

# Daily Journal

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## California's Top Labor & Employment Lawyers for 2016

### EDITOR'S NOTE

PAGA remained omnipresent in employment law this year. A record number of new lawsuits invoked the Private Attorney General Act of 2004 as employees pushed for civil penalties and to escape employers' binding arbitration clauses.

In this special issue, we honor some of the California lawyers involved in these and other cutting-edge employment and labor cases. They are brilliant, strategic and, most of all, agile, as they navigate a fast-moving and ever-changing legal landscape. Compiling this list, we often marveled at the performances of these lawyers. As you read through this issue, we think you'll be impressed, too.

## Jesse A. Cripps

FIRM:	CITY	SPECIALTY
Gibson, Dunn & Crutcher LLP	Los Angeles	Employer defense litigation

When it comes to class action employment suits, Cripps is the kind of attorney who can't see the forest for the trees — and he prefers it that way. Cripps views each class action not as a single entity but as a loose collection of highly diverse individual claims that can be dealt with one at a time.

"I've seen some cases that look like they could fit the definition of a class action on face value, but when you dig beneath the surface you see a lot of differences between the people it purports to represent," he said. "So you try the case plaintiff by plaintiff and claim by claim, parsing it to a more manageable level and focusing on the question of whether it should be a class action in the first place."

Last year, Cripps and his team won a state appellate court decision to compel plaintiffs in a class action against the Arakelian Enterprises Inc. waste reduction firm into individual arbitration, which could potentially cut its exposure to Private Attorneys General Act fees.

In another case, Cripps won summary judgments and class certification rulings that helped slash 85 percent of the potential exposure facing Taylor Fresh Foods Inc.

And over the past two years, Cripps and firm co-lead counsel Catherine A. Conway have used a variety of tactics to transform a class action representing several hundred store managers at art supply chain Michaels Stores Inc. into 25 or so individual lawsuits, which they are trying to

pick off one by one.

In the Michaels case, the first step was to move the suit from state court to federal court, which has stricter rules on class actions. The plaintiffs said their claims totaled less than the \$5 million that would subject them to federal law. But the defense compiled detailed computations showing that the potential damages were far higher, which was strong enough to convince the 9th Circuit Court of Appeals.

In federal court, Cripps and Conway next pushed to decertify the class, arguing that the store managers' working hours weren't as uniform as the plaintiffs said, which would make it hard to pin down damages. They submitted affidavits from 40 current store managers to demonstrate how much the working hours varied from store to store. In 2014, U.S. District Judge George H. Wu decertified the class, agreeing that "any class proceeding would almost certainly devolve into mini-trials."

After the decertification, the plaintiffs could still file individual claims. But Cripps successfully argued before the 9th Circuit Court of Appeals that the statute of limitations on those claims should begin when the case was first filed in 2006 instead of a successive filing in 2011. Cripps believes the decision, rendered in May, will lead to the total dismissal of several claims and partial dismissals for the rest.

In the meantime, the defense team found two plaintiffs had filed for bankruptcy since launching



the Michaels suit but failed to mention the suit to the U.S. Bankruptcy Court as the law requires. Wu dismissed both claims over judicial estoppel, which bars parties from taking positions that contradict their stance in previous legal proceedings. In April, the 9th Circuit upheld Wu's decision in the first case, and Cripps expects a similar decision in the second case later this year.

Cripps said the Michaels case shows that "when you're defending against a class action, you need a multipronged strategy to divide and conquer, which in our case included the decertification, summary judgments, tolling [for the statute of limitations] and the bankruptcies. You can't just take a cookie-cutter approach."

— Dean Calbreath