



## → David R. Garcia

### Partner

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David Garcia is a partner in the firm's Century City office. He is a litigator with a broad background in complex civil litigation for major U.S. companies, including extensive class action and multidistrict litigation experience. His practice focuses principally on antitrust litigation and counseling with particular emphasis on the entertainment industry, provider side healthcare mergers and the intersection between antitrust and intellectual property in litigation and joint ventures.

### Areas of Practice

David's antitrust litigation experience includes price fixing cartel defense, patent related monopolization claims and representation of clients in connection with civil and criminal investigations by the Federal Trade Commission and the antitrust division of the U.S. Department of Justice. He counsels extensively on joint ventures, mergers and acquisitions and competitor collaborations in healthcare, for a broad range of hospitals and doctor groups throughout the U.S. including second requests and divestiture negotiations with both the FTC and DoJ. His broad ranging antitrust litigation background also includes major matters involving standard setting, state action immunity, and contested mergers. He also counsels and litigates in a variety of vertical distribution situations, including dealer termination, vertical pricing restrictions, franchise termination disputes and counseling and litigation involving multilevel marketing organizations. Finally he counsels joint ventures in the formation stage and through ongoing antitrust monitoring.

Clients for whom he has worked include: Arcadian Medicare Advantage Insurance, a broad variety of physician groups and for profit and non profit hospital systems throughout the U.S., The Secure Content Storage Association LLC, The Digital Cinema Initiative, LLC, Lending Tree, Samsung, Epson America, China Mobile, Sprint, Carrier Airconditioning, Herbalife, Amgen, Barnes & Noble, Warner Home Video, The Digital Cinema Initiative, LLC, and Playboy Enterprises, Inc.

David has also handled wide-ranging securities litigation, first in New York and later in California, that has included class action defense, the defense of derivative litigation on behalf of both individuals and companies, litigation arising out of mergers and acquisitions, and internal corporate investigations. He has also had extensive experience representing companies and individuals in investigations commenced by the Securities and Exchange Commission.

Companies for whom he has worked in the securities area include: Credit Suisse; First Boston; The Special Committee of the Board of Diamond Multimedia, Inc.; BT Securities; Montgomery Securities; Bank of America; the outside directors of FarWest Financial Savings & Loan.

## Honors

The Los Angeles 500 - The Most Influential People in Los Angeles, *Los Angeles Business Journal*, 2016, 2017

RAVES (Recognizing AHLA Volunteer Engagement and Success) Recipient, American Health Lawyers Association, 2016

Southern California Super Lawyer, *Super Lawyers*, 2014-2015, 2017-2020

*Legal 500*, 2012, 2013, 2015, 2019-2020

## Experience

Represented Molina Healthcare in antitrust litigation by the Department of Justice challenging Aetna's proposed acquisition of Humana after Molina agreed to acquire more than \$400 million of Medicare Advantage assets from both Aetna and Humana to fix any potential anticompetitive impact that would have resulted from the transaction.

Represented Sansum Medical Group in FTC investigation of proposed mergers with Santa Barbara Cottage Hospital.

DoJ Antitrust Division's investigation concerning Samsung's assertion of standard essential patents against Apple in response to Apple's claimed infringement of its design and utility patents

Represented Arcadian Insurance in the FTC investigation of its acquisition by Humana, Inc., and negotiation of eventual consent decree

Represented Lending Tree in exclusive dealing litigation involving exclusive internet affiliation agreements

Represented Samsung in horizontal boycott litigation involving Rambus, and price fixing class action litigation

Represented Sansum Clinic, a Santa Barbara, California physician group of 185 independent physicians in a multi-specialty group, in an affiliation agreement with Santa Barbara Cottage Hospital. After a four year investigation by the Federal Trade Commission and the California Attorney General, the parties decided to withdraw their application of the proposed affiliation agreement

Providing antitrust counseling to Carrier Airconditioning in distributorship restriction in the western United States

Representing Herbalife in a variety of vertical distributorship issues

Represented Amgen in potential antitrust litigation against a competitor arising out of a prior patent infringement settlement

Providing antitrust and general outside advice and counseling to the Digital Cinema Initiative, a joint venture of the seven major movie studios created to establish performance and digital security specifications for the transmission and exhibition of digital cinema, and to explore business models for encouraging digital cinema implementation

Defended Warner Home Video in a nationwide class action and related federal and state cases brought by independent video rental retailers claiming a group boycott and price fixing in connection with contracts entered into between movie studios, including Warner Home Video, and a national home video rental chain

Assisted in defense of California state court antitrust and certain competition claims against Samsung by competitor

Represented the Digital Cinema Committee of Motion Picture Association of America in connection with antitrust issues relating to digital cinema transmission, security and exhibition issues

Part of team defending The Gator Corporation in multidistrict nationwide direct and class action attacks on Gator's targeted internet advertising business model under the Copyright Act, the Lanham Act and state unfair competition law

Represented entertainment companies in multidistrict antitrust litigation involving alleged antitrust violations by internet service providers allegedly tying ISP and cable television services

Represented internet companies, including search engine operators and sellers of internet advertising, in multidistrict antitrust litigation arising out of patent claims, and antitrust advice and counseling relating to distribution of advertising through affiliation agreements

Provided continuing antitrust advice to multiple studios concerning vertical competition issues, such as exclusive dealing and differential pricing in various market segments, including E-commerce, theatrical distribution, and consumer product marketing

Represented Barnes & Noble in Robinson Patman multidistrict litigation brought by the American Booksellers Association and various individually owned bookstores throughout the United States, including trial of that action which settled during the plaintiffs' case

Represented the directors of Primadonna Resorts in class and derivative litigation arising out of the sale of the Primadonna Resorts to MGM Grand Incorporated

Represented Advance Micro Devices in a class action litigation relating to disclosures concerning microprocessor development

Represented medical products device manufacturers in connection with class action litigation concerning the timing of announcements concerning FDA approval of new medical devices

Represented major commercial banks and savings and loans in connection with loan loss reserve and revenue recognition litigation

## Articles

- AmEx Ruling May Have Big Impact On Health Insurance  
*Law360*, 07.17.2018
- There Is Potential Federal Inconsistency Over ACOs  
*Law360*, 06.16.2015
- Supplier Beware of California's Equipment Dealers Act Before Deciding on Termination of Dealers  
*Bloomberg BNA*, 12.05.2014

- Calif. On Board As Health Care Antitrust Enforcer  
*Law360*, 09.27.2012
- No Mandatory Antitrust Review For ACOs  
*The Recorder*, 11.10.2011
- Levels of antitrust scrutiny for ACOs  
*The Recorder*, 04.18.2011
- Health Care Reform May Prompt Antitrust Violations  
*The Recorder*, 02.21.2011
- Law is in Flux Over Internal Governance of Foreign Firms  
*Daily Journal*, 03.31.2006

## Antitrust Law Blog Posts

- "DOJ Issues First Business Review Letter Approving Competitor Collaboration In Response To COVID-19," April 17, 2020
- "Eleventh Circuit Denies Blue Cross Blue Shield's Interlocutory Appeal Challenging Application of Per Se Rule In Multidistrict Litigation In Alabama," December 17, 2018
- "AmEx Ruling May Have Big Impact on Health Insurance," July 19, 2018
- "Exclusive Agreement Between Hospital and Insurance Plan Does Not Violate Section 1," June 22, 2017
- "Antitrust Not Always Available in Competitor Disputes in the Healthcare Sector," March 16, 2017
- "U.S. Department of Justice Sues North Carolina Hospital System for Insisting on Anti-Steering Provisions in Insurance Reimbursement Contracts," June 15, 2016
- "State Regulatory Scheme Offering Antitrust Immunity to Healthcare Collaborations Creates Tension Between Federal and State Antitrust Enforcement," May 20, 2015
- "Eleventh Circuit Affirms FTC Finding that Rebate Program Served to Unlawfully Maintain Monopoly Power," April 22, 2015
- "In Highly-Anticipated Decision, Ninth Circuit Affirms That Hospital-Physician Group Merger in *St. Luke's* Violated Section 7 And Casts Serious Doubt on Viability of Efficiencies Defense," February 18, 2015
- "CMS' Proposed Regulations Include Significant Antitrust Implications For Entities Interested In Forming ACOs," January 5, 2015
- "Supplier Beware Before Terminating Dealers: California's Equipment Dealers Act," November 18, 2014
- "*Dang v. San Francisco Forty Niners* - Consumers can challenge Reebok's exclusive NFL apparel deal based just on a market of garments bearing NFL team logos," August 7, 2013
- "*American Express Co. v. Italian Colors Restaurant*: A class action waiver in an arbitration agreement will be strictly enforced under the Federal Arbitration Act," June 25, 2013
- "Challenge To Alleged Restraints On Baseball And Hockey Programming Survive Motion To Dismiss And Advance To The Next Round Of Litigation," December 19, 2012
- "Supreme Court Will Now Hear Two Appeals Concerning Class Arbitration," December 14, 2012
- "Large General Acute-Care Hospital Abandons Acquisition Of 15-Bed Surgical Specialty Center As A Result Of FTC Challenge," November 26, 2012

- "Supreme Court to Address Enforceability of Arbitration Agreements and Class Action Waivers Yet Again," November 19, 2012
- "*In re American Express Merchants' Litigation* - Plaintiffs Survive Three Rounds In The Second Circuit, But Can They Survive The Supreme Court?" February 7, 2012

## Healthcare Law Blog Posts

- "Third Circuit Rejects State's Bid for Attorney's Fees in Hospital Merger Dispute," February 1, 2019
- "U.S. Department of Justice Settles Anti-Steering Suit Against Hospital System; First Such Settlement After Amex SCOTUS Decision," November 26, 2018
- "California Sues Sutter Health Alleging Anti-Competitive Practices," April 6, 2018
- "Has the Acquisition of Cigna Corp. by Anthem, Inc. Been Relegated to the Dustbin of History? Stay Tuned!" May 3, 2017
- "FTC Stands Down in Latest Head-to-Head Battle Between Federal and State Oversight of Healthcare Collaborations," July 8, 2016
- "FTC Suffers Setback in Campaign to Slow the Rising Tide of Healthcare Consolidations," May 16, 2016
- "State Oversight of Anticompetitive Activity in Healthcare: Is a New Wave Ahead?" April 28, 2015
- "District Court Weighs in on Level of Integration Required to Shield Health Care Collaborations from Section 1 Scrutiny," November 14, 2014
- "California AG Becomes the Latest Antitrust Enforcer to Investigate Hospital/Doctor Group Combinations," September 21, 2012

## Speaking Engagements

Presenter, "Antitrust Overview—Refresher for Hospital, Physician Group, and Payer Counsel Seeking to Engage in Strategic Ventures and Other Activities," AHLA Physicians and Hospitals Law Institute, February 5, 2018

Panelist, "Aetna-Humana: From Antitrust Investigation to Permanent Injunction, What Does it Mean for Future Healthcare M&A?" Bloomberg Intelligence, April 27, 2017

Panelist, "Expert Insights on the Increasing Consolidation of the Medical Sector: Examining the Latest Antitrust Risks for the Healthcare Industry and the Complex Insurance Coverage and Claims Issues Associated with the Integration of Hospitals and Physician Practices," ACI's Medical Liability Claims, Coverage and Risk Management Conference, October 27, 2016

Presenter, Antitrust and Provider Networks AHLA Webinar

Presenter, California Society for Healthcare Attorneys, Antitrust Update

Lecturer, 2015 Healthcare Forecast Conference, U.C. Irvine

Lecturer, LACBA Healthcare/Antitrust Program: Trends in Government Enforcement

Lecturer, ABA Class Action Section, Antitrust Panel

Lecturer, California State Bar, Antitrust Section

## Events

Critical Antitrust Issues for Healthcare Companies During the COVID-19 Pandemic  
Webinar, 04.14.2020

2016 Antitrust in Healthcare Conference  
Ritz-Carlton Pentagon City, 05.12.2016

2016 CSHA Annual Meeting & Spring Seminar  
Monterey Plaza Hotel & Spa, Spring 2016

Trust Us, It's Complicated  
Antitrust Issues Facing Healthcare in the Affordable Care Act Environment  
05.01.2014

## Podcasts & Webinars

Nota Bene Episode 86: Post-Pandemic International Competition Regulations that are Suddenly In Play with Leo Caseria, Jacques Derenne, David Garcia, and Bevin Newman  
06.17.2020

Nota Bene Episode 20: The Evolving Nature of the U.S. Healthcare Industry with David Garcia  
01.23.2019

## Practices

Healthcare

International Reach

Korea

Antitrust and Competition

Healthcare / Antitrust

Entertainment and Digital Media

Litigation

Class Action Defense

Securities Litigation

Antitrust Counseling and Compliance

California Antitrust and Unfair Competition Law

Cartel Investigations and Litigation

Consumer Protection

Government Merger and Civil Conduct Investigations

Intellectual Property / Antitrust  
Municipal and Public Entity Restructuring  
Private Civil Antitrust Litigation

## Industries

Blockchain Technology and Digital Assets  
Energy, Infrastructure and Project Finance  
Entertainment and Digital Media  
Esports & Games  
Healthcare

## Education

J.D., Georgetown University  
B.A., Harvard University

## Clerkships

Law clerk to the Honorable Constance Baker Motley, U.S. District Judge, Southern District of New York, 1981-82

## Admissions

California  
New York  
Washington, D.C.  
Florida  
U.S. District Court, Northern and Central Districts of California  
U.S. District Court, Southern and Eastern Districts of New York  
U.S. District Court, District of Columbia  
U.S. Court of Appeals, Second, Sixth, Ninth, and District of Columbia Circuits