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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 AmeriCare MedServices, Inc.,  
13 *Plaintiff,*

14 vs.

15 City of Garden Grove and CARE  
16 Ambulance Service, Inc.,  
17 *Defendants.*

Case No.: 8:16-cv-01806 JLS (AFMx)  
**Amended Complaint**

**JURY TRIAL DEMANDED**

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1 Plaintiff AmeriCare MedServices, Inc. (“AmeriCare”) alleges as  
2 follows upon actual knowledge with respect to itself and its own acts,  
3 and upon information and belief as to all other matters.

#### 4 NATURE OF THE ACTION

5 AmeriCare seeks relief from the City of Garden Grove and CARE  
6 Ambulance Service, Inc. under Section 2 of the Sherman Act, 15 U.S.C.  
7 § 2. Abusing its police and regulatory powers, and by a willful  
8 misinterpretation of California regulatory law, the city conferred a  
9 monopoly concession on a sole provider of prehospital emergency  
10 medical services (“EMS”) in the Garden Grove area. The city in turn  
11 imposes additional fees and provides compulsory ancillary services to  
12 the captive customers of its mandatory provider. The provision of  
13 these services in this region constitutes a distinct service market.  
14 Because of its challenged conduct, the city’s preferred provider, CARE,  
15 holds an absolute monopoly as the only permitted provider in this  
16 market. Since establishing its monopoly, CARE imposed  
17 supracompetitive prices—i.e., prices that it could not durably charge  
18 in a competitive market. It has also reduced the quality of care and  
19 the availability of ambulances. AmeriCare, a wrongly excluded  
20 provider of these services, therefore seeks appropriate relief under  
21 Section 2.  
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23 California has a comprehensive statutory scheme (the “EMS  
24 Act”) that is supposed to regulate and supervise the provision of EMS.  
25 Any local public agency that fulfills its duties under the EMS Act is  
26 immune from the reach of federal antitrust law under the doctrine of  
27 state-action immunity. But the city has flouted its obligations under  
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1 the EMS Act, has not even arguably acted in accordance with it, and  
2 therefore cannot claim state-action immunity. Rather, its conduct  
3 must be measured against the well-settled standards of Section 2,  
4 which forbids any legal person to acquire or maintain a monopoly  
5 position by means of wrongful exclusionary conduct, and which also  
6 forbids two or more legal persons to conspire in order to acquire a  
7 monopoly position by wrongful exclusionary conduct.

8 The city acted as a market-participant by providing ancillary  
9 services and imposing fees on the captive customers of its mandatory  
10 provider. Since it has acted as a market-participant, it should be held  
11 to the same standards of liability as other market-participants. There  
12 is no principled basis for drawing any distinction between a public and  
13 private market-participant when both fulfill the same function in  
14 furtherance of the same ends—generating profits by rendering  
15 valuable commercial services. AmeriCare therefore asks that the  
16 Court recognize a market-participant exception to the Local  
17 Government Antitrust Act of 1984, 15 U.S.C. §§ 34–36, and on this  
18 basis it has requested damages and other relief under 15 U.S.C.  
19 § 15(a). AmeriCare also seeks permanent injunctive relief and  
20 declaratory relief under 15 U.S.C. § 26 as well as related declaratory  
21 relief.  
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23 The State of California created a scheme by which it and its  
24 political subdivisions ensure that California citizens receive the  
25 prehospital EMS to which they are entitled. Under that scheme, the  
26 state gave its local EMS authorities—subject to supervision and  
27 approval by the California Emergency Medical Services Authority  
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(“EMSA”)—authority to determine which areas within its jurisdiction should be “exclusive operating areas” subject to a competitive bidding process or grandfathering, and which areas should be non-exclusive operating areas in which multiple qualified providers operate to provide the swiftest emergency response. With the exception of grandfathered areas where the same service provider has been providing service without interruption since January 1, 1981, competition is the state policy.

Defendant City of Garden Grove eschewed the State of California’s competition policy—and the determinations made by its state and local EMS authorities—and instead conspired with Defendant CARE to monopolize the market and exclude other providers. Although the city did not “contract[] for or provide[]” prehospital EMS as of June 1, 1980, it asserts that it retains control of those services even though it did not have any contract for and did not provide prehospital EMS itself.

In 2000, the city awarded an exclusive contract to CARE—in conjunction with its own fire department—in direct violation of state law. In doing so, it created an illegal monopoly in violation of Sherman Act Section 2.

In 2014, EMSA notified the Orange County Emergency Medical Services Agency (“OCEMS”) that EMSA has conclusively determined that Zone AO8 is a non-exclusive area in which any county-qualified EMS provider is entitled to be placed in rotation upon request because the area did not qualify for the granting of exclusivity.

1           The city—recalcitrant to ceding control that the State of  
2 California has determined should instead be provided in a competitive  
3 market—refuses to place Plaintiff AmeriCare into the rotation for  
4 AO8. The city falsely claims that it maintains its “rights” under  
5 California Health & Safety Code Section 1797.201. But the city never  
6 had those rights because it was not contracting for or providing its own  
7 prehospital EMS services as of June 1, 1980. *See* Cal. Health & Safety  
8 Code § 1797.201. Moreover, regardless of whether the city retained  
9 .201 rights, it may only operate as an exclusive operating area if either  
10 (a) “a competitive process is utilized to select the provider or providers”  
11 or (b) OCEMS “develops or implements a local plan that continues the  
12 use of existing providers operating within [the] area in the manner  
13 and scope in which the services have been provided without  
14 interruption since January 1, 1981.” Cal. Health & Safety Code  
15 § 1797.224.  
16

17           The city has not utilized a competitive process and has not  
18 carried on with an existing service provider without interruption since  
19 before January 1, 1981. As the state authority making such  
20 determinations, EMSA has accordingly determined that the City of  
21 Garden Grove does not meet either exception for exclusivity.

22           Defendants established an illegal monopoly with 100% market  
23 power and an ability to raise prices above market levels in AO8 while  
24 providing minimal quality and speed of service without regard to  
25 market demand. In direct contravention of State of California policy,  
26 the city displaced all competition in the market for prehospital EMS  
27 in the area comprising Garden Grove. As a result, consumers of  
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1 prehospital EMS in the relevant market pay supracompetitive prices  
2 and suffer slower response times and lesser quality emergency  
3 services than they would in a competitive market.

4 This is an action for damages, declaratory, and injunctive relief  
5 for monopolization and conspiracy to restrain trade under Sections 1  
6 and 2 of the Sherman Act and certain state law claims.

### 7 **JURISDICTION AND VENUE**

8 1. This Court has primary subject-matter jurisdiction over  
9 this action under 28 U.S.C. §§ 1331 and 1337(a), and Sections 4 and  
10 16 of the Clayton Act, 15 U.S.C. §§ 15, 26 because this action arises  
11 under the antitrust laws of the United States.

12 2. This Court has supplemental jurisdiction over the state  
13 law claims of this complaint under 28 U.S.C. § 1367 because they arise  
14 from the same nucleus of operative facts as the antitrust claim such  
15 that they form part of the same case or controversy.

16 3. Venue is proper in the Central District of California  
17 under 28 U.S.C. § 1391(b) and 15 U.S.C. §§ 15, 22 because  
18 Defendantstransact business in this district and because a substantial  
19 part of the events giving rise to this complaint occurred in this district.  
20 More specifically, Defendants monopolized a geographic market  
21 within this district.

22 4. Defendants are subject to personal jurisdiction in  
23 California because (a) Defendant City of Garden Grove is a California  
24 city with a California address that conducts business in California and  
25 (b) Defendant CARE is a California corporation doing business in the  
26 State of California.  
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**PARTIES**

5. Plaintiff AmeriCare MedServices, Inc. is a family-owned, Orange County-based California corporation qualified and licensed to provide emergency ambulance service throughout Orange County. AmeriCare has been serving Orange County since its formation in 1996.

6. Defendant City of Garden Grove is a California general lawcity with its principal place of business at 11222 Acacia Parkway, Garden Grove, California, 92840.

7. Defendant CARE Ambulance Service, Inc. is a California corporation with its principal place of business at 1517 West Braden Court, Orange, California, 92868.

8. Defendants and their employees and agents participated personally in the unlawful conduct challenged in this complaint and, to the extent they did not personally participate, they authorized, acquiesced, set in motion, or otherwise failed to take necessary steps to prevent the acts complained of in this complaint.

9. Each Defendant acted as the principal of or agent for each other Defendant as to the acts, violations, and common course of conduct alleged in this complaint.

**SUBSTANTIVE ALLEGATIONS**

**The Statutory Scheme**

10. Prior to 1980, the law governing prehospital EMS in California was haphazard; cities, counties, and public districts were not required to, and had little guidance or means to, coordinate or integrate their operations.

1           11.       In 1980, the California legislature imposed a new  
2 scheme for the provision of prehospital EMS designed to create a new  
3 coordinated system for the provision of prehospital EMS with its  
4 passage of the Emergency Medical Services System and the Pre-  
5 Hospital Emergency Medical Care Personnel Act.

6           12.       The act created a new manner of local administration of  
7 prehospital EMS, providing two tiers of governance: (1) the EMSA,  
8 and (2) the local EMS agency, in this case, the OCEMS section of the  
9 Orange County Department of Health.

10           13.       Among the EMSA's duties are the power to review and  
11 approve the prehospital EMS plans submitted by local EMS agencies  
12 to determine whether the plans "effectively meet the needs of the  
13 persons served" and are consistent with the law and authority  
14 guidelines and regulation.

15           14.       The local EMS agency, on the other hand, has the power  
16 and responsibility to provide prehospital EMS throughout its area of  
17 responsibility. It develops and submits for approval its plan for  
18 prehospital EMS in the area of its responsibility.

19           15.       The legislative scheme allows a local EMS agency to  
20 designate one of two modes for the provision of EMS services in any  
21 particular geographic area within its purview: (1) exclusive operating  
22 areas and (2) non-exclusive operating areas.

23           16.       In effect, an exclusive operating area allows the local  
24 EMS to create monopolies in the provision of prehospital EMS  
25 ***provided*** that the local EMS uses a competitive process for awarding  
26 those monopolies. Cal. Health & Safety Code § 1797.224. The local  
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EMS can also designate an exclusive operating area through “grandfathering” an area in which a particular provider or providers have been operating without interruption since January 1, 1981. *Id.*

17. In non-exclusive operating areas, prehospital EMS providers compete in an open market. In Orange County, these private ambulance services are subject to a rigorous licensing and qualification process and must provide services according to rates predetermined by OCEMS. AmeriCare is fully licensed and qualified by OCEMS.

18. Under the scheme, the local EMS agency must define and describe each operating area within its jurisdiction in its local EMS plan submitted to EMSA. It must designate each area as exclusive or non-exclusive.

19. Mindful that the new prehospital EMS scheme relies on a competitive marketplace that would supplant existing services in some municipalities, the legislature made one narrow exception to the system of local EMS agency control: a municipality that had contracted or provided for its own prehospital EMS as of June 1, 1980 could choose whether to continue administering its own prehospital EMS or to enter into an agreement with the local EMS agency. *See* Cal. Health & Safety Code § 1797.201. Cities that chose to retain their power to administer prehospital EMS colloquially call this power “.201 rights.”

20. But this control does not allow cities to create monopolies by their own fiat. Section 1797.224 allows **only** local EMS

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agencies such as OCEMS, acting through an EMSA-approved plan, to create exclusive operating areas:

A local EMS agency may create one or more exclusive operating areas in the development of a local plan, if a competitive process is utilized to select the provider or providers of the services pursuant to the plan. No competitive process is required if the local EMS agency develops or implements a local plan that continues the use of existing providers operating within a local EMS area in the manner and scope in which the services have been provided without interruption since January 1, 1981.

Cal. Health & Safety Code § 1797.224.

21. The California Supreme Court has explained that while a local EMS agency’s ability to create [exclusive operating areas] may not supplant the [cities’] ability to continue to control EMS operations over which they have historically exercised control[, n]othing in this reference to section 1797.201 suggests that cities . . . are to be allowed to expand their services, or to create their own exclusive operating areas.

*Cty. of San Bernardino v. City of San Bernardino*, 15 Cal. 4th 909, 932 (1997).

22. Therefore, even where a city retains .201 rights, operating areas can only be designated as exclusive by the local EMS if the city can establish either (1) grandfathering, or (2) that it utilized

1 a competitive process to select its current provider in the last ten  
2 years.

3 23. Otherwise, the operating area must be designated as a  
4 non-exclusive operating area in which restraints of trade imposed by  
5 a local government entity are not immune from antitrust liability  
6 under the state action doctrine.

7 24. Moreover, EMSA and OCEMS have each taken the  
8 position that “OCEMS may not delegate its statutory authority to  
9 conduct competitive processes for emergency ambulance services” to  
10 the cities or other agencies. Accordingly, an exclusive operating area  
11 must either be subject to (a) grandfathering, or (b) an OCEMS-  
12 administered competitive bidding process. Neither applies here.

13 25. The EMS Act explicitly decrees that it is intended to  
14 establish a comprehensive system for regulating and supervising the  
15 provision of EMS in California. *See* Cal. Health & Safety Code  
16 § 1797.6. The various workings of the EMS Act confirm that, except  
17 for “grandfathered” providers, competitive bidding and open  
18 competition among qualified providers are supposed to be industry  
19 standards for the provision of EMS in California. *See generally id.*  
20 § 1797 *et seq.* The EMS Act thus promulgates a policy of competitive  
21 bidding and open competition that is actively monitored and  
22 supervised by the EMSA and the local EMSAs. *See id.* The EMS Act  
23 further decrees that: (1) it is intended to establish a fully regulated,  
24 actively supervised system for providing EMS in California; and (2) in  
25 accordance with the doctrine of state-action immunity, the federal  
26 antitrust laws should not reach “activities undertaken by local  
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1 governmental entities *in carrying out their prescribed functions*  
 2 *under [the EMS Act].”* *Id.* § 1797.6. As explained fully in this  
 3 complaint, the city did not engage in the challenged conduct in  
 4 furtherance of any duty it owed or any role properly assigned to it  
 5 under the EMS Act, nor did it engage in any “activity” in order to  
 6 “carry out” of any its “prescribed functions” under the EMS Act, but  
 7 rather it disregarded and flouted its obligations under the EMS Act  
 8 while invoking spurious legal rationales to justify its conduct. It even  
 9 disregarded specific directives of its local EMSA (OCEMS) by failing  
 10 to operate AO8 as a non-exclusive operating area. The city is therefore  
 11 unable to rely on the state-action immunity promulgated in the EMS  
 12 Act. Abusing its powers, the city conferred on its joint collaborator a  
 13 highly lucrative monopoly concession, established itself as the sole  
 14 provider of auxiliary services at unreasonable rates, and saddled its  
 15 captive customers with onerous prices and inferior service. Its conduct  
 16 can and should be condemned under Section 2.

### 18 **Prehospital EMS in the City of Garden Grove**

19 26. As of June 1, 1980, the City of Garden Grove had a *de*  
 20 *facto*, unwritten agreement with several ambulance services, such as  
 21 Schaefer Ambulance Service, Inc., Southland Ambulance (later  
 22 acquired by American Medical Response, Inc.) and Medix Ambulance  
 23 Service, to provide emergency ambulance service within its city limits.

24 27. In 1994, CareLine—a successor to Southland—was  
 25 awarded an exclusive contract.

26 28. In 2000, the City of Garden Grove granted an exclusive  
 27 contract to CARE which it has regularly extended to the present.  
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1 Under the contract, CARE administers the city's ambulance program,  
2 providing four ambulances staffed with its own EMTs, working in  
3 conjunction with fire department paramedics. CARE also serves as the  
4 city's billing and collections agent and takes a collection fee; beyond  
5 that, the city pays for CARE's labor and keeps the rest—with the  
6 result consistently generating significant net revenue for the city.

7 29. The city's legally and factually untenable position  
8 appears to have been that (a) it had .201 rights, and (b) as a result of  
9 those .201 rights, it could establish a new monopoly.

10 30. OCEMS may only designate and maintain exclusive  
11 zones in its local EMS plan—and EMSA will only approve such a  
12 designation—if a city can establish one of two criteria: (1) a  
13 competitive bidding process was used in the last ten years to contract  
14 with the highest ranked bidder, or (2) grandfathering. Under this  
15 criteria, OCEMS has determined that only the cities of Brea, Santa  
16 Ana, and Westminster could be labeled as city-administered zones  
17 enjoying exclusivity under the plan, whether due to competitive  
18 bidding or grandfathering.

19 31. In August 2014, EMSA determined that AO8 failed to  
20 meet either criterion for the exclusive operating area designation  
21 under California Health & Safety Code Section 1797.224. EMSA  
22 subsequently approved the OCEMS 2014 Orange County EMS plan  
23 with AO8 designated as a non-exclusive operating area.

24 32. Both CARE and the city benefit from their joint  
25 monopoly at the direct expense of consumers of prehospital EMS. For  
26 each call, non-residents receiving prehospital EMS pay for a separate  
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1 “paramedic response” charge of \$350.00 for the fire department’s  
2 response on top of the standard prehospital EMS charges by CARE  
3 (which are billed regardless of residency). CARE bills these patients  
4 on a Garden Grove Fire Department invoice and is responsible for  
5 collection and deposit for the city.

6 33. CARE provides other benefits in exchange for this  
7 lucrative contract, including paying an \$18.15 medical supplies fee for  
8 each transport.

9 34. Moreover, CARE provides kickbacks to members of city  
10 government in the form of campaign contributions with the mutual  
11 understanding that the contributions secure CARE’s continued role.

12 35. The city has refused to place any other private  
13 ambulance company in the rotation for service calls, illegally  
14 maintaining a monopoly in a non-exclusive zone.

### 15 **City of Garden Grove Excludes AmeriCare**

16 36. AmeriCare submitted a written request to OCEMS  
17 February 25, 2015 to be placed on rotation within AO8, the non-  
18 exclusive operating area comprising Garden Grove. OCEMS replied  
19 March 18, 2015 directing AmeriCare to contact the city manager for  
20 the incorporated city within the zone.

21 37. Although OCEMS has the responsibility and authority  
22 to administer non-exclusive zones not retained by cities validly  
23 exercising .201 rights, OCEMS has entered into agreements in which  
24 it allows certain cities to administer, in part, the provision of  
25 prehospital EMS within its jurisdiction. OCEMS calls these areas “city  
26 administered” and the Orange County attorney has expressly  
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1 disclaimed that “city administered” is not a determination regarding  
2 .201 rights. Instead, “OCEMS does not currently believe the  
3 determination of which cities can legitimately claim .201 rights is one  
4 to be made by [it].” *See* Ex. A at 1. OCEMS nevertheless continues to  
5 assert its sole authority to determine exclusivity because “.201 rights  
6 and exclusivity are two different things.” *Id.* at 2.

7 38. AmeriCare submitted its written request to Allan L.  
8 Roeder, city manager of City of Garden Grove March 19, 2015,  
9 explaining its correspondence with OCEMS and requesting that either  
10 the city arrange for AmeriCare to be placed into the prehospital EMS  
11 rotation or state a position that it does not have responsibility for the  
12 administration of prehospital EMS. Ex. B.

13 39. The city sent a scathing response in which it asserted,  
14 contrary to well-established law, that it has the authority to designate  
15 its own exclusive area and to do so without any competitive process.  
16 Moreover, it stated that a city retaining .201 rights “is not required to  
17 open up its jurisdiction, on a rotation or any other basis, to additional  
18 providers.” Ex. C at 4.

19 40. But for Defendants’ conspiracy to monopolize the  
20 market, AmeriCare and other private ambulance providers would  
21 have been placed in rotation and patients would have paid lower prices  
22 for faster and better service. During periods of higher volume, more  
23 ambulances would have been available from other providers and  
24 patients would have been stabilized and transported for hospital care  
25 more quickly.  
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1           41.       AmeriCare lost business as a result of Defendants'  
2 actions.

3                           **Claims Limitation Not Applicable**

4           42.       AmeriCare has complied with all applicable  
5 presentation of claims to local governments' requirements under  
6 California law. The City of Garden Grove failed to respond to  
7 AmeriCare's claim for damages.

8   **COUNT I**

9   **Monopolization, 15 U.S.C. § 2**

10           43.       Plaintiff repeats each and every allegation contained in  
11 the paragraphs above and incorporates by reference each preceding  
12 paragraph as though fully set forth at length herein.

13           44.       Section 2 of the Sherman Act, 15 U.S.C. § 2 provides:

14                           Every person who shall monopolize, or attempt to  
15 monopolize, or combine or conspire with any other person  
16 or persons, to monopolize any part of the trade or commerce  
17 among the several States, or with foreign nations, shall be  
18 deemed guilty of a felony.  
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20           45.       Defendants possess monopoly power in the market for  
21 prehospital EMS in the Garden Grove area. The city has the power to  
22 exclude competition and has exercised that power in favor of itself and  
23 CARE, which together hold 100% market power in the area comprising  
24 Garden Grove.

25           46.       The relevant service market is the provision of EMS  
26 (broadly speaking, ambulance services and related prehospital  
27 emergency medical services).  
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1           47.       EMS are services rendered to people who have suffered  
2 a medical emergency and require immediate treatment and rapid  
3 transport to a nearby hospital. The highly skilled medical  
4 professionals who render these services must receive compulsory  
5 education, training and licensure before they can offer them. The  
6 providers of these services must fulfill numerous regulatory  
7 requirements and carry compulsory insurance.

8           48.       Above all, the city acts as an effectual gatekeeper that  
9 determines which providers can operate in AO8. Practically speaking,  
10 most calls for emergency service and EMS are made to the city's  
11 emergency lines, such as 911. It is the city that dispatches these  
12 emergency calls and otherwise uses its police and regulatory powers  
13 to ensure that only the provider(s) of whom it has approved can render  
14 EMS in its area. If a person requires EMS in AO8, it must rely on such  
15 EMS as the city will arrange to provide for it, owing to the manner in  
16 which the city has handled this matter.

17           49.       There is no other service of any kind that can serve as a  
18 reasonably interchangeable substitute for EMS. No matter how high  
19 the price of these services, those who require them cannot turn to an  
20 alternative service. There is no cross-elasticity of demand between  
21 EMS and any other service.

22           50.       The relevant geographic market is AO8—which is the  
23 Garden Grove area. People within this area who require EMS will  
24 inevitably be served only by the city's designated provider of these  
25 services—the city itself. No other provider is permitted to serve the  
26 area.  
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1           51.       Therefore, the relevant market at issue in this case is  
2 the provision of EMS in A08.

3           52.       Through the conduct described herein, Defendants have  
4 willfully maintained that monopoly power by anticompetitive and  
5 exclusionary conduct. They acted with the intent to maintain this  
6 monopoly power, and the illegal conduct has enabled it to do so, in  
7 violation of Section 2 of the Sherman Act.

8           53.       The market has been harmed as a result of Defendants’  
9 conduct as consumers of prehospital EMS have been forced to pay  
10 supracompetitive prices while receiving lower quality, slower service.

11           54.       AmeriCare provides superior prehospital EMS at lower  
12 prices and provides higher quality and faster service.

13           55.       AmeriCare has been harmed by Defendants’ willful  
14 maintenance of their monopoly and their exclusion of all competitors.

15           56.       Defendants acted in direct contravention of the policy of  
16 the State of California with regard to displacement of competition for  
17 prehospital EMS, and therefore are not entitled to immunity under  
18 the state action doctrine.

19           57.       Moreover, the city is not entitled to immunity under the  
20 state action doctrine because it is a market participant.

21           58.       The Local Government Antitrust Act, 15 U.S.C. §§ 34–  
22 36, does not apply because the city is (a) engaging in *ultra vires* acts  
23 and therefore not acting in its official capacity, and (b) not acting in its  
24 capacity to govern—merely regulating or interacting with private  
25 actors—but rather as a market participant by conducting a *de facto*  
26 joint commercial venture with CARE.  
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the area comprising Garden Grove, with the specific intent and purpose to exclude all other competition and monopolize the market for prehospital EMS in the area of Garden Grove.

71. Defendants have taken overt acts manifesting this intent, such as entering into exclusivity agreements and through statements made by the city to AmeriCare in response to its request to be placed in rotation.

72. Defendants’ concerted action had the necessary and direct effect of entrenching their monopoly power.

73. The market has been harmed as a result of Defendants’ conduct as consumers of prehospital EMS have been forced to pay supracompetitive prices while receiving lower quality, slower service.

74. AmeriCare provides superior prehospital EMS at lower prices and provides higher quality and faster service.

75. AmeriCare has been harmed by Defendants’ willful maintenance of the monopoly and their exclusion of all competitors.

76. Defendants acted in direct contravention of the policy of the State of California with regard to displacement of competition for prehospital EMS.

77. Moreover, the city is not entitled to immunity under the state action doctrine because it is a market participant.

78. The Local Government Antitrust Act, 15 U.S.C. §§ 34--36, does not apply because the city is (a) engaging in *ultra vires* acts and therefore not acting in its official capacity, and (b) not acting in its capacity to govern—merely regulating or interacting with private

1 actors—but rather as a market participant by conducting a de facto  
2 joint commercial venture with CARE, as pled more fully above.

3 79. CARE’s conduct is not protected by the *Noerr-*  
4 *Pennington* immunity. AmeriCare does not complain of any lobbying  
5 effort or petition to the city that CARE might have made or against  
6 any other protected “political activity” that it might have undertaken.  
7 AmeriCare complains only against CARE’s unlawful possession of  
8 monopoly power in the market—i.e., it challenges commercial  
9 practices conducted in commerce, not protected “political activity.”

#### 10 **COUNT IV**

#### 11 **Conspiracy to Restrain Trade, 15 U.S.C. § 1**

12 80. Plaintiff repeats each and every allegation contained in  
13 the paragraphs above and incorporates by reference each preceding  
14 paragraph as though fully set forth at length herein.

15 81. Defendant City of Garden Grove, a horizontal and  
16 vertical competitor of AmeriCare, and Defendant CARE, a horizontal  
17 competitor of AmeriCare, combined and conspired to restrain trade in  
18 violation of Sherman Act Section 1 by engaging in a scheme to exclude  
19 all competition from the market for prehospital EMS in the area  
20 comprising Garden Grove.

21 82. Defendants’ agreement and actions in furtherance of the  
22 conspiracy foreclosed 100% of the market for prehospital EMS in the  
23 area comprising Garden Grove.

24 83. The market has been harmed as a result of Defendants’  
25 conduct as consumers of prehospital EMS have been forced to pay  
26 supracompetitive prices while receiving lower quality, slower service.  
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84. AmeriCare provides superior prehospital EMS at lower prices and provides higher quality and faster service.

85. AmeriCare has been harmed by Defendants’ willful maintenance of the monopoly and their exclusion of all competitors.

86. Defendants acted in direct contravention of the policy of the State of California with regard to displacement of competition for prehospital EMS.

87. Moreover, the city is not entitled to immunity under the state action doctrine because it is a market participant.

88. The Local Government Antitrust Act, 15 U.S.C. §§34-36, does not apply because the city is (a) engaging in *ultra vires* acts and therefore not acting in its official capacity, and (b) not acting in its capacity to govern—merely regulating or interacting with private actors—but rather as a market participant by conducting a de facto joint commercial venture with CARE, as pled more fully above.

89. CARE’s conduct is not protected by the *Noerr-Pennington* immunity. AmeriCare does not complain of any lobbying effort or petition to the city that CARE might have made or against any other protected “political activity” that it might have undertaken. AmeriCare complains only against CARE’s unlawful possession of monopoly power in the market—i.e., it challenges commercial practices conducted in commerce, not protected “political activity.”

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**COUNT V**

**Declaration of Rights, Cal. Civ. Proc. Code § 1060**

90. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

91. California Health & Safety Code Section 1797.224 provides that “[a] local EMS agency may create one or more exclusive operating areas in the development of a local plan, if a competitive process is utilized to select the provider or providers of the services pursuant to the plan.”

92. OCEMS has designated AO8, the area comprising Garden Grove, as non-exclusive and has duly licensed AmeriCare as a prehospital EMS provider which the City of Garden Grove must place in rotation upon its request.

93. Defendant City of Garden Grove incorrectly argues that Section 1797.224 does not apply to it.

94. AmeriCare therefore seeks a declaration from this Court declaring that the city lacks authority to create an exclusive operating area under Section 1797.224 and that the city does not have any rights under Section 1797.201.

**COUNT VI**

**Declaratory Judgment, 28 U.S.C. § 2201; 15 U.S.C. § 26**

95. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

1           96.       An actual and justiciable controversy exists between  
2 AmeriCare and Defendants concerning Defendants' violations of  
3 federal antitrust law and the California EMS laws.

4           97.       Contrary to the city's assertions, it has not retained any  
5 rights or powers under Section 1797.201.

6           98.       Contrary to the city's assertions, it does not have the  
7 authority to create an exclusive operating area.

8           99.       Contrary to the city's assertions, AmeriCare is entitled  
9 to be placed into rotation in AO8, which is designated as non-exclusive  
10 by OCEMS.

11           100.      Contrary to the city's assertions, it is not grandfathered  
12 because it did not have an existing EMS service that has been provided  
13 uninterrupted since January 1, 1981.

14           101.      Contrary to the city's assertions, it has attempted and  
15 succeeded at maintaining an illegal monopoly in restraint of interstate  
16 commerce that is not immune from liability under the state action  
17 doctrine.

18           102.      Defendants' actions and assertions described above  
19 have caused, and will continue to cause, irreparable harm to  
20 AmeriCare and the public. AmeriCare has no adequate remedy at law.

21           103.      AmeriCare therefore seeks a declaration from this Court  
22 declaring that the city lacks authority to create an exclusive operating  
23 area under Section 1797.224 and that the city does not have any rights  
24 under Section 1797.201.

25           104.      AmeriCare seeks a further declaration from this Court  
26 that the city has committed the above-pled antitrust offenses, and that  
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1 it is not entitled to immunity under the state-action doctrine for these  
2 legal wrongs.

3 105. AmeriCare seeks a further declaration from this Court  
4 that the city should held legally responsible for damages, costs and  
5 interest under 15 U.S.C. § 15(a), notwithstanding the Local  
6 Government Antitrust Act, 15 U.S.C. §§ 34–36, because the city has  
7 acted as a market-participant engaged in commercial activity.

8 **REQUEST FOR RELIEF**

9 **WHEREFORE**, AmeriCare requests that this Court:

10 A. Enter a temporary restraining order against Defendants to  
11 enjoin them from continuing their illegal acts under 15 U.S.C. § 26;

12 B. Declare that Defendants’ conduct violates Section 2 of the  
13 Sherman Act and California Health & Safety Code Sections 1797.201  
14 and 1797.224;

15 C. Declare that the city is not entitled to immunity from  
16 damages, interest, fees, and costs under 15 U.S.C. § 36 because it is  
17 acting as a market participant rather than a government entity that  
18 is merely regulating or interacting with private actors or because its  
19 acts were *ultra vires* under California law;

20 D. Enter judgment against Defendants;

21 E. Award AmeriCare compensatory damages in three times  
22 the amount sustained by it as a result of Defendants’ actions, to be  
23 determined at trial as provided in 15 U.S.C. §§ 15(a) and 26;

24 F. Award AmeriCare pre- and post-judgment interest at the  
25 applicable rates on all amounts awarded, as provided in 15 U.S.C.  
26 §§ 15(a) and 26;

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G. Award AmeriCare its costs and expenses of this action, including its reasonable attorney’s fees necessarily incurred in bringing and pressing this case, as provided in 15 U.S.C. §§ 15(a) and 26;

H. Grant permanent injunctive relief under 15 U.S.C. § 26 to prevent the recurrence of the violations for which redress is sought in this complaint; and

I. Order any other such relief as the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims.

DATED: December 1, 2016

Bona Law PC

*/s/Jarod Bona*

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JAROD BONA

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*Attorney for Plaintiff*

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### CERTIFICATE OF SERVICE

I am employed in San Diego County. I am over the age of 18 and not a party to the within action. My business address is 4275 Executive Square, Suite 200, La Jolla, California 92037. On December 1, 2016, I caused to be served via CM/ECF a true and correct copy of the **Amended Complaint**.

The CM/ECF system will generate a “Notice of Electronic Filing” (NEF) to the filing party, the assigned judge and any registered user in the case. The NEF will constitute service of the document for purposes of the Federal Rules of Civil, Criminal and Appellate Procedure.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of December 2016 at San Diego, California.



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*Gabriela Hamilton*