

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

K MART CORPORATION, A SUBSIDIARY)	
OF SEARS HOLDINGS CORPORATION)	
)	
Petitioner)	
)	
v.)	No. 15-60897
)	
NATIONAL LABOR RELATIONS BOARD)	
)	
Respondent)	
)	

**UNOPPOSED MOTION OF THE NATIONAL LABOR RELATIONS
BOARD TO REMOVE THIS CASE FROM ABEYANCE AND
SUMMARILY GRANT THE COMPANY’S PETITION FOR REVIEW**

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

The National Labor Relations Board, by its Deputy Associate General
Counsel, respectfully moves this Court to remove this case from abeyance and
summarily grant the Company’s petition for review. In support of this motion, the
Board shows:

1. In the Decision and Order under review, the Board found that Kmart Corporation, a subsidiary of Sears Holdings Corporation (“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 September 26, 2016, this Court placed this case in abeyance pending the Supreme Court's decision in *NLRB v. Murphy Oil USA, Inc.*, No. 16-307; *Lewis v. Epic Sys. Corp.*, No. 16-285; and *Morris v. Ernst & Young*, No. 16-300.

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 of the Board's Order.

4. Counsel for the Company does not oppose this motion.

WHEREFORE, the Board respectfully moves this Court to remove this case

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

from abeyance, and summarily grant the Company's petition for review 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 23rd 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 402 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
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570

Dated at Washington, D.C.
this 23rd day of May 2018

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CERTIFICATE OF SERVICE

I certify that on May 223, 2018, the foregoing motion was filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system, and that all counsel are registered CM/ECF users.

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

Dated at Washington, D.C.
this 23rd day of May 2018