Docket #0476 Date Filed: 11/9/2020

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

BRETT HODOCK, **Individually and on behalf of all others similarly situated**	§	**Civil Action No. _____**
Plaintiff,	§	**JURY TRIAL DEMANDED**
v.	§	**COLLECTIVE ACTION PURSUANT TO 29 U.S.C. § 216(b)**
HI-CRUSH, INC., HI-CRUSH LMS, LLC, and HI-CRUSH SERVICES, LLC,	§	
Defendants.	§	**CLASS ACTION PURSUANT TO FED. R. CIV. P. 23**

ORIGINAL COLLECTIVE/CLASS ACTION COMPLAINT

Brett Hodock ("Plaintiff" or "Hodock") brings this action against Hi-Crush, Inc., Hi-Crush LMS, LLC, and Hi-Crush Services, LLC (collectively "Defendants" or "Hi-Crush"), 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.*

Plaintiff's FLSA claims are asserted as a nationwide collective action as described herein under Section 16(b) of the FLSA, 29 U.S.C. § 216(b), his Ohio state law claims are asserted as a class action on behalf of a class of Ohio workers, as described herein, under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 23, and his Pennsylvania state law claim is asserted as a class action on behalf of a class of Pennsylvania workers as described herein, under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 23.

I.

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OVERVIEW

1. This is a collective action 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 as class actions pursuant to the state laws of Ohio and Pennsylvania pursuant to FED. R. CIV. P. 23 to recover unpaid wages, overtime wages, and other applicable penalties.

2. Plaintiff and the Putative Class Members are those similarly situated persons who worked for Defendants anywhere in the United States, at any time during the relevant statutes of limitation through the final disposition of this matter and were not paid the correct overtime rate in violation of state and federal law.

3. Specifically, Defendants enforced a uniform company-wide policy wherein they improperly calculated hourly employees' overtime rate when they failed to include non-discretionary job bonuses in the calculation of the regular rate of pay for overtime purposes.

4. The FLSA requires that all forms of compensation—including the non-discretionary job bonuses paid to Plaintiff and the Putative Class Members—be included in the calculation of the regular rate of pay for overtime purposes.

5. Defendants' illegal company-wide policy has created a miscalculation of Plaintiff and the Putative Class Members regular rate(s) of pay for purposes of calculating their overtime compensation each workweek.

6. Although Plaintiffs and the Putative Class Members routinely work (or worked) in excess of forty (40) hours per workweek, Plaintiff and the Putative Class Members have not been paid at the correct rate of overtime of at least one and one-half times their regular rates for all hours worked in excess of forty (40) hours per workweek.

7. Defendants knowingly and deliberately failed to compensate Plaintiff and the Putative Class Members at the correct overtime rate for each overtime hour worked each workweek on a routine and regular basis during the relevant time periods.

8. Plaintiff and the Putative Class Members did not and currently do not perform work that meets the definition of exempt work under the FLSA, the Ohio Acts, or the PMWA.

9. Plaintiff and the Putative Class Members were not paid the at the proper overtime rate for all hours worked in excess of forty (40) hours per workweek.

10. The decision by Defendants not to pay the proper overtime rate to Plaintiff and the Putative Class Members was neither reasonable nor in good faith.

11. Plaintiff and the Putative Class Members seek to recover all unpaid overtime, liquidated damages, and other damages owed under the FLSA as a collective action pursuant to 29 U.S.C. § 216(b), and to recover all unpaid overtime and other damages owed under the Ohio Acts and the PMWA as class actions pursuant to Federal Rule of Civil Procedure 23.

12. Plaintiff prays that all similarly situated workers (Putative Class Members) be notified of the pendency of this action to apprise them of their rights and provide them an opportunity to opt-in to this lawsuit.

13. Plaintiff also prays that the Rule 23 classes from Ohio and Pennsylvania are certified as defined herein, and Plaintiff Brett Hodock be named as Class Representative.

II.
THE PARTIES

14. Plaintiff Brett Hodock ("Hodock") was employed by and did work for Defendants in Pennsylvania, Ohio, and West Virginia during the relevant time period. Plaintiff Hodock did not

receive the correct amount of overtime compensation for all hours worked in excess of forty (40) hours per workweek.[1]

15. The FLSA Collective Members are those current and former employees who worked for Defendants, anywhere in the United States, at any time in the past three (3) years through the final disposition of this matter, and have been subjected to the same illegal pay system under which Plaintiff Hodock worked and was paid.

16. The Ohio Class Members are those current and former employees who worked for Defendants, anywhere in the state of Ohio, at any time in the past two (2) years through the final disposition of this matter, and have been subjected to the same illegal pay system under which Plaintiff Hodock worked and was paid.

17. The Pennsylvania Class Members are those current and former employees who worked for Defendants, anywhere in the state of Pennsylvania, at any time in the past three (3) years through the final disposition of this matter and have been subjected to the same illegal pay system under which Plaintiff Hodock worked and was paid.

18. Defendant Hi-Crush, Inc., is a foreign for-profit limited liability company licensed to and doing business in Texas, and may be served through its registered agent for service of process: **CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas, 75201-3136**.

19. Defendant Hi-Crush LMS, LLC, is a foreign for-profit limited liability company licensed to and doing business in Pennsylvania, and may be served through its registered agent for service of process: **CT Corporation System, 600 N. 2nd Street, Suite 401, Harrisburg, Dauphin County, Pennsylvania, 17101**.

[1] The written consent of Brett Hodock is attached hereto as Exhibit "A".

20. Defendant Hi-Crush Services, LLC, is a foreign limited liability company, employing workers in Pennsylvania, and may be served through its registered agent for service of process: **CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas, 75201-3136**.

21. Defendants are joint employers pursuant to 29 C.F.R. § 791.2. Defendant Hi-Crush Services, LLC maintained common ownership, oversight and control over Hi-Crush LMS, LLC and Plaintiff and the Putative Class Members during the relevant time period. As a result, Defendants are responsible, both individually and jointly, for compliance with all of the applicable provisions of the FLSA, including the overtime provisions, with respect to the employment for the workweeks at issue in this case during the relevant time period.

III.
JURISDICTION & VENUE

22. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 as this is an action arising under 29 U.S.C. § 201 *et. seq*.

23. This Court has personal jurisdiction over Defendants because the cause of action arose within this District as a result of Defendants' conduct within this District.

24. Venue is proper in the Southern District of Texas because this is a judicial district where adversary proceedings against Defendants must be filed.

25. Specifically, Defendants have maintained a working presence throughout this District and Division.

26. Venue is therefore proper in this Court pursuant to 28 U.S.C. § 1391(b).

IV.
ADDITIONAL FACTS

27. Hi-Crush is a premier provider of fracking proppant and logistics solutions to the North American petroleum industry.[2] Hi-Crush mines, processes, and transports specialized mineral sand used as a proppant to its customers for use during the well completion process to facilitate oil & natural gas recovery.

28. Plaintiff and the Putative Class Members' job duties consisted of loading and unloading sand at various well sites in southwest Pennsylvania, Ohio, West Virginia, and throughout the United States.

29. Plaintiff Hodock was hired, trained, and employed by Hi-Crush and performed work near Canonsburg, Pennsylvania, from approximately June 2019 through March 2020.

Defendants are Joint Employers under the FLSA

30. Defendants are joint employers pursuant to 29 C.F.R. § 791.2.

31. Defendants directly or indirectly hired Plaintiff and the Putative Class Members, controlled their work schedules and conditions of employment, and determined the rate and method of the payment of wages.

32. Defendants maintained control, oversight, and direction over Plaintiff and the Putative Class Members, including the promulgation and enforcement of policies affecting the payment of wages for overtime compensation.

33. Specifically, Defendants Hi-Crush Inc. created and controlled the pay policies and finances of Hi-Crush Services, LLC, which in turn, created and controlled the pay policies promulgated by Defendants Hi-Crush LMS, LLC.

[2] https://www.hicrushinc.com/about/

34. Defendants mutually benefitted from the work performed by Plaintiff and the Putative Class Members.

35. Defendants did not act entirely independently of each other and have not been completely disassociated with respect to the work of Plaintiff and the Putative Class Members.

36. Defendants acted directly or indirectly in the interest of each other in relation to Plaintiff and the Putative Class Members.

37. Specifically, Defendants dictated the routine and goals that needed to be done in order to meet the goals of the respective Defendants or their customers.

38. Moreover, all Defendants had the power to hire and fire Plaintiff and the Putative Class Members; supervise and control Plaintiff and the Putative Class Members' work schedules and conditions of their employment; determine their rate and method of payment; and, maintain their employment records.

39. As a result, all Defendants are responsible, both individually and jointly, for compliance with all of the applicable provisions of the FLSA, including the overtime provisions, with respect to the entire employment for the workweeks at issue in this case.

40. Plaintiff and the Putative Class Members are non-exempt blue-collar workers who were (and are) paid on an hourly basis plus overtime, and a non-discretionary job bonus.

41. Plaintiff and Putative Class Members were paid overtime for all hours worked over 40 in a workweek, but the non-discretionary job bonuses for all hours worked in the field were not included in the calculation of their overtime rate.

42. In addition to their forty (40) hours, Plaintiff and the Putative Class Members would work long overtime hours each week. Specifically, Defendants regularly scheduled Plaintiff and the Putative Class members a minimum of twelve (12) to fourteen (14) hours per day and they regularly worked a minimum of 84 hours or more per week.

43. Plaintiff and the Putative Class Members also received job bonuses in addition to their regular base pay (hourly rate).

44. The non-discretionary job bonuses paid to Plaintiff and the Putative Class Members were meant to encourage and motivate Plaintiff and the Putative Class Members to work harder and to reward them for their hard work.

45. The non-discretionary job bonuses were based upon a pre-determined formula established by Defendants. Moreover, specific criteria had to be met in order to receive the job bonuses.

46. When Plaintiff and the Putative Class Members met the criteria, they were entitled to receive the job bonuses.

47. The FLSA mandates that overtime be paid at one and one-half times an employee's regular rate of pay. Under the FLSA, the regular rate of pay is the economic reality of the arrangement between the employer and the employee. 29 C.F.R. § 778.108.

48. Pursuant to 29 C.F.R. § 778.209, these non-discretionary job bonuses (and any other non-discretionary compensation) should have been included in Plaintiff and the Putative Class Members' regular rates of pay before any and all overtime multipliers were applied.

49. Defendants denied Plaintiff and the Putative Class Members the proper amount of overtime pay as a result of a widely applicable, illegal pay practice.

50. Accordingly, Defendants' pay policies and practices violated the FLSA, Ohio state law, and Pennsylvania state law.

V.
CAUSES OF ACTION

COUNT ONE
(Collective Action Alleging FLSA Violations)

A. FLSA COVERAGE

51. All previous paragraphs are incorporated as though fully set forth herein.

52. The FLSA Collective is defined as:

ALL CURRENT AND FORMER EMPLOYEES WHO WORKED FOR HI-CRUSH AT ANY TIME IN THE LAST THREE YEARS, AND WERE PAID ON AN HOURLY BASIS, AND WHOSE JOB BONUSES WERE NOT INCLUDED IN THE REGULAR RATE OF PAY FOR PURPOSES OF DETERMINING THEIR OVERTIME RATE.

53. At all times hereinafter mentioned, Hi-Crush has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

54. At all times hereinafter mentioned, Hi-Crush has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

55. At all times hereinafter mentioned, Hi-Crush has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, or in any closely related process or occupation directly essential to the production thereof, and in that those enterprises have had, and have, an annual gross volume of sales made or business done of not less than $500,000.00 (exclusive of excise taxes at the retail level which are separately stated).

56. During Plaintiff and the Putative Class Members' employment with Hi-Crush, they provided services for Hi-Crush that involved interstate commerce for purposes of the FLSA.

57. In performing the operations hereinabove described, Plaintiff and the Putative Class Members were engaged in commerce or in the production of goods for commerce within the meaning of §§ 203(b), 203(i), 203(j), 206(a), and 207(a) of the FLSA. 29 U.S.C. §§ 203(b), 203(i), 203(j), 206(a), 207(a).

58. Specifically, Plaintiff and the Putative Class Members were ***non-exempt*** employees who worked for Hi-Crush during the relevant statutes of limitation, and were engaged in oilfield services that were directly essential to the production of goods for Hi-Crush and related oil and gas companies. 29 U.S.C. § 203(j).

59. At all times hereinafter mentioned, Plaintiff and the Putative Class Members were employees engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206–07.

60. In violating the FLSA, Hi-Crush acted willfully, without a good faith basis and with reckless disregard of applicable federal law.

B. FAILURE TO PAY WAGES IN ACCORDANCE WITH THE FLSA

61. All previous paragraphs are incorporated as though fully set forth herein.

62. Hi-Crush violated provisions of Sections 7 and 15 of the FLSA, 29 U.S.C. §§ 207, and 215(a)(2) by employing individuals in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA for workweeks longer than forty (40) hours without compensating such employees for hours worked in excess of forty (40) per workweek at rates at least one and one-half times their regular rate(s).

63. Plaintiff and the Putative Class Members have suffered damages and continue 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 and the Putative Class Members would be able to precisely calculate damages.

64. Moreover, Hi-Crush knowingly, willfully and in reckless disregard carried out its illegal pattern of failing to pay Plaintiff and the Putative Class Members overtime compensation. 29 U.S.C. § 255(a).

65. Hi-Crush knew or should have known its pay practices were in violation of the FLSA.

66. Hi-Crush is a sophisticated party and employer, and therefore knew (or should have known) its policies were in violation of the FLSA.

67. Plaintiff and the Putative Class Members, on the other hand, are unsophisticated laborers who trusted Hi-Crush to pay overtime in accordance with the law.

68. The decision and practice by Hi-Crush to not pay the correct overtime rate was neither reasonable nor in good faith.

69. Accordingly, Plaintiff and the Putative Class Members are entitled to the correct amount of overtime wages for all hours worked in excess of forty (40) in a workweek pursuant to the FLSA in an amount equal to one-and-a-half times his regular rate of pay, plus liquidated damages, attorneys' fees and costs.

C. COLLECTIVE ACTION ALLEGATIONS

70. All previous paragraphs are incorporated as though fully set forth herein.

71. Pursuant to 29 U.S.C. § 216(b), this is a collective action filed on behalf of all of Hi-Crush's employees throughout the United States who have been similarly situated to Plaintiff Hodock with regard to the work they performed and the manner in which they were paid.

72. Other similarly situated employees of Hi-Crush have been victimized by Hi-Crush's patterns, practices, and policies, which are in willful violation of the FLSA.

73. The FLSA Collective Members are defined in Paragraph 52.

74. Hi-Crush's failure to pay Plaintiff and the FLSA Collective Members for all hours worked and overtime compensation at the rates required by the FLSA, results from generally applicable policies and practices of Hi-Crush, and does not depend on the personal circumstances of Plaintiff or the FLSA Collective Members.

75. Thus, Plaintiff's experiences are typical of the experiences of the FLSA Collective Members.

76. The specific job titles or precise job requirements of the various FLSA Collective Members do not prevent collective treatment.

77. All of the FLSA Collective Members—regardless of their specific job titles, precise job requirements, rates of pay, or job locations—are entitled to be paid for all hours worked and at the proper overtime rate for all hours worked in excess of forty (40) hours per workweek.

78. Although the issues of damages may be individual in character, there is no detraction from the common nucleus of liability facts.

79. Absent a collective action, many members of the proposed FLSA collective likely will not obtain redress of their injuries and Hi-Crush will retain the proceeds of its violations.

80. Moreover, individual litigation would be unduly burdensome to the judicial system. Concentrating the litigation in one forum will promote judicial economy and parity among the claims of the individual members of the classes and provide for judicial consistency.

81. Accordingly, the FLSA collective of similarly situated plaintiffs should be certified as defined as in Paragraph 52 and notice should be promptly sent.

COUNT TWO
(Class Action Alleging Violations of the Ohio Acts)

A. OHIO WAGE ACTS COVERAGE

82. All previous paragraphs are incorporated as though fully set forth herein.

83. The Ohio Class is defined as:

ALL CURRENT AND FORMER EMPLOYEES WHO WORKED FOR HI-CRUSH, IN THE STATE OF OHIO, AT ANY TIME IN THE LAST TWO YEARS THROUGH THE FINAL DISPOSITION OF THIS MATTER, AND WERE PAID ON AN HOURLY BASIS, AND WHOSE JOB BONUSES WERE NOT INCLUDED IN THE REGULAR RATE OF PAY FOR PURPOSES OF DETERMINING THEIR OVERTIME RATE. ("Ohio Class" or "Ohio Class Members")

84. At all times hereinafter mentioned, Hi-Crush has been an employer within the meaning of the Ohio Wage Act, O.R.C. § 4111.03(D)(2) and the OPPA, O.R.C. § 4113.15 (A).

85. At all times hereinafter mentioned, Plaintiff and the Ohio Class members have been employees within the meaning of the Ohio Wage Act, O.R.C. § 4111.03(D)(3) and the OPPA, O.R.C. § 4113.15 (A).

86. Plaintiff and the Ohio Class Members were or have been employed by Hi-Crush since October 23, 2018 and have been covered employees entitled to the protections of the Ohio Wage Acts and were not exempt from the protections of the Ohio Wage Acts.

87. The employer, Hi-Crush, is not exempt from paying overtime benefits under the Ohio Wage Acts.

B. FAILURE TO PAY WAGES IN ACCORDANCE WITH THE OHIO WAGE ACTS

88. All previous paragraphs are incorporated as though fully set forth herein.

89. The Ohio Wage Act requires that employees, including Plaintiff and the Ohio Class Members, receive "time and one-half" overtime premium compensation for hours worked over forty (40) per week.

90. The OPPA requires that Hi-Crush pay Plaintiff and the Ohio Class Members 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.

91. Plaintiff and the Ohio Class Members were or have been employed by Hi-Crush since October 23, 2018 and have been covered employees entitled to the protections of the Ohio Wage Acts.

92. Hi-Crush is an employer covered by the requirements set forth in the Ohio Wage Acts.

93. Plaintiff and the Ohio Class Members are not exempt from receiving overtime benefits under the Ohio Wage Acts.

94. Plaintiff and the Ohio Class Members worked more than forty (40) hours in workweeks during times relevant to this case, however, Hi-Crush violated the Ohio Wage Acts by failing to pay Plaintiff and the Ohio Class Members the correct overtime premium for hours worked over 40 per week.

95. Plaintiff and the Ohio Class Members were not paid all wages, including overtime wages at one and one-half times their regular rates within thirty (30) days of performing the work.

96. The wages of Plaintiff and the Ohio Class Members remain unpaid for more than thirty (30) days beyond their regularly scheduled payday.

97. Plaintiff and the Ohio Class Members have suffered damages and continue 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 Hodock would be able to precisely calculate damages.

98. In violating the Ohio Wage Acts, Hi-Crush acted willfully, without a good faith basis, and with reckless disregard of Ohio Wage Act and the OPPA.

99. The proposed class of employees, i.e. putative class members sought to be certified pursuant to the Ohio Wage Acts, is defined in Paragraph 83.

100. The precise size and identity of the proposed class should be ascertainable from the business records, tax records, and/or employee or personnel records of Hi-Crush.

C. OHIO WAGE ACTS CLASS ALLEGATIONS

101. All previous paragraphs are incorporated as though fully set forth herein.

102. Plaintiff bring his Ohio Wage Acts claims as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all similarly situated individuals employed by Hi-Crush who worked in Ohio at any time since October 23, 2018.

103. Class action treatment of Plaintiff's Ohio Wage Acts claims is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

104. The number of Ohio Class Members is so numerous that joinder of all class members is impracticable.

105. Plaintiff is a member of the Ohio Class, his claims are typical of the claims of other Ohio Class Members, and he has no interests that are antagonistic to or in conflict with the interests of other Ohio Class Members.

106. Plaintiff and his counsel will fairly and adequately represent the Ohio Class Members and their interests.

107. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

108. Accordingly, the Ohio Class should be certified as defined in Paragraph 83.

COUNT THREE
(Class Action Alleging Violations of the PMWA)

A. PMWA COVERAGE

109. All previous paragraphs are incorporated as though fully set forth herein.

110. The Pennsylvania Class is defined as:

ALL CURRENT AND FORMER EMPLOYEES WHO WORKED FOR HI-CRUSH, IN THE STATE OF PENNSYLVANIA, AT ANY TIME FROM IN THE LAST THREE YEARS THROUGH THE FINAL DISPOSITION OF THIS MATTER, AND WERE PAID ON AN HOURLY BASIS AND WHOSE JOB BONUSES WERE NOT INCLUDED IN THE REGULAR RATE OF PAY FOR PURPOSES OF DETERMINING THEIR OVERTIME RATE. ("Pennsylvania Class" or "Pennsylvania Class Members")

111. At all times hereinafter mentioned, Hi-Crush has been an employer within the meaning of the PMWA, 43 P.S. § 333.103(f).

112. At all times hereinafter mentioned, Plaintiff has been an employee within the meaning of the PMWA, 43 P.S. § 333.103(g).

113. Plaintiff and the Pennsylvania Class Members were or have been employed by Hi-Crush since October 23, 2017 and have been covered employees entitled to the protections of the Ohio Wage Acts and were not exempt from the protections of the PMWA.

114. The employer, Hi-Crush, is not exempt from paying overtime benefits under the PMWA.

B. FAILURE TO PAY WAGES IN ACCORDANCE WITH THE PMWA

115. All previous paragraphs are incorporated as though fully set forth herein.

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

117. Plaintiff was not exempt from receiving overtime benefits under the PMWA.

118. Plaintiff worked more than forty (40) hours in workweeks during times relevant to this complaint, however, Hi-Crush violated the PMWA by failing to pay Plaintiff the correct amount of overtime premium for hours worked over forty (40) per week.

119. Plaintiff 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.

120. In violating the PMWA, Hi-Crush acted willfully, without a good faith basis and with reckless disregard of clearly applicable Pennsylvania law.

121. The proposed class of employees, i.e. putative class members sought to be certified pursuant to the PMWA, is defined in Paragraph 110.

122. The precise size and identity of the proposed class should be ascertainable from the business records, tax records, and/or employee or personnel records of Hi-Crush.

C. PMWA CLASS ALLEGATIONS

123. All previous paragraphs are incorporated as though fully set forth herein.

124. Plaintiff brings his PMWA claims as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all similarly situated individuals employed by Hi-Crush who worked in Ohio at any time since October 23, 2017.

125. Class action treatment of Plaintiff's PMWA claims is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

126. The number of Pennsylvania Class Members is so numerous that joinder of all class members is impracticable.

127. Plaintiff is a member of the Pennsylvania Class, his claims are typical of the claims of other Pennsylvania Class Members, and he has no interests that are antagonistic to or in conflict with the interests of other Pennsylvania Class Members.

128. Plaintiff and his counsel will fairly and adequately represent the Pennsylvania Class Members and their interests.

129. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

130. Accordingly, the Pennsylvania Class should be certified as defined in Paragraph 110.

VI.
RELIEF SOUGHT

131. Plaintiff respectfully prays for judgment against Hi-Crush as follows:

a. For an Order recognizing this proceeding as a collective action pursuant to Section 216(b) of the FLSA, certifying the FLSA Collective as defined in Paragraph 52 and requiring Hi-Crush to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all potential collective action members;

b. For an Order certifying the Ohio Acts Class as defined in Paragraph 83, and designating Plaintiff Hodock as Representative of the Ohio Class;

c. For an Order certifying the PMWA Class as defined in Paragraph 110, and designating Plaintiff Hodock as Representative of the Pennsylvania Class;

d. For an Order pursuant to Section 16(b) of the FLSA finding Hi-Crush liable for unpaid back wages due to Plaintiff, and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff;

e. For an Order pursuant to the Ohio Acts awarding Plaintiff his unpaid overtime and other damages allowed by law;

f. For an Order pursuant to the PMWA awarding Plaintiff his unpaid overtime and other damages allowed by law;

g. For an Order awarding the costs and expenses of this action;

h. For an Order awarding attorneys' fees;

i. For an Order awarding pre-judgment and post-judgment interest at the highest rates allowed by law;

j. For an Order awarding Plaintiff Hodock a service award as permitted by law;

k. For an Order compelling the accounting of the books and records of Hi-Crush, at Hi-Crush's own expense; and

l. 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*

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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*
Clif Alexander

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)

PLAINTIFFS	DEFENDANTS
Brett Hodock, individually and on behalf of all others similarly situated	Hi-Crush, Inc., Hi-Crush LMS, LLC, and Hi-Crush Services, LLC
ATTORNEYS (Firm Name, Address, and Telephone No.) ANDERSON ALEXANDER, PLLC 819 N. Upper Broadway Corpus Christi, TX 78401 (361)-452-1279	**ATTORNEYS** (If Known) **Timothy A. ("Tad") Davidson II, Ashley L. Harper, George A. Davis, Keith A. Simon, Annemarie V. Reilly, Hugh K. Murtagh**
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☒ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☒ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Plaintiff and the putative class members bring this action against Hi-Crush, Inc., Hi-Crush LMS, LLC and Hi-Crush Services, LLC seeking all available relief for unpaid overtime wages under Sections 207 and 216(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201–19, and under Ohio and Pennsylvania state laws.

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☒ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☒ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☒ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☒ Check if this case involves a substantive issue of state law	☒ Check if this is asserted to be a class action under FRCP 23
☒ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

See Ex. 1, pg. 18.

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Hi-Crush, Inc., Hi-Crush LMS, LLC and Hi-Crush Services, LLC.	BANKRUPTCY CASE NO. **20-33495 (DRJ)**	
DISTRICT IN WHICH CASE IS PENDING **Southern District of Texas**	DIVISION OFFICE **Houston**	NAME OF JUDGE **David R. Jones**
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE **11/9/20**	PRINT NAME OF ATTORNEY (OR PLAINTIFF) **Clif Alexander & Austin W. Anderson**	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.