

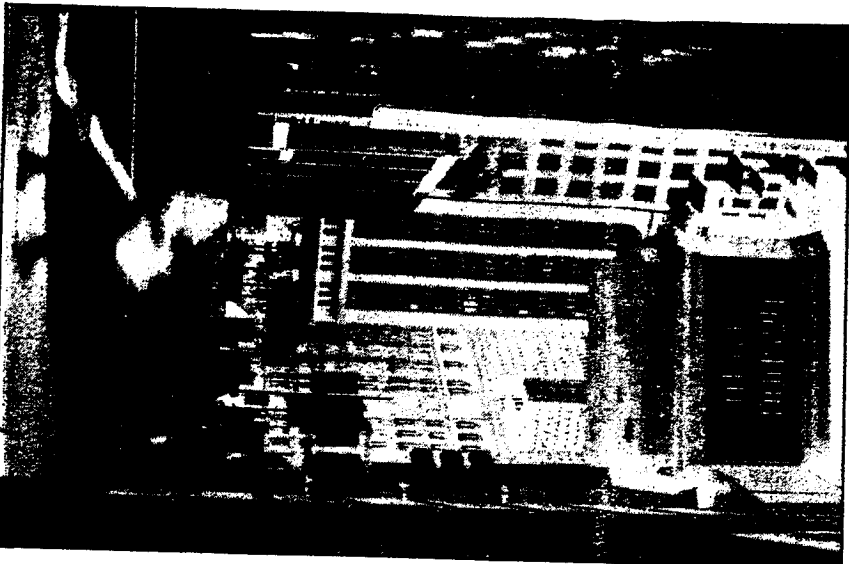
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JASON DOOR

Wage-and-hour suits — the next hot stock tip?

By Pam Smith
RECORDER STAFF WRITER

Mark Thiernan, a wage-and-hour pioneer, is championing a new class of wage slave: stockbrokers.

Wage-and-hour class actions are often portrayed as battles between corporations and low-wage workers.

This time, though, Thiernan and co-counsel James Clapp are fighting on behalf of potential class members that, as Thiernan puts it, "earn so much money that nobody even thinks of them being entitled to overtime."

In the past couple of months they've teamed up to file a handful

TRADING UP: Plaintiff lawyers representing stockbrokers see investment houses as a ripe target for wage-and-hour suits.

of class actions in four California counties on behalf of stockbrokers, taking aim at companies including UBS Financial Services Inc., McLaughlin, Piven, Vogel Securities Inc.; and Merrill Lynch, Pierce, Fenner & Smith Inc.

They're seeking overtime and re-payment for wage deductions, which Thiernan contends were used for regular business costs such as computers, software and administrative assistants. The classes have not been certified yet, Thiernan said, but he estimates members could number in the thousands.

The cases strike an odd chord, given the potential class members who are thought to earn more than those who typically mount wage-and-hour class actions, employment lawyers said.

While there have been a number
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of gender-discrimination class actions in the financial services industry, said David Borgen, a partner at Oakland's Goldstein, Demchak, Baller, Borgen & Dardarian, "I don't recall seeing any in terms of wage and hour."

Thierman, of the Thierman Law Firm in Reno, couldn't recall another wage-and-hour case on behalf of stockbrokers either. The two plaintiff lawyers came up with the idea, he said, after he wrote an article about whether mortgage brokers should get overtime pay.

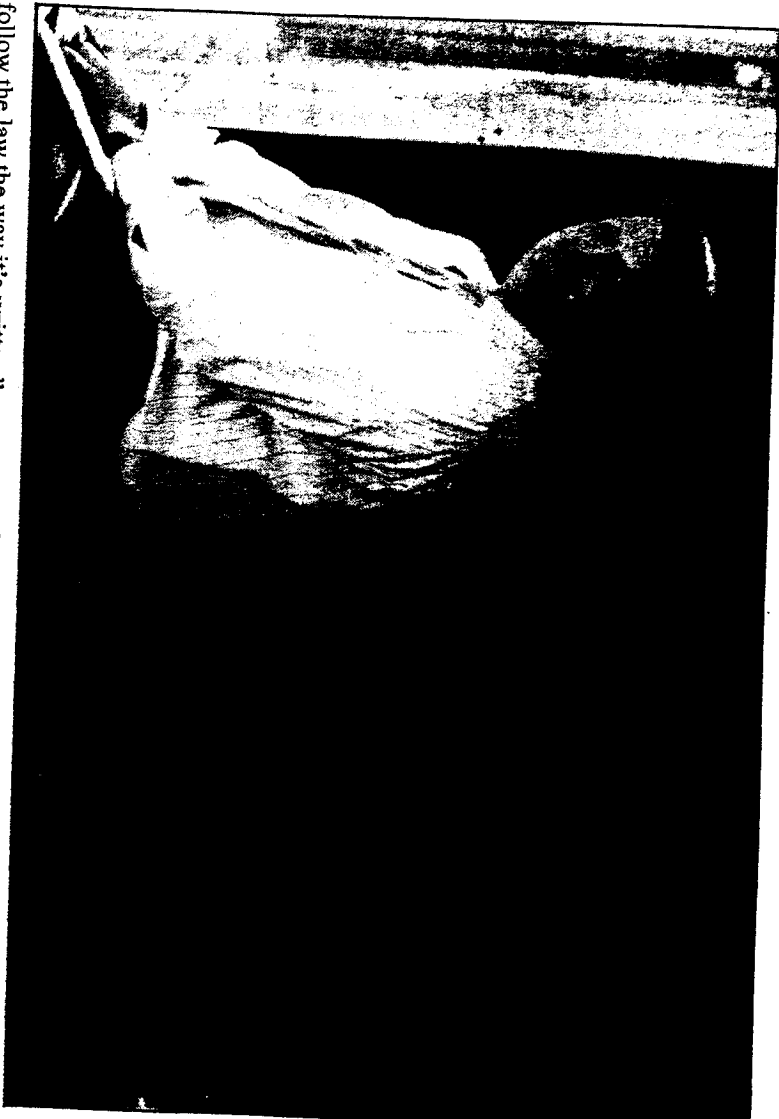
In the piece, Thierman argued mortgage companies don't qualify as a retail establishment, so mortgage brokers should not qualify for an "inside sales" exemption under federal law. Clapp, of Dostart Clapp & Covey in San Diego, saw the article, and thought similar reasoning should apply to stockbrokers, said Thierman.

The more money class members make, the more challenging the case may be, because judges and juries tend to be more sympathetic to low-wage earners, said Borgen.

"It turns the tables a bit," said Tyler Paetkau, a partner in Bingham McCutchen's East Palo Alto office and chair of the State Bar labor and employment law section.

Judges or jurors may think, "why are you asking for more, you're already getting a million dollars a year," but the plaintiffs side will argue, "all we're doing is enforcing the law," added Paetkau, who represents employers in wage-and-hour class actions.

"A good judge," says Thierman, "will



HEARD ON THE STREET: Plaintiffs' attorney Mark Thierman says that stockbrokers "earn so much money that nobody even thinks of them being entitled to overtime."

RECORDER FILE (1997)

follow the law the way it's written."

Thierman said he and Clapp filed their class actions in Alameda, San Francisco, San Diego and Los Angeles superior courts.

Wage-and-hour suits have become big business for plaintiff lawyers and a big headache for businesses. Companies have been forced to pay millions in suits alleging they misclassified low-level managers as exempt from overtime. Changes to federal overtime rules, prompted by complaints that vague guidelines had led to

confusion and litigation, took effect last week.

The presidential campaigns have been fighting over the effect the changes will have on workers' pay, and some lawyers are fielding calls about them. But California lawyers said the federal changes are almost beside the point when it comes to their clients' employees in the Golden State.

"We're telling them that, in most cases, there's little or no change" in California, said Robert Tollen, a partner at Seyfarth

Shaw.

California law is much more protective of employees, said Michael Loeb, a partner at Bingham McCutchen.

He describes seminars his firm held to educate those clients that have a national reach as "schizophrenic." While dispensing advice to managers from some other states, he'd tell those from California to "cover your ears."

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