

<p>DISTRICT COURT, DELTA COUNTY, COLORADO</p> <p>501 Palmer Street, #338, Delta, CO 81416 Phone Number: 970-874-6280</p> <hr/> <p>Plaintiffs:</p> <p>SG INTERESTS I, LTD., a Texas limited partnership, and SG INTERESTS VII, LTD., a Texas limited partnership</p> <p>v.</p> <p>Defendant:</p> <p>Peter T. Kolbenschlag, a/k/a Pete Kolbenschlag</p>	<p><i>COURT USE ONLY</i></p>
<p>Attorneys for Plaintiffs:</p> <p>William E. Zimsky, Atty. Reg.#: 25318 Abadie & Schill PC 555 Rivergate Lane, Suite B4-180 Durango, CO 81301 Phone Number: (970) 385-4401 FAX Number: (970) 385-4901 E-mail: bill@abadieschill.com</p>	<p>Case Number:</p> <p>2017CV30026</p> <p>Division Courtroom</p>
<p>FIRST AMENDED COMPLAINT</p>	

COME NOW Plaintiffs SG Interests I, Ltd. and SG Interests VII, Ltd. (collectively referred to herein as “SGI”), by and through their attorneys, Abadie & Schill, PC, and for their complaint against Defendant Peter T. Kolbenschlag, a/k/a Pete Kolbenschlag, states and alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1. SG Interests I, Ltd. is a limited partnership duly organized under the laws of the State of Texas with its principal place of business located at 100 Waugh Drive, Suite 400,

Houston, Texas 77007. SG Interests I, Ltd. is currently authorized to do business in Colorado and is currently doing business in Colorado. SG Interests I, Ltd. maintains an office in La Plata County, Colorado. Gordy Oil Company is the general partner of SG Interests I, Ltd.

2. SG Interests VII, Ltd. is a limited partnership duly organized under the laws of the State of Texas with its principal place of business located at 100 Waugh Drive, Suite 400, Houston, Texas 77007. SG Interests VII, Ltd. is currently authorized to do business in Colorado and is currently doing business in Colorado. SG Interests VII, Ltd. maintains an office in La Plata County, Colorado. Gordy Oil Company is the general partner of SG Interests VII, Ltd.

3. Defendant Peter T. Kolbenschlag, a/k/a Pete Kolbenschlag, is an individual who resided in Delta County, Colorado, during all times pertinent hereto and who currently resides in Delta County, Colorado.

4. This action alleges tortious conduct committed in Colorado by a citizen of Colorado. Thus, this Court has jurisdiction to hear this case. COLO. CONST. art. VI, § 9. Venue is proper in Delta County because the Defendant is a resident of Delta County. C.R.C.P. 98(c)(1).

II. GENERAL ALLEGATIONS

5. SG Interests I, Ltd. and its affiliate, Gordy Oil Company, operate 86 active wells in Colorado, New Mexico, Texas, and Louisiana. With regard to the oil and gas leases in western Colorado which give rise to this lawsuit, SG Interests VII, Ltd. owns the leasehold interests in the wells operated by SG Interests I, Ltd. SGI and its affiliate entities are best described as a small independent oil and gas company.

A. THE DEVELOPMENT OF THE RAGGED MOUNTAIN AREA BY SGI AND GEC

6. In 2001, SGI and GEC began independently acquiring and developing oil and gas leases in the Ragged Mountain Area of western Colorado.¹ Prior to 2003, their activities generally focused on different parts of the Ragged Mountain Area, with SGI acquiring leases on the eastern side of the area while GEC acquired leases along the southern boundary. However, over the course of 2003 and 2004, their interests began to overlap as each sought to acquire: the Ragged Mountain Pipeline Gathering System (“Ragged Mountain Pipeline”), which was the only existing pipeline accessing the Ragged Mountain Area; leases from BDS International, LLC and affiliated entities (collectively, “BDS”); and additional federal oil and gas leases as the BLM offered those additional parcels for lease in the Ragged Mountain Area. Conflicting efforts by SGI and GEC to acquire assets held by BDS resulted in litigation between SGI and GEC in 2004.

7. In October 2004, GEC and SGI met to discuss the prospect of settling the litigation and entering into a collaboration to develop the Ragged Mountain Area. The potential collaboration contemplated joint acquisition of the BDS assets, improvements to the existing BDS pipelines, and joint development of new pipelines to serve the area.

8. On or about December 23, 2004, BLM announced that it would hold an auction on February 10, 2005, that would include three tracts in the Ragged Mountain Area, comprising a total of approximately 2,925 acres.²

¹ The Ragged Mountain Area covers roughly the region encompassed by the Townships 10 South through 12 South and Ranges 89 West through 91 West, as designated by the Public Land Survey System, comprising portions of Delta, Gunnison, Mesa, and Pitkin Counties.

² The three tracts are: COC068350 and COC068351, located in Gunnison County; and COC0068352, located in Delta and Gunnison Counties.

9. On or about February 2, 2005, SGI and GEC continued their discussions about entering into a risk sharing agreement to jointly develop oil and gas resources in the Ragged Mountain Area. These discussions resulted in the drafting of the written Memorandum of Understanding (“MOU”) by attorneys for SGI and GEC that was executed by the parties on February 8, 2005.

10. Under the MOU, the parties agreed that SGI would bid on certain federal oil and gas leases at the February 12, 2005 BLM sale and that SG would assign GEC a 50% interest in any leases for which it was the successful bidder. The parties also agreed to establish a business plan within ninety (90) days addressing the development of the leases. In addition, the MOU provided that the parties would enter into joint venture agreements governing the development of the leases and set forth the “Major Components” of such agreements.

11. SGI was the successful bidder at the BLM lease sale held on February 12, 2005, for federal oil and gas leases COC-68350, COC-68351, and COC-68352. Pursuant to the terms of the MOU, SGI assigned a 50% interest in each lease to GEC.

12. SGI and GEC amended the MOU to include lease COC-068490, which was being tendered for bid at the May 12, 2005, BLM lease sale. SGI was the successful bidder for lease COC-068490 and SG assigned a 50% interest in this lease to GEC.

13. On June 3, 2005, SGI and GEC entered into an Area of Mutual Interest Agreement (“AMIA”) and an Option and Participation Agreement (“OPA”), to further document the joint venture provisions of the MOU. The AMIA required either party to offer 50% of any oil and gas interest acquired within the area of mutual interest to the other party at cost. The

AMIA also provided that the parties would work together with respect to permitting of pipelines to service the area and granted GEC rights, which it subsequently exercised, to participate in the ownership of the Bull Mountain Pipeline. The OPA settled the outstanding litigation between SGI and GEC and provided for joint acquisition of the Ragged Mountain Pipeline and other assets held by BDS, which the parties successfully accomplished in July 2005. Pursuant to the AMIA, GEC and SGI acquired all 18 leases in the Ragged Mountain Area that were auctioned by the BLM from July 2005 through November 2006.

14. Pursuant to the MOU, the AMIA, and the OPA, SGI and GEC made significant upgrades to the Ragged Mountain Pipeline and developed and constructed the Bull Mountain Pipeline, a new, higher capacity pipeline to serve the Ragged Mountain Area. Also, pursuant to the MOU, the AMIA, and the OPA, SGI and GEC have expended, and continue to expend, significant resources to develop the oil and gas resources underlying the twenty-two leases acquired through these agreements. SGI has spent more than \$24 Million in developing the assets associated with the twenty-two leases that were the subject of MOU and AMI. This amount does not include any amounts spent by SGI to build the Bull Mountain Pipeline to transport gas produced by the twenty-two leases. As a result of these agreements, the United States has earned, and will continue to earn, significantly more royalty payments than it would otherwise have received absent the risk sharing arrangement between SGI and GEC.

B. THE ANTI-TRUST AND FALSE CLAIM ACT LAWSUITS AND SETTLEMENT

15. On October 20, 2009, Anthony B. Gale, as Relator, filed a Qui Tam Complaint on behalf of the United States in the United States District Court for the District of Colorado, Civil Action No. 09-CV-02471 (referred to herein as the “FCA Action”). In that complaint, Mr. Gale, who actually executed the MOU, the AMIA, and the OPA on behalf of GEC, alleged that SGI and GEC colluded not to bid against each other with respect to twenty-two federal oil and gas leases, the four leases for which SG was the successful bidder under the MOU and the eighteen leases for which SG was the successful bidder that involved lands within the AMIA.

16. On February 4, 2011, SGI received a Civil Investigative Demand (“CID”) from the United States Department of Justice (“DOJ”) regarding SGI’s bidding practices with respect to federal oil and gas leases. In order to comply with the CID, SGI retained outside counsel and other third parties to respond to the CID and to cooperate with the DOJ’s investigation of SGI’s bidding practices.

17. SGI fully cooperated with the DOJ during the course of the investigation, producing more than 100,000 pages of documents, making its employees available for interviews and depositions, and otherwise providing the DOJ with access to all the information that the DOJ requested related to SGI’s bidding process for federal oil and gas leases.

18. After conducting a two-year investigation, the United States determined that SGI’s and GEC’s agreement to bid jointly pursuant to the MOU constituted a *per se* violation of Section 1 of the Sherman Act. In contrast, the United States determined that SGI’s and GEC’s

agreement to bid jointly pursuant to the AMIA was ancillary to the broader efficiency enhancing collaboration reflected in other provisions of the AMIA and the simultaneously executed OPA.

19. Among other defenses, SGI contended that the MOU was ancillary to the AMIA and OPA and, therefore, did not constitute a violation of the Sherman Act.

20. Although SGI denied any wrongdoing, SGI reached a settlement agreement with the United States with respect to the four leases acquired at the February and May 2005 auctions. After the United States DOJ and SGI agreed to the settlement, the DOJ filed a complaint against SGI and GEC alleging that the MOU unreasonably restrained competition for the acquisition of BLM leases and that the United States was injured as a result of the unlawful agreement in that it received lower bid payments for the four leases than it would have absent the allegedly illegal agreement.

21. The DOJ issued a Press Release on February 15, 2012, to announce the “proposed settlement.” In that Press Release, the DOJ did not characterize the payment to the United States as a “fine,” nor did the DOJ state that SGI had admitted to any wrongdoing or that any judicial determination had been made finding that SGI was in violation of any law or regulation. A copy of the Press Release is attached herein as Exhibit 1.

22. The proposed settlement was published in the Federal Register, 77 Fed. Reg. 10775 (Feb. 23, 2012), with a request for comments.

23. In its Response of Plaintiff United States to Public Comments on the Proposed Final Judgement (Corrected) (Doc. # 17) (“Corrected Response to Comments”), the DOJ: (1) noted that commenters mischaracterized the settlement amount as a “fine” (p. 20); acknowledged

that the Sherman Act does not provide for civil penalties or civil fines (p. 20); and stated that SGI did not make any admission of wrongdoing (pp. 20-21). A copy of the Corrected Response to Comments is attached hereto as Exhibit 2.

24. After Judge Matsch rejected the originally proposed settlement, the DOJ filed a Plaintiff's Memorandum in Support of Its Motion for Entry of Final Judgment With Respect to Defendants SG Interests I, Ltd. and SG Interests VII, Ltd. and For Entry of Final Judgment With Respect to Defendant Gunnison Energy Corporation (Doc. # 28), a copy of which is attached hereto as Exhibit 3. In that Memorandum, the DOJ noted that "the United States has not proved its case at trial" and that there was a risk that the United States might not succeed in establishing liability. Memorandum at 13.

25. As part of the settlement approved by Judge Matsch, SGI eventually agreed to pay the United States \$275,000 to settle the anti-trust complaint. SGI also settled the FCA Action.

26. Under the settlement agreement, the United States retained the right to prosecute SGI criminally in connection with its bidding practices for the twenty-two leases. The United States has never brought any criminal charges against SGI and the statute of limitations has run out for any criminal charges to be brought against SGI in connection with its bidding practices for the twenty-two leases.

27. SGI made the prudent economical business decision to pay a settlement to avoid the costs of protracted litigation. During the course of the two-year investigation, SGI expended more than \$1.75 Million in responding to the CID, not including the significant amount of time spent by employees of SGI in responding to requests for documents, gathering documents, and

participating in defending the CID with its attorneys. SGI proposed a settlement because the DOJ continued to investigate without specifying what SGI did wrong and SGI anticipated spending more than it did in responding to the DOJ's investigation if litigation ensued. Thus, instead of paying more than an additional million and a half dollars in attorneys' fees, expert witness fees, and other costs, not including the opportunity costs of having to divert economic and human resources away from developing its assets in order to defend the government's baseless allegations, SGI voluntarily chose the economically prudent course of action – making a payment to the government for a significantly lesser amount of money. In other words, SGI settled with the United States lawsuit without any admission of wrongdoing in order to pursue its core business, the development of oil and gas resources. To that end, SGI has spent more than \$24 Million in developing the assets associated with the twenty-two leases that were the subject of MOU and AMI. This amount does not include any amounts spent by SGI to build the Bull Mountain Pipeline to transport gas produced by the twenty-two leases.

28. Agreements such as the ones entered into between SGI and GEC are common place in the oil and gas industry. During the course of the DOJ's investigation, SGI provided the DOJ with copies of a number of such agreements to which it is a party in Texas. The DOJ has never questioned the legality of any of these agreements and did not allege any violation of law with respect to the eighteen federal oil and gas leases for which SGI was the successful bidder at BLM sales covered by the AMIA and OPA between SGI and GEC.

C. The Thompson Divide Leases

29. Unrelated to the leases that were the subject of the MOU and/or AMIA between SGI and GEC, SGI was the lessee of eighteen federal oil and gas leases issued by the BLM covering minerals owned by the United States located in Garfield, Pitkin, Gunnison, and Mesa Counties, Colorado. These leases covered lands within an area commonly referred to as the Thompson Divide, which is located in the White River National Forest.

30. On November 17, 2016, the BLM issued a Record of Decision that cancelled all eighteen of SGI's leases in the Thompson Divide area.

31. On November 28, 2016, the Glenwood Springs Post Independent, a general circulation newspaper serving Garfield County, Colorado, published an article headlined "Divide lease decision likely to land in court." A copy of that article is attached hereto as Exhibit 4.

32. The article discussed the BLM's November 17, 2016, Record of Decision. The article stated that SGI "vowed to take legal action based on evidence it says points to collusion between the Obama administration and environmental interests to reach a 'predetermined political decision.'" The article quoted Robbie Guinn, in which he states that "[SGI] will seek lost profits in the courts."

33. The article states that Mr. Guinn pointed to testimony he gave to the Subcommittee on Natural Resources referring to BLM communications that SGI obtained through a Freedom of Information Act request as the basis for SGI's legal action.

D. KOLBENSCHLAG'S DEFAMATORY STATEMENT

34. On November 29, 2016, Kolbenschlag published a written comment to the article that was published on the Glenwood Springs Post Independent's website. A copy of the comment is attached hereto as Exhibit 5.

35. In that comment, Kolbenschlag falsely asserted that:

While SGI alleges "collusion" let us recall that it, SGI, was actually fined for colluding (with GEC) to rig bid prices and rip off American taxpayers. Yes, these two companies owned by billionaires thought it appropriate to pad their portfolios at the expense of you and I and every other hard-working American.

D. PETER KOLBENSCHLAG

36. Peter Kolbenschlag is a self-described "outspoken critic" of SGI. He has stated that "When oil and gas proposals began popping up around the small towns and family farms of Colorado's North Fork Valley, my home, I helped organize the community to fight back." He opposes hydraulic fracturing operations, a technique that SGI employs with the wells that it operates in the North Fork Valley. However, he is not an uninformed muckraker haphazardly posting comments from his mother's basement. Rather, he is a media savvy entrepreneur who has developed expertise over the years in working on public lands, energy, and recreation resource issues and organizing effective grassroots advocacy campaigns.

37. Kolbenschlag is the owner and principal of Mountain West Strategies, Ltd. According to Mountain West Strategies, Ltd.'s website, Kolbenschlag "has over 20 years experience crafting, running, and winning successful issue campaigns, including media relations,

campaign development, grassroots response, event planning, and strategic research.” <http://mountainweststrategies.com>

According to its website, Mountain West Strategies, Ltd. provides the following type of services:

Mountain West Strategies specializes in public outreach and community engagement in western Colorado, eastern Utah, and the Mountain West.

Getting the On-the-Ground Response

With years of experience working on public lands, energy, and recreation resource issues, Mountain West Strategies can provide research and analysis, strategic planning, media development, stakeholder relations, and the campaign management to create effective community-based action.

<http://mountainweststrategies.com/services>.

38. Reflective of his expertise, Kolbenschlag was part of a delegation formed by Citizens for a Healthy Community, to travel to Washington, D.C. in 2013, to lobby for greater protection from oil and gas leasing on public lands. Citizens for a Healthy Community is an environmental organization “dedicated to protecting the air, water and foodsheds within . . . Delta County . . . from impacts of oil and gas development.” The delegation from Citizens for a Healthy Community specifically focused on proposed BLM rulemaking on hydraulic fracturing on federal lands proposed by the BLM.

39. In addition to his defamatory comment made in response to the Glenwood Springs Post Independent’s November 29, 2016, article, Kolbenschlag has published other derogatory comments about SGI. In a letter that he sent to Glenwood Springs Post Independent, published on September 24, 2015, Kolbenschlag stated that “SG Interests has at least one Colorado

politician in its pocket,” referring to Congressman Scott Tipton, essentially accusing SGI of contributing money to Congressman Tipton as part of a *quid pro quo* scheme to “grease the Congressional skids to gets its way in Western Colorado.”

40. As a business owner, Kolbenschlag is aware of the harm that can be caused by making false accusations against a business. Kolbenschlag is also apparently aware of the relation of such false accusations to a claim of libel. In response to a letter to the editor published in the Grand Junction Sentinel about Kolbenschlag, he wrote the following in response to the letter to the editor that was printed in the Sentinel on September 26, 2016:

Recent letter included falsehoods leveled in attempt to disparage business³

My company, Mountain West Strategies, receives no government subsidies or government monies and charging so, as does Mr. Conkle in his ill-informed letter, is *a falsehood leveled in the attempt to disparage my business*... (Emphasis supplied.)

* * *

Mr. Conkle should not toss out *falsehoods that border on libel*, and he ought to educate himself before spouting claims regarding things he clearly knows little about. Correcting this behavior would make him a better advocate for whatever causes he supports. (Emphasis supplied.)

PETE KOLBENSCHLAG
Paonia

III. CLAIM FOR RELIEF – LIBEL PER SE

41. Plaintiffs incorporate and re-allege paragraphs 1-40 above.

42. Kolbenschlag’s assertion that SGI “was actually fined for colluding (with GEC) to rig bid prices and rip off American taxpayers” constitutes a statement of fact and not an opinion.

³ It is unclear whether this headline for the letter to the editor was written by Kolbenschlag or by the editor of the opinion page of the Sentinel.

43. Kolbenschlag caused this assertion to be published on the Glenwood Springs Post Independent's website.

44. The substance and gist of Kolbenschlag's assertion that SGI "was actually fined for colluding (with GEC) to rig bid prices and rip off American taxpayers" is contrary to the true facts and a reasonable person reading the assertion would be likely to think significantly less favorably about SGI than they would if they knew the true facts.

45. An assertion that a company was fined by the federal government for colluding to rig bid prices and rip off American taxpayers is defamatory because it tends to harm the company's reputation by lowering the company in the estimation of at least a substantial and respectable minority of the community.

46. No extrinsic evidence or innuendo is necessary to show that Kolbenschlag's assertion that "was actually fined for colluding (with GEC) to rig bid prices and rip off American taxpayers" is defamatory in nature or that the assertion was made about SGI.

47. Kolbenschlag is a media savvy activist who has "more than twenty years experience working on public lands, energy, and recreation resource issues," and holds himself out as an expert in "research and analysis, strategic planning, media development, stakeholder relations, and the campaign management to create effective community-based action." He has travelled to Washington, D.C. on behalf of an environmental organization to lobby for greater protection from oil and gas leasing on public lands and proposed BLM rulemaking on hydraulic fracturing on federal lands.

48. As an expert in creating effective community-based action, Kolbenschlag was aware at the time he made his false assertion of the need to disseminate truthful information in connection with commenting on issues involving public lands and energy. In fact, five weeks prior to publishing his defamatory statement against SGI, he publically admonished someone for “a falsehood leveled in the attempt to disparage my business,” advising that person “not toss out falsehoods that border on libel” and noting that the person “ought to educate himself before spouting claims regarding things he clearly knows little about. Correcting this behavior would make him a better advocate for whatever causes he supports.”

49. There was no basis for Kolbenschlag to assert that SGI “was actually fined for colluding (with GEC) to rig bid prices and rip off American taxpayers.”

50. Kolbenschlag failed to pursue obvious available sources for possible corroboration of or refutation regarding the truthfulness of his assertion, including the most obvious source for corroboration, the Department of Justice.

51. Prior to making his assertion, there was publically available information that unequivocally established that SGI was not “actually fined for colluding (with GEC) to rig bid prices and rip off American taxpayers” but that SGI settled the dispute without admitting any wrongdoing by paying a settlement.

52. Kolbenschlag is a self-described “outspoken” critic of SGI who displayed ill-will and animosity toward SGI prior to publishing his false assertion against SGI.

53. Based on allegations set forth herein, at the time that Kolbenschlag published his assertion that SGI “was actually fined for colluding (with GEC) to rig bid prices and rip off

American taxpayers,” he acted with actual malice since he either knew that this assertion was false or he made the assertion with a reckless disregard as to whether the assertion was true.

54. Kolbenschlag’s assertion that SGI “actually fined for colluding (with GEC) to rig bid prices and rip off American taxpayers” has caused SGI actual damages, including, but not limited to, impairment of SGI’s reputation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests the Court to enter judgment in its favor and against Defendant as follows:

- A. Actual damages in an amount to be proven at trial;
- B. Costs and attorneys’ fees as provided by statute; and
- C. For such other relief as this Court may deem just and proper, including pre- and post-judgment interest.

Dated this 21st day of April, 2017.

ABADIE & SCHILL, PC

/s/ William E. Zimsky

William E. Zimsky

Attorneys for Plaintiffs SG Interests I, Ltd. and SG Interests, VII, Ltd.

Plaintiffs’ Address:

100 Waugh Drive
Suite 400
Houston, Texas 77007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April, 2017, I served a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** with the Court via ICCES, which will send notification of such filing to the following:

Steven D. Zansberg, Esq.
Levine Sullivan Koch & Schultz, LLP
1888 Sherman Street, Suite 370
Denver, CO 80203
szansberg@lskslaw.com

/s/ William E. Zimsky