


B10 (Official Form 10) (04/13)

<b>UNITED STATES BANKRUPTCY COURT</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: Hi-Crush, Inc.	Case Number: 20-33495 (DRJ)	<b>COURT USE ONLY</b>
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Brett Hodock		
Name and address where notices should be sent: Anderson Alexander, PLLC 819 N. Upper Broadway Corpus Christi, TX 78410 Telephone number: 361-452-1279 email: team@a2xlaw.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where payment should be sent (if different from above):  Telephone number: _____ email: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>38,252.16</u>		
If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
<b>2. Basis for Claim:</b> Unpaid Overtime wages pursuant to 29 U.S.C. § 216(b). See Exhibit 1. (See instruction #2)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> <u>2 9 2 9</u>	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____  Annual Interest Rate _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____  <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ _____
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
		<b>Amount entitled to priority:</b> \$ <u>12,475.00</u>
<small>*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>		
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this 1		 203349520110900000000013

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**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain: **Claimant does not have all payroll documents in his possession.**

**8. Signature:** (See instruction #8)

Check the appropriate box.

- I am the creditor.    
  I am the creditor's authorized agent.    
  I am the trustee, or the debtor, or their authorized agent.    
  I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)  
 (See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Clif Alexander  
 Title: Partner  
 Company: Anderson Alexander, PLLC  
 Address and telephone number (if different from notice address above):  
819 N. Upper Broadway  
Corpus Christi, Texas 78401  
 Telephone number: 361-852-1279 email: team@a2xlaw.com

s/ Clif Alexander 11/9/20  
 (Signature) (Date)

*Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.*

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.*

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).**

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

Reset

Save As...

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**DEFINITIONS****INFORMATION****Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506 (a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. § 507 (a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

BRETT HODOCK,

*Creditor*

v.

HI-CRUSH, INC.,

*Debtor.*

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Case No. 20-33495-DRJ

**BASIS OF CLAIM**

Brett Hodock (“Creditor” or “Hodock”) brings this action against Hi-Crush Inc. seeking all available relief, including compensation, unpaid back wages, overtime compensation, liquidated damages, and attorneys’ fees and costs pursuant to the provisions of Sections 207 and 216(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201–19, Ohio’s Minimum Fair Wage Standards Act (“the Ohio Wage Act”), O.R.C. §§ 4111.01, 4111.03 and 4111.10, the Ohio Prompt Pay Act (“the OPPA”), O.R.C. §§ 4113.15 (the Ohio Wage Act and the OPPA will collectively be referred to as “the Ohio Acts”), and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.*

**I.  
STATEMENT OF CLAIM**

1. This claim is brought to recover overtime wages, liquidated damages, and other applicable penalties brought pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201–19, and pursuant to the state laws of Ohio and Pennsylvania to recover unpaid wages, overtime wages, and other applicable penalties.

2. Debtors enforced a uniform company-wide policy wherein it improperly calculated hourly employees’ overtime rate when it failed to include non-discretionary job bonuses in the calculation of the regular rate of pay for overtime purposes.

3. The FLSA requires that all forms of compensation—including the non-discretionary job bonuses paid to Creditor—be included in the calculation of the regular rate of pay for overtime purposes.

4. The Ohio Wage Act requires that employees, including Creditor, receive “time and one-half” overtime premium compensation for hours worked over forty (40) per week.

5. Furthermore, the OPPA requires that Hi-Crush pay Creditor all wages, including unpaid overtime, on or before the first day of each month, for wages earned by him during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month, for wages earned by him during the last half of the preceding calendar month.

6. The PMWA requires that employees receive “time and one-half” overtime premium compensation for hours worked over forty (40) per week.

7. Creditor has suffered damages and continues to suffer damages as a result of Hi-Crush’s acts or omissions as described herein; though Hi-Crush is in possession and control of necessary documents and information from which Plaintiff would be able to precisely calculate damages.

8. Debtor’s illegal company-wide policy has created a miscalculation of Creditor’s regular rate of pay for purposes of calculating his overtime compensation each workweek.

9. Although Creditor routinely worked in excess of forty (40) hours per workweek, Creditor has not been paid at the correct rate of overtime of at least one and one-half times his regular rate for all hours worked in excess of forty (40) hours per workweek.

10. Creditor Hodock worked for Debtor at a rate of \$19.00 per hour.

11. Creditor Hodock worked approximately 58 hours of overtime per week, three (3) weeks a month.

12. Creditor Hodock was paid additional non-discretionary job bonuses each month in an amount between \$800 and \$1,400. The average non-discretionary job bonus paid to Creditor was approximately \$1,100 a month over an eight (8) month period.

13. Creditor Hodock is entitled to \$38,252.16 of unpaid back wages, including liquidated damages pursuant to the FLSA.

## **II. RELIEF SOUGHT**

Creditor respectfully prays for judgment against Hi-Crush as follows:

- a. For an Order pursuant to Section 16(b) of the FLSA finding Hi-Crush liable for unpaid back wages due to Creditor, and for liquidated damages equal in amount to the unpaid compensation found due to Creditor;
- b. For an Order pursuant to the Ohio Acts awarding Creditor his unpaid overtime and other damages allowed by law;
- c. For an Order pursuant to the PMWA awarding Creditor his unpaid overtime and other damages allowed by law;
- d. For an Order awarding the costs and expenses of this action;
- e. For an Order awarding attorneys' fees;
- f. For an Order awarding pre-judgment and post-judgment interest at the highest rates allowed by law;
- g. For an Order compelling the accounting of the books and records of Hi-Crush, at Hi-Crush's own expense; and
- h. For an Order granting such other and further relief as may be necessary and appropriate.

Date: November 9, 2020

Respectfully submitted,

By: /s/ Clif Alexander \_\_\_\_\_

**Clif Alexander**

Texas Bar No. 24064805

[clif@a2xlaw.com](mailto:clif@a2xlaw.com)

**Austin W. Anderson**

Texas Bar No. 24045189

[austin@a2xlaw.com](mailto:austin@a2xlaw.com)

**ANDERSON ALEXANDER, PLLC**

819 N. Upper Broadway

Corpus Christi, Texas 78401

Telephone: (361) 452-1279

Facsimile: (361) 452-1284

*Attorneys for Creditor*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2020, I electronically filed the foregoing document with the clerk of the court for the U.S. Bankruptcy Court, Southern District of Texas using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

*/s/ Clif Alexander*

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Clif Alexander