

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GENE POOL TECHNOLOGIES,  
INC.,  
Plaintiff(s),  
v.  
COSTAL HARVEST, LLC,  
Defendant(s).

Case No. EDCV 21-01328-JWH(SHKx)  
**CIVIL TRIAL SCHEDULING  
ORDER**  
Last Day to Move to Amend Pleadings  
or to Add New Parties: in accordance  
with Fed. R. Civ. P. 15(a) &  
Fed. R. Civ. P. 16(b)(4)  
Fact Discovery Cut-Off: 2/17/2023  
Deadline for Initial Designation of  
Expert Witnesses: 3/17/2023  
Deadline for Designation of Rebuttal  
Expert Witnesses: 4/14/2023  
All Discovery Cut-Off (including  
hearing of discovery motions):  
5/19/2023  
Dispositive Motion Hearing Cut-Off:  
6/16/2023  
Deadline for Responses to Dispositive  
Motions: 7/7/2023  
Deadline for Replies ISO Dispositive  
Motions: 7/14/2023

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Hearing on Dispositive Motions:  
7/28/2023 @ 9:00 a.m.

Deadline for Hearing on Motions *in*  
*Limine*: 9/29/2023 at 9:00 a.m.

Final Pretrial Conference: 10/6/2023 at  
1:00 p.m.

Jury Trial: 10/23/2023 at 9:00 a.m.

Trial Estimate: 4 days

1 This case is set for trial before the Honorable John W. Holcomb in  
2 Courtroom 9D, Ronald Reagan Federal Building and U.S. Courthouse,  
3 411 W. 4th Street, Santa Ana, California.

4 **I. AMENDING PLEADINGS AND ADDING PARTIES**

5 There is no separate deadline for the parties to amend their pleadings or  
6 to add parties. Parties who wish to amend pleadings or to add parties shall  
7 comply with Rule 15(a) and, if applicable, Rule 16(b)(4) of the Federal Rules of  
8 Civil Procedure, as well as L.R. 15-1 through L.R. 15-3 and L.R. 16-14.

9 **II. MOTIONS**

10 **A. Schedule and Procedures**

11 Judge Holcomb hears motions in civil cases, through in-person  
12 appearances, on Fridays at 9:00 a.m. The cut-off date for hearing motions is the  
13 last day on which motions will be heard; *i.e.*, the motion must be filed at least 28  
14 days before the deadline in accordance with the requirements of L.R. 6-1. *A*  
15 *copy of every motion-related document filed (including documents pertaining to*  
16 *claim construction hearings in patent cases) must be delivered to the chambers*  
17 *drop box outside Courtroom 9D or transmitted to chambers via FedEx, UPS, or*  
18 *other overnight delivery service (the “Mandatory Chambers Copy”).* The  
19 cut-off date applies to all non-discovery motions except motions directly related  
20 to the conduct of trial (*e.g.*, motions *in limine* and motions to sever parties or to  
21 bifurcate issues for trial).

22 The parties are also reminded about their obligation to comply with  
23 L.R. 7-3, which requires a Conference of Counsel at least seven days before a  
24 party files most types of motions. The Court may deny a motion *sua sponte* if the  
25 moving party fails to comply strictly with L.R. 7-3.

26 **B. Motions for Summary Judgment**

27 The Court employs special procedures for summary judgment motions,  
28 including the parties’ preparation of a mandatory *Joint Exhibit* and *Joint*

1 **Statement of Undisputed Facts and Genuine Disputes.** The parties and their  
2 counsel are directed to the Standing Order for a full explanation.

3 The Court reminds the parties that the cut-off date for hearing dispositive  
4 motions (*i.e.*, summary judgment motions) is the last day on which motions will  
5 be **heard**, not **filed**. The Court encourages parties to confer early and often  
6 regarding anticipated summary judgment motions and, when appropriate, to file  
7 a stipulation and proposed order to set a briefing schedule that provides the  
8 parties with more time between filing and opposition, and between opposition  
9 and reply, than the one week that is provided under L.R. 6-1, 7-9, and 7-10.

10 **C. Motions in Limine**

11 All motions *in limine* (including *Daubert* motions) and other trial-related  
12 motions must be filed at least 28 days before the Final Pretrial Conference and  
13 properly noticed for hearing **one week before the date of the Final Pretrial**  
14 **Conference**. Oppositions to motions *in limine* are due 21 days before the Final  
15 Pretrial Conference (*i.e.*, 14 days before the hearing on motions *in limine*).  
16 Replies will not be accepted.

17 Counsel shall meet and confer thoroughly, in accordance with L.R. 7-3, in  
18 an effort to limit or eliminate the need for such trial-related motions.  
19 Memoranda of Points and Authorities in support of or in opposition to motions  
20 *in limine* shall not exceed 10 pages. Motions shall not be compound; *i.e.*, each  
21 motion shall address only one item of evidence or witness. If common grounds  
22 for exclusion or admission apply to multiple items of evidence or witnesses, each  
23 motion shall address only one category of evidence or witnesses. Motions *in*  
24 *limine* should not be disguised motions for summary judgment or summary  
25 adjudication.

26 **D. Withdrawal and Non-Opposition of Motions**

27 All parties and counsel must comply with L.R. 7-16, which provides as  
28 follows:

1 Any moving party who intends to withdraw the motion before the  
2 hearing date shall file and serve a withdrawal of the motion, not later  
3 than seven (7) days preceding the hearing. Any opposing party who  
4 no longer intends to oppose the motion, shall file and serve a  
5 withdrawal of the opposition, not later than seven (7) days preceding  
6 the hearing.

7 Failure to comply with this notification requirement may result in the imposition  
8 of sanctions on the offending counsel or party.

9 If a defendant files a motion to dismiss a complaint and the plaintiff  
10 subsequently amends that complaint, then the defendant shall file a Notice of  
11 Withdrawal of its motion to dismiss in accordance with L.R. 7-16, without  
12 waiting for the plaintiff or the Court to take action on the motion.

### 13 III. DISCOVERY

14 Counsel shall initiate all discovery other than depositions at least *45 days*  
15 before the cut-off date. The Court will not approve stipulations between  
16 counsel that permit responses to be served after the cut-off date except in  
17 unusual circumstances and for good cause shown.

18 All depositions must be completed by the discovery cut-off deadline.  
19 Counsel shall lodge all original depositions that will be used in trial with the  
20 Courtroom Deputy Clerk on the first day of trial.

21 Counsel are expected to resolve discovery problems without the  
22 assistance of the Court. Discovery disputes have been referred to the Magistrate  
23 Judge assigned to this case. The discovery cut-off is the last date to *complete*  
24 discovery, including expert discovery. It is also the last day for hearing any  
25 discovery motion.

26 If not separately set forth above, the required expert disclosures shall be  
27 made *70 days* before the discovery cut-off date.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. SETTLEMENT PROCEDURES**

Counsel must complete a settlement conference under the Court-Directed ADR Program (L.R. 16-15.4) no later than the date set by the Court above. If the parties desire to participate in an ADR procedure other than that elected in the Rule 26(f) Scheduling Report and Order, they shall file a stipulation with the Court. This request will not necessarily be granted.

Counsel shall include in the proposed Pretrial Conference Order a status report detailing what procedure has been followed and the status of settlement efforts. The case may not proceed to trial unless all parties, including the principals of all corporate parties, have appeared personally at a settlement conference and have complied with L.R. 16-15.5.

If a settlement is reached, it shall be reported immediately to this Court as required by L.R. 16-15.7. *In all cases set for jury trial, the parties must notify the Court, no later than the Wednesday preceding the Monday trial date, of any settlement, so that the necessary arrangements can be made to bring in a different case for trial or to notify the members of the public who would otherwise be reporting for jury duty that their services are not needed that date. Failure to comply with this notification requirement may result in the imposition of sanctions on counsel for one or more parties, or their clients, or both.*

**V. FINAL PRETRIAL CONFERENCE**

The Court will conduct a Final Pretrial Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure and L.R. 16-1 on the date and time listed above. Each party appearing in this action shall be represented at the Final Pretrial Conference and at all pretrial meetings by its lead trial counsel. Counsel should be prepared to discuss streamlining the trial, including the presentation of testimony by deposition excerpts, time limits, stipulations regarding undisputed facts, and the qualification of experts by admitted resumes. In rare

1 cases where the Pretrial Conference is waived by the Court, counsel must follow  
2 L.R. 16-11. This Court does not exempt *pro per* parties from the requirements of  
3 L.R. 16.

4 **VI. MATTERS TO BE DISCUSSED AT THE FINAL PRETRIAL**  
5 **CONFERENCE**

6 Counsel shall be prepared to discuss the following matters with the Court  
7 at the Pretrial Conference:

- 8 • the witnesses all parties intend to call during their respective cases, and  
9 the amount of time necessary for direct and cross examination of each  
10 witness;
- 11 • any anticipated problems in scheduling witnesses;
- 12 • any evidentiary issues, including anticipated objections under Rule 403 of  
13 the Federal Rules of Evidence, and objections to exhibits;
- 14 • jury selection procedures;
- 15 • all pretrial motions, including motions *in limine* and motions to bifurcate  
16 and to sever (which, as noted above, must be set for hearing at least one  
17 week before the Pretrial Conference);
- 18 • any disputed jury instructions, and the form of the instructions that will be  
19 given to the jury at the outset of the case, i.e., before opening statements  
20 and presentation of evidence;
- 21 • whether any counsel intends to use any evidence or demonstrative aid in  
22 opening statement; and
- 23 • motions to exclude witnesses from the courtroom during trial testimony.

24 If counsel for any party needs to arrange for the installation of their own  
25 equipment, such as video monitors, notebooks, or projection equipment, counsel  
26 shall notify the Courtroom Deputy Clerk no later than 4:00 p.m. on the  
27 Wednesday before trial so that the necessary arrangements can be made.

28

1 **VII. PRETRIAL FILINGS**

2 Counsel shall submit carefully prepared Memoranda of Contentions of  
3 Fact and Law (which may also serve as the trial briefs) and proposed Pretrial  
4 Conference Orders in accordance with the provisions of L.R. 16-4 through 16-7.  
5 The form of the proposed Pretrial Conference Order shall be in conformity with  
6 the form set forth in Appendix A to the Local Rules.

7 The filing schedule for pretrial documents is as follows:

8 **A. At Least 28 Days before Final Pretrial Conference**

- 9 • Motions *in limine* (which, as noted above, must be set for hearing at least  
10 one week before the Pretrial Conference)<sup>1</sup>

11 **B. At Least 21 Days before Final Pretrial Conference**

- 12 • Memorandum of contentions of fact and law  
13 • Witness lists  
14 • Joint exhibit list  
15 • Oppositions to motions *in limine* (which, as noted above, must be set for  
16 hearing at least one week before the Pretrial Conference)

17 **C. At Least 14 Days before Final Pretrial Conference**

- 18 • Proposed Final Pretrial Conference Order  
19 • Proposed jury instructions and any objections thereto  
20 • Proposed verdict forms  
21 • Statement of the case  
22 • Proposed *voir dire* questions, if desired

23 **D. At Least 7 Days before Trial:**

- 24 • Trial briefs, if desired.  
25

26 <sup>1</sup> In rare instances, the Court will set the deadline for hearing motions *in*  
27 *limine* for a date other than one week before the Final Pretrial Conference. In  
28 those instances, motions *in limine* are due no later than 21 days before the  
hearing, and oppositions are due no later than 14 days before the hearing.

1 In drafting the Proposed Final Pretrial Conference Order, counsel shall  
2 make a good faith effort to agree on, and to set forth, as many uncontested facts  
3 as possible. The Court may read the uncontested facts to the jury at the start of  
4 the trial.

5 In drafting the factual issues in dispute for the Proposed Final Pretrial  
6 Conference Order, the issues of fact should track the elements of a claim or  
7 defense upon which the jury would be required to make findings. Counsel  
8 should attempt to state issues in ultimate fact form, not in the form of  
9 evidentiary fact issues (*i.e.*, “was the defendant negligent?”; “was such  
10 negligence the proximate cause of injury to the plaintiff?”; “was the plaintiff  
11 negligent?”; *not*, “was the plaintiff standing on the corner of 5th Street and  
12 Spring Avenue at 10:00 a.m. on May 3?”). Counsel may list sub-issues under  
13 the headings of ultimate fact issues, but shall not use this as a device to list  
14 disputes over evidentiary matters.

15 Issues of law should state legal issues upon which the Court will be  
16 required to rule after the Pretrial Conference, including during the trial, and  
17 should not list ultimate fact issues to be submitted to the trier of fact.

18 Each party shall list and identify its respective expert witnesses, if any.  
19 Failure of a party to list and identify an expert witness in the Proposed Final  
20 Pretrial Conference Order shall preclude a party from calling that expert witness  
21 at trial.

22 **E. Exhibit and Witness Lists**

23 Counsel are directed to prepare their exhibits by placing them in three-  
24 ring binders that are tabbed down the right side with exhibit numbers. The spine  
25 portion of the binder shall indicate the volume number and shall contain an  
26 index of each exhibit included in the volume. The binders are to be prepared  
27 with an original for the Courtroom Deputy Clerk, which shall be tagged with the  
28 appropriate exhibit tags in the upper right-hand corner of the first page of each

1 exhibit, and two copies for the Court (the “Judge’s binders”). Each binder shall  
2 contain an index of the included exhibits. The exhibits are to be numbered in  
3 accordance with L.R. 26-3.

4 The Court requires the following to be submitted to the Courtroom  
5 Deputy Clerk on the first day of trial:

- 6 • The original exhibits with the Court’s exhibit tags. The parties shall use  
7 yellow tags for Plaintiff and blue tags for Defendant, which shall be  
8 stapled to the front of the exhibit on the upper right corner with the case  
9 number, case name, and exhibit number placed on each tag. Counsel can  
10 obtain exhibit tags at the Clerk’s Office. Exhibit Tags (Plaintiff &  
11 Defendant, form G-014) are also available on the Court’s website, under  
12 “Court Procedures,” “Forms.”
- 13 • Two Judge’s binders with a copy of each exhibit for use by the Court,  
14 tabbed with numbers as described above. (Court’s exhibit tags not  
15 necessary.)
- 16 • Four copies of the exhibit index.

17 The exhibit index shall be in the following form:

Case No.		Case Name:	
<u>Exhibit No.</u>	<u>Description</u>	<u>Date Identified</u>	<u>Date Admitted</u>
3	1/30/2005 Letter from Doe to Roe		

- 22 • Four copies of witness lists in the order in which the witnesses may be  
23 called to testify.

24 The witness lists shall be in the following form:

25  
26  
27  
28

1	Case No.	Case Name:
2	<u>Witness Name</u>	<u>Date Called to Testify</u>
3	1. John Doe	
4	2. Jane Roe	

5  
6 All counsel shall meet no later than *10 calendar days* before trial and shall  
7 stipulate to the extent possible regarding foundation, waiver of the best evidence  
8 rule, and admission into evidence of exhibits at the start of trial. The exhibits to  
9 be received will be noted on the extra copies of the exhibit lists.

10 **VIII. COURT REPORTER**

11 At least seven days before the commencement of trial, counsel for the  
12 parties shall provide the court reporter with a list of unusual words, phrases, and  
13 spellings that may come up during trial. This information should be emailed to  
14 Court Reporter Services at [ReportersCACD@cacd.uscourts.gov](mailto:ReportersCACD@cacd.uscourts.gov).

15 **IX. JURY INSTRUCTIONS**

16 *Fourteen calendar days* prior to the L.R. 16-2 Meeting of Counsel,  
17 counsel shall exchange proposed jury instructions and special verdict forms (if  
18 applicable). *Seven calendar days* prior to the L.R. 16-2 meeting, counsel shall  
19 exchange any objections to the instructions and special verdict forms. Prior to or  
20 at the time of the L.R. 16-2 meeting, counsel shall meet and confer with the goal  
21 of reaching agreement regarding one set of joint, undisputed jury instructions  
22 and one special verdict form.

23 The parties shall file proposed jury instructions *fourteen calendar days*  
24 before the Final Pretrial Conference. As always, the parties must submit  
25 Mandatory Chambers Copies to the Court. In addition, the parties must submit  
26 electronic versions (in Word format) to the Court at the following e-mail  
27 address: [JWH\\_Chambers@cacd.uscourts.gov](mailto:JWH_Chambers@cacd.uscourts.gov).

28

1 As noted above, the parties must act jointly to submit proposed jury  
2 instructions. The parties must submit one set of agreed upon jury instructions.  
3 At the same time, the parties must submit another set of jury instructions  
4 containing the instructions upon which the parties disagree and the objections to  
5 those instructions. Where the parties disagree on an instruction, the party  
6 opposing the instruction must attach a short (*i.e.*, one to two paragraphs)  
7 statement supporting the objection and the party submitting the instruction  
8 must attach a short statement supporting the instruction. Each statement  
9 should be on a separate page and should follow directly after the disputed  
10 instruction.

11 Accordingly, the parties ultimately will submit one document or, if the  
12 parties disagree over any proposed jury instructions, two documents. If the  
13 parties submit two documents, those documents should consist of: (1) a set of  
14 agreed upon jury instructions; and (2) a set of disputed jury instructions along  
15 with reasons supporting and opposing each disputed instruction.

16 Where the *Manual of Model Civil Jury Instructions for the Ninth*  
17 *Circuit* provides a version of a requested instruction, the parties should submit  
18 the Model instruction. Where California law applies, the Court prefers counsel  
19 to use JUDICIAL COUNCIL OF CALIFORNIA, CIVIL INSTRUCTIONS—(“CACI”). If  
20 neither of the above sources has an instruction on the subject, counsel are  
21 directed to consult the current edition of O’Malley, et al., FEDERAL JURY  
22 PRACTICE AND INSTRUCTIONS. Each requested instruction (a) shall cite the  
23 authority or source of the instruction; (b) shall be set forth in full; (c) shall be on  
24 a separate page; (d) shall be numbered; (e) shall cover only one subject or  
25 principle of law; and (f) shall not repeat principles of law contained in any other  
26 requested instruction.

27 The Court will send a copy of the jury instructions into the jury room for  
28 use by the jury during deliberations. Accordingly, in addition to the file copies

1 described above, the parties shall file with the Courtroom Deputy Clerk and  
2 shall email to chambers on the first day of the trial a “clean set” of joint and/or  
3 proposed jury instructions that contain only the text of each instruction set forth  
4 in full on each page, with the caption “Court’s Instruction Number \_\_\_”  
5 (eliminating titles, supporting authority, indication of party proposing, etc.).  
6 This version will be referred to as the “Jury Copy” of the jury instructions.

7 An index page shall accompany all jury instructions submitted. The index  
8 page shall indicate the following:

- 9 • The number of the instruction;
- 10 • A brief title of the instruction;
- 11 • The source of the instruction and any relevant case citations; and
- 12 • The page number of the instruction.

13 EXAMPLE:

<u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page</u>
1	Burden of Proof	9th Cir. 12.02	7

## 17 X. JOINT STATEMENT OF THE CASE

18 Counsel shall prepare a joint statement of the case which will be read by  
19 the Court to the prospective panel of jurors prior to the commencement of *voir*  
20 *dire*. The statement should not be longer than three paragraphs. The statement  
21 shall be filed with the Court fourteen calendar days before the Final Pretrial  
22 Conference.

## 23 XI. TRIAL

24 The Court sets firm trial dates. Counsel shall arrive at the Courtroom *not*  
25 *later than 8:30 a.m.* each day of trial. The Court reserves the time from *8:30 to*  
26 *9:00 a.m.* to handle legal and administrative matters outside the presence of the  
27 jury. The trial will commence promptly at 9:00 a.m. Counsel shall anticipate

28

1 matters that may need discussion or hearing outside the presence of the jury and  
2 to raise them during this period.

3 The Court is in session with the jury on *Mondays through Thursdays,*  
4 *9:00 a.m. to 5:00 p.m., with a morning and an afternoon break and a lunch*  
5 *recess from approximately 12:00 noon to 1:00 p.m.* In most instances, jury  
6 selection is completed on the first morning of trial, and counsel should be  
7 prepared to give opening statements and to begin their presentation of evidence  
8 immediately thereafter.

9 All counsel shall observe the following practices during trial:

- 10 • All counsel and parties shall rise when the jury enters and leaves the  
11 courtroom.
- 12 • Counsel shall stand when addressing the Court, including when objecting  
13 to opposing counsel's questions.
- 14 • When objecting, counsel shall state only "objection" and the legal ground  
15 for the objection (*e.g.*, hearsay, irrelevant, etc.). Counsel shall refrain  
16 from arguing the legal basis for the objection unless and until permission  
17 is granted to do so. Counsel shall instruct their witnesses to refrain from  
18 answering a question while an objection is pending.
- 19 • Counsel must seek leave to approach the Courtroom Deputy Clerk or the  
20 witness and shall question witnesses while standing at the lectern.
- 21 • Counsel shall not address or refer to witnesses or parties by first names  
22 alone, with the exception of witnesses under 14 years old.
- 23 • Counsel shall not discuss the law or argue the case in opening statements.
- 24 • Counsel shall address all remarks to the Court and shall not directly  
25 address the Courtroom Deputy Clerk, the Court Reporter, opposing  
26 counsel, or the jury (except in opening statement and closing argument).  
27 Counsel must ask the Court for permission to talk off the record in order  
28 to speak with opposing counsel.

- 1 • Counsel shall not make an offer of stipulation unless he or she has  
2 conferred with opposing counsel and believes that the stipulation will be  
3 accepted.
- 4 • While Court is in session, counsel may not leave the counsel table to  
5 confer with witnesses, colleagues, or assistants elsewhere in the  
6 courtroom unless the Court grants permission to do so in advance.
- 7 • Where a party has more than one lawyer, only one may conduct the direct  
8 or cross-examination of a particular witness or make objections with  
9 respect to that witness.
- 10 • If a witness was on the stand before a recess or adjournment, counsel shall  
11 have the witness back on the stand and ready to proceed when Court  
12 resumes.
- 13 • If there is more than a brief delay between witnesses, the Court may deem  
14 that the party has rested.
- 15 • The Court attempts to cooperate with witnesses and will, except in  
16 extraordinary circumstances, accommodate them by permitting them to  
17 be examined out of sequence. Counsel should discuss any scheduling  
18 issues with opposing counsel. If there is an objection, counsel shall confer  
19 with the Court in advance.

## 20 XII. BENCH TRIALS

21 *Twenty-one calendar days* before the trial date, each party shall prepare  
22 and serve on opposing counsel copies of the proposed Findings of Fact and  
23 Conclusions of Law. Each party shall review the other party's proposed  
24 Findings and Conclusions and make such changes in the party's own proposed  
25 Findings and Conclusions as necessary following such review. *Fourteen*  
26 *calendar days* before the trial date, each party shall lodge two copies of its  
27 proposed Findings of Fact and Conclusions of Law with the Court, also serving  
28 other parties if changes have been made. The parties shall be prepared to submit

1 to the Court, and to exchange among themselves, supplemental Findings of Fact  
2 and Conclusions of Law during the course of the trial.

3 **XIII. WEBSITE**

4 Counsel are encouraged to review the Central District’s website for  
5 additional information: [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov).

6 The Courtroom Deputy Clerk is ordered to serve a copy of this Order  
7 personally, electronically, or by mail on counsel for all parties to this action.

8 **IT IS SO ORDERED.**

9  
10 Dated: November 23, 2022

  
\_\_\_\_\_  
John W. Nolcomb  
UNITED STATES DISTRICT JUDGE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28