



# Franchise Law Alert: Gray Plant Mooty Delivers First Franchisor Victory in Anti-Poaching Class Action

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The United States District Court for the Eastern District of Michigan has dismissed an anti-poaching class action against a major national franchisor. In *Ogden v. Little Caesar Enterprises, Inc.*, the Court held that the plaintiff, who had briefly been employed by a franchisee as a restaurant manager, failed to state an antitrust claim under the Sherman Act and also that he had failed to allege sufficient facts to demonstrate an antitrust injury as required.

Beginning in 2017, numerous national franchisors have been the subject of purported class actions on behalf of franchisee employees who claimed to have been harmed by the anti-poaching provisions that had become prevalent in franchise agreements. These plaintiffs have asserted that the anti-poaching provisions in the franchise agreements constitute unlawful restraints of trade in violation of Section 1 of the Sherman Act.

At least four district courts have allowed claims against franchisors to proceed to discovery, concluding that the provisions at least potentially could be *per se* illegal or subject to analysis under the "quick-look" doctrine. The plaintiffs in these cases have not alleged specific product or geographic markets, as required under the default "rule of reason" standard for Section 1 claims.

In a thorough 24-page opinion, District Judge David M. Lawson of the Eastern District of Michigan held that the employee had failed to state a proper *per se* or quick-look claim under governing Supreme Court and Sixth Circuit precedent, and that the plaintiff's admitted failure to allege essential elements of a rule of reason claim therefore required dismissal of his case.

The Court also found that the plaintiff failed to allege an injury resulting from any alleged antitrust violation. The decision by Judge Lawson is the first to reject an antitrust class action claim involving anti-poaching provisions against a franchisor at the motion to dismiss stage.

*Little Caesar was represented in the Ogden litigation by Michael L. Sturm, Robert L. Zisk, and Peter J. Klarfeld of the Washington, D.C. office of Gray Plant Mooty.*