

**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**

OPPENHEIMERFUNDS, INC; JOHN V.  
MURPHY; OPPENHEIMERFUNDS  
DISTRIBUTOR, INC.; BRIAN W.  
WIXTED; RONALD H. FIELDING;  
DANIEL G. LOUGHRAN; SCOTT S.  
COTTIER; TROY E. WILLIS;  
MASSACHUSETTS MUTUAL LIFE  
INSURANCE COMPANY,

Petitioners,

v.

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

Respondents.

No. 15-703  
(D.C. No. 1:09-MD-02063-JLK-KMT)  
(D. Colo.)

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**ORDER**

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

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This matter is before the court on the Petition for Permission to Appeal from Order Granting Class Certification (the “Petition”). *See* Fed. R. App. P. 5(a); Fed. R. Civ. P. 23(f). The Petition was filed by Defendants OppenheimerFunds, Inc., OppenheimerFunds Distributor, Inc., Scott S. Cottier, Ronald H. Fielding, Daniel G. Loughran, John V. Murphy, Troy E. Willis, Brian W. Wixted, and Massachusetts Mutual Life Insurance Company. 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 the Oppenheimer California Municipal Fund, No. 15-702.

Also before us is the Petitioners' Amended Motion for Leave to File a Reply in support of Rule 23(f) Petition for Permission to Appeal from Order Granting Class Certification. A proposed reply brief was submitted with the motion. The motion to file a reply is opposed by the respondent.

As a preliminary matter, the petitioners' motion to file a reply is granted. The reply will be filed as of the date the court received it.

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 cursive script that reads "Lara Smith".

by: Lara Smith  
Counsel to the Clerk