

Exhibit 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ABBOTT LABORATORIES,

No. C 04-02123 WHA

Plaintiff,

v.

BECTON, DICKINSON AND COMPANY
AND NOVA BIOMEDICAL
CORPORATION,

Defendants.

FINAL CHARGE TO THE JURY

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1.

Members of the jury, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult as necessary.

It is your duty to find the facts from all the evidence presented in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case. In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the Court may have said or done as suggesting what verdict you should return — that is a matter entirely up to you.

2.

The evidence from which you are to decide what the facts are consists of:

1. The sworn testimony of witnesses, on both direct and cross-examination, regardless of who called the witness;
2. The exhibits which have been received into evidence;
3. The sworn testimony of witnesses in depositions read into evidence; and
4. Any facts to which all the lawyers have stipulated here in the courtroom before you. You must treat any stipulated facts as having been conclusively proven.

3.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. By way of example, if you wake up in the morning and see that the sidewalk is wet, you may find from that fact that it rained during the night. However, other evidence, such as a turned-

1 on garden hose, may explain the presence of water on the sidewalk. Therefore, before you
2 decide that a fact has been proven by circumstantial evidence, you must consider all the
3 evidence in light of reason, experience and common sense. You should consider both kinds of
4 evidence. The law makes no distinction between the weight to be given to either direct or
5 circumstantial evidence. It is for you to decide how much weight to give to any evidence. You
6 should base your decision on all of the evidence, regardless of which party presented it.

7 4.

8 In reaching your verdict, you may consider only the testimony and exhibits received
9 into evidence. Certain things are not evidence and you may not consider them in deciding
10 what the facts are. I will list them for you:

11 1. Arguments and statements by lawyers are not evidence.

12 The lawyers are not witnesses. What they have said in their opening statements,
13 closing arguments and at other times is intended to help you interpret the
14 evidence, but it is not evidence. If the facts as you remember them differ from
15 the way the lawyers have stated them, your memory of them controls.

16 2. A suggestion in a question by counsel or the Court is not evidence
17 unless it is adopted by the answer. A question by itself is not evidence.

18 Consider it only to the extent it is adopted by the answer.

19 3. Objections by lawyers are not evidence. Lawyers have a duty to
20 their clients to consider objecting when they believe a question is improper under
21 the rules of evidence. You should not be influenced by any question, objection
22 or the Court's ruling on it.

23 4. Testimony or exhibits that have been excluded or stricken, or that
24 you have been instructed to disregard, are not evidence and must not be
25 considered. In addition, some testimony and exhibits have been received only
26 for a limited purpose; where I have given a limiting instruction, you must follow
27 it.

28

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