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Attorneys for Plaintiff
Agilent Technologies, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

AGILENT TECHNOLOGIES, INC., a Delaware Corporation,

Plaintiff,

v.

TWIST BIOSCIENCE CORP., a Delaware Corporation; EMILY LEPROUST, an Individual; and DOES 1 through 20, inclusive,

Defendants.

Case No. 16-cv-291137

FIRST AMENDED COMPLAINT FOR:

(1) BREACH OF CONTRACT;
(2) BREACH OF THE DUTY OF LOYALTY; AND
(3) MISAPPROPRIATION OF TRADE SECRETS

JURY DEMANDED

Complaint filed: February 3, 2016
Judge: Hon. Peter Kirwan

Agilent Technologies, Inc. ("Agilent"), by and through its undersigned counsel, for their claims for relief against Twist Bioscience Corporation ("Twist"), Emily Leproust ("Leproust"), and Does 1 through 20 (collectively, "Defendants"), avers on knowledge as to itself and its own acts, and on information and belief as to all other matters, as follows:

NATURE OF DISPUTE

1. Emily Leproust is a scientist who, in a premeditated plan, stole industry-leading genomics technology from her longtime employer, Agilent Technologies, to start her own competitive company, Twist Bioscience. Agilent's genomics technology is critical to the research and development of life-saving drugs, medical diagnostics, and fundamental molecular biology research. Leproust's primary job duty at Agilent was to develop and improve existing Agilent DNA oligonucleotide ("oligo") synthesis technologies to meet a burgeoning demand for applications of these technologies, including assembling oligos into large, high-quality genes. In violation of her duties to faithfully assist Agilent in improving its already industry-leading technology, Leproust secretly laid the groundwork for a theft of Agilent technology, beginning on or before February 2012—more than one year before she resigned from Agilent. That month, she registered internet domain names for Twist. For the next fourteen months, Leproust remained at Agilent and continued to use Agilent's resources, people, and proprietary information to develop and perfect the technology that Twist now touts as industry leading. During that time, Leproust even pitched her competing company to venture capitalists—all while still an Agilent employee. After leaving Agilent, Leproust then targeted and poached key employees with the skills and knowledge of Agilent's trade secrets, proprietary instruments, and methods necessary to synthesize high-quality oligos and collections of oligos ("oligo libraries") of a length, complexity, and fidelity previously unmatched by any company other than Agilent. In carrying out this plan, Leproust repeatedly breached her contractual duties, which required that she disclose and assign to Agilent all technological innovations relating to Agilent's research or business, protect all Agilent confidential information, and refrain from recruiting Agilent employees for a period of two years after departing the company.

2. Twist now threatens Agilent's hard-earned technological and competitive advantage, not because of any profound innovation by Twist, but because it planned and executed a wide-ranging misappropriation of Agilent trade secrets, confidential information, proprietary processes, and key personnel. The intellectual property and know-how stolen by Leproust and Twist make up the leading edge of oligo-synthesis technology that took more than twenty years, tens of millions of dollars, and the work of a large, interdisciplinary team of Agilent scientists and engineers to develop.[1] The result is a well-funded Twist that is built on the back of Agilent's intellectual property and know-how. Twist thus has an ill-gotten, illegitimate, and unearned head start in the markets for gene assembly, oligo libraries, and products and applications derived from oligo libraries, such as target-enrichment and genome-editing products ("Derivative Oligo Products"). Agilent brings this action to enjoin Twist from utilizing Agilent's trade secrets and confidential information, to recover the misappropriated intellectual property and technology that contractually should have been disclosed and assigned to Agilent, and to collect damages incurred as a result of Leproust's repeated contractual breaches, raiding of employees, and misappropriation of Agilent technology and processes.

3. In late 2011, Agilent authorized Leproust—by then director of research and development of Applications and Chemistry in Agilent's Genomics business—to research and develop methods of assembling genes from synthesized oligos quickly and accurately, to enable Agilent to meet a growing demand for faster, more affordable access to large quantities of custom-made genes. But Leproust had her own intentions of meeting not only this demand in the several-hundred-million-dollar, gene-assembly market, but also the demand for oligo libraries and their Derivative Oligo Products. Her plans involved stealing Agilent trade secrets and using them to create her own competitive company, Twist. She registered domain names for Twist in February 2012. Rather than leave Agilent, Leproust stayed *an additional fourteen months*.

4. During this entire timeframe, she remained under the directive to improve and create new applications for Agilent's oligo-synthesis technology. But she did not present them to

[1] Agilent was spun off from Hewlett-Packard in 1999.

Agilent, to whom Leproust was contractually obligated to disclose and assign exactly such inventions and discoveries. Instead, she pitched the ideas she developed as an Agilent employee to venture capital firms in March 2013, *while still an Agilent employee*. The pitch was to use these ideas, Agilent trade secrets, confidential information, and employees to start a competitive company.

5. Shortly after pitching these ideas to venture capitalists, Leproust abruptly resigned in April 2013, refusing upon her exit to affirm her contractual obligations to protect Agilent's confidential information, to acknowledge Agilent's ownership of the developments conceived by her during and related to her Agilent employment, and to refrain from soliciting or recruiting Agilent's employees. She also wiped clean her Agilent smartphone of any data and removed the smart card upon returning it to Agilent.

6. The Agilent-owned developments Leproust pitched to venture capital firms were so mature and valuable that less than three months after her departure, Twist had secured nearly $5 million in funding from at least fourteen investors. These developments also were fundamentally based on underlying, confidential oligo-synthesis methodologies developed during twenty years of research, trial-and-error, and substantial capital and manpower investment at Agilent. Among these technologies is Agilent's proprietary method of oligo synthesis based on industrial-scale inkjet technologies and unique quality-control processes. Through its oligo-synthesis technology, Agilent produces the highest-quality long DNA strands among all commercially available sources.

7. Agilent's oligo library synthesis technologies marry Agilent trade secrets in mechanics, chemistry, biology, and other disciplines—including the physical, proprietary machines (that exist only at Agilent) that use inkjet technologies to synthesize the oligos ("oligo writers"), the trade secrets inherent in the composition of the phosphoramidite solution ("ink") used in synthesis, and all of the trade secrets associated with the positive and negative experimental results in producing oligos. The result of these twenty-plus years of work by a large team of chemical engineers, fluidics engineers, organic chemists, mechanical engineers, and electric engineers at Agilent is a custom "million-feature," array-writing technology capable of

synthesizing long (*i.e.*, greater than 200 nucleotides) oligos at an extremely high density with minimal loss of accuracy. Essential aspects of this proprietary process have never been publicly disclosed, are trade secrets, and are subject to Agilent's efforts to protect confidential information.

8. The oligo writer itself is extraordinarily difficult and time-consuming to build, even with knowledge of Agilent's trade secrets. For example, in 2005, when Leproust and one of her cofounders at Twist proposed replacing only the printhead in Agilent's oligo writer with a newer model, they drew up a *year-long* development path—a schedule made possible by the team's familiarity with the existing printhead system, and the existing system's similarity to its replacement. And when Agilent's Labs group decided to build an oligo writer for research purposes using many of the same components used in its commercial writers, it took a small team two and a half years to build the research writer with the same functionality and synthesis error rate. To independently design and build an inkjet writer capable of synthesizing oligos at the same industry-leading error rate—without using the Agilent trade secrets and know-how developed over a decade—would take several years longer still.

9. Yet Twist and Leproust built such an oligo writer in a much shorter time frame. The gene-assembly developments pitched by Twist—which Leproust learned as an Agilent employee under a duty to assign such developments to Agilent—involve synthesizing oligos (which, when assembled, comprise a gene) on a surface almost 100 times smaller than what is typically used. In order to assemble genes on such a small surface, Twist must first synthesize long oligos with feature sizes measuring about 30 microns in diameter and spaced only about 50 microns apart. Twist's patent applications—which claim priority to provisional patent applications filed only five months after Leproust's departure from Agilent—make clear that its business is built on synthesizing oligos on a substrate, using inkjets, at an error rate and density that took Agilent 20 years to achieve. These applications also disclosed the use of particular mixed silane surfaces and described silane ratios developed and optimized at Agilent. And in April 2015, Twist publicly announced that it had begun selling synthesized DNA using this technology. Twist did not and could not have independently developed the technology to

synthesize oligos at this size and density in its two years of existence—much less in the three months it took to obtain millions of dollars in funding. It needed Agilent's trade secrets and confidential information to do so.[2]

10. As just several examples, Twist needed to determine and optimize the appropriate synthesis environment; perform quality-analysis and quality-control of the resulting oligos; optimize combinations of ink and inkjet-head parameters; determine effective combinations of methods and reagents; and optimize flowcell designs. It is evident from the materials distributed by Twist to investors that Twist is using Agilent's state-of-the-art printing processes and trade secrets to bring Twist's oligo-library, Derivative Oligo, and gene-assembly products to market at a higher volume, faster pace, and lower price than could ever have been possible without the theft.

11. To help recreate these technologies for Twist's benefit, and in violation of Leproust's contractual obligations not to recruit Agilent employees for two years, Leproust and Twist recruited and hired 10 of Leproust's former Agilent colleagues—including key members of Agilent's oligo writer and chemistry group. Collectively, these colleagues have full access to and command of the fruits of Agilent's twenty-plus years of investment in its interdisciplinary approach to oligo synthesis; had worked more than 100 years at Agilent; and were the *key* employees needed to utilize and implement Agilent's stolen technology.

12. Based on information available to date, the confidential information that Twist misappropriated from Agilent includes the synthesis environment to implement anhydrous conditions and accurate placement of synthesis reagents (such as optimization of conditions, dry nitrogen flow, and reducing static charge); quality-analysis and quality-control methods (including LC-MS- and Next Generation Sequencing-based methods); optimized combination of ink and inkjet-head parameters (including the composition, viscosity, inkjet type, head speed, and distance from substrate); the gene-assembly technologies Leproust developed at Agilent,

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[2] Because Twist's patent applications were not published until February 2015, and Twist did not announce its "Alpha Access Program" until April 2015, Agilent did not discover that Twist's business was founded on the misuse of Agilent's trade secrets until the latter half of 2015.

including optimized combinations and reagents that Leproust is believed to have developed, hidden, and diverted for use at or for Twist; and details of flowcell design (such as optimization of flowcell backing material, flowcell-filling mechanism, and flowcell drainage to minimize residual acid).

13. Through her actions, Leproust breached her agreements with Agilent and breached her duty of loyalty to Agilent. Leproust and Twist also have misappropriated Agilent's trade secrets in violation of California Civil Code §§ 3426 *et seq*. Agilent seeks to enjoin the use by Twist and/or Leproust of any Agilent trade secrets, confidential information, and proprietary developments; to recover its misappropriated trade secrets, confidential information, and proprietary developments; to enjoin Defendants from obtaining or enjoying any further commercial advantage from their misappropriation of this information; and to recover actual and punitive damages.

THE PARTIES

14. Plaintiff Agilent Technologies, Inc., is a Delaware corporation with its principal place of business in Santa Clara, California.

15. Defendant Twist Bioscience Corporation is a Delaware corporation with its principal place of business in San Francisco, California.

16. Defendant Emily Leproust is a resident of the State of California.

17. Agilent is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 20, and therefore sues these Defendants by such fictitious names. Agilent is informed and believes, and on that basis alleges, that each of such fictitiously named Defendants was acting as the agent, partner, or joint venturer of the other Defendants and is jointly and severally responsible for the acts and omissions alleged herein.

18. A substantial part of the events giving rise to Agilent's causes of action as alleged herein occurred in Santa Clara County, California, and have a direct effect on Agilent in Santa Clara County, California. Agilent is informed and believes and thereon alleges that the actions causing injury to Agilent as alleged herein, even if initiated outside of California, were expressly aimed at California, with knowledge that they would cause harm in California.

JURISDICTION AND VENUE

19. This action arises under the laws of the State of California and is within the subject matter jurisdiction of this Court. Further, Defendants are subject to the personal jurisdiction of this Court because they conduct business in and/or are residents of California.

20. Pursuant to California Code of Civil Procedure sections 395 *et seq.*, venue is proper in the Superior Court of the State of California in and for the County of Santa Clara because the contracts at issue were breached in the County of Santa Clara, State of California, and because Agilent was harmed in the County of Santa Clara, State of California.

GENERAL ALLEGATIONS

Agilent's Business

21. Agilent is a world-leading research, development, and manufacturing company whose laboratory products and services target the food, environmental and forensics, pharmaceutical, diagnostics, chemical and energy, and research markets, among others. Agilent's solutions enable its customers to address global trends that impact human health and the environment, and to anticipate future scientific needs. Its innovative technologies provide scientists and healthcare workers tools to fight cancer, improve quality of life, and enable new discoveries.

22. Agilent has made enormous investments during the years in the research and development of cutting-edge technology in order to remain an industry leader in discovering, developing, and commercializing innovative technologies for DNA and ribonucleic acid ("RNA") synthesis and measurement. These technologies have led to groundbreaking insights into the human genome, enabling a deeper understanding and identification of developmental abnormalities, cancer and its progression, susceptibility to disease, and differing responses to treatment. Agilent has invested many millions of dollars and enormous amounts of time into the research, development, design, and refinement of its first-in-class oligo-synthesis technology.

23. Agilent is an interdisciplinary organization whose approximately 12,000 employees bring expertise across many subject areas to foster innovation and new technologies. Agilent Research Laboratories power Agilent's growth through groundbreaking science and

technology. Agilent Research Laboratories complement Agilent's product-line Research and Development groups by looking beyond Agilent's current products and creating technologies for future markets. Agilent develops, manufactures, and sells genomics-related products and services through its Genomics business ("Genomics"). Agilent expends significant amounts of resources in recruiting, interviewing, hiring, training, developing, and managing the performance of talented employees throughout its workforce, including employees in Genomics and its manufacturing, marketing, and sales organizations.

24. Due to the nature of Agilent's business, Agilent must protect its many valuable trade secrets and other proprietary materials in its possession. Agilent uses a variety of controls to regulate access to and disclosure of its data, communications, and proprietary information. These include, but are not limited to: encrypting all data-storage devices containing sensitive information; adopting security guidelines governing the connection of employees' personal computing devices to Agilent's network; requiring employees to label data according to the level of sensitivity; and requiring employees to flag all emails containing sensitive information as "confidential," and to encrypt their attachments. Agilent requires every employee to execute an agreement governing and protecting its confidential and proprietary information, and considers such agreements to be vitally important to the protection of its business. Agilent also implements physical security measures such as locked facilities and key cards, and electronic security measures such as network protections and need-to-know access controls. Agilent further trains employees on the importance of protecting confidential information, and protects its trade secrets by entering into non-disclosure agreements with its customers and vendors. Agilent also holds scores of patents covering various aspects of its technology.

Leproust Joins Agilent And Signs A Confidentiality & Assignment-Of-Invention Agreement

25. Agilent hired Leproust in 2000. Like other employees, Leproust was required to sign, and did sign, an Agreement Regarding Confidential Information and Proprietary Developments ("Confidentiality and Assignment Agreement") as a condition to employment at Agilent. Paragraph 2 of the Confidentiality and Assignment Agreement addresses the protection of Agilent's "Confidential Information," and provides:

> I agree: (a) to use such information only in the performance of Agilent duties; (b) to hold such information in confidence and trust; and (c) to use all reasonable precautions to assure that such information is not disclosed to unauthorized persons or used in an unauthorized manner, both during and after my employment with Agilent.

26. The Confidentiality and Assignment Agreement defines "Confidential Information" as "trade secrets, confidential business and technical information, and know-how not generally known to the public . . . which is acquired or produced by me in connection with my employment by Agilent." By way of illustration, but not limitation, the Confidentiality and Assignment Agreement specifies that "Confidential Information" includes "information on Agilent organizations, staffing, finance, information of employee performance, compensation of others, research and development, manufacturing and marketing, as well as information which Agilent receives from others under an obligation of confidentiality."

27. Paragraph 3 of the Confidentiality and Assignment Agreement addresses the disclosure and assignment of "Proprietary Developments," and provides:

> Such Proprietary Developments are the sole property of Agilent, and I agree: (a) to disclose them promptly to Agilent; (b) to assign them to Agilent; and (c) to execute all documents and cooperate with Agilent in all necessary activities to obtain patent, copyright, mask works and/or trade secret protection in all countries, at Agilent's expense.

28. The Confidentiality and Assignment Agreement defines "Proprietary Developments" as "inventions and discoveries (whether or not patentable), designs, works of authorship, mask works, improvements, data, processes, computer programs and software . . . that are conceived or made by me alone or with others while I am employed by Agilent and that relate to the research and development or the business of Agilent, or that result from work performed by me for Agilent."

29. The Confidentiality and Assignment Agreement also makes clear that these disclosure and assignment obligations apply equally to an invention "for which no equipment, supplies, facility, or trade secret information of [Agilent] was used and which was developed entirely on the employee's own time" as long as "(a) the invention relates (i) to the business of

[Agilent], or (ii) to [Agilent's] actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for [Agilent]."

30. Paragraph 7 of the Confidentiality and Assignment Agreement addresses non-solicitation of Agilent employees, and provides: "I agree not to disrupt, damage or interfere with the operation or business of Agilent by soliciting or recruiting its employees for myself or others, both during my employment at Agilent and for a period of two years following termination of my employment with Agilent."

31. Leproust also was obligated to comply with Agilent's Standards of Business Conduct ("Standards"). The Standards obligated Leproust to refrain from "any outside work that could lead to divided loyalties"; to refrain from "hav[ing] a personal or family financial interest in any Agilent supplier, customer, reseller or competitor that might cause divided loyalty"; and to "disclose any outside work for an Agilent competitor, customer, reseller or supplier, or any other involvement that could cause divided loyalties, prior to engaging in any such activity."

32. The Standards thus imposed strict restraints on Leproust's involvement with outside entities that could possibly encroach upon Leproust's loyalty to Agilent.

Agilent Develops Valuable Trade Secrets In Oligo Synthesis During Leproust's Tenure

33. Agilent has become the industry leader in producing high-accuracy, long oligos: DNA or RNA molecules that have a wide range of applications in genetic testing, research, and forensics. Through its oligo-synthesis technology, Agilent produces the highest-quality long DNA strands among all commercially available sources.

34. Agilent's oligo library synthesis technology is the result of more than twenty years of interdisciplinary research, development, and trial-and-error. This technology marries Agilent trade secrets in mechanics, chemistry, biology, and other disciplines—including the oligo writers; the composition of the "ink" used in synthesis; and all of the knowledge of the environment, parameters, and specifications that work best and most efficiently to accurately produce high-quality oligos, and which to avoid.

35. Agilent hired Leproust to work on developing the chemical aspects of the inkjet writer used for this high-density oligo synthesis. Leproust remained intimately involved in the

development and commercialization of Agilent's inkjet writer technology throughout her entire career there. By the end of Leproust's thirteen-year tenure at Agilent, she directed the research and development of Applications and Chemistry in Genomics, supervising a team of scientists and engineers responsible for the development and implementation of oligo synthesis and oligo library synthesis technology, and managing related technology collaborations between Agilent and other industry leaders. By virtue of this leadership position and management role, she enjoyed a position of trust and confidence at Agilent, which gave her access to all aspects of Agilent's oligo synthesis and other related proprietary technology and intellectual property, as well as their commercial applications, opportunities, and consumers.

Agilent Entrusts Leproust With Developing Gene-Assembly Technology While Leproust Covertly Exploits That Technology Through Twist

36. In late 2011, Agilent investigated expanding the applications for its world-leading oligo libraries to meet a burgeoning market in synthetic biology. There was a new demand—from researchers across various industries—for fast and affordable access to large quantities of custom-made genes, and Agilent wanted to meet it. Agilent was uniquely positioned to do so as the leading producer of long oligos—the building blocks of genes—and oligo libraries. Entering this market required building on Agilent's oligo library synthesis technologies by developing technology that could quickly, cheaply, and accurately assemble these oligos into genes on-demand. In late 2011, Leproust obtained approval for and initiated a project to research and develop gene-assembly technologies through her Genomics group. She then registered domain names and email addresses for Twist on February 4, 2012, without informing Agilent of these actions. From this point (and likely earlier) until she resigned from Agilent on April 12, 2013, Leproust developed her strategic plan for Twist—a company now directly competing with Agilent and its partners in the oligo-library-synthesis, Derivative Oligo Products, and gene-assembly markets, for several hundreds of millions of dollars in market share. Leproust kept these plans secret from Agilent, impeding and tainting its effort to enter the gene-assembly market.

37. In February 2013, leaders in Agilent Research Laboratories, Genomics, marketing, and other groups held meetings with Agilent's then-CEO, Bill Sullivan to discuss the merits of: (1) investing in and working with Gen9, a Cambridge-based startup in the gene-assembly market, or (2) building on Agilent's existing oligo library synthesis technology and new applications—being developed by Leproust and others—to meet the demands of the gene-assembly market organically. Unbeknownst to these executives, Leproust, who was ostensibly leading Agilent's effort to meet the demands of the gene-assembly market organically, had transferred her loyalty to Twist a year earlier. And on February 4, 2013, Leproust—while still an Agilent employee and while continuing to use Agilent resources and have access to its confidential information—filed articles of incorporation for Twist, which now competes directly with Gen9 and Agilent in the gene-assembly space, and with Agilent in the oligo-library-synthesis and Derivative Oligo Products spaces.

38. Rather than contribute the Proprietary Developments she was obligated to disclose and assign to Agilent under the Confidentiality and Assignment Agreement, Leproust withheld from Agilent its own business opportunities and technological developments. Leproust never disclosed to Agilent the existence of her plans for Twist, despite her then-existing obligations to present the business opportunities that ultimately grew into Twist, to disclose her developments relating to Agilent's research or business, and to refrain from competing with Agilent as an Agilent employee.

39. Indeed, not only did Leproust fail to disclose her plans and developments for gene assembly to Agilent, as was her obligation, she actively presented those opportunities to others outside of Agilent to obtain funding for her new venture—while still an Agilent employee and making use of Agilent resources and intellectual property. In February and March 2013, Leproust delivered proposals for a gene-assembly system and business to several venture capital investors, including in Cambridge, Massachusetts, San Francisco, and Menlo Park. Leproust was employed by Agilent during this time period, and owed Agilent a duty to refrain from competing with it in this manner.

40. In early April 2013, Agilent decided to partner with Gen9 by obtaining equity and investing $21 million in the company, and by providing Agilent oligo libraries to Gen9 as its starting material for gene assembly. Access to Agilent's high-quality oligo libraries was an important consideration for Gen9 in deciding to partner with Agilent.

Leproust Leaves Agilent And Refuses To Acknowledge

Her Confidentiality, Assignment, And Non-Solicitation Obligations

41. On April 12, 2013, Leproust abruptly left Agilent without notice, after several days of skipping meetings and calling in "sick." She refused to sign Agilent's "Functional Exit Interview Memo," which reminds departing employees of their obligations not to use or disclose Agilent's confidential and proprietary information. Rather than state her true plans, Leproust said she was leaving to work for a "sequencing company." And she refused to take with her, as requested, the Confidentiality and Assignment Agreement, under which she was obligated to refrain from using or disclosing—and to use all reasonable precautions to prevent—the unauthorized disclosure of Agilent's trade secrets, confidential business and technical information, and other valuable information not generally known to the public. Her refusal, of course, did not in any way impact her contractual obligations under the Confidentiality and Assignment Agreement, which Leproust signed on September 11, 2000, and which remained in effect. Leproust then wiped the contents (and removed the smart card) of her Agilent-issued smartphone before returning it to Agilent in order to ensure no tracks were left behind.

Leproust Launches Twist With Proprietary Developments

And Trade Secrets That Belong To Agilent

42. On July 1, 2013—less than *three months* after Leproust left Agilent—Twist obtained $4.7 million in Series A funding from fourteen investors. Just five months after Leproust's departure, Twist filed provisional patent applications regarding its use of an oligo writer to synthesize oligos using inkjet technology. By May 2014—just thirteen months after Leproust left Agilent—Twist had completed its $9 million in Series A funding, *and* $26 million of Series B Funding, *and* obtained a $5 million grant from the U.S. government's Defense Advanced Research Projects Agency. Leproust also publicly stated that her early fundraising

efforts for Twist were a "lonely time," affirming that they began long before her April 2013 departure from Agilent and July 1, 2013, disclosure of nearly $5 million in Series A funding.

43. While at Agilent, Leproust covertly designed Twist's business to operate in the same specialized markets as Agilent and to compete directly with Agilent and Gen9, with products incorporating the features Leproust was supposed to have been developing for and assigning to Agilent.

44. Twist markets itself as possessing a new platform for gene assembly to meet the demand for fast and affordable access to large quantities of custom-made genes. The linchpins of this platform are: (1) the use of silicon plates (rather than glass) to address temperature-control issues that arise during gene assembly; and (2) the use of "capping" or double-coupling steps during the synthesis of longer oligos to reduce errors in gene assembly. These temperature-control and error-reduction improvements were the subject of Leproust's experiments at Agilent, as part of Agilent's efforts to enter the gene-assembly market. Leproust conducted some of these experiments during the final fourteen months of her employment with Agilent, after forming domain names for Twist. The solutions Leproust generated are trade secrets and Proprietary Developments that belong to Agilent, not Twist. Twist also markets and sells high-quality oligo libraries for a broad range of applications, and competes directly with Agilent in the oligo-library and Derivative Oligo Products markets.

45. Agilent compensated Leproust to ensure its genomics products were at the forefront of the field; Leproust was responsible for making constant improvements to this technology during the many years she worked for Agilent. She was specifically tasked and entrusted with developing technologies to permit Agilent to enter the very same markets Leproust formed a *new company* to serve—a company she planned and developed as an Agilent employee, and for which she secured millions in funding within about 90 days of leaving Agilent. The inventions, discoveries, and improvements that Leproust took to Twist are exactly the type of Proprietary Developments she was required to disclose and assign to Agilent under the Confidentiality and Assignment Agreement.

Leproust Solicits Her Former Genomics Colleagues At Agilent

46. Under the Confidentiality and Assignment Agreement, Leproust was obligated not to solicit or recruit Agilent employees for a period of two years—until April 12, 2015. Yet, Leproust recruited and hired Siyuan Chen away from Agilent in November 2013. Chen worked in Genomics Research and Development as a nucleic acid chemist, and had intimate knowledge of Agilent's oligo library synthesis technology, including the most advanced developments, which he helped create, as well as the gene assembly work Leproust was leading. Chen took a paid leave of absence from Agilent the day before Leproust's resignation, and left Agilent less than three weeks after his return. Like Leproust, Chen refused to sign the Functional Exit Interview Memo, which reminds departing employees of their obligations not to use or disclose Agilent's confidential and proprietary information. And, like Leproust, Chen also had agreed to the obligations in the Confidentiality and Assignment Agreement as a condition of his employment with Agilent.

47. In February 2014 and again in May 2014, Agilent demanded assurances from Leproust that she did not recruit any Agilent employees in violation of the Confidentiality and Assignment Agreement. Twist responded, but refused to provide such assurances.

48. Leproust also hired and likely recruited Joe Worrall and Mike Krause before the expiration of her obligation not to solicit Agilent employees. Worrall and Krause similarly possess intimate knowledge of Agilent's related oligo-synthesis technologies.

49. Twist and Leproust hired five other experienced Agilent employees during the last year and a half: Mary Noe, Scott McCuine, Solange Glaize, Maria Celeste Ramirez, and Tara Hill. Twist hired these employees because of their intimate knowledge of, experience with, and/or access to Agilent's valuable oligo-synthesis technology as well as their institutional knowledge of Agilent's business plans and customer lists to commercialize it. Collectively, these key employees also possessed oligo synthesis-related expertise across subject areas and knew how to implement and bring to market Agilent's interdisciplinary approach to oligo synthesis. Twist's Vice President of Sales and Marketing—Patrick Finn—also is a former Agilent employee, who worked in Agilent's Life Sciences Business Development group.

Twist Gains A Head Start Subsidized By Trade Secrets It Misappropriated From Agilent

50. The technology presented in Twist's 2015 patent application and business presentations was not and could not have been independently developed during Twist's short existence to date. Instead, this technology makes use of Agilent's trade secrets in oligo synthesis. By way of illustration only, Twist describes having refashioned the "plates" containing oligos for gene assembly so that they contain approximately 10,000, rather than 96, wells—each containing roughly 100 oligos. In order to assemble genes on such a small surface, Twist must first synthesize oligos with feature sizes measuring fewer than about 30 microns in diameter and spaced only about 50 microns apart. It has taken at least twenty years of largely unpublished, interdisciplinary research and development, design, trial and error, and investment for Agilent to develop the technology to synthesize oligos at this size and density. Twist also discloses the use of particular silane surfaces and specific values for the ratio of the mixture of these silanes, which are identical to the material and ratio that Agilent derived after many years of development and optimization. Twist could not, and did not, independently develop this technology, and build an oligo writer implementing it, in two years—much less in the few months it took to obtain funding—without making use of Agilent's trade secrets.

51. Indeed, Twist filed two provisional U.S. patent applications on August 5, 2013, only four months after Twist was founded and only five months after Leproust left Agilent. These applications—Provisional Application Nos. 61/862,445 and 61/862,457—disclose technology that Twist could not have developed during its short time of existence, such as methods of synthesizing oligos on the substrate having a functionalized surface. The listed inventors on these Provisional Applications are William Banyai and Bill Peck, Twist's co-founders with Leproust—both of whom also were employed at another company (Complete Genomics) until the spring of 2013. Peck, also a former Agilent employee (for nearly eight years), served as the architect of two generations of Agilent's high density microarray manufacturing platforms.

52. To help make use of this technology for its own benefit, Twist hired the employees listed in Paragraphs 46 to 49 above.

53. By using Agilent's trade secrets, Proprietary Developments, and other confidential information, Twist is in the process of bringing products to market more quickly and more cheaply than could otherwise have been possible, thereby gaining an unfair competitive advantage.

FIRST CAUSE OF ACTION

(Breach of Contract)

(Against Leproust)

54. Agilent realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 53, inclusive, hereinabove.

55. As a material condition to her employment with Agilent, Leproust entered into a written contract and agreed: "(a) to disclose [Proprietary Developments] promptly to Agilent; (b) to assign [Proprietary Developments] to Agilent; and (c) to execute all documents and cooperate with Agilent in all necessary activities to obtain patent, copyright, mask works and/or trade secret protection in all countries, at Agilent's expense."

56. As a material condition to her employment with Agilent, Leproust entered into a written contract and agreed "not to disrupt, damage or interfere with the operation or business of Agilent by soliciting or recruiting its employees for myself or others, both during [Leproust's] employment at Agilent and for a period of two years following termination of [Leproust's] employment with Agilent."

57. As a material condition to her employment at Agilent, Leproust entered into a written contract and agreed "to use such [Confidential Information] only in the performance of Agilent duties; (b) to hold such information in confidence and trust; and (c) to use all reasonable precautions to assure that such information is not disclosed to unauthorized persons or used in an unauthorized manner, both during and after [Leproust's] employment with Agilent."

58. As a material condition to her employment at Agilent, Leproust entered into written contracts and agreed to refrain from "any outside work that could lead to divided loyalties"; to refrain from "hav[ing] a personal or family financial interest in any Agilent supplier, customer, reseller or competitor that might cause divided loyalty"; and to "disclose any outside

work for an Agilent competitor, customer, reseller or supplier, or any other involvement that could cause divided loyalties, prior to engaging in any such activity."

59. Notwithstanding Leproust's agreement to these terms, Leproust failed to disclose to Agilent her strategic plans for improvements on and new applications for Agilent's oligo-synthesis technologies. Leproust also recruited and solicited one or more Agilent employees to terminate their employment with Agilent within two years of Leproust's resignation, and used Agilent's Confidential Information and Proprietary Developments in her new venture at Twist.

60. By her actions described hereinabove, and as described in paragraphs 1 through 59, inclusive, Leproust has materially breached her agreements with Agilent.

61. Agilent has performed all conditions, covenants, and promises required to be performed by it with respect to its agreements with Leproust, except for those conditions, covenants, and promises that have been excused by reason of Leproust's breaches alleged herein.

62. As a direct and proximate result of Leproust's material breaches of her agreements with Agilent, Agilent has been damaged in a sum according to proof at the time of trial.

63. Unless and until Defendants are restrained from the actions described herein, Agilent will continue to suffer great and irreparable harm for which monetary damages would be an inadequate remedy. Agilent is, therefore, entitled to injunctive relief compelling Leproust to disclose in writing and assign to Agilent all Proprietary Developments (including the strategic plan she created for improving Agilent's oligo-synthesis technology and its application to gene assembly); restraining Leproust from using those Proprietary Developments for her own benefit; and restraining Leproust from soliciting and/or inducing Agilent's employees to terminate their employment with Agilent for a further period of two years.

64. Agilent is entitled to have a constructive trust for its benefit imposed upon all Agilent trade secrets and confidential business information disclosed or used by Defendants in breach of Leproust's obligations under agreements with Agilent, including the Confidentiality and Assignment Agreement. Agilent is further entitled to have a constructive trust for its benefit imposed upon all gains derived by Defendants from Leproust's breach of her obligations under

the Confidentiality and Assignment Agreement, including, but not limited to, all profits of, equity interests in, and/or increases in the value of equity interests in Twist derived therefrom.

SECOND CAUSE OF ACTION

(Breach of Duty of Loyalty)

(Against Leproust)

65. Agilent realleges and incorporates herein by reference each and every allegation contained in paragraphs 25-32, 36-40, and 43 hereinabove.

66. By virtue of her employment with Agilent, Leproust owed a duty of loyalty to Agilent.

67. In violation of her duty to Agilent, Leproust transferred her loyalty from Agilent to Twist at least as early as February 4, 2012, when she registered internet domain names and email addresses for Twist, which now competes with Agilent in the oligo-library-synthesis, Derivative Oligo Products, and gene-assembly markets. From February 2012 to April 2013, Leproust continued to work on Agilent's effort to enter gene assembly market, all the while working to enter that market through Twist. In violation of the Standards and the Confidentiality and Assignment Agreement, Leproust withheld from Agilent, and diverted to Twist, her strategic business and technological plans for improving Agilent's oligo-synthesis technology and applying it to gene assembly. Leproust actively hid the fact that she was preparing to compete with Agilent and then did compete with Agilent by, among other actions, actively promoting her new competitive venture by pitching it to venture capitalists to raise funds, all the while leading Agilent to believe she was devoting her best efforts to enable Agilent to enter the gene-assembly market.

68. These actions—proscribed both by the duty of loyalty and Leproust's obligations under the Standards and Confidentiality and Assignment Agreement—do not depend on the existence or misappropriation of Agilent's trade secrets for their wrongfulness.

69. Leproust willfully and intentionally failed to discharge her duties and responsibilities as an Agilent employee.

70. As a direct and proximate result of the wrongful conduct of Leproust, Agilent has suffered damages, and is entitled to recover such damages, in an amount to be proven at trial. Agilent's damages for breach of the duty of loyalty include, but are not limited to, all compensation paid by Agilent to Leproust during the period of time in which she was in breach of her duty of loyalty. Agilent is also entitled to recover damages from the harm it suffered as a result of Leproust's failure to disclose her efforts to enter the gene-assembly market through Twist, while simultaneously leading Agilent's effort to enter that market through its own developments and existing technology.

71. Because the actions of Leproust were both willful and malicious, Agilent also is entitled to an award of punitive damages against Leproust.

THIRD CAUSE OF ACTION

(Misappropriation In Violation of California Civil Code §§ 3426 *et seq*.)

(Against all Defendants)

72. Agilent realleges each and every allegation set forth in paragraphs 1 through 71, inclusive, and incorporates them herein by reference.

73. Agilent's trade secrets and confidential, proprietary materials include information that derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use. These trade secrets include, but are not limited to, the synthesis environment to implement anhydrous conditions and accurate placement of synthesis reagents (such as optimization of parameters, dry nitrogen flow, and reducing static charge) and related confidential information about Agilent's oligo library synthesis technology; the negative and positive research and trial and error leading to the development of Agilent's oligo-synthesis technologies and ability to synthesize oligos with feature sizes measuring about 30 microns in diameter and spaced only about 50 microns apart; Agilent's proprietary quality-analysis and quality-control methods (including LC-MS- and Next Generation Sequencing-based methods); Agilent's use of linker chemistry, including the selection of certain linkers over others, and methods of eliminating linker fragments; the relationship between the molecular density of active synthesis sites on the substrate surface and the final

molecular density of a synthesized oligo; Agilent's methods of controlling depurination and acid deblocking; Agilent's optimized combination of ink and inkjet-head parameters (including the ink composition, ink viscosity, inkjet type, head speed, and distance from substrate); test systems Agilent designed for measuring and optimizing various synthesis parameters; the process of using inkjet printers to synthesize oligos on glass or related surfaces, and the parameters and conditions of that process; the gene-assembly technologies Leproust developed at Agilent (including optimized combinations and reagents Leproust is believed to have developed, hidden, and diverted for use at or for Twist); flowcell design (such as optimization of flowcell backing material, flowcell-filling mechanism, and flowcell drainage to minimize residual acid); the design of proprietary machines used to synthesize the oligos and specialized vendors needed to implement that design; all of Agilent's confidential internal analyses of the gene-assembly market, including confidential cost and pricing analyses and information; and information regarding Agilent personnel with specific expertise and inside knowledge regarding Agilent's oligo-synthesis technology and its applications. These technologies and information constitute "trade secrets" under California Civil Code Section 3426.1. At all relevant times, Agilent owned and does own these trade secrets.

74. These materials and information are the subject of reasonable efforts by Agilent to maintain their secrecy. Agilent uses a variety of controls to regulate access to and disclosure of its data, communications, and proprietary information. These include, but are not limited to: encryption of all data-storage devices containing sensitive information; security guidelines governing the connection of employees' personal computing devices to Agilent's network; requiring employees to label data according to its level of sensitivity; and requiring employees to mark all emails containing sensitive information as "confidential," and to encrypt their attachments. As mentioned above, Agilent also requires every employee to execute an agreement governing and protecting Agilent's confidential and proprietary information, and considers such agreements to be vitally important to the protection of its business. Agilent also implements physical security measures such as locked facilities and key cards, and electronic security measures such as network protections and need-to-know access controls. Agilent further trains

employees on the importance of protecting confidential information. Agilent also protects its trade secrets by entering into non-disclosure agreements with its customers and vendors.

75. In violation of California's Uniform Trade Secrets Act, Defendants willfully and maliciously misappropriated Agilent's trade secrets through improper means. Among other things, Leproust used her detailed knowledge as director of research and development of Applications and Chemistry in Genomics, and the collective knowledge obtained from her Genomics team members and from the members of Agilent's Research Laboratories, to exploit years of trial and error and experimentation on the best processes for both creating and utilizing Agilent equipment; to identify specific areas for improvement upon and new applications for Agilent's existing oligo-synthesis technologies; to identify specific engineering solutions for implementing those improvements and applications; and to identify specific Agilent personnel with the inside knowledge necessary to accomplish those engineering solutions. Defendants have used this knowledge to successfully induce key employees to leave Agilent to join Twist and are using the trade-secret knowledge of those individuals and Leproust to exploit and build upon Agilent's oligo-synthesis technologies in the creation of products on behalf of Twist. This includes Agilent's oligo-synthesis technology and proprietary information necessary to synthesize oligos with feature sizes measuring fewer than about 30 microns in diameter and spaced only about 50 microns apart. Defendants engaged in these acts with knowledge that the trade secrets belonged to Agilent and that they were using improper means to acquire, use, and/or disclose those trade secrets.

76. By reason of the above-alleged acts and conduct of Defendants, Agilent has been damaged, and it will suffer great and irreparable harm and damage. Defendants are using Agilent's own trade secrets, including Proprietary Developments, to compete against Agilent in both the gene-assembly, oligo-library, and Derivative Oligo Products markets. Twist advertises three "products" on its website: two are oligo "libraries" or "pools," and the other relates to its gene-assembly services. Defendants are competing with and taking sales from Agilent not only in the market Leproust was entrusted with helping Agilent to enter, but also in the oligo-library and Derivative Oligo Products markets in which Agilent already held a competitive advantage by

virtue of the trade secrets Defendants have misappropriated. The amount of this irreparable harm will be difficult to ascertain, and Agilent will be without an adequate remedy at law.

77. Agilent is entitled to injunctive relief restraining Defendants, their officers, agents, employees, and all persons acting in concert with them, from using or disclosing Agilent's trade secrets and restraining Defendants from obtaining any benefits from their wrongful use of Agilent's trade secrets.

78. Agilent is further entitled to an order requiring Defendants, their employers, agents, employees, and all persons acting in concert with them, to return to Agilent any and all of its trade secrets and confidential, proprietary materials, including, but not limited to, any and all materials consisting of, incorporating, referencing, or derived from Agilent's trade secrets and confidential, proprietary information.

79. Agilent is further entitled to recover from Defendants the actual damages sustained by Agilent as a result of Defendants' wrongful acts described in this complaint. The amount of such damages cannot be determined precisely at this time. Defendants' acts of misappropriation were both willful and malicious, and Agilent is entitled to an award of statutory exemplary damages and attorneys' fees against Defendants. Agilent is further entitled to recover from Defendants the gains, profits, advantages, and unjust enrichment that they have obtained as a result of their wrongful acts as described herein. Agilent is at present unable to ascertain the full extent of these gains, profits, advantages, and unjust enrichment. In the alternative, Agilent is entitled to reasonable royalties for the use of its trade secrets, in an amount that cannot be determined precisely at this time.

80. Agilent is further entitled to have a constructive trust for its benefit imposed upon all trade secrets misappropriated by Defendants, and all other gains derived from Defendants' trade-secret misappropriation, including, but not limited to, all profits of, equity interests in, and/or increases in the value of equity interests in Twist derived therefrom.

WHEREFORE, Agilent prays for judgment against Defendants as follows:

1. Injunctive relief restraining and enjoining Defendants from continuing the wrongful acts and conduct set forth above, including, but not limited to, an injunction barring Defendants from making any use of Agilent's oligo-synthesis technology and trade secrets, and of any technologies Leproust developed or conceived of while employed by Agilent relating to Agilent's research, including in gene assembly;

2. An order compelling Defendants to comply with their continuing obligations as set forth above;

3. Compensatory damages in an amount to be proven at trial;

4. Repayment of all compensation received by Leproust from Agilent during the period of time when she was in breach of her duty of loyalty;

5. Punitive and/or statutory exemplary damages;

6. The imposition of a constructive trust for the benefit of Agilent upon (a) all assets misappropriated or used by one or more Defendants in violation of the Confidentiality and Assignment Agreement, and all Agilent trade secrets misappropriated by Defendants; and (b) all gains, including, but not limited to, any profits of, equity interests in, and/or increases in the value of equity interests in, Twist, derived from breach of any agreements with Agilent, or from any misappropriation of Agilent's trade secrets by Defendants;

7. Reasonable attorneys' fees;

8. All costs of suit herein incurred; and

9. Such other and further relief as the court may deem proper.

Agilent hereby demands a trial by jury.

Dated: October 31, 2016

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By: _____
Daniel M. Petrocelli
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Agilent Technologies, Inc.