

1 ROBERT E. NICHOLS (SBN 100028)
2 RICHARD W. COVERT (SBN 34582)
3 713 Key Route Blvd.
4 Albany, California 94706
5 Telephone: (510) 710-7033
6 renichols01@comcast.net

7
8 *Attorneys for Plaintiff,*
9 *The Lions Club of Albany, California*

10
11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 **THE LIONS CLUB OF ALBANY,**
15 **CALIFORNIA, A Nonprofit Corporation,**

16 **Plaintiff,**

17 **v.**

18 **THE CITY OF ALBANY, a Charter City; and**
19 **DOES 1 through 25;**

20 **Defendants.**

Case No. 3:22-CV-5377 WHA
Related to 3:17-CV-05236 WHA

**[PROPOSED] ORDER DESOLVING
STAY OF PROCEEDINGS,
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

21 The Court has considered Plaintiff the Lions Club of Albany, California's *Ex Parte*
22 Application for Relief from Stay and a Temporary Restraining Order and an Order to Show Cause
23 Why a Preliminary Injunction Should Not Issue, and the Declarations, Exhibits and Memorandum
24 in Support thereof.

25 **IT IS HEREBY ORDERED:**

- 26 1. That the stay of these proceedings issued November 17, 2022, is desolved;
- 27 2. That pending time to allow a full hearing for determination of the Order to Show
- 28 Cause Why a Preliminary Injunction Should Not Issue, Defendant, the City of Albany and its

**[PROPOSED] TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

1 agents, servants, employees, and all person acting in concert or participation with them from
2 taking, removing, moving, deconstructing, disassembling or otherwise injuring the Cross on
3 Albany Hill.

4 3. This Temporary Restraining Order was issued on _____ at _____
5 a.m./p.m. Plaintiff will suffer irreparable harm because the Cross on Albany Hill will be removed
6 from the Plaintiff's property easement prior to any trial depriving Plaintiff of the daily exhibition
7 and use of the Cross and significant religious holiday use of the Cross during the pendency of this
8 action resulting in the violation of the Plaintiffs First Amendment rights to Free Exercise of
9 Religion and Free Speech.

10 4. Defendant's attorney, Scott W. Ditfurth was notified on February 27, 2022 by
11 telephone that Plaintiff would be seeking this Preliminary Injunction.

12 5. This Preliminary Injunction shall expire on _____ unless
13 extended by the Court or unless Defendant consents to a longer extension and the reasons for the
14 extension are entered in the record.

15 6. The Plaintiff is ordered to serve this Temporary Restraining Order and all
16 supporting pleadings and papers on the adverse party by _____.

17 **IT IS FURTHER ORDERED** that the parties shall appear at _____ a.m./p.m.
18 on _____, 2023 before the Honorable William Alsup, in Courtroom 12, 19th Floor,
19 Located at 450 Golden Gate Avenue, San Francisco, California for a hearing to show cause why
20 Defendant City of Albany and all of its agents, servants, employees, and all person acting in
21 concert or participation with them, should not be preliminarily enjoined from taking, removing,
22 moving, deconstructing, disassembling or otherwise injuring the Cross on Albany Hill.

23 **IT IS SO ORDERED**

24 DATED: _____, 2023

The Honorable William Alsup
United States District Judge