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PROPOSED ATTORNEYS FOR DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§ Chapter 11
	§
Diamondback Industries, Inc., <i>et al.</i> , ¹	§ Case No. 20-41504-ELM-11
	§
Debtors.	§ Jointly Administered

**DEBTORS' MOTION PURSUANT TO BANKRUPTCY RULE 9019
TO COMPROMISE CONTROVERSY WITH KINGDOM
DOWNHOLE TOOLS, LLC, TREBA BAKER, AND JUSTICE BAKER**

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 501 W. 10TH STREET, ROOM 147, FORT WORTH, TEXAS 76102 BEFORE CLOSE OF BUSINESS ON JUNE 6, 2020 WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Diamondback Industries, Inc. (4403) ("Diamondback"); Discerner Holdings, Inc. (5110) ("Discerner Holdings"); and Discerner Investments, LLC (3076) ("Discerner Investments"). The location of the Debtors' service address is 3824 Williamson Road, Crowley, Texas 76036.

Diamondback Industries, Inc. and its debtor affiliates, as debtors and debtors-in-possession in the above-referenced chapter 11 cases (collectively, the “Debtors”) hereby file this *Debtors’ Motion Pursuant to Bankruptcy Rule 9019 to Compromise Controversy with Kingdom Downhole Tools, LLC, Trea Baker, and Justice Baker* (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States District Court for the Northern District of Texas (the “District Court”) has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. The District Court’s jurisdiction has been referred to this Court pursuant to 28 U.S.C. § 157 and the District Court’s Miscellaneous Order No. 33, *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984. This is a core matter pursuant to 28 U.S.C. § 157(b), which may be heard and finally determined by this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On April 21, 2020 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 Cases. Further, no trustee or examiner has been requested or appointed in these Chapter 11 Cases.

4. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting the Motion and the Debtors' Chapter 11 Cases are set forth in greater detail in the *Declaration of Cade Kennedy in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "Kennedy Declaration"), which was filed on the Petition Date and is incorporated by reference in this Motion.

5. Prior to the Petition Date, Diamondback initiated a separate legal action styled *Diamondback Industries, Inc. v. Kingdom Downhole Tools, LLC, Trea Baker, and Justice Baker.*, Case No. 4:18-cv-00902-A in the District Court, Fort Worth Division (the "Lawsuit"). The Lawsuit was transferred *sua sponte* to this Court as an adversary proceeding, which has been assigned Adversary Proceeding No. 20-04032 (the "Adversary Proceeding").

6. On April 29, the Court entered the *Order on Corrected Agreed Motion for Stay of Outstanding Deadlines Pending Bankruptcy Court Approval of Settlement Agreement* [Adv. Docket No. 12], which abated the Adversary Proceeding until further order of the Court to enable Diamondback to request court approval of a settlement agreement among the parties.

7. In the Lawsuit, Diamondback asserted claims against Kingdom Downhole Tools, LLC ("Kingdom"), Trea Baker, and Justice Baker (collectively, the "Defendants" and together with Diamondback, the "Parties") for misappropriation of trade secrets under the Defend Trade Secrets Act, violations of the Computer Fraud and Abuse Act, harmful access by computer, civil conspiracy, patent infringement, and violations of the Digital Millennium Copyright Act. The Defendants asserted entitlement to recover their attorneys' fees from Diamondback, including pursuant to 18 U.S.C. § 1836(b)(3)(D) for bringing a claim for trade secret misappropriation in bad faith, but have not otherwise asserted any counterclaims. The Parties deny all wrongdoing.

8. Following good faith negotiations, the Parties determined that it was in their respective best interests to consensually resolve the Adversary Proceeding. On May 12, 2020, the Parties entered into a Compromise Settlement Agreement (the “Settlement Agreement”), whereby the Parties resolved their claims on terms that do not include either the exchange of money or a business transaction between the Parties. A true and correct copy of the Settlement Agreement is attached to the Proposed Settlement Order (defined below) as **Exhibit 1**. The material terms of the Settlement Agreement are summarized below:

- Mutual Release: In consideration of the covenants, representations, and warranties set forth in the Settlement Agreement, the Parties agree to mutual discharges and releases from any and all claims that are or were asserted in, or could have been asserted in, or which arise from the same transactions or occurrences as those claims that are or were asserted in the Lawsuit.
- Product Marketing: To the extent that Kingdom continues to manufacture, market, advertise, or sell products that operate with a Diamondback power charge, and to the extent that Diamondback continues to manufacture and sell power charges that satisfactorily operate with such products, Kingdom covenants that it will identify and continue to promote (to the same extent prior to effective date of the Settlement Agreement) Diamondback as one of the preferred sources of approved power charges.
- Non-Disclosure: Defendants represent, warrant, and covenant that they will not share, disseminate, or otherwise disclose Diamondback’s power charge formulas.
- Bankruptcy Court Approval: Within five days after the execution of the Settlement Agreement, Diamondback is required to file in this Court a motion for approval of the Settlement Agreement and to diligently prosecute such motion.
- Dismissal of Adversary Proceeding: Within five business days of receiving approval of the Settlement Agreement from the Court, Diamondback shall dismiss or cause to be dismissed with prejudice the Lawsuit. Each Party shall bear its own costs and fees.

Relief Requested

9. By this Motion, the Debtors respectfully request the entry of an order, substantially in the form attached to the Motion as **Exhibit A** (the “Proposed Settlement Order”), pursuant to Bankruptcy Code Sections 105(a) and Federal Rule of Bankruptcy Procedure 9019, authorizing and approving the Debtors’ entry into, and performance under, the Settlement Agreement. In accordance with Local Bankruptcy Rule 9019-1(c), upon approval of the Proposed Settlement Order, the Debtors also respectfully request the entry of an order in the Adversary Proceeding, substantially in the form attached to the Motion as **Exhibit B** (the “Proposed Dismissal Order”), dismissing the Adversary Proceeding with prejudice.

Basis for Relief Requested

10. Bankruptcy Rule 9019 provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. Proc. 9019(a). Compromises and settlements are “a normal part of the process of reorganization.” *Protective Committee for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Court may, in its discretion, approve settlements in accordance with Federal Rule of Bankruptcy Procedure 9019(a). *CFB-5, Inc. v. Cunningham*, 371 B.R. 175, 181 (N.D. Tex. 2007). “Approval should only be given if the settlement is fair and equitable and in the best interest of the estate.” *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997) (internal quotations omitted); *CFB-5*, 371 B.R. at 181; *In re Heritage Org., L.L.C.*, 375 B.R. 230, 259 (Bankr. N.D. Tex. 2007).

11. In deciding whether the settlement of a controversy is “fair and equitable,” Courts have considered certain factors, including: (a) the probability of success in the litigation, with due consideration for the uncertainty in fact and law; (b) the complexity and likely duration of the litigation and any attendant expenses, inconvenience and delay, and (c) all other factors bearing

on the wisdom of the compromise. *In re Cajun Elec.*, 119 F.3d at 355-56; *In re Heritage Org.*, 375 B.R. at 259. Court also consider the best interest of the creditors, with proper deference to their reasonable views, and the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion. *In re Cajun Elec.*, 119 F.3d at 356; *In re Heritage Org.*, 375 B.R. at 260.

12. It is unnecessary for the Court to conduct a mini-trial before approving a settlement. *In re Heritage Org.*, 375 B.R. at 260. The Court need only make itself aware of the relevant facts and law so that it may make an informed and intelligent decision. *In re Cajun Elec.*, 119 F.3d at 356.

13. Here, the factors weigh in favor of approving the Settlement Agreement and dismissing the Adversary Proceeding. The Parties have agreed that the Settlement Agreement is in the best interest of all Parties. Diamondback has agreed to forego continued prosecution of the Adversary Proceeding in exchange for the covenants, representations, and warranties in the Settlement Agreement, including the covenant by Kingdom to promote Diamondback as a preferred source of certain products, subject to the terms of the Settlement Agreement. Furthermore, to the extent that the Defendants have or had any claims against Diamondback, including for attorney's fees, in connection with the Adversary Proceeding, the Settlement Agreement resolves any such claims without incurring the costs that would be associated with such litigation.

14. The Parties engaged in good faith, arm's-length negotiations to settle on the terms of the Settlement Agreement. The Debtors believe that the terms of the Settlement Agreement are fair and reasonable, and in the best interests of all creditors. Accordingly, the Debtors request that

the Court approve the proposed Settlement Agreement, and upon such approval, dismiss the Adversary Proceeding.

Notice

15. Notice of this Motion will be provided to the parties listed on the Debtors' service list in accordance with the *Order Granting Complex Chapter 11 Bankruptcy Case Treatment*.

WHEREFORE the Debtors respectfully request that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 16th day of May, 2020.

HAYNES AND BOONE, LLP

By: /s/ David L. Staab

Ian T. Peck

State Bar No. 24013306

David L. Staab

State Bar No. 24093194

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Facsimile: 214.651.5940

Email: matt.ferris@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTORS

CERTIFICATE OF CONFERENCE

The undersigned proposed counsel for the Debtors hereby certifies that on May 16, 2020, counsel for the Debtors conferred with counsel for the Defendants regarding the relief requested in the Motion. Counsel for the Defendants consents to the relief requested in the Motion.

/s/ David L. Staab

David L. Staab

Exhibit A

Proposed Settlement Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Diamondback Industries, Inc., <i>et al.</i> , ¹	§	Case No. 20-41504-ELM-11
	§	
Debtors.	§	Jointly Administered

**ORDER GRANTING DEBTORS' MOTION PURSUANT
TO BANKRUPTCY RULE 9019 TO COMPROMISE
CONTROVERSY WITH KINGDOM DOWNHOLE
TOOLS, LLC, TREBA BAKER, AND JUSTICE BAKER**

Upon the *Debtors' Motion Pursuant to Bankruptcy Rule 9019 to Compromise Controversy with Kingdom Downhole Tools, LLC, Treba Baker, and Justice Baker* (the "Motion")² of

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Diamondback Industries, Inc. (4403) ("Diamondback"); Discerner Holdings, Inc. (5110) ("Discerner Holdings"); and Discerner Investments, LLC (3076) ("Discerner Investments"). The location of the Debtors' service address is 3824 Williamson Road, Crowley, Texas 76036.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Diamondback Industries, Inc., *et al.* (collectively, the “Debtors”); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*, Miscellaneous Rule No. 33 (N.D. Tex. August 3, 1984) (Woodward, H.O.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Settlement Agreement attached to this Order as **Exhibit 1** is hereby approved in its entirety and shall be effective according to its terms as if set forth in full in this Order.
3. The Debtors are authorized to take any and all actions necessary and proper to implement the terms of the Settlement Agreement and to perform all obligations thereunder on the conditions set forth therein.

END OF ORDER

Agreed to in form and substance:

By: /s/ David L. Staab

Ian T. Peck
State Bar No. 24013306
David L. Staab
State Bar No. 24093194
HAYNES AND BOONE, LLP
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Email: david.staab@haynesboone.com

By: /s/ Michael A. McCabe

Michael A. McCabe
State Bar No. 24007628
Munck Wilson Mandala, LLP
12770 Coit Road
Suite 600
Dallas, Texas 75251
Email: mmccabe@munckwilson.com

**ATTORNEY FOR KINGDOM DOWNHOLE
TOOLS, LLC, TREA BAKER, AND JUSTICE
BAKER**

and

Matthew T. Ferris
State Bar No. 24045870
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: 214.651.5000
Facsimile: 214.651.5940
Email: matt.ferris@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTORS

Exhibit 1 to Settlement Order

Compromise Settlement Agreement

COMPROMISE SETTLEMENT AGREEMENT

This COMPROMISE SETTLEMENT AGREEMENT ("Agreement") is entered into as of May 12, 2020 ("Effective Date") by and between: Diamondback Industries, Inc., a Texas corporation having its principal place of business at 3824 Williamson Road, Crowley, Texas ("Diamondback" or "Plaintiff"), on the one hand; and Kingdom Downhole Tools, LLC, a Texas Limited Liability Company with its principal place of business at 3136 Meandering Way, Granbury, Texas 76049 ("Kingdom"), on behalf of itself and its Affiliates; Trea Baker, an individual residing at 1402 5th Street, Grandbury, Texas 76048, and Justice Baker, an individual residing at 3136 Meandering Way, Grandbury, Texas 76049, on the other hand. Kingdom, Trea Baker, and Justice Baker may be referred to collectively as "Defendants." Plaintiff and Defendants may be referred to collectively as the "Parties," or individually as a "Party."

WHEREAS Diamondback develops, manufactures, and sells setting tools, power charges, and igniters for use in completing oil and gas wells; and

WHEREAS Diamondback patented the "Disposable Setting Tool" on November 7, 2017 and is the assignee of U.S. Patent No. 9,810,035 (the "'035 Patent"); and

WHEREAS Diamondback claims certain rights in and to the '035 Patent, some of which are the subject of an ongoing appeal taken from a case styled *Diamondback Industries, Inc. v. Repeat Precision, LLC, et al.*, Case No. 6:19-cv-00034-ADA (W.D. Tex.) ("Waco Matter"); and

WHEREAS Defendants manufacture and sell disposable setting tools known as the K10 and K20 (collectively "K20"); and

WHEREAS Diamondback's product offerings include power charges suitable for the K20; and

WHEREAS Diamondback maintains that certain schematics, drawings, formulas, computer files, and other information used in or developed for its business activities ("Diamondback Materials") are the property of Diamondback and are entitled to trade secret status and legal protection; and

WHEREAS Defendants dispute the trade secret status of certain Diamondback Materials;

WHEREAS, Plaintiff and Defendants are parties to a separate legal action styled *Diamondback Industries, Inc. v. Kingdom Downhole Tools, LLC, Trea Baker, and Justice Baker.*, Case No. 4:18-cv-00902-A, pending in the United States District Court for the Northern District of Texas, Fort Worth Division, which on April 24, 2020, was transferred sua sponte to the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division ("Lawsuit"); and

WHEREAS Plaintiff has asserted claims in the Lawsuit for: misappropriation of trade secrets under the Defend Trade Secrets Act; violations of the Computer Fraud and Abuse Act; Harmful Access by Computer; civil conspiracy; infringement of the '035 Patent by making, using, selling, offering for sale, and importing the K20; and violations of the Digital Millennium Copyright Act; and

WHEREAS Plaintiff has asserted various rights to recover damages, attorney's fees, injunctive

relief, and other relief; and

WHEREAS Defendants have not asserted any counterclaims but have asserted entitlement to recover their attorney's fees from Plaintiff, including pursuant to 18 U.S.C. § 1836(b)(3)(D);

WHEREAS the Parties deny all wrongdoing and desire to resolve their differences through this Compromise Settlement Agreement; and

WHEREAS Diamondback is a Debtor in Possession in Case No. 20-41504-elm-11 (N.D. Tex.) (the "Bankruptcy Case"), now pending in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the "Bankruptcy Court").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which the Parties acknowledge, Diamondback and Defendants agree as follows:

1. Definitions.

1.1. "Affiliate" means, with respect to a Party, any other entity that directly or indirectly Controls (wherein "Control" means control of more than half of the voting equity of) such Party or is under common Control with or is Controlled by such Party.

1.2. "Effective Date" means the date set forth in the first paragraph.

1.3. "Third Party" means any entity other than Diamondback and Defendants and their respective Affiliates.

2. Mutual Releases and Dismissal.

2.1. In consideration of the covenants, representations, and warranties set forth herein, Diamondback, on behalf of itself and its Affiliates, hereby discharges and releases Defendants and their Affiliates, if any, together with their respective officers, directors, agents, servants, attorneys, employees, successors, and assigns, together with their distributors, wholesalers, resellers, retailers, and customers, of and from any and all claims, liability, losses, damages, causes of action, attorney's fees, obligations, and all other claims of every kind and nature in law or equity, whether arising under state, federal, international law, or which are, or were asserted in, or could have been asserted in, or which arise from the same transactions or occurrences as those claims that are, or were asserted in, the Lawsuit, whether such claims are in tort, statute, or contract, present or future, known or unknown, that exist or may have existed prior to the Effective Date (except for representations or obligations expressly included in this Agreement). For the avoidance of doubt, Diamondback represents and covenants that it will not initiate any action or assert any claims or causes of action against Kingdom relating to Kingdom's manufacture, use, sale, offer for sale, or importation of its K20 tools. To the extent that Diamondback is involuntarily joined in an action against Defendants, Diamondback's involuntary joinder shall not constitute a violation of this covenant not to sue or a breach of this Agreement.

2.2. In consideration of the covenants, representations, and warranties set forth herein, Defendants, on behalf of themselves and their Affiliates, if any, hereby discharge and release

Diamondback and its Affiliates, if any, together with their respective officers, directors, agents, servants, attorneys, employees, successors, and assigns, together with their distributors, wholesalers, resellers, retailers and customers, of and from any and all claims, liability, losses, damages, cause of action, attorney's fees, obligations, and all other claims of every kind and nature in law or equity, whether arising under state, federal, international law, or which are, or were asserted in, or could have been asserted in, or which arise from the same transactions or occurrences as those claims that are, or were asserted in, the Lawsuit, whether such claims are in tort, statute, or contract, present or future, known or unknown, that exist or may have existed prior to the Effective Date (except for representations or obligations expressly included in this Agreement).

2.3. Pursuant to Section 5.7, within five (5) business days of receiving approval by the Bankruptcy Court, Diamondback shall dismiss or cause to be dismissed with prejudice the Lawsuit, by filing appropriate dismissal papers which recite that each party shall bear its own costs and fees. The Parties shall cooperate to execute the necessary documents and to take the necessary actions to dismiss the Lawsuit.

2.4. The Parties acknowledge that each may hereafter discover facts in addition to or different from those that it now knows or believes to be true with respect to the subject matter of this release, but it is the intention of each such Party to fully, finally and forever settle and release any and all released claims that now exist, may exist, or heretofore have existed with respect to the subject matter of this release. In furtherance of this intention, the releases contained herein shall be and remain in effect as full and complete general releases, notwithstanding the discovery or existence of any such additional or different facts.

3. Product Marketing.

3.1. To the extent Kingdom continues to manufacture, market, advertise, or sell its K20 products or similar products that operate with a Diamondback power charge, and to the extent that Diamondback continues to manufacture and sell power charges that satisfactorily operate with the K20, Kingdom covenants that it will identify and continue to promote (to the same extent it has done prior to the Effective Date) Diamondback as one of the preferred sources of approved power charges for all such products.

4. Representations, Warranties, and Covenants.

4.1. Subject to the approval of the Bankruptcy Court (*see* Sections 2.3 and 5.7), each Party represents and warrants that: (a) it has the full authority to enter into and execute this Agreement; and (b) it has all requisite legal rights necessary to grant any and all rights or to provide any and all covenants to the other Party as set forth in this Agreement.

4.2. Notwithstanding any other provision in this Agreement, Defendants represent, warrant, and covenant that they will not share, disseminate, or otherwise disclose Diamondback's power charge formulas.

5. Miscellaneous.

5.1. Notices. Any notice, report, or request to be made hereunder shall be given by sending the same by reputable air courier or by email (in case of email, with a written confirmation by the receiving Party) as follows:

If to Diamondback:

Benton Cantey
3824 Williamson Road
Crowley, Texas
Email: benton.cantey@diamondbackindustries.com

With a copy to:

Decker Cammack and David Skeels
Whitaker Chalk Swindle & Schwartz PLLC
301 Commerce Street, Suite 3500
Fort Worth, Texas 76102
Email: dcammack@whitakerchalk.com and dskeels@whitakerchalk.com

If to Defendants:

Kingdom Downhole Tools, LLC, Trea Baker, and/or Justice Baker
3136 Meandering Way
Granbury, Texas 76049
Email: tbaker@kingdomdownholetools.com

With a copy to:

Michael A. McCabe
Munck Wilson Mandala, LLP
12770 Coit Road
Suite 600
Dallas, Texas 75251
Email: mmccabe@munckwilson.com

If any person or entity requests Diamondback to join a lawsuit against Defendants, then Diamondback shall immediately give Defendants notice of such request.

5.2. Confidentiality. During and after the term of this Agreement, each Party agrees not to disclose, and agrees to cause their respective Affiliates not to disclose, any terms or conditions of this Agreement without obtaining prior written consent from the other Party, except that each Party may disclose such terms and conditions to the extent that disclosure: (a) is to such Party's or its Affiliates' officers, directors, managers, employees, insurers, lawyers, and accountants and is reasonably necessary for such Party's business purposes; (b) is necessary in order to obtain enforcement of the terms of this Agreement; (c) is required by law (including bankruptcy proceedings), regulation, court order or rule, discovery request, or subpoena; or (d) becomes

necessary, in connection with due diligence activities relating to the potential sale of the equity or the business of a Party or any of its Affiliates to a Third Party, provided that such Third Party is contractually subject to at least the same confidentiality obligations as required under this Agreement.

In the event that a Party is required to disclose this Agreement pursuant to paragraph 5.2(c) in response to a discovery request, subpoena, or similar disclosure in a legal, administrative, or regulatory proceeding, the disclosing Party (i) shall give prior written notice to the other Party, including providing the other Party with a copy of the relevant request for production or subpoena, (ii) shall not disclose this Agreement until fifteen (15) business days after the notification set forth in (i) above to provide an opportunity for the other Party to object, and (iii) when disclosed, shall make reasonable best efforts to ensure that the disclosure is made pursuant to the highest level of confidentiality available under any applicable protective order or other governing agreement, order, or regulation.

If asked by a Third Party about resolution of the Lawsuit, the Parties agree that they will state only that the parties have resolved their claims on terms that do not include either the exchange of money or a business transaction between the Parties.

5.3 Non-Disparagement: Subject to applicable law, the Parties shall not (i) make any statements, or take any other actions whatsoever, to publicly disparage, call into disrepute, defame, slander, sully or compromise the goodwill, name, brand or reputation (collectively, the "Company Goodwill") of any other Party or such Party's agents, subsidiaries, affiliates, successors, assigns, officers, key employees, or directors, or (ii) commit any other action that could likely injure, hinder or interfere with the operations, business relationships, or Company Goodwill of a Party or its affiliates or such Party's agents, subsidiaries, affiliates, successors, assigns, officers, key employees, or directors.

5.4. Integration. This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof and merges and supersedes all prior discussions between them, written or oral. Neither of the Parties shall be bound by any warranties, understandings or representations with respect to such subject matter other than as expressly provided in this Agreement or as expressly set forth in a writing signed with or subsequent to execution hereof by an authorized representative of the Party to be bound by said writing. In entering into this Agreement, no Party is relying upon any representation not specified in this Agreement.

5.5. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument, and will become binding upon the exchange of facsimile or PDF copies of the required signatures. The parties may thereafter execute copies of this Agreement, each bearing original signatures, for their records.

5.6. Governing Law, Jurisdiction, and Venue. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Texas without regard to choice-of-law principles. In any action arising out of or related to this Agreement, including any action for breach of this Agreement and any action to enforce the Agreement or to declare the Parties' rights or obligations under this Agreement, each Party hereby irrevocably submits to the jurisdiction of any court of competent jurisdiction located within the Northern District of Texas, Fort Worth Division.

Exclusive venue for any such action shall be in a court of competent jurisdiction located within the Northern District of Texas, Fort Worth Division

5.7. Bankruptcy Court Approval. This Agreement is subject to approval by the United States Bankruptcy Court in the Bankruptcy Case. Within five (5) days after execution of this Agreement, Diamondback shall file in the Bankruptcy Court a motion for approval of this Agreement, pursuant to Federal Rule of Bankruptcy Procedure 9019 (the "CSA Motion") and shall diligently prosecute the CSA Motion.

5.8. Further Assurances. The parties agree to execute such additional documents and to take such additional actions as may be reasonably necessary to carry out the intent of this Agreement, including cooperation that may be required in connection with the Bankruptcy Case.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

DIAMONDBACK INDUSTRIES, INC.

By: Benton Cantley
Title: President
Date: 5/13/2020

KINGDOM DOWNHOLE TOOLS, LLC

By: [Signature]
Title: member
Date: 5/12/20

TREA BAKER

[Signature]

JUSTICE BAKER

[Signature]

MWM.840264v1

Exhibit B

Proposed Dismissal Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
Diamondback Industries, Inc., <i>et al.</i> , ¹	§	Case No. 20-41504-ELM-11
	§	
Debtors.	§	Jointly Administered

Diamondback Industries, Inc.	§	
Plaintiff.	§	
	§	
v.	§	Adversary No. 20-04032-ELM
	§	
Kingdom Downhole Tool, LLC,	§	
Trea Baker, and Justice Baker	§	
Defendants.	§	

ORDER DISMISSING ADVERSARY PROCEEDING

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Diamondback Industries, Inc. (4403) ("Diamondback"); Discerner Holdings, Inc. (5110) ("Discerner Holdings"); and Discerner Investments, LLC (3076) ("Discerner Investments"). The location of the Debtors' service address is 3824 Williamson Road, Crowley, Texas 76036.

Upon the *Debtors' Motion Pursuant to Bankruptcy Rule 9019 to Compromise Controversy with Kingdom Downhole Tools, LLC, Trea Baker, and Justice Baker* (the "Motion")² of Diamondback Industries, Inc., *et al.* (collectively, the "Debtors"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc*, Miscellaneous Rule No. 33 (N.D. Tex. August 3, 1984) (Woodward, H.O.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Adversary Proceeding is hereby DISMISSED with prejudice.
2. Each party to the Adversary Proceeding shall bear its own costs and fees.

END OF ORDER

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Agreed to in form and substance:

By: /s/ David L. Staab

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PROPOSED ATTORNEYS FOR DEBTORS