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Potential consequences of aiding employee disloyalty

California law allows competitors to recruit each other's employees — but not by any means

By [Dan Eaton](#) PUBLISHED: June 29, 2026 at 6:00 AM PDT

This column first addressed an employee's duty of loyalty nine years ago, almost to the day. A recent ruling of San Diego's division of the California court of appeal prompts this update.

Guild Mortgage Company LLC v. CrossCountry Mortgage LLC addressed claims by nationwide residential mortgage lender Guild Mortgage Company against a rival firm, CrossCountry Mortgage (CCM). Guild alleged CCM conspired with three Guild employees at Guild's Kirkland, Wash. branch — while they were still Guild employees — to divert Guild loan business and employees to CCM.

Guild further sought damages from CCM for conspiring with the employees to steal Guild trade secrets and other confidential information and to access Guild's computer system to copy stored confidential information and use it to CCM's competitive advantage.

Guild was awarded monetary relief from each of the three allegedly conspiring employees in arbitrations. Guild separately sued CCM in court while those arbitrations were pending.

CCM argued the three Guild employees owed no actionable duties to Guild, so CCM could not be liable for aiding and abetting any breach of duty. CCM further argued it could not be liable for interfering with Guild's relationships with Guild employees and customers or for conspiring in the employees' unauthorized conduct related to Guild's computer systems because the heart of those claims was the employees' misappropriation of trade secrets for which the California Uniform Trade Secrets Act (CUTSA) provided the only remedy.

The trial judge agreed with CCM and dismissed Guild's complaint. The court of appeal reversed.

Aiding employee disloyalty

In 1995, the court of appeal in *Stokes v. Dole Nut Co.* ruled employees owe their employer "undivided loyalty" while employed. An employer may sue for breach of this duty of loyalty. Some employees also owe their employers a deeper fiduciary duty, which one court has

described as the duty to protect the employer's interests and to avoid injuring the employer or depriving the employer of the employee's skills.

Applying these principles, the Guild court first ruled Guild employees at all levels owed Guild loyalty during their employment.

The court of appeal further ruled Guild had sufficiently alleged CCM had aided, and benefited from, then-Guild branch manager Christopher Flowers's breach of his fiduciary duty to Guild. Flowers owed a fiduciary duty to Guild even though Flowers was not a Guild vice president or other officer. It sufficed that Guild alleged it had trusted Flowers to oversee a sizeable branch.

The court held CCM would be liable to Guild if Guild ultimately proves CCM aided Flowers in recruiting the two conspiring subordinates to leave Guild to work for CCM and to convert Guild's customers and their loan applications to CCM, breaching not only the duty of loyalty the employees owed Guild but also obligations Guild owed its clientele, and causing the mass resignation of virtually all employees at Guild's Kirkland branch.

Disrupting Guild's employee, customer relationships

CCM argued CUTSA, California's trade secrets law, displaced Guild's claims that CCM wrongfully induced the three Guild employees to breach loyalty and confidentiality provisions in their Guild employment contracts and that CCM wrongfully disrupted Guild's relationships with borrowers and prospective borrowers. Guild expressly did not assert a CUTSA claim against CCM, presumably to avoid limiting its claims against CCM. But CCM argued Guild's interference claims, at heart, were misappropriation of trade secrets claims.

Not so, said the court of appeal. The court noted that CUTSA purported to establish a uniform, exclusive remedy for misappropriation only of information meeting the definition of a trade secret. CUTSA defines a trade secret as information that (1) has independent value from not being generally known; and (2) is subject to reasonable secrecy measures. Guild's employment agreement with the three employees who allegedly conspired with CCM identified trade secrets as just one of several types of proprietary Guild "confidential information."

Even if CUTSA displaced non-CUTSA claims based on misappropriation of any kind of confidential information, the court concluded Guild had alleged conduct extending "far beyond merely taking and using confidential information." Mining Guild's computer systems for confidential information to take to CCM served to further the conspiracy's primary objective: having a Guild branch manager sabotage the branch's operations while still employed.

Nor did CUTSA displace Guild's claim that the conspiracy between CCM and the employees violated the Comprehensive Computer Data Access and Fraud Act (CCDAFA). CCDAFA prohibits wrongfully accessing and tampering with, computer systems. CUTSA and CCDAFA target different wrongs. CUTSA combats predatory conduct directed at certain types of intellectual property. By contrast, CCDAFA combats predatory conduct directed at electronic data and how it can be hosted, stored, and manipulated. Guild's CCDAFA claim therefore is not based on the misappropriation of trade secrets, which only CUTSA can address.

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