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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 Buena Park and CARE
16 Ambulance Service, Inc.,

17 *Defendants.*

Case No.: 8:16-cv-01832 JLS (AFMx)

Amended Complaint

JURY TRIAL DEMANDED

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

4 NATURE OF THE ACTION

5 AmeriCare seeks relief from the City of Buena Park and CARE
6 Ambulance Service, Inc. under Sections 1 and 2 of the Sherman Act,
7 15 U.S.C. §§ 1–2. Abusing its police and regulatory powers, and by a
8 willful misinterpretation of California regulatory law, the city has
9 conferred a monopoly concession on a sole provider of prehospital
10 emergency medical services (“EMS”) in the Buena Park area. The city
11 in turn imposes additional fees and provides compulsory ancillary
12 services to the captive customers of its mandatory provider. The
13 provision of these services in this region constitutes a distinct service
14 market. Because of its challenged conduct, the city’s preferred
15 provider, CARE, holds an absolute monopoly as the only permitted
16 provider in this market. Since establishing its monopoly, CARE
17 imposed supracompetitive prices—i.e., prices that it could not durably
18 charge in a competitive market. It has also reduced the quality of care
19 and the availability of ambulances. AmeriCare, a wrongly excluded
20 provider of these services, therefore seeks appropriate relief under
21 Sections 1 and 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 acted as a market participant, it should be held to
11 the same standards of liability as other market participants. There is
12 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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1 (“EMSA”)—authority to determine which areas within its jurisdiction
2 should be “exclusive operating areas” subject to a competitive bidding
3 process or grandfathering, and which areas should be non-exclusive
4 operating areas in which multiple qualified providers operate to
5 provide the swiftest emergency response. With the exception of
6 grandfathered areas where the same service provider has been
7 providing service without interruption since January 1, 1981,
8 competition is the state policy.

9 Defendant City of Buena Park eschewed the State of California’s
10 competition policy—and the determinations made by its state and
11 local EMS authorities—and instead conspired with Defendant CARE
12 to monopolize the market and exclude other providers. Although the
13 city did not “contract[] for or provide[]” prehospital EMS as of June 1,
14 1980, it asserts that it retains control of those services even though it
15 did not have any contract for and did not provide prehospital EMS
16 itself.

17
18 In 1999, the city awarded an exclusive contract to CARE—in
19 conjunction with its own fire department—in direct violation of state
20 law. In doing so, it created an illegal monopoly in violation of Sherman
21 Act Section 2.

22 In 2014, EMSA notified the Orange County Emergency Medical
23 Services Agency (“OCEMS”) that EMSA has conclusively determined
24 that ZoneAO3 is a non-exclusive area in which any county-qualified
25 EMS provider is entitled to be placed in rotation upon request because
26 the area did not qualify for the granting of exclusivity.
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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 AO3. 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.
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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 Buena Park 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 AO3 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 Buena Park. 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.

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 Defendants
18 transact business in this district and because a substantial part of the
19 events giving rise to this complaint occurred in this district. More
20 specifically, Defendants monopolized a geographic market within this
21 district.

22 4. Defendants are subject to personal jurisdiction in
23 California because (a) Defendant City of Buena Park 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 Buena Park is a charter city with its principal place of business at 6650 Beach Boulevard, Buena Park, California, 90621.

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

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

3 A local EMS agency may create one or more exclusive
4 operating areas in the development of a local plan, if a
5 competitive process is utilized to select the provider or
6 providers of the services pursuant to the plan. No
7 competitive process is required if the local EMS agency
8 develops or implements a local plan that continues the
9 use of existing providers operating within a local EMS
10 area in the manner and scope in which the services have
11 been provided without interruption since January 1,
12 1981.

13 Cal. Health & Safety Code § 1797.224.

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

23 *Cty. of San Bernardino v. City of San Bernardino*, 15 Cal. 4th 909, 932
24 (1997).

25 22. Therefore, even where a city retains .201 rights,
26 operating areas can only be designated as exclusive by the local EMS
27 if the city can establish either (1) grandfathering, or (2) that it utilized
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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 (the OCEMS) by
10 failing to operate AO3 as a non-exclusive operating area. The city is
11 therefore unable to rely on the state-action immunity promulgated in
12 the EMS Act. Abusing its powers, the city conferred on its joint
13 collaborator a highly lucrative monopoly concession, established itself
14 as the sole provider of auxiliary services at unreasonable rates, and
15 saddled its captive customers with onerous prices and inferior service.
16 Its conduct can and should be condemned under Section 2.

17 **Prehospital EMS in the City of Buena Park**

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19 26. As of June 1, 1980, the City of Buena Park did not have
20 a written agreement in effect with its designated private emergency
21 ambulance service provider.

22 27. In 1999, the City of Buena Park granted an exclusive
23 contract to CARE, which it has regularly extended to the present.
24 Under the contract, CARE administers the city’s ambulance program,
25 providing its own ambulances with its own EMTs, working in
26 conjunction with fire department paramedics. CARE also serves as the
27 city’s billing and collections agent for a city “paramedic response” fee
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1 and takes a collection fee for itself—with the result consistently
2 generating significant net revenue for the city. CARE also separately
3 bills patients for CARE’s response and transport fees.

4 28. The city’s legally and factually untenable position
5 appears to have been that (a) it had .201 rights, and (b) as a result of
6 those .201 rights, it could establish a new monopoly.

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

16 30. In June 2013, EMSA determined that AO3 failed to
17 meet either criterion for the exclusive operating area designation
18 under California Health & Safety Code Section 1797.224. EMSA
19 subsequently approved the OCEMS 2014 Orange County EMS plan
20 with AO3 designated as a non-exclusive operating area.

21 31. Both CARE and the city benefit from their joint
22 monopoly at the direct expense of consumers of prehospital EMS. For
23 each call, patientsreceiving prehospital EMS pay for a separate
24 “paramedic response” charge of \$300.00 for the fire department’s
25 response on top of the standard prehospital EMS charges by CARE.
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1 CARE bills these patients on a City of Buena Park invoice and is
2 responsible for collection and deposit for the city.

3 32. CARE provides other benefits in exchange for this
4 lucrative contract, including paying an \$18.15 medical supplies fee for
5 each transport.

6 33. The city also offers a “paramedic subscription program”
7 under which subscribers can pay a \$45.00 annual fee that covers the
8 “paramedic response” fee but excludes ambulance transportation fees
9 charged by CARE.

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

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

16
17 **City of Buena Park Excludes AmeriCare**

18 36. AmeriCare submitted a written request to OCEMS
19 February 25, 2015 to be placed on rotation within AO3, the non-
20 exclusive operating area comprising Buena Park. OCEMS replied
21 March 18, 2015 directing AmeriCare to contact the city manager for
22 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 its jurisdiction. OCEMS calls these areas “city
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1 administered” and the Orange County attorney has expressly
2 disclaimed that “city administered” is not a determination regarding
3 .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 Ex. A at 1. OCEMS nevertheless continues to
6 assert its sole authority to determine exclusivity because “.201 rights
7 and exclusivity are two different things.” *Id.* at 2.

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

14 39. The city did not respond.

15 40. But for Defendants’ conspiracy to monopolize the
16 market, AmeriCare and other private ambulance providers would
17 have been placed in rotation and patients would have paid lower prices
18 for faster and better service. During periods of higher volume, more
19 ambulances would have been available from other providers and
20 patients would have been stabilized and transported for hospital care
21 more quickly.

22 41. AmeriCare lost business as a result of Defendants’
23 actions.

24 **Claims Limitation Not Applicable**

25 42. AmeriCare has complied with all applicable
26 presentation of claims to local governments’ requirements under
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1 California law. The City of Buena Park rejected AmeriCare's claim for
2 damages April 4, 2016.

3 **COUNT I**

4 **Monopolization, 15 U.S.C. § 2**

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

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

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

14 45. Defendants possess monopoly power in the market for
15 prehospital EMS in the Buena Park area. The city has the power to
16 exclude competition and has exercised that power in favor of itself and
17 CARE, which together hold 100% market power in the area comprising
18 Buena Park.

19 46. The relevant service market is the provision of EMS
20 (broadly speaking, ambulance services and related prehospital
21 emergency medical services).

22 47. EMS are services rendered to people who have suffered
23 a medical emergency and require immediate treatment and rapid
24 transport to a nearby hospital. The highly skilled medical
25 professionals who render these services must receive compulsory
26 education, training and licensure before they can offer them. The
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1 providers of these services must fulfill numerous regulatory
2 requirements and carry compulsory insurance.

3 48. Above all, the city acts as an effectual gatekeeper that
4 determines which providers can operate in AO3. Practically speaking,
5 most calls for emergency service and EMS are made to the city's
6 emergency lines, such as 911. It is the city that dispatches these
7 emergency calls and otherwise uses its police and regulatory powers
8 to ensure that only the provider(s) of whom it has approved can render
9 EMS in its area. If a person requires EMS in AO3, it must rely on such
10 EMS as the city will arrange to provide for it, owing to the manner in
11 which the city has handled this matter, as pled fully above.

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

17 50. The relevant geographic market is AO3—which is the
18 Buena Park area. People within this area who require EMS will
19 inevitably be served only by the city's designated provider of these
20 services—the city itself. No other provider is permitted to serve the
21 area.
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23 51. Therefore, the relevant market at issue in this case is
24 the provision of EMS in AO3.

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

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

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

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

10 56. Defendants acted in direct contravention of the policy of
11 the State of California with regard to displacement of competition for
12 prehospital EMS, and therefore are not entitled to immunity under
13 the state action doctrine.

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

16 58. The Local Government Antitrust Act, 15 U.S.C. §§ 34–
17 36, does not apply because the city is (a) engaging in *ultra vires* acts
18 and therefore not acting in its official capacity, and (b) not acting in its
19 capacity to govern—merely regulating or interacting with private
20 actors—but rather as a market participant by conducting a *de facto*
21 joint commercial venture with CARE.

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

3 **COUNT II**

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

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

8 61. Defendants have willfully engaged in a course of
9 conduct, including anticompetitive and exclusionary actions, with the
10 specific intent of monopolizing the market for prehospital EMS in the
11 area of Buena Park, and there is a dangerous probability that, unless
12 restrained, anticompetitive conditions will occur, in violation of
13 Section 2 of the Sherman Act.

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

17 63. AmeriCare provides superior prehospital EMS at lower
18 prices and provides higher quality and faster service.

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

21 65. Defendants acted in direct contravention of the policy of
22 the State of California with regard to displacement of competition for
23 prehospital EMS, and therefore are not entitled to immunity under
24 the state action doctrine.

25 66. Moreover, the city is not entitled to immunity under the
26 state action doctrine because it is a market participant.
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1 67. The Local Government Antitrust Act, 15 U.S.C. §§ 34–
 2 36, does not apply because the city is (a) engaging in *ultra vires* acts
 3 and therefore not acting in its official capacity, and (b) not acting in its
 4 capacity to govern—merely regulating or interacting with private
 5 actors—but rather as a market participant by conducting a *de facto*
 6 joint commercial venture with CARE, as pled more fully above.

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

16 **Conspiracy to Monopolize, 15 U.S.C. § 2**

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

20 70. The city and CARE combined and conspired to acquire
 21 and maintain monopoly power in the market for prehospital EMS in
 22 the area comprising Buena Park, with the specific intent and purpose
 23 to exclude all other competition and monopolize the market for
 24 prehospital EMS in the area of Buena Park.

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

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

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

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

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

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

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

17 78. The Local Government Antitrust Act, 15 U.S.C. §§ 34–
18 36, does not apply because the city is (a) engaging in *ultra vires* acts
19 and therefore not acting in its official capacity, and (b) not acting in its
20 capacity to govern—merely regulating or interacting with private
21 actors—but rather as a market participant by conducting a de facto
22 joint commercial venture with CARE, as pled more fully above.

23 79. CARE's conduct is not protected by the *Noerr-*
24 *Pennington* immunity. AmeriCare does not complain of any lobbying
25 effort or petition to the city that CARE might have made or against
26 any other protected “political activity” that it might have undertaken.
27
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1 AmeriCare complains only against CARE’s unlawful possession of
2 monopoly power in the market—i.e., it challenges commercial
3 practices conducted in commerce, not protected “political activity.”

4 **COUNT IV**

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

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

9 81. Defendant City of Buena Park, a horizontal and vertical
10 competitor of AmeriCare, and Defendant CARE, a horizontal
11 competitor of AmeriCare, combined and conspired to restrain trade in
12 violation of Sherman Act § 1 by engaging in a scheme to exclude all
13 competition from the market for prehospital EMS in the area
14 comprising Buena Park.

15 82. Defendants’ agreement and actions in furtherance of the
16 conspiracy foreclosed 100% of the market for prehospital EMS in the
17 area comprising Buena Park.

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

21 84. AmeriCare provides superior prehospital EMS at lower
22 prices and provides higher quality and faster service.

23 85. AmeriCare has been harmed by Defendants’ willful
24 maintenance of the monopoly and their exclusion of all competitors.
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86. Defendants acted in direct contravention of the unmodified 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.”

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

1 process is utilized to select the provider or providers of the services
2 pursuant to the plan.”

3 92. OCEMS has designated AO3, the area comprising
4 Buena Park, as non-exclusive and has duly licensed AmeriCare as a
5 prehospital EMS provider which the City of Buena Park must place in
6 rotation upon its request.

7 93. Defendant City of Buena Park incorrectly argues that
8 Section 1797.224 does not apply to it.

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

13 **COUNT VI**

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

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

18 96. An actual and justiciable controversy exists between
19 AmeriCare and Defendants concerning Defendants’ violations of
20 federal antitrust law and the California EMS laws.

21 97. Contrary to the city’s assertions, it has not retained any
22 rights or powers under Section 1797.201.

23 98. Contrary to the city’s assertions, it does not have the
24 authority to create an exclusive operating area.
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1 99. Contrary to the city’s assertions, AmeriCare is entitled
2 to be placed into rotation in AO3, which is designated as non-exclusive
3 by OCEMS.

4 100. Contrary to the city’s assertions, it is not grandfathered
5 because it did not have an existing EMS service that has been provided
6 uninterrupted since January 1, 1981.

7 101. Contrary to the city’s assertions, it has attempted and
8 succeeded at maintaining an illegal monopoly in restraint of interstate
9 commerce that is not immune from liability under the state action
10 doctrine.

11 102. Defendants’ actions and assertions described above
12 have caused, and will continue to cause, irreparable harm to
13 AmeriCare and the public. AmeriCare has no adequate remedy at law.

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

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

22 105. AmeriCare seeks a further declaration from this Court
23 that the city should held legally responsible for damages, costs and
24 interest under 15 U.S.C. § 15(a), notwithstanding the Local
25 Government Antitrust Act, 15 U.S.C. §§ 34–36, because the city has
26 acted as a market-participant engaged in commercial activity.
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1 **REQUEST FOR RELIEF**

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

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

5 B. Declare that Defendants' conduct violates Section 2 of the
6 Sherman Act and California Health & Safety Code Sections 1797.201
7 and 1797.224;

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

13 D. Enter judgment against Defendants;

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

17 F. Award AmeriCare pre- and post-judgment interest at the
18 applicable rates on all amounts awarded, as provided in 15 U.S.C.
19 §§ 15(a) and 26;

20 G. Award AmeriCare its costs and expenses of this action,
21 including its reasonable attorney's fees necessarily incurred in
22 bringing and pressing this case, as provided in 15 U.S.C. §§ 15(a) and
23 26;

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

JAROD BONA

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La Jolla, CA 920370

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Attorney for Plaintiff

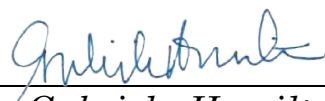
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CERTIFICATE OF SERVICE

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.



Gabriela Hamilton