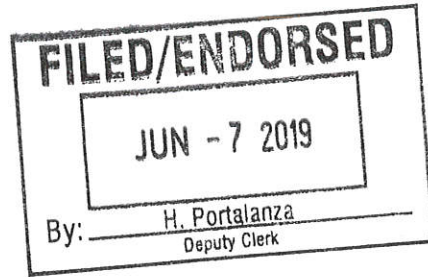


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34-2019-80003163

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11 CALIFORNIA FIRE CHIEFS
12 ASSOCIATION, INC., a nonprofit
13 corporation,

13 Petitioner and Plaintiff,

14 vs.

15 CALIFORNIA EMERGENCY
16 MEDICAL SERVICES AUTHORITY,
17 a department of the State of California,

17 Respondent and Defendant.

Case No.:

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(Civ. Proc. Code §§ 526, 1060, 1085)

19 On behalf of its more than 850-member fire service agencies, Petitioner and
20 Plaintiff California Fire Chiefs Association, Inc. ("CalChiefs") alleges:

21 **INTRODUCTION**

22 1. Respondent and Defendant California Emergency Medical Services
23 Authority ("EMSA"), the State of California's regulatory agency for emergency
24 medical services ("EMS"), has been operating in violation of mandatory state law for
25 at least 30 years.

26 2. As a state agency, EMSA must comply with the Administrative
27 Procedures Act ("APA"), Cal. Gov't Code §§ 11340 et seq., 11370 et seq., which
28

1 contains certain mandatory procedures for the adoption of regulations and prohibits the
2 use and enforcement of so-called “underground regulations.”

3 3. Underground regulations are regulations that have not been adopted under
4 the APA. Underground regulations and state agency determinations based on
5 underground regulations are void and have no legal effect.

6 4. California regulates EMS in the Emergency Medical Services System and
7 the Prehospital Emergency Medical Care Personnel Act (“EMS Act”), Cal. Health &
8 Safety Code § 1797, et seq. It provides that “[EMSA] shall develop planning and
9 implementation guidelines for [EMS] systems.” Cal. Health & Safety Code §
10 1797.103.

11 5. Beginning in 1985, EMSA issued the following EMS system guidelines
12 containing EMSA’s policies, procedures, rules, and criteria relating to California local
13 governments’ EMS systems and their administration and provision of emergency
14 ambulance and medical services under Health & Safety Code sections 1797.201
15 (“Section 1797.201”) and 1797.224 (“Section 1797.224”): (a) EMSA Guideline #141:
16 “Competitive Process for Creating Exclusive Operating Areas” (1985 & 1997)
17 (“Guideline 141”); (b) Draft EMSA Guideline #141: “Review Criteria and Policy for
18 Transportation and Exclusive Operating Components of the EMS Plan” (2d ed. 2008)
19 (“Guideline 141-B”); and (c) EMSA Guideline #310-01: “EMS System Coordination
20 and HS 1797.201 in 2010” (2010) (“Guideline 310-01”). Even though these guidelines
21 implement, interpret and make specific the EMS Act, EMSA never promulgated them
22 as regulations as required by the APA.

23 6. On April 4, 2019, EMSA filed with the Office of Administrative Law
24 (“OAL”) a certification pursuant to Cal. Code Regs., tit. 1, § 280(a) that it “will not
25 issue, use, enforce, or attempt to enforce” alleged underground regulations in
26 Guidelines 141, 141-B, and 310-01 (“Section 280 Certification”). A true and correct
27 copy EMSA’s Section 280 Certification is attached as Exhibit 1 to this Petition and
28 incorporated herein by reference.

1 11. Respondent and Defendant EMSA is an agency of the State of California
2 and a department within the California Health & Human Services Agency. EMSA’s
3 business offices are located in Rancho Cordova, California.

4 **JURISDICTION AND VENUE**

5 12. This Court has jurisdiction to issue writs of mandate pursuant to article
6 VI, section 10, of the California Constitution and Code of Civil Procedure section
7 1085. The Court has jurisdiction to grant declaratory and injunctive relief pursuant to
8 Code of Civil Procedure sections 525, 526, 526a and 1060.

9 13. Venue is proper in the County of Sacramento pursuant to Code of Civil
10 Procedure sections 393(b), 395 and 401.

11 **GENERAL ALLEGATIONS**

12 **The APA**

13 14. The APA is a detailed statutory scheme that sets forth state agencies’
14 mandatory duties related to the adoption and enforcement of regulations.

15 15. EMSA must adopt rules and regulations in accordance with the APA’s
16 requirements. Cal. Health & Safety Code § 1797.107.

17 16. EMSA shall not “issue, utilize, enforce, or attempt to enforce any
18 guideline, criterion, bulletin, manual, instruction, order, standard of general
19 application, or other rule” unless it has been properly adopted as a regulation pursuant
20 to the APA’s procedures. Cal. Gov’t Code § 11340.5(a).

21 **The EMS Act And Guidelines 141, 141-B, And 310-01**

22 17. The EMS Act sets forth a comprehensive statutory scheme regulating
23 virtually every aspect of EMS in California. See, e.g., Cal. Health & Safety Code §§
24 1797.1–1797.7. In enacting the EMS Act, the Legislature opted for what is largely a
25 two-tier system of regulation for EMS.

26 18. EMSA occupies the first tier, and it “is responsible for the coordination
27 and integration of all state activities concerning [EMS].” Cal. Health & Safety Code §
28 1797.1; see also id. § 1797.100. EMSA is required to “develop planning and

1 implementation guidelines for [EMS] systems” which address, among other things,
2 patient transportation and EMS system organization and management. Id., at §
3 1797.103. It is also required to “receive plans for the implementation of [EMS] and
4 trauma care systems from local EMS agencies.” Id., at § 1797.105(a).

5 19. County-affiliated local EMS agencies (“LEMSAs”) occupy the second
6 tier. LEMSAs are responsible for their counties’ EMS systems. Among other things,
7 LEMSAs must develop a formal plan for the local EMS system (a “local EMS plan”)
8 in accordance with EMSA’s guidelines and submit the plan to EMSA on an annual
9 basis for the latter’s review and approval, id., at §§ 1797.204, 1797.250, 1797.254.

10 20. Health & Safety Code section 1797.85 (“Section 1797.85”) authorizes
11 LEMSAs to create exclusive operating areas (“EOAs”) for emergency ambulance
12 services and EMS providers. Pursuant to Section 1797.224, LEMSAs create EOAs
13 through a “competitive process” (i.e., competitively bid procurements) or by
14 “grandfathering” existing providers that have operated in the same manner and scope
15 and without interruption since January 1, 1981. LEMSAs must submit to EMSA any
16 EOAs and their “competitive process[es],” if applicable, as part of their local EMS
17 plans.

18 21. EMSA has the authority to review both types of EOAs and disapprove
19 them if they are “not ‘concordant and consistent with . . . both the guidelines and
20 regulations, established by [EMSA].” Cal. Health & Safety Code § 1797.105(b).

21 22. The Legislature “also accorded a significant role in the governance of
22 [EMS] to cities and fire [protection] districts” operating pursuant to Section 1797.201.
23 Valley Med. Transp., Inc. v. Apple Valley Fire Prot. Dist., 17 Cal.4th 747, 754 (1998).

24 23. As construed by the courts, “[Section 1797.201] gives cities and fire
25 [protection] districts that administered prehospital EMS on June 1, 1980, the right to
26 continue to do so.” Id., at 761. Such administrative authority allows cities and fire
27 protection districts “to maintain control of the services they operated or contracted for
28 in June, 1980, and permit[s] them to make decisions as to the appropriate manner of

1 providing those services.” Cnty. of San Bernardino v. City of San Bernardino, 15
2 Cal.4th 909, 930 (1997).

3 24. Counties and LEMSAs “may not contravene the authority of eligible cities
4 and fire [protection] districts to continue the administration of their prehospital EMS
5 without the latter's consent,” San Bernardino, 15 Cal.4th at 924, or use Section
6 1797.224 EOAs “to unilaterally displace a city or fire district continuing to operate
7 [EMS]” under Section 1797.201, Apple Valley, 17 Cal.4th at 759.

8 25. Over time, EMSA has used the EOA approval process to purport to
9 determine local governments’ rights to provide EMS and ambulance services on an
10 exclusive or nonexclusive basis under Sections 1797.201 and 1797.224 and has done
11 so without affording them notice or an opportunity to be heard.

12 26. Guidelines 141, 141-B, and 310-01 contain, among other things, EMSA’s
13 policies, procedures, rules, and criteria interpreting and implementing Sections
14 1797.85, 1797.201, and 1797.224.

15 27. On July 12, 1985, EMSA Interim Director George V. Moorhead issued a
16 memorandum to all County/Regional EMS Administrators and County Administrative
17 Officers entitled “Competitive Process for Creating Exclusive Operating Areas.” In
18 February of 1997, EMSA reissued the Moorhead memorandum without substantive
19 change as Guideline 141 (Ex. 2 at Exs. A, B).

20 28. Guideline 141’s stated purpose is to “delineate a competitive process for
21 awarding exclusive operating areas for emergency response” under Section 1797.224.
22 It provides: (a) that a LEMSA must create and award EOAs by developing and issuing
23 a Request for Proposal (“RFP”); (b) mandatory requirements for the contents of such
24 RFPs, any responding proposals, and the resulting contracts with providers; and (c)
25 mandatory procedures for the submission, receipt, evaluation, and rejection of
26 proposals, bid protests, and cancellations of procurements (collectively “Guideline 141
27 Rules and Criteria”) (see Ex. 2 at Ex. B at §§ I-VII, IX-XI).

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1 29. On May 15, 2008, EMSA Chief Deputy Director Daniel R. Smiley issued
2 a memorandum to all LEMSA Administrators and Medical Directors entitled “30-Day
3 Review of Ambulance EOA Review Criteria and Zone Listing.” Guideline 141-B was
4 attached to the Smiley memorandum (Ex. 2 at Ex. C). According to the Smiley
5 memorandum, Guideline 141-B is “a compilation of review criteria and policy used by
6 EMSA to review [EOAs],” under Section 1797.224 (Ex. 2 at Ex. C at 1).

7 30. Guideline 141-B contains the following EMSA policies, rules, and
8 criteria, all of which are regulations within the meaning of the APA:

9 a. EMSA’s processes, policies, rules and criteria relating to the award
10 of EOAs through RFPs (Ex. 2 at Ex. C at §§ II, III.B, III.D, IV.B.1, IV.D, V)
11 (collectively, “RFP Rules and Criteria”), including, but not limited to:

12 (1) The requirement that LEMSAs “conduct a fair and open
13 competitive process with a transparent and equitable applicant rating
14 system” (id. at § IV.D);

15 (2) The requirement that a “competitive process shall be
16 conducted at least every 10 years” (id. at § IV.D); and

17 (3) EMSA may withdraw its approval of “competitive process”
18 Section 1797.224 EOAs if a LEMSA fails to follow the RFP
19 requirements, fails to implement the EMSA-approved RFP as written,
20 modifies the RFP without EMSA’s approval, or fails to follow the
21 selection criteria described in the RFP (id. at § IV.D).

22 b. EMSA’s policies, rules and criteria relating to its ongoing review of
23 ambulance service contracts corresponding to EOAs awarded by LEMSAs (Ex.
24 2 at Ex. C at §§ II, IV.D, V.H) (collectively, “Resulting Contract Rules and
25 Criteria”), including, but not limited to:

26 (1) Contracts for “competitive process” EOAs are limited to a
27 maximum 10-year term (including extensions and renewals (Ex. 2 at Ex.
28 C at §§ II, V.H));

1 (2) “Without a timely competitive process, [EMSA] is unable to
2 assure that ambulance contract terms do not result in an anticompetitive
3 environment and restrict trade in a given geographic area” (*id.* at § IV.D);
4 and

5 (3) EMSA may withdraw its approval of “competitive process”
6 Section 1797.224 EOAs if the EOA contract extends beyond 10 years,
7 selected providers’ breach their contracts’ terms, or LEMSAs amend the
8 contracts to include terms that are materially different from terms found in
9 the EMSA-approved RFP (*id.* at § IV.D).

10 c. EMSA’s policies, rules and criteria relating to its review of EOAs
11 awarded by LEMSAs pursuant to Section 1797.224’s “grandfathering” process,
12 (Ex. 2 at Ex. C at §§ II, IV.C) (collectively, “Manner and Scope Rules and
13 Criteria”), including but not limited to:

14 (1) Defining “manner and scope” in Section 1797.224 to mean
15 “[t]he economic distribution of the marketplace within an EMS area or
16 sub-area. Manner and scope includes [sic] consideration of geographic
17 changes to the EMS operating area or sub-area, interruption in services,
18 [and] free entry and exit in the marketplace” (*id.* at § II);

19 (2) Defining “boundary changes” to mean “[a]ny reconfiguration
20 of the geographic borders previously designated by the LEMSA for each
21 operating area” (*id.*);

22 (3) Criteria to determine whether there has been a change in
23 “manner and scope” that would impact a provider’s eligibility for
24 “grandfathering” (*id.* at § IV.C.1); and

25 (4) EMSA may withdraw its approval of “grandfathering”
26 Section 1797.224 EOAs if there are “[s]ignificant boundary changes of
27 the area” or “change[s] of manner and scope” (*id.* at § IV.C.4).

28 ///

1 d. EMSA’s policies, rules and criteria relating to Section 1797.224
2 EOAs and Section 1797.201 cities and fire districts (Ex. 2 at Ex. C at § IV.C.3)
3 (collectively, “Section 1797.201 Rules and Criteria”).

4 e. EMSA’s policies, rules and criteria relating to exclusive services
5 and state action antitrust immunity from federal antitrust laws (Ex. 2 at Ex. C at
6 §§ I.E, II, III.B, IV.B, IV.B.2, IV.C.3, IV.C.4, IV.D) (collectively “Exclusivity
7 & Antitrust Immunity Rules and Criteria”), including, but not limited to:

8 (1) Local governments enjoy state action antitrust immunity only
9 for “activities that are specifically authorized by the state and that are
10 subject to state oversight” pursuant to Sections 1797.85 and 1797.224 (Ex.
11 2 at Ex. C at § I.E.1);

12 (2) Cnty. Commc’ns Co. v. City of Boulder, 455 U.S. 40 (1982),
13 the EMS Act, and subsequent California state court decisions “have
14 superseded” local ordinances established by counties to “restrict
15 competition among [ambulance] providers” (id. at § I.E.2);

16 (3) “The only method to restrict competition in the ambulance
17 marketplace is through adherence to provisions of the EMS Act/Health
18 and Safety Code” (id. at § I.E.2);

19 (4) “If a LEMSA chooses to establish EOAs that are restricted
20 to designated providers, it must do so in accordance with [Sections
21 1797.85 and 1797.224]” (id. at § IV.B.2);

22 (5) Cities and fire districts administering their own EMS systems
23 under Section 1797.201 are not entitled to exclusivity unless they also
24 satisfy “the requirements established in Section 1797.224” (id. at §
25 IV.C.3);

26 (6) EMSA may withdraw its approval of “competitive process”
27 Section 1797.224 EOAs if bidders engage in unfair, i.e., anticompetitive,
28 bidding practices or procuring agencies engage in “unfair competitive

1 process procedures or selection[s]” (id. at § IV.D); and

2 (7) Once EMSA withdraws its approval of a “competitive
3 process” or “grandfathering” Section 1797.224 EOA, the EOA “will not
4 receive protection from antitrust actions” (id. at §§ IV.C.4, IV.D).

5 31. In April 2010, EMSA senior management and staff issued Guideline No.
6 310-01, entitled “EMS System Coordination and HS 17971.201 in 2010,” as a
7 “discussion document” for a May 4, 2010 stakeholder workshop (Ex. 3 at Ex. A).

8 32. Guideline 310-01 contains the following EMSA policies, rules, and
9 criteria, all of which are regulations within the meaning of the APA:

10 a. EMSA’s official interpretation of Section 1797.201 and its
11 relationship to Sections 1797.85 and 1797.224, and federal antitrust law (id. at 1,
12 9-24) (collectively, “Section 1797.201 Statutory Constructions”).

13 b. Criteria to determine whether a city or fire district is eligible to
14 operate pursuant to Section 1797.201 (id. at 12) (“Section 1797.201 Eligibility
15 Criteria”).

16 c. EMSA’s policies, rules, and criteria regarding whether Section
17 1797.201 cities or fire districts may provide emergency ambulance and medical
18 services on an exclusive basis (id. at 10, 14, 19-22, 24 (collectively “Section
19 1797.201 Exclusivity Rules”), including, but not limited to:

20 (1) “[Section 1797.201] does not grant exclusivity for emergency
21 ambulance, advanced life support or limited advanced life support
22 services.” (Id. at 10, 21).

23 (2) “[U]nless the provisions of exclusivity as defined under
24 [Sections 1797.85 and 1797.224] have been followed, the restriction of
25 [paramedic] services may not be possible.” (Id. at 14).

26 (3) “The creation of [EOAs] is expressly permitted in [Sections
27 1797.85 and 1797.224].” (Id. at 19).

28 (4) “[Section 1797.201] does not grant any rights for a city or

1 fire district to ambulance zone exclusivity without a competitive process.”
2 (Id. at 21).

3 (5) “[Section 1797.201] only provides for the right to service the
4 boundaries of that city or fire district.” (Id. at 21).

5 (6) “With respect to ambulance service exclusivity, a City or Fire
6 District cannot claim to both hold [Section 1797.201] rights, and also
7 simultaneously receive the benefits of exclusivity under [Section
8 1797.224], as an integrated part of an EMS system.” (Id. at 22).

9 (7) “Ambulance services provided by cities or fire districts do
10 not obtain exclusivity from [Section 1797.201].” (Id. at 24).

11 33. Although they are “regulations” within the meaning of the APA, EMSA
12 did not adopt any of the interpretations, rules, policies, and criteria in Guidelines 141,
13 141-B, or 310-10 pursuant to the APA.

14 34. In 2010, the California Court of Appeal determined that Guideline 141-
15 B’s Manner and Scope Rules and Criteria were underground regulations. It instructed
16 EMSA that if it wished to “validate [the Manner and Scope Rules and Criteria] for
17 future cases,” EMSA would have to formally adopt them as regulations under the
18 APA. Cnty. of Butte v. Emergency Med. Serv. Auth., 187 Cal.App.4th 1175, 1202
19 (2010).

20 35. Following Butte, EMSA undertook to formally adopt regulations relating
21 to local EMS systems through a stakeholder taskforce. That effort stalled in 2016.
22 EMSA has not made any effort to finalize its regulations since 2016.

23 36. EMSA nevertheless continues using and enforcing the underground
24 regulations in Guidelines 141, 141-B, and 310-01.

25 **CalChiefs’ OAL Petitions And EMSA’s Section 280 Certification**

26 37. CalChiefs filed its petitions with OAL on February 4, 2019 (see Exs. 2-4).
27 38. OAL Petition 1 challenged Guideline 141’s rules and criteria as well as
28 Guideline 141-B’s RFP Rules and Criteria, Resulting Contract Rules and Criteria,

1 Manner and Scope Rules and Criteria, Section 1797.201 Rules and Criteria, and
2 Exclusivity & Antitrust Immunity Rules and Criteria (Ex. 2 at 3-5). CalChiefs
3 supported OAL Petition 1 with examples of EMSA enforcing or supplementing its
4 rules and criteria in Guidelines 141 and 141-B and making determinations regarding
5 Section 1797.224 EOAs for the City and County of San Francisco, as well as Orange,
6 Alameda, and Contra Costa Counties (id. at 5-7; id. at Exs. D-G).

7 39. OAL Petition 2 challenged Guideline 310-01’s Section 1797.201
8 Statutory Constructions, Eligibility Criteria, and Exclusivity Rules in Guideline 310-01
9 (Ex. 3 at 3-4). CalChiefs discussed instances of EMSA enforcing or supplementing its
10 rules and criteria in Guideline 310-01 and making determinations regarding twelve
11 Orange County cities’ Section 1797.224 EOAs and Section 1797.201 exclusive rights
12 and contracts (id. at 11; id. at Ex. D).

13 40. OAL Petition 3 challenged Guideline 141-B’s Manner and Scope Rules
14 and Criteria and Guideline 310-01’s Section 1797.201 Eligibility Criteria in relation to
15 local governments’ consolidation or reorganization pursuant to the Cortese-Knox-
16 Hertzberg Local Government Reorganization Act of 2000 (“LAFCO Act”), Cal. Gov’t
17 Code §§ 56000, et seq. and Local Agency Formation Commission (“LAFCO”)
18 proceedings (Ex. 4 at 12-13; id. at Ex. B). CalChiefs discussed instances of EMSA
19 enforcing or supplementing its rules and criteria in Guidelines 141-B and 310-01 and
20 making determinations regarding the San Bernardino County Fire Protection District’s
21 and San Ramon Valley Fire Protection District’s Section 1797.224 EOAs and Section
22 1797.201 exclusive rights and contracts (id. at 10-13; id. at Exs. C-F).

23 41. On April 4, 2019, EMSA responded to CalChiefs’ petitions by filing with
24 OAL its Section 280 Certification, certifying that it “will not issue, use, enforce, or
25 attempt to enforce the alleged underground regulations contained in” Guidelines 141,
26 141-B, and 310-01 (Ex. 1 at 1).

27 42. By filing its Section 280 Certification, EMSA also certified “that it has
28 stopped the practice[s] alleged by [CalChiefs’ three petitions] to be . . . underground

1 regulation[s].” OAL, Initial Statement of Reasons, Amendment To Title 1, CA Code
2 Of Regulations Regarding Enforcement Of The Rulemaking Provisions Of The
3 Administrative Procedure Act at 8 (Sept. 16, 2005).

4 **EMSA Continues To Use, Enforce, or Attempt To Enforce Its Unlawful**
5 **Underground Regulations, Creating Regulatory Uncertainty**

6 *EMSA EOA Determinations*

7 43. EMSA publishes, periodically updates, and distributes a document called
8 Ambulance Zones, Ground: Exclusive Operating Areas Status Determinations by
9 EMSA (“EMSA EOA Determinations”). This document collects all of EMSA’s
10 determinations regarding EOAs submitted to it by LEMSAs, including its
11 determinations that such EOAs are “exclusive” or “non-exclusive.”

12 44. On April 15, 2019, CalChiefs’ counsel wrote a demand letter to Dr.
13 Backer, a true and correct copy of which is attached as Exhibit 5 to this Petition and
14 incorporated herein by reference. CalChiefs demanded, among other things, that
15 EMSA “remove from [its] website all versions of the [EMSA EOA Determinations]
16 document and cease and desist from making and publishing such determinations until
17 EMSA properly enacts regulations governing” its review of Section 1797.224 EOAs,
18 consistent with its Section 280 Certification (Ex. 5 at 1, 3).

19 45. EMSA rejected this demand in an April 25, 2019 letter from EMSA
20 counsel to CalChiefs, a true and correct copy of which is attached as Exhibit 6 to this
21 Petition and incorporated herein by reference.

22 46. EMSA thereafter published an updated version the EMSA EOA
23 Determinations document with its determinations as of May 9, 2019 on its website at
24 <https://emsa.ca.gov/wp-content/uploads/sites/71/2019/05/050919-Ambu-Zone.pdf>. A
25 true and correct copy of the May 9, 2019 version of the EMSA EOA Determinations
26 document is attached as Exhibit 7 to this Petition and incorporated herein by reference.
27 The document contains EMSA’s determinations regarding the twelve Orange County
28 cities, San Bernardino County Fire Protection District, and San Ramon Valley Fire

1 Protection District, which are void because they were made pursuant to the
2 underground regulations in Guidelines 141, 141-B, and 310-01 (compare Ex. 7 at 12,
3 20, 22, 44-45, with Ex. 2 at Exs. A-C, E; Ex. 3 at Exs. A-D; Ex. 4 at Exs. C-F).

4 ***Monterey County***

5 47. Effective January 31, 2010, Monterey County contracted with a private
6 ambulance provider for the exclusive provision of all ambulance services within its
7 EOA. That contract expires on January 31, 2020. On information and belief EMSA
8 told Monterey County and the Monterey EMS Agency sometime prior to January 10,
9 2019 that its current EOA provider contract may not be extended.

10 48. On January 10, 2019, Monterey County and the Monterey County EMS
11 Agency issued RFP #10671 soliciting providers to service a countywide EOA for all
12 ambulance services (emergency and nonemergency). Among other things, the RFP
13 required the winning bidder to operate as the county's exclusive dispatcher for all
14 EMS-related calls (including for first responder public safety agencies) and reclassified
15 certain suburban areas of the county as rural areas with response times that were four
16 minutes greater than under the prior EOA provider contract.

17 49. The Monterey County EMS Agency held a mandatory bidders'
18 conference at its offices on January 29, 2019. Seven interested bidders attended.

19 50. RFP #10671 quickly drew criticism from EMS system stakeholders and
20 county residents, who faulted the Monterey EMS Agency for failing to provide for
21 adequate public participation in the process used for developing the RFP.

22 51. At its March 22, 2019 meeting, the Monterey County Emergency Medical
23 Care Committee (and advisory body to the county and the LEMSA) voted to
24 recommend that the Monterey County Board of Supervisors cancel the procurement.
25 A true and correct copy of Monterey County Emergency Medical Care Committee
26 Chair Jodi Schaffer's letter to the Monterey County Board of Supervisors, requesting
27 that the procurement be cancelled is attached as Exhibit 8 to this Petition and
28 incorporated herein by reference.

1 52. On March 26, 2019, Monterey County EMS Agency EMS Bureau Chief
2 Michael Petrie wrote a letter to EMSA Director Dr. Howard Backer requesting
3 EMSA’s “technical assistance to assure that the RFP process used is objective,
4 unbiased, and does not allow for interference” and accusing the Monterey County
5 Emergency Medical Care Committee of interfering with the competitive process. A
6 true and correct copy of EMS Bureau Chief Petrie’s March 26, 2019 letter is attached
7 as Exhibit 9 to this Petition and incorporated herein by reference.

8 53. EMSA responded to EMS Bureau Chief Petrie in an April 11, 2019 letter
9 from EMS Systems Division Assistant Chief Angela Wise, a true and correct copy of
10 which is attached as Exhibit 10 to this Petition and incorporated herein by reference.

11 54. Contrary to its Section 280 Certification, EMSA’s April 11, 2019 letter
12 used, enforced, or attempted to enforce its underground regulations in Guidelines 141
13 and 141-B as follows:

14 a. “In accordance with [Section 1797.224 and Health and Safety Code
15 section 1797.200], it is the sole responsibility of the [LEMSA] to designate
16 [EOAs] and develop, conduct, and implement its competitive process for
17 selecting providers.” (Id. at 1).

18 b. “Monterey County EMS Agency must conduct a process that is fair,
19 competitive, and ensures political effects of County involvement and EMS
20 system participants do not influence the local EMS agency.” (Id.).

21 c. “Should the Monterey County EMS Agency deem its competitive
22 process to be interfered with and negatively influenced by political special
23 interests, it may unilaterally cancel the bid process.” (Id.).

24 d. “However, please note that upon contractual conclusion, and the
25 event the competitive process is not completed by January 31, 2020, the
26 ambulance zone covered by the original competitive process of January 31,
27 2010, will transition to a non-exclusive operating area on February 1, 2020.” (Id.
28 at 1-2).

1 55. The Monterey County Board of Supervisors did not cancel the RFP prior
2 to its closing date.

3 56. Although seven potential bidders expressed interest, only the incumbent
4 private ambulance provider submitted a bid by the May 5, 2019 closing date. On
5 information and belief, the average cost of an advanced life support ambulance ride
6 under the incumbent’s proposal would have been about \$10,000, which would be the
7 costliest ambulance ride in the nation. That astronomical cost was due in part to the
8 RFPs’ requirement that the selected contractor act as the dispatcher for all EMS-related
9 calls in the county with the provider passing along the cost of a new dispatch facility,
10 equipment, and employees to consumers.

11 57. The Monterey County EMS Agency rejected all bids and cancelled the
12 procurement process for RFP #10671 in a May 21, 2019 letter from the Monterey
13 Administrative Office, Contract Purchasing Division, Management Analyst Gina
14 Encallado to the county’s incumbent ambulance provider, a true and correct copy of
15 which is attached as Exhibit 11 to this Petition and incorporated herein by reference.
16 Notably, Management Analyst Encallado wrote that the Monterey County EMS
17 Agency cancelled the procurement because “[it] has determined its needs can be
18 satisfied by a less expensive method,” which is a near verbatim quote from Guideline
19 141 Rules and Criteria for procurement cancellations (compare Ex. 11 at 1, with Ex. 2
20 at Ex. B at § XI.1.g).

21 ***Santa Clara County***

22 58. In 2010, Santa Clara County issued RFP #PHD-10-06 seeking an
23 ambulance provider for its EOA. Effective July 1, 2011, Santa Clara County entered
24 into an exclusive contract with a private ambulance provider to provide emergency
25 ambulance services in the county’s EOA. The contract has a five-year term and allows
26 for two optional three-year extensions. Over time, the county and its provider
27 amended the contract six times including one three-year extension. The contract’s
28 expiration date is now June 30, 2019.

1 59. In an April 24, 2017 letter from Dr. Backer (executed by Mr. Smiley) to
2 Santa Clara County EMS Agency EMS Director Jackie Lowther, EMSA disapproved
3 the county’s 2015 local EMS plan update. A true and correct copy of Dr. Backer’s
4 April 24, 2017 letter to EMS Director Lowther is attached as Exhibit 12 to this Petition
5 and incorporated herein by reference.

6 60. Applying the underground regulations in Guideline 141-B, EMSA
7 purported to find that the amendments made material changes to the contract “beyond
8 what was included in the approved RFP, and therefore constitutes a failure to
9 implement the EMS plan as approved. . . . Therefore, the approved RFP and ensuing
10 operational contract, as implemented by [Santa Clara County EMS Agency] to date,
11 does [sic] not ultimately provide a fair and level playing field for all bidders, and
12 consequently [EMSA] cannot continue our prior approval of the competitive process as
13 part of the local EMS plan.” (Id. at 2-3). EMSA then made the following
14 determinations: (1) “[EMSA] is rescinding its approval of RFP #PHD 10-06, as part of
15 the 2010 EMS plan, effective immediately, for failure to continue to implement the
16 RFP as approved”; and (2) “[EMSA] is staying the decision to rescind until June 30,
17 2019. This effectively means that [Santa Clara County EMS Agency] must initiate and
18 complete a new competitive process if the [LEMSA] wishes the sub-area to continue to
19 be an [EOA] past June 30, 2019, and to receive state action immunity.” (Id. at 3).

20 61. Santa Clara County issued an RFP for the EOA in 2018. After receiving a
21 single, nonresponsive bid from the incumbent private ambulance provider, the county
22 cancelled the procurement.

23 62. On May 21, 2019, the Santa Clara County Board of Supervisors was
24 asked to approve a seventh amendment to the county’s exclusive emergency
25 ambulance services contract. A true and correct copy of the Santa Clara County Board
26 of Supervisors’ May 21, 2019 Regular Meeting Agenda, agenda item 22, a copy of the
27 proposed amendment, and a Summary of Proceedings are attached as Exhibit 13 to this
28 Petition and incorporated herein by reference.

1 73. CalChiefs, on behalf of its members, has a beneficial interest in the
2 issuance of a writ of mandate, apart from that of the public at large, in that its members
3 provide EMS and ambulance services are subject to EMSA's regulatory authority and
4 have been subjected to EMSA's void underground regulations and void determinations
5 of their legal rights pursuant to such void underground regulations.

6 74. CalChiefs also has citizen standing to seek mandate relief. The statutes
7 and decisional law cited in this Petition establish important public rights in that the
8 provision of EMS by local government entities is critical to the public peace, health,
9 and safety of the state, which must not be jeopardized, disrupted, or interfered with by
10 EMSA's unlawful rulemaking and enforcement in violation of mandatory state law.
11 EMSA's public duties to refrain from acting unlawfully and in excess of its statutory
12 authority and to comply with the APA and the Section 280 Certification is therefore
13 imperative, and the public need to do so significant.

14 75. CalChiefs, its members, California local governments, and the public will
15 suffer severe and irreparable injury if EMSA's unlawful and arbitrary actions in
16 violation of mandatory state law are not enjoined.

17 76. CalChiefs, its members, and the public do not have a plain, speedy, and
18 adequate remedy at law to challenge EMSA's failure to comply with the APA and its
19 implementing regulations.

20 77. CalChiefs therefore requests that the Court issue a writ of mandate
21 commanding EMSA to:

- 22 a. Comply with the Section 280 Certification;
- 23 b. Set aside EMSA's determinations regarding local governments'
24 exclusive rights to provide and administer emergency ambulance and medical
25 services made pursuant to its underground regulations in Guidelines 141, 141-B,
26 and 310-01;
- 27 c. Remove EMSA's void determinations, including all versions of the
28 EMSA EOA Determinations document, from its website;

1 d. Making any further determinations regarding local governments'
2 rights under Sections 1797.201 and 1797.224 until such time as it promulgates
3 valid and effective regulations addressing such matter in compliance with the
4 APA.

5 82. Absent such injunctive relief, EMSA's unlawful and wrongful conduct
6 will cause great and irreparable injury or waste to CalChiefs, its members, and
7 California local governments in that they: (a) will be subjected to Defendants'
8 unlawful and continuing efforts to issue, use, enforce, or attempt to enforce EMSA's
9 void underground regulations and determinations in violation of the APA and contrary
10 to EMSA's Section 280 Certification; (b) will be forced to incur unnecessary costs,
11 burdens, and expenses in attempting to comply with Sections 1797.85, 1797.201,
12 1797.224 and the EMS Act without the benefit of any valid regulations issued by
13 EMSA; (c) will be forced to incur unnecessary costs, burdens, and expenses in
14 establishing and safeguarding their rights and obligations under the EMS Act and other
15 state statutes related to EMS and ambulance services, which were negatively impacted
16 by EMSA's void underground regulations and void determinations; and (d) may be
17 exposed to potential litigation by third parties relying on EMSA's void underground
18 regulations and determinations, including but not limited to the determinations
19 compiled in the EMSA EOA Determinations document.

20 83. CalChiefs and its members have no other speedy or adequate remedy at
21 law in that: (a) it is impossible for CalChiefs' members to determine the precise
22 amount of damages that they will suffer if EMSA's conduct is not enjoined; (b)
23 CalChiefs and/or its members will be forced to institute a multiplicity of actions and
24 proceedings every time they learn of an additional instance of unlawful conduct by
25 EMSA; and (c) EMSA is not liable in money damages for any of its actions and
26 conduct alleged in this Petition and Complaint.

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PRAYER

WHEREFORE, California Fire Chiefs Association, Inc. prays for judgment as follows:

A. That this Court declare: (1) the Section 280 Certification binds EMSA; (2) the interpretations, rules, policies, criteria, and procedures in Guidelines 141, 141-B, and 310-01 are void and unenforceable underground regulations; and (3) all determinations made by EMSA pursuant to its underground regulations are void, unenforceable and may be set aside by a court of law;

B. That this Court issue a Writ of Mandate commanding Respondents to: (1) comply with EMSA’s Section 280 Certification; (2) set aside EMSA’s determinations regarding local governments’ rights to provide and administer emergency ambulance and medical services made pursuant to the underground regulations in Guidelines 141, 141-B, and 310-01; (3) remove any documents containing or referencing EMSA’s void determinations from the agency’s website, including but not limited to the EMSA EOA Determinations document; (4) provide notice to local governments, EMS stakeholder groups, and the public that such determinations were made pursuant to underground regulations and are therefore void and have no legal effect; and (5) begin promulgating local EMS system regulations in compliance with the APA and the EMS Act;

C. That this Court issue an preliminary injunction and/or permanent injunction enjoining and restraining Defendants from: (1) issuing, using, enforcing, or attempting to enforce the underground regulations in Guidelines 141, 141-B, and 310-01 and the September 12, 2018 Memorandum; (2) engaging in the practices alleged to be underground regulations in CalChiefs OAL petitions as required by EMSA’s Section 280 Certification; (3) publishing, publicizing, or relying on EMSA’s void determinations that were based on the aforementioned underground regulations, including but not limited to the EMSA EOA Determinations document; and (4) making any further determinations regarding local governments’ rights to provide and administer emergency ambulance and medical services under Sections 1797.201 and

1 1797.224 unless and until EMSA promulgates valid and effective regulations
2 addressing such rights in compliance with the APA;

3 D. That this Court retain jurisdiction over this matter to take all necessary
4 and proper steps to protect CalChiefs, its members, local governments, private
5 ambulance providers, and the public from the consequences of EMSA's failure to
6 comply with the APA;

7 E. That this Court award Petitioner and Plaintiff its costs in prosecuting this
8 action, including reasonable attorneys' fees and costs; and

9 F. That this Court grant such other relief as the Court deems just and proper.

10
11 WRIGHT, L'ESTRANGE & ERGASTOLO
12 Attorneys for Petitioner and Plaintiff
13 California Fire Chiefs Association, Inc.

14 Dated: June 7, 2019

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By: 

Andrew E. Schouten

