

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

WILLIAM JONES, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

WAFFLE HOUSE, INC., *et al.*,

Defendants.

Case No.: 6:15-cv-01637-RBD-DAB

**PLAINTIFF’S OPPOSITION TO PUBLIC DATA’S MOTION FOR LEAVE TO FILE A
REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF
STANDING**

Defendant Public Data inappropriately attempts to get in the last word by filing a reply brief to its pending Motion to Dismiss where no further argument is warranted. Indeed, Public Data already has attempted to skirt the rules and re-argue its Motion to Dismiss. Public Data’s Motion for Leave to File a Reply Brief is itself a precis of its requested reply brief and, thus, violates the Local Rules. Plaintiff William Jones (“Plaintiff”) hereby respectfully requests that the Court deny Public Data’s Motion to File a Reply Brief and determine the Motion to Dismiss on the briefing that is already completed.

ARGUMENT

The Local Rules do not allow a party to file a reply brief except with leave of Court. *See* L.R. 3.01(a)-(c). Instead the moving party is granted 25 pages to make its motion, and the opposing party is granted 20 pages to oppose. *Id.* The decision to omit the filing of a reply brief except with leave of court was not a capricious rule made by this District but a thoughtful decision made with the obvious realization that reply briefs waste the time of the parties and the Court, needlessly

elongate proceedings, and typically consist of a rehash of previously addressed arguments. Instead L.R. 3.01(g) requires the moving party to meet and confer before filing a motion; this allows the parties to address pertinent issues in a timely and efficient manner.

Public Data's Motion to Dismiss was intended to test Plaintiff's evidence in support of constitutional standing. Contrary to Public Data's representation (Mot. to File Reply Brief, DE 105, at 2, ¶4), Plaintiff's Opposition to the motion was not predicated solely on conducting discovery. Indeed, Plaintiff specifically argued that the evidence, even at that early stage, established the existence of a genuine issue of material fact appropriate for determination by a jury. (Opp'n to Mot. to Dismiss, DE 49, at 2-4, 8-12.) And since then Plaintiff's evidence has only mounted.¹

Nor is discovery complete. Discovery remains open through August 2017. Plaintiff has taken only two depositions, both just last week owing to Defendants' refusal to produce witnesses any sooner. (Kachadoorian Decl. ¶ 13.) Moreover, the corporate designee for each Defendant knew little to nothing about the issues set forth in the respective deposition notices.² (*Id.* at ¶ 15.) And Defendants' responses to written discovery have been similarly deficient. (*Id.* at ¶¶ 6, 7, 10-12, 14.) Indeed Public Data refuses to provide documents in its possession pertaining specifically

¹ See, e.g., Mot. for Class Cert. at p. 11-12 (discussing that "evidence now shows that Plaintiff was highly qualified to work as a server at Waffle House because he had many years of experience with the company and that Waffle House only runs background checks at the end of the application process when the unit managers determine that a candidate is needed and qualified . . . Waffle House must pay to run each background check, is very sensitive to this expense, and therefore will only run a background check when it is ready to hire a candidate . . . Waffle House prefers hiring servers with experience, particularly experience working at Waffle House, and has the acutest need around the holiday, starting in November . . . Waffle House cannot point to a single applicant other than Plaintiff whose personnel record shows a background check was run when it actually was not.").

² See Mot. for Class Cert. at p. 23-25; Fervier Depo, attached to Kachadoorian Decl. as Ex. A, at 251:21-252:11 ("I would say that Jeff Wright was involved on a day-to-day basis in the background checks from the time I left until the present. So certainly, he would know specifics of what was happening on a daily basis greater than I would. I mean, that's obvious."); 2nd Stringfellow Depo, attached to Kachadoorian Decl. as Ex. B, at 184:5-11 ("Q: The information in Public Data's databases relates to particular people though, correct? A: It may or may not. I don't know.") **Apparently, the principal of Public Data does not know who his customers are, why they patronize his business, or—incredibly—how much money his own business makes.** (*Id.* at 137:24-138:13; 139:9-12.)

to Plaintiff. (*Id.* at ¶ 12.) Plaintiff has already filed two motions to compel further discovery responses [DE 93, 94] and will likely be forced to file three or more additional motions to compel in the coming weeks because of Defendants’ ongoing discovery abuse. (Kachadoorian Decl. ¶ 12.) Plaintiff also anticipates taking several additional depositions, obtaining key documents, and conducting Rule 34(a)(2) inspections of Defendants. Hence no “outcome to discovery” has occurred. (Mot. at 3.) Discovery of the true facts and evidence is critical to evaluating liability in this action; discovery is not a mere “tactic,” as Public Data suggests. (*Id.*)

Public Data also purports to bring to the Court’s attention a “new” decision, *Spokeo, Inc. v. Robins*, 2016 U.S. LEXIS 3046 (U.S. May 16, 2016). Public Data was well aware of *Spokeo* when it filed its Motion to Dismiss because the Supreme Court had already granted certiorari, and many courts had stayed actions pending its determination. (Kachadoorian Decl. ¶ 18, Ex. C (article written by Dave Gettings and Tim St. George discussing *Spokeo*)). *Spokeo* is not a ruling out of nowhere that requires the Court’s immediate attention. Public Data did not move to stay this action and indeed did not even reference *Spokeo* in its Motion to Dismiss, despite the attention lavished on the case by the defense bar, especially Troutman Sanders. Nor is *Spokeo* even apposite to this case. Public Data is aware that the instant action is very different from *Spokeo*, which involved a people-search website that merely posted information regarding consumers on the Internet. Here, the claims involve the denial of Plaintiff’s employment specifically because of a consumer report furnished by Public Data. There is no need to brief the effect of each and every opinion that involves the FCRA, no matter how relevant.

Conclusion

Plaintiff respectfully requests that the Court deny Public Data’s motion for leave to file a reply brief. In the alternative, Plaintiff requests leave to file a sur-reply of equal length.

DATED: June 3, 2016

Respectfully submitted,

/s/ Justin Kachadoorian
Anthony J. Orshansky
(admitted *pro hac vice*)
Alexandria R. Kachadoorian
(admitted *pro hac vice*)
Justin Kachadoorian
(admitted *pro hac vice*)
COUNSELONE, PC
9301 Wilshire Boulevard, Suite 650
Beverly Hills, CA 90210
Tel: (310) 277.9945
Fax: (424) 277.3727
anthony@counselonegroup.com
alexandria@counselonegroup.com
justin@counselonegroup.com

Michael J. Pascucci
Fla. Bar No. 83397
Joshua H. Eggnatz, Esq.
Fla. Bar. No. 67926
EGGNATZ, LOPATIN & PASCUCCI, LLP
5400 S. University Drive, Ste. 413
Davie, FL 33328
Tel: (954) 889-3359
Fax: (954) 889-5913
Mpascucci@ELPLawyers.com
JEggnatz@EggnatzLaw.com

Attorneys for Plaintiff William G. Jones

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Justin Kachadoorian