

IN THE IOWA DISTRICT COURT IN AND FOR DALLAS COUNTY

<p>GARY DEMERCURIO and JUSTIN WYNN,</p> <p>Plaintiff,</p> <p>v.</p> <p>DALLAS COUNTY, IOWA, and CHAD LEONARD,</p> <p>Defendants</p>	<p>No.</p> <p>PETITION AT LAW AND JURY DEMAND</p>
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COME NOW Plaintiffs and, for their cause of action against these defendants, state:

PARTIES

1. Plaintiff Gary DeMercurio is a resident of Washington State.
2. Plaintiff Justin Wynn is a resident of Florida.
3. Defendant Dallas County, Iowa is a governmental entity and operates the Dallas County Sheriff's Department.
4. Defendant Chad Leonard (herein "Leonard") is a resident of Dallas County, Iowa and was at all times relevant an employee of Dallas County, employed as its Sheriff.

FACTUAL ALLEGATIONS

5. At all times relevant, Gary DeMercurio was an employee of Coalfire Labs (“Coalfire”) a cybersecurity firm headquartered in Colorado.

6. At all times relevant, Justin Wynn was an employee of Coalfire.

7. In 2015, the Iowa Judicial Branch, through the State Court Administrator, retained Coalfire to perform a cybersecurity analysis of the Iowa Court system.

8. The Iowa Judicial Branch and Coalfire entered into a Master Agreement at that time.

9. Thereafter, the Iowa Judicial Branch and Coalfire entered into a Service Order and Rules of Engagement in the Spring of 2015 for the performance of certain cybersecurity testing activities, including physical penetration.

10. As part of the agreement, the Iowa Judicial Branch provided a Letter of Authorization to Coalfire and its employees. This authorization is euphemistically called a “get out of jail free” letter.

11. The “get out of jail free” letter is intended to protect Coalfire employees working on the project from being wrongfully arrested for performing those necessary contractual activities that could be misinterpreted as criminal acts.

12. This engagement resulted in a report issued by Coalfire to the Iowa Judicial Branch in May 2015.

13. In 2019, the Iowa Judicial Branch, through the State Court Administrator, again retained Coalfire to perform a cybersecurity analysis of the Iowa Court system.

14. Again, a Service Order and Rules of Engagement were prepared and discussed between Coalfire employees and employees of the Iowa Judicial Branch.

15. The Rules of Engagement provided that the plaintiffs would be the employees responsible for carrying out the activities requested by the Iowa Judicial Branch.

16. The request by the Iowa Judicial Branch was for Coalfire employees to test the security of the Iowa Judicial Branch, including district court level facilities and determine what weaknesses existed in those facilities.

17. The request by the Iowa Judicial Branch included testing the security of 5 physical facilities, namely the Iowa Judicial Branch Building (with some limitations) in Des Moines, the Polk County Courthouse in Des Moines, the Juvenile Justice Center in Des Moines, the Criminal Court Area in Des Moines, and the Dallas County Courthouse in Adel, Iowa.

18. The Rules of Engagement included external, internal, and application testing.

19. The Rules of Engagement also included social engineering activities that involved “physical attacks” as part of “physical security assessments.” A physical attack included “lockpicking.”

20. These “physical attacks” were to be conducted “during the day and evening.”

21. The Rules of Engagement anticipated that plaintiffs would seek to breach judicial branch buildings so long as done without causing significant physical damage to the buildings, such as breaking windows.

22. The Iowa Judicial Branch approved the surreptitious entry of judicial branch and courthouse buildings by the plaintiffs. This was approved both in writing and in oral communications.

23. The security penetration efforts to be performed by the plaintiffs were to begin on September 8, 2019, and end on September 13, 2019.

24. The Iowa Judicial Branch specifically did not want “local law enforcement or security persons to be notified” in advance about the penetration testing that was to be performed by the plaintiffs.

25. To protect the plaintiffs, the Rules of Engagement included a Letter of Authorization (“get out of jail free”) letter signed by employees of the State Court Administrator’s Office of the Iowa Judicial Branch.

26. The plaintiffs were to carry the letter with them and show the letter to any law enforcement or other individual to avoid arrest.

27. The purpose for conducting this testing was to identify areas of weakness in the physical and cyber environment of the court system that could be used to prevent similar breaches by malicious actors.

PENETRATION TESTING

28. As contracted, the plaintiffs tested the security systems at the Polk County Courthouse and adjacent buildings, as well as at the Iowa Judicial Branch Building during the period of September 8-10, 2019.

29. This testing included plaintiffs leaving a business card at the Judicial Building in Des Moines after breaching the security system there.

30. On the morning of September 10, 2019, an employee of the Iowa Judicial Branch acknowledged and congratulated Plaintiffs for entering the Judicial Building without being detected.

31. On the evening of September 10-11, 2019, plaintiffs went to the Dallas County Courthouse to perform penetration testing.

32. When plaintiffs arrived, they found one of the doors to the courthouse unlocked. To continue with their testing, the plaintiffs closed and locked that door and then began the process of trying to enter.

33. During their efforts, they tripped the alarm, recognized that the alarm had been tripped, and waited for law enforcement to arrive.

34. Setting off the alarm is an expected event as the purpose of the penetration testing is to determine if existing systems work.

THE ARREST OF THE PLAINTIFFS

35. At approximately 1235am on September 11, 2019, deputies from the Dallas County Sheriff's Office arrived.

36. Plaintiffs identified themselves and provided the "get out of jail free" letter signed by the representative from the Iowa Judicial Branch.

37. After reviewing the letter, the deputies contacted one of the individuals who signed the "get out of jail free" letter.

38. That representative of the Iowa Judicial Branch verified that the plaintiffs were acting within the scope of the contract by being at the Dallas County Courthouse.

39. The Dallas County Sheriff's deputies were satisfied and told the plaintiffs that they were good to go.

40. However, before plaintiffs left, Dallas County Sheriff Chad Leonard arrived.

41. When Leonard arrived, the situation changed.

42. Leonard refused to recognize the authority of the Iowa Judicial Branch to permit plaintiffs to perform testing on the Dallas County Courthouse.

43. Leonard ordered his deputies to arrest both plaintiffs.

44. Plaintiffs were arrested, their property seized, they were booked and held in the County Jail for approximately 20 hours. They were each held on a \$50,000 bond.

45. Sheriff Leonard refused to reconsider his decision to arrest the plaintiffs and pressed for the continued prosecution of the plaintiffs.

46. Initially, the plaintiffs were accused of the following crimes:

a. Burglary in the 3rd Degree pursuant to Iowa Code §713.6A(1).

b. Possession of Burglar Tools pursuant to Iowa Code §713.7.

47. Eventually, the charges were amended to Trespass.

48. But when plaintiffs moved to dismiss that charge for a lack of evidentiary support, the Dallas County Attorney's office agreed to the dismissal of the amended charges.

CAUSES OF ACTION

1. Plaintiffs assert claims against all defendants for negligence, false arrest, abuse of process, defamation, intentional infliction of emotional distress, and malicious prosecution.

2. In addition, Plaintiffs assert claims against all defendants for violation of the Iowa Constitution. These constitutional rights include the right to freedom of movement and association as guaranteed by Article I, §1 of the Iowa Constitution; the right to liberty and property guaranteed by Article I, §1 of the Iowa Constitution; the right to due process (liberty and property) guaranteed by Article I, §9 of the Iowa Constitution; and the right against unreasonable search and seizure guaranteed by Article I, §8 of the Iowa Constitution.

3. Because of the acts, omissions, and constitutional violations alleged, Plaintiffs have suffered restrictions on their liberty, have been deprived of their constitutional right to be free from unreasonable seizure and imprisonment of their person; have suffered the humiliation, mental anguish, and emotional distress of being wrongfully accused of a crime; have suffered and will continue to suffer emotional distress, and the violation of their civil rights, all to their damage and detriment in amounts to be proven at trial. In addition, Plaintiffs have suffered economic loss in the form of loss of income.

4. In addition, Plaintiffs seek punitive damages against Defendant Leonard, in an amount that will deter him, and others similarly situated, from such conduct in the future.

5. Finally, Plaintiffs seek an award of common law attorney's fees.

6. The damages claimed exceed the jurisdictional limits pursuant to Rule 6.105 of the Iowa Rules of Appellate Procedure.

WHEREFORE, Plaintiffs pray for judgment against all defendants for a reasonable amount of compensatory damages sufficient to compensate them, together with punitive damages against Defendant Leonard, attorney's fees and expenses, and for interest and costs as provided by law.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all fact issues in this case.

Respectfully submitted,

/s/ Martin A. Diaz

Martin A. Diaz AT0002000

1570 Shady Ct NW

Swisher, IA 52338

Telephone: 319.339-4350

Facsimile: 319.339-4426

E-Mail: marty@martindiazlawfirm.com