

1 Jarod Bona (234327)
2 jarod.bona@bonalawpc.com
3 Bona Law PC
4 4275 Executive Square, Suite 200
5 La Jolla, CA 92037
6 858.964.4589
7 858.964.2301 (fax)

Attorney for Plaintiff

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

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

13 vs.

14 City of San Clemente and CARE
15 Ambulance Service, Inc.,
16
17 *Defendants.*

Case No.: 8:16-cv-01852 JLS (AFMx)
Amended Complaint

JURY TRIAL DEMANDED

18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 San Clemente and CARE Ambulance Service, Inc. under Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1–2. 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 San Clemente 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 in order to acquire a
7 monopoly position by wrongful exclusionary conduct.

8 The city acted as a market-participant by providing ancillary
9 services and imposing fees on the captive customers of its mandatory
10 provider. Since it has acted as a market-participant, it should be held
11 to the same standards of liability as other market-participants. There
12 is no principled basis for drawing any distinction between a public and
13 private market-participant when both fulfill the same function in
14 furtherance of the same ends—generating profits by rendering
15 valuable commercial services. AmeriCare therefore asks that the
16 Court recognize a market-participant exception to the Local
17 Government Antitrust Act of 1984, 15 U.S.C. §§ 34–36, and on this
18 basis it has requested damages and other relief under 15 U.S.C.
19 § 15(a). AmeriCare also seeks permanent injunctive relief and
20 declaratory relief under 15 U.S.C. § 26 as well as related declaratory
21 relief.
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
28

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

17 In 2015, the city awarded an exclusive contract to CARE—in
18 conjunction with its own fire department—in direct violation of state
19 law. In doing so, it created an illegal monopoly in violation of Sherman
20 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 AO18 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
27
28

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 AO18. The city falsely claims that it maintains its “rights” under
5 California Health & Safety Code Section 1797.201. But the city never
6 had those rights because it was not contracting for or providing its own
7 prehospital EMS services as of June 1, 1980. *See* Cal. Health & Safety
8 Code § 1797.201. Moreover, regardless of whether the city retained
9 .201 rights, it may only operate as an exclusive operating area if either
10 (a) “a competitive process is utilized to select the provider or providers”
11 or (b) OCEMS “develops or implements a local plan that continues the
12 use of existing providers operating within [the] area in the manner
13 and scope in which the services have been provided without
14 interruption since January 1, 1981.” Cal. Health & Safety Code
15 § 1797.224.
16

17 The city has not utilized a competitive process and has not
18 carried on with an existing service provider without interruption since
19 before January 1, 1981. As the state authority making such
20 determinations, EMSA has accordingly determined that the City of
21 San Clemente 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 AO18 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 San Clemente. As a result, consumers of
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

prehospital EMS in the relevant market pay supracompetitive prices 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 San Clemente 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 San Clemente is a general law city with its principal place of business at 100 Avenida Presidio, San Clemente, California, 92672.

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
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 operating
17 areas] may not supplant the [cities'] ability to continue to
18 control EMS operations over which they have historically
19 exercised control[, n]othing in this reference to section
20 1797.201 suggests that cities . . . are to be allowed to expand
21 their services, or to create their own exclusive operating
22 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
28

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 §1797.6.
16 The various workings of the EMS Act confirm that, except for
17 “grandfathered” providers, competitive bidding and open competition
18 among qualified providers are supposed to be industry standards for
19 the provision of EMS in California. *See generally id.* § 1797 *et seq.* The
20 EMS Act thus promulgates a policy of competitive bidding and open
21 competition that is actively monitored and supervised by the EMSA
22 and the local EMSAs. *See id.* The EMS Act further decrees that: (1) it
23 is intended to establish a fully regulated, actively supervised system
24 for providing EMS in California; and (2) in accordance with the
25 doctrine of state-action immunity, the federal antitrust laws should
26 not reach “activities undertaken by local governmental entities *in*
27
28

1 *carrying out their prescribed functions under [the EMS Act].”*
2 *Id.* § 1797.6. As explained fully in this complaint, the city did not
3 engage in the challenged conduct in furtherance of any duty it owed or
4 any role properly assigned to it under the EMS Act, nor did it engage
5 in any “activity” in order to “carry out” of any its “prescribed functions”
6 under the EMS Act, but rather it disregarded and flouted its
7 obligations under the EMS Act while invoking spurious legal
8 rationales to justify its conduct. It even disregarded specific directives
9 of its local EMSA (the OCEMS) by failing to operate AO18 as a non-
10 exclusive operating area. The city is therefore unable to rely on the
11 state-action immunity promulgated in the EMS Act. Abusing its
12 powers, the city conferred on its joint collaborator a highly lucrative
13 monopoly concession, established itself as the sole provider of
14 auxiliary services at unreasonable rates, and saddled its captive
15 customers with onerous prices and inferior service. Its conduct can and
16 should be condemned under Section 2.

18 **Prehospital EMS in the City of San Clemente**

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

22 27. The city has utilized the services of multiple private
23 ambulance services such as Doctor’s Ambulance Service, LifeCare
24 Ambulance, Medix Ambulance Service, and Scudders Ambulance
25 Service, Inc. for requests to emergency ambulance service calls within
26 its city limits prior to June 1, 1980 and thereafter.

27
28

1 28. In 2015, the City of San Clemente granted an exclusive
2 contract to CARE, which it has regularly extended to the present.
3 Under the contract, CARE administers the city’s ambulance program,
4 providing its own ambulances with its own EMTs, working in
5 conjunction with fire department paramedics. CARE also serves as the
6 city’s billing and collections agent for a city “paramedic response” fee
7 and takes a collection fee for itself—with the result consistently
8 generating significant net revenue for the city. CARE also separately
9 bills patients for CARE’s response and transport fees.

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

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

23 31. In August 2014, EMSA determined that AO18 failed to
24 meet either criterion for the exclusive operating area designation
25 under California Health & Safety Code Section 1797.224. EMSA
26 subsequently approved the OCEMS 2014 Orange County EMS plan
27 with AO18 designated as a non-exclusive operating area.
28

1 32. Both CARE and the city benefit from their joint
2 monopoly at the direct expense of consumers of prehospital EMS. For
3 each call, patientsreceiving prehospital EMS pay for a separate
4 “paramedic response” charge of \$1,091.96 for the fire department’s
5 response on top of the standard prehospital EMS charges by CARE of
6 \$704.61. CARE bills these patients on a City of San Clemente invoice
7 and is responsible for collection and deposit for the city.

8 33. CARE provides other benefits in exchange for this
9 lucrative contract, including paying a \$16.87 medical supplies fee for
10 each transport.

11 34. The city also offers a “paramedic subscription program”
12 under which subscribers can pay a \$40.00 annual fee that covers the
13 “paramedic response” fee but excludes ambulance transportation fees
14 charged by CARE.

15 35. Moreover, CARE provides kickbacks to members of city
16 government in the form of campaign contributions with the mutual
17 understanding that the contributions secure CARE’s continued role.

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

21 **City of San Clemente Excludes AmeriCare**

22 37. AmeriCare submitted a written request to OCEMS
23 February 25, 2015 to be placed on rotation within AO18, the non-
24 exclusive operating area comprising San Clemente. OCEMS replied
25 March 18, 2015 directing AmeriCare to contact the city manager for
26 the incorporated city within the zone.
27
28

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

13 39. AmeriCare submitted its written request to Pall
14 Gudgeirsson, city manager of City of San Clemente March 19, 2015,
15 explaining its correspondence with OCEMS and requesting that either
16 the city arrange for AmeriCare to be placed into the prehospital EMS
17 rotation or state a position that it does not have responsibility for the
18 administration of prehospital EMS. Ex. B.

19 40. The city did not respond.

20 41. But for Defendants’ conspiracy to monopolize the
21 market, AmeriCare and other private ambulance providers would
22 have been placed in rotation and patients would have paid lower prices
23 for faster and better service. During periods of higher volume, more
24 ambulances would have been available from other providers and
25 patients would have been stabilized and transported for hospital care
26 more quickly.
27
28

1 42. AmeriCare lost business as a result of Defendants'
2 actions.

3 **Claims Limitation Not Applicable**

4 43. AmeriCare has complied with all applicable
5 presentation of claims to local governments' requirements under
6 California law. The City of San Clemente rejected AmeriCare's claim
7 for damages April 6, 2016.

8 **COUNT I**

9 **Monopolization, 15 U.S.C. § 2**

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

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

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

19 46. Defendants possess monopoly power in the market for
20 prehospital EMS in the San Clemente area. The city has the power to
21 exclude competition and has exercised that power in favor of itself and
22 CARE, which together hold 100% market power in the area comprising
23 San Clemente.

24 47. The relevant service market is the provision of EMS
25 (broadly speaking, ambulance services and related prehospital
26 emergency medical services).
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

48. 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.

49. Above all, the city acts as an effectual gatekeeper that determines which providers can operate in AO18. 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 AO18, 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.

50. 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.

51. The relevant geographic market is AO18—which is the San Clemente 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.

1 52. Therefore, the relevant market at issue in this case is
2 the provision of EMS in AO18.

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

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

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

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

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

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

21 59. The Local Government Antitrust Act, 15 U.S.C. §§ 34–
22 36, does not apply because the city is (a) engaging in *ultra vires* acts
23 and therefore not acting in its official capacity, and (b) not acting in its
24 capacity to govern—merely regulating or interacting with private
25 actors—but rather as a market participant by conducting a *de facto*
26 joint commercial venture with CARE.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

60. 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

61. 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.

62. 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 San Clemente, and there is a dangerous probability that, unless restrained, anticompetitive conditions will occur, in violation of Section 2 of the Sherman Act.

63. 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.

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

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

1 the area comprising San Clemente, with the specific intent and
2 purpose to exclude all other competition and monopolize the market
3 for prehospital EMS in the area of San Clemente.

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

8 73. Defendants' concerted action had the necessary and
9 direct effect of entrenching their monopoly power.

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

13 75. AmeriCare provides superior prehospital EMS at lower
14 prices and provides higher quality and faster service.

15 76. AmeriCare has been harmed by Defendants' willful
16 maintenance of the monopoly and their exclusion of all competitors.

17 77. Defendants acted in direct contravention of the policy of
18 the State of California with regard to displacement of competition for
19 prehospital EMS.

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

22 79. The Local Government Antitrust Act, 15 U.S.C. §§ 34–
23 36, does not apply because the city is (a) engaging in *ultra vires* acts
24 and therefore not acting in its official capacity, and (b) not acting in its
25 capacity to govern—merely regulating or interacting with private
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

80. 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 IV

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

81. 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.

82. Defendant City of San Clemente, a horizontal and vertical competitor of AmeriCare, and Defendant CARE, a horizontal competitor of AmeriCare, combined and conspired to restrain trade in violation of Sherman Act § 1 by engaging in a scheme to exclude all competition from the market for prehospital EMS in the area comprising San Clemente.

83. Defendants’ agreement and actions in furtherance of the conspiracy foreclosed 100% of the market for prehospital EMS in the area comprising San Clemente.

84. 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

89. 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.

90. 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.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT V

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

91. 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.

92. 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.”

93. OCEMS has designated AO18, the area comprising San Clemente, as non-exclusive and has duly licensed AmeriCare as a prehospital EMS provider which the City of San Clemente must place in rotation upon its request.

94. Defendant City of San Clemente incorrectly argues that Section 1797.224 does not apply to it.

95. 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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

100. Contrary to the city’s assertions, AmeriCare is entitled to be placed into rotation in AO18, which is designated as non-exclusive by OCEMS.

101. 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.

102. 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.

103. 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.

104. 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.

105. 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.

3 106. 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, U.S.C. §§ 34–36, because the city has acted
7 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;

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

4275 Executive Square, Suite 200
La Jolla, CA 920370
858.964.4589
858.964.2301 (fax)
jarod.bona@bonalawpc.com

Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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