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and EMILY LEPROUST

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SANTA CLARA** Case #16CV291137  
Env #2444060

11  
12 AGILENT TECHNOLOGIES, INC., a  
Delaware Corporation,  
13 Plaintiff,  
14 v.  
15 TWIST BIOSCIENCE CORP., a Delaware  
Corporation; EMILY LEPROUST, an  
Individual; SIYUAN CHEN, an Individual;  
16 SOLANGE GLAIZE, an Individual; and DOES  
1 through 20, inclusive,  
17 Defendants.

Case No. 16-cv-291137  
**TWIST BIOSCIENCE CORPORATION  
AND EMILY LEPROUST'S ANSWER  
AND AFFIRMATIVE DEFENSES TO  
AGILENT'S SECOND AMENDED  
COMPLAINT**

Action Filed: Feb. 3, 2016  
Judge: Hon. Brian C. Walsh  
Location: Department 1

18 -----  
19 TWIST BIOSCIENCE CORP and EMILY  
LEPROUST,  
20 Cross-Complainants,  
21 v.  
22 AGILENT TECHNOLOGIES, INC., and  
DOES 1 through 10, inclusive,  
23 Cross-Defendants  
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1 Defendants and Cross-Complainants Twist Bioscience Corp. (“Twist”) and Emily  
2 Leproust (“Leproust” and together with Twist, “Defendants”), hereby answer the Second  
3 Amended Complaint (“SAC”) of Plaintiff and Cross-Defendant Agilent Technologies, Inc.  
4 (“Agilent” or “Plaintiff”).

5 **GENERAL DENIAL**

6 Pursuant to Code of Civil Procedure section 431.30, subdivision (d), Defendants hereby  
7 deny each and every material allegation in the SAC and further deny that Agilent has been  
8 damaged in the manner alleged, in any manner, or in any amount. Defendants file this answer  
9 pursuant to Code Civ. Pro. 430.30, subdivision (c) and reserve all rights to challenge the SAC  
10 through their demurrer and motion to strike.

11 **AFFIRMATIVE DEFENSES**

12 1. Defendants hereby incorporate by reference the facts alleged in Defendants’  
13 concurrently-filed Cross-Complaint in this action as support for their general denial and defenses.  
14 By alleging the affirmative defenses set forth below, Defendants do not agree or concede that they  
15 bear the burden of production or persuasion on any of these issues, whether in whole or in part.  
16 Without waiving the foregoing answer, Defendants assert the following separate affirmative  
17 defenses to the SAC:

18 **FIRST AFFIRMATIVE DEFENSE**

19 2. Plaintiff has failed to state facts sufficient to constitute a cause of action.

20 **SECOND AFFIRMATIVE DEFENSE**

21 3. Plaintiff released, relinquished, waived, and/or abandoned any right to any of the  
22 claims upon which Plaintiff now seeks relief.

23 **THIRD AFFIRMATIVE DEFENSE**

24 4. Plaintiff’s claims are barred, in whole or in part, by any and all applicable statutes  
25 of limitations.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 5. Any alleged conduct or omission by Defendants was not the cause in fact or  
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1 proximate cause of any injury alleged by Plaintiff.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 6. To the extent that the following are deemed affirmative defenses rather than  
4 ordinary defenses, Plaintiff's purported trade secrets are not protectable or were otherwise not  
5 misappropriated because they were already disclosed within the public domain, were generally  
6 known, were the subject of independent development or derivation, or were readily ascertainable.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 7. Plaintiff has failed to state facts sufficient to support an award of punitive damages.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 8. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 9. Plaintiff's claims are barred, in whole or in part, because by virtue of its own  
13 conduct, Plaintiff is estopped from recovering from Defendants.

14 **NINTH AFFIRMATIVE DEFENSE**

15 10. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

16 **TENTH AFFIRMATIVE DEFENSE**

17 11. Defendants have not committed the wrongs alleged in the Second Amended  
18 Complaint. Thus, Plaintiff is barred from recovery, in whole or in part, to the extent that recovery  
19 by Plaintiff would constitute unjust enrichment and a windfall to Plaintiff.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 12. Plaintiff is barred from recovery, in whole or part, because any actions taken by  
22 Defendants, if any, with respect to Plaintiff, were based on an honest, reasonable, and good faith  
23 belief in the facts as known and understood at the time.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 13. At all relevant times, Plaintiff consented to and approved all the purported acts and  
26 omissions about which Plaintiff now complains.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

14. Plaintiff's claims are barred, in whole or in part, to the extent the purported acts and omissions about which Plaintiff now complains are licensed or otherwise authorized by persons or entities with the right to license or authorize.

**FOURTEENTH AFFIRMATIVE DEFENSE**

15. Plaintiff's claims for a constructive trust are barred or otherwise unavailable, either in whole or part, under the California Uniform Trade Secrets Act and California contract law.

**FIFTEENTH AFFIRMATIVE DEFENSE**

16. Plaintiff's claims for a constructive trust are barred, either in whole or part, because Defendants' alleged profits, gains, increases in value, or equity interests are not the result of any conduct complained of by Plaintiff.

**SIXTEENTH AFFIRMATIVE DEFENSE**

17. Plaintiff's claims are barred because they seek to enforce purported contract provisions that are against public policy and are therefore void and unenforceable, including under Business and Professions Code section 16600 et seq.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

18. To the extent that the following is deemed an affirmative defense rather than an ordinary defense, Plaintiff's claims are barred because Plaintiff failed to take reasonable efforts and/or precautions to protect its purported trade secrets.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

19. Plaintiff's claim for misappropriation was brought and maintained in bad faith, as Plaintiff had no evidence of misappropriation prior to commencing this lawsuit and continues to maintain this suit even after exculpatory evidence has been made known. In addition to any contractual right to attorneys' fees, Defendants are entitled to, and will seek reasonable expenses, including attorneys' fees and costs, in defending itself in accordance with the laws of the State of California, including Code of Civil Procedure section 128.7.

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**NINETEENTH AFFIRMATIVE DEFENSE**

20. Plaintiff has failed to state facts sufficient to support an award of attorneys' fees against Defendants.

**TWENTIETH AFFIRMATIVE DEFENSE**

21. Plaintiff's request for injunctive relief is improper because Plaintiff has not suffered any irreparable injury, there is no likelihood of future injury to Plaintiff, and there exists an adequate remedy at law to address the claims set forth in the Complaint.

**TWENTY FIRST AFFIRMATIVE DEFENSE**

22. Plaintiff voluntarily and with knowledge assumed the risk of all damages of which Plaintiff complains.

**TWENTY SECOND AFFIRMATIVE DEFENSE**

23. Plaintiff failed to take reasonable efforts or make reasonable expenditures to mitigate and/or avoid the damages of which Plaintiff complains.

**TWENTY THIRD AFFIRMATIVE DEFENSE**

24. Plaintiff's claim for breach of contract is barred, either in whole or in part, because there is no enforceable contract, including because there was no mutual assent or exchange of valuable consideration between the parties to the alleged contract.

**TWENTY FOURTH AFFIRMATIVE DEFENSE**

25. Plaintiff is aware that the allegations in the Complaint are frivolous and that the Complaint has been filed in bad faith so as to constitute a sham pleading.

**TWENTY FIFTH AFFIRMATIVE DEFENSE**

26. Plaintiff failed to exercise reasonable care and diligence to avoid the risk of and/or enhancement of any injuries which might be sustained by reason of the alleged acts of Defendants. Therefore, any damages awarded to the Plaintiff shall be limited to recovery for injuries which Plaintiff would have sustained had Plaintiff exercised reasonable care and diligence to avoid the risk and/or enhancement of injury to Plaintiff.

1 **RESERVATION OF RIGHTS**

2 27. Defendants reserve the right to assert additional defenses, including based on  
3 additional information learned or obtained during discovery and their own investigation.

4 **STATEMENT OF INTENTION TO PURSUE CIVIL CODE SECTION 3426.4 REMEDY**

5 28. Because Defendants believe that Plaintiff acted in bad faith within the meaning of  
6 Civil Code section 3426.4, Defendants intend to seek all fees and costs permitted under that  
7 statute.

8 **PRAYER FOR RELIEF**

9 Wherefore, Defendants and Cross-Complainants Twist and Leproust pray for judgment  
10 and relief as follows:

- 11 1. That the Second Amended Complaint be dismissed with prejudice and that Plaintiff
- 12 take nothing thereby;
- 13 2. For Defendants' costs of suit, including reasonable attorneys' fees;
- 14 3. For attorneys' fees and costs pursuant to Civil Code section 3426.4; and
- 15 4. For such other and further relief as the Court may deem just and proper.

16  
17 DATED: January 29, 2019

Respectfully submitted,

18  
19 By  \_\_\_\_\_

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21 & SULLIVAN, LLP  
22 Kevin P.B. Johnson  
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