

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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NATIONAL LABOR RELATIONS BOARD,)	
)	
Petitioner)	No.17-70582
)	
v.)	Board Case No.
)	28-CA-142681
BATES PAVING & SEALING, INC.)	
)	
Respondents)	
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**JOINT MOTION TO DISMISS THE BOARD’S
APPLICATION FOR ENFORCEMENT WITHOUT PREJUDICE**

**To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:**

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, the National Labor Relations Board (“the Board”) and Bates Paving & Sealing, Inc. (“the Company”), respectfully move to dismiss the Board’s application for enforcement without prejudice. In support of their joint motion, the parties show as follows:

1. On February 28, 2017, the Board filed with this Court an application for enforcement of its Order against the Company in the above-captioned case. The Board’s underlying Decision and Order is reported at 364 NLRB No. 46 (July 14, 2016).

2. The Board and the Company have sought to resolve this case by way of a mediated settlement agreement. The parties have reached such an agreement, thus dispensing with the necessity for further litigation at this time.

3. In the parties' settlement agreement, the Company agreed that the Board's application for enforcement would be dismissed without prejudice. Thereby, the Board reserves the right to file a future application to enforce, in the event the Company fails to continue its compliance with the prospective relief in the Board's Order. *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); *NLRB v. Raytheon Co.*, 398 U.S. 25, 27-28 (1970). Accordingly, the parties jointly request that the Court dismiss the Board's application for enforcement without prejudice.

4. Each party is to bear its own costs.

5. The Company, by its counsel, has authorized the Board to execute this motion on its behalf.

WHEREFORE, the parties respectfully request that their joint motion be granted and that the Board's application for enforcement be dismissed without prejudice.

Respectfully submitted,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
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/s/ Eric Hawkins

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Counsel for Bates Paving & Sealing, Inc.

Dated at Washington, D.C.
this 18th day of July 2017

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 429 words of proportionally-spaced, 14-point type, and the word processing system used was Microsoft Word 2010.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
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1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-1714

Dated at Washington, D.C.
this 18th day of July 2017

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, and that this document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Linda Dreeben

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Dated at Washington, D.C.
this 18th day of July 2017