

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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|-----------------------------------|---|----------------|
| NIJJAR REALTY, INC., A CALIFORNIA |) | |
| CORPORATION, DBA PAMA MANAGEMENT |) | |
| |) | |
| Petitioner/Cross-Respondent |) | Nos. 15-73921 |
| |) | 16-70336 |
| v. |) | |
| |) | Board Case No. |
| NATIONAL LABOR RELATIONS BOARD |) | 21-CA-092054 |
| |) | |
| Respondent/Cross-Petitioner |) | |
| |) | |

MOTION OF THE NATIONAL LABOR RELATIONS BOARD
TO LIFT THE STAY IN THIS PROCEEDING, SUMMARILY GRANT
NIJJAR’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 (“the Board”), by its Deputy Associate
General Counsel, respectfully moves this Court to lift the stay in this proceeding,
summarily grant the petition for review filed by Nijjar Realty, Inc., a California
corporation, dba Pama Management (“Nijjar”), 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, *Nijjar Realty, Inc., d/b/a
Pama Management and Gerardo Haro*, 363 NLRB No. 38 (Nov. 20, 2015), the
Board found that Nijjar had violated the National Labor Relations Act by
maintaining and enforcing 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).

2. Subsequently, Nijjar filed a petition for this Court to review the Board's Order (Case No. 15-73921), and the Board filed a cross-application for enforcement of the same (Case No. 16-70336). The Court consolidated both cases, and the parties completed briefing in August 2016.

3. On January 13, 2017, the Supreme Court granted certiorari in *Murphy Oil*, No. 16-307, and two companion cases, *Epic Systems Corp. v. Lewis*, No. 16-285, and *Ernst & Young v. Morris*, No. 16-300. On February 22, this Court ordered this proceeding stayed until issuance of the Supreme Court's decisions in the aforementioned cases.

4. On May 21, 2018, the Supreme Court issued its decision in *Epic Systems*, *Murphy Oil*, and *Ernst & Young*. *See Epic Systems Corp. v. Lewis*, No. 16-285, 2018 WL 2292444 (U.S. May 21, 2018). The Court held that employers may lawfully maintain arbitration agreements that bar employees from concertedly pursuing work-related legal claims.

5. The Board acknowledges that its Decision and Order is no longer enforceable against Nijjar in light of the Supreme Court's ruling. The Board therefore consents to the summary grant of Nijjar's petition for review of the

Board's Order, and the summary denial of the Board's cross-application for enforcement of the same.

WHEREFORE, the Board respectfully moves this Court to lift the stay in this proceeding, summarily grant Nijjar'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, SE
Washington, DC 20570-0001

Dated at Washington, DC
this 23rd day of May 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(g)(1), the Board certifies that this motion contains 378 words of proportionally spaced, 14-point type, and the word-processing software used was Microsoft Word 2010. The Board further certifies that the PDF file submitted to the Court has been scanned for viruses using Symantec Endpoint Protection version 12.1.6 and is virus-free according to that program.

s/ Linda Dreeben
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2018, I electronically filed the foregoing with the Clerk for the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I further certify that this document was served on all parties or their counsel of record through the appellate CM/ECF system.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Dated at Washington, DC
this 23rd day of May 2018