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Please note:
This sample document is redacted from an actual research and writing project we did for a customer some time ago. It reflects the law as of the date we completed it. Because the law may have changed since that time, please use it solely to evaluate the scope and quality of our work.
If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

Attorney for Defendant
JOHN WHITE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF BADGER

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Plaintiff,

Case No. 54321

NOTICE OF MOTION AND MOTION
TO DISCLOSE CONFIDENTIAL
INFORMANT

vs.

JOHN WHITE,
Defendant.

Date:
Time:
Dept.:

_____ /

TO THE DISTRICT ATTORNEY FOR THE COUNTY OF BADGER:

TAKE NOTE that on July ____, 2004, at ____ a.m., or as soon thereafter as the motion can be heard, in Department ___ of the above-entitled court, located at _____, defendant John White will move to disclose the confidential informant. The motion is made on the grounds that, because the confidential informant was a participant in the crime and an eyewitness to it, he can testify regarding defendant's guilt or innocence. The motion is made on the basis of this notice, the attached memorandum of points and authorities and declaration of Louella Green, and the entire records and proceedings on file in this action.

1 Dated: June 19, 2004

2
3 LOUELLA GREEN
4 Attorney for Defendant

5 **MEMORANDUM OF POINTS & AUTHORITIES**

6 Defendant John White has been charged with selling methamphetamine to a co-
7 defendant, who in turn sold it to a confidential informant. The informant is the only
8 witness who can raise even circumstantial evidence that defendant was involved in a sale.
9 Thus disclosure of the informant is essential not only to providing due process to White
10 but to his prosecution as well.

11
12 **STATEMENT OF FACTS**

13 According to the police report produced by the District Attorney, Heuchera police
14 officers were investigating narcotics sales activity at the apartment complex at 110 Elm
15 Street in Heuchera. The police contacted the informant, who agreed to attempt to buy
16 \$200 worth of methamphetamine from a person named "Joe" at that address. They gave
17 him marked bills for that purpose and searched him to ensure he had no contraband.
18 After calling Joe, the informant approached the front of the complex, and co-defendant
19 Joe Jones flagged him down. The two walked to the corner of Main Street and Elm.

20 At the same time, other officers watched defendant White as he left his apartment
21 at 345 Oak Street and drove to the corner of Main and Elm. Jones crossed the street and
22 entered the passenger's side of the car. The officers watched the car travel eastbound on
23 Main, then northbound on Walnut, and then westbound on First Street. At the corner of
24 First and Elm, Jones got out. Jones returned to Main and Elm, where the informant was
25 waiting. The informant then returned to the officers' vehicle and gave them three baggies
26 of methamphetamine.

1 According to the police report, the confidential informant stated that he¹ met Jones
2 in front of the apartment building and walked to the corner of Main and Elm. He further
3 stated that, when defendant White arrived, Jones ran across the street, got in the car, and
4 drove off. A short time later, Jones flagged him down and gave him the three baggies of
5 methamphetamine.

6 The police arrested defendant White as he drove off but found no contraband in his
7 car. They did find \$200 of the bills they had given to the informant. On the search of his
8 apartment, a small amount of methamphetamine was found. White was charged with
9 sale, furnishing, or transportation of a controlled substance (Health & S. Code
10 § 11352(a)) and possession of methamphetamine for sale (§ 11351.1(a)). He was further
11 charged with the enhancement for sale within 1,000 feet of a school (§ 11353.6(b)).

12 This controlled buy was actually part of a scheme to execute a search warrant that
13 had been issued the day before. The affidavit supporting the warrant was based on an
14 almost identical controlled buy occurring shortly before. According to the affidavit, the
15 informant called the officer and said that somebody named Joe was selling
16 methamphetamine out of an apartment at 110 Elm Street. The officers had the informant
17 set up a buy and gave him some city funds. The informant said he met Joe Jones outside
18 the building and went back to an apartment inside, where Joe showed him about \$100
19 worth of methamphetamine. Jones said he did not have enough to fill the informant's
20 order. The informant said Jones ordered a quantity of methamphetamine via the
21 telephone from someone else. They left the building, and met an Asian male who drove
22 up in a vehicle. The informant said Jones bought about \$800 worth of meth-
23 amphetamine—about three baggies—from this person. The informant further said that he
24 and Jones returned to the apartment, where Jones gave him a quantity of meth-
25 amphetamine. The informant then returned to the officers' vehicle.

26
27 ¹The male pronoun is used for stylistic reasons only and does not reflect any
28 opinion of the informant's sex.

1 **ARGUMENT**

2 The court will compel disclosure of a confidential informant when the defendant
3 makes an adequate showing that the informant may be a material witness on the issue of
4 guilt or innocence. *People v. Theodor* (1972) 8 Cal.3d 77, 88. He must show a
5 reasonable possibility that, in view of the evidence, the informant could give evidence on
6 the issue of guilt that might result in exoneration. *Ibid.* He need not prove that the
7 informant would give that testimony, but only show some evidence of a possibility that
8 the unnamed informer is a material witness. *Ibid.*

9 The defendant must demonstrate the witness's—not the testimony's—material
10 character. *People v. Mejia* (1976) 57 Cal.App.3d 574, 580. An informant who is an
11 actual participant in the crime alleged or a nonparticipating eyewitness to it is ipso facto a
12 material witness. *People v. Lee* (1985) 164 Cal.App.3d 830, 835-836. Such a witness
13 has a sufficiently proximate vantage point to the crime that his testimony's material
14 character will be presumed. *People v. White* (1974) 38 Cal.App.3d 412, 423-424.

15 If defendant were charged only with the possession of drugs for sale and the
16 evidence against him consisted of mere indicia of intent to sell (such as the amount of
17 contraband possessed and the simultaneous possession of scales, no disclosure of a
18 confidential informant would be necessary. *People v. Alderrou* (1987) 191 Cal.App.3d
19 1074, 1081. In *Alderrou*, the informant could not give exculpatory testimony regarding a
20 sale because the defendant there

21 was not convicted of selling methamphetamine or transporting it or giving it
22 away. [Alderrou] was not being charged nor was he convicted of the
23 particular sale—or any sale—which he may have made to the confidential
24 informant or which the confidential informant may have witnessed. Instead,
25 the crime for which he was charged and convicted was the possession of
26 methamphetamine which had not yet been sold to anyone but was intended to
27 be sold by someone at some time to someone else.

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Ibid.

But here, defendant is charged with the particular sale to Jones. Only the informant can say whether Jones actually acquired drugs from defendant. In fact, without the informant's testimony, all the prosecution can prove is that the informant went to Jones's apartment, Jones left, got into White's vehicle, drove off, and got out. The informant returned with a small amount of methamphetamine, and White had some of the money. This testimony is insufficient to prove that White sold anyone methamphetamine.

CONCLUSION

The confidential informant is a participant in the entire transaction by which he supposedly acquired, through Jones, drugs from defendant. Jones is an eyewitness to the crime or a witness who is so close temporally to the crime as to be presumptively material. This court should therefore order the informant's disclosure.

Dated:

Respectfully submitted,

LOUELLA GREEN
Attorney for Defendant