

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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HARRY ASATO PAINTING, INC.)	Case Nos.
Petitioner/Cross-Respondent)	15-1400 & 15-1466
)	
v.)	
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent/Cross-Petitioner)	
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**JOINT MOTION OF THE PARTIES TO DISMISS THE PETITION FOR
REVIEW WITH PREJUDICE, AND THE CROSS-APPLICATION FOR
ENFORCEMENT WITHOUT PREJUDICE, OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

Pursuant to Fed. R. App. P. 42(b), the National Labor Relations Board (“the Board”), and Harry Asato Painting, Inc. (“the Company”), by their respective counsel, jointly move this Court to dismiss the petition for review, with prejudice, and the cross-application for enforcement, without prejudice, filed in the above-captioned cases. In support of their motion, the parties show as follows:

1. On May 19, 2015, the Board issued its Decision and Order against the Company, which is reported at 362 NLRB No. 104. On September 30, 2015, the Board issued its Order Denying Motion for Reconsideration and Reopening the Record, which is reported at 362 NLRB No. 104.

2. On October 30, 2015, the Company filed a petition for review of the Order Denying Motion for Reconsideration and Reopening the Record, which the Court

docketed as case number 15-1400. On November 18, the Board filed a cross-application for enforcement of its Decision and Order, which the Court docketed as case number 15-1466.

3. On February 29, 2016, the Court granted the parties' joint motion to extend the briefing deadlines to accommodate a pending settlement.

4. During all stages of appellate litigation, the parties diligently sought to resolve the case without further litigation and the costs associated with such litigation. The parties have reached final agreement and the Company has satisfied the required settlement obligations, dispensing with the necessity of further litigation.

5. The Company therefore agrees to dismiss with prejudice its petition for review of the Order Denying Reconsideration and Reopening the Record. The Company also agrees that it will not petition for review of the Board's underlying Decision and Order. Accordingly, the parties jointly request that the Court dismiss the petition for review in case number 15-1400 with prejudice.

6. The Company further agrees that the Board's cross-application for enforcement should be dismissed without prejudice to the Board's right to file a future application for enforcement of its Order in the event the Company fails to comply with the Order and with the terms of settlement. *See NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950) (because "[a] Board order imposes a

continuing obligation” and because “the Board is entitled to have [any] resumption of the unfair practice barred by an enforcement decree,” an employer’s compliance does not deprive the Board of the right to secure enforcement of the order from an appropriate court); *accord NLRB v. Raytheon Co.*, 398 U.S. 25, 27-28 (1970).

Accordingly, the parties jointly request that the Court dismiss the Board’s cross-application for enforcement in case number 15-1466 without prejudice

7. Each party is to bear its own costs.

8. Counsel for the Company Barry W. Marr has authorized counsel for the Board to file this joint motion on the Company’s behalf.

WHEREFORE, the parties respectfully request that the Court enter an order dismissing with prejudice the Company’s petition for review, and dismissing without prejudice the Board’s cross-application for enforcement.

Respectfully submitted,

/s/ Linda Dreeben

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Dated: March 30, 2016

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v.)	
)	Board Case Nos.
NATIONAL LABOR RELATIONS BOARD)	20-CA-124382
)	20-CA-125157
Respondent/Cross-Petitioner)	
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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
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Dated at Washington, DC
this 30th day of March 2016