

# 2012 BCSECCOM 202

## Settlement Agreement

### Malkeet Singh Bains

#### *Securities Act, RSBC 1996, c. 418*

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Malkeet Singh Bains (Bains) agree as follows:

#### **Agreed Statement of Facts**

##### ***Regulatory action***

1. Sungro Minerals Inc. (Sungro) is a reporting issuer under BC Instrument 51-509, *Issuers Quoted on the U.S. Over the Counter Markets*.
2. On July 29, 2009, the Executive Director issued a temporary order that all persons cease trading in the securities of Sungro and a notice of hearing under section 161 of the *Securities Act, RSBC 1996, c. 418 (Act)*.
3. On September 25, 2009, the British Columbia Securities Commission (Commission) extended the temporary order under section 161(3) of the Act until a hearing is held and a decision is rendered.
4. On August 8, 2011, the Executive Director amended the notice of hearing to name Bains and the following additional respondents: Mark Aaron McLeary (M. McLeary), Timothy John McLeary (T. McLeary), Narvinder Singh Patric Virk (Virk), Robert Hainey (Hainey), Jerry Williams, and Erik John Benson (Benson).

##### ***Bains and his associates***

5. Bains specializes in insurance broker services and is the principal of M. Bains Financial Inc.
6. Bains is a close friend of M. McLeary and has known him for over 20 years. M. McLeary is a financial planner and has experience starting public companies.
7. T. McLeary is M. McLeary's brother. T. McLeary and Bains have known each other since the mid-1990's, when they worked together at the same insurance company.
8. Bains has known Virk for over 20 years. Virk and his wife own and operate a number of gas stations in the Lower Mainland. Bains introduced Virk to M. McLeary.

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9. Bains has known Karnjit Singh Bahd (Bahd) for over 25 years. Bahd's chief employment has been as a sales representative for automobile related businesses.
10. Benson is an investment advisor at Canaccord Genuity Corporation (Canaccord). At all material times, Benson was the investment advisor for Virk, Bahd, and Bains' brother. Benson became their investment advisor when their previous investment advisor left Canaccord in or about April 2009. Benson has never been Bains' investment advisor.

### *The original plan: manufacturing a shell company*

11. At all material times, Bains had no experience with public companies.
12. In the months leading up to September 2007, M. McLeary advised Bains that they could manufacture an Over the Counter Bulletin Board (OTCBB) shell company, sell it for a profit, and share the sale proceeds. McLeary told Bains that a closely-held shell company could be expected to sell for about USD \$500,000.
13. M. McLeary and Bains decided that Bains would be the only appointed officer and director of the new company, but that M. McLeary would assist Bains.
14. M. McLeary directed Bains to incorporate Sungro in Nevada, which he did on August 10, 2007. Bains registered it in British Columbia as an extraprovincial company on August 20, 2007 and designated the address of M. Bains Financial in Surrey, British Columbia, as its head office.
15. M. McLeary told Bains that setting up Sungro as a shell company for the OTCBB would require about USD \$100,000 in funding and 40 seed shareholders.
16. At M. McLeary's direction:
  - (a) On August 15, 2007, Bains, as sole director of Sungro, authorized the company to issue 5 million shares to himself at USD \$0.001 per share, for which he paid to the company USD \$5,000.
  - (b) Bains assembled 40 seed shareholders and raised the remaining USD \$95,000 by placing 118,750 Sungro shares with each of them for a price of \$0.02 per share, or USD \$2,375 in total, with both the number of shares and their price having been determined by M. McLeary. Bains did this by:

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- (i) Telling Virk and Bahd about the plan to create and sell an OTCBB shell.
  - (ii) Recruiting them to serve as seed shareholders.
  - (iii) With the assistance of Virk and Bahd, recruiting the remaining seed shareholders from among the close family and friends of the three of them.
- (c) On September 18, 2007, Bains, as sole director of Sungro, authorized the company to issue shares to the seed shareholders.
- (d) On February 22, 2008, Bains caused Sungro to file documents with the United States Securities and Exchange Commission that registered the seed shareholders' shares for resale in the United States and disclosed that Sungro was a shell company with nominal assets and operations.

### *Selling Virk's shares*

17. In or about January 2009, Bains:

- (a) gave Virk his Sungro share certificate representing 118,750 shares;
- (b) provided Virk with a letter that verified how Virk had obtained the shares (the OTC letter); and
- (c) instructed Virk to deposit his Sungro share certificate and the OTC letter with his investment adviser.

18. On February 19, 2009:

- (a) Virk, following Bains' instructions, entered an order through his investment advisor at Canaccord to sell 30,000 Sungro shares at USD \$0.35 each.
- (b) The sell order was filled a few minutes later, netting USD \$10,000.
- (c) This was this the first ever public trade of Sungro shares.

### *The new plan: selling the shares of seed shareholders*

19. Some time between February and June 2009, M. McLeary told Bains that he was unable to sell Sungro.

20. M. McLeary told Bains that they would sell some of the shares instead and divide the proceeds.

21. M. McLeary instructed Bains to approach Virk and Bahd, who agreed to sell their seed shares, on the understanding that they would share in the proceeds.

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22. Between June 12, 2009 and June 22, 2009, M. McLeary directed Bains to instruct Virk to sell his remaining Sungro shares over a number of days, in a particular sequence, and at certain specified prices, all of which Bains did. On Bains' instructions, Virk entered the following orders through Benson:

DATE	TIME	SHARES	(US \$) PRICE	NOTES
12-Jun-09	8:36:31 am	50,000	\$0.45	Day order - expired
15-Jun-09	9:37:07 am	25,000	\$0.45	Filled
17-Jun-09	9:36:21 am	25,000	\$0.45	Filled
17-Jun-09	12:24:37 pm	20,000	\$0.90	Filled
18-Jun-09	7:17:08 am	5,000	\$2.00	Day order – filled
18-Jun-09	8:10:51 am	3,750	\$2.00	Day order - expired after 2,000 shares filled
19-Jun-09	12:25:59pm	1,750	\$2.00	Multiple order - filled
		2,500	\$2.25	Multiple order - filled
		2,500	\$2.50	Multiple order – filled
22-Jun-09	7:13:36 am	5,000	\$2.15	Filled
<b>Total Sold</b>		<b>88,750</b>		

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23. When Bains instructed Virk to enter each of these sell orders, Bains knew Sungro had no mineral property and negligible assets.
24. In the course of working with M. McLeary to orchestrate the sale of Virk's Sungro shares through his Canaccord account, Bains instructed Virk to tell Benson to use a particular market maker to execute the trades. Virk did so on June 12, 2009, when he entered the first trade sell order.
25. The net trading proceeds from the sale of Virk's Sungro shares in June 2009 was USD \$79,885.16.
26. Acting under M. McLeary's direction, Bains told Virk that:
- (a) M. McLeary had an account, controlled by him, at a currency exchange company.
  - (b) Virk was to direct Benson to pay out the USD \$79,885.16 proceeds from the sale of Virk's Sungro shares to this account.
27. On June 24, 2009, Virk, as instructed, directed Benson to forward the proceeds to M. McLeary's account. On June 25, 2009, Canaccord issued a cheque for USD \$79,885.16 for deposit to the currency exchange account, and in due course USD \$60,000 was paid to M. McLeary and the balance was paid to Bains.

### *Gathering more shares*

28. At M. McLeary's direction, Virk and Bahd convinced 18 of the seed shareholders to transfer their Sungro shares to Virk, Bahd, M. McLeary, and Internet Marketing Solutions Inc. (IMS), a company beneficially owned by Hainey, and Bains's brother, as follows:

Name	# of share certificates	# of shares
Virk	4	475,000
Bahd	3	356,250
M. McLeary	4	475,000
IMS	4	475,000
Bains's brother	3	356,250

29. On June 19, 2009 at M. McLeary's direction, Bains instructed Sungro's transfer agent to transfer the shares of 7 of the seed shareholders to Bahd and

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Hainey's company. The transfers occurred pursuant to powers of attorney signed by the seed shareholders and attached to their share certificates.

30. On June 22, 2009, M. McLeary provided Bains with a letter for his signature instructing Sungro's transfer agent to transfer the shares of the 11 other seed shareholders among M. McLeary, Virk, and Bains's brother. Bains signed the letter.

### *Selling Bahd's shares*

31. On June 19, 2009, M. McLeary gave Bains an envelope containing Sungro share certificates belonging to Bahd and Bains' brother, which Bains delivered to Benson.
32. Between June 23, 2009 and July 6, 2009, M. McLeary directed Bains to instruct Bahd to begin to sell his Sungro shares over a number of days, in a particular sequence, and at certain specified prices, all of which Bains did. On Bains' instructions, Bahd entered the following orders through Benson:

DATE	TIME	SHARES	(US \$) PRICE	NOTES
23-Jun-09	10:30:03 am	5,000	\$3.20	Cancelled
23-Jun-09	10:40:36 am	5,000	\$3.20	Day order – cancelled
23-Jun-09	12:48:58 am	2,500	\$3.75	Cancelled after 500 shares filled
23-Jun-09	12:59:11 am	2,500	\$3.90	Multiple order – cancelled
		2,500	\$4.15	Multiple order – cancelled
		2,500	\$4.35	Multiple order – cancelled
25-Jun-09	9:08:13 am	2,500	\$4.25	Multiple day order - expired after 500 shares filled
		2,500	\$4.50	Multiple day order - expired
		2,500	\$4.75	Multiple day order - expired
26-Jun-09	7:05:12 am	5,000	\$4.50	Multiple order – filled
		10,000	\$4.75	Multiple order – cancelled after 700 shares filled

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DATE	TIME	SHARES	(US \$) PRICE	NOTES
6-Jul-09	7:02:58 am	9,300	\$4.75	Halted after 100 shares filled
7-Jul-09	<b>Halt Trade Order</b>			
<b>Total Sold</b>		<b>6,800</b>		

### *Commission halts the selling*

33. On July 7, 2009, the Commission issued the first of two halt trade orders for Sungro shares. This led to the cancellation of Bahd's outstanding sell orders.
34. On July 9, 2009, Cannacord paid out the net proceeds from the sale of Bahd's Sungro shares, amounting to USD \$29,543.12.
35. Bahd deposited the cheque into his bank account on July 14, 2009, where it was converted into CAD \$33,147,38. On Bains' instructions, Bahd then remitted the funds to Bains as follows:
- (a) \$8,000.00 in cash, withdrawn from Bahd's account on July 14, 2009.
  - (b) \$10,000.00 cheque to Bains dated July 15, 2009.
  - (c) \$15,147.38 cheque to Bains dated July 15, 2009 from a company beneficially owned by Bahd.

### *Misconduct*

36. By engaging in the above conduct, Bains, directly and indirectly, engaged in and participated in conduct relating to Sungro's shares that he reasonably should have known resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Sungro shares, contrary to section 57(a) of the Act.

### *Public Interest*

37. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

### *Undertaking*

38. In settlement of this matter, Bains undertakes to pay \$125,000 to the Commission and testify at the hearing in this matter as a Commission witness.

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39.

### ¶ 2 **Order**

The Executive Director will issue an order (the Order) that:

1. under section 161(1)(b) of the Act, Bains will be prohibited from purchasing or trading in securities, except that he may purchase and trade through one non-registered account, RRSP and RESP accounts through a registered representative, provided he has given a copy of the Order to the registered representative through which he makes a purchase or trade;
2. under section 161(1)(d)(ii), Bains will be prohibited from becoming or acting as an officer or a director of any issuer;
3. under section 161(1)(d)(iii), Bains will be prohibited from becoming or acting as a promoter;
4. under section 161(1)(d)(iv), Bains will be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
5. under section 161(1)(d)(v), Bains will be prohibited from engaging in investor relations activities;

for a period of 25 years from the date of the Order.

### ¶ 3 **Consent to Regulatory Orders**

Bains consents to a regulatory Order made by any province or territorial securities regulatory authority in Canada containing any or all the Orders set out in paragraph 2 above.

### ¶ 4 **Waiver**

Bains waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

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¶ 5 **Counterpart**

This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6 May 23, 2012

Malkeet Singh Bains )  
Malkeet Singh Bains

Patrick Sullivan )  
Witness Signature )  
Patrick Sullivan )  
Witness Name (please print) )  
300 – 1168 Hamilton Street )  
Address )  
Lawyer )  
Occupation )

¶ 7 May 23, 2012

Paul C. Bourque

¶ 8 Paul C. Bourque, Q.C.  
Executive Director