

## Class Actions over Background Checks Continue

Fair Credit Reporting Act / May 19, 2015 / Michael A. Logan

As previously reported in an earlier blog post, retailers are under attack in a wave of class actions alleging violations of the Fair Credit Reporting Act. The allegations are essentially the same in all of these suits: that the employer failed to "properly" inform the prospective employee that their consumer reports was going to be utilized in the hiring process.

Dollar Tree is the latest victim in a federal court filing in Florida. The Suit alleges that Dollar Tree failed to properly disclose, **in a separate document**, that it was going to obtain and utilize a consumer report for hiring purposes. The second allegation, which is common to most of these suits, is that Dollar Tree improperly included a waiver of liability in the notices it did provide, in violation of the Fair Credit Reporting Act and FTC regulations.

Whole Foods, which has a number of such cases filed against it, requested a stay in the US Supreme Court following the Supreme Court's agreement to hear a case under the FCRA in which the Plaintiff's alleges that Spokeo violated the FCRA by publishing untrue information about him. A Florida federal judge previously denied Whole Foods motion to delay a proposed class action pending the Supreme Court decision. Whole Foods argued that the Supreme Court's ruling would affect whether the plaintiff in its case has standing to pursue the claim. U.S. District Judge Richard A. Lazzara denied the Motion, ruling that it "has no way of divining" how the Supreme Court will rule on the Spokeo case or if the high court's ruling will change Speer's standing." "A stay of these proceedings to await a decision from the Supreme Court in Spokeo is not warranted," the judge said.

Background checks are common in the retail industry, and many retailers have been targeted by class action litigation alleging violations of the FCRA. All retailers should immediately review their practices to ensure compliance with the FCRA. In most instances, a minor change to the application forms could cure any potential violations that are alleged. A properly worded, stand-alone notice should be utilized.

The EEOC and the FTC recently issued guidance concerning the use of background checks.  
[http://www.eeoc.gov/eeoc/publications/background\\_checks\\_employers.cfm](http://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm)

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