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Waffle House Can't Shake Background Check Class Action

By Shayna Posses

Law360, New York (June 13, 2016, 4:20 PM ET) -- A Florida federal judge refused to toss a proposed class action accusing Waffle House of violating the Fair Credit Reporting Act by conducting background checks using public data without properly informing job seekers, saying Monday there are facts in dispute that belong before a jury.

U.S. District Judge Roy B. Dalton Jr. held that a jury must determine whether Waffle House Inc. obtained a consumer report on lead plaintiff William Jones through The Source for Public Data LP, declining to dismiss litigation contending that he was denied a job based on a background check that returned a criminal record without being told the reason or receiving a copy of the report and information about the consumer reporting agency used.

Jones provided evidence showing that the restaurant's manager and the chain's defense attorney confirmed that Waffle House completed a background check on him in connection with his application, proof corroborated by the company's own paperwork, the judge explained. As such, Judge Dalton held, a reasonable juror could conclude that Waffle House performed a background check on Jones using Public Data, a paid search website for public record information that is also named in the litigation.

"The defendants' attempt to prove that they now have no recollection or record of such a search is insufficient to defeat plaintiff's evidence on a summary judgment standard where there is a material factual dispute as to whether a background check was performed on plaintiff," the judge said.

Jones filed suit against the popular Southern eatery in October, alleging that although he had worked at Waffle House restaurants "without issue" since 1988, he was denied a job based on a background check when he reapplied for a position at a Florida location in December 2014, according to court filings.

The applicant said the restaurant didn't tell him that it intended to deny his application and, after deciding not to hire him, didn't give him notice about the consumer reporting agency used and other information required by the federal law.

Until March 2015, Waffle House used Public Data, a company that maintains that it is not a consumer reporting agency and thus is not subject to the FCRA, for its background check information, according to a **motion for class certification** Jones filed last week.

The restaurant used Public Data because it was a "fast and cheap alternative to the standard consumer-reporting agencies," Jones states, but the evidence shows that Waffle House knew it was out of compliance with the federal law.

"Waffle House knew that by using Public Data to run background checks it was playing fast and loose with the FCRA," the motion for certification states.

Waffle House and Public Data moved to dismiss the action in December, contending in separate motions that Jones lacked standing to bring his claims because there was no evidence that the restaurant chain ran a search on him using the website's database, the opinion said. The companies contended that the report that forms the basis of Jones' claims doesn't exist, according to the opinion.

According to Waffle House, after filing the present lawsuit, Jones applied for and was hired at a location in Kansas City, Missouri. He left the job after six weeks, but had agreed to an arbitration agreement when he applied, the restaurant said.

On Monday, Judge Dalton allowed oral arguments on Waffle House's April motion to compel arbitration, limiting the discussion to Jones' challenge to the agreement's delegation provision, which requires disputes regarding the pact's enforceability to be decided by an arbitrator, according to court filings.

Representatives for the parties didn't immediately return request for comment Monday.

William G. Jones is represented by Michael J. Pascucci and Joshua H. Eggnatz of Eggnatz Lopatin & Pascucci LLP and Alexandria R. Kachadoorian, Anthony J. Orshansky and Justin Kachadoorian of CounselOne PC.

Waffle House Inc. and WH Capital LLC are represented by Richard W. Smith of Fisher Rushmer PA and David M. Gettings and John C. Lynch of Troutman Sanders, LLP. The Source For Public Data LP, Shadowsoft Inc., Harlington-Straker-Studio Inc. and Dale Bruce Stringfellow are represented by Thomas H. Loffredo of GrayRobinson PA, along with Timothy St. George and Ronald I. Raether Jr. of Troutman Sanders LLP.

The case is William G. Jones v. Waffle House Inc. et al, number 6:15-cv-01637, in the U.S. District Court for the Middle District of Florida, Orlando Division.

--Additional reporting by Bonnie Eslinger. Editing by Bruce Goldman.

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