

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

NATIONAL LABOR RELATIONS BOARD)
Petitioner)
) No. 18-72954
v.)
) Board Case No.
MATSON TERMINALS, INC.) 20-CA-178312
Respondent)

**UNOPPOSED MOTION OF THE NATIONAL LABOR RELATIONS
BOARD TO DISMISS ENFORCEMENT APPLICATION**

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

Pursuant to Federal Rule of Appellate Procedure 42(b), the National Labor Relations Board (“the Board”), through its Assistant General Counsel, respectfully moves this Court to dismiss its application for enforcement in the above-captioned case.

1. On October 17, 2018, the Board issued a Decision and Order against Matson Terminals, Inc. (“Matson”). *Matson Terminals, Inc.*, 367 NLRB No. 20. On November 1, 2018, the Board applied for enforcement of its Order, which the Court docketed as case number 18-72954.

2. During all stages of appellate litigation, the parties diligently sought to resolve the case without further litigation and the costs associated with such litigation. The parties subsequently reached a final agreement and Matson has complied with that agreement and with the underlying Order in a manner

satisfactory to the Board, thus dispensing with the necessity of further litigation at this time.

3. Matson has agreed that the Board's cross-application for enforcement should be dismissed without prejudice to the Board's right to file a future application for enforcement of its Order in the event that Matson fails to comply with the Order and with the terms of settlement. *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); *accord NLRB v. Raytheon Co.*, 398 U.S. 25, 27-28 (1970). Therefore, the Board requests that this Court dismiss the Board's application for enforcement without prejudice to the Board's right to file a future application for enforcement.

4. Each party is to bear its own costs.

5. Barry W. Marr and Christopher S. Yeh, counsel for Matson, indicate that Matson does not oppose this motion.

WHEREFORE, the Board respectfully requests that the Court enter an order dismissing without prejudice the Board's application for enforcement of its Order.

Respectfully submitted,

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Dated at Washington, DC
this 19th day of March 2019

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 391 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2016.

Respectfully submitted,

/s/ David Habenstreit
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2019, I electronically filed the foregoing motion with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

Respectfully submitted,

/s/ David Habenstreit _____
David Habenstreit
Assistant General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Dated at Washington, DC
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