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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

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

This Order Relates to:

ALL CASES.

**PRETRIAL ORDER NO. 17: EQUIPMENT
AND TECHNIQUES FOR VIDEOTAPED
DEPOSITIONS**

1. Order Applicable to All Cases in MDL Proceedings. This Order shall apply to all cases currently pending in MDL No. 1699 and to all related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto (collectively, “the MDL proceedings”). This Order is binding on all parties and their counsel in all cases currently pending or subsequently made a part of these proceedings and shall govern each case in the proceedings unless it explicitly states that it relates only to specific cases.

2. Scope of Order. Pursuant to paragraph 34(b) of Pretrial Order No. 4, the parties have met and conferred regarding the equipment and techniques to be used to videotape depositions of witnesses in the MDL proceedings, and in particular have reviewed the sample order in the *Manual for Complex Litigation, Fourth*, § 40.29, paragraph 9(b)(1)(i) to (v). This Order shall govern any and all depositions in the MDL proceedings.

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1 3. Video Operator. The operator(s) of the videotape recording equipment
2 shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the
3 deposition the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

4 4. Attendance. Each witness, attorney, and other person attending the
5 deposition shall be identified on camera at the commencement of the deposition. Thereafter, only
6 the deponent (and any demonstrative materials and exhibits used during the deposition, which
7 may be taped via split screen) will be videotaped.

8 5. Standards. The deposition will be conducted in a manner to replicate, to
9 the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the
10 deponent shall be seated at a table or in a witness box except when reviewing or presenting
11 demonstrative materials for which a change in position is needed. To the extent practicable, the
12 deposition will be conducted in a neutral setting, against a solid background, with only such
13 lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field
14 of view will be changed only as necessary to record accurately the natural body movements of the
15 deponent or to portray exhibits and materials used during the deposition. Sound levels will be
16 altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating
17 and smoking by deponents or counsel during the deposition will not be permitted.

18 6. Interruptions. Videotape recording will be suspended during all “off the
19 record” discussions.

20 7. Index. The videotape operator shall use a counter on the recording
21 equipment and after completion of the deposition shall prepare a log, cross-referenced to counter
22 numbers, that identifies the positions on the tape at which examination by different counsel
23 begins and ends, objections are made and examination resumes at which exhibits are identified,
24 and any interruption of continuous tape recording occurs, whether for recesses, “off the record”
25 discussions, mechanical failure, or otherwise.

26 8. Use of Depositions at Trial. Prior to any trial, the parties shall meet and
27 confer with respect to the use of any videotaped deposition testimony or exhibits (including
28 exhibits displayed through trial software such as Trial Director, Summation, or Concordance).

