FACT SHEET:
TWIST'S SUMMARY JUDGMENT MOTIONS

On December 23, 2019 Twist Bioscience filed Motions for Summary Judgment in California Superior Court seeking the dismissal of the long-running, meritless lawsuit brought by Agilent Technologies against Twist.

Below are some key takeaways from Twist's motions for summary judgment, followed by direct quotes from the filings:

Agilent Filed this Litigation for the Sole Purpose of Stifling Competition and Has Done Everything Possible to Drag Out this Litigation Indefinitely

- "For years now, [Agilent] has been using this litigation for the sole purpose of stifling competition. Indeed, Agilent tried desperately ***to stay its own claims*** . . . in the hope that its lawsuit could drag on for as long as possible, creating more headwinds for Twist in the investor community and in the marketplace."

- Twist's legal filing concludes that "Agilent is in no hurry to have its claims resolved. Agilent knows its claims have no merit. Agilent is simply using this lawsuit to derail Twist (in the same way Agilent tried to sabotage Twist's IPO) so that it can catch up in the gene synthesis market, where – to this day – Agilent has yet to sell a gene."

Agilent's Disastrous Investment in Gen9 and Its Continued Failure to Compete in the Marketplace Led Directly to Agilent's Last-Ditch Legal Maneuvers

- Agilent's lawsuit "came after years of Agilent lying in wait, watching to see if Twist would succeed. Then in 2016, after having failed in its attempt to break into the gene synthesis market through a disastrous outside investment in a company called Gen9, and finding itself far behind Twist in this important and emerging market, Agilent filed its litigation in an attempt to buy itself time to catch up."

- "As far as Agilent is concerned, the reputations and livelihoods of Leproust, Chen, and other Twist employees are merely collateral damage."

After More than Three Years of Litigation and a Comprehensive Discovery Process, Agilent Has Found No Factual Support for its Trade Secret Misappropriation Claims

- Twist's summary judgment motion details the legal proceedings and discovery efforts conducted so far:

    - "[M]ore than three years of litigation";

- "[F]ull transparency by [Twist] — including the disclosure of hundreds of thousands of internal documents";

- "[F]ull access to Twist's technical database and its million-plus files"; and

- "[M]ore than 10 consecutive months of device inspection by Agilent's outside forensic team".

- After all of these legal and discovery proceedings, "Agilent has found **no support for its misappropriation claims**. Instead, all of the evidence points to only one conclusion: **[Twist] engaged in good faith competition, independently developed a unique silicon-based technology, and is now selling synthetic biology products that are being used to further important medical research, to advance scientific discovery, and even to store digital data in DNA**."

- Agilent's first attempt to identify trade secrets was, "rejected by the Court as an **obvious 'everything but the kitchen sink' approach**."

- The discovery process has now made clear that, "Agilent did ***nothing*** to protect" its so-called "trade secrets":

    - "Agilent knows what to do when it has a trade secret – it sequesters it; it keeps it in one physical location; it restricts access to those who 'need to know'; it tells its employees that a trade secret has been discovered during the course of a particular project so that they know not to discuss the details of the project; it puts big, bold trade-secret warnings on documents that relate – not to the trade secret itself – but to the project within which the trade secret was discovered."

    - "What did Agilent do with the 'trade secrets' at issue here? Nothing. Agilent concedes that *thousands* of documents disclose the purported trade secrets; Agilent cannot even locate or identify all of them; many of them are not even marked 'confidential'; none of them is marked with a big, bold trade-secret warning; no employees were told they needed to tread carefully around these 'trade secrets.'"

    - In short, according to Twist's summary judgment motion, "[**t]he 'trade secrets' were simply conjured up for this case**."

<u>Twist Does Not Even Use Agilent's Stale and Often Incorrect Understanding of DNA Synthesis Facts</u>

- "Twist's technology outperforms Agilent's in part because it does ***not*** use Agilent's stale, un-nuanced, and sometimes just plain wrong understanding of the 'facts' of DNA synthesis."

- In addition, "Twist's use of publicly available products and software simply cannot constitute trade secret misappropriation. There are no material issues of disputed fact as to the baseless nature of Agilent's misappropriation claim, which was so obviously brought solely to try to litigate Twist out of existence because Agilent cannot compete with Twist in the marketplace."

Dr. Emily Leproust Fulfilled Her Duty of Loyalty to Agilent

- "Dr. Emily Leproust fulfilled her duty of loyalty to Agilent. Indeed, she went far above and beyond what her duty required. For more than ten years, Dr. Leproust was one of Agilent's star employees. Agilent repeatedly recognized that Dr. Leproust was contributing tenfold what others did to help Agilent meet its goals. Dr. Leproust gave it her all even though Agilent cancelled two of her projects. And she did this even though Agilent refused her requests to be moved toward a commercial, customer-facing role, instead restricting her responsibilities to research and development."

- Twist's legal filings also explain that California law strongly "favor[s] an individual's freedom to pursue employment opportunities" and "protects the rights of employees to "prepare to compete with his or her employer, such that the employee can commence competition with the employer immediately upon termination of the employment relationship. An employee can create a business plan, raise money, create a corporation, set up space, buy equipment, sign contracts with vendors and regulators, create products, prepare marketing materials, and so on – all for the purpose of competing with his or her employer upon resignation."

- The facts clearly demonstrate that Dr. Leproust never "actively" and "directly" competed with Agilent while she was employed by Agilent. According to Twist's legal filing, "the undisputed evidence is that, as of April 12, 2013 – when Dr. Leproust left Agilent – Twist was not actively or directly making sales or diverting customers. In fact, Twist had no space, no equipment, no operations, no products, no customers, no sales. Indeed, Dr. Leproust left Agilent the same day that Twist signed the documents for a $600,000 bridge financing loan to be used to fund the start up of Twist's operations, hopefully improving its chances of actually attracting equity investors. Twist's commercial launch did not come until April 2015 and **its first sale did not come until September 2015 – *years* after Dr. Leproust left Agilent.** In other words, it is undisputed that there was no competition between Twist and Agilent while Dr. Leproust was an Agilent employee."

Agilent's Purported "Contracts" with Drs. Emily Leproust and Siyuan Chen Are Not Legally Enforceable

- According to Twist's legal filings, the form Agilent contract that imposes a variety of obligations on Dr. Leproust and Dr. Chen, by its "own terms" makes clear that "neither

Leproust nor Chen received 'consideration' in exchange for signing those documents such that no 'contract' was formed and, without a binding contract, no breach could have occurred."

- In addition, "Agilent either has not shown that the [the contractual] provisions it seeks to recover under are sufficiently definite to be enforceable and, even if it had, it fails to adduce record evidence of any breach by Leproust of Chen. Agilent's contract claims must be dismissed."