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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: BEXTRA AND CELEBEX
MARKETING SALES PRACTICES AND
PRODUCT LIABILITY LITIGATION

CASE NO. M:05-CV-01699-CRB
MDL No. 1699

This Order Relates to:

ALL PLAINTIFFS LISTED IN
SCHEDULE A.

**PRETRIAL ORDER NO. 29: PROVISION OF
CASE-SPECIFIC EXPERT REPORTS
REGARDING SPECIFIC CAUSATION**

1. Order Applicable to All Cases Listed in Schedule A. This Order shall apply to all plaintiffs listed in Schedule A.
2. Plaintiffs' Obligation to Service Case-Specific Expert Reports. In addition to each plaintiff's obligation under Pretrial Order No. 6 to serve a Plaintiff Fact Sheet ("PFS"), all responsive documents (or a written notice that none are in the possession of plaintiff or plaintiff's counsel), and properly executed authorizations, each plaintiff listed in Schedule A (including each personal representative of an estate of any deceased or of any incompetent user of Celebrex® and/or Bextra®) and the plaintiff's counsel, in consultation with such medical advisor(s) as they see fit to consult, shall consider whether there are good grounds to continue the action in light of the plaintiff's individual circumstances. If so, then the plaintiff shall serve a Rule 26(a)(2) case-specific expert report regarding specific causation, signed and sworn to by a physician or other

1 medical expert (a “Case-Specific Expert Report”). Plaintiffs shall send the Case-Specific Expert
2 Reports to Defendants’ counsel by a manner agreed to by the parties.

3 3. Contents of Case-Specific Expert Report. Each Case-Specific Expert
4 Report shall include the following information:

5 a. Plaintiff’s Information. The plaintiff’s name and date of birth;

6 b. Expert’s Information. The name, professional address, and
7 curriculum vitae of the expert, including a list of all publications authored by the witness within
8 the preceding ten years;

9 c. Plaintiff’s Medical Records. A list of the plaintiff’s medical
10 records reviewed by the expert prior to the preparation of the Case-Specific Expert Report by
11 Bates number, as well as copies of any such records not posted on the web site of the medical
12 record vendor hired jointly by the parties;

13 d. Use Dates. The dates during which the plaintiff used Celebrex®
14 and/or Bextra® and references to the Bates numbers of the particular pages relied upon as
15 evidence of such use (or the actual pages if the pages are not Bates stamped);

16 e. Plaintiff’s Prescribing Physician. The name(s) of the physician(s)
17 who prescribed Bextra and/or Celebrex to the plaintiff;

18 f. Plaintiff’s Injury. Whether the plaintiff’s medical records report
19 that the plaintiff experienced a myocardial infarction, ischemic stroke, sudden death, or any other
20 injury while the plaintiff was taking Celebrex® and/or Bextra® and, if so: (i) the nature of the
21 alleged injury; (ii) the date of the alleged injury; and (iii) references to the particular pages relied
22 upon as evidence of such myocardial infarction, ischemic stroke, sudden death, or other injury.

23 4. Schedule for Serving Case-Specific Expert Reports. Each plaintiff listed in
24 Schedule A shall have 45 days from entry of this Order to serve upon defendants’ counsel a
25 complete and signed Case-Specific Expert Report.

26 5. Dismissal of Plaintiffs Who Fail to Provide Case-Specific Expert Reports.
27 Any plaintiff who fails to provide a Case-Specific Expert Report that complies with this Order
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1 within the applicable timeline will be subject to having his or her claims, as well as any derivative
2 claim(s), dismissed with prejudice pursuant to the following procedure:

3 a. Deficiency Letter. When any plaintiff fails to provide a Case-
4 Specific Expert Report that complies with this Order, defendants' counsel may write a letter to
5 plaintiff's counsel and identify with particularity the alleged deficiency ("the deficiency letter").
6 The letter shall state that the plaintiff will have seven (7) days to cure the alleged deficiency and
7 that absent cure of the alleged deficiency within that time (or within any extension of that time as
8 agreed to by the parties), defendants may move for dismissal of plaintiff's claims, including
9 dismissal with prejudice.

10 b. Compliance Motion. If plaintiff's counsel does not provide a Case-
11 Specific Expert Report that complies with this Order within seven days of receipt of the
12 deficiency letter, defendants' counsel may file a motion with the Special Master seeking an order
13 requiring plaintiff to comply with this Order or face a motion to dismiss with prejudice, or other
14 sanctions (a "compliance motion"). Such compliance motions shall be heard on an expedited
15 basis. A compliance motion may be noticed fourteen (14) calendar days before the hearing date,
16 with any opposition to be filed seven (7) calendar days before the hearing and any reply to be
17 filed three (3) calendar days before the hearing.

18 c. Compliance Order. If the Special Master determines that a plaintiff
19 has failed to provide a Case-Specific Expert Report that complies with this Order, the Special
20 Master shall order plaintiff to comply with this Order within seven (7) days or face dismissal or
21 other appropriate sanctions as determined by the Court ("the compliance order").

22 d. Failure to Comply with Special Master's Order and Motion to
23 Dismiss. If plaintiff does not comply with the compliance order within seven (7) days,
24 defendants' counsel may file a motion with the Court to dismiss plaintiff's claims with prejudice
25 or for other appropriate sanctions (a "motion to dismiss"). No further notice to plaintiff's counsel
26 shall be required. Such motions to dismiss shall be heard on an expedited basis. A motion to
27 dismiss may be noticed fourteen (14) calendar days before the hearing date, with any opposition
28 to be filed seven (7) calendar days before the hearing and any reply to be filed three (3) calendar

1 days before the hearing. If the Court determines that plaintiff has not complied with the
2 compliance order, it may dismiss plaintiff's claims with prejudice or impose other sanctions as it
3 deems appropriate.

4 6. A Written Report to the Court. On or before September 29, 2008, the
5 parties, either jointly or separately, shall provide the Court with a written report on the status of
6 plaintiffs' compliance with PTO 29 and a recommendation as to how the Court should proceed to
7 expeditiously resolve any pending cases.

8 **IT IS SO ORDERED.**

9 Dated: August 1, 2008

10 /s/
11 HONORABLE CHARLES R. BREYER
12 UNITED STATES DISTRICT JUDGE
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