**12.15 Controlled Substance—Possession or Distribution**

**of Listed Chemical (21 U.S.C. § 841(c)(2))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [possession] [distribution] of a listed chemical, knowing or having reasonable cause to believe it would be used to manufacture [*specify controlled substance*] in violation of Section 841(c)(2) of Title 21 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [[possessed] [distributed]] [*specify listed chemical*]; and

Second, the defendant [possessed] [distributed] it knowing, or having reasonable cause to believe, that it would be used to manufacture [*specify controlled substance*].

It does not matter whether defendant knew that [*specify listed chemical*] was a listed chemical. It is sufficient that the defendant knew or had reasonable cause to believe that it would be used to manufacture [*specify controlled substance*] or some other prohibited drug.

“Reasonable cause to believe” means knowledge of facts that, although not amounting to direct knowledge, would cause a reasonable person in the defendant’s position knowing the same facts, to reasonably conclude that the [*specify listed chemical*] would be used to manufacture a controlled substance. You must consider the knowledge and sophistication of the defendant when determining whether the defendant had reasonable cause to believe that the [*specify listed chemical*] would be used to manufacture [*specify controlled substance*] or some other prohibited drug.

**Comment**

In *United States v. Kaur*,382 F.3d 1155, 1156-57 (9th Cir. 2004),the court recognized that 21 U.S.C. § 841(c)(2) “clearly presents knowledge and reasonable cause to believe as two distinct alternatives” and held that the trial court fairly and accurately defined “reasonable cause to believe” as follows: “‘Reasonable cause to believe’ means to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person knowing the same facts, to reasonably conclude that the pseudoephedrine would be used to manufacture a controlled substance.” *See also United States v. Johal*, 428 F.3d 823, 825-28 (9th Cir. 2005).The “reasonable cause to believe” standard incorporates both objective and subjective elements. *Kaur*, 382 F.3d at 1157. The standard “requires a jury to evaluate scienter through the lens of the particular defendant on trial” considering “the knowledge and sophistication of the particular defendant on trial, not that of a hypothetical person before the court.” *United States v. Munguia*, 704 F.3d 596, 603 (9th Cir. 2012).

*See United States v. Ching Tang Lo*,447 F.3d 1212, 1231-33 (9th Cir. 2006) (discussing mens rea standard for conspiring to aid and abet manufacture of controlled substances).

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