No. 25-1365

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

BRIEF FOR FORMER SEC OFFICIALS AND LAW PROFESSORS AS *AMICI CURIAE* SUPPORTING PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are individuals with a strong interest in the issues presented in this petition: former officials of the U.S. Securities and Exchange Commission ("SEC") and law professors whose scholarship and teaching focus on the federal securities laws. In alphabetical order, the *amici curiae* are:

- Brian G. Cartwright: General Counsel of the SEC (2006-2009).
- Ronald J. Colombo: Professor of Law at Maurice A. Deane School of Law at Hofstra University.
- Elizabeth Cosenza: Associate Professor and Area Chair, Law and Ethics, at Fordham University.
- Richard A. Epstein: The Laurence A. Tisch Professor of Law at the New York University School of Law; the Peter and Kirsten Bedford Senior Fellow at The Hoover Institution; and the James Parker Hall Distinguished Service Professor of Law, Emeritus, and Senior Lecturer at the University of Chicago Law School.
- The Honorable Joseph A. Grundfest: Former Commissioner of the SEC (1985-1990) and the William A. Franke Professor of Law and Business at Stanford Law School.

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[1] No counsel for any party authored this brief in whole or in part, and no party or counsel made a monetary contribution to the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief. Consistent with Rule 37.2, all counsel of record received timely notice of *amici*'s intent to file this brief.

- Simon Lorne: General Counsel of the SEC (1993-1996) and Adjunct Professor, University of Texas at Austin School of Law.

Amici have a longstanding interest in the proper and consistent interpretation and enforcement of the federal securities laws. Given the SEC's limited resources, lawsuits initiated by private parties are an important complement to the agency's own enforcement actions. But it is vital to the integrity of the securities laws that private enforcement actions remain within proper bounds. When courts nullify the guardrails that protect companies and their shareholders from certification of gigantic classes in the kinds of event-driven inflation-maintenance cases that are most prone to abuse, that has a devastating effect on the securities markets.[2]

INTRODUCTION AND SUMMARY OF ARGUMENT

When adverse news causes a company's stock price to fall, shareholders frequently bring securities claims alleging the decline was the result of fraudulent statements. Of course, not every stock-price decline is the result of fraud, and not every putative class action should be certified. Increasingly, securities plaintiffs seek class action status through allegations that companies committed fraud on the market by making misrepresentations that did not increase the company's stock price, but rather supposedly held it up through "inflation maintenance," which dissipated when the market later learned that the representations were not true. These kinds of cases are prone to abuse because

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[2] The views expressed in this brief do not necessarily reflect the views of the institutions with which *amici* are or have been affiliated.

it is very easy for plaintiffs to reverse-engineer a securities-fraud action under an inflation-maintenance theory: they (i) cherry-pick one news report that coincided with a stock-price decline while ignoring earlier reports that did not lead to a stock-price decline, and (ii) assert that the bad news about the company revealed the falsity of earlier company statements related to the subject of that disclosure, no matter whether the company statements contained any specific information later corrected by the news report.

This case encapsulates that phenomena, and it is now proceeding as a class action only because the Ninth Circuit eliminated an important guardrail this Court established to protect companies from often meritless actions. The Ninth Circuit's decision also sided with the Third Circuit to entrench a stark split with the Second Circuit. That is harmful to securities markets, because companies now risk crushing liability for securities claims based on any negative business development.

Defendants' petition demonstrates why this Court's review is warranted. *Amici* submit this brief to highlight the consequences if this Court allows the Ninth Circuit's erroneous decision to stand.

In recent years, shareholders have sued after almost any kind of adverse business event or corporate trauma—from an earnings miss to oil spills, product recalls, or C-suite scandals—and claim to have been defrauded by earlier statements made touching on the same general subject. To invoke the *Basic* presumption of reliance, which holds that all material information about a company is incorporated into its stock price, plaintiffs contend that the company's statements "maintained" an inflated stock price. When the negative event occurred, the purported truth was revealed, leading to a stock-price decline.

Here, for example, plaintiff contends that Zillow's public statements that it had made "progress . . . in strengthening [its] pricing models" for its Zillow Offers home-buying business maintained an inflated stock price by hiding that Zillow sometimes made manual adjustments to its models to keep up with home prices. CA9 5-ER-965-969. Plaintiff hypothesized under its inflation-maintenance theory that Zillow's stock price would have declined if Zillow had coupled its disclosure about "strengthening" its models with the highly specific tangential detail that it sometimes made manual adjustments. But plaintiff never tried to establish that counter-factual. Instead, plaintiff merely cited negative information about the subject of the Zillow Offers business—namely, a bank report that Zillow had purchased too much inventory at high prices, followed by a Zillow announcement that it would wind down its Zillow Offers home-buying business because the market was too "volatile" to "accurately forecast future home prices." CA9 5-ER-983-985; Pet. App. 4.

As should have been self-evident, the resulting stock drop occurred because Zillow was shutting down a significant business line, not because the market learned the specific omitted fact that Zillow sometimes made manual adjustments to its pricing model or even the more general risk that Zillow's pricing model might not be accurate, especially in highly volatile market conditions (as Zillow warned in its public disclosures). *See, e.g.*, Zillow 2020 Form 10-K at 13-15 <tinyurl.com/2s9nafu7>. In fact, market analysts, industry publications, and news reports had already been informing the market that Zillow's home-buying business was struggling. While the same information (and more) found in the allegedly "corrective" bank report had already been reported by other publications days and weeks before the allegedly "corrective" bank report, plaintiff strategically chose to not designate those disclosures as corrective of the statements because there was no associated stock-price decline.

By their nature, suits like this one collide with this Court's admonition that the "implied" private right of action under Section 10(b) of the Exchange Act of 1934 should be construed narrowly, and "not be extended beyond its present boundaries." *Stoneridge Inv. Partners, LLC* v. *Sci.-Atlanta, Inc.*, 552 U.S. 148, 165, 167 (2008). Nonetheless, inflation-maintenance cases were sometimes certified for class treatment without permitting defendants to show that the challenged statements did not impact the stock price (by maintaining supposed inflation).

In *Goldman Sachs Group, Inc.* v. *Arkansas Teacher Retirement System*, 594 U.S. 113 (2021), the Court instituted guardrails to protect defendants' right to rebut the *Basic* presumption at class certification, especially in cases proceeding under the inflation-maintenance theory. Reaffirming its prior holding in *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 283 (2014) (*Halliburton II*), that if a "misrepresentation had no price impact, then *Basic*'s fundamental premise 'completely collapses, rendering class certification inappropriate,'" the Court instructed lower courts to consider the degree of "mismatch" between the alleged misstatements supposedly maintaining the inflated price and the alleged corrective disclosures. *Goldman*, 594 U.S. at 119, 123. The Court gave as an example of a fatal mismatch a generic statement that "we have faith in our business model," followed by a specific "corrective disclosure" that "our fourth quarter earnings did not meet expectations." *Id.* at 123. Where there is such a "mismatch between the contents of the misrepresentation and the corrective disclosure," the inference "that the back-end price drop equals front-end inflation [] starts to break down." *Id.*

Here, the Ninth Circuit wrongly concluded that the alleged misrepresentations are "matched enough" to alleged corrective disclosures simply because they "relate[] to" the subject of "Zillow's home-pricing struggles." Pet. App. 4-5. That ruling improperly expands the private action, guts the mismatch test this Court established in *Goldman*, and squarely conflicts with the Second Circuit, which held, on remand from *Goldman*, that "requiring only a general front-end—back-end subject matter match . . . does not meaningfully account for the Supreme Court's guidance." *Ark. Tchr. Ret. Sys.* v. *Goldman Sachs Grp., Inc.*, 77 F.4th 74, 100-101 (2d Cir. 2023) (*Goldman II*). The Ninth Circuit's decision will further exacerbate confusion in the district courts over how to apply this Court's mismatch test.

Specifically, the Ninth Circuit failed entirely to analyze whether the drops in Zillow's stock price that coincided with the alleged corrective disclosures were reasonable proxies for purported inflation attributed to the challenged statements, which is the purpose underlying the mismatch test. Instead of undertaking the required mismatch analysis, the Ninth Circuit simply observed that the alleged corrective disclosure "revealed new information about how Zillow's home-pricing struggles threatened the business." Pet. App. 4. But *Goldman* requires not simply that the statements relate to the same "subject matter," but that they be "truthful substitutes" such that the stock-price drop can be considered a fair proxy for the purported inflation attributed to the challenged statements. *See Goldman II*, 77 F.4th at 98. Here, the Ninth Circuit did exactly what this Court says should not be done—treating a specific "back-end" disclosure that business results "did not meet expectations" as a proxy for a "front-end" disclosure about "faith in our business model." *Goldman*, 594 U.S. at 123.

The Ninth Circuit's misapplication of the mismatch test will have far-reaching consequences. By requiring only a general subject-matter match and a stock drop in response to negative news, class certification risks becoming near-automatic in the kinds of inflation-maintenance and so-called event-driven cases that are the least likely to be meritorious, yet especially prone to abuse. This will force companies into costly coerced settlements—ultimately harming, not protecting, investors. Because appellate courts rarely exercise their discretion to review class certification orders under Rule 23(f), the Court may never have a better opportunity to provide much needed guidance to lower courts. This Court should grant review and reverse.

ARGUMENT

I. Section 10(b) Is An Implied Private Right Of Action That Must Be Construed Narrowly.

"The § 10(b) private cause of action is a judicial construct that Congress did not enact in the text of the relevant statutes." *Stoneridge*, 552 U.S. at 164. As such, it must be given a "narrow" construction, and "should not be extended beyond its present boundaries." *Id.* at 165, 167. This Court warned against the "federal power" being used to "invite litigation beyond the immediate sphere of securities litigation" to reach any mishap in the "realm of ordinary business operations," an "area[] already governed by functioning and effective state-law guarantees." *Id.* at 161.

Securities fraud suits like here that attempt to turn every negative development into securities fraud conflict with that instruction in *Stoneridge*. That is why some courts correctly squash attempts to reverse-engineer a securities fraud suit based on a stock drop coinciding with negative company news (*e.g.*, an earnings miss), and shareholders claiming to have been defrauded based on an earlier company statement implicating the subject of the negative event (*e.g.*, statements about making "improvements"). *See Shields* v. *Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1129 (2d Cir. 1994) ("[Plaintiff] records statements by defendants predicting a prosperous future and holds them up against the backdrop of what actually transpired. . . . This technique is sufficient to allege that the defendants were wrong; but misguided optimism is not a cause of action. . . . We have rejected the legitimacy of 'alleging fraud by hindsight.'"); *Karth* v. *Keryx Biopharmaceuticals, Inc.*, 6 F.4th 123, 135 (1st Cir. 2021) ("[A]a complaint may not simply contrast a defendant's past optimism with less favorable actual results in support of a claim of securities fraud.") (quotation omitted); *Smallen* v. *W. Union Co.*, 950 F.3d 1297, 1309 (10th Cir. 2020) ("Plaintiff may not rely on a subsequent event triggering a decrease in stock price to say that the later, sobering revelations make the earlier, cheerier statement a falsehood.") (quotation omitted).

Respecting the narrow construction of the implied right of action protects companies (and their shareholders) from potentially abusive litigation and the *in terrorem* effect that securities class actions pose:

"that extensive discovery and the potential for uncertainty and disruption in a lawsuit allow plaintiffs with weak claims to extort settlements from innocent companies." *Stoneridge*, 552 U.S. at 163; *see Speerly* v. *Gen. Motors, LLC*, 143 F.4th 306, 324 (6th Cir. 2025) (*en banc*) ("[C]oerced settlements substantially raise the costs of doing business for companies, which in turn pass on those costs to consumers, investors, and workers.") (quotation omitted). The Ninth Circuit ignored that principle here by applying a vague standard so as to make it almost *pro forma* for plaintiffs to obtain class certification in abusive inflation-maintenance cases.

II. The Ninth Circuit's Decision Construes Section 10(b) Expansively, Nullifying This Court's "Mismatch" Safeguard.

A. In *Halliburton II*, the Court held that a defendant can rebut the *Basic* presumption of reliance at class certification by showing that the misrepresentation "did not affect the stock's market price." 573 U.S. 258, 279 (2014). After *Halliburton II*, however, lower courts almost never found that a defendant successfully rebutted the *Basic* presumption. *See Ark. Tchr. Ret. Sys.* v. *Goldman Sachs Grp., Inc.*, 955 F.3d 254, 266 n.9 (2d Cir. 2020) (citing statistics), *rev'd*, 594 U.S. 113 (2021).

Seven years later, in *Goldman*, this Court revisited this important issue and clarified that a defendant's rebuttal right was not an empty promise and does not impose on defendants a nearly impossible burden to disprove all possibility of price impact, as some district courts had required. *See Monroe Cnty. Emps. Ret. Sys.* v. *S. Co.*, 332 F.R.D. 370, 395 (N.D. Ga. 2019) (defendants failed to "rule out" all possibility of "price impact whatsoever").

Instead, the Court made clear in *Goldman* that the "court's task is simply to assess all the evidence of price impact—direct and indirect—and determine whether it is more likely than not that the alleged misrepresentations had a price impact." 594 U.S. at 126-127. Courts also "must take into account *all* record evidence relevant to price impact . . . —qualitative as well as quantitative—aided by a good dose of common sense." *Id.* at 122, 124.

Without endorsing the inflation-maintenance theory, the Court further addressed how the price impact analysis works if invoked by plaintiffs. When an alleged misstatement does not cause the stock price to increase, that could mean one of two things: (i) the statement had no price impact because the statement was immaterial, or (ii) the statement was material and impacted the stock price by allegedly maintaining inflation already embedded in the stock price. To show the latter, "[p]laintiffs typically try to prove" price impact "indirectly" under the inflation-maintenance theory by focusing on the back-end stock-price decline following negative news about the company. *Goldman*, 594 U.S. at 123. "They point to a negative disclosure about a company and an associated drop in its stock price; allege that the disclosure corrected an earlier misrepresentation; and then claim that the price drop is equal to the amount of inflation maintained by the earlier misrepresentation." *Id.* "But that final inference—that the back-end price drop equals front-end inflation—starts to break down when there is a mismatch between the contents of the misrepresentation and the corrective disclosure." *Id.* Thus, the "mismatch" test answers the question: when is it reasonable to look to a stock-price decline as an indirect proxy for inflation introduced when the allegedly fraudulent statements were made?

This Court's "mismatch" test establishes an important guardrail. Absent this guardrail, the inference that the "back-end price drop equals front-end inflation," *Goldman*, 594 U.S. at 123, becomes irrefutable, because allegations of wrongdoing nearly always conflict, at some level of generality, with a company's prior statements. If a court eschews a meaningful comparison of the content and specificity of the front-end alleged misstatement and back-end allegedly corrective event, as the Ninth Circuit did below, massive securities fraud class actions will be certified based on barely more than the fact that the stock price declined at the end of the plaintiffs' proposed class period in response to negative news about the company. That directly conflicts with this Court's admonition that the federal securities laws were not enacted "to provide investors with broad insurance against market losses, but to protect them against those economic losses that misrepresentations actually cause." *Dura Pharms., Inc.* v. *Broudo*, 544 U.S. 336, 345 (2005). For this reason, lower courts have acknowledged that this Court's mismatch test applies in all cases where plaintiffs invoke the inflation-maintenance theory of price impact, not just in cases where the challenged statements are generic. *See, e.g.*, *In re Kirkland Lake Gold Ltd. Sec. Litig.*, 2024 WL 1342800, at *6-7, 11 (S.D.N.Y. Mar. 29, 2024). Even a specific statement about a product can fail to "[]match [the informational] content" of a negative event that prompts a stock price decline, *id.* at *11, such as a company's decision to shut down a business line.

On remand from this Court's *Goldman* decision, the Second Circuit recognized the danger of a loose subject-matter test. Were the rule otherwise, "securities plaintiffs could find a road to success in the rearview mirror: they would need only find negative news, such as the revelation that a company may have [violated a law], and then point to any previous disclosure from the company which touches upon a similar subject, such as that company's commitment to complying with the law—no matter how generic that statement is." *Goldman II*, 77 F.4th at 101.

B. The Ninth Circuit here erred—creating a clear split with the Second Circuit—by gutting this Court's mismatch test through the implementation of a vague standard that statements were "matched enough" under *Goldman*. Pet. App. 4-5. The Ninth Circuit observed that the "corrective" disclosures were "matched enough" to the alleged misrepresentations merely because "[t]he disclosures revealed new information" about the same general subject matter (*i.e.*, "Zillow's home-pricing struggles") without considering whether the back-end disclosures were actually a truthful proxy for the supposed front-end misstatements. *Id.* That vague standard misapplies *Goldman*, which warns against equating a general front-end statement about "faith in [a] business model" with back-end disclosure of unfavorable results. 594 U.S. at 123. Although the front-end statements may have related to the same "subject matter" as the back-end disclosures, they were in no way "truthful substitutes" such that the back-end disclosures can be a truthful proxy for the purported front-end misstatements. *See Goldman II*, 77 F.4th at 98. Zillow's statements that it made "progress" with its pricing models is not counter to its later statements that its strategy had underperformed; both statements can be true at the same time. Yet the Ninth Circuit summarily concluded that because the statements "revealed new information about [] Zillow's home-pricing struggles," the statements were "matched enough" under *Goldman*. Pet. App. 4.

The Ninth Circuit compounded its error by ignoring that the corrective disclosure and the alleged truthful substitute were fundamentally different in nature. It is implausible that market reaction to major news that Zillow was shutting down its Zillow Offers business would be equal to the amount of inflation that would have been removed from the stock price had Zillow disclosed the far more benign information allegedly omitted from the challenged statements—namely, that even though Zillow stated that it had "improved" its pricing model, Zillow made manual adjustments to the model's output. The Ninth Circuit merely stated that "[e]ven if a later disclosure does not refer directly to an alleged misrepresentation," the "changed market price may indicate how the market would have reacted had the defendant told the truth from the start." Pet. App. 3. That speculative conclusion is flatly at odds with the entire purpose of the mismatch test, which is to determine "*whether* there is a basis to infer that the back-end price equals front-end inflation." *Goldman II*, 77 F.4th at 99 n.11 (emphasis added); *see* Merritt Fox & Joshua Mitts, *Event-Driven Suits and the Rethinking of Securities Litigation*, 78 Bus. Law. 1, 4 (2023) ("[B]y focusing on the price drop at the time of a corrective disclosure, courts have lost track of the critical point that the real issue is whether the misstatement inflated the share price by a meaningful amount in the first place.").

C. Worse still, the Ninth Circuit's reliance on a particular news report, where other publicly-available sources had reported the same information (and more) about Zillow's pricing model in the days and weeks prior, contradicts the core theoretical underpinning of *Basic*. *Basic*'s "fraud on the market" theory of reliance asserts that every stock trade is presumably made in reliance on "all publicly available information." *Basic Inc.* v. *Levinson*, 485 U.S. 224, 246 (1988). The "prerequisite" for that presumption is that the stock price does, in fact, "fully reflect all publicly available information." *In re PolyMedica Corp. Sec. Litig.*, 432 F.3d 1, 8-11 & n.16 (1st Cir. 2005); *see West* v. *Prudential Sec., Inc.*, 282 F.3d 935, 937 (7th Cir. 2002) ("The theme of *Basic* and other fraud-on-the-market decisions is that public information reaches professional investors, whose evaluations of that information and trades quickly influence securities prices."); *see also* Lynn Stout, *The Mechanisms of Market Inefficiency: An Introduction to the New Finance*, 28 J. Corp. L. 635, 639-640 (2003).

In the decision below, the Ninth Circuit held that the efficient-market theory that underpins the *Basic* presumption can be considered when it helps the plaintiff but ignored when it helps the defendant. Specifically, even though the court held that the market was efficient enough to invoke the *Basic* presumption and certify a massive class, the court held that defendants could not rebut that presumption by showing that the allegedly corrective information disclosed in the bank report cited by plaintiff had been publicly-reported weeks earlier without causing any stock-price decline. According to the Ninth Circuit, the public information defendants cited to rebut the presumption—which was in the form of research analyst reports and news reports, including Bloomberg reports—"was not widely discussed or accessible" beforehand. Pet. App. 4.

The Ninth Circuit's conclusion that information reported in public analyst reports is not sufficiently public to impact a stock price flies in the face of *Basic* and contravenes this Court's precedent explaining that market efficiency is achieved because of the work of securities analysts. As this Court has explained, "[t]he value to the entire market of analysts' efforts cannot be gainsaid; market efficiency in pricing is significantly enhanced by their initiatives to ferret out and analyze information, and thus the analyst's work redounds to the benefit of all investors." *Dirks* v. *SEC*, 463 U.S. 646, 658 n.17 (1983) (quotation omitted); *see Asher* v. *Baxter Int'l Inc.*, 377 F.3d 727, 731 (7th Cir. 2004) (The *Basic* presumption rests on the theory "that other people (professional traders, mutual fund managers, securities analysts) did the reading, and that they made trades or recommendations that influenced the price. In an efficient capital market, all information known to the public affects the price and thus affects every investor."). Thus, "[w]hen markets are informationally efficient, it is impossible to segment information as" the Ninth Circuit did in this case. *Asher*, 377 F.3d at 732.

Consequently, the bank report suggesting that Zillow's "pricing model [had] misfired" could not have corrected any prior statements. Pet. App. 4-5. In the efficient market on which plaintiff's claims rely, Zillow's stock price already reflected its home-pricing struggles, because information about those struggles had been reported on and quantified in analyst reports. *See* CA9 2-ER-218-222. As a result, the only new information that impacted the stock price was the market processing Zillow's disclosure that it shut down its Zillow Offers business line. But Zillow could not have disclosed that information when it made its challenged statements about "improving" its pricing model, because it had not yet made any decision to close down the entire business.

D. This case is not a one-off, but emblematic of nearly all inflation-maintenance suits. It is implausible to infer that, because a stock-price decline followed a highly specific negative event like shutting down an entire business line, generalized positive statements touching on the same subject matter made months or years earlier by the company propped up the stock price. *See, e.g.*, *Raab* v. *Gen. Physics Corp.*, 4 F.3d 286, 289 (4th Cir. 1993) ("[T]he market price of a share is not inflated by vague statements predicting growth."); *Smith* v. *Gap, Inc.*, 177 F.4th 405, 411 (2d Cir. 2026) (company's "characterization of demand as 'strong'" is "unactionable puffery" that no reasonable investor would rely on).

The Ninth Circuit's decision thus effectively turns the price impact inquiry into a readily satisfied box-checking exercise that fails to address whether "investors relied upon the [challenged] disclosure *as written*." *Goldman II*, 77 F.4th at 100. By jumping to the back-end stock drop without asking whether there is an evidentiary or "common sense" basis to use that price decline as a proxy for front-end inflation when the statement was made, *Goldman*, 594 U.S. at 122, the Ninth Circuit missed the very issue it was required to decide under *Basic*: whether a *challenged statement impacted the stock price* when made, such that "an investor presumptively relies on a misrepresentation . . . through his reliance on the integrity of the market price." *Halliburton II*, 573 U.S. at 278 (quotation and alterations omitted). The mismatch test exists to determine "*whether* there is a basis to infer that the back-end price [drop] equals front-end inflation." *Goldman II*, 77 F.4th at 99 n.11 (emphasis added).

That is why *Goldman* requires not simply that the statements relate to the same "subject matter," but that they match in content and specificity, reflecting that the stock-price drop is potentially a proxy for the purported inflation attributed to the challenged statements. *See Goldman II*, 77 F.4th at 98. As the Second Circuit correctly recognized, a properly conducted "mismatch inquir[y]" is the critical check on "the value of the back-end price drop as indirect evidence of a front-end, inflation-maintaining price impact." *Id.* at 93.

The Ninth Circuit's adoption of a vague standard that asks only whether the front-end disclosures "relate[] to" the back-end disclosures, and are therefore "matched enough" to permit an inference of reliance was legal error that warrants this Court's review. Pet. App. 4-5. Even before the Ninth Circuit's legally erroneous decision, there has been considerable confusion in the district courts about how to apply the "mismatch" test. *See* Per Axelson & Matthew D. Cain, *What Is Price Impact? How the* Goldman *Decisions Are Reshaping Shareholder Class Actions*, 22 Berkeley Bus. L.J. 441, 465 (2025) (post-*Goldman*, there is "a lack of consensus in court opinions regarding the meaning of price impact and how to address it at the class certification stage"). If allowed to stand, the Ninth Circuit's adoption of a vague standard that empties the mismatch test of almost all meaning will exacerbate that confusion.

III. The Ninth Circuit's Decision Will Lead To Even More Abusive Securities Suits.

As Zillow observes in its petition (at 30), the Ninth Circuit's adoption of a loose subject-matter test will make class certification near automatic in a particularly abusive form of securities fraud claim known as event-driven securities litigation. For decades, "securities class actions were largely about financial disclosures (*e.g.*, earnings, revenues, liabilities, etc.)," in which case "the biggest disaster was an accounting restatement." John Coffee, Jr., *The Changing Character of Securities Litigation in 2019*, CLS Blue Sky Blog (Jan. 22, 2019) <tinyurl.com/47n2v74t>. Not anymore.[3] Now, "the biggest disaster may be a literal disaster: an airplane crash, a major fire, or a medical calamity that is attributed to your product." *Id.*; *see* Matt Levine, *Everything Everywhere Is Securities Fraud*, Bloomberg (June 26, 2019) <tinyurl.com/yevzs89z> ("And so contributing to global warming is securities fraud, and sexual harassment by executives is securities fraud, and customer data breaches are securities fraud, and mistreating killer whales is securities fraud, and whatever else you've got."); Kevin LaCroix, *Ripped from the Headlines: Norfolk Southern Hit with Securities Suit*, The D&O Diary (Mar. 19, 2023) <tinyurl.com/333nate9> ("There was a time when most securities litigation was about financial fraud. . . . However, it increasingly seems that securities suits are more about the latest high-profile incident, giving the lawsuits a 'ripped from the headlines' feel.").

These event-driven cases are becoming increasingly common. *See* Gideon Mark, *Event-Driven Securities Litigation*, 24 U. Pa. J. Bus. L. 522, 528 (2022) ("[B]y 2018 [event-driven] suits accounted for more than one-quarter of all securities class actions filings."). But

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[3] In 2025, only 4% of securities fraud class actions involved restatements of earnings, and 16% involved allegations of accounting violations. *See* Cornerstone Research, *Securities Class Action Filings: 2025 Year in Review* at 12 (2026) <tinyurl.com/4phxabm8>.

they are particularly prone to abuse. Without a proper application of the *Goldman* decision, they will wreak havoc on the markets.

First, event-driven suits often seek to impose double punishment on companies, because consumers allegedly injured by the asserted misconduct have already brought separate litigation under laws directly governing that conduct (*e.g.*, product-liability laws). This double punishment harms not only the company, but also shareholders and consumers. *See SEC* v. *Tambone*, 597 F.3d 436, 452-53 (1st Cir. 2010) (Boudin, J., and Lynch, J., concurring) ("No one sophisticated about markets believes that multiplying liability is free of cost. And the cost, initially borne by those who raise capital . . . , gets passed along to the public."); Amelia Miazad, *D&O Insurers As Climate Governance Monitors*, 104 B.U. L. Rev. 1181, 1209 (2024) (observing that "the increase in event-driven [securities] litigation is causing D&O insurance brokers to caution that policy terms 'will be tested' ").

Second, event-driven cases involve increasingly long class periods, multiplying theoretical exposure, often to billions of dollars. *See Changing Character*, *supra* ("potential damages [in event-driven cases] are often very high"); *Carpenters Pension Tr. Fund of St. Louis* v. *Barclays PLC*, 310 F.R.D. 69 (S.D.N.Y. 2015) (certifying 5-year class period). Moreover, as plaintiffs allege ever-wider time gaps between alleged misstatements and corrective events, intervening events like "changed economic circumstances, changed investor expectations, [or] new industry-specific or firm-specific facts, conditions, or other events" make it more challenging to attribute stock price declines to "the earlier misrepresentation." *Dura*, 544 U.S. at 343.

Third, plaintiffs often challenge dozens or more statements—essentially every company statement touching on the negative event's subject matter—overwhelming the district court in hopes that at least one statement will stick and survive a motion to dismiss. *See, e.g.*, *In re FirstEnergy Corp. Sec. Litig.*, No. 20-cv-3785 (S.D. Ohio), Dkt. No. 72 ¶¶ 95-135 (40+ statements), Rule 23(f) petition pending, No. 26-0303 (6th Cir.).

And once a class is certified, that is "often the whole ballgame," as the aggregation of claims places "hydraulic pressure to settle" even "questionable claims." *Allen* v. *Ollie's Bargain Outlet, Inc.*, 37 F.4th 890, 908-909 (3d Cir. 2022) (Porter, J., concurring).[4]

In sum, the "difficulties associated with terminating event-driven securities litigation at the motion to dismiss or class certification stage, coupled with the costs of discovery and extremely large potential damage awards typical in this sort of litigation, means that the risk of vexatious litigation is high." Amanda Rose, *A Response to Calls for SEC-Mandated ESG Disclosure*, 98 WASH. U. L. REV. 1821, 1852-1853 (2021).

* * *

The Court's adoption of the "mismatch" test in *Goldman* provides a critical defense against meritless inflation-maintenance and event-driven securities litigation. Without a properly conducted mismatch analysis, it is not difficult for plaintiffs to allege that a corporate trauma that coincides with a stock drop relates to the subject of a prior company statement. If allowed

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[4] Nearly all securities class actions settle if a class is certified—only 0.4% of cases reach a trial verdict. *See Securities Class Action Filings*, *supra*, at 16.

to stand, the decision below imposing only a loose subject-matter test will nullify the mismatch test in exactly the kinds of cases where it is most needed to protect issuers from abusive suits.

As explained in Zillow's petition (at 31), this case is an ideal vehicle to rebalance the scales on price impact. There are no relevant factual disputes here, and this Court's review is urgently needed. After *Halliburton II*, lower courts had construed the price-impact defense so narrowly that it could be disregarded. *See supra* 9. After this Court recalibrated the scales in *Goldman*, some lower courts are again diluting the legal standard to once again make class certification in securities fraud cases near-automatic. Moreover, the Ninth Circuit's deeply flawed decision is likely to attain outsized influence in the lower courts, because appellate courts rarely address price-impact issues due to the discretionary nature of appellate review of class certification orders under Federal Rule of Civil Procedure 23(f). *See* Robert Klonoff, *Federal Rule of Civil Procedure 23(f): Reflections after a Quarter Century*, 75 Syracuse L. Rev. 185, 198 (2025) (between 2020 and 2023, "appellate courts granted Rule 23(f) review about 24 percent of the time"). And because "[t]he Ninth Circuit is one of the stingiest courts in the country when it comes to permission to appeal under Rule 23(f)," *id.* at 197 (quotation omitted), it is unlikely that the Ninth Circuit will self-correct.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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