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Top Labor & Employment Lawyers 2017

Jesse A. Cripps

FIRM:

Gibson, Dunn & Crutcher LLP

CITY:

Los Angeles

SPECIALTY:

Complex litigation, class actions

Cripps operates both at the trial and, when necessary, at the appellate levels for clients including Michaels Stores Inc., Glenair Inc., Taylor Fresh Foods Inc., The Nisei Farmers League and Comcast Corp.

When arts and crafts retailer Michaels Stores was the target of multidistrict wage and hour litigation over allegations under California's unfair competition law and Labor Code, Cripps represented the company as it lost a motion to dismiss in the trial court but won a reversal at the 9th U.S. Circuit Court of Appeals.

"It's not unusual [to perform both roles] at our firm," Cripps said. "It's an efficient way to handle a matter, to take the case from start to finish."

A key issue was the statute of limitations. In July 2016, a 9th Circuit panel agreed with Cripps' argument that litigants cannot benefit from "piggyback" tolling by filing multiple class actions. The panel also refused to allow tolling the plaintiffs' claims that had accrued after decertification of the first class action. Even though the anti-piggybacking rationale did not apply to those claims, the unanimous panel reasoned that tolling such claims would not protect the class action because a district court had already determined that

similar claims were not amenable to class treatment. The decision represented a significant win by disposing of several plaintiffs and eliminating the bulk of the claims asserted by the plaintiffs who remain. Cripps argued the 9th Circuit appeal. *Anderson v. Michaels Stores Inc.*, 14-56726 (9th Cir., filed Oct. 29, 2014).

"The panel asked some incredibly tough questions," Cripps said. "There was some sense we might not get the result we did. Courts are sometimes inclined to give the benefit of the doubt to plaintiffs, but this panel did the right thing."

In a separate matter for Michaels, an employment misclassification case, Cripps won at both in the district court and at the circuit. The plaintiff, a former Michaels store manager, alleged meal and rest break violations under California law and claimed that Michaels owed him unpaid overtime and numerous statutory penalties because it had classified him as exempt from state and federal overtime requirements. The Gibson Dunn team contended that the plaintiff was judicially estopped from pursuing his claims because he had failed to disclose them in two different Chapter 13 bankruptcy cases that he had initiated after filing his suit against Michaels. The circuit panel rejected the



plaintiff's argument that his subjective state of mind should have been considered when the district court ruled that he could not proceed.

"We were so happy to get that ruling," Cripps said. "I was sitting on a plane at the gate and it came over my phone three minutes before the doors closed. No, there was no in-flight Champagne. I was working on that trip."

— John Roemer