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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

AmeriCare MedServices, Inc., *Plaintiff*, vs. City of Orange, *Defendant*.	Case No.: **Amended Complaint** JURY TRIAL DEMANDED

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 Orange 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 Orange City 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

standards of Section 2, which condemn any legal person that acquires or maintains a monopoly position by means of wrongful exclusionary conduct—which is exactly what the city has done, and what AmeriCare is prepared to prove.

In this matter, the city has acted as a market-participant that by misuse of its powers has excluded all other qualified providers. Since it has acted as a market-participant, it should be held to the same standards of liability as other market-participants. There is no principled basis for drawing any distinction between a public and private market-participant when both fulfill the same function in furtherance of the same ends—generating profits by rendering valuable commercial services. AmeriCare therefore asks that the Court recognize a market-participant exception to the Local Government Antitrust Act of 1984, 15 U.S.C. §§ 34–36 (the "LGAA"), and on this basis it has requested damages and other relief under 15 U.S.C. § 15(a). AmeriCare also seeks permanent injunctive relief and declaratory relief under 15 U.S.C. § 26 as well as related declaratory relief.

The State of California created a scheme by which it and its political subdivisions ensure that California citizens receive the prehospital EMS to which they are entitled. Under that scheme, the state gave its local EMS authorities—subject to supervision and approval by the California Emergency Medical Services Authority ("EMSA")—authority to determine which areas within its jurisdiction should be "exclusive operating areas" subject to a competitive bidding process or grandfathering, and which areas should be non-exclusive

operating areas in which multiple qualified providers operate to provide the swiftest emergency response. With the exception of grandfathered areas where the same service provider has been providing service without interruption since January 1, 1981, competition is the state policy.

Defendant City of Orange eschewed the State of California's competition policy—and the determinations made by its state and local EMS authorities—and instead monopolized the market. Although the city did not "contract[] for or provide[]" prehospital EMS as of June 1, 1980, it asserts that it retains control of those services. The city had an informal understanding, and no written contract, with a private ambulance company until 1995. In 1995, the city displaced the private ambulance service with its own fire department, repudiating the competitive bidding process once and for all, in direct violation of state law. In doing so, it created an illegal monopoly in violation of Sherman Act Section 2.

Due to the absence of a competitive bidding process or any grandfathering, the Orange County Emergency Medical Services Authority ("OCEMS") redesignated AO16 as a non-exclusive area in which any county-qualified EMS provider is entitled to be placed in rotation upon request.

The city—recalcitrant to ceding control over a lucrative revenue-generating service the State of California has determined should instead be provided in a competitive market—refuses to place Plaintiff AmeriCare into the rotation for AO16. The city falsely claims that it maintains its "rights" under California Health & Safety Code Section

1797.201. But the city never had those rights because it was not contracting for or providing its own prehospital EMS services as of June 1, 1981. *See* Cal. Health & Safety Code § 1797.201. Moreover, regardless of whether the city retained .201 rights, it may only operate as an exclusive operating area if either (a) "a competitive process is utilized to select the provider or providers" or (b) OCEMS "develops or implements a local plan that continues the use of existing providers operating within [the] area in the manner and scope in which the services have been provided without interruption since January 1, 1981." Cal. Health & Safety Code § 1797.224. As the designating authority, OCEMS determined that the City of Orange does not meet either exception for exclusivity.

The city has not utilized a competitive process and has not carried on with an existing service provider without interruption since before January 1, 1981. In fact, the city did not enter into the ambulance business until 1995.

The City of Orange established an illegal monopoly with 100% market power and an ability to raise prices above market levels—indeed, to any price it so deems—in AO16, while providing minimal quality and speed of service without regard to market demand. In direct contravention of State of California policy, the city displaced all competition in the market for prehospital EMS in the area comprising Orange. As a result, consumers of prehospital EMS in the relevant market pay supracompetitive prices and suffer slower response times and lesser quality emergency services than those provided in a competitive market.

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 general law 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

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

6. Defendant City of Orange is a California general law city with its principal place of business at 300 E. Chapman Avenue, Orange, California 92866.

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.

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.

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 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."

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

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

Cal. Health & Safety Code § 1797.224.

19. The California Supreme Court has explained that while

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

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

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

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

22. The EMS Act explicitly decrees that it is intended to establish a comprehensive system for regulating and supervising the provision of EMS in California. *See* Cal. Health & Safety Code § 1797.6. The various workings of the EMS Act confirm that, except for

"grandfathered" providers, competitive bidding and open competition among qualified providers are supposed to be industry standards for the provision of EMS in California. *See generally id*. § 1797 *et seq*. The EMS Act thus promulgates a policy of competitive bidding and open competition that is actively monitored and supervised by the EMSA and the local EMSAs. *See id*. The EMS Act further decrees that: (1) it is intended to establish a fully regulated, actively supervised system for providing EMS in California; and (2) in accordance with the doctrine of state-action immunity, the federal antitrust laws should not reach "activities undertaken by local governmental entities ***in carrying out their prescribed functions under* [*the EMS Act*]**." *Id*. § 1797.6 (emphasis supplied). As explained fully in this complaint, the city did ***not*** engage in the challenged conduct in furtherance of any duty it owed or any role properly assigned to it under the EMS Act, nor did it engage in any "activity" in order to "carry out" of any its "prescribed functions" under the EMS Act, but rather it disregarded and flouted its obligations under the EMS Act while invoking spurious legal rationales to justify its conduct. It even disregarded specific directives of its local EMSA (the OCEMSA) by failing to operate AO9 as a non-exclusive operating area. The city is therefore unable to rely on the state-action immunity promulgated in the EMS Act. Abusing its powers, the city arrogated unto itself a highly lucrative monopoly concession, and it has subjected its captive customers to onerous prices and inferior service. Its conduct can and should be condemned under Section 2.

Prehospital EMS in the City of Orange

23. In 1972, the City of Orange had a *de facto*, unwritten agreement with Morgan Ambulance Service, Inc. (and its successor, Medix Ambulance Service) to provide emergency ambulance service within Orange city limits.

24. The city requested and entered into a series of contracts with Orange County concerning the administration of prehospital EMS in the City of Orange in 1979, 1981, and 1986. *See* Ex. A.

25. Under the agreement, the city gave its authority to administer prehospital EMS, including the authority to license and regulate. In turn, the city was required to adopt the Orange County model ambulance ordinance, which provides for competitive bidding, standards for licensure, and maximum rates for private providers, among other things.

26. Although the city chose to repudiate its power to administer prehospital EMS, Orange County allowed the city to utilize its own competitive request for proposal (RFP) process if it so chose. This allowed the city to retain minimal controls over service levels and operations established through the RFP process.

27. The city did not conduct an RFP as required by the ordinance. Morgan Ambulance Service (later Medix) continued to operate exclusively within the city until 1995.

28. But in the midst of a recession and the effects of Proposition 13, the city followed suit with many other cities in California: rather than balance its budget, it increased the variety of

services performed by its fire department, expanding into lucrative new revenue-generating domains.

29. In 1995, the City of Orange ceased using its existing provider and entered, for the first time, into the ambulance business itself. Its legally and factually untenable position appears to have been that (a) it had .201 rights, and (b) as a result of those .201 rights, it could establish a new monopoly of its own.

30. Since establishing its monopoly, the city has raised its rates arbitrarily and without regard to cost.

31. Immediately after establishing its monopoly, the city cut back on service levels previously provided within AO16—from four ambulances to three.

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

33. In 2002, OCEMS re-evaluated its EMS plan. OCEMS determined that AO16 failed to meet either criterion for the exclusive operating area designation under California Health and Safety Code Section 1797.224. OCEMS submitted its amended plan designating

AO16 as a non-exclusive operating area to EMSA, which EMSA approved.

34. The city never placed any private ambulance company in the rotation for service calls, illegally maintaining its monopoly in a non-exclusive zone.

City of Orange Excludes AmeriCare

35. AmeriCare submitted a written request to OCEMS February 25, 2015 to be placed on rotation within AO16, the non-exclusive operating area comprising Orange. OCEMS replied March 18, 2015 directing AmeriCare to contact the city manager for the incorporated city within the zone.

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

37. AmeriCare submitted its written request to John Sibley, city manager of City of Orange March 19, 2015, explaining its correspondence with OCEMS and requesting that either the city

arrange for AmeriCare to be placed into the prehospital EMS rotation or state a position that it does not have responsibility for the administration of prehospital EMS. Ex. C.

38. The city sent a scathing response in which it asserted, contrary to well-established law, that it has the authority to designate its own exclusive area and to do so without any competitive process. Moreover, it stated that a city retaining .201 rights "is not required to open up its jurisdiction, on a rotation or any other basis, to additional providers." Ex. D at 5.

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

40. AmeriCare lost business as a result of the city's actions.

Claims Limitation Not Applicable

41. AmeriCare has complied with all applicable presentation of claims to local governments' requirements under California law. The City of Orange denied AmeriCare's claim March 10, 2016, and therefore the state law claims for damages are timely filed.

COUNT I

Monopolization, 15 U.S.C. § 2

42. 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.

43. 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 . . . .

44. Defendant City of Orange possesses monopoly power in the market for the provision of prehospital EMS in the Orange City area.

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

46. 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.

47. Above all, the city acts as an effectual gatekeeper that determines which providers can operate in AO16. 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 AO16, 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.

48. 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.

49. The relevant geographic market is AO16—which is the Orange City area. People within this area who require EMS will inevitably be served only by the city's designated provider of these services—the city itself. No other provider is permitted to serve the area.

50. Therefore, the relevant market at issue in this case is the provision of EMS in AO16 (the "Market").

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

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

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

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

55. The City of Orange has acted in direct contravention of the policy of the State of California with regard to displacement of competition for prehospital EMS, and therefore is not entitled to immunity under the state action doctrine.

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

57. The Local Government Antitrust Act of 1984, 15 U.S.C. §§ 34–36, does not apply because the city was not acting in its capacity to govern—merely regulating or interacting with private actors—but rather as a market participant.

COUNT II

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

58. 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.

59. Defendant City of Orange has 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 Orange, and there is a dangerous probability that,

unless restrained, anticompetitive conditions will occur, in violation of Section 2 of the Sherman Act.

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

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

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

63. The City of Orange has acted in direct contravention of the policy of the State of California with regard to displacement of competition for prehospital EMS.

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

65. The Local Government Antitrust Act of 1984, 15 U.S.C. §§ 34–36, does not apply because the city was not acting in its capacity to govern—merely regulating or interacting with private actors—but rather as a market participant.

COUNT III

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

66. 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.

67. California Health and 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."

68. OCEMS has designated AO16, the area comprising Orange, as non-exclusive and has duly licensed AmeriCare as a prehospital EMS provider which Orange must place in rotation upon its request.

69. Defendant City of Orange incorrectly argues that Section 1797.224 does not apply to it.

70. 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.

COUNT IV

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

71. 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.

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

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

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

75. Contrary to the city's assertions, AmeriCare is entitled to be placed into rotation in AO16, which is designated as non-exclusive by OCEMS.

76. 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.

77. 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.

78. 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.

79. 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.

80. AmeriCare seeks a further declaration from this Court that the city has committed monopolization and/or attempted monopolization in violation of Section 2 for which it is not entitled to immunity under the state action doctrine.

81. 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 under 15 U.S.C. § 26;

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. Declare that Defendant is not entitled to immunity from damages, interest, fees, and costs under 15 U.S.C. § 36 because it is acting as a market participant rather than a government entity that is merely regulating or interacting with private actors;

D. Enter judgment against Defendant;

E. 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) and 26;

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

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: November 21, 2016. Bona Law PC

/s/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 21, 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