

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

COOK CHILDREN'S HEALTH
FOUNDATION a/k/a W.I. COOK
FOUNDATION, INC., on behalf of itself
and a class of similarly situated persons,

Plaintiff,

v.

DIAMONDBACK E&P LLC,

Defendant.

Civil Action No. CIV-21-359-D

**SUPPLEMENT TO CLASS REPRESENTATIVE'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT (DOC. 53) AND
MOTION FOR APPROVAL OF PLAINTIFF'S ATTORNEY'S FEES,
LITIGATION EXPENSES, ADMINISTRATION, NOTICE, AND
DISTRIBUTION COSTS, AND INCENTIVE AWARD (DOC. 54)**

Class Representative Cook Children's Health Foundation a/k/a W.I. Cook Foundation, Inc. submits the Declaration of Robert G. Gum, attached as Exhibit 1, in support of Class Representative's Motion for Final Approval of Class Action Settlement (Doc. 53) and Class Representative's Motion for Approval of Plaintiff's Attorneys' Fees, Litigation Expenses, Administration, Notice, and Distribution Costs, and Incentive Award (Doc. 54).

Respectfully Submitted,

/s/ Rex A. Sharp

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CERTIFICATE OF SERVICE

I hereby certify that, on April 10, 2024, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Rex A. Sharp

Rex A. Sharp

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Plaintiff,

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Defendant.

Case No. CIV-21-359-D

DECLARATION OF ROBERT G. GUM

I, Robert G. Gum, declare as follows:

1. I am an attorney and partner practicing law at the office of Gum, Puckett & Mackechnie, L.L.P. in Oklahoma City, Oklahoma.
2. On April 7, 2023, I was retained by Plaintiff Cook Children’s Health Foundation (“Cook”) and its counsel (“Class Counsel”), and Defendant Diamondback E&P LLC (“Diamondback”) and its counsel, to act as mediator in the above-entitled action. As described below, the mediation resulted in a proposed class-action settlement executed on November 16, 2023, and submitted to the Court for approval.
3. While some aspects of the mediation process are confidential, Cook and Diamondback have authorized me to describe to the Court the procedural and substantive mediation matters, and to provide my opinions on the mediation process, as set forth below in this Declaration.

4. My statements and those of the parties during the mediation are subject to a confidentiality agreement, and I do not intend to waive that agreement. I make this Declaration based on personal knowledge and am competent to so testify.

Qualifications

5. I am a graduate of Oklahoma State University and the University of Oklahoma Law School. I began practicing law in 1977 in Oklahoma, primarily litigating complex civil cases and oil and gas matters. One common area of dispute, and one with which I have extensive experience, involves disagreements over the calculation and payment of royalties on the production of oil and natural gas. I have handled many oil and gas royalty disputes, including class actions, both as a litigator and as a mediator.

6. During the last decade a significant portion of my practice has involved mediation. I have served as a mediator in dozens of civil disputes over the past decade, and the majority of these cases have involved significant monetary claims. Many of these cases have involved large putative classes, complex legal and factual issues, very sophisticated attorneys and litigants. They have resulted in hundreds of millions of dollars in class wide settlements after mediation.

7. I have successfully mediated approximately 15 royalty owner class action disputes concerning the underpayment of royalties. These cases have involved a variety of underpayment claims, including the alleged failure to pay royalty on gas conditioning service costs such as gathering fees, gathering fuel, lost and unaccounted for gas, compression, dehydration, treatment, processing fees, processing plant fuel, raw make NGL transportation and fractionation, and other charges, as well as the alleged failure to pay or pay completely for natural gas, NGLs, Helium, Drip Condensate, and other products from oil and gas wells. While most of these cases are controlled by Oklahoma law, several have been controlled by the law of other states, including the laws of Texas.

8. A list of mediated oil and gas cases will be supplied upon request.

**The Cook-Diamondback Settlement Process Was
Thorough, Fair, and Arm's Length**

9. Based on my experience mediating cases involving putative class actions, specifically royalty underpayment class actions, I recall the mediation process between Cook and Diamondback as being very similar to other large mediations. It was conducted in a manner that was thorough and fair, and resulted in a hard-negotiated arm's-length settlement of contested issues. My recent review of my file confirms my memory here.

10. I understand that Cook and Diamondback engaged in a nearly two-year process of assembling and reviewing extensive information relating to Diamondback's oil and gas royalty accounting. This included reviewing royalty provisions in thousands of Texas oil and gas leases, multiple natural gas sales contracts, sales accounting documents, and voluminous royalty data—all covering a period of ten years.

11. As this process was continuing, Class Counsel contacted me in April 2023 to ask if I was willing and available to serve as a mediator. I agreed. The parties then set a one-day mediation at my office for June 28, 2023.

12. Shortly before the mediation session, the parties contacted me and requested that we reschedule our mediation so that the parties and experts could continue their review and analysis of the extensive data produced by Diamondback. The mediation then was rescheduled for July 18, 2023. I understand the parties used the additional time prior to the mediation to continue their factual and expert work.

13. As part of my engagement, I requested that the parties provide detailed mediation statements prior to our in-person session. On July 11, 2023, both parties submitted statements

extensively briefing the class certification and merits issues. I found both statements to be supported by substantial factual, expert, and back-up data.

14. I understand that prior to the mediation the parties conferred by telephone to exchange their positions and evaluations of the case, and they responded to one another's positions to clarify and refine their views. In addition, prior to the mediation, I held telephone conferences with counsel for each party separately to discuss my thoughts on their positions and their thoughts on recent Texas court decisions. I shared my views on each party's strengths and weaknesses and offered my assessment of the areas where the parties had continued disputes on class certification, liability, and damages. Both parties responded to those questions before and during the mediation process.

15. It was apparent to me from the rigorous but focused nature of the joint session discussion that each side had made good use of the pre-session work. All of the attorneys performed well during the joint session; however, Class Counsel was very well versed in the factual discovery and legal issues critical to the putative class's claims and, when appropriate, relied on the aid of expert analysis to appropriately evaluate both the strengths and weaknesses of Cook's case. It appeared that Defendant was cooperative in producing substantial amounts of confidential information to enable Class Counsel to assess the case and that Class Counsel and his team used this information to advantage.

16. I conducted the formal mediation session on July 18, 2023, at my office in Oklahoma City. The mediation lasted several hours. There was much discussion about the state of oil and gas royalty law, particularly the law of Texas. It is no secret that Texas law does not favor royalty claims to the same extent as do some states, including Oklahoma. It was apparent to me Class Counsel was well informed and had risked his client's case accordingly.

17. Ultimately, Cook and Diamondback agreed to the salient terms of the settlement, including the amount of money to be paid and the scope of the release. The parties executed a term sheet to guide their preparation of drafting final settlement documents.

18. I understand that, over the following several months, the parties worked on the formal Settlement Agreement. This was a long process that involved, among other things, negotiating a more specific release and additional monetary consideration to account for supplemental royalty data provided by Diamondback. This resulted in the Stipulation and Settlement Agreement filed with this Court on November 16, 2023. I have reviewed the critical parts of this document in preparation for presenting this Declaration.

Opinions on the Parties' Settlement

19. After presiding over the mediation process in this case, I am convinced that the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiation conducted in good faith. There was no collusion between the parties. I have worked extensively with both Class Counsel and counsel for Diamondback in this and in other cases, and I stand firm in my belief in their integrity. Both sides were represented by experienced counsel who took tough positions in the negotiations, and they were then and continue to be satisfied with the settlement as being reasonable under the circumstances. I share their opinion.

20. Through the mediation process, I learned the parties had exchanged substantial amounts of data for the experts to analyze. Reviewing this volume of data is common in class actions of this size, and the parties' review of this data was critically important to the mediation process.

21. The issues of liability and class certification were rendered unusually complicated here by virtue of legal uncertainty. A recent Texas Supreme Court case was key, as was a related

case attempting to apply that case to a similar dispute which had been escalated to the Fifth Circuit, and orally argued without an opinion. This case was settled amidst this background of such legal uncertainty.¹

22. I developed a good understanding of the full range of the dispute, the respective positions of the parties, and the relative strengths and weaknesses of those positions, as well as the risks, rewards, and costs of continued litigation and inevitable appeal. As is my standard practice as a mediator, I discussed all of these matters with both parties in private sessions to make sure each side appreciated its weakness and the other side's strength.

23. Mediations of royalty underpayment class actions are always affected by concerns over the need to be fair to the class. The history of objections to the fairness of proposed settlements in notable cases, particularly royalty underpayment cases with numerous class members, was well known to Class Counsel and me. In this case, it was important to get the parties to agree on fair terms, and equally important for those terms to be such that Class Counsel believed the Court would find them reasonable.

24. The issue of fairness also was important to Cook as the class representative. As a charitable organization supporting children's healthcare, the class representative in this case appeared to be uniquely concerned with the value of the settlement for the Class and with looking out for the 'little guy' royalty owners. The class representative steadfastly helped push the settlement into the upper part of what I had identified as the settlement range. This had the ultimate effect of enhancing the recovery for the class.

25. Based on my knowledge of the issues in dispute, my review of the substantial factual and legal materials presented before and at the mediation, the rigor of the negotiations, the

¹ Since the settlement, I understand the Fifth Circuit did not issue an opinion but instead certified various questions under Texas law to the Texas Supreme Court, which has yet to issue an opinion on the subject.

relative strengths and weaknesses of the parties' positions, and the benefits achieved in the settlement, I believe that the terms of the settlement are fair, adequate, reasonable and in the best interests of the Settlement Class. As an experienced litigator and mediator, I am a big believer in the leveling effect of an informed, arm's-length negotiation when it comes to assuring that a particular settlement is reasonable.

26. In my experience, settlement, particularly a mediated settlement, is almost always a more reliable means of weighing and managing litigation risk than is the trial of a matter. Weighing risk and assessing claim value is obviously highly subjective, leaving room for good-faith disagreement, but I always feel good and conclude that the negotiated number was the right number when I see both sides finally and reluctantly agree to it, and that is what happened here. Competing interests and shared information as was present during this mediation works as a very effective vaccination against an unreasonable or unfair result.

On April 9, 2024, I declare under penalty of perjury that the foregoing is true and correct.



Robert G. Gum