

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10481 / April 12, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83035 / April 12, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18435

In the Matter of

WELLNESS CENTER USA, INC.,

Respondent.

**ORDER INSTITUTING
CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Wellness Center USA, Inc. (“Wellness” or the “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. SUMMARY

1. From 2013 through 2014, Wellness Center USA, Inc. ("Wellness") issued false and misleading Forms 10-K and 10-Q concealing a scheme by Andrew Kandalepas, its President, Chief Executive Officer, Chief Financial Officer, and Chairman of the Board of Directors, to misappropriate \$450,000 from the company. Wellness' filings fraudulently characterized Kandalepas' unauthorized withdrawals as "salary," "prepayments," or "loans," when in fact, Kandalepas withdrew funds from the company to pay himself whatever amount he felt was appropriate whenever he chose. Wellness also issued two false press releases in 2015 touting non-existent sales. During the time periods that these false and misleading documents were publicly filed and issued, Wellness was actively raising money from investors through private placements.

2. Wellness also caused Matthew T. Mushlin's ("Mushlin") violations of Section 15(a) of the Exchange Act. Between 2012 and 2017, Wellness retained Mushlin, an unregistered broker, to identify and solicit potential investors and sources of funding. Mushlin facilitated the purchase of approximately \$2,000,000 of Wellness securities from over thirty investors. In exchange for his efforts, Wellness paid Mushlin commissions in 2013, 2015, and 2017 totaling \$232,925.

B. RESPONDENT

3. **Wellness Center USA, Inc. ("Wellness")** is a Nevada corporation formed in June 2010 with its principal place of business in Hoffman Estates, Illinois. Since 2012, Wellness' common stock has been quoted on the Over-the-Counter Bulletin Board under the symbol WCUI.

C. OTHER RELEVANT PARTIES

4. **Andrew J. Kandalepas ("Kandalepas")** was at all relevant times the President, Chief Executive Officer, Chief Financial Officer, and Chairman of the Board of Directors of Wellness.

5. **Tony Zhicong Li ("Li")** is a resident of Belle Mead, New Jersey and has been licensed as a certified public accountant with the State of New Jersey since 2000. Since July 2000, Li has been the President, a partner, and fifty-percent owner of Li & Co. Li was the lead engagement partner for Wellness for the fiscal year 2012 through 2015 audits. On June 14, 2016, the Public Company Accounting Oversight Board ("PCAOB") censured and barred Li from being an associated person of a registered accounting firm for failure to cooperate with a PCAOB investigation unrelated to Wellness.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. **Li and Company, PC (“Li & Co.”)** is a public accounting firm headquartered in Skillman, New Jersey founded in 2000. Li & Co. acted as Wellness’ auditor from 2011 through April 29, 2016. Li & Co. was registered with the PCAOB from September 2006 until June 14, 2016 when its registration was revoked for failure to cooperate with a PCAOB investigation unrelated to Wellness.

7. **Matthew T. Mushlin (“Mushlin”)** was at all relevant times retained by Wellness to provide “consulting services,” which included identifying and introducing the company to potential investors and sources of funding.

D. FACTS

Wellness Background

8. Wellness was originally an online vitamin and nutritional supplement distributor, and subsequently through a series of acquisitions became the holding company for four subsidiaries involved in the alternative medicine and healthcare sectors. Since its inception in 2010, Wellness has had less than \$500,000 revenue every year, and has had annual net losses between \$100,000 and \$7 million. Wellness has primarily funded its operations through sales of stock, having raised approximately \$18.6 million since 2011.

9. Since Wellness’ inception, Kandalepas has unilaterally controlled all its business functions and operations. He is Wellness’ Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), President, and Chairman of Wellness’ Board of Directors (“Board”). Kandalepas had sole control over Wellness’ bank accounts and its bookkeeping. As Wellness’ only officer, Kandalepas was also responsible for the preparation of its periodic reports.

Kandalepas’ Compensation

10. From 2010 through fiscal 2012, Kandalepas did not take compensation from Wellness outside of receiving 3.7 million Wellness shares and options for another 1.6 million shares in 2010. According to Wellness’ bylaws, officer salary and compensation was to be fixed by the Board. Between 2010 and early 2012, Kandalepas loaned Wellness approximately \$100,000 to \$200,000 to fund its operations. By the end of Wellness’ 2012 fiscal year,² Kandalepas fully repaid himself by taking withdrawals from Wellness’ bank account at will and without the Board’s knowledge or involvement. From 2011 through mid-2013, Wellness reported in periodic filings with the Commission that “Kandalepas has elected not to receive any compensation for his services, until the Company is financially capable to compensate him.”

² Wellness operates on a September 30 fiscal year.

Kandalepas Made Unauthorized Withdrawals From Wellness

11. In early fiscal 2013, after repaying himself for his advances to the company, Kandalepas continued to withdraw money from the company without Board knowledge or authorization. Kandalepas took however much he wanted when he wanted, in varying amounts and on no consistent schedule. By the end of fiscal 2013, Kandalepas had made unauthorized withdrawals of \$457,058, characterizing the withdrawals on Wellness' financial statements as a combination of salary, prepayments, or loans. Because Kandalepas had sole control over Wellness' bank account and Wellness lacked internal controls over corporate expenditures, Kandalepas freely diverted Wellness' funds to himself.

12. In February 2013, as part of the closing of Wellness' books for the first quarter of fiscal year 2013, Wellness' bookkeeper informed Kandalepas and Wellness' auditor Li that during the quarter Kandalepas had withdrawn from the company \$68,433 beyond what he had lent the company. In response, Kandalepas unilaterally and retroactively declared, without consulting the Board, that he would receive a \$200,000 salary, or \$50,000 per quarter, to account for his withdrawals.

13. Each quarter throughout fiscal year 2013, Wellness recorded \$50,000 in compensation for Kandalepas in its accounting records. But Kandalepas took more money. Throughout 2013, Kandalepas withdrew money from Wellness whenever he pleased, opting for frequent withdrawals of inconsistent amounts rather than a regular salary, and he did not limit himself to his purported salary. Wellness booked any withdrawals exceeding Kandalepas' \$50,000 quarterly salary as "prepaid expenses." By the end of fiscal 2013, Kandalepas had taken \$457,058 from the company.

Wellness' Misleading 2013 Forms 10-Q

14. Wellness concealed Kandalepas' withdrawals in its 2013 Forms 10-Q. Its first and second quarter Forms 10-Q falsely stated that "Kandalepas has elected not to receive any compensation for his services, until the Company is financially capable to compensate him," even though Kandalepas had taken \$149,037 from the company during the first two quarters and had classified \$100,000 of that as "salary" in Wellness' accounting records. In those quarters, Wellness' consolidated income statements reported "salaries-officers" at the parent company of \$50,000 and \$100,000 respectively, although they did not attribute this compensation to Kandalepas. Wellness' third quarter Form 10-Q omitted the misstatement that Kandalepas was not being compensated, but still did not affirmatively disclose that Kandalepas had been taking an unauthorized salary or that he was withdrawing funds from the company in excess of that salary.

15. In each of Wellness' 2013 Forms 10-Q, Wellness classified Kandalepas' excess withdrawals in a non-descript balance sheet line item entitled "prepayments and other current assets." There was no way to tell from the quarterly reports that this amount represented withdrawals by Kandalepas.

Wellness's Misleading 2013 Form 10-K

16. During the 2013 fiscal year audit, Li discussed the \$257,058 of Kandalepas' excess withdrawals with Kandalepas. Kandalepas told Li that he was entitled to the excess withdrawals as back pay for previous years' services for which he was not compensated. Li responded that Kandalepas could not take back pay since Wellness had not accrued salary for him in prior periods.

17. Days before the Form 10-K filing date, Li requested that Kandalepas pay back these "advances" before the company filed its 10-K, but Kandalepas declined. Li presented him with two other options for dealing with the overpayments: recognize the overpayments as compensation (bringing Kandalepas' compensation to \$457,000 for 2013) or execute a promissory note with the company for \$250,000. Between midnight and 3:00 a.m. on January 14, 2014, the day Wellness filed its Form 10-K, Kandalepas, without Board consultation or authorization, finalized and executed a promissory note to pay Wellness \$250,000 plus interest. The promissory note was backdated to September 30, 2013, Wellness' fiscal year end. The overpayments were reclassified on Wellness' balance sheet from prepaid expenses to a note receivable. Kandalepas never notified Wellness' Board about his withdrawals or this last minute promissory note and he never sought Board approval for his withdrawals for the promissory note.

18. Wellness' 2013 Form 10-K made false representations concerning Kandalepas' excess withdrawals. In Item 13 of Form 10-K concerning related-party transactions, Wellness falsely stated that "[o]n September 30, 2013, Mr. Kandalepas borrowed \$250,000 from the Company pursuant to a promissory note." In fact, Kandalepas did not borrow any money from Wellness on September 30, 2013; he took that sum throughout the previous twelve months. Moreover, the note was executed on January 14, 2014, not on September 30, 2013. In Note 10 of the financial statements, *Related Party Transactions*, the company falsely stated that "[o]n September 30, 2013, Chairman, President, and CEO ("Maker") hereby promises to pay [\$250,000] to the order of Wellness Center." However, this promise, *i.e.*, the execution of the note, occurred on January 14, 2014, not on September 30, 2013. The Form 10-K attached a copy of the falsely dated note as an exhibit.

19. In addition to being false, these disclosures were misleading because Kandalepas did not have the financial ability to repay the note. As of January 2014, Kandalepas was past due on his mortgage, had tens of thousands of dollars in credit card debt, and had minimal liquid assets available to repay the loan. Kandalepas failed to make even the full first required payment in April 2014 and quickly fell far behind on the required payments.

20. In its Forms 10-K and 10-Q for fiscal 2014 and 2015, Wellness continued to misrepresent that Kandalepas had issued a promissory note on September 30, 2013 and failed to disclose the circumstances that gave rise to that note. In early 2016, after Wellness retained a new independent accountant, Wellness wrote off the nearly \$200,000 still owed under Kandalepas' promissory note as compensation.

Wellness Issued False And Misleading Press Releases

21. Wellness also issued false and misleading press releases concerning alleged sales of medical devices by Wellness' subsidiary Psoria-Shield Inc. ("PSI"). On October 1, 2015, Wellness issued a press release touting that Wellness was shipping its flagship product, the PL-1000, to multiple major cities in the United States. The release discussed the primary sales channels and selling partners for the PL-1000, including both domestic and international sales channels. This press release was false and misleading. The "shipments" that were touted in the press release were primarily to potential buyers to allow them to test the products or to distributors for potential selling. The touted shipments were not made to fulfill purchases and at the time Wellness had not sold a single unit. In fact, Wellness could not legally sell any PL-1000s because PSI's manufacturing registration with the FDA had expired in October 2013. Without this registration, PSI was prohibited from manufacturing or selling its medical device, and the device could not legally be used on patients. Kandalepas was aware of the registration deficiency just nine days before the press release was issued. Nevertheless, Kandalepas reviewed and approved the October 1, 2015 press release before it was issued and was quoted in the release hailing "this major milestone."

22. Nearly two months later, on November 24, Wellness issued another press release touting additional shipments of the PL-1000 to new cities. According to the release, "[r]evenue for the earlier shipments reported on October 1, 2015 will be realized in the pending quarter, ending December 31, 2015. Revenue for the present shipments will be partially realized in December 2015 and partially in January 2016." This release was false and misleading. As of the time of this release, Wellness had still not sold a single PL-1000 and there were no sales orders associated with any of the product shipments, and PSI's FDA registration was still expired. Kandalepas reviewed and approved the November 24, 2015 press release knowing that there had not been any sales. Wellness recognized no revenue from medical device sales from October 1, 2015 through December 31, 2015.

Wellness Retained Mushlin to Identify and Solicit Investors

23. Since its inception, Wellness has relied almost solely upon new capital investments to fund its operations. Beginning around 2012 and continuing through 2017, Wellness retained Mushlin and/or his business to identify potential investors and sources of funding and to solicit them to invest in Wellness through private placements. Wellness knew that Mushlin was not associated with a registered broker-dealer, and that his business was not registered as a broker-dealer.

24. Mushlin solicited investors for Wellness by calling individuals who previously had invested in other issuers based on Mushlin's recommendations, by sending unsolicited emails to his investor contacts, often with promotional materials attached, and by meeting with potential investors or their agents. Mushlin also solicited registered representatives that managed discretionary accounts to encourage them to buy Wellness stock for their customers.

25. In addition to soliciting investments and providing advice, Mushlin interposed himself as an intermediary between his investor contacts and Wellness at key points of the securities transactions. He sent blank subscription agreements, warrants, and suitability questionnaires to his investor contacts, often with instructions on how to complete the forms. He instructed investors to return the completed form to him so he could pass them along to Wellness. He advised his investor contacts on how and where to send their payments to Wellness. He distributed Wellness stock certificates and warrants. Mushlin's investor contacts advised him when they sent money to Wellness and when they wanted to execute warrants. They contacted Mushlin if they had any questions regarding Wellness or their investments.

26. In exchange for his fundraising efforts and involvement at key points of the transactions, Wellness paid Mushlin approximately 10% of the total amount of funds he raised for the company. The timing and amount of Mushlin's compensation were directly tied to when, and how much, his investor contacts invested in Wellness. If Mushlin did not secure investments, then he did not get paid.

27. Between 2013 and 2017, Mushlin solicited and secured the purchase of approximately \$2,000,000 worth of Wellness stock. Wellness paid him commissions in 2013, 2015, and 2017 totaling \$232,925 for acting as an unregistered broker.

E. FINDINGS

28. As a result of the conduct described above, Wellness violated Section 17(a)(2) of the Securities Act, which prohibits any person in the offer or sale of any securities, from obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

29. As a result of the conduct described above, Wellness violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

30. As a result of the conduct described above, Wellness caused Mushlin's violations of Section 15(a) of the Exchange Act, which prohibits any broker or dealer from making use of the mails or any means or instrumentality of interstate commerce to effectuate any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

F. UNDERTAKING

31. Cooperation with the Commission's Investigation and Related Litigation. Respondent Wellness shall cooperate fully with the Commission in any and all investigations, litigations, administrative and other proceedings commenced by the Commission or to which the Commission is a party relating to or arising from the matter described in this Order. Wellness' cooperation shall include the following: (1) to produce, without service of a notice or subpoena,

all information and documents reasonably requested by the Commission staff in connection with the Commission's related investigation, litigation, administrative or other proceedings; and (2) to use its best efforts, without service of a notice or subpoena, to secure the attendance and testimony of any current or former employee, officer, executive, partner, principal or agent of Wellness, at any meeting, interview, testimony, deposition, hearing, trial, or other legal proceeding as may be reasonably requested by the Commission staff.

32. In determining whether to accept the Offer, the Commission has considered this undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Wellness shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

By the Commission.

Brent J. Fields
Secretary