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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 AmeriCare MedServices, Inc.,

19 *Plaintiff,*

20 vs.

21 City of Huntington Beach,

22 *Defendant.*

Case No.:

Amended Complaint

JURY TRIAL DEMANDED

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

NATURE OF THE ACTION

AmeriCare seeks relief from the City of Huntington Beach under Section 2 of the Sherman Act, 15 U.S.C. § 2 (“Section 2”). Abusing its police and regulatory powers, and by a willful misinterpretation of California regulatory law, the city has established itself as the sole provider of prehospital emergency medical services (“EMS”) in the Huntington Beach area. The provision of these services in this region constitutes a distinct service market. Because of its challenged conduct, the city holds an absolute monopoly as the only permitted provider in this market. Since establishing its monopoly, the city has imposed supracompetitive prices—*i.e.*, prices that it could not durably charge in a competitive market. It has also reduced the quality of care and the availability of ambulances. AmeriCare, a wrongly excluded provider of these services, therefore seeks appropriate relief under Section 2.

California has a comprehensive statutory scheme (the “EMS Act”) that is supposed to regulate and supervise the provision of EMS. Any local public agency that fulfills its duties under the EMS Act is immune from the reach of federal antitrust law under the doctrine of state-action immunity. But in this matter the city has *flouted* its obligations under the EMS Act, has not even arguably acted in accordance with it, and therefore cannot claim state-action immunity. Rather, its conduct must be measured against the well-settled

1 standards of Section 2, which condemn any legal person that acquires
2 or maintains a monopoly position by means of wrongful exclusionary
3 conduct—which is exactly what the city has done, and what
4 AmeriCare is prepared to prove. In this matter, the city has acted as
5 a market-participant that by misuse of its powers has excluded all
6 other qualified providers. Since it has acted as a market-participant,
7 it should be held to the same standards of liability. AmeriCare
8 therefore asks that the Court recognize a market-participant
9 exception to the Local Government Antitrust Act of 1984, 15 U.S.C.
10 §§34—36 (the “LGAA”), and on this basis it has requested damages
11 and other relief under 15 U.S.C. §15(a). AmeriCare also seeks
12 permanent injunctive relief and declaratory relief under 15 U.S.C. §26
13 as well as related declaratory relief.
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15 The State of California created a scheme by which it and its
16 political subdivisions ensure that California citizens receive the
17 prehospital EMS to which they are entitled. Under that scheme, the
18 state gave its local EMS authorities—subject to supervision and
19 approval by the California Emergency Medical Services Authority
20 (“EMSA”)—authority to determine which areas within its jurisdiction
21 should be “exclusive operating areas” subject to a competitive bidding
22 process or grandfathering, and which areas should be non-exclusive
23 operating areas in which multiple qualified providers operate to
24 provide the swiftest emergency response. With the exception of
25 grandfathered areas where the same service provider has been
26 providing service without interruption since January 1, 1981,
27 competition is the state policy.
28

1 Defendant City of Huntington Beach eschewed the State of
2 California’s competition policy—and the determinations made by its
3 state and local EMS authorities—and instead monopolized the
4 market. Although it entered into an agreement with Orange County
5 in 1986 regarding the provision of prehospital EMS under a
6 competitive bidding process for prehospital EMS in the area
7 comprising Huntington Beach (designated by the California
8 Emergency Medical Services Authority (“OCEMS”) as “AO9”), that
9 arrangement did not last. The city displaced a competitive private
10 ambulance service with its own fire department, repudiating the
11 competitive bidding process once and for all, in direct violation of state
12 law. In doing so, it created an illegal monopoly in violation of Sherman
13 Act Section 2.
14

15 Due to the absence of a competitive bidding process or any
16 grandfathering, OCEMS redesignated AO9 as a non-exclusive area in
17 which any county-qualified EMS provider is entitled to be placed in
18 rotation upon request. Those private EMS providers’ rates are set by
19 the county, whereas city EMS providers’ rates are not.

20 The city—recalcitrant to ceding control over a lucrative revenue-
21 generating service the State of California has determined should
22 instead be provided in a competitive market—refuses to place Plaintiff
23 AmeriCare into the rotation for AO9. The city falsely claims that it
24 maintains its “rights” under California Health & Safety Code Section
25 1797.201. But the city repudiated its rights to retain administration
26 of prehospital EMS when it and the county “enter[ed] into a written
27 agreement . . . regarding the provision of prehospital emergency
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1 medical services for that city or fire district.” Cal. Health & Safety
2 Code § 1797.201. Moreover, regardless of whether the city retained
3 .201 rights, it may only operate as an exclusive operating area if either
4 (a) “a competitive process is utilized to select the provider or providers”
5 or (b) it “develops or implements a local plan that continues the use of
6 existing providers operating within [the] area in the manner and scope
7 in which the services have been provided without interruption since
8 January 1, 1981.” Cal. Health & Safety Code § 1797.224. As the
9 designating authority, OCEMS determined that Huntington Beach
10 does not meet either exception for exclusivity.

11 The city has not utilized a competitive process and has not
12 carried on with an existing service provider without interruption since
13 before January 1, 1981. In fact, the city did not enter into the
14 ambulance business until 1993.

15 The City of Huntington Beach established an illegal monopoly
16 with 100% market power and an ability to raise prices above market
17 levels—indeed, to any price it so deems—in A09, while providing
18 minimal quality and speed of service without regard to market
19 demand. In direct contravention of State of California policy, the city
20 displaced all competition in the market for prehospital EMS in the
21 area comprising Huntington Beach. As a result, consumers of
22 prehospital EMS in the relevant market pay supracompetitive prices
23 and suffer slower response times and lesser quality emergency
24 services than those provided in a competitive market.
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This is an action for damages, declaratory, and injunctive relief for monopolization under Section 2 of the Sherman Act and certain state law claims.

JURISDICTION AND VENUE

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

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

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

4. Defendant is subject to personal jurisdiction in California because it is a California charter city with a California address that conducts business in California.

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

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County. AmeriCare has been serving Orange County since its formation in 1996.

6. Defendant, City of Huntington Beach, is a California charter city with its principal place of business at 2000 Main Street, Huntington Beach, California 92648.

7. The city and its 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.

SUBSTANTIVE ALLEGATIONS

The Statutory Scheme

8. 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.

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

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

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11. Among the EMSA’s duties are the power to review and approve the prehospital EMS plans submitted by local EMS agencies to determine whether the plans “effectively meet the needs of the persons served” and are consistent with the law and Authority guidelines and regulation.

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

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

14. In effect, an exclusive operating area allows the local EMS to create monopolies in the provision of prehospital EMS ***provided*** that the local EMS uses a competitive process for awarding those monopolies. Cal. Health & Safety Code § 1797.224. The local 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.*

15. 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.

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16. Under the scheme, the local EMS 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.

17. 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 January 1, 1981 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”.

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

1 the manner and scope in which the services have been
2 provided without interruption since January 1, 1981.

3 Cal. Health & Safety Code § 1797.224.

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

12 *Cty. of San Bernardino v. City of San Bernardino*, 15 Cal. 4th
13 909, 932 (1997).

14 20. Therefore, even where a city retains .201 rights,
15 operating areas can only be designated as exclusive by the local EMS
16 if the city can establish either (1) grandfathering, or (2) that it utilized
17 a competitive process to select its current provider in the last ten
18 years.

19 21. Otherwise, the operating area must be designated as a
20 non-exclusive operating area in which restraints of trade imposed by
21 a local government entity are not immune from antitrust liability
22 under the state action doctrine.

23 22. The EMS Act explicitly decrees that it is intended to
24 establish a comprehensive system for regulating and supervising the
25 provision of EMS in California. See Cal. Health & Safety Code §
26 1797.6. The various workings of the EMS Act confirm that, except for
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1 “grandfathered” providers, competitive bidding and open competition
2 among qualified providers are supposed to be industry standards for
3 the provision of EMS in California. *See generally id.* § 1797 *et seq.* The
4 EMS Act thus promulgates a policy of competitive bidding and open
5 competition that is actively monitored and supervised by the EMSA
6 and the local EMSAs. *See id.* The EMS Act further decrees that: (1) it
7 is intended to establish a fully regulated, actively supervised system
8 for providing EMS in California; and (2) in accordance with the
9 doctrine of state-action immunity, the federal antitrust laws should
10 not reach “activities undertaken by local governmental entities *in*
11 *carrying out their prescribed functions under [the EMS Act].*”
12 *Id.* § 1797.6 (emphasis supplied). As explained fully in this complaint,
13 the city did *not* engage in the challenged conduct in furtherance of any
14 duty it owed or any role properly assigned to it under the EMS Act,
15 nor did it engage in any “activity” in order to “carry out” of any its
16 “prescribed functions” under the EMS Act, but rather it disregarded
17 and flouted its obligations under the EMS Act while invoking spurious
18 legal rationales to justify its conduct. It even disregarded specific
19 directives of its local EMSA (the OCEMSA) by failing to operate AO9
20 as a non-exclusive operating area. The city is therefore unable to rely
21 on the state-action immunity promulgated in the EMS Act. Abusing
22 its powers, the city arrogated unto itself a highly lucrative monopoly
23 concession, and it has subjected its captive customers to onerous prices
24 and inferior service. Its conduct can and should be condemned under
25 Section 2.
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1 **Prehospital EMS in Huntington Beach**

2 23. Starting in the 1960s, the City of Huntington Beach had
3 a *de facto*, unwritten agreement with Seals Ambulance Services, Inc.
4 to provide emergency ambulance service within Huntington Beach
5 city limits.

6 24. The City of Huntington Beach retained its .201 rights
7 until 1986, when it requested and entered into a contract with Orange
8 County “to administer emergency response ambulance service to
9 provide uniformity throughout the County.” See Exhibit A at 2.

10 25. Under the contract, the city gave its authority to
11 administer prehospital EMS, including licensing and regulating
12 prehospital EMS. In return, the city was required to adopt the Orange
13 County model ambulance ordinance, which provides for competitive
14 bidding, standards for licensure, maximum rates for private providers,
15 among other things.

16 26. Although the city chose to repudiate its power to
17 administer prehospital EMS, Orange County allowed the city to utilize
18 its own competitive request for proposal (RFP) process if it so chose.
19 This allowed the city to retain minimal controls over service levels and
20 operations established through the RFP process. The city’s stated
21 purpose in opting into Orange County administration was to “limit the
22 city’s liability in any antitrust action taken” under its exclusive need-
23 and-necessity permit system and *de facto* agreement with Seals.
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25 27. The city did not conduct an RFP as required by the
26 ordinance. Seals continued to operate exclusively within the city until
27 1993.
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1 28. But in the midst of a recession and the effects of
2 Proposition 13, the city followed suit with many other cities in
3 California: it increased the variety of services performed by its fire
4 department, expanding into lucrative new revenue-generating
5 domains.

6 29. In 1993, the City of Huntington Beach ceased using its
7 existing provider and entered, for the first time, into the ambulance
8 business itself. Its legally and factually untenable position appears to
9 have been that (a) it had .201 rights, and (b) as a result of those .201
10 rights, it could establish a new monopoly of its own.

11 30. Within one year of establishing its monopoly, the city
12 announced rate increases above the rates authorized by OCEMS for
13 private licensed ambulance services. *See Exhibit B.* In the years since,
14 it has raised its rates astronomically.

15 31. Immediately after establishing its monopoly, the city cut
16 back on service levels previously provided within AO9. Because the
17 city was not subject to the licensing and regulation requirements of
18 the Orange County ambulance ordinance, it decided to cut staffing
19 during peak periods below minimum levels required of licensed
20 ambulance services.

21 32. Moreover, the city's service provided only three
22 ambulance units compared to four primary and four available backup
23 ambulance units previously provided.

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

7 34. In 2002, OCEMS re-evaluated its EMS plan. OCEMS
8 determined that AO9 failed to meet either criterion for the exclusive
9 operating area designation under California Health and Safety Code
10 Section 1797.224. OCEMS submitted its amended plan designating
11 AO9 as a non-exclusive operating area to EMSA, which EMSA
12 approved.

13 35. The city never placed any private ambulance company
14 in the rotation for service calls, illegally maintaining its monopoly in
15 a non-exclusive zone.
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17 **City Excludes AmeriCare**

18 36. AmeriCare submitted a written request to OCEMS
19 February 25, 2015 to be placed on rotation within AO9, the non-
20 exclusive operating area comprising Huntington Beach. OCEMS
21 replied March 18, 2015 directing AmeriCare to contact the city
22 manager for the incorporated city within the zone.

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

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9 38. AmeriCare submitted its written request to Fred
10 Wilson, city manager of City of Huntington Beach March 19, 2015,
11 explaining its correspondence with OCEMS and requesting that either
12 the city arrange for AmeriCare to be placed into the prehospital EMS
13 rotation or state a position that it does not have responsibility for the
14 administration of prehospital EMS. Ex. D.

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

21 40. But for the city’s monopolization of the market,
22 AmeriCare and other private ambulance providers would have been
23 placed in rotation and patients would have paid lower prices for faster
24 and better service. During periods of higher volume, more ambulances
25 would have been available from other providers and patients would
26 have been stabilized and transported for hospital care more quickly.

27 41. AmeriCare lost business as a result of the city’s actions.
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Claims Limitation Not Applicable

42. AmeriCare has complied with all applicable presentation of claims to local governments’ requirements under California law. The City of Huntington Beach denied AmeriCare’s claim February 29, 2016.

COUNT I

Monopolization, 15 U.S.C. § 2

43. 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.

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

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony

45. Defendant City of Huntington Beach possesses monopoly power in the market for the provision of prehospital EMS in the Huntington Beach area.

46. In the present matter, the relevant service market is the provision of EMS (broadly speaking, ambulance services and related prehospital emergency medical services).

47. EMS are services rendered to people who have suffered a medical emergency and require immediate treatment and rapid transport to a nearby hospital. The highly skilled medical professionals who render these services must receive compulsory

1 education, training and licensure before they can offer them. The
2 providers of these services must fulfill numerous regulatory
3 requirements and carry compulsory insurance.

4 48. Above all, the city acts as an effectual gatekeeper that
5 determines which providers can operate in AO9. Practically speaking,
6 most calls for emergency service and EMS are made to the city's
7 emergency lines, such as 911. It is the city that dispatches these
8 emergency calls and otherwise uses its police and regulatory powers
9 to ensure that only the provider(s) of whom it has approved can render
10 EMS in its area. If a person requires EMS in AO9, it must rely on such
11 EMS as the city will arrange to provide for it, owing to the manner in
12 which the city has handled this matter, as pled fully above.

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

18 50. The relevant geographic market is AO9—which is the
19 Huntington Beach area. People within this area who require EMS will
20 inevitably be served only by the city's designated provider of these
21 services—the city itself. No other provider is permitted to serve the
22 area.

23 51. Therefore, the relevant market at issue in this case is
24 the provision of EMS in AO9 (the "Market").

25 52. Through the conduct described herein, the city has
26 willfully maintained that monopoly power by anticompetitive and
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1 exclusionary conduct. It has acted with the intent to maintain its
2 monopoly power, and its illegal conduct has enabled it to do so, in
3 violation of Section 2 of the Sherman Act.

4 53. The Market has been harmed as a result of the city's
5 conduct as consumers of prehospital EMS have been forced to pay
6 supracompetitive prices while receiving lower quality, slower service.

7 54. AmeriCare provides superior prehospital EMS at lower
8 prices and provides higher quality and faster service.

9 55. AmeriCare has been harmed by the city's willful
10 maintenance of its monopoly and its exclusion of all competitors.

11 56. The City of Huntington Beach has acted in direct
12 contravention of the policy of the State of California with regard to
13 displacement of competition for prehospital EMS, and therefore is not
14 entitled to immunity under the state action doctrine.

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

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18 **COUNT II**

19 **Attempted Monopolization, 15 U.S.C. § 2**

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

23 59. Defendant City of Huntington Beach has willfully
24 engaged in a course of conduct, including anticompetitive and
25 exclusionary actions, with the specific intent of monopolizing the
26 market for prehospital EMS in the area of Huntington Beach, and
27 there is a dangerous probability that, unless restrained,
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1 anticompetitive conditions will occur, in violation of Section 2 of the
2 Sherman Act.

3 60. The Market has been harmed as a result of the city's
4 conduct as consumers of prehospital EMS have been forced to pay
5 supracompetitive prices while receiving lower quality, slower service.

6 61. AmeriCare provides superior prehospital EMS at lower
7 prices and provides higher quality and faster service.

8 62. AmeriCare has been harmed by the city's willful
9 maintenance of its monopoly and its exclusion of all competitors.

10 63. The City of Huntington Beach has acted in direct
11 contravention of the clearly articulated policy of the State of California
12 with regard to displacement of competition for prehospital EMS.

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

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16 **COUNT III**

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

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

21 66. California Health and Safety Code Section 1797.224
22 provides that "[a] local EMS agency may create one or more exclusive
23 operating areas in the development of a local plan, if a competitive
24 process is utilized to select the provider or providers of the services
25 pursuant to the plan."

26 67. OCEMS has designated AO9, the area comprising
27 Huntington Beach, as non-exclusive and has duly licensed AmeriCare
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1 as a prehospital EMS provider which Huntington Beach must place in
2 rotation upon its request.

3 68. Defendant City of Huntington Beach incorrectly argues
4 that Section 1797.224 does not apply to it.

5 69. AmeriCare therefore seeks a declaration from this Court
6 declaring that the city lacks authority to create an exclusive operating
7 area under Section 1797.224 and that the city repudiated any rights it
8 once had under Section 1797.201.

9 **COUNT IV**

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

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

14 71. An actual and justiciable controversy exists between
15 AmeriCare and the city concerning the city's violations of federal
16 antitrust law and the California EMS laws.

17 72. Contrary to the city's assertions, it has not retained any
18 rights or powers under Section 1797.201.

19 73. Contrary to the city's assertions, it does not have the
20 authority to create an exclusive operating area.

21 74. Contrary to the city's assertions, AmeriCare is entitled
22 to be placed into rotation in AO9, which is designated as non-exclusive
23 by OCEMS.

24 75. Contrary to the city's assertions, it is not grandfathered
25 because it did not have an existing EMS service that has been provided
26 uninterrupted since January 1, 1981.
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76. Contrary to the city’s assertions, it has attempted and succeeded at maintaining an illegal monopoly in restraint of interstate commerce that is not immune from liability under the state action doctrine.

77. The city’s actions and assertions described above have caused, and will continue to cause, irreparable harm to AmeriCare and the public. AmeriCare has no adequate remedy at law.

78. 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 repudiated any rights it once had under Section 1797.201.

79. AmeriCare seeks a further declaration from this Court that the city has attempted and maintained an illegal monopoly under Section 2 of the Sherman Act for which it is not entitled to immunity under the state-action doctrine.

80. AmeriCare seeks a further declaration from this Court that the city should held legally responsible for damages, costs and interest under 15 U.S.C. §15(a), notwithstanding the LGAA, because in this matter the city has acted as a market-participant engaged in commercial activity.

REQUEST FOR RELIEF

WHEREFORE, AmeriCare requests that this Court:

A. Enter a temporary restraining order against Defendant to enjoin it from continuing its illegal acts;

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B. Declare that Defendant’s conduct violates Section 2 of the Sherman Act and California Health & Safety Code Sections 1797.201 and 1797.224;

C. Enter judgment against Defendant;

D. Award AmeriCare compensatory damages in three times the amount sustained by it as a result of Defendant’s actions, to be determined at trial as provided in 15 U.S.C. § 15(a);

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

F. 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);

G. Grant permanent injunctive relief to prevent the recurrence of the violations for which redress is sought in this complaint; and

H. 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: November 21, 2016

Bona Law PC

/s/ Jarod Bona

JAROD BONA

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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 November 15, 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 21st day of November 2016 at San Diego, California.



Gabriela Hamilton