the Bylaws and/or Rules and Regulations and otherwise
6 refused to acknowledge or discuss the matter until 2011.

7 E. **HOA.**

8 The HOA filed no tax returns or other tax forms during the period covered by this action.

9 The HOA held no board of directors meetings during the seven year period covered by
10 this action until the last month of the last year (seventh year) of this period on April 16, 2011.

11 In 2005, Defendant OFSRA closed all of the HOA's checking, savings and money
12 market accounts and transferred all of the funds from the closed accounts into its accounts.

13 Per the HOA Bylaws: "The sole qualification for membership shall be ownership of a lot
14 in the Project and the recording with the Recorder of the County of Tuolumne a short form of the
15 Covenants, Conditions, and Restrictions described in Section 1.02 hereof with respect to each lot
16 owned."

17 Defendant OFSRA, acting as the HOA's board of directors, never distributed the
18 finalized version of the CC&R to property owners as promised at its annual and special meetings
19 and in its communications and did not included it in its or the HOA's files.

20 Defendant OFSRA, acting as the HOA's board of directors, never created the short form
21 version of the CC&R as promised at its annual and special meetings and in its communications
22 to property owners.

23 Defendant OFSRA, acting as the HOA's board of directors, ignored and denied requests
24 from subdivision property owners to join the HOA.
25

1 The HOA had only a single member, Defendant OFSRA, from inception through April
2 2011.

3 The HOA has never been a viable entity whereas it was not able to fulfill the number of
4 directors requirement declared in both its Articles of Incorporation and Bylaws.

5 The HOA is currently not viable for the reasons above plus it has no board of directors.

6 The only references to the HOA during the period covered by this action were: At the
7 2008 annual meeting, Defendant OFSRA's President declared: "We will be conducting the
8 Homeowner's Association and Recreation Association meetings concurrently." The header of
9 the 2007, 2008, 2009 and 2010 Annual Meeting Minutes listed the names of both corporations.¹
10 No HOA business was conducted at any of these meetings.

11 The only activity related to the HOA from 2005 through April 15, 2011 was: Defendant
12 OFSRA, acting as the HOA's board of directors, filed SI-100 Statements of Information forms
13 with the Secretary of State.

14 F. **Defendant OFSRA.**

15 Defendant OFSRA fraudulently directly billed assessments and special assessments to the
16 property owners and beginning in 2005, identified itself only as the entity on the invoices and
17 statements, making no references to the HOA.

18 Beginning in 2005, Defendant OFSRA fraudulently directly collected assessments and
19 special assessments from the property owners and directly deposited the funds to its checking
20 accounts, savings and money market accounts.

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24 ¹ The word "homeowner" occurred regularly throughout these documents, however, only with the exceptions
25 explicitly noted above, the word "homeowner" refers exclusively to property owners within the subdivision and not
the members of the Homeowners' Association.

1 At the December 3, 2011 OFSRA special meeting of members, Treasurer Del Wallis
2 responded to a question from the floor inquiring if the assessment was always paid to the
3 Homeowners' Association. Del replied that, initially, twenty-five years ago, it was billed in the
4 Homeowners' name only, but was changed to the Recreation association and the money came
5 directly into the Recreation Association.

6 Defendant OFSRA filed form 1120 U.S. Corporation Income Tax Returns reporting its
7 business service/activity as Homeowners Association (81290) during the period covered by this
8 action.

9 Defendant OFSRA filed form 100 U.S. Corporation Income Tax Returns reporting its
10 business service/activity as Homeowners Association (81290) during the period covered by this
11 action.

12 13 **II. Defendant OFSRA Unjustifiably Monopolized the HOA**

14 As the sole member of the HOA, Defendant OFSRA unjustifiably monopolized the HOA
15 by: Not distributing the finalized CC&R. Not creating or distributing the required Short Form
16 CC&R. Ignoring and denying requests from subdivision property owners to join the HOA.

17 18 **III. The HOA was Not a Viable Entity and Not Functioning During the Period Covered by** 19 **this Action**

20 The HOA was not a viable entity and not functioning during the period covered by this
21 action due to the actions of Defendant OFSRA: It had no board of directors meetings. It's bank
22 accounts were closed. It filed no tax returns with the IRS or State of California. It did not
23 maintain the books and records required by its bylaws and California Law. It did not create or
24 publish the financial statements required by California Law. It was not able to fulfill the number
25 of directors requirement.

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IV. The HOA did Not Bill or Collect Assessments

While it should have been the responsibility of the HOA to collect assessments during the period covered by this action per the License Agreements, Articles of Incorporation and Bylaws, the HOA did not bill or collect assessments whereas it was not a viable entity and not functioning due to the actions of Defendant OFSRA.

V. Defendant OFSRA Billed and Collected Assessments

Defendant OFSRA fraudulently directly billed assessments and special assessments to the property owners beginning in 2005 and identified itself only as the entity on the invoices and statements, making no references to the HOA.

Also beginning in 2005, Defendant OFSRA fraudulently directly collected assessments and special assessments from the property owners and directly deposited the funds to its checking accounts, savings and money market accounts.

VI. Conclusion

The HOA was not a viable entity and not functioning during the period covered by this action and did not bill or collect assessments or conduct business. The HOA is currently not viable and is not functioning. Only Defendant OFSRA billed and collected assessments and conducted business during the period covered by this action. Plaintiffs accordingly ask that the HOA be dismissed for lack of involvement.