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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTHONY FREY, a Washington resident, on  
behalf of himself and all others similarly  
situated,

Plaintiff,

v.

3PD, INC. d/b/a 3PD WASHINGTON, INC., a  
Georgia Corporation,

Defendant.

NO.

**C 08-0630** JCC

**CLASS ACTION COMPLAINT FOR  
DAMAGES, RESTITUTION, AND  
INJUNCTIVE RELIEF**

Plaintiff Anthony Frey ("Plaintiff" or "Frey"), by his undersigned attorneys, for his class action complaint against defendant 3PD, Inc., d/b/a 3PD Washington, Inc. ("Defendant" or "3PD"), alleges as follows:

**INTRODUCTION**

1.1 Nature of Action. Plaintiff brings this action against 3PD for willfully misclassifying Plaintiff and the members of the Class as independent contractors rather than employees, in violation of Washington State law. As a result, 3PD has willfully failed to pay Plaintiff and the members of the Class overtime compensation they are due. In addition, 3PD has made wrongful deductions from the paychecks of Plaintiff and the members of the Class in violation of Washington State law.

CLASS ACTION COMPLAINT FOR  
DAMAGES, RESTITUTION AND  
INJUNCTIVE RELIEF - 1

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**JURISDICTION AND VENUE**

2.1 Jurisdiction. This Court has subject matter jurisdiction over all claims asserted in this action pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1367. The matter in controversy for each of Plaintiff's claims against 3PD exceeds, exclusive of interest and costs, the sum of \$75,000. In addition, the matter in controversy for Plaintiff's and the Class members' claims against 3PD exceeds, exclusive of interest and costs, the sum of \$5,000,000.

2.2 Venue. Venue in the Western District of Washington is proper because 3PD resides and transacts business in this District and Plaintiff performed work for Defendant in this District.

**PARTIES**

3.1 Plaintiff Anthony Frey. Frey, who resides in Oak Harbor, Washington, worked for 3PD in the state of Washington from September 2, 2005 to February 28, 2008 and performed work for 3PD in King County. At all times, 3PD misclassified Plaintiff Frey as an independent contractor, failed to pay him earned overtime, and made wrongful deductions from his paychecks.

3.2 Defendant 3PD. 3PD is a Georgia corporation with its headquarters in Marietta, Georgia. 3PD is registered to do and does business throughout the State of Washington, including King County. 3PD employs hundreds of individuals in Washington State to provide home delivery services for major retailers such as Home Depot and Sears (the "Drivers"). 3PD employed Plaintiff as a delivery driver in the State of Washington. On January 1, 2006, 3PD Delivery, LLC merged with Dedicated Delivery & Install Services, Inc., and changed its name to 3PD Delivery, Inc. On January 1, 2008, 3PD Delivery, Inc. merged with CRT Corporation and changed its name to 3PD, Inc. As a result of the mergers of January 1, 2006 and January 1, 2008, Defendant 3PD acquired each and every liability of 3PD Delivery, LLC and 3PD Delivery, Inc., the predecessor entities that each employed Plaintiff for a portion of the time relevant to this Complaint.

1 **CLASS ACTION ALLEGATIONS**

2 4.1 Class Definition: Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings  
3 this case as a class action on behalf of a Class defined as follows:

4 All Drivers who provided delivery services for 3PD in the State of  
5 Washington from April 24, 2005 through the final disposition of  
this action (the "Class Period").

6 Excluded from the Class are 3PD, any entity in which 3PD has a controlling interest or which  
7 has a controlling interest in 3PD, and 3PD's legal representatives, assignees, and successors.

8 Also excluded are the judge to whom this case is assigned and any member of the judge's  
immediate family.

9 4.2 Numerosity. Plaintiff believes there are hundreds of current and former Drivers.  
10 The members of the Class are so numerous that joinder of all members is impracticable.  
11 Moreover, the disposition of the claims of the Class in a single action will provide substantial  
12 benefits to all parties and the Court.

13 4.3 Commonality. Pursuant to Fed. R. Civ. P. 23(a)(2) and (a)(3), there are numerous  
14 questions of law or fact common to Plaintiff and the Class members. These questions include,  
but are not limited to, the following:

15 4.3.1 Whether Plaintiff and the Class members are or were employed by  
16 Defendant;

17 4.3.2 Whether 3PD has engaged in a common course of failing to reimburse  
18 Plaintiff and the Class for Defendant's business expenses;

19 4.3.3 Whether 3PD has engaged in a common course of failing to pay Plaintiff  
20 and the Class overtime compensation for hours worked in excess of forty (40) per week;

21 4.3.4 Whether 3PD has engaged in a common course of failing to maintain true  
and accurate time records for all hours worked by Plaintiff and the Class;

22 4.3.5 Whether 3PD has violated RCW 49.46.130;

- 1 4.3.6 Whether 3PD has violated RCW 49.48.010;  
2 4.3.7 Whether 3PD has violated 49.52.050;  
3 4.3.8 Whether 3PD has violated 49.12.450;  
4 4.3.9 Whether 3PD has violated RCW 49.52.060;  
5 4.3.10 Whether 3PD has violated WAC 296-126-025;  
6 4.3.11 Whether 3PD has violated WAC 296-126-028;  
7 4.3.12 Whether the actions of 3PD are applicable to the Class as a whole,

8 entitling Class members to injunctive relief;

9 4.3.13 Whether 3PD has knowingly engaged in a common course of  
10 intentionally or recklessly misleading Plaintiff and the Class as to their status as independent  
11 contractors; and

12 4.3.14 The nature and extent of class-wide injury and the measure of  
13 compensation for such injury.

14 4.4 Typicality. The claims of the representative Plaintiff are typical of the claims of  
15 the Class. Plaintiff was a Driver for 3PD and is a member of the proposed Class. Plaintiff's  
16 claims, like the claims of the Class, arise out of the same common course of conduct by 3PD and  
17 are based on the same legal and remedial theories.

18 4.5 Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.  
19 Plaintiff has retained competent and capable attorneys who are experienced trial lawyers with  
20 significant experience in complex and class action litigation, including employment law.  
21 Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the  
22 Class and have the financial resources to do so. Neither Plaintiff nor his counsel have interests  
23 that are contrary to or that conflict with those of the proposed Class.

24 4.6 Predominance. 3PD has engaged in a common course of wage and hour  
violations toward Plaintiff and members of the Class in that 3PD willfully treated all Drivers as

1 independent contractors when in fact they were employees under Washington State law. The  
2 common issues arising from this conduct that affect Plaintiff and members of the Class  
3 predominate over any individual issues. Adjudication of these common issues in a single action  
4 has important and desirable advantages of judicial economy.

5 4.7 Superiority. Plaintiff and Class members have suffered and will continue to  
6 suffer harm and damages as a result of 3PD's unlawful and wrongful conduct. Absent a class  
7 action, however, most Class members likely would find the cost of litigating their claims  
8 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation  
9 because it conserves judicial resources, promotes consistency and efficiency of adjudication,  
10 provides a forum for small claimants, and deters illegal activities. Plaintiff and his counsel are  
11 unaware of any litigation that has already been commenced concerning 3PD's wage and hour  
12 violations in Washington. Litigation of the claims should occur in this Court as all claims are  
13 brought under Washington law. There will be no significant difficulty in the management of this  
14 case as a class action. The Class members are readily identifiable from 3PD's records.

15 4.8 Appropriateness of Injunctive and Declaratory Relief. 3PD has acted on grounds  
16 generally applicable to the Class, thereby making final injunctive relief or corresponding  
17 declaratory relief appropriate with respect to the Class as a whole. Prosecution of separate  
18 actions by individual members of the Class would create the risk of inconsistent or varying  
19 adjudications with respect to individual members of the Class that would establish incompatible  
20 standards of conduct for 3PD.

## 21 SUMMARY OF FACTUAL ALLEGATIONS

22 5.1 Common Course of Conduct. 3PD has engaged in, and continues to engage in, a  
23 common course of wage and hour violations against its Drivers in the State of Washington.

24 5.2 Throughout the Class Period, 3PD has employed hundreds of Drivers in the State  
of Washington.

1           5.3     3PD requires each prospective Driver to fill out an application, which requests  
2 information such as his or her employment history, driver's licenses and accident history, and  
3 personal references. The application also asks whether the Driver is currently working for  
4 another employer and whether he or she intends to continue to work for another employer while  
5 employed by 3PD.

6           5.4     3PD also requires prospective Drivers to undergo a physical examination and to  
7 submit to drug and alcohol testing. 3PD's Drivers must agree to continue to submit to drug and  
8 alcohol testing whenever requested by 3PD throughout their employment.

9           5.5     3PD furnishes its Drivers with a vehicle or vehicles to use throughout their  
10 employment (the "Vehicles").

11           5.6     3PD furnishes its Drivers with additional equipment necessary for their work,  
12 such as straps, hand trucks and pallet jacks, cellular phones and other devices such as scanners.

13           5.7     3PD also furnishes its Drivers with fuel cards, which can only be used to fill up  
14 the Vehicles. The Drivers can use the fuel cards to pay at the pump only, and can use the fuel  
15 cards no more than ten times weekly. Alternatively, the Drivers are given a weekly cash payment  
16 for fuel that does not vary depending upon how much the Driver actually spends for fuel each  
17 week.

18           5.8     3PD also furnishes its Drivers with uniforms that they are required to wear at all  
19 times when working for Defendant. Each Driver's initial uniform package consists of five shirts  
20 with 3PD Delivery embroidered on them, one sweatshirt, one jacket and one hat.

21           5.9     3PD requires its Drivers to make deliveries for a single 3PD customer, such as  
22 Home Depot, and to a specific store or group of stores.

23           5.10    3PD pays its Drivers either a fixed amount weekly or by commission. 3PD  
24 decides which method of payment will be utilized. Drivers are not able to choose the method of  
25 payment. The amount of the weekly payment or commission is not negotiable, nor are the  
26 amounts of various chargebacks that 3PD deducts from its Drivers' weekly paychecks.

1           5.11   The Drivers' weekly paychecks are deposited by direct deposit into their bank  
2 accounts. Alternatively, if a Driver prefers to receive payment by check, that Driver is charged a  
3 \$20 weekly fee, which 3PD deducts from the Driver's weekly paycheck.

4           5.12   Once employed by 3PD, the Drivers are required to strictly conform to 3PD  
5 standards. 3PD's "Contract Driver Guide Book" explains 3PD's expectations: "At 3PD, we don't  
6 have 'Drivers'; we have Customer Care Delivery Specialists waiting to provide service, that's  
7 the difference!" 3PD explains that it distinguishes itself from its competitors, because:

8           • Our quality Customer Care Delivery Specialists are uniformed, professionally trained,  
9 and focused on leaving a positive impression!

10          • Our logistics professionals are committed to developing creative delivery, truckload and  
11 warehouse solutions that add bottom-line value to our customers.

12          • Management and maintenance of our own fleet guarantees clean, well maintained  
13 vehicles from delivery vans to box trucks to tractor trailers.

14          • Cutting edge technology that works for you and helps save our customers money by  
15 providing 'real time' tracking and routine information for every delivery.

16           5.13   3PD controls all key aspects of the Drivers' work.

17           5.14   Single Customer. Each Driver makes deliveries for a single 3PD customer, such  
18 as Home Depot or Sears. 3PD's Drivers are prohibited from using the Vehicles that they lease or  
19 purchase from 3PD to offer any non-3PD delivery services.

20           5.15   Hours and days worked. 3PD requires its Drivers to be available to make  
21 deliveries six (6) days a week, Monday through Saturday, for ten (10) hours each day. 3PD  
22 retains the right to order its Drivers to work holidays and days after holidays (such as the Friday  
23 after Thanksgiving). Failure to work on these required days can result in termination of the  
24 Driver by 3PD.

1           5.16 Exclusive Employment. Plaintiff and members of the Class are not able to make  
2 deliveries for any company or customers other than 3PD, because: (1) 3PD prohibits its Drivers  
3 from using the Vehicles that they lease or purchase from 3PD to offer any non-3PD delivery  
4 services; and (2) 3PD requires its Drivers to be available to make deliveries for it ten (10) hours  
5 per day, six (6) days per week, leaving no time to make deliveries for any company or customer  
6 other than 3PD.

7           5.17 Authority over work assignments. Each Driver is assigned to a specific store or  
8 stores by 3PD. 3PD assumes complete authority over which store or stores each Driver services.  
9 3PD's Drivers are not permitted to exchange assignments among themselves.

10          5.18 Authority over work load. 3PD exercises total control over the workload of its  
11 Drivers, including how many deliveries each Driver makes and when the deliveries are made  
12 each day. Drivers are not permitted to decline delivery assignments. If a Driver refuses to accept  
13 a delivery assignment, that Driver may be subject to discipline and possible termination by 3PD.  
14 Drivers are continuously evaluated regarding their adherence to 3PD standards regarding when  
15 pick-ups and deliveries are made, such as whether they were on time for store pick-ups, whether  
16 they routed their stops in a manner that 3PD deemed efficient, whether they loaded sufficiently  
17 quickly, whether they called in any anticipated delays to dispatch, whether they called each  
18 customer thirty (30) minutes prior to delivery, and whether they honored special time requests.

19          5.19 No Substitute Drivers. Drivers are not permitted to allow persons who are not  
20 pre-approved by 3PD to assume their job duties even temporarily. 3PD exercises its power to set  
21 eligibility requirements for Drivers' assistants, as well as its power to control whom its Drivers  
22 hire and fire. All assistants must undergo 3PD's requisite criminal background checks, drug  
23 screening and DOT physical examinations.

24          5.20 Appearance. Drivers are required to wear 3PD uniforms, without any variance.  
Their uniforms carry the 3PD logo, and can be purchased only from the 3PD Company Store.  
The cost of the uniforms is deducted from the Drivers' weekly pay. Drivers are evaluated by

1 3PD on their adherence to 3PD requirements regarding appearance, such as whether they are  
2 wearing the 3PD uniform, their shirt is buttoned, their shirt tail is tucked in; their hair is  
3 groomed, their I.D. badge is visible, they are wearing only 3PD approved logos, and whether  
4 they generally appear "neat and clean".

5 5.21 Vehicles. The Drivers purchase or lease the Vehicles from 3PD. All Vehicles  
6 used by Drivers must conform to specific criteria set forth by 3PD, which makes them unsuitable  
7 for work other than for 3PD. 3PD's specifications include the type and color of Vehicle, and the  
8 Vehicles must be marked with insignia or other markings to identify the Vehicle as being part of  
9 3PD's system. As a result, the Vehicles are clearly identifiable as belonging to 3PD.

10 5.22 Maintenance of Vehicles. 3PD controls when and how the Vehicles used by its  
11 Drivers are maintained. A recurring fee for Vehicle maintenance is deducted from each Driver's  
12 weekly paycheck. In addition, Drivers are required to adhere to 3PD standards regarding  
13 equipment maintenance, such as whether all equipment is clean and in good condition, whether  
14 the cab is organized and clean, the side box secured properly, and whether decals are in good  
15 condition.

16 5.23 Manner of Work. 3PD requires its Drivers to follow specific instructions as to  
17 how to load, transport and unload shipments. Drivers are evaluated by 3PD regarding their  
18 adherence to 3PD approved delivery techniques, such as: how they exit their cabs; how they use  
19 a forklift; how they complete their trip sheets; how they strap and unstrap their loads; how they  
20 carry their loads; and even whether they display a sufficient "sense of urgency" in completing  
21 their tasks.

22 5.24 Termination at will. During the period March 21, 2002 until approximately  
23 September 2006, 3PD required that Drivers provide thirty (30) days' written notice prior to  
24 terminating their employment with 3PD. If the Drivers failed to provide that notice, 3PD  
required the Drivers to pay \$2,000 as liquidated damages. However, 3PD retained to itself the  
right to terminate its Drivers without notice if they failed to adhere to any of their numerous

1 obligations under the Agreements, which in practice amounted to the ability to terminate Drivers  
2 at will. Beginning approximately September 2006, 3PD required that Drivers provide seven (7)  
3 days' written notice prior to terminating their employment with 3PD. 3PD again retained to  
4 itself the ability to terminate Drivers unilaterally without notice if they failed to adhere to any  
5 one of numerous obligations, which in practice amounted to the ability to terminate Drivers at  
6 will. Throughout the Class Period, in practice, 3PD was able to and did terminate Drivers at will.

7 5.25 No potential for entrepreneurial risks and rewards. Throughout the Class Period,  
8 3PD's Drivers were compensated on a highly structured system that gave them no ability to  
9 exercise entrepreneurship or otherwise engage in the risks and rewards associated with owning a  
10 business. Accordingly, its Drivers were paid either a flat weekly rate or a set commission, as  
11 determined by 3PD, with no opportunity to negotiate individually for a higher rate or  
12 commission amount.

13 5.26 No opportunity to compete. Throughout the Class Period, 3PD's Drivers were  
14 prohibited from using the Vehicles to offer delivery services independent from the services that  
15 they were required to provide for 3PD.

16 5.27 "Company store." Throughout the Class Period, 3PD's Drivers received weekly  
17 paychecks from 3PD. Prior to issuing these checks, 3PD deducted various compulsory expenses  
18 from its Drivers' weekly pay. These business expenses included uniforms and a fee for Vehicle  
19 maintenance that Drivers were permitted to obtain only from 3PD. The amounts deducted for  
20 these expenses were not negotiable.

21 5.28 Required insurance. Throughout the Class Period, 3PD required its Drivers  
22 obtain specific types and levels of insurance. The Drivers purchased their insurance through  
23 3PD and 3PD deducted a weekly amount from their paychecks for insurance. The amounts  
24 deducted for insurance were not negotiable. 3PD did not provide its Drivers with a copy of the  
insurance policies.

1           5.29   Drug and Alcohol Testing. Throughout the Class Period, 3PD's Drivers were  
2 required to submit to drug and alcohol testing administered whenever and wherever dictated by  
3 3PD.

4           5.30   Interaction with Customers. Throughout the Class Period, 3PD required that its  
5 Drivers adhere to strict protocols regarding how to interact with customers. Drivers were  
6 evaluated on their adherence to 3PD customer courtesy standards, such as whether they greeted  
7 customers initially, thanked customers for their business, made eye contact, whether they ever  
8 said "No" to a customer, and whether they were perceived as friendly, patient, polite and  
9 respectful.

10          5.31   Mandatory Meetings. Throughout the Class Period, 3PD required its Drivers to  
11 participate in regular meetings with 3PD managers, during which time 3PD instructed its Drivers  
12 regarding their performance and any changes in 3PD's protocols.

13          5.32   Requisite Paperwork. Throughout the Class Period, 3PD required its Drivers to  
14 complete a daily log of each delivery that they made each day and to obtain each customer's  
15 signature on the log. Drivers were instructed as to precisely how to complete the log. The  
16 Drivers were required to return the form to 3PD at the end of each business day. Drivers were  
17 also required to provide 3PD with fuel purchase receipts, accident reports, overage shortage and  
18 damage reports, and other reports.

19          5.33   Evaluation by 3PD. Throughout the Class Period, Drivers were evaluated by 3PD  
20 on their adherence to strict 3PD requirements including: their appearance, their interactions with  
21 customers, how they maintained their equipment, when their pick-ups and deliveries were made,  
22 and the techniques they used for accomplishing deliveries. 3PD documented its Drivers'  
23 adherence to these and other standards and scored each Driver on his or her performance. If a  
24 Driver's overall performance fell below a certain score, 3PD asserted its right to deduct fines  
from that Driver's weekly paycheck. In addition, 3PD's Drivers could be subject to termination  
if they failed to achieve a certain score.

1           5.34    3PD engages in a fraud designed to make its Drivers appear to be running  
2 independent businesses, when in reality its Drivers are 3PD employees. For example, throughout  
3 the Class Period, 3PD required each of its prospective Drivers to sign a uniform contract with  
4 3PD (hereinafter referred to as the “Agreements”) without negotiation as a condition of  
5 employment.

6           5.35    The Agreements are contracts of adhesion, drafted exclusively by 3PD and/or its  
7 legal counsel.

8           5.36    The Agreements purport to classify 3PD’s Drivers as independent contractors so  
9 as to conceal the true nature of the relationship between 3PD and its Drivers, i.e., that of  
10 employer and employees.

11           5.37    The Agreements are, and at all material times have been unlawful,  
12 unconscionable and fraudulent in form and effect.

13           5.38    To fraudulently conceal the true nature of its relationship with its Drivers, during  
14 the Class Period 3PD has required its Drivers to obtain business licenses. If a prospective Driver  
15 did not have a business license, 3PD would obtain a business license for that Driver.

16           5.39    Similarly, during the Class Period, 3PD required its Drivers to have a business  
17 card. If a prospective Driver did not have a business card, 3PD would create a prototype of a  
18 business card, which was then scanned and inserted into the prospective Driver’s application  
19 materials. The Drivers do not actually use business cards, as they work for 3PD full-time and are  
20 prohibited from performing delivery services for the general public.

21           5.40    As another example of 3PD’s effort to fraudulently conceal the true nature of its  
22 relationship with the Drivers, during April 2006, 3PD sent a communication to its Drivers,  
23 stating that, “[b]ecause of recent court rulings 3PD must take quick action to define their  
24 employees from the contract Drivers, by doing this all contract drives [sic.] must show that they  
are either a LLC, (Limited Liability Company) or they must show that they are a Corporation.”  
3PD recommended that its Drivers use one of two firms to set up their corporation or LLC, and

1 also provided its Drivers with an estimate of the cost of setting up a corporation or LLC. If a  
2 Driver used one of the two recommended firms, 3PD agreed to front the cost of forming a  
3 corporation or LLC for the Driver and then deduct that cost from the Driver's weekly paychecks.

4 5.41 Throughout the Class Period, 3PD required each Driver to "purchase" certain  
5 items, which were properly 3PD's business expenses, such as vehicle insurance and maintenance  
6 fees, drug testing, cellular telephones, and business uniforms. All of these "purchases" were  
7 from 3PD itself, and an amount for each item was deducted by 3PD from each Driver's gross  
8 pay. The Drivers could not negotiate the amounts that were deducted for each of 3PD's business  
9 expenses. Thus, 3PD attempted to create the appearance that its Drivers were paying for their  
10 own tools and equipment used in the course of their purportedly independent businesses, whereas  
in reality 3PD improperly forced its Drivers to pay for 3PD's own business expenses.

#### 11 **FIRST CLAIM FOR RELIEF**

#### 12 **(Violation of RCW 49.46.130 — Failure to Pay Overtime Wages in Violation of 13 Washington Minimum Wage Act)**

14 6.1 Plaintiff realleges and incorporates by reference each and every allegation set  
15 forth in the preceding paragraphs.

16 6.2 RCW 49.46.130 provides that "no employer shall employ any of his employees  
17 for a workweek longer than 40 hours unless such employee receives compensation for his  
18 employment in excess of the hours above specified at a rate not less than one and one-half times  
19 the regular rate at which he is employed."

20 6.3 By the actions alleged above, 3PD has violated the provisions of RCW 49.46.130.

21 6.4 As a result of the unlawful acts of 3PD, Plaintiff and the Class have been deprived  
22 of compensation in amounts to be determined at trial and pursuant to RCW 49.46.090, Plaintiff  
23 and the Class are entitled to recovery of such damages, including interest thereon, as well as  
24 attorneys' fees and costs.

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**SECOND CLAIM FOR RELIEF**

**(Violation of RCW 49.12.450 — Wrongful Wage Deductions for Uniform Expenses)**

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7.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

7.2 RCW 49.12.450 provides that employers may not make deductions from employee wages for uniforms.

7.3 By the actions alleged above, 3PD has made wrongful deductions for uniforms from the wages of Plaintiff and Class members.

7.4 As a result of the wrongful acts of 3PD, Plaintiff and Class members have been deprived of compensation in amounts to be determined at trial. Plaintiff and Class members are entitled to recovery of such damages, including interest thereon, as well as, pursuant to RCW 49.48.030, attorneys' fees and costs.

**THIRD CLAIM FOR RELIEF**

**(Violation of RCW 49.52.050, RCW 49.52.060 and, and WAC 296-126-028 - Wrongful Deductions From On-going Wages)**

8.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

8.2 Pursuant to RCW 49.52.050, RCW 49.52.060 and WAC 296-126-028, an employer may not make deductions from an employee's wages except in limited circumstances.

8.3 As described above, Defendant willfully violated Washington law in that it unlawfully withheld monies from the compensation earned by Plaintiff and the Class members for uniforms and for 3PD's own business expenses, including but not limited to:

- a. the purchase or lease of Vehicles meeting Defendant's specifications;
- b. all costs of operating, insuring and maintaining those Vehicles, including the cost of fuel;
- c. the purchase of company uniforms;

- d. the purchase of equipment used for deliveries, such as straps, hand trucks, and pallet jacks;
- e. the cost of obtaining Department of Transportation medical certification; and
- f. the cost of pre-employment, random or other drug or alcohol screening.

8.4 Such deductions were not for the Plaintiff's or the Class members' benefit. Defendant has failed to identify and record all such wage deductions openly and clearly in Plaintiff's and the Class members' payroll records.

8.5 As a result of Defendant's willful misconduct, Plaintiff and the Class members have been deprived of compensation in amounts to be determined at trial and pursuant to RCW 49.52.070, Plaintiff and Class members are entitled to recovery of twice the amount of such wages wrongfully withheld, including interest thereon, as well as attorneys' fees and costs.

**FOURTH CLAIM FOR RELIEF**  
**(Violation of RCW 49.48.010 and WAC 296.126.025 — Failure to Pay Wages Owed)**

9.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

9.2 RCW 49.48.010 provides that "[w]hen any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period." The statute further provides that it shall be unlawful "for any employer to withhold or divert any portion of an employee's wages."

9.3 By the actions alleged above, 3PD violated the provisions of RCW 49.48.010 and WAC 296.126.025.

9.4 As a result of 3PD's unlawful acts, Plaintiff and Class members have been deprived of compensation in amounts to be determined at trial. Plaintiff and Class members are

1 entitled to recovery of such damages, including interest thereon, as well as, pursuant to RCW  
2 49.48.030, attorneys' fees and costs.

3 **FIFTH CLAIM FOR RELIEF**  
4 **(Violation of RCW 49.52.050 — Willful Refusal to Pay Wages)**

5 10.1 Plaintiff realleges and incorporates by reference each and every allegation set  
6 forth in the preceding paragraphs.

7 10.2 RCW 49.52.050 provides that any employer who, “[w]ilfully and with intent to  
8 deprive the employee of any party of his wages, shall pay any employee a lower wage than the  
9 wage such employer is obligated to pay such employee by any statute, ordinance, or contract”  
10 shall be guilty of a misdemeanor. The statute further provides that any employer who “[s]hall  
11 collect or receive from any employee a rebate of any part of wages theretofore paid by such  
12 employer to such employee” shall be guilty of a misdemeanor.

13 10.3 Violations of RCW 49.46.130, as discussed above, constitute violations of  
14 RCW 49.52.050.

15 10.4 RCW 49.52.070 provides that any employer who violates the provisions of  
16 RCW 49.52.050 shall be liable in a civil action for twice the amount of wages withheld,  
17 attorneys' fees, and costs.

18 10.5 As a result of the willful, unlawful acts of 3PD, Plaintiff and the Class have been  
19 deprived of compensation in amounts to be determined at trial and pursuant to RCW 49.52.070,  
20 Plaintiff and the Class are entitled to recovery of twice such damages, including interest thereon,  
21 as well as attorneys' fees and costs.

22 **SIXTH CLAIM FOR RELIEF**  
23 **(Fraud)**

24 11.1 Plaintiff realleges and incorporates by reference each and every allegation set  
forth in the preceding paragraphs.

1           11.2 Plaintiff and the members of the Class were purportedly hired by Defendant to  
2 work as "independent contractors" pursuant to the terms of the Agreements described above. At  
3 all times, Defendant knew or recklessly disregarded that the "independent contractor"  
4 classification in the Agreements was improper and that Plaintiff and all persons similarly situated  
5 were employees entitled to the benefits and protections of all laws enacted for employees.  
6 Plaintiff is informed, believes and on that basis allege, that through the Agreements and other  
7 actions alleged herein, Defendant intentionally or recklessly misled Plaintiff and the members of  
8 the Class as to their employment status for the purpose of realizing unjust profits from their work  
9 and/or to avoid paying for its own operating costs and payroll taxes owed to the State of  
Washington and the federal government.

10           11.3 At all material times, Defendant knew that the material representations made to  
11 Plaintiff and the members of the Class in the Agreements concerning their employment status,  
12 and the concealment and/or non-disclosure of material facts from Plaintiff and the Class  
13 concerning their employment status and their corresponding obligation to assume responsibility  
14 for all of their "own" employment-related expenses, including but not limited to purchasing or  
leasing, operating and paying to maintain expensive trucks were false and fraudulent.

15           11.4 At all material times, Defendant intended to and did induce Plaintiff and the Class  
16 members to reasonably and justifiably rely to their detriment on the false and fraudulent  
17 representations made to them by Defendant in the Agreements concerning their employment  
18 status and obligation to assume responsibility for employment-related expenses, including but  
19 not limited to purchasing or leasing, operating and maintaining expensive trucks, and suffered  
damage as a direct and proximate result.

20           11.5 By its aforesaid conduct, Defendant is guilty of oppression, fraud and malice in  
21 violating Plaintiff's and the Class members' rights and protections guaranteed by Washington  
22 state law and other applicable law.

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**SEVENTH CLAIM FOR RELIEF**  
**(Rescission of Agreements)**

12.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

12.2 Despite the express terms of the Agreements, Plaintiff's and the Class members' relationships with 3PD satisfy every aspect of the test for employment, as opposed to independent contractor status.

12.3 3PD controls virtually every aspect of the Plaintiff's and the Class members' work and earnings, as set forth above.

12.4 Despite this control and the actual status of its Drivers as employees, 3PD mischaracterizes Plaintiff and the Class members as independent contractors. As a result, 3PD's Drivers must pay substantial sums of their own money for work-related expenses, including but not limited to:

- the purchase or lease of Vehicles meeting Defendant's specifications;
- all costs of operating, insuring and maintaining those Vehicles, including the cost of fuel;
- the purchase of company uniforms;
- the purchase of equipment used for deliveries, such as straps, hand trucks, and pallet jacks;
- the cost of obtaining Department of Transportation medical certification; and
- the cost of pre-employment, random or other drug or alcohol screening.

12.5 The Agreements illegally and unfairly advantage 3PD by mischaracterizing the status of Plaintiff and the Class members in that 3PD evades employment-related obligations, such as overtime, social security contributions, workers' compensation coverage, and state disability and unemployment compensation, illegally shifting the expense of workers' compensation coverage and other expenses to Plaintiff and the Class members.



- (iv) unemployment insurance;
- (v) income tax withholding;
- (vi) meal, break and rest periods.

14.2.2 Whether 3PD has unlawfully failed to pay benefits and compensation owing in a timely manner to Plaintiff and the Class members whose employment with Defendant ended, as required by Washington law.

14.2.3 What amounts Plaintiff and the Class members are entitled to receive in compensation and benefits.

14.2.4 What amounts Plaintiff and the Class members are entitled to receive in interest on unpaid compensation due and owing.

14.2.5 What amounts Plaintiff and the Class members are entitled to receive from Defendant in statutory penalties and interest.

14.3 Plaintiff and the Class members further seek entry of a declaratory judgment which declares Defendant's practices as heretofore alleged to be unlawful and which provides for recovery of all sums determined by this Court to be owed by Defendant to the Plaintiff and the Class members.

**TENTH CLAIM FOR RELIEF  
(Injunctive Relief)**

15.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

15.2 3PD will continue to misclassify Plaintiff and the Class members as independent contractors and unlawfully deny them the common benefits of employee status unless enjoined from doing so.

15.3 Plaintiff and the Class members have been injured and damaged, and are threatened with injury and damage, by Defendant's continued misclassification and unlawful

1 refusal to pay all compensation and benefits as heretofore alleged, and Plaintiff and the Class  
2 members have no adequate remedy at law.

3 15.4 Plaintiff has a reasonable fear that 3PD, upon receiving notice of this lawsuit, will  
4 take such action or inaction resulting in the termination, harassment, demotion, reassignment, or  
5 reduction in currently paid compensation or benefits against Class members, to their detriment,  
6 in retaliation for attempting to enforce their rights under Washington law.

7 15.5 3PD has acted, and threatened to act, on grounds generally applicable to Plaintiff  
8 and the members of the Class, thereby making appropriate preliminary and permanent injunctive  
9 relief enjoining Defendant and its agents from engaging in the unlawful practices heretofore  
10 alleged.

### 10 JURY DEMAND

11 16.1 Plaintiff hereby demands a trial by jury for all issues so triable.

### 12 PRAYER FOR RELIEF

13 WHEREFORE, Plaintiff, on his own behalf and on behalf of the members of the Class,  
14 pray for judgment against 3PD as follows:

15 17.1 Certification of the proposed plaintiff Class;

16 17.2 A declaration that 3PD is financially responsible for notifying all Class members  
17 of its wage and hour violations;

18 17.3 Appoint Plaintiff Frey as representative of the Class;

19 17.4 Appoint the undersigned counsel as counsel for the Class;

20 17.5 Declare that 3PD's actions complained of herein violate RCW 49.46.130, RCW  
21 49.46.090, , RCW 49.52.060, RCW 49.48.010, RCW 49.12.450, and RCW 49.52.050;

22 17.6 An Order that rescinds the Agreements, and awards restitution to Plaintiff and the  
23 Class for the reasonable value of the services they provided to 3PD as employees;

1 17.7 An Order requiring 3PD to reimburse Plaintiff and the Class for the 3PD business  
2 expenses that they have covered, or statutory damages, whichever is greater;

3 17.8 Enjoin 3PD and its officers, agents, successors, employees, representatives, and  
4 any and all persons acting in concert with 3PD, as provided by law, from engaging in the  
5 unlawful and wrongful conduct set forth herein;

6 17.9 Award Plaintiff and the Class compensatory and exemplary damages, as allowed  
7 by law;

8 17.10 Award Plaintiff and the Class attorneys' fees and costs, as allowed by law;

9 17.11 Award Plaintiff and the Class prejudgment and post-judgment interest, as  
10 provided by law; and

11 17.12 Grant such other and further relief as the Court deems necessary, just, and proper.

DATED this 22nd day of April, 2008.

BRODKOWITZ LAW

12  
13 By: /s/ Alisa R. Brodkowitz, WSBA #31749

14 **Alisa R. Brodkowitz**

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