

Nos. 16-70069 and 16-70267

**United States Court of Appeals
for the Ninth Circuit**

PHILMAR CARE, LLC, a California limited liability company,
Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent/Cross-Petitioner,

JUAN CORTES,
Respondent-Intervenor.

On Petition for Review and Cross-Application for Enforcement of a
Decision and Order of the National Labor Relations Board
Case No. 31-CA-133242

**SECOND UNOPPOSED MOTION OF PHILMAR CARE, LLC TO
CONTINUE STAY OF APPELLATE PROCEEDINGS PENDING U.S.
SUPREME COURT'S REVIEW OF CLASS ACTION WAIVER CASES**

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On February 28, 2017, Petitioner/Cross-Respondent Philmar Care, LLC (“Philmar”), by its attorneys, moved the Court to stay appellate proceedings pending the U.S. Supreme Court’s review of *Epic Systems Corp. v. Lewis*, No. 16-285; *Ernst & Young v. Morris*, No. 16-300; and *NLRB v. Murphy Oil USA, Inc.*, No. 16-307 (certiorari granted on January 13, 2017). At issue in this appellate proceeding is whether Philmar violated Section 8(a)(1) of the National Labor Relations Act (“NLRA”) by maintaining and enforcing a binding arbitration agreement in which the parties agreed to submit their individual claims to arbitration. The Supreme Court’s review of the aforementioned cases will have a direct, and likely dispositive, impact on the outcome of this case.

On February 28, 2017, the Court granted Philmar’s unopposed motion to stay appellate proceedings, stayed this petition for review until May 1, 2016, and stated that, at or prior to the expiration of the stay, Philmar may move for further appropriate relief.

On April 26, 2017, Philmar filed an unopposed motion to continue the stay on appellate proceedings pending the U.S. Supreme Court’s review of *Ernst & Young* and other class action waiver cases. On May 10, 2017, the Court granted this motion, stayed the petition for review until November 1, 2017, and stated that, at or prior to the expiration of the stay, Philmar may move for further appropriate relief.

On October 2, 2017, the U.S. Supreme Court heard oral arguments on *Ernst & Young* and other class action waivers. Accordingly, Philmar hereby respectfully requests that the Court continue the stay of proceedings until the U.S. Supreme Court issues a decision in the class action waiver cases and to order Philmar to file a status report within 10 days of the decision.

Philmar has conferred with NLRB counsel and counsel for Respondent-Intervenor Juan Cortes, who indicated that they will not oppose this Motion.

Respectfully submitted,

DATED: October 30, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ William C. Sung
Jeffrey S. Ranen
William C. Sung
Attorneys for Petitioner Philmar Care, LLC

CERTIFICATE OF SERVICE

PHILMAR CARE, LLC v. NLRB

Case No. 16-70069

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I hereby certify that I electronically filed the foregoing **SECOND UNOPPOSED MOTION OF PHILMAR CARE, LLC TO CONTINUE STAY OF APPELLATE PROCEEDINGS PENDING U.S. SUPREME COURT'S REVIEW OF CLASS ACTION WAIVER CASES** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 30, 2017.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system:

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the above-referenced document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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

Executed on October 30, 2017, at Los Angeles, California.


Alexandra Martinez