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Post-Trial Roadmap on What Not to Do After a Failed Deal

Propel c. Phillips 66, No. 22CV007197 (Cal. Super. Ct. July 30, 2025)

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What went wrong is plain from the record. Phillips 66 courted Propel, obtained deep access to Propel's models and strategy during diligence, and repeatedly signaled that a deal was on track. Inside Phillips 66, however, executives debated a "go it alone" pivot while still drawing on Propel's information. The team that had supported diligence began building Phillips 66's competing plan, retained Propel materials, and stripped Propel's name from models that would underlie Phillips 66's own launch. Within days of the internal decision, Phillips 66 told regulators it would proceed without Propel and then sent formal notice terminating the deal. The court found this misuse of diligence access and reversal in course "reprehensible" from a business perspective.

The paper trail makes the sequence hard to dismiss as ordinary competition. By March 2018, Phillips 66 executives acknowledged the value of Propel's know-how. As diligence progressed, Phillips 66 negotiated price and terms while the internal team worked up a standalone plan. Communications reflected that Phillips 66 no longer needed Propel to reach the market, had learned far more through diligence than before, and was preparing an internal presentation on the pivot. The same personnel who had reviewed Propel's confidential materials were tasked with modeling Phillips 66's entry and kept Propel files in their working directories even after retirement. The court credited that evidence and concluded that Phillips 66 used Propel's confidential information to launch a rival program after walking away from the deal.

Against that record, the jury returned a $604.9 million unjust-enrichment verdict and found willful and malicious misappropriation by clear and convincing evidence. The court grounded its CUTSA damages enhancement in three anchors it identified on the face of the order: the nature of the misconduct as found by the jury, Phillips 66's financial condition and ability to pay, and the relationship between exemplary and compensatory relief. It then assessed reprehensibility using the guideposts the order cites and applied them to the evidence of how the negotiations and pivot unfolded.

The calibration is concrete. Rather than doubling the entire $604.9 million, the court tied the enhancement to real-world deal economics. It selected $195 million—three times the conditional purchase price plus the executive team incentives that had been part of the proposed transaction—explaining that this amount punishes the misconduct without reducing punishment to a routine cost of doing business for a large public company. The court also emphasized specific deterrence: a total judgment of this size, with interest, is "more than sufficient" to drive fair diligence practices and to ensure confidential materials are returned or quarantined when a transaction fails.

The lesson is not about headline numbers. It is about process discipline in deals. If you are accessing a counterparty's models to evaluate an acquisition, do not repurpose those models to stand up your own competing program. Segregate diligence work, use a clean team if there is any chance of an internal pivot, track who touched what, and document return or quarantine when talks stall. For litigators, build or attack the enhancement on the points the order highlights: negotiation timeline, what was promised externally versus decided internally, who retained or reused the counterparty's files, and how quickly the rival came to market. Misusing diligence access is the type of conduct that can transform a compensatory award into a punitive one calibrated to the benefit of the bargain you tried to take without paying for.