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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MORROW

MORROW COUNTY HEALTH DISTRICT,

Plaintiff,

v.

MORROW COUNTY; BOARDMAN FIRE
RESCUE DISTRICT; and MICHAEL
HUGHES,

Defendants.

Case No. 23CV19604

**CIVIL COMPLAINT FOR BREACH
OF CONTRACT, PROMISSORY
ESTOPPEL, TORTIOUS
INTERFERENCE WITH CONTRACT,
AND DECLARATORY AND
INJUNCTIVE RELIEF**

CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION

Amount of Prayer: \$4,372,350.00
Jury Trial Requested

Filing Fee: \$884.00 – ORS 21.160(1)(d)

COMES NOW, Morrow County Health District, plaintiff, who brings this Civil Claim for
Declaratory and Injunctive Relief and alleges as follows:

1.

Morrow County Health District (MCHD) is a duly organized health district located in
Morrow County, Oregon.

2.

The Morrow County Health District Board (Board) is the Board of Directors within the
MCHD, duly elected by the citizens of Morrow County to oversee the medical needs of the
county and promote their health, safety and welfare. The Board is also responsible for managing
a budget that includes money from a tax levy Morrow County citizens pay. The Board must
apportion funds provided through their budget in a way that is economical, reasonable and fair,

1 considering the whole of the county, not just the city of Boardman or the economic ambitions of
2 Boardman Fire Chief Michael Hughes. That budget includes management of the EMS services,
3 including ambulance service for Morrow County. An ambulance service is an essential medical
4 service in the county.

5 3.

6 Morrow County (County) is a duly organized public body in Oregon that has been in
7 existence since 1885. It is managed by The Morrow County Board of Commissioners (BOC).

8 4.

9 Those commissioners include: David Sykes, Jeff Wenholz, and Roy Drago Jr.
10 (Commissioners). Jeff Wenholz (Wenholz) serves on the Board of Good Shepherd Health Care
11 System (Good Shepherd), which has been public about its intent to provide healthcare services in
12 Boardman, in competition with MCHD. Jeff Wenholz is under investigation by the Oregon
13 Government Ethics Commission for unrelated ethics violations and the OGEC is reviewing
14 another complaint related to his initial refusal to disclose his conflict of interest, a position he
15 later changed following the ethics complaint, by indicating that he may have a “potential”
16 conflict of interest in making decisions about the MCHD and the ASA Plan at issue here. Up to
17 this point, however, he refuses to acknowledge an actual conflict of interest or recuse himself
18 from discussions and planning with respect to the ASA Plan.

19 5.

20 On information and belief, Wenholz has been discussing with Good Shepherd and
21 Boardman Fire Chief Michael Hughes (Hughes) for some time, the creation of a new health
22 district and ambulance service to work with Good Shepherd, serving only Boardman and not the
23 balance of Morrow County residents. Notably, Hughes also serves as the Board Chair of
24 Columbia River Health (CRH), a Federally Qualified Healthcare Clinic located in Boardman.
25 Last year, CRH discontinued its occupational health services and referred all occupational health
26

1 clients to Good Shepherd, despite the fact that MCHD already provides occupational health
2 services at a location closer to these clients than Good Shepherd.

3 6.

4 To the extent Wenholz was acting for his own self-interest or the interest of Good
5 Shepherd, rather than in the interests of Morrow County residents, he was acting outside the
6 course and scope of his authority with County and would, therefore, be personally liable for the
7 economic losses MCHD is positioned to experience. MCHD reserves the right to assert direct
8 claims against Wenholz to the extent discovery confirms these important details.

9 7.

10 Boardman Fire Rescue District (BFRD) is a duly organized rural fire district located in
11 Morrow County, Oregon. The Fire Chief of the City of Boardman is Michael Hughes, a position
12 he has held since February 2020.

13 8.

14 Boardman, Oregon, is a city within Morrow County with a population of approximately
15 4,000 people. It comprises approximately a little less than one third of the entire county's
16 population. Irrigon, Lexington, Ione and Heppner are also located within Morrow County. Roy
17 Drago Jr. and former County Commissioner, Don Russell (Russell), both reside in Boardman.
18 Russell also served as a board member for BFRD with a term expiration of June 2021.

19 9.

20 On July 1, 1995, Morrow County entered into an Intergovernmental Agreement (IGA)
21 with MCHD that states: "The Morrow County Health District was formed on September 2, 1994
22 as a Health District pursuant to ORS Chapter 440 for the purpose of assuming and administering
23 the Exhibit A services currently provided by the County; and That District has adopted a budget
24 to provide for the Exhibit A services, commencing July 1, 1995; County has eliminated such
25 funding from the County budget, also effective July 1, 1995; and That it is the intention of the
26

1 people of Morrow County to transfer all fiscal and performance responsibility for the Exhibit A
2 services from Morrow County to District, effective July 1, 1995.”

3 10.

4 The “Exhibit A services” described above included: “*Morrow County Emergency*
5 *Medical Services* – [which] consists of three ambulance services, one in Boardman, one in
6 Heppner, and the other in Irrigon. First response units are located in Ione and Lexington and are
7 called to stabilize victims until Basic or Advance Life Support ambulance crews arrive to treat
8 and transport patients.”

9 11.

10 The Exhibit A services also include running a substantial number of facilities and
11 programs for the benefit of all Morrow County. Currently provided services include, but are not
12 limited to, Pioneer Memorial Hospital and Nursing Facility, Pioneer Memorial Home Health &
13 Hospice, Pioneer Memorial Clinic, Ione Community Clinic, Irrigon Medical Clinic, and
14 Boardman Immediate Care.

15 12.

16 MCHD has been actively providing ambulance services within Morrow County,
17 including the city of Boardman, pursuant to that agreement and subsequent Ambulance Service
18 Area Plans, since 1995, without interruption.

19 13.

20 Morrow County adopted its Ambulance Service Area Plans (ASA Plans) in 1998 and
21 2021 through appropriate process.

22 14.

23 Both ASA Plans assigned all ambulance services to MCHD and the whole of Morrow
24 County, which was designated as a single ASA. It, in conjunction with the Morrow County
25 Ordinance, also made it illegal to operate an ambulance without that ambulance being assigned
26 within the ASA. Under both plans, MCHD was charged with administering those plans in

1 providing for the safe and efficient use of emergency services throughout the entirety of Morrow
2 County.

3 15.

4 Those ASA plans require the MCHD to create and establish an EMS Advisory
5 Committee/QA Subcommittee for the purpose of evaluating the ASA Plan and the ongoing
6 safety of emergency services being provided within Morrow County. The EMS Advisory
7 Committee is a multi-disciplinary peer review body selected by the MCHD and includes
8 appropriately trained medical personnel composed of representatives that include a supervising
9 physician, EMT, Nursing Services from Pioneer and Good Shepherd Hospitals, Fire
10 departments, Quick Response Teams, and 911/dispatch systems representatives.

11 16.

12 On April 28, 2021, the Morrow County Commissioners reviewed and approved a revised
13 ASA Plan pursuant to the request from the Oregon Health Authority. The Plan went through a
14 public meeting and was approved by the sitting commissioners with a unanimous vote, including
15 Russell. An attestation was signed documenting the procedure for approval was completed
16 appropriately and sent to the State of Oregon Health Authority (OHA). MCHD was again
17 selected as the only ambulance service provider within the ASA.

18 17.

19 Among other things, the ASA confirmed that Morrow County was covered by a single
20 ASA. The boundaries of that ASA included all of Morrow County. Under that plan, The EMS
21 Advisory Committee was given express authority to administer the Plan and annually review the
22 plan, remedy identified deficiencies, address potential problem areas, and address on-going
23 growth and changes in the EMS system in Morrow County.

24 18.

25 Pursuant to the ASA Plans, and in justifiable reliance on the promise that it would
26 continue as the sole ambulance provider, MCHD was required to employ a sufficient staff and

1 maintain vehicles, equipment and supplies in order to ensure it was adequately responding to
2 dispatch calls in providing emergency and nonemergency aid. Substantial expenditures were
3 made following the 2021 plan’s approval in reliance on that promise and efforts have been
4 undertaken to secure additional ambulance facilities and stations within the County. Additional
5 staff were also hired to accommodate the increased demand the County placed on the ambulance
6 service.

7 19.

8 Being assigned as the sole provider of ambulance service was a material term of the
9 Agreement and Plans, as ambulance services throughout the country are well-known to operate
10 at a net loss in rural communities. A loss of any critical portion of the area comprising the
11 MCHD would compromise ambulance and other health services being provided to the remainder
12 of the County. This reality has been the topic of concern for the federal and state governments. In
13 January 2021, the Federal Office of Rural Health Policy and the US Department of Health and
14 Human Services entered into a cooperative agreement with the Rural Policy Research Institute
15 and provided support for the research performed in analyzing the issues facing rural counties,
16 including Morrow County. One of the leading impediments to a rural county’s ability to provide
17 fast, safe and efficient health care is funding. That funding is related, in part, to the number of
18 runs an ambulance can make and the amount of “stand-by” time ambulances and crew incur. The
19 loss of runs results in a loss of funding for the entire program. An increased level of stand-by
20 time is economic waste and an ineffective use of taxpayer resources and funding.

21 20.

22 The 2021 ASA Plan provides that “Morrow County Ambulance Service, owned and
23 operated by the Morrow County Health District, and who have been providing ambulance
24 service for the past fifty years shall be named to provide ambulance service in their area of
25 assignment as specified in the plan, until such time they no longer desire to do so or legal steps
26 have been taken to remove the provider from the assigned area.” ASA Plans are intended to be

1 renewed every five years. MCHD continues in its goal and desire to provide ambulance service
2 for Morrow County.

3 21.

4 Under ORS Chapter 198, no county is allowed to have two special districts performing
5 the same services. The law states: “*A district may not include territory within another district
6 formed under same principal Act when the other district is authorized to perform and is
7 performing the services the affected district is authorized to perform,*” unless the territory is
8 withdrawn. ORS 198.720(2).

9 22.

10 Over the course of the last two years, Boardman Fire Rescue District (BFRD) has been
11 actively engaged, through its staff and Fire Chief, in attempting to take over the ambulance
12 service being actively provided by MCHD within Morrow County for the purpose of obtaining
13 more funding and depleting the funding being used to satisfy the financial burdens of running the
14 health district.

15 23.

16 In doing so, BFRD has been engaged in a series of activities principally aimed at
17 disrupting the emergency medical services provided by MCHD to patients located in Morrow
18 County and undermining public trust in MCHD. Those activities have been so extreme and
19 unsafe, they have resulted in the submission of numerous ethics complaints to the Oregon Health
20 Authority (OHA) that are currently under investigation, and the MCHD initiated and completed a
21 series of quality assurance investigations and implemented measures, pursuant to the ASA Plans,
22 aimed at protecting the health, welfare and safety of Morrow County residents and visitors.

23 24.

24 BFRD has continuously engaged over this time, through its agents and employees, in
25 publishing false statements about the MCHD on social media and elsewhere, stating or inferring
26 MCHD provides substandard emergency response or is otherwise unsafe. Agents of BFRD have

1 spoken publicly, violating federal and state privacy laws by disclosing protected health
2 information, and berated MCHD emergency medical providers and the services they provide.
3 They have published literature and further used taxpayer resources to engage in this behavior,
4 displaying banners and signage on public property, which has been intentionally designed to
5 weaken public faith and trust in MCHD, besmirching its reputation. This, in and of itself,
6 presents a public safety concern, as the public trust is directly tied to its comfort in knowing
7 reliable help will not be delayed when emergencies arise.

8 25.

9 In early 2020, BFRD, through Hughes, approached Morrow County Sheriff dispatch and
10 instructed them to forward all emergency and nonemergency calls to the BFRD. This was a
11 material change in policy. The overwhelming number of calls they responded to did not require
12 fire response and many were nonemergency calls. This was done in an effort to interfere with
13 MCHD’s ability to access patients and respond quickly to emergency and nonemergency calls.
14 This was also a violation of the ASA Plan, which describes instances where fire districts can and
15 should respond to emergency calls and further provides MCHD has the right of first refusal on
16 nonemergency calls.

17 26.

18 This action on the part of BFRD resulted in dangerous and confused situations, with
19 multiple providers attempting to provide patient care simultaneously. Disagreements erupted,
20 tempers flared and BFRD staff even refused to hand over patient care when ambulance crews
21 arrived or were already providing care, in violation of the ASA Plan and the Morrow County
22 ordinance. The EMS Advisory Committee determined BFRD’s activities were unsafe and
23 constituted a danger to patients.

24 27.

25 Following these activities, MCHD met and prepared a “DETERMINATION” dated April
26 27, 2022, declaring BFRD’s actions unsafe and directing BFRD to cease and desist in its

1 behaviors. But, BFRD ignored these efforts and directives, and continued in its unsafe and
2 unethical activities. Hughes declared the MCHD had no authority over him, and he would
3 continue doing as he pleased, in spite of the health and safety concerns MCHD raised on behalf
4 of Morrow County residents.

5 28.

6 BFRD's other activities have included, but are not limited to: racing to emergency scenes
7 in an effort to "arrive first" on scene, stealing medications and medical supply stock from
8 MCHD ambulances, blocking MCHD ambulances on scene with its vehicles in an attempt to
9 impede MCHD access to patients in need of emergency care, operating without an active
10 supervising physician, acting without appropriate protocols in place, refusing to hand over care
11 of patients after the arrival of MCHD ambulance crew in violation of Morrow County ordinance,
12 actively arguing about care with MCHD personnel in front of patients receiving that care,
13 bullying and attempting to intimidate female MCHD emergency personnel as they are providing
14 emergency medical care, and commandeering an MCHD ambulance or otherwise failing to exit
15 the ambulance when directed to do so, all of which have created an imminent risk of harm to
16 Morrow County residents and others.

17 29.

18 On May 18, 2022, the Morrow County BOC met, and Hughes asked for County support
19 to approve an ambulance license application he was submitting to the OHA. Oregon law requires
20 the County to evaluate critical data and affirmatively determine that the County has a need for
21 additional ambulance service before issuing a "statement of need" in support of such a license.
22 So, at that time, the request was suspended so the BOC could further investigate and evaluate the
23 need.

24 30.

25 Despite this determination by the BOC, on June 30, 2022, Hughes submitted an
26 application for an ambulance license with the OHA, falsely misrepresenting the Morrow County

1 Board of Commissioners supported the application. In the application, he specifically stated he
2 had “included a letter *from Morrow County*” and further stated that “The *county does not have*
3 *an adopted ASA Plan* at this time.” These statements were intentionally false and provided in
4 violation of ORS 682.028, which expressly prohibits false statements contained in any
5 application for ambulance licensure.

6 31.

7 The “letter from Morrow County” Hughes submitted was merely a letter prepared by
8 then-sitting commissioner and Boardman resident Don Russell, signed June 27, 2022. It stated:
9 “VARIFICATION OF NEED.” It then went on to falsely claim that Boardman Fire had
10 demonstrated the need for a second staffed ambulance in its response area. The letter was placed
11 on “Morrow County Board of Commissioners” letterhead and signed by Russell without
12 approval of the Morrow County BOC, with the express intent of deceiving the State of Oregon
13 OHA, so Hughes could obtain a license through illegal means.

14 32.

15 Hughes’ corrupt scheme was thwarted by MCHD, who learned of his and Russell’s lies
16 and deception before OHA relied on those misrepresentations and issued an ambulance license.
17 After learning this was a devious scheme, and the representations were patently false, the OHA
18 did not issue the license.

19 33.

20 On July 4, 2022, during a parade, the reasons for this desperate, illegal act were made
21 clearer as BFRD unveiled two new ambulances it had purchased with taxpayer money despite
22 not even having an ambulance license.

23 34.

24 On or about July 22, 2022, Boardman Mayor Keefer, also a volunteer for BFRD, then
25 went on a public tirade, yelling and falsely claiming that BFRD was attempting to interfere with
26 Boardman Police Department and the manner in which it responds to calls. Mayor Keefer knew

1 these statements were false, but he made them nonetheless to enflame Boardman public
2 sentiment against the MCHD. He went on and on about MCHD interfering with the safety of
3 Boardman residents, grandstanding about an issue he completely fabricated for the illicit purpose
4 of discrediting MCHD and making himself seem like some kind of political hero.

5 35.

6 Despite all of the bad faith shown by BFRD, substantial efforts were made by MCHD
7 throughout this time to negotiate a reasonable resolution to the conflict, including mediation with
8 former OHA leadership. Unfortunately, this did not end well, as Russell and Hughes were
9 unwilling to negotiate in good faith and attempted to bully and intimidate MCHD female staff.

10 36.

11 BFRD was then provided notice and afforded an opportunity to attend a hearing before
12 the MCHD Board. They were also invited to provide any documentation they wished to provide
13 in defense of the charges leveled against them. The initial hearing was postponed by MCHD in
14 good faith and as a courtesy to BFRD. A second mediation was scheduled in its place, with a
15 retired Oregon State Circuit Court Judge and former OHA regulatory compliance leadership.
16 However, BFRD summarily cancelled the scheduled mediation between the parties once it
17 became clear the BOC would probably be composed of new, Boardman-favorable,
18 commissioners in the immediate future.

19 37.

20 But a second hearing date had been scheduled following mediation in the event it failed,
21 anticipating BFRD was not intending to enter into good faith negotiations and the claims of
22 scheduling conflicts were all a ruse. BFRD also announced it would never attend the hearing,
23 waiving its rights under the ASA Plans.

24 38.

25 This ultimately culminated in a finding of Default against BFRD, an additional order to
26 cease its disruptive activities, and a \$169,000 penalty pursuant to Morrow County ordinance

1 MC-C-4-98 and based upon the costs and expenses MCHD incurred in dealing with BFRD’s
2 recalcitrant and dangerous behavior that had risked lives.

3 39.

4 As of this date, BFRD refuses to comply with the MCHD determinations and orders.
5 Both ASA Plans allow the MCHD to pursue enforcement action of the applicable MC-C-4-98
6 penalties through the powers of this Court, and MCHD has exhausted all available administrative
7 remedies in remediating these safety issues.

8 40.

9 On April 5, 2023, the Morrow County Board of Commissioners, including two newly-
10 elected commissioners, convened and generally commented without voting that its lawyer
11 informed them the 2021 ASA Plan was invalid. The claim was made that the 2021 Plan did not
12 go through the proper ordinance process. This is inaccurate and a mischaracterization of what the
13 law actually requires. It was also falsely claimed that ASA Plans must be codified through an
14 ordinance, but this, too, is not true.

15 41.

16 In addition, the BOC voted they were keeping the 1998 ASA Plan and County Ordinance
17 MC-C-4-98 in place. But it also announced that it would be redrawing the ASA Plan boundaries
18 in an effort to allow BFRD the ability to provide ambulance services within the city of Boardman
19 and perhaps elsewhere.

20 42.

21 Moreover, and *against* the clear advice of its legal counsel, which was read into the
22 public record, the Boardman-favorable BOC further announced that it would prepare for BFRD a
23 “Statement of Support” that would allow BFRD to obtain an ambulance license. They did so
24 without having evaluated any documents and without having determined there was a
25 “documented need” for an additional ambulance service, as Oregon law requires. Additionally,
26 they made every indication that they would leave it to the OHA to determine whether the letter

1 met the requirements of the law, of course without informing the OHA that the BOC had not, in
2 fact, determined there was a demonstrated need. This decision by the BOC to mislead the OHA
3 again with such a letter is completely unethical, demonstrating clear bias favoring BFRD.

4 43.

5 BFRD and County further made claims that the EMS Advisory Committee and the
6 MCHD Board were without authority to do anything about BFRD's ongoing and severe safety
7 problems, while simultaneously claiming the 1998 ASA Plan was still in place. The County and
8 its Commissioners refused to acknowledge that, if there is any ordinance at all, Oregon law
9 requires the ordinance to be compliant with the ASA Plan, and not the other way around. ORS
10 682.031(3). The 1998 ASA Plan and the 2021 ASA Plan are either the same or substantially
11 similar with respect to the MCHD and its appointment and powers with respect to the EMS
12 Advisory Committee and the purpose of that committee. The terms within them control.

13 44.

14 Moreover, despite knowing about the BFRD's numerous safety issues, it completely
15 ignored them and has literally done absolutely nothing to protect the safety of Morrow County
16 residents. Instead, it wishes to reward the behavior by helping BFRD obtain an ambulance
17 license and allow them to take over the Boardman service, removing MCHD in the process.

18 45.

19 Both the MCHD and the BFRD are special districts operating within Morrow County. Per
20 the IGA and ASA Plans, MCHD is already providing ambulance services within Morrow
21 County, which includes the city of Boardman. Allowing BFRD to provide ambulance services
22 within the ASA, Morrow County boundaries, will violate ORS 198.720(2), which prohibits
23 special districts from providing the same services within the same area. It will also constitute a
24 breach of the approved ASA Plans and the IGA, which MCHD has relied upon and made
25 expenditures in furtherance of.

26 ///

1 46.

2 MCHD currently provides ambulance service to Morrow County residents at a net
3 financial loss to MCHD in the amount of approximately \$1.7 million. A loss it has absorbed
4 since its inception in the interests of serving the public good. A change of this nature will also
5 jeopardize MCHD's ability to continue providing ambulance services to the rest of its service
6 area residents and visitors within Morrow County because it will lose its ability to bill out at
7 what is known as "cost-based reimbursement" through Medicare.

8 47.

9 Cost-Based Reimbursement is provided pursuant to 42 USC Section 1395m(l)(8) and
10 may be implemented for qualified Critical Access Hospitals (CAH) providing ambulance
11 services. Pioneer Memorial and Good Shepherd are approved CAHs.

12 48.

13 In order to qualify for Cost-Based Reimbursement, MCHD needs to be "the only provider
14 or supplier of ambulance services that is located within a 35-mile drive of such CAH" pursuant
15 to federal law.

16 49.

17 BFRD owns and maintains a facility on Butter Creek Road that houses vehicles, and that
18 is less than 35 miles from Pioneer Memorial Hospital.

19 50.

20 The Center for Medicare Services (CMS) is the entity responsible for making the
21 determinations about whether CAHs qualify for cost-based reimbursement under the federal
22 statute, which does not further explain whether Butter Creek would be considered in determining
23 how the definition of "provider" would be interpreted under the statute, and from where the 35
24 mile rule would be applied. Therefore, CMS would need to be consulted in order for this issue to
25 be resolved. A failure to do so while continuing to submit claims for medicare services based on
26 cost-based reimbursement would potentially result in violating the Federal False Claims Act,

1 which carries with it punishments and sanctions that include substantial penalties, interest, and
2 even criminal prosecution.

3 51.

4 County refuses to acknowledge this important issue, anticipating that MCHD should
5 simply take on the exposure for liability at its own expense and risk while inferring that CMS
6 would be none the wiser, if no one said anything about this critical factual detail to regulators
7 about it.

8 52.

9 Cost-based reimbursement allows MCHD to bill ambulance services at a higher rate,
10 rather than at the substantially discounted Medicare price. This loss would result in an additional
11 subsidization of ambulance services for MCHD in the approximate amount of \$1,000,000 per
12 annum, assuming cost-based reimbursement would be lost. This would bring total net financial
13 loss to MCHD for providing ambulance services to \$2.7 million, rather than \$1.7 million per
14 annum. This loss could not be absorbed by MCHD, and the ambulance service to the rest of the
15 area residents would be eliminated until the County made alternate arrangements for those
16 essential services.

17 53.

18 Moreover, regardless of cost-based reimbursement rules, if another ambulance service
19 provider were allowed to assume Boardman service, this would substantially deplete incoming
20 receivables and, therefore, place at risk those health services provided to other residents outside
21 of Boardman, based on the fact that Boardman service comprises a substantial portion of the runs
22 made by MCHD in any given year. The run loss could not be offset in a way to allow MCHD to
23 provide service to the remainder of the county.

24 54.

25 Furthermore, given the obvious bias evidenced by BFRD's, Hughes' and Wenzholz's prior
26 conduct, it is likely that BFRD would risk patient lives/welfare in favor of transporting patients

1 to Good Shepherd, rather than Pioneer Memorial, regardless of which facility was the closest,
2 safest facility to provide emergency medical care. On information and belief, Wenholz derives
3 personal benefit from the success of Good Shepherd, as a result of various perks he receives
4 while serving its Board.

5 55.

6 Despite knowing all of these details and in spite of the public safety warnings issued by
7 the MCHD and the EMS Advisory Committee, the BOC announced their intention to engage in
8 work sessions with the goal of re-structuring the ASA Plan boundaries in a way that would
9 breach the ASA Plan and IGA. Work sessions are underway and, as such, the health and safety
10 of Morrow County residents is at risk.

11 56.

12 Any delay of a court order restraining Morrow County from changing the ASA Plan to
13 allow BFRD to provide ambulance services within the MCHD creates an imminent risk of
14 irreparable harm to the residents of Morrow County, as it will disrupt emergency medical
15 services and substantially interfere with MCHD's ability to provide emergency services as it is
16 directed to do pursuant to the IGA and ASA Plans. Patients may well be shuttled away to Good
17 Shepherd and away from closer care Pioneer Memorial could provide. This will also place the
18 entire MCHD and services it provides to all residents at risk, as the impact a loss of ambulance
19 services it provides will affect its tax levy, which must be regularly renewed.

20 57.

21 MCHD requests a jury trial on all claims outside of those seeking equitable declaratory
22 and injunctive relief from this court.

23 58.

24 **Intentional Interference with Business Relations**

25 MCHD hereby incorporates paragraphs 1-5, 7-14, 16-20, 22-57, above.

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59.

BFRD was well aware of the above-described business relationship between MCHD and Morrow County and it acted through its agents, including the Fire Chief, Michael Hughes, with the intention of capturing and taking over the ambulance service within the City of Boardman, Morrow County.

60.

BFRD did this using improper means as specified in paragraphs 22-36, 39, and 54. Alternatively, to the extent Hughes was acting outside the course and scope of his authority while engaging in these acts on behalf of the BFRD, he is, therefore, personally liable for the consequences of his actions and injury incurred by MCHD.

61.

As a direct consequence of these activities, MCHD will be required to terminate EMS employees and other staff, and much of its business expenditures that were incurred in an effort to accommodate the demands of the ASA Plans will have gone to waste. MCHD will not be able to afford continued ambulance services within Morrow County and may not be able to afford to continue other essential medical services to County residents over time, as the operating levy may fail without ambulance services being provided. The total estimated economic loss and waste will amount to approximately \$4,203,350.

62.

Breach of Contract

MCHD hereby incorporates paragraphs 1-21 and 40-57, above.

63.

The ASA Plans and IGA are contracts that specifically guarantee MCHD would be the exclusive provider of ambulance services within Morrow County. The term of that contract was to run for 5 years from the date it was approved by the BOC. Morrow County has announced its intention to breach that agreement.

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64.

In order to protect the public interest, MCHD requests the Court immediately enter a Temporary Restraining Order (motion to follow) followed by a Permanent Injunction prohibiting Morrow County from moving or otherwise disrupting the boundaries of the ASA Plans to the extent that it would allow BFRD to provide ambulance services within Morrow County at least within the five-year timeframe designated in the ASA Plan.

65.

Alternatively, County should be required to pay MCHD the losses it will incur in the event of a breach, said amount to be the difference between cost-based reimbursement versus actual reimbursement over the existing life of the contract, in the approximate amount of \$3 million, together with future loss of revenue through Pioneer Memorial in the estimated amount of \$100,000, caused by the inappropriate shuttling of patients away from Pioneer Memorial care.

66.

County should be required to pay for the consequential damages incurred by MCHD in the amount of \$1,103,350, spent on undertaking additional investment in the ambulance service and hiring additional staff pursuant to the contracts.

67.

Promissory Estoppel

MCHD hereby incorporates paragraphs 1-21 and 40-57, above.

68.

To the extent this Court believes the ASA Plans and IGA are not *written contracts* that specifically guarantee MCHD would be the exclusive provider of ambulance services within Morrow County, MCHD justifiably relied on the representations, history, pattern of conduct and expectations that it would be doing so to its detriment over the course of the last quarter century and, thus, requests this Court acknowledge this and award appropriate relief in the alternative forms of:

1. An injunction prohibiting County from violating the terms of the agreements and dividing the ASA, prohibiting BFRD from being approved to provide ambulance service until the term of the current ASA runs.
2. Entering judgment in the amount of the anticipated loss of MCHD's cost-based reimbursement over the next three years in the amount of \$3 million.
3. Entering judgment in the amount of the future anticipated loss of revenue through Pioneer Memorial in the estimated amount of \$100,000, caused by the inappropriate shuttling of patients away from Pioneer Memorial care.
4. Entering an Order requiring County to pay for the consequential damages incurred by MCHD in the amount of \$1,103,350, spent on undertaking additional investment in the ambulance service and hiring additional staff.

69.

Declaratory Judgment and Enforcement of MCHD Entry of Default

MCHD hereby incorporates paragraphs 1-4, 7-10, 13-19, 22-28, and 35-39, above.

70.

In order to protect the public interest, MCHD requests this Court enter a Temporary Restraining Order (motion to follow) followed by a Permanent Injunction prohibiting BFRD from continuing to engage in its disruptive behaviors and from further pursuing ambulance services within Morrow County and imposing the penalty assessed by the MCHD against BFRD based upon its multiple violations of MC-C-4-98.

WHEREFORE, Plaintiff prays for judgment as follows, as such remedies may be alternatively or contemporaneously applied:

1. Enjoining Morrow County from moving or otherwise disrupting the boundaries of the ASA Plans to the extent that it would allow BFRD to provide ambulance services within Morrow County.

2. Enjoining BFRD from continuing to engage in its disruptive behaviors and requiring them to comply with the MCHD’s safety directives and determinations.
3. Declaring BFRD committed the offense of nuisance and imposing a fine in the amount of \$169,000 based upon its multiple violations of MC-C-4-98.
4. Requiring County to pay MCHD the cost differential in the amount of \$4,203,350 in the event it loses its CMS cost-based reimbursement, plus its consequential damages associated with its actions in breaching the IGA and ASA Plans and (alternatively) MCHD’s justifiable reliance on those promises made.
5. Requiring BFRD and Hughes to pay MCHD the cost differential in the amount of \$3 million for its estimated CMS cost-based reimbursement, plus its consequential damages associated with its intentional tortious interference with business relations between County and MCHD in the amount of \$1,203,350, for a grand total of \$4,203,350.
6. For Plaintiff’s costs and disbursements authorized by law; and
7. For such other relief as this court deems just and proper.

DATED this 10th day of May, 2023.

HART WAGNER LLP

/s/ Troy S. Bundy

By: _____

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