

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

NETWORK CAPITAL FUNDING CORP.,)	
)	
Petitioner)	
)	
v.)	Nos. 16-70687
)	16-70803
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO
REMOVE THIS CASE FROM ABEYANCE AND SUMMARILY GRANT
THE COMPANY’S PETITION FOR REVIEW AND DENY THE BOARD’S
CROSS-APPLICATION FOR ENFORCEMENT OF ITS ORDER**

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

The National Labor Relations Board respectfully moves this Court to
remove this case from abeyance and summarily grant the Company’s petition for
review, and deny the Board’s cross-application for enforcement. In support of this
motion, the Board shows:

1. In the Decision and Order under review, the Board found that
Network Capital Funding Corp. (the Company) had violated the National Labor
Relations Act by maintaining an arbitration agreement barring employees from
concertedly pursuing work-related claims in any forum, arbitral or judicial. In
doing so, the Board applied the rule set forth in *Murphy Oil, USA, Inc.*, 361 NLRB

774 (2014), *enforcement denied in relevant part*, 808 F.3d 1013 (5th Cir. 2015), *cert. granted*, No. 16-307 (Jan. 13, 2017).

2. On April 12, 2018, this Court renewed the stay in this case until the sooner of either the Supreme Court's decision in *NLRB v. Murphy Oil, USA, Inc.*, No. 16-307, or July 16, 2018.

3. On May 21, 2018, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, No. 16-285, 2018 WL 2292444 (U.S. May 21, 2018), holding that employers may lawfully maintain arbitration agreements that bar employees from concertedly pursuing work-related legal claims.¹ The Board acknowledges that under that decision, the Decision and Order in this case is no longer enforceable. The Board therefore consents to the summary grant of the Company's petition for review, and the summary denial of the Board's cross-application for enforcement, of the Board's Order.

¹ The Court issued *Epic Systems* together with *Murphy Oil*, No. 16-307, and *Ernst & Young LLP v. Morris*, No. 16-300.

WHEREFORE, the Board respectfully moves this Court to remove this case from abeyance, and summarily grant the Company's petition for review and deny the Board's cross-application for enforcement of the Board's Order.

Respectfully submitted,

/s/Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

NATIONAL LABOR RELATIONS BOARD

1015 Half Street, S.E.

Washington, D.C. 20570

Dated at Washington, D.C.
this 22nd day of May 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 372 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2010.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
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CERTIFICATE OF SERVICE

I certify that on May 22, 2018, the foregoing motion was filed 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 all counsel are registered CM/ECF users.

s/ Linda Dreeben
Linda Dreeben
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