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,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, WASHINGTON LEGAL FOUNDATION, AND BUSINESS ROUNDTABLE IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

Rules

Other Authorities

TABLE OF AUTHORITIES
(continued)

Page(s)

INTEREST OF *AMICI*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents 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 to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

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 formation, job creation, economic growth, and the cultivation of public trust and confidence in the financial markets.

Washington Legal Foundation ("WLF") is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes and defends free enterprise, individual rights, limited government, and the rule of law. WLF often appears as an amicus before this Court and federal appellate courts across the country in disputes over the proper scope

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund its preparation or submission. Counsel for all parties were timely notified under Rule 37.2 of *amici*'s intent to file this brief.

of the federal securities laws.

Business Roundtable represents more than 200 chief executive officers of America's leading companies. Business Roundtable CEOs lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. gross domestic product. Business Roundtable was founded on the belief that businesses should play an active and effective role in the formulation of public policy, and Business Roundtable members develop and advocate for policies to promote a thriving U.S. economy and expanded opportunity for all. Business Roundtable participates in litigation as amicus when important business interests are at stake.

Amici have a strong interest in this case. If the Ninth Circuit's decision were to stand, it would expose American businesses to costly securities class-action lawsuits for allegedly defrauding the market, based on supposed "corrective statements" that merely involve the same general subject as—but do not actually correct the content of—a prior alleged misrepresentation. That result would be inconsistent with basic securities-law principles established by decades of this Court's precedent.

SUMMARY OF ARGUMENT

Securities class-action plaintiffs increasingly allege that companies have committed fraud on the market by making misrepresentations designed not to increase their stock's price, but simply to keep it from falling. Such "inflation-maintenance" theories pose particular difficulties for measuring the "price impact" of the alleged misrepresentations, because plaintiffs must show how much the stock price *would have* fallen but for the misrepresentation. *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.*, 594 U.S. 113, 123 (2021). Without showing that price impact, plaintiffs cannot leverage the "rebuttable presumption" established in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), that investors relied on the misrepresentation to their detriment when trading the company's stock. *Goldman*, 594 U.S. at 123. Hence, plaintiffs must attempt to show that a later disclosure corrected the misrepresentation and then claim "the back-end price drop" from the disclosure "equals front-end inflation" from the misrepresentation. *Id.* If "there is a mismatch between the contents of the misrepresentation and the corrective disclosure," or if the supposed disclosure otherwise does not actually *correct* anything not already known, then that "inference … starts to break down." *Id.*

This Court held in *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014), and reaffirmed in *Goldman*, 594 U.S. at 119, that defendants must "be allowed to defeat the [*Basic*] presumption at the class certification stage through evidence that the misrepresentation did not in fact affect the stock price," *Halliburton*, 573 U.S. at 279. The Ninth Circuit in this case made a fundamental legal error that deprived Zillow Group, Inc. ("Zillow")—and threatens to deprive other defendants—of that right. It did this by allowing Plaintiffs to prove price impact and certify a class based on a "disclosure" that did not address the same content as, and so could not have "corrected," any prior misrepresentation.

The Ninth Circuit's reasoning is a recipe for unwarranted class certifications in contravention of this Court's precedent. And the decision's impact is not limited to the Ninth Circuit: it threatens to distort securities class actions nationwide. The Ninth Circuit's ruling, though unpublished, represents that court's considered judgment and will govern securities cases throughout the circuit—especially since the Ninth Circuit almost never grants review of class-certification decisions in securities cases and so will be unlikely to revisit the issue anytime soon. The court of appeals' lax standard for showing that disclosures were corrective also conflicts with the standard in the Second Circuit, whose precedent faithfully follows this Court's decisions by requiring corrective statements to actually correct a prior misrepresentation's content. Because the panel below has made inflation-maintenance cases far easier to certify in the Ninth Circuit, that circuit—already one of the top forums for securities suits—will now draw class-action plaintiffs away from the Second Circuit in search of more certain class certifications. As inflation-maintenance cases become increasingly popular, the Ninth Circuit's misguided reasoning threatens to saddle businesses throughout the nation with baseless but costly class-action lawsuits.

This case meets every rationale for certiorari review. It conflicts with *Halliburton* and *Goldman*, *see* Sup. Ct. R. 10(c), and with a decision from another court of appeals, *see* Sup. Ct. R. 10(a). The questions the petition raises are also of exceptional importance to a wide swath of securities cases, especially because the decision below is likely to establish a de facto nationwide rule in the growing category of "corrective statement" cases. *See* Sup. Ct. R. 10(c). And absent this Court's review, the decision below will have substantial adverse consequences for the business community.

The Court should grant certiorari and reverse.

ARGUMENT

I. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENT AND OTHER CIRCUITS' DECISIONS AND IS PLAINLY WRONG

As the Petition explains in greater detail, the Ninth Circuit made a significant legal error that defies this Court's precedent—and as a result conflicts with Second Circuit case law that faithfully follows this Court's precedent—while also undermining evidentiary standards intended to prevent meritless class certification. The Ninth Circuit panel held that a disclosure is sufficiently corrective if it merely concerns the same general subject as the alleged misrepresentation, without requiring that the disclosure actually *correct* the misrepresentation. Pet. App. 4a. This error functionally deprives defendants of any opportunity to disprove the price-impact prerequisite to *Basic*'s reliance presumption—an opportunity that *Halliburton* and *Goldman* guarantee.

A. The Ninth Circuit's Holding Contradicts *Halliburton* and *Goldman* and Thereby Exacerbates a Circuit Split.

The Ninth Circuit's decision enables class-action plaintiffs to prove price impact from supposedly "corrective" disclosures that do not actually correct a prior misrepresentation. *See* Pet. App. 4a. The Ninth Circuit's ruling flouts this Court's precedent and conflicts with a Second Circuit ruling that faithfully follows *Halliburton* and *Goldman*.

The Ninth Circuit refused to require that a proposed corrective disclosure actually correct a prior factual misrepresentation. The original alleged misrepresentations here consisted of broad suggestions "that Zillow, while struggling to get its pricing model right, had made 'progress ... in strengthening [its] pricing models.'" Pet. App. 4a. The supposed corrective disclosure was Zillow's later decision to "close[] the entire home-buying side of its business because it had been 'unable to accurately forecast future home prices.'" *Id.* Zillow's later determination that it ultimately could not accurately forecast home prices does not, of course, contradict its earlier statement that it was "struggling" with its pricing model but believed it was making "progress" on it. *Id.*[2] The world is lit-

[2] Jaeger had also argued, and the district court had agreed, that Zillow's earlier statements were misrepresentations because they allegedly failed to reveal that Zillow had used manual overlays to alter its pricing algorithm. Pet. 4-5, 13; Pet. App. 22a-23a. However, Zillow pointed out—and the Ninth Circuit did not disagree—that "it never revealed the use of the manual

tered with failed inventions, would-be scientific discoveries, and business ventures that showed initial promise but never panned out. And Zillow admitted to facing difficulties, which would place any reasonable investor on notice that its efforts to develop a pricing algorithm might not succeed. Yet the court found it sufficient that both the alleged misrepresentations and the alleged corrective disclosures dealt with "Zillow's home-pricing struggles." *Id.* The mere similarity of the subject matter, the Ninth Circuit felt, meant that "Zillow's front-end and back-end statements are *matched enough* under *Goldman*." *Id.* (emphasis added).

The Ninth Circuit's ruling followed in the footsteps of the Third Circuit, which likewise allowed a class to be certified in an inflation-maintenance case simply because "there [was] no mismatch between the *subject* of the alleged misrepresentation" by the defendant "and the content of the disclosures." *San Diego Cnty. Emps. Ret. Ass'n v. Johnson & Johnson*, 2025 WL 2176586, at *4 (3d Cir. July 30, 2025) (emphasis added). There, the plaintiffs pointed to various press releases, websites, and other statements announcing jury verdicts, new lawsuits, or other developments in asbestos-related tort suits against Johnson & Johnson (J&J), which supposedly contradicted prior J&J statements stating its products did not contain dangerous levels of asbestos. *Id.* at *1 & n.3. The asbestos plaintiffs' bar either made or was instrumental to

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overlays until . . . after the close of the class period." Pet. App. 4a. The Ninth Circuit relied instead on the statements suggesting Zillow "had made 'progress'" on its pricing models. *Id.*

each of the supposed corrective disclosures, each of which repeated information that was already available. *Id.* at *1 n.3, *3. And the district court "made no correctiveness findings" at all. *Id.* at *10 (Chung, J., dissenting). Yet the Third Circuit majority did not remand for the district court to make such findings; nor did the majority do the work itself to match up any fact in any alleged corrective disclosure with any alleged misrepresentation to show that the former corrected the latter. *See id.* at *4 (majority opinion). Instead, the Third Circuit opined that "market reaction to the disclosures is capable of shedding light on the price impact of the alleged misrepresentations" merely because they involved the same "subject." *Id.*

These decisions flatly contradict this Court's opinion in *Goldman*. There, the Court held that the key "inference" for inflation-maintenance cases—"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." *Goldman*, 594 U.S. at 123. For instance, there may be such a mismatch "when the earlier misrepresentation is generic (*e.g.*, 'we have faith in our business model') and the later corrective disclosure is specific (*e.g.*, 'our fourth quarter earnings did not meet expectations')." *Id.* This is so even though one could say that such a disclosure "revealed new information" relevant to the general topic of the company's financial health. Pet. App. 4a. More specific misrepresentations likewise may not match later disclosures if the latter do not actually involve the same "content" as the former, so that "it is less likely that the specific disclosure actually corrected the [earlier] misrepresentation." *Goldman*, 594 U.S. at 123.

By accepting broad subject-level matches as sufficient to prove that a disclosure is corrective, the Ninth and Third Circuits also split with the Second Circuit. Following this Court's direction, the Second Circuit has held that a corrective disclosure must actually correct an alleged misrepresentation. *See Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 80-81 (2d Cir. 2023) (*Goldman II*). "[R]equiring only a general front-end—back-end subject matter match to, effectively, concoct a highly specific truthful substitute does not meaningfully account for the Supreme Court's guidance in *Goldman*." *Id.* at 100-01. The Ninth and Third Circuits allow for just the sort of concocted matches that the Second Circuit rightly prohibits.[3]

B. The Ninth Circuit's Standard Allows Plaintiffs to Certify a Class Without Any Price Impact.

The Ninth Circuit's decision is particularly dangerous for securities defendants because it allows plaintiffs not merely to state a claim but to certify a class even when defendants meet this Court's stand-

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[3] Underscoring the importance of the split in standards, the Third Circuit cited in support of its watered-down test a pre-*Halliburton*, pre-*Goldman* Second Circuit case that did not address matching. *See Johnson & Johnson*, 2025 WL 2176586, at *4 n.10. In so doing, the Third Circuit overlooked the Second Circuit's post-*Goldman* precedent that represents the Second Circuit's current rule. *See* Pet. 17-18.

ards for disproving price impact. The fact that a misrepresentation has a price impact is "*Basic*'s fundamental premise," and price impact "thus has everything to do with the issue of predominance at the class certification stage." *Halliburton*, 573 U.S. at 283. This Court therefore has admonished that "if reliance is to be shown through the *Basic* presumption, the publicity and market efficiency prerequisites must be *proved* before class certification." *Id.* (emphasis added).

This requirement is an application of this Court's more general class-action standards. "Rule 23 does not set forth a mere pleading standard," allowing the court to make all inferences in the plaintiff's favor and fill in any missing details. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Rather, any party seeking to certify a class "must affirmatively demonstrate his compliance with the Rule." *Id.* This means that plaintiffs must "satisfy *through evidentiary proof* at least one of the provisions of Rule 23(b)"—here, Rule 23(b)(3), including its predominance requirement. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013); *see Halliburton*, 573 U.S. at 275 (noting that the Court's class-action "decisions have made clear that plaintiffs wishing to proceed through a class action must actually prove—not simply plead—that their proposed class satisfies each requirement of Rule 23, including (if applicable) the predominance requirement of Rule 23(b)(3)" (emphasis omitted)). If there is no common evidence of price impact, plaintiffs will not be able to show that common issues predominate.

To avoid this problem, the Ninth Circuit affirmed the district court's class certification by effectively making it impossible for Zillow to disprove price impact. It did so in two ways. First, it reasoned that Zillow's later disclosure *could have* communicated new information to investors because the disclosure "suggested that its earlier statements *may have* obscured how Zillow's pricing model misfired." Pet. App. 4a (emphasis added). Second, there was a "price drop immediately after the alleged corrective disclosures," and the panel thought it permissible for the district court to treat this as significant evidence that the drop was *caused* by the disclosures. Pet. App. 3a.[4]

Both rationales are wrong. The first allows plaintiffs to defeat defendants' showing of no price impact based solely on judges' intuitions about what *might* give the market additional signals. *See* Pet. App. 4a. This sort of speculation is inappropriate at any stage. But it is especially problematic at class certification, where the plaintiffs must "*prove[]*" most of the prerequisites for the *Basic* presumption and defendants have the right to "seek to defeat the *Basic* presumption . . . through direct as well as indirect price impact

[4] The Ninth Circuit also relied on the idea that some of the information "disclosed" was already public but was too obscure to truly affect the markets. *See* Pet. App. 4a-5a. However, the plaintiffs already had to prove market efficiency to invoke *Basic* at the class-certification stage. *See Halliburton*, 573 U.S. at 283. A panel cannot simultaneously credit that finding and also assume that quantified information already disclosed *seven times* to the public, Pet. 28, did not reach or affect the market until the eighth disclosure.

evidence." *Halliburton*, 573 U.S. at 283 (emphasis added).

As to the second rationale, the panel erroneously treated the fact that the stock price moved *after* a disclosure as acceptable proof that the price moved *because* the disclosure corrected a misrepresentation. Pet. App. 3a. But "*[p]ost hoc ergo propter hoc* is the name of a logical fallacy, not a reliable means of meeting one's burden of proof." *Aluminum Recovery Techs., Inc. v. ACE Am. Ins. Co.*, 94 F.4th 561, 563 (7th Cir. 2024). Price impact requires *causation*, not mere temporal correlation. *See In re Allstate Corp. Sec. Litig.*, 966 F.3d 595, 612 (7th Cir. 2020). If "the alleged misrepresentation did not, for whatever reason, *actually affect* the market price, . . . then the presumption of reliance would not apply." *Halliburton*, 573 U.S. at 269 (emphasis added).[5]

It is easy to see why this causation requirement exists. A defendant may, of course, be able to show

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[5] The Ninth Circuit also expressly invoked the standard for determining loss causation when analyzing the relevance of a price drop to the price-impact inquiry. Pet. App. 3a. But this Court has made clear that loss causation and price impact are "distinct concept[s]." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 814 (2011). Because price impact is not nearly as obvious in inflation-maintenance cases as when an alleged misrepresentation itself raised the stock's price, merely showing that a price drop occurred after an alleged corrective disclosure cannot prove price impact without showing "a closer fit" between the alleged disclosure and the earlier alleged misrepresentation. *Goldman II*, 77 F.4th at 99 n.11. But the Ninth Circuit's analysis did not even establish loss causation, because it did not show that *fraud* was what "caused the loss for which the plaintiff seeks to recover damages." 15 U.S.C. § 78u-4(b)(4).

that the supposed corrective disclosure had no effect on the stock price because the stock price did not move. *But see Johnson & Johnson*, 2025 WL 2176586, at *4 n.12 (holding that even "the absence of a statistically significant decline after the disclosure is not a barrier to a finding that the press release affected the stock price"). But a defendant also can show that, though the stock's price dropped, it did so for reasons unrelated to the disclosure of new corrective information. Zillow's announcement that it was writing off its housing stock and closing an entire business line—with the resultant dip in expected future revenue for the company—certainly could be enough on its own to explain a significant drop in stock price. *See* Pet. 14. Here that was the far likelier culprit, since "Zillow's difficulties in predicting home prices"—the supposed material omission from its earlier statements—had in fact been "specifically quantified and disclosed to the market *seven times*" before the alleged corrective disclosure. Pet. 28. Indeed, Zillow explained below that most of the price drop occurred because of the closure of the home-purchasing business line. Pet. 14. Yet the district court and the Ninth Circuit operated under the unfounded assumption that a stock drop after an alleged disclosure must mean the disclosure was what caused the drop.

Or consider the Third Circuit's decision in *Johnson & Johnson*. The panel majority there held, among other things, that a news story announcing a verdict in a J&J asbestos trial counted as a corrective disclosure in part because stock prices fell after the story. *Johnson & Johnson*, 2025 WL 2176586, at *4 nn.11-

12. But a new *event*, such as a trial verdict, may trigger a stock-price drop even if the event is based on already-public information, like evidence of malfeasance, whose initial disclosure had already dispelled any prior misrepresentation. *See id.* at *10 (Chung, J., dissenting). The stock price may even drop as a result purely of the *amount* of an adverse verdict, which may differ from investors' expectations, *see id.*, or may significantly affect a company's bottom line. The Third Circuit panel confused such events, which can lower stock prices by creating bad publicity, with the actual revelation of the underlying information, which if released in an efficient market already would have corrected any misrepresentation.

The Ninth and Third Circuit's erroneous legal standard substitutes mere closeness in time for evidence of causation. And it allows judges' speculation about what effects a company's announcement might have on the markets to override the evidence the parties actually present. That such threadbare analysis could stand in for evidence of causation at the class-certification stage simply underscores how far the Ninth and Third Circuit's rule deviates from what this Court's precedents require.

II. THE STANDARD FOR REBUTTING THE *BASIC* PRESUMPTION IS OF GREAT IMPORTANCE

The core question raised by the petition—what must be proven to defeat a rebuttal of the *Basic* presumption in corrective-disclosure cases—is of exceptional importance. America's business community already is fighting off a wave of inflation-maintenance cases. Left to spread, the lax analysis that the Ninth

Circuit employed here could turn the wave into a tsunami, placing immense pressure on businesses of all sorts to settle unmeritorious cases to avoid crushing financial exposure.

A. As shown below, corrective-disclosure theories, and inflation-maintenance theories in particular, have become common in securities class-action lawsuits. The Ninth Circuit's decision invites highly dubious class actions predicated on supposed "corrective disclosures" that do not actually correct any prior statements. As two observers noted, this "more relaxed standard could increase litigation risks and settlement pressures for companies." Joni Jacobsen & Angela M. Liu, *Securities and Derivative Litigation: Quarterly Update*, Harvard L. Sch. F. on Corp. Governance (Mar. 18, 2025), https://perma.cc/G25X-2E36. One academic observer similarly noted that the Third Circuit's *Johnson & Johnson* decision was "a gift to plaintiffs." Ann Lipton, *The Third Circuit Says Markets are Efficient but Not Too Efficient*, Bus. Law Prof Blog (Aug. 1, 2025), https://perma.cc/L9YX-ASU8. And this "gift" will keep on giving—not just at class certification, "but also [on] motions to dismiss, where arguments similar to" Zillow's and J&J's have, before now, often "succeed[ed] in getting complaints dismissed." *Id.*

The panel's errors will be felt across the country, far beyond this case or the circuit that decided it. Given the Ninth Circuit's size, it unsurprisingly vies with the Second Circuit for the greatest number of securities class actions of any circuit in the country. Cornerstone Rsch., *2025 Year in Review: Securities Class Action Filings* 22 fig. 21 (2026), https://perma.cc/V8A7-BDRM. The panel's loosening of the tight fit *Goldman* required between an alleged misrepresentation and an alleged corrective disclosure renders the Ninth Circuit a far more inviting forum for securities class-action plaintiffs than the Second Circuit, which follows *Goldman*. (And the next-most-popular circuit for securities class actions is the Third Circuit, which is aligned with the Ninth in loosening the *Goldman* standard. *See id.*) Not a single Ninth Circuit judge sought to rehear this case en banc, providing further assurance to plaintiffs that the panel's standard is one with which the broader circuit is comfortable. *See* Pet. App. 28a. The opinion inevitably will have an outsized effect on securities class actions, as plaintiffs deciding between the most common forums for such suits will have a significant incentive to choose the Ninth Circuit (or the Third Circuit) rather than the Second Circuit. *See* 15 U.S.C. § 78aa(a) (allowing action to be filed in any "district wherein any act or transaction constituting the violation occurred . . . or in the district wherein the defendant is found or is an inhabitant or transacts business").

It does not matter that the panel's opinion is unpublished. Though unpublished decisions are not binding authority, parties may cite an unpublished case to the Ninth Circuit "as persuasive authority," *Animal Legal Def. Fund v. Veneman*, 490 F.3d 725, 733 (9th Cir. 2007) (en banc) (Thomas, J., concurring in part and dissenting in part), and the Ninth Circuit may still follow such a decision when a panel "find[s] its reasoning persuasive," *United States v. Harding*, 2021 WL 5507418, at *1 (9th Cir. Nov. 24, 2021). Parties have greater reason to cite the panel's opinion here, and future panels have greater reason to rely on it, in light of the Ninth Circuit's refusal to review the decision en banc. More crucially, district courts may cite unpublished Ninth Circuit decisions as "strongly persuasive" authority, *Cadena v. Am. Honda Motor Co.*, 2025 WL 3483436, at *11 (C.D. Cal. Dec. 3, 2025), and often do.[6] District courts in the Ninth Circuit and beyond predictably will rely on this decision—as at least one court already has. *See AMI – Gov't Emps. Provident Fund Mgmt. Co. v. Alphabet Inc.*, 2026 WL 1382950, at *6 (N.D. Cal. May 18, 2026). Other securities class-action plaintiffs already are relying on the panel's decision to bolster their own cases.[7] And, of

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[6] *See, e.g.*, *Williams v. Transworld Sys. Inc.*, 2026 WL 970239, at *4 (N.D. Cal. Apr. 10, 2026); *Lopez v. FCA US LLC*, 2026 WL 712820, at *4 (C.D. Cal. Feb. 24, 2026); *United States v. J-M Mfg. Co.,* 2024 WL 4468012, at *7 n.16 (C.D. Cal. July 2, 2024); *United States v. Lingelbach*, 2022 WL 3903145, at *2 (D. Mont. Aug. 30, 2022), *aff'd*, 2024 WL 94313 (9th Cir. Jan. 9, 2024); *Schubert v. Strange*, 2022 WL 1658689, at *1 n.1 (W.D. Wash. May 25, 2022).

[7] *See, e.g.*, Plaintiffs' Omnibus Opposition to Defendants' Motions to Dismiss the Third Amended Consolidated Class Action Complaint at 56-57, *In re Illumina, Inc. Sec. Litig.*, No. 3:23-cv-02082 (S.D.Cal. filed Feb. 4, 2026), 2026 WL 1747798; Plaintiffs' Reply Memorandum in Further Support of Amended Motion for Class Certification at 5, 9, *In re Enovix Corp. Sec. Litig.*, 2026 WL 1078569 (N.D. Cal. Apr. 21, 2026), 2026 WL 1715617; Plaintiffs' Reply in Further Support of Motion to Certify Class at 2-3, *In re NVIDIA Corp. Sec. Litig.*, 825 F. Supp. 3d 1047 (N.D. Cal. 2026), 2025 WL 4097879.

course, this Court routinely grants petitions for certiorari from unpublished decisions.[8]

B. The panel opinion will have significant adverse consequences for *amici*'s members. Plaintiffs in securities cases generally allege that misrepresentations artificially inflated stock prices until corrective disclosures burst the inflationary bubble. Of these, a growing number allege the same "inflation-maintenance" theory alleged in *Goldman* and by Plaintiffs here—despite this Court's refusal to bless its validity. *Goldman*, 594 U.S. at 120 n.1; *see, e.g.*, *In re Allstate*, 966 F.3d at 612 & n.5; *IBEW Loc. 98 Pension Fund v. Best Buy Co.*, 818 F.3d 775, 782-83 (8th Cir. 2016); *In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223, 257-58 (2d Cir. 2016); *In re Pfizer Inc. Sec. Litig.*, 819 F.3d 642, 659 (2d Cir. 2016); *Ludlow v. BP, P.L.C.*, 800 F.3d 674, 680, 687 (5th Cir. 2015); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 418-19 (7th Cir. 2015); *FindWhat Inv. Grp. v. FindWhat.com*, 658 F.3d 1282, 1314-15 (11th Cir. 2011); *Schleicher v. Wendt*, 618 F.3d 679, 683-84 (7th Cir. 2010).

In fact, the inflation-maintenance theory has become securities plaintiffs' go-to method of alleging price impact. One study found that, in the four years after *Halliburton*, the inflation-maintenance theory

[8] *See, e.g.*, *Pung v. Isabella Cnty.*, 146 S. Ct. 1964 (2026), *vacating and remanding Pung v. Kopke*, 2025 WL 318222 (6th Cir. Jan. 28, 2025); *Hunter v. United States*, 146 S. Ct. 1702, 1709 (2026); *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1552 (2026); *Keathley v. Buddy Ayers Constr., Inc.*, 146 S. Ct. 1532, 1538 (2026); *Geo Grp., Inc. v. Menocal*, 607 U.S. 438, 443 (2026).

was raised in ***71%*** of district-court cases involving attempts to rebut the *Basic* presumption. *See* Note, *Congress, the Supreme Court, and the Rise of Securities-Fraud Class Actions*, 132 Harv. L. Rev. 1067, 1077 (2019). District courts in the Ninth Circuit have also recognized that a plaintiff can proceed on an inflation-maintenance theory, and often adjudicate class-certification motions in such cases. *See, e.g.*, *In re Enovix Corp. Sec. Litig.*, 2026 WL 1078569, at *7-13 (N.D. Cal. Apr. 21, 2026); *Pardi v. Tricida, Inc.*, 2024 WL 4336627, at *7-12 (N.D. Cal. Sept. 27, 2024); *Ferris v. Wynn Resorts Ltd.*, 2023 WL 2337364, at *6-11 (D. Nev. Mar. 1, 2023). Scholars have noted, and expressed concern about, the increasingly common use of the inflation-maintenance theory to sustain securities class actions. *See, e.g.*, Richard A. Booth, *Price Inflation and Price Maintenance in Securities Fraud Class Actions*, 30 Stan. J.L. Econ. & Bus. 133, 135-36, 171 (2025); Merritt B. Fox & Joshua Mitts, *Event-Driven Suits and the Rethinking of Securities Litigation*, 78 Bus. Law. 1, 67-68 (2023); Emily Strauss, *Is Everything Securities Fraud?*, 12 U.C. Irvine L. Rev. 1331, 1331 (2022).

By further lowering the barriers to certifying classes in inflation-maintenance cases, the Ninth Circuit's decision threatens to strongarm *amici*'s members into settling cases they otherwise would defend, imposing heavy and unnecessary financial tolls. As this Court has noted, "when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once," defendants "will be pressured into settling questionable claims" when "[f]aced with even a small chance of a devastating loss."

AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 350 (2011). The "risk of 'in terrorem' settlements," *id.*, is high in the securities context, because the sums at issue are astronomical. Since 2020, companies subject to securities class actions have been exposed to an average maximum of $2.27 trillion in annual liability. *See* Cornerstone Rsch., *supra*, at 10 fig. 9 (averaging totals from 2020 through 2025). Settling for even a fraction of this amount imposes crushing costs on American businesses (and, ultimately, consumers). But risking class verdicts of anything approaching their total potential exposure could outright ruin securities class-action defendants.

The Ninth Circuit's ruling, if permitted to stand, will accelerate an already alarming trend. As it is, the inflation-maintenance theory strongly encourages settlements by increasing potential damages amounts and multiplying the total amount of securities litigation. *See* Booth, *supra*, at 171 (noting that the inflation-maintenance theory "clearly encourages more litigation and more generous settlements by defendants who fear the potentially devastating consequences of going to trial"). And there is substantial incentive for lawyers to use companies' product or service-based conduct, which does not directly harm shareholders, to follow up their primary tort suits with a second round of so-called "event-driven" securities class actions like the one here. Strauss, *supra*, at 1334. Indeed, "[t]he average shareholder settlement in cases where the misconduct most directly harms other victims is more than double the average settlement for those cases where the primary victims are shareholders" themselves. *Id.* The Ninth Circuit's erroneous standard for analyzing correctiveness will only encourage these sorts of claims, thus forcing *amici*'s members to avoid ruinous class litigation by settling cases they normally would fight and win.

Goldman promised to tighten the too-loose standards courts had used to certify classes under the inflation-maintenance theory. But the Ninth Circuit's decision neutralizes *Goldman*, returning to a world in which plaintiffs can point to any later statement on the same general topic as an alleged misrepresentation and label it a corrective disclosure. It is thus vital that this Court grant certiorari and correct the Ninth Circuit's egregious error before it spreads further.

CONCLUSION

For these reasons, this Court should grant certiorari and reverse.

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