

<p>DISTRICT COURT, NINETEENTH JUDICIAL DISTRICT Court Address: Weld County Courthouse 901 9th Ave. Greeley, CO 80631</p>	<p>▲COURT USE ONLY▲</p>
<p>In re Search of Amalia’s Translation and Tax Service; and Amalia Cerrillo, Luis Noriega, on behalf of himself and as class representative, John Doe, on behalf of himself and as class representative, Frank Doe, on behalf of himself and as class representative, Robert Doe, on behalf of himself and as class representative, Plaintiffs v. Kenneth R. Buck, in his official capacity as District Attorney for the Nineteenth Judicial District; John Cooke, in his official capacity as Weld County Sheriff, Defendants.</p>	<p>Case No. Courtroom</p>

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**COMPLAINT SEEKING RETURN OF PROPERTY
PURSUANT TO COLO.R.CRIM.P. 41(e)
and CLASS ACTION COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Amalia Cerrillo owns and operates Amalia's Translation and Tax Service in Greeley, Colorado. Since 2000, Amalia has assisted thousands of her customers and clients with filing income tax returns.

2. Plaintiffs Luis Noriega, John Doe, Frank Doe and Robert Doe (the "Client Plaintiffs") are clients of Ms. Cerrillo's who have used her tax preparation services for several years.

3. In this class action, Plaintiffs seek legal redress for the violation of their own rights and the rights of thousands and thousands of Ms. Cerrillo's clients. Their privacy was illegally invaded by an unconstitutional search warrant and an unreasonable search and seizure carried out at Ms. Cerrillo's business on October 17, 2008. The illegal search and seizure was part of an investigation that Defendants have dubbed "Operation Number Games."

4. Defendants' continued retention of the illegally-seized confidential information constitutes an ongoing and continuing violation of the Plaintiffs' rights of privacy and the rights of Ms. Cerrillo's customers.

5. Defendants' search and investigation was not aimed at Ms. Cerrillo; instead, the targets were some unidentified and unspecified clients of Ms. Cerrillo's business. As explained in the Affidavit For Search Warrant submitted to obtain the illegal search warrant, Ms. Cerrillo "is conducting business according to Internal Revenue Service (IRS) guidelines and has not violated any laws."

6. Defendants believed that the tax-return files of some unidentified clients contained evidence that these individuals may have violated Colorado criminal statutes by earning wages using fictitious social security numbers or otherwise using social security numbers that were not assigned to them.

7. Ms. Cerrillo's clients include citizens and immigrants who file their tax returns using their valid social security numbers as their taxpayer identification number.

8. Ms. Cerrillo's customers have also included persons who are not eligible to obtain social security numbers, but who nevertheless are legally required to file tax returns and report their earned income. For these customers, IRS regulations require that the taxpayer obtain and file tax returns using an Individual Taxpayer Identification Number (ITIN). In accordance with IRS procedures, the tax returns for these customers will reflect their ITIN as their tax identification number, even when the documentation of their wages or other income reflects a social security number that is not theirs.

9. On October 17, 2008, officers of the Greeley Police Department and the Weld County Sheriff's Office carried out the illegal search and seizure for which Plaintiffs seek redress. The officers arrived at Ms. Cerrillo's business with a search warrant that unconstitutionally authorized the seizure of all computers, hard drives, floppy disks, and compact

disks and the search of all emails, images, memoranda, correspondence, and every other document or file stored in electronic form. In addition to seizing the computers and electronic storage media, the officers carted off 49 boxes of files containing the hard-copy records, dating back as far as 2000, of almost 5000 of Ms. Cerrillo's tax-preparation clients.

10. Defendants searched and made copies of the electronic storage media they seized. They also made copies of the paper files of at least 1300 of Amalia's tax-preparation clients. Defendants have already reviewed and disclosed confidential information that they obtained from the illegally-seized materials, and there is an imminent risk of additional review and future disclosures of illegally-obtained confidential information.

11. The Plaintiffs seek relief under Rule 41(e) of the Colorado Rules of Criminal Procedure. They also seek a temporary restraining order and/or preliminary injunction as well as a declaratory judgment and a permanent injunction pursuant to Colo.R.Civ.P. 57 and 65 and the state and federal constitutions.

JURISDICTION

12. This action is brought pursuant to Rule 41(e) of the Colorado Rules of Criminal Procedure. This action for declaratory and injunctive relief is brought under the Uniform Declaratory Judgments Law, Colo. Rev. Stat. §§ 13-51-101 et seq., and Rules 57 and 65 of the Colorado Rules of Civil Procedure. This Court also has jurisdiction to consider Plaintiffs' claims pursuant to 42 U.S.C. § 1983.

VENUE

13. All actions described in this Complaint took place in the Nineteenth Judicial District, and the Defendants are located in the Nineteenth Judicial District.

PARTIES

14. Plaintiff Amalia Cerrillo owns and operates Amalia's Translation and Tax Service in Greeley, Colorado. In this action, Plaintiff Cerrillo asserts her own rights as well as her clients' rights of privacy.

15. Plaintiff Luis Noriega is a client of Ms. Cerrillo and has used her tax preparation services for several years. Defendants seized and continue to retain copies of his tax returns and tax-return-related information.

16. Plaintiff John Doe sues under a fictitious name. He is a client of Ms. Cerrillo and has used her tax preparation services. Defendants seized and continue to retain copies of his tax returns and tax-return-related information.

17. Plaintiff Frank Doe sues under a fictitious name. He is a client of Ms. Cerrillo and has used her tax preparation services. Defendants seized and continue to retain copies of his tax returns and tax-return-related information.

18. Plaintiff Robert Doe sues under a fictitious name. He is a client of Ms. Cerrillo and has used her tax preparation services. Defendants seized and continue to retain copies of his tax returns and tax-return-related information.

19. In this Complaint, references to the “Doe Plaintiffs” refer collectively to John Doe, Frank Doe, and Robert Doe. Along with the filing of this Complaint, the Doe Plaintiffs have filed a motion seeking the Court’s permission to participate in this action without revealing their true identities.

20. In this Complaint, references to the “Client Plaintiffs” are collective references to Plaintiffs Noriega and to the three Doe Plaintiffs. The Client Plaintiffs sue on their own behalf and as class representatives of a class of similarly-situated clients (the “Client Class”) whose tax-return-related information was seized during the challenged search and seizure.

21. Defendant Kenneth R. Buck is the District Attorney of the Nineteenth Judicial District of the State of Colorado. He has supervisory authority over all prosecutors working in his office (hereafter “the District Attorney’s Office”), and they act as Buck’s agents and employees. He is the final policymaker for the District Attorney’s Office for the Nineteenth Judicial District. Buck is sued in his official capacity for prospective relief.

22. Defendant John Cooke is the Sheriff of Weld County, Colorado. He is the final policymaker for Weld County for all matters concerning the operations and management of the Weld County Sheriff’s Office. He has supervisory authority over all Weld County Sheriff’s deputies. They act as his agents and employees. Cooke is sued in his official capacity for prospective relief.

23. At all times relevant to this Complaint, all Defendants and their agents and employees were acting under color of state law, under color of their office, and within the scope of their employment.

FACTUAL ALLEGATIONS

24. Plaintiff Amalia Cerrillo has lived in Greeley and Weld County for 34 years, since she was two years old. She is a bookkeeper, translator, and tax preparer. She began her current business in the 1990s while working out of her home. She opened Amalia’s Translation and Tax Service in 2000. Her business serves primarily a community of Spanish-speaking clients, a community that has seen tremendous growth in recent years in Weld County and the surrounding area.

25. Ms. Cerrillo’s tax-filing clients expect that the personal and financial information they provide to Ms. Cerrillo will be maintained as confidential. They expect that their tax returns and tax-related documents will be communicated to the Internal Revenue Service; to the Colorado Department of Revenue; and to no one else. Federal statutes require Ms. Cerrillo to maintain her clients’ tax returns and tax-related information as strictly confidential.

26. On October 16, 2008, Deputy Richard Toft of the Weld County Sheriff’s Office signed a six-page document titled Affidavit for Search Warrant (the “Affidavit”). A copy of that document is attached to this Complaint as **Exhibit A**. Toft presented that document to the

Honorable Marcelo Kopcow of the Nineteenth Judicial District Court for the State of Colorado, along with a three-page draft of a proposed search warrant.

27. The text of the Affidavit and the text of the proposed search warrant had been previously reviewed and approved by a prosecutor working for Defendant Buck in the District Attorney's Office.

28. The Affidavit explained that Ms. Cerrillo "is conducting business according to Internal Revenue Service (IRS) guidelines and has not violated any laws."

29. Ms. Cerrillo was not the target of the Defendants' investigation. The target was unknown clients who were ineligible to obtain valid social security numbers and were suspected of receiving wages or other income under a social security number that was not theirs.

30. Although these clients do not have and cannot obtain a valid social security number, they are nevertheless required by law to report their earned income by filing tax returns. The Internal Revenue Service provides for them to file their tax returns using an ITIN. The IRS is aware that many taxpayers using an ITIN may be working without legal authorization and residing in the United States without complying with the immigration laws. Nevertheless, federal officials have made the decision that tax returns and tax return information is confidential and will not be provided to other government agencies such as the Social Security Administration or Immigration and Customs Enforcement. Federal government officials have determined that such strict confidentiality is necessary to carry out the mission of the IRS to ensure maximum compliance with the tax laws.

31. The Defendants believed that the confidential tax return information that Ms. Cerrillo maintained in these clients' confidential files contained evidence that some clients may have violated Colorado statutes prohibiting criminal impersonation and/or identity theft.

32. On October 16, 2008, Judge Kopcow signed the search warrant. A copy of that three-page warrant is attached to this Complaint as **Exhibit B**.

33. The next day, approximately ten law enforcement officers appeared at Ms. Cerrillo's business to execute the warrant.

34. All acts and omissions of the officers who executed the search warrant were carried out at the direction and authority of the Defendants. All of the subsequent acts and omissions regarding the materials seized during the search, including reviewing, searching, and copying the seized materials, were also carried out pursuant to the direction and authority of the Defendants. In this Complaint, all such acts and omissions attributed to "the officers" are acts and omissions of the Defendants.

35. Ms. Cerrillo was provided with the three-page search warrant. The Affidavit was not attached to the warrant. None of the officers and none of the Defendants provided Ms. Cerrillo with a copy of the Affidavit.

36. Ms. Cerrillo read paragraph #1 of the warrant. It was her understanding that the hardcopy files the officers were authorized to seize were limited to files related to tax returns for

2006 and 2007 only. She explained that her files were not organized by tax year. Instead, they were organized alphabetically by client name. She further understood that the officers wanted only the 2006 and 2007 hardcopy files of clients who filed their tax returns for those years using an ITIN.

37. Ms. Cerrillo offered to go through the files herself to locate and separate the files that were described in paragraph #1 of the search warrant. She asked for a few hours to get that done.

38. The officer who appeared to be in charge declined Ms. Cerrillo's offer. He said that the officers could not wait. Instead of taking only the hardcopy files described in the search warrant, the officers seized all the hardcopy files relating to all of Ms. Cerrillo's tax-filing clients. The officers took 49 file boxes filled with the hardcopy files relating to the tax filings of approximately 5000 clients and customers, with tax returns and related information dating back as far as 2000.

39. The hard-copy files of each of the individual Client Plaintiffs were among the documents the Defendants searched and seized.

40. The officers also seized all four of Ms. Cerrillo's computers, including all the electronic documents and other files stored on the computers' hard drives. They also seized all of the other electronic storage media in Ms. Cerrillo's business, including seven to eight dozen CDs and approximately two dozen floppy disks.

41. The hard drives of the computers Defendants seized included electronic versions of confidential tax returns and related information pertaining to each of the individual Client Plaintiffs as well as similar confidential tax returns and related information pertaining to thousands of Ms. Cerrillo's clients.

42. The tax-related records the officers seized contained personal and confidential information that revealed intimate details of the lives of Ms. Cerrillo's clients and their spouses and families. The files revealed social security numbers (or ITINs) as well as details of the work history and income of Ms. Cerrillo's clients and their spouses. They revealed information about the clients' children and other dependents, including the children's social security numbers, dates of birth, and, often, copies of birth certificates. Some files contained copies of documentation that clients relied on to support various deductions or exemptions. Many of the files revealed detailed information about specific clients' bank accounts, including the bank routing number and the account number.

43. In addition to seizing thousands of hardcopy files that were not authorized by the search warrant, the officers searched and seized numerous electronically-stored documents and files that were not fruits, instrumentalities or evidence of any crime and that had no arguable relevance to the Defendants' investigation.

44. The officers seized CDs that contained nothing but music. They took CDs that contained nothing but the Ms. Cerrillo's family photographs. They confiscated floppy disks that stored information that had nothing to do with the Defendants' investigation.

45. The hard drives of the computers that Defendants searched and seized contained numerous personal files and personal documents that had nothing to do with Ms. Cerrillo's clients or the Defendants' investigation. In addition to Ms. Cerrillo's personal family photographs, personal emails, and personal correspondence, the hard drives also contained personal and confidential financial information related to Ms. Cerrillo herself and her family. This included Ms. Cerrillo's personal tax returns and related information dating back to 2000. It also included Ms. Cerrillo's detailed bank statements going back many years; records relating to a restaurant business Ms. Cerrillo formerly operated; and records relating to a bankruptcy Ms. Cerrillo filed several years ago.

46. The electronic storage media Defendants seized also contained additional information—unrelated to Defendants' investigation—that revealed confidential information about customers who used Ms. Cerrillo's translation or bookkeeping services. Thus, the Defendants seized information about companies for whom Ms. Cerrillo had done bookkeeping and payroll work, including W2 forms for the companies' employees. The electronic files included numerous documents generated in the course of Ms. Cerrillo translation services. These include, but are not limited to, translations of birth certificates, death certificates, marriage licenses, rental agreements, other contracts, documents in support of applications for divorces, and filings submitted to immigration authorities.

47. The search warrant did not limit Defendants to searching for particular evidence of particular crimes. Instead, the warrant authorized Defendants to search all of the electronic storage media—every document or file on every hard drive, CD and floppy disk—to look for any evidence of any criminal activity at all that may have been committed by any person, at any time in history, anywhere in the world.

48. At no time did any of the Defendants attempt a less intrusive legal process for compelling the production of the information they sought from Ms. Cerrillo's business. They did not attempt, for example, to invoke C.R.S. § 16-3-301.1, which provides for a court order to produce records.

49. Some time after the search and seizure, Defendants returned materials to Ms. Cerrillo. Ms. Cerrillo was informed that the Defendants had made copies of the materials they wanted. At no time did Ms. Cerrillo receive a detailed inventory of the materials seized or the materials returned. At no time did Ms. Cerrillo receive an inventory of the particular files or documents that Defendants copied. Without such detailed inventories, the Plaintiffs allege, on information and belief, that Defendants have not returned the entirety of the materials seized on October 17, 2008.

50. Plaintiffs believe and allege that Defendants made and retained complete copies of the hard drives of each of the computers that were seized. Similarly, Plaintiffs believe and allege that Defendants made and retained copies of all of the electronic storage media that were seized, including all CDs and floppy disks.

51. The illegal search and seizure effectively closed Ms. Cerrillo's business for a period of time. Defendants deprived Ms. Cerrillo of her computers, her software, and her files. Customers arrived whom Ms. Cerrillo had to turn away because she did not have her computers

or her files. Although Defendants later returned some or all of the seized materials, the illegal search and seizure caused and continues to cause damage to Ms. Cerrillo, to her business, to her clients' privacy interests, and to Ms. Cerrillo's ability to conduct her lawful business in the future.

52. The Weld County District Attorney's Office held a press conference on November 14, 2008, and it issued a written press release on that date. The press release explained that Defendants were collaborating in an investigation they called "Operation Number Games." The illegal search and seizure of Ms. Cerrillo's business was carried out as part of that investigation.

53. The Defendants announced that they had searched approximately 4900 tax files that they seized from Ms. Cerrillo's business. Based on information from those confidential files, Defendants said they suspect 1338 clients of Ms. Cerrillo had violated Colorado statutes that forbid identity theft or criminal impersonation. According to Defendants, the criminal impersonation statute is violated when an individual uses a fictitious social security number to obtain a job, and the identity theft statute is violated when an individual obtains a job using a social security number that is assigned to a different person.

54. None of the Client Plaintiffs have been arrested or charged with any offense in connection with Operation Number Games.

55. Defendants' announcement that they intend to charge more than 1300 persons based on records seized from Ms. Cerrillo's business caused and continues to cause additional harm. Ms. Cerrillo reasonably fears that many longtime customers will not return, because they are no longer confident that their private and confidential information will remain confidential. Even customers who are not targets of the Defendants' investigation can no longer reasonably expect confidentiality. Defendants' illegal search threatens to deter future customers whose future tax filings could be seized if there is another search of Ms. Cerrillo's business.

56. Ms. Cerrillo intends to continue providing tax preparation services for customers with valid social security numbers as well as for customers who are required to use ITINs. She intends to continue to assist all her customers in complying with their legal obligation to file tax returns. Thus, Ms. Cerrillo intends to continue business practices that Defendants acknowledge, in their Affidavit, "has not violated any laws" and that is carried out "according to Internal Revenue Service (IRS) guidelines."

57. Ms. Cerrillo and the Client Plaintiffs reasonably fear that without intervention from this Court, Ms. Cerrillo will be subjected in the future—during or soon after the 2008 tax return season—to another search and seizure of her office and her customers' records.

58. The Plaintiffs' fears are borne out by Defendant Buck's public statements. Defendant Buck apparently believes that any continuation by Ms. Cerrillo of the same lawful business practices constitutes probable cause for additional future searches. As Defendant Buck explained to the Greeley Tribune, "[Cerrillo] was interviewed and indicated this is what the IRS wants, and she does it for a number of people. At that point we had probable cause to conduct a search at her office."

CLASS ALLEGATIONS

59. The Client Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

60. The Client Plaintiffs represent a Client Class defined as follows:

All persons listed as taxpayers on any files containing tax returns or related information that Defendants seized during the search and seizure at Amalia's Translation and Tax Service on October 17, 2008, except for Servando Trejo and also excluding from the class any person who, as of the date Plaintiffs' Motion for Class Certification is filed, has already been charged or is the subject of an outstanding arrest warrant resulting from the Operations Number Games investigation.

61. The proposed class is so numerous that joinder of all members is impracticable. The Defendants have acknowledged that they seized the files containing tax returns and related information of approximately 4900 of Ms. Cerrillo's customers.

62. There are questions of law and fact common to the members of the plaintiff class.

63. The claims of the Client Plaintiffs are typical of the claims of the class members.

64. The Client Plaintiffs will fairly and adequately protect the interests of the class. The Client Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the class. The Client Plaintiffs are represented by attorneys employed by and working in cooperation with the ACLU Foundation of Colorado, which has extensive experience in litigating class actions seeking declaratory and injunctive relief.

65. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive and declaratory relief to the class as a whole.

DECLARATORY RELIEF

66. An actual and immediate controversy exists between Plaintiffs and Defendants. Plaintiffs contend that Ms. Cerrillo was subjected to an unreasonable search and seizure that violated her rights; the rights of the Client Plaintiffs; the rights of the Client Class; and the rights of Ms. Cerrillo's translation and bookkeeping clients. Defendants contend that the search and seizure was lawful.

67. Plaintiffs are therefore entitled to a declaration of rights with respect to this controversy. Without such a declaration, Plaintiffs will be uncertain of their rights and responsibilities under the law.

INJUNCTIVE RELIEF

68. Plaintiffs are entitled to injunctive relief. Plaintiffs are suffering irreparable injury and will continue to suffer a real and immediate threat of irreparable injury as a result of

the Defendants' actions and threatened future actions. Plaintiffs have no plain, adequate or speedy remedy at law.

FIRST CLAIM FOR RELIEF

(Colorado law)

69. The foregoing allegations are incorporated herein.

70. Article II, Sections 7 and 25 of the Colorado Constitution; the state constitutional right of privacy; and Rule 41 of the Colorado Rules of Criminal Procedure protect the privacy of Ms. Cerrillo's files and the privacy of the confidential information contained in the files of the Client Plaintiffs and the Client Class.

71. The search and seizure of Ms. Cerrillo's business, and the search and seizure of the files and confidential information of the Client Plaintiffs and thousands of additional clients, was carried out pursuant to a warrant that authorized an unreasonable search and seizure. Among the reasons are the following:

- a. The warrant was not based on individualized probable cause.
- b. The warrant violated the particularity requirement of Article II Section 7;
- c. The warrant illegally authorized the search and seizure of materials and confidential information that were neither fruits, instrumentalities, nor evidence of crime.
- d. The warrant failed to comply with the statutory requirements of Rule 41 of the Colorado Rules of Criminal Procedure.

72. In addition, the Defendants seized materials that the already-overbroad warrant did not authorize them to seize.

73. The Plaintiffs and additional clients whose reasonable expectation of privacy and confidentiality was infringed, suffered an unreasonable search and seizure, in violation of Article II, Sections 7 and 25 of the Colorado Constitution; the right of privacy, and Colo.R.Crim.P. 41.

74. Defendants retain copies of the illegally-seized materials and confidential information. They have reviewed and disclosed portions of the still-retained confidential information and there is an imminent risk of additional review and additional disclosures in the future.

75. Wherefore, Plaintiffs and the Client Class are entitled to a declaratory judgment, a temporary restraining order, a preliminary injunction, and permanent injunctive relief; and such additional relief as the Court deems just.

SECOND CLAIM FOR RELIEF

(federal law)

76. The foregoing allegations are incorporated herein.

77. The Fourth Amendment and the constitutional right of privacy protect the privacy of Ms. Cerrillo's files and the privacy of the confidential information contained in the files of her clients.

78. The search and seizure of Ms. Cerrillo's business, and the search and seizure of the files and confidential information of the Client Plaintiffs and the Client Class, was carried out pursuant to a warrant that authorized an unreasonable search and seizure.

79. In addition, the Defendants seized materials that the already-overbroad warrant did not authorize them to seize.

80. Ms. Cerrillo, the Client Plaintiffs, the Client Class, and additional clients of Ms. Cerrillo suffered an unreasonable search and seizure.

81. Defendants retain copies of the illegally-seized materials and confidential information. They have reviewed and disclosed portions of the still-retained confidential information and there is an imminent risk of additional review and additional disclosures in the future.

82. Wherefore, Plaintiffs are entitled to a declaratory judgment, a temporary restraining order, a preliminary injunction, and permanent injunctive relief; and such additional relief as the Court deems just.

PRAYER FOR RELIEF

83. WHEREFORE, Plaintiffs respectfully requests that the Court:

- a. Set an expedited briefing schedule and a date for an expedited hearing for Plaintiffs' motion for relief under Rule 41(e) and Plaintiffs' Motion for a temporary restraining order and/or preliminary injunction;
- b. Certify the Client Class pursuant to Colo.R.Civ.P. 23(b)(2).
- c. Issue a declaratory judgment that the search and seizure violated Plaintiffs' rights, and grant a permanent injunction and an order pursuant to C.R.C.P. 41(e) ordering the Defendants to return the illegally confiscated materials, return or destroy any copies made, and destroy any information collected or compiled therefrom; and
- d. Such additional relief as the Court deems just.

Dated this 26th day of January 2009.

JACOBS CHASE FRICK KLEINKOPF & KELLEY, LLC

This document has been filed via Lexis/Nexis File & Serve in accordance with C.R.C.P. 121 and the original document and signature are maintained on file.

s/ Elizabeth L. Harris

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