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Superior Court of California,
County of San Francisco

12/22/2021
Clerk of the Court
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Deputy Clerk

Attorneys for Petitioners and Plaintiffs
OPEN THE GREAT HIGHWAY ALLIANCE, VICTORIA
BRUCKNER, RAUL HERNANDEZ, SHEILA KOREN,
MICHAEL REGAN, AND STEVEN HILL

CALIFORNIA SUPERIOR COURT
COUNTY OF SAN FRANCISCO

OPEN THE GREAT HIGHWAY
ALLIANCE, VICTORIA T. BRUCKNER,
RAUL HERNANDEZ, SHEILA KOREN,
MICHAEL REGAN, AND STEVEN
HILL,

*Petitioners and
Plaintiffs,*

vs.

PHILIP A. GINSBURG, General Manager,
San Francisco Recreation and Park
Department; SAN FRANCISCO
RECREATION AND PARK
COMMISSION; and DOES 1 THROUGH
5;

*Respondents and
Defendants.*

CASE NO. CPF-21-517641

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: Jan. 31, 2022, 9:30 am

DEPT: 302

Judge: Hon. Ethan P. Schulman

TO THE COURT, THE PARTIES, AND THEIR COUNSEL OF RECORD:

Please take notice that on Jan. 31, 2022, 9:30 am, or as soon thereafter as this matter may
be heard in Dept. 302 (Hon. Ethan P. Schulman, presiding) of the above entitled Court located at
400 McAllister St., San Francisco, CA 94102, Petitioners and Plaintiffs (collectively,
“Plaintiffs”) Open the Great Highway Alliance, Victoria T. Bruckner, Raul Hernandez, Sheila

NOTICE OF MOTION AND MOTION FOR
PRELIMINARY INJUNCTION

1 Koren, Michael Regan, and Steven Hill will move, and hereby move, that the Court issue a
2 preliminary injunction ordering Defendants and Respondents to stop the continuing violations of
3 Sections 21101.6 and 21101 of the California Vehicle Code and Section 3.03 of the San Francisco
4 Park Code, by immediately re-opening the Great Highway, John F. Kennedy Drive, and Martin
5 Luther King Drive (collectively, the “Gateway Drives”) to all vehicular traffic.

6 Plaintiffs seek a preliminary injunction on the following grounds:

- 7
8 1. The ongoing closure of the Gateway Drives violates, and continues to violate,
9 Section 21101.6 of the California Vehicle Code (Third Cause of Action).
- 10 2. The ongoing closure of the Gateway Drives violates, and continues to violate,
11 Section 21101 of the California Vehicle Code (Fourth Cause of Action).
- 12 3. The ongoing closure of the Gateway Drives violates, and continues to violate,
13 Section 3.03 of the San Francisco Park Code (Fifth Cause of Action).

14 This Motion is based on this Notice of Motion and Motion, the accompanying Points and
15 Authorities, the pending Petition for Writ of Mandate and Complaint for Injunctive and
16 Declaratory Relief (filed Dec. 16, 2021), the accompanying Declarations of Victoria T. Bruckner,
17 Raul Hernandez, Sheila Koren, Michael Regan, Steven Hill, and Gautam Dutta, all records and
18 pleadings on file with the Court in this matter, all matter of which the Court may take judicial
19 notice, and all further evidence and argument that may be presented in reply to any opposition on
20 this Motion or at the hearing on this Motion.
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1 DATED: Dec. 22, 2021

2
3 BUSINESS, ENERGY, AND ELECTION
4 LAW, PC

5
6 By: /s/ Gautam Dutta

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8 GAUTAM DUTTA, ESQ.

9
10 Attorneys for Petitioners and Plaintiffs

11 OPEN THE GREAT HIGHWAY ALLIANCE,
12 VICTORIA BRUCKNER, RAUL
13 HERNANDEZ, SHEILA KOREN, MICHAEL
14 REGAN, AND STEVEN HILL

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POINTS AND AUTHORITIES

*Since the state has preempted the entire field of traffic control, any right of a local authority to interfere with the free flow of traffic, **as by closing a street**, must be derived from an express delegation of authority from the Legislature.*

-- Citizens Against Gated Enclaves v. Whitley Heights Civic Association¹

I. Introduction

Because they have been illegally closed to people traveling in certain vehicles, three critical paths that lead to or pass through Golden Gate Park and Ocean Beach – the Great Highway, John F. Kennedy Drive, and Martin Luther King Drive (collectively, the “Gateway Drives”) – must be immediately re-opened to all vehicular traffic.

As we will show, both State and local law ban *partial* closures of the Gateway Drives: i.e., closing them to *some* vehicles or members of the public, while leaving them open to others. Here, although the Gateway Drives have been closed² to most cars, trucks, and motorcycles, Defendants continue to allow pedestrians, human-powered bicycles, joggers, and a number of motorized vehicles – including food trucks, scooters,³ surreys, electric bicycles, and the cars of “VIP” concert attendees – to access the Gateway Drives. Those road closures violate, and continue to violate, Sections 21101.6 and 21101 of the California Vehicle Code and Section 3.03 of the San Francisco Park Code.

As a direct result of the illegal closures, it is no longer feasible for many residents who are disabled or families from socio-economically diverse neighborhoods to enjoy many of the sights and sounds along the ocean and within one of San Francisco’s crown jewels: Golden Gate Park. Accordingly, Plaintiffs request a preliminary injunction that

¹ *Citizens Against Gated Enclaves v. Whitley Heights Civic Assn.* (1994) 23 Cal.App.4th 812, 820 (emphasis in original as to first bolded phrase, underlining added as to “express”).

² As discussed below, the relevant parts of MLK Drive and JFK Drive have been completely closed to certain vehicular traffic; and a two-mile section of the Great Highway has been closed to certain vehicular traffic between 12 noon every Fridays through 6 am every Monday.

³ Driving a motorized scooter requires a valid driver’s license or instruction permit. Veh. Code §21235(c).

orders Defendants to stop violating State and local law: by immediately re-opening the Gateway Drives to *everyone*.

II. The Parties⁴

Defendant **Philip A. Ginsburg** is General Manager of the San Francisco Recreation and Park Department. Defendant **San Francisco Recreation and Park Commission** is comprised of seven members who are appointed by the Mayor.

Subject to the restrictions imposed by law, each Defendant has the authority to “close[] to the public” – as well as re-open – the Gateway Drives (which are administered by the San Francisco Recreation and Park Department).⁵

Plaintiff **Open the Great Highway Alliance** (the “Alliance”), a California nonprofit corporation, informs and educates the public of the harmful consequences of not fully re-opening the Upper Great Highway, the two-mile section of the Great Highway stretching from Lincoln Way (the north end) to Sloat Blvd. (the south end).⁶ The Alliance is also concerned about numerous other road closures in San Francisco, including those of John F. Kennedy Drive (“JFK Drive”) and Martin Luther King Drive (“MLK Drive”).

Plaintiff **Victoria Bruckner**, who lives in the Mission District, has cerebral palsy, a lifelong mobility and neurological disability. For mobility she requires a wheelchair and an attached mobility device, or she must be accompanied by a live person wherever she frailly walks, always with great risk of falling.

Ms. Bruckner has regularly visited Golden Gate Park since moving to San Francisco in 1978. The closure of JFK Drive has effectively shut out Ms. Bruckner from

⁴ For the sake of brevity, each Plaintiff and Petitioner shall be referred to as “Plaintiff”; each Defendant and Respondent, as “Defendant”. All facts concerning the Plaintiffs derive from their accompanying Declarations.

⁵ S.F. Park Code §3.03. The Gateway Drives are deemed a “park” under Section 2.01(a) of the San Francisco Park Code, for they are under the “control, management, and direction” of the San Francisco Recreation and Park Commission. Oddly, the Commission has jurisdiction over the Great Highway pursuant to a statute enacted in 1874, before automobiles were even invented. *See* Act of the Legislature of Mar. 11, 1874 (Statutes of California 1873-74, p. 333).

⁶ The terms “Great Highway” and “Upper Great Highway” will be used interchangeably.

1 visiting Golden Gate Park, and any of the public facilities and programs operated within it
2 by the City and County of San Francisco, including the following attractions located along
3 JFK Drive: the Rhododendron Dell, the Conservatory of Flowers, Stow Lake, the Dahlia
4 Garden, National AIDS Memorial Grove, Lily Pond, Peacock Meadow, and two major
5 museums.

6 Plaintiff **Raul Hernandez** grew up in a working-class, Latino family in the
7 Mission District which often drove to JFK Drive in Golden Gate Park for recreation. Mr.
8 Hernandez has lupus, an autoimmune-system disease. As a result of his disability, he
9 needs a cane to walk. Mr. Hernandez cannot ride a bicycle, or even take an hour-long bus,
10 to get to JFK Drive.

11 Mr. Hernandez has been involved or associated with, whether for work or as a
12 volunteer, with the San Francisco Giants, Mission Food Hub, San Francisco Lowrider
13 Council, Latino Task Force, and San Francisco's Juvenile Probation Department. In his
14 experience, much of San Francisco's Latino community considers having access to
15 Golden Gate Park via JFK Drive to be their "lifeline".

16 Plaintiff **Sheila Koren**, a licensed mental health therapist, has been a resident of
17 the Outer Richmond District for 35 years. Ms. Koren has a partial disability as a result of
18 severe scoliosis that also impacts her lungs, and also suffers from arthritis and bursitis. As
19 part of her medical interventions for her health, Ms. Koren regularly swims at the
20 therapeutic pool of the Pomeroy Recreation and Rehabilitation Center (the "Pomeroy
21 Center"), located near the San Francisco Zoo.

22 When the Great Highway is open to vehicles, that trip takes Ms. Koren
23 approximately 10 minutes to travel in her car along that route to the Pomeroy Center.
24 When the Great Highway and MLK Drive are closed, Ms. Koren must allot about 45
25 minutes for that trip because the next shortest and fastest route is across Chain of Lakes
26 Drive, which runs north-south through Golden Gate Park.

27 Plaintiff **Michael Regan**, a 73-year-old Vietnam veteran, lives in the Ingleside
28

1 Terraces neighborhood. Mr. Regan has a service-connected disability, specifically cancer
2 due to exposure to Agent Orange. For many years, Mr. Regan has used the Great
3 Highway to get to the Veterans Hospital (VA), located at Ft. Miley in San Francisco.

4 For veterans and other patients traveling to the VA from Daly City or even further
5 south, the closure of the Great Highway and Martin Luther King Drive has created great
6 hardship. The Great Highway not only provides the fastest, safest and most direct route
7 for Mr. Regan to get to and from the VA, but also provides calming and stress relief for
8 Mr. Regan and many other veterans. When the Great Highway is closed, it has taken Mr.
9 Regan about another 20 minutes each way (40 minutes round trip) traveling down other
10 local streets that are less direct, more congested, and less safe to arrive at his destination.

11 Plaintiff **Steven Hill**, a 25-year resident of the Outer Sunset District, is the
12 architect of San Francisco's Ranked Choice Voting system and public financing of
13 campaigns. A prolific author, journalist, and political organizer, Mr. Hill has written
14 seven books of political nonfiction. When the Great Highway and MLK Drive are closed
15 to cars, his usually calm street (Lincoln Way) becomes a "highway" used by thousands of
16 diverted drivers to get to work, school, appointments, and other commitments.

17 Last summer, Mr. Hill's wife suffered a tragic fall and fractured her femur in four
18 places. Her femur required emergency surgery, and a titanium rod was inserted into her
19 leg, as well as other plates, screws and wire to hold the shattered bone together. This
20 began many months of rehabilitation, as they learned firsthand what it was like for
21 disabled people to live and travel around San Francisco.

22 **III. Relevant Facts**⁷

23 *Closure of Upper Great Highway.* On Apr. 4, 2020, the Upper Great Highway
24 was closed for routine maintenance to remove sand from the roadway.⁸ In a text message
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26 ⁷ Unless otherwise indicated, all facts derive from the Verified Petition for Writ of Mandate
27 and Complaint for Injunctive and Declaratory Relief (the "Writ Petition", filed Dec. 16, 2021).

28 ⁸ Local authorities have "broad powers to *construct and maintain streets*[" *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 557 (italics in original).

1 sent about two days later, San Francisco Supervisor Gordon Mar asked San Francisco
2 Municipal Transportation Agency (MTA) Director Jeffrey Tumlin to keep the Upper
3 Great Highway closed to vehicular traffic after the sand had been removed.⁹

4 However, neither Supervisor Mar nor the MTA had – or has – the authority to
5 close any part of the Great Highway. Subsequently, although no closure order was issued,
6 the Upper Great Highway was not re-opened to vehicular traffic.

7 *Modified Closure of Upper Great Highway.* Over 16 months later (Aug. 15,
8 2020), Defendant Ginsburg announced a modified closure of the Upper Great Highway.
9 Namely, beginning Aug. 16, 2021, “motor vehicle traffic” would be allowed on the Upper
10 Great Highway from Monday morning at 6 am through Friday at 12 noon. According to
11 his announcement, Defendant Ginsburg based the continued closure of the Upper Great
12 Highway on Section 3.03 of the Park Code.¹⁰

13 The Upper Great Highway remains closed to “motor vehicle traffic” *from 12 noon*
14 *on Fridays through 6 am on Mondays.* Under state law, a “motor vehicle” is defined as “a
15 vehicle that is self-propelled”;¹¹ and a “vehicle” is defined as a “device by which any
16 person or property may be propelled, moved, or drawn upon a highway, *excepting a*
17 *device moved exclusively by human power[.]*”¹²

18 However, despite the sweeping language of Defendant Ginsburg’s ban on “motor
19 vehicles”, certain motor vehicles *are* being allowed to access the Great Highway
20 beginning at 12 noon on Friday through the weekend. According to a document posted
21 online by the Recreation and Park Department, “e-bikes” and “scooters” (many of which
22 are motorized) are not subject to the “motor vehicle” ban – because the Department has
23 installed “Eco-Counter sensors” that counts e-bikes and scooters *when the Upper Great*
24

25 ⁹ Writ Petition **Exh. 1.**

26 ¹⁰ Writ Petition **Exh. 2.**

27 ¹¹ Veh. Code §415(a); *see also People v. Varela* (2011) 193 Cal.App.4th 1216, 1219.
Motorized wheelchairs, tricycles, and quadricycles used by disabled individuals are exempted
from that definition. Veh. Code §415(b).

28 ¹² Veh. Code §670 (italics added); *see People v. Philpott* (2004) 122 Cal.App.4th 893, 901.

1 *Highway is closed* to other motorized vehicles.¹³

2 Furthermore, nearly a month ago Defendant Ginsburg’s Recreation and Park
3 Department announced a “pilot program” that opened the Great Highway to food trucks.
4 The Department further stated that the program would be “*expand[ed.]*”¹⁴

5 *Closure of JFK Drive.* On Apr. 27, 2020, San Francisco Mayor London N. Breed
6 announced that JFK Drive would be closed to “vehicular traffic” from Kezar Drive to
7 Transverse Drive until her “Stay Home Order is lifted”.¹⁵ Although the Mayor
8 subsequently lifted her Stay Home Order in Jan. 2021, she did not lift JFK Drive’s
9 vehicular ban as she had promised.

10 *Closure of MLK Drive.* On Sept. 18, 2020, the Recreation and Park Department
11 announced, in a press release, that the “west portion of MLK Drive west of Sunset
12 Boulevard” would be “closed to regular traffic”.¹⁶ However, in that press release, the
13 Recreation and Park Department allowed the following vehicles (which are both
14 motorized and non-motorized) to access MLK Drive on a 24/7 basis: scooters, bicycles,
15 and “other forms of micromobility.”¹⁷

16 *Motorized Vehicles on JFK Drive, Upper Great Highway, and MLK Drive.*
17 Plaintiff Steven Hill and others have observed a plethora of motorized vehicles on each of
18 the Gateway Drives. Among other things, Mr. Hill and others have seen food trucks,
19 motorized scooters, and motorized bicycles on the Upper Great Highway and JFK Drive.
20 Mr. Hill has also seen motorized surreys on JFK Drive and motorized scooters and
21 motorized bicycles on MLK Drive. Those motorized vehicles could easily hurt and even
22 kill pedestrians, but are allowed to roam the “closed” Gateway Drives.

23 What is more, Plaintiff Steven Hill has personally observed long lines of cars
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25 ¹³ See Great Highway Project, p.6 of 8 (Writ Petition **Exh. 3**). According to the Recreation
and Park Department, the “Eco-Counter sensors” do *not* count “cars, buses, or trucks.” *Id.*

26 ¹⁴ Nov. 23, 2021 San Francisco Recreation and Park Department Press Release, “Pilot
Program Welcomes Food Trucks to Great Highway” (italics added), Writ Petition **Exh. 8**.

27 ¹⁵ See Mayor London N. Breed’s Apr. 27, 2020 Press Release, Writ Petition **Exh. 4**.

28 ¹⁶ See Rec. and Park Department’s Sept. 18, 2020 Press Release at 2, Writ Petition **Exh. 5**.

¹⁷ See *id.*

1 parked on MLK Drive and JFK Drive during the three-day Outside Lands rock and roll
2 concert in Golden Gate Park last October, when the streets were supposedly closed to
3 cars. In fact, *VIP parking passes have been sold* as part of an elite VIP package for
4 Outside Lands concertgoers.

5 In contrast, a disabled person like Mr. Hill's wife is not allowed access to the
6 Gateway Drives when his or her partner drives her from home in a "vehicle" that is not a
7 motorized surrey, scooter, bicycle, or food truck.

8 *Harmful Impact of the Closures on the Disabled Community.* Before the
9 pandemic, JFK Drive was open to all types of transportation, and afforded hundreds of
10 parking spaces, including disability parking spaces. Paratransit vehicles used to be able to
11 drop off and pick up people with disabilities curbside, at multiple locations along JFK
12 Drive, depending on which attraction you wanted to visit.

13 If a disabled person like Ms. Bruckner now needs to use her wheelchair and
14 mobility device in Golden Gate Park, both items must be folded up and loaded in a car or
15 paratransit vehicle. If she is dropped off, the driver must use a significant amount of time
16 and effort to unload and unfold her wheelchair, unload and reassemble her mobility
17 device, help her into the wheelchair, and attach the mobility device to it.

18 If Ms. Bruckner does not take her wheelchair and mobility device with her, the
19 driver must accompany her wherever she walks, because she walks at great risk of falling.
20 Being afforded car access to a drop-off point will not meet Ms. Bruckner's access needs.
21 The driver must park near the location she wants to visit, so that he or she can assist her.

22 Similarly, Mr. Hill and his rehabilitating wife can no longer visit a number of
23 attractions along JFK Drive, including the Conservatory of Flowers, the gardens there, and
24 the many walkways in that eastern edge of the park where they have walked for decades.
25 Mr. Hill's wife simply cannot walk that far, even using her "walker/rollator" for support.
26 There are no places to drive on the long stretch of JFK Drive, and not enough places to
27 park even though Mr. Hill's wife has a "disabled placard," since the handful of disabled
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1 parking spots are always full.

2 During the closure of JFK Drive, Ms. Bruckner and many other disabled persons
3 like her have been effectively barred from visiting the public attractions and public
4 programs in Golden Gate Park that used to be fully accessible to them.

5 The ongoing closure of JFK Drive deprives Ms. Bruckner, and many other people
6 with mobility and vision disabilities who are unable to travel to their destinations without
7 being driven in a motor vehicle, of equal access to, and full participation in, the most
8 popular public facilities and programs in Golden Gate Park. In essence, this policy of JFK
9 Drive Road closure amounts to nothing less than the *redlining of disabled persons*.

10 *Harmful Impact of the Closures on Communities of Color.* With the ongoing
11 closure of JFK Drive, only a certain privileged class of people are effectively allowed to
12 use it: largely consisting of (1) those who live very close by that section of the park (a
13 wealthier region of the city where relatively few Latinos or African Americans live), and
14 (2) those who are able-bodied enough to ride a bicycle from elsewhere. It can take an
15 hour to take the city bus (Muni) from the socio-economically diverse Mission District
16 (where Plaintiff Raul Hernandez lives and grew up) to Golden Gate Park.

17 *Harmful Impact of the Closures on Families, Workers, Communities, and Quality*
18 *of Life.* The west side of San Francisco is the worst served city area in terms of public
19 transportation, with *no bus or train lines traveling north-south* near the Great Highway
20 that can help people to get to work, school, doctor's appointments, or anywhere else they
21 need to be. Without viable transportation alternatives, people have no choice but to drive.

22 Pre-pandemic, an estimated 18,000 to 20,000 vehicles per day used the Great
23 Highway to get to work, with many people commuting to Silicon Valley for jobs, to San
24 Francisco State University, the Veterans Administration Hospital, doctor appointments,
25 the San Francisco Zoo, and the Pomeroy swimming pool for people with disabilities.

26 That daily, pre-pandemic car count translated to an estimated 550,000 vehicles per
27 month – and with more than one passenger in many cars, as many as *three quarters of a*
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1 *million people per month* traveling north-south on the Great Highway. Now, between 12
2 noon every Friday and 6 am every Monday, metal gates block entry to the Great Highway
3 at its intersections with Sloat Blvd. and Lincoln Way. Large orange containers about the
4 size of a large couch, metal fences, cement cinderblocks and “Do Not Enter – Authorized
5 Vehicles Only” signs block entry to the closed stretches of MLK Drive and JFK Drive.

6 Now, with the Great Highway closed, diverted cars, trucks, and motorcycles race
7 up and down the Sunset District’s Lincoln Way – which has become motorists’ main
8 connection to Sunset Blvd., the next closest north-south thoroughfare through the Sunset
9 District. Motorists have also begun diverting to the Lower Great Highway, a surface
10 street which runs parallel to the closed Upper Great Highway and other residential streets.
11 Delivery trucks and big rigs that once used the Great Highway now rush along the surface
12 streets of the Sunset neighborhood, right outside people’s front doors – creating
13 unprecedented traffic, noise and noxious pollution. Hot rodders and motorcycle packs
14 that used to show off along the long stretch of the Great Highway now race through the
15 Sunset neighborhood.

16 Moreover, many motorists going to or from the north side of Golden Gate Park
17 have been suddenly forced to commute through the middle of Golden Gate Park (Chain of
18 Lakes and Crossover Drives) in newly created bumper-to-bumper traffic – violating the
19 Recreation and Park Department’s own master plan to protect the park from non-park
20 traffic. This was made even worse by the closure of MLK Drive, which is located only a
21 few blocks from Plaintiff Steven Hill’s house.

22 **IV. Legal Standard**

23 “[T]he general purpose of a preliminary injunction is to preserve the status quo
24 pending a final adjudication of the claims on the merits.”¹⁸ Where an injunction is sought
25 “to prevent injury from *future conduct*”, the status quo is “the last actual peaceable,
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28 ¹⁸ *O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1471.

1 uncontested status which *preceded the pending controversy*.”¹⁹ “To secure a preliminary
2 injunction, the plaintiff must establish ‘that he is likely to succeed on the merits, that he is
3 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
4 equities tip in his favor,’ and particularly where public harm is implicated, ‘that an
5 injunction is in the *public interest*.’”²⁰

6 **V. Legal Analysis**

7 **A. The Ongoing Violations of Street-Access Statutes**

8 The Court should issue a preliminary injunction, for it is highly likely that the
9 Plaintiffs will prevail on their claims under Section 21106 (“Section 21101.6”) and
10 Section 21101 (“Section 21101”) of the California Vehicle Code and Section 3.03
11 (“Section 3.03”) of the San Francisco Park Code.²¹ In a nutshell, Defendants are denying
12 access of the Gateway Drives to certain members of the public, while allowing other
13 members unrestricted access to the Gateway Drives. Defendants are thereby violating,
14 and continue to violate, Section 21101.6, Section 21101, and Section 3.03.

15 As California courts have admonished, every member of the public has a
16 “common and *fundamental* right” to use streets and highways “for purposes of travel and
17 transportation” and has a fundamental right to travel within the State, including within a
18 city.²² Put another way, “The streets of a city belong to the people of the state, and every
19 citizen of the state has a right to the use thereof, subject to legislative control.”²³ In that
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21 ¹⁹ *Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1046 (italics
22 added) (California Supreme Court deems an injunction seeking to prevent injury from future
conduct to be prohibitory, not mandatory, in nature).

23 ²⁰ *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 272 (italics added) (*quoting*
24 *Winter v. Natural Resources Defense Council, Inc.* (2008) 557 U.S. 7, 20).

25 ²¹ Plaintiffs’ Third, Fourth, and Fifth Causes of Action, respectively.

26 ²² *City of Lafayette v. County of Contra Costa* (1979) 91 Cal.App.3d 749, 753 (there is a
fundamental right to use streets and highways); *Citizens Against Gated Enclaves*, 23 Cal.App.4th
at 819 (same); *In re White* (1979) 97 Cal.3d 141, 148 (there is a fundamental right to travel within
the State, including within a city). The terms “street” and “highway” have the same meaning in
the Vehicle Code. *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 550 n.5.

27 ²³ *Citizens Against Gated Enclaves*, 23 Cal.App.4th at 818-19 (*quoting Lafayette*, 91
28 Cal.App.3d at 753).

1 regard, the Legislature enacted Section 21 of the California Vehicle Code – which **bans**
2 local authorities from “interfer[ing] with the free flow of traffic, *as by closing a street*”,
3 without being expressly authorized to do so by the Legislature.²⁴

4 Section 21101.6. At the outset, Defendants must be stopped from continuing to
5 violate Section 21101.6 – because they are denying access of the Gateway Drives to
6 certain members of the public, while allowing others unrestricted access to the Gateway
7 Drives. Section 21101.6 bans “local authorities” from “plac[ing] gates or other selective
8 devices on any street which deny or restrict the access of certain members of the public to
9 the street, while permitting others *unrestricted access to the street*.”²⁵

10 By enacting Section 21101.6, the Legislature expressly “intended to codify” the
11 holding from *City of Lafayette v. County of Contra Costa*.²⁶ In *Lafayette*, a city closed a
12 road to all through traffic except for “drivers with an established need to use the [r]oad.”²⁷
13 In response, the Court of Appeal ordered that the road barrier be removed. Significantly,
14 as the California Supreme Court approvingly noted, *Lafayette* ordered the “removal of the
15 barrier because the city had *no authority to partially close the street*, not because the
16 closure discriminated between residents and nonresidents.”²⁸

17 Here, as in *Lafayette*, gates and other barriers have partially closed the roadways at
18 issue. Namely, the Gateway Drives have been closed off to most cars, trucks, and
19 motorcycles at all times (for JFK Drive and MLK Drive) or at certain times (for the Great
20 Highway). However, pedestrians, human-powered bicycles, joggers, and certain
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22 ²⁴ *Citizens Against Gated Enclaves*, 23 Cal.App.4th at 820 (italics in original) (*quoting* 75
23 Ops.Cal.Atty.Gen. 80, 81 (1992)). *See also Citizens Against Gated Enclaves*, 23 Cal.App.4th at
24 818-19 (“While it is true that the regulation of traffic upon a public street is of special interest to
25 the people of a municipality, it does not follow that such a regulation is a municipal affair, and if
there is a doubt as to whether or not such regulation is a municipal affair, that doubt must be
resolved *in favor of the legislative authority of the state*.”) (italics added).

26 ²⁵ Veh. Code §21101.6 (italics added).

27 ²⁶ *Id.* §21101.6 (*citing Lafayette*, 91 Cal.App.3d 749).

28 ²⁷ *Lafayette*, 91 Cal.App.3d at 752.

²⁸ *Rumford*, 31 Cal.3d at 554 n.7 (italics added) (*citing Lafayette*, 91 Cal.App.3d at 756-57);
accord, Citizens Against Gated Enclaves, 23 Cal.App.4th at 819.

1 motorized vehicles – including scooters, surreys, food trucks, and electric bicycles – are
2 being allowed to roam freely across the Gateway Drives on a 24/7 basis. Because the
3 Gateway Drives have been closed to some members of the public but not others, Section
4 21101.6 requires that the roadways be immediately re-opened to everyone.

5 *Park Code 3.03.* Similarly, Defendants must be stopped from continuing to
6 violate Section 3.03 of the San Francisco Park Code – because the Gateway Drives have
7 been closed to some members of the public but not others. Section 3.03 grants Defendants
8 the power to “close[]” the Gateway Drives “*to the public*” in case of an “emergency” or if
9 the “public interest demands it.”²⁹

10 However, nothing in in Section 3.03 allows Defendants to close off the Gateway
11 Drives to *some* members of public, but not others – and controlling³⁰ State law (set forth
12 under Section 21101.6 and *Lafayette*) flatly *bans* closing our roadways in such a manner.
13 Because the Gateway Drives have been closed to some members of the public but not
14 others, Section 3.03 requires that they be immediately re-opened to everyone.

15 *Section 21101.* In the same vein, Defendants must be stopped from continuing to
16 violate Section 21101, for the Gateway Drives have been closed to some vehicles, but not
17 others. At the outset, Section 21101 – which grants “[l]ocal authorities” limited authority
18 to regulate roads by “adopt[ing] rules and regulations by ordinance or resolution” – does
19 not apply here, for the provisions of Section 21101.6 supersede those of Section 21101.
20 Indeed, as Section 21101.6 expressly states, its provisions apply “[n]otwithstanding
21 Section 21101”.³¹

22 Yet even if Section 21101 did apply, Section 21101(a) bans local authorities from
23 partially closing a street. Under the simple “principle” set forth by the California Supreme
24

25 ²⁹ S.F. Park Code §3.03 (italics added). The Gateway Drives are deemed a “park” under
26 Section 2.01(a) of the San Francisco Park Code, because they are under the “control,
management, and direction” of the San Francisco Recreation and Park Commission.

27 ³⁰ *See Conejo Wellness Center, Inc. v. City of Agoura Hills* (2013) 214 Cal.App.4th 1534,
1552 (“Otherwise valid local legislation that *conflicts with state law* is preempted and therefore
void.”) (italics added, citations omitted).

28 ³¹ Veh. Code §21101.6 (italics added).

1 Court, a street may *not* be “*partially* closed, or, more precisely, closed to *some vehicular*
2 *traffic*.”³² Because the Gateway Drives have been closed to some – but not all – vehicular
3 traffic, Section 21101(a) requires that they be immediately re-opened to every vehicle.

4 Defendants might try to claim that they have the authority to close Gateway Drives
5 (a) on a “temporary” basis or pursuant to a “slow streets” program, or (b) pursuant to
6 “emergency” powers. Neither claim has merit. *First*, as the Legislature recently noted,
7 Section 21101(e) currently bans local authorities from “temporar[ily]” adopting “slow
8 streets” programs or imposing any other mandates that involve the total closure of a street,
9 if such a “temporary” closure *continues* to be imposed “on an *on-going basis*”.³³

10 For this reason – and at the request of the City of Los Angeles – the Legislature
11 recently enacted AB 773 (Nazarian): legislation (effective Jan. 1, 2022) which sets forth a
12 rigorous process for local jurisdictions to adopt “slow streets” programs on an *ongoing* (as
13 opposed to temporary) basis.³⁴ Significantly, to qualify under AB 773’s “slow streets”
14 exception, a local government (such as the San Francisco Board of Supervisors) must
15 enact an “ordinance” that meets a number of stringent requirements.³⁵

16 Defendants might try to argue that Plaintiffs’ plea for injunctive relief *might*
17 become moot, on the ground that the Board of Supervisors *could*, someday, enact a “slow
18 streets” ordinance that would pass muster under AB 773. However, it is highly unlikely
19 that, given the nature of the political process, the Board of Supervisors will enact a “slow
20 streets” ordinance in time for the hearing on this Motion.³⁶

21
22 ³² *Rumford*, 31 Cal.3d at 554 (italics added).

23 ³³ May 4, 2021 Assembly Bill Analysis, Assem. Bill 773 (Nazarian) (2021-22 Reg. Session),
24 as introduced Feb. 16, 2021, at 2 (italics added), *attached as* Dutta Decl. **Exh. 1**; Aug. 27, 2021
25 Assembly Bill Analysis, Conc. in Sen. Amend. July 5, 2021, Assem. Bill 773 (Nazarian) (2021-
26 22 Reg. Session), at 2 (italics added), *attached as* Dutta Decl. **Exh. 2**.

27 ³⁴ Veh. Code §21101(f), *as amended by* AB 773 (Nazarian) (2021-22 Reg. Session),
28 *attached as* Dutta Decl. **Exh. 3**; *see* note 33 *supra*.

³⁵ *See* note 34 *supra*.

³⁶ *Cf. Madrid v. Perot Systems Corp.* (2005) 130 Cal.App.4th 440, 465 (injunctive
relief may be denied if a “change of circumstances *at the time of the hearing* ... render[s]
injunctive relief moot or unnecessary) (italics added, citation omitted).

1 *Second*, no “emergency” powers excuse Defendants’ refusal to re-open the
2 Gateway Drives – because Defendants simply cannot exercise power *they do not have*. As
3 we have shown, State law does not currently grant local authorities any power whatsoever
4 to partially close roads – and none of the Governor’s executive orders have granted any
5 road-closing power to local authorities.³⁷ Indeed, as shown earlier, the Legislature
6 recently amended Section 21101 – because it expressly recognized that, *even during the*
7 *pandemic*, local authorities lacked the authority to adopt “slow streets” programs on an
8 ongoing basis.³⁸

9 Because the continuing closures of the Gateway Drives violate both State and local
10 law, Defendants must be ordered to immediately re-open the Gateway Drives.

11 *Balancing of Interim Harm.* Injunctive relief is further warranted because the balance of
12 equities heavily favors Plaintiffs. Unless the Court issues a preliminary injunction, Plaintiffs will
13 continue to suffer irreparable harm. Disabled individuals like **Victoria Bruckner** and **Raul**
14 **Hernandez** will continue to be effectively barred from enjoying the access necessary to enjoy
15 attractions and participate in public programs along JFK Drive in Golden Gate Park. Partially
16 disabled individuals like **Sheila Koren** must spend an extra 35 minutes to access the therapeutic
17 pool at the Pomeroy Center – which gives her less time for her mental-health therapeutic practice
18 and hurts her income. Vietnam Veterans like **Michael Regan** suffer great hardship accessing
19 medical care at the Ft. Miley Veterans Hospital.

20 In the same vein, Sunset District residents like **Steven Hill** and his rehabilitating wife can
21 no longer visit several attractions along JFK Drive – and their previously quiet neighborhood is
22 now plagued by unprecedented traffic, noise, and noxious pollution. Due to inadequate public
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24 ³⁷ The only gubernatorial executive order that touched on road closures addressed the use of
25 sidewalks and parking lots associated with restaurants that are within the right-of-way of a state
highway. Executive Order No. N-83-20 §1, Writ Petition **Exh. 7**.

26 ³⁸ See note 33 *supra*; *Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 609 (“The
27 Legislature is *deemed to be aware of existing laws and judicial decisions* construing the same
28 statute in effect at the time legislation is enacted, and to have enacted and amended statutes in the
light of such decisions as have a direct bearing upon them.” (italics added, citations and internal
quotation marks omitted)).

transit, **Raul Hernandez** and other residents of socio-economically diverse communities will continue to be effectively barred from enjoying the attractions and public programs along JFK Drive in Golden Gate Park. Finally, the quality of life of hundreds of thousands of people per month who relied on the Great Highway will continue to be adversely affected.

In stark contrast, Defendants will suffer no harm if an injunction is granted, for they will simply be required to obey the law. Indeed, it is hornbook law that “[t]here is a *public interest* in having the law *obeyed*.”³⁹ Moreover, pedestrians, bicyclists, and joggers will continue to be able to access the Gateway Drives as they had before the pandemic.

In short, Plaintiffs and hundreds of thousands of other people will suffer irreparable harm unless an injunction is granted, while Defendants will not suffer any harm *whatsoever* if an injunction is granted. Because the balance of equities heavily favors Plaintiffs, the Court should swiftly issue a preliminary injunction.⁴⁰

VII. Conclusion

The illegal closure of the Gateway Drives has irreparably harmed a broad spectrum of San Franciscans – and Californians as a whole: from disabled and partially abled people, to families and working people who live on the west side and elsewhere, to people who live a substantial distance from the Gateway Drives. Because they refuse to obey the law, Defendants must be ordered to immediately re-open the illegally closed Gateway Drives.

³⁹ *Cal. Assn. of Nursing Homes v. Williams* (1970) 4 Cal.App.3d 800, 813 (italics added); *accord*, *City of Los Angeles v. 2000 Jeep Cherokee* (2008) 159 Cal.App.4th 1272, 1280 (“The City took vehicles under an ordinance preempted by state law, thereby depriving the drivers of their use. Because [plaintiff’s] lawsuit forced the City to abandon its ordinance and comply with state law, the *public interest was served* – and no more was required.”) (italics added, citations omitted).

⁴⁰ Many of the individual Plaintiffs are of limited means, and Open the Great Highway Alliance is a nonprofit organization. Accordingly, Plaintiffs respectfully ask that any bond requirement be waived. *E.g.*, *Alshafie v. Lallande* (2009) 171 Cal.App.4th 421, 434 (plaintiffs of limited means may be relieved from bond requirement); *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Services, Inc.* (E.D. Cal. 2001) 181 F.Supp.2d 1111, 1130 (waiving injunction bond for nonprofit organization) (*citing People ex rel. Van De Kamp v. Tahoe Regional Plan* (9th Cir. 1985) 766 F.2d 1319, 1325).

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2 DATED: Dec. 22, 2021
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4 BUSINESS, ENERGY, AND ELECTION
5 LAW, PC
6

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