

1 ROGER M. SCHRIMP, ESQ., SBN 039378
2 GEORGE P. RODARAKIS, ESQ. SBN 222214
3 ERIC J. SOUSA, ESQ., SBN 232541
4 Damrell, Nelson, Schrimp
5 Pallios, Pacher & Silva
6 1601 Modesto, CA 95354
7 Telephone 209-526-3500

8 TED R. FRAME, ESQ. SBN 023736
9 Frame & Matsumoto
10 201 Washington Street
11 Post Office Box 895
12 Coalinga, CA 93210
13 559-935-1552

14 Attorneys for Plaintiff
15 BRITZ FERTILIZERS, INC.

16 STEPHEN T. CLIFFORD, ESQ., SBN 39020
17 T. MARK SMITH, ESQ., SBN 162370
18 Clifford & Brown
19 A Professional Corporation
20 Attorneys at Law
21 1430 Truxtun Avenue, Suite 900
22 Bakersfield, CA 93301
23 661-322-6023
24 661-322-3508 fax

25 Attorneys for Defendants
26 BAYER CORPORATION and BAYER CROPSCIENCE, LP

27
28
29 IN THE UNITED STATES DISTRICT COURT
30
31 FOR THE EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

32 BRITZ FERTILIZERS, INC.,

33 Plaintiff,

34 vs.

35 BAYER CORPORATION; BAYER
36 CROPSCIENCE, LP,

37 Defendants

38) Case No.: 1:06-CV-00287-OWW-DLB

39)
40) **STIPULATION AND JOINT APPLICATION**
41) **RE: SEALING OF DOCUMENTS IN SUPPORT**
42) **OF BRITZ FERTILIZERS, INC.'S AND BAYER**
43) **CROPSCIENCE, LP'S/BAYER**
44) **CORPORATION'S JOINT APPLICATION**
45) **FOR DETERMINATION OF GOOD FAITH**
46) **SETTLEMENT, OPPOSITION THERETO, AND**
47) **RELATED DOCUMENTS; ORDER THEREON**

48) **E.D. CAL. L.R. 141**
49)
50)
51)
52)
53)
54)
55)
56)
57)
58)
59)
60)
61)

1 WHEREAS Britz Fertilizers, Inc. (“Britz”) and Bayer Cropscience, LLP and Bayer
2 Corporation (collectively “Bayer”), have agreed in consideration of the mutual promises and
3 covenant contained in an executed Confidential Settlement Agreement and Mutual General
4 Release to settle the above entitled action conditional upon the entry of an order granting a
5 Motion for Good Faith Settlement and thereby barring and discharging any and all potential
6 third party claims and/or causes of action for contribution or indemnity, present or future
7 against Bayer by those parties having received notice of the filing of said Motion;

8 WHEREAS the terms of such conditional settlement are expressly made confidential as
9 set forth in the Confidential Settlement Agreement and Mutual General Release;

10 WHEREAS Britz’ and Bayer’s Joint Application and Motion for Determination of
11 Good Faith Settlement (“Motion”) reflects the terms of such settlement and the Confidential
12 Settlement Agreement and Mutual General Release is attached in support of said motion;

13 WHERRAS Britz and Bayer agree that the terms of such settlement should remain
14 confidential within the ambit of the Court’s determination of the Motion;

15 WHEREAS Britz and Bayer agree and stipulate that the documents filed in support of
16 the Motion should be filed under seal to preserve the confidentiality of the settlement;

17 WHEREAS Britz and Bayer jointly agree that any opposition to the Motion and reply to
18 the opposition should also be filed under seal to preserve the confidentiality of the terms of the
19 Confidential Settlement Agreement and Mutual General Release.

20 Britz and Bayer hereby stipulate and jointly request that the Court enter an Order in
21 accord with US District Court, Eastern District of California, Local Rule 141, sealing all
22 documents filed in support of Britz’ and Bayer’s Motion, any papers filed in opposition thereto,
23 and any papers or documents filed in reply to any opposition. Submitted herewith are the
24 following documents in support of the Motion requested to be filed under seal:

- 25 1. Notice of Hearing for Joint Motion to Determine Good Faith of Settlement and
26 to Bar Claims Against Defendants for Contribution and Indemnity;
- 27 2. Joint Application by Plaintiff Britz Fertilizers, Inc. and Defendants Bayer
28 Corporation and Bayer Cropscience, LP for Determination of Good Faith

1 Settlement pursuant to C.C.P. Sections 877 and 877.6;

- 2 3. Memorandum of Points and Authorities in Support of Joint Motion to
3 Determine Good Faith of Settlement and to Bar Claims Against Defendants for
4 Contribution and Indemnity;
- 5 4. Declaration of Ted R. Frame in Support of Joint Application for Good Faith
6 Settlement;
- 7 5. Declaration of Stephen T. Clifford in Support of Joint Application for Good
8 Faith Settlement; and
- 9 6. [Proposed] Order Determining Settlement to be in Good Faith and Baring
10 Claims for Contribution and Indemnity.

11
12 DAMRELL, NELSON, SCHRIMP,
13 PALLIOS, PACHER & SILVA

14 Dated: July 22, 2010

15 By /s/ Roger Schrimp
16 Roger Schrimp
17 Attorneys for Plaintiff

18 FRAME & MATSUMOTO

19
20 Dated: July 22, 2010

21 By /s/ Ted R. Frame
22 Ted R. Frame
23 Attorneys for Plaintiff

24 CLIFFORD & BROWN

25 Dated: July 22, 2010

26 By /s/ T. Mark Smith
27 Stephen T. Clifford
28 T. Mark Smith
Attorneys for Defendants

1 **ORDER**

2 IT IS HEREBY ORDERED that Britz Fertilizer, Inc.'s and Bayer Cropscience,
3 LP/Bayer Corporation's Stipulation and Joint Application to seal documents filed in support of
4 and opposition to the Joint Motion to Determine Good Faith of Settlement and to Bar Claims
5 Against Defendants for Contribution and Indemnity ("Motion") is GRANTED. The following
6 documents submitted herewith shall be filed under seal:

- 7 1. Notice of Hearing for Joint Motion to Determine Good Faith of Settlement and
8 to Bar Claims Against Defendants for Contribution and Indemnity;
- 9 2. Joint Application by Plaintiff Britz Fertilizers, Inc. and Defendants Bayer
10 Corporation and Bayer Cropscience, LP for Determination of Good Faith
11 Settlement pursuant to C.C.P. Sections 877 and 877.6;
- 12 3. Memorandum of Points and Authorities in Support of Joint Motion to
13 Determine Good Faith of Settlement and to Bar Claims Against Defendants for
14 Contribution and Indemnity;
- 15 4. Declaration of Ted R. Frame in Support of Joint Application for Good Faith
16 Settlement;
- 17 5. Declaration of Stephen T. Clifford in Support of Joint Application for Good
18 Faith Settlement; and
- 19 6. [Proposed] Order Determining Settlement to be in Good Faith and Baring
20 Claims for Contribution and Indemnity.

21
22 The Court further Orders that any documents submitted in Opposition and Reply to any
23 Opposition to the Motion shall be filed under seal and all parties shall comply with the
24 procedures set forth in E.D. Cal. Local Rule 141 for the filing of such documents. Moving
25 parties shall serve all interested parties with this Order upon service of the Motion.
26
27

28 IT IS SO ORDERED.

1 Dated: July 23, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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