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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Waffle House Applicants Combine Background Check Suits

By **Sophia Morris**

Law360, New York (November 9, 2017, 5:30 PM EST) -- Waffle House job applicants consolidated two separate class actions against the chain and a consumer reporting agency over secretive background checks that allegedly violate the Fair Credit Reporting Act, filing an amended complaint Wednesday in Florida federal court.

The consolidated complaint brings together the claims of Waffle House Inc. applicants William Jones and Alex Holt along with several other applicants who allege that the restaurant chain and The Source for Public Data LP, which does business as PublicData.com, violated the FCRA by failing to disclose that background checks were performed on potential employees and that the reports, which contained inaccuracies, were used to deny them employment.

While much of the amended complaint remains the same as Jones' 2015 original, it now brings claims on behalf of an improper disclosure and authorization class and an adverse action class, along with a separate Public Data class. The improper disclosure class is anyone who was not notified of the background check, and the adverse action class is anyone who was not hired as a result of the check's findings.

Jones sued Waffle House in October 2015, alleging that he received no notice from Waffle House that a background check had been performed on him. He believes the findings of that report were used to deny him employment, and he had no opportunity to challenge it, according to court documents.

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, according to court filings. Meanwhile, the applicants claim that Public Data is "a shady, offshore consumer reporting agency" that provides "slipshod consumer reports for literally 'pennies' on the dollar."

On Oct. 25, **the court ruled** that Holt and the other Waffle House applicants who had joined his April suit could intervene in the Jones action, while at the same time denying their request to consolidate the two cases. U.S. District Judge Roy B. Dalton said that the Holt suit was duplicative of Jones' suit and must be dismissed.

The October ruling came after Waffle House and the applicants raised differing arguments for consolidation of the two suits. Jones and Holt said consolidating the suits would **promote** judicial economy, while Waffle House **argued** that the claims should be consolidated in the Holt action, because Jones must arbitrate his claims. The company said after Jones filed his suit in Florida, he was hired at a Waffle House in Kansas City, Missouri, and, on his first day, he signed an agreement sending employment-related claims "past, present or future" to arbitration, according to court documents.

Waffle House's arbitration bid was denied in July 2016, with the court finding that the arbitration agreement was effectively an illegal communication between Waffle House's attorneys and Jones that led him, unwittingly, 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.

Judge Dalton said in a minute order on Oct. 26 that Waffle House could compel Jones to begin arbitration within 20 days of the order, but it is not clear if that ruling affects his position as a plaintiff in this amended suit. No additional details were provided in the brief order.

Representatives for the parties did not respond to requests for comment Thursday.

The plaintiffs are represented by Michael Pascucci and Joshua Eggatz of Eggatz Lopatin & Pascucci LLP and Alexandria Kachadoorian, Anthony J. Orshansky and Justin Kachadoorian of CounselOne PC.

Waffle House Inc. and WH Capital LLC are represented by Richard Smith of Cole Scott & Kissane PA and David Gettings and John Lynch of Troutman Sanders LLP.

Data defendants 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 Inc. et al., case number 6:15-cv-01637, in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Joyce Hanson and Carolina Bolado. Editing by Alyssa Miller.

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