

**BLOGS**

Class Actions

## Court Allows Only One of Two Proposed Classes to Be Certified

In *Quadrel v. GNC Franchising, LLC.*, 2007 WL 4241839 (W.D. Pa. Nov. 29, 2007), the court considered a motion by current and former GNC franchisees to certify a class action against their franchisor. The plaintiffs alleged that GNC had violated the provisions of a settlement agreement to resolve a previous class action brought in 2001. Under the prior settlement, the franchisor had agreed to take reasonable measures to avoid setting the ultimate discounted retail price on certain sale items below the franchisees' then-current wholesale price, to not accept royalty on such items, and to reaffirm its policy not to interfere with vendor sales directly to franchisees. One new class sought to be certified would have been composed of current and former franchisees who participated in the previous settlement, and a second would have included those opted out of that pact.

After the plaintiffs filed their motion for class certification, the sole representative of Class 2 was dismissed from the case without prejudice, apparently pursuant to the settlement of a related case. Class counsel argued that dismissal was nevertheless inappropriate as to all class members, as a viable class representative had existed at the time the motion for certification was filed. The court disagreed, finding that a viable representative is needed up to the date on which class certification is granted by a court. Because the court had not yet ruled on the class certification motion at the time the only named plaintiff's claims were withdrawn, no justiciable case or controversy existed and the motion for certification as to Class 2 was denied as moot. The court did, however, grant plaintiffs' motion to certify the Class 1 claims, finding that it met all of the Rule 23 standards.