

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02418-MEH

VICTOR CEJKA,
JAMES WALKER,
STEVEN WASCHER,
JAMIE LYTLE, and
PAUL CROSS,

Plaintiffs,

v.

VECTRUS SYSTEMS COMPORATION, f/k/a Exelis Systems Corporation,
BRANDON SPANN, and
KEVIN DANIEL,

Defendants.

ORDER ON MOTIONS TO DISMISS

Michael E. Hegarty, United States Magistrate Judge.

Before the Court are Defendant Vectrus Systems Corporation's Motion for Partial Dismissal [filed December 15, 2015; docket #6] and Defendants Spann's and Daniel's Amended Motion for Dismissal Pursuant to Rule[s] 12(b)(1), 12(b)(2), and 12(b)(6) [filed January 25, 2016; docket #22]. This matters are fully briefed, and the Court finds that oral argument (not requested by the parties) would not materially assist the Court in adjudicating the motions. For the following reasons, Spann's and Daniel's motion is granted pursuant to Fed. R. Civ. P. 12(b)(2) and Vectrus' motion is granted in part and denied in part as set forth herein.¹

BACKGROUND

Plaintiffs initiated this employment action against Defendants on October 30, 2015.

¹On December 31, 2015, the parties consented to the jurisdiction of this Court pursuant to 28 U.S.C. § 636(c) and D.C. Colo. LCivR 40.1

Essentially, they allege claims against Defendant Vectrus Systems Corp. (“Vectrus”) for common law retaliatory termination (Claim I) and for violation of 10 U.S.C. § 2409, the Department of Defense whistleblower statute (Claim II); a claim against all Defendants for common law outrageous conduct (Claim III); and a claim against the individual Defendants, Brandon Spann (“Spann”) and Kevin Daniel (“Daniel”) for intentional interference with contract and/or prospective business advantage (Claim IV).

I. Facts

The following are factual allegations (as opposed to legal conclusions, bare assertions, or merely conclusory allegations) made by Plaintiffs in the operative Complaint and pertinent to the present motion, which are taken as true for analysis under Fed. R. Civ. P. 12(b)(6) pursuant to *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Vectrus is a federal contractor that has numerous contracts and subcontracts with various departments of the federal government throughout the United States and abroad. Vectrus entered into a subcontract with Fluor Corporation (“Fluor”) to provide certain services to the Department of Defense at BAF, which is a U.S. military base inside a combat zone, and at other U.S. military bases in Afghanistan. Vectrus’ subcontract was subsequently amended or modified (hereinafter referred as the “Contract”). Fluor has the prime contract with the Department of Defense.

Plaintiffs were employed by Vectrus as security investigators in its Personnel Services Department at BAF. Cross was the lead security investigator. Plaintiff Victor Cejka (“Cejka”) was assigned by Vectrus to the Contract, specifically its Logistics Civilian Augmentation Program (LOGCAP) IV Project Task Order 005 in Afghanistan (the “Program”), from August 13, 2012 to December 12, 2013. Plaintiff James Walker (“Walker”) was assigned by Vectrus to the Program from January 7, 2013 to July 12, 2014. Plaintiff Steven Wascher (“Wascher”) was assigned by

Vectrus to the Program from January 2013 to June 2014. Plaintiff Jamie Lytle (“Lytle”) was assigned by Vectrus to the Program from August 13, 2012 to December 12, 2013. Plaintiff Paul Cross (“Cross”) was assigned by Vectrus to the Program from June of 2010 to September 13, 2013.

In the summer and fall of 2013, Plaintiffs worked together in the Vectrus Personnel Services Department at BAF as part of the Program. The Personnel Services security investigators at BAF, including Plaintiffs, were responsible for conducting interviews and investigations required for the issuance of badges and for maintaining the investigation information in the Biometric Automated Toolset (“BAT”) computer database. The U.S. government maintains the BAT database in conjunction with its European allies. The biometric tracking and identification information that is maintained in the BAT system includes fingerprints, iris scans and facial photos. The BAT system is critical to the U.S. Military’s efforts to combat insurgent forces in Afghanistan that are interspersed within an indigenous population. The maintenance of accurate information in the BAT system is vital to the security of BAF and the U.S. Military’s other bases in Afghanistan.

According to the Fluor Desktop Guidelines, the duties of investigators are as follows:

Investigator. Conducts initial, bi-annual, and exit or directed interviews of host and foreign nationals who apply for or leave employment on US military installation; supervises Identification Card Office; enters data into biometric HUMINT screening database; collects biometrics and conduct enrollments; other duties as assigned/required within the FPSC operational realm; accurately complete the work and records associated with their work assignments as specified by this DTG and submit them to the Personnel Services Supervisor on a regular basis for review and approval.

The security investigators also are required to report to their supervisors and the military any possible criminal conduct or other threats to the safety or security of the base or personnel.

In the summer 2013, the Vectrus Personnel Services Department at BAF (“FPSC”) was supervised by Cross in his capacity as lead investigator, who reported to Vectrus’ Senior Security Supervisor, Defendant Brandon Spann (“Spann”), who in turn reported to Vectrus’ Regional

Security Manager, Defendant Kevin Daniel (“Daniel”), who ultimately reported to Vectrus’ Country Manager Richard Diaz (“Diaz”). The military oversight person for FPSC was Sergeant First Class John Salinas (“SFC Salinas”).

Starting in August 2013, Plaintiffs observed Spann and other Vectrus employees engaging in what they perceived to be security violations and other wrongful behavior. Plaintiffs contemporaneously prepared a day-by-day timeline which described in detail the activities they discovered and actions they took to report the wrongdoing and to assist the U.S. Military’s investigation of the alleged wrongdoing by Vectrus employees. For example, Plaintiffs discovered that Spann permitted an unauthorized person who did not have security clearance, a Fluor employee named James Brown (“Brown”), to participate in interviews, screenings, and interrogations of Host Country Nationals and Third Country Nationals. Cross reported this information to Daniel, and Cross and Wascher also reported it to military oversight, SFC Salinas.

Plaintiffs also discovered that an investigation report on BAT prepared by Wascher had been altered to remove the information that had been provided by Daniel pertaining to a sexual relationship one of his friends was having with the target of the investigation, as well as other information that implicated members of Vectrus management or their friends. Wascher reported this incident to the lead investigator, Cross, who reported it to Spann and Daniel, and instructed Wascher to resubmit a complete report. However, Spann reprimanded Cross and ordered him and the other investigators to stop any discussions of deletions or alterations on BAT.

Plaintiffs did some further review and learned that other investigation reports had been either deleted from BAT or altered. They reported this information to Spann but no action was taken. Plaintiffs also reported it to military oversight, SFC Salinas. Plaintiffs understood that tampering with investigation reports was a very serious violation because it compromised the integrity of the

BAT system, which threatened the security at BAF and the other U.S. military bases in Afghanistan.

In early September 2013, Salinas initiated a military investigation and Wascher provided a statement at the military's request. Shortly thereafter, Wascher was asked to investigate unauthorized identification cards in the possession of Turkish workers and the lack of the required documentation in their BAT dossiers. Spann confronted Wascher and attempted to convince him to drop that investigation. Spann had a close relationship with two Turkish contractors and was allegedly having a sexual relationship with the daughter of the owner of one of the contractors. Plaintiffs believe Spann's efforts were intended to protect members of Vectrus management and possibly the Turkish contractor, since it was their understanding that Spann had previously attempted to protect the Turkish contractor by improperly directing investigators to back off of an investigation into human trafficking allegations involving the use of young Turkish male sex slaves by said contractor on the base and by giving the contractor advance notice of raids by the military.

Shortly after he confronted Wascher, Spann told Plaintiffs that he had persuaded the military head of BAF, known as "Garrison Command," to replace SFC Salinas as military oversight for FPSC. Thereafter, SFC Salinas was replaced by James Fox. Spann directed Plaintiffs not to provide statements or assist in the military's investigation without approval of Vectrus's HR department. However, Plaintiffs continued to cooperate with the military's investigation. On September 20, 2013, Salinas met with Plaintiffs and advised them that the military was continuing to investigate the information they had provided.

On September 24, 2013, Spann announced that Vectrus had terminated Cross for purportedly violating Vectrus' rules of conduct by disclosing classified information and making a false statement during an investigation. Plaintiffs believe that, because Cross was the lead investigator, Spann and others at Vectrus hoped his termination would send a message to the other investigators and stop

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.