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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92072751
Party	Plaintiff Traditional Medicinals, Inc.
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Signature	/Jeremy Johnson/
Date	01/23/2021
Attachments	MUG OF SUNSHINE REQUEST TO SET ASIDE AND WITHDRAW.pdf(157712 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TRADITIONAL MEDICINALS, INC.  
Petitioner,

v.

SHAWNALEE F. PUSEY  
Respondent

Cancellation No. 92072751

Registration No. 5,423,764

Mark: MUG OF SUNSHINE

**WITHDRAWAL OF PETITION WITHOUT PREJUDICE  
AND  
REQUEST TO SET ASIDE NOTICE OF DEFAULT**

Petitioner Traditional Medicinals, Inc. (“Petitioner”) hereby notifies the Board that it desires to withdraw its Petition for Cancellation (“Petition”) without prejudice as permitted by 37 C.F.R. § 2.114(c) and Fed. R. Civ. P. 41(a)(1). Dismissal without prejudice is proper because Registrant Shawnalee F. Pusey (“Registrant”) has not yet filed an answer. Additionally, pursuant to a Coexistence Agreement between the parties, Registrant expressly consents to dismissal of the Petition without prejudice.

Further, and out of an abundance of caution, Petitioner and Registrant also jointly request that the Board set aside the Notice of Default issued on January 21, 2021. In support of this request, the parties represent that good cause exists for vacating the notice of default: Registrant’s failure to answer was not the result of willful conduct or gross negligence; nor will Petitioner suffer any prejudice. The parties entered into a Coexistence Agreement in September 2020 in which, *inter alia*, Registrant consented to registration of Petitioner’s CUP OF SUNSHINE mark, application Serial No. 87092002 (“Petitioner’s Mark”), and Petitioner agreed to withdraw the Petition upon

publication of Petitioner's Mark. The publication process took longer than anticipated, and, thereafter, Petitioner failed to file the notice of withdrawal as agreed.

WHEREFORE Petitioner and Registrant jointly request that the Board vacate the Notice of Default and enter an order allowing withdrawal of the Petition of Cancellation without prejudice.

Dated this 23<sup>rd</sup> day of January 2021.

TRADITIONAL MEDICINALS, INC.

/Jeremy M. Johnson/

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SHAWNALEE F. PUSEY

/Marie Anne Mastrovito/

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*Attorneys for Registrant, Shawnalee F. Pusey*

### **Certificate of Service**

I hereby certify that a true and correct copy of the foregoing pleading was served by electronic mail this 23<sup>rd</sup> day of January 2021 upon counsel for Registrant at [mamastrovito@lawabel.com](mailto:mamastrovito@lawabel.com).

/Jeremy M. Johnson/

Jeremy M. Johnson, Esq.