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

11 AmeriCare MedServices, Inc.,

12 *Plaintiff,*

13 vs.
14

15 City of Costa Mesa and CARE
16 Ambulance Service, Inc.,

17 *Defendants.*

Case No.: 8:16-cv-01804 JLS (AFMx)

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 Costa Mesa and CARE Ambulance Service, Inc. under Section 2 of the Sherman Act, 15 U.S.C. § 2. Abusing its police and regulatory powers, and by a willful misinterpretation of California regulatory law, the city has conferred a monopoly concession on a sole provider of prehospital emergency medical services (“EMS”) in the Costa Mesa area. The city in turn imposes additional fees and provides compulsory ancillary services to the captive customers of its mandatory provider. The provision of these services in this region constitutes a distinct service market. Because of its challenged conduct, the city’s preferred provider, CARE, holds an absolute monopoly as the only permitted provider in this market. Since establishing its monopoly, CARE 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 the city has flouted its obligations under

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 to acquire a monopoly
7 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.
22

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.

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10 Defendant City of Costa Mesa eschewed the State of California’s
11 competition policy—and the determinations made by its state and
12 local EMS authorities—and instead conspired with Defendant CARE.
13 to monopolize the market and exclude other providers. Although the
14 city did not “contract[] for or provide[]” prehospital EMS as of June 1,
15 1980, it asserts that it retains control of those services. The city had
16 an informal understanding, and no written contract, with a private
17 ambulance company until 2000. In 2008, the city awarded an exclusive
18 contract to CARE—in conjunction with its own fire department—in
19 direct violation of state law. In doing so, it created an illegal monopoly
20 in violation of Sherman Act Section 2.

21 In 2014, EMSA notified the Orange County Emergency Medical
22 Services Agency (“OCEMS”) that EMSA has conclusively determined
23 that Zone AO4 is a non-exclusive area in which any county-qualified
24 EMS provider is entitled to be placed in rotation upon request because
25 the area did not qualify for the granting of exclusivity.

26 The city—recalcitrant to ceding control that the State of
27 California has determined should instead be provided in a competitive
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1 market—refuses to place Plaintiff AmeriCare into the rotation for
2 AO4. The city falsely claims that it maintains its “rights” under
3 California Health & Safety Code Section 1797.201. But the city never
4 had those rights because it was not contracting for or providing its own
5 prehospital EMS services as of June 1, 1980. *See* Cal. Health & Safety
6 Code § 1797.201. Moreover, regardless of whether the city retained
7 .201 rights, it may only operate as an exclusive operating area if either
8 (a) “a competitive process is utilized to select the provider or providers”
9 or (b) OCEMS “develops or implements a local plan that continues the
10 use of existing providers operating within [the] area in the manner
11 and scope in which the services have been provided without
12 interruption since January 1, 1981.” Cal. Health & Safety Code
13 § 1797.224.
14

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

20 Defendants established an illegal monopoly with 100% market
21 power and an ability to raise prices above market levels in AO4 while
22 providing minimal quality and speed of service without regard to
23 market demand. In direct contravention of State of California policy,
24 the city displaced all competition in the market for prehospital EMS
25 in the area comprising Costa Mesa. As a result, consumers of
26 prehospital EMS in the relevant market pay supracompetitive prices
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and suffer slower response times and lesser quality emergency services than they would in a competitive market.

This is an action for damages, declaratory, and injunctive relief for monopolization and conspiracy to restrain trade under Sections 1 and 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 Defendants transact business in this district and because a substantial part of the events giving rise to this complaint occurred in this district. More specifically, Defendants monopolized a geographic market within this district.

4. Defendants are subject to personal jurisdiction in California because (a) Defendant City of Costa Mesa is a California city with a California address that conducts business in California and (b) Defendant CARE is a California corporation doing business in the 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 Costa Mesa is a California general law city with its principal place of business at 77 Fair Drive, Costa Mesa, California, 92626.

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.

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11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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

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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.

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14 Cal. Health & Safety Code § 1797.224.

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 AO4 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.

18 **Prehospital EMS in the City of Costa Mesa**

19 26. As of June 1, 1980, the City of Costa Mesa had a *de facto*,
20 unwritten agreement with Schaefer Ambulance Service, Inc. and
21 Seal’s Ambulance, to provide emergency ambulance service within
22 Costa Mesa city limits.

23 27. The city requested and entered into a contract with
24 Orange County to administer emergency response ambulance service
25 within the area comprising Costa Mesa August 1, 1981.

26 28. Schaefer and Seal’s continued without a contract until
27 the mid-1990s using a rotation system. In October 2000, the City of
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1 Costa Mesa awarded an exclusive agreement for all EMS ambulance
2 responses within the city limits to Schaefer. The agreement was
3 extended until September 2008.

4 29. In 2008, the City of Costa Mesa granted an exclusive
5 contract to CARE and has consistently extended it ever since. Under
6 the contract, CARE administers the city's ambulance program,
7 staffing its own dedicated ambulances with its own EMTs. CARE also
8 serves as the city's billing and collections agent and takes a collection
9 fee; beyond that, the city pays for CARE's labor and keeps the rest—
10 with the result consistently generating significant net revenue for the
11 city.

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

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

24 32. In August 2014, EMSA determined that AO4 failed to
25 meet either criterion for the exclusive operating area designation
26 under California Health & Safety Code Section 1797.224. EMSA
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1 subsequently approved the OCEMS 2014 Orange County EMS plan
2 with AO4 designated as a non-exclusive operating area.

3 33. Both CARE and the city benefit from their joint
4 monopoly at the direct expense of consumers of prehospital EMS. For
5 example, the city practices what amounts to double billing when it is
6 reimbursed by insurers or Medicare. Even after receiving the standard
7 reimbursement from the insurer or Medicare for prehospital EMS, the
8 city bills a non-resident beneficiary \$275.00 for a separate “paramedic
9 response” charge and allocates the resulting proceeds (after CARE’s
10 collection fee) to its general fund. CARE also pays the city \$18.15 per
11 transport for “medical supplies,” which amounts to over \$150,000 per
12 year.
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14 34. Moreover, CARE provides kickbacks to members of city
15 government in the form of campaign contributions with the mutual
16 understanding that the contributions secure CARE’s continued role.

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

20 **City of Costa Mesa Excludes AmeriCare**

21 36. AmeriCare submitted a written request to OCEMS
22 February 25, 2015 to be placed on rotation within AO4, the non-
23 exclusive operating area comprising Costa Mesa. OCEMS replied
24 March 18, 2015 directing AmeriCare to contact the city manager for
25 the incorporated city within the zone.

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

11 38. AmeriCare submitted its written request to Ivy M. Tsay,
12 city manager of City of Costa Mesa, March 19, 2015, explaining its
13 correspondence with OCEMS and requesting that either the city
14 arrange for AmeriCare to be placed into the prehospital EMS rotation
15 or state a position that it does not have responsibility for the
16 administration of prehospital EMS. Ex. B.

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

23 40. But for Defendants’ conspiracy to monopolize the
24 market, AmeriCare and other private ambulance providers would
25 have been placed in rotation and patients would have paid lower prices
26 for faster and better service. During periods of higher volume, more
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1 ambulances would have been available from other providers and
2 patients would have been stabilized and transported for hospital care
3 more quickly.

4 41. AmeriCare lost business as a result of Defendants'
5 actions.

6 **Claims Limitation Not Applicable**

7 42. AmeriCare has complied with all applicable
8 presentation of claims to local governments' requirements under
9 California law. The City of Costa Mesa did not respond.

10 **COUNT I**

11 **Monopolization, 15 U.S.C. § 2**

12 43. 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 44. Section 2 of the Sherman Act, 15 U.S.C. § 2 provides:

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

21 45. Defendants possess monopoly power in the market for
22 prehospital EMS in the Costa Mesa area. The city has the power to
23 exclude competition and has exercised that power in favor of itself and
24 CARE, which together hold 100% market power in the area comprising
25 Costa Mesa.
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46. 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 education, training and licensure before they can offer them. The providers of these services must fulfill numerous regulatory requirements and carry compulsory insurance.

48. Above all, the city acts as an effectual gatekeeper that determines which providers can operate in AO4. Practically speaking, most calls for emergency service and EMS are made to the city's emergency lines, such as 911. It is the city that dispatches these emergency calls and otherwise uses its police and regulatory powers to ensure that only the provider(s) of whom it has approved can render EMS in its area. If a person requires EMS in AO4, it must rely on such EMS as the city will arrange to provide for it, owing to the manner in which the city has handled this matter, as pled fully above.

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

50. The relevant geographic market is AO4—which is the Costa Mesa area. People within this area who require EMS will

1 inevitably be served only by the city’s designated provider of these
2 services—the city itself. No other provider is permitted to serve the
3 area.

4 51. Therefore, the relevant market at issue in this case is
5 the provision of EMS in AO4.

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

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

14 54. AmeriCare provides superior prehospital EMS at lower
15 prices and provides higher quality and faster service.

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

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

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

24 58. The Local Government Antitrust Act, 15 U.S.C. §§ 34–
25 36, does not apply because the city is (a) engaging in *ultra vires* acts
26 and therefore not acting in its official capacity, and (b) not acting in its
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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.

59. 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 II

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

60. 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.

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

62. 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.

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

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

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

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

67. 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.

68. 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 III

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

69. 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.

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70. The city and CARE combined and conspired to acquire and maintain monopoly power in the market for prehospital EMS in the area comprising Costa Mesa, with the specific intent and purpose to exclude all other competition and monopolize the market for prehospital EMS in the area of Costa Mesa.

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

1 capacity to govern—merely regulating or interacting with private
2 actors—but rather as a market participant by conducting a de facto
3 joint commercial venture with CARE, as pled more fully above.

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

11 **COUNT IV**

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

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

16 81. Defendant City of Costa Mesa, a horizontal and vertical
17 competitor of AmeriCare, and Defendant CARE, a horizontal
18 competitor of AmeriCare, combined and conspired to restrain trade in
19 violation of Sherman Act Section 1 by engaging in a scheme to exclude
20 all competition from the market for prehospital EMS in the area
21 comprising Costa Mesa.
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23 82. Defendants’ agreement and actions in furtherance of the
24 conspiracy foreclosed 100% of the market for prehospital EMS in the
25 area comprising Costa Mesa.
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83. 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.

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 AO4, the area comprising Costa Mesa, as non-exclusive and has duly licensed AmeriCare as a prehospital EMS provider which the City of Costa Mesa must place in rotation upon its request.

93. Defendant City of Costa Mesa 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.

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

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

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

99. Contrary to the city’s assertions, AmeriCare is entitled to be placed into rotation in AO4, which is designated as non-exclusive by OCEMS.

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

101. 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.

102. Defendants’ 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.

103. 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.

104. AmeriCare seeks a further declaration from this Court that the city has committed the above-pled antitrust offenses, and that

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

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

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

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

21 D. Enter judgment against Defendants;

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

25 F. Award AmeriCare pre- and post-judgment interest at the
26 applicable rates on all amounts awarded, as provided in 15 U.S.C.
27 §§ 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

JAROD BONA

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858.964.2301 (fax)
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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