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PRACTICE BRIEF · BUSINESS TORTS

CUTSA Preemption in 2026: Which Common-Law Claims Survive and Which Are Swept Away

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California's Uniform Trade Secrets Act (Civil Code §§ 3426–3426.11) provides the exclusive civil remedy for trade secret misappropriation in California — and it broadly preempts other tort and statutory claims that are "based on" the same alleged misappropriation. This preemption provision, codified at § 3426.7, has been one of the most litigated issues in California business tort practice for two decades, and the case law remains unsettled in ways that are practically significant for plaintiffs and defendants alike.

In 2026, the operative framework for CUTSA preemption analysis draws from a body of California Court of Appeal and Ninth Circuit decisions that have gradually refined — but not fully harmonized — the preemption boundary.

I. The Preemption Framework

Section 3426.7 preempts "civil remedies based upon misappropriation of a trade secret." The California Court of Appeal in *Silvaco Data Systems v. Intel Corp.*, 184 Cal.App.4th 210 (2010), established that preemption turns on the gravamen of the claim: if the facts that are essential to the claim constitute misappropriation of a trade secret, the claim is preempted — even if the plaintiff labels it as conversion, breach of confidence, or interference with economic advantage.

But *Silvaco* also established the surviving categories: claims that are "based on" conduct that is wrongful *independently* of whether it constitutes trade secret misappropriation can proceed alongside CUTSA claims.

> *"The preemption question is not whether the case involves trade secrets. It is whether the plaintiff's damages theory requires proof that a trade secret was taken. If the claim survives even if no trade secret exists, it may not be preempted."*

CUTSA Preemption — Claim Analysis Framework
What is the *gravamen* of the claim? What facts are essential to prove it?
Trade secret misappropriation →
The claim cannot succeed without proving a trade secret was taken or misused.
Preempted by CUTSA § 3426.7.
Common-law claim displaced. Only CUTSA cause of action survives.
Examples: conversion of confidential info, breach of confidence, unjust enrichment based on unauthorized use.
Independent wrongful act →
The claim's wrongfulness exists even if the information is not a trade secret.
Not preempted. Claim proceeds alongside CUTSA.
Examples: breach of contract (non-compete, NDA), breach of fiduciary duty for independent conduct, fraud or defamation as the underlying wrong.
Per Silvaco Data Systems v. Intel Corp., 184 Cal.App.4th 210 (2010) — gravamen test

II. Claims That Typically Survive Preemption

A. Breach of Contract

A claim for breach of a confidentiality agreement, non-compete, or non-solicitation provision survives CUTSA preemption because it is grounded in the contractual obligation — not in trade secret law. The wrongfulness of the conduct flows from the contract, not from whether the disclosed information meets CUTSA's definition of a trade secret.

B. Breach of Fiduciary Duty (Narrow)

A fiduciary duty claim survives where the duty itself is independent of the obligation not to misappropriate trade secrets. An officer who diverts a corporate opportunity, uses company resources for personal gain, or self-deals in breach of loyalty can be sued under a fiduciary duty theory even if the same conduct also involved trade secret misappropriation — as long as the breach-of-duty damages are not identical to the misappropriation damages.

C. Intentional Interference (Where Independent Wrongful Act Exists)

Intentional interference with prospective economic advantage requires an independently wrongful act. Where the underlying wrong is something other than misappropriation — such as defamation, fraud, or violation of a statute — the interference claim may survive. But where the only independently wrongful act alleged is the misappropriation itself, preemption applies.

III. Claims That Are Typically Preempted

- **Conversion** of confidential information or trade secrets — because the "property" being converted is the trade secret itself

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- **Breach of confidence** (equitable) — where the information allegedly protected is a trade secret
- **Unjust enrichment** based on unauthorized use of proprietary information — the enrichment claim is directly grounded in the misappropriation
- **Unfair competition under Business and Professions Code § 17200** — where the unlawful, unfair, or fraudulent act alleged is the trade secret misappropriation itself

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PLEADING AND DEFENSE STRATEGY

- For plaintiffs: plead non-preempted claims with independent factual allegations — articulate clearly why the claim's wrongfulness does not depend on proving trade secret status
- Identify any breach of express contractual obligation that runs parallel to and separate from the misappropriation theory; contracts create independent wrongfulness
- For defendants: attack the preemption issue early — a demurrer or motion for judgment on the pleadings at the outset can significantly narrow the case before discovery costs accumulate
- Watch the damages overlap: even if a non-CUTSA claim formally survives preemption, courts have granted summary adjudication where the only measure of damages is identical to the CUTSA damages
- Consider whether the information at issue actually qualifies as a trade secret — if not, CUTSA does not apply and neither does its preemption provision

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CUTSA preemption remains one of the most case-dispositive early issues in California business litigation. Getting it right — at the pleading stage — determines whether a plaintiff has one claim or six, and whether a defendant faces a narrow trade-secret dispute or a sprawling multi-theory action.

Practice	Business Torts
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