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Waffle House Turns To 11th Circ. In Background Check Fight

By **Carolina Bolado**

Law360, Miami (August 22, 2016, 5:14 PM ET) -- Waffle House on Monday signaled its intent to appeal a Florida federal judge's order refusing to toss a proposed class action accusing the restaurant chain of violating the Fair Credit Reporting Act by conducting background checks using public data without properly informing job seekers.

Waffle House Inc. told the Middle District of Florida that it will appeal the **ruling** from June by U.S. District Judge Roy B. Dalton Jr. that declined to dismiss the suit or send it to arbitration.

The judge ruled that lead plaintiff William Jones had provided enough evidence to take the case to a jury. Jones says Waffle House obtained a consumer report on him through The Source for Public Data LP and then denied him 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.

Judge Dalton said 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. 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.

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 in June.

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

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 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.

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., case number 6:15-cv-01637, in the U.S. District Court for the Middle District of Florida, Orlando Division.

--Additional reporting by Shayna Posses and Bonnie Eslinger. Editing by Aaron Pelc.

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