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Waffle House Applicants Want Job-Screening Suits Combined

By **Carolina Bolado**

Law360, Miami (August 28, 2017, 9:14 PM EDT) -- The job applicants behind two putative class suits over Waffle House's allegedly secretive background checks asked a Florida federal judge Monday to consolidate the cases for efficiency.

The plaintiffs in the two cases in the Middle District of Florida said consolidation of the suits, which allege Waffle House violated the Fair Credit Reporting Act through the background checks it ran on applicants for jobs, would promote judicial economy and avoid duplication of issues.

"Intervention is appropriate because it promotes efficiency, protects the interests of intervenors and unnamed members of the putative class, and causes no prejudice to the existing parties," the plaintiffs said.

In the first suit, filed in October 2015, lead plaintiff William Jones says Waffle House and various data reporting companies violated the FCRA by not giving him a copy of a background check run on him when he applied to work at a Waffle House restaurant in Florida. Jones claims the company also did not let him dispute the background check.

He sought to represent a class of Waffle House applicants who were not hired based on a background check.

A few months later, Jones was hired at a Waffle House in Kansas City, Missouri. Without telling his attorneys in the Florida suit about the job or his new employer about the suit, Jones on his first day signed an agreement sending employment-related claims "past, present or future" to arbitration. After a Waffle House paralegal working on Jones' case noticed a pay stub in his personnel file, the company moved for arbitration.

U.S. District Judge Roy B. Dalton denied the company's motion in July 2016, saying that the arbitration agreement was effectively an illegal communication between Waffle House's attorneys and Jones that led him, unwitting, to undermine his suit, but the Eleventh Circuit **overturned that ruling** on Aug. 7. The appeals court said the arbitration agreement applies and that it is clear it is up to an arbitrator to decide whether the dispute should be arbitrated.

While that case was paused on appeal, plaintiff Alex Holt filed a similar class action in April in the same court.

In their consolidation motion, the plaintiffs pointed out that even though the Holt suit was filed a year and a half after the Jones suit, both are at similar stages of litigation because the Jones suit was **paused for a year**.

"There is no risk of delay in proceedings because the action has been frozen for a long time and there has been no movement toward trial or resolution in that time," the plaintiffs said.

The plaintiffs are represented by Michael Pascucci and Joshua Eggatz of Eggatz 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 cases are Jones et al. v. Waffle House Inc. et al., case number 6:15-cv-01637, and Holt et al. v. Waffle House et al., case number 6:17-cv-00693, in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Braden Campbell and Nathan Hale. Editing by Aaron Pelc.

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