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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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN RESPONSE TO
PLAINTIFF'S MOTION TO SET
TRIAL**

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

DATE: January 12, 2023
TIME: 2:30 p.m.
DEPT.: 517

21
22 **I**
23 **SETTING THIS MATTER FOR TRIAL**

24 The Case Management Conference in this action has not yet been conducted.
25 Counsel has raised issues which would seem better addressed at a Case Management hearing
26 rather than by this trial setting motion. The Lions Club has no objection to setting this matter
27 for trial. Defendant notes that (1) discovery has not yet been completed and (2) the records and
28 documentation associated with the Resolution of Necessity have not yet been compiled, and

1 the transcript of the City Council hearing on the Resolution of Necessity has not yet been not
2 yet been conducted. It would seem reasonable that Defendant, the Lions Club, be provided
3 copies of the transcript and documents in the City's possession, and be given the opportunity to
4 correct or object to the proposed records prior to ruling on evidentiary objections or submission
5 of trial briefs. Nonetheless, the Lions Club has no objection to the Trial being set within
6 reasonable time pursuant to Code of Civil Procedure § 1260.010.

7 **II**

8 **UNDER CALIFORNIA EMINENT DOMAIN LAW ALL ISSUES OTHER THAN**
9 **THE AMOUNT OF JUST COMPENSATION ARE TRIED BY THE COURT—A**
10 **JURY DETERMINES THE AMOUNT OF JUST COMPENSATION**

11 Under CCP § 1260.110 upon the motion of any party the issue of the right to
12 take is bifurcated from other issues. Under CCP § 12603.120 the trial court not the jury,
13 determines if the Plaintiff has the right to take!

14 **III**

15 **THE CITY'S MOTION TO SET TRIAL INCLUDES A VAILED *IN LIMINE***
16 **MOTION TO LIMIT EVIDENCE WHICH IS PREMATURE**

17 The City's Motion To Set Trial includes a camouflaged motion *in limine*
18 seeking to restrict evidence to be presented at trial. This attempt to limit trial evidence has
19 been submitted prior to discovery, case management conference, settlement conference or
20 pretrial conference and is grossly premature. Local Rule 3.35 anticipates that motions *in limine*
21 should be filed three days prior to the pretrial conference then set for a subsequent hearing.
22 Local Rule of Court Rule 3.35(e).

23 The City is seeking to suppress, limit, and prevent the Lions from introducing
24 relevant evidence at trial establishing that the resolution of necessity hearing was affected by a
25 gross abuse of discretion. In *Redevelopment Agency v. Norm's Slauson*, 173 Cal.App.3d 1121
26 (1985) that court noted that the resolution of necessity is not conclusive if shown to have been
27 influenced or affected by an abuse of discretion. The Court in *Norm's Slauson* found the
28 resolution of necessity was a sham and the board simply rubber stamped a predetermined result

1 based upon evidence of a contract with a developer and issuance of revenue bonds that
2 irrevocably committed the agency to take the property all occurring before taking any steps to
3 condemn the property regardless any evidence that might be presented the hearing. Id at 1127.
4 Implicit in this requirement of a hearing and the adoption of a resolution of necessity is the
5 concept that, in arriving at its decision to take, the Agency engage in a good faith and judicious
6 consideration of the pros and cons of the issue and that the decision to take be buttressed by
7 substantial evidence of the existence of the three basic requirements set forth in Code of Civil
8 Procedure, section 1240.030. Id. At 1125-1126.

9 The City would prefer to prematurely prevent the Lions from introducing
10 relevant evidence showing that the City Council failed and refused to engage in good faith and
11 judicious consideration of the pros and cons of selling a small parcel of land to eliminate any
12 Establishment Clause Problem, failed to consider any facts showing public necessity required
13 the “project;” failed to weigh the public good against the private injury the Lions will suffer
14 regarding their ability to display the Cross, particularly in light of a legitimate alternative; and
15 failed to consider if condemnation was in fact necessary in light of the Lions offer to purchase
16 the property. Evidence will show that the City has been biased and prejudiced against the
17 Christian Cross favoring atheists and others, and improperly acted based upon this bias and
18 animus in reaching its decision to condemn the Lions easement and Cross.

19 These matters are more appropriately resolved after discovery has concluded.
20 At the start of the trial on the Right to Take the Court can rule on motions *in limine*.

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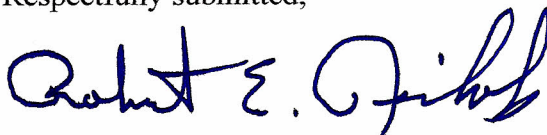
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IV
CONCLUSION

In light of the foregoing, Defendant, the Lions Club of Albany, California has no objection to the Court setting an appropriate trial date and agrees that the bifurcation of the trial is appropriate. Since there will be no jury any motions *in limine* should be heard at, or a few days before the commencement of trial.

Dated: December 28, 2022

Respectfully submitted,



Robert E. Nichols
Attorney for the Albany Lions Club