



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF SHALLOW OIL & GAS INC., ERIC O'BRIEN, ABEL DA SILVA,
ABRAHAM HERBERT GROSSMAN also known as ALLEN GROSSMAN
and KEVIN WASH¹**

**AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

I. THE RESPONDENTS

1. Shallow Oil & Gas Inc. ("Shallow Oil") is an Ontario corporation that was incorporated on September 24, 2007.
2. Eric O'Brien ("O'Brien") is listed as the initial and sole director of Shallow Oil.
3. Abel Da Silva ("Da Silva") was a directing mind of Shallow Oil and was a director or officer of Shallow Oil. In the alternative, Da Silva was employed by and/or acted as an agent for Shallow Oil and acted as a salesperson for Shallow Oil securities.

¹ The Commission approved settlement agreements reached with the following individuals, each of whom had originally been named as a respondent in this proceeding: Gurdip Singh Gahunia also known as Michael Gahunia (approved on December 16, 2010), Marco Diadamo (approved on December 9, 2011), Gord McQuarrie (approved on May 12, 2009) and William Mankofsky (approved on July 24, 2009).

4. Abraham Herbert Grossman, also known as Allen Grossman (“Grossman”) was a directing mind of Shallow Oil and was a director or officer of Shallow Oil. In the alternative, Grossman was employed by and/or acted as agent for Shallow Oil, and acted as a salesperson for securities of Shallow Oil.
5. Gurdip Singh Gahunia, also known as Michael Gahunia (“Gahunia”) was employed by and/or acted as agent for Shallow Oil, and acted as a salesperson for securities of Shallow Oil.
6. Marco Diadamo (“Diadamo”) was employed by and/or acted as agent for Shallow Oil, and acted as a salesperson for securities of Shallow Oil.
7. Gord McQuarrie (“McQuarrie”) was employed by and/or acted as agent for Shallow Oil, and acted as a salesperson for securities of Shallow Oil.
8. Kevin Wash (“Wash”) was employed by and/or acted as agent for Shallow Oil, and acted as a salesperson for securities of Shallow Oil.
9. William Mankofsky (“Mankofsky”) was employed by and/or acted as agent for Shallow Oil, and acted as a salesperson for securities of Shallow Oil.
10. Shallow Oil, O'Brien, Da Silva, Grossman and Wash are referred to collectively as the "Respondents".

II. SUMMARY OF STAFF’S ALLEGATIONS

11. The specific allegations advanced by Staff are:
 - (a) Between September 24, 2007 and February 27, 2008, the Respondents traded in securities of Shallow Oil without being registered contrary to section 25(1)(a) of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the “Act”);
 - (b) Between September 24, 2007 and February 27, 2008, O’Brien, Da Silva, and Grossman, being directors or officers of Shallow Oil, did authorize, permit or

acquiesce in trades in securities of Shallow Oil without Shallow Oil being registered to trade in such securities contrary to section 129.2 of the Act;

- (c) Between September 24, 2007 and February 27, 2008, the Respondents traded in securities of Shallow Oil when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53(1) of the Act;
- (d) Between September 24, 2007 and February 27, 2008, O'Brien, Da Silva, and Grossman, being directors or officers of Shallow Oil, did authorize, permit or acquiesce in trades in securities of Shallow Oil where such trading was a distribution of such securities, without having filed a preliminary prospectus and prospectus and obtaining receipts for them from the Director, contrary to section 129.2 of the Act;
- (e) Between September 24, 2007 and February 27, 2008, the Respondents, with the intention of effecting a trade in securities of Shallow Oil, gave undertakings as to the future value or price of the securities of Shallow Oil contrary to section 38(2) of the Act;
- (f) Between September 24, 2007 and February 27, 2008, O'Brien, Da Silva, and Grossman, being directors or officers of Shallow Oil, did authorize, permit or acquiesce in the giving of undertakings by Shallow Oil, with the intention of effecting a trade in securities of Shallow Oil, as to the future value or price of securities of Shallow Oil contrary to section 129.2 of the Act;
- (g) Between September 24, 2007 and February 27, 2008, the Respondents, with the intention of effecting a trade in securities of Shallow Oil, made representations that securities of Shallow Oil would be listed on a stock exchange contrary to section 38(3) of the Act;

- (h) Between September 24, 2007 and February 27, 2008, O'Brien, Da Silva, and Grossman, being directors or officers of Shallow Oil, did authorize, permit or acquiesce in the making of representations by Shallow Oil, with the intention of effecting a trade in securities of Shallow Oil, that securities of Shallow Oil would be listed on a stock exchange, contrary to section 129.2 of the Act;
- (i) Between September 24, 2007 and February 27, 2008, the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that the respondents knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to section 126.1(b) of the Act;
- (j) Between September 24, 2007 and February 27, 2008, O'Brien, Da Silva, and Grossman, being directors or officers of Shallow Oil, did authorize, permit or acquiesce in Shallow Oil engaging or participating in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons to whom they traded securities of Shallow Oil, contrary to section 129.2 of the Act;
- (k) Between September 24, 2007 and February 27, 2008, O'Brien did contravene Ontario securities law by trading in securities of Shallow Oil at a time when he was prohibited from trading in securities by order of the Ontario Securities Commission dated July 3, 2007, contrary to section 122(1)(c) of the *Act*;
- (l) Between September 24, 2007 and February 27, 2008, Da Silva did contravene Ontario securities law by trading in securities of Shallow Oil at a time when he was prohibited from trading in securities by order of the Ontario Securities Commission dated May 10, 2006, contrary to section 122(1)(c) of the *Act*;
- (m) Between September 24, 2007 and February 27, 2008, Grossman did contravene Ontario securities law by trading in securities of Shallow Oil at a time when he was prohibited from trading in securities by order of the Ontario Securities

Commission dated January 24, 2006 and did thereby commit an offence contrary to section 122(1)(c) of the *Act*;

- (n) On or about December 18, 2007, Da Silva made a statement in an affidavit provided to the Ontario Securities Commission, to wit: “I have not engaged in any business or undertaking which is in relation to the sale of securities”, that, in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue, contrary to section 122(1)(a) of the *Act*;
- (o) On or about December 21, 2007, Da Silva made statements, to a person acting under the authority of the Ontario Securities Commission, during cross-examination on his affidavit dated December 18, 2007, to wit: since May 2006 he had not been involved in any business or undertaking which is in relation to the sale of securities, that, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, contrary to section 122(1)(a) of the *Act*;
- (p) On or about March 31, 2008, Grossman, made a statement in an affidavit provided to the Ontario Securities Commission, to wit: “I was not involved in any way in customer service or had any connection what so ever to the sale of securities of Shallow Oil”, that, in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue and did thereby commit an offence contrary to section 122(1)(a) of the *Act*;
- (q) On or about March 31, 2008, Grossman, made a statement while giving evidence before the Ontario Securities Commission, to wit: “I have had nothing to do with the sale of securities” of Shallow Oil & Gas Inc., that, in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue and did thereby commit an offence contrary to section 122(1)(a) of the *Act*;

- (r) On or about March 31, 2008, Grossman, made a statement through material provided to the Ontario Securities Commission, to wit: altered e-mail correspondence tendered as evidence, that, in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue and did thereby commit an offence contrary to section 122(1)(a) of the *Act*; and,
- (s) On or about March 31, 2008, Grossman, made a statement while giving evidence before the Ontario Securities Commission, to wit: he had never met Wayne Matthews and never had any communications with Wayne Matthews, that, in a material respect and at the time and in the light of the circumstances under which it was made, does not state a fact that is required to be stated or that is necessary to make the statement not misleading, and did thereby commit an offence contrary to section 122(1)(a) of the *Act*.

III. BACKGROUND AND PARTICULARS TO ALLEGATIONS

- **Trading in Securities of Shallow Oil**

12. Staff of the Commission (“Staff”) allege that between September, 2007 and February, 2008 (the “Material Time”), the Respondents traded securities of Shallow Oil.

13. Throughout the Material Time, Shallow Oil was not registered in any capacity with the Commission.

14. Throughout the Material Time, none of the Respondents was registered with the Commission in any capacity.

15. The trades in Shallow Oil securities were trades in securities not previously issued and were therefore distributions. No preliminary prospectus or prospectus was filed and no receipts were issued for them by the Director to qualify the trading of Shallow Oil securities.

16. The Respondents and other employees or agents of Shallow Oil contacted investors or potential investors by phone, and used aliases when speaking with investors or potential investors on the telephone. Some of the aliases used were: Wayne Matthews; Kevin Crawford; Mark Rogers; Gord Sinclair; Bill Wilson; and, Mike Rosen.
17. Potential investors were sent information packages about Shallow Oil by e-mail or facsimile.
18. The Respondents traded securities of Shallow Oil to Ontario residents and residents of other jurisdictions, in circumstances where there were no exemptions available to them under the Act.
19. The Respondents advised potential investors and investors, with the intention of effecting trades, that Shallow Oil was about to be listed on a stock exchange and that the value or price of the securities would rise significantly when Shallow Oil was listed on a stock exchange.
20. Shallow Oil securities were traded to numerous investors and these investors sent over \$200,000 to Shallow Oil.
21. After orally agreeing to invest, investors received a subscription agreement from Shallow Oil. The subscription agreement set out the quantity, unit price and total amount of investment. Investors were instructed to make cheques payable to Shallow Oil and to send the subscription agreement and cheques to a virtual office in Toronto, Ontario.
22. Investors received a share certificate signed by O'Brien for common shares in Shallow Oil.

- **Fraudulent Conduct**

23. During the trading of securities of Shallow Oil, the Respondents adopted a high pressure sales approach that included making prohibited representations and undertakings, as well as providing information to potential investors that was false, inaccurate and misleading, including:

- (a) that Shallow Oil was about to go public and would be listed on a stock exchange;
- (b) false, inaccurate and misleading information with respect to the business activities of Shallow Oil;
- (c) false, inaccurate, and misleading content on the Shallow Oil website;
- (d) false, inaccurate, and misleading information with respect to assets held by Shallow Oil; and,
- (e) using false names and aliases when communicating with potential investors and investors.

24. The representations and undertakings were made with the intention of effecting trades in the securities of Shallow Oil. The Respondents engaged in a course of conduct relating to securities that they knew or reasonably ought to have known would result in a fraud on investors.

25. Staff allege that Shallow Oil was not carrying on legitimate business operations and that their only significant source of funds were funds obtained from investors as a result of fraudulent conduct.

26. As directors or officers of Shallow Oil, O'Brien, Da Silva and Grossman authorized, permitted or acquiesced in the violations of Ontario securities laws that were committed by the employees or agents of Shallow Oil.

- **Breach of Cease Trade Orders**

27. On July 3, 2007, in other proceedings before the Commission, the Commission ordered O'Brien to temporarily cease trading in securities (the "O'Brien Cease Trade Order"). The O'Brien Cease Trade Order was subsequently extended by the Commission and was in effect throughout the Material Time related to these Allegations.

28. On May 10, 2006, in other proceedings before the Commission, the Commission ordered that Da Silva cease trading in securities for a period of seven years (the “Da Silva Cease Trade Order”). The Da Silva Cease Trade Order was in effect throughout the Material Time related to these Allegations.

29. On January 24, 2006, in other proceedings before the Commission, the Commission ordered that Grossman temporarily cease trading in all securities (the “Grossman Cease Trade Order”). The Grossman Cease Trade Order was subsequently extended by the Commission and was in effect throughout the Material Time related to these Allegations.

30. On October 10, 2007, in other proceedings before the Commission, the Commission ordered that Gahunia temporarily cease trading in all securities (the “Gahunia Cease Trade Order”). The Gahunia Cease Trade Order was subsequently extended by the Commission and was in effect from October 10, 2007 and remains in effect.

- **Da Silva Misleading Staff**

31. In the course of other proceedings initiated by Staff in which Da Silva was a respondent, Da Silva swore an affidavit on December 18, 2007 (the “Da Silva Affidavit”). Staff allege that Da Silva made statements in the Da Silva Affidavit that, in material respects, at the time and in light of the circumstances under which they were made, were misleading or untrue, and/or Da Silva failed to state facts that were required to be stated or that were necessary to make the statements not misleading.

32. More specifically, at paragraph 28 of the Da Silva Affidavit, he stated,

Having been sanctioned in May 2006 by the OSC along with the principals of Joe Allen Capital, I have not engaged in any business or undertaking which is in relation to the sale of securities, which I fully realize needs certain licensing by a securities commission.

33. On December 21, 2007, Da Silva was cross-examined by Staff on the Da Silva Affidavit. During that cross-examination, Da Silva stated, under oath, that he had not been involved directly in any business or undertaking which was in relation to the sale of securities since May of 2006.

34. During the cross-examination of Da Silva, he also stated that he had not been working in any form since November or December of 2006.

35. As a respondent in a proceeding initiated by the Commission, Da Silva had a significant obligation to be truthful in the Da Silva Affidavit and during his cross-examination on the Da Silva Affidavit. Da Silva mislead Staff with respect to his involvement in any business or undertaking which is in relation to the sale of securities and with respect to working with Shallow Oil.

36. Staff allege that between September, 2007 and January, 2008 Da Silva was a directing mind of Shallow Oil and was involved in the trading of Shallow Oil securities.

- **Grossman Misleading the Commission**

37. On January 16, 2008, the Commission issued an Order stating that: (i) all trading in securities by Shallow Oil shall cease and that all trading in Shallow Oil securities shall cease; and, (ii) O'Brien, Da Silva, Gahunia, and Grossman cease trading in all securities (the "Temporary Order"). On January 30 and 31, 2008, and on March 31, 2008, the Commission extended the Temporary Order.

38. On March 31, 2008, a hearing took place where the Commission considered whether it was appropriate to extend the Temporary Order against the respondents (the "March Hearing"). Grossman was the only respondent that attended the March Hearing and opposed Staff's request to continue the Temporary Order.

39. As part of Grossman's opposition to the extension of the Temporary Order, he tendered two documents entitled "Evidence Brief of Allen Grossman" that he referred to as Part 1 and 2, respectively. During the March Hearing these two documents were marked as exhibits number 2 and 3 on the Temporary Order. Included within exhibits 2 and 3 was an affidavit of Grossman (the "Grossman Affidavit") and copies of e-mail correspondence.

40. Grossman was cross-examined during the March Hearing.

41. Staff allege that Grossman made statements in the Grossman Affidavit, that he was not involved in any way in customer service or had any connection whatsoever to the sale of securities of Shallow Oil, that, in material respects, at the time and in light of the circumstances under which they were made, were misleading or untrue.

42. Staff allege that the e-mail correspondence tendered as evidence by Grossman during the March Hearing had been altered and as a result the e-mail correspondence was misleading or untrue.

43. Staff allege that during his cross-examination during the March Hearing, Grossman made a statement, that he had nothing to do with the sale of securities of Shallow Oil, that in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue.

44. Staff allege that during his cross-examination during the March Hearing, Grossman made statements, that he had never met Wayne Matthews and that he had never had any communications with Wayne Matthews, that, in material respects and at the time and in the light of the circumstances under which they were made, did not state a fact that is required to be stated or that is necessary to make the statements not misleading.

45. As a respondent in the Temporary Order proceedings initiated by the Commission, Grossman had a significant obligation to be truthful in the Grossman Affidavit and during his

cross-examination before the Commission. Grossman made statements and provided documents to the Commission that misled the Commission with respect to his involvement in Shallow Oil.

46. Staff allege that between September, 2007 and January, 2008 Grossman was a directing mind of Shallow Oil, ran the day-to-day operations of the trading of Shallow Oil securities, and used the alias Wayne Matthews.

IV. Ontario Court of Justice Proceedings

47. By information dated June 12, 2008 sworn by Staff pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, Shallow Oil, Grossman, Da Silva and O'Brien were charge with contravening Ontario securities laws pursuant to section 122 of the Act. The conduct underlying those alleged breaches also forms the basis of the Statement of Allegations issued by Staff in this proceeding.

48. On May 18, 2011, Mr. Justice Kenkel of the Ontario Court of Justice (Central East Region) found Shallow Oil, Grossman, Da Silva and O'Brien guilty of breaches of Ontario securities laws.

49. Staff are aware that O'Brien is appealing his conviction by the Ontario Court of Justice.

V. Conduct Contrary to Ontario Securities Law and Contrary to the Public Interest

50. At the time of the trades described above, the Respondents were not registered to trade in securities pursuant to Ontario securities law. The Respondents traded in securities without being registered in accordance with Ontario securities law, contrary to section 25(1) of the Act, and acted contrary to the public interest.

51. No preliminary prospectus and no prospectus has been filed and no receipts have been issued to permit the trading of Shallow Oil securities. The trading in Shallow Oil securities by the Respondents was contrary to section 53(1) of the Act, and contrary to the public interest.

52. The Respondents made representations and undertakings to investors, with the intention of effecting trades of Shallow Oil securities, regarding the future listing and future value of Shallow Oil securities contrary to section 38 of the Act, and contrary to the public interest.

53. The Respondents have engaged in a course of conduct in relation to the securities of Shallow Oil that they knew or reasonably ought to have known would perpetrate a fraud on potential investors in Ontario and in other jurisdictions contrary to section 126.1 of the Act, and contrary to the public interest.

54. O'Brien, Da Silva, Grossman, and Gahunia were all subject to cease trade orders of the Commission at all material times related to these allegations. By trading in securities between September 2007 and January 2008, O'Brien, Da Silva, Grossman, and Gahunia breached the cease trade orders contrary to section 122 of the Act, and contrary to the public interest.

55. On December 18 and 21, 2007, Da Silva misled Staff contrary to section 122(1) of the Act, and contrary to the public interest.

56. On March 31, 2008, Grossman misled the Commission contrary to section 122(1) of the Act, and contrary to the public interest.

57. As directors or officers of Shallow Oil, O'Brien, Da Silva, and Grossman authorized, permitted or acquiesced in the breaches of sections 25(1), 53(1), 38, and 126.1 of the Act by Shallow Oil contrary to section 129.2 of the Act, and in so doing engaged in conduct contrary to the public interest.

58. Each of Shallow Oil, Grossman, Da Silva and O'Brien has been found by Mr. Justice Kenkel of the Ontario Court of Justice to have contravened the laws of the jurisdiction respecting the buying or selling of securities or derivatives which are circumstances which permit an order to be made pursuant to paragraph 3 of subsection 127(10) of the Act.

59. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, May 14, 2012.