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# Suit Alleges Background-Check Agency Mistakes

John Caher, [New York](#) Law Journal

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A would-be Manhattan doorman who claims he was denied a job because a company purporting to do [background checks](#) wrongly reported that he has a criminal record is taking on the consumer reporting industry in a federal class action filed Thursday.

Kevin A. Jones lodged a [consumer class action](#) against Sterling Infosystems, which claims to be the largest background checking firm in the world, in the Southern District. The suit, *Jones v. Sterling Infosystems*, 14-cv-3076, alleges violations of the federal [Fair Credit Reporting](#) Act and the New York Fair Credit Reporting Act.

Jones brought the suit after he was offered and accepted a job as a doorman/ porter with Halstead Management Co., but the offer was revoked because of Sterling's alleged error. The suit contends that the company's research relied on second-hand information, not actual court records, and confused Jones with a similarly named individual who has a [criminal record](#), according to [his complaint](#).

Sterling is one of several companies that mine [public records](#) to perform background checks on prospective employees, obtaining information from various sources about criminal, driving and credit histories and selling it to clients.

In New York State, criminal history information is generally available only from the court system and is based on an individual's name. So-called "rap sheets," which are fingerprint-based and more accurate than name-based records, are not available to the public or to companies like Sterling.

Jones claims in his suit that Sterling conducted a sloppy investigation, could have easily determined that Jones the job applicant was not Jones the convict and failed to abide by protections in the state and federal Fair Credit acts designed to shield consumers from the distribution of false information.

The suit, filed by Legal Action Center and Francis & Mailman, a Philadelphia [law firm](#) that specializes in consumer protection litigation, said the Jones mishap is part of a pattern in which Sterling "grossly and recklessly" sells information that it has failed to verify or is based on incomplete or false records.

According to the lawsuit, Jones, after he accepted the job but before he started, received a call from Halstead advising that the background investigation showed he had a criminal record. Halstead withdrew the job offer and advised Jones that if he disputed the information he should take it up with Sterling, according to the suit.

Jones claims he contacted Sterling and provided fingerprint-based documentation from the state Division of Criminal Justice Services showing that he did not have a criminal history. Records show the company corrected the report, but by that time the employment opportunity was lost, according to the lawsuit.

The suit seeks an order "enjoining Sterling from selling background checks and consumer reports to employers which contain public record information unless and until Sterling agrees to purchase and/or otherwise obtain the full and complete court record from each court."

Attorneys Sally Friedman and Monica Welby of the Legal Action Center said Sterling improperly put the burden on Jones to prove he was not the individual with a criminal record.

"They put the onus on him to prove that the criminal record wasn't his," Friedman said in an interview. "Sterling didn't do anything to reinvestigate, as it is required to do under the Fair [Credit Reporting](#) Act. They just relied on a bulk database that

is sold to reporting agencies and updated only periodically."

Friedman and Welby said a simple examination of actual court records would have shown that their client has a different middle initial and is of a different race than the convict.

"Under both the federal and state reporting acts, a consumer reporting agency has to either notify consumers that they are reporting a public record or maintain reasonable procedures to ensure that the records are complete and up to date," Friedman said. "Here, they didn't do either of those things."

Andrew Porter, the company's general counsel, was not immediately available for comment.

In March, Sterling was one of four background check companies that agreed to refrain from automatically disqualifying candidates for employment because of criminal history.

At the time, Attorney General Eric Schneiderman said that New Yorkers "who have paid their debt to society deserve a fair shot at employment opportunities," and noted that state law requires employers to consider mitigating factors in making hiring decisions involving former offenders.

The action against Sterling comes less than a month after a similar class action was lodged in the Southern District against another consumer reporting company, CoreLogic SafeRent.

*James v. CoreLogic*, 14-cv-2477, was brought by a plaintiff who had applied for housing through a leasing center. The plaintiff alleges CoreLogic improperly sold information on a felony conviction that had been vacated and sealed several years earlier. Francis & Mailman and the Legal Action Center represent the plaintiff in the *James* case.

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