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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 KENNETH BERNER  
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

21  
22 I, Kenneth Berner declare:

23 1. I am the President of the Albany Lions Club.

24 2. I have been a member of the Albany Lions Club for more than 53 years.

25 3. I know of my personal knowledge that the Albany Lions Club

26 constructed the steel and plexiglas lighted cross on property owned by Hubert and Ruth Call in  
27 1971.

28 4. I am informed and believe that on August 24, 1973, Hubert and Ruth Call

1 granted the Albany Lions Club an easement for ingress and egress to maintain the cross  
2 standing on his property on Albany Hill.

3 5. The Albany Lions Club has lighted the Cross prior to every Christmas  
4 and prior to every Easter.

5 6. The Albany Lions Club has also hosted Easter Morning Services every  
6 Easter Morning.

7 7. The Albany Lions Club has also occasionally lighted the cross on special  
8 occasions such as the 75<sup>th</sup> anniversary of the Pearl Harbor attack and Veterans Day.

9 8. I am informed and believe that members of the local community have  
10 held other religious services at the site of the Cross, such as celebrations of life.

11 9. Since 1971, the Albany Lions Club has expended considerable time and  
12 money repairing and maintaining the cross. The Club has paid a monthly utility bill to maintain  
13 electrical service at the cross. The Club has regularly maintained the cross - replacing lights,  
14 light fixtures, plexiglass material, removing graffiti, repairing acts of vandalism and installing  
15 and maintaining security devices.

16 10. I have personally visited the park at the top of Albany Hill on many  
17 occasions and observed the park to have a dirt walking trail that is between ten (10) and thirty  
18 (30) yards wide depending on the location. A significant amount of grasses, brush and trees  
19 grow to the west of this path with a smaller amount of grass, brush and trees growing mostly on  
20 a steep eastern slope. The path is consistently used by walkers and hikers. The most significant  
21 natural areas of the park consist of trees, grasses and brush that are located on the west side of  
22 the park. Narrow hiking trails extend through this western area. The Cross rests on the east side  
23 of the lot very near to the edge of a steep slope. The Cross is located such that it does not  
24 interfere with plant, animal life or the public from using any path in the park.

25 11. I have reviewed the legal documents served on the Lions Club by the  
26 City and understand that the City is seeking an Order of Prejudgment Possession so that the City  
27 can remove the cross from Albany Hill. The removal of the cross will cause the Lions Club a  
28 significant hardship. Removal of the Cross will prevent the Lions Club from illuminating the

1 Cross at Christmas and Easter and will end Easter Morning Services at the cross.

2 12. The removal of the Cross from Albany Hill will deprive the Albany Lions  
3 Club of its First Amendment right to freedom of speech and free exercise of religion by  
4 preventing the lighting the cross and the hosting of Easter Morning Services. The Lions will  
5 suffer the loss of their long established and exercised First Amendment rights should the City's  
6 motion be granted and the Cross removed.

7 13. If the Order of Possession is granted and this court subsequently sustains  
8 Defendant's objections to the City's right to take the easement and cross, the Lions Club will be  
9 required to obtain a permit from the City to restore the cross. Assuming the permit is granted,  
10 the Lions Club will need to hire a contractor to construct and install a new cross. All this will  
11 cost time and money.

12 14. The cross on Albany Hill has become an embedded feature of the  
13 community's landscape and identity. Many in the community have come to value the cross and  
14 the Club regularly receives notes of thanks as well as community support for its continued  
15 maintenance.

16 15. The Albany Lions Club also receives community support for its projects  
17 as well as financial support from local churches and individuals who appreciate and support the  
18 Cross and Cross related activities. Removal of the Cross by the City will damage this support.

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

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25 KENNETH BERNER  
26 President  
27 Lions Club of Albany, California  
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