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13 AMERICAN MEDICAL RESPONSE WEST

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

AMERICAN MEDICAL RESPONSE WEST, a
California corporation,

Plaintiff,

v.

COUNTY OF SONOMA; and DOES 1 through
30,

Defendants.

Case No:

**COMPLAINT FOR (1) RESCISSION, (2)
BREACH OF THE DUTY OF GOOD FAITH
AND FAIR DEALING, AND (3)
DECLARATORY RELIEF**

Unlimited Civil Case: Exceeds \$25,000

JURY TRIAL DEMANDED

1 Plaintiff American Medical Response West (“AMR”), doing business as Sonoma Life Support,
2 alleges the following in support of its claims against defendant County of Sonoma (“County”) and Does
3 1-30:

4 **I. NATURE OF THE ACTION**

5 1. For over 30 years, AMR and its dedicated team members have served the residents of
6 Sonoma County as the **exclusive** provider of emergency ground ambulance services in a central zone of
7 Sonoma County known as Exclusive Operating Area 1 (“EOA-1”), which includes Santa Rosa and
8 surrounding neighborhoods. During this time, AMR has never wavered from its commitment to the
9 residents and has pledged to continue providing the same level of excellent care as it has done for over
10 three decades. However, the County caused the California Emergency Medical Services Authority
11 (“EMSA”) on March 29, 2022 to declare EOA-1 non-exclusive. When negotiating an extension of
12 AMR’s exclusive contract to serve the residents of EOA-1, County staff withheld material facts from
13 AMR regarding EMSA’s decision. While AMR is committed to staying and serving the community, it
14 brings this action to confirm its right to rescind the contract or, in the alternative, declare the contract
15 unenforceable and void for lack of consideration.

16 2. EOA-1 contains approximately 250,000 Sonoma County residents and receives thousands
17 of emergency medical calls for service each year. By limiting services to one provider in a portion of
18 the County, the exclusive operating area arrangement ensures that the single, authorized ambulance
19 provider manages the system and focuses on effective patient care for all types of residents in need of
20 emergency ambulance services including both rural and urban residents within the zone instead of many
21 ambulance providers trying to maximize their own revenues through competing for insured or affluent
22 patients in a non-exclusive arrangement. Unlike non-exclusive providers, an exclusive provider
23 generally has additional duties and responsibilities including, but not limited to, regulated rates, response
24 time standards, first responder coordination, data collection and evaluation requirements, personnel
25 requirements, staffing of ambulance and response units, and vehicle replacement and maintenance
26 requirements.

27 3. In 2008, following a competitive bidding process approved by EMSA, AMR and the
28 County on behalf of its local EMS agency (“LEMSA”) entered into the most recent contract for AMR to

1 be the **exclusive** provider of emergency ground ambulance services to the residents of EOA-1 (“EOA
2 Contract”). The EOA Contract had an initial term of five years from July 1, 2009 to June 30, 2014. The
3 County subsequently exercised its options to extend the term of the EOA Contract by an additional five
4 years “based on superior performance” through June 30, 2019.

5 4. Historically, EMSA expected local EMS agencies to conduct an EMSA-approved
6 competitive bid process at periodic intervals before the local EMS agency implemented another
7 exclusive contract.¹ In this instance, the County received a one-year extension from EMSA (*i.e.*,
8 through June 30, 2020) to have an EMSA-approved procurement process in place due to delays caused
9 by wildfires that affected Sonoma County. At the County’s request, AMR agreed to extend the EOA
10 Contract (“Third Amendment”) to June 30, 2022 with the understanding and expectation that the County
11 would comply with EMSA’s directive to complete the request for proposal (“RFP”) process in place. In
12 June 2022, AMR and the County agreed to an additional extension to June 30, 2024 (“Final Fourth
13 Amendment”) so the County could complete the EMSA-approved RFP process.

14 5. In February 2022, while negotiating an initial version of the fourth amendment of the
15 EOA Contract (“Initial Fourth Amendment”) with AMR, the County secretly entered into a settlement
16 agreement with Sonoma County Fire District (“Sonoma County Fire”) in a lawsuit that was unrelated to
17 EOA-1. Although the claims were unrelated, the County inexplicably agreed in the settlement to allow
18 Sonoma County Fire to operate in EOA-1 in violation of AMR’s exclusivity rights. The County also
19 agreed to cancel the ongoing RFP for EOA-1 because Sonoma County Fire did not have the resources
20 necessary to compete with AMR. As a result, EMSA re-classified EOA-1 as “non-exclusive” with an
21 effective date of June 20, 2020 and the exclusivity that the County promised to AMR no longer existed.

22 6. The County had no legitimate reason or purpose to make concessions affecting EOA-1.
23 Sonoma County Fire’s claims did not involve EOA-1 and EMSA had already notified the County that
24 EOA-1 could only continue as an “exclusive” operating area if the County completed the competitive
25 bidding process that was already underway. By surrendering to Sonoma County Fire’s demands, the
26 County failed to protect AMR’s right to operate all ambulance services exclusively in EOA-1 and
27

28 ¹ As discussed below, Health & Safety Code § 1797.224 allows local EMS agencies to maintain
exclusive operating areas as long as they undertake a competitive bid process for selecting providers on
a periodic basis.

1 eviscerated the primary consideration supplied by the County under the EOA Contract. Further, when
2 the County and AMR negotiated the Initial Fourth Amendment in February 2022, the County did not
3 disclose that it had authorized Sonoma County Fire to operate within EOA-1 as part of the settlement
4 and that the settlement was conditioned on the County cancelling the RFP process.

5 7. Ultimately, the County’s malfeasance has directly harmed AMR and potentially harmed
6 County residents located in Santa Rosa and the surrounding areas within EOA-1. To the detriment of
7 AMR and the residents of the County, the County’s actions and failures have: (a) Rendered the EOA
8 Contract unenforceable, null and void; (b) Allowed multiple ambulance providers to compete for 911
9 ambulance calls in EOA-1 without any meaningful control by the LEMSA; and (c) Eliminated mandated
10 response time standards and other clinical standards in EOA-1.

11 8. After acceding to Sonoma County Fire’s demands, the County started yet another RFP
12 process. The next competitively bid contract for EOA-1 is scheduled to take effect on or about January
13 15, 2024—almost five years after the EOA Contract was initially set to expire. Notwithstanding the
14 County’s treatment of AMR, and the confusion that has ensued in the County’s EMS system, AMR
15 pledges to continue providing emergency medical services and reports to the County about its
16 performance while the County’s RFP process continues. However, the terms and conditions that AMR
17 originally agreed to are no longer valid and enforceable because EOA-1 is no longer exclusive. As such,
18 AMR is entitled to, and hereby requests, certain legal and equitable relief from this Court, including
19 rescission, declaratory relief, and damages caused by the County’s malfeasance.

20 **II. THE PARTIES**

21 9. Plaintiff AMR is a California corporation organized and existing under the laws of
22 California. AMR is, and was at all relevant times, qualified to do business in California.

23 10. Defendant County is a political subdivision of the State of California that contracted for
24 emergency ground ambulance service on behalf of its designated local EMS agency, the County of
25 Sonoma Department of Health Services (“DHS”). Within the DHS, EMS agency functions are the
26 responsibility of Coastal Valleys EMS Agency (“Coastal Valley”), which is organized within the Public
27 Health Division of DHS. DHS and Coastal Valley are collectively referred to herein as the County’s
28 “LEMSA.”

11. AMR is ignorant of the true names and capacities of the defendants sued herein as Does 1 through 30, inclusive, and therefore sues these defendants by such fictitious names. AMR will amend this Complaint to allege their true names and capacities when such are ascertained. AMR is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged and that AMR's injuries as herein alleged were proximately caused by said defendants' acts or omissions. For the purposes of convenience, however, AMR refers to the County and the Doe defendants collectively as "County."

8 **III. JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over each of the causes of action alleged in this Complaint by virtue of the statutes, common law, and other legal authority of the State of California, and by virtue of the fact that the amount in controversy exceeds \$25,000.00. The Court has personal jurisdiction over the County because the County committed acts relevant to the causes of action alleged in this Complaint including, but not limited to, the following: the County made representations in the State of California, entered into one or more contracts in the State of California, committed torts and statutory violations within the State of California, caused injuries to California residents within the State of California, and otherwise purposefully availed itself of the benefits and protections of the laws of the State of California.

13. Venue is proper in this Court because the contract at issue in the case was made and was to be performed in the County of Sonoma, California. The contract contains a venue clause that requires that this case be brought in the County of Sonoma. In addition, the liabilities and obligations that are the subject of this case arose in the County of Sonoma.

22 **IV. THE EMS ACT**

14. Since 1980, California's Emergency Medical Services System and the Pre-Hospital Emergency Medical Care Personnel Act ("EMS Act") has governed the coordination and integration of all emergency medical services ("EMS") throughout California. Health & Safety Code §§ 1797 *et seq.* In 1984, the Legislature amended the EMS Act for the purpose of authorizing local EMS agencies to grant exclusive operating areas to ambulance providers such as AMR. This legislative change was prompted by the release in 1982 of an antitrust decision by the United States Supreme Court known as

1 *Community Communications Co. v. Boulder* (1982) 455 U.S. 40, 51. (See *County of San Bernardino v.*
2 *City of San Bernardino* (1997) 15 Cal.4th 909, 917-18 (“*County of San Bernardino*”).) One of the 1984
3 amendments to the EMS Act added Health & Safety Code section 1797.224 (“Section 1797.224”),
4 which provides in pertinent part:

5 A local EMS agency may create one or more exclusive operating areas in
6 the development of a local plan, if a competitive process is utilized to
7 select the provider or providers of the services pursuant to the plan. . . . A
8 local EMS agency which elects to create one or more exclusive operating
9 areas in the development of a local plan shall develop and submit for
10 approval to the authority, as part of the local EMS plan, its competitive
 process for selecting providers and determining the scope of their
 operations. This plan shall include provisions for a competitive process
 held at periodic intervals.

11 15. As the California Supreme Court in *Valley Medical Transport, Inc. v. Apple Valley Fire*
12 *Protection Dist.* (1998) 17 Cal.4th 747, 754 stated, the “‘EMS Act ... create[s] a comprehensive system
13 governing virtually every aspect of prehospital emergency medical services.’ ” (Quoting *County of San*
14 *Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 915). The Court in *County of San*
15 *Bernardino* observed, the “ability to create [exclusive operating areas] recognized in section 1797.224
16 would be rendered largely futile, however, if cities or fire districts that had no history of operating
17 ambulance services were able at any time to expand into these services, thereby partially nullifying an
18 existing EOA. . . . Furthermore, as we have seen, section 1797.224 gives the power to grant exclusive
19 operating areas only to counties and local EMS agencies, not to cities or fire districts.” (15 Cal.4th at
20 pp. 932-34.)

21 16. In *Schaefer’s Ambulance Service v. County of San Bernardino* (1998) 68 Cal.App.4th
22 581, 589, the court of appeal stated that “[t]he purpose of creating exclusive operating areas is to
23 eliminate competition. ‘[T]he EMS Act ‘evidences an intent to “displace unregulated competition” in a
24 field where quality and cost control are vitally important state interests.’ ” (citations omitted) ‘[A]n EOA
25 permits local EMS agencies to offer private emergency service providers protection from competition in
26 profitable, populous areas in exchange for the obligation to serve unprofitable, more sparsely populated
27 areas. (citations omitted.)’ ”

28 17. Thus, Section 1797.224 empowers the local EMS agency to create exclusive operating
areas, however, that power is conditioned on (a) the local EMS agency developing a local EMS plan that

1 relies on the use of a competitive process to select the provider pursuant to the plan, (b) the state
2 authority, EMSA, approving the local EMS agency's plan with its competitive bid process for selecting
3 providers and determining the scope of their operations outlined in the plan, and (c) the local EMS
4 agency outlining in its plan provisions for holding these competitive bid processes at "periodic
5 intervals."

6 **V. GENERAL ALLEGATIONS**

7 **A. The County and AMR Entered Into the EOA Contract.**

8 18. Beginning in or about July 2008, the County, through the LEMSA, conducted an RFP
9 competitive bid process pursuant to Section 1797.224 that sought to award to a single ambulance
10 contractor the right to operate exclusively the emergency ground ambulance services in EOA-1. AMR
11 submitted a proposal and prevailed in the competitive bid process.

12 19. In December 2008, the County and AMR entered into the EOA Contract. A copy of the
13 EOA Contract is attached hereto as **Exhibit A** and incorporated by reference. The EOA Contract
14 obligated AMR to provide the "Emergency Ground Ambulances Services in accordance with this
15 Agreement and RFP, at 12:01 a.m. on July 1, 2009." (*See* Ex. A (definition of "Implementation Date").)
16 The Contract provided that the County could extend the expiration up to a maximum of ten years as long
17 as the County decided about a possible extension at least 18 months prior to the scheduled termination
18 date. (*Id.* § 3.2.)

19 20. In exchange for the obligations undertaken by AMR, the EOA Contract awarded AMR
20 the **exclusive right** within EOA-1 to provide and bill for "**all** requests for Emergency Ground
21 Ambulance Services for the term of this Agreement within the EOA." (*Id.* § 1.3(A) (emphasis added).)
22 "For **all** requests for Emergency Ground Ambulance Services within the EOA, [AMR] shall respond
23 with an [Advanced Life Support ("ALS")] Resource Unit and is mandated to respond at the ALS
24 Resource Level." (*Id.* (emphasis added).) This exclusive right to provide all ambulances and bill others
25 for those services included the right to provide **all** responses to 911 calls, **all** ALS interfacility transports
26 between different medical facilities located within EOA-1, and **all** standby rights related to special
27 events requiring emergency ambulance services. (*Id.* § 1.3(B), (C).)
28

21. The EOA Contract did not require the County to pay AMR to operate the EMS system in EOA-1 for the LEMSA. Instead, the consideration that the County provided AMR in the EOA Contract was the right of AMR to operate **exclusively in EOA-1**. This exclusivity permitted AMR to manage and operate the EMS system in EOA-1 in the most effective manner without concerns that another provider could enter its territory to take calls and bill for transports that originated in EOA-1. In this respect, the EOA Contract included a section entitled “Compensation to Contractor,” which stated in pertinent part:

14.1 As compensation for the services, equipment and materials furnished under this Agreement, Contractor shall receive the following as full compensation: (i) market rights as specified herein; (ii) use of communication infrastructure with reasonable routine maintenance provided by the County as specified, and (iii) **income from fee for service billing and other reimbursement mechanisms as specified.**

14.2 In consideration for all services, equipment, materials, and supplies to be furnished by Contractor, the EMS Agency has designated Contractor as the **exclusive provider of Emergency Ground Ambulance in the EOA within the geographical areas defined by this Agreement.** Contractor and EMS Agency agree that said designation shall begin on July 1, 2009, and **shall continue throughout the term of this Agreement, unless otherwise mutually agreed upon.**

(Ex. A. §§ 14.1, 14.2 (emphasis added).)

22. Moreover, in exchange for the exclusivity promised by the County, the EOA Contract imposed additional requirements on AMR that it would not have agreed to, and that the County would not have required, but for the fact that EOA-1 was exclusive. These additional requirements included:

- a. Operating the entire EMS system in EOA-1;
- b. Responding to all calls with ALS ambulances staffed with a minimum of one paramedic and one emergency medical technician per unit;
- c. Meeting certain response time performance standards for responding to calls for AMR’s ambulances and reporting its performance each month to the LEMSA;
- d. Paying liquidated damages if AMR failed to meet contractual performance standards and other contractual reporting obligations;
- e. The LEMSA approving and regulating AMR’s charges to patients; and

1 f. Paying the LEMSA an annual fee of \$180,000 for contract monitoring.

2 23. In conjunction with the EOA Contract, the County submitted its annual EMS Plan to
3 EMSA (“2008 EMS Plan”), which EMSA approved. In its “Statement of Exclusivity,” the 2008 EMS
4 Plan stated that EOA-1 is an “[e]xclusive franchise developed and implemented through a competitive
5 RFP process.” The 2008 EMS Plan further confirmed that the County approved the EOA Contract after
6 selecting AMR in a competitive process pursuant to Section 1797.224.

7 24. Pursuant section 3.2 of the EOA Contract, the County subsequently exercised its options
8 to extend the term of the EOA Contract by an additional five years “based on superior performance”
9 (*i.e.*, through June 30, 2019). Copies of these extensions are attached hereto as **Exhibit B** and
10 incorporated herein by reference.

11 **B. In 2018 EMSA Expected the County to Conduct a New RFP Process and Implement**
12 **a New Competitively Bid Contract by June 30, 2020.**

13 25. Beginning in or about December 2017, and in anticipation of the EOA Contract expiring,
14 the LEMSA was scheduled to commence the process of putting EOA-1 out for competitive bid through
15 a RFP process. However, a large wildfire burned portions of the City of Santa Rosa and other portions
16 of Sonoma County. This and other fires disrupted the LEMSA’s roll-out of the RFP.

17 26. On May 8, 2018, the County Board of Supervisors authorized the LEMSA to submit a
18 letter requesting that EMSA approve a one-year extension to continue the EOA Contract such that the
19 EOA Contract and EOA-1’s exclusivity designation could continue.

20 27. On or June 26, 2018, EMSA approved the County’s request for a one-year extension.
21 EMSA, however, made clear that this one-year extension was a “one-time only extension for the
22 exclusivity of Exclusive Operating Area (EOA) #1 until June 30, 2020.” EMSA further indicated that it
23 expected the County to proceed with a competitive bidding process without delay in order to maintain
24 the exclusivity of EOA-1. In relevant part, EMSA stated: “This extension assumes that [the LEMSA]
25 will be actively working on a new competitive process that will be implemented by June 30, 2020.”
26 EMSA also stated: “We expect that well prior to June 30, 2020, **you will have an approved**
27 **competitive process in place to continue the exclusive designation for that zone** or submit a local
28 EMS plan for approval that contemplates some other designation for ambulance transport within that

zone.” A copy of this EMSA’s June 26, 2018 letter is attached hereto as **Exhibit E** and incorporated herein by reference.

C. EMSA Admonished the LEMSA for Failing to Submit Annual EMS Plan Updates.

28. On or about October 2, 2018, pursuant to the EMS Act, the LEMSA submitted an update of its EMS plan (“2018 EMS Plan”). The 2018 EMS Plan is the most recent EMS Plan from the LEMSA posted on EMSA’s website. A pertinent portion of the 2018 EMS Plan is attached hereto as **Exhibit F** and incorporated herein by reference.²

29. Importantly, according to the 2018 EMS Plan, the LEMSA had one existing exclusive operating area (EOA-1) and that EOA-1 will be subject to a **“competitive award process in 2017 for a 2019 implementation.”** (Ex. F § 1.28 (emphasis added).) The 2018 EMS Plan included EMSA’s directive that any “local EMS agency that desires to implement exclusive operating areas ... shall develop an EMS transportation plan which addresses ... [the] use of a competitive bid process to ensure system optimization.” (*Id.* § 4.19.) In its “Statement of Exclusivity,” the 2018 EMS Plan further confirmed that EOA-1 possesses “exclusivity established through a competitive RFP process” and that the EOA Contract included “one 3 year extension and a final two year extension bringing the contract term to June 30, 2019.” (*Id.* § P (Ambulance Zone Summary Form for Sonoma EOA-1).)

30. On or about January 15, 2019, EMSA sent the LEMSA a letter indicating that EMSA had approved the 2018 EMS Plan. However, EMSA admonished the LEMSA for failing to submit an update to its EMS plan to EMSA every year in violation of Health & Safety Code section 1797.254.³ EMSA reminded the LEMSA that the County’s “next annual EMS Plan Update will be due on or before January 31, 2020.”

31. The LEMSA has not posted on its website a copy of any EMS Plan since the 2018 EMS Plan. On information and belief, the LEMSA has not submitted any EMS Plan to EMSA since the 2018 EMS Plan.

² A complete copy of the 2018 EMS Plan is available at https://emsa.ca.gov/wp-content/uploads/sites/71/2019/01/2018_CoastalValleys_EMS-Plan.pdf.

³ Health & Safety Code section 1797.254 states: “Local EMS agencies shall annually submit an emergency medical services plan for the EMS area to the authority, according to EMS Systems, Standards, and Guidelines established by the authority.”

D. The County Asked AMR to Extend the EOA Contract to Permit it to Complete the EMSA Approved RFP Process.

32. On or about May 15, 2019, the County asked AMR to enter into the Third Amendment. This Third Amendment purported to extend the EOA Contract from July 1, 2019 through **June 30, 2022**. AMR signed the Third Amendment. During the period of the extension, AMR reasonably expected and relied on the County to comply with EMSA's directive to have an approved competitive process in place to continue the exclusive designation for EOA-1. AMR also expected that the LEMSA would comply with its legal obligation to submit an EMS Plan Update to EMSA pursuant to Health & Safety Code section 1797.254. A copy of the Third Amendment is attached hereto as **Exhibit C** and incorporated by reference.

33. Later in 2019, AMR participated in a series of stakeholder meetings with the LEMSA relating to the development of the RFP process for EOA-1 ("RFP 1"). During those meetings, the LEMSA stated that a draft of RFP 1 would be completed by September 2020, with EMSA and the Board of Supervisors' approval occurring in or about December 2020, and after release of the final RFP 1 proposals from bidders would be due in June 2021.

34. Eventually, after receiving EMSA's approval, the County finally released its long-delayed RFP 1 on November 8, 2021 and set the date for submission of proposals for March 1, 2022. AMR prepared its proposal and was ready to submit it on March 1, 2022.

E. Sonoma County Fire and the County Reached a Settlement About EOA-1 to Settle Claims That Only Related to EOA-2.

35. On or about November 24, 2021, Sonoma County Fire sued the County alleging, among other things, that the County unilaterally created another exclusive operating area in Sonoma County known as EOA-2 without first obtaining EMSA's approval to do so and without following the requirements set forth in Section 1797.224 ("Sonoma County Fire Lawsuit"). The claims and relief sought by Sonoma County Fire related to EOA-2.

36. On or about February 1, 2022, without disclosing to AMR that the County and Sonoma County Fire were close to settling the Sonoma County Fire Lawsuit, the County asked AMR to extend the EOA Contract a fourth time.

1 37. On February 8, 2022, during a closed session, the Board of Supervisors approved a
2 settlement of the Sonoma County Fire Lawsuit. The contents of the closed session were kept secret at
3 the time. However, on March 1, 2022, the County disclosed that it agreed to a detailed settlement
4 agreement that consisted of five terms (“Settlement Agreement”). A copy of the Settlement Agreement
5 is attached hereto as **Exhibit G** and incorporated by reference.

6 38. On February 17 and 18, 2022, the parties to the Settlement Agreement and their counsel
7 signed the Settlement Agreement. Term one of the Settlement Agreement provided a condition
8 precedent that the County must withdraw RFP 1 for EOA-1. Term two required dismissal of the
9 Sonoma County Fire Lawsuit. Terms three and four addressed EOA-2. Term five again addressed
10 EOA-1. Specifically, term five subsection (b) provided in pertinent part that Sonoma County Fire “shall
11 be authorized to provide emergency ground ambulance services in EOA-1 on backup, stand-by,
12 and/or mutual aid basis.” In term five subsection (f), Sonoma County Fire agreed to defend,
13 indemnify and hold harmless the County, up to a maximum of \$250,000, for “any claims arising from
14 this Agreement or withdrawal of the RFP or based on challenges to EOA-1 exclusivity during the
15 extension of the AMR contract by no longer than January 15, 2024.” In effect, terms one and five
16 expanded the scope of the Sonoma County Fire Lawsuit beyond EOA-2 in order to cancel the RFP
17 regarding EOA-1 and to provide Sonoma County Fire with authority to respond to ambulance calls in
18 EOA-1 in contravention of AMR’s exclusivity rights for EOA-1.

19 39. The term “mutual aid” is used in EMS agreements to mean a written agreement between
20 two providers that permits one provider to request assistance from the other provider on the conditions
21 set forth in the written mutual aid agreement. In 2022, AMR asked Sonoma County Fire for a mutual
22 aid agreement, which Sonoma County Fire refused. The terms “backup and standby” were not defined
23 terms in the Settlement Agreement and are not defined terms in the EMS Act. The County erred by
24 including “backup” and “standby” as exceptions to AMR’s exclusivity for EOA-1.

25 **F. The County Asked AMR to Extend the EOA Contract Without Disclosing the**
26 **Terms of the Settlement to AMR.**

27 40. On February 18, 2022, AMR signed the Initial Fourth Amendment of the EOA Contract
28 after negotiating with the County over the length of the extension and inclusion of a term that would

1 establish a tiered-response ground ambulance system by July 1, 2022. While negotiating the Initial
2 Fourth Amendment, the County failed to disclose to AMR material facts including, but not limited to,
3 that the County had just reached a settlement with Sonoma County Fire that called for the County to
4 cancel RFP 1 and that the County granted Sonoma County Fire permission to enter EOA-1 “to provide
5 emergency ground ambulance services in EOA-1 on **backup, stand-by, and/or mutual aid basis.**” A
6 copy of the Initial Fourth Amendment is attached hereto as **Exhibit H** and incorporated by reference.

7 41. On the same day that AMR signed the Initial Fourth Amendment, the County cancelled
8 RFP 1 for EOA-1 without EMSA approval. In its notice, the County did not disclose that it cancelled
9 RFP 1 because of a settlement with Sonoma County Fire. Instead, it stated publicly that it cancelled
10 RFP 1 due to “the disrupted supply chain and difficulty recruiting paramedics.” AMR did not request
11 the cancellation. AMR was prepared and ready to submit its proposal on March 1, 2022 in connection
12 with RFP 1. However, on information and belief, Sonoma County Fire was not ready to compete
13 against AMR as of February 18, 2022.

14 **G. The County Concealed Material Facts From AMR Regarding its Loss of**
15 **Exclusivity.**

16 42. After AMR signed the Initial Fourth Amendment, on February 23, 2022, the County
17 notified EMSA that it rescinded RFP 1.

18 43. Approximately a month later, on March 29, 2022, EMSA advised the County that
19 because “Sonoma County does not have an approved competitive process in place to grant exclusivity to
20 a provider in this area, the cancellation of the competitive process for Sonoma County EOA #1 reverts
21 the EMS sub-area to a **non-exclusive sub-area effective June 30, 2020.**” (“March 2022 EMSA
22 Letter”). EMSA further informed the County that in order for the LEMSA to designate this “sub-area as
23 exclusive under HSC 1797.224, a new approved competitive process will need to be conducted.” A
24 copy of the March 2022 EMSA Letter is attached hereto as **Exhibit I** and incorporated by reference.

25 44. The existence of the March 2022 EMSA Letter and its voiding of exclusivity in EOA-1
26 was a material event that the County should have disclosed to AMR. However, the County knowingly
27 withheld this fact. Further, the County could have appealed EMSA’s decision to protect AMR’s
28

1 exclusivity or requested a stay of EMSA's decision. On information and belief, the County chose not to
2 appeal or seek a stay of EMSA's decision to the detriment of AMR.

3 45. On May 24, 2022, the Initial Fourth Amendment came before the Board of Supervisors
4 for consideration and approval. The Director of DHS submitted a staff report that summarized the key
5 aspects of the Initial Fourth Amendment and represented to the Board of Supervisors that "[c]oncurrent
6 with the development of the settlement, the County engaged in good-faith negotiations with AMR
7 regarding the extension of the current contract." This DHS staff report did not include any disclosure
8 regarding the loss of exclusivity as of March 29, 2022.

9 46. Finally, this DHS staff report recognized that if there was no contract with AMR in place
10 by July 1, 2022, thereby converting EOA-1 to an non-exclusive zone, (a) "any existing Sonoma County
11 ambulance provider will be permitted to operate within the boundaries of EOA1 without contractual
12 oversight" by the LEMSA, (b) multiple "ambulance providers will compete for 911 ambulance calls
13 outside of EMS coordination," (c) "non-contracted ambulance providers will not be subject to existing
14 response time standards and will be able to charge unregulated fees for service," and (d) the County
15 "will no longer receive cost recovery in the amount of \$312,768 by the contract service provider for
16 contract oversight."

17 47. AMR was seeking implementation of a tiered response system by July 1, 2022. On or
18 about June 7, 2022, AMR signed the Final Fourth Amendment, which included a term regarding the
19 implementation of a delayed tiered response system to the detriment of AMR. This modification
20 occurred because the Board of Supervisors insisted on it during the May 24th board meeting.
21 Importantly, however, the Final Fourth Amendment did not amend the EOA Contract's exclusivity
22 rights. A copy of the Final Fourth Amendment is attached hereto as **Exhibit D** and incorporated by
23 reference.

24 48. Moreover, no one from the County advised AMR that EMSA had declared EOA-1 non-
25 exclusive prior to AMR signing the Final Fourth Amendment. This was a material omission that would
26 have significantly impacted the course of negotiations over the Final Fourth Amendment. AMR would
27 never have signed the Final Fourth Amendment on June 7, 2022 if it had known at the time that AMR's
28

1 exclusivity had been voided by EMSA. AMR did not learn about the March 2022 EMSA Letter until
2 February 2023.

3 **H. EMSA’s June 2022 Letter Regarding the Loss of Exclusivity of EOA-1.**

4 49. On or about June 13, 2022, unbeknownst to AMR, the County asked EMSA for an
5 extension of the exclusivity of EOA-1.

6 50. On June 16, 2022, the County executed the Final Fourth Amendment.

7 51. On June 17, 2022, EMSA denied the County’s request for an extension of exclusivity of
8 EOA-1 and advised the County that the “exclusivity for Sonoma County EMS Sub-Area #1 expired on
9 June 30, 2020. The EMS Authority recognizes Sonoma County EMS Sub-Area #1 as non-exclusive. In
10 order for [the LEMSA] to designate this sub-area as exclusive under HSC 1797.224, a new approved
11 competitive process will need to be conducted.” (“June 2022 EMSA Letter”). A copy of the June 2022
12 EMSA Letter is attached hereto as **Exhibit J** and incorporated by reference.

13 52. After receiving the June 2022 EMSA Letter, the County had an obligation to inform
14 AMR of EMSA’s denial of the request to extend exclusivity and EMSA’s second ruling that EOA-1 was
15 no longer exclusive. However, the County did not disclose these facts. Instead, on July 1, 2022, the
16 County permitted the Final Fourth Amendment to go into effect and misrepresented EOA-1 as AMR’s
17 exclusive zone for responding to all calls.

18 **I. Sonoma County Fire Sub-Contracted With a Private Ambulance Company to**
19 **Transport Patients in Sonoma County.**

20 53. In 2021, Sonoma County Fire sub-contracted with a private ambulance provider, Medic
21 Ambulance Service, Inc. (“Medic”), to provide additional ambulance capabilities to service the Eastern
22 Sonoma County Fire zone and “appurtenant ambulance service areas” in Sonoma County. In an
23 amendment to their contract dated May 26, 2022, Sonoma County Fire recited the fact that Sonoma
24 County Fire and the County entered into the Settlement Agreement that authorized Sonoma County Fire
25 “to provide emergency ground ambulance services in EOA-1 as **backup, stand-by, and/or mutual aid**
26 **basis.**” (Emphasis added). The amendment also increased Medic’s deployment by requiring Medic to
27 deploy three ambulances, provide two additional units in ready reserve, and purchase three new
28 ambulances to “meet the requirements described” in the amendment.

1 **J. February / March 2022: Sonoma County Fire Began Intruding into EOA-1.**

2 54. Prior to the Settlement Agreement, Sonoma County Fire was not authorized to respond to
3 calls within EOA-1 unless it was specifically agreed to by AMR. However, between March 1, 2022 and
4 June 30, 2022, Sonoma County Fire responded to 148 calls in EOA-1 without any request for assistance
5 from AMR. Sonoma County Fire's uninvited intrusions into EOA-1 harmed AMR and its ability to
6 operate EOA-1 in an organized, efficient and effective manner.

7 55. On July 12, 2022, the County notified Sonoma County Fire that mutual aid requires an
8 agreement or request for assistance from the ambulance zone provider (*i.e.*, AMR) and in "no case may
9 one provider unilaterally respond into another ambulance service zone without the expressed permission
10 of the designated zone provider."

11 56. After July 12, 2022, Sonoma County Fire increased its intrusions in EOA-1. From
12 August 1, 2022 through February 28, 2023, Sonoma County Fire responded to 405 calls in EOA-1
13 without any request for assistance from AMR. However, the County took no further steps to stop
14 Sonoma County Fire from intruding into EOA-1 even though the Settlement Agreement required
15 Sonoma County Fire to "honor the exclusivity of EOA-1."

16 **K. October 14, 2022: AMR Sent Written Notice to the County Relating to the Impact of**
17 **the Loss of Exclusivity.**

18 57. On August 3, 2022, the County advised AMR that EMSA had sent the County the June
19 2022 EMSA Letter, in which EMSA denied the County's request for an extension of exclusivity of
20 EOA-1 and advised the County that the "exclusivity for Sonoma County EMS Sub-Area #1 expired on
21 June 30, 2020." On or about September 2, 2022, AMR received the June 2022 EMSA Letter in response
22 to a Public Records Act request.

23 58. On October 14, 2022, AMR sent the Board of Supervisors, the County, the LEMSA, and
24 their counsel a letter notifying them, among other things, of the consequences of the loss of exclusivity
25 and the impact on EOA-1, the EOA Contract, and the Final Fourth Amendment ("October 14 Letter").
26 AMR enclosed a copy of the June 2022 EMSA Letter, not knowing at the time that EMSA had already
27 declared EOA-1 non-exclusive on March 29, 2022. A copy of the October 14 Letter is attached hereto
28 as **Exhibit K** and incorporated by reference.

59. In the October 14 Letter, AMR indicated that as a result of the LEMSA's and County's actions that caused a loss of exclusivity for EOA-1, with both County entities having failed to cure the issue with EMSA, the "terms and conditions of [its Contract] are no longer in effect and AMR is no longer operating under the terms of the [Contract]." AMR also indicated that notwithstanding this situation, "AMR will continue to provide emergency medical services as it has done over the decades while the County's request for proposal process...continues." AMR has, in fact, continued through the present to provide emergency medical services in EOA-1. In its October 14 Letter, AMR included a claim asking the County to return all "payments" in satisfaction of Government Code section 810, *et seq.*

60. On February 7, 2023, AMR and the County held a mediation, but were unable to resolve the dispute at issue here.

FIRST CAUSE OF ACTION

Rescission – California Civil Code section 1689

(Against the County and DOES 1-30)

61. AMR incorporates by reference paragraphs 1 through 60 as though fully set forth herein.

62. As alleged above, the County lost exclusivity for EOA-1 as a result of the County cancelling RFP 1 for EOA-1 pursuant to the Settlement Agreement with Sonoma County Fire in a case that had no relation to EOA-1. In addition to its agreement to cancel RFP 1, which resulted in EMSA re-designating EOA-1 to be "non-exclusive," in the Settlement Agreement the County authorized Sonoma County Fire to provide emergency ground ambulance services in EOA-1 on backup, stand-by, and/or mutual aid basis. By surrendering to Sonoma County Fire's demands, the County eviscerated AMR's right to operate all ambulance services exclusively in EOA-1 and caused the primary, contractual consideration under the EOA Contract to fail and thereby rendered the EOA Contract null and void.

63. Moreover, between March 29, 2022 and July 1, 2022, the County withheld material facts from AMR and knowingly misrepresented to AMR that EOA-1 was exclusive, and then permitted the Final Fourth Amendment to take effect July 1, 2022 even with the loss of exclusivity. The County knowingly withheld and misrepresented material facts from AMR to induce it to enter into the Final

1 Fourth Amendment. But for the County's actions, AMR would not have entered into the Final Fourth
2 Amendment as drafted.

3 64. On October 14, 2022, AMR provided notice of rescission. The County then claimed that
4 the rescission was of no effect, and then demanded that AMR comply with the EOA Contract, pay
5 liquidated damages, file contractually required reports, and make other contract payments.

6 65. Accordingly, AMR was, and is, entitled to rescission of the EOA Contract under
7 California Civil Code sections 1689(b)(1), (b)(2), (b)(4), (b)(5) and (b)(6). As alleged above, AMR has
8 provided notice of rescission to the County. However, to the extent further notice is required, AMR
9 intends for the service of the summons and complaint in this action to serve as notice of rescission of the
10 EOA Contract, and hereby demands that the County pay AMR rescission damages, restitution and
11 consequential damages in an amount to be determined at trial, but in excess of \$25,000.00.

12 **SECOND CAUSE OF ACTION**

13 **Breach of Implied Covenant of Good Faith and Fair Dealing**

14 **(Against the County and DOES 1-30)**

15 66. AMR incorporates by reference paragraphs 1 through 65 as though fully set forth herein.

16 67. In California, every contract imposes upon each party an implied duty of good faith and
17 fair dealing in its performance and its enforcement of the contract. This covenant of good faith and fair
18 dealing, implied by law in every contract, exists to prevent the County from unfairly frustrating AMR's
19 right to receive the benefits of the agreement actually made, that is, AMR's contractual right to
20 exclusivity for EOA-1.

21 68. Under the EOA Contract, the County had an implied duty of good faith and fair dealing.
22 As described above, AMR entered into the EOA Contract and all subsequent amendments and has at all
23 times relied on the County to comply with all applicable federal, state and local laws and regulations
24 relating to its function of managing the County's EMS system. (See Ex. A § 21.8.) AMR also relied on
25 the County to treat AMR fairly and honestly, and to avoid taking any action that would infringe on
26 AMR's longstanding rights to provide exclusive emergency ground ambulance services in EOA-1.

27 69. AMR did all or substantially all of the significant things that the EOA Contract required.
28

1 70. The County failed to perform its obligations under the EOA Contract and under the EMS
2 Act, and breached its obligation to deal with AMR in good faith. The County's failures include, but are
3 not limited to, the following:

- 4 a. Without any notice or input from AMR, the County entered into the Settlement
5 Agreement with Sonoma County Fire, and in violation of the EMS Act and the
6 County's EMS Ordinance agreed that Sonoma County Fire could provide
7 emergency ground ambulance services in EOA-1 on backup, stand-by, and/or
8 mutual aid basis.
- 9 b. Without any notice or input from AMR, the County agreed to cancel RFP 1 for
10 EOA-1 without obtaining prior authorization from EMSA and with the
11 consequence that cancelling RFP 1 would result in the loss of exclusivity for
12 EOA-1.
- 13 c. The County failed to undertake actions required by EMSA to preserve and
14 maintain the exclusivity of EOA-1 such as requiring the submission of all bids by
15 March 1, 2022 and completing the competitive bid process as outlined in RFP 1.
- 16 d. The County failed to appeal to EMSA or seek a stay of EMSA's ruling regarding
17 the loss of exclusivity relating to EOA-1.

18 71. The County also breached its duty of good faith and fair dealing by withholding material
19 facts relating to EOA-1 from AMR while seeking approval from the Board of Supervisions regarding
20 the Initial Fourth Amendment and the Final Fourth Amendment. For example, as discussed above, no
21 one from the County advised AMR that EMSA had declared EOA-1 non-exclusive on March 29, 2022
22 during the negotiations or at any other time prior to signing the Final Fourth Amendment. This was a
23 material omission that would have significantly impacted the course of negotiations or stopped them
24 altogether. Under the Initial Fourth Amendment and the Final Fourth Amendment of the EOA Contract,
25 AMR agreed to undertake additional obligations and risk because it was able to exclusively manage and
26 operate the EMS system in EOA-1 in the most effective manner without concerns that other providers
27 would disrupt its operations. AMR would never have permitted the Initial Fourth Amendment, as
28 drafted, to proceed forward for approval by the Board of Supervisors on May 24, 2023, if it had known

1 at the time that AMR's exclusivity had been voided by EMSA on March 29, 2022. Additionally, AMR
2 would never have signed the Final Fourth Amendment, as drafted, if it had known at the time that
3 AMR's exclusivity had been voided by EMSA on March 29, 2022.

4 72. The County also breached its duty of good faith and fair dealing by withholding material
5 facts such as receipt by the County of the June 2022 EMSA Letter again declaring the loss of exclusivity
6 relating to EOA-1 when it permitted the Final Fourth Amendment to take effect on July 1, 2022.

7 73. AMR has performed all of its obligations under the EOA Contract, except to the extent
8 that its obligations have been excused. The County, on the other hand, has not.

9 74. As a result of the County's conduct, AMR has suffered harm by such conduct including
10 but not limited to direct and consequential damages in an amount to be proven at trial. Moreover, the
11 County's reckless and unlawful conduct has directly undermined the organization and coordination of
12 EMS services in EOA-1 and AMR's ability to provide the services to the residents that it has faithfully
13 served for over thirty years.

14 **THIRD CAUSE OF ACTION**

15 **Declaratory Relief**

16 **(Against the County and DOES 1-30)**

17 75. AMR incorporates by reference paragraphs 1 through 74 as though fully set forth herein.

18 76. An actual, present controversy exists regarding AMR and the County about their rights
19 and obligations under the EOA Contract, including but not limited to, whether the EOA Contract is
20 unenforceable, null and void, and subject to rescission as a result of the conduct alleged above.

21 77. The County breached a valid, enforceable and material term in the EOA Contract by
22 which it agreed that AMR would be the exclusive provider of emergency ground ambulance in EOA-1
23 and that AMR's exclusivity rights "shall continue through the term of this Agreement, unless otherwise
24 mutually agreed upon." The County also breached its promise to "comply with all applicable federal,
25 state and local laws and regulations[.]" (Ex. A § 21.8.) Among other things, the County violated its
26 local EMS Ordinance, the EMS Act, and explicit EMSA directives by (a) failing to submit regular EMS
27 Plan Updates to EMSA, (b) cancelling RFP 1 and failing to hold a timely and lawful competitive bid
28 process to maintain exclusivity for EOA-1, (c) authorizing Sonoma County Fire to operate ambulance

1 services in EOA-1 in violation of AMR's exclusivity rights, and (d) treating EOA-1 as though it was
2 exclusive after receiving notice from EMSA that it was no longer exclusive.

3 78. As a result of the County's malfeasance, EOA-1 effectively no longer exists. The County
4 caused EMSA to find that "EOA-1 was no longer exclusive, retroactive to June 30, 2020, pending
5 completion of a competitive process to identify an exclusive provider." EMSA has now re-classified
6 EOA-1 as non-exclusive "County EMS Sub-Area #1" and several other providers are currently
7 operating in the area, including Sonoma County Fire and Medic. Sonoma County Fire now refers to the
8 area as "the former EOA-1."

9 79. In its October 14 Letter, AMR indicated that as a result of the LEMSA and County's
10 actions, the "terms and conditions of [its Contract] are no longer in effect and AMR is no longer
11 operating under the terms of the [Contract]." The County contends that AMR's notice was without
12 effect and that the terms of the EOA Contract remain in effect. In essence, the County contends that
13 AMR is obligated to perform as if it were still the exclusive provider of EMS services even though the
14 County has made it impracticable to do so.

15 80. By reason of the foregoing, an actual and justiciable controversy has arisen and now
16 exists between AMR and the County concerning their legal relationship. AMR desires a judicial
17 determination and declaration from this Court that the EOA Contract is unenforceable, null and void and
18 that AMR is excused from performing under the EOA Contract. The County has rendered performance
19 impracticable as contemplated in the EOA Contract. AMR seeks a judicial determination and
20 declaration from this Court that the County should provide restitution and disgorgement to AMR
21 including all liquidated damages, penalties and other payments that AMR may be entitled to under the
22 law.

23 81. AMR also requests injunctive relief against the County and the LEMSA to enjoin the
24 County and the LEMSA from enforcing any and all of the terms and obligations under the EOA
25 Contract.
26
27
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, AMR prays for relief and judgment, as follows:

3 1. For rescission of the EOA Contract and any amendment thereto pursuant to California
4 Civil Code section 1692;

5 2. For payment of rescission damages, restitution, and consequential damages to AMR in an
6 amount to be determined at trial pursuant to California Civil Code section 1692;

7 3. For a declaration that the EOA Contract and any amendment thereto is unenforceable,
8 null and void;

9 4. For a declaration that AMR's obligations under the EOA Contract and any amendment
10 thereto are extinguished, in whole or in part, by rescission pursuant to California Civil Code section
11 1692;

12 5. For a declaration that AMR is released and excused from any and all obligations
13 contained in the EOA Contract and any amendment thereto;

14 6. For injunctive relief enjoining the County and the LEMSA from enforcing any and all of
15 the terms and obligations under the EOA Contract;

16 7. For payment of compensatory and consequential damages, including lost profits, and any
17 other applicable damages in an amount to be determined at trial, but in excess of \$25,000.00;

18 8. For AMR's costs and attorneys' fees to the extent permitted under the law and the EOA
19 Contract; and

20 9. Such other and further legal remedies and equitable relief, whether similar or different, as
21 this Court deems appropriate and just.

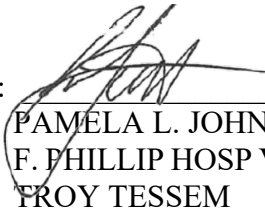
DEMAND FOR JURY TRIAL

AMR hereby prays and requests a trial by jury as to all applicable causes of action under California law.

Date: March 29, 2023

FOLEY & LARDNER LLP

By:



PAMELA L. JOHNSTON
F. PHILLIP HOSP V
TROY TESSEM

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