

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-cv-00198-MSK-MEH

SUN RIVER ENERGY, INC.

v.

ERIK S. NELSON; STEVE STEPHENS; and  
CORAL CAPITAL PARTNERS, INC.

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**DEFENDANTS' ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM**

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Defendants Erik S. Nelson (“Nelson”), Steve Stephens (“Stephens”), and Coral Capital Partners, Inc. (“Coral Capital”), by and through counsel, M. Gabriel McFarland, J. Lucas McFarland, and Cyd Hunt of Evans & McFarland, LLC, respectfully answer Plaintiff’s Amended Complaint and assert counterclaims against Plaintiff as follows:

**ANSWER**

**ADMISSIONS AND DENIALS**

1. In response to paragraph 1, Defendants admit the name of Plaintiff is Sun River Energy, Inc. (“Sun River”), and it is a Colorado corporation. Defendants lack knowledge or information sufficient to admit or deny the remaining allegations and therefore deny the same.

2. In response to paragraph 2, Defendants admit Nelson is an individual, and his address is 2389 Elmwood Circle SE, Smyrna, GA 30082.

3. In response to paragraph 3, Defendants admit Stephens is an individual, but deny the remaining allegations.

4. In response to paragraph 4, Defendants admit Coral Capital is a corporation, its president is Nelson, and the address of its registered agent is 2389 Elmwood Circle SE, Smyrna, GA 30082.

5. In response to paragraph 5, Defendants admit jurisdiction in this Court is proper but deny the remaining allegations.

6. Defendants admit the allegations in paragraph 6.

7. In response to paragraph 7, Defendants admit venue is proper but deny the remaining allegations.

8. In response to the allegations in paragraph 8, Defendants state that the referenced contract speaks for itself. To the extent the allegations purport to interpret or supplement the contract, they are denied. Defendants admit Nelson was and is the president of Coral Capital and has periodically signed written contracts on behalf of the company.

9. In response to the allegations in paragraph 9, Defendants state that the referenced contract speaks for itself. To the extent the allegations purport to interpret or supplement the contract, they are denied.

10. In response to the allegations in paragraph 10, Defendants state that the referenced contract speaks for itself. To the extent the allegations purport to interpret or supplement the contract, they are denied.

11. In response to the allegations in paragraph 11, Defendants state that the referenced contract speaks for itself. To the extent the allegations purport to interpret or supplement the contract, they are denied. Defendants deny the remaining allegations, as Coral

Capital Partners and those persons affiliated with it did not need to be securities registered under federal or state law.

12. In response to the allegations in paragraph 12, Defendants admit that at all time pertinent to this case, they were not so licensed or registered, nor did they need to be in connection with Coral Capital's agreement with and services performed for Sun River.

13. Defendants deny the allegations in paragraph 13.

14. Defendants deny the allegations in paragraph 14.

15. In response to the allegations in paragraph 15, Defendants state Stephens was retained to assist with certain services Coral Capital was to provide Sun River. Defendants deny the remaining allegations in paragraph 15.

16. In response to the allegations in paragraph 16, Nelson and Coral Capital state that on April 24, 2008, they received a letter from the Plaintiff, stating that due to financial distress the Plaintiff "*must terminate your Consulting Agreement, effective April 30, 2008.*" Said letter further stated, "*We hope, after a restructuring, to be able to negotiate a new arrangement.*" At the time of said letter, Plaintiff had failed for many weeks to compensate Coral Capital for the services it had provided to Plaintiff. Defendant Stephens lacks information or knowledge sufficient to form a belief as to the truthfulness of the allegations in paragraph 16 and therefore denies the same.

17. In response to paragraph 17, Nelson and Coral Capital deny the latter was owed "approximately \$30,000 in cash." The actual amount due was \$52,500. Nelson and Coral Capital further state that as the result of certain negotiations and compromises, on or about August 6, 2008, Coral Capital ultimately agreed to accept 150,000 shares of Sun River's

common stock as payment under the contract; and instructed Sun River to issue 75,000 shares to Nelson and 75,000 shares to Stephens. This arrangement was fully disclosed by Plaintiff on page 29 of its Form 10-K filed with the Securities Exchange Commission on August 13, 2009. Defendants otherwise deny the allegations in paragraph 17.

18. In response to paragraph 18, Defendants lack information or knowledge sufficient to form a belief as to the truthfulness of the alleged actions of the board of directors and therefore deny the same. Defendants admit Sun River's board issued unanimous consent minutes on or about August 7, 2008 that authorized, *inter alia*, the issuance of 75,000 shares each to Nelson and Stephens. Defendants further state that Sun River has disclosed the issuance of said shares to Nelson and Stephens in its SEC filings, which included audited financial statements for the fiscal years ended April 30, 2009 and 2010, respectively. Defendants admit the reference to "Steve Smith" was erroneous and "Steve Stephens" was intended.

19. Defendants deny the allegations in Paragraph 19 and state that on or about August 15, 2008, Nelson and Stephens and Sun River arranged for the exchange of both men's Sun River warrants for Sun River common shares based upon one share for every three warrants. Said exchange, which was board approved and reported to the SEC, entitled Nelson to receive 24,998 restricted shares and Stephens to receive 18,750 restricted shares. Nelson and Stephens have subsequently discovered Sun River failed to issue the correct number of common shares in the share-for-warrant exchange by a shortfall of 6,248 shares of Sun River's common stock. Defendants admit the reference to "Steve Smith" was erroneous and "Steve Stephens" was intended.

20. In response to the allegations in paragraph 20, Defendants state that the referenced exhibit speaks for itself. To the extent the allegations purport to interpret or supplement the exhibit, they are denied.

21. In response to the allegations in paragraph 21, Defendants state that the referenced exhibit speaks for itself. To the extent the allegations purport to interpret or supplement the exhibit, they are denied. Defendants further deny the allegations in paragraph 21 as contrary to Plaintiff's regulatory filings. On August 21, 2008, Plaintiff filed a Form 8-K with the Securities Exchange Commission, stating in Item 3.02 thereof – Unregistered Sales of Equity Securities that *“Holders of the warrants and options agreed to accept shares of the Registrant's common stock equal to 33.33% of the shares underlying the warrant and/or option in exchange for the cancellation of the warrants and/or option.”*

22. Defendants deny the allegations in paragraph 22.

23. Defendants deny the allegations in paragraph 23 and specifically deny that any alleged forfeiture has occurred, as all services required of Defendants were performed in full or excused by Plaintiff's breach. Furthermore, Plaintiff's audited financial statements, opinions of counsel, disclosures in subsequent filings with the Securities Exchange Commission, and representations in third party agreements reflect that full consideration has in fact been paid for said shares.

24. Defendants deny the allegations in paragraph 24.

25. In response to the allegations in paragraph 25, Nelson and Coral Capital deny Nelson received any such alleged material non-public information regarding Sun River pursuant to said alleged agreement and further state that Plaintiff has failed to particularize said alleged

non-public information and Nelson's alleged use thereof. Furthermore, Plaintiff never asserted said contentions until Nelson sought to remove the restrictive legends from certain of his common shares in the spring of 2010 so he could sell them. Stephens denies any prior knowledge of said alleged October 2008 agreement or of any information allegedly exchanged or delivered in connection therewith and notes that Plaintiff does not assert said allegations against him.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27.

28. Nelson and Coral Capital deny the allegations in paragraph 28 and state that Plaintiff and its agents did not disseminate or share said alleged material, non-public information to or with Nelson and that certain of said alleged matters were public knowledge. Nelson and Coral Capital deny ever having received or shared any alleged material non-public information regarding Sun River with Stephens. Stephens denies ever having received any alleged material non-public information regarding Sun River from either Nelson or Coral Capital. Moreover, Plaintiff has failed to particularize said non-public information and Nelson's or Stephens's alleged use thereof. Furthermore, Plaintiff never asserted said contentions until Nelson sought to remove the restrictive legends from certain of his common shares in the spring of 2010 so he could sell them.

29. In response to paragraph 29, Defendants admit Stephens had business dealings with Nelson and Coral Capital. Nelson and Coral Capital deny ever having received or shared any alleged material non-public information regarding Sun River with Stephens. Stephens denies every having received any alleged material non-public information regarding Sun River

from either Nelson or Coral Capital. Moreover, Plaintiff has failed to particularize said non-public information and Nelson's or Stephens's alleged use thereof. Furthermore, Plaintiff never asserted said contentions until Nelson sought to remove the restrictive legends from certain of his common shares in the spring of 2010 so he could sell them.

30. Defendants deny the allegations in paragraph 30.

31. In response to paragraph 31, Defendants admit that during 2010 Nelson and Stephens requested the removal of the restrictive legends from the certificates representing their shares of Sun River common stock.

32. Defendants deny the allegations in paragraph 32.

33. In response to paragraph 33, Defendants incorporate by reference the foregoing admissions, denials, and statements.

34. The allegations in paragraph 34 constitute contentions and interpretations of law that require no response. However, to the extent said allegations state or imply wrongdoing by the Defendants or any impairment to the Defendants' rights in their securities, they are denied.

35. Defendants deny the allegations in paragraph 35.

36. In response to paragraph 36, Defendants incorporate by reference the foregoing admissions, denials, and statements.

37. Defendants deny the allegations in paragraph 37.

38. Defendants deny the allegations in paragraph 38.

39. Defendants deny the allegations in paragraph 39.

40. In response to paragraph 40, Defendants incorporate by reference the foregoing admissions, denials, and statements.

41. Defendants deny the allegations in paragraph 41.

42. Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in paragraph 43.

44. Defendants deny the allegations in paragraph 44.

45. Defendants deny the allegations in paragraph 45.

46. In response to paragraph 46, Defendants incorporate by reference the foregoing admissions, denials, and statements.

47. In response to paragraph 47, Defendants deny they owed any fiduciary duties to Plaintiff but admit that Plaintiff, its officers, directors, and other controlling persons owed Defendants fiduciary duties to act in utmost good faith and not to self-deal to the detriment of Defendants and other stockholders of the Plaintiff.

48. Defendants deny the allegations in paragraph 48.

49. Defendants deny the allegations in paragraph 49 and specifically deny that Plaintiff is entitled to any form of damages or other relief whatsoever.

50. In response to paragraph 50, Defendants incorporate by reference the foregoing admissions, denials, and statements.

51. Defendants deny the allegations in paragraph 51.

52. In response to paragraph 52, Nelson and Stephens admit they have requested the removal of restrictive legends on their share certificates so they will be freely transferrable. Defendants deny the remaining allegations.

53. Defendants deny the allegations in paragraph 53.

54. Defendants deny the allegations in paragraph 54.



55. In response to paragraph 55, Defendants state that Plaintiff has no right to the relief requested or to any other relief against Defendants.

56. The Defendants deny each and every allegation of the Complaint not admitted above.

### **JURY DEMAND**

Defendants hereby demand a jury trial on all issues so triable.

### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state claims upon which relief may be granted.
2. The Court lacks personal jurisdiction over Defendants.
3. Sun River's claims are barred by the doctrines of estoppel, waiver, ratification, laches, accord and satisfaction, and unclean hands.
4. Sun River's claims are barred by reason of a failure of contractual consideration on certain agreements alleged in its Complaint.
5. Sun River's claims are barred by reason of an insufficiency of contractual consideration on certain agreements alleged in its Complaint.
6. Sun River's claims are barred by reason of the absence of a meeting of the minds on certain agreements alleged in its Complaint.
7. Sun River's claims are barred by the statute of frauds.
8. Sun River's conduct has excused Defendants from performing any duties, agreements, and obligations allegedly owed to Sun River.
9. Sun River's claims are barred by the applicable statutes of limitations and other time bars arising under law that preclude the assertion of Sun River's claims due to lapse of time.

10. Sun River's claims are barred by its failure to satisfy certain conditions precedent to the filing of the Complaint.

11. Sun River has failed to mitigate its alleged damages (although Defendants deny that Sun River has suffered any damages whatsoever).

12. The Complaint fails to particularize Sun River's allegations of alleged fraud and other intentional wrongdoing.

13. Sun River's claims are barred by reason of Sun River's wrongful acts and omissions and other illegal conduct.

14. Defendants have not engaged in any act, omission, or transaction that has proximately caused any alleged injury or loss to Sun River.

15. Sun River's alleged damages and injuries were proximately caused by Sun River's own acts, omissions, and dealings (although Defendants deny that Sun River has been injured or damaged in any fashion whatsoever).

16. Sun River's alleged damages and injuries have resulted from the acts, omissions, occurrences, and dealings of third parties who were independent of and not controlled by Defendants (although Defendants deny that Sun River has been damaged or injured in any fashion whatsoever).

17. Defendants assert the defense of offset against any claimed damages sought in the Complaint (although Defendants deny that Sun River has been damaged in any fashion whatsoever).

18. Defendants assert the defense of recoupment against any claimed damages sought in the Complaint (although Defendants deny that Sun River has been damaged in any fashion whatsoever).

WHEREFORE, Defendants respectfully request that all claims Plaintiff asserts against them be dismissed or otherwise rejected, and that judgment be entered in Defendants' favor, along with all costs, and that the Court enter such further relief as it deems appropriate.

### **COUNTERCLAIM**

Erik S. Nelson, Steve Stephens, and Coral Capital Partners, Inc., by and through their counsel, M. Gabriel McFarland, J. Lucas McFarland, and Cyd Hunt, assert the following Counterclaims against Sun River Energy, Inc.:

### **BACKGROUND INFORMATION**

1. On October 17, 2007, Sun River engaged Coral Capital to provide advisory services. A true copy of that agreement ("the Advisory Agreement") is attached as Exhibit A to the original Answer filed in this proceeding and is hereby incorporated herein. Pursuant to the Advisory Agreement, Coral Capital developed a business plan and financial model, which were completed by late January 2008.

2. In April 2008, the Advisory Agreement was terminated due to Sun River's failure to pay Coral Capital approximately \$52,000 for its completed services.

3. During the summer of 2008, Sun River offered Coral Capital 150,000 shares of Sun River common stock in lieu of the cash fees due to Coral Capital. Sun River further offered to convert previously issued warrants to Sun River common stock. Coral Capital accepted Sun

River's offer in late July 2008, and requested the proposed stock be issued in the names of Messrs. Nelson and Stephens, who had assisted Coral Capital on the project.

4. On August 7, 2008, Sun River's board of directors signed unanimous consent minutes approving the parties' settlement agreement. Thereafter, Sun River issued 75,000 shares of its common stock to Nelson and 75,000 shares to Stephens (incorrectly referred to as "Steve Smith" in the minutes). Sun River also converted Nelson's and Stephens's warrants, although not into the full number of shares required. The warrant conversion resulted in the issuance of 24,998 additional shares to Nelson and 18,750 additional shares to Stephens. A true copy of said consent minutes is attached as Exhibit B to the original Answer filed in this proceeding and is hereby incorporated herein.

5. Sun River Energy disclosed the conversion of the warrants to common stock in its Form 8-K filed with the SEC on August 21, 2008.

6. The settlement was not conditioned on the performance of any future duties by Coral Capital, Nelson, or Stephens. The board's consent minutes simply, and accurately, state that Coral Capital had earned the shares for its past services. In fact, the first time Sun River ever alleged any failure to perform under the Advisory Agreement was in paragraph 16 of Sun River's Complaint.

7. Sun River's Form 10-K, filed with the U.S. Securities and Exchange Commission ("SEC") on August 13, 2009, discloses at page 25 the issuance of the 150,000 shares to Stephens and Nelson. Sun River's board member and president, Redgie Green, signed the Form 10-K, attesting to the accuracy of the information contained therein. Additionally, Sun River board

members Stephen Weathers, Thomas Anderson, and David Surgnier signed a Sarbanes-Oxley certification to those disclosures, appearing at Exhibit 32 to the Form 10-K.

8. On August 13, 2010, Sun River Energy filed its Form 10-K for the fiscal year ended April 30, 2010. The “Statement of Shareholders Equity” disclosed the issuance of the shares to Nelson and Stephens. The Form 10-K’s Item 3, relating to Sun River’s “Legal Proceedings,” did not disclose any alleged breach or non-performance by Coral Capital, Nelson, or Stephens. Sun River has never disclosed any alleged breach by Coral Capital, Nelson, or Stephens: (1) in its Form 10-K filings for fiscal years 2008, 2009, and 2010; or (2) to the SEC.

9. Nelson owns Sterling Investment Services, Inc. (“Sterling”), which periodically publishes newsletters on technical stock analysis and produces custom research for various companies. In September 2008, Nelson was contacted by John Bradley, a Sun River consultant, on the topic of publishing a custom research report on Sun River. Sterling issued a research report in early October 2008 based on publicly available data.

10. On approximately October 1, 2008, Nelson was introduced to Harry McMillan (“McMillan”). Nelson was told McMillan was a principal in an investment services entity called J.H. Brech, LLC (“Brech”), and that he would be advising Sun River directly and in charge of its investor relations. McMillan and Nelson discussed Sterling’s services, and McMillan asked Nelson for Sterling to submit a work proposal to him.

11. Thereafter, Nelson prepared and forwarded a proposed contract (“the Proposed Sterling Contract”) to Brech’s managing member, whereby Brech would become a Sterling “client.” A true copy of the Proposed Sterling Contract is attached as Exhibit C to the original Answer filed in this proceeding and is hereby incorporated herein.

12. The parties to the Proposed Sterling Contract were Sterling and Brech. The services to be rendered were from Sterling to Brech. Sun River was not a party to the contract.

13. Nelson made attempts over time to discuss the Proposed Sterling Contract with McMillan. However, Brech refused to accept the terms or sign the Proposed Sterling Contract.

14. In early June 2009, many months after Nelson sent the Proposed Sterling Contract to Brech, McMillan sent Sterling a “Confidentiality and Non-Circumvent Agreement” (“the CNCA”). A true copy of the CNCA is attached as Exhibit D to the original Answer filed in this proceeding and is hereby incorporated herein.

15. The signature blocks on the CNCA list the contracting parties as Coral Capital, McMillan, and Brech. The agreement specifies the Proprietary Information to be “certain investment banks, and representatives of the investment banks endorsed hereto by Exhibit A.” McMillan explained the CNCA was a requirement for any continuing negotiations on the Proposed Sterling Contract. More specifically, he told Nelson that Brech wanted to be assured that if Nelson were to speak with any of Brech’s investor list or other contacts to whom Brech might introduce him, he would not solicit those entities for other investments. Thus, the CNCA sought to protect against solicitation, not the release of information regarding Sun River.

16. McMillan further represented to Nelson that the CNCA would be strictly limited to the “272 entities,” as noted in Paragraph 2b of the Proposed Sterling Contract. Based on that and several agreed on revisions, on or about August 21, 2009, Nelson signed a revised version of the CNCA as president of Coral Capital and returned it to McMillan.

17. Brech never executed or otherwise agreed to the terms of the Proposed Sterling Contract. And, Sterling has never provided any services to Brech under the Proposed Sterling

Contract. To date, all copies of the Proposed Sterling Contract Brech has sent to Sterling contain no countersignature by Brech.

18. Neither McMillan nor Brech has ever signed the CNCA or provided Nelson with a fully executed copy thereof. Sun River's name does not even appear on the CNCA.

19. The common share certificates Nelson and Stephens received from Sun River originally bore SEC Rule 144 restrictive legends.

20. Nelson subsequently requested the restriction on 75,000 of his shares be removed, since the Rule 144 "restricted period" had been satisfied.

21. On November 12, 2008, Nelson obtained a legal opinion from Sun River's legal counsel authorizing the removal of the restrictive legend on Nelson's 75,000 shares. A true copy of said opinion is attached as Exhibit E to the original Answer filed in this proceeding and is hereby incorporated herein. Nelson subsequently liquidated those shares over a period of many months spanning November 2008 into 2010, with no complaint from Sun River's management.

22. In the fall of 2009, several weeks after negotiations on the Proposed Sterling Contract had ceased, McMillan mailed Nelson an unsolicited report titled "Colfax Exploration & Development Project" ("the Colfax Report"). The information contained therein was primarily comprised of publicly available data compiled from a variety of sources, including the internet. The report addressed possible further geological study of Sun River's mineral properties in the Raton Basin of New Mexico.

23. The Colfax Report did not contain any material information relating to potential natural gas reserves or a valuation on the area under study. Nothing contained within the report would merit disclosure in a Form 8-K filing with the SEC.

24. Had the Colfax Report contained any material information, Sun River, a reporting company registered with the SEC, would have been obligated by Regulation SK to disclose that information to the public through the filing of a Form 8-K within four days of receiving the report from its authors. No such 8-K filing was ever made.

25. Sun River's own website provides a larger estimate of potential "gas-in-place" than the Colfax Report claims.

26. On March 24, 2010 Sun River issued a press release and filed an 8-K announcing the "acquisition of aeromagnetic data and preliminary processing results." That press release contained positive information concerning the Colfax New Mexico property.

27. On April 2, 2010, McMillan called Nelson, inquiring whether he had sold shares of Sun River common stock in open market transactions. McMillan threatened to file a lawsuit for Sun River against Nelson if he engaged in any future open market stock sales without getting McMillan's prior approval.

28. During said telephone call, McMillan never accused Nelson, Sterling, or Coral Capital of breaching any alleged past or present agreement with Brech or with Sun River.

29. During said telephone call, McMillan never accused Nelson or Stephens of trading in Sun River securities based on any alleged non-public material information.

30. On April 14, 2010, Nelson delivered a letter to Sun River, protesting McMillan's behavior and requesting Sun River to immediately cease sharing any information concerning its public shareholders with non-officers and non-directors.

31. At all relevant times herein, McMillan and Brech have acted on behalf of and as agents for Sun River, with the knowledge, direction, and acquiescence of Sun River's



management. Sun River's management has approved, if not expressly authorized, McMillan and Brech to direct Sun River's affairs, interfere with its shareholders, and harass and impede certain Sun River shareholders, including Nelson and Stephens, from selling Sun River shares.

32. In late April 2010, Nelson attempted to have the restrictive Rule 144 legend removed from his 24,998 restricted shares of Sun River common stock. His broker/dealer who held those securities advised him Sun River claimed it had no securities counsel and would be unable to process the request. At that time, however, Sun River was making its SEC filings and has remained current in its SEC reporting since, notwithstanding its claim of not having acting counsel.

33. As the result of Sun River's intentional interference, Nelson has been unable to sell 24,998 shares of Sun River common stock.

34. On July 8, 2010, Sun River Energy announced through a press release and a Form 8-K filing that it had received certain final geological reports on its "Raton Basin" holdings. The announcement reflected the existence of geological formations much greater than that reported in earlier reports, including the Colfax Report.

35. On July 19, 2010, Sun River Energy issued a press release and filed a Form 8-K announcing it had entered into an Acquisition Agreement and Share Purchase Agreement for an acquisition of FTP Oil & Gas, LP, and to acquire all the outstanding shares of PC Operating Texas, Inc. Those disclosed acquisitions were both material and further eclipsed any other geological information McMillan had previously sent to Nelson.

36. Sun River is a publicly traded corporation with approximately 23,946,727 shares issued and outstanding and a market capitalization of slightly under \$100 million. Nelson's and

Stephens's combined shares amount to less than one-half of one percent of its issued shares, and there is an active public market for the shares of Sun River. The intermittent and limited sales of their shares would have had no impact on the market for Sun River's common stock.

37. Cicerone Development Corporation LLC ("Cicerone") owns approximately 31% of Sun River's common stock. It is subject to various federal securities regulations, including a requirement to file periodic Form 4's with the SEC. A Form 4 requires an owner of more than 10% of an issuer's securities to disclose its periodic transactions in those securities.

38. Coral Capital, Nelson, and Stephens have reason to believe Brech and Cicerone are controlled by Harry McMillan. As a result, Brech is subject to the reporting requirement of its ownership of Sun River's common stock and required to file Form 4's with the SEC updating its ownership and holdings.

39. Cicerone has engaged in the purchase and sale of shares of Sun River in violation of Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. § 78p). Section 16 requires the disgorgement of profits from securities transactions effected by beneficial owners, directors, and officers who trade within certain proscribed six month periods. Defendants hereby demand that Sun River's management examine Cicerone's and Brech's trading activities in Sun River shares and pursue relief against them for any violation of Section 16.

40. Counterclaimants believe counsel for Sun River is also the counsel for Brech and Cicerone and that, as a result, Sun River has actual or *de facto* knowledge of Cicerone's violation of Section 16 of the Securities Exchange Act of 1934 and its other improper dealings alleged herein.

41. Beginning in January 2009, Sun River issued to Brech, at the end of each month, warrants with a “cashless exercise” provision, enabling Brech to purchase 20,000 shares of Sun River’s common stock at an exercise price equal to the closing price of the common stock on the final trading day of each month. The warrants issued to Brech expire two years from the date of exercise, with the initial warrants set to expire in January 2011.

42. Beginning in June 2009, Cicerone was issued at the end of each month warrants with a “cashless exercise” provision to purchase 20,000 shares of Sun River’s common stock at an exercise price equal to the closing price of Sun River’s common stock on the final trading day of each month. The warrants issued to Cicerone expire two years from the date of exercise with the initial warrants set to expire in June 2011.

43. Brech and Cicerone stand to gain financially with respect to their own Sun River positions by harassing, obstructing, and otherwise preventing Nelson and Stephens and similarly situated Sun River shareholders from lawfully registering their shares and selling them into the public market.

44. Sun River is attempting to raise in excess of \$15 million. It has a pecuniary financial interest in delaying or preventing Nelson and Stephens and other shareholders from selling their shares in the public market because a limitation on supply, coupled with consistent or increasing demand, will cause the trading price to rise.

45. Additionally, Sun River is attempting to close the purchase of KATY Resources ETX, LLC. A portion of the purchase price is to be paid in Sun River shares. Per Article 2 of the Purchase and Sale Agreement between KATY RESOURCES ETX, LLC and Sun River (filed with the SEC as an exhibit to the Form 8-K filed by Sun River on October 21, 2010), the

number of acquisition shares to be issued to KATY is subject to adjustment based on the “Trailing 30-Day Average Price.” The above-described conduct of Sun River and its agents reflects apparent attempts to manipulate upward the price of Sun River’s common stock in order to issue the sellers fewer Sun River shares.

46. Sun River’s contentions in its Complaint and in other filings directly and consistently contradict its audited and unaudited financial statements and other disclosure documents filed with the SEC and its board action in 2008 with respect to Nelson and Stephens. Accordingly, Sun River is either attempting to nullify the lawful consent resolutions of its previous board members or is stating *in judicio* that its management has made misstated or inaccurate public securities filings with the SEC.

47. Sun River’s conduct reflects its intent to commit securities law violations through manipulative schemes and devices for its own benefit.

48. Sun River has engaged in actions that evince self-dealing, conflict of interest with its shareholders, and the resulting breach of its fiduciary duty to treat all shareholders fairly.

49. Sun River’s support of the actions of Brech, Cicerone, and McMillan is an attempt to convert Nelson’s and Stephens’s property and unjustly enrich Sun River and its agents.

50. Sun River and its agents have committed violations of multiple state and federal securities laws and regulations.

51. Sun River and its agents have engaged in a pattern of behavior designed to fraudulently induce shareholders to voluntarily refrain from selling their shares of Sun River common stock or to refrain from doing so out of fear, as a result of harassment.

52. Sun River and its agents have engaged in a pattern of behavior designed to intimidate and thwart shareholders from selling their shares of Sun River common stock.

53. Sun River and its agents have engaged in a pattern of behavior designed to deprive shareholders of their right to have the restrictive legends removed from their stock certificates in accordance with exemptions provided within Rule 144 of the Securities Act of 1933.

54. Sun River has allowed its agents to knowingly violate Section 16 of the Securities Exchange Act of 1934.

55. Sun River and/or its agents have engaged in a protracted scheme to manipulate the price of Sun River's common stock in the public market place higher, toward the goal of unjust enrichment.

56. The end game of the scheme of activity on the part of Sun River and its agents is to improperly manipulate the price of Sun River's common shares.

57. The activities in the commission of the stock manipulation scheme have harmed the Counterclaimants.

58. Nelson and Stephens maintain, on information and belief, that Sun River has engaged in similar forms and patterns of harassment and intimidation with some its other shareholders who have attempted to liquidate their shares of Sun River.

### **CLAIMS FOR RELIEF**

#### **COUNTERCLAIM I (Violation of C.R.S. § 4-8-401)**

59. Counterclaimants incorporate the foregoing paragraphs by this reference.

60. Sun River is statutorily bound to register the transfer of the Counterclaimants' common shares free of any legend pursuant to C.R.S. § 4-8-401.

61. Sun River has knowingly violated and continues to knowingly violate C.R.S. § 4-8-403 by refusing to allow Counterclaimants to have the restrictive legend removed from their share certificates.

62. As a result, Counterclaimants have suffered damages in an amount to be determined at trial.

**COUNTERCLAIM II**  
**(Civil Theft, C.R.S. § 18-4-401, et seq.)**

63. Counterclaimants incorporate the foregoing paragraphs by this reference.

64. Sun River, by refusing to remove the restrictive legend from Nelson's and Stephens's stock and otherwise allow them to sell the same, has knowingly obtained or exercised dominion and control over property (*i.e.*, stock) owned by Nelson and Stephens.

65. Sun River's exercise of control over the stock previously issued to the Counterclaimants was without their authorization and occurred by means that included threats, intimidation, and deception.

66. In exercising control over the shares previously issued to the Counterclaimants, Sun River intended to permanently deprive them of the use or benefit of the shares issued, including any benefit that they might obtain by selling such shares in whole or in part.

67. Sun River exercised its control with the specific intent to permanently deprive Counterclaimants of the benefit of the property.

68. Sun River, by its continued exercise of control over the shares issued to Counterclaimants and refusal to provide proper registration instructions to its transfer agent, has

permanently deprived Counterclaimants of the use or benefit of the shares issued, including any benefit that they might obtain by selling such shares in whole or in part.

69. As a result of Sun River's violations of C.R.S. § 18-4-401, *et seq.*, Counterclaimants are is entitled to recover three times their actual damages or other amounts available by law, together with the costs of this action and reasonable attorney fees.

**COUNTERCLAIM III**  
**(Violation of the Securities Exchange Act of 1934)**

70. Counterclaimants incorporate the foregoing paragraphs by this reference.

71. Counterclaimants hereby assert claims arising under Section 10(b) and 20(a) of the Securities Exchange Act of 1934 (“the Exchange Act”) and Rule 10b-5 promulgated thereunder.

72. The acts and wrongs complained of herein were conducted between persons residing and domiciled in different states in transactions involving publicly traded securities.

73. Sun River negotiated the settlement of the Advisory Agreement so as to inveigle Coral Capital, Nelson, and Stephens to forbear from suing Sun River and to accept Sun River common stock in lieu of monetary compensation that was otherwise then due and owing.

74. The Counterclaimants negotiated in good faith with Sun River with the reasonable expectation that Sun River would perform and satisfy its executory contractual covenants under the settlement. Those executory covenants included Sun River’s obligation to timely remove restrictive legends from said common stock so that Counterclaimants would have freely tradable, unrestricted shares they could liquidate at will in the open market.

75. Sun River’s controlling persons knew the Counterclaimants were entering into the settlement arrangement on the material condition that Sun River would perform its executory

obligation to timely removal of any restrictions on said common stock once the statutory “lock up” periods governing those restrictions were satisfied.

76. At the time Sun River entered into the executory settlement, it and those persons acting in concert with it did not have the present intent or plan to ever fully perform that agreement or to enable Counterclaimants to enjoy the benefit of their contractual bargain.

77. At the time of entering into the settlement and thereafter, Sun River’s controlling persons had the present intent to engage in patterns of wrongdoing and harassment to prevent various securities holders like the Counterclaimants from freely trading their securities so that said controlling persons could liquidate their own holdings in a more advantageous market environment.

78. At all relevant times, Counterclaimants acted in good faith in their settlement negotiations and justifiably relied on Sun River’s commitments and promises, including the implied promise and covenant to promptly remove restrictive legends from the common stock delivered pursuant to the settlement.

79. Sun River acted fraudulently and concealed its wrongful plans and intent from the Counterclaimants and induced the Counterclaimants to act to their detriment, resulting in monetary loss and damage.

80. Following said settlement transaction, McMillan, acting on behalf of himself, Blech, and Cicerone, and as a controlling person of Sun River, engaged in the harassing and interfering conduct and other artifices and schemes described above in his dealings with Nelson and Stephens, with other common stock shareholders, and with Sun River’s stock transfer agent. Said conduct has further included Sun River’s utilizing the civil process of this Court to assert



false and frivolous litigation claims against the Counterclaimants in an effort to harass them and to divest them of their stock.

81. This wrongful conduct has advanced Sun River's plan to defraud said shareholders and to deprive them of their vested rights in their common stock, while correspondingly enabling McMillan, Brech, Cicerone and others acting in concert with them to manipulate the market in order to sell their holdings.

82. Through means and instrumentalities of interstate commerce, and in connection with the purchase and sale of securities, Sun River and its controlling persons knowingly willfully and recklessly: (1) made untrue statements of material facts upon which the Counterclaimants relied and did omit to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; (2) employed manipulative, deceptive, and fraudulent devices, schemes, and artifices to defraud Counterclaimants; and (3) engaged in acts, practices, and courses of conduct that operated as a fraud and deceit on Counterclaimants. As such, Sun River and said controlling persons have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

83. Such acts and omissions were fraudulently concealed from Counterclaimants until shortly before these legal proceedings commenced such that Counterclaimants did not know of and could not have reasonably discovered them until these proceedings commenced.

84. By virtue of said fraud, misrepresentations, and deceit, Counterclaimants have incurred damages and losses, including without limitation the amount of their investments plus the lost use of the money invested.

**COUNTERCLAIM IV**

**(Violation of the Colorado Securities Act, C.R.S. § 11-51-101, *et seq.*)**

85. Counterclaimants incorporate the foregoing paragraphs by this reference.

86. Sun River's dealings with the Counterclaimants involved the offer, sale, or purchase of securities, namely, the issuance of shares by Sun River to Nelson and Stephens with the understanding and expectation that said persons, as owners of the shares, were entitled to sell or attempt to sell and freely trade the shares by themselves or through a brokerage firm and as otherwise permitted by law.

87. As a condition of Counterclaimants' attempts to sell the certificated Sun River shares issued to them, they requested registration of transfer of their Sun River shares into the names of their brokerage firms, their brokerage firms' designated custodians, or their nominees.

88. In connection with the offer, sale, or purchase of the Sun River shares issued to the Counterclaimants, Sun River directly or indirectly:

- (a) employed a device, scheme or artifice to defraud, as alleged above;
- (b) made untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, as alleged above; and
- (c) engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit upon the Counterclaimants, as alleged above.

89. Counterclaimants reasonably relied upon Sun River's conduct and false statements and the false impressions created by those statements.

90. Sun River's violations of § 11-51-101, *et seq.*, have caused Counterclaimants to incur damages. As a result of Sun River's violations, Counterclaimants are entitled to recover damages in an amount to be proven at trial, together with the costs of this action and reasonable attorney fees, and injunctive or other relief.

**COUNTERCLAIM V**  
**(Violation of the Colorado Organized Crime Control Act, C.R.S. § 18-17-101, *et seq.*)**

91. Counterclaimants incorporate the foregoing paragraphs by this reference.

92. Sun River knowingly associated itself with McMillan, Brech, Cicerone, and other persons for the purpose of thwarting, preventing, or delaying sales of Sun River stock by shareholders other than McMillan, Brech, and Cicerone and in order to benefit McMillan, Brech, and Cicerone to the detriment and damage of said other shareholders.

93. Sun River knowingly conducted or participated directly or indirectly in an enterprise consisting of McMillan, Brech, and Cicerone and other persons. The purpose of the enterprise was to obstruct or prevent sales of Sun River stock being undertaken by shareholders other than McMillan, Brech, and Cicerone.

94. Upon information and belief, Sun River agreed and knowingly allowed and/or participated with McMillan, Brech, and Cicerone to carry out a plan by which they together would through unlawful means thwart, prevent, or delay the sale of Sun River stock by shareholders other than McMillan, Brech, and Cicerone.

95. Sun River, together with McMillan, Brech, and Cicerone and persons associated with them, has engaged in a pattern of racketeering activity by unlawfully exercising dominion or control over the Sun River shares issued to Nelson, Stephens, and other Sun River shareholders (including but not limited to Nova Leasing, LLC and Sharon K. Fowler) with the

intent to permanently deprive such shareholders of the use or benefit of their shares, including any benefit that might be realized from the sale of such shares.

96. Sun River, together with McMillan, Brech, and Cicerone, has engaged in a pattern of racketeering activity by two or more acts of securities fraud as alleged herein. Such acts include making untrue or misleading statements of material fact, or omitting to disclose material facts, in connection with the offer, sale, or purchase of securities, with the intent that Counterclaimants, Nova Leasing, LLC, Sharon K. Fowler, Mountain Share Transfer, and others would rely upon such false statements; and such persons did so rely. Sun River, acting together with McMillan, Brech, and Cicerone, made such false statements in connection with the sale of securities.

97. Sun River's violations of C.R.S. § 18-17-101, *et seq.* have caused damage to Counterclaimants.

98. As a result of Sun River's violations, Counterclaimants are entitled to recover three times their actual damages or other amounts available by law, together with the costs of this action and reasonable attorney fees, and injunctive or other relief.

**COUNTERCLAIM VI**  
**(Breach of Fiduciary Duty to Shareholders)**

99. Counterclaimants incorporate the foregoing paragraphs by this reference.

100. Sun River and its board of directors have fiduciary duties to the shareholders of the company. Those duties include the obligation to act in utmost good faith toward the shareholders, to operate the company for the shareholders' benefit, to deal fairly with the shareholders, and to treat all shareholders equally.

101. By reason of their wrongful conduct described above, Sun River and its agents have violated their fiduciary duties to Counterclaimants and other similarly situated shareholders.

102. As a result, Counterclaimants have suffered damages in an amount to be proven at trial.

**COUNTERCLAIM VII  
(Declaratory Judgment)**

103. Counterclaimants incorporate the foregoing paragraphs by this reference.

104. A real controversy regarding Sun River's obligation to remove the restrictive legend from the at-issue Sun River shares exists between Counterclaimants, on one hand, and Sun River, on the other hand.

105. Counterclaimants are entitled to a judgment declaring that Sun River must remove the restrictive legend from the at-issue shares, and Sun River has a duty to register the transfer of the at-issues shares immediately, as requested by Nelson and Stephens.

**PRAYER FOR RELIEF**

WHEREFORE, Counterclaimants demand judgment against Sun River Energy, Inc. on all claims for relief in an amount that will adequately compensate them for all damages, losses, and injuries, treble damages as allowed by law, pre- and post-judgment interest, attorney fees, costs, a trial by jury, and the entry of any and all other relief the Court may deem just and proper.

Dated this 17<sup>th</sup> day of May, 2011.

Respectfully submitted,

s/ M. Gabriel McFarland

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STEPHENS, and CORAL CAPITAL

PARTNERS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 17, 2011, I electronically filed the foregoing **DEFENDANTS' ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to at least the following via e-mail:

Stephen E Csajaghy  
CONDIT CSAJAGHY, LLC  
695 S. Colorado Blvd., Suite 270  
Denver, CO 80246

s/ Gina Bowermaster

Gina Bowermaster