

## [Securities Regulation Daily Wrap Up, WHITSLEBLOWER NEWS—N.D. Cal.: Judge gives nod to fast appeal of Dodd-Frank claim, \(Jul. 24, 2015\)](#)

Securities Regulation Daily Wrap Up

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By Mark S. Nelson, J.D.

A federal judge in California certified a Dodd-Frank Act whistleblower claim for interlocutory appeal because it will give the Ninth Circuit its first chance to rule on whether the 2010 financial reform law requires a whistleblower to report directly to the SEC. The court also declined to stay the case pending appeal and refused to dismiss or to decline supplemental jurisdiction over a new state law claim because the defendant company failed to make the needed showing (*Somers v. Digital Realty Trust, Inc.*, July 22, 2015, Chen, E.).

Somers sued Digital Realty claiming discrimination based on sexual orientation. He also brought related claims for wrongful termination, breach of contract, defamation, and asserted that he was a whistleblower under the Dodd-Frank Act. But Somers never reported his concerns as a whistleblower to the SEC.

In May, District Judge Edward M. Chen [denied](#) Digital Realty's motion to dismiss the claim, having concluded that a whistleblower can report internally to his employer or directly to the SEC, while still noting the question was a "difficult" one. The judge said his decision was consistent with those of most other district courts, but he acknowledged that one appellate panel in another circuit and at least one district court in the same district as Judge Chen had reached the opposite conclusion.

Somers amended his complaint in early June to add a state whistleblower claim. That move, plus the court's earlier decision to keep the case alive, prompted Digital Realty to ask the court to certify the case for interlocutory appeal, and to either dismiss Somers's new California claim or decline to exercise supplemental jurisdiction over it.

Judge Chen said Somers's Dodd-Frank Act claim was a controlling question of law that may materially advance the determination of the claim since a reversal likely would result in Somers's claim being dismissed with prejudice. Moreover, the split of authority between a few district courts and the majority of them, and between most district courts and the Fifth Circuit's *Asadi* opinion, constitute a substantial ground for difference of opinion justifying speedy appellate review. For good measure, Judge Chen noted that the Dodd-Frank Act question would be a matter of first impression in the Ninth Circuit.

The case is [No. C-14-5180 EMC](#).

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Companies: Digital Realty Trust Inc.

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