SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA Dept. No. 23

Date: 7/30/2025 Hon. MICHAEL MARKMAN, Judge

PROPEL FUELS, INC.,

Plaintiff,

v.

PHILLIPS 66 COMPANY,

Defendant.

Case No. 22CV007197

ORDER RE EXEMPLARY DAMAGES; INTEREST; and CASE MANAGEMENT ISSUES

ORDERS

Exemplary Damages

The court awards exemplary damages pursuant to Civil Code section 3426.3, subdivision (c), in the amount of $195 million, for the reasons discussed below. The sum represents triple the purchase price offered by Phillips 66 for Propel Fuels in March of 2018 (including anticipated earn-out incentives to members of Propel's management team).

Interest

The court sets the interest rate at seven percent pursuant to section 3287, subdivision (a) of the Code of Civil Procedure, running from the date of the jury's verdict. Damages since that date are "readily ascertainable" for purposes of the statute. For the reasons discussed below, the court rejects Phillips 66's argument that the jury's award did not constitute "damages" for purposes of section 3287(a). Interest is not yet available at the post-judgment rate of ten percent because the court has not yet issued the Judgment.

Motion to Stay Execution of Judgment

The court GRANTS Defendant's motion to stay execution of the Judgment. Per Defendant's earlier request, the court has waited until issuing this decision to enter Judgment.

The court will meet with the parties on August 5, 2025 at 10am to discuss the proposed form of Judgment and to then enter Judgment. Appearances may be made via Zoom.

Case Management Conference

The court sets a case management conference for August 5, 2025 at 10am for purposes of discussing the form of Judgment and to enter Judgment. Appearances may be via Zoom. The parties are to meet and confer and submit a proposed form of judgment (or competing drafts if no agreement is reached) by 11:30am on August 4, 2025. An electronic copy is to be emailed to dept23@alameda.courts.ca.gov. The court plans to discuss the timing of post-judgment briefing at the case management conference.

OVERVIEW

Plaintiff Propel Fuels, Inc. produces and sells renewable, low-emission, high-performance fuel – specifically renewable diesel fuel and an ethanol-based diesel fuel known as "E85." Phillips 66 Company is a large oil company that sells fuel through a network of gas stations. On September 25, 2017, after Phillips 66 expressed interest in acquiring Propel, the parties signed a non-disclosure agreement ("NDA"). Propel agreed that it would negotiate exclusively with Phillips 66 and not attempt to negotiate an acquisition with any other potential acquirer. An extended due diligence period followed. Propel shared a range of information about its business with Phillips 66 as the two parties negotiated the terms of an acquisition.

On August 24, 2018, however, Phillips 66 notified Propel that it was terminating negotiations and releasing Propel from its exclusivity obligations. In the aftermath of the termination, Phillips 66 took rapid steps toward developing its own renewable diesel business and entering California's renewable diesel market.

Before the statute of limitations expired, Propel filed suit against Phillips 66 for trade secret misappropriation under the California Uniform Trade Secrets Act ("CUTSA"). The parties and the court tried this trade secret misappropriation case to a jury in September and October 2024. The jury reached a $604.9 million verdict for the plaintiff, representing Phillips 66's unjust enrichment. (Civ. Code, § 3426.3, subd. (a).) The jury also found, by clear and convincing evidence, that Phillips' actions were willful and malicious. The jury's finding triggered further proceedings concerning whether the court should impose exemplary damages and, if so, how much those damages ought to be.

By statute, exemplary damages are set by the court rather than the jury. CUTSA provides: "If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subdivision (a) or (b)." (Civ. Code, § 3426.3, subd. (c).) Twice the unjust enrichment award of $604.9 million yields a staggering $1.2 billion maximum award, which is what Propel Fuels seeks here.

The court's decision to award $195 million as exemplary damages is tied to its review of the testimony and other evidence at trial. In summary, the court finds that Phillips 66's misconduct was "reprehensible" from a business perspective. The evidence at trial reflects that Phillips 66 took advantage of Propel Fuels by abusing its bargaining power during due diligence. Propel was financially vulnerable as the far, far smaller party in the transaction – a small start-up facing cash flow issues as compared to the oil and gas behemoth. Phillips dangled the carrot of an acquisition of $40 million, plus $25 million in milestone-based incentives to Propel's executive team. After Phillips walked away from the deal, the evidence reflects that Propel nearly imploded.

Phillips gained substantial knowledge about the renewable diesel and E85 business from Propel. Ultimately, learning Propel's trade secrets gave Phillips the comfort to abandon Propel and "go it alone" in the renewable diesel market. Its knowledge of Propel's trade secret information itself made the business case for entering the renewable diesel and E85 markets. Phillips 66 saved months (if not years) by leveraging what it learned from Propel. It did not need to create a new business plan from scratch because Propel had already given it proof of concept. Phillips 66 ran with it. Among other things, Propel's data found its way into the foundational documents, enormous spreadsheets used for financial and site analyses, used by Phillips to green-light its "go it alone" strategy.

Phillips 66 took no efforts to shield the team implementing its renewable diesel project from Propel's trade secrets. Rather, the team that implemented Phillips 66's "go it alone" strategy was virtually identical to the team that Phillips had used to conduct the due diligence of Propel. Phillips 66 knew it could make use of a "clean team" to avoid any potential misuse of Propel trade secrets – such steps are well known throughout corporate America and Phillips executives testified they were certainly aware of the concept – but it did not consider the deal significant enough to undertake the necessary effort and expense.

Further, for several weeks after the executive in charge of Phillips 66's renewable diesel plans claimed he had decided he had misgivings about a deal with Propel, the evidence reflects the same executive assured Propel that the deal was still on track. Other Phillips personnel involved in the due diligence did the same. The evidence reflects this was no mere accident. Phillips 66's efforts to explain away the evidence reflecting its misuse of Propel's trade secrets were not persuasive.

Evidence of Phillips 66's financial condition reflects that Phillips has the ability to pay the sum set by the court along with the jury award and interest. The ratio of the jury's award to the court's exemplary damages award is well within the two-to-one range anticipated by the California Uniform Trade Secrets Act.

The court's $195 million award is not what Propel wanted. The court, however, finds that Propel's proposed award – $1.2 billion – would go too far. The jury's award is enormous, but not punitive, because it forces Phillips 66 to give up the gains it made at Propel's expense. The court's $195 million figure punishes Phillips for its misconduct because it is directly tied to

the real-world value of the benefit of the parties' bargain. It encompasses and then trebles the total value of the deal to Propel and its executive team.

Phillips 66 is a large, publicly traded company, but a $195 million award is meaningful and would not be just a "routine cost of doing business." (*Simon v. San Paolo U.S. Holding Co.* (2005) 35 Cal.4th 1159, 1185.) The concerns that enter the equation when discussing the maximum exemplary damages award available here (the $1.2 billion Propel seeks) are abated by tying the exemplary damages award to the benefit of the parties' original bargain. A $195 million award is also apparently among the top five awards of exemplary damages under CUTSA (and its relatively new federal equivalent) at least since 2013. (Ritz Decl., App. A.)

EXEMPLARY DAMAGES

Legal Framework

The jury awarded $604.9 million as the amount of Phillips 66's unjust enrichment. (See Civ. Code § 3426.3, subd. (a) [a complainant may "may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss."].) "If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice" that amount." (Civ. Code, § 3426.3, subd. (c).) Propel seeks the maximum in exemplary damages.

During the pretrial conference, the court ruled against Propel's argument that it could establish willful and malicious misappropriation by a preponderance of the evidence. The court instead required that Propel make the showing by clear and convincing evidence. The jury found willful and malicious conduct by Phillips using the higher standard imposed by the court.

In a sense, the statute places the judge in the role of the trier of fact for purposes of deciding whether to impose exemplary damages and, if so, how much those damages ought to be. (See Civ. Code, § 3426.3, subd. (c) ("the court *may* award exemplary damages"); *Robert L. Cloud & Assocs., Inc. v. Mikesell* (1999) 69 Cal. App. 4th 1141, 1151 n.8 (*Robert L. Coud & Assocs.*); see *Monster Energy Co. v. Vital Pharms., Inc.* (C.D. Cal. Oct. 6, 2023) 2023 WL 8168854, at *20.) In that respect, the exemplary damages available are less similar to treble damages under various California statutes (for example, statutes awarding treble damages under the Cartright Act (Bus. & Prof. Code, § 16755, subd. (a)(3)) or for financial elder abuse (Civil Code, § 3345, subd. (b)) than they are to a traditional punitive damages assessment by a trier of fact. A leading California decision explains:

> While an award of treble damages is equally punitive in its effect, the computation of the penalty is strictly mechanical. In contrast, an award of punitive damages under the UTSA is subject to no fixed standard; the statute merely sets a cap on the amount of the award. The trial court retains wide discretion to set the amount anywhere between zero and two times the actual

> loss. (§ 3426.3, subd. (c).) Thus, evidence of the defendant's financial condition remains essential for evaluating whether the amount of punitive damages actually awarded is appropriate.

(*Robert L. Cloud & Assocs., supra,* 69 Cal. App. 4th at p. 1151 n.8.)

The court's review of the record in connection with exemplary damages focuses on three sets of facts: (1) The nature of Phillips' misconduct, as found by the jury, (2) Phillips' financial condition (and specifically the ability to pay the award), and (3) the ratio of the potential exemplary damages award to compensatory damages. (See *Robert L. Cloud & Assocs., supra*, 69 Cal.App.4th at p. 1152-53; *Adams v. Murakami* (1991) 54 Cal.3d 105, 110 (*Adams*).)

When assessing the "reprehensibility" of a defendant's misconduct, courts look to five factors. These are:

> (1) the harm caused was physical as opposed to economic; (2) the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; (3) the target of the conduct had financial vulnerability; (4) the conduct involved repeated actions or was an isolated incident; and (5) the harm was the result of intentional malice, trickery, or deceit, or mere accident.

(*State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 419, citing *BMW of N. Am., Inc. v. Gore* 517 U.S. 559, 575 (*Gore*).)

A number of courts also indicate some degree of deference is due to the legislative judgment concerning enhanced damages. (See *Motorola Sols., Inc. v. Hytera Comms. Corp. Ltd.* (7th Cir. 2024) 108 F.4th 458, 496, *reh'g and reh'g in banc dismissed,* 2024 WL 4416886 (7th Cir. Oct. 4, 2024), *cert. denied,* 145 S. Ct. 1182 (2025) (*Motorola Sols.*).) What "legislative judgments" these courts perceive, however, seem to amount to repeating that "appropriate sanctions" for misappropriation "cap out at twice the compensatory damages awarded by" the trial court. (*Id.*)

Finally, when assessing the relationship of compensatory damages with exemplary damages:

> the California Supreme Court has made clear that compensatory damages and exemplary damages should share a direct relationship." *Mattel, Inc. v. MGA Enter't, Inc.,* 801 F.Supp.2d 950, 955 (C.D.Cal.2011), *vacated on other grounds,* 705 F.3d 1108 (9th Cir.2012) (citing *Neal,* 21 Cal.3d at p. 928 (awarding $85 million in exemplary damages-an amount equal to the compensatory damages-in a California trade-secret misappropriation case)). Large compensatory damages awards warrant proportionally larger exemplary

damages awards. *See State Farm,* 538 U.S. at p. 425 (acts of bad faith and fraud warranted something closer to a 1 to 1 ratio); *Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal. of Life Activists,* 422 F.3d 949, 962 (9th Cir.2005) (holding that in cases where there are significant economic damages and punitive damages are warranted but behavior is not particularly egregious, a ratio of up to 4 to 1 serves as a good proxy for the limits of constitutionality); *Zhang v. Am. Gem Seafoods, Inc.,* 339 F.3d 1020, 1043–44 (9th Cir. 2003) (post-*State Farm* case upholding 7 to 1 ratio where the wrongful conduct involved significant racial discrimination).

(*Patriot Rail Corp. v. Sierra R. Co.* (E.D. Cal. Oct. 23, 2014) 2014 WL 5426446, at *5.)

Limitation of Liability Clause

Phillips 66 initially argued that Propel bargained away the right to any exemplary damages claim pursuant to the terms of the parties' 2017 Non-Disclosure Agreement ("NDA"). Section 7 of the NDA, which Phillips relies upon, states: "In no event shall any Party be entitled to exemplary, indirect, special, punitive, consequential damages and/or lost profits." (PX-20051 at § 7.) Propel countered that the limitation of liability applies only to claims for breach of the NDA and that section 7 of the NDA is unenforceable under Civil Code sections 1668 and 3513.

Propel argues that Civil Code section 1668 forecloses Phillips 66's argument here. It provides: "All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." (Civ. Code, § 1668.) Phillips responded that section 1668 ought not to apply here because the NDA simply limited the remedies available between it and Propel.

The California Supreme Court's recent decision in *New England Country Foods, LLC v. VanLaw Food Products, Inc.* (April 24, 2025) 17 Cal.5th 703, 707, resolves Phillips 66's defense under the NDA categorically in Propel's favor. There, the Court held that "a limitation on damages for willful injury to the person or property of another is invalid under section 1668." (*Ibid.*)

In supplemental briefing requested by this court, Phillips 66 confirmed that the *VanLaw* decision "forecloses P66's argument that section 1668 is inapplicable because 'the Limitation of Liability Clause merely limits the type of remedies available.'" (Supp. Br. at p. 1.) Phillips argues the case "reinforces P66's argument that the Court 'should exercise its discretion' under CUTSA 'to award zero exemplary damages.'" (*Ibid.*) The court agrees with Phillips 66 that, under the statute, the court has the power to not award exemplary damages. As discussed below, however, the evidence strongly supports an award.

The court need not reach the parties' arguments with respect to Civil Code section 3513. That statute provides: "Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." The purpose of punitive damages "is a purely public one." (*Adams, supra,* 54 Cal.3d at p. 110.) The court has not identified anything in the legislative history of CUTSA to suggest that exemplary damages should be interpreted differently from punitive damages in the context of section 3513.

The Nature of Phillips 66's Misconduct

The jury found Phillips 66 liable for trade secret misappropriation by a preponderance of the evidence. The jury's verdict reflected misappropriation of dozens of trade secrets. The jury found that Phillips 66's conduct was willful and malicious by clear and convincing evidence. These are obviously economic rather than physical harms, and public safety is not an issue, to use the framework of *Gore, supra*, but the court starts its analysis with the jury's decision that the economic harm was indeed reprehensible.

The court has reached its own conclusions, independent of the jury as the statute appears to require, based on the entire body of evidence admitted at trial. The court will highlight here only on a few examples of the evidence. Those examples include Phillips' duplicitous handling of the wind-down of the parties' potential acquisition deal, troubling aspects of Phillips' handling of the due diligence process, and the accompanying mismanagement of the transition from a potential acquisition to a "go it alone" strategy (including the failure to use a clean team procedure).

The evidence of Phillips 66's handling of the wind-down of the deal with Propel contributes to the conclusion that Phillips 66's misconduct was reprehensible. Some background is helpful here. Phillips 66's dealmakers were initially very excited about the prospect of a deal with Propel. The manager of Phillips' commercial renewable fuels business, Drew Leder, helped craft the strategy for the renewables business. (JX 111.) In 2017, the strategy increasingly relied on opportunities relating to renewable diesel. (E.g., PX 20179.) The problem was that Phillips had to be confident in the supply of renewable diesel in order to build the business. (See DX 30124.)

Discussions began between Propel and Phillips 66 business development lead Matt Fischer, resulting in the signing of an NDA in September 2017. Leder first met with Propel executives Koichi Kurisu and Robert Elam in October 2017. As discussions moved forward, Phillips began referring to Propel with the codename "Area 49." By December of 2017, Leder was a proponent of Propel within Phillips. (PX 20501.) He believed Propel could position Phillips 66 favorably "at the end of the renewable diesel value chain" (PX 20414). In other words, a deal with Propel could put Phillips in the position of being able to move large volumes of renewable diesel at the gas pump.

By March of 2018, Leder seemed bullish about a deal with Propel, telling colleagues "we'll learn so much from them." (PX 20275.) If Phillips let Propel, then Propel could help Phillips tremendously by growing retail, developing symbiotic marketing arrangements, and the like. Matt Fischer, who was the lead negotiator with Propel, also liked the deal, though he concedes a bias in favor of dealmaking given his role in business development. (PX 20211.)

Based on input from multiple executives involved in supervising Phillips 66's renewables strategy, the companies moved forward with further discussions and initial due diligence. The parties signed a letter of intent in December 2017, with a preliminary bid of $55.8 million for the acquisition. (PX 20510.) On March 26, 2018, with due diligence under way, Phillips submitted a conditional bid to Propel for $40 million. (JX 6.) Propel signed off, agreeing to negotiate with Phillips exclusively through due diligence until its acquisition by Phillips – or until the termination of the deal.

Senior Strategy Advisor Gary Brush was among the Phillips executives who were initially excited about a deal with Propel. By May 30, 2018, in the midst of due diligence, Brush indicated Phillips was "buying a ten-year head start in renewables." (PX 20345.) Brush based that estimate on Propel's ten years in business marketing E85 at that point, but the key point was that Propel had broad recognition and strength in the renewable fuel business. Phillips 66 personnel accessed the data warehouse for its due diligence of Propel over 6,300 times, downloading 2,768 records. (PX 20021.)

Phillips 66 blamed its souring on the Area 49, aka Propel, deal on multiple factors throughout the trial. One line of testimony suggested that a deal with Propel would involve "cracking concrete" at gas stations across California to put in new pumps and tanks at great expense, which did not seem to hold up on cross-examination. Another line suggested that Propel faced regulatory hurdles that would become even more challenging if Phillips 66 were to acquire it, which Propel effectively countered via contrary evidence and expert testimony. A further line argued that Phillips 66 had misgivings about Propel's CEO, Robert Elam, due to intemperate emails and behavior. His behavior did become unusual as due diligence neared an end without confirmation from Phillips that the deal would be consummated, but that explanation, too, seemed contrived.

Phillips 66's unpersuasive explanations aside, from the court's perspective the evidence reflects that the tenor of internal decision-making at Phillips began to change in April 2018 when Phillips 66 executive Nick Dombalis was brought in to supervise the Propel acquisition and its anticipated integration with Phillips. In mid-May, Dombalis had misgivings; he believed further evaluation was necessary to prevent Phillips from walking away from the deal. (JX 65.) Nevertheless, in a June 1, 2018 email exchange with Gary Brush, Dombalis expressed his agreement that Phillips was buying a head-start by acquiring Propel. (PX 20342.)

A week later, June 7, 2018, Dombalis voiced his belief that Phillips 66 ought not to acquire Propel. He wrote to his supervisor, Randy Fralix, that time was Propel's enemy and its alternatives were limited. As a result of cash flow issues, Propel "was a failing business in my

mind," said Dombalis. (Tr. 1735:12-27.) It was time to move forward without Propel. "We do not need the Propel brand to market RD," he wrote. (JX 64.) Dombalis noted that "we know much more than we did 4 months ago," as a result of due diligence. He believed it would be "strategic to start leveraging time to improve [Phillips'] position." (JX 64.) In connection with a presentation to senior executives about the potential Propel deal, Mr. Dombalis noted that one of the reasons to make the potential purchase was to enable speed to market entry. (PX 20199.) But the value of the deal versus the next-best alternative seemed to favor going it alone. Among other things, doing so could reduce the risk of executing on a deal with a small team not already with Phillips.

During June 2018, notwithstanding the internal decision at Phillips to move away from a deal with Propel, Propel's executive team was waiting for the final green light from Propel. The evidence reflects multiple discussions between executives at Propel and Phillips concerning when the deal would become final. Phillips 66 deal team members repeatedly reassured Propel executives that the deal was on track. (For example, Tr. 1125:18-1126:21.)

On June 27, 2018, Dombalis himself told Propel that the transaction was final and simply awaiting approval by Phillips 66's chairman of the board. (PX 20096; Dombalis testimony [TR 1614:25-1616:14.].) The reassurance was particularly duplicitous in light of Dombalis' internal communications at Phillips that the deal should not go forward. Dombalis enthusiastically wrote to Propel's second in command, Koichi Kurisu: "I made the presentation about Propel purchase last Friday, upbeat, now it is the COB's (Greg Garland) call. Convinced we can crush it..best regards, Nick." (PX 20096.)

Asked about his email to Mr. Kurisu at trial, Dombalis testified:

A: Yes. I did say that, yes.
Q: Now, it was not true at this time, all of the necessary approvals, except for the CEO's, had been completed; right?
A: That's not correct.
Q: Had you signed off on the deal?
A: I had not.
Q: Had Mr. Fralix signed off on the deal?
A: I have not – or he did not.
Q: Had Ms. McGinnis signed off on the deal?
A: At this point I'm not aware of it, no.
Q: Okay. Those are all people that had to sign off on the deal before it got finalized; right?
A: That's not correct.
Q: So Ms. McGinnis was not the decider?
A: No. It has to typically go through my team's group where we have each department sign off on the respective analysis and sign off before it moves to Mr. Fralix.
Q: Okay. But had those things happened yet as of June 17th-27th?

A: Not to my knowledge.
Q: That's not what you told Mr. Elam and Mr. Kruisu, is it?
A: It's just I said what I said.

(TR 1614:25-1616:14.) Mr. Dombalis later agreed that, by early August 2018, he was "done with Propel."

It took over a month more, until August 24, 2018, before Phillips 66 officially pulled the plug on the Propel deal by sending notice to Propel.

August 24, 2018 was a Friday. Mr. Dombalis testified he thought the decision to "go it alone" was made sometime after August 24. Retail fuel sales expert Charley Lakey began removing the word "Propel" from a list of station site "scores" that had been created with Propel's input during due diligence. (PX 20876.) On the following Monday, August 27, 2018, Dombalis' team sent a notice letter to California regulators at the California Air Resources Board ("CARB") concerning its anticipated entry into the renewables market. (JX 74.2.) By February 2019, Phillips 66 was implementing its strategy of converting sales of diesel fuel (known as "CARB 2") to R99 (renewable diesel).

Dombalis' team – which was the same team as the one that had been working to make the Propel acquisition happen and to successfully implement it on "Day One" – moved forward in developing a "go it alone" strategy. No efforts were taken to achieve any separation between the Propel deal team and the "go it alone" team at all. Based on the expert testimony at trial, the concept of using a "clean team" after an unsuccessful joint venture or acquisition, is well known, and Phillips' decision-makers certainly knew it was a possibility. Dombalis himself had experience "recusing" himself from aspects of other deals, including one with "E-Fuels" for mobile diesel services.

Phillips 66 elected not to use a clean team. It explains this decision with reference to the expense involved in bringing in a new team after an existing team with existing expertise had been involved in a project. It also suggests that use of "clean teams" are an exception rather than the rule in the oil and gas industry, but the supporting evidence was not at all persuasive. Phillips decided instead to attempt to delete references to Propel in its financial models and other data that would be used in its new RD and E85 business.

Phillips 66's decision to use its Propel team to build Phillips' own business was, at best, a terrible error of judgment. The jury found it was more, and the evidence concerning the overlapping teams certainly helped support its finding of willful and malicious conduct by clear and convincing evidence. It also supports the court's conclusions here.

Without a clean team in place, it is understandable why evidence of misuse of Propel trade secrets pops up through much of the evidence of Phillips 66's "go it alone" activities in the latter part of 2018. For example, Charley Lakey undertook efforts to delete "Propel" from retail data about sites where RD and E85 might be sold, but evidence of re-use of Propel's site-

related data persists in work relating to the build-out of Phillips' new operations. Dombalis himself kept a "Propel" file with information from the due diligence process in his files right up until he retired.

Most strikingly, Jonathan Cohen was tasked with preparing a financial model. Among other things, he was tasked with stripping out and deleting Propel information in various financial models so that the models could (theoretically) then be reused. On September 13, 2018, Cohen sent a spreadsheet to Dombalis with the subject line: "Here. Take it. It's yours." (PX 20384.) Hard-coded information from Propel remained in the models.

Propel likened the re-use of its trade secret data as similar to basically slapping a new "go it alone" cover sheet on top of the financial models that had been used to green-light the deal with Propel, and which relied on Propel trade secret information. The evidence does not reflect a one-to-one correlation in all fields, but Propel makes a persuasive side-by-side comparison of the August 21, 2018 executive summary of the potential Propel Acquisition, prepared and used just before officially terminating the Propel deal, with the executive summary in the "here...take it...its yours" email on September 13, 2018 (and a September 11, 2018 summary for the "pilot" of the "go it alone" strategy. (Compare PX 20395 p. 6 with PX 20384 p. 43 and with JX 10 p. 2.)

Phillips 66 argues that its conduct did not really cause harm to Propel. While it is correct that the jury's damages award is tied to unjust enrichment rather than to damages or lost profits, Phillips' conduct had a very real impact on Propel. Propel lost out on its acquisition price of $40 million, with $25 million lost by executives that they could have earned by hitting various post-acquisition milestones. (JX 6.) Propel had difficulty negotiating with other potential business partners, who wondered why the deal had gone south. (Tr. 380:21-28; 505:6-21.) And it nearly defaulted on its loans. (Tr. 617:5-12; 619:13-15.) The total economic harm to Propel is difficult to model and Propel did not attempt to do so at trial since it was pursuing a far more valuable unjust enrichment theory of damages, but Phillips 66 is overly dismissive when it argues "Propel did not prove actual harm."

In summary, the evidence reflects reprehensible business conduct by Phillips 66. Phillips 66 gleaned an enormous amount of information concerning the renewable diesel and E85 markets from due diligence. Internally, some at Phillips characterized it as a ten-year head start, in the sense that Propel had accumulated ten years' worth of know-how, real-world data, and other information that Phillips would be able to leverage in an acquisition. Phillips 66 leveraged its time in due diligence, effectively deciding to "go it alone" by early June 2018. It continued to string Propel along during that time, most jarringly seen in Mr. Dombalis' email of June 27 reassuring Mr. Kurisu at Propel that the deal had been presented to the decision-makers and was just awaiting final approval from the chairman of the board. It took another month before Phillips 66 formally called off the deal.

Phillips 66 then managed to pivot to its "go it alone" strategy, contacting California regulators the very next business day after terminating the Propel deal. It pushed forward

building a business that it had not been a player in before due diligence with Propel. Its knowledge of Propel's trade secret information itself made the business case for entering the renewable diesel and E85 markets. Phillips 66 saved months (if not years) of design and development time because it had done all the work already alongside Propel during due diligence. Phillips 66 got its proof of concept from Propel and then ran with it.

Phillips 66 should have been candid with Propel about any alleged misgivings in early June 2018, when Nick Dombalis effectively decided the deal should not be consummated. It should not have repeatedly reassured Propel that the acquisition was on track when the deal was effectively dead. It should have collected and sequestered, returned, or destroyed all Propel confidential information shared during due diligence, without exception and without trying to parse whether a particular piece of information was indeed a trade secret under the law. It should not have tried to re-use spreadsheets populated with data from Propel, both financial and concerning site evaluations. And if all that was really too hard or too expensive, then it probably should have just acquired Propel. The end result of all of these missteps brought Phillips 66 to the jury verdict and to this award of exemplary damages.

Phillips 66's Financial Condition

Propel cites undisputed evidence that Phillips 66 had a net worth of $31.7 billion in 2023, which included $150 billion in revenue and $7 billion in after-tax profits. (Ex. 32 [PP6 2023 10-K].) It employs 13,000 people and had a market capitalization of $48 billion as of December 2024. (Ex. 33.)

Given the record, there is no question that Phillips 66 can pay the jury verdict, interest, and the court's exemplary damages award. Propel submits that the evidence of Phillips' financial condition reflects that an award under $1.2 billion would not be sufficient to deter and punish Phillips but would instead be a "routine cost of doing business." (*Simon, supra*, 35 Cal.4th at p. 1185.)

The court disagrees with Propel that a $1.2 billion award is required in order for any award to be effective in achieving its goals under the law. Exemplary damages of $195 million, on top of the jury's verdict, amounts to a total judgment of $799,900,000 – not including pre-judgment interest. That total is *not* routine.

The court anticipates that the total judgment is more than sufficient to cause Phillips 66, and public companies at large, to conduct due diligence fairly and to take reasonable steps to safeguard the trade secrets of their smaller potential acquisition partners. Steps like returning trade secrets and other confidential information after a failed merger or acquisition, pursuing future substantially similar business ventures by using a clean team ought to have been second-nature to Phillips before it danced with Propel. The court is confident Phillips will make it so going forward as a result of this case and the exemplary damages award.

Ratio of Exemplary to Compensatory Damages

The court's exemplary damages award is treble the value of Phillips 66's bid for Propel after including incentives for Propel's executive team. (JX 6.) But the award is well below the statutory maximum of twice the jury's $604.9 million award ($1.2 billion). It is just under one-third of the jury's unjust enrichment calculation. The award falls well within the court's discretion under CUTSA and is well within the bounds of due process set by the U.S. and California Supreme Courts. (See *Motorola Sols., supra*, 108 F.4th at p. 497 [explaining under Defend Trade Secrets Act ("DTSA"), the federal analog to the CUTSA, "The two-to-one limit on punitive damages is strong evidence that 'Congress supplanted traditional ratio theory and effectively obviated the need for a *Gore* ratio examination' of awards that comport with DTSA's statutory scheme."].)

The Court's Damages Calculation

After taking into account the factors discussed above, and after review of the record, the court awards exemplary damages in the amount of $195 million. The court reached this figure by reviewing the evidence relating to the original value the parties placed on the acquisition of Propel by Phillips 66.

As noted above, Phillips 66's original letter of intent concerning its potential acquisition of Propel valued the deal at $55.8 million. (PX 20510.) Further discussions led to a bid from Phillips 66 to purchase Propel for $40 million. (JX 6.) A further $25 million would go to members of Propel's management team in the form of earn-outs pegged to milestones concerning post-acquisition progress relating to the new business. Of the $25 million, $10 million would be tied to building out sites for selling renewable diesel and $15 million would be tied to milestones based on volumes of fuel sold by the new business. (JX 6; Kurisu testimony.)

While the court could exercise its discretion to simply double the jury's $604.9 million award, Phillips 66 has raised a number of due process concerns that a $1.2 billion award could be viewed as excessive. In the court's view, the value of the Propel acquisition to the parties provides a better starting point for assessing exemplary damages. The jury's award reflected the evidence concerning Phillips 66's unjust enrichment – Phillips 66's gains as a result of its trade secret misappropriation – rather than harm done to Propel. Doubling Phillips 66's unjust enrichment yields a number that would be a true windfall to Propel but that might not be construed as tied to harm to Propel.

Since the jury has effectively forced Phillips 66 to give up the benefits of Phillips 66's misappropriation, the court ties exemplary damages to the harm Propel suffered when Phillips walked away from its deal in order to "go it alone." The court pegs exemplary damages to harm that Propel suffered in the aggregate, since the court is also including milestone payments that would have been made to Propel executives after meeting various volume and station opening targets. The court enhances the value of the benefit of the bargain in order to

effectuate the purposes of an enhanced damages/punitive damages award, as described in the cases discussed above, by trebling what Phillips 66 had agreed to pay.

Further Due Process Analysis

Much of Phillips 66's argument concerning due process limitations on an award of exemplary damages seems to address the high end of the potential scale ($1.2 billion).

With regard to Phillips' broader arguments, the court disagrees with Phillips 66's argument that Phillips lacked notice it might be subject to an exemplary damages award because it had been relying on the limitation of liability language in section 7 of the parties' NDA until the *VanLaw* decision "unexpectedly broke new ground." (Def. Supp. Br. at pp. 5-6.) The language of Civil Code section 1668 has been on the books since the year 1872. The *VanLaw* decision is notable for the clarity with which it confirmed that "a limitation on damages for willful injury to the person or property of another is invalid under section 1668," but it was never reasonable for Phillips to rely on the NDA as forever foreclosing the availability of exemplary damages.

The court observed during the pretrial conference, when Phillips sought to eliminate the jury instruction concerning willful and malicious conduct (and when Propel sought to apply a lower burden of proof to the same instruction), that section 7 of the NDA appeared to limit liability based on a breach of the NDA. But there was no claim for breach of the NDA. Section 7 of the NDA did not appear to apply to an independent cause of action for trade secret misappropriation. Rather, the NDA was simply one of multiple pieces of evidence confirming that Phillips had a duty to maintain the secrecy or limit the use of the confidential information that Propel had shared with it during due diligence. (See Civ. Code, § 3426.1, subd. (b)(2)(B)(ii).)

Phillips 66 does not establish that the court's award of exemplary damages is prohibited or limited by due process requirements. "Elementary notions of fairness" enshrined in constitutional jurisprudence "dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." (*BMW of N. Am., Inc. v. Gore* (1996) 517 U.S. 559, 574.) The Supreme Court identifies "three guideposts indicative of adequate notice: degree of reprehensibility; ratio of punitive damages to harm/potential harm inflicted on plaintiff; and comparison of punitive damages award to other sanctions for comparable misconduct." (*Sierra Club Found. v. Graham* (1999) 72 Cal.App.4th 1135, 1162. [citing *BMW v. Gore, supra,* 517 U.S. at pp. 565, 574–75].) Here, the jury found willful and malicious misappropriation, indicating a severe degree of reprehensibility. While the jury award was based on Phillips 66's unjust enrichment, rather than injury to Propel, the ratio of the awards is authorized by statute, and this court is satisfied that the statutory damages cap provided by CUTSA complies with due process. Propel has made a showing that the award is comparable to awards in other cases, which the court will not repeat here.

POST-VERDICT INTEREST

Legal Framework

Propel seeks post-judgment interest at a rate of ten percent. California law provides: Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied." (Code Civ. Proc., § 685.010, subd. (a).)

Alternatively, Propel seeks pre-judgment interest at a rate of seven percent. The Civil Code provides: "A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt." (Civ. Code, § 3287, subd. (a) & (c) (setting seven percent rate).) Pre-judgment interest is available where "damages [are] readily ascertainable," which is true where damages are "determined by a verdict." (*Bullock v. Philip Morris USA, Inc.* (2011) 198 Cal.App.4th 543, 574.) Interest will begin to accrue under section 3287(a) from the date a jury verdict is entered. (*Id.*)

Discussion

This court's practice is to enter judgment within 24 hours of receiving a jury verdict, consistent with section 664 of the Code of Civil Procedure. Section 664, however, is not mandatory, and this case is not ordinary. The parties initially stipulated that the court not enter judgment. Later, Propel asked the court to enter judgment but Phillips 66 opposed, arguing that the judgment ought not be entered until after the court issues its decision relating to exemplary damages. The parties further stipulated to a prolonged briefing schedule concerning the exemplary damages issue. The Supreme Court's decision in *VanLaw* triggered a further round of briefing.

The cases Propel cites in support of its argument that the court should set interest at ten percent are not persuasive. The trial court judgment in *ATECO v. Hales* (Cal. Super. Ct. July 18, 2005) 2005 WL 4174035, does not include any discussion of the court's authority to issue "post-verdict interest" in the absence of a judgment. The decision in *Westbrook v. Fairchild* (1992) 7 Cal.App.4th 889, 898, does not include any such discussion either. The court in *Westbrook* was focused on the ten percent ceiling for post-judgment interest where the trial court had tried to permit the prevailing party to collect compound interest.

Additionally, as Phillips 66 points out, the court in *Westbrook* was likely relying on a since-amended Rule of Court, rule 3.1802, which permitted the clerk to include "interest accrued since the entry of the verdict" in the final judgment. A few years after *Westbrook*, the court in *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 532-533 rejected the argument that post-judgment interest accrues between entry of a jury verdict and the judgment because it would conflict with section 685.020(a), leading to the amendment of rule 3.1802 in 2014.

The bottom line is that, without a judgment, post-judgment interest cannot accrue under the statute.

Pre-judgment interest is available to Propel. The court entered the jury's verdict on the last day of trial. Under section 3287(a), pre-judgment interest began to accrue from that date. (*Bullock, supra,* 198 Cal.App.4th at p. 574.) Interest at a seven percent rate began to accrue under section 3287(a) from the date a jury verdict is entered.

Phillips 66 argues that Propel should not be able to recover even pre-judgment interest because the jury's award concerned unjust enrichment rather than "damages" under section 3287(a). The court disagrees for two reasons. First, Phillips 66 asserts its "unjust enrichment awards are not damages" argument too late. Had Phillips 66 made this argument at the conclusion of trial, or at the hearing on Propel's motion for entry of judgment, the court would have simply entered judgment so that post-judgment interest could accrue under section 685.010(a) of the Code of Civil Procedure. Propel would have suffered prejudice from the unavailability of interest during the extended briefing schedule the parties had agreed upon. The court would not have signed off on the procedure in the face of such prejudice.

Second, under *Bullock*, prejudgment interest begins to accrue when a jury verdict is entered. The verdict is based on unjust enrichment, but it remains a monetary remedy properly characterized as damages for purposes of section 3287(a). (See generally *Cassinos v. Union Oil Co.* (1993) 14 Cal.App.4th 1770, 1788, 1790 (awarding prejudgment interest on unjust enrichment claim based on trespass).) Section 3287 does not appear to make a distinction between unjust enrichment and any other monetary remedy, and no one has pointed to legislative history indicating to the contrary.

Finally, as Propel points out, none of the cases Phillps 66 relies upon involved a court denying prejudgment interest for unjust enrichment *post-verdict*. Two of Phillips 66's authorities concerned requests for prejudgment interests without any jury verdict at all. (*Keating v. Jastremski* (S.D. Cal. Mar. 30, 2021) 2021 WL 1195868 at *5; *Softketeers, Inc. v. Regal W. Corp.* (C.D. Cal. Feb. 7, 2023) 2023 WL 2024701 at *6.)

IT IS SO ORDERED.

July 30, 2025

Michael M. Markman
Judge, Superior Court of California
Alameda County

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	**FILED** Superior Court of California County of Alameda 07/30/2025 Chad Finke, Executive Officer / Clerk of the Court By: T. Lopez Deputy
PLAINTIFF/PETITIONER: PROPEL FUELS, INC.,	
DEFENDANT/RESPONDENT: PHILLIPS 66 COMPANY	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 22CV007197

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the ORDER RE EXEMPLARY DAMAGES; INTEREST; and CASE MANAGEMENT ISSUES entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 07/30/2025

By:

T. Lopez, Deputy Clerk

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6

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