



Plaintiff's Claim and ORDER to Go to Small Claims Court

Clerk stamps date here when form is filed.

FILED
Superior Court of California
County of Los Angeles
08/03/2018
Shari R. Conner, Executive Officer / Clerk
By: A. Aghakian, Deputy

Notice to the person being sued:

- You are the defendant if your name is listed in ② on page 2 of this form. The person suing you is the plaintiff, listed in ① on page 2.
- You and the plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Fill in court name and street address:

Superior Court of California, County of
Los Angeles

Van Nuys Courthouse East
6230 Sylmar Avenue
Van Nuys, CA 91401

Court file in case number when form is filed.

Case Number: 18VESC03883

Case Name: MORGRO
vs
VENDEKUSH BRAND, LLC., et al.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court

The people in ① and ② must go to court: (Clerk fills out section below.)

Trial Date	E. Date	Time	Department	Name and address of court, if different from above
1.				
2.	10/02/2018	8:30 AM	P	
3.				

Date: 08/03/2018 Clerk, by: A. Aghakian, Deputy

Instructions for the person suing:

- You are the plaintiff. The person you are suing is the defendant.
- Before you fill out this form, read form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of all pages of this form. (Make one copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each defendant a court-stamped copy of all five pages of this form and any pages this form tells you to attach. There are special rules for "serving," or delivering, this form to public entities, associations, and some businesses. See forms SC-104, SC-104B, and SC-104C.
- Go to court on your trial date listed above. Bring witnesses, receipts, and any evidence you need to prove your case.

Plaintiff (list names):

Case Number:

18VESC03883

① The plaintiff (the person, business, or public entity that is suing) is:

Name: Jaime Moreno Phone: _____
 Street address: 333 Washington Blvd. #505 Marina Del Rey Ca. 90292
Street City State Zip
 Mailing address (if different): _____
Street City State Zip

If more than one plaintiff, list next plaintiff here:

Name: _____ Phone: _____
 Street address: _____
Street City State Zip
 Mailing address (if different): _____
Street City State Zip

 Check here if more than two plaintiffs and attach form SC-100A. Check here if either plaintiff listed above is doing business under a fictitious name. If so, attach form SC-103. Check here if any plaintiff is a "licensee" or "deferred deposit originator" (payday lender) under Financial Code sections 23000 et seq.

② The defendant (the person, business, or public entity being sued) is:

Name: VENICEKISH BRAND, LLC Phone: _____
 Street address: 2554 Lincoln Blvd. #412 Venice Ca 90291
Street City State Zip
 Mailing address (if different): _____
Street City State Zip

If the defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process here:

Name: Hugo Massimo Job title, if known: _____
 Address: 2554 Lincoln Blvd. #412 Venice Ca. 90291
Street City State Zip

 Check here if your case is against more than one defendant, and attach form SC-100A. Check here if any defendant is on active military duty, and write his or her name here: _____③ The plaintiff claims the defendant owes \$ 5,000.00. (Explain below):

a. Why does the defendant owe the plaintiff money?

For Defamatory per se damages by publishing false statement about plaintiff committing crimes against defendant

When did this happen? (Date): _____

b. If no specific date, give the time period: Date started: JUNE 10, 2018 Through: presentc. How did you calculate the money owed to you? (Do not include court costs or fees for service.)

 _____ Check here if you need more space. Attach one sheet of paper or form MC-031 and write "SC-100, Item 3" at the top.

Plaintiff (list names):

Case Number:

18VESC03883

- 4 You must ask the defendant (in person, in writing, or by phone) to pay you before you sue. If your claim is for possession of property, you must ask the defendant to give you the property. Have you done this?
 Yes No If no, explain why not:

- 5 Why are you filing your claim at this courthouse?

This courthouse covers the area (check the one that applies):

- a. (1) Where the defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the defendant or where the defendant lived or did business when the defendant made the contract.
 (2) Where the plaintiff's property was damaged.
 (3) Where the plaintiff was injured.
- b. Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc. § 395(b).)
- c. Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civ Code, § 1812.10.)
- d. Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civ Code, § 2984.4.)
- e. Other (specify):

- 6 List the zip code of the place checked in 5 above (if you know):

91605

- 7 Is your claim about an attorney-client fee dispute? Yes No

If yes, and if you have had arbitration, fill out form SC-101, attach it to this form, and check here:

- 8 Are you suing a public entity? Yes No

If yes, you must file a written claim with the entity first. A claim was filed on (date):
If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- 9 Have you filed more than 12 other small claims within the last 12 months in California?

Yes No If yes, the filing fee for this case will be higher.

- 10 Is your claim for more than \$2,500? Yes No

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

- 11 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 8-3-2018 Jaime Moreno
Plaintiff types or prints name here

Plaintiff signs here

Date: _____
Second plaintiff types or prints name here

Second plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the trial. Contact the clerk's office for form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civ. Code, § 54.8.)

SC-100A

Other Plaintiffs or Defendants

Case Number: 18VESC03883

This form is attached to form SC-100, item 1 or 2.

1 If more than two plaintiffs (person, business, or entity suing), list their information below:

Other plaintiff's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

Is this plaintiff doing business under a fictitious name? Yes No If yes, attach form SC-103.

Other plaintiff's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

Is this plaintiff doing business under a fictitious name? Yes No If yes, attach form SC-103.

Check here if more than 4 plaintiffs and fill out and attach another form SC-100A.

2 If more than one defendant (person, business, or entity being sued), list their information below:

Other defendant's name: Jason Abraham

Street address: 4001 Redondo Beach Phone: _____

City: Redondo Beach State: Ca Zip: 90278

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

If this defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process:

Name: _____ Job title, if known: _____

Address: _____

City: _____ State: _____ Zip: _____

Check here if your case is against more than two defendants, and fill out and attach another form SC-100A.

3 Is your claim for more than \$2,500? Yes No

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

4 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

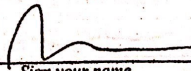
I declare under penalty of perjury under California state law that the information above and on any attachments to this form is true and correct.

Date: 8-3-2018

Type or print your name: Jaime Moreno

Date: _____

Type or print your name _____


Sign your name

Sign your name

SC-100A

Other Plaintiffs or Defendants

Case Number: 18VESC03883

 This form is attached to form SC-100, item 1 or 2.**1 If more than two plaintiffs (person, business, or entity suing), list their information below:**Other plaintiff's name: ~~Hugo Moreno~~

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

Is this plaintiff doing business under a fictitious name? Yes No If yes, attach form SC-103.

Other plaintiff's name: _____

Street address: _____ Phone: _____

City: _____ State: _____ Zip: _____

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

Is this plaintiff doing business under a fictitious name? Yes No If yes, attach form SC-103. Check here if more than 4 plaintiffs and fill out and attach another form SC-100A.**2 If more than one defendant (person, business, or entity being sued), list their information below:**Other defendant's name: Hugo MorenoStreet address: 2554 Lincoln Blvd. #412 Phone: _____City: Venice State: Ca Zip: 90291

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

If this defendant is a corporation, limited liability company, or public entity, list the person or agent authorized for service of process:

Name: _____ Job title, if known: _____

Address: _____

City: _____ State: _____ Zip: _____

 Check here if your case is against more than two defendants, and fill out and attach another form SC-100A.**3 Is your claim for more than \$2,500? Yes No**

If yes, I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.

4 I understand that by filing a claim in small claims court, I have no right to appeal this claim.

I declare under penalty of perjury under California state law that the information above and on any attachments to this form is true and correct.

Date: 8-3-2018Type or print your name
Jaime Moreno

Date: _____

Type or print your name

Sign your name

Sign your name

"SC-100, Item 3"

MC-031

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	JAIMÉ MORENO vs VENICEKUSH BRAND, LLC, et al	CASE NUMBER: 18VESCO3883
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DECLARATION

(This form must be attached to another form or court paper before it can be filed in court.)

On or about June 21, 2018 I noticed that there was defamatory per se statements published publicly on a website the Defendants control.

On July 12, 2018 I sent a notice to defendants through certified mail demanding the removal of false defamatory statements published by defendants on their website www.venicekush.com/notice or provide evidence of said crimes claimed in the defamatory statement I notified them that failure to provide such evidence of their claims within 30 days would constitute an agreement that defendants are liable to Plaintiff for \$5,000.00.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 8-3-2018

Jaime Moreno
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF DECLARANT)

- Attorney for
- Respondent
- Plaintiff
- Other (Specify):
- Petitioner
- Defendant

Names and addresses of additional plaintiffs and defendants:

Nombres y direcciones de los demandados adicionales:

PLAINTIFF/DEMANDANTE

DEFENDANT/DEMANDADO

Hugo Moreno
2554 Lincoln Blvd.
Venice, CA 90291

NOTICE OF ENTRY OF JUDGMENT

NOTICE OF ENTRY OF JUDGMENT (Small Claims) - This notice is required by the Small Claims Act to be filed with the court within 10 days of the date of the entry of judgment. Failure to file this notice may result in the judgment being set aside.

This notice is automatically generated by the court. It is not required to be filed with the court.

NOTICE OF ENTRY OF JUDGMENT (Small Claims) - This notice is required by the Small Claims Act to be filed with the court within 10 days of the date of the entry of judgment. Failure to file this notice may result in the judgment being set aside.

NOTICE OF ENTRY OF JUDGMENT (Small Claims)

NOTICE OF ENTRY OF JUDGMENT (Small Claims)

NORTHWEST DISTRICT
Van Nuys Courthouse East
6230 Sylmar Avenue
Van Nuys CA 91401

SMALL CLAIMS CASE NO: 18VESC03883

- NOTICE TO ALL PLAINTIFFS AND DEFENDANTS -

Your small claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the back of this sheet for important information about your rights.

- AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS -

Su caso ha sido resuelto por la corte para reclamos judiciales menores. Si la corte ha decidido en su contra y ha ordenado que usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte. Lea el reverso de este formulario para obtener información de importancia acerca de sus derechos.

PLAINTIFF/DEMANDANTE
Jaime Moreno
333 Washington Blvd.
#505
Marina Del Rey, CA 90292

DEFENDANT/DEMANDADO
Venicekush Brand, LLC.
2554 Lincoln Blvd.
#412
Venice, CA 90291

Jason Abraham
4001 Redondo Beach
Redondo Beach, CA 90278

NOTICE OF ENTRY OF JUDGMENT

JUDGMENT WAS ENTERED AS STATED BELOW ON (DATE): 10/02/2018

Court orders judgment entered on the Plaintiff's Claim filed by Jaime Moreno on 08/03/2018 as follows: Defendants Jason Abraham; Hugo Moreno; Venicekush Brand, LLC. do not owe the plaintiff Jaime Moreno any money on plaintiff's claim.

Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided.

CLERK'S CERTIFICATE OF MAILING - I certify that I am not a party to this action. This *Notice of Entry of Judgment* was mailed first class, postage prepaid, in a sealed envelope to the parties at the addresses shown above. The mailing and this certification occurred at the place and on the date shown below.

Place of mailing: Van Nuys CA 91401
Date of mailing: 10/5/2018

Sherril R. Carter, Executive Officer / Clerk of Court

Laura Naradov

Clerk by Laura Naradov, Deputy

The county provides small claims advisor services free of charge. Read the information sheet on the reverse.

Venicekush Brand LLC

7012 3460 0003 1236 1847

Date: October 1st, 2018

Affidavit

This is a verified plain statement of truth

Before me, the undersigned authority, personally appeared Hugo Moreno, who being by me duly affirmed, deposed as follows:

I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein state:

Venicekush Brand LLC and its members as alleged defendants in this matter rebut the plaintiffs claim of defamation with the affirmative defenses of Truth and consent to the publication of the allegedly defamatory statement. The chronology of events occur as such:

The first communication that plaintiff has sent to the defendants regarding the subject matter of defamation is dated 09/19/2016 and is attached herein and herewith as Exhibit A1.

Within the third paragraph of Exhibit A1 the plaintiff himself communicates the issue at hand being defamation based upon our website and its postings, including an attachment of said Notice dated 09/19/2016.

With firsthand knowledge I affirm that the contents of the publication on our website are facts. Incident communication with change@secureserver.net is attached as Exhibit A4 and I affirm in a phone call conversation with an agent of said company that I was told the name Jaime Moreno as the party attempting to steal my domain that I have had since 2010.

In regards to the series of events which occurred, I simply posted truthful information as a public service announcement and provided for the public benefit in the manner of a consumer and investor fraud prevention Notice in regards to our business and bootleggers of our company brand.

On September 27th 2016 an Affidavit of Conditional Acceptance herein and herewith attached as Exhibit A2 from the defendants was communicated in response to the plaintiff's notice dated 09/19/2016. Our response in said Certified Mailing, with Return Receipt number 7012 3460 0003 1236 0529, created a Default and a tacit agreement that if the plaintiff has a valid claim, that he present evidence of the bona fide claim. This evidence was never presented and acquiescence to said Affidavit of Conditional Acceptance created an estoppel pursuant to an Affidavit of Certificate of Non-Response, attached herein and herewith as Exhibit A3, barring plaintiff from any further action, including this Small Claims Case #18VES03883, without actual proof of Plaintiffs claim.

Said Affidavit of Conditional Acceptance is also presented as evidence of perjury committed by the plaintiff against the court. Plaintiff is knowingly making it appear to the court as though this was a new matter and it is an ongoing private matter of which the plaintiff acquiesced too.

Dismissal is appropriate under Section 2.132(a) of the Trademark Act where the plaintiff's time for taking testimony has expired and the plaintiff has not taken any testimony or offered any evidence. Because Opposer failed to take any testimony or offer any other evidence in support of his claim during his assigned testimony period, and because we determine that Opposer is not entitled to a reopening of the period, Applicant's motion to dismiss the opposition under Trademark Rule 2.132(a) is **granted** and the opposition is **dismissed with prejudice**.

represented by counsel, to comply with applicable rules and authorities. *McDermott v. S.F. Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx. 865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008). See also 30 TTAVUE 2-3 (warning Opposer that representation by an attorney is strongly advisable and strict compliance with Board's rules is required of all parties, whether or not they are represented by counsel). Opposer assumed responsibility for this case as a pro se plaintiff, and in so doing took responsibility for moving this case forward on the established schedule. See *Atlanta-Fulton County Zoo Inc. v. DePalma*, 45 USPQ2d 1858, 1860 (TTAB 1998). If Opposer believed that he needed more time to obtain papers or files, it was incumbent upon him to file a motion to extend the deadline for his testimony period before the period closed more than three months later.

In view thereof, the failure to file evidence and a brief appears to be wholly in the control of Opposer. This weighs heavily against a finding of excusable neglect.

4. Fourth Pioneer Factor: Good Faith

The fourth factor concerns Opposer's good faith. There is no evidence of record that Opposer failed to file evidence during his testimony period in bad faith. Accordingly, we find this factor neutral.

5. Decision

After careful consideration of the *Pioneer* factors and all of the relevant circumstances in this case, we find that Opposer's delay was not the result of excusable neglect.

3. **Third Pioneer Factor: Reason for Delay**

Turning to the third *Pioneer* factor, the reason for the delay, Opposer claims his prior counsel “kept possession of documentary evidence given to him by Opposer in order for counsel to represent Opposer [sic] case to the Board. Counsel . . . would not return my phone calls after a disagreement concerning his competence to prosecute the case. If not for counsels [sic] neglect there would be no delay by Opposer.”¹⁴

The Board granted the motion of Opposer’s former counsel, The Berglund Group (“TBG”), to withdraw from the proceeding on December 21, 2019 – over four months before Opposer’s trial period closed.¹⁵ TBG stated it was Opposer who would not return his counsel’s calls, and “[t]he only documents and property in TBG’s possession related to this action were the pleadings filed by TBG on behalf of Opposer which [TBG] emailed to Opposer at the time of filing.”¹⁶ Accordingly, Opposer’s representations regarding the fault of his former counsel are, at best, inconsistent with the record in this proceeding.

Nonetheless, on January 18, 2020, Opposer stated he intended to represent himself without the aid of counsel.¹⁷ Notwithstanding that Opposer appears pro se, the Board expects all parties appearing before it, regardless of whether they are

¹⁴ 37 TTABVUE 14.

¹⁵ 27 TTABVUE. Counsel supplemented his withdrawal on December 16, 2019 in response to the Board’s order. See 29 TTABVUE. The Board notes that Opposer initiated this proceeding without the aid of counsel. See 1 TTABVUE. Subsequently, two sets of counsel have appeared and withdrawn from representing Opposer in this proceeding. See 7, 23, 24, 27, 29 TTABVUE. Applicant’s former counsel also withdrew from the proceeding. See 17 TTABVUE. Accordingly, both parties currently appear pro se.

¹⁶ 29 TTABVUE 5-6 (Declaration of Russell J. Miller ¶¶ 6, 8).

¹⁷ 31 TTABVUE.

1. First *Pioneer* Factor: Danger of Prejudice

The type of prejudice contemplated by the first *Pioneer* factor is prejudice to the non-movant's ability to litigate the case, e.g., where the non-movant has lost evidence or witnesses as a result of the delay. See *Pumpkin*, 43 USPQ2d at 1587. Applicant has not pointed to any specific loss of evidence or witness testimony as a result of Opposer's delay, and there is no evidence in the record that Applicant's ability to defend against Opposer's claim has been prejudiced by the delay. Accordingly, this factor weighs in favor of finding excusable neglect.

2. Second *Pioneer* Factor: Length of Delay

With respect to the length of the delay and its potential impact on proceedings, the Board must evaluate the total length of the delay caused by Opposer's failure to properly offer evidence during his testimony period or file a brief and the resulting motion practice, including the time for the Board to consider the pending motion. *Coffee Studio*, 129 USPQ2d at 1483 (citing *Pumpkin*, 43 USPQ2d at 1588).

It has been almost a year since Opposer's testimony period closed. Reopening Opposer's testimony period would further delay resolution of this case by many months and runs counter to the Board's interest in an expeditious adjudication of this and other cases, as well as Applicant's interest in the resolution of this case. See *Pumpkin*, 43 USPQ2d at 1588 ("The Board, and parties to Board proceedings generally, clearly have an interest in minimizing the amount of the Board's time and resources that must be expended on matters[.]"). Accordingly, we find this factor weighs against a finding of excusable neglect.

As discussed by the Board in *Pumpkin, Ltd. v. Seed Corps*, 43 USPQ2d 1582, 1585-86 (TTAB 1997), the Supreme Court has clarified the meaning and scope of “excusable neglect” as used in the Federal Rules of Civil Procedure and elsewhere. In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. L.P.*, 507 U.S. 380, 395 (1993), the Court held that the determination of whether a party’s neglect is excusable is “at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” These include:

- (1) The danger of prejudice to the non-movant;
- (2) The length of the delay and its potential impact on judicial proceedings;
- (3) The reason for the delay, including whether it was within the reasonable control of the movant; and
- (4) Whether the movant acted in good faith.

Id. In subsequent applications of this test, several courts and the Board have stated that the third *Pioneer* factor – namely, the reason for the delay and whether it was within the reasonable control of the movant – might be considered the most important factor in a particular case. See *Pumpkin*, 43 USPQ2d at 1587, n.7 and cases cited therein. See also *Luster Prods., Inc. v. Van Zandt*, 104 USPQ2d 1877, 1878 (TTAB 2012). The Board balances the reason for the delay with the other factors enumerated by the Supreme Court in *Pioneer* to take into account all relevant circumstances. *Coffee Studio LLC v. Reign LLC*, 129 USPQ2d 1480, 1482 (TTAB 2019).

noticed, and collecting cases in which the Board has taken, or declined to take, judicial notice of facts). Moreover, Opposer's request for judicial notice is untimely. See *Litton Bus. Sys., Inc. v. J.G. Furniture Co.*, 190 USPQ 431, 434 (TTAB 1976) (“[W]e should not use judicial notice to remedy plaintiff's failure to present adequate evidence.”). See also TBMP § 704.12(b) (“The request [for judicial notice] should be made during the requesting party's testimony period, by notice of reliance accompanied by the necessary information.”).¹³

Accordingly, unless Opposer's testimony period is reopened, it would be futile to allow this case to proceed. Fed. R. Civ. P. 6(b)(1)(B); *Gaylor Enter. Co. v. Calvin Gilmore Prods. Inc.*, 59 USPQ2d 1369, 1373 (TTAB 2000).

B. Reopening of Opposer's Testimony Period

To overcome Applicant's motion for involuntary dismissal, Opposer must show good and sufficient cause why judgment should not be rendered against him, failing which the notice of opposition will be dismissed with prejudice. The “good and sufficient cause” standard in the context of Trademark Rule 2.132(a) is equivalent to the “excusable neglect” standard which Opposer would be required to meet to reopen Opposer's testimony period under Fed. R. Civ. P. 6(b)(1)(B). *PolyJohn Enters. Corp. v. 1-800-Toilets Inc.*, 61 USPQ2d 1860, 1860-61 (TTAB 2002).

¹³ Applicant has not made any admissions in his answer that would establish Opposer's entitlement to a statutory cause of action, see *Spanishtown Enters., Inc. v. Transcend Resources, Inc.*, 2020 USPQ2d 11388, at *2 (TTAB 2020) (discussing change in nomenclature of doctrine formerly known as “standing”), or Opposer's claim of Applicant's non-ownership of the subject mark. The documents attached to Applicant's Answer, 4 TTABVUE 6-94, also are not of record in the proceeding.

submitted with summary judgment motion not of record); *Univ. Games Corp. v. 20Q.net, Inc.*, 87 USPQ2d 1465, 1468 n.4 (TTAB 2008) (same). Evidence not obtained and filed in compliance with the rules of practice will not be considered by the Board. Trademark Rule 2.123(k), 37 C.F.R. § 2.123(k). See, e.g., *Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1846 n.8 (TTAB 2004) (materials submitted outside of applicant's assigned testimony period and which failed to comply with the Board's evidentiary rules given no consideration); *Original Appalachian Artworks Inc. v. Streeter*, 3 USPQ2d 1717, 1717 n.3 (TTAB 1987) (stating a party may not reasonably presume evidence is of record when it is not offered in accordance with the rules). See also TBMP § 706.

Opposer has not properly made any evidence of record during his trial period in this proceeding. Any documents served as part of Opposer's initial disclosures, and the exhibits attached to Opposer's brief, are not properly of record because they were not submitted during Opposer's trial period. Most of the documents that are the subject of Opposer's request for "judicial notice" do not comprise the kind of facts that may be judicially noticed by the Board. See Fed. R. Evid. 201(b);¹² *Omaha Steaks Int'l, Inc. v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1692-93 (Fed. Cir. 2018) (discussing the taking of judicial notice in Board proceedings). See also TBMP § 704.12(a) & nn.1-2 (discussing the kinds of facts that may be judicially

¹² Rule 201(b) provides that a tribunal "may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the [tribunal's] territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

In response, Opposer contends he has made evidence of record, pointing to “email communication, receipts, and some kind of documentation” served on Applicant with Opposer’s initial disclosures.⁸ Opposer further asks the Board to take judicial notice of evidence attached to his response brief.⁹ Finally, Opposer requests that his testimony period be reopened to allow him an opportunity to submit additional evidence.¹⁰

II. Decision

A. No Evidence of Record

We first turn to Opposer’s argument that he has introduced evidence in the proceeding. There are a number of ways to introduce evidence into the record in a Board proceeding.¹¹ To be considered at final hearing, however, all evidence that is not automatically of record must be properly introduced during a party’s trial period. *Cf. Land O’Lakes, Inc. v. Hugunin*, 88 USPQ2d 1957, 1960 n.7 (TTAB 2008) (evidence

⁸ See 37 TTABVUE 5.

⁹ See *id.* at 2-3, 25-57. These documents were included as exhibits to Applicant’s Answer: a partial “Affidavit of Fact and Truth” by Applicant (the complete, signed version is at 4 TTABVUE 7-10); California articles of incorporation of “Venice Kush”; a California Seller’s Permit; a California trademark registration; and an application for event insurance.

¹⁰ *Id.* at 5. Opposer states that he intends to introduce evidence in support of “fraud” – however, Opposer’s fraud claim was dismissed and is not a pending ground for opposition. See note 4, *supra*.

¹¹ For example, evidence may be introduced either in the form of testimony depositions taken by a party or by witness affidavits or declarations. Trademark Rules 2.123, 37 C.F.R. § 2.123. Documents and other exhibits may be made of record with appropriate identification and introduction by a witness. *Id.* Certain specified types of evidence, such as official records and printed publications and discovery responses, also may be introduced by filing the materials with the Board under cover of a notice of reliance. Trademark Rules 2.120(k), 2.122(e), 37 C.F.R. §§ 2.120(k), 2.122(e). See generally TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §§ 703-705 (2020).

and do not repeat or address all of the parties' arguments or evidence. *Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

I. Relevant Background

On March 31, 2017, Opposer filed a notice of opposition against registration of the mark VENICEKUSH in standard characters for "Clothing, namely, hats, shirts, socks, jackets, sweaters, and gloves" in International Class 25.³ On April 19, 2018, the Board granted judgment on the pleadings as to certain pleaded claims, leaving as the sole remaining ground for opposition a claim of non-ownership of the subject mark.⁴ Applicant, in his answer, denies the salient allegations of the claim.⁵

As last reset, Opposer's main trial period ended April 26, 2020 and his rebuttal trial period ended August 9, 2020. Opposer's brief was due October 8, 2020.⁶ Applicant seeks dismissal of the opposition with prejudice in view of Opposer's failure to submit any evidence during trial or file a brief.⁷

³ Application Serial No. 87172475, filed September 15, 2016 based on an allegation of first use and first use in commerce of September 15, 2010 under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a).

⁴ See 1 TTABVUE 5 (Notice of Opposition); 13 TTABVUE 9 (dismissing claims of fraud and false suggestion of a connection); 26 TTABVUE (order construing "Amended Notice of Opposition" as Opposer's election to proceed only on the ground of non-ownership, and confirming that the original notice of opposition (1 TTABVUE) and Applicant's answer thereto (4 TTABVUE) are the operative pleadings).

⁵ See 4 TTABVUE.

⁶ See 32 TTABVUE 1.

⁷ 33 TTABVUE. Applicant also did not file any evidence during his trial period, which ended June 25, 2020. See 32 TTABVUE 1. Although a motion for judgment under 37 CFR § 2.132(a) should be filed before the opening of the moving party's testimony period, we have exercised our discretion to consider Applicant's later-filed motion. See Trademark Rule 2.132(c), 37 CFR § 2.132(c); *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710, 1712 (Fed. Cir. 1991).

THIS ORDER IS NOT A
PRECEDENT OF THE
TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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April 9, 2021

Opposition No. 91233735

*Jaime Moreno DBA American Cannabis
Company & Venice Kush*

v.

Hugo Moreno Olvera

**Before Wolfson, Lynch, and Johnson,
Administrative Trademark Judges.**

By the Board:

This case now comes up for consideration of Applicant's motion, filed October 13, 2020, for involuntary dismissal under Trademark Rule 2.132(a), 37 C.F.R. § 2.132(a).¹ On October 31, 2020, Opposer opposed the motion and requested that the Board reopen Opposer's trial period.²

We have considered the parties' briefs and any evidence submitted therewith, but address the record only to the extent necessary to set forth our analysis and findings

¹ 33 TTABVUE. Record citations are to TTABVUE, the Board's publicly available docket history system. See *Turbin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

² 37 TTABVUE 16. The Board permitted Opposer to refile his brief with proof of service, which Opposer timely did on January 7, 2021. 37 TTABVUE. All references to Opposer's brief in opposition are to the later-filed submission at 37 TTABVUE; the filing at 35 TTABVUE is given no further consideration. Applicant did not file a reply.