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on 4/29/2019 8:42 PM
Reviewed By: R. Walker
Case #16CV291137
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

AGILENT TECHNOLOGIES, INC.,

Plaintiff,

v.

TWIST BIOSCIENCE CORP., EMILY
LEPROUST, SIYUAN CHEN, SOLANGE
GLAIZE, *et al.*

Defendants.

Case No. 16-CV-291137

**ORDER NUMBER 10
BY DISCOVERY REFEREE**

Action Filed: February 3, 2016
Location: Department 1
Judge: Hon. Brian Walsh
Discovery Referee: Hon. James Ware (Ret.)

**DISCOVERY REFEREE'S STATEMENT OF DECISION ON
DEFENDANTS' MOTION TO COMPEL RESPONSES TO
FIRST AND SECOND SETS OF INTERROGATORIES**

I. INTRODUCTION

Presently before the Discovery Referee is Defendants Twist and LeProust's Motion to
Compel Responses to First and Second Sets of Interrogatories. The Motion was referred to

1 the Referee pursuant to California Code of Civil Procedure sections 638 and 644 and the
2 January 22, 2019 Stipulation and Order of the Court.

3 Pursuant to the requirements of paragraph 4 of the January 22 Stipulation and Order,
4 the Referee conducted an in-person hearing on the Motion on April 16, 2019, at the JAMS
5 Silicon Valley Resolution Center. Counsel for all parties were present. The hearing was
6 recorded by a stenographer. Neither party has declared that this Motion is “case dispositive”
7 or presented a “bet-the-company” issue. (See Order of Appointment.) Thus, the Referee
8 reports his Statement of Decision as a definitive ruling on the Motion. (See Order No. 5 at 5,
9 fn. 5.)
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12 **II. BACKGROUND**

13 On March 1, 2019, Defendants submitted a Motion to Compel Responses to First and
14 Second Sets of Interrogatories. Defendants assert three grounds to compel supplemental
15 responses to Interrogatory Nos. 15, 25, 34, 44, 47, 84, 101, 102, 138, and 171-173, contending
16 that (1) Plaintiff has failed to provide any concrete, factual information in its own possession
17 to support its misappropriation claim; (2) Plaintiff has failed to meaningfully respond to the
18 interrogatories; and (3) Plaintiff’s failure to disclose facts to support its misappropriation
19 claims is further evidence of its bad faith. Defendants also seek an award of reasonable fees
20 and expenses incurred in filing this Motion. (Motion at 13.)
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23 On March 15, 2019, Plaintiff filed its Opposition. Plaintiff opposes the Motion on three
24 grounds: (1) that its responses to all of the interrogatories at issue in this Motion are
25 sufficient, complete, and straightforward; (2) that its response to Interrogatory No. 12
26 describes facts supporting its trade secret misappropriation claim; and (3) Defendants are
27 permitted to propound supplemental interrogatories under the limits of California Code of
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1 Civil Procedure section 2030.070, but have failed to do so. Further, Plaintiff contends that
2 Defendants' Motion is untimely, because their time to request supplemental responses has
3 expired. (Opposition at 4.) Moreover, Plaintiff proposes that the parties enter into a
4 stipulation for a schedule for the parties to update their interrogatory responses one time
5 before the close of fact discovery, such that requests for supplemental responses do not
6 continue to burden Plaintiff by requiring constant updating of responses. (Opposition at 6.)

8 Finally, both parties request for an award of fees and costs pursuant to California Code
9 of Civil Procedure section 2030.330(d).

11 III. DISCUSSION

12 A. Timeliness of the Motion to Compel

13 Before discussing the merits of Defendants' Motion, the Referee addresses the
14 threshold objection that Plaintiff makes regarding the timeliness of the Motion. Specifically,
15 Plaintiff contends that Defendants' Motion as to Interrogatories 15, 25, 34, 44, and 84 is
16 untimely. (Opposition at 5, fn. 2.) Defendants contend that the Motion is timely based on a
17 stipulation made by the parties on April 3, 2018, to extend "the otherwise applicable
18 deadlines for filing motions to compel . . . indefinitely." Defendants contend that nothing in
19 the parties' stipulation states that it does not apply to previously-served interrogatories.

21 (Reply at 6.)

23 California Code of Civil Procedure section 2030.300 provides that a propounding party
24 waives any right to compel a further response to interrogatories if a motion to compel is not
25 made within 45 days of the service of the verified response or of any supplemental verified
26 response or on or before any specific later date to which the propounding party and the
27 responding party have agreed in writing.

1 The interrogatories that are the subject of this Motion were propounded on October
2 11, 2016. Plaintiff served its responses to Interrogatory Nos. 15, 25, 34, and 44 on October 11,
3 2016 and the original response to No. 84 on December 2, 2016. (Id.) The present Motion to
4 compel was filed March 1, 2019. However, the Referee finds and concludes that the language
5 of the parties' stipulation to extend the deadline for motions to compel "indefinitely" does not
6 restrict the extension to only future interrogatories. Thus, the Referee overrules Plaintiff's
7 objection that the Motion is time barred.
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9 **B. Legal Standard**

10 Under California Code of Civil Procedure section 2030.210, "[t]he party to whom
11 interrogatories have been propounded shall respond in writing under oath separately to each
12 interrogatory by any of the following: (1) An answer containing the information sought to be
13 discovered; (2) An exercise of the party's option to produce writings; (3) An objection to the
14 particular interrogatory." If an interrogatory cannot be answered completely, it shall be
15 answered to the extent possible. Cal. Code Civ. Proc. § 2030.220. If an objection is made to an
16 interrogatory or to a part of an interrogatory, the specific ground for the objection shall be set
17 forth clearly in the response. If an objection is based on a claim of privilege, the particular
18 privilege invoked shall be clearly stated. Cal. Code Civ. Proc. § 2040.230(b).
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22 **C. Interrogatory Nos. 15, 25, 34, and 44**

23 Interrogatory Nos. 15, 25, 34, and 44 request the following:

24 **Interrogatory No. 15:** With respect to each person who YOU have IDENTIFIED
25 (in YOUR response to the preceding interrogatory) as having knowledge of the
26 facts upon which YOU base YOUR allegations that TWIST BIOSCIENCE has
27 actually misappropriated any AGILENT ALLEGED TRADE SECRET (including
28 each of those trade secrets you have described in response to Interrogatory 9),
state the facts that each person knows with regard to YOUR allegations that
TWIST BIOSCIENCE has actually misappropriated each trade secret allegedly
misappropriated.

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2 **Interrogatory No. 25:** With respect to each person who YOU have IDENTIFIED
3 (in YOUR response to the preceding interrogatory) as having knowledge of the
4 facts upon which YOU base YOUR allegations that TWIST BIOSCIENCE threatens
5 to misappropriate each of the AGILENT trade secrets YOU allege TWIST
6 BIOSCIENCE threatens to misappropriate, state the facts that each person
7 knows with regard to YOUR allegations that TWIST BIOSCIENCE threatens to
8 misappropriate each of the AGILENT trade secrets YOU allege TWIST
9 BIOSCIENCE threatens to misappropriate.

10 **Interrogatory No. 34:** With respect to each person who YOU have IDENTIFIED
11 (in YOUR response to the preceding interrogatory) as having knowledge of the
12 facts upon which YOU base your allegations that LEPROUST has actually
13 misappropriated any AGILENT ALLEGED TRADE SECRET (including each of
14 those trade secrets you have described in response to Interrogatory 29), state
15 the facts that each person knows with regard to YOUR allegations that
16 LEPROUST has actually misappropriated each trade secret allegedly
17 misappropriated.

18 **Interrogatory No. 44:** With respect to each person who YOU have IDENTIFIED
19 (in YOUR response to the preceding interrogatory) as having knowledge of the
20 facts upon which YOU base YOUR allegations that LEPROUST threatens to
21 misappropriate each of the AGILENT trade secrets YOU allege LEPROUST
22 threatens to misappropriate, state the facts that each person knows with regard
23 to YOUR allegations that TWIST BIOSCIENCE threatens to misappropriate each
24 of the AGILENT trade secrets YOU allege LEPROUST threatens to
25 misappropriate. (Bramhall Decl., Ex. A.)

26 Defendants contend that Plaintiff failed to identify relevant, responsive facts to these
27 interrogatories. (Motion 4-5.) These interrogatories seek specific facts regarding whether
28 Defendants actually misappropriated or threaten to misappropriate each of Plaintiff's alleged
trade secrets. (Reply at 5.) Defendants contend that contrary to Plaintiff's argument,
Interrogatory Nos. 11, 12, and 14 do not identify the specific facts know to the relevant
individuals. (Id. at 5.) Plaintiff states that it has provided a complete response to these
interrogatories by identifying (1) the individuals that were knowledgeable about the facts in
question, via incorporation of its responses to Interrogatory Nos. 11 and 14, and (2) the

1 details of what those individuals knew, via incorporation of its response to Interrogatory No.
2 12. (Opposition at 8.)

3 Upon review of Plaintiff's March 19, 2018 supplemental response to Interrogatory No.
4 12, the body of the response mentions only individuals and former Plaintiff's employees
5 Ramirez, Glaize, Leproust. (Bramhall Decl., Ex. D (Under Seal).) Plaintiff's March 15, 2019
6 supplemental response refers to, by reference to other documentation and not identifying
7 information, seven (7) Twist employees who retained Plaintiff's documents after leaving the
8 company. (Bramhall Decl., Ex. E, at 14 (Under Seal).) The March 15 response also identifies
9 Leproust, Glaize, and Ramirez, but with respect to their computer files and file transfers,
10 without stating what each knew or knows about the alleged misappropriation or threatened
11 misappropriation. (Id. at 14, 19, 21.)

12 By incorporation, the response to Interrogatory No. 12 also includes Plaintiff's
13 operative 2019.210 Trade Secret Identification Statement and a Declaration of Kevin Luebke
14 ("Luebke Declaration") in support of Plaintiff's Special Motion to Strike (Anti-SLAPP motion).
15 (Opposition at 7.) The Luebke Declaration mentions Plaintiff's employees Jeff Sampson, Joel
16 Myerson, Steve Laderman, and Karen Griswold, and Plaintiff's forensic expert Scott Cooper as
17 individuals Luebke consulted in preparing his declaration. (See Ehlers Decl., Ex. A, Ex. 5, at 5.)
18 However, Luebke does not specify which person had what specific knowledge of the trade
19 secrets he identifies in his declaration. Further Plaintiff's Response to Interrogatory No. 14
20 identifies Jeff Sampson, Steve Laderman, and Joel Myserson as the people at Agilent who are
21 most knowledgeable of the facts described in response to Interrogatory No. 12, but does not
22 specify which facts each person has knowledge of. (Bramhall Decl., Ex. E.)

1 Plaintiff provides no information in its Opposition or supporting Declaration of J.
2 Hardy Ehlers as to what individuals it identified, much less what each person knew or knows
3 about the alleged misappropriation by Twist or Leproust, or threatened misappropriation by
4 Twist or Leproust. The submissions the parties have provided on this dispute is voluminous.
5 Although the Referee has spent significant amount of time examining the layers of documents
6 incorporated by reference, the Referee is unable to determine whether Plaintiff's responses
7 are sufficient. It is a well-established principle that discovery is "the search for truth." Jaffee
8 v. Redmond, 518 U.S. 1, 19 (1996) (citation). Thus, liberal discovery serves "the integrity and
9 fairness of the judicial process by promoting the search for the truth." Shoen v. Shoen, 5 F.3d
10 1289, 1292 (9th Cir. 1993).

13 Based on the record before the Referee, the Referee finds that Plaintiff has not
14 provided straightforward and complete responses to Interrogatory Nos. 15, 25, 34, and 44, to
15 the extent that they do not identify persons with the knowledge sought and for which
16 identified trade secrets. Accordingly, the Referee GRANTS Defendants' Motion as to these
17 interrogatories as outlined at the conclusion of this Order.

19 **D. Interrogatory No. 47**

20 Interrogatory No. 47 states:

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22 **Interrogatory No. 47:** With respect to YOUR allegations in Paragraph 1 of
23 YOUR COMPLAINT that LEPROUST engaged "in a premeditated plan" to steal
24 "industry-leading genomics technology" from YOU to start TWIST BIOSCIENCE,
25 describe each action YOU allege LEPROUST took to steal "industry-leading
26 genomics technology" from YOU. (Bramhall Decl., Ex. A; See Second Amended
27 Complaint (SAC) ¶ 1, Dec. 13, 2018).

28 Plaintiff contends that the question posed in Interrogatory No. 47 is simply a more
specific version of the question asked in Interrogatory No. 12. (Opposition at 9.) Therefore,
Plaintiff contends that its incorporation of Interrogatory No. 12, which includes detailed

1 information about specific actions Leproust took when misappropriating trade secrets from
2 Agilent, was a sufficient response. (Id.)

3 Upon review of Interrogatory No. 12 and the response, the Referee concludes that
4 Plaintiff's incorporation of its response of Interrogatory No. 12 with Interrogatory No. 47 is
5 incomplete and broad. Although the Interrogatory No. 12 response provides information in
6 great detail about Leproust's use and transfer of Plaintiff files while at Agilent and an alleged
7 timeline of her plans to leave Agilent and join Twist, a response that requires the asking party
8 to speculate as to what exactly was part of a "premeditated plan" is not straightforward
9 sufficient to satisfy the requirements of section 2030.220. Accordingly, the Referee GRANTS
10 Defendants' Motion with respect to Interrogatory No. 47 as specified at the conclusion of this
11 Order.
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14 **E. Interrogatory No. 84**

15 Interrogatory No. 84 requests information related to Plaintiff's allegation that Leproust
16 withheld discovery related to gene assembly. (Motion at 6.) The interrogatory provides:
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18 **Interrogatory No. 84:** With respect to YOUR allegations in Paragraph 8 of
19 YOUR COMPLAINT that "[t]he gene-assembly developments pitched by Twist—
20 which LeProust learned as an Agilent employee under a duty to assign such
21 developments to Agilent—involve synthesizing oligos...," identify with
22 specificity the "gene-assembly developments" that YOU claim LEPROUST had a
23 duty to assign to AGILENT as of the date in any pitch to venture capitalists in
24 2013. (Bramhall Decl., Ex. A at 12.)

25 Defendants contend that the following response lacks the specificity requested as to
26 what was "pitched by Twist." (Reply at 7.)

27 All gene assembly technology conceived by Leproust from late 2011 through
28 April 12, 2013 and diverted to Twist (rather than disclosing and assigning it to
Agilent) belongs to Agilent. This includes, but is not limited to the **REDACTED**

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3 Upon review, the Referee concludes that the response above does not specify which

4 developments were “pitched by Twist” in an effort to secure venture capitalist funding as

5 requested in the interrogatory. Rather, Plaintiff’s response more broadly lists “[a]ll gene

6 assembly technology conceived by Leproust” up until the date she left Agilent. Accordingly,

7 the Referee GRANTS Defendants’ Motion to compel a more specific response to Interrogatory

8 No. 84 as outlined at the conclusion of this Order.

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10 **F. Interrogatory Nos. 101-102**

11 Interrogatory Nos. 101-102 request information relating to Plaintiff’s claim that

12 former Agilent’s employees other than Leproust have allegedly misappropriated trade

13 secrets:

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15 **Interrogatory No. 101:** If YOU contend that one or more of the former

16 AGILENT colleagues to which you refer, has misappropriated any AGILENT

17 ALLEGED TRADE SECRETS, describe with specificity each and every alleged

18 AGILENT ALLEGED TRADE SECRETS that YOU claim the employee in question

19 has misappropriated from AGILENT.

20 **Interrogatory No. 102:** With respect to each AGILENT ALLEGED TRADE

21 SECRET YOU have described with specificity in response to the prior

22 interrogatory, and for each former AGILENT colleague that YOU allege has

23 misappropriated any AGILENT ALLEGED TRADE SECRETS, state all facts upon

24 which YOU base YOUR allegations that the former AGILENT colleague in

25 question has misappropriated any trade secret. (Bramhall Decl. Ex. A.)

26 Defendants contend that Plaintiff failed to provide substantive information in response

27 to these requests; instead, Plaintiff references its responses to Interrogatory Nos. 12, 98, 100,

28 and 129. (Motion at 8.) Defendants contend that these are not responsive because (1)

response to Interrogatory No. 12 does not specifically identify any alleged trade secrets

misappropriated by any specific former Agilent’s employee, including Leproust; (2) response

1 to Interrogatory No. 98 merely identifies former Agilent’s employees with access to and
2 knowledge of certain alleged trade secrets from its original disclosure; (3) response to
3 Interrogatory No. 100 merely claims that it “has reason to believe” others “in addition to
4 Leproust” misappropriated trade secrets; and (4) response to Interrogatory No. 129 merely
5 identifies former Plaintiff employees with access to and knowledge of certain alleged trade
6 secrets from its disclosures. (Motion at 8-9.) In sum, Defendants contend that Plaintiff’s
7 responses to Interrogatory Nos. 101 and 102 only demonstrate knowledge of and access to
8 trade secrets, which is insufficient to establish a misappropriation claim and therefore
9 unresponsive. (Id.); see Cal. Code Civ. Proc. § 3426.1.

12 In its response to these interrogatories, Plaintiff incorporated its responses to other
13 interrogatories as follows:

- 14 - That “Agilent has reason to believe that, in addition to Leproust, Leproust’s
15 former Agilent colleagues also misappropriated Agilent’s trade secrets, but
16 Agilent is still investigating their potential misappropriation,” (Bramhall
17 Decl., Ex. G, at 106);
- 18 - The trade secrets to which each former employee had full access and
19 command, (Bramhall Decl., Ex. D, at 115-16);
- 20 - The facts supporting the former employees’ knowledge of or access to
21 Agilent’s trade secrets (Bramhall Decl., Ex. D, at 126-28); and
- 22 - The facts upon which Agilent bases its claims of misappropriation against
23 Twist—as well as detailed allegations with regard to Solange Glaize and
24 Maria Celeste Ramirez. (Bramhall Decl., Ex. E, at 13-22; Opposition at 12.)

25 Plaintiff contends that it is still in the process of determining exactly which former
26 employees misappropriated which trade secrets, because it has only recently received
27 documents and information related to this determination. (Opposition at 12.) Plaintiff
28 contends that its responses describe the information it does not yet have but expects to
receive, which is authorized by sections 2030.220(a), (b). (Id. at 13.)

1 To the extent that Plaintiff is “still in the process” of discovering which former
2 employees of Agilent misappropriated which trade secrets, the Referee finds that Plaintiff’s
3 responses to these interrogatories are incomplete, but that Plaintiff has thus far complied
4 with section 2030.220 by responding that it does not yet have the information requested.
5 Thus, on or before **May 15, 2019**, Plaintiff shall provide a supplemental response to
6 Interrogatory Nos. 101 and 102, with a specific response identifying each individual and each
7 corresponding trade secret as requested by Defendants. If specific information for a
8 particular trade secret is still unavailable, Plaintiff shall state so explicitly in its response.
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11 **G. Interrogatory No. 138**

12 Interrogatory No. 138 requests the following:

13 **Interrogatory No. 138:** With respect to AGILENT's Third Cause of Action that
14 TWIST BIOSCIENCE and LEPROUST misappropriated AGILENT trade secrets,
15 state all facts that support your contention that “Defendants willfully and
16 maliciously misappropriated Agilent’s trade secrets through improper means.”
(Bramhall Decl., Ex. A.)

17 Plaintiff’s response incorporates by reference its response to Interrogatory Nos. 5 and
18 12, which Defendants contend fail to address willfulness and malice. (Motion at 10.)
19 Defendants contend they are entitled to whatever information Plaintiff knew when it filed this
20 lawsuit in 2016 and accused Defendants of acting willfully and maliciously in allegedly
21 misappropriating Agilent’s trade secrets, separate from any non-responsive narrative
22 provided for different (and non-responsive) interrogatories. (Motion at 9-10.) Defendants
23 contend that Interrogatory No. 5 seeks facts supporting Plaintiff’s solicitation claim, and
24 Interrogatory No. 12 does not articulate facts establishing willful and malicious
25 misappropriation, nor identify which facts prove willful and malicious misappropriation as
26 requested. (Reply at 8.)
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1 Plaintiff contends that its responses to Interrogatory Nos. 5 and 12 detail LeProust's
2 efforts to poach employees with knowledge of trade secrets and demonstrate deliberate
3 efforts to misappropriate Agilent's trade secrets, including a description of LeProust's efforts
4 to steal Agilent's documents and eradicate any evidence of wrongdoing. (Opposition at 14.)
5 Plaintiff contends that this response fully addresses the information sought by Interrogatory
6 No. 138. (Id.) Further, in its March 19, 2018 supplemental response to No. 138, Plaintiff
7 states that because Defendants have not yet produced documents and witnesses have not
8 been deposed, its investigation is not complete. (Bramhall Decl., Ex. D (Under Seal), at 129.)
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11 To the extent that Plaintiff is still investigating its allegations of willfulness and
12 maliciousness, it appears that Plaintiff does not yet have the information it needs to respond
13 in full to Interrogatory No. 138. Thus, the Referee finds that Plaintiff's responses to these
14 interrogatories are incomplete, but that Plaintiff has thus far complied with section 2030.220
15 by responding that it does not yet have the information requested. The Referee ORDERS
16 Plaintiff to provide a supplemental response to Interrogatory No. 138 by **May 15, 2019**. If
17 specific information for a particular element of a request is not yet available, Plaintiff shall
18 state so explicitly in its response.
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21 **H. Interrogatory Nos. 171-173**

22 Interrogatory Nos. 171-173 state the following:

23 **Interrogatory No. 171:** For each ALLEGED TRADE SECRET, IDENTIFY with
24 precision and specificity how AGILENT contends each of the DEFENDANTS
25 received or otherwise obtained each ALLEGED TRADE SECRET, including but
26 not limited to the DATE(s) when YOU contend each DEFENDANT received or
27 obtained each ALLEGED TRADE SECRET, the exact means by which each
28 DEFENDANT received or obtained each ALLEGED TRADE SECRET, any forensic
facts or data that support YOUR contention, and any witnesses who have
personal knowledge of each such event. For purposes of these interrogatories,
the term "DATE" means the exact day, month, and year, if ascertainable, or if
not, the responding party's best approximation thereof.

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2 **Interrogatory No. 172:** With respect to any contention by YOU that any of the
3 DEFENDANTS used one or more ALLEGED TRADE SECRETS without YOUR
4 authorization or consent, separately IDENTIFY each such alleged use by each
5 such DEFENDANT with precision and specificity, including but not limited to
6 the exact information allegedly used, all DATE(s) of each such alleged
7 unauthorized use, all place(s) of such alleged unauthorized use, the identity of
8 all PERSON(s) who put such information to each such alleged unauthorized use,
9 witnesses to each such alleged unauthorized use, and the exact manner in
10 which each such alleged unauthorized use was effectuated.

11 **Interrogatory No. 173:** With respect to any contention by YOU that any of the
12 DEFENDANTS disclosed one or more ALLEGED TRADE SECRETS without YOUR
13 authorization or consent, separately IDENTIFY each such alleged disclosure by
14 each such DEFENDANT with precision and specificity, including but not limited
15 to the exact information allegedly disclosed, all DATE(s) of each such alleged
16 unauthorized disclosure, all place(s) of such alleged unauthorized disclosure,
17 the identity of all PERSON(s) who allegedly disclosed such information or to
18 whom the information was disclosed, witnesses to each such alleged
19 unauthorized disclosure, and the exact manner in which each such alleged
20 unauthorized disclosure was effectuated. (Bramhall Decl., Ex. B (Under Seal).)

21 Plaintiff's response incorporates other interrogatory responses: No. 12 for all three,
22 No. 14 for all three, No. 129 for No. 171, and No. 184 for No. 171. (Motion at 11.) Defendants
23 contend that these do not provide the specific information needed to establish unlawful
24 acquisition, use, and disclosure to support Plaintiff's claims. See Cal. Code Civ. Proc. § 3426.1;
25 (Motion at 11.) Defendants contend that Plaintiff's interrogatory responses fail to disclose
26 facts supporting Plaintiff's contentions that Defendants "received or otherwise obtained" (No.
27 171), "used" (No. 172), or "disclosed" (No. 173) one or more of Plaintiff's trade secret.
28 (Bramhall Decl. Ex. B; Reply at 8.) Further, Defendants contend that the responses also fail to
identify the requested facts separately, so that Defendants can determine the specific bases
for this element of Plaintiff's trade secret claim. (Reply at 8.) Plaintiff contends that the
responses Plaintiff incorporated into its answer are directly relevant to the information it has

1 in its possession about how Defendants' obtained those secrets and how they were
2 subsequently used. (Opposition at 14.)

3 Plaintiff's response to Interrogatory No. 171 incorporates by reference facts
4 supporting identified former employees' knowledge of or access to Plaintiff's trade secrets.
5 (Bramhall Decl., Ex. D (Under Seal), Response to No. 129; Ex. B (Under Seal), No. 171.; see
6 Opposition at 14.) Upon review of the response to Interrogatory No. 129, the Referee is
7 persuaded that incorporation of its response by reference for Interrogatory No. 171 is a
8 reasonable response, with respect to witnesses that had knowledge of the events described.
9 However, the responses in Interrogatory Nos. 129 and 12 do not respond to the rest of
10 Interrogatory No. 171, in particular "the exact means by which each DEFENDANT received or
11 obtained each ALLEGED TRADE SECRET, [and] any forensic facts or data that support YOUR
12 contention." To the extent that these details are not explicitly provided in the body of either
13 the response to Interrogatory No. 129 or the body of the response to Interrogatory No. 171,
14 the Referee GRANTS Defendants' Motion to compel with respect to completing, to the extent
15 possible, those responses, pursuant to the instructions provided at the conclusion of this
16 Order.

17 With respect to Interrogatory Nos. 172-173, Plaintiff contends that its response to
18 Interrogatory Nos. 12 and 14 answer these interrogatories because they include dates and
19 places of Defendants' use and disclosure of each trade secret, and that discovery with respect
20 to the dates and locations of Defendants' use and disclosure of trade secrets is ongoing.
21 (Opposition at 14-15.) Plaintiff has offered to supplement its responses once further
22 investigation and discovery take place. (Opposition at 15.). Upon review of the responses to
23 Interrogatory No. 12, the Referee determines that it mentions certain dates as milestone
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1 events, such as: April 12, 2013, the date Leproust left Agilent to found Twist; August 5, 2014,
2 the date Twist filed a patent application; and February 4, 2012, the date Leproust registered
3 domain names and email addresses for Twist. (Bramhall Decl., Ex. D (Under Seal).) However,
4 these are the only dates mentioned in the responses to Interrogatory Nos. 12 and 14, and they
5 are not tied to any of the specific information requested in Interrogatory Nos. 172 and 173.
6

7 Further, the incorporated responses do not provide any specificity with regard to identities of
8 persons, each alleged use or disclosure of trade secrets, witnesses thereof, and the date and
9 place these activities took place. Thus, to the extent that Plaintiff's responses to Interrogatory
10 Nos. 172 and 173 do not provide these specific details, the responses are incomplete, and the
11 Referee concludes that incorporation of the responses from Interrogatory Nos. 12 and 14 do
12 not provide any specific details as requested in these interrogatories.
13

14 Accordingly, the Referee GRANTS Defendants' Motion to compel supplemental
15 responses to Interrogatory Nos. 172 and 173, to the extent that the *specific* information –
16 identities of persons, witnesses, dates, and places relevant to specific trade secrets – is
17 available to Plaintiff. If specific information for a particular trade secret is not yet available,
18 Plaintiff should state so explicitly in its response, pursuant to the instructions provided at the
19 conclusion of this Order.
20

21 **I. Supplementation of Contention Interrogatories**

22 In its Opposition, Plaintiff proposes that the parties enter into a stipulation for a
23 schedule for the parties to update their interrogatory responses one time before the close of
24 fact discovery, such that requests for supplemental responses do not continue to burden
25 Plaintiff by requiring constant updating of responses, where Defendants must provide their
26 first and initial responses to Plaintiff's contention interrogatories within 30 days. (Opposition
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1 at 16.) Defendants contend Plaintiff's offer to supplement interrogatories and negotiation of a
2 schedule to do so is an attempt to hide its discovery failures. (Reply at 1.) However,
3 Defendants are amenable to discussing a schedule for responding to supplemental
4 interrogatories, but Plaintiff may not use this schedule to continue to delay providing
5 satisfactory answers in the first place. (Id. at 10.)
6

7 The Referee supports the parties meet and confer efforts. To the extent that the
8 parties choose to enter into an agreement regarding supplemental responses to
9 interrogatories and RFAs or RFPs, the Referee encourages the parties to do so in order to
10 streamline and narrow the scope of discovery.
11

12 **J. Requests for Fees and Costs**

13 Both parties request for an award of fees and costs pursuant to California Code of Civil
14 Procedure section 2030.330(d).
15

16 Section 2030.330(d) provides: "The court shall impose a monetary sanction under
17 Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who
18 unsuccessfully makes or opposes a motion to compel a further response to interrogatories,
19 unless it finds that the one subject to the sanction acted with substantial justification or that
20 other circumstances make the imposition of the sanction unjust."
21

22 Based on the totality of the record, the Referee finds that both sides acted with
23 substantial justification in filing and responding to this discovery dispute. Accordingly, an
24 award of fees and costs is unwarranted.
25

26 **IV. CONCLUSION**

27 The Referee GRANTS Defendant's Motion to Compel Responses to the First and Second
28 Sets of Interrogatories as follows:

1 **Interrogatory Nos. 15, 25, 34, and 44:** Plaintiff shall provide a complete
2 supplemental response and identify specific persons with the specific facts sought regarding
3 misappropriation or threatened misappropriation for any alleged trade secret.
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5 **Interrogatory No. 47:** Plaintiff shall provide a complete supplemental response with
6 particularity in the body of its response, which particular elements of its response are directly
7 in relation to “a premeditated plan” as described in No. 47.
8

9 **Interrogatory No. 84:** Plaintiff shall provide a complete supplemental response to the
10 extent it has not specified which gene assembly technology, with corresponding details
11 requested, was “pitched by Twist.”
12

13 **Interrogatory Nos. 101 and 102:** Plaintiff shall provide a complete supplemental
14 response identifying each individual and each corresponding trade secret as requested by
15 Defendants. If specific information for a particular element of a request is not yet available,
16 Plaintiff must state so explicitly in its response.
17

18 **Interrogatory No. 138:** Plaintiff shall provide a complete supplemental response
19 after it obtains information from the completion of its allegations of willfulness and
20 maliciousness by the deadline as set forth in this Order.
21

22 **Interrogatory No. 171:** Plaintiff shall provide a complete supplemental response
23 regarding the allegation that Defendants “received or otherwise obtained” one or more of
24 Plaintiff’s trade secret. If specific information for a particular element of a request is not yet
25 available, Plaintiff must state so explicitly in its response.
26

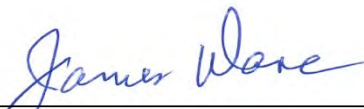
27 **Interrogatory Nos. 172 and 173:** Plaintiff shall provide a complete supplemental
28 response to the extent that the *specific* information – identities of persons, witnesses, dates,
and places relevant to specific trade secrets – is available to Plaintiff. If specific information

1 for a particular element of a request is not yet available, Plaintiff must state so explicitly in its
2 response, pursuant to the instructions provided at the conclusion of this Order.

3 Plaintiff shall comply with the production requirements ordered above on or before
4 **May 15, 2019.**

5
6 The Referee declines to award sanctions in the form of attorney fees and costs to either
7 party.

8
9 Dated: April 26, 2019

10
11 

12 _____
13 JAMES WARE
14 UNITED STATES DISTRICT JUDGE (RET.)
15 DISCOVERY REFEREE