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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

REBECCA ORR,

Plaintiff,

vs.

**UNITED PARCEL SERVICE, INC., a
corporation; and DOES 1-100, inclusive,**

Defendants.

Case No.: CVRI 2400302

**CLASS AND INDIVIDUAL ACTION
COMPLAINT**

- 1. FAILURE TO PAY REPORTING TIME
PAY**
- 2. FAILURE TO TIMELY PAY WAGES**
- 3. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 4. UNLAWFUL BUSINESS PRACTICES**
- 5. RETALIATION**

Plaintiff Rebecca Orr brings this class and individual action against United Parcel Service, Inc. and Does 1-100 for violations of the California Labor Code and the Business and Professions Code.

PARTIES

1. Rebecca Orr ("Plaintiff") is and at all times relevant herein was employed in Riverside County, California, and was an "employee" as defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

2. United Parcel Service, Inc. ("UPS") is a corporation organized and existing under the laws of the state of California which is registered to conduct business and does conduct business in California.

3. At all times relevant herein, UPS has been an “employer” as defined by the Labor Code and applicable IWC Order(s) and employed Plaintiff.

4. UPS and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants was acting as the employer, joint employer, agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

7. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of Riverside because Defendants conduct business in this County and Plaintiff has performed work for Defendants in this County. Plaintiff hereby demands a jury trial.

GENERAL ALLEGATIONS

8. UPS is a multinational shipping and receiving company with locations throughout the United States.

9. Plaintiff worked as a Seasonal Support Driver and reported to UPS's Riverside, CA and Temescal Canyon, CA locations from a mid-November 2023, until December 26, 2023.

10. Throughout her employment, Plaintiff was a non-exempt employee entitled to be paid for every hour worked and overtime as appropriate.

11. Because of their uniform and unlawful compensation system, UPS's Seasonal Support Drivers were routinely denied reporting time pay. Specifically, UPS would fail and refuse –

- 1 a. To pay Seasonal Support Drivers for half their scheduled shift (up to 4 hours) when
2 they reported to work, but were not put to work; and
3 b. To pay Seasonal Support Drivers for half their scheduled shift (up to 4 hours) when
4 they report to work but were furnished less than half of their scheduled day's work.

5 12. Because of the violations set forth above, the wage statements furnished by UPS to is
6 Seasonal Support Drivers to its non-exempt employees violated Labor Code section 226(a) insofar as
7 they failed to:

- 8 a. Accurately show the gross wages earned in violation of section 226(a)(1);
9 b. Accurately show the total number of hours worked by the employee in violation of
10 section 226(a)(2);
11 c. Accurately show the net wages earned in violation of section 226(a)(5); and
12 d. Accurately show all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate in violation of section
14 226(a)(9).

15 13. Because Plaintiff and UPS's Seasonal Support Drivers are not compensated at all or not
16 properly compensated for all of their reporting time pay, they are not timely compensated for the same
17 during each pay period and at the end of their employment.

18 14. From at least four years prior to the filing of this action, UPS has adopted and
19 employed unfair business practices. These unfair business practices include, but are not limited to,
20 failing to properly pay all reporting time pay.

21 **INDIVIDUAL ALLEGATIONS**

22 15. Plaintiff was hired by UPS on or about November 20, 2023. See **Exhibit 1**.

23 16. Plaintiff was advised that she was scheduled to work 6 hours per day, 6 days per week
24 and that she would receive text messages each morning with her routes from UPS's automated system.

25 17. Thereafter, each morning Plaintiff would receive a text messaging stating, "I have you
26 working today for ssd can you confirm your availability". See e.g., **Exhibit 2**.

1 18. When Plaintiff responded “Yes”, she would receive a text message providing her route
2 number and start time. She would also receive a text message stating her exact reporting location. See
3 e.g., **Exhibit 2**.

4 19. On December 15, 2023, at 8:57 a.m., Plaintiff received a text message indicating that
5 UPS was experiencing an increase in work volume and seeking confirmation that she could work on
6 Saturday, December 16, 2023. Plaintiff confirmed she was available. See **Exhibit 3**.

7 20. Having not received a route for December 15, 2023, Plaintiff called in to UPS for
8 clarification.

9 21. Plaintiff was advised that she was scheduled, and that UPS would call back with a
10 route.

11 22. When UPS called Plaintiff back, she was told that there was no route available.

12 23. In response, Plaintiff asked to be transferred to Human Resources.

13 24. After being transferred to Human Resources, Plaintiff inquired as to why she had not
14 been given a route. Plaintiff was told that there was not enough packages and that her route had been
15 cut. Plaintiff was also told that UPS would keep her on standby in case another route opened up.

16 25. Because she already had Human Resources on the phone, Plaintiff complained about
17 not being paid for her reporting time pay. The Human Resources representative responded that she
18 could not go back and fix timecards and abruptly ended the call.

19 26. On December 16, 2023, despite having received the text indicating UPS was
20 experiencing increased work volume and having agreed to work in response to the same, Plaintiff did
21 not receive a route.

22 27. When Plaintiff inquired as to whether she was still scheduled, she was advised that her
23 route did not come through for dispatch. UPS also apologized for the inconvenience. See Exhibit 4.

24 28. Thereafter, in retaliation for complaining about not receiving reporting time pay, and
25 despite numerous inquiries regarding route assignments, Plaintiff was not provided anymore routes
26 through UPS’s automated system. See **Exhibits 4 and 5**.

CLASS ACTION ALLEGATIONS

29. Plaintiff seeks to maintain this action as a class action as to the First through Fourth Causes of Action. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure 382. The putative classes which Plaintiff seeks to represent consist of the following:

- a. All current and former Seasonal Support Drivers who worked for UPS from January 12, 2020, through the date of trial (the “Seasonal Support Driver Class”);
- b. All current and former Seasonal Support Drivers who received a wage statement from UPS from January 12, 2023, through the date of trial (the “Wage Statement Class”); and
- c. All members of the Seasonal Support Driver Class whose employment ended between January 12, 2021, through the date of trial (the “Waiting Time Penalty Class”).

The Seasonal Support Driver Class, Wage Statement Class, and Waiting Time Penalty Class are collectively referred to as the “Class”.

30. The class of persons is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that Defendants employ more than 500 employees who satisfy the class definition. Although the exact number and identity of class members is not presently known, they can be identified in Defendants’ records through coordinated discovery pursuant to this class action.

31. This action may be maintained as a class because the questions of law and fact which are common to class members clearly predominate over any questions affecting only individual members and because a class action is superior to other available methods for adjudicating the controversy.

32. There are numerous common questions of law and fact arising out of Defendants’ conduct. This class action focuses on Defendants’ systematic failure to: (a) properly pay employees

1 for all reporting time pay; (b) provide accurate itemized wage statements, and (c) timely pay all wages
2 due and owing each pay period and at the end of employment.

3 33. Furthermore, common questions of fact and law predominate over any questions
4 affecting only individual members of the class. The predominating common or class-wide questions
5 of law and fact include the following:

- 6 a. Whether Defendants failed to pay their Seasonal Support Drivers for all of their
7 reporting time pay;
- 8 b. Whether the Defendants failed to furnish accurate itemized wage statements;
- 9 c. Whether Defendants failed to pay all wages due and owing at end of their
10 Seasonal Support Drivers' employment;
- 11 d. Whether the alleged violations constitute unfair business practices;
- 12 e. Whether the Class is entitled to injunctive relief; and
- 13 f. Whether the Class is entitled to unpaid wages, statutory penalties and/or
14 restitutionary relief, and the amount of the same.

15 34. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of
16 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
17 alleged violations of Defendants. Plaintiff's claims are typical of those of the Class because
18 Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

19 35. The defenses of Defendants, to the extent that such defenses apply, are applicable
20 generally to the whole Class and are not distinguishable as to the proposed class members.

21 36. Plaintiff will fairly and adequately protect the interests of all members of the Class, and
22 has retained attorneys with extensive experience in litigation, including class and representative
23 actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and
24 adequately protect the interests of all members of the class because it is in her best interest to
25 prosecute the claims alleged herein in order to obtain the full compensation due himself and the other
26 class members.

27 37. A class action is superior to any other method available for fairly and efficiently
28 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)

1 litigating the claims of individual class members would be unnecessarily costly and burdensome and
2 would deter individual claims, 3) litigating the claims of individual class members would create a risk
3 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
4 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
5 bring individual claims, 5) class members would be discouraged from pursuing individual claims
6 because the damages available to them are relatively small, and 6) public policy encourages the use of
7 the class actions to enforce employment laws and protect individuals who, by virtue of their
8 subordinate position, are particularly vulnerable.

9 38. Judicial economy will be served by maintenance of this lawsuit as a class action. To
10 process numerous virtually identical individual cases will significantly increase the expense to and
11 burden on the Court, the class members, and Defendants, all while unnecessarily delaying the
12 resolution of this matter. There are no obstacles to effective and efficient management of this lawsuit
13 as a class action by this Court and doing so will provide multiple benefits to the litigating parties
14 including, but not limited to, efficiency, economy, and uniform adjudication with consistent results.

15 39. Notice of a certified class action and any result or resolution of the litigation can be
16 provided to class members by mail, email, publication, or such other methods of notice as deemed
17 appropriate by the Court.

18 **FIRST CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE § 1194, 8 C.C.R. § 11090, AND IWC WAGE ORDERS.**
20 **(Failure to Pay Reporting Time Pay)**
Against Defendants

21 40. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 41. Pursuant to California Labor Code section 1194, any employee receiving less than the
25 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
26 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
27 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

1 42. Pursuant to California Code of Regulations, title 8, Section 11090, Subsection 5, each
2 workday an employee is required to report for work and does report, but is not put to work or is
3 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for
4 half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four
5 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

6 43. Pursuant to the IWC Wage Orders, including IWC Wage Order No. 9, Subsection 5,
7 each workday an employee is required to report for work and does report, but is not put to work or is
8 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for
9 half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four
10 (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

11 44. During the relevant time period, and as explained more fully in the preceding
12 paragraphs, Plaintiff and Defendants' other Seasonal Support Drivers were regularly denied reporting
13 time pay.

14 45. During the relevant time period, Defendants intentionally and willfully failed to pay
15 Plaintiff and their Seasonal Support Drivers the proper reporting time pay wages due to them.

16 46. Wherefore, Plaintiff and the other members of the Seasonal Support Driver Class have
17 been injured as set forth above and request relief as hereafter provided.

18 **SECOND CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE §§ 201, ET SEQ.**
20 **(Failure to Pay All Wages Due and Owing at End of Employment)**
 Against Defendants

21 47. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 48. California Labor Code section 201 provides that if an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

26 49. California Labor Code section 202 requires an employer to pay an employee all earned
27 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
28 quitting if the employee has given 72 hours previous notice of his or her intention to quit.

1 50. As set forth above, Plaintiff and Defendants' other Seasonal Support Drivers were not
2 timely paid all of their earned wages during employment, including reporting time pay. As a result,
3 there were necessarily outstanding and unpaid wages due and owing when their employment with
4 Defendants ended. Those wages remain outstanding.

5 51. Wherefore, Plaintiff and the other members of the Waiting Time Penalty Class have
6 been injured as set forth above and request relief as hereafter provided.

7 **THIRD CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 226(a)**
9 **(Failure to Furnish Accurate Itemized Wage Statements)**
 Against Defendants

10 52. Plaintiff hereby realleges and incorporates by reference each and every allegation set
11 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
12 allegations of this cause of action.

13 53. Pursuant to California Labor Code section 226(a) "every employer shall, semimonthly
14 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
15 part of the check, draft, or voucher paying the employee's wages, or separately when the wages are
16 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
17 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and
18 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
19 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
20 employee and only the last four digits of his or her social security number or an employee
21 identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all
22 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
23 each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate
24 of pay and the total hours worked for each temporary services assignment."

25 54. An employee suffering injury as a result of the knowing and intentional failure by an
26 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
27 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
28 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate

1 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
2 attorney's fees. Labor Code § 226(e)(1).

3 55. An employee is deemed to suffer injury if the employer fails to provide a wage
4 statement or if the employer fails to provide accurate and complete information as required by any one
5 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
6 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
7 during the pay period or any of the other information required to be provided pursuant to Labor Code
8 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
9 name and address of the employer and iv) the name of the employee and the last four digits of his or
10 her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-
11 (iv). "Promptly and easily determine" means a reasonable person would be able to readily ascertain
12 the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

13 56. As set forth above, Defendants intentionally and willfully failed to furnish accurate
14 itemized wage statements which complied with Labor Code section 226.

15 57. Wherefore, Plaintiff and the other members of the Wage Statement Class have been
16 injured as set forth above and request relief as hereafter provided.

17 **FOURTH CAUSE OF ACTION**
18 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 ET SEQ.**
19 **(Unfair Business Practices)**
Against Defendants

20 58. Plaintiff hereby realleges and incorporates by reference each and every allegation set
21 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
22 allegations of this cause of action.

23 59. The statutory violations, as alleged above, are unfair business practices within the
24 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq*), and
25 include, but are not limited to failing to properly pay reporting time pay.

26 60. Wherefore, Plaintiff and the other members of the Seasonal Support Driver Class have
27 been damaged as set forth above and request relief as hereafter provided.
28

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 98.6 and 1102.5
(Retaliation)
Against Defendants

61. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

62. Labor Code section 98.6, subdivision (a) provides that “[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

63. Labor Code section 1102.5, subdivision (b) expressly prohibits an employer, or anyone acting on behalf of an employer, from retaliating against an employee for disclosing/reporting information about alleged violation/non-compliance with a state or federal statute, rule, or regulation to any person with authority over the employee.

64. Nevertheless, as set forth above, Defendants retaliated against Plaintiff because she exercised rights provided under the Labor Code and complained about violations of the law.

65. As a direct and proximate result of Defendants’ conduct, Plaintiff has been harmed and requests relief as hereafter provided.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

3 **As to the First through Fourth Causes of Action:**

- 4 1. That this Court certify the Class;
- 5 2. That this Court appoint Plaintiff as representative of the Class;
- 6 3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
- 7 4. That this Court award actual, compensatory, special, and general damages as well as
- 8 restitutionary relief to Plaintiff and the members of the Class;
- 9 5. That this Court award injunctive relief, including that available under Labor Code
- 10 sections 226(h) and Business and Professions Code Section 17203;
- 11 6. That this Court award penalties and liquidated damages including, but not limited to,
- 12 those available under Labor Code sections 203, 226 and 1194.2;
- 13 7. That this Court award statutory attorneys' fees and costs, including those available
- 14 under Labor Code sections 218.5, 226(e)(1), and 1194 as well as Code of Civil
- 15 Procedure section 1021.5;
- 16 8. That this Court award prejudgment and post-judgment interest according to any
- 17 applicable provision of law or as otherwise permitted by law; and
- 18 9. That this Court award such other and further relief as the court deems just and proper.

19 **As to the Fifth Cause of Action:**

- 20 2. For economic (special) and non-economic (general) damages in an amount yet unknown,
- 21 but in excess of the minimum jurisdictional limit of this Court;
- 22 3. For injunctive relief;
- 23 4. For punitive and/or exemplary damages;
- 24 5. Civil Penalties under Labor Code sections 98.6 and 1102.5;
- 25 6. For statutory attorneys' fees and costs, including those available under Labor code sections
- 26 98.6, 1102.5;
- 27
- 28

- 1 7. For prejudgment and post-judgment interest according to any applicable provision of law
2 or as otherwise permitted by law, including that available under Civil Code sections
3 3287(a) and 3289(b);
4 8. For such other and further relief as the Court deems just and proper.
5

6 **DATED:** January 16, 2023

MAYALL HURLEY P.C.

7
8 By 
9 ROBERT J. WASSERMANN
10 JENNY D. BAYSINGER
11 Attorneys for Plaintiff and the Putative Class
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EXHIBIT 1



Monday, Nov 20 • 6:56 PM

Texting with Ups (SMS/MMS)

Welcome to our UPS team. For your convenience, we can communicate your daily work assignment via text message.

If you prefer to no longer receive messages from this company, please respond with STOP.

Your UPS Coordinator is VIVIAN BENN and can be called at 9514196691 if you have any questions.

Please read the UPS Terms and Conditions and UPS photo language: <https://bit.ly/2LEVjY6>



Tap to load preview



If you agree to UPS



Text message



EXHIBIT 2



Ups



Friday, Nov 24 • 7:36 AM

I have you working today for ssd
can you confirm yes for availability

Yes

Your route assignment is route J13.
Start time is approximately 11:00.

Meet at 11C UPS STORE: 231 E
ALESSANDRO BLVD, RIVERSIDE, CA,
92508. Reply "Yes" or "No".

Yes

Your daily safety reminder is:
"Use horn, lights, and signals to
communicate intentions link:"

Friday, Nov 24 • 10:14 AM

GOOD MORNING SEASONAL
DRIVERS. This is just an update
message for you to be reminded to



Text message



EXHIBIT 3



Ups



Friday, Dec 15 • 8:57 AM

Good Morning- As expected, we have an increase in work volume and would like to have you working TOMORROW Saturday 12/16/23. Are you available? Please Reply "YES" or "NO" to ACCEPT work assignment. Thank you- Vivian (Orange Crest)

Friday, Dec 15 • 10:13 AM

YES

Also was my route not available for today?

Saturday, Dec 16 • 11:56 AM

Hey there I called in they said I was scheduled today, but I haven't received my route.Am I still scheduled?

Your route didn't c ↓ through for dispatch. Our apologies for



Text message



EXHIBIT 4



Ups



Saturday, Dec 16 • 11:56 AM

Hey there I called in they said I was scheduled today, but I haven't received my route.Am I still scheduled?

Your route didn't come through for dispatch. Our apologies for any inconvenience this may have caused. - Vivian

Monday, Dec 18 • 10:00 AM

Hey is there any work available for today even if it's not my route

Saturday, Dec 23 • 9:45 AM

Hey there is the any work available for today

Wednesday, Dec 27 • 12:31 PM



Text message



EXHIBIT 5



Ups



Wednesday, Dec 27 • 12:31 PM

Is seasonal still going?

GOOD MORNING. THANK YOU FOR BEING A GREAT PART OF THE PEAK SEASON WITH UPS!! THE SEASON IS OFFICIALLY OVER. *** UPS Orange Crest

So you know Vest was turned in to jd baker at customer service center
20701 KRAMERIA ave 1:45 pm
12/27/23 by Rebecca orr.

Friday, Dec 29 • 11:40 AM

Peak Season has Officially Come to a Close. GREAT JOB AND THANK YOU for being a part of UPS Orange Crest SSD 2023 Team! We look forward to working with you again in the future. Wishing you all the best in 2024!

11:40 AM



Text message

