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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON
11 (HONORABLE LONNY R. SUKO)

12 UNITED STATES OF AMERICA,)

13)
14 Plaintiff,)

NO. CR-05-180-LRS

15 vs.)

MOTION AND MEMORANDUM
TO SUPPRESS EVIDENCE

16)
17 DIXIE ELLEN RANDOCK,)

18 STEVEN KARL RANDOCK, SR.,)

19 HEIDI KAE LORHAN, and)

20 ROBERTA LYNN MARKISHTUM,)

21)
22 Defendants.)
23)

MOTION

24 COMES NOW, Steven Karl Randock, Sr., on behalf of himself and the other
25 Defendants in the above-cited action, by and through counsel Peter S. Schweda, and
26 respectfully moves this Court for an Order suppressing evidence unlawfully searched

1 and seized from a storage space by agents with the United States Secret Service on
2 March 24, 2005. The Defendants had a legitimate expectation of privacy in the
3 storage space, located within an office building at 601 E. Seltice Way, Post Falls,
4 Idaho. Furthermore, a subsequent search warrant of March 29, 2005, of Defendants'
5 office in Post falls was issued based on the unlawfully obtained evidence resulting in
6 the search and seizure of further property.
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9 This Motion to Suppress Evidence is based upon the following Memorandum.

10 **MEMORANDUM**

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12 **I. STATEMENT OF FACTS**

13 In January 2005, the United States Secret Service initiated an investigation into
14 a number of Internet-based virtual schools that were alleged to have fraudulently sold
15 high school and college degrees. (Neirinckx Aff. ¶ 6). A number of the schools were
16 believed to be operating out of an office, leased by Defendant Steve Randock, located
17 in the basement of a building at 601 E. Seltice Way, Suite 8B, Post Falls, Idaho.
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19 (Neirinckx Aff. ¶ 6; Indictment ¶ 65).¹
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21 The office building located at 601 E. Seltice Way has many units, several of
22 which are located within the basement, including Suite 8B. Adjacent to Suite 8B is a
23 small storage space with two points of entry, one of which is a doorway leading
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26 ¹ "Neirinckx Aff" refers to Application and Affidavit for Search Warrant dated March 29, 2005, and filed in the United States District Court for the District of Idaho, Case Number MIS 5799, a copy of which is filed with this motion as an attachment.

1 directly from Suite 8B. (Neirinckx Aff. ¶ 26). The other entry is also a doorway,
2 leading from the main hallway of the basement. The Defendants believed they had
3 this space for their private storage. On March 24, 2005, SSA John E. Neirinckx,
4 entered the storage area and observed several boxes belonging to the Defendants on
5 the floor next to the door leading into Suite 8B. (Neirinckx Aff. ¶ 26). These boxes
6 were covered by lids and were filled with credit card statements, life insurance
7 policies, bank statements, and other documents. Agent Neirinckx had to inspect the
8 contents of the boxes in order to know that they included such items as CD's. Agent
9 Neirinckx had neither a search warrant nor permission from the Defendants, none of
10 which were present at Suite 8B at the time, to enter this storage space. (Neirinckx
11 Aff. ¶ 26 and photographs in attachments hereto).

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13 On March 29, 2005, United States Magistrate Judge Mikel H. Williams of the
14 District of Idaho granted Agent Neirinckx's application and affidavit for a search
15 warrant based on Agent Neirinckx's observation of the contents of the covered boxes
16 located within the storage space a few days earlier. (Neirinckx Aff. ¶ 26). That same
17 day, Agent Neirinckx and another agent executed the search warrant by personally
18 serving a copy of the warrant and inventory on the landlord of the premises, Ray
19 Guerra, even though the Agent was fully aware who owned the property he searched
20 and seized. (Discovery at Bates 360557, 360558). The Agent waited until 5:15 p.m.
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1 to execute the warrant. During the ensuing search, eleven boxes of documents,
2 floppy discs, and other information were seized and removed from the storage space.
3 (Discovery at Bates 360557). None of the Defendants were present at Suite 8B
4 during the search, and the agents did not leave a copy of the warrant or a receipt of
5 items that were taken. The Defendants did not receive copies of either of these
6 documents. Instead of a warrant or receipt, Agent Neirinckx left a handwritten note
7 explaining that the eleven boxes could be found at the county landfill. (Discovery at
8 Bates 360558). The note also mentioned that the area was “not a dumpster” and “that
9 the boxes were a fire hazard.” The signature on the note bore, “an angry tenant,”
10 rather than Agent Neirinckx’s own name. See photographs of the note in the
11 attachment to this motion.
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14 On May 25, 2005, Defendant Roberta Markishtum called the Post Falls Police
15 Department to report the theft of the boxes. (Post Falls Police Report ¶¶ 1, 2).
16 Officer K. Mattson and Detective Dave Beck of the Post Falls Police Department
17 investigated the incident. (Discovery at Bates 360585). Ms. Markishtum informed
18 Officer Mattson that the boxes contained personal and financial information.
19 (Discovery of Bates 360584). On May 27, 2005, Agent Neirinckx interviewed
20 Detective Beck and informed him that the records he was assigned to investigate
21 were the same records Agent Neirinckx had seized through the search warrant.
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1 (Discovery at Bates 360585).

2 **II. ISSUES PRESENTED**

3 (1) Whether the warrantless search of March 24, 2005, violated the Fourth
4 Amendment.

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6 (2) Whether the Magistrate's decision to issue subsequent search warrants was
7 influenced by evidence derived from the initial illegal search on March 24,
8 2005.

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10 (3) Whether the Agents failure to serve or leave a copy of the warrant and
11 inventory with the Defendants violated the Fourth Amendment
12 "particularity" requirement and violated Federal Rule of Criminal
13 Procedure 41(f).
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16 **III. LEGAL ARGUMENT**

17 **(1) The warrantless search of March 24, 2005, violated the Fourth** 18 **Amendment**

19 The Fourth Amendment protects individuals from the Government against
20 unreasonable searches and seizures of their persons, homes, and possessions. U.S.
21 Const. amend. IV. Warrantless searches and seizures are per se unreasonable, subject
22 only to a few well-delineated exceptions in which the Government has the burden of
23 proof. *Katz v. United States*, 389 U.S. 347, 357 (1967). The applicability of the
24 Fourth Amendment turns on whether the individual invoking its protection has a
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1 legitimate expectation of privacy against a Government intrusion. Oliver v. United
2 States, 466 U.S. 170, 177 (1984). An expectation of privacy is legitimate if that
3 individual has a subjective expectation of privacy that society is prepared to
4 recognize as reasonable. Katz, 389 U.S. at 361 (Harlan, J., concurring). Such
5 protections extend to offices and commercial buildings as well as to residential
6 premises. Marshall v. Barlow's, Inc., 436 U.S. 307, 311 (1978). Even though an
7 area near or adjacent to a domain may be accessible to the public, a person may have
8 a legitimate expectation of privacy in that area if he seeks to preserve it as private.
9 United States v. Fluker, 543 F.2d 709, 716 (9th Cir. 1976). Under the exclusionary
10 rule, evidence obtained in violation of the Fourth Amendment may not be used in
11 criminal proceedings against the victim of an illegal search and seizure. Mapp v.
12 Ohio, 367 U.S. 643, 655 (1961).

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14 In Fluker, the Ninth Circuit reversed the defendants' convictions reasoning that
15 the defendants had a reasonable expectation of privacy with respect to a corridor area
16 because the entry to that area was normally locked and only the tenants and landlord
17 had access to that portion of the building. Fluker, 543 F.2d at 716. Similarly, federal
18 agents in this case unlawfully entered an area of a building that was intended to be
19 private and only accessed by the tenants and the landlord. Furthermore, the boxes
20 that were seized had covered lids and contained both business and personal
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documents the Defendants intended to keep private and safe. Since the Defendants had a legitimate expectation of privacy in the storage space and the Government's warrantless search was unreasonable, the Defendants are entitled to an order suppressing the evidence gained directly or derivatively by the illegal search.

(2) The Magistrate's decision to issue subsequent search warrants of March 29, 2005, was influenced by evidence derived from the illegal search on March 24, 2005.

The Warrant Clause of the Fourth Amendment maintains that all Warrants issued must be based on probable cause, be supported by Oath or affirmation, and must particularly describe the place to be searched and the persons or things to be seized. U.S. Const. amend. IV. To provide protection from government intrusion, only a neutral and detached magistrate is permitted to issue a search warrant so long as there exists probable cause to support it. Fed. R. Crim. P. 41. The magistrate's decision to issue a warrant must not be influenced by knowledge of results flowing from a prior illegal search. *Murray v. United States*, 487 U.S. 533, 537 (1988). When a supporting affidavit is based on information gained during an illegal search, any evidence obtained in a subsequent lawful search must be suppressed, unless other independent information listed in the affidavit is sufficient to support a probable cause finding. *Id.*

In *Murray*, federal Government agents entered a warehouse without a warrant

1 where the defendants were keeping marijuana. Id. at 535. Once inside, the agents
2 observed several bales of marijuana, but decided to keep the warehouse under
3 surveillance for several hours while they sought a search warrant. Id. In seeking the
4 warrant, the agents never mentioned the illegal entry in their affidavit, nor did they
5 rely on observations made during that entry. Id. at 535-536. Upon reentering the
6 warehouse, the agents seized over 270 bales of marijuana. Id. at 536. The defendants
7 moved to have all the evidence seized from the warehouse suppressed, but the trial
8 court denied the motion and the First Circuit Court of Appeals affirmed. Id. The
9 Supreme Court vacated the First Circuit's decision and remanded to decide whether
10 the agents would have sought a warrant without the prior illegal entry and if the
11 lawful seizure was genuinely independent of the prior illegal search. Id. at 542-543.
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16 Unlike the search warrant affidavit in Murray, Agent Neirinckx's search
17 warrant affidavit contained information of his illegal search and entry of the storage
18 space the Defendants were using, but it hides the illegal nature of the entry.
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20 (Neirinckx Aff. ¶ 26). Although Agent Neirinckx's affidavit did contain some other
21 information to support the warrant, the natural conclusion is that the illegal search did
22 influence the Magistrate's decision to issue the search warrant. (Neirinckx Aff. ¶¶
23 10, 13, 27, 28). Without the illegal search, there is not enough independent
24 information in the affidavit to support a finding of probable cause and the
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1 particularity of the things to be seized. Therefore, the evidence discovered and seized
2 on March 29, 2005, during the execution of the search warrant and any evidence
3 derivative thereto must be suppressed.
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5 **(3) The Agents failure to serve or leave a copy of the warrant and**
6 **inventory with the Defendants violated the Fourth Amendment**
7 **“particularity” requirement and violated Federal Rule of**
8 **Criminal Procedure 41(f)(3).**

9 An officer executing a search warrant must give a copy of the warrant and a
10 receipt of items seized to the owner of the property, or leave copies of each at the site
11 where the property was taken. Fed. R. Crim. Proc. 41(f)(3). Executing officers are no
12 longer required to serve the warrant on the owner before commencing the search, so
13 long as the owner is provided with a copy at the conclusion of the search. Groh v.
14 Ramirez, 540 U.S. 551, 562 (2004). Only fundamental violations of Rule 41 require
15 automatic suppression. United States v. Johnson, 660 F.2d 749, 753 (9th Cir. 1981).
16 A violation is fundamental where the search is unconstitutional under traditional
17 Fourth Amendment standard. *Id.* In addition, suppression may be warranted for non-
18 fundamental violations where the defendant was either prejudiced or the executing
19 officer acted in intentional and deliberate disregard of the Rule. United States v.
20 Williamson, 439 F.3d 1125, 1133 (9th Cir. 2006).
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22 In United States v. Gantt, 194 F.3d 987, 996 (9th Cir. 1999), Government
23 agents entered the defendant’s hotel room with a search warrant and conducted a
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1 three-hour search while the defendant was instructed to sit in the hallway. When the
2 defendant asked to see the warrant, the agents responded by showing her the face of
3 the warrant but not Attachment A, which listed the items that were seized, *Id.* At the
4 conclusion of the search, the agents left a copy of the warrant and Attachment A in
5 the hotel room, but before the defendant could examine them, she was arrested and
6 taken to an FBI office where she was finally shown the entire warrant. *Id.* In
7 reviewing the violation of Rule 41, the Ninth Circuit suppressed the seized evidence,
8 explaining that the agents acted in deliberate disregard of Rule 41 when they served
9 the defendant with a complete warrant several hours after the search had commenced
10 and several hours after she requested to see it. *Id.* at 1000.

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15 Moreover, a fundamental violation of the requirement of the Fourth
16 Amendment to particularity describe the things to be seized. As the Court stated in
17 *Groh v. Ramirez*, 540 U.S. 551, 561 (2004):

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20 We have long held, moreover, that the purpose of the
21 particularity requirement is not limited to the prevention of general
22 searches. See *Garrison*, 480 U.S. at 84. A particular warrant also
23 “assures the individual whose property is searched or seized of the
24 lawful authority of the executing officer, his need to search, and the
25 limits of his power to search.” *United States v. Chadwick*, 433 U. S.
26 1, 9 (1977) (citing *Camara v. Municipal Court of City and County of*
San Francisco, 387 U.S. 523, (1967)), abrogated on other grounds,
California v. Acevedo, 500 U.S. 565 (1991).

1 As was in the case in *Gantt*, the Government agents here acted with intentional
2 and deliberate disregard of Rule 41. This was also a fundamental violation of the
3 Fourth Amendment. The agents served a copy of the search warrant on the landlord,
4 Ray Guerra, who does not own any of the property that was taken. (Discovery at
5 Bates 360558.) The Agents knew very well whose property they were taking.
6 Instead the Agents engaged in deliberate obfuscation and subterfuge. Agent
7 Neirinckx left a handwritten note in the hallway, which he signed “by an angry
8 tenant,” explaining that the Defendants’ property could be found at the County
9 landfill. *Id.* When the Defendants discovered the missing boxes and the handwritten
10 note, they reported a theft with the Post Falls Police Department. The Agents then
11 teamed up with the Post Falls Police Officers to continue this unconstitutional ruse by
12 faking a theft investigation, all the while really investigating the Defendants. The
13 Agents under the guise of “we are the police and we are here to help you, “
14 interrogated the Defendants, searched through other papers, and seized additional
15 objects including seals.² See United States v. Bosse, 898 F2d 113 (9th Cir. 1990).
16 The fictitious investigation continued until August, 2005, when multiple additional
17 search warrants were issued.
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26 ² This phony investigation will be subject of a separate motion for outrageous government misconduct which will be filed in the near future.

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IV. CONCLUSION

For the reasons stated herein, the Defendants respectfully request that all evidence from the Idaho search and seizures of March 25 and March 29, 2005 and any evidence derivative thereto be suppressed.

RESPECTFULLY SUBMITTED this 15th day of June, 2007.

WALDO, SCHWEDA, & MONTGOMERY, P.S.

By: /s/ PETER S. SCHWEDA

Peter S. Schweda, WSBA #7494

Attorney for Defendant Steven Karl Randock, Sr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed a true and correct copy of the foregoing Motion and Memorandum to Suppress Evidence, by delivering same to each of the following attorneys of record, as follows:

George JC Jacobs, III usa-wae-gjacobs@usdoj.gov

By: /s/ PETER S. SCHWEDA

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Attorney for Defendant Steven Karl Randock, Sr