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## Waffle House Applicants Want Case To Go On During Appeal

By **Cara Salvatore**

Law360, New York (August 30, 2016, 3:58 PM ET) -- A Waffle House job applicant said Monday that the chain can't delay his proposed class action over its allegedly secretive background checks, even while the Eleventh Circuit reviews a judge's searing order annulling an arbitration agreement because of the "unsavory aroma" of Waffle House's "highly suspect" litigation strategy.

The suit, brought by onetime applicant and later employee William Jones, accuses the Southern breakfast chain of crossing the Fair Credit Reporting Act by keeping job seekers in the dark during and after the background-check process. In various of five proposed classes, the chain is accused of withholding info about FCRA rights, withholding copies of reports, telling applicants to take up disputes with the reporting agency and more.

Waffle House **wants the suit shelved** as the Eleventh Circuit reviews U.S. District Judge Roy Dalton's denial of arbitration.

But Jones said the chain merely wants to "prevent the court from ruling on plaintiff's pending motions, including his motion for class certification, in hopes that the appellate court will shunt him into individual arbitration and thus snuff out this class action.

"Not only is this ulterior purpose an illegitimate basis to file an appeal, but it is certain to be unsuccessful because the appellate court will be reviewing the court's order for abuse of discretion, a highly deferential standard," Jones said Monday.

He said Waffle House obtained a consumer report on him through co-defendant The Source for Public Data LP, known as Public Data, and then turned him down for a job because Public Data's database had Jones down as an ex-convict. But Jones wasn't told the reason, and received neither the report nor details on the reporting agency.

This summer, Judge Dalton issued two rulings denying Waffle House Inc.'s motion to dismiss the suit and then its motion to compel arbitration. The latter was based on an unusual set of circumstances: Jones was initially rejected, but after filing his suit, he applied again and was hired at a location in Kansas City, Missouri — a stint that turned out to last only six weeks. But Jones agreed to an arbitration agreement when he applied the second time, the restaurant said.

Judge Dalton fiercely rebuked the chain for such legal dealings with a person suing it, despite Waffle House's argument that its counsel presigns all employee arbitration agreements before knowing whom they're going to. A lengthy quotation from that order reveals the extent of the judge's displeasure:

"The business practice of presigning arbitration agreements effectively allows Waffle House to bury its head in the sand as to the co-signer and disclaim any responsibility for ex parte communications with adverse litigants. ... The entire transaction was highly suspect. Without the aid of counsel, Waffle House's procurement of a binding adherence contract from a represented party, who was actively engaged in litigation against it, is plainly wrong. Indeed, the whole process by which the waiver was obtained and then sought to be applied to this proceeding has an unsavory aroma."

Jones has requested class certification, and Waffle House's response to that bid is due Sept. 1. The judge is also mulling whether Jones is an appropriate class representative, according to notes from a July 22 hearing.

Public Data is a paid search website for public record information and is also a defendant. Until March 2015, Waffle House used Public Data for its checks, but Public Data maintains that it is not a consumer reporting agency and thus is not subject to the FCRA, Jones said in June.

Public Data was a "fast and cheap alternative to the standard consumer reporting agencies," but Waffle House knew the site was flouting the FCRA, according to Jones.

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

Waffle House Inc. and WH Capital LLC are represented by Richard Smith of Fisher Rushmer PA, and David Gettings and John 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 Loffredo of GrayRobinson PA, and Timothy St. George and Ronald Raether Jr. of Troutman Sanders LLP.

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

--Additional reporting by Shayna Posses, Carolina Bolado and Bonnie Eslinger. Editing by Mark Lebetkin.

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