

# 2017-46189 / Court: 061

CAUSE NO. \_\_\_\_\_

**REPUBLIC EMS, LTD.,  
Plaintiff,**

v.

**VIKING ENTERPRISES, INC. d/b/a  
CITY AMBULANCE SERVICES,  
MOHAMAD MASSOUD, and EDITH  
HERNANDEZ,  
Defendants.**

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**IN THE DISTRICT COURT OF**

**\_\_\_ JUDICIAL DISTRICT**

**HARRIS COUNTY, TEXAS**

## PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Republic EMS, Ltd. ("Plaintiff") and files this, its Original Petition against Defendant Viking Enterprises, Inc. d/b/a City Ambulance Services ("City Ambulance"), Mohamad Massoud ("Massoud"), and Edith Hernandez ("Hernandez") (City Ambulance, Mohamad Massoud, and Edith Hernandez will be collectively referred to herein as the "Defendants"), and for cause of action would show the Court the following:

### DISCOVERY CONTROL PLAN

1. Plaintiff asserts that discovery should be conducted in accordance with a Level 2 discovery control plan under Texas Rules of Civil Procedure 190.3.

### PARTIES

2. Plaintiff Republic EMS, Ltd. ("Republic EMS") is a duly licensed Texas business that operates an ambulance service in Houston and other Texas cities.

3. Defendant Viking Enterprises, Inc. d/b/a City Ambulance Services is a Texas corporation. Service on City Ambulance may be through its registered agent, Mohamad Massoud at 781 Country Place, Apartment 1087, Houston, Texas 77079; or at 9515 Champions Cove Dr., Spring, Texas 77379-6581, or wherever Mohamad Massoud may be found.

4. Defendant Mohamad Massoud is an individual residing in Harris County, Texas. Mohamad Massoud may be served personally at 781 Country Place, Apartment 1087, Houston, Texas 77079; or at 9515 Champions Cove Dr., Spring, Texas 77379-6581; or wherever he may be found.

5. Defendant Edith Hernandez is an individual residing in Harris County, Texas. Edith Hernandez may be served personally at her place of residence, located at 310 Hunt St., Houston, Texas 77003, or wherever she may be found.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the controversy because the amount in controversy is within the jurisdictional limits of the Court.

7. Venue is proper in Harris County, Texas, pursuant to §15.002 of the Texas Civil Practice and Remedies Code because the events or omissions giving rise to Plaintiff's claims were located in Harris County, Texas.

#### **FACTS**

8. Republic EMS and City Ambulance both provide ambulance services in and around Houston, Conroe and other locations in Texas. The current Chief Marketing Officer of Republic EMS is Omar Dar, who previously worked for City Ambulance for years as an independent contractor. When City Ambulance had first begun business, Mohamad Massoud promised Omar Dar an ownership interest in City Ambulance. Mohamad Massoud broke that promise. In search of better opportunities, Mr. Dar left City Ambulance for Republic EMS in February 2016.

9. Recently, clients and employees of City Ambulance have left City in favor of Republic EMS. The reason: Republic EMS provides a superior ambulance service and superior

working environment for its employees. The successes of Republic EMS have caused the principals associated with City Ambulance to resent Republic.

10. Resentment toward Republic EMS by Mohamad Massoud and his affiliated persons at City Ambulance increased over time, until May 2016. Based on information and belief, representatives hired, authorized and/or ratified by City Ambulance and Mohamad Massoud, President of City Ambulance, deliberately vandalized a Republic EMS ambulance in May 2016. They shot out the windows of one of Republic's ambulances with a firearm. The wrongdoers were successful (temporarily), as the ambulance owned by Republic EMS had to be pulled from service for necessary repairs.

11. Between September and November 2016, Republic EMS ambulances were vandalized on nine (9) additional and independent occasions. The shootings of Republic EMS ambulances occurred at a variety of locations in Texas. Based on information and belief, person(s) acting under the direction, authority, knowledge and/or approval of City Ambulance and Mohamad Massoud were responsible for the attacks.

12. On another occasion, based on information and belief, City Ambulance and its representatives even severed the brake lines of a Republic EMS ambulance.

13. As result of the vandalism, Republic EMS spent at least \$11,155.47 in repair costs. Due to the vandalism and threats of violence, Republic EMS was required to implement heightened security protection. As a result of the vandalism and threats of violence, Republic's security costs currently exceed \$100,000.00.

14. While Republic's ambulances were being repaired, GPS tracking devices were discovered on Republic's vehicles. Republic has found multiple illegal tracking devices installed on their ambulances. City Ambulance used the tracking devices to follow Republic's

ambulances and see what customers Republic serviced and with whom Republic representatives met. City Ambulance then sent marketing materials to the clients and prospective clients of Republic EMS. City Ambulance also used the tracking devices to know where Republic EMS vehicles would be so that City Ambulance could maliciously damage Republic's ambulances.

15. Based on information and belief, Edith Hernandez, the wife of a City Ambulance director, Hadi Mneimneh ordered, purchased, paid for by and/or registered the tracking devices. Since Defendants' use of the tracking devices was believed to constitute a criminal offense, Republic EMS reported the matter to law enforcement authorities. The Montgomery County Sheriff's Office has taken possession of the tracking devices.

16. Defendants' conduct is not just reckless, it is malicious and criminal. The conduct was undertaken with a specific intent to cause substantial harm to Republic EMS. When viewed objectively from the standpoint of Republic EMS, the actions of City Ambulance, Mohamad Massoud, and Edith Hernandez involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Moreover, the Defendants had actual, subjective awareness of the extreme degree of risk involved, but proceeded with conscious indifference to the rights, safety and welfare of others.

17. The conduct of the Defendants is reprehensible. This is especially true considering that City Ambulance holds itself out as a provider of *health* services. On one occasion, for example, Republic EMS did not discover that the windows on an ambulance had been damaged until the Republic EMS team arrived to transport a patient in need of medical attention. Due to the vandalism, the Republic EMS team was unable to transport the patient, and treatment for the patient was significantly delayed. It is fortunate that no patient died or has been seriously injured as a result of the vandalism perpetrated by City Ambulance upon Republic EMS's ambulances.

18. Defendants' actions are terroristic. Defendants are resorting to criminal means in an attempt to frighten, intimidate and harm Republic EMS and its employees. Defendants have shown a complete and total disregard for the health and safety of the residents in the communities served by Republic EMS. The Defendants and those acting on their behalf have intentionally and knowingly damaged the personal property of Republic EMS, which has caused substantial pecuniary loss to Republic EMS.

19. Based on information and belief, there is no distinction between Mohamad Massoud and City Ambulance. There might be other owners of City Ambulance, but Mohamad Massoud owns (at least in part), operates, manages and controls City Ambulance. Republic EMS alleges that Mohamad Massoud is individually liable for the acts and omissions of City Ambulance; the corporate form of City Ambulance should be ignored.

#### **CAUSES OF ACTION**

##### **CONVERSION**

20. All subsequent and foregoing paragraphs of this pleading are incorporated herein by reference.

21. Defendants are liable to Republic EMS for conversion. Republic EMS owns ambulances that it uses to transport patients in the areas Republic EMS serves. The ambulances are personal property of Republic EMS. The Defendants wrongfully exercised dominion and control over the ambulances by intentionally and maliciously placing tracking devices on Republic's ambulances, and by vandalizing the ambulances. Defendants' criminal actions interfered with Republic EMS' right to freely use and enjoy its property. As a result of Defendants' conversion, Republic EMS has suffered damages exceeding \$40,000.

22. As Defendants acted with a wanton a malicious nature, Republic EMS is entitled to punitive damages from Defendants for Defendants' conversion of Republic EMS' property.

**TORTIOUS INTERFERENCE WITH EXISTING CONTRACT**

23. All subsequent and foregoing paragraphs of this pleading are incorporated herein by reference.

24. Defendants' actions constitute tortious interference with existing and/or prospective contracts. Republic EMS has contractual relationships with multiple health service providers in and around Harris County, Texas. Defendants know that Republic EMS has agreements to serve multiple providers. Defendants willfully and intentionally interfered with those contracts by placing tracking devices on and vandalizing Republic EMS ambulances. This interference proximately caused Republic EMS harm, damage or loss. Republic's ambulances were unable to respond to calls because they were damaged, unable to be used until fully repaired. Republic EMS sustained damages caused by Defendants' interference.

25. As Defendants' conduct was intentional, knowing, and malicious, Republic EMS is entitled to punitive damages from Defendants for Defendants' tortious interference.

**TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS**

26. All subsequent and foregoing paragraphs of this pleading are incorporated herein by reference.

27. Defendants are also liable for tortious interference with prospective business relations. At the time of Defendants' actions, there was a reasonable probability that Republic EMS would have entered into a business relationship with a third person(s). By placing tracking devices and vandalizing Republic EMS ambulances, Defendants prevented Republic

EMS ambulances from completing services and interfered with this prospective business relationship. As well established herein, the Defendants' conduct was independently tortious and unlawful. Defendants' interference cause injury and the Plaintiff suffered actual damages.

28. As Defendants' conduct was intentional, knowing, and malicious, Republic EMS is entitled to punitive damages from Defendants for Defendants' tortious interference.

#### **CONSPIRACY**

29. All subsequent and foregoing paragraphs of this pleading are incorporated herein by reference.

30. Defendants conspired together and with other individuals to accomplish the criminal and unlawful conduct complained of herein. Defendants, along with others, had a meeting of the minds to accomplish the criminal and unlawful conduct complained of herein. Additionally, Defendants agreed to interfere with Republic EMS' business. One of the members committed the unlawful acts to further their object or course of action. As a direct result of Defendants' conspiracy, Republic EMS has suffered damages.

31. All members of this conspiracy are jointly and severally liable for the damages resulting from the conspiracy. Republic EMS reserves the right to add additional third-party defendants as more information becomes known.

#### **AIDING AND ABETTING**

32. All subsequent and foregoing paragraphs of this pleading are incorporated herein by reference.

33. Defendants are jointly and severally liable to Republic EMS caused upon their conduct that constitutes aiding and abetting.

34. One or more of the Defendants committed the underlying torts complained of herein. The remaining Defendants are jointly and severally liable for assisting because they had knowledge that the primary actor committed a tort. They had knowledge that the remaining Defendant's conduct constituted a tort. They intended to assist the Defendant in committing the tort. They gave the primary actor assistance or encouragement. The assistance and/or encouragement was a substantial factor in causing the tort.

35. Additionally, the Defendants are jointly and severally liable for aiding and abetting as one Defendant's activity accomplished a tortious result; and the remaining Defendants provided substantial assistance in accomplishing the tortious result, such assistance was a breach of duty to Republic EMS, and the Defendants' participation was a substantial factor in causing the tort.

36. Further, Defendants are jointly and severally liable for aiding and abetting as the Defendants pursued a concert of action to commit a tortious act. Liability under this theory is proper as one or more of the Defendants, and at least one other actor (or Defendant), committed an intentional act or was grossly negligent. The tort was highly dangerous, devious, or was an antisocial group activity that was likely to cause death or serious injury. The Defendants agreed to cooperate in the plan or agreed to accomplish a particular result. The Defendants' conduct was tortious, and the tortious conduct of the Defendants and other actor caused Republic EMS' injury.

37. As a result of Defendants' aiding and abetting, Defendants should be held jointly and severally liable.

#### **ALTER EGO/PIERCING THE CORPORATE VEIL**

38. All subsequent and foregoing paragraphs of this pleading are incorporated herein by reference.

39. Based upon the *alter ego* doctrine, Mohamad Massoud is liable for the acts of City Ambulance. Additionally, Mohamad Massoud is jointly and severally liable to Republic EMS for the conduct of City Ambulance under the single business enterprise theory. Piercing the corporate veil in this action is proper because:

- a. Mohamad Massoud has had a financial interest in, ownership of, and control of City Ambulance and has used that control as a means of perpetuating a fraud;
- b. City Ambulance was organized and operated as a tool or business conduit of Mohamad Massoud; and
- c. That such unity existed between Mohamad Massoud and City Ambulance that the separateness of any corporation or business entity ceased.

40. Republic EMS further alleges that (1) Mohamad Massoud is the legal and/or beneficial owner of City Ambulance; (2) irrespective of his title, Mohamad Massoud controls the operations of City Ambulance; and (3) Mohamad Massoud formed City Ambulance solely or principally for his own personal benefit and to avoid personal liability for any risks or obligations incurred in the course of business.

41. Additionally, Mohamad Massoud is liable under an *alter ego* theory because the total dealings of Massoud and City Ambulance establish proof of *alter ego* based on the following factors:

- (1) the degree to which corporate property and individual property have been commingled and not kept separate;
- (2) the amount of financial interest, ownership, and control Mohamad Massoud maintains over City Ambulance; and
- (3) the extent to which City Ambulance has been used for personal purposes.

42. As proof of *alter ego*, the Court may consider such factors as: (1) the payment of alleged corporate debts with personal checks or other commingling of funds; (2)

representations that the individuals will financially back the company; (3) the diversion of company profits to the individuals for their personal use; (4) inadequate capitalization; and (5) failure to keep company and personal assets separate.

43. City Ambulance has been used by Mohamad Massoud as a conduit, extension or instrumentality to commit wrongful actions against Republic EMS. Mohamad Massoud has used the corporate structure to engage in actual and constructive fraud. Mohamad Massoud has legal or beneficial ownership and/or actual or constructive control over City Ambulance that has allowed him to use City Ambulance as an *alter ego* to aid in the wrongful acts against Republic EMS.

44. Based on information and belief, the bank account records, general ledger, and other financial records of City Ambulance and Mohamad Massoud will prove that Mohamad Massoud is the *alter ego* of City Ambulance. Republic EMS requests that Mohamad Massoud be held jointly and severally liable for Republic EMS' actual damages, attorney's fees, pre-judgment and post-judgment interest, and court costs.

#### **DAMAGES**

45. Due to the wrongful conduct of the Defendants, Republic EMS has incurred substantial actual damages. Republic EMS seeks all consequential, incidental, general and special damages that it may prove upon trial. Republic EMS respectfully requests that the jury determine the amount of damages to which Republic EMS is entitled.

46. Republic EMS is entitled to exemplary damages from Defendants as a result of their intentional, knowing, and malicious conduct. *See Green Int'l v. Solis*, 951 S.W.2d 384, 391 (Tex. 1997); *see also* TEX. CIV. PRAC. & REM. CODE §41.003(a)(2). Defendants are not

entitled to any cap on exemplary damages because the actions complained of are felonious, intentional, and malicious.

#### **ATTORNEYS' FEES**

47. Republic EMS has been forced to retain counsel as a result of the actions committed by City Ambulance and Defendants. As a component of the punitive damages, and based on equitable principles, Republic EMS is entitled to recover its reasonable and necessary attorneys' fees through trial and all appeals.

#### **JURY DEMAND**

48. In accordance with Rule 216 of the Texas Rules of Civil Procedure, Plaintiff hereby requests a trial by jury in this case. In support of this application, Plaintiff would show that the appropriate jury fee has been paid to the clerk of the court more than 30 days in advance of the trial setting.

#### **REQUEST FOR DISCLOSURE**

49. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Republic EMS requests that Defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

#### **RULE 193.7 NOTICE**

50. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives notice to Defendants that any and all documents produced may be used against the Defendants producing the document at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

**NOTICE OF DEPOSITIONS OF MOHAMAD MASSOUD & EDITH HERNANDEZ**

PLEASE BE ADVISED THAT pursuant to Rule 199 of the Texas Rules of Civil Procedure, Plaintiff Republic EMS will take the oral depositions of Mohamad Massoud on Friday, August 25, 2017, beginning at 9:00 a.m.; and the oral deposition of Edith Hernandez on Monday, August 28, 2017, beginning at 9:00 a.m. The depositions shall continue day to day until completed. The depositions will take place before a certified court reporter, will be videotaped, and will be taken at the offices of McGinnis Lochridge Kilgore, 711 Louisiana St., Suite 1600, Houston, Texas 77002. In the event that the witnesses are not available on the requested dates, Plaintiff requests said depositions on the earliest mutually available dates.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Republic EMS, Ltd. requests that Defendants Viking Enterprises, Inc. d/b/a City Ambulance Services, Mohamad Massoud, and Edith Hernandez be cited to appear and answer, and that Plaintiff recover all actual and punitive damages to which it is entitled, plus attorneys' fees, costs, pre-judgment, and post-judgment interest, and for such other and further relief, both general and special, at law or in equity, to which Republic EMS may show itself to be justly entitled.

Respectfully submitted,

/s/ Paul D. Clote

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