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7 Lions Club of Albany, California

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10
11 CITY OF ALBANY, a charter city,

12
13 Plaintiff,

14 v.

15
16 ALBANY LIONS CLUB, LIONS
INTERNATIONAL, a California Non-Profit
17 Corporation; DOES 1-10, and ALL
18 PERSONS UNKNOWN CLAIMING AN
INTEREST IN THE PROPERTY,

19
20 Defendants.

Case No. 22CV010822

Assigned for all purposes to:
HON. SOMNATH RAJ CHATTERJEE

Department: 517

**DECLARATION OF ROBERT E. NICHOLS
STATING FACTS SUPPORTING
HARDSHIP AND OPPOSING
PREJUDGMENT POSSESSION**

Action Filed: May 4, 2022
Trial Date: Not Set

DATE: July 28, 2022
TIME: 1:30 p.m
DEPT: 517

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22 I, Robert E. Nichols, declare:

23 1. I am the attorney for the Lions Club of Albany, California and my State
24 Bar Number is listed above.

25 2. I have represented the Lions Club in matters regarding the cross on
26 Albany Hill including the legal action, *Lions Club of Albany, California v. The City of Albany*,
27 United States District Court for the Northern District of California Docket Number C17-05236
28 WHA and defended the Lions Club in the Counterclaim, *City of Albany v. The Lions Club of*

1 *Albany California.*

2 3. In 2015, I was provided a flyer from the East Bay Atheists group which
3 complained about the cross on Albany Hill and made certain safety assertions.

4 4. On February 1, 2016, the Albany City Council conducted a public
5 hearing concerning the "Lions' cross." I have reviewed the minutes and tapes of the meeting.

6 5. At the February 1, 2016 city council meeting the members of the City
7 Council including Councilmember Nason, unanimous expressed the desire that the Lions cross
8 be removed from Albany Hill.

9 6. At the February 1, 2016, Preston Jordan appeared as a private citizen
10 prior to his election to the City Council, now Mayor Jordan stated: "I just want to add my voice
11 of support to all the good thinking that you've heard already for removing the cross. I know it's a
12 very difficult thing to get accomplished, and I commend you for pursuing it in the most cost-
13 efficient manner possible. But please pursue it."

14 7. On February 4, 2016, Councilmember Nason attended a regular meeting
15 of the Albany Lions Club. I was also in attendance at this Lions Club meeting. At the meeting
16 Councilmember Nason expressed the City's dissatisfaction with the cross because it is a
17 religious symbol. Councilmember Nason stated that the City wished the cross removed from
18 Albany Hill and the Lions Club's easement relinquished to the City.

19 8. On November 18, 2016, Councilmember Nason issued a public
20 statement saying, "[T]he Albany City Council (including me) would like to replace it [the cross]
21 with something nonsectarian. We envision a site that could still be used for Easter services and
22 other Christian and non-religious purposes."

23 9. On November 19, 2016, Councilmember Nason issued a public statement
24 saying: "I am about to be sued by the Albany Lions Club for advocating that the cross on
25 Albany Hill be replaced by a nonsectarian substitute site that would be appropriate for use by
26 non-Christians and non-religious people as well as Christians."

27 10. In a Declaration filed with the U.S. District Court Councilmember Nason
28 stated: "During the 1970s, the Cross on Albany Hill when lit was clearly visible from the front

1 porch of my family home. My parents objected to it for a number of reasons, including the fact
2 they felt its presence in the public park constituted a municipal endorsement of Christianity.”

3 11. Councilmember Nason also stated in her Declaration: “I recall that at the
4 time of the decision of the California Supreme Court in *Thomson v. Call*, in May 1985, when I
5 was a first-year law student, I read a comment in the newspaper by then-Mayor Henry Kruse
6 that the Cross would remain in the public park because of its popularity in Albany. I recall
7 disagreeing with his position, but also believing it would be only a matter of time until the cross
8 would be removed, as members of older generations retired and more contemporary policies
9 and practices were adopted in Albany.”

10 12. Councilmember Nason stated in her Declaration: “When, as a member of
11 the City Council in 2014, I learned that atheist groups were asking that the cross be removed, I
12 was supportive of their efforts and assumed that this would be an uncomplicated matter.”

13 13. In a November 11, 2017 “Mayor’s Statement” then Mayor Peggy
14 McQuaid stated, “The Albany City Council was dismayed to learn that in a departure from
15 historical practice, the cross on Albany Hill was lit by the Albany Lions Club on Friday,
16 November 10. I am sure many Albany residents recognized Veterans Day in a manner which
17 was appropriate and meaningful for them. I want to reiterate that the neither City Council nor
18 the City of Albany endorses in any way the lighting of the cross for any occasion, religious or
19 nationalistic, or supports its continued presence on public property.”

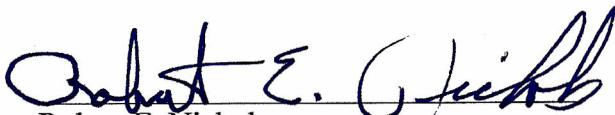
20 14. I also recall attending at least one city council meeting where Preston
21 Jordon now Mayor Jordon urged the City to obstruct the public view of the cross by planting
22 large, fast growing trees on the east side of the structure.

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15. It is my belief that Mayor Jordon and councilmembers Nason and McQuaid were biased and prejudiced against the cross on Albany Hill when considering and passing the City's Resolution of Necessity.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration was executed on June 9, 2022 at Albany, California.


Robert E. Nichols
Attorney for
Lions Club of Albany, California