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

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

RULE AND COMMENTARY

INTRODUCTION

Jaeger's brief in opposition, which rests on misstatements about the decisions in the circuit split and the evidence in this case, only confirms that the Court should grant review. After taking its first securities case under Rule 23(f) in over a decade, the Ninth Circuit issued a decision flouting this Court's decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 594 U.S. 113, 123 (2021), and deepening a now 1–2 split with the Second Circuit's well-reasoned decision in *Arkansas Teacher Retirement System v. Goldman Sachs Group, Inc.*, 77 F.4th 74, 99 (2d Cir. 2023) (*Goldman II*). The Ninth Circuit's decision, which affirmed class certification without considering whether Zillow's back-end disclosures "actually correct[]" its front-end alleged misstatements, *Goldman*, 594 U.S. at 123, threatens to make class certification virtually automatic in most securities cases. Indeed, as the amici—including several of the nation's most prominent business advocacy organizations, former SEC officials, and securities law scholars—confirm, the Ninth Circuit's decision threatens to open the floodgates for abusive securities litigation designed to coerce public companies into settling meritless claims, stifling economic activity in the process. *See* U.S. Chamber of Commerce, et al. Br. 14-22; Manhattan Inst. Br. 3-13; Former SEC Officials & Law Professors Br. 17-22. The Court should grant review or summarily reverse.

Jaeger's counterarguments don't withstand scrutiny. Jaeger claims the lower courts aren't actually split on the standard for assessing price impact in inflation-maintenance cases. But his arguments depend on misrepresenting the decisions. The opinions speak for themselves and make clear that the Second Circuit requires back-end statements to be "truthful substitute[s]" for the alleged misstatements, *Goldman II*, 77 F.4th at 99, but the Third and Ninth Circuits require merely that back-end "disclosure[s] contain[] information relating to [the] alleged misrepresentations," *San Diego County Employees Retirement Ass'n v. Johnson & Johnson*, No. 24-1409, 2025 WL 2176586, at *4 (3d Cir. July 30, 2025); *see* App. 4a.

Jaeger also claims that Zillow's front- and back-end statements aren't mismatched. But those arguments rely on rewriting the alleged misrepresentations to manufacture the front- and back-end match that *Goldman* requires, underscoring that Jaeger can't win under the correct legal standard.

Jaeger further claims that this case is a bad vehicle to address the proper price-impact standard under *Goldman*. But Jaeger's vehicle issues are make-weight. For example, Jaeger complains that this case hasn't been litigated to final judgment—something that's true of *every* class-certification appeal. That hasn't stopped the Court from granting review before, *see, e.g.*, *Goldman*, 594 U.S. at 121, and it shouldn't do so here.

Without the Court's intervention, the critical safeguards that the Court announced in *Goldman* for securities defendants in inflation-maintenance cases will remain meaningless in the Third and Ninth Circuits. The Court could summarily reverse and reaffirm *Goldman*, or grant plenary review. But if the Court has any doubt, it should call for the views of the Solicitor General given the federal government's role and interest in regulating and ensuring the efficient functioning of the Nation's securities markets. *See,* *e.g.*, United States Br. at 1, *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 146 S. Ct. 1546 (2026) (No. 24-345).

ARGUMENT

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

A. The Ninth Circuit's decision deepens a now 1–2 circuit split over what *Goldman*'s mismatch standard requires. 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, in contrast, hold that statements are matched 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. *Johnson & Johnson*, 2025 WL 2176586, at *4; App. 2a-3a. Only this Court can resolve the split. Both the Third and Ninth Circuits denied rehearing en banc, making clear that those courts won't voluntarily align themselves with the Second Circuit. *See* App. 28a; *San Diego County Employees Retirement Ass'n v. Johnson & Johnson*, No. 24-1409, 2025 WL 2848912, at *1 (3d Cir. Oct. 7, 2025).

B. Jaeger's attempts to obscure the split lack merit.

1. Jaeger first argues that "the Second Circuit rejected" any rule "that a back-end disclosure must 'expressly and specifically negate' or 'directly render' false the prior misstatement." Opp. 19 (emphasis omitted). He says the Second Circuit instead endorsed an amorphous test allowing courts to find price impact "where matches are weak" based solely on unspecified "indirect evidence"—a test Jaeger claims is consistent with the Third and Ninth Circuits' approach. Opp. 19-20.

But none of that is true. In *Goldman II*, the Second Circuit explained that while its pre-*Goldman* caselaw left room for a plaintiff to claim inflation maintenance based on back-end statements that didn't directly contradict the alleged misstatements, "*Goldman* dispel[led] that notion." 77 F.4th at 99. After *Goldman*, the Second Circuit explained, "any gap among the front- and back-end statements *as written*" must "be limited." *Id.* (emphasis added). The standard is satisfied only when the back-end statements are "truthful substitute[s]" for the front-end misstatements. *Id.* Put differently, the statements must be so closely related and worded that the back-end disclosure could function as a truthful stand-in for the front-end statement. *Id.*

2. Jaeger next claims "[t]here is little daylight" between *Goldman II* and the Ninth Circuit's approach. Opp. 21. Jaeger says the Ninth Circuit didn't hold that Zillow's front- and back-end statements were matched because they were about the same general subject matter and potentially in tension with one another, but instead because the panel conducted a "deeper" analysis based on the statements' "substance." Opp. 23.

Once again, the opinion refutes Jaeger's claims. Take Zillow's front-end statement that it had made "progress … in strengthening [its] pricing models." CA9 5-ER-965-66. Jaeger claims that statement was misleading because it didn't also disclose that Zillow was using manual adjustments to keep up with home-price appreciation. 5-ER-965-68. The Ninth Circuit held that this statement was matched with Zillow's back-end announcements that it was winding down, and then ending, Zillow Offers—even though the back-end statements "never revealed the use of manual overlays"—because the back-end "disclosures revealed new information showing the extent of Zillow's home-pricing struggles." App. 4a. Unlike the Second Circuit, the court didn't require that "any gap among the front- and back-end statements as written be limited" or that the back-end statements could function as "truthful substitutes" for the alleged misstatement. *Goldman II*, 77 F.4th at 99. It just required both sets of statements to address the same general subject ("home pricing") and to be in tension with one another. That's exactly the test the Second Circuit rejected when it held that "requiring only a general front-end—back-end subject matter match … does not meaningfully account for the Supreme Court's guidance in *Goldman*." *Goldman II*, 77 F.4th at 100-01. If the Ninth Circuit conducted the kind of "deeper" analysis Jaeger claims, it did so silently, telling district courts they needn't bother.

3. Finally, Jaeger claims the Third Circuit hasn't embraced "a subject matter match" test either. Opp. 25. But the Third Circuit explicitly held in *Johnson & Johnson* that there was no mismatch because "each [back-end] disclosure contained information *relating to* J&J's alleged misrepresentations." 2025 WL 2176586, at *4 (emphasis added).

Jaeger tries to downplay the sharply different standards the Second, Third, and Ninth Circuits have adopted to minimize the split. But the decisions' actual language and holdings establish a 1–2 circuit split and underscore the urgent need for this Court's intervention.

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

A. As this Court's decision in *Goldman* and the Second Circuit's decision in *Goldman II* make clear, the inflation-maintenance theory doesn't work unless the back-end statements are truthful stand-ins for the alleged front-end misstatements. Pet. 24-26. Courts must "ask[] 'what would have happened if [the company] had spoken *truthfully*'" when it 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 and thus reveal how the stock price would have reacted but for the alleged fraud. *Goldman*, 594 U.S. at 123. A back-end statement satisfies that standard 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[]" it "false." *Goldman II*, 77 F.4th at 98-99.

None of the front- and back-end statements here meet that standard. Zillow's alleged misstatements assert that it had made "progress … in strengthening [its] pricing models," and achieved "largely 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 aren't mutually exclusive with Zillow's alleged misstatements about manual pricing adjustments or home renovations, and don't reveal their falsity. It is possible (and in fact true) that Zillow did improve its pricing-models and renovation operations but decided after receiving additional data that the improvements weren't significant enough to make Zillow Offers viable. That means the statements are fatally mismatched, rebutting Jaeger's theory of price impact. The Ninth Circuit contravened *Goldman* by affirming class certification without requiring that Zillow's back-end disclosures "actually correct[]" the alleged misstatements. *Goldman*, 594 U.S. at 123.

B. Jaeger's counterarguments are meritless.

1. Jaeger argues that (1) Zillow's front-end statements that it had made "progress … in strengthening [its] pricing models" and "sharpen[ed] [its] offer strength" promised investors that "Zillow had fixed a fundamental issue critical to the business's success"—accurately forecasting homes; and (2) Zillow's back-end statements contradicted these "assurances by admitting that it had never been able to accurately predict future home prices." Op. 31-33. But that argument is self-refuting. Zillow's front-end statements said that it had improved its pricing models; Zillow never promised that it could perfectly predict home prices. That is gloss Jaeger adds in his briefing to make his argument seem more plausible. Rather, the market was well aware, based on publicly available data and market analysts' repeated disclosures to investors (without any negative stock-price reaction), that Zillow hadn't always been able to accurately forecast home prices despite Zillow's efforts to improve its modeling. CA9 2-ER-218-20, 3-ER-424-524. That is why Jaeger pleaded that Zillow's front-end statements were false not because Zillow had guaranteed that its pricing algorithm would always succeed, but rather because Zillow did not specifically disclose that it was making manual adjustments to its pricing algorithm. 5-ER-965-68. Because Zillow's back-end statements don't reveal the manual adjustments or contradict its representations that it had strengthened its pricing models, the statements can't possibly show how the market would have reacted if the manual adjustments had been disclosed on the front end. That means the statements are fatally mismatched. *Goldman*, 594 U.S. at 123.

2. Unable to explain away the mismatch, Jaeger offers two reasons to infer front-end price impact even without a matched back-end comparator. Each fails.

First, Jaeger offers three hypothetical truthful versions of Zillow's alleged misstatements and asserts that "Zillow's stock price would have dropped" if it had made these statements instead. Opp. 33-34. But because Zillow's back-end disclosures don't contain any of the information in his hypotheticals, Jaeger's argument is pure speculation. For example, it is hardly certain that investors would have reacted negatively to a statement that Zillow had "doubled [its home] acquisitions without first resolving our executives' internal misgivings about [its] models' accuracy and ability to respond quickly to errors"—Jaeger's first hypothetical (Opp. 33)—given that Zillow's stock didn't react at all on the seven previous occasions when analysts disclosed Zillow's inability to accurately forecast home prices. CA9 2-ER-218-20, 3-ER-424-524. And Zillow's back-end announcements that it was first pausing, and then ending, Zillow Offers didn't say anything about its purported "executives' internal misgivings." Opp. 33. So there's no basis to infer that the back-end price drop would have occurred if Zillow had made Jaeger's imagined statements instead of the alleged misstatements.

Second, Jaeger argues (Opp. 34-35) that analyst reports show that investors understood Zillow's back-end disclosures as a revelation that its front-end statements were false. But none of the analyst reports Jaeger cites mentions Zillow's alleged misstatements, much less claim that any of Zillow's prior statements were false. That's probably why even the Ninth Circuit didn't adopt Jaeger's analyst-report arguments.

3. Left with nothing else, Jaeger claims (Opp. 35-36) that enforcing *Goldman*'s mismatch standard would make it too difficult for plaintiffs to certify classes in inflation-maintenance cases and would allow defendants to escape liability. But that gets the policy analysis backwards. The inflation-maintenance theory is inherently speculative and tenuous, and depends on guessing how a company's stock price would have changed based on statements that were never made. Pet. 7-8, 29-31. Enforcing *Goldman*'s guardrails on this theory doesn't relieve any defendant of liability. Rather, it prevents plaintiffs from using the burdens of class litigation to manufacture settlement value where none otherwise exists.

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

A. As amici confirm, the price-impact standard for inflation-maintenance cases is exceptionally important. *See* U.S. Chamber of Commerce, et al. Br. 14-22; Manhattan Inst. Br. 3-13; Former SEC Officials & Law Professors Br. 17-22. The majority of securities plaintiffs now rely on the inflation-maintenance theory. This is because it makes it easier to obtain class certification for event-driven securities claims by allowing them to capitalize on a company's announcement of bad news, even if not "actually correct[ive]" of the company's prior statements. *See* Pet. 29-31. Without a meaningful opportunity to rebut the inflation-maintenance theory, class certification will become virtually automatic in securities cases, pressuring defendants to settle meritless claims. The Third and Ninth Circuits' rule deprives securities defendants of this critical opportunity by asking only whether the front- and back-end statements address the same general subject matter—something that is virtually always true in any securities case that advances past the pleading stage. *Id.* This case is an excellent vehicle to resolve the question presented because it was squarely litigated and decided below, and the proper mismatch standard is outcome-determinative on these facts.

B. Jaeger doesn't dispute that the question presented is critically important. Instead, he wrongly argues that the case is a poor vehicle to resolve it.

1. Jaeger first argues that this case doesn't implicate the question presented because the Ninth Circuit allows defendants to "rebut price impact by attacking the corrective link between front-end misstatements and back-end disclosures." Opp. 15-18. But unlike the Second Circuit, which requires front- and back-end statements to so closely conflict that the back-end statements are truthful substitutes for the alleged misstatements, the Ninth Circuit's decision here requires only a general subject-matter match between front- and back-end statements. *Supra* pp. 4-5. This case thus squarely implicates an outcome-determinative conflict over how closely related front- and back-end statements must be to satisfy *Goldman*'s mismatch test.

2. Jaeger next argues (Opp. 27-29) that this case is a poor vehicle because it hasn't been litigated to a final judgment. But the Court routinely grants review of orders granting class certification in securities cases. *See, e.g.*, *Goldman*, 594 U.S. at 121; *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014); *Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455, 464-65 (2013). And for good reason. "Certification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978). Indeed, this Court promulgated Federal Rule of Civil Procedure 23(f) to facilitate interlocutory appeals of abusive class certification orders. *See* Advisory Committee Notes on 1998 Amendments to Fed. R. Civ. Proc. 23.

3. Jaeger argues (Opp. 30) that the Court should deny review to await percolation in the lower courts and a split among published opinions. But as Zillow explained (Pet. 6, 21-22), securities fraud cases are rarely tried to judgment given the enormous potential damages associated with material price declines for publicly traded securities. And class-certification appeals are themselves "rare," *Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 955 (9th Cir. 2005), particularly in securities cases. That means the Court is unlikely to have another opportunity to review the question presented in the near future, even though it affects most securities cases that advance past the pleading stage. It also means that district courts in the Third and Ninth Circuits are likely to treat the unpublished opinions in *Johnson & Johnson* and in this case as binding, as district courts often do when on-point published decisions aren't available. Delaying review won't benefit the Court's eventual consideration of this issue; it will just allow meritless classes to be certified while lower courts continue to ignore *Goldman*—possibly for another decade or longer.

4. Finally, Jaeger argues (Opp. 30-31) that the lower courts haven't considered whether the alleged misstatements Jaeger added to his amended complaint after the district court's class certification order could independently support class certification. But that is putting the cart before the horse. Once the Court reverses the Ninth Circuit's erroneous class-certification decision and clarifies the legal standard, Jaeger can try to argue on remand that his newly pleaded statements are matched with Zillow's back-end disclosures under *Goldman*. Nothing about the statements would complicate or upset this Court's decision about whether back-end disclosures must actually correct alleged front-end misstatements in price-impact cases. But leaving the decision in place would produce serious consequences. Summary reversal or plenary review solves the problem, and Jaeger will be free to renew his argument on remand.

CONCLUSION

The Court should grant plenary review or summarily reverse.

Respectfully submitted.

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