

CIVIL COVER SHEET

C 08-0630 JCC

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ANTHONY FREY

(b) County of Residence of First Listed Plaintiff Island County, WA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alisa Brodkowitz, Brodkowitz Law, 1700 Seventh Avenue, Suite 2220, Seattle, WA 98101 (206) 838-7531

DEFENDANTS

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

County of Residence of First Listed Defendant Cobb County, GA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
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6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Sec. 1332 and 28 U.S.C. Sec. 1367

Brief description of cause: Wage & Hour Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE

April 23, 2008

SIGNATURE OF ATTORNEY OF RECORD

Alisa Brodkowitz

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
for the

ANTHONY FREY)	
Plaintiff)	
v.)	Civil Action No.
3PD, INC. d/b/a/ 3PD WASHINGTON, INC.)	
Defendant)	

Summons in a Civil Action **C 08-0630** JCC

To: (Defendant's name and address)

3PD, INC. d/b/a 3PD WASHINGTON, INC.
Corporation Services Company
6500 Harbour Heights Pkwy, Suite 400
Mukilteo, WA 98275

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

BRUCE RIFKIN

Date: 4-23-08

Name of clerk of court

Tom Kondzioura

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

(1) personally delivering a copy of each to the individual at this place, _____;
_____ ; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____ ; or

(4) returning the summons unexecuted to the court clerk on _____ ; or

(5) other (*specify*) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

Date: _____

Server's signature

Printed name and title

Server's address

FILED ENTERED
LODGED RECEIVED

★ APR 23 2008 ★

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.

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CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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;

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.

