

Electronically Filed  
by Superior Court of CA,  
County of Santa Clara,  
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 6  
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 REGARDING  
DEFENDANTS' MOTION TO COMPEL RESPONSES TO TWIST'S  
FIRST SET OF REQUESTS FOR ADMISSIONS AND FORM INTERROGATORIES**

Presently before the Discovery Referee is Defendants Twist and Leproust's Motion to Compel Responses to Twist's First Set of Requests for Admission Nos. 1-225 ("RFAs") and corresponding Form Interrogatory 17.1. The Motion was referred to the Referee pursuant to

1 California Code of Civil Procedure sections 638 and 644 and the January 22, 2019 Stipulation  
2 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. At the hearing, the parties agreed that the Referee may take this  
7 Motion under submission for decision on the papers.  
8

9 On April 18, 2019, the Referee received notification from counsel that after meeting  
10 and conferring, the parties have reached an agreement on the Motion. For the record and  
11 disposal of the Motion, the Referee recites the parties' agreement in this Order. The  
12 agreement provides:  
13

- 14 (1) Defendants agree to withdraw their Motion to Compel Responses to Defendant  
15 Twist's First Set of Requests for Admission and Form Interrogatories, filed  
16 March 1, 2019.
- 17 (2) Plaintiff agrees to provide substantive answers to 48 RFAs addressed in  
18 Defendants' Motion—specifically RFA Nos. 10, 13, 14, 18–22, 48, 49, 58, 59, 76,  
19 85–87, 96, 97, 112, 113, 122, 123, 128, 129, 131, 134, 173, 174, 179, 194–205,  
20 208, 210, 213-16, and 218. For these RFAs, where Plaintiff has provided only  
21 objections, Plaintiff will provide a substantive answer (i.e., admit or deny). And  
22 where Plaintiff had previously provided an answer, Plaintiff will provide a  
23 supplemental answer that addresses Defendants' concerns with the previously-  
24 provided answer as reflected in the Motion's briefing. By way of example, for  
25 RFA Nos. 18-21, Plaintiff's response should be to admit or deny the RFA as  
26 originally written not as modified (to replace "disclose" with "specifically  
27 describe").
- 28 (3) Plaintiff agrees that when responding to the RFAs listed above, Plaintiff will  
provide Form Interrogatory 17.1 responses for any RFA where its answer is not  
an "unqualified admission." (See Motion at 11-12.)

1 (4) To address Plaintiff's concern regarding the term "synthetic biology market,"  
2 Defendants agree to amend RFA Nos. 96 and 97 as follows:

3 (a) RFA No. 96

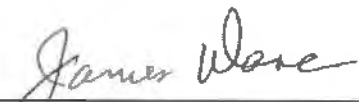
- 4 ▪ ORIGINAL: Admit that AGILENT has recruited employees from one or  
5 more of its competitors in the synthetic biology market.
- 6 ▪ AMENDED: Admit that AGILENT has recruited employees from one  
7 or more of Illumina, Inc., Ginkgo Bioworks, Qiagen N.V., Roche  
8 Holding AG, BlueHeron, Integrated DNA technologies, Molecular  
9 Assemblies, DNAscript, CustomArray, or GenScript.

10 (b) RFA No. 97

- 11 ▪ ORIGINAL: Admit that AGILENT has placed former employees  
12 recruited from its competitors in the synthetic biology market into  
13 competitive roles vis-à-vis their former employers.
- 14 ▪ AMENDED: Admit that AGILENT has placed former employees  
15 recruited from one or more of Illumina, Inc., Ginkgo Bioworks,  
16 Qiagen N.V., Roche Holding AG, BlueHeron, Integrated DNA  
17 technologies, Molecular Assemblies, DNAscript, CustomArray, or  
18 GenScript into competitive roles vis-à-vis their former employers.

19 The parties did not provide a timeline for the completion of these supplemental  
20 disclosures. Given that there is only four and a half months of the discovery period remaining,  
21 the Referee sets **May 15, 2019** as the deadline for production of these supplemental  
22 responses. The parties are free to agree to a different production deadline, with notice to the  
23 Referee.

24 Dated: April 18, 2019

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26 \_\_\_\_\_  
27 JAMES WARE  
28 UNITED STATES DISTRICT JUDGE (RET.)  
DISCOVERY REFEREE

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**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

Re: Agilent Technologies, Inc. vs. Twist Bioscience Corp., et al.  
Reference No. 1100104633

I, Brian Palencia, not a party to the within action, hereby declare that on April 22, 2019, I served the attached Order No. 6 on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Francisco, CALIFORNIA, addressed as follows:

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Emily Leproust  
Twist Bioscience Corp.

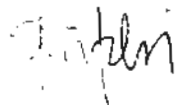
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Parties Represented:  
Agilent Technologies, Inc.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Francisco,  
CALIFORNIA on April 22, 2019.



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Brian Palencia  
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