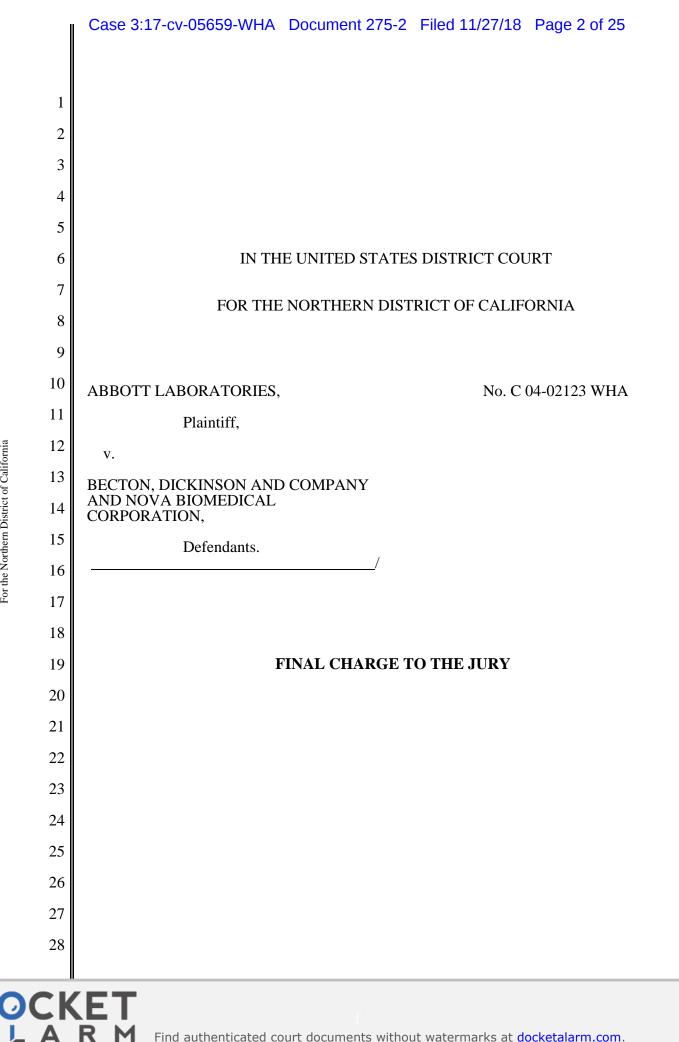
Exhibit 2

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United States District Court For the Northern District of California

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1.

2 Members of the jury, it is my duty to instruct you on the law that applies to this case. 3 A copy of these instructions will be available in the jury room for you to consult as necessary. 4 It is your duty to find the facts from all the evidence presented in the case. To those 5 facts you will apply the law as I give it to you. You must follow the law as I give it to you 6 whether you agree with it or not. You must not be influenced by any personal likes or dislikes, 7 opinions, prejudices or sympathy. That means that you must decide the case solely on the 8 evidence before you. You will recall that you took an oath promising to do so at the beginning 9 of the case. In following my instructions, you must follow all of them and not single out some 10 and ignore others; they are all equally important. You must not read into these instructions or 11 into anything the Court may have said or done as suggesting what verdict you should return — 12 that is a matter entirely up to you. 13 2. 14 The evidence from which you are to decide what the facts are consists of: 15 1. The sworn testimony of witnesses, on both direct and 16 cross-examination, regardless of who called the witness; 2. 17 The exhibits which have been received into evidence; 3. 18 The sworn testimony of witnesses in depositions read into 19 evidence; and 20 4. Any facts to which all the lawyers have stipulated here in the 21 courtroom before you. You must treat any stipulated facts as having been 22 conclusively proven. 23 3. 24 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such 25 as testimony by a witness about what that witness personally saw or heard or did. 26 Circumstantial evidence is proof of one or more facts from which you could find another fact. 27 By way of example, if you wake up in the morning and see that the sidewalk is wet, you may 28 find from that fact that it rained during the night. However, other evidence, such as a turned-

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United States District Court

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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.

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

4.

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

2. A suggestion in a question by counsel or the Court is not evidence unless it is adopted by the answer. A question by itself is not evidence. Consider it only to the extent it is adopted by the answer.

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

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

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5. Anything you may have seen or heard when the Court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

5.

Certain charts, animations and summaries have been shown to you in order to help explain the facts disclosed by the books, records and other documents which are in evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

6.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says or part of it or none of it. In considering the testimony of any witness, you may take into account:

1. The opportunity and ability of the witness to see or hear or know the things testified to;

2. The witness' memory;

3. The witness' manner while testifying;

4. The witness' interest in the outcome of the case and any bias or prejudice;

5. Whether other evidence contradicted the witness' testimony;

The reasonableness of the witness' testimony in light of all the

evidence; and

6.

7. Any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. Nor does it depend on which side called the witnesses or produced evidence. You should base your decision on all of the evidence, regardless of which party presented it.

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