

No. 26-2183

IN THE
United States Court of Appeals for the Ninth Circuit

IN RE NVIDIA CORPORATION SECURITIES LITIGATION

STICHTING PENSIOENFONDS PGB; LANNEBO KAPITALFORVALTNING AB,
Plaintiffs-Respondents,

v.

NVIDIA CORPORATION; JENSEN HUANG,
Defendants-Petitioners.

On Petition for Permission to Appeal from the United States District
Court for the Northern District of California
No. 18-cv-07669, Hon. Haywood S. Gilliam, Jr.

**BRIEF OF THE CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA AND THE SECURITIES
INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
AS AMICI CURIAE IN SUPPORT OF DEFENDANTS'
PETITION FOR PERMISSION TO APPEAL**

Jonathan D. Urick
Janet Galeria
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062

Kevin Carroll
SECURITIES INDUSTRY AND
FINANCIAL MARKETS
ASSOCIATION
1099 New York Ave., NW
6th Floor
Washington, DC 20001

Daniel A. Rubens
Jodie C. Liu
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000

James N. Kramer
ORRICK, HERRINGTON &
SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105

Lauren A. Weber
ORRICK, HERRINGTON &
SUTCLIFFE LLP
401 Union Street, Suite 3300
Seattle, WA 98101

Counsel for Amici Curiae

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America states that it is a nonprofit organization. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

The Securities Industry and Financial Markets Association (SIFMA) states that it is a nonprofit organization. SIFMA has no parent company, and no publicly held company has 10% or greater ownership in SIFMA.

TABLE OF CONTENTS

	Page
RULE 26.1 CORPORATE DISCLOSURE STATEMENT.....	i
TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICI CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	5
I. Rule 23(f) Review Is Needed Because District Courts Are Failing To Scrutinize Damages Models As Required Under <i>Comcast</i>	5
II. Rule 23(f) Review Is Needed Because District Courts Are Misapplying <i>Goldman’s</i> Framework For Analyzing Price Impact.	8
III. The Petition Raises Important And Recurring Legal Issues With Significant Implications For The U.S. Securities Markets And Economy.....	12
CONCLUSION.....	15
CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Apple Inc. Sec. Litig.</i> , No. 19-cv-2033, 2022 WL 354785 (N.D. Cal. Feb. 4, 2022).....	10
<i>Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.</i> , 77 F.4th 74 (2d Cir. 2023).....	11
<i>AT&T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2011).....	14
<i>Basic Inc. v. Levinson</i> , 485 U.S. 224 (1988).....	3
<i>Chamberlan v. Ford Motor Co.</i> , 402 F.3d 952 (9th Cir. 2005).....	7
<i>City of Sunrise Firefighters’ Pension Fund v. Oracle Corp.</i> , No. 18-cv-4844, 2022 WL 1459567 (N.D. Cal. May 9, 2022).....	6
<i>Comcast Corp. v. Behrend</i> , 569 U.S. 27 (2013).....	2, 5, 6
<i>Crews v. Rivian Auto., Inc.</i> , No. 2:22-cv-01524, 2024 WL 3447988 (C.D. Cal. July 17, 2024).....	10, 11
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018).....	13
<i>In re FirstEnergy Corp. Sec. Litig.</i> , 149 F.4th 587 (6th Cir. 2025)	5
<i>Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.</i> , 594 U.S. 113 (2021).....	3, 4, 8, 9, 10, 13
<i>Halliburton Co. v. Erica P. John Fund, Inc.</i> , 573 U.S. 258 (2014).....	10

Jaeger v. Zillow Grp., Inc.,
 No. 24-6605, 2025 WL 2741642 (9th Cir. Sept. 26, 2025)..... 12

Junge v. Geron Corp.,
 No. 20-cv-547, 2022 WL 1002446 (N.D. Cal. Apr. 2, 2022)..... 6

Lab’y Corp. of Am. Holdings v. Davis,
 605 U.S. 327 (2025)..... 14

In re Mattel, Inc. Sec. Litig.,
 No. 19-cv-10860, 2021 WL 4704578 (C.D. Cal. Oct. 6, 2021)..... 10

In re Qualcomm Inc. Sec. Litig.,
 No. 17-cv-121, 2023 WL 2583306
 (S.D. Cal. Mar. 20, 2023) 10

SEB Inv. Mgmt. AB v. Wells Fargo & Co.,
 No. 22-cv-3811, 2025 WL 1243818 (N.D. Cal. Apr. 25, 2025)..... 6

Weston v. DocuSign, Inc.,
 348 F.R.D. 354 (N.D. Cal. 2024) 6

Wolff v. Aetna Life Ins.,
 77 F.4th 164 (3d Cir. 2023)..... 14

Rules

Fed. R. Civ. P. 23..... 2

Fed. R. Civ. P. 23(b)(3) 6

Fed. R. Civ. P. 23(f) 5, 8

Other Authorities

Per Axelson & Matthew D. Cain, *What Is Price Impact? How the Goldman Decisions Are Reshaping Shareholder Class Actions*, 22 Berkeley Bus. L.J. 441 (2025)..... 9

Cornerstone Research, *Securities Class Action Filings—2025 Year in Review* (2026), <https://tinyurl.com/fru6dk7x>..... 13, 14

Geoffrey Rapp, *Rewiring the DNA of Securities Fraud Litigation: Amgen’s Missed Opportunity*, 44 Loy. U. Chi. L.J. 1475 (2013) 14

U.S. Chamber Inst. for Legal Reform, *A Rising Threat: The New Class Action Racket That Harms Investors and The Economy* (2018), <https://tinyurl.com/2v5amm9t> 14

INTEREST OF AMICI CURIAE¹

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is representing the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Securities Industry and Financial Markets Association (SIFMA) is a securities-industry trade association representing the interests of hundreds of securities firms, banks, and financial-asset managers across the United States. SIFMA's mission is to support a strong financial sector, while promoting investor opportunity, capital

¹ No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or any person or entity other than amici, their members, and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

formation, job creation, economic growth, and the cultivation of public trust and confidence in the financial markets. SIFMA routinely files amicus briefs in cases that present important questions affecting securities-industry participants.

This case involves important and recurring issues concerning standards for class certification in private securities actions, which are directly relevant to amici's missions of promoting fair and efficient markets and protecting industry participants from the costs of improperly certified securities class actions.

INTRODUCTION AND SUMMARY OF ARGUMENT

The district court's certification decision exacerbates mounting confusion in this circuit over two crucial issues affecting securities class actions. This Court's intervention is needed to ensure that district courts adhere to the rigorous standards for class certification under Rule 23, as elaborated in two critical decisions of the Supreme Court.

First, numerous district courts in this circuit have been excusing plaintiffs from their clear obligation under *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), to put forward a coherent classwide damages model that is tethered to their theory of liability. Rather than holding

plaintiffs to that standard, courts have continued to certify classes based on plaintiffs' mere promise to deliver a damages model at a later stage of the proceeding—even if the litigation never proceeds to that stage, given the settlement pressure imposed by an erroneous certification of a class.

Second, district courts are misapplying the Supreme Court's guidance in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 594 U.S. 113 (2021), on how to analyze price impact. This issue is critical to class certification in securities cases like this one, where the plaintiffs claim that defendants' misrepresentations caused a company's stock price to remain inflated until the market reacted to the revelation of the truth. To overcome individualized issues in proving that they relied on a misstatement, plaintiffs often invoke a rebuttable presumption of reliance under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), which assumes that a stock's market price reflects the alleged misrepresentation. *Goldman* reaffirms that defendants may defeat that *Basic* presumption by "prov[ing] a lack of price impact"—i.e., that the misrepresentation did not affect the stock's price—"by a preponderance of the evidence." 594 U.S. at 117. *Goldman* further requires courts to

consider whether there is a “mismatch between the contents of the [alleged] misrepresentation and the corrective disclosure,” which cuts against class certification. *Id.* at 123. But many district courts are failing to follow that instruction, thereby depriving defendants of their right to rebut the *Basic* presumption by severing the asserted link between the alleged misrepresentation and the corrective disclosure.

The decision below underscores the need for this Court’s guidance on both questions. The district court here joined the unfortunate trend of allowing an expert’s generic invocation of “out-of-pocket” damages, along with an assurance that a suitable model will be developed later, to satisfy *Comcast*’s strictures. And the court departed from *Goldman*’s framework for evaluating mismatches between alleged misrepresentations and corrective disclosures, treating it as sufficient that different statements touched on the same general subject matter.

Both independently and taken together, these errors in the district court’s analysis merit interlocutory review. Each issue arises frequently in securities class actions, and each has recently prompted

courts of appeals to grant Rule 23(f) petitions.² Without this Court’s intervention and precedential guidance, district courts will continue to misapply these decisions and improperly certify classes, thereby inflicting unnecessary costs on litigants, businesses, and the U.S. economy.

ARGUMENT

I. Rule 23(f) Review Is Needed Because District Courts Are Failing To Scrutinize Damages Models As Required Under *Comcast*.

As a prerequisite to class certification, *Comcast* requires plaintiffs to supply “*evidentiary proof*” that “damages are capable of measurement on a classwide basis” in a manner “consistent with [the plaintiffs’] liability case.” 569 U.S. at 33-35 (emphasis added). A damages model that “does not even attempt” to measure damages under the plaintiffs’

² See *In re FirstEnergy Corp. Sec. Litig.*, 149 F.4th 587, 597, 623 (6th Cir. 2025) (vacating and remanding for the district court to conduct the proper damages analysis under *Comcast*); *In re Boeing Co. Sec. Litig.*, No. 25-1492 (4th Cir. May 2, 2025), Dkt. 2 (granting review on *Comcast* issue); *Hall v. Johnson & Johnson*, No. 24-8001 (3d Cir. Feb. 21, 2024), Dkt. 10 (granting review on *Goldman* price-impact issue); *Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, No. 21-3105 (2d Cir. Mar. 9, 2022), Dkt. 101 (granting review on price-impact issue); see also *Jaeger v. Zillow Grp., Inc.*, No. 24-5473 (9th Cir. Oct. 24, 2024), Dkt. 9 (granting review on *Goldman*’s “mismatch” standard but ultimately resolving the case in an unpublished memorandum disposition).

theory “cannot possibly establish that damages are susceptible of measurement across the entire class for purposes of Rule 23(b)(3).” *Id.* at 35. And class certification is improper unless the district court conducts a “rigorous analysis,” which “frequently entail[s] ‘overlap with the merits of the plaintiff[s]’ underlying claim,” to determine that the plaintiffs have satisfied Rule 23(b)(3)’s predominance requirement. *Id.* at 33-34.

District courts in this circuit have been diluting *Comcast* by giving plaintiffs a pass at the certification stage when their damages expert asserts generic theories like “out-of-pocket damages,” supported by a promise to develop a damages model later in the case.³ In this context, however, later usually means never. Most defendants face the risk of

³ See, e.g., *SEB Inv. Mgmt. AB v. Wells Fargo & Co.*, No. 22-cv-3811, 2025 WL 1243818, at *8 (N.D. Cal. Apr. 25, 2025) (“*Comcast* does not require Plaintiffs to produce an ‘out-of-pocket damages method that applies specifically to this case.’” (citation omitted)); *Weston v. DocuSign, Inc.*, 348 F.R.D. 354, 367-69 (N.D. Cal. 2024) (certifying a class where the plaintiffs’ expert offered the same basic damages model that he had “used in ‘virtually every matter’” in which he participated as an expert); *City of Sunrise Firefighters’ Pension Fund v. Oracle Corp.*, No. 18-cv-4844, 2022 WL 1459567, at *8-9 (N.D. Cal. May 9, 2022) (certifying a class based on the plaintiffs’ expert’s opinion “that a class-wide ‘out-of-pocket’ damages model ... is feasible”); *Junge v. Geron Corp.*, No. 20-cv-547, 2022 WL 1002446, at *6-7 (N.D. Cal. Apr. 2, 2022) (collecting similar cases).

crushing liability after class certification—Plaintiffs here seek billions of dollars in damages—so “certification sounds the death knell of the litigation” on the merits because defendants cannot, as a practical matter, take their chances by litigating the case through judgment. *Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 958 (9th Cir. 2005) (citation omitted).

The district court’s certification decision here exemplifies this error, as it cannot be squared with *Comcast*’s directive to conduct a rigorous analysis of Plaintiffs’ class-damages theory. Plaintiffs have posited a complex “inflation-maintenance” theory of liability that rests on “nine alleged misstatements” about cryptocurrency mining and its impact on the demand for gaming GPUs. A18.⁴ Plaintiffs’ expert, Dr. Mason, admitted that the artificial inflation at issue might differ throughout the class period based on various factors, such as cryptocurrency prices and market sentiment. *See* D. Ct. Dkt. 237-2 at 31 & n.153. But as to damages, Dr. Mason offered the vague assurance that he still could “apply standard economic, financial, and valuation tools and techniques.” *Id.* at 31 n.153. Although the district court

⁴ “A” citations refer to the addendum to Defendants’ petition.

recognized that Plaintiffs’ liability theory presents “complicating factors in calculating inflation and addressing loss causation,” the court certified the class on its speculation that Plaintiffs might develop a working damages model down the road. A48.

That was error. *Comcast* does not permit district courts to accede to an expert’s generalized assertions about an as-yet-undeveloped damages model simply because “the class may be decertified” later if that model turns out to be deficient. *Contra id.* (citation omitted). *Comcast* demands a rigorous inquiry into plaintiffs’ damages models *before* a district court certifies a class, not at a later stage that may never arrive.

II. Rule 23(f) Review Is Needed Because District Courts Are Misapplying *Goldman*’s Framework For Analyzing Price Impact.

The Supreme Court cautioned in *Goldman* that there is “less reason to infer front-end price inflation ... from ... back-end price drop”—indeed, any such inference “starts to break down”—where “there is a mismatch between the contents of the misrepresentation and the corrective disclosure.” 594 U.S. at 123. Here, however, the district court expressed uncertainty about how to assess price impact under

what it described as the “somewhat new and somewhat difficult to apply *Goldman* procedure.” D. Ct. Dkt. 284 at 2-3. And lacking appellate precedents applying *Goldman*, other district courts have similarly struggled in their analysis, often reaching outcomes irreconcilable with the Supreme Court’s holding. 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) (noting “a lack of consensus in [post-*Goldman*] opinions,” especially “at the class certification stage”). That confusion extends to multiple subsidiary questions under *Goldman*, including the following:

Burden. Under *Goldman*, defendants “bear the burden of persuasion to prove a lack of price impact by a preponderance of the evidence.” 594 U.S. at 117. The Supreme Court explained that this burden “will have bite only when the court finds the evidence in equipoise—a situation that should rarely arise.” *Id.* at 127. The district court here was “not entirely sure what *Goldman* meant by this observation” and opined that it should be difficult for a defendant to show a “lack of *any* price impact.” A16 n.12. But as *Goldman* explains, this inquiry must be sensitive to the “generic nature” of front-end

statements and any resulting mismatch between those statements and a back-end disclosure. 594 U.S. at 123. That is why in many cases, defendants may readily sever the link. Otherwise, the *Basic* presumption will become “largely irrebuttable” in practice, which would “effectively eliminate[]” the requirement that plaintiffs prove reliance. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 296-97 (2014) (Thomas, J., concurring in the judgment).

Identity in subject matter. Several district courts in this circuit have been too quick to find price impact merely because the front-end and back-end statements address the same general subject matter or somehow “relate” to one another.⁵ Similarly here, the district court relied on the fact that certain analyst reports addressed the same

⁵ See, e.g., *In re Apple Inc. Sec. Litig.*, No. 19-cv-2033, 2022 WL 354785, at *9 (N.D. Cal. Feb. 4, 2022) (finding price impact where disclosures “were directly related to the subject matter of” alleged misrepresentations); *In re Mattel, Inc. Sec. Litig.*, No. 19-cv-10860, 2021 WL 4704578, at *5 (C.D. Cal. Oct. 6, 2021) (asserting that a “corrective disclosure need not be a ‘mirror image’ disclosure”); *Crews v. Rivian Auto., Inc.*, No. 2:22-cv-01524, 2024 WL 3447988, at *14 (C.D. Cal. July 17, 2024) (analyzing whether back-end disclosure was sufficiently “related to” front-end misrepresentations). *But see In re Qualcomm Inc. Sec. Litig.*, No. 17-cv-121, 2023 WL 2583306, at *14-15 (S.D. Cal. Mar. 20, 2023) (properly requiring that the back-end disclosure “directly contradict” the alleged front-end misstatements).

general topic as the alleged misstatements—the extent to which NVIDIA’s revenue depended on cryptocurrency-mining—to salvage the presumption of reliance despite acknowledging “some mismatch in subject matter.” A39-40. But as the Second Circuit has explained, “commentary touching upon only the same subject matter” is not enough to dispel a mismatch under *Goldman* without some further inquiry into the specificity of the relevant statements. *Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 104 (2d Cir. 2023).

Relevance of loss causation. As the district court purported to recognize, “[a]voiding a ‘mismatch’ ‘requires a closer fit (even if not precise) between the front- and back-end statements than courts have required when analyzing the loss causation element of securities fraud.’” A23. But other district courts have invoked loss-causation caselaw in analyzing mismatch at the class-certification stage. *E.g.*, *Crews*, 2024 WL 3447988, at *13-16. And in a recent unpublished opinion, a panel of this Court declined to find error in a district court’s decision to “look[] to loss-causation case law for guidance,” even while acknowledging that the loss-causation standard and *Goldman’s*

standard are not the same. *Jaeger v. Zillow Grp., Inc.*, No. 24-6605, 2025 WL 2741642, at *1 (9th Cir. Sept. 26, 2025).

* * *

This Court has yet to offer precedential guidance on any of these consequential *Goldman* questions. Its unpublished disposition in *Jaeger* described the loss-causation and price-impact inquiries as “substantially similar” but also acknowledged that they differ, *id.*, without providing any explanation of how they may diverge. District courts similarly lack instruction from this Court on how to understand *Goldman*’s discussion of the burden of persuasion, or how to evaluate mismatch when the statements in question address the same general subject matter. Unless this Court grants review and addresses those issues, district courts in this circuit will continue to employ conflicting approaches, and defendants will be deprived of a fair opportunity to rebut the presumption of reliance, as required under *Goldman*.

III. The Petition Raises Important And Recurring Legal Issues With Significant Implications For The U.S. Securities Markets And Economy.

These issues under *Comcast* and *Goldman* arise frequently in securities class actions and warrant interlocutory review. As noted,

plaintiffs now routinely obtain class certification based on promises of a forthcoming damages model indistinguishable from those Plaintiffs' expert offered here. And securities plaintiffs increasingly rely on price-impact theories like the one asserted here, claiming that misrepresentations inflated the stock price until a corrective disclosure brought it back down. *See Goldman*, 594 U.S. at 123 (describing “inflation-maintenance theory”). Meanwhile, the Ninth Circuit continues to be one of the most popular circuits for securities class-action filings, *see* Cornerstone Research, *Securities Class Action Filings—2025 Year in Review*, 22 (2026), <https://tinyurl.com/fru6dk7x>, which will no doubt continue if this circuit's class-certification law remains favorable to plaintiffs.

Resolving district courts' ongoing confusion is important not only for the state of the law, but also for the stability of financial markets and the health of the U.S. economy. Class certification represents a critical inflection point for class-action litigation: If a class is certified, defendants face intense and often insurmountable pressure “to settle even unmeritorious claims.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 524 (2018) (citation omitted). With hundreds of millions or billions of

dollars at stake, even companies with strong defenses on the merits will likely find just “a small chance of a devastating loss” at trial too risky to proceed. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011). Thus, although an order certifying a class is “not *technically* a final order,” it is “often decisive as a practical matter.” *Wolff v. Aetna Life Ins.*, 77 F.4th 164, 167 (3d Cir. 2023) (citation omitted); *see also* Geoffrey Rapp, *Rewiring the DNA of Securities Fraud Litigation: Amgen’s Missed Opportunity*, 44 Loy. U. Chi. L.J. 1475, 1478 (2013) (recognizing that securities cases “almost always settle” after class certification); Cornerstone Research, *supra*, at 16 (from 1997 to 2025, “only 0.4%” of federal securities class actions “reached trial”).

As Justice Kavanaugh recently observed of class actions generally, given the costs of these “coerced settlements,” “[o]verbroad and incorrectly certified classes can ultimately harm consumers, retirees, and workers, among others.” *Lab’y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting from dismissal of writ of certiorari). The same is true of improperly certified securities class actions specifically, which “inflict serious harm on investors, companies, the capital markets, and America’s economy.” U.S. Chamber Inst. for

Legal Reform, *A Rising Threat: The New Class Action Racket That Harms Investors and The Economy*, 6 (2018),

<https://tinyurl.com/2v5amm9t>.

CONCLUSION

This Court should grant Defendants' petition.

April 15, 2026

Respectfully submitted,

Jonathan D. Urick
Janet Galeria
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062

Kevin Carroll
SECURITIES INDUSTRY AND
FINANCIAL MARKETS
ASSOCIATION
1099 New York Ave., NW
6th Floor
Washington, DC 20001

/s/ Daniel A. Rubens

Daniel A. Rubens
Jodie C. Liu
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000

James N. Kramer
ORRICK, HERRINGTON &
SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105

Lauren A. Weber
ORRICK, HERRINGTON &
SUTCLIFFE LLP
401 Union Street, Suite 3300
Seattle, WA 98101

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the length limitations of Federal Rule of Appellate Procedure 29 and Ninth Circuit Rules 5-2 and 32-3 because, excluding the portions excepted by the rules, the brief contains 2,790 words.

This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a) because the brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in a Century Schoolbook 14-point font.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/Daniel A. Rubens

Daniel A. Rubens

Counsel for Amici Curiae