

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

NATIONAL LABOR RELATIONS BOARD,	)	
	)	
	)	
Petitioner,	)	Case No. 19-2534
	)	
v.	)	
	)	
ADT LLC, D/B/A ADT SECURITY SERVICES,	)	Board Case Nos.:
	)	03-CA-230714
	)	03-CA-234585
Respondent.	)	

**RESPONDENT ADT LLC’S ANSWER TO THE APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD**

Respondent ADT LLC, by its counsel, and pursuant to Fed. R. App. P. 15(b)(2), answers the Application for Summary Entry of a Judgment Enforcing an Order of the National Labor Relations Board (“Application for Enforcement”) filed in Case No. 19-2534 as follows:

**A. Jurisdiction of this Court**

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the unfair labor practices found by the Board occurred in New York. The Board’s final order issued on July 29, 2019.

**ANSWER:** Respondent admits this Court has jurisdiction to hear the Application for Enforcement pursuant to Section 10(e) of the National Labor Relations Act, as amended (the “Act”), and that venue is proper in this Court. Respondent further admits the National Labor Relations Board (the “Board”) issued an Order dated July 29, 2019 in Case Nos. 03-CA-230714 and 03-CA-234585 adopting the Administrative Law Judge’s June 17, 2019 decision in those cases.

**B. Proceedings Before the Board**

1. On March 1, 2019, the Director for Region 3 issued an order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Case Nos. 03-CA-230714 and 03-CA-234585, charging Respondent with certain violations of the Act.

**ANSWER:** Respondent admits the Regional Director for Region 03 of the Board issued an Order dated March 1, 2019 entitled Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Case Nos. 03-CA-230714 and 03-CA-234585 alleging Respondent violated Sections 8(a)(1), (3), and (5) of the Act.

2. Following a hearing before Administrative Law Judge Arthur J. Amchan, the judge issued a decision on June 17, 2019, finding that Respondent had violated the Act and recommending that an order be issued requiring that the Respondent cease and desist from the unfair labor practices found, and take certain affirmative action to remedy those unfair labor practices, including posting an appropriate notice.

**ANSWER:** Respondent admits that after a hearing held on April 17, 2019 before Administrative Law Judge Arthur J. Amchan, Judge Amchan issued a Decision dated June 17, 2019 finding Respondent engaged in certain unfair labor practices and issuing a recommended order to cease and desist from engaging in certain unfair labor practices and to take certain affirmative action, including a notice posting.

3. On June 17, 2019, the Board issued an order transferring the proceeding to the Board and notifying the Respondent that the Board must receive exceptions to the administrative law judge's decision by July 15, 2019.

**ANSWER:** Respondent lacks sufficient knowledge and information as to when the Board issued an order transferring the proceeding to the Board and notifying the Respondent of the deadline to file exceptions.

4. Section 10(c) of the Act (29 U.S.C. § 160(c)) provides that "if no exceptions are filed [with the Board] within twenty days after service [of the administrative law judge's decision] upon the parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed." Section 102.46 and 102.48 of the Board's Rules and Regulations (29 C.F.R. 102.46 and 102.48) implement this provision and provide that, in the event no exceptions are filed within 28 days, the decision of the

administrative law judge shall be adopted by the Board and all objections and exceptions thereto are waived for all purposes.

**ANSWER:** Respondent admits the language cited in Paragraph B(4) is an accurate reflection of the language in Section 10(c) of the National Labor Relations Act and Sections 102.46 and 102.48 of the National Labor Relations Board's Rules and Regulations.

5. Respondent did not file exceptions with the Board.

**ANSWER:** Respondents admits the averment in Paragraph B(5).

6. In the absence of any exceptions to the administrative law judge's decision, on July 29, 2019, the Board issued an order adopting the administrative law judge's findings and conclusions, and directing the Respondent to take the action set forth in the Judge's recommended order

**ANSWER:** Respondent admits the Board issued an order adopting the Administrative Law Judge's June 17, 2019 decision in in Case Nos. 03-CA-230714 and 03-CA-234585.

### **C. The Board is Entitled to Summary Enforcement of Its Order**

The Board is entitled to summary entry of a judgment enforcing its order because, by failing to file exceptions with the Board challenging the administrative law judge's decision, the Respondent failed to raise any issues before the Board. Section 10(e) of the Act (29 U.S.C. § 160(e)) provides that "no objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused by extraordinary circumstances." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting this requirement, this Court and other circuits have consistently held that a respondent's failure to file any exceptions before the Board entitles the Board, [SIC]

**ANSWER:** Respondent denies the Board is entitled to summary entry of a judgment enforcing its order as Respondent continues to work diligently and communicate as necessary to comply with the Board's order.

Wherefore, Respondent ADT LLC opposes the Application for Enforcement and requests the Court grant Respondent all relief to which it is entitled while the parties continue communications aimed at resolving this matter and the underlying Board order.

**Dated:** September 6, 2019.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By: /s/ Evan B. Citron

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 6th day of September, 2019 the foregoing ***RESPONDENT ADT LLC'S ANSWER TO THE APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD*** was Electronically Filed as a .pdf document via the Court's e-filing system and transmitted via U.S. First-Class Mail to:

David Habenstreit  
Acting Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half St. S.E.  
Washington, D.C. 20570

*/s/ Evan B. Citron*

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Evan B. Citron

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