No. 25-____

In the Supreme Court of the United States

ZILLOW GROUP, INC., ET AL., PETITIONERS

v.

JEREMY JAEGER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Basic Inc. v. Levinson*, 485 U.S. 224, 246-47 (1988), the Court held that securities fraud plaintiffs can obtain class certification by proving prerequisites tending to show that the defendant's alleged misrepresentations affected the "market price" of the defendant's stock. The defendant may then rebut that showing with evidence that its statements did not in fact affect the stock price. *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 594 U.S. 113, 123 (2021). Most plaintiffs claim that the defendant's alleged "front-end" misstatements affected stock price by concealing a material business risk, thus preventing the stock price from declining. Plaintiffs here point to a stock price decline that occurred after the "back-end" disclosure of bad news, and argue that the decline would have happened earlier if the defendant's front-end statements had been truthful.

In *Goldman*, the Court held defendants must have a meaningful opportunity to rebut this "inflation maintenance" theory of price impact by showing that the back-end disclosures didn't "actually correct[]" the defendant's front-end statements. *Id.* But the Ninth Circuit here held that investors may invoke the theory if the front- and back-end statements address the same general subject matter, even absent correction.

The question presented is whether a defendant can rebut the inflation maintenance theory by showing that back-end disclosures didn't actually correct its alleged misstatements, as the Second Circuit has held, or whether the inflation maintenance theory is functionally immune from challenge if the disclosures are about the same general subject as the prior statements, as the Third and Ninth Circuits have held.

PARTIES TO THE PROCEEDING

Petitioners are Zillow Group, Inc., Richard Barton, Allen Parker, and Jeremy Wacksman. Respondents are Jeremy Jaeger and all others similarly situated. Zillow's stock trades on the NASDAQ Global Select Market under the ticker symbols Z (for Class C shares) and ZG (for Class A shares).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants Zillow Group, Inc., Richard Barton, Allen Parker, and Jeremy Wacksman represent as follows: Zillow does not have a parent corporation, and no publicly held corporation owns 10% or more of Zillow stock.

RELATED PROCEEDINGS

United States Court of Appeals (9th Cir.):

Jaeger v. Zillow Group, Inc., et al., No. 24-6605 (Sept. 26, 2025)

United States District Court (W.D. Wash.):

Jaeger v. Zillow Group, Inc., et al., No. 2:21-cv-01551-TSZ (Aug. 23, 2024)

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INTRODUCTION

This case presents an outcome-determinative conflict on an important question of federal securities law: how closely related "back-end" statements precipitating a stock price drop must be to the defendant's alleged "front-end" misstatements to justify certifying a class based on the so-called "inflation maintenance" theory of price impact. In *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 594 U.S. 113, 123 (2021), the Court held that back-end disclosures must "actually correct[]" the alleged misstatements, and the Second Circuit faithfully applied that guidance on remand in *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.*, 77 F.4th 74, 99 (2d Cir. 2023) (*Goldman II*). But here the Ninth Circuit, joining the Third, departed from both *Goldman* and *Goldman II* by affirming class certification based on a watered-down standard that threatens to make certification virtually automatic in the vast majority of securities cases. Although the Ninth Circuit's decision is unpublished, this Court's intervention is critical. Letting the Ninth Circuit's decision stand will allow investors to leverage meritless claims to extract huge paydays from public companies. And the Court is unlikely to have another opportunity to correct the Ninth Circuit's departure from *Goldman* because that court virtually never grants Rule 23(f) review in securities cases, which are seldom tried to judgment. This case presents the ideal opportunity to intervene after two Justices recused themselves from considering the cert petition in *Johnson & Johnson, et al. v. San Diego County Employees Retirement Ass'n, et al.*, No. 25-977 (U.S. Apr. 20, 2026). The Court should either grant review or summarily reverse.

1. To prove securities fraud, plaintiffs must show that they relied on material misstatements made by the defendant. That question generally presents individualized issues unsuitable for class-wide resolution. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 267-68 (2014) (*Halliburton II*). Under this Court's decision in *Basic Inc. v. Levinson*, 485 U.S. 224, 246-47 (1988), however, investors can invoke a presumption of reliance if they bought or sold shares in an efficient market based on the theory that the stock price incorporates all material public information. Defendants may rebut that presumption by showing that the alleged misstatements did not affect the stock price when made. *Goldman*, 594 U.S. at 119.

In recent years, the great majority of securities plaintiffs have invoked the *Basic* presumption even if the price failed to react when the statements were made, indicating that the statements weren't incorporated into the stock price. *See Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.*, 955 F.3d 254, 266 n.9 (2d Cir. 2020), *vacated on other grounds by Goldman*, 594 U.S. at 113. In these "inflation-maintenance" cases, the parties debate whether a price drop that occurred later, in response to different, "back-end" statements, can prove that the alleged "front-end" misstatements prevented the price from dropping when made. *Goldman*, 594 U.S. at 119-120, 123.

2. In *Goldman*, this Court ruled that inflation-maintenance cases must meet a rigorous standard for class certification. Courts cannot certify a class if there is a "mismatch" between the alleged front-end misstatements, on the one hand, and the truthful back-end disclosures preceding a later price drop, on the other. *Id.* at 123. If the statements don't sufficiently match, there's no reason to think that the way the price reacted to the back-end statements is the way the price would have reacted had the alleged front-end misstatements been truthful. *Id.*

But the courts of appeals have split on what constitutes a mismatch. In *Goldman II*, the Second Circuit, following this Court's directive in *Goldman*, held that statements are mismatched if the back-end statements aren't truthful stand-ins for the alleged misstatements. 77 F.4th at 99. To match, a back-end statement must "expressly and specifically negate[] the alleged false statement," or "directly render[]" it "false." *Id.* at 98. That mismatch standard, the Second Circuit stressed, is stricter than the separate standard for loss causation, *id.* at 99 n.11—a different securities-fraud element that is often improperly conflated with price impact. *See Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 814 (2011) (*Halliburton I*). That standard isn't met when front- and back-end statements address the same "subject matter" without directly conflicting. *Goldman II*, 77 F.4th at 100-01.

The Third Circuit, by contrast, holds that it does not matter whether back-end disclosures are "corrective of prior misrepresentations." *San Diego County Employees Retirement Ass'n v. Johnson & Johnson*, No. 24-1409, 2025 WL 2176586, at *8 (3d Cir. July 30, 2025) (Chung, J., dissenting). Instead, the Third Circuit permits plaintiffs to invoke the inflation maintenance theory if the front- and back-end statements address the same general subject matter and the back-end disclosures are arguably in tension with the front-end alleged misstatements, *id.* at *4—the same standard the Second Circuit rejected in *Goldman II*, 77 F.4th at 100-01.

Here, as described below, the Ninth Circuit sided with the Third and rejected the approach this Court mandated in *Goldman* and the Second Circuit faithfully followed in *Goldman II*.

3. Class certification in this case turns on whether, as the Ninth Circuit wrongly held, Respondent Jeremy Jaeger can invoke the inflation maintenance theory without showing that Zillow's back-end statements corrected alleged front-end misstatements.

In November 2021, Zillow announced that it was ending its Zillow Offers business segment—an initiative that bought homes, renovated them, and then resold them for a small profit—because it had been unable to make accurate enough predictions about residential real estate prices to make the segment worthwhile. App. 11a. That announcement precipitated a large decline in Zillow's stock price. App. 24a. A few months earlier, Zillow made a handful of generic statements that it had "improv[ed]" its home pricing models and achieved cost reductions in its home renovation operations because of unspecified "durable operational improvement." CA9 5-ER-966. Jaeger claims that these statements were false because they did not reveal that Zillow was making manual adjustments to its home pricing algorithms to improve their accuracy, and that Zillow had achieved reductions in operational costs by performing fewer renovations and paying contractors less. App. 9a-10a.

At the class certification stage, Jaeger claimed that the stock price decline that occurred after Zillow announced that it was ending Zillow Offers showed that Zillow's alleged misstatements affected Zillow's stock price by preventing it from declining. App. 10a-

11a. Zillow responded that the back-end disclosures said nothing about manual adjustments or renovations, and thus couldn't show what would have happened if the alleged misstatements had addressed those details. App. 21a-25a. Put differently, Zillow explained that none of the back-end statements "actually corrected" the front-end statements, meaning the statements were too mismatched to use the inflation maintenance theory under this Court's decision in *Goldman*.

The district court certified a class and the Ninth Circuit affirmed. Like the Third Circuit, the Ninth Circuit declined to evaluate whether the back-end statements actually corrected the front-end ones, such that they could serve as truthful stand-ins for the alleged misstatements. App. 4a. Rather, the panel concluded that courts can borrow case law assessing loss causation—whether the defendant's alleged fraud proximately caused the plaintiff's investment losses, *see Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 346 (2005)—and concluded that the front- and back-end statements in this case satisfy the loss causation standard because they address the same general subject matter. App. 4a.

4. That decision merits this Court's review or summary reversal.

a. To start, the Ninth Circuit's decision deepens a now 1–2 split with the Second Circuit over what *Goldman*'s mismatch analysis entails. In the Second Circuit, statements are sufficiently matched only if the back-end statement "expressly and specifically negat[es] the alleged false statement," or "directly render[s]" it "false." *Goldman II*, 77 F.4th at 98. By contrast, in the Third Circuit and now the Ninth

Circuit, statements are matched if they address the same general subject matter and could be read as in tension with one another. *Johnson & Johnson*, 2025 WL 2176586, at *4; App. 4a.

The split is real and the stakes are high even though the Third and Ninth Circuits' decisions are unpublished. Because of the large potential damages, securities fraud suits are seldom tried to judgment—meaning the only opportunity to address *Goldman*'s mismatch standard is in cases where the court of appeals grants Rule 23(f) review. But the Ninth Circuit rarely grants Rule 23(f) review, *see Chamberlain v. Ford Motor Co.*, 402 F.3d 952, 955 (9th Cir. 2005), and almost never does so in securities cases. Indeed, its grant here was its first in a securities case in more than a decade. And both the Third and Ninth Circuits denied rehearing en banc—in the Third Circuit, over the dissent of three judges—further cementing the split. *See* App. 28a; *San Diego County Employees Retirement Ass'n v. Johnson & Johnson*, No. 24-1409, 2025 WL 2848912, at *1 n.* (3d Cir. Oct. 7, 2025). That means that the Third and Ninth Circuits' decisions are likely to be those courts' final word on the *Goldman* mismatch standard, producing different class certification outcomes than cases brought in the Second Circuit. Indeed, district courts in the Ninth Circuit have already started treating the Ninth Circuit's decision here as binding and applying it, contrary to this Court and the Second Circuit's standard. This Court often summarily reverses unpublished decisions when they call the lower courts' adherence to precedent into question, and that course is warranted here. *See infra* p. 26.

The Ninth Circuit's decision to apply the Third Circuit's watered-down mismatch standard was outcome-determinative. None of the back-end statements that Zillow was first pausing and then ending its Zillow Offers business segment referenced, much less negated, Zillow's front-end statements that it had improved its pricing models and operations. That means that Jaeger's class certification motion would have failed if the Ninth Circuit had applied the Second Circuit's—and this Court's—mismatch standard.

b. The Ninth Circuit's decision contravenes this Court's precedent. The inflation maintenance theory is inherently speculative and tenuous. It depends on using a back-end stock price decline as a proxy for how the stock price would have reacted to truthful versions of the alleged misstatements. That counterfactual speculation works only if the front- and back-end statements are very closely related—such that the only meaningful difference between the statements is that one is false and the other is true. *Goldman II*, 77 F.4th at 97-101. Otherwise, it is impossible to disentangle the impact of the alleged fraud from other reasons why the market may have reacted differently to the two statements.

The statements here aren't matched, and without the necessary match, applying the inflation maintenance theory makes no sense. As noted, none of Zillow's back-end statements that it was first pausing, and then ending its Zillow Offers segment reveal that Zillow was making manual adjustments to its pricing algorithms or reducing the scope of its home renovations—the information that Jaeger claims was wrongfully withheld by Zillow's alleged misstatements. App. 10a. So the stock price drop after the back-end statements cannot reveal how the stock price would have behaved if that information had been disclosed when the alleged misstatements were made.

Under any faithful application of this Court's decision in *Goldman*, Jaeger's motion for class certification should have failed.

c. The question presented is exceptionally important. Class certification is often the whole ballgame in securities fraud suits, because most defendants are forced to settle even meritless securities fraud suits rather than risk multi-billion dollar classwide damages awards. That is precisely why this Court's precedents require the lower courts to give defendants a meaningful opportunity to rebut a plaintiff's theory of price impact. *See Goldman*, 594 U.S. at 122; *Halliburton II*, 573 U.S. at 280.

The Third and Ninth Circuits' decisions effectively eliminate that opportunity. Class certification is a foregone conclusion if investors need only show that the front- and back-end statements are about the same subject matter and in tension enough to satisfy the pleading standard for loss causation. That's because a plausible theory of loss causation is needed to advance past the pleading stage—under the Third and Ninth Circuits' test, any case that survives a motion to dismiss is effectively destined for certification. This Court's intervention is needed to ensure that defendants are not pressured to pay out enormous settlements of meritless claims that do not meet the requirements for class-action treatment.

This case is an excellent vehicle. The split is clear and outcome-determinative, and the question was squarely litigated and decided below. There are no factual disputes or alternative holdings that could complicate review. Presumably, the full Court will be able to consider this petition, unlike the recent *Johnson & Johnson* case, where two Justices recused. And the split shouldn't have occurred in the first place given this Court's clear direction in *Goldman*. Now that the Third and Ninth Circuits have refused to self-correct, the Court should grant review or summarily reverse.

OPINIONS BELOW

The district court's order granting class certification is reported at 746 F. Supp. 3d 1025. The Ninth Circuit's opinion affirming the district court's order is unreported, but available at 2025 WL 2741642.

JURISDICTION

1. The district court had jurisdiction under 15 U.S.C. § 78aa and 28 U.S.C. § 1331, because Jaeger's claims arise under the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. §§ 78j(b), 78t(a), and Securities & Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5.

2. The court of appeals had jurisdiction over Zillow's appeal from the district court's class certification order pursuant to 28 U.S.C. § 1292(e) and Federal Rule of Civil Procedure 23(f).

3. The court of appeals entered its judgment on September 26, 2025, App. 1a-5a, and denied rehearing en banc on January 6, 2026, App. 28a. On March 31, 2026, Justice Kagan extended the time to file a petition for a writ of certiorari to June 5, 2026. *See* 28 U.S.C. § 2101(c). This petition is timely filed on June 5, 2026. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5, and relevant portions of Federal Rule of Civil Procedure 23 are reproduced in the appendix.

STATEMENT

A. Legal background

1. To certify a damages class under Federal Rule of Civil Procedure 23(b)(3), a plaintiff must show (among other things) that "there are questions of law or fact common to the class" and "the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(a)(2), (b)(3). To prove a claim for fraud, the plaintiff must typically show that she relied on a false statement made by the defendant. *See Halliburton II*, 573 U.S. at 267. Ordinarily, fraud claims are ill-suited to class-action treatment because the question of whether any particular class member relied on the defendant's allegedly false statements "would … overwhelm[] the common" questions in the case. *See Basic*, 485 U.S. at 242.

2. In *Basic*, this Court articulated a special rule—applicable only to securities cases—that gives securities fraud plaintiffs an opportunity to obtain class certification. Under *Basic*, courts presume that a stock's price in an efficient market incorporates all public information material to the company's prospects. *See Halliburton II*, 573 U.S. at 268. Courts thus presume that investors buying shares at the market price implicitly relied on any material misstatements reflected in that price. *See Basic*, 485 U.S. at 245. Defendants can rebut the presumption by showing that the alleged misstatements failed to affect the price. *Goldman*, 594 U.S. at 119.

3. Ordinarily, courts assess whether alleged misstatements affected the stock's price by examining how the price increased when the statements were made. *Halliburton II*, 573 U.S. at 280. But in inflation maintenance cases, the stock price does not meaningfully change in response to the alleged misstatements. Instead, the plaintiff argues that the misstatements prevent a price drop—that is, they maintain an inflated price. Plaintiffs typically try to prove inflation maintenance by inference. Plaintiffs point to a later (back-end) disclosure and an associated price drop and claim that the disclosure corrected the (front-end) misstatement and that the back-end "price drop is equal to the amount of inflation maintained by the earlier misrepresentation." *Goldman*, 594 U.S. at 123.

Goldman put guardrails on the inflation-maintenance theory. For the theory to work, the Court explained, the back-end statements must actually correct the alleged front-end misstatements. The theory's core premise "starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure." *Id.* If the statements meaningfully differ, it's less likely the back-end statement precipitating the price drop "actually corrected" the alleged misstatement. *Id.* That, in turn, "means that there is less reason to infer front-end price inflation—that is, price impact—from the back-end price drop." *Id.*

B. Factual and procedural background

1. In April 2018, Zillow launched Zillow Offers, its "iBuying" business. While Zillow Offers was active, Zillow purchased homes directly from sellers, performed renovations, and re-sold the homes for small profit margins. App 8a. From its start, Zillow consistently disclosed Zillow Offers was part of its vision to become a one-stop shop for residential real estate transactions services. CA9 3-ER-303-04, 5-ER-927-28. Zillow thus prioritized scaling Zillow Offers in order to become a market maker, rather than making large profits on each home. 3-ER-311. Because too much profit would cause customers to go elsewhere for better deals, Zillow sought less profit and more scale so it could meet the customers' needs as a service business. *Id.*

But Zillow Offers encountered unpredictable swings in the real-estate market. Early on, unprecedented home-price appreciation prompted Zillow to make adjustments to ensure it wouldn't inadvertently offer too little to potential sellers. 3-ER-307, 5-ER-915-23. In the summer of 2021, however, home-price appreciation dramatically slowed as the residential real estate market began to cool off after being turbocharged by policy efforts to help the economy recover from the COVID-19 pandemic. 3-ER-361. Zillow's earlier adjustments began to overshoot the mark, putting purchase prices above later resale prices. 3-ER-354-61. Ultimately, on its November 2021 quarterly earnings call, Zillow announced it was ending Zillow Offers because the market was too volatile for Zillow's pricing projections. 3-ER-353-54. That announcement caused a substantial decline in Zillow's stock price. 5-ER-920-21.

2. After that stock price decline, Respondent Jeremy Jaeger brought securities-fraud claims alleging that Zillow and certain officers made misstatements in August and September 2021. Jaeger alleges Zillow made general, positive statements about improvements to its pricing model such as "[w]e made progress this quarter in improving our pricing models" while concealing that it had also manually adjusted its algorithms to keep up with home-price appreciation. 5-ER-966-68. Jaeger also claims Zillow made misstatements that its declining home renovation costs were due to "durable operational improvements," while purportedly failing to disclose that the cost declines were due to reducing its home-renovation operations and how much it paid contractors. 5-ER-966-69. Zillow's stock price did not meaningfully change at the time of the alleged misstatements.

Jaeger claims that back-end disclosures revealed the statements were false. In mid-October 2021, *Bloomberg* reported that Zillow Offers was pausing home acquisitions, a fact Zillow confirmed in a press release. 5-ER-980-81. KeyBanc Capital Markets then reiterated previous news and analyst reports that 66% of Zillow's homes were for sale below their purchase price. 5-ER-983. Finally, on its November earnings call, Zillow announced it was writing down home inventory and ending Zillow Offers. Zillow's stock price subsequently declined. 2-ER-229-30.

3. a. Jaeger sought class certification, claiming the price drop would have occurred in August and September 2021 had Zillow then told investors that it was using manual algorithm adjustments and reducing the scope of its home renovations. 5-ER-877-907. Zillow responded that the back-end disclosures said nothing about manual adjustments or renovations, and thus couldn't show what would have happened if the alleged misstatements had addressed those details. 3-ER-550-579. Zillow also pointed out that it makes no sense to use the stock drop that occurred after it announced the end of Zillow Offers as a proxy for the supposed front-end price inflation, because Zillow hadn't decided to end Zillow Offers in August and September 2021, and most or all of the back-end stock drop was due to the closure of a major business line for Zillow. *Id.*

The district court granted class certification without addressing whether Zillow's back-end disclosures matched the alleged misstatements closely enough to show how the market would have reacted to truthful versions of those statements. Instead, the court focused on whether Zillow's back-end disclosures "might have affected stock prices"—an issue no party contests and *Goldman* makes clear is not the inquiry. App. 22a.

b. The Ninth Circuit granted review under Federal Rule of Civil Procedure 23(f) and affirmed. Like the district court, the panel didn't ask whether Zillow's back-end disclosures could substitute for truthful versions of the alleged misstatements, and thus potentially reveal whether the alleged misstatements prevented a front-end price drop. Instead, the panel concluded that courts can rely on caselaw assessing loss causation—whether the defendant's alleged fraud proximately caused the plaintiff's investment losses—and concluded that the front- and back-end statements in this case satisfy the loss causation standard because they address the same general subject matter. App. 2a-3a.

c. Zillow petitioned for rehearing en banc. It explained that the Ninth Circuit's decision split from the Second Circuit's decision in *Goldman II*, which expressly held that *Goldman*'s mismatch standard requires a "closer fit" between the front- and back-end statements than is necessary to plead loss causation.

77 F.4th at 99 n.11. Zillow further explained that the Ninth Circuit contravened this Court's decision in *Goldman* by failing to address whether the back-end statements here "actually corrected" Zillow's alleged misstatements. But the Ninth Circuit denied rehearing en banc, App. 28a, functionally ensuring that lower courts in the Ninth Circuit will apply a different legal standard in inflation maintenance cases than courts in the Second Circuit.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision deepens an inexplicable, now 1–2, circuit split over what *Goldman*'s mismatch standard requires—inexplicable because the Ninth and Third Circuits' decisions flout this Court's clear precedent in *Goldman*. Following *Goldman*, the Second Circuit holds that front- and back-end statements are matched only if the back-end statement "expressly and specifically negat[es] the alleged false statement," or "directly render[s]" it "false." *Goldman II*, 77 F.4th at 98. The Third and Ninth Circuits, by contrast, hold that statements are matched if the front- and back-end statements are about the same general subject matter and the back-end disclosures are arguably in tension with the front-end alleged misstatements. *Johnson & Johnson*, 2025 WL 2176586, at *4; App. 2a-3a. The split was outcome-determinative because the front- and back-end statements here flunk the Second Circuit's (and this Court's) more demanding test.

The Ninth Circuit's decision defies logic. The inflation maintenance theory works only if the back-end statements directly falsify the front-end statements—that is the only way they can potentially reveal how the defendant's stock price would have reacted to truthful versions of the alleged misstatements. Here, the back-end statements announcing that Zillow was first pausing, and then ending, its Zillow Offers business segment didn't reveal that Zillow was using manual adjustments to its pricing algorithms or scaling back its home renovations operations—the information that Jaeger claims Zillow's alleged misstatements concealed. So the stock drop after the back-end statements can't reveal how the stock price would have behaved if Zillow's front-end statements had included that information.

The question presented is important, and this case is an excellent vehicle for reiterating and ensuring that the lower courts are following this Court's guidance in *Goldman*. The Third and Ninth Circuits' standard, in departing from *Goldman*, essentially makes class certification automatic in inflation maintenance cases. That, in turn, makes it easier for investors to extort high-dollar payouts from securities defendants even for patently meritless claims, since few companies would willingly take even a small risk of a multi-billion-dollar damages judgment. The Court's intervention is necessary to prevent abusive claims from further proliferating. Given that this case represents the Ninth Circuit's first Rule 23(f) grant in over a decade, this case may present the Court's only opportunity to ensure that the lower courts faithfully adhere to *Goldman*. This case is an ideal vehicle to rein in abusive claims because the Ninth Circuit relied squarely on its *Goldman*-contravening standard to affirm class certification and then refused to grant rehearing, and the answer to the question determines whether Jaeger's claims can proceed as a class action.

The Court should either grant review or summarily reverse.

I. The courts of appeals have split 1–2 on what constitutes a mismatch under *Goldman*.

The Ninth Circuit's decision deepens a now 1–2 split about whether back-end statements must actually correct the defendant's alleged misstatements to satisfy *Goldman*'s mismatch standard. The split, which reflects the Third and Ninth Circuits' determined refusal to follow this Court's direction in *Goldman*, won't resolve itself without this Court's intervention.

A. The Second Circuit holds that statements are matched only when the back-end disclosures are truthful stand-ins for the front-end misstatements.

In *Goldman*, the plaintiffs alleged that a bank's statements that it had "extensive" controls "to identify and address conflicts of interest" were false given the bank's failure "to disclose mishaps in their conflicts protocol." *Goldman II*, 77 F.4th at 82-84. To show price impact, the plaintiffs pointed to stock-price drops following the government's decisions to initiate enforcement actions against the bank and argued that those same drops would have occurred earlier had the bank revealed alleged weaknesses in its conflicts protocol. *Id.* On remand from this Court, the district court certified a class, finding the statements close enough in content despite their substantial differences in wording and detail. *Id.* at 90.

The Second Circuit disagreed, holding that the statements were mismatched. *Goldman*, the court explained, "requires that any gap among the front- and back-end statements as written be limited," because the inflation-maintenance theory "ask[s] 'what would have happened if [the company] had spoken *truthfully*'" in the alleged misstatements. *Id.* at 99. Thus, a price drop after a back-end statement cannot show how the market would have reacted to truthful versions of the alleged misstatements unless the back-end statements are "truthful substitute[s]" for the alleged misstatements. *Id.* In short, the back-end statement must "expressly and specifically negate[] the alleged false statement," or "directly render[]" it "false." *Id.* at 98. It is *not* enough under *Goldman*, the Second Circuit held, for front- and back-end statements to address the same "subject matter" without directly conflicting. *Id.* at 100-01. Applying that standard, the court then held that the back-end announcements of government enforcement actions were too dissimilar in wording and content to be truthful substitutes for the bank's statements that it had extensive internal controls to address conflicts of interest. *Id.*

In short, *Goldman II* holds that front- and back-end statements are mismatched if the back-end statements aren't truthful stand-ins for the front-end misstatements. That standard is met only when the back-end statement "expressly and specifically negat[es] the alleged false statement," or "directly render[s]" it "false." *Id.* at 98.

B. The Third and Ninth Circuits hold that statements are matched if they merely address the same general subject matter and a stock price drop follows the back-end disclosures.

Unlike the Second Circuit—and this Court—the Third and Ninth Circuits don't require back-end disclosures to falsify or share a close relationship with the front-end alleged misstatements. Instead, those circuits will rubber-stamp an inflation maintenance class action if the front- and back-end statements are about the same general subject and a stock price drop follows the back-end statements—factors present in virtually *all* securities fraud actions that advance past the pleading stage.

1. Begin with the Third Circuit. In *Johnson & Johnson*, the plaintiff alleged that J&J made false statements denying that there was asbestos in its talc products. 2025 WL 2176586, at *1. To show price impact, the plaintiffs pointed to stock price drops following statements from plaintiffs' lawyers discussing documents produced by J&J in products liability suits, news reports, and a verdict against J&J, and argued that those drops would have occurred earlier if J&J hadn't denied that its talc products contained asbestos. *Id.* at *1 n.3. The district court expressly refused to consider J&J's arguments that none of the back-end disclosures "corrected"—*i.e.*, revealed the falsity of—the front-end misstatements, and certified a class. *Id.* at *9-10 (Chung, J., dissenting).

A divided panel of the Third Circuit affirmed. Like the district court, the panel majority declined to consider whether the back-end disclosures actually revealed the falsity of the front-end misstatements. Instead, the court held that there was a sufficient match to satisfy *Goldman* because "each disclosure contained information relating to J&J's alleged misrepresentations," "could have communicated new, value-relevant information to investors," and "was followed by a stock price decline for which there was no other explanation but the disclosure itself." *Id.* at *4. Put differently, the panel held that it was enough that the back-end disclosures discussed the same general subject matter as the alleged misstatements and were arguably in tension with them—the exact standard the Second Circuit explicitly rejected in *Goldman II*, 77 F.4th at 100-01.

Judge Chung dissented. Under *Goldman*, Judge Chung recognized, "[o]ne way defendants can" defeat the inflation maintenance theory "is by demonstrating that a negative disclosure identified by plaintiffs did not 'correct an earlier misrepresentation.'" *Johnson & Johnson*, 2025 WL 2176586, at *7 (alteration adopted; quoting *Goldman*, 594 U.S. at 123). The panel majority had rested its analysis solely on a conclusion "that each disclosure had 'an associated price drop.'" *Id.* at *9. That was insufficient, Judge Chung explained, because an "associated price drop could only be a proxy for price impact if the [back-end disclosures] related to and were corrective of alleged … misrepresentations." *Id.* Because the district court had not conducted a "correctiveness analysis" and "the corrective effect of the[] [back-end] disclosures [wa]s unknown," Judge Chung would have remanded for the district court to "properly conduct a 'searching' price impact analysis as to all of the purported corrective disclosures." *Id.* at *11-12.

2. The Ninth Circuit applied a similar approach here. Rather than analyzing whether the back-end disclosures falsified Zillow's front-end statements, as the Second Circuit and Judge Chung would have required, the panel instead analyzed whether the back-end statements "revealed new information showing the extent of Zillow's home-pricing struggles." App. 4a. The statements were "matched enough," the panel concluded, because "[t]he back-end disclosures … revealed new information about how Zillow's home-pricing struggles threatened the business and suggested that its earlier statements may have obscured how Zillow's pricing model misfired." *Id.* Put simply, the panel held that *Goldman*'s mismatch standard was satisfied because the front- and back-end statements were about the same subject and could be read as in tension with one another, even though the back-end statements did not falsify the front-end ones. Again, that is exactly the permissive analysis the Second Circuit barred in *Goldman II*, 77 F.4th at 100-01.

C. The split—the result of the Third and Ninth Circuits' disregarding *Goldman*'s guidance—is outcome-determinative, and only this Court can resolve it.

1. The 1–2 split is real and entrenched, even though the Third and Ninth Circuits' decisions are unpublished. Securities-fraud cases are rarely tried to judgment given the enormous potential damages associated with material price declines for publicly traded securities. Indeed, between 2012 and 2022, only *two* securities class actions nationwide were tried to verdict. Jordan Eth & Ryan Keats, *A Tale of Two Trials: The Past Decade in Securities Class Action Jury Verdicts* at 2-3, Morrison & Foerster LLP Insights (Jan. 14, 2022), https://tinyurl.com/3z4jkahm. Historically, less than 1% of securities fraud cases are tried to judgment. *See* Cornerstone Research, *Securities Class Action Filings: 2024 Year in Review* at 16 (2025), https://tinyurl.com/3d5ujdbv. That means that Rule 23(f) grants provide the only meaningful opportunity to address the lower courts' misapplication of the *Goldman* mismatch standard.

But grants of Rule 23(f) review are themselves rare, particularly in the Ninth Circuit. The Ninth Circuit has held "that Rule 23(f) review should be a rare occurrence." *Chamberlain*, 402 F.3d at 955. Applying its anti-Rule 23(f) guidance, the Ninth Circuit virtually never grants Rule 23(f) review in securities cases. Indeed, the Ninth Circuit's decision to hear Zillow's appeal in this case was its first grant of Rule 23(f) review in a securities case in more than a decade. And both the Third and Ninth Circuits declined rare opportunities to align themselves with the Second Circuit by denying rehearing en banc in this case and *Johnson & Johnson*. *See* App. 28a; *Johnson & Johnson*, 2025 WL 2848912, at *1.

All that means that the Ninth Circuit's decision here and the Third Circuit's decision in *Johnson & Johnson* are likely to be the final word on *Goldman* in those circuits for the foreseeable future. Indeed, one district court in the Ninth Circuit has already treated the Ninth Circuit's decision in this case as binding and declined to assess whether back-end disclosures actually correct the issuer's front-end statements, contrary to the Second Circuit's standard in *Goldman II*. In *AMI–Government Employees Provident Fund Management Co. v. Alphabet Inc.*, No. 23-cv-1186, 2026 WL 1382950, at *6 (N.D. Cal. May 18, 2026), the court concluded that "an event can be corrective" for *Goldman* purposes "when it merely discloses a consequence of concealed information (for example, an earnings miss), even if the connection between the cause and the consequence is not made explicitly in the disclosure." That decision can't be reconciled with *Goldman II*'s holding that *Goldman*'s mismatch standard is met only when the back-end statement "expressly and specifically negat[es] the alleged false statement," or "directly render[s]" it "false." *Id.* at 98.

2. The split is also outcome-determinative, as this case shows. If this case had been brought in the

Second Circuit, Jaeger's motion for class certification would have been denied because none of the back-end disclosures actually falsify Zillow's front-end statements that it had improved its pricing algorithms or made durable operational improvements. Indeed, neither the district court nor the Ninth Circuit concluded otherwise. But because the Ninth Circuit declined to apply *Goldman* and *Goldman II*'s mismatch standard, and instead assessed only whether Zillow's front- and back-end statements were about the same general subject matter and associated with a stock price drop, Jaeger was able to certify a class.

3. The split won't resolve itself. Rule 23(f) grants are rare, particularly in the Ninth Circuit. *Supra* pp. 21-22. And both the Third and Ninth Circuits denied rehearing en banc, passing up opportunities to align themselves with the Second Circuit. If those courts didn't see the value in providing more guidance on *Goldman*'s mismatch standard in these cases, it is difficult to see why they would do so in a future case. Indeed, as the recent *AMI* decision shows, it is almost certain that lower courts will continue to compound and deepen their error. The Court should grant review or summarily reverse.

II. The Ninth Circuit's decision is wrong, and conflicts with and nullifies this Court's decision in *Goldman*.

Under *Goldman*, an inflation-maintenance theory is viable only if back-end statements could substitute as truthful versions of the alleged misstatements. That requires the back-end and front-end statements to be mutually exclusive. Zillow's are not. The Ninth Circuit's contrary rule contravenes *Goldman*, and this Court should grant review or summarily reverse.

A. Class certification is improper in inflation-maintenance cases unless the back-end statements are truthful stand-ins for the alleged misstatements.

The inflation-maintenance theory doesn't work unless the back-end statements are truthful stand-ins for the alleged front-end misstatements. Courts must "ask[] 'what would have happened if [the company] had spoken *truthfully*'" when it instead made the alleged misstatements. *Goldman II*, 77 F.4th at 99. Back-end statements can answer that question only if they "actually correct[]" the alleged misstatements. *Goldman*, 594 U.S. at 123. If the statements don't directly clash, the price drop following the back-end statements can't show how the price would have reacted to a truthful version of the front-end statement, rather than because of something different about the back-end statement.

A back-end statement is a truthful stand-in for an alleged front-end misstatement only when it is mutually exclusive with the alleged misstatement "as written"—it must "expressly and specifically negate[] the alleged false statement," or "directly render[]" the alleged statement "false." *Goldman II*, 77 F.4th at 98-99. Under *Goldman*, an alleged misstatement saying "we have faith in our business model" doesn't match a back-end disclosure that "our fourth quarter earnings did not meet expectations" because the latter statement does not "actually correct[]" the former. 594 U.S. at 123. Although the statements address the same general subject matter (the business' performance) and could arguably be in tension, a company can have faith in its business model and still not meet earnings expectations. Because the two statements aren't mutually exclusive, "there is less reason to infer front-end price inflation—that is, price impact—from the back-end price drop." *Id.*

Critically, *Goldman*'s price-impact test differs from the general test for pleading "loss causation"—securities-law parlance for "proximate cause." *Dura*, 554 U.S. at 346. As this Court has made clear, "loss causation is a … distinct concept in securities law" from "price impact." *Halliburton I*, 563 U.S. at 814. Loss causation requires showing that the alleged fraud "caused the loss for which the plaintiff seeks to recover damages." 15 U.S.C. § 78u-4(b)(4). A plaintiff can allege loss causation simply by pleading that a back-end price drop resulted from fraud, even if the back-end statements that caused the drop don't reveal the fraud. *See, e.g.*, *Mineworkers' Pension Scheme v. First Solar Inc.*, 881 F.3d 750, 754 (9th Cir. 2018). By contrast, *Goldman* requires back-end statements to show how the market would have reacted to truthful versions of the front-end statements. Back-end statements can't do that if they don't directly falsify the alleged misstatements. *Goldman II*, 77 F.4th at 98. That's why *Goldman* "requires a closer fit" between the front- and back-end statements than "loss causation." *Id.* at 99 n.11.

Imagine, for example, that a manufacturing company tells investors that its production output is normal, even though it knows that global supply-chain disruptions could reduce its output next quarter. The company's stock price doesn't react when the statement is made. But the company's next quarterly report reveals lower-than-expected earnings, and its stock price drops. A plaintiff could plead loss causation simply by alleging that the company's front-end statement concealed the risk of a production slowdown later revealed by the "earnings miss, even if the market was unaware at the time" of the alleged "fraud." *Mineworkers*, 881 F.3d at 754. But by itself, the quarterly report's disclosure can't satisfy *Goldman*, because the earnings miss doesn't inherently falsify the earlier alleged misstatement. There's no way to tell what the market would have done had the company truthfully disclosed at the front end that it anticipated global supply-chain disruptions. The statements are thus mismatched, and cannot be used to show price impact. *Goldman*, 594 U.S. at 123.

B. The Ninth Circuit's decision contradicts *Goldman* and warrants review, if not summary reversal.

The panel decision is wrong and, contrary to *Goldman*, virtually eliminates defendants' opportunity to rebut the *Basic* presumption in inflation-maintenance cases, which present unique dangers of class certification when there is no sound basis for proving reliance using class-wide evidence. This Court will summarily reverse unpublished decisions where they reflect the lower court's refusal to abide by its precedent. *See, e.g.*, *Clark v. Sweeney*, 607 U.S. 7, 10 (per curiam), *summarily reversing Sweeney v. Graham*¸ No. 22-6513, 2025 WL 800452 (4th Cir. Mar. 13, 2025); *Alaska v. Wright*, 593 U.S. 152, 154 (2021) (per curiam), *summarily reversing* 819 F. App'x 544 (9th Cir. 2020); *Mays v. Hines*, 592 U.S. 385, 393-94 (2021) (per curiam), *summarily reversing* 814 F. App'x 898 (6th Cir. 2020). This case is a prime candidate.

1. Zillow's front- and back-end statements are indisputably mismatched and cannot prove inflation maintenance. Zillow's alleged misstatements assert that it had made "progress … in strengthening [its] pricing models," and achieved "durable operational improvements." CA9 5-ER-965-66. Jaeger claims those statements were misleading because Zillow was manually adjusting its pricing models to better react to volatile home-price appreciation, and had decreased the scope of home renovations given shortages in the labor market for contractors. 5-ER-965-68.

But Zillow's back-end statements that it was first pausing, and then ending, Zillow Offers "because it had been 'unable to accurately forecast future home prices,'" App. 4a, aren't mutually exclusive with Zillow's alleged misstatements about manual pricing adjustments or home renovations. Rather, taken together, the statements could reflect that Zillow strengthened its pricing models and made operational improvements, but that those improvements proved insufficient to stabilize Zillow Offers over the following quarter. In fact, that is exactly what happened. The back-end statements aren't truthful substitutes for the alleged misstatements, and thus flunk *Goldman*'s mismatch test.

2. The panel's contrary decision contravenes *Goldman* and makes it functionally impossible for defendants to defeat class certification in inflation-maintenance cases. The panel found no mismatch because the front- and back-end statements were about the same general subject matter and the latter statements contained information that wasn't disclosed in the former. App. 4a. But a price drop following back-end disclosures cannot show that the alleged misstatements affected the stock price unless the back-end statements revealed new information that necessarily contradicts the earlier alleged misstatements. Without that contradiction, the *Basic* presumption doesn't support class certification. As the panel seemed to momentarily recognize, *Goldman* requires a "closer fit," App. 2a, than simply showing the back-end disclosures addressed the same general subject as the alleged misstatements or pleading loss causation. That is why the Second Circuit correctly rejected the "same subject matter" test as inconsistent with *Goldman*. *Goldman II*, 77 F.4th at 104. But rather than articulate a standard as to what constitutes a "closer fit," the panel embraced the "same subject matter" inquiry that *Goldman* and *Goldman II* rejected.

Worse, the panel compounded its error by holding that Zillow's back-end disclosures "revealed new information about … Zillow's home-pricing struggles," App. 4a, even though Zillow's difficulties in predicting home prices had earlier been specifically quantified and disclosed to the market *seven times* in press and analyst reports, including through *Bloomberg*, without any stock price reaction. 2-ER-218-21. Jaeger's expert opined that this "coverage … was widely disseminated to investors" and "incorporate[ed] … into the market prices of Zillow stock." 4-ER-603-05. Under *Basic*, the stock price already reflected Zillow's struggles, so restating the same information couldn't have caused Zillow's back-end price drop. By holding the opposite, the panel decision will undermine settled law that information already known to the market cannot cause a back-end price drop. *See, e.g.*, *Connecticut Retirement Plans & Trust Funds v. Amgen Inc.*, 660 F.3d 1170, 1173-74 (9th Cir. 2011).

3. The Ninth Circuit's decision effectively nullifies *Goldman*. This Court has held that Defendants must have a meaningful opportunity to rebut the *Basic* presumption. *Halliburton II*, 573 U.S. at 283. But the panel opinion's and district court's approach—asking only whether front- and back-end statements address the same subject matter—withholds that opportunity. Plaintiffs typically sue only when they can tie back-end statements precipitating a price drop to alleged front-end misstatements about the same subject matter. Indeed, securities actions proceed to the class certification stage only if plaintiffs have adequately pleaded loss causation. *Dura*, 554 U.S. at 346. Thus, if district courts conduct loss-causation inquiries rather than evaluate whether the back-end statements are truthful substitutes for the alleged misstatements, defendants can *never* rebut the presumption of reliance in inflation-maintenance cases. That result effectively makes *Goldman* dead letter in the Ninth Circuit—a sure sign that it is wrong. That is yet another reason why the Court should consider summarily reversing as an efficient alternative to granting plenary review.

III. The question presented is important, and this case is an excellent vehicle to resolve it.

A. Maintaining meaningful guardrails for inflation maintenance cases is exceptionally important. Between this "Court's 2014 decision in *Halliburton II*" and 2019, "securities plaintiffs invoked the inflation-maintenance theory in 20/28 (71%) of federal district court cases involving a defendant's attempt to rebut the *Basic* presumption." *Arkansas Teacher*, 955 F.3d at 266 n.9. It's not hard to see why the tactic has become so popular. The inflation maintenance theory allows an investor to claim to satisfy *Basic*'s price impact requirement from the very fact that the defendant's stock price didn't budge when the alleged fraud was communicated to the market. The theory makes it immeasurably easier for a disappointed investor to manufacture a bogus securities fraud suit "ready made for class certification." *Halliburton II*, 573 U.S. at 300 (Thomas, J., concurring in the judgment). When a company announces bad news that causes a stock price decline, an investor can scour the company's prior public statements, point to prior statements discussing the same general subject as the adverse event, and claim that the statements prevented the company's stock price from declining earlier by concealing the risk of loss. Indeed, numerous commentators have noted that this kind of abusive, event-driven securities litigation is becoming increasingly common since the inflation-maintenance theory became more popular with securities plaintiffs. *See, e.g.*, Richard A. Booth, *Price Maintenance and Price Inflation in Securities Fraud Class Actions*, 30 Stanford J. L., Econ. & Business 133, 135 (2025); Merritt B. Fox & Joshua Mitts, *Event-Driven Suits and the Rethinking of Securities Litigation*, 78 Business Lawyer 1, 1 (2023).

It is critically important that defendants have a meaningful opportunity to rebut class certification in event-driven securities cases. When an investor claims multi-billion dollar damages on behalf of a class, it is almost never economically rational for the defendant to "incur the costs of defending a class action and run the risk of potentially ruinous liability." *Laboratory Corp. of America Holdings v. Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting). That is why the vast majority of certified securities class actions settle before judgment and why it is so important that defendants have a meaningful mechanism for rebutting the *Basic* presumption in inflation-maintenance cases. The Third and Ninth Circuits' rule deprives securities defendants of that opportunity by asking only whether the front- and back-end statements address the same subject matter—something that will virtually always be true in any securities case that advances past the pleading stage. As a result, the Third and Ninth Circuits' rule will pressure securities defendants to pay out enormous settlements of meritless claims by making class certification virtually automatic in inflation-maintenance cases. The abuse of the inflation maintenance theory will only grow further from here. The Court should intervene to prevent investors from using meritless, event-driven securities lawsuits to extort unmerited payouts from the Nation's public companies.

B. This case is an excellent vehicle to resolve the question presented. The parties extensively briefed, and the Ninth Circuit squarely decided, whether the front- and back-end statements in this case satisfy *Goldman*'s mismatch standard. The Ninth Circuit's decision to require only a general subject-matter match was outcome-determinative, since the statements here are mismatched under the Second Circuit's test. There are no alternative holdings or other problems that could complicate this Court's review. And unlike the Court's recent consideration of the petition in *Johnson & Johnson*, where two Justices recused, all nine Members of the Court should presumably be able to consider this petition. This case thus presents an ideal opportunity to resolve the split between the Second, Third, and Ninth Circuits about what defendants must show to rebut the inflation maintenance theory under *Goldman*—or simply to summarily reverse and instruct the Ninth Circuit to follow this Court's decision in *Goldman*.

CONCLUSION

The Court should grant plenary review or grant and summarily reverse.

Respectfully submitted.

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