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11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF ARIZONA**

14 **Mario Cardoso**, Individually and on  
15 Behalf of All Others Similarly Situated;

16 Plaintiffs,

17 v.

18 **Pick A Part, LLC**, an Arizona company;  
19 **Rush Auto Recyclers, Inc.**, an Arizona  
20 company; **Daniel Rush**, an Arizona  
21 Resident; and **Janet Rush**, an Arizona  
22 resident;

23 Defendants.

Case No.

**COLLECTIVE ACTION COMPLAINT  
FOR COMPENSATION UNDER 29  
U.S.C. § 201, ET SEQ.**

**(Jury Trial Requested)**

24 Plaintiff Mario Cardoso, individually, and on behalf of all other persons similarly  
25 situated, allege as follows:

26 **PRELIMINARY STATEMENT**

27 1. Plaintiff brings this action on behalf of himself and all similarly-situated  
28 current and former yard laborer employees.



1           8.     At all relevant times to the matters alleged herein, Plaintiff resided in the  
2 State of Arizona.

3           9.     At all material times, Plaintiff was a full-time, non-exempt employee of  
4 Defendants from on or around June 4, 2018 until present.

5           10.    At all relevant times during his employment, Plaintiff was employed as a  
6 yard laborer.

7           11.    At all relevant times, Plaintiff was an employee of Defendants as defined by  
8 29 U.S.C. § 203(e)(1).

9           12.    Plaintiff is a non-exempt employee.

10          13.    Defendant Pick A Part, LLC, is an Arizona company, authorized to do  
11 business in the State of Arizona and was at all relevant times Plaintiffs and the Collective  
12 Members’ employer as defined by 29 U.S.C. § 203(d).

13          14.    Defendant Rush Auto Recyclers, Inc., is an Arizona company, authorized to  
14 do business in the State of Arizona and was at all relevant times Plaintiffs and the Collective  
15 Members’ employer as defined by 29 U.S.C. § 203(d).

16          15.    Defendant Daniel Rush is an Arizona resident. He has directly caused events  
17 to take place giving rise to this action. Daniel Rush was at all times Plaintiff’s employer  
18 as defined by 29 U.S.C. § 203(d).

19          16.    Defendant Janet Rush is an Arizona resident. She has directly caused events  
20 to take place giving rise to this action. Janet Rush was at all times Plaintiff’s employer as  
21 defined by 29 U.S.C. § 203(d).

22          17.    Under the FLSA, Defendant Daniel Rush is an employer. The FLSA defines  
23 “employer” as any individual who acts directly or indirectly in the interest of an employer  
24  
25  
26  
27  
28

1 in relation to an employee. Defendant Daniel Rush had the authority to hire and fire  
2 employees, supervised and controlled Plaintiff’s work schedules or the conditions of his  
3 employment, determined the rate and method of Plaintiff’s payment of wages, and  
4 maintained employment records in connection with Plaintiff’s employment. As a person  
5 who acted in the interest of the previously identified corporate entities in relation to the  
6 company’s employees, Daniel Rush is subject to individual and personal liability under the  
7  
8 FLSA.

9  
10 18. Under the FLSA, Defendant Janet Rush is an employer. The FLSA defines  
11 “employer” as any individual who acts directly or indirectly in the interest of an employer  
12 in relation to an employee. Defendant Janet Rush had the authority to hire and fire  
13 employees, supervised and controlled Plaintiff’s work schedules or the conditions of his  
14 employment, determined the rate and method of Plaintiff’s payment of wages, and  
15 maintained employment records in connection with Plaintiff’s employment. As a person  
16 who acted in the interest of the previously identified corporate entities in relation to the  
17 company’s employees, Janet Rush is subject to individual and personal liability under the  
18  
19 FLSA.

20  
21 19. Plaintiff is further informed, believes, and thereon alleges that the  
22 Defendants herein gave consent to, ratified, and authorized the acts of all other Defendants,  
23 as alleged herein.

24  
25 20. Defendants are sued in both individual and corporate capacities.

26  
27 21. Defendants are jointly and severally liable for the injuries and damages  
28 sustained by Plaintiff and the Collective Members.

1           22. At all relevant times, Defendants have been engaged in interstate commerce  
2 and / or have been an enterprise whose gross annual volume of sales made or business done  
3 is greater than \$500,000.  
4

5                                       **COLLECTIVE ACTION ALLEGATIONS**

6           23. Plaintiff brings this action on behalf of himself and all other similarly situated  
7 individuals pursuant to 29 U.S.C. § 216(b). Plaintiff and the similarly situated individuals  
8 work(ed) as yard laborers (or in a position with similar job titles or job duties) for  
9 Defendants. The proposed collective class for the FLSA claim is defined as follows:  
10

11                       **All persons who worked as yard laborers (or in other positions with similar job  
12 titles or job duties) for Defendants at any time from three years prior to the  
13 filing of this Complaint through the entry of judgment (the “Collective  
Members”).**

14           24. Plaintiff has given his written consent to be a Party Plaintiff in this action  
15 pursuant to U.S.C. § 216(b). Plaintiff’s signed consent form is attached as “**Exhibit 1**”.  
16 As this case proceeds, it is likely that other individuals will file consent forms and join as  
17 “opt-in” plaintiffs.  
18

19           25. At all relevant times, Plaintiff and the Collective Members are and have been  
20 similarly situated, have had substantially similar job requirements and pay provisions, and  
21 are and have been subject to Defendants’ decision, policy, plan, and common programs,  
22 practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay  
23 one-and-one-half times Plaintiff’s and the Collective Members’ regular rates of pay for all  
24 time in excess of forty (40) hours per workweek that Defendants suffered or permitted them  
25 to work. Plaintiffs’ claims stated herein are essentially the same as those of the Collective  
26 Members. This action is properly maintained as a collective action because in all pertinent  
27  
28

1 aspects the employment relationship of individuals similarly situated to Plaintiff's are  
2 identical or substantially similar.

3 26. Defendants paid Plaintiff and the Collective Members an hourly rate.

4 27. Plaintiff and the Collective Members routinely worked over forty (40) hours  
5 in a workweek and were not compensated by Defendants with overtime pay for all hours  
6 they worked over forty in a workweek.  
7

8 28. Defendants are aware that Plaintiff and the Collective Members, upon  
9 information and belief, those similarly situated work(ed) under these conditions, and yet  
10 Defendants still denied them overtime compensation.

11 29. The Collective Members perform or have performed the same or similar work  
12 as Plaintiff.  
13

14 30. As such, the Collective Members are similar, if not identical, to Plaintiff in  
15 terms of job duties, pay structure, and/or the denial of all overtime pay.  
16

17 31. Defendants' failure to pay overtime compensation required by the FLSA  
18 results from generally applicable policies or practices and does not depend on the personal  
19 circumstances of the Collective Members.  
20

21 32. The experiences of Plaintiff, with respect to his pay, are typical of the  
22 experiences of the Collective Members.

23 33. All class members, irrespective of their particular job requirements and job  
24 titles, are entitled to compensation for hours worked in excess of forty (40) during a given  
25 workweek.  
26

27 34. Although the exact amount of damages may vary among the Collective  
28 Members, the damages for the Collective Members can be easily calculated by a simple

1 formula. The claims of all Collective Members arise from a common nucleus of facts.  
2 Liability is based on a systematic course of wrongful conduct by the Defendants that caused  
3 harm to all of the Collective Members.  
4

5 35. Defendants uniformly misrepresented to Plaintiff and other yard laborers that  
6 they were receiving more money than they should if they did not receive all their overtime  
7 pay. In reality, Plaintiff and other similarly situated employees are, and were entitled to  
8 overtime pay.  
9

10 36. Notice of this action should be sent to all similarly situated yard laborers.

11 37. There are numerous similarly situated current and former employees of  
12 Defendants who have been denied appropriate compensation in violation of the FLSA, who  
13 would benefit from a Court supervised notice of the lawsuit and the opportunity to join the  
14 case. Those similarly stated employees are known to Defendants and are readily  
15 identifiable through Defendants' records.  
16

17 **FACTUAL ALLEGATIONS RELATING TO PLAINTIFF CARDOSO**

18 38. Plaintiff, on behalf of himself and the Collective Members, realleges and  
19 incorporate by reference all allegations in all preceding paragraphs.  
20

21 39. On or around June 4, 2018 Cardoso began employment with Defendants as a  
22 yard laborer. His main job duties included cutting car harnesses, setting up cars after  
23 processing, doing odd labor jobs, and buying scrap metal.  
24

25 40. Plaintiff did not have supervisory authority over any employees.

26 41. Plaintiff did not possess the authority to hire or fire employees.

27 42. Plaintiff did not possess the authority to make critical job decisions with  
28 respect to any of Defendants' employees.

1 43. Plaintiff did not direct the work of two or more employees.

2 44. Plaintiff did not exercise discretion and independent judgment with respect to  
3 matter of significance.

4 45. Plaintiff was not a manager.

5 46. Plaintiff's primary duty was not the management of the enterprise in which  
6 they were employed or any recognized department of the enterprise.

7 47. Plaintiff routinely worked with knowledge of Defendants, and often at  
8 Defendants' requests, in excess of 40 hours per week.

9 48. Specifically, during his employment, Plaintiff routinely worked in excess of  
10 40 hours per week and was not paid all the premium one-and-one-half times his regular rate  
11 as required under the FLSA for hours worked over 40 in a workweek.

12 49. For example, during the workweek of November 18, 2018, Plaintiff worked  
13 22 hours of overtime and was only compensated \$225.00 cash for the overtime hours  
14 worked. Plaintiff received less than his normal straight time for all hours worked in excess  
15 of 40. For 22 hours of overtime, Plaintiff should have received \$396.00.

16 50. Defendants uniformly misrepresented to Plaintiff that he was receiving more  
17 wages if they did not receive overtime pay.

18  
19  
20  
21  
22 **COUNT ONE: FAIR LABOR STANDARDS ACT**  
23 **FAILURE AND/OR REFUSAL TO PAY OVERTIME**

24 51. Plaintiff, on behalf of himself and the Collective Members, realleges and  
25 incorporate by reference all allegations in all preceding paragraphs.

26 52. Plaintiff and the Collective Members were non-exempt employees entitled to  
27 the statutorily mandated overtime wages.  
28



1           53. While employed by Defendants, Plaintiff and the Collective Members worked  
2 hours of overtime per week, each and every workweek, for which they worked for  
3 Defendants, and Defendants did not pay to Plaintiff and the Collective Members one-and-  
4 one-half times their regular rate of pay for all such time.  
5

6           54. As a result, Defendants have intentionally failed and/or refused to pay  
7 Plaintiff and the Collective Members all overtime according to the provisions of the FLSA.  
8

9           55. Defendants further have engaged in a widespread pattern and practice of  
10 violating the provisions of the FLSA by failing and/or refusing to pay Plaintiff and the  
11 Collective Members in accordance with 29 U.S.C. § 207.

12           56. As a result, Defendants have intentionally failed and/or refused to pay  
13 Plaintiff and the Collective Members overtime according to the provisions of the FLSA.  
14

15           57. Defendants further have engaged in a widespread pattern and practice of  
16 violating the provisions of the FLSA by failing to pay Plaintiff and the Collective Members  
17 in accordance with 29 U.S.C. § 207.

18           58. Defendants knew that – or acted with reckless disregard as to whether – their  
19 refusal or failure to properly compensate Plaintiff and the Collective Members over the  
20 course of their employment would violate federal law, and Defendants were aware of the  
21 FLSA overtime requirements during Plaintiff’s and the Collective Members’ employment.  
22 As such, Defendants’ conduct constitutes a willful violation of the FLSA.  
23

24           59. As a result of Defendants’ failure or refusal to pay Plaintiff and the Collective  
25 Members a wage equal to one-and-one-half times Plaintiff’s and the Collective Members’  
26 regular rates of pay for work they performed for Defendants in excess of their regular 40-  
27 hour workweek, Defendants violated 29 U.S.C. § 207(a). Plaintiff and the Collective  
28

1 Members are therefore entitled to compensation of one-and-one-half times their regular  
2 rates of pay, to be proven at trial, plus an additional equal amount as liquidated damages,  
3 together with interest, reasonable attorney's fees, and costs.  
4

5 **WHEREFORE**, Plaintiff, individually, and on behalf of all other similarly situated  
6 persons, respectfully requests that this Court grant the following relief in Plaintiff's and the  
7 Collective Members' favor, and against Defendants:

8  
9 A. Designation of this action as a collective action on behalf of the FLSA  
10 Collective Members (asserting FLSA claims) and prompt issuance of notice  
11 pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA  
12 opt-in class, apprising them of the pendency of this action, and permitting  
13 them to timely assert FLSA claims in this action by filing individual Consent  
14 to Sue forms pursuant to 29 U.S.C. § 216(b);  
15

16 B. For the Court to declare and find that the Defendants committed one or more  
17 of the following acts:

18 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by failing  
19 to pay overtime wages;

20 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;

21 C. For the Court to award compensatory damages, including liquidated damages  
22 pursuant to 29 U.S.C. § 216(b), to be determined at trial;  
23

24 D. For the Court to award prejudgment and post-judgment interest;

25 E. For the Court to award Plaintiff's reasonable attorneys' fees and costs of the  
26 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth  
27 herein;  
28

- 1 F. For the Court to provide reasonable incentive awards for named Plaintiff to  
2 compensate him for the time he spent attempting to recover wages for the  
3 Collective Members and for the risks he took in doing so; and  
4  
5 G. Such other relief as this Court shall deem just and proper.  
6

7 **JURY TRIAL DEMAND**

8 Plaintiff and the Collective Members hereby demand a trial by jury on all issues so  
9 triable.  
10

11 RESPECTFULLY SUBMITTED December 19, 2018.

12 **ZOLDAN LAW GROUP, PLLC**

13  
14 By: /s/ Jason Barrat  
15 14500 N. Northsight Blvd., Suite 133  
16 Scottsdale, AZ 85260  
17 Attorneys for Plaintiffs  
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**EXHIBIT 1**

ZOLDAN LAW GROUP, PLLC  
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11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF ARIZONA**

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19 **Rush Auto Recyclers, Inc.**, an Arizona  
20 company; **Daniel Rush**, an Arizona  
21 Resident; and **Janet Rush**, an Arizona  
22 resident;

23 Defendants.

Case No.

**PLAINTIFF MARIO CARDOSO  
CONSENT TO JOIN COLLECTIVE  
ACTION AS NAMED PLAINTIFF**

**(Jury Trial Requested)**

24 I, Mario Cardoso, do hereby consent to be a party Plaintiff to the above-entitled  
25 action. I have read the complaint to be filed in the United States District Court for the  
26 District of Arizona, Phoenix Division, and authorize my attorneys, Zoldan Law Group  
27 PLLC to file the complaint on my behalf and for other employees similarly situated.

28 *Mario C. Cardoso*

\_\_\_\_\_  
Mario Cardoso

12/18/18

\_\_\_\_\_  
Date

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

## Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s): Mario Cardoso** **Defendant(s): Pick A Part, LLC ; Rush Auto Recyclers, Inc. ; Daniel Rush ; Janet Rush**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Micahel Zoldan**  
**Zoldan Law Group, PLLC**  
**14500 N. Northsight Blvd., Suite 133**  
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**4804423410**

**Jason Barrat**  
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**4804423410**

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A  
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI. Cause of Action: **29 U.S.C. § 201-219**

VII. Requested in Complaint

Class Action: **Yes**  
Dollar Demand:  
Jury Demand: **Yes**

VIII. This case is not related to another case.

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**Signature: Jason Barrat**

**Date: 18.12.18**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Employee Sues Pick A Part, Rush Auto Recyclers for Allegedly Unpaid Overtime Wages](#)

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