

# Real estate wages suit may be limited

By Brian Sumers  
Daily Journal Staff Writer

A suit filed by the state labor commissioner this week alleging ZipRealty misclassified its real estate agents as independent contractors may not have broader impact, even though nearly all of the state's real estate firms pay agents the same way.

"I think there are differences in the ZipRealty business model than the rest of the industry," said June Barlow, general counsel and vice president of the California Association of Realtors.

She said that 99 percent of the group's members classify their agents as independent contractors, which makes them ineligible for minimum wage requirements or overtime pay. But the agents, she said, have a lot of autonomy, coming and going as they please and choosing how many properties to list, for instance.

According to the complaint, *Labor Commissioner v. ZipRealty*, RG11-11596987 (Alameda Super. Ct., filed Sept. 26, 2011), ZipRealty required its agents to respond to emails and phone calls, prepare documents and research property — documenting the work on the company's Web portal from their home offices. The suit alleges that the agents should have been classified as employees and asks for \$7.5 million in wages, \$1.25 million in overtime pay and \$9 million in damages and penalties.

In a written statement, ZipRealty said it has acted no differently than any other California real estate agency: "ZipRealty adamantly believes that this claim is without merit and intends to vigorously defend this lawsuit."

"The more control the principal has over the workers, the more like-

ly they'll be deemed an employee," said Sue M. Bendavid, a management-side lawyer and shareholder at Lewitt, Hackman, Shapiro, Marshall & Harlan in Encino.

But Bendavid said real estate firms may want to reconsider how they classify their agents or at least redefine their relationships with those contractors as a result of the suit.

"As this becomes in the news, and it becomes out there and people start paying attention, they will start looking at their practices," Bendavid said. "They'll have to decide if they want to make a transition."

Jeffrey Winikow, a workers' rights attorney at the Law Office of Jeffrey Winikow in Los Angeles, agreed that employers may want to take another look at how they classify employees. The ZipRealty case, he said, may not be a typical case against one employer.

"The labor commissioner is not in the business of filing gotcha wage-and-hour cases," he said. "The private bar often is trying to make millions out of minutiae; they home in on technicalities. But when the labor commissioner uses state resources, there's something there."

The suit follows a Kern County Superior Court case, in which a judge earlier this month awarded \$330,000 in damages and interest to four former ZipRealty agents who alleged they were misclassified as independent contractors when they should be classified as employees.

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