

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

EXCALIBUR CHARTER SCHOOL, INC.	)	
	)	
Petitioner/Cross-Respondent	)	
v.	)	Nos. 18-71058
	)	& 18-71125
NATIONAL LABOR RELATIONS BOARD	)	
	)	Board Case No.
Respondent/Cross-Petitioner	)	28-CA-023039
	)	

**JOINT MOTION TO DISMISS WITH PREJUDICE THE PETITION FOR  
REVIEW AND TO DISMISS WITHOUT PREJUDICE THE CROSS-  
APPLICATION FOR ENFORCEMENT**

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

Pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure, the National Labor Relations Board (“the Board”), by its Acting Deputy Associate General Counsel, and Excalibur Charter School, Inc. (“Excalibur”) (collectively, “the Parties”) respectfully move to dismiss with prejudice Excalibur’s petition for review, and to dismiss without prejudice the Board’s cross-application for enforcement. In support of their joint motion, they show as follows:

1. On March 29, 2018, the Board issued a Decision and Order reported at 366 NLRB No. 49. Excalibur filed a petition for review of the Board's Order in this Court (No. 18-71058) and the Board cross-applied for enforcement of its Order (No. 18-71125). The Court issued an order consolidating these cases.

2. Subsequently, with the assistance of the Court's mediation program, the Parties reached a written agreement that resolved all outstanding issues arising from the Board's Order. Excalibur 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. Accordingly, pursuant to the terms of their agreement, the Parties now move to dismiss Excalibur's petition for review with prejudice, and to dismiss the Board's cross-application for enforcement without prejudice to the Board's right to file a future application for enforcement, if necessary, in the event that Excalibur fails to continue complying with the Order. *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).

4. The Parties agree that each party is to bear its own costs.

5. Laurent Badoux, counsel for Excalibur, has authorized the Board to

execute this motion on Excalibur's behalf.

WHEREFORE, the Parties respectfully request that the Court grant this joint motion and dismiss with prejudice Excalibur's petition for review and dismiss without prejudice the Board's cross-application for enforcement of its Order.

Respectfully submitted,

/s/ David Habenstreit

David Habenstreit

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/s/ Laurent Badoux

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Dated at Washington, DC  
this 20th day of August 2019

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its document contains 433 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2016.

/s/ David Habenstreit  
David Habenstreit  
Acting Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570

Dated at Washington, DC  
this 20th day of August 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 20, 2019, I filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for Ninth Circuit by using 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.

/s/ David Habenstreit  
David Habenstreit  
Acting Deputy Associate General Counsel  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570

Dated at Washington, DC  
this 20th day of August 2019