

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 15, 2015

Elisabeth A. Shumaker
Clerk of Court

DAVID K. DOWNES; MATTHEW P.
FINK; PHILLIP A. GRIFFITHS; MARY
F. MILLER; JOEL W. MOTLEY;
RUSSELL S. REYNOLDS, JR.; JOSPEH
M. WIKLER; PETER I. WOLD;
OPPENHEIMER CALIFORNIA
MUNICIPAL FUND; CLAYTON K.
YEUTTER; KENNETH A. RANDALL;
ROBERT G. GALLI; BRIAN F.
WRUBLE,

Petitioners,

v.

ROBERT RIVERA; STEPHEN LOWE;
FRANK TACKMANN; KENNETH
MILHEM; JOSEPH STOCKWELL,

Respondents.

No. 15-702
(D.C. No. 1:09-MD-02063-JLK-KMT)
(D. Colo.)

ORDER

Before **HARTZ**, **GORSUCH**, and **MATHESON**, Circuit Judges.

This matter is before the court on the Petition of the Oppenheimer California Municipal Fund and Independent Trustees for Permission to Appeal Order Granting Class Certification (the “Petition”). *See* Fed. R. App. P. 5(a); Fed. R. Civ. P. 23(f). The Petition was filed by the Oppenheimer California Municipal Fund, David K. Downes, Matthew P. Fink, Robert G. Galli, Phillip A. Griffiths, Mary F. Miller, Joel W. Motley,

Kenneth A. Randall, Russell S. Reynolds, Jr., Joseph M. Wikler, Peter I. Wold, Brian F. Wruble, and Clayton K. Yeutter. The lead plaintiff filed Respondent's Opposition to Petition for Permission to Appeal from Order Granting Class Certification, which was applicable to both this petition and the companion petition filed by OppenheimerFunds, Inc., No. 15-703.

Also before us is the Petitioners' Motion for Leave to Join in Reply Brief in Support of Rule 23(f) Petition for Permission to Appeal Order Granting Class Certification, which asks to join in the reply brief proposed by the petitioners in No. 15-703 if the reply is filed. The motion to join in the proposed reply is opposed by the respondent.

As a preliminary matter, the petitioners' motion to join in the petitioners' reply in No. 15-703 is granted. By separate order, the court has granted the petitioners' motion to file a reply in No. 15-703. The reply will be filed as of the date the court received it. The petitioners here may join in that reply.

Upon consideration of the Petition, the response, the reply, and the materials on file, we *grant* the Petition for two principal reasons. First, the district court's order granting class certification does not demonstrate the "rigorous analysis" required to ensure that Rule 23's provisions are satisfied. *Vallario v. Vandehey*, 554 F.3d 1259, 1266-67 (10th Cir. 2009). Second, the Supreme Court has issued a new decision addressing Section 11 securities claims, which the district court did not have an opportunity to consider before granting class certification in this case. *See Omnicare, Inc.*

v. Laborers Dist. Council Constr. Indus. Pension Fund, No. 13-435, 135 S. Ct. 1318, 2015 WL 1291916 (U.S. Mar. 24, 2015).

Within 14 days of the date of this order, the petitioners shall pay the \$505 filing and docketing fees to the Clerk of the District Court for the District of Colorado. *See* Fed. R. App. P. 5(d)(1)(A). The date of this order shall serve as the date of the notice of appeal in the new matter. *Id.* at 5(d)(2).

The clerk of this court is directed to open the new appeal once the clerk of the district court notifies this court that the filing fee has been paid. *Id.* at 5(d)(3). The court anticipates substantially abbreviated proceedings once the new appeal is open.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Lara Smith".

by: Lara Smith
Counsel to the Clerk