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PRACTICE BRIEF · BUSINESS TORTS

# Business Torts: Recent Developments 2023-2024 — Non-Competes, Trade Secrets, and the Evolving Economic Loss Doctrine

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The 2023-2024 period brought significant movement in California business tort law. Two landmark statutes reshaped the non-compete landscape, the semiconductor sector generated high-stakes trade secret disputes with national security implications, and courts continued refining the boundaries of unfair competition standing, tortious interference doctrine, and the economic loss rule. This review surveys five developments that California business litigators should understand heading into the second half of 2024.

## I. AB 1076 and SB 699: California Strengthens Its Non-Compete Ban

California has long been the most aggressive jurisdiction in voiding non-compete agreements. Business and Professions Code section 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." But until 2024, a question lingered: did section 16600 void *all* non-competes, or only those that imposed *unreasonable* restraints?

The California Supreme Court appeared to resolve this question in *Edwards v. Arthur Andersen, LLP*, 44 Cal.4th 937 (2008), holding that section 16600 voids any agreement that restrains an employee from practicing a profession — full stop — and rejecting the "narrow restraint" exception recognized by some lower courts. But Edwards left enough ambiguity that some employers

continued to include restrictive covenants in employment agreements, particularly where the agreement was governed by the law of another state or where the restriction was narrowly tailored.

AB 1076, effective January 1, 2024, closes that gap legislatively. It amends section 16600 to add subdivision (b), providing that "any contract that is void under this section is unenforceable regardless of where and when the contract was signed." The statute codifies the *Edwards* broad reading and eliminates the argument that a California court might apply a reasonableness standard to a narrowly drawn restriction.

SB 699, also effective January 1, 2024, adds section 16600.5, which makes it unlawful for an employer to enter into or attempt to enforce a non-compete agreement with an employee "regardless of whether the contract was signed and the employment was maintained outside of California." SB 699 is the more aggressive of the two statutes because it reaches agreements formed entirely outside California, as long as the employee currently works in or resides in California.

### Notification Requirements

AB 1076 imposed a retroactive notice obligation. By February 14, 2024, employers were required to notify in writing any current or former employee who was employed after January 1, 2022, that any non-compete clause or agreement to which they were subject is void. The notice must be individualized and delivered to the employee's last known address and email. Failure to provide this notice constitutes a violation of the unfair competition law under Business and Professions Code section 17200.

### Practical Impact

Existing non-compete agreements signed in any jurisdiction are unenforceable against California-based workers. Employers must audit their employment agreements, vendor contracts, and partnership agreements for non-compete provisions. For employees who signed non-competes in other states before relocating to California, SB 699 provides a statutory basis to resist enforcement — and potentially to seek injunctive relief and attorneys' fees under the UCL.

## II. Trade Secret Litigation in the Semiconductor Industry

The semiconductor industry has become the most active sector for trade secret litigation in California, driven by intense competition for talent, the concentration of chip-design companies in Silicon Valley and Southern California, and the strategic importance of semiconductor technology under federal export-control policy. The 2023-2024 period saw several significant disputes that illuminate the current state of California trade secret law under both the California Uniform Trade Secrets Act (CUTSA, Civil Code sections 3426-3426.11) and the federal Defend Trade Secrets Act (DTSA, 18 U.S.C. sections 1831-1839).

### The Identification Requirement

One of the most litigated issues in California trade secret cases is the plaintiff's obligation to identify its alleged trade secrets with "reasonable particularity." In *Advanced Modular Sputtering, Inc. v. Superior Court*, 132 Cal.App.4th 826 (2005), the Court of Appeal held that a plaintiff must


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designate its trade secrets with sufficient precision to allow the defendant to prepare a defense — trade secret claims cannot proceed on the basis of vague, categorical descriptions of allegedly proprietary information.

In the semiconductor context, this identification requirement creates particular difficulty. Companies asserting trade secret misappropriation often allege that a departing engineer carried knowledge of process nodes, circuit layouts, or fabrication techniques that, taken individually, may be publicly known but that in combination constitute proprietary know-how. Courts have been receptive to "combination" trade secret claims where the plaintiff can articulate how the specific combination of elements derives independent economic value, but they have also dismissed claims where the plaintiff's identification amounts to "everything the employee learned while working here."

### Reasonable Measures

Under CUTSA section 3426.1(d), information qualifies as a trade secret only if the owner has taken "reasonable measures" to maintain its secrecy. In the semiconductor industry, this standard implicates policies around clean-room design protocols, compartmentalized access controls, exit-interview procedures, and the use of confidentiality agreements. Recent decisions have emphasized that the reasonableness of protective measures is assessed relative to the value and nature of the information, not against a uniform checklist. A startup with three engineers is not held to the same security infrastructure as a multinational fabrication company — but it must demonstrate that it treated the information as confidential in some meaningful way.

### California's Rejection of Inevitable Disclosure

California remains one of the few major jurisdictions to reject the "inevitable disclosure" doctrine outright. In *Whyte v. Schlage Lock Co.*, 101 Cal.App.4th 1443 (2002), the Court of Appeal held that a plaintiff cannot obtain an injunction prohibiting a former employee from working for a competitor simply by showing that the employee possesses trade secrets and will inevitably use or disclose them in the new position. The court reasoned that inevitable-disclosure injunctions are functionally equivalent to non-compete agreements and are therefore inconsistent with section 16600.

This remains a critical distinction in semiconductor disputes. An employer that loses an engineer to a competitor cannot obtain injunctive relief on the theory that the engineer will "inevitably" apply proprietary knowledge in the new role. Instead, the employer must prove *actual or threatened* misappropriation — evidence that the former employee has taken, used, or disclosed specific trade secrets, or that circumstances indicate an imminent threat of such conduct.

## III. UCL Standing Requirements: Who Can Sue Under Section 17200

California's Unfair Competition Law (Business and Professions Code sections 17200-17210) provides a broad cause of action against "any unlawful, unfair or fraudulent business act or practice." The UCL is among the most powerful tools in the California business tort plaintiff's arsenal


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because it borrows substantive standards from virtually any other law — the "unlawful" prong allows a plaintiff to enforce any statute, regulation, or common-law rule through the UCL's equitable remedy of restitution or injunctive relief.

But the UCL's power is constrained by its standing requirements, which were significantly tightened by Proposition 64 in 2004. Before Proposition 64, any person could bring a UCL action as a private attorney general, regardless of injury. Proposition 64 added section 17204's requirement that a private plaintiff must have "suffered injury in fact and . . . lost money or property as a result of the unfair competition."

### The Causation Requirement After *Kwikset*

In *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310 (2011), the California Supreme Court interpreted the "as a result of" requirement. The court adopted an "actual reliance" standard: a consumer who was exposed to a deceptive practice and relied on it in making a purchasing decision has standing, even if the product itself was not defective. *Kwikset* established that the "lost money or property" requirement can be satisfied by showing that the plaintiff spent money that he or she would not have spent absent the unlawful conduct.

The 2023-2024 period saw continued litigation over what constitutes sufficient reliance and whether a plaintiff who benefited from the transaction in other ways has truly "lost money or property." Courts have generally held that overpayment — paying more than the plaintiff would have paid for the product absent the deceptive conduct — satisfies the standing requirement, even if the product delivered some value.

### Competitor Standing

The more consequential development in UCL standing involves competitor actions. A business that sues a competitor under the UCL must show that it lost money or property as a result of the competitor's unfair practice — typically by demonstrating lost sales, lost customers, or competitive disadvantage. Courts have required that the causal connection be more than speculative: a plaintiff must present evidence that customers or business opportunities were diverted by the challenged conduct, not merely that the competitor's conduct was unlawful.

Recent decisions have drawn a sharper line between cases where a competitor can show concrete diversion of business and cases where the alleged unfair practice is too attenuated from the competitor's losses to confer standing. This distinction is particularly important in industries with many market participants, where any single competitor's losses may be diffuse and difficult to attribute to a specific unfair practice.

### Representative Standing

UCL section 17203 authorizes courts to grant relief "to any person in interest," which California courts have interpreted to permit representative actions. A plaintiff with individual standing may seek relief on behalf of a broader class, but the standing inquiry remains anchored to the named plaintiff. If the named plaintiff lacks standing, the representative claim fails regardless of whether unnamed class members may have been injured.


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## Tortious Interference in Technology Recruiting

California recognizes two forms of tortious interference: interference with existing contractual relations and interference with prospective economic advantage. Both torts are frequently alleged in the context of aggressive technology recruiting — where one company targets another's employees for hire — but the elements and defenses differ significantly.

### Interference with Contractual Relations

To establish intentional interference with contractual relations, a plaintiff must show: (1) a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) intentional acts designed to induce a breach or disruption of the contract; (4) actual breach or disruption; and (5) resulting damages. *See Quelimane Co. v. Stewart Title Guaranty Co.*, 19 Cal.4th 26, 55 (1998).

In the recruiting context, the "contract" at issue is typically an employment agreement with restrictive covenants — such as non-solicitation provisions, confidentiality clauses, or assignment-of-inventions obligations. When a competitor recruits an employee and the employee breaches these obligations in connection with the move, the employer may assert interference against the competitor-recruiter. The critical question is whether the competitor had *knowledge* of the contractual obligations and took *intentional acts* designed to cause a breach. Passive hiring — responding to an unsolicited application — does not ordinarily establish interference. Targeted solicitation of an employee known to be subject to restrictive covenants, combined with encouragement or assistance in breaching those covenants, can.

### Interference with Prospective Economic Advantage

Interference with prospective economic advantage requires a showing of "independently wrongful" conduct — a requirement established by *Della Penna v. Toyota Motor Sales, USA, Inc.*, 11 Cal.4th 376 (1995). The plaintiff must show that the defendant engaged in conduct that was wrongful apart from the interference itself — meaning the defendant's conduct must independently violate some constitutional, statutory, regulatory, or common-law standard.

This "independently wrongful" requirement is a substantial hurdle in the recruiting context. A company that hires a competitor's employees through legitimate means — offering better compensation, better working conditions, or better career opportunities — is not engaging in independently wrongful conduct, even if the effect is to deprive the competitor of key personnel. The interference claim gains traction only when the recruiting is accomplished through wrongful means: fraud, misrepresentation, trade secret theft, or violation of a specific statute.

### The Section 16600 Tension

California's strong public policy favoring employee mobility, codified in section 16600 and reinforced by AB 1076 and SB 699, creates a fundamental tension with tortious interference claims in the recruiting context. An employer that asserts interference based on a departing employee's non-compete or non-solicitation agreement faces the threshold objection that the underlying agreement is void — and that the employer is, in effect, using the interference tort to accomplish indi-

rectly what section 16600 prohibits directly. Courts have been increasingly skeptical of interference claims where the gravamen of the complaint is that a competitor hired the plaintiff's employee, absent evidence of independently wrongful conduct beyond the recruitment itself.

## V. Economic Loss Rule: Exceptions Expanding

The economic loss rule is the principle that tort damages are generally not available for purely economic losses arising from a contractual relationship. Where the parties' rights and obligations are defined by contract, the contract provides the exclusive measure of liability — and a plaintiff who has suffered only economic injury (as opposed to personal injury or property damage) must pursue contract remedies, not tort claims.

### The *Robinson Helicopter* Fraud Exception

The most important exception to the economic loss rule in California business tort practice is the fraud exception recognized in *Robinson Helicopter Co., Inc. v. Dana Corp.*, 34 Cal.4th 979 (2004). The California Supreme Court held that the economic loss rule does not bar tort claims where the defendant's conduct constitutes fraud — specifically, affirmative intentional misrepresentation. The court reasoned that fraud is a tort that is independent of any contractual obligation, and that allowing a contracting party to avoid tort liability for fraud simply because a contract exists would undermine the deterrent function of fraud law.

*Robinson Helicopter* has been read to encompass intentional misrepresentation and concealment, but courts have been more cautious about extending it to negligent misrepresentation. The distinction matters because many business-to-business disputes involve allegations that a contracting party overstated its capabilities, misrepresented the quality of its goods, or failed to disclose material defects — conduct that may sound in negligent misrepresentation rather than intentional fraud.

### The Special Relationship Exception

The "special relationship" exception permits tort recovery for purely economic losses where the parties stand in a relationship that imposes duties beyond those created by their contract. The paradigmatic example is the professional-client relationship: an attorney, accountant, or insurance broker who negligently advises a client may be liable in tort even though the parties' relationship is also contractual.

In *Bily v. Arthur Young & Co.*, 3 Cal.4th 370 (1992), the California Supreme Court addressed the scope of the special relationship exception in the context of auditors and accountants. The court held that an auditor's duty of care for negligent misrepresentation extended only to those persons for whose benefit the audit was intended — typically the client and certain specifically identified third parties — not to the general investing public. This limitation remains significant in securities-related business tort litigation.


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### The Contract-Tort Boundary in Practice

The 2023-2024 case law continued to refine the boundary between contract and tort. In *Erlich v. Menezes*, 21 Cal.4th 543 (1999), the Supreme Court had established that a breach of contract does not give rise to tort damages merely because the breach was negligent — something more is required, such as a violation of an independent duty or conduct that goes beyond the contractual failure. Courts in this period applied *Erlich* to dismiss tort claims that were, in substance, repackaged breach-of-contract claims seeking to leverage tort remedies (principally punitive damages and broader consequential damages) unavailable under the contract.

Plaintiffs have responded by structuring their pleadings to articulate independent duties — duties that exist apart from the contract and that were violated by conduct that is tortious in character, not merely a failure to perform a contractual promise. The most common strategy is to pair a breach-of-contract claim with a fraud claim based on promissory fraud (making a contractual promise without any intention of performing it) or a negligent misrepresentation claim based on pre-contractual statements that induced the plaintiff to enter the contract.

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PRACTICAL TAKEAWAYS

- **Non-competes:** All non-compete agreements are void as applied to California-based workers, regardless of where signed. Employers must audit existing agreements and comply with AB 1076's notification requirements to current and former employees.
- **Trade secrets:** Identify trade secrets with reasonable particularity at the pleading stage, document reasonable protective measures, and do not rely on "inevitable disclosure" theories — California rejects them. Pursue CUTSA and DTSA claims in parallel where federal jurisdiction is advantageous.
- **UCL standing:** Ensure that the named plaintiff can demonstrate concrete, causally connected financial harm from the challenged practice. Competitor plaintiffs face a higher evidentiary burden to show diverted business or customers.
- **Tortious interference:** Recognize that section 16600 limits the viability of interference claims grounded in non-compete or non-solicitation obligations. Focus interference allegations on independently wrongful conduct — not on the hiring itself.
- **Economic loss rule:** When asserting both contract and tort claims, plead the tort claim with independent factual allegations establishing either fraud or a special-relationship duty. A tort claim that merely restates the breach of contract in tort language will not survive demurrer.

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The 2023-2024 period reinforces a consistent theme in California business tort law: the state's courts and legislature favor open competition, employee mobility, and access to the marketplace — while maintaining robust protections for genuinely proprietary information and holding parties to honest dealing. Businesses that understand where these doctrines are heading can structure their agreements, competitive practices, and litigation strategies accordingly.


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