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8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11 **ARYTON COSTA**, individually and on behalf
12 of all others similarly situated,

13 Plaintiff,

14 vs.

15 **UNIVERSITY OF ANTELOPE VALLEY**, a
16 California Corporation,

17 Defendant.

Case No.: 21STCV18531

**PLAINTIFF'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF UNOPPOSED
MOTION FOR APPROVAL OF PAGA
SETTLEMENT PURSUANT TO LABOR
CODE § 2699(l)**

Date: May 11, 2022

Time: 10:00 a.m.

Dept.: 9

Hon. Yvette M. Palazuelos

18 Complaint Filed: May 14, 2021
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1 Pursuant to California Evidence Code sections 452 and 453, Plaintiff Aryton Costa hereby
2 requests that the Court take judicial notice of an *amicus curiae* brief filed by the California Labor
3 Commissioner in *Price v. Uber Technologies, Inc.*, Case No. BC554512 (L.A. Sup. Ct.). A true and
4 correct copy is attached as **Exhibit 1** hereto. The brief is relevant not to prove the truth of any facts, but
5 merely because it reflects the position the Labor Commissioner has taken about the proper standard for
6 courts to apply when deciding whether to approve PAGA settlements.

7 The Court may take judicial notice of records in another court's files. Cal. Evid. Code § 452(d);
8 *Duggal v. G.E. Capital Communications Services, Inc.*, 81 Cal. App. 4th 81, 86 (2000); *Thornton v.*
9 *Rhoden*, 245 Cal. App. 2d 80, 96 n.17 (1966). Accordingly, Plaintiff requests that the Court take judicial
10 notice of the document attached as **Exhibit 1** hereto.

11 Dated: March 4, 2022

Respectfully submitted,

12 HAMMONDLAW, P.C.

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15 _____
Julian Hammond

16 Attorney for Plaintiff
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EXHIBIT 1

FILEDSuperior Court of California
County of Los Angeles

JUN 16 2017

Sherri R. Carter, Executive Officer/Clerk

By Isabel Arellanes, Deputy
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

STEVEN PRICE, an individual; individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC., a Delaware
Corporation, RAISER-CA, LLC, a Delaware
Limited Liability Company, and DOES 2
through 100, inclusive,

Defendant.

Case No: BC554512

Assigned for all Purposes to:
Hon. Maren Nelson – Dept. 307

**THE CALIFORNIA LABOR
COMMISSIONER'S AMICUS CURIAE
BRIEF PURSUANT TO MAY 11, 2017
ORDER**

BY FAX

Dept: 307
Date: June 30, 2017
Time: 1:30 p.m.

[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE
SECTION 6103 **]**

TABLE OF CONTENTS

I.	WHERE MULTIPLE PLAINTIFFS BRING PAGA CLAIMS AGAINST THE SAME EMPLOYER FOR THE SAME OR SIMILAR ALLEGED VIOLATIONS OF LAW, WHICH PLAINTIFFS, IF ANY, SPEAK ON BEHALF OF THE LABOR COMMISSIONER?	1
II.	WHAT LEGAL STANDARD SHOULD THE COURT APPLY IN APPROVING A SETTLEMENT UNDER LABOR CODE SECTION 2699(1)(2)?	2
III.	THE PROPRIETY OF THE PROPOSED SETTLEMENT IN THIS ACTION	4
A.	SUFFICIENCY OF CIVIL PENALTIES	4
B.	SCOPE OF RELEASE	6
C.	RISK OF REVERSE AUCTION	7
D.	DISPROPORTIONATELY ENRICHING NAMED PLAINTIFFS	8
IV.	CONCLUSION	9

1 Pursuant to the Court's May 11, 2017 order, Labor Commissioner Julie A. Su ("Labor
2 Commissioner") respectfully submits this *amicus curiae* brief regarding the proposed settlement
3 in this matter.¹ The Court requested briefing on three issues:

- 4 1. Where multiple plaintiffs bring PAGA claims against the same employer for
5 the same or similar alleged violations of law, which plaintiffs, if any, speak on
6 behalf of the Labor Commissioner?
- 7 2. What legal standard should the court apply in approving a settlement under
8 Labor Code section 2699, subdivision (b)(2)?
- 9 3. The propriety of the proposed settlement in this action.

10 While these issues implicate some unsettled legal questions, the Labor Commissioner
11 believes that these issues are best resolved by applying principles of fairness and justice that have
12 developed in other forms of representative actions, as well as by considering PAGA's role in
13 helping the Labor Commissioner discharge her mandate

14 to vigorously enforce minimum labor standards in order to ensure
15 employees are not required or permitted to work under substandard
16 unlawful conditions or for employers that have not secured the
17 payment of compensation, and to protect employers who comply
18 with the law from those who attempt to gain a competitive
19 advantage at the expense of their workers by failing to comply with
20 minimum labor standards.

(Lab. Code § 90.5, subd. (a).)

21 **I. WHERE MULTIPLE PLAINTIFFS BRING PAGA CLAIMS AGAINST THE**
22 **SAME EMPLOYER FOR THE SAME OR SIMILAR ALLEGED VIOLATIONS**
23 **OF LAW, WHICH PLAINTIFFS, IF ANY, SPEAK ON BEHALF OF THE LABOR**
24 **COMMISSIONER?**

25 The California Supreme Court has recognized the Private Attorneys General Act of 2004
26 ("PAGA") as a procedural device that allows aggrieved employees to bring actions to recover
27 civil penalties that otherwise could only be sought by the State. (*See Amalgamated Transit Union*

28 ¹ While the Court's May 11, 2017 order invited the Labor Commissioner to submit an *amicus*
brief, the state's interest with regard to the Private Attorneys General Act, Labor Code section
2698, *et seq.*, lies with the Labor and Workforce Development Agency, the legislatively-created,
cabinet-level agency within the State of California charged with coordinating enforcement of
California's Labor Code and on whose behalf PAGA claims are brought. The Labor
Commissioner is the Chief of the Division of Labor Standards Enforcement within the
Department of Industrial Relations, and the LWDA oversees the Department of Industrial
Relations. (Lab. Code §§ 50, 79, 82.) It is the LWDA that is the real party in interest with regard
to PAGA claims, not the Labor Commissioner.

1 *Local 1756 v. Super. Ct.* (2009) 46 Cal.4th 993, 1003.) It neither creates substantive rights nor,
2 even as a form of qui tam action, authorizes any plaintiff to speak on behalf of the Labor
3 Commissioner. To the extent the parties and objectors disagree on whether more than one plaintiff
4 may bring an action based on the same or similar allegations, the Labor Commissioner notes that
5 nothing in PAGA or the general jurisprudence regarding representative actions precludes this.
6 PAGA—unlike California’s principal qui tam statute, the California False Claims Act—does not
7 place limits on how many representative actions may proceed. (*See* Gov. Code § 12652,
8 subd. (c)(10) [“When a person brings an action under this subdivision, no other person may bring
9 a related action based on the facts underlying the pending action.”].) The absence of such limits
10 indicates the Legislature’s intention to permit overlapping litigation against the same employer;
11 but a judgment in a PAGA action can bind all who would be bound by a judgment in an action
12 brought by the State. (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 985.)

13 **II. WHAT LEGAL STANDARD SHOULD THE COURT APPLY IN APPROVING A**
14 **SETTLEMENT UNDER LABOR CODE SECTION 2699(1)(2)?**

15 It is well established that PAGA serves to augment the limited enforcement capability of
16 the Labor and Workforce Development Agency by empowering employees to bring actions to
17 enforce California’s labor standards. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014)
18 59 Cal.4th 348, 383; *accord Arias, supra*, 46 Cal.4th at p. 986 [“The act’s declared purpose is to
19 supplement enforcement actions by public agencies, which lack adequate resources to bring all
20 such actions themselves.”]; *see also* Stats. 2003, ch. 906, § 1.) In doing so, PAGA plaintiffs “take
21 on a special responsibility to their fellow aggrieved workers who are effectively bound by any
22 judgment.” (*O’Connor v. Uber Technologies* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134.) This
23 responsibility “is especially significant given that PAGA does not require class action
24 procedures” that would safeguard against fraud and collusion. (*Id.* at p. 1133.) In this context, the
25 touchstone for the adequacy of the settlement must always be the purposes and policies
26 underlying California’s labor laws, and PAGA as a proxy for a state action. To that end, a PAGA
27 settlement must provide for relief that is genuine, meaningful, and consistent with the State’s goal
28 of benefitting the public through enforcement of its labor laws.

1 Against this backdrop, the Labor Commissioner believes that courts evaluating PAGA
2 settlements should utilize the standard employed in qui tam and other representative actions: is
3 the settlement fair, adequate, and reasonable under all of the circumstances in light of the public
4 policies underlying California's labor standards? Part of this analysis is a consideration of the
5 strength of the plaintiffs' case—something that courts have considered in both qui tam and class
6 actions. (*See United States ex rel. Schweizer v. Oce N. Am., Inc.* (D.D.C. 2013) 956 F.Supp.2d 1,
7 11 ["While there is 'no single test' for class action settlement approval under Rule 23(e) in this
8 jurisdiction, courts look to the following factors: . . . "(b) the terms of the settlement in relation to
9 the strength of plaintiffs' case. . . ."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
10 116, 130 ["The proposed settlement cannot be judged without reference to the strength of
11 plaintiffs' claims. [Citations]"].)

12 The Labor Commissioner takes no position on the merits of plaintiffs' case, but to the
13 extent the Court determines plaintiffs may succeed, the Court may consider multiple forms of
14 relief. While PAGA does not imbue a plaintiff with the same range of authority as the Labor
15 Commissioner,² nothing in the statute precludes an aggrieved employee from seeking, and a court
16 from imposing, injunctive relief to end ongoing violations (*e.g.*, ordering an employer to
17 appropriately classify its workforce as employees and affirmatively comply with employer
18 obligations like reimbursing employees for business expenses, providing meal and rest periods,
19 paying overtime, providing paid sick leave, etc.). Consequently, where a settlement solely
20 provides for the recovery of monetary penalties, and does not otherwise effectuate the State's
21 interests through affirmative actions, a court should weigh the full monetary value of relevant
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23 ² To end and deter Labor Code violations and vindicate individual employee's rights, the Labor
24 Commissioner possesses and utilizes broad authority. For example, in addition to the various
25 specific citations and penalties that the Commissioner may impose, she may: investigate and
26 adjudicate claims for wages and money owed; prosecute actions for the collection of wages and
27 other moneys payable to employees where she determines they are financially unable to employ
28 counsel; take assignment of employee claims for wages and other compensation; prosecute civil
actions to recover unpaid minimum wage and overtime compensation with or without the affected
employees' consent; represent claimants in *de novo* appeals from administrative adjudications
awarding compensation; issue stop work orders prohibiting use of employee labor where an
employer has failed to secure the workers' compensation for its workforce; and license various
industries (*e.g.*, garment manufacturer, farm labor contractors, car wash, studio teachers and talent
agents). (Lab. Code §§ 96, 98.3, 1193.6, 3710.1.)

1 penalties and determine if the proposed penalties effectively minimize the economic advantages
2 employers gain by non-compliance. Only penalties that create “an effective disincentive for
3 employers to engage in unlawful and anticompetitive business practices” achieve PAGA’s
4 purpose. (Sen. Bill. No. 796 (2003-2004 Reg. Sess.) § 1(a).)

5 In addition, as discussed more fully below, courts should consider other aspects of the
6 settlement that may affect the settlement’s fairness, adequacy, and reasonableness, including but
7 not limited to the scope of the release, the risk of a reverse auction, and the disproportionate
8 enrichment of named plaintiffs.

9 **III. THE PROPRIETY OF THE PROPOSED SETTLEMENT IN THIS ACTION**

10 Although the Labor Commissioner takes no position on the underlying dispute in this
11 matter or the ultimate propriety of the settlement, she has identified the following aspects of the
12 proposed settlement that merit closer scrutiny before the Court can assure itself that the settlement
13 is consistent with the State’s interest and PAGA’s requirements.

14 **A. SUFFICIENCY OF CIVIL PENALTIES**

15 The parties have provided the Court their views on the underlying merits of this matter
16 and the litigation risks. While a settlement in which a defendant agrees to classify its workers as
17 employees and adhere to the requirements of the State’s employee protections could ensure
18 compliance with the law going forward and thereby factor into the court’s evaluation of a
19 settlement,³ the proposed settlement does not provide for affirmative relief. The settlement’s
20 adequacy, therefore, can only be determined by examining whether, weighing all factors—
21 including the merits of the claims—the proposed penalty amounts effectively promote PAGA’s
22 compliance and deterrence goals.

23
24 ³ As the Legislature recognized, “[a]lthough innovative labor law education programs and self-
25 policing efforts by industry watchdog groups may have some success in educating some
26 employers about their obligations under state labor laws, in other cases the only meaningful
27 deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as
28 provided in the Labor Code.” (Stats. 2003, ch. 906, § 1.) Furthermore, as Judge Chen described, a
PAGA settlement that resolves important questions regarding the status of workers, or contains
substantial injunctive relief, “augment[s] the state’s enforcement capabilities, encourage[es]
compliance with Labor Code provisions, and deter[s] noncompliance.” [Citations.]” (*O’Connor*,
supra. 201 F.Supp.3d at pp. 1134-35.)

1 Here, the settlement compromises and releases penalties for 54 separate violations
2 impacting over a million workers in California. However, the parties have not offered a robust
3 and specific description of the maximum value of all individually-identified claims and the
4 consequent penalties being released. Absent a description of the monetary exposure associated
5 with each alleged violation, the Court cannot discharge its duty to determine whether a release of
6 claims eliminates the competitive advantages an employer may improperly gain through non-
7 compliance with the State's minimum labor standards. (*See Kullar, supra*, 168 Cal.App.4th at
8 p. 133 [noting court cannot draw conclusions regarding the fairness and adequacy of the proposed
9 settlement "if it is not provided basic information about the nature and magnitude of the claims in
10 question and the basis for concluding that the consideration being paid for the release of those
11 claims represents a reasonable compromise"]; *see also O'Connor v. Uber Technologies* (N.D.
12 Cal. June 30, 2016, 13-CV-03826-EMC, 15-CV-00262-EMC) 2016 WL 3548370, at *7 ["The
13 parties should provide an accurate assessment of the potential verdict value of the PAGA
14 claim"].)

15 Moreover, the Labor Code provides for certain penalties in the amount of unpaid wages.
16 (E.g., Lab. Code §§ 558, 1197.1.) These penalties are distinct from the other penalties that can be
17 collected through PAGA by virtue of the fact that these penalties are payable to the aggrieved
18 employees. (Lab. Code §§ 558, subd. (a)(3), 1197.1, subd. (a)(3); *see also Thurman v. Bayshore*
19 *Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1148.) Such wage-measured penalties,
20 which are analogous to disgorgement, deter violations by disincentivizing the improper economic
21 gain the non-compliant employer would otherwise receive.⁴ Accordingly, in order to gauge the
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24 ⁴ Where the penalty recoverable includes disgorgement of amounts required by the State's
25 minimum labor standards, such as Labor Code sections 558 and 1197.1, review of a proposed
26 settlement should necessarily include evaluation of the sufficiency of such disgorgement, which is
27 not an assertion of private rights, but rather another method of enforcing the policies underlying
28 California's minimum labor standards. (*See Eddleman v. U.S. Dept. of Labor* (10th Cir. 1991) 923
F.2d 782, 791 [enforcement proceeding by U.S. Department of Labor to liquidate unpaid wage
claims was "but another method of enforcing the policies underlying the SCA [Service Contract
Act]"], *modified on other grounds by Temex Energy, Inc. v. Underwood, Wilson, Berrv. Stein &*
Johnson (10th Cir. 1992) 968 F.2d 1003.) "[W]ithout this result [disgorgement], there would be
an insufficient deterrent to improper conduct that is more profitable than lawful conduct."
(*County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 543; *see also Kokesch v.*

1 extent to which the proposed settlement fairly and adequately comports with PAGA's purpose,
2 the Court should understand the approximate maximum value of these penalties as well and the
3 rationale behind settling for different amounts. This information, however, has not been provided.

4 Finally, the Labor Commissioner further notes that PAGA puts the burden on the parties
5 to present the facts and circumstances that would render a civil penalty unjust, arbitrary and
6 oppressive, or confiscatory. The evaluation of whether the imposition of maximum penalties is
7 unjust, arbitrary, oppressive, or confiscatory turns on the conduct at issue and the impact of the
8 penalties in deterring ongoing violations. Because of this, a description of a proposed settlement
9 as the largest assessment of civil penalties pursuant to PAGA is not dispositive of the adequacy of
10 a settlement; nor is it dispositive to compare a case to other cases in which various penalty
11 amounts were approved. What matters are the unique facts of the case at hand and the extent to
12 which the proposed settlement can effectively promote the State's goals. (*See Cotter v. Lyft, Inc.*
13 (N.D. Cal. 2016) 176 F.Supp.3d 930, 942 ["a trial court must assess the adequacy and
14 reasonableness of a proposed settlement in light of unique facts of the case at hand, in light of the
15 proposed settlement as a whole, and in light of the particular risks involved"].)

16 B. SCOPE OF RELEASE

17 The Labor Commissioner observes that the settlement represents that the State of
18 California shall be deemed to have fully, finally, and forever waived, released, relinquished, and
19 discharged the released parties from all PAGA claims known or unknown related to the claims
20 being released. (Provision V.C.) Though it is common for parties in private class actions to
21 release claims known or unknown, nothing in PAGA authorizes the parties to agree to a release of
22 unpleaded claims on behalf of the State. While the Supreme Court has recognized that a judgment
23 concerning specific allegations and claims in an action under PAGA may bind the State, the
24 settlement's assumption that the State is bound by this broadly-worded release is inconsistent with
25 PAGA's specific requirements and the State's broad law enforcement and remedial authority.
26 Private parties may waive their own rights, but they may not waive the State's. To condone an
27

28 *Securities and Exchange Commission* (2017) 581 U.S. ____ [137 S.Ct. 1130] [SEC's disgorgement
action operates as a civil penalty].)

1 attempt to limit the State's authority to redress labor violations falling outside the scope of the
2 pleaded allegations would violate public policy and PAGA's role in augmenting, rather than
3 supplanting, the State's law enforcement capacity.

4 C. RISK OF REVERSE AUCTION

5 Where multiple plaintiffs bring separate claims against the same employer for the same or
6 similar alleged violations of law, there is a risk of a "reverse auction" in which "the defendants
7 pick the most vulnerable or compliant plaintiff with which to settle and bind all other suits."
8 (*Cobarruviaz v. Maplebear, Inc.*, No. 15-CV-00697-EMC (N.D. Cal. Sept. 30, 2016) 2016 WL
9 5725076, at *2.) Because PAGA actions are a form of representative action, the concern may
10 arise—as it does in class actions—that a settlement is the product of a reverse auction, or
11 collusion or overreaching by the parties. (*See Glidden v. Chromalloy American Corp.* (7th Cir.
12 1986) 808 F.2d 621, 627 [settlement of representative actions, *e.g.*, a class action, "creates
13 obvious dangers; the representative may have been a poor negotiator or may even be in cahoots
14 with the defendant."]; *accord Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026
15 ["The dangers of collusion between class counsel and the defendant, as well as the need for
16 additional protections when the settlement is not negotiated by a court designated class
17 representative, weigh in favor of a more probing inquiry than may normally be required under
18 Rule 23(e)."].) It is therefore incumbent on a court in PAGA actions to closely scrutinize the
19 circumstances underlying PAGA settlements, even absent direct evidence of collusive conduct,
20 just as it would with respect to class actions. (*Reynolds v. Beneficial Nat. Bank* (7th Cir. 2002)
21 288 F.3d 277, 283; *see also Crawford v. Equifax Payment Services, Inc.* (7th Cir. 2000) 201 F.3d
22 877, 882 [rejecting settlement when plaintiff and "his attorney were paid handsomely to go away;
23 the other class members received nothing (not even any value from the \$5,500 'donation') and
24 lost the right to pursue class relief."].) The exercise of vigilance is especially critical given that, as
25 previously discussed, a resolution of specifically-identified PAGA claims has preclusive impact
26 on the State.

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1 **D. DISPROPORTIONATELY ENRICHING NAMED PLAINTIFFS**

2 Though class action representatives often are provided side payments in a settlement as
3 “incentive awards,” there appears to be no precedent for such awards in the context of a PAGA
4 action. PAGA, like other qui tam actions, already creates an “incentive” to bring actions by
5 allocating 25% of the civil penalties recovered to the plaintiff and the other aggrieved employees.
6 (See *Baumann v. Chase Inv. Services Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 [“The
7 employee’s recovery is thus an incentive to perform a service to the state.”].) PAGA thereby links
8 the plaintiff’s self-interest to the overall litigation; the more civil penalties collected, the more the
9 aggrieved employees—including the PAGA plaintiff—are rewarded. Providing a separate
10 payment to a PAGA plaintiff that is not tethered to the amount of civil penalties may dilute
11 PAGA’s designed incentive and introduce a potential conflict of interest between the named
12 representative, other aggrieved employees, and the State.

13 Moreover, as recognized in class actions, substantial and disproportionate awards for
14 named plaintiffs in exchange for the named plaintiffs’ individual releases of all claims raise
15 “grave problems of collusion.” (*Women’s Committee For Equal Employment Opportunity v.*
16 *National Broadcasting Co.* (S.D.N.Y. 1977) 76 F.R.D. 173, 180 [“[W]hen representative
17 plaintiffs make what amounts to a separate peace with defendants, grave problems of collusion
18 are raised.”].) Notably, the Labor Commissioner does not negotiate analogous incentive payments
19 to specifically identified employees when pursuing enforcement actions. The downside of such
20 awards—even those that are not tied to a release—“is that the payments lend themselves for use
21 as side payments to induce named plaintiffs to go along with sweetheart deals.” (*Kakani v. Oracle*
22 *Corp.*, No. C 06-06493 WHA (N.D. Cal. June 19, 2007) 2007 WL 1793774, at *10.) Named
23 plaintiffs “are incentivized, out of self-interest, to achieve the best possible result for the class” or,
24 in this case, the aggrieved employees. (*Ibid.*) Accordingly, the separate awards to named plaintiffs
25 in the proposed settlement—even in exchange for broader individual releases—merit the Court’s
26 careful review.

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1 **IV. CONCLUSION**

2 The Labor Commissioner appreciates the invitation to comment on the proposed
3 settlement and draw the Court's attention to the issues identified above.
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5
6 Date: June 16, 2017

Respectfully submitted,

7 OFFICE OF THE DIRECTOR
8 State of California, Department of Industrial
9 Relations

10 By: 

Dan L. Gildor

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12 Counsel for Department of Industrial
13 Relations Appearing Specially for the Labor
14 Commissioner
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