

1 SCOTT W. DITFURTH, Bar No. 238127  
scott.ditfurth@bbklaw.com  
2 BEST BEST & KRIEGER LLP  
3390 University Avenue  
3 5th Floor  
P.O. Box 1028  
4 Riverside, California 92502  
Telephone: (951) 686-1450  
5 Facsimile: (951) 686-3083

6 Attorneys for Plaintiff  
CITY OF ALBANY, a charter city

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Alameda  
**07/13/2022 at 10:02:31 AM**  
By: Christina Rogers,  
Deputy Clerk

EXEMPT FROM FILING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 6103

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

11 CITY OF ALBANY, a charter city,  
12 Plaintiff,

13 v.

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

Case No. 22CV010822  
Judge: Hon. Somnath Raj Chatterjee

**REPLY BRIEF SUBMITTED BY CITY  
OF ALBANY IN SUPPORT OF  
MOTION FOR PREJUDGMENT  
POSSESSION**

**Hearing**

Date: July 28, 2022  
Time: 1:30 p.m.  
Dept.: 517

Action Filed: May 4, 2022

1 **I. INTRODUCTION**

2 Defendant Albany Lions Club, Lions International’s (“Defendant) Opposition does nothing  
3 to refute the fact that Plaintiff City Of Albany (“City”) has met all of the requirements to obtain  
4 prejudgment possession. Recognizing this, Defendant attempts to argue red herrings that have  
5 nothing to do with the statutory requirements for prejudgment possession. Additionally,  
6 Defendant—who is neither the owner of the property or an occupant of the property—makes no  
7 justifiable argument that prejudgment possession will result in undue hardship to Defendant, which  
8 is the central issue on a motion for prejudgment possession.

9 Code of Civil Procedure section 1255.410(d)(2) establishes the four conditions precedent  
10 for granting a request for prejudgment possession in the event of a timely opposition. Here, the  
11 Court should grant the City’s motion for prejudgment possession, as the City has met each of the  
12 four prerequisites. As more fully set forth in its moving papers, and below, the City:

- 13 • Made a valid precondemnation offer to Defendant, based on an appraisal prepared  
14 by a licensed appraiser;
- 15 • Conducted a hearing and adopted a valid resolution of necessity to acquire the real  
16 property that the City is seeking to acquire in this action;
- 17 • Made a deposit of the probable just compensation based on an appraisal;
- 18 • Has met all of the requirements for the issuance of an order for prejudgment  
19 possession; and
- 20 • Will suffer substantial hardship if prejudgment possession is limited or denied.

21 On the other hand, Defendant makes no showing as to why prejudgment possession would  
22 result in any hardship to Defendant, instead claiming that the granting of the motion will necessarily  
23 mean that Defendant cannot light the cross on Easter or Christmas, or hold Easter morning services  
24 at the cross. Neither of these “hardships” relate to the timing of possession, but rather the  
25 acquisition as a whole. In order to defeat the City’s motion for prejudgment possession, Defendant  
26 must establish an immediate hardship related to the timing of possession. Defendant has wholly  
27 failed to establish this crucial finding.

28 Defendant also argues that its right-to-take challenge somehow precludes the granting of

1 prejudgment possession. In making this argument, Defendant essentially seeks to transform this  
2 motion for prejudgment possession into a right to take trial. However, arguments related to any  
3 right-to-take issues, or compensation issues, have no bearing on the City’s ability to obtain  
4 prejudgment possession.

5 The City has established that it has met all of the requirements for prejudgment possession,  
6 including substantial hardship if prejudgment possession is not granted. In response, Defendant  
7 has failed to establish any hardship on its part that would justify denying the City’s motion.

8 **II. LEGAL STANDARD**

9 The City is presumed to have met the requirements for prejudgment possession if the motion  
10 is not opposed within 30 days of service: “the court *shall* make an order for possession” if it finds  
11 that the plaintiff is entitled to take the property by eminent domain, and that it has made the requisite  
12 deposit. (Code Civ. Proc. § 1255.410(d)(1) (emphasis added).) Only if the motion is opposed does  
13 the condemning agency bear the additional burden of showing that there is an overriding need for  
14 prejudgment possession and that, if possession is denied, the agency will suffer substantial hardship  
15 that is greater than the hardship suffered by the opposing party.

16 As set forth in its moving papers, and below, the City has satisfied the requirements of Code  
17 of Civil Procedure section 1255.410. Moreover, there is an overriding need for the City to obtain  
18 prejudgment possession, and the City will suffer a substantial hardship if possession is denied or  
19 limited. The hardship that the City will suffer if possession is denied or limited outweighs any  
20 hardship on Defendant that would be caused by the granting of the order for possession.

21 **III. THE CITY HAS SATISFIED ALL OBLIGATIONS FOR POSSESSION**

22 The court may make an order for prejudgment possession of the property if the court finds  
23 each of the following: (1) the plaintiff is entitled to take the property by eminent domain; (2) the  
24 plaintiff has deposited, pursuant to Article 1 (commencing with Section 1255.010), an amount that  
25 satisfies the requirements of that article; (3) there is an overriding need for the plaintiff to possess  
26 the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a  
27 substantial hardship if the application for possession is denied or limited; and (4) the hardship that  
28 the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant

1 or occupant that would be caused by the granting of the order of possession. (Code Civ. Proc.,  
2 § 1255.410, subd. (d)(2).) Here, the City has met all the requirements.

3 **A. The City is Entitled to Take the Property**

4 On April 4, 2022, after a noticed hearing, the City Council adopted Resolution of Necessity  
5 No. 2022-32 (the “RON”), declaring that the public interest and necessity require the acquisition,  
6 by eminent domain proceedings, of the easement interest held by Defendants, as well as removal  
7 of the cross. (Bond Decl., ¶¶ 4, 7,8; Ex B.) The City is granted this authority under Government  
8 Code § 37350 *et seq.* and Code of Civil Procedure §§ 1240.110 and 1240.120.

9 The City Council adopted the RON, having made the requisite findings to adopt the  
10 resolution. (Bond Decl. ¶ 9.) Thus, there is a *conclusive presumption* that the City has the right to  
11 acquire the property through eminent domain. (Code Civ. Proc. §§ 1240.030, 1245.250; see e.g.,  
12 *People ex rel. Dep’t of Transp. v. Cole* (1992) 7 Cal.App.4th 1281, 1284-85; *Council of San Benito*  
13 *County Governments v. Hollister Inn, Inc.* (2012) 209 Cal.App.4th 473, 497.) Defendant takes  
14 issue with this requirement, arguing that it is asserting a right-to-take challenge. However, as set  
15 forth below, the law is clear that any such challenge does not overcome the conclusive presumption  
16 afforded the City related to a motion for prejudgment possession.

17 **B. The City Has Deposited a Probable Amount of Just Compensation**

18 The City has deposited an amount pursuant to Article 1 (commencing with Section  
19 1255.010) that satisfies the requirements of that article. On or about April 28, 2022, the City  
20 deposited in the condemnation trust account of the State Treasury the amount of \$500,000 as the  
21 probable compensation for the acquisition of the easement (and cross removal) on the Property.  
22 Defendant does not take issue with the City’s deposit.

23 **C. There is an Overriding Need for Prejudgment Possession**

24 There is an overriding need for the City to possess the property prior to the issuance of final  
25 judgment in the case. Here, a resolution of necessity may be considered sufficient evidence of a  
26 public entity’s urgent need to obtain possession. (*Israni v. Superior Court* (2001) 88 Cal.App.4th  
27 621, 640.) Only in rare instances will courts disturb a legislative or administrative declaration, such  
28 as a resolution of necessity, that the particular use is public or necessary. (See *People ex rel. Dep’t*

1 *Pub. Works v. Superior Court* (1968) 68 Cal.2d 206.)

2 The City owns the property that is the subject matter of this eminent domain action.  
3 Defendant has a limited easement over the property for ingress and egress in order to maintain a  
4 cross situated on the property. The City proposes a project required by public interest and necessity  
5 because the City seeks to acquire the easement in order to unencumber public land and avoid any  
6 potential violation of the Establishment Clause arising from Defendant’s display of a cross in the  
7 park. (Bond Decl., ¶¶ 2–4; *see* Code Civ. Proc., § 1240.680, subd. (a)(1) [“property is presumed  
8 to have been appropriated for the best and most necessary public use if the property is appropriated  
9 to public use as...a city park...”]; *see also* *Lions Club of Albany, California v. City of Albany* (N.D.  
10 Cal. 2018) 323 F.Supp.3d 1104, 1117.) Here, the property is already being utilized as public space.  
11 Accordingly, the City’s intended use is presumed to be the best and most necessary use.

12 Additionally, the project is planned and located in the manner that will be most compatible  
13 with the greatest public good and the least private injury because the easement to be acquired (with  
14 the cross) is prominently located and highly visible. (Delahooke Decl., Ex. B at pp. 1–13; *Lions*  
15 *Club, supra*, 323 F.Supp.3d at p. 1110.) Acquisition of the easement (and removal of the cross)  
16 will, thus, have the greatest public good by creating unobstructed views and preserving the open  
17 space character of the park from many vantage points. Additionally, acquiring the easement will  
18 eliminate potential tax payer dollars to be spent regarding a potential Establishment Clause  
19 violation. For those same reasons, and because of the location-specific nature of the public project,  
20 acquisition of the Property is necessary; no other property could be acquired that would serve the  
21 public purposes of the project.

22 **D. The City’s Hardship Outweighs any Hardship Claimed by Defendant**

23 The City will suffer hardship without prejudgment possession, as there will be an  
24 unnecessary and ongoing risk of litigation due to the possibility that the cross raises concerns under  
25 the Establishment Clause. (Bond Decl., ¶ 11 & Ex. C [*Lions Club, supra*, 323 F.Supp.3d at pp.  
26 1115–17].) It is uncertain how long the eminent domain action will take. Accordingly, denying  
27 this motion would simply be delaying the acquisition while simultaneously subjecting the City to  
28 a unnecessary risk of litigation during the pendency of the eminent domain action. The property is

1 necessary for the City’s public use, as acquisition of the easement – and removal of the cross – are  
2 the required in order to unencumber the park, as well as avoid a potential Establish Clause issue.  
3 (Bond Decl. ¶ 4.) The City’s legitimate and secular purpose in avoiding future Establishment  
4 Clause litigation justifies the removal of the cross. (See *Vasquez v. Los Angeles County*, 487 F.3d  
5 1246, 1257 (9th Cir. 2007).)

6 Additionally, the City is presently managing the property as a public park. The City has an  
7 ongoing and overriding need to continue managing the open space, with all of its plant and animal  
8 life, for the public, without interference of the maintenance of the cross. (Bond Decl., ¶ 11.) The  
9 City has an overriding need for possession of the property to be able to appropriately manage this  
10 open space. (*Ibid.*)

11 On the other side, Defendant’s stated hardships are nothing more than not being able to light  
12 up the cross at Easter and Christmas, or be able to hold Easter morning services. Neither of these  
13 hardships outweigh the City’s hardships. In support of its opposition, Defendant submits two  
14 declarations. The declaration of Robert Nichols, Defendant’s attorney, does not set forth any  
15 hardship on behalf of Defendant. Rather, Mr. Nichols’s declaration appears to only set forth various  
16 statements made by third parties in 2015-2017.<sup>1</sup> With respect to the declaration of Kenneth Berner,  
17 the only hardship set forth is that “[r]emoval of the Cross will prevent the Lions Club from  
18 illuminating the Cross at Christmas and Easter and will end Easter Morning Services at the Cross.”  
19 (Berner Decl. ¶ 11.) There are a number of things wrong with this statement. First, this does not  
20 provide a justification for substantial hardship. In evaluating prejudgment possession, the  
21 balancing of hardships involves the granting of *immediate* possession, not hardships related to the  
22 overall acquisition. (See Code Civ. Proc. § 1255.410(d)(2)(D).) There is no indication, or factual  
23 statement, that Defendant will suffer any hardship as a specific result of *immediate* possession.  
24 Rather, all of the alleged harms expressed by Defendant result from the acquisition of the Property,  
25 *regardless of when it will be taken*. None of the hardships raised in the Opposition relate to the  
26 timing of possession, which his required in opposing a motion for possession. (*Israni v. Superior*  
27 *Court* (2001) 88 Cal.App.4th 621. 636 [the Court defined the term “substantial hardship” to require

28 \_\_\_\_\_  
<sup>1</sup> The City has filed a corresponding objection to evidence.  
38159.03002\40310254.1

1 a specific relationship to the particular interval between the application for the order of immediate  
2 possession and its proposed effective date].)

3 Second, the easement that is the subject matter of this acquisition states as follows: “an  
4 easement for ingress and egress to maintain the existing cross standing on a portion of the following  
5 described premises...” (Bond Decl. & Ex. B.) The lighting of the cross at Easter and Christmas,  
6 or the holding of Easter morning services, are not contemplated uses under the easement, and cannot  
7 therefore be used as a basis to oppose the City’s right to prejudgment possession. At most, the  
8 lighting of the cross, and Easter morning services, can be considered an ancillary benefit of the  
9 easement. Deprivation of a benefit, even a substantial one, is not the equivalent of a substantial  
10 hardship. (*Fairrington v. Dyke Water Co.* (1958) 50 Cal.2d 198.)

11 **IV. DEFENDANT’S OBJECTIONS**

12 Under Code of Civil Procedure section 1255.410, once the City has demonstrated that it:  
13 (1) adopted a RON; and (2) made the required deposit of probable just compensation, the burden  
14 shifts to the defendant to demonstrate it would suffer hardship if the City was granted prejudgment  
15 possession. The “overriding need” the City must demonstrate is considered in the context of the  
16 plan of operation for execution of the project and the situation of the property with respect to such  
17 plan. (*Israni v. Superior Court* (2001) 88 Cal.App.4th 621, 638, discussing “urgent need” standard  
18 under previous section 1255.410, subd.(c).) Hardship to the defendant requires a specific  
19 relationship to the interval between the application for the order of possession and its effective date.  
20 (*Id.* at p. 642, addressing “substantial hardship” as defined under previous section 1255.420.)

21 **A. Defendant Does Not Own or Occupy the Property**

22 Code of Civil Procedure § 1255.410(c) states that only a defendant or an occupant of the  
23 property can oppose a motion of prejudgment possession. The City owns fee title to the property.  
24 Defendant simply has a non-exclusive easement interest for ingress and egress to maintain the cross  
25 on the property. (Bond Decl. ¶ 3 & Ex A.) Defendant has no legal right to possession of the land  
26 and is not the record owner of the property. (See *Marvin M. Brandt Revocable Tr. v. U.S.*, 572 U.S.  
27 93 (2014).) Moreover, Defendant has no possessory interest in the land or the cross. The definition  
28 of “occupant” requires actual possession of land, and as Defendant has none, Defendant is not an

1 occupant. (See *Dutcher v. Sanders* (1912) 20 Cal.App.549.) The purpose of notification for  
2 prejudgment possession is to assure the occupants of the property being acquired are put on notice  
3 in case the acquisition displaces any such occupant, requiring that they relocate. (See e.g., Code  
4 Civ. Proc. 1255.410(e)(1)(A) & B; Gov. Code 7260-7277 [providing that a public entity must  
5 provide relocation assistance to any person or business displaced as a result of the acquisition]; see  
6 also *Parking Auth. v. Nicovich* (1973) 32 Cal.App.3d 420). Defendant is neither an owner or an  
7 occupant, and there is no relocation.

8 **B. Defendant Does Not Have a Sufficient Interest in the Property to be Able to**  
9 **Assert Hardship**

10 Code of Civil Procedure section 1255.410, subdivision (c), provides that a written  
11 opposition asserting hardship “shall be supported by a declaration signed under penalty of perjury  
12 stating facts supporting the hardship.” Declarations usually are by an owner and/or occupant of the  
13 property (Defendant is neither), but competent experts may also provide supporting declarations.  
14 (Condemnation Practice in California 93d ed Cal CEB 2005), § 8.32.) Because the test is one of  
15 balancing hardships between the parties, the opposition should provide a detailed description of  
16 hardship to the owner and any occupant. (*Ibid.*)

17 As set forth above, Defendant is neither an owner or occupant of the property, but rather  
18 has an easement interest. An easement is a nonpossessory interest in real property, thus the  
19 easement owner does not have the right to actual possession. (*Marvin M. Brandt Revocable Tr. v.*  
20 *U.S.*, 572 U.S. 93 (2014).) Any “hardship” Defendant suggests is mere conjecture. Indeed,  
21 potential loss to a party not in possession of the property in question does not amount to a substantial  
22 hardship. (See *Israni v. Superior Court* (2001) 88 Cal.App.4th 621, 640643). Because Defendant  
23 does not actually own or possess the property, the “hardships” set forth by Defendant do not provide  
24 a basis to deny the City’s motion for prejudgment possession.

25 Defendant also claims that the City’s acquisition constitutes a violation and loss of First  
26 Amendment rights. It is unclear if this is listed as a substantial hardship by Defendant. Moreover,  
27 Defendant offers no legal authority as to how Defendant’s First Amendment rights have been  
28 violated by the City, nor any authority equating loss of First Amendment rights to substantial



1 hardship, as defined by Code Civ. Proc. § 1255.410. Even more, Defendant’s own Constitution  
2 and Bylaw state that its purpose is: “To Provide a forum for the open discussion of all matters of  
3 public interest; provided, however, that *partisan politics and sectarian religion shall not be debated*  
4 *by club members.*”<sup>2</sup> (Italics added). Defendant’s actions of lighting the cross and holding Easter  
5 morning services appear to be in direct contradiction to the authorized purpose of the organization.

6 **C. Disputes in Compensation Do Not Provide a Basis to Oppose Possession**

7 Defendant argues that applying for a permit and constructing a new cross will cost time and  
8 money. (Opposition 3:12-15; 6:9-13.) This is an irrelevant. Such an argument relates to  
9 *compensation*, not prejudgment possession. The issue of just compensation is entirely separate  
10 from the question of the City’s right to acquire the property. Defendant offers no other authority  
11 indicating the amount of compensation to be sought is grounds to oppose prejudgment possession.  
12 If it were, *every* eminent domain defendant could defeat a motion for prejudgment possession  
13 simply by raising allegations regarding the amount of just compensation and other damages to be  
14 determined at trial. This conclusion is untenable and unnecessary given the specific procedural  
15 safeguards established by the legislature in Code of Civil Procedure section 1255.010 *et seq.*

16 If Defendant does believe it is entitled to additional compensation, Defendant is entitled to  
17 seek that compensation in the eminent domain action. But for purposes of prejudgment possession,  
18 such a claim does not affect the City’s ability to obtain prejudgment possession. Rather, the central  
19 issue of prejudgment possession is hardship *specific to the timing of possession*, and Defendant has  
20 failed to identify any such hardship.

21 **D. Right-to-Take Challenges Do Not Affect the City’s Ability to Obtain**  
22 **Prejudgment Possession**

23 Defendant argues that the City did not adopt a lawful resolution of necessity because the  
24 City “fails to describe a ‘project.’” (Opposition 6:25-26.) As such, Defendant contends that the  
25 RON is invalid. A challenge to the validity of the RON is a right-to-take challenge. Here,  
26

27 <sup>2</sup> Language can be found on the Lions Club International Constitution and Bylaws at:  
28 <https://clubrunner.blob.core.windows.net/00000101144/en-us/files/homepage/lions-club-international-constitution-by-laws/Lions%20Club%20International%20Constitution%20&%20By-Laws.pdf>  
38159.03002/40310254.1

1 Defendant’s challenge to the City’s right to take is mistimed. Such challenges are determined at  
2 the right to take trial under section 1260.120. (*Santa Cruz County Redevelopment Agency v. Izant*  
3 (1995) 37 Cal.App.4th 141, 151-152.)

4 Defendant confuses one of the prerequisites for an order for prejudgment possession – “[t]he  
5 plaintiff is entitled to take the property by eminent domain” (Code of Civ. Proc., § 1255.410, subd.  
6 (d)(2)(A), emphasis added) – with a right to take trial under section 1260.120. The prerequisite for  
7 an order for prejudgment possession (i.e., “entitled to take”) is a preliminary determination. In the  
8 context of a motion for prejudgment possession, the Legislative Committee Comment following  
9 section 1255.410 is instructive:

10 It should be noted that the determination of the plaintiff’s right to  
11 take the property by eminent domain [under this provision] is  
12 preliminary only. The granting of an order for possession does not  
13 prejudice the defendant’s right to demur to the complaint or to  
14 contest the taking. Conversely, the denial of an order for possession  
does not require a dismissal of the proceeding and does not prejudice  
the plaintiff’s right to fully litigate the issue if raised by the  
defendant.

15 (Cal. Law Revision Com. Com., 19 Pt. 3 West’s Ann. Code Civ. Proc. (2007 ed.) foll. § 1255.410,  
16 p. 580.) In contrast, section 1260.120, subdivision (a), provides that the Court “shall hear and  
17 determine all objections to the right to take.” This provision provides for “a court determination of  
18 right to take issues.” (Cal. Law Revision Com. Com., 19 Pt.3 West’s Ann. Code Civ. Proc. (2007  
19 ed.) foll. § 1260.120, p. 625.) Section 1260.110 specifically provides that objections to the right to  
20 take are heard at the right to take trial, not on a motion for prejudgment possession:

- 21 (a) Where objections to the right to take are raised, unless the  
22 court orders otherwise, they shall be heard and determined  
prior to the determination of the issue of compensation.
- 23 (b) The court may, on motion of any party, after notice and  
24 hearing, specially set such objections for trial. (Emphasis  
25 added.)

26 The Legislature distinguished between the two processes – one preliminary and one final.  
27 The prerequisite to prejudgment possession is whether the agency is “entitled to take the property  
28 by eminent domain.” (Code Civ. Proc., § 1255.410, subd. (d)(2)(A), emphasis added.) When the  
Legislature uses different words as part of the same statutory scheme, those words are presumed to


1 have different meanings. (*Romano v. Mercury Ins. Co.* (2005) 128 Cal.App.4th 1333, 1343.) The  
2 statutory scheme is consistent. It provides that prejudgment orders of possession can be vacated  
3 under certain circumstances. (Code Civ. Proc., § 1255.440.) Defendant’s contention that it would  
4 be improper to grant a motion for prejudgment possession prior to determining the validity of the  
5 right to take is wrong. Section 1255.440 would be meaningless if Defendant’s contention was true.

6 Until a right to take trial is held, the resolution of necessity creates a conclusive presumption  
7 that the following are true: (1) the public interest and necessity require the project; (2) the project  
8 is planned or located in the manner that will be most compatible with the greatest public good and  
9 least private injury; and (3) the property sought to be acquired is necessary for the project. (Code  
10 Civ. Proc., §§ 1240.030 and 1245.250.)

11 An agency is “entitled to take the property by eminent domain” where the agency is  
12 statutorily authorized to exercise the power of eminent domain and a resolution of necessity was  
13 adopted prior to the filing of the action. Government Code section 37350.5 states that a “city may  
14 acquire by eminent domain any property necessary to carry out any of its powers or functions.”  
15 The City is thus “entitled” to take the property by eminent domain because it is a city organized  
16 and existing under California law and it adopted a valid RON.

17  
18 Dated: July 13, 2022

BEST BEST & KRIEGER LLP

19  
20 By:   
21 SCOTT W. DITFURTH  
22 Attorneys for Plaintiff  
23 CITY OF ALBANY, a charter city  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Ana Horta, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3390 University Avenue, 5<sup>th</sup> Floor, Riverside, California 92501. On July 13, 2022, I served a copy of the within document(s):

**REPLY BRIEF SUBMITTED BY CITY OF ALBANY IN SUPPORT OF MOTION FOR PREJUDGMENT POSSESSION**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Riverside, California addressed as set forth below.
- by placing the document(s) listed above in a sealed FedEx envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a FedEx agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Robert E. Nichols  
Richard W. Covert  
713 Key Route Blvd.  
Albany, CA 94706  
Tel: (510) 710-7033  
Email: renichols01@comcast.net

Attorneys for Defendant  
LIONS CLUB OF ALBANY,  
CALIFORNIA

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 13, 2022, at Riverside, California.

  
\_\_\_\_\_  
Ana Horta