

LAWYERS FOR JUSTICE[®]

September 9, 2021

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

**Re: *PARK WEST LANDSCAPE, INC. & PARK WEST LANDSCAPE
MAINTENANCE, INC.***

Dear Representative:

We have been retained to represent Francisco Vitela-Orozco against Park West Landscape, Inc. and Park West Landscape Maintenance, Inc. (including any and all affiliates, subsidiaries, parents, directors, officers, agents, and executive employees) (collectively referred to as “Park West Landscape”) for violations of California wage-and-hour laws. Mr. Vitela-Orozco seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and all other remedies available under PAGA.

Mr. Vitela-Orozco seeks these remedies on behalf of the State of California and “aggrieved employees,” as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Park West Landscape employed Mr. Vitela-Orozco as an hourly-paid, non-exempt employee from approximately April 2011 to approximately November 2020, in the State of California.

The “aggrieved employees” that Mr. Vitela-Orozco may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the State of California.

Based on the following facts and theories, Park West Landscape has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-5-2001, and 16-2001.

Park West Landscape required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time. Such work included, but was not limited to, responding to work-related inquiries.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Vitela-Orozco and other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week. Therefore, Mr. Vitela-Orozco and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, Park West Landscape required Mr. Vitela-Orozco and other aggrieved employees to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods.

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. During the relevant time period, Park West Landscape failed to pay Mr. Vitela-Orozco and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Park West Landscape failed to pay Mr. Vitela-Orozco and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Park West Landscape did not provide Mr. Vitela-Orozco and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Park West Landscape were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Vitela-Orozco and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Vitela-Orozco and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Vitela-Orozco and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Vitela-Orozco and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Vitela-Orozco and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Park West Landscape failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Vitela-Orozco and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Park West Landscape did not provide Mr. Vitela-Orozco and other aggrieved employees with the minimum wages to which they were entitled for work performed "off-the-clock."

California Labor Code section 1198 provides that "The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001, 5-2001, and 16-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time period, Park West Landscape failed to pay Mr. Vitela-Orozco and other aggrieved employees half the usual or scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay for workdays in which Mr. Vitela-Orozco and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day's work. During the relevant time period, Park West Landscape failed to pay Mr. Vitela-Orozco and other aggrieved employees

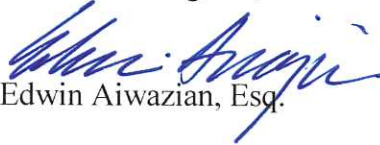
for two (2) hours at the employee's regular rate of pay on days in which Mr. Vitela-Orozco and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Vitela-Orozco and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Park West Landscape. These costs include, but are not limited to, the use of personal phones for work-related purposes, the use of personal vehicles for work-related purposes, the purchase and maintenance of clothing in compliance with the dress code, the purchase and maintenance of shoes in compliance with the dress code, and the purchase and maintenance of tools and supplies, including masks.

Therefore, on behalf of all aggrieved employees, Mr. Vitela-Orozco seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA, including civil penalties pursuant to Labor Code section 558.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,


Edwin Aiwazian, Esq.

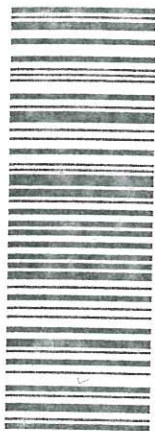
Cc: (By U.S. Certified Mail / Return Receipt Requested)

Park West Landscape, Inc.
c/o James P Tracy
Agent for Service of Process
22421 Gilberto, Suite A
Rancho Santa Margarita, CA 92688

Park West Landscape Maintenance, Inc.
c/o James P Tracy
Agent for Service of Process
22421 Gilberto, Suite A
Rancho Santa Margarita, CA 92688



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c/o James P Tracy
Agent for Service of Process
22421 Gilberto, Suite A
Rancho Santa Margarita, CA 92688

PS Form 3800, April 2015 PSN 7530-02-000-9047

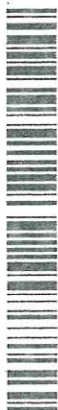
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1. Article Addressed to:

**Park West Landscape, Inc.
c/o James P Tracy
Agent for Service of Process
22421 Gilberto, Suite A
Rancho Santa Margarita, CA 92688**



9590 9402 5372 9189 8434 05

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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If YES, enter delivery address below: ☐ Yes ☐ No

Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery | |

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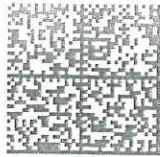
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PS Form 3800, April 2012



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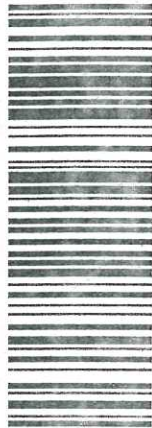
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☐ Return Receipt (electronic)	\$	
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☐ Adult Signature Required	\$	
☐ Adult Signature Restricted Delivery	\$	

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c/o James P Tracy
Agent for Service of Process
22421 Gilberto, Suite A
Rancho Santa Margarita, CA 92688

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



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1. Article Addressed to:

Park West Landscape Maintenance, Inc.
c/o James P Tracy
Agent for Service of Process
22421 Gilberto, Suite A
Rancho Santa Margarita, CA 92688



9590 9402 5372 9189 8433 99

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

delivery address different from item 1? ☐ Yes
YES, enter delivery address below: ☐ No

3. Service Type

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| ☐ Adult Signature | ☐ Priority Mail Express® |
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| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
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PS Form 3800, July 2015 PSN 7530-02-000-9053