UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SJUNDE AP-FONDEN, individually and on behalf of all others similarly situated, Plaintiff, v. THE GOLDMAN SACHS GROUP, INC., et al., Defendants.	Civil Case No.: 1:18-cv-12084-VSB

PLAINTIFF'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. COMMON QUESTIONS PREDOMINATE UNDER RULE 23(b)(3) 1

A. The Class is Entitled to the *Basic* Presumption of Reliance 1

1. Eight Undisputed Factors Demonstrate Market Efficiency 1

2. Plaintiff's *Cammer* 5 Evidence Demonstrates Market Efficiency 2

B. Defendants Have Not Rebutted the *Basic* Presumption as They Fail to Prove the Absence of Price Impact by a Preponderance of the Evidence 4

1. The November 9, 2018 Corrective Disclosure 4

2. The December 17, 2018 Corrective Disclosure 9

C. Plaintiff's Proposed Damages Methodology Satisfies *Comcast* 10

III. AP7 IS A TYPICAL AND ADEQUATE CLASS REPRESENTATIVE 12

A. AP7's Non-Production of Cumulative Reports That It Was Not Obligated to Preserve Does Not Raise a Unique Defense 12

B. AP7's Trading Pattern Does Not Give Rise to Any Unique Defense 14

IV. CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

In re Allergan PLC Sec. Litig.,
2021 WL 4077942 (S.D.N.Y. Sept. 8, 2021).....2, 7, 11

In re Am. Int'l Grp., Inc. Sec. Litig.,
265 F.R.D. 157 (S.D.N.Y. 2010).....13

Ark. Teacher Ret. Sys. v. Goldman Sachs Grp., Inc.,
955 F.3d 254 (2d Cir. 2020), *rev'd on other grounds*, 141 S. Ct. 1951 (2021).....5, 6

Basic Inc. v. Levinson,
485 U.S. 224 (1988)..... *passim*

Bensley v. FalconStor Software, Inc.
277 F.R.D. 231 (E.D.N.Y. 2011).....14

Bing Li v. Aeterna Zentaris Inc.,
324 F.R.D. 331 (D.N.J. 2018).....10

In re BP plc Sec. Litig.,
2013 WL 6388408 (S.D. Tex. Dec. 6, 2013).....12

In re BP plc Sec. Litig.,
2014 WL 2112823, (S.D. Tex. May 20, 2014),
aff'd sub nom. Ludlow v. BP plc, 800 F.3d 674 (5th Cir. 2015).....12

Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC,
310 F.R.D. 69 (S.D.N.Y. 2015).....3, 10, 11

City of Livonia Emps.' Ret. Sys. v. Wyeth,
284 F.R.D. 173 (S.D.N.Y. 2012).....15

Comcast Corp. v. Behrend,
569 U.S. 27 (2013).....10

Erica P. John Fund, Inc. v. Halliburton Co.,
309 F.R.D. 251 (N.D. Tex. 2015).....8

In re Fed. Home Loan Mortg. Corp. (Freddie Mac) Sec. Litig.,
281 F.R.D. 174 (S.D.N.Y. 2012).....3

GenOn Mid-Atlantic, LLC v. Stone & Webster, Inc.,
282 F.R.D. 346 (S.D.N.Y. 2012).....13

In re Goldman Sachs Grp., Inc. Sec. Litig.,
2021 WL 5826285 (S.D.N.Y. Dec. 8, 2021) ..... *passim*

Grigsby v. BofI Holding, Inc.,
979 F.3d 1198 (9th Cir. 2020) 6

Lapin v. Goldman Sachs & Co.,
254 F.R.D. 168 (S.D.N.Y. 2008) 1-2, 9, 12

Loritz v. Exide Techs.,
2015 WL 6790247 (C.D. Cal. July 21, 2015) 12

McIntire v. China MediaExpress Holdings, Inc.,
38 F. Supp. 3d 415 (S.D.N.Y. 2014) 14

Menaldi v. Och-Ziff Capital Mgmt. Grp. LLC,
328 F.R.D. 86 (S.D.N.Y. 2018) 15

Monroe Cty. Emps.' Ret. Sys. v. S. Co.,
332 F.R.D. 370 (N.D. Ga. 2019) 10

In re Monster Worldwide, Inc. Sec. Litig.,
251 F.R.D. 132 (S.D.N.Y. 2008) 14, 15

Pearlstein v. Blackberry Ltd.,
2021 WL 253453 (S.D.N.Y. Jan. 26, 2021) 8, 12, 14

In re Petrobras Sec. Litig.,
312 F.R.D. 354 (S.D.N.Y. 2016) 15

In re Petrobras Sec. Litig.,
862 F.3d 250 (2d Cir. 2017) 3

In re Pfizer Inc. Sec. Litig.,
282 F.R.D. 38 (S.D.N.Y. 2012) 13, 15

Pirnik v. Fiat Chrysler Autos., N.V.,
327 F.R.D. 38 (S.D.N.Y. 2018) 10, 11-12

Plymouth Cty. Ret. Sys. v. Apache Corp.,
2021 WL 4726510 (S.D. Tex. Oct. 6, 2121) 15

In re Puda Coal Inc. Sec. Litig,
2013 WL 5493007 (S.D.N.Y. Oct. 1, 2013) 14

R.F.M.A.S., Inc. v. So,
271 F.R.D. 13 (S.D.N.Y. 2010) 13

Roach v. T.L. Cannon Corp.,
778 F.3d 401 (2d Cir. 2015).....10

Rocco v. Nam Ti Elecs., Inc.,
245 F.R.D. 131 (S.D.N.Y. 2007).....15

In re Signet Jewelers Ltd. Sec. Litig.,
2019 WL 3001084 (S.D.N.Y. Jul. 10, 2019).....2, 5, 11

In re Sumitomo Copper Litig.,
182 F.R.D. 85 (S.D.N.Y.1998).....14

In re Symbol Techs., Inc. Sec. Litig.,
2015 WL 3915477 (E.D.N.Y. June 25, 2015).....15

In re Teva Sec. Litig.,
2021 WL 872156 (D. Conn. Mar. 9, 2021).....3, 4, 11

Vizirgianakis v. Aeterna Zentaris, Inc.,
775 F. App'x 51 (3d Cir. 2019).....10

W. Palm Beach Pol. Pension Fund v. DFC Global. Corp.,
2016 WL 4138613 (E.D. Pa. Aug. 4, 2016).....6

Waggoner v. Barclays PLC,
875 F.3d 79 (2d Cir. 2017).....2, 3, 6, 11

Wilson v. LSB Indus., Inc.,
2018 WL 3913115 (S.D.N.Y. Aug. 13, 2018).....3, 11

Zubulake v. UBS Warburg LLC,
229 F.R.D. 422 (S.D.N.Y. 2004).....13

TABLE OF ABBREVIATIONS[1]

"1MDB"	1Malaysia Development Berhad
"AP7" or "Plaintiff"	Sjunde AP-Fonden
"Class Period"	October 29, 2014 through December 14, 2018, inclusive
"Class"	All persons and entities that purchased or otherwise acquired Goldman's common stock during the period from October 29, 2014 through December 14, 2018, inclusive, and were damaged thereby
"Defendants"	The Goldman Sachs Group, Inc. ("Goldman" or the "Company"), Lloyd C. Blankfein ("Blankfein"), and Gary D. Cohn ("Cohn")
"Dr. Kothari"	Defendants' expert, S.P. Kothari, Ph.D.
"Dr. Mason"	Plaintiff's expert, Joseph R. Mason, Ph.D.
"DX __"	Exhibits to the Declaration of John E. Schreiber in Support of Defendants' Brief in Opposition to Lead Plaintiff's Motion for Class Certification (ECF Nos. 148, 149)
"Kothari Rpt."	Expert Report of Dr. Kothari (ECF No. 148-1)
"Leissner"	Tim Leissner, Goldman's Head of Investment Banking for Southeast Asia
"Low" or "Jho Low"	Low Taek Jho
"Mason Reply"	Reply Expert Report of Joseph R. Mason, Ph.D., dated March 24, 2022 (PX 1)
"Mason Rpt."	Expert Report of Joseph R. Mason, Ph.D., dated November 12, 2021 (ECF No. 142-1)
"Mot."	Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Class Certification (ECF No. 141)

[1] All other capitalized terms shall have the meanings ascribed to them in the Second Amended Class Action Complaint. Unless otherwise noted, all emphasis is added and all internal alterations, citations, and quotation marks are omitted.

"MTD Order"	Opinion and Order on Motion to Dismiss the Second Amended Class Action Complaint (ECF No. 102)
"NYSE"	New York Stock Exchange
"Opp."	Defendants' Brief in Opposition to Lead Plaintiff's Motion for Class Certification (ECF No. 147)
"PX __"	Exhibits to the Declaration of Andrew L. Zivitz in Support of Plaintiff's Reply Memorandum of Law in Further Support of Plaintiff's Motion for Class Certification, dated March 24, 2022
"SAC"	Second Amended Class Action Complaint (ECF No. 63)

I. INTRODUCTION

Defendants' challenges to class certification do not withstand scrutiny. The Class should be certified and AP7 designated to serve as its representative.

First, evidence showing that the price of Goldman common stock reacted to unexpected news ("*Cammer* 5") is not required to invoke the classwide presumption of reliance under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) where, as here, all other market efficiency factors are unchallenged. Dr. Mason's event study analysis nevertheless satisfies *Cammer* 5.

Second, Defendants fail to rebut the *Basic* presumption because they cannot show, by a preponderance of the evidence, that the alleged misstatements had ***no*** price impact. The November 9, 2018 disclosure of Blankfein's 2013 meeting with Low—which occurred after Goldman's compliance department's multiple warnings about Low—revealed the scope of Defendants' ties to Low and the 1MDB scandal and, as the financial press noted, caused a precipitous stock drop. In addition, Defendants' expert made no effort to quantify the price impact of any of the so-called "confounding" news he identifies. Defendants also cannot show a lack of price impact from the December 17, 2018 disclosure that Malaysia would pursue criminal charges against Goldman.

Third, the out-of-pocket damages measure put forth by Dr. Mason is consistent with AP7's liability theory, and has been repeatedly deemed an appropriate methodology in securities cases.

Finally, AP7 is a typical and adequate class representative, and the purported "unique defenses" that Defendants claim AP7 may encounter are meritless. The Motion should be granted.

II. COMMON QUESTIONS PREDOMINATE UNDER RULE 23(b)(3)

A. The Class is Entitled to the *Basic* Presumption of Reliance

1. Eight Undisputed Factors Demonstrate Market Efficiency

During the Class Period, Goldman common stock traded on the NYSE, and "no argument could be made that the New York Stock Exchange is not an efficient market." *Lapin v. Goldman*

Sachs & Co., 254 F.R.D. 168, 183, (S.D.N.Y. 2008). Moreover, Defendants do not dispute Dr. Mason's evidence that the first four *Cammer* factors and all of the *Krogman* factors support market efficiency: (i) high weekly trading volume; (ii) analyst coverage; (iii) large number of market makers; (iv) form S-3 eligibility; (v) market capitalization and public float; (vi) narrow bid-ask spread; (vii) autocorrelation; and (viii) lack of constraints on short selling. Mason Rpt. ¶¶ 31-47; 68-85; *see also* Mot. at 17-22.

AP7's overwhelming and unrebutted evidence of market efficiency entitles the Class to the *Basic* presumption, and the Court need not consider evidence bearing upon *Cammer* 5. *See Waggoner v. Barclays PLC*, 875 F.3d 79, 98 (2d Cir. 2017) (no *Cammer* 5 evidence required when market efficiency was "so clear that the Defendants failed to challenge such efficiency—based on seven other factors—apart from their attack on [the] *Cammer* 5 event study"); *see also In re Signet Jewelers Ltd. Sec. Litig.*, 2019 WL 3001084, at *13 (S.D.N.Y. Jul. 10, 2019) ("[A]s the Second Circuit noted in *Waggoner*, where the remaining four *Cammer* factors and the three *Krogman* factors all point toward market efficiency, ***a court can dispose of Cammer's fifth factor completely***."); *In re Allergan PLC Sec. Litig.*, 2021 WL 4077942, at *10 (S.D.N.Y. Sept. 8, 2021) (same).[2] If, despite the foregoing authority, the Court is inclined to consider *Cammer* 5, it can comfortably conclude that the evidence weighs heavily in AP7's favor.

2. Plaintiff's *Cammer* 5 Evidence Demonstrates Market Efficiency

Dr. Mason's event study demonstrates that during the Class Period, Goldman common stock was seven times more likely to experience statistically significant abnormal returns on Release Days that on non-Release Days. Mason Rpt. ¶¶ 51-66. He found that 50% of abnormal

[2] Pre-*Waggoner* cases (Opp. at 8) addressing the putative importance of *Cammer* 5 are inapplicable. Moreover, Defendants' unsupported suggestion that *Waggoner*'s directive is limited to cases where a plaintiff's *Cammer* 5 evidence is "inconclusive" (Opp. at 10) is irrelevant given Defendants' expert's opinion that Dr. Mason's *Cammer* 5 analysis is "inconclusive." Kothari Rpt. ¶ 56.

returns on Release Days (8 out of 16) are statistically significant compared to 7% on non-Release days (71 out of 1,024). *Id*. These results satisfy *Cammer* 5. *See, e.g.*, *Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 310 F.R.D. 69, 92 (S.D.N.Y. 2015) (*Cammer* 5 satisfied where 5 of 15 news days exhibited statistically significant returns); *see also* PX 1 (Mason Reply) ¶¶ 93-104.

Despite this strong showing, Defendants contend that Dr. Mason's *Cammer* 5 analysis is inadequate because he did not test whether Goldman's stock price "increased on positive news and decreased on negative news," i.e., "directionality." Opp. at 9. Dr. Kothari likewise claims that measuring directionality is a "necessary step," while failing to cite ***any*** supporting literature. Kothari Rpt. ¶¶ 48-51. Defendants and their expert are wrong. Testing for directionality is not required to satisfy *Cammer* 5 in this Circuit. *See, e.g.*, *In re Petrobras Sec. Litig.*, 862 F.3d 250, 277-78 (2d Cir. 2017) (noting that burden of demonstrating market efficiency is "not an onerous one" while rejecting proposition that "directional empirical evidence" is required); *Waggoner*, 875 F.3d at 97 (*Petrobras* "rejected the argument that 'directional' evidence of price impact was required by *Cammer* 5"); *Wilson v. LSB Indus., Inc.*, 2018 WL 3913115, at *14 (S.D.N.Y. Aug. 13, 2018) ("lack of the inclusion of directionality analysis in [expert's] event study does not require us to discount this report's usefulness in determining market efficiency").[3]

Consistent with governing case law, there are sound economic reasons why showing directionality is not required to satisfy *Cammer* 5. Such analyses are subjective, and academic literature shows that, for earnings surprises, "it can be difficult to predict directionality correctly even 65 percent of the time" when assessing individual firms. *In re Teva Sec. Litig.*, 2021 WL 872156, at *28 (D. Conn. Mar. 9, 2021); *id*. at *29 ("failure to consider directionality does not

[3] Defendants' scant authorities suggesting that directionality should be tested pre-date the Second Circuit's decisions holding the opposite. Opp. at 9-10. Regardless, directionality was not determinative in *Freddie Mac*, as the expert's analysis "was so internally inconsistent that [the court] found it unreliable and unpersuasive." *In re Fed. Home Loan Mortg. Corp. (Freddie Mac) Sec. Litig.*, 281 F.R.D. 174, 181 (S.D.N.Y. 2012).

weaken [expert's] results"); *see* Mason Reply ¶¶ 93-104.[4] Dr. Kothari's earnings surprise analysis does nothing to detract from Dr. Mason's *Cammer* 5 evidence supporting market efficiency.

B. Defendants Have Not Rebutted the *Basic* Presumption as They Fail to Prove the Absence of Price Impact by a Preponderance of the Evidence

1. The November 9, 2018 Corrective Disclosure

Plaintiff has "presented evidence persuasively attributing the [November 9, 2018] price decline [] to circumstances that directly implicated the substance of the alleged misstatements." *In re Goldman Sachs Grp., Inc. Sec. Litig.*, 2021 WL 5826285, at *13 (S.D.N.Y. Dec. 8, 2021); *see* Mason Reply ¶¶ 10-76. The financial press not only linked the stock drop directly to the November 9 disclosure, but—like the November 9 *Wall Street Journal* article itself—"placed Blankfein's meeting with Low in context by noting his previous comments suggesting that he and senior officials were unaware of issues related to 1MDB and that 1MDB was the fault of a handful of 'rogue employees.'" MTD Order at 37; *see* Mason Reply ¶¶ 55, 57. As one example:

> Investors seem to be growing more worried about the potential fallout from the multibillion-dollar 1MDB fraud scandal on Goldman Sachs Group, driving its shares down 11% over the last two sessions. ***Shares of Goldman (ticker: GS) tumbled 9% on Friday [November 9], following reports that Lloyd Blankfein, the firm's current chairman and former CEO, had twice attended meetings with the figure at the center of the scandal, Jho Low*** . . . . At the DealBook conference earlier this month, Blankfein said that the former Goldman bankers who had been charged "evaded our safeguards[.]"

PX 2 (Barron's 11/12/18); *see also* PX 3 (Bloomberg 11/12/2018: "Shares of Goldman fell by more than 7% . . . after reports late last week that . . . Blankfein was present at meetings [with] Jho Low"). Given this evidence, Defendants cannot "negate the inference that the alleged misstatements had ***some*** price impact." *Goldman*, 2021 WL 5826285, at *13 (emphasis in

[4] Defendants mischaracterize Dr. Mason's testimony regarding the well-documented difficulty of addressing directionality for earnings releases—which are *not* the subject of any misstatements or corrective disclosures here—as some concession that Dr. Mason may not be able to disaggregate the price impact of any confounding information when calculating damages. Opp. at 2, 19-20. Dr. Mason made no such concession. Mason Reply ¶ 118 & n. 229.

original); *see id*. ("[T]he Court [] credits Dr. Finnerty's analysis of the news coverage and commentary surrounding the alleged corrective disclosures, which convincingly links Goldman's post-disclosure plight back to the alleged misstatements.").

Defendants' rebuttal evidence falls short of demonstrating "that the ***entire*** price decline [following the November 9 *Wall Street Journal* article] . . . was due to something other than [the] alleged misstatements." *Ark. Teacher Ret. Sys. v. Goldman Sachs Grp., Inc.*, 955 F.3d 254, 270 (2d Cir. 2020), *rev'd on other grounds*, 141 S. Ct. 1951 (2021). "Defendants' burden is not merely to prove that the alleged misstatements were one of several sources of price impact, nor even that other sources loomed larger," but rather to "show, by a preponderance, that the alleged misstatements had ***no price impact whatsoever***." *Goldman*, 2021 WL 5826285, at *12.

"Confounding" News. Dr. Kothari does not quantify the purported price impact of any of the "confounding" events he identifies; he simply points to other news "that ***could have potentially*** caused price impact . . . ." Kothari Rpt. ¶ 109; *see also id*. at Ex. 6 n.3 (identifying "confounding news . . . with ***potential*** price impact"). As Dr. Kothari testified: "I wasn't trying to quantify for what is the stock price reaction to each of these confounding pieces of information . . . . I didn't set out and didn't literally estimate the price decline caused by various confounding news effects." PX 4 at 26:20-22, 29:4-31:4, 89:15-90:21. Having failed to measure any portion of the November 9 stock price decline attributable to any piece of supposed confounding news, Defendants cannot show that the decline is fully explained by the confounding information, and thus cannot show a lack of price impact. Mason Reply ¶¶ 10-13; *see Signet*, 2019 WL 3001084, at *17 (*Basic* presumption not rebutted where defendants' expert declined to assign any value to putative confounding information through an "empirical analysis"). "At best, Defendants' evidence serves only to surface other [] sources of price impact." *Goldman*, 2021 WL 5826285, at *11. But as the

Second Circuit holds, "for a defendant to erase the inference that the corrective disclosure had price impact—i.e., that it played some role in the price decline—it must demonstrate under the preponderance-of-the-evidence standard . . . that [] ***other events explain the entire price drop***." *Ark. Teacher*, 955 F.3d at 270 n.18; *accord Waggoner*, 875 F.3d at 104 (*Basic* presumption not rebutted where "***some*** of the price reaction" was attributable to confounding news) (emphasis in original). "[S]imply pointing to other ***potential*** causes for a stock price change following a corrective disclosure is therefore not enough to rebut the *Basic* presumption." *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2016 WL 4138613, at *14 (E.D. Pa. Aug. 4, 2016).

Additionally, the so-called confounding news identified by Dr. Kothari was largely known to the market prior to November 9, 2018, and Dr. Kothari did not consider how this public information was incorporated into market expectations. Mason Reply ¶¶ 14-45. Because Defendants cannot show that each piece of this confounding information was new—much less quantify its impact on Goldman's stock price—they are unable to rebut the *Basic* presumption, as "the disclosure of . . . information already known by the market . . . will not cause a change in stock price." *Grigsby v. BofI Holding, Inc.*, 979 F.3d 1198, 1205 (9th Cir. 2020).[5] For example:

- The market knew of the "potential" for a U.S.-China trade war (Opp. at 13) well before November 9, 2018. Mason Reply ¶¶ 19-22. Moreover, Defendants misleadingly state that "President Trump" "excoriat[ed]. . . Goldman as an 'unpaid foreign agent[]' that could undermine" trade talks (Opp. at 13) when in fact the provocative comment came from Peter Navarro. Indeed, the article cited by Dr. Kothari expressly noted the White House's disavowal of Navarro, stating that "Navarro didn't speak for the administration or Mr. Trump" and 'is ***freelancing***; he's speaking for himself." PX 5.
- Goldman first disclosed "the potential for Brexit to impact Goldman" (Opp. at 13) in its 2017 Annual Report in February 2018, and its plan to shift assets from the U.K. to Germany was widely reported months prior to November 9, 2018. Mason Reply ¶¶ 23-26.
- The Federal Reserve head of supervision's November 9 speech announced nothing new about the proposed capital requirement regulations that were unveiled in April 2018, other

[5] Indeed, as Dr. Kothari testified, "generally repeating the same information that was known previously does not generate a stock price reaction …." PX 4 at 11:15-12-11.

than that the requirements would not be implemented until 2020, which analysts viewed as "positive" for banks. And the November 9 *Bloomberg Intelligence* article discussing the impact of the regulations on Goldman was based on capital data that had long been known to the market, as evidenced by earlier analyst reports. *Id*. ¶¶ 33-36.

- The supposed "decline of Goldman's trading revenues" (Opp. at 13) also mischaracterizes the news on November 9. Mason Reply ¶¶ 37-39. In fact, the same news report Dr. Kothari cites reported that Goldman's trading revenues were in a "recovery." PX 6.

Similarity to Prior Disclosures. Defendants' efforts to minimize the import of Blankfein's 2013 meeting with Low also fail. While Defendants note that the two had first met in 2009 (Opp. at 12), as this Court has underscored, the 2013 meeting "took place ***after*** multiple warnings from Goldman's Compliance and Legal Departments" and included discussions of "1MDB business" (MTD Order at 37), suggesting Blankfein's complicity in Goldman's relationship with Low and 1MDB. Several media reports also noted that the 2013 meeting occurred after numerous red flags were raised internally at Goldman. Mason Reply ¶¶ 46-51, 55-57. Moreover, as AP7 argued in opposing Defendants' motion to dismiss, the November 2, 2018 *Bloomberg* article refers only to an *unnamed* "high-ranking [Goldman] executive" meeting with Low, and it is illogical to suggest that investors had reason to conclude that this "executive" was in fact Goldman's CEO, as even the title of the article makes clear. DX 7 ("***Mystery Goldman Exec*** at 1MDB Meeting Signals New Woes for Bank"). Finally, Defendants' denials of knowledge of, and role in, the 1MDB scandal appeared in *both Bloomberg* articles that Defendants now claim revealed the full truth to investors before November 9. *See id*. at 3; PX 7 at 3 (Blankfein quoted as claiming that "the matter was an issue of a few employees dodging bank controls"); *see also* MTD Order at 40. And the lack of a statistically significant price drop following these earlier reports does not disprove price impact on November 9. *See Allergan*, 2021 WL 4077942, at *12 (rejecting as "nonsense" argument that lack of statistically significant price response to similar prior news rebutted *Basic* presumption).

Analyst Commentary. Defendants' claim that analysts made modest mention of

Blankfein's 2013 meeting with Low (Opp. at 16-17) does not overcome the *Basic* presumption. Dr. Kothari's cabined approach ignores numerous financial media and news sources that directly connected the November 9 price decline to the news of Blankfein's 2013 meeting with Low. Mason Reply ¶¶ 52-57; *see, e.g.*, *Goldman*, 2021 WL 5826285, at *8, 13 (noting that defendants' expert "limit[ed] her review to securities analysts' reports, ignoring articles from *The Wall Street Journal* and the *Associated Press*," and finding her "narrower review of analyst commentary" insufficient to rebut presumption). "Indeed, the presence or absence of analyst commentary, while of interest, is not a scientifically accepted method of demonstrating price impact or its absence." *Pearlstein v. Blackberry Ltd.*, 2021 WL 253453, at *20-21 (S.D.N.Y. Jan. 26, 2021) (rejecting argument that "analysts did not view the announcements as a correction of earlier statements").

Intraday Analyses. Even though Dr. Kothari does not assign any portion of the abnormal return on November 9 to any purportedly confounding news, Defendants argue that the continuing decline in Goldman's stock price late in the trading day somehow disproves that the corrective disclosure impacted the price. Opp. at 13. Defendants' supposition fails. The trading pattern is not explained by confounding news, and it is consistent with research showing that early intraday price trends tend to intensify toward the end of the trading day. Mason Reply ¶¶ 58-63 & n. 120-21.[6]

"*Mismatch*." There is no "mismatch" between the November 9 corrective disclosure and the alleged misstatements. With respect to the Business Principles Statements, the Supreme Court's *Goldman* decision "does not purport to require [the] precise 'match'" Defendants urge. *Goldman*, 2021 WL 5826285, at *14 n.19; *see id*. (*Goldman* did not "signal to courts weighing evidence of price impact that narrower corrective disclosures cannot poke targeted, meaningful

[6] Defendants' citation to *Erica P. John Fund, Inc. v. Halliburton Co.*, 309 F.R.D. 251 (N.D. Tex. 2015) ("*Halliburton III*") is misplaced. *Halliburton III* based its ruling *both* on the absence of a statistically significant price reaction *and* the fact that the relevant information had been previously disclosed. Neither circumstance is present here.

holes in overarching impressions enforced through broader prior statements"). Although they did not expressly mention the Business Principles Statements, multiple analysts noted Goldman's damaged risk management reputation following the November 9 news, including Oppenheimer's report that the 1MDB scandal was "[r]eputationally . . . a disaster for Goldman," stating that "reputational damage [is] a foregone conclusion." Mason Reply ¶ 54. Moreover, Defendants' argument that the Business Principles Statements had no price impact because they were "made routinely by public companies" (Opp. at 14) "misconstrues" AP7's inflation-maintenance claims, which "do not hinge on whether such statements were consciously relied upon, in the moment, by investors evaluating Goldman," but rather, "on whether the statements *maintained* an already-inflated stock price." *Goldman*, 2021 WL 5826285, at *12 (emphasis in original).

The 1MDB Statements, which served to conceal Defendants' knowledge of the red flags surrounding the 1MDB deals, also sufficiently match the November 9 disclosure which, as the Court noted, "placed Blankfein's meeting with Low into context by noting his previous" statements denying knowledge of the red flags. MTD Order at 37. The news of Blankfein's 2013 meeting—after multiple internal warnings about doing business with Low—"had never before been revealed to the public" and "is highly material to the scope of Blankfein's and Goldman's connection to Low and the 1MDB scandal." *Id*. at 36, 40. Defendants also ignore the press' direct attribution of the price decline to the news of the 2013 meeting. Mason Reply ¶ 55.

2. The December 17, 2018 Corrective Disclosure

Defendants fail to prove a lack of price impact from the December 17, 2018 corrective disclosure. In fact, three different regression specifications that Dr. Kothari ran yielded abnormal returns on December 17 that are statistically significant at confidence levels above 92%, with one specification at approximately 95%; and three regressions that Dr. Mason ran yielded abnormal returns significant at confidence levels of 90.4%, 94.7%, and 95.3%. Mason Reply ¶¶ 80-82.

Pointing to no other news that could account for the decline, Defendants claim that statistical significance below the 95% confidence level proves a complete absence of price impact. As Dr. Mason explains, however, statistical significance at the 90% level is accepted in the economic literature, and price movement at this level demonstrates price impact. *Id*. ¶¶ 78-79, 84. "[T]he Supreme Court . . . has [not] indicated whether the abnormal return must meet a particular threshold level," *Carpenters*, 310 F.R.D. at 85, and cases more recent than Defendants' authorities do not impose a 95% confidence level requirement. *See, e.g., Pirnik v. Fiat Chrysler Autos., N.V.*, 327 F.R.D. 38, 46 (S.D.N.Y. 2018) (price movement at 92% confidence level "does not prove the absence of price impact"); *Bing Li v. Aeterna Zentaris Inc*., 324 F.R.D. 331, 345 (D.N.J. 2018), *aff'd sub nom. Vizirgianakis v. Aeterna Zentaris, Inc.*, 775 F. App'x 51, 53 (3d Cir. 2019) (price movement at 84% confidence level "[did] not demonstrate the absence of a price impact"). And even if these regression results did not show statistical significance (they do), "Defendants still have not rebutted the presumption because . . . the existence of non-statistically-significant stock price declines does not prove the absence of price impact." *Monroe Cty. Emps.' Ret. Sys. v. S. Co*., 332 F.R.D. 370, 393 (N.D. Ga. 2019); *accord Vizirgianakis*, 775 F. App'x at 53. Finally, the news that Defendants claim was "priced in" was the risk of monetary penalties—not criminal prosecution. MTD Order 38-39. Defendants do not meet their burden of showing no price impact.

C. Plaintiff's Proposed Damages Methodology Satisfies *Comcast*

Comcast Corp. v. Behrend, 569 U.S. 27 (2013) requires only that a proposed classwide damages methodology "measure damages that result from the class's asserted theory of injury." *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 407 (2d Cir. 2015). Here, as in virtually every Section 10(b) action, AP7 alleges that Defendants' misstatements created or maintained artificial inflation in Goldman's stock price. SAC ¶ 395. Consistent with that theory, Dr. Mason articulates a step-by-step approach to calculate damages that uses a universally-accepted event study methodology.

This methodology employs evidence common to all class members to measure the inflation in Goldman's stock for each day of the Class Period and out-of-pocket damages for all class members. Mason Rpt. ¶¶ 10, 90-97. Dr. Kothari agrees that an out-of-pocket damages measure is appropriate (Kothari Rpt. ¶¶ 64-66), and courts in this Circuit routinely certify classes proposing the same methodology. *See, e.g.*, *Waggoner*, 875 F.3d at 106 ("this is a case in which the Plaintiffs' proposed measure for damages . . . is directly linked" to their liability theory); *Teva*, 2021 WL 872156, at *40; *Signet*, 2019 WL 3001084, at *20; *Wilson*, 2018 WL 3913115, at *17.

Despite clear authority that "plaintiffs are not required to demonstrate either loss causation or damages for purposes of class certification," *Carpenters*, 310 F.R.D. at 99, Defendants contend that Dr. Mason's methodology is inadequate because he does not detail precisely how he would disaggregate any non-fraud-related "confounding information" from the stock price declines following the corrective disclosures. Opp. at 19-20. There is no requirement to provide such details at class certification. *See Waggoner*, 875 F.3d at 106 ("failure to disaggregate . . . did not preclude class certification"); *Allergan*, 2021 WL 4077942, at *15 (plaintiff "need not [disaggregate] at this juncture to establish that common issues relating to damages predominate"); *Signet*, 2019 WL 3001084, at *20 (same). Further, even if disaggregation were required, Dr. Mason made clear that he could use standard valuation techniques to isolate the impact of confounding information, which would apply to all class members equally. Mason Rpt. ¶ 93; Mason Reply ¶¶ 117-118, 120.

Defendants also criticize Dr. Mason for not detailing how he would account for variations in inflation during the Class Period. Opp. at 20-21. But an expert is not required to "account for variations in inflation over time" at class certification. *Waggoner*, 875 F.3d at 106 ("even accepting Defendants' premises that inflation would have varied during the class period . . . Defendants' argument fails"); *see also Pirnik*, 327 F.R.D. at 47 ("*Comcast* does not require [p]laintiffs to

account for variations in inflation throughout the class period at the class certification stage").[7]

III. AP7 IS A TYPICAL AND ADEQUATE CLASS REPRESENTATIVE

AP7's claims are typical because its injury arises from the same conduct that affected all other Class members. AP7 is also adequate because it is an institutional investor with a major stake in this litigation, and has vigorously prosecuted this case on behalf of the Class for close to three years. *See* Mot. at 12-14. Ignoring the ample evidence of AP7's typicality and adequacy, Defendants suggest—without support—that AP7 is subject to "unique defenses." Opp. at 21-25. Courts, however, "should not disqualify a named plaintiff based upon any groundless, far-fetched defense that the defendant manages to articulate," *Lapin*, 254 F.R.D. at 179, because "[t]he unique defense rule . . . is intended to protect the plaintiff class—not to shield defendants from a potentially meritorious suit." *Pearlstein*, 2021 WL 253453, at *8. AP7 faces no unique defenses, and those Defendants concoct "will certainly not become the focus of the trial." *Id*. at *9.

A. AP7's Non-Production of Cumulative Reports That It Was Not Obligated to Preserve Does Not Raise a Unique Defense

Defendants incorrectly claim that AP7 is inadequate because it failed to produce certain monthly reports from its external investment managers. Opp. at 22-23. *First*, it is undisputed both that AP7 instituted a litigation hold at the outset of this case in early 2019, and that it has consistently adhered to it. PX 8 at 28:20-21, 69:25-70:7. Prior to that, AP7 was not obligated to preserve documents related to its Goldman stock transactions, except under AP7's document retention policy, which did not require AP7 to these preserve these reports. *Id*. at 67:25-68:8. AP7's disposal of these documents in the ordinary course of business, ***before*** the litigation hold, does not

[7] Defendants' cases are inapposite. In *Loritz v. Exide Techs.*, "Plaintiffs [first] failed to set forth *any* model of damages" and on reply only referenced general techniques untethered to the facts. 2015 WL 6790247, at *22 (C.D. Cal. July 21, 2015). *In re BP plc Sec. Litig.*, 2013 WL 6388408 (S.D. Tex. Dec. 6, 2013) *supports* certification because the court ultimately certified an investor subclass which used the same out-of-pocket method that AP7 proposes. 2014 WL 2112823, at *10 (S.D. Tex. May 20, 2014), *aff'd sub nom. Ludlow v. BP plc*, 800 F.3d 674 (5th Cir. 2015).

impact its adequacy.[8] Moreover, even if AP7 were obligated to preserve the reports, a "technical lapse [in discovery] . . . is an insufficient basis for rejecting [plaintiff] on the grounds of adequacy." *In re Pfizer Inc. Sec. Litig.*, 282 F.R.D. 38, 49 (S.D.N.Y. 2012).

Second, as Defendants concede, the monthly reports at most reflect transaction data ***cumulative*** of the information in other documents AP7 produced. The reports list "securities trades and other transactions [] executed on AP7's behalf," including in Goldman common stock, Opp. at 22, whereas AP7 has produced records detailing ***all*** of its Class Period trades in Goldman stock. *See* PX 9, 10. Given the "limited probative value" of these cumulative reports, Defendants cannot establish any deficiency in AP7's document production. *GenOn Mid-Atl., LLC v. Stone & Webster, Inc.*, 282 F.R.D. 346, 359 (S.D.N.Y. 2012) (no spoliation where destroyed documents were produced in another format). Defendants thus present no evidence, as required, showing that relevant information was actually withheld.[9] *See In re Am. Int'l Grp., Inc. Sec. Litig.*, 265 F.R.D. 157, 172 (S.D.N.Y. 2010). Defendants also suffered no prejudice, as the monthly reports contained cumulative information—and Defendants never sought them directly from AP7's external managers who generated and possessed the reports. *See R.F.M.A.S., Inc. v. So*, 271 F.R.D. 13, 51-52 (S.D.N.Y. 2010) (no prejudice where party failed to pursue discovery through subpoena).[10]

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[8] AP7's involvement in ***unrelated*** cases filed ***before*** this action did not trigger a duty to preserve any documents related to ***this action***. *See Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 430 (S.D.N.Y. 2004) (duty to preserve extends only to documents "relevant to [a] party's claim or defense"). Moreover, Defendants fail to show why the monthly reports should have been preserved in those unrelated prior cases.

[9] Defendants' conjecture that the monthly reports may show that AP7 engaged in short sales of Goldman stock fails. Opp. at 23 n.15. AP7's corporate designee testified, ***and*** its transaction records show, that AP7 did not short Goldman stock during the Class Period. DX 4 at 50:19-22; PX 8 at 54:3-4; Gröttheim Errata; PX 9, 10.

[10] Defendants also ignore (Opp. at 22-23) that AP7 asked Goldman to "articulate specifically why it requires . . . these duplicative reports" and stated that it was "available to confer as needed." PX 11 at 3-4. ***Goldman never responded to this letter*** or otherwise pursued the issue. Given Defendants' inaction, AP7's refusal to request cumulative reports generated and possessed by its external managers was justified, particularly in light of AP7's longstanding policy of avoiding interactions with its managers that could influence their trading. PX 8 at 15:24-25; 16:8-10; 19:15-20; 20:9-12; 27:20-23.

Third, there is no evidence that AP7 lacked good faith. *See McIntire v. China MediaExpress Holdings, Inc.*, 38 F. Supp. 3d 415, 425 (S.D.N.Y. 2014). In addition to diligently instituting and complying with a litigation hold, AP7 exhibited its good faith by timely responding to Defendants' document requests, reviewing thousands of documents, and completing its production prior to the Court-ordered deadline.

B. AP7's Trading Pattern Does Not Give Rise to Any Unique Defense

AP7's Class Period purchases and sales of Goldman shares and purchases after the corrective disclosures do not "raise questions regarding its reliance on the alleged misstatements." Opp. at 23. *First*, where "plaintiff's theory of liability is premised on the 'fraud on the market' presumption," a class representative's specific reliance "is largely irrelevant." *In re Monster Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132, 134 (S.D.N.Y. 2008). "[F]actual differences in the amount of damages, date, size or manner of purchase, the type of purchaser, [and] the presence of both purchasers and sellers . . . will not defeat class action certification when plaintiffs allege that the same unlawful course of conduct affected all members of the proposed class." *In re Sumitomo Copper Litig.*, 182 F.R.D. 85, 92 (S.D.N.Y.1998). That is precisely what AP7 alleges. SAC ¶ 433.

Second, Defendants misstate the record. AP7, a long-term investor in Goldman which held 319,966 shares at the start of the Class Period, was a ***net purchaser*** of 100,269 Goldman shares during the Class Period, and never liquidated its entire position. *See* ECF No. 63-1 (PSLRA certification); PX 9, 10; PX 8 at 110:5-18. Therefore, AP7 is not an in-and-out trader "who both purchase[s] and sell[s] ***all of [its] shares*** prior to a corrective disclosure." *Pearlstein*, 2021 WL 253453, at *11. In Defendants' inapposite cases, the plaintiffs "purchased and sold all of [their] shares prior to any revelation of fraud." *Bensley v. FalconStor Software, Inc*. 277 F.R.D. 231, 237, 240 (E.D.N.Y. 2011); *see also In re Puda Coal Inc. Sec. Litig*, 2013 WL 5493007, at *18 (S.D.N.Y. Oct. 1, 2013). AP7 also held Goldman stock through the end of the Class Period, and it can claim

damages just like all other Class members. *See Menaldi v. Och-Ziff Capital Mgmt. Grp. LLC*, 328 F.R.D. 86, 92 (S.D.N.Y. 2018) (despite in-and-out transactions, class representative was "a typical plaintiff because she bought stock before the first corrective disclosure and held some of it throughout the remainder of the class period"). By contrast, the plaintiff in *Plymouth County Retirement System v. Apache Corp*. was a retail investor and a "net seller," who engaged in "frenzied" in-and-out trading and "completely liquidated his [] stock holdings a dozen times." 2021 WL 4726510, at *3-5 (S.D. Tex. Oct. 6, 2121). That case has no application.

Third, AP7's purchases after the November 9, 2018 corrective disclosure—when AP7 alleges that Goldman's stock price remained artificially inflated—do not give rise to a unique defense, as such post-disclosure purchases have "no bearing on whether or not [the class representative] relied on the integrity of the market during the class period." *Monster*, 251 F.R.D. at 135; *In re Petrobras Sec. Litig.*, 312 F.R.D. 354, 360 (S.D.N.Y. 2016) (same). This is particularly true where a plaintiff, like AP7, did not possess any non-public information and did not make disproportionate purchases post-disclosure. *City of Livonia Emps.' Ret. Sys. v. Wyeth*, 284 F.R.D. 173, 178-79 (S.D.N.Y. 2012) (distinguishing *Rocco v. Nam Ti Elecs., Inc.*, 245 F.R.D. 131, 136 (S.D.N.Y. 2007)). AP7's post-November 9 purchases represent only 15% of its Class Period purchases. PX 9, 10; *see Pfizer*, 282 F.R.D. at 46 n.5 (plaintiff typical despite post-disclosure purchases "representing approximately ***44%***" of class period purchases). There is simply no evidence that arguments concerning AP7's individual reliance would "distract [it] from the work of representing the class as a whole." *In re Symbol Techs., Inc. Sec. Litig.*, 2015 WL 3915477, at *4 (E.D.N.Y. June 25, 2015).

IV. CONCLUSION

For the foregoing reasons, the Motion should be granted.

Dated: March 24, 2022 Respectfully submitted,

KESSLER TOPAZ
MELTZER & CHECK, LLP

S/ Andrew L. Zivitz
Andrew L. Zivitz
Matthew L. Mustokoff
Johnston de F. Whitman, Jr.
Jamie M. McCall
Margaret E. Mazzeo
Nathan A. Hasiuk
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
azivitz@ktmc.com
mmustokoff@ktmc.com
jwhitman@ktmc.com
jmccall@ktmc.com
mmazzeo@ktmc.com
nhasiuk@ktmc.com

Lead Counsel for Sjunde AP-Fonden and the Class

BERNSTEIN LITOWITZ
BERGER & GROSSMANN LLP

Salvatore J. Graziano
Rebecca E. Boon
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1444
sgraziano@blbglaw.com
rebecca.boon@blbglaw.com

Liaison Counsel for the Class