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21 *Attorneys for Defendants*

22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

24 IN RE: BEXTRA AND CELEBREX) No. M:05-CV-01699-CRB
25 MARKETING, SALES PRACTICES, AND)
26 PRODUCT LIABILITY LITIGATION) MDL No. 1699

26 THIS RELATES TO:) SETTLEMENT AGREEMENT AND
27 ALL PURCHASER CASES) RELEASE

28
SETTLEMENT AGREEMENT AND RELEASE
M:05-CV-01699-CRB
001682-15 281539 V1

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Exhibit 1	Short Form Notice to Consumer Subclasses
Exhibit 2	Long Form Notice to Consumer Subclasses
Exhibit 3	Short Form Notice to TPP Subclass
Exhibit 4	Long Form Notice to TPP Subclass
Exhibit 5	TPP Opt-Out Information Request
Exhibit 6	TPP Proof of Claims and Release
Exhibit 7	[Proposed] Preliminary Approval Order
Exhibit 8	Eserow Agreement
Exhibit 9	[Proposed] Order and Final Judgment
Exhibit 10	Plan of Allocation
Exhibit 11	Consumer Claim Form

1 would be protracted and expensive, and that it is desirable that the Class Action be fully and finally
2 settled in the manner and upon the terms and conditions set forth in this Agreement, in order to
3 limit further expense, inconvenience, and distraction, and to dispose of the burden of protracted
4 litigation, taking into account, among other things, the uncertainty and risks inherent in any
5 litigation, especially in complex cases such as this;

6 WHEREAS, Class Plaintiffs have filed a consolidated amended complaint combining the
7 allegations of the Third Amended Purchase Claims Master Bextra Complaint and the Third
8 Amended Purchase Claims Master Celebrex Complaint, which shall serve as the operative
9 complaint for the purposes of this Agreement (the "Consolidated Amended Complaint");

10 WHEREAS, Class Plaintiffs have advised Defendant that in the absence of settlement they
11 intend to seek amendment to the Consolidated Amended Complaint to allege claims under the
12 federal RICO statute, and seek certification of a national class under that statute;

13 WHEREAS, the Parties agree that this Agreement shall not be deemed or construed as an
14 admission or as evidence of any violation of any statute or law, or of any liability or wrongdoing
15 by any of the Released Persons, or of the truth of any of the claims or allegations alleged in the
16 Third Amended Purchase Claims Master Bextra Complaint, Third Amended Purchase Claims
17 Master Celebrex Complaint, and [Proposed] Consolidated Amended Complaint (collectively,
18 "Complaint"), or as a waiver of any defenses thereto, or a waiver of any right to oppose
19 amendment to allege RICO claims, or any argument in response to a motion for class certification;

20 WHEREAS, the Parties have conducted a thorough examination and investigation of the
21 facts and law relating to the asserted and potential claims and defenses in the Complaint;

22 WHEREAS, the Defendant and Class Plaintiffs, through their counsel, after vigorous
23 arm's-length negotiations, have conditionally agreed to a total payment by Defendant of
24 \$89,000,000 (of which \$4,000,000 is allocated solely for notice and claims administration) in full
25 and final settlement of the Celebrex and Bextra Purchase Claims as set forth herein.

26 NOW, THEREFORE, it is agreed by and between the undersigned on behalf of Pfizer and
27 the Class Plaintiffs that any and all claims made or that could have been made against Pfizer by
28 Class Plaintiffs in the Class Action be settled, compromised and dismissed on the merits with

1 prejudice and without costs as to Plaintiffs or Pfizer, subject to the approval of the Settlement
2 Court, on the following terms and conditions:

3 **1. Settlement Class Definition**

4 A. Subject to the Settlement Court's approval, and the conditions of Paragraph 15, the
5 undersigned agree and consent to the certification pursuant to Fed. R. Civ. P. 23(b)(3) of the
6 following settlement class as defined by its combined three subclasses (collectively, the
7 "Settlement Class"):

- 8 (1) Bextra or Bextra and Celebrex Consumer Subclass. All consumers located in the
9 United States who purchased or paid for prescriptions of Bextra or both Bextra and
10 Celebrex. Class members who purchased or paid for both Bextra and Celebrex will
11 receive compensation based on their Bextra purchases only, in exchange for
12 releasing their claims for both Bextra and Celebrex purchases.
- 13 (2) Celebrex ONLY Consumer Subclass. All consumers located in the United States
14 who purchased or paid for prescriptions of Celebrex, but not Bextra, prior to July
15 29, 2005. This class and subclass does not include individuals who only purchased
16 or paid for Celebrex after July 29, 2005.
- 17 (3) Bextra and Celebrex Third Party Payor ("TPP") Subclass. All TPPs, defined as all
18 entities that: (a) provide, sponsor or insure a healthcare plan, which includes
19 prescription drug coverage to natural persons, and (b) purchase, pay or insure all or
20 part of the cost of prescription drugs prescribed and dispensed to those persons
21 pursuant to a health plan, located in the United States who reimbursed or paid for
22 Bextra and/or Celebrex. Class members who purchased or paid for both Bextra and
23 Celebrex will receive compensation based on their Bextra purchases only, in
24 exchange for releasing their claims for both Bextra and Celebrex purchases.

25 B. Excluded from the proposed Class are Defendant, any entity in which Defendant has
26 a controlling interest or which have a controlling interest in Defendant, and Defendant's legal
27 representatives, predecessors, successors and assigns; the judicial officers to whom this case is
28 assigned; any member of the immediate families of excluded persons; governmental agencies and
those who resold Celebrex and/or Bextra, and any consumer who has released his/her claims
against Pfizer related to Celebrex and/or Bextra.

C. Those entities that own or operate businesses referred to commonly as pharmacy
benefit managers ("PBMs") or third party administrators ("TPAs") and who as part of their
business operation contract with ultimate TPPs of a prescription pharmaceutical benefit to perform

1 certain services in the administration and management of that prescription pharmaceutical benefit
2 for those ultimate TPPs are not class members under the Settlement Class definition. The
3 Settlement Class, specifically the Bextra and Celebrex TPP subclass, includes the ultimate TPPs
4 providing the prescription pharmaceutical benefit and not the PBMs or TPAs with which those
5 TPPs contract to administer or manage that prescription benefit on behalf of the class members,
6 unless such PBMs or TPAs are the fiduciary of the TPPs or by contract assumed, in whole or in
7 party, the insurance risk of that prescription pharmaceutical benefit during the class period.

8 **2. General Definitions**

9 As used in this Agreement, the following terms shall have the indicated meanings:

10 A. "Authorized Claimant" means a Class Member who submits a timely and valid
11 Proof of Claim form to the Claims Administrator or is otherwise authorized to receive a share of
12 the Net Settlement Fund under the Plan of Allocation.

13 B. "Claims Administrator" means Rust Consulting, Inc. (formerly Complete Claim
14 Solutions, LLC), subject to approval of the Settlement Court.

15 C. "Class Complaint" or "Complaint" means the Third Amended Purchase Claims
16 Master Bextra Complaint, Third Amended Purchase Claims Master Celebrex Complaint, and
17 [Proposed] Consolidated Amended Complaint.

18 D. "Class Counsel" means the law firms listed in the Consolidated Amended
19 Complaint and Settlement Allocation Counsel.

20 E. "Class Escrow Account" means the account established pursuant to Paragraph 9.A.
21 and Exhibit 8 to this Agreement.

22 F. "Class Member" means any person or entity falling within the definition of the
23 Settlement Class who is not a Settlement Class Opt-Out.

24 G. "Class Notice Consultant" means Kinsella Media, LLC, 2120 L Street NW, Suite
25 205, Washington, DC or, if not reasonably available, another firm agreed to by Pfizer and Class
26 Counsel.

27 H. "Class Representatives" mean the named plaintiffs who have asserted claims on
28 behalf of themselves and a putative class in the Class Action. Class Representatives for the

1 Settlement Class are as follows: Allied Services Division Welfare Fund; ASEA/AFSCME Local
2 52 Health Benefits Trust; Bricklayers of Indiana Welfare Fund; Commonwealth Care Alliance;
3 Frankenmuth Financial Group, Inc.; IBEW 673 Fringe Benefit Fund; IBEW Local 129 Fringe
4 Benefit Funds; IBEW Local 683 Fringe Benefit Funds; IBEW Local 32 Health and Welfare Fund;
5 Indiana Carpenters Health and Welfare Fund; Indiana Electrical Workers Local 481 Benefit Trust;
6 Indiana State Council of Roofers Health and Welfare Fund; Indiana State District Council of
7 Laborers and Hod Carriers Welfare Fund; Metal Trades Branch Welfare Fund; Michiana Area
8 Electrical Workers Health and Welfare Fund; National Healthcare Insurance Company; New
9 England Carpenters Health Benefits Fund; Painters Local No. 469 Health and Welfare Fund;
10 Painting Industry Insurance and Annuity Funds; Pipe Trades Industry Health and Welfare Plan;
11 Plumbers and Steamfitters Local No. 166 Health and Welfare Plan; Plumbers and Steamfitters
12 Local 42 Health & Welfare Plan; Plumbers Local No. 210 Health and Welfare Fund; Service
13 Employee International Union Local No. 3 Health & Welfare Fund; Sheet Metal Workers Local
14 No. 20 Welfare and Benefit Fund; Sheet Metal Workers' International Association Local No. 28 of
15 Metropolitan New York & Long Island; Southern Ohio Painters Health and Welfare Fund;
16 Steamfitters' Industry Welfare Fund; Watters, Linda A., Offices of Financial and Insurance
17 Services for the State of Michigan in her capacity as Rehabilitator of The Wellness Plan and in her
18 capacity as Liquidator of Michigan Health Maintenance Organization Plans, Inc., formerly known
19 as Omnicare Health Plan, Inc.; Betty A. Alexander; Nancy Ayers; Aurora Balloveras; Clara
20 Fontanilles; Dorothy Greaves; Sarah Hare; Ronnie L. Hatcher; Beatrice Howard; Georgia
21 Katsanos; Stephen Keisker; Rose Lohman; Michelle Madoff; Helen Marconi; Robert Mariconi;
22 Evelyne Mayes; Judith C. Meredith; Nancy Milano; Mary Morris; Vernon Shephard; and June
23 Swan.

24 1. "Consumer Class Member" means any person falling within the definition of the
25 Consumer Subclasses set forth in Paragraphs 1.A.(1) and 1.A.(2) who is not a Settlement Class
26 Opt-Out. "Consumer Class Member" includes living persons as well as the executors, heirs,
27 administrators, trustees, or other authorized representatives of deceased persons.

28



1 J. "Court" or "Settlement Court" means the Honorable Charles R. Breyer of the
2 United States District Court for the Northern District of California, or, if Judge Breyer is not
3 available, another judge from the United States District Court for the Northern District of
4 California who will be designated by Judge Breyer or who is duly appointed, or any other court
5 before which Pfizer's Counsel and Class Counsel agree to settle the claims of the Settlement Class.

6 K. "Effective Date" has the meaning ascribed in Paragraph 7 of this Agreement.

7 L. "Escrow Agent" means a bank or institution agreed to by the parties.

8 M. "Final" means the latest of:

9 (1) the date of final affirmance of any appeal of the Judgment, the expiration of
10 time for a petition for or a denial of a writ of certiorari to review the Judgment and, if certiorari is
11 granted, the date of final affirmance of the Judgment following review pursuant to that grant; or

12 (2) the date of final dismissal or withdrawal of any appeal from the Judgment or
13 the final dismissal, denial or withdrawal of any proceeding on certiorari or writ of review of the
14 Judgment; or

15 (3) if no appeal is filed, the expiration date of the time for filing or noticing of
16 any appeal from the Judgment. Any proceeding or order, or any appeal or petition for a writ of
17 review or certiorari, pertaining solely to any Plan of Allocation or application for attorneys' fees
18 and expenses shall not in any way delay or preclude the Judgment from becoming Final.

19 N. "Judgment" means the Order and Final Judgment to be entered approving the
20 Agreement substantially in the form attached hereto as Exhibit 9.

21 O. "Net Settlement Fund" means the Settlement Fund less: notice and administration
22 costs and expenses as described in Paragraphs 5.B. and 9.C.(7), Taxes and Tax Expenses as
23 described in Paragraph 9.D., and the amount of any Fee and Expense Award to Plaintiffs' Counsel.

24 P. "Pfizer's Counsel" or "Defendant's Counsel" means DLA Piper and such other
25 counsel as Pfizer may designate.

26 Q. "Pharmaceutical Purchase" or "Purchase" means payment or reimbursement, direct
27 or indirect, for all or part of the cost of Bextra or Celebrex.

28

1 R. "Plaintiffs" means the Class Representatives together with all putative members of
2 the Settlement Class.

3 S. "Preliminary Approval Order" means an order approving the settlement set forth in
4 this Agreement, substantially in the form of Exhibit 7.

5 T. "Proof of Claim" means the form submitted to the Claims Administrator by a Class
6 Member claiming to be an Authorized Claimant and attached hereto as Exhibits 6 and 11.

7 U. "Released Claims" means any and all claims, demands, actions, suits, causes of
8 action, damages whenever incurred, and liabilities of any nature whatsoever, including costs,
9 expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or
10 equity, that any Class Releaser who has not timely and validly excluded itself from the Settlement
11 Class, whether or not they object to this Agreement or make a claim upon or participate in the
12 Settlement Fund, ever had, now has, or hereafter can, shall, or may have, directly, indirectly,
13 representatively, derivatively, or in any capacity, arising out of any conduct, events or transactions
14 alleged or that could have been alleged in any litigation relating to the purchase, price, payment,
15 reimbursement, use, prescription, marketing, manufacture, distribution, sale, promotion, research,
16 design, development, supply and/or ingestion of Celebrex and/or Bextra during the Class Period.

17 "Released Claims" include all state and federal statutory and common law claims of any sort.

18 "Released Claims" shall not include any claim against any person or entity that is not a Released
19 Party, any claim for breach of this Agreement, or any claim between any Settlement Class Member
20 and any Released Party that is unrelated to the allegations set forth in the Class Complaints.

21 V. "Released Parties" means: Pfizer, Inc., Pharmacia Corporation, and G.D. Searle
22 LLC and all associated and affiliated companies, along with their successors, assigns, subsidiaries,
23 and trustees and/or beneficiaries of trusts which have an interest in the above referenced
24 companies, and/or any of their current, past or future owners, directors, officers, employees,
25 attorneys, liability insurers, accountants, direct and indirect shareholders, partners, members, or
26 agents.

27 W. "Releaser" means any (i) Class Member, (ii) his, her, or its respective present and
28 former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates, (iii) his, her, or

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and

Mark D. Fischer
Rawlings & Associates, PLLC
One Eden Parkway
LaGrange, KY 40031-1800
mdf@rawlingscompany.com

Y. "Settlement Class Opt-Out" means any person or entity falling within the definition of the TPP Settlement Subclass or the Consumer Settlement Subclasses, as the Court shall determine, who has submitted a timely and valid request for exclusion in accordance with the procedures set forth in the notices disseminated pursuant to Orders of the Court.

Z. "Settlement Fund" means the fund identified in Paragraph 9.A., together with any interest earned or accrued while in escrow.

AA. "Settlement Notices" means the Notices which are to be sent to the Settlement Class or published substantially in the forms attached hereto as Exhibits 1, 2, 3 and 4.

BB. "Third Party Payor" or "TPP" means an entity that is: (a) a party to a contract, issuer of an insurance policy, or sponsor of a plan, and (b) at risk, under such contract, insurance policy, or plan to reimburse all or part of the cost of prescription drugs dispensed to covered natural persons. TPPs include insurance companies, and any person or entity that made Pharmaceutical Purchases for individual or group beneficiaries of the TPP's prescription drug or health coverage plans including, but not limited to, self-insured employers, union health and welfare plans. Entities with self-funded plans that contract with a health insurance company or other entity to serve as a third party claims administrator to administer their prescription drug benefits qualify as TPPs. Private plans that cover government employees and/or retirees are also included. Excluded are Defendant, its respective present and former, direct and indirect, parents, subsidiaries, divisions, partners and affiliates; the United States government, its officers, agents, agencies and departments, the States of the United States and their respective officers, agents, agencies and departments; and all other local governments and their officers, agents, agencies and departments.

1 CC. "TPP Class Member" means any person or entity falling within the definition of the
2 Settlement Class, excluding any Settlement Class Opt-Out, who also falls within the definition of
3 Third Party Payor.

4 DD. "Unknown Claims" means any Released Claims that a Releaser does not know or
5 suspect to exist in its favor at the time of its release of the Released Parties, which, if known by it,
6 might have affected its settlement with and release of the Released Parties, or might have affected
7 its decision not to object to this Settlement. With respect to any and all Released Claims against
8 the Released Parties, the Releaser agrees, upon the Effective Date, to expressly waive and
9 relinquish, and by operation of the Judgment shall have expressly waived and relinquished, to the
10 fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the
11 California Civil Code, which provides:

12 A general release does not extend to claims which the creditor does
13 not know or suspect to exist in his or her favor at the time of
14 executing the release, which if known by him or her must have
15 materially affected his settlement with the debtor;

16 or by any law or state or territory of the United States, or principle of common law, which is
17 similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releaser
18 may hereafter discover facts other than or different from those which he, she, or it knows or
19 believes to be true with respect to the Released Claims, but each Releaser hereby expressly waives
20 and fully, finally, and forever settles and releases, upon the Effective Date of this Agreement, any
21 known or unknown, suspected or unsuspected, contingent or non-contingent Released Claims,
22 whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory
23 of law or equity now existing or coming into existence in the future, including, but not limited to,
24 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or
25 rule, without regard to the subsequent discovery or existence of such different or additional facts.

26 3. Reasonable Best Efforts to Effectuate This Settlement

27 Consistent with the terms of this Agreement and notwithstanding the rights of the parties to
28 terminate this Agreement at certain times, the parties and their counsel agree to use their reasonable
best efforts, including all steps and efforts contemplated by this Agreement and any other

1 reasonable steps and efforts that may be necessary or appropriate, by order of the Settlement Court
2 or otherwise, to carry out the terms of this Agreement.

3 **4. Motion for Preliminary Approval**

4 Concurrent with the submission of this Agreement for consideration by the Settlement
5 Court, Class Counsel shall submit to the Settlement Court a motion for preliminary approval of the
6 settlement set forth in this Agreement, requesting entry of a Preliminary Approval Order
7 substantially in the form annexed hereto as Exhibit 7.

8 **5. Notice to Class**

9 The class notice program shall be in accordance with Fed. R. Civ. P. 23 and subject to the
10 approval of the Settlement Court. Class Counsel shall file a Motion for Approval of Notice
11 Program by March 27, 2009.

12 A. Upon approval of the Notice Program by the Settlement Court, and the making of
13 advance payment(s) by Pfizer pursuant to Paragraph 9.A.(1), Class Counsel, in accordance with
14 Fed. R. Civ. P. 23 and the Preliminary Approval Order, shall provide all members of the Settlement
15 Class who can be identified by reasonable means with the best notice practicable under the
16 circumstances, in substantially the forms of the Settlement Notices attached hereto as Exhibits 1, 2,
17 3 and 4, or as otherwise ordered by the Court. Such notice shall include publication on a web site
18 established by Class Counsel or the Claims Administrator and additional publication and other
19 notice as set forth in the Settlement Notice Program.

20 B. All expenses associated with the provision of notice to the members of the
21 Settlement Class, including the fee for professional services rendered by Kinsella Media, LLC,
22 2120 L Street NW, Suite 205, Washington, DC or, if not reasonably available, another firm agreed
23 to by Pfizer and Class Counsel (the "Class Notice Consultant") shall be advanced from the
24 Settlement Fund. The Claims Administrator shall issue no press release or other written
25 communication to Class Members without first obtaining the parties' written approval of such
26 press release or communication.

