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Criminal Antitrust Enforcement by the California Attorney General: What Can We Expect?

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I. Introduction

Dating to 1907, California's Cartwright Act[1] is the primary state law through which private plaintiffs and state agencies challenge allegedly anticompetitive conduct. Like federal antitrust laws, the stated goal of the Cartwright Act is to "protect and foster competition by preventing combinations and conspiracies which unreasonably restrain trade"[2] — preserving consumer welfare by "stemm[ing] the power of monopolies and cartels."[3]

The Cartwright Act creates both civil and criminal causes of action. Private plaintiffs and California state agencies regularly file civil suits alleging violations of the Cartwright Act. However, criminal enforcement of the Cartwright act has been rare and intermittent. Authority to criminally prosecute Cartwright Act violations is vested both in the California Department of Justice ("CA DOJ") and the state's district attorneys. Although frequently the basis for civil suits, in recent history the Cartwright Act has seldom been the basis for criminal antitrust enforcement.[4] Thus, it was notable when Paula Blizzard, Supervising Deputy Attorney General in the Antitrust Section of the California Attorney General's Office, announced in March 2024 that the CA DOJ would re-prioritize state criminal antitrust enforcement.[5] According to Blizzard, after 25 years of dormancy, the Cartwright Act is being dusted off—and criminal antitrust enforcement by CA DOJ is on the horizon.[6]

Unfortunately, Blizzard's statements have left out many critical details on how the new criminal enforcement efforts in California will unfold. What types of cases will the CA DOJ prosecute? Will they criminally prosecute conduct that goes beyond the scope of federal criminal law under the Sherman Act? How will they coordinate with the U.S. Department of Justice ("DOJ") to ensure there is no duplicative prosecution for the same conduct? We do not yet know and will mostly likely have to wait for the CA DOJ to bring enforcement action before these questions can be conclusively answered. However, existing statutory law, recent judicial decisions, and previous criminal antitrust cases filed by the State do offer some clues to answer these key questions.

II. California's Cartwright Act — A vehicle for state criminal enforcement

A. Trends in Antitrust Enforcement

Blizzard's statements are part of a broader trend in increased antitrust enforcement at the state and federal level. In recent years, state attorneys general have promised more vigorous antitrust enforcement — both civilly and criminally — in parallel with the federal

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[1] CAL. BUS. & PROF. CODE §§ 16700–16770.

[2] *Morrison v. Viacom, Inc.*, 52 Cal. App. 4th 1514, 1524 (1997).

[3] *Clayworth v. Pfizer, Inc.*, 233 P.3d 1066, 1076 (Cal. 2010).

[4] In fact, since 1907, criminal prosecutions under the Cartwright Act have been relatively rare. See *People v. Sacramento Butchers Protective Ass'n*, 107 P. 712, 12 Cal. App. 471, 480 (Cal. Ct. App. 1910); *People v. H. Jevne Co.*, 178 P. 517, 179 Cal. 621, 624 (Cal. 1919); Compl., *People v. Athens Disposal Co. Inc. of the City of Indus.*, No. A972331 (L.A. Mun. Ct. July 19, 1988); Felony Compl. for Arrest Warrants, *People v. Waste Mgmt. of Cal., Inc.*, No. A952588 (L.A. Mun. Ct. Mar. 10, 1989); *People v. Sherwin*, 82 Cal. App. 4th 1404, 1406–07 (2000).

[5] Alex Wilts, *California's Top Antitrust Enforcer to Revamp Criminal Enforcement*, MLex (modified Mar. 7, 2024, 23:51), https://mlexmarketinsight.com/news/insight/california-s-top-antitrust-enforcer-to-revamp-criminal-enforcement.

[6] See *Sherwin*, 82 Cal. App. 4th at 1406–07 (affirming the trial court's dismissal of the indictment where "the successful suppression motions provided changed circumstances to support renewed section 995 motions and . . . without the evidence that had been suppressed, there was insufficient evidence to support the indictment").

government.[7] Gwendolyn Cooley, chair of the Multistate Antitrust Task Force for the National Association of Attorneys General and Wisconsin's AAG for antitrust, echoed Blizzard's statements at the 2024 ABA Antitrust Spring Meeting, noting that 44 states have the authority to bring criminal charges for antitrust violations and suggesting that there would likely be more state criminal enforcement in the coming year.[8] Federal and state agencies are pursuing novel theories, merger activity is increasingly scrutinized, and collaboration among antitrust enforcers is the norm.

In April 2024, the California Law Revision Commission returned sweeping recommendations to revise the state's antitrust laws — including proposing a separate merger notification filing regime for California.[9] The temperature has also gone up in criminal enforcement with the DOJ recently announcing its willingness to bring criminal charges in Sherman Act, Section 2 monopolization cases — cases which largely have not been brought since the 1970s.[10]

B. Cartwright Act — Civil and Criminal Scope

A frequent refrain — by courts and commentators alike — is that California's Cartwright Act is "broader in range and deeper in reach than the Sherman Act."[11] Though case law interpreting federal antitrust laws is instructive, the California Supreme Court has made clear that its view of the Cartwright Act is not co-extensive with Sherman Act.[12]

There are indeed some clear differences between the Cartwright Act and federal antitrust laws. For example, the Cartwright Act does not address unilateral conduct, lacking any parallel to Section 2 of the Sherman Act. Nor does the Cartwright Act explicitly address mergers, having no parallel to Section 7 of the Clayton Act.[13] This is not to say that unilateral conduct or mergers are not the focus of enforcement activity by CA DOJ, but the vehicle for enforcement is not the Cartwright Act. Additionally, unlike the Sherman Act's general prohibition of "every contract, combination . . . or conspiracy in restraint of trade,"[14] the Cartwright Act enumerates the specific offenses it proscribes. Among others, the following conduct violates the Cartwright Act:

> "a combination of capital, skill or acts by two or more persons for any of the following purposes"—
>
> (a) To create or carry out restrictions in trade or commerce.

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[7] There is a long 30+ year history of federal-state cooperation in criminal antitrust enforcement—evident by the Executive Working Group for Antitrust's program to cross-designate state attorneys general to assist in federal grand jury investigations. See Jonathan I. Gleklen & Thomas P. Brown et al. *ABA Sect. of Antitrust Law, Antitrust Law Developments* 1024 (7th ed. 2012) ("*Antitrust Law Developments*").

[8] Alex Wilts and Chris May, *US states 'very interested' in staying on top of criminal enforcement, antitrust task force chair says*, MLex (modified Apr. 12, 2024), https://mlexmarketinsight.com/news/insight/us-states-very-interested-in-staying-on-top-of-criminal-enforcement-antitrust-task-force-chair-says.

[9] Cal. L. Revision Comm'n, *Antitrust Law - Study B-750: California Antitrust Law and Mergers*, http://www.clrc.ca.gov/B750.html and http://www.clrc.ca.gov/pub/Misc-Report/ExRpt-B750-Grp2.pdf (last visited July 2, 2024).

[10] Press Release, U.S. Dep't of Just., Off. of Pub. Affs., *Assistant Attorney General Jonathan Kanter Delivers Opening Remarks at 2022 Spring Enforcers Summit* (Apr. 4, 2022), https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-opening-remarks-2022-spring-enforcers; U.S. Dep't of Just., Just. Manual § 7-2.200 (2022), https://www.justice.gov/jm/jm-7-2000-prior-approvals; see, e.g. Plea Agreement, *United States v. Zito*, No. 1:22-cr-00113 (D. Mont. Sept. 19, 2022), ECF No. 2.

[11] *Cianci v. Super. Ct. of Contra Costa Cnty.*, 710 P.2d 375, 40 Cal. 3d 903, 920 (Cal. 1985); see also *In re Cipro Cases I & II*, 348 P.3d 845, 871–72 (Cal. 2015) (quoting *Cianci*, 40 Cal. 3d at 920, 710 P. 2d 375) (that "the Cartwright Act is broader in range and deeper in reach than the Sherman Act" and holding that federal antitrust laws do not preempt the Cartwright Act).

[12] *In re Cipro Cases I & II*, 348 P.3d 845, 858-859 (Cal. 2015).

[13] Though the Cartwright Act does not explicitly address mergers, it may prohibit combinations to monopolize—*i.e.*, where two parties engage in a conspiracy to monopolize through merger activities. Specific intent to monopolize is not required. See *In re Cipro Cases*, 348 P.3d at 863 ("We begin with the proposition that agreements to establish or maintain a monopoly are restraints of trade made unlawful by the Cartwright Act. . . . Under general antitrust principles, a business may permissibly develop monopoly power, i.e., 'the power to control prices or exclude competition' . . . through the superiority of its product or business acumen. To acquire or maintain that power through agreement and combination with others, however, is quite a different matter.") (internal citations omitted).

[14] 15 U.S.C. § 1.

(b) To limit or reduce the production, or increase the price of merchandise or of any commodity.

(c) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

(d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State.

(e) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following:

(1) Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value. . . ."[15]

Many of these enumerated violations appear familiar — price fixing, exclusive dealing, or minimum resale price maintenance, for example. However, while the text of the Cartwright Act differs, it is not so clear that its application differs — and, facially, the text does not clearly reveal how the Cartwright Act is "broader and deeper" than the Sherman Act. In fact, courts, commentators, and plaintiffs alike have struggled to define such differences. In *Epic Games, Inc. v. Apple Inc.*, for example, the court was critical of this claimed reach of the Cartwright Act stating that, to prevail on a Cartwright Act claim where a Sherman Act claim fails, a plaintiff cannot rely on "conclusory statements about the broader 'reach' of the Cartwright Act relative to the Sherman Act" but must identify "specific and material differences between the Cartwright Act and the Sherman Act."[16]

One well-known difference between federal and California antitrust regimes is the law on resale price maintenance. Since the 2007 decision in *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*,[17] resale price maintenance has been evaluated under the rule of reason framework under federal law. By contrast, in *Mailand v. Burckle*, the California Supreme Court held that resale price maintenance is per se illegal under the Cartwright Act.[18] Lower courts continue to apply *Mailand* in California, as the California Supreme Court has not revisited the law on resale price maintenance post-*Leegin*. Other differences between the Cartwright Act and the Sherman Act are less scrutable — and to the extent plaintiffs or enforcers seek a broader application of the Cartwright Act, it largely appears to be their burden to articulate with specificity what this "broader reach" of the Cartwright Act means in practice.

For criminal antitrust enforcement, the scope of the Cartwright Act is material. Criminal courts are likely to be equally, if not more, skeptical of the "broader and deeper" dicta — not only is there virtually no modern precedent to reach for, but criminal prosecutions under the Cartwright Act must be more concretely grounded less they run afoul of Due Process guarantees.[19] Absent explicit statutory support, we expect that most

[15] CAL. BUS. & PROF. CODE § 16720.

[16] 559 F. Supp. 3d 898, 1048 (N.D. Cal. 2021) ("*Epic I*"), *aff'd in part*, 67 F.4th 946 (9th Cir. 2023) ("*Epic II*"). In April 2023, the Ninth Circuit affirmed in part and reversed in part the lower court's decision in *Epic I*, though it did not address Epic's Cartwright Act claims because they were not asserted on appeal. *Epic II*, 67 F.4th at 970 n.4.

[17] 551 U.S. 877, 885–86 (2007), *aff'd sub nom. PSKS, Inc. v. Leegin Creative Leather Prods., Inc.*, 615 F.3d 412 (5th Cir. 2010).

[18] 572 P.2d 1142 (Cal. 1978).

[19] See, *Walker v. Superior Court*, 763 P.2d 852, 871 (Cal. 1988) ("Article I, section 7, of the California Constitution and the Fourteenth Amendment to the United States Constitution both assure that no person shall be deprived of life, liberty, or property without due process of law. Among the implications of this constitutional command is that the state must give its citizenry fair notice of potentially criminal conduct. This requirement has two components: 'due process requires a statute to be definite enough to provide (1) a standard of conduct for those whose activities are proscribed and (2) a standard for police enforcement and for ascertainment of guilt.'" (quoting *Burg v. Municipal Court*, 673 P.2d 732 (Cal. 1983))). See also, *People v. Superior Court* (Caswell), 758 P.2d 1046, 1048 (Cal. 1988) ("The requirement of a reasonable degree of certainty in legislation, especially in the criminal law, is a well established element of the guarantee of due process of law." (quoting *In re Newbern* 350 P.2d 116, 120 (Cal. 1960))).

courts will limit the scope of a Cartwright Act criminal prosecution to conduct constituting a crime under Section 1 of the Sherman Act, specifically horizontal agreements among competitors to engage in price-fixing, bid rigging, market allocation, or output restrictions.

C. Double Jeopardy, the Petite Policy, and the California Penal Code

1. The Fifth Amendment and the Petite Policy

Even if not coextensive, the Cartwright Act and federal antitrust laws significantly overlap. And because the California and federal regimes both attach criminal liability to certain anticompetitive conduct, in theory both the state and federal government could pursue successive prosecutions of the same criminal offense. Though a lawyer's initial instinct may be to reach for the Double Jeopardy Clause of the Fifth Amendment, it in fact provides no relief. In two 1959 cases, *Abbate v. United States*, and *Bartkus v. Illinois*, the Supreme Court held that the Fifth Amendment does not bar (i) a federal prosecutor from bringing criminal charges against the same criminal act previously prosecuted under state law, nor (ii) a state prosecutor from bringing criminal charges against the same criminal act previously prosecuted under federal law.[20] That is, the doctrine of dual sovereignty permits two such successive prosecutions for the same conduct.[21]

At the federal level, this consequence of dual sovereignty has been addressed by longstanding DOJ policy — known as the *Petite* Policy[22] — which dictates that, absent a compelling federal interest, "no federal prosecution may be initiated or continued following a state prosecution based on substantially the same act or acts."[23] While not a perfect parallel to the Fifth Amendment's protection, the *Petite* Policy limits successive prosecutions by federal authorities — and deviations from the policy have been met with scrutiny by courts.[24]

Though the *Petite* Policy does not address state prosecutorial discretion, *Abbate* and *Bartkus* "do not preclude a state from providing greater double jeopardy protection than is provided by the federal Constitution under decisions of the United States Supreme Court."[25] In practice, many states mirror DOJ policy and prohibit state prosecutors from initiating or maintaining a state criminal prosecution if it is based on substantially the same act or acts as a federal prosecution.[26] California is one of those states.

2. California's Statutory Double Jeopardy Protection

California's statutory analogue to the *Petite* Policy is California Penal Code sections 793 and 656. The protective scope of these sections limits the ability of a state prosecutor to pursue criminal charges if those charges are based on substantially the same act or acts as an earlier federal prosecution.[27] These sections dovetail to functionally prevent successive state prosecutions: while section 793 bars prosecution, section 656 provides a complete defense.[28]

Section 793 states: "When an act charged as a public offense is within the jurisdiction of the

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[20] *Abbate v. United States*, 359 U.S. 187 (1959); *Bartkus v. Illinois*, 359 U.S. 121 (1959); see also *Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 61 (2016).

[21] Under the doctrine of dual sovereignty, a single act gives rise to two separate offenses if it violates the laws of two separate sovereigns — and, thus, under this doctrine, a person may be lawfully subjected to successive prosecutions based on a single act.

[22] The Department of Justice first announced the Petite Policy on April 6, 1959, shortly after the Supreme Court's decisions in *Abbate* and *Bartkus*. The policy was first given recognition in 1960, in *Petite v. United States*, 361 U.S. 529 (1960) (per curiam)—hence its name.

[23] *Antitrust Law Developments*, *supra* note 7 at 1025.

[24] See, e.g. *Rinaldi v. United States*, 434 U.S. 22 (1977) (per curiam).

[25] *People v. Homick*, 289 P.3d 791, 814 (Cal. 2012) (quoting *People v. Comingore*, 570 P.2d 723, 20 Cal. 3d 142, 145 (Cal. 1977)).

[26] See, e.g. FLA. STAT. § 542.21; 740 ILL. COMP. STAT 10/6; MD. CODE ANN., COM. LAW § 11-207; MICH. COMP. LAWS § 445.779.

[27] *Homick*, 289 P.3d at 813 ("Section 656 provides 'greater double jeopardy protection than the United States Supreme Court has determined to be available under the Fifth Amendment of the United States Constitution,' as the Constitution does not bar 'prosecution and conviction for the same act by both state and federal governments.'") (quoting *People v. Belcher*, 520 P.2d 385, 11 Cal. 3d 91, 96–97 (Cal. 1974) (en banc).

[28] See *Comingore*, 20 Cal. 3d at 148, 570 P.2d 723.

United States, or of another state or territory of the United States, as well as of this state, a conviction or acquittal thereof in that other jurisdiction is a bar to the prosecution or indictment in this state."[29] Section 656 states: "Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of the United States, or of another state or territory of the United States based upon the act or omission in respect to which he or she is on trial, he or she has been acquitted or convicted, it is a sufficient defense."[30]

The California Supreme Court most recently addressed the scope of section 656 in *People v. Homick*.[31] According to the Court, the critical question is whether the prior conviction or acquittal in another jurisdiction is "considered to have been 'founded upon the act or omission' for which the defendant is being tried in California."[32] That is, under section 656 the "California conviction *is barred* if all the acts necessary to the California charges were also necessary to prove the prior charges, but *is not barred* 'where the offense committed is not the same act but involves an element not present in the prior prosecution.'"[33]

In *Homick*, for example, the defendant was first federally indicted for and convicted of interstate murder for hire. Subsequently, defendant was convicted of two counts of first-degree murder in California state court, as to which the jury found the special circumstance allegations of murder by lying in wait.[34] Affirming defendant's conviction, the California Supreme Court held that the state prosecution was not barred by section 656 because it required proof of circumstances not required to be proved to maintain the federal conviction. Namely, the special circumstance of "lying in wait" required proof the killer "concealed his or her purpose, watched and waited a substantial time for the opportunity to act, and thereafter launched a surprise attack on the victim from a position of advantage."[35] Because proof of these circumstances was not necessary to make out the federal offense of interstate murder for hire, the subsequent California prosecution was not barred by section 656.[36]

Though some defendants successfully invoke section 656,[37] *Homick* illustrates a narrow application of California's statutory double jeopardy protections.[38] Likely because no criminal prosecution has been brought under the Cartwright Act in 25 years, there is no precedent on the application of section 656 to competing federal and state criminal antitrust prosecutions. To the extent that the Cartwright Act is "broader and deeper" than the Sherman Act, CA DOJ maintains wide license to pursue criminal antitrust enforcement — and sections 656 and 793 act only as limited constraints.

D. Future Criminal Enforcement Action

With all of this in mind, we turn to CA DOJ enforcement priorities: what will future criminal enforcement look like? At this point, we can only speculate, but history is perhaps the best predictor of future action — drawing us back

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[29] *Id.* § 793.

[30] CAL. PENAL CODE § 656.

[31] 289 P.3d 791.

[32] *Id.* at 815; see also *Comingore*, 20 Cal 3d at 146–48, 570 P.2d 723 ("In accord with this intent, as well as the statute's plain language, we have held section 656 applies when the physical conduct required for the California charges has previously been the subject of an acquittal or conviction in another jurisdiction, regardless of whether the two charges have different requirements as to intent or other nonact elements.").

[33] *Homick*, 289 P.3d at 816–17 (quoting *Belcher*, 11 Cal. 3d at 99, 520 P.2d 385.

[34] *Id.*

[35] *Id.* at 817.

[36] *Id.* at 810 (explaining that the fact the federal prosecutor had proved that defendant had ambushed and killed the victims — thus demonstrating the factual predicate to the "lying-in-wait" special circumstance — 656 did not apply because proof of ambush was not necessary to prove the federal offense). In *Homick*, the court stated: "A prior prosecution is not 'founded' or 'based,' within the meaning of section 656, on every piece of conduct shown by the evidence at the earlier trial. Were that the rule, the entire course of criminal conduct that led to the earlier charges would be effectively protected from prosecution in California, an interpretation we expressly rejected for section 656 . . . in Belcher." *Id.* at 817–18 (citation omitted).

[37] See, e.g. *People v. Candelaria*, 294 P.2d 120 (Cal. Ct. App. 1956).

[38] CAL. PENAL CODE § 656.

approximately 25 years to CA DOJ's criminal antitrust enforcement in the 1990s.

1. Bid-rigging

Historically, CA DOJ has criminally pursued big-rigging and other conspiratorial conduct involving state and local government contracts. For example, in 1988, state prosecutors charged waste disposal companies and their employees with criminal violations of the Cartwright Act — engaging in a conspiracy to allocate the market for waste disposal services — by agreeing not to enter bids for competitors' accounts.[39] A few years later, in the most recent state criminal antitrust prosecution, state prosecutors charged numerous defendants with Cartwright Act violations, alleging defendants had rigged bids for state food supply contracts.[40]

The State's focus on bid rigging prosecutions mirrors the priorities of the DOJ. Federally, bid-rigging and other conspiratorial conduct involving federal government contracts have been the focus of criminal enforcement activity with both the DOJ's Antitrust Division and U.S. Attorney's Office in California having actively pursued such prosecutions in recent years.[41] For Blizzard and the CA DOJ, this category of conduct will most likely be the primary focus of future criminal enforcement action, with a particular emphasis on state, municipal, and other local contracts where the state's tax dollars are at risk and their enforcement interests are most significant.

2. Labor and Employment Cases

Labor and employment cases may be an additional category of future criminal antitrust enforcement. Labor and employment matters have been a recent focus of CA antitrust reform: even before the FTC released its near-complete ban on non-compete provisions,[42] California legislatively enacted Senate Bill 699 and Assembly Bill 1076, codifying state case law banning non-compete agreements and providing employees a civil cause of action against their employers.[43] Relatedly, no-poach and wage-fixing cases have been the focus of recent federal enforcement activity — though the federal government has achieved little success.[44] As labor-market antitrust scrutiny heats up, this may be another category of conduct that is a focus of state criminal antitrust enforcement moving forward.

III. Conclusion

Blizzard's announcement all but guaranteed the revival of state criminal antitrust enforcement in California. However, the path forward for the California DOJ is not without obstacles; there are unanswered questions California authorities will confront along the way. For example, related federal and state prosecutions will raise interesting questions of collaboration and deference: not only will California courts have to address the scope of the Cartwright Act and of sections 793 and 656 of the Penal Code, but the California enforcement regime must also address, for example, how state criminal

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[39] *People v. Athens Disposal Co.*, No. A972331 (L.A. Mun. Ct. 1990) (imposing criminal fines for bid-rigging conspiracy by trash-hauling firms for local government contracts); see also *People v. Waste Mgmt. of California, Inc.* (1989).

[40] *Sherwin*, 82 Cal. App. 4th 1404. The indictment was ultimately dismissed as not supported by probable cause—and the dismissal affirmed on appeal—after defendant successfully moved to suppress key evidence. *Id.*

[41] Press Release, U.S. Dep't of Just., Off. of Pub. Affs., *Former Public Official and California Contractor Sentenced for Bid Rigging and Bribery* (Apr. 24, 2023), https://www.justice.gov/opa/pr/former-public-official-and-california-contractor-sentenced-bid-rigging-and-bribery.

[42] Press Release, FTC, *FTC Announces Rule Banning Noncompetes: FTC's Final Rule Will Generate Over 8,500 New Businesses Each Year, Raise Worker Wages, Lower Health Care Costs, and Boost Innovation* (Apr. 23, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes.

[43] CAL. BUS. & PROF. CODE § 16600.5(e)(1); S.B. 699, 2023-2024 Legis., Reg. Sess. (Cal. 2023), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB699.

[44] See, e.g. Jury Verdict Form at 1-2, *United States v. Manahe*, No. 2:22-cr-00013 (D. Me. Mar. 22, 2023), ECF No. 247 (acquitting defendants of allegations relating to wage-fixing and no-poach agreements in violation of violations of Section 1 of the Sherman Act, despite favorable evidentiary decisions for the government); Ruling & Order on Defs.' Mots. for J. of Acquittal, *United States v. Patel*, No. 3:21-cr-00220 (D. Conn. Apr. 28, 2023), ECF No. 599 (granting, in an extraordinary decision, defendants' motion for judgment of acquittal under Federal Rule of Criminal Procedure 29(a), finding that the no-poach agreement at issue was not a market allocation as a matter of law).

antitrust enforcement will interact with the Antitrust Division's Leniency Program.

The coming years will be instructive in shaping the course of future criminal antitrust enforcement in California. While we can only speculate as to future enforcement activity today, if Blizzard and CA DOJ remain true to their promise, our days of speculating may soon be over.