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.

Case No. 1:18-cv-12084-VSB-KHP

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF RELEVANT FACTS 4

LEGAL STANDARD 9

ARGUMENT 12

I. Class Certification Should Be Denied Because Defendants Have Rebutted The *Basic* Presumption Of Reliance 12

A. The "Mismatch" Between the Corrective Disclosure And Alleged Misstatements, as Well as Other Price-Impact Evidence, Precludes Certification Under *Goldman Sachs* and *ATRS* 12

1. There Is a Complete "Mismatch" Between the Front- and Back-End Disclosures 12

2. "Truthful Substitutes" Of The Alleged Misstatements Would Not Have Affected The Stock's Price 17

3. Other Evidence Confirms That the Alleged Misstatements Did Not Maintain Artificial Inflation in the Stock Price 21

B. The Corrective Disclosure Did Not Cause A Back-End Price Drop On November 9 or November 12 23

1. Class Certification Must Be Denied Because The Corrective Disclosure Did Not Cause A Back-End Price Drop On November 9 24

2. Even Assuming the Corrective Disclosure Caused A Back-End Price Drop On November 9, It Certainly Caused No Drop on November 12 28

II. Damages Cannot Be Calculated On A Classwide Basis 30

III. Plaintiff Is Subject To Unique Defenses That Threaten To Become The Focus Of The Litigation 30

CONCLUSION 30

TABLE OF AUTHORITIES

Page(s)

Cases

Allegheny Cnty. Emps.' Ret. Sys. v. *Energy Transfer LP*,
623 F. Supp. 3d 470 (E.D. Pa. 2022) 13

Amgen Inc. v. *Conn. Ret. Plans & Tr. Funds*,
568 U.S. 455 (2013) 24

Arkansas Teacher Retirement System v. *Goldman Sachs Group, Inc.*,
77 F.4th 74 (2d Cir. 2023) .... *passim*

Basic Inc. v. *Levinson*,
485 U.S. 224 (1988) 9

In re Chicago Bridge & Iron Co. N.V. Sec. Litig.,
2019 WL 5287980 (S.D.N.Y. Oct. 18, 2019) 13

Erica P. John Fund, Inc. v. *Halliburton Co.*,
309 F.R.D. 251 (N.D. Tex. 2015) 13, 28

Goldman Sachs Group., Inc. v. *Arkansas Teacher Retirement System*,
141 S. Ct. 1951 (2021) .... *passim*

Halliburton Co. v. *Erica P. John Fund, Inc.*,
573 U.S. 258 (2014) 9

In re Intuitive Surgical Sec. Litig.,
2016 WL 7425926 (N.D. Cal. Dec. 22, 2016) 13, 28

Meyer v. *Greene*,
710 F.3d 1189 (11th Cir. 2013) 25

In re Moody's Corp. Sec. Litig.,
274 F.R.D. 480 (S.D.N.Y. 2011) 25

In re Qualcomm Inc. Sec. Litig.,
2023 WL 2583306 (S.D. Cal. Mar. 20, 2023) 27

Ramirez v. *Exxon Mobil Corp.*,
2023 WL 5415315 (N.D. Tex. Aug. 21, 2023) 25, 26, 27

In re Sec. Cap. Assur. Ltd. Sec. Litig.,
729 F. Supp. 2d 569 (S.D.N.Y. 2010) 28

Simpson v. *Dart*,
234 F.4th 706 (7th Cir. 2022) 23

In re Vivendi, S.A. Sec. Litig.,
838 F.3d 223 (2d Cir. 2016)..10

Waggoner v. *Barclays PLC*,
875 F.3d 79 (2d Cir. 2017)..10, 25

Other Authorities

Fed. R. Civ. P. 23 ....9, 23

Defendants The Goldman Sachs Group, Inc. ("Goldman" or "Defendant"), Lloyd Blankfein, and Gary Cohn respectfully submit this memorandum of law in opposition to Plaintiff Sjunde AP-Fonden's motion to "certify a class of all persons and entities that purchased or otherwise acquired Goldman's common stock between October 29, 2014, and November 8, 2018, inclusive (the 'Class Period'), and were damaged thereby (the 'Class')." ECF Nos. 291–292.

PRELIMINARY STATEMENT

This case has been substantially narrowed. Plaintiff's 1MDB securities fraud case now focuses on only a smattering of alleged false statements about four specific topics during the class period and just a single corrective disclosure that allegedly revealed the truth. The 13 remaining alleged false statements concern (1) the "fees and commissions" Goldman received for underwriting the 1MDB bond transactions; (2) Goldman's lack of "visibility" into the diversion of 1MDB funds to third parties; (3) Goldman's lack of evidence showing Jho Low's involvement in the 1MDB transactions; and (4) Goldman CEO Lloyd Blankfein's lack of knowledge of "red flags" known beforehand to senior management. By contrast, the sole remaining alleged corrective disclosure is a news report, issued the evening of November 8, 2018, repeated the morning of November 9, reporting that Blankfein attended an event with approximately 20 clients in 2013 at which the Prime Minister of Malaysia and Jho Low were also present. Plaintiff's class certification motion hinges on the theory that Goldman's stock price was artificially "propped up" by the alleged misstatements on these four topics, and that the amount of this inflation can be inferred from a stock drop over two trading days when the market learned about the 2013 client event.

But Plaintiff's case for class certification is foreclosed by the binding law of the Supreme Court and this Circuit and by basic principles of market efficiency. In an inflation-maintenance case such as this one, two conditions must be satisfied for a class to be certified: (1) there must be a "match" or "sufficient link" between the content of the alleged front-end misstatements and the

back-end corrective disclosure, to support the inference that "back-end price drop equals front-end inflation;" and (2) the alleged corrective disclosure must have actually caused a decline in the stock price, and thus can be used to measure the "price impact" of the alleged misrepresentations. Plaintiff fails on both counts.

First, under the Supreme Court and Second Circuit decisions in *Goldman Sachs Group., Inc.* v. *Arkansas Teacher Retirement System*, 141 S. Ct. 1951 (2021) ("*Goldman*"), and *Arkansas Teacher Retirement System* v. *Goldman Sachs Group, Inc.*, 77 F.4th 74 (2d Cir. 2023) ("*ATRS*"), a class cannot be certified where the alleged misstatements at issue do not "match" or sufficiently "link" to the alleged corrective disclosure. In other words, if there is a "gap" between the content of the alleged misstatements and the content of the alleged corrective disclosure "as written," class certification is unavailable. *ATRS*, 77 F.4th at 99. That is the case here. On their face, and as Plaintiff's expert has admitted and Defendants' expert agrees, none of the four categories of alleged misstatements says anything at all about a Blankfein/Low meeting, and the corrective disclosure itself says nothing at all about fees, fund diversion, Low's involvement in the 1MDB bond transactions, or Blankfein's awareness of earlier red flags. In other words, the corrective disclosure neither matches with nor links to the prior statements, and that "mismatch" precludes class certification. The mere fact that the statements involve the same subject—*i.e.*, 1MDB—is not enough.

Additional evidence like that evaluated by the *ATRS* court demonstrates that none of the alleged misstatements artificially propped up Goldman's stock price. This also precludes class certification. Significant public information came out during the class period relating directly to each of the alleged misstatements, but the stock price did not react—as Plaintiff's expert has admitted. Plaintiff's expert has also admitted that securities analysts covering Goldman did not quote or refer to the alleged misstatements; that the alleged misstatements were not discussed on earnings

calls; and that even after November 8, market observers did not connect the allegedly corrective information to the alleged misstatements. All of this evidence shows that the alleged misstatements did not prop up Goldman's stock price.

Second, a class cannot be certified unless the corrective disclosure actually caused a statistically significant stock drop. *See Goldman*, 141 S. Ct. at 1961 (noting that the inflation-maintenance theory assumes that "back-end price drop equals front-end inflation"). Here, the corrective disclosure did not have a price impact on Goldman's stock, and thus there is no back-end price drop that can serve as a basis to infer front-end inflation. Both Plaintiff's and Defendants' experts agree that in an efficient market—such as the one for Goldman's stock—information is incorporated into the stock price rapidly. They also agree that because the corrective disclosure was made after market close on November 8, 2018, at 11:17 p.m., Goldman's stock would have begun to react to the corrective disclosure on November 8 no later than the market open on November 9. But there was no statistically significant decline in Goldman's stock at market open, or any other time during the morning of November 9. In fact, Goldman's stock did not experience any statistically significant decline on November 9 until roughly 3:00 p.m.—*15 hours* after the November 8 article was published, following the release of other news relevant to Goldman. Plaintiff offers no meaningful explanation for this extraordinary delay. And the absence of a causal connection between the November 8 disclosure and a decline in Goldman's stock price is further illustrated by additional evidence: among other things, the lack of analyst commentary on the 2013 client event and the lack of price reaction to public reports preceding the corrective disclosure about other meetings involving senior Goldman officials and Low.

Plaintiff's theory that the November 8 disclosure somehow continued to cause a decline in Goldman's stock price on November 12—four days after the November 8 disclosure—is even

more implausible. That theory—which Plaintiff came up with notwithstanding the Court's dismissal of Plaintiff's prior theory for the decline on that day—is also incompatible with the fact that Goldman's stock is efficient and should have rapidly incorporated new information within 15 minutes. It is also contradicted by overwhelming evidence that the November 12 decline was attributable to news that day about Malaysia seeking a "full refund" and "consequential losses" from Goldman—the very disclosure that the Court rejected.

As detailed further herein, class certification should be denied: there is plainly insufficient evidence of price impact. There is a mismatch between the content of the alleged misstatements and the corrective disclosure; additional probative evidence (as well as a "good dose of common sense") confirms that neither the contents of the misstatements nor the corrective disclosure was value relevant; and no sound principle of financial economics or market efficiency supports a finding of price impact either on November 9 or November 12.

STATEMENT OF RELEVANT FACTS

1. **1MDB Background (2012 – 2013):** In 2012 and 2013, Goldman underwrote three bond offerings for a Malaysian sovereign-wealth fund known as "1MDB." ECF No. 272 (Third Amended Complaint ("TAC")) ¶ 2. Two senior Asia-based bankers for Goldman, Tim Leissner (a Goldman Sachs partner) and Roger Ng, led these three 1MDB transactions. *Id.* ¶ 15. Jho Low, an adviser to Malaysian Prime Minister Najib, orchestrated a scheme to divert 1MDB funds to himself and various foreign officials and their relatives. *See, e.g., id.* ¶¶ 11–12. Leissner and Ng were aware of and facilitated the payment of bribes and kickbacks and, in exchange, received kickbacks themselves. *See id.* ¶¶ 152–153, 218. Leissner and Ng regularly lied to Goldman's compliance team, legal department, and business-approval committees to conceal their scheme from the company. *See id.* ¶ 281.

2. **The alleged misstatements (October 2014 – November 1, 2018):** Plaintiff

identifies 13 alleged misstatements by Goldman between late 2014 and late 2018 related to the 1MDB transactions. *See id.* ¶ 26. All of those are included in Exhibit 1 of Dr. Kothari's report. Sperling Decl. Ex. A ("Kothari Rep."). The alleged misstatements concern four topics, which are included in the following table for the Court's convenience:

Category	Alleged False/Misleading Statement
1MDB Fees	"These transactions were individually tailored financing solutions, the fee and commissions for which reflected the underwriting risks assumed by Goldman Sachs on each series of bonds, as well as other prevailing conditions at the time, including spreads of credit benchmarks, hedging costs, and general market conditions." TAC ¶¶ 339–342.
Fund Diversion	"We had no visibility into whether some of those funds may have been subsequently diverted to other purposes." TAC ¶¶ 343–345; *see also id.* ¶¶ 357–358, 361–362.
Low's Involvement	"We have found no evidence showing any involvement by Jho Low in the 1MDB bond transactions." TAC ¶¶ 346–347, 351–354.
"Red Flags"	Sorkin asked Blankfein "[t]here were reports though that . . . senior management, there were red flags on this beforehand. Fair?" Blankfein stated, in part, "I am not aware of them." TAC ¶¶ 363–365.

Plaintiff does not argue any of these alleged misstatements caused any increase in Goldman's stock price when they were issued. To the contrary, both parties' experts agree that Goldman's stock price did not experience a statistically significant increase following any of the alleged misstatements. Kothari Rep. ¶¶ 41–43 & Ex. 2.

3. Public disclosures preceding corrective disclosure (December 2014 – November 8, 2018): Contrary to Plaintiff's suggestion that the "fraud" was "revealed" in November 2018, the 1MDB fraud, including Goldman's role, was extensively covered in the press long before. Kothari Rep. ¶¶ 19–27. In addition to substantial press coverage, the 1MDB scheme even inspired the September 2018 publication of *Billion Dollar Whale*, a *New York Times* bestseller, penned by *Wall Street Journal* reporters, detailing the collapse of the scheme. *Id.* ¶ 27.

Importantly, well before November 8, investors were already aware of significant information about each of the four topics addressed in the alleged misstatements. Indeed, Dr. Kothari examined the full mix of information known to the market, and identified 82 news articles regarding Goldman's fees from the 1MDB transactions, including articles that described Goldman's fees as "inexplicably . . . high," Kothari Rep. ¶¶ 46, 48–50 & Ex. 3; 159 articles discussing Goldman's knowledge of or participation in the diversion of 1MDB funds, *id.* ¶¶ 46, 51–54 & Ex. 3; 51 articles describing ties between Low and Goldman employees, *id.* ¶¶ 46, 55–58 & Ex. 3; and 6 articles addressing purported red flags known to Goldman's management, *id.* ¶¶ 46, 59–60 & Ex. 3. These disclosures *directly* contradict the content of the alleged misstatements (*i.e.*, they are "truthful substitutes" for the alleged misrepresentations). Yet there was no statistically significant price movement attributable to these truthful substitutes on the days when any of these articles were released. *See infra* Part I.A.2; Kothari Rep. ¶ 44 & Ex. 3.

Of particular note were a series of disclosures released in November immediately before the corrective disclosure:

November 1: A federal court unsealed a criminal complaint and information against Leissner, as well as docket entries indicating Leissner had pleaded guilty. *See* Kothari Rep. ¶ 27; Sperling Decl. Ex. D (Complaint and Affidavit); Sperling Decl. Ex. E (Information). These unsealed filings revealed that Leissner and his co-conspirators (Ng and Low) engaged in an "overarching criminal scheme to divert billions of dollars in funds belonging to 1MDB . . . . and to pay bribes to secure and retain business" for Goldman. Sperling Decl. Ex. D ¶ 16. Specifically:

- On the topic of *fees* paid to Goldman, the indictment alleged that Leissner and other Goldman employees "intentionally structured [the 1MDB transactions] as bond deals" to "generate[] much higher revenues and fees for [Goldman] . . . even though the bond financing was more expensive for 1MDB." Sperling Decl. Ex. E ¶ 33.
- On the subject of Goldman's knowledge of *fund diversion* and *Low's involvement*, the

indictment repeatedly alleged that Leissner, Ng, and others conspired with Low to "divert some of the funds" from the 1MDB transactions "into the bank account of shell companies" that Leissner, Ng, Low, and others beneficially owned and controlled. *E.g.*, *id.* ¶¶ 32, 40.

- The indictment also alleged "*red flags*" that caused Goldman to reject Low as a client based on "concerns . . . about the source of [Low's] wealth"—but which did not deter Leissner from engaging in fraud. *Id.* ¶ 23.

Again, the stock price did not react to these disclosures on the very same topics as the 13 alleged false statements—again showing that the alleged misstatements were not "maintaining" inflation. Kothari Rep. ¶ 81.

November 8: During the trading day, *Bloomberg*, *Dow Jones*, and the *Financial Times* all reported on a 2009 meeting between Blankfein, Low, and Najib. Kothari Rep. ¶¶ 27, 79–88; *see also* ECF No. 295-62 (Bloomberg), ECF No. 295-63 (Financial Times), Sperling Decl. Ex. F (Dow Jones)). The *Bloomberg* article reported that the 2009 meeting attended by Blankfein, Leissner, Najib, and Low "laid the groundwork" for the investment banking relationship. Kothari Rep. ¶¶ 79–80; ECF No. 295-62. The stock price on November 8 did *not* react to this 2009 meeting news. Kothari Rep. ¶¶ 79–80.

4. The after-hours corrective disclosure (November 8, 2018): Plaintiff relies on a single corrective disclosure: the November 8 disclosure that Blankfein attended a 2013 Goldman roundtable with 20 significant clients, which was also attended by Najib and Low (the "2013 client event").[1] Mot. 12. This information was contained in a November 8 *Financial Times* article, released after market close at 11:17 p.m. ECF No. 295-63 ("Prosecutors believe that Mr. Low met

---

[1] For purposes of this motion, Defendants assume that the reporting of the meetings was accurate. But Low was not at the 2013 client event at all, as the Deferred Prosecution Agreement ("DPA") between the United States and Goldman explains. *See* ECF No. 295-2 ¶ 65 ("[I]n or about September 2013, Goldman hosted a roundtable in New York for [Najib] . . . Low did not ultimately attend."). Likewise, no deponent in this case recalled Low attending the client event. Defendants thus reserve all rights to address the indisputable factual inaccuracy of Plaintiff's purported "corrective disclosure," and other allegations about purported meetings, at a later stage of this litigation.

. . . with a senior Goldman executive in 2013 at a gathering that included the Malaysian PM" and that "a person briefed on the matter said that unnamed executive . . . was Mr. Blankfein."). Plaintiff's expert, Dr. Mason, "based [his] analysis on the November 8th after hours disclosure as being the disclosure in this case." Sperling Decl. Ex. C ("Mason 10/19/23 Dep. Tr.") 19:14–24.

November 9: When the market opened on November 9, Goldman's stock price did not experience a statistically significant decline, Kothari Rep. ¶ 96 & Exs. 9, 10, meaning that it did not react to the November 8 after-hours disclosure of the 2013 client event. Plaintiff's expert concedes that "Goldman's share price would have begun to react to this information [in the corrective disclosure] no later than the market's opening on [that November 9] morning." Dkt. 295-1 ("Mason Rep.") ¶ 126(a); *see also id.* ¶¶ 34 (efficient market for Goldman's stock should "promptly incorporate new, value-relevant public information"). Indeed, substantial economic evidence confirms that efficient markets incorporate new value-relevant information within approximately *15 minutes*. *See* Kothari Rep. ¶ 97. But Plaintiff's expert does not refute that the stock did not actually react at the market open on the morning of November 9.

Then, at 11:02 a.m. on November 9, the *Wall Street Journal* again reported that Blankfein met Low in 2013, when Najib "s[a]t down with around 20 high-level Goldman clients" at an event "Mr. Low attended with Mr. Najib," according to "people familiar with the matter." ECF No. 295-65. Plaintiff's expert describes this disclosure as merely "confirmatory." Mason 10/19/23 Dep. Tr. 23:20–24:13. Goldman's stock did not experience a statistically significant decline for nearly four hours after the 11:02 a.m. article. Kothari Rep. ¶ 96 & Exs. 9, 10.

It was not until nearly 3:00 p.m. on November 9—15 hours after the November 8 disclosure of the 2013 client event—that Goldman's stock declined. By that time, the market was digesting other confounding news that impacted the price. Kothari Rep. ¶¶ 94–98. Figure 1 of Dr. Kothari's

report (reproduced as Appendix A) illustrates this delayed reaction. *See also id.* Exs. 9, 10.

November 12: Plaintiff also posits that the November 8 disclosure of the 2013 client event caused Goldman's stock to decline four days later, on November 12. Plaintiff's motion, however, ignores the pre-market-open announcement on November 12 that the Malaysian government would be seeking a "full refund" and "consequential losses" from Goldman for the 1MDB transactions (the "Full Refund News"). *See* Kothari Rep. ¶ 108. That omission is glaring, since Plaintiff's own earlier complaint attributed the entirety of the November 12 stock decline to the Full Refund News, ECF No. 63 (Second Amended Complaint) ¶¶ 400–402, a theory swap that Plaintiff's own expert could not coherently explain at his deposition. Mason 10/19/23 Dep. Tr. 41:20–43:4. The Court has already held that the Full Refund News was not an actionable corrective disclosure because it represented the materialization of a known risk. *See* ECF No. 102 at 37. Because it was in fact the cause of the price decline, *see* Kothari Rep. ¶¶ 114–117, Plaintiff cannot rely on the disclosure now to show price impact.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 23(b)(3), Plaintiff is required to prove that common questions "predominate" over individual questions. While Plaintiff may rely on the presumption of reliance announced in *Basic Inc.* v. *Levinson*, 485 U.S. 224 (1988), that presumption is rebuttable where, as here, Defendants show that "alleged misrepresentation[s] did not actually affect the market price of the stock"—*i.e.*, did not have "price impact." *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 284 (2014). *Basic*'s key premise then "completely collapses, rendering class certification inappropriate." *Id.* at 283. In assessing price impact evidence, courts must evaluate "*all* probative evidence" of price impact, "qualitative as well as quantitative—aided by a good dose of common sense." *Goldman*, 141 S. Ct. at 1960 (citation omitted). Defendants' burden is a mere preponderance of evidence, which "will have bite only when the court finds the evidence

in equipoise" (and which "should rarely arise"). *Id.* at 1963.

The bar for class certification in inflation-maintenance cases is high. Even before *Goldman* and *ATRS*, the Second Circuit required plaintiffs in inflation-maintenance cases to establish a close link between the content of the front- and back-end statements. Absent this link, the back-end decline cannot serve as a proxy for the alleged front-end inflation. As the *ATRS* court explained, in *Waggoner* v. *Barclays PLC*, 875 F.3d 79 (2d Cir. 2017), there was a "tight fit between corrective disclosure and misrepresentation." 77 F. 4th at 97. There, the alleged misstatement was that Barclays' trading platforms were "safe from aggressive trading practices" because the bank was "taking steps to protect institutional investors" by "monitoring and removing aggressive traders," and the correction disclosed that "no special protections existed" and "Barclays favored rather than removed aggressive traders." *Id*. (internal quotation marks omitted). As a result, "the corrective disclosure directly implicated not just the same topic, but the alleged misstatements themselves," and because the corrective disclosure "expressly and specifically negat[ed] the alleged false statement," the match between the two statements was *complete*. *Id.* at 98.

Similarly, in *Vivendi, S.A. Sec. Litig.*, 838 F.3d 223 (2d Cir. 2016), the company made a series of statements about its "comfortable liquidity situation" that were later contradicted by reports that the company "faced massive refinancing needs." *ATRS*, 77 F.4th at 98. As the *ATRS* court explained, even though *some* of the alleged corrective disclosures did not "expressly reference" the alleged misstatements, even then the "match" between them was extremely close: the corrective disclosures "*directly* rendered false the company's affirmative misrepresentations." *Id.* (emphasis added).

The Supreme Court's decision in *Goldman* requires even more. *Goldman* held that, where there is "a mismatch between the contents of the misrepresentation and the corrective disclosure,"

the "inference" that "back-end price drop equals front-end inflation" starts to "break down." 141 S. Ct. at 1961. *Goldman* thus meaningfully limits the permissible extent of any gap between the front- and back-end statements. In the words of the Second Circuit in *ATRS*: *Goldman* "adds more to the mix" and "dispels the notion" that a plaintiff can craft an inflation-maintenance case by pointing to mismatching disclosures on the same basic subject. *ATRS*, 77 F.4th at 99, 102 (noting that "a plaintiff cannot (a) identify a specific back-end, price dropping event, (b) find a front-end disclosure bearing on the same subject, and then (c) assert securities fraud, unless the front-end disclosure is sufficiently detailed in the first place"). As a result, adding to the limitations on the inflation-maintenance theory in *Waggoner* and *Vivendi*, *Goldman* also requires "that any gap among the front- and back-end statements *as written* [must] be limited." *ATRS*, 77 F.4th at 99 (emphasis added).

The Second Circuit also gave additional guidance for how to assess whether a back-end drop is a proxy for front-end inflation when there is *some* overlap between the alleged misstatements and the corrective disclosure. The inference that the alleged misrepresentations are "propping up" the stock "requires some indication that investors relied upon the [misstatements] as written." *ATRS*, 77 F.4th at 100. While the misstatement need not cause an uptick in inflation, it must "actually maintain inflation" and actually "prop[] up the stock." *Id.* at 80. Whether a misstatement has inflation-maintaining capacity can be tested by asking whether a "truthful substitute" for the alleged misstatement "would have impacted the stock price." *Id.* at 98–99, 103. While *ATRS* addressed a "mismatch in genericness," *id.* at 100, *Goldman* made clear that the analysis applies to any "mismatch between the contents of the misrepresentation and the corrective disclosure," 141 S. Ct. at 1961. To determine whether any link has been severed, *Goldman* requires the Court to consider all "probative evidence" of price impact, *id.* at 1960, which in *ATRS* encompassed,

among other items, analyst reports demonstrating that investors did not consciously rely upon the alleged false statements in making investment decisions. *ATRS*, 77 F.4th at 104.

ARGUMENT

I. CLASS CERTIFICATION SHOULD BE DENIED BECAUSE DEFENDANTS HAVE REBUTTED THE *BASIC* PRESUMPTION OF RELIANCE

Class certification must be denied for two independent reasons. *First*, there is a "mis-match" between the alleged November 8 corrective disclosure—*i.e.*, in Plaintiff's words, the "revelation that Blankfein met with Low" in 2013, Mot. 2, 27—and each of the 13 alleged misstatements. This mismatch, and additional evidence akin to the dispositive evidence in *ATRS*, destroys any potential inference that the back-end decline is a proxy for front-end inflation. *Second*, there is overwhelming evidence that the corrective disclosure on November 8 did *not* affect the stock's price on November 9—and certainly not on November 12—meaning that there is also no back-end stock drop from which to infer front-end price impact.

A. The "Mismatch" Between the Corrective Disclosure And Alleged Misstatements, as Well as Other Price-Impact Evidence, Precludes Certification Under *Goldman Sachs* and *ATRS*

Applying *Goldman* and *ATRS* to this case compels the conclusion that class certification must be denied because (1) there is a complete mismatch between the alleged front-end misstatements and the back-end corrective disclosure; (2) even if there were some overlap, the "truthful substitutes" for the alleged misstatements had no impact on Goldman's stock price; and (3) overwhelming evidence demonstrates that the alleged misstatements—which were entirely ignored by analysts during the class period—were not, in fact, propping up Goldman's stock price. Under the analysis conducted by the Second Circuit in *ATRS,* class certification should be denied.

1. There Is a Complete "Mismatch" Between the Front- and Back-End Disclosures

Absent a sufficient link between the content of the front- and back-end statements as

written, Plaintiff cannot rely upon the inference that back-end decline equals front-end inflation. The mismatch analysis must be conducted as to each alleged misstatement. *See ATRS,* 77 F.4th at 94–95.[2] Properly conducted here, there is a complete "mismatch between the contents of the misrepresentation and the corrective disclosure." *Goldman*, 141 S. Ct. at 1961.

A. *i. Alleged misstatements about fees and commissions:* Plaintiff first challenges four statements concerning fees and commissions earned in the 1MDB transactions, such as "what we earned from the debt transactions reflected the risks we assumed at the time." Kothari Rep. Ex. 1 (statements 1–2, 10–11). But these statements lack a sufficient link to the corrective disclosure that Blankfein attended a 2013 client event with Low and 20 Goldman clients. For one thing, the disclosure neither "expressly referenced" nor "directly render[ed]" them false; indeed, the disclosure did not even relate to the volume of Goldman's fees. Plaintiff's expert admitted as much at his deposition. Mason 10/19/23 Dep. Tr. 124:14–19 ("Q. The November 8th and 9th disclosure about the Blankfein/Low meeting does not talk about the fees and commissions that Goldman made from the 1MDB. Correct? A. That is correct."). Plaintiff does not argue otherwise in its motion, failing to match them to the corrective disclosure at all. *See* Kothari Rep. ¶ 100. Under *ATRS*, Plaintiff cannot simply identify front-end and back-end statements on the same "subject matter," *i.e.*, 1MDB. 77 F.4th at 100–101. Instead, the alleged misrepresentations "as written" must provide a "closer fit." *Id.* at 99 & n.11.

---

[2] *See Allegheny Cnty. Emps.' Ret. Sys.* v. *Energy Transfer LP*, 623 F. Supp. 3d 470, 509 (E.D. Pa. 2022) ("[C]lass certification is claim specific and . . . the alleged misrepresentations define the [securities fraud] claims raised."); *In re Chicago Bridge & Iron Co. N.V. Sec. Litig.*, 2019 WL 5287980, at *25–39 (S.D.N.Y. Oct. 18, 2019), *report and recommendation adopted in relevant part*, 2020 WL 1329354 (S.D.N.Y. Mar. 23, 2020) (price impact rebutted as to one of seven alleged corrective disclosure dates); *In re Intuitive Surgical Sec. Litig.*, 2016 WL 7425926, at *14–17 (N.D. Cal. Dec. 22, 2016) (price impact rebutted on two of five disclosure dates); *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 309 F.R.D. 251, 269–80 (N.D. Tex. 2015) (price impact rebutted on five of six alleged disclosure dates).

ii. Alleged misstatements about visibility into fee diversion by 1MDB: Plaintiff next challenges three statements in which Goldman stated "[w]e had no visibility into whether some of those funds may have been subsequently diverted to other purposes" by 1MDB. Kothari Rep. Ex. 1 (statements 3–4, 7–9, 11–12). Again, the content of the front-end and back-end statements is entirely unmatched: the front-end statements concern Goldman's visibility into the diversion of funds, and the back-end statement concerns Blankfein and Low attending a 2013 client event.[3] Kothari Rep. ¶ 100–102. Here again, Plaintiff's expert could not and did not dispute the mismatch at his deposition. Mason 10/19/23 Dep. Tr. 126:19–127:4 ("Q. The November 8th and 9th disclosures about an alleged Blankfein/Low Meeting in 2013 doesn't talk about how funds relating to the 1MDB transactions were or weren't used. Right? A. Right.").

iii. Alleged misstatement regarding evidence of Low's involvement: Plaintiff cites a single December 22, 2016, statement by Goldman that "we have found no evidence showing any involvement by Jho Low in the 1MDB bond transactions." Kothari Rep. Ex. 1 (statement 5).[4] Again, Plaintiff contrasts this with the disclosure of Blankfein and Low attending a 2013 client event. Information placing Blankfein, Low, and Najib at a 2013 client roundtable with 20 other Goldman clients does not "match" the front-end disclosure that, as of December 2016, Goldman had not found evidence of Low's involvement in the 1MDB transactions. Kothari Rep. ¶ 100–102. The mere attendance of these three people at a client event does not, on its face, directly

[3] Plaintiff states that the 2013 client event "included discussions of 1MDB," Mot. 27, which does not capture the details of the *Wall Street Journal* article. To the extent that the article describes the 2013 client event at all, it says that the purpose of the 2013 client event was for PM Najib "to sit down with around 20 high-level Goldman clients." ECF No. 295-65 . By contrast, the article says that the 2009 meeting—which had been disclosed on November 8, *see supra* p. 7—was "set up by [Leisner and Ng] for Goldman to pursue deals with 1MDB." *Id.*.

[4] Plaintiff also cites a different statement by Goldman, from June 2017, about whether Low was a client of Goldman in connection with the Coastal Energy acquisition. Kothari Rep. Ex. 1 (statement 6). Plaintiff does not address this statement anywhere in its moving brief; the statement is not even about Low's involvement in the 1MDB bond transactions and plainly does not "match" at all with the November 8 client event disclosure.

render false Goldman's statement that it had not identified evidence of Low's involvement in the 1MDB transactions, which Plaintiff's expert could not and did not dispute. Mason 10/19/23 Dep. Tr. 138:6–10 ("Q. Is it your recollection that those articles say that Mr. Low was involved in the one 1MDB bond transactions? A. Oh, in the bond transactions themselves. I'm not sure they say that."); *see also id.* 138:11–145:11.[5]

iv. Alleged misstatement by Blankfein about "red flags" known beforehand to senior management: Finally, Plaintiff challenges Blankfein's November 1, 2018, statement, "I'm not aware of them," following a question about reports of senior management being aware of "red flags . . . beforehand." Kothari Rep. Ex. 1 (statement 13). That Blankfein stated his own lack of awareness of "red flags" that may have been known beforehand to senior management does not "match" with a disclosure of his participation in the 2013 client event, after the 1MDB transactions had concluded. Kothari Rep. ¶ 100–102; Mason 10/19/23 Dep. Tr. 123:21–124:3 ("Q. Dr. Mason, which of the four categories of alleged misstatements talks about a meeting in 2013 between Mr. Blankfein and Mr. Low? . . . . A. None of the misstatements specifically refer to a meeting.").

b. Plaintiff does not attempt to conduct a statement-by-statement comparison of the information in the alleged misstatements and in the corrective disclosure. Instead, Plaintiff argues that there is no "disconnect" only because Plaintiff ignores the actual content of the statements and then recharacterizes them to suit its narrative. Mot. 26. Specifically, Plaintiff argues that the alleged misstatements "denied [defendants'] culpability and connection to Low," whereas the

[5] Plaintiff argues that the Court, in ruling on the motion to dismiss, "found" that the corrective disclosure "contradicted" this alleged misstatement. Mot. 27. But this Court's ruling did not address whether there was "mismatch" between this particular corrective disclosure and this alleged misstatement under the later-decided *Goldman* and *ATRS*. And the Second Circuit has now clarified that "whether there is a basis to infer that the back-end price equals front-end inflation . . . is a different question than loss causation." *ATRS*, 77 F.4th at 99 n.11. The Second Circuit has also clarified that—compared to that loss-causation inquiry—the price-impact inquiry requires a "closer fit (even if not precise) between the front- and back-end statements." *Id.*

corrective disclosure revealed that "Goldman was culpable and complicit in Low's corruption." *Id.*; *see also* Mot. 25, 27. But the Second Circuit has expressly rejected Plaintiff's approach. *ATRS* repeatedly explains that the mismatch analysis requires a court to determine whether the alleged misstatements "*as written*" maintained inflation in the stock's price. *See, e.g.*, 77 F.4th at 99, 100, 101, 102 (emphasis added). Plaintiff cannot rewrite the alleged misstatements as wholesale "denials of culpability" when that is not what those alleged misstatements actually say. *Id.* at 100 (noting that "reinforcement [of a market misconception] requires some indication that investors relied upon the [alleged misstatement] *as written*" (emphasis added)). Plaintiff also cannot recharacterize the corrective disclosure as a wholesale revelation that "Goldman was culpable" when that is not what the November 8 news report actually says. And of course that recharacterization of the new information is particularly implausible when so much public information already detailed Goldman's involvement with 1MDB. *See supra* pp. 4–7.

Plaintiff also attempts to craft a link by relying on "market commentary"— five articles in total—allegedly tying the corrective disclosure to the alleged misstatements. Mot. 13–14, 27. That effort fails. The articles Plaintiff cites never quote, cite, or refer back to the 13 alleged misstatements—as Plaintiff's own expert conceded. Kothari Rep. ¶¶ 74–77; Mason 10/19/23 Dep. Tr. 191:6–8, 193:15–20, 193:24–194:4. For example, the *Financial Times* article that Plaintiff cites connects Leissner's plea and Ng's indictment—not the 2013 client event—with an observation that "Goldman has always maintained that it did not know how the proceeds of the bond offerings were spent." ECF No. 295-64. Likewise, the *Wall Street Journal* article that Plaintiff cites connects the DOJ indictment—not the 2013 client event—to the observation "[t]he bank has said it couldn't have known what would happen to the money it helped raise." ECF No. 295-65. Indeed, as Dr. Kothari explains, *none* of the "market commentary" issued in the wake of the corrective

disclosure and cited by Plaintiff (or its expert) either "mention[s] any of the Alleged Misstatements *at all*" or claims that "the November 8-9 Alleged Disclosure corrected the Alleged Misstatements." Kothari Rep. ¶ 75; *see also id.* ¶¶ 74–77. Instead, all five articles simply question whether the news that Blankfein met with Low undermined the "rogue employee" narrative offered by Goldman following Leissner's plea—and therefore referred to *different* statements by Goldman. *Id.* ¶ 75 & n.135. As *ATRS* explained, market "commentary touching upon only the same subject matter . . . cannot be enough" to establish that investors "relied on [the alleged misstatements]." 77 F.4th at 104.

*   *   *   *   *

The fatal flaw in Plaintiff's theory is that, under *ATRS*, the new information in the corrective disclosure *as written* does not in any way "match" with or "link" to the alleged misstatements *as written*. This complete mismatch is dispositive: the inflation-maintenance theory fails and class certification should be denied.

2. *"Truthful Substitutes" Of The Alleged Misstatements Would Not Have Affected The Stock's Price*

Even if the Court were to determine that there is at least *some* informational overlap between the front-end and back-end statements, the Court must still evaluate whether a "truthful substitute" for the alleged misrepresentation would have impacted the stock price.[6] *ATRS*, 77 F.4th at 98–102 (citing *Vivendi*, 838 F.3d at 258). As noted above, *see supra* pp. 10–11, this analysis allows the Court to assess how the market would have reacted to a truthful alternative disclosure, made at the same level of specificity as the alleged false statements. *See ATRS*, 77 F.4th at 98–

[6] Plaintiff appears to suggest that this requirement does not apply here because plaintiff does not claim that the "risk-disclosure was misleading by omission." Mot. 25 n.13 (quoting *ATRS*, 77 F.4th at 102). But *ATRS* expressly contemplates that this "truthful-substitute-formula" applies whenever "the corrective disclosures do not expressly identify the alleged misrepresentation as false." 77 F.4th at 98–99.

102. If the stock price would not have reacted (or did not react) to the truthful substitute, then the alleged false statement did not have any "inflation-maintaining capacity." *Id.* at 103.

Here, the Court need not speculate about how the market would have reacted to a "truthful substitute" because information constituting truthful substitutes for the four categories of alleged misstatements was released repeatedly during the class period. That the stock price did not react to these disclosures demonstrates unequivocally that none of the alleged misstatements had inflation-maintaining capacity; otherwise, these truthful substitutes would have caused the artificial inflation to have dissipated. Glaringly, neither Plaintiff nor its expert makes any effort to demonstrate that truthful substitutes for the front-end statements would have affected Goldman's stock price. To the contrary, Dr. Mason does not consider disclosures throughout the putative class period that "extensively discussed and revealed the information purportedly concealed by the Alleged Misstatements." Kothari Rep. ¶ 44. Dr. Kothari's analysis confirms the lack of price impact of the front-end statements:

i. *Alleged misstatements about fees and commissions:* A truthful substitute for the alleged false statements about fees and commissions would be "Goldman's fees and commissions were higher than one would expect given the assumed risks." But the release of that exact information *did not* affect the stock's price. For example, even before the proposed class period, *The Edge Malaysia* published an article stating that "the fees and other payments paid to" Goldman were "particularly high" and "way above industry norm." Sperling Decl. Ex. G. Goldman's stock price did not decline. Kothari Rep. ¶ 48. Indeed, Dr. Kothari identified 82 additional articles on 67 separate days between November 2014 and November 8, 2018, discussing Goldman's high fees from 1MDB. *Id.* ¶¶ 46–50 & Ex. 3. There was no statistically significant price movement

attributable to the truthful substitute on any of the days such information was revealed, which shows that the market did not view Goldman's 1MDB fees as value-relevant. *Id.* ¶ 50 & Ex. 3.

ii. *Alleged misstatements about visibility into fund diversion by 1MDB*: A truthful substitute for the alleged misstatements about Goldman's visibility into the diversion of funds would have to concern the diversion of funds—*e.g.*, "Goldman had visibility into whether funds may have been subsequently diverted by 1MDB to other purposes." But again, that statement would not have affected the stock price because it *did not* affect the stock's price. Dr. Kothari identified 159 articles published on 83 separate days between July 2016 and November 8, 2018, that discussed the diversion of funds from 1MDB, many of which included reports that Goldman senior executives may have been aware of, or participated in, the diversion of funds. Kothari Rep. ¶¶ 46, 51–54 & Ex. 3. On top of that, the Leissner indictment and plea revealed that Leissner admitted that he and Ng conspired to divert funds. Kothari Rep. ¶ 27; *see also supra* pp. 6–7. Yet there was no statistically significant price movement on *any* day when Goldman employees' participation in fund diversion was disclosed, demonstrating that the fund diversion misstatements did not maintain inflation in the stock price. *Id.* ¶¶ 46, 54 & Ex. 3.

iii. *Alleged misstatement regarding Goldman's knowledge of Low's involvement*: With respect to Goldman's December 2016 statement about evidence of Low's involvement in the 1MDB bond transactions, the truthful substitute would actually refer to Goldman's knowledge of Low's involvement—*e.g.*, "Goldman had evidence showing Low's involvement in the 1MDB bond transactions." Again, this information was actually revealed to the market before the corrective disclosure on November 8, and the information *did not* affect the stock's price. Between the date of the alleged misstatement (December 22, 2016) and the alleged corrective disclosure (November 8, 2018), more than 20 press reports discussed Low's involvement in the 1MDB deals,

and many discussed the possibility that Goldman had knowledge of Low's involvement. Kothari Rep. ¶¶ 46, 55–58 & Ex. 3. Among these disclosures were (1) the September 2018 publication of *Billion Dollar Whale* detailing Low's role as the scheme's mastermind, and reporting on the close connections between Low, Leissner, and Ng; and (2) the November 1 Leissner criminal filings describing the conspiracy between Low, Leissner, Ng, and others.[7] *Id.* ¶ 27. That none of these disclosures caused a price decline demonstrates that the alleged misstatement about Low's involvement was not propping up Goldman's stock price. *Id.* ¶ 57 & App'x E.3.

iv. *Alleged misstatement about Blankfein's knowledge of red flags*: Finally, the truthful substitute for Blankfein's "red flags" response would not have affected the stock's price. Here, even reading Blankfein's response as Plaintiff reads it (*i.e.*, as a denial of the existence of red flags), the truthful substitute would be an acknowledgment by Blankfein of red flags known earlier to Goldman senior management. But Plaintiff ignores the voluminous public information about red flags before Blankfein made the statement, including in *Billion Dollar Whale,* which stated "[a] series of red flags—from the involvement of Jho Low, to the unusual decision to obtain a guarantee from the fund of another country, to 1MDB's willingness to overpay for the power plants—were all overlooked." Kothari Rep. ¶ 59. Furthermore, six articles published between Blankfein's alleged misstatement (on November 1) and the alleged corrective disclosure (after-hours on November 8) discussed evidence that Goldman was aware of "red flags" related to the 1MDB transactions. *Id.* ¶ 60 & Ex. 3. There was *no* statistically significant price movement when any of that information was released to the market, *id.* ¶¶ 59–60 & Ex. 3, thus confirming that the "red flags" statement neither created nor maintained any stock price inflation.

[7] The "truthful substitute" for the alleged misstatement about Low being a client in the Coastal Energy deal was revealed no later than September 2018 when *Billion Dollar Whale* was published, and there was no resultant stock decline. Kothari Rep. ¶ 58. Accordingly, that alleged misstatement did not have inflation-maintaining capacity, even assuming that the statement is sufficiently linked to the corrective disclosure (which it is not, *see supra* p. 14 n.4).

In sum, under *ATRS*, these analyses confirm that the "truthful substitute" disclosures would not—and indeed, did not—have "price-dropping capacity." *ATRS*, 77 F.4th at 102. This unequivocally demonstrates the lack of price impact of the alleged misstatements.

3. Other Evidence Confirms That the Alleged Misstatements Did Not Maintain Artificial Inflation in the Stock Price

Substantial additional evidence—including the same type of evidence considered in *ATRS,* as well as additional economic evidence not at issue in *ATRS*—confirms that the 13 alleged misstatements did not "actually maintain inflation" in the stock. *ATRS*, 77 F.4th at 100. As *ATRS* explains, economic evidence drawn from contemporaneous analyst reports and other sources is relevant to showing that the alleged misstatements did not "hold [their] weight" by reinforcing market misconceptions or otherwise causing the stock price to remain inflated. *Id.*

i. No Price Increase from Alleged Misstatements: It is undisputed that none of the alleged misstatements *increased* the stock's price when they were issued. Confirming Plaintiff's concession, Dr. Kothari found that the stock price "did not increase in a statistically significant way following any of the 13 Alleged Misstatements." Kothari Rep. ¶ 43 & Ex. 2.

ii. No Contemporaneous Analyst or Investor Reliance on Alleged Misstatements: *ATRS* instructs courts to consider any "pre-disclosure investor report[s]" discussing the alleged misstatements as an indicator of their inflation-maintaining capacity. *ATRS*, 77 F.4th at 103. Here, as in *ATRS*, the evidence also supports that investors did not rely upon any of the alleged misstatements "in the moment" when evaluating Goldman and making investment decisions. *ATRS*, 77 F.4th at 100. As Dr. Kothari found, none of the 1,430 analyst reports that covered Goldman Sachs during the four-plus-year class period (and beyond)—including 82 reports discussing 1MDB in some form—discussed or commented on any of the Alleged Misstatements *at any point*. Kothari Rep. ¶¶ 62–70 & Exs. 5.A–5.D. Nor were there any questions asked on earnings calls during the

class period about any of the alleged misstatements. *Id.* ¶¶ 71–73. In short, investors were not relying upon the alleged misstatements "in the moment." *ATRS*, 77 F.4th at 100.

iii. No Analyst Tied the Corrective Information Back to the Alleged Misstatements: Analyst reports following the alleged corrective disclosure also confirm that investors did not understand the disclosure to be connected to the alleged misstatements. From November 9, 2018, to the end of January 2019, the vast majority of analyst reports mentioning 1MDB—70 out of 72—made no mention at all of meetings between Blankfein and Low. Kothari Rep. ¶¶ 89–93. Of the remaining two reports, one mentioned not the 2013 client event, but rather the 2009 meeting between Blankfein and Low (not alleged as a corrective disclosure by Plaintiff, and also not accompanied by any stock price drop). *Id.* ¶ 91. The final report mentions *a* meeting, but does not distinguish whether it is referring to the 2009 or 2013 meeting. *Id.* And while that report refers to the meeting as a potential explanation for Goldman's recent stock decline—among ten possible reasons—it does not tie the 2013 meeting back to the 13 alleged misstatements. *Id.*; *see also* Mason 10/19/23 Dep. Tr. 90:3–9 ("Q. By the way, does that sentence about Mr. Blankfein say that his presence meant that Goldman lied about anything? . . . A. No."). Accordingly, none of the post-corrective disclosure analyst reports connected the 2013 client event disclosure to any of the alleged misstatements, and almost all of them ignored it entirely. *See ATRS*, 77 F.4th at 103 (noting that market commentary after the corrective disclosure did not show that the "market relied on the [alleged misstatements]"); *id.* at 104 (parsing the specific language of the analyst reports and explaining that commentary touching on "the same subject matter" as the alleged misstatements "cannot be enough" to show that investors relied on the alleged misstatements).

iv. Plaintiff Inaccurately Relies on Press Reports to Connect The Corrective Disclosures and Alleged Misstatements: Finally, as noted above, Plaintiff identifies five news articles

"issued in the wake" of the alleged corrective disclosure that allegedly "demonstrate that the [alleged misstatements] impacted Goldman's stock price." *See* Mot. 13–14, 25–26; Mason Rep. ¶¶ 115–125. But as explained above, none of those news stories connect the corrective disclosure to any of the alleged misstatements. *See supra* pp. 16–17.

* * * * *

Defendants have established that there is a mismatch between all 13 alleged misstatements and the sole corrective disclosure, which severs the inference that the alleged back-end price decline is a proxy for front-end inflation. Defendants have also established that that the alleged misstatements were not "propping up" Goldman's stock. This precludes Plaintiff's reliance on the inflation-maintenance theory, forecloses application of the *Basic* presumption, and requires class certification to be denied. If the Court were to conclude that there is a mismatch between the corrective disclosure and only some alleged misstatements, it should exclude those misrepresentations from the class and shorten the class period. *See* Fed. R. Civ. P. 23(c)(1)(B) (requiring the court to "define" the "class claims, issues, or defenses"); *Simpson* v. *Dart*, 234 F.4th 706, 713 (7th Cir. 2022) (noting that certification may be appropriate for "some . . . claims but not others").

B. The Corrective Disclosure Did Not Cause A Back-End Price Drop On November 9 or November 12

Class certification must be denied for the independent reason that the November 8 corrective disclosure did not cause Goldman's stock price to drop. Plaintiff's theory is that the corrective disclosure released after-hours on November 8 affected the stock's price on November 9 and then next trading day, November 12. But in an efficient market, information is absorbed rapidly into the stock price. Both Plaintiff's and Defendants' experts agree that if value-relevant information is disclosed after the market closes on one day, it should affect the stock price at market open the following day. Here, the alleged corrective disclosure occurred at 11:17 p.m. on November 8,

2018, but there was no statistically significant price drop at market open on November 9. Indeed, there was no statistically significant price drop until nearly 3:00 p.m. on November 9. Plaintiff's theory of delayed price impact is incompatible with the theory of efficient markets, and its assertion that the corrective disclosure continued to affect the stock's price on November 12 is even more preposterous. That economic evidence should be dispositive alone, but that evidence is confirmed by obvious alternative explanations for the price drop on both days: on November 9, the market reacted to other confounding news; on November 12, the market responded to news that Malaysia intended to bring an enforcement action for 1MDB—precisely the explanation for the November 12 drop advanced in Plaintiff's Second Amended Complaint.

1. Class Certification Must Be Denied Because The Corrective Disclosure Did Not Cause A Back-End Price Drop On November 9

It is undisputed that the alleged corrective disclosure occurred at 11:17 p.m. on November 8, and that there was no statistically significant price decline at the market-open on November 9. Kothari Rep. ¶¶ 96–98. Nor was there a statistically significant price decline for over 5 hours after the open, until approximately 3:00 p.m. on November 9. *Id*. & Ex. 9, 10. Plaintiff's contention that, in an efficient market, it took 15 hours for the market to react to the simple disclosure that Blankfein met with Low in 2013 is completely implausible. If the market is efficient (which is undisputed), and the revelation that Blankfein met with Low in 2013 were value-relevant (as Plaintiff claims it is), then the market would have reacted to that information at the opening on November 9—long before 15 hours had passed. *Id*. ¶ 96.

Plaintiff's expert has conceded as much. Dr. Mason found that each of the ten factors he considered supported a finding of market efficiency, Mason Rep. ¶¶ 93–94; agrees that efficient markets "promptly incorporate new, value-relevant public information about the issuer," *id.* ¶ 34;[8]

[8] This concession is consistent with case law. *See Amgen Inc.* v. *Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455,

and admits that Goldman's stock would have "begun to react" to information released "after the close of trading" on November 8 "no later than the market's opening" on November 9, *id*. ¶ 126. Plaintiff offers no explanation for the 15-hour delay.

Nor can it: as Dr. Kothari explains, substantial economic literature shows that efficient markets incorporate new information within 15 minutes, if not much sooner. Kothari Rep. ¶¶ 97, 109–110.[9] Consistent with those studies, courts have held that, in the context of a pre-market-open disclosure, the lack of a statistically significant decline at the market open demonstrates lack of price impact. *See Ramirez* v. *Exxon Mobil Corp.*, 2023 WL 5415315, at *16 (N.D. Tex. Aug. 21, 2023) (evaluating price movement using a "close-to-open window" where corrective disclosure was "short, easily digestible article issued hours before the market opened"). Lack of a statistically significant back-end decline means that "price movement is indistinguishable from random price fluctuations" and "cannot be attributed to company-specific information." *ATRS*, 77 F.4th at 86 n.5; *see, e.g.*, *Exxon Mobil*, 2023 WL 5415315, at *15–16; *In re Moody's Corp. Sec. Litig.*, 274 F.R.D. 480, 493 (S.D.N.Y. 2011). Because the November 8 disclosure of the 2013 client event did not cause a statistically significant decline the *Basic* presumption is rebutted.

Moreover, other confounding information released on November 9 explains the late-day decline. By 3:00 p.m., when Goldman's stock began to trend down, additional confounding information had been released: (1) a *Bloomberg* article reporting that Goldman lagged behind peer firms in its plan to transfer assets to Germany because of Brexit (10:28 a.m.); (2) Leissner's plea

466 (2013) (noting that "all publicly available information is *rapidly* incorporated" (emphasis added)); *Waggoner*, 875 F.3d at 94 (similar); *Meyer* v. *Greene*, 710 F.3d 1189, 1197–98, 1199 n.11 (11th Cir. 2013) (similar).

[9] Unlike Dr. Kothari, Dr. Mason does not perform a detailed analysis of the timing of Goldman's stock price movements on November 9. Instead, he relies on news articles that allegedly connect the 2013 client event to the stock price declines. Kothari Rep. ¶ 100. Needless to say, the journalists on which Dr. Mason relies do not purport to have conducted an intra-day trading analysis or to have considered other information in the market about Goldman, and Dr. Mason's reliance on journalists is no substitute for economic analysis by a credited expert. *Id.*; *see also id.* ¶ 101 (identifying news articles that credit the stock price declines to other causes).

transcript, in which Leissner made the accusation that his actions were "in line" with a "culture" at Goldman to "conceal facts from certain compliance and legal employees" (12:17 p.m.); (3) a statement by an advisor to then-President Trump that Goldman was acting as "China's unpaid agent" during trade discussions between the United States and China (12:24 p.m.); and (4) a report that the Federal Reserve intended to amend the "Stress Capital Buffer," which would have caused Goldman to have a $15 billion capital deficit (2:08 p.m.). Kothari Rep. ¶¶ 94, 97–98 & tbl. 5. Goldman's stock price started to decline only after this confounding news was released, and occurred much closer in time to the release of the confounding news than the November 8 corrective disclosure. Kothari Rep. ¶¶ 96–97 & Ex. 10. Indeed, contemporaneous analyst reports frequently referenced those confounding events. Kothari Rep. ¶¶ 94–95 & nn. 198, 203, 209, 218.

By contrast, contemporaneous analyst reports *never* directly reference the 2013 client event. Of the 72 analyst reports issued from November 9, 2018, to January 31, 2019 that made any mention of 1MDB, 70 did not mention a meeting between Blankfein and Low. Kothari Rep. ¶¶ 89–91. That analysts largely ignored the disclosure confirms that the market did not view the specific "revelation" in the corrective disclosure to be value-relevant. *Id*. Of the two reports that do mention a meeting, the first mentioned only the *2009 meeting*, and the second says that "Blankfein reportedly met with 1MDB representatives" without specifying either the 2009 or 2013 meeting. *Id.* ¶ 91. Those two analysts did not revise their Goldman price targets, buy/sell recommendations, or earnings targets, showing that neither analyst considered the meeting to be value-relevant. *Id.* ¶ 90. That not a single analyst called out the 2013 client event specifically, much less changed their valuation of Goldman on that basis, dramatically undermines Plaintiff's attempt to ascribe billions of market capitalization losses to that single piece of information. *See, e.g.*, *Exxon Mobil Corp.*, 2023 WL 5415315, at *15–16 (finding *Basic* presumption rebutted when only 6 of

480 contemporary analyst reports mentioned one corrective disclosure, when 0 mentioned a second corrective disclosure, and when none of the reports adjusted price targets).

Moreover, it is not surprising that the news about the 2013 client event did not move the market because that information was neither new nor value-relevant. The market was already aware that Blankfein met with Low in 2009, and that a "high-ranking executive" had met with Low in 2013—and there was no statistically significant price movement following either of those disclosures. Kothari Rep. ¶¶ 79–87. Further, Dr. Kothari identified 24 news articles published during the proposed class period that discussed senior-level meetings between Goldman Sachs officials and 1MDB officials, including the meetings in 2009 and 2013. *Id.*; *see also* Sperling Decl. Ex. B ("Wood Rep.") ¶¶ 21–22 (explaining professional investors "would have been aware of extensive information regarding the 1MDB scandal" before the corrective disclosure).[10] Again, there was no statistically significant price movement following any of those disclosures. When, as here, there is already public information that "mirrors the corrective disclosure[]," it is "less likely that the corrective disclosures were actually curative" and "less likely that [the corrective disclosures] caused the back-end price drops." *In re Qualcomm Inc. Sec. Litig.*, 2023 WL 2583306, at *13 (S.D. Cal. Mar. 20, 2023); *see also Exxon Mobil*, 2023 WL 5415315, at *15 (finding no price impact where "two additional articles" introducing "identical" or "the same essential information" as a corrective disclosure did not affect the stock's price). Indeed, responding to Dr. Mason, expert Christianna Wood, who has decades of experience as a professional investor, Wood Rep. ¶¶ 1–9, explains that the disclosure of Low's attendance at a 2013 client event to

[10] In addition, *Billion Dollar Whale*, published in September 2018, had already reported that Blankfein and Low were in the same New York City hotel in 2013, and that Najib met with Blankfein during this trip. Kothari Rep. ¶ 82. Remarkably, Dr. Mason did not even bother to read *Billion Dollar Whale* when preparing his expert report to learn that it partially disclosed the 2013 meeting, and he conceded that it "might have changed his opinion." Mason 10/19/23 Dep. Tr. 111:19–22, 113:15–114:2.

cultivate business, which investors would have assumed "would have centered around topics of interest to the [Malaysian] Prime Minister" is simply not the kind of information that would be meaningful to investors' decisions regarding Goldman's stock. Wood Rep. ¶¶ 23–29.

On the basis of this overwhelming evidence, the Court cannot certify a class because it is more likely than not that the November 8 corrective disclosure did not affect the stock's price, and Defendants thus have rebutted the *Basic* presumption.

2. *Even Assuming the Corrective Disclosure Caused A Back-End Price Drop On November 9, It Certainly Caused No Drop on November 12*

Plaintiff also makes the untenable claim that the increasingly severe price drop on November 12 is attributable to the November 8 corrective disclosure. This contention is inconsistent with a stock that trades in an efficient market. Courts have consistently rejected multi-day event windows if the stock at issue trades in an efficient market. *Halliburton*, 309 F.R.D. at 276; *see also Intuitive Surgical*, 2016 WL 7425926, at *14 (noting that the use of "two-day window to calculate price impact" was "inappropriate" because "it is likely that the market would have [] quickly incorporated the information contained in the Bloomberg article into [the] stock price"); *In re Sec. Cap. Assur. Ltd. Sec. Litig.*, 729 F. Supp. 2d 569, 600 n.5 (S.D.N.Y. 2010) (rejecting loss causation theory where the allegations involved "wide event windows"). Plaintiff should not be permitted both to invoke the efficient market theory to satisfy reliance, but then rely on a delayed decline four days later that is irreconcilable with that theory.

Given academic research showing that stock prices incorporate news within a matter of minutes, Plaintiff's argument that the November 12 stock decline was caused by the three-plus-day-earlier disclosure is "unscientific." Kothari Rep. ¶ 110. Dr. Mason has conceded that new, value-relevant information is incorporated "rapidly" and would have begun at the market open on November 9. *See supra* pp. 24–25. He has also previously admitted that delayed price reactions

should occur only in exceptional cases, when the disclosure arrives "at the end of the trading day" or is "very complex." Sperling Decl. Ex. H ("Mason 12/16/21 Dep. Tr.") 56:18–22, 57:19–58:7. Assuming such exceptions exist, neither applies here because the purportedly new information was both simple and released in the evening of November 8. Kothari Rep. ¶ 112; Wood Rep. ¶ 30.

Plaintiff's theory of delayed price movement is particularly implausible given the obvious alternative explanation for the price drop on November 12: Malaysia's Finance Minister announcing before market open that Malaysia was seeking to recover "a full refund" and "consequential losses" from Goldman for 1MDB. Kothari Rep. ¶ 114–115. As Dr. Kothari demonstrates, this Full Refund News "entirely explains" the price decline on November 12 because of the direct impact of the disgorgement and the indirect reputational effects on Goldman. *Id.* ¶ 119; *see also id.* ¶¶ 120–126. Academic studies show that price declines following fraud-related announcements of criminal investigations are multiples of the actual penalties incurred, because the market price incorporates factors beyond the penalties and legal fees. *Id.* ¶¶ 123–126. Applying that literature, Dr. Kothari finds that the November 12 decline falls within the range of expected declines from the Full Refund News. *Id.* Consistent with that finding, market participants anticipated billions in penalties; indeed, Goldman's stock price *did not react* when multi-billion dollar penalties were announced because they were already anticipated. *Id.* ¶ 120 & Ex. 12.

Incredibly, Plaintiff ignores the Full Refund News, and Dr. Mason claims he has "seen no evidence that information other than revelations about the Company's senior-level complicity in the 1MDB bond offerings caused the abnormal return in Goldman's share price on that date." ECF No. 223-1 (Mason 1/13/23 Merits Rep.) ¶ 68. Dr. Mason's assertion should not be credited: Plaintiff itself previously pleaded that the Full Refund News was the cause of the November 12 decline, but can no longer do so because this Court held that such decline reflected the materialization of a

known risk. *See supra* p. 9; Kothari Rep. ¶ 117. And Dr. Mason cannot say that the Full Refund News impacted Goldman's share price on November 12 at the same time that he attempts to back out the effect of a Malaysian action on Goldman's price by subtracting only $600 million—the amount of Goldman's 1MDB fees. Mason Rep. n.130. On its face, this limited deduction is not economically defensible for the reasons above, and because (1) the Malaysian government expressly sought not just the $600 million of fees but also "consequential losses," which the market plainly interpreted to exceed $600 million, and (2) Dr. Mason has previously admitted that announcements of criminal investigations are associated with price drops from "reputational losses" that are much greater in value than the sum of any governmental penalties. Kothari Rep. ¶¶ 123; ECF No. 160-1 (Mason 3/24/22 Class Cert. Reply Rep.) ¶ 71.

For these reasons, even if the Court concludes that the November 8 corrective disclosure had some impact on the price on November 9, it should limit the proposed class by finding no price impact for the November 12 decline.

II. DAMAGES CANNOT BE CALCULATED ON A CLASSWIDE BASIS

Class certification should also be denied because Plaintiff has not shown that its proposed damages methodology is consistent with the classwide theory of liability. Defendants incorporate those arguments by reference. *See* ECF No. 146, at 18–21.

III. PLAINTIFF IS SUBJECT TO UNIQUE DEFENSES THAT THREATEN TO BECOME THE FOCUS OF THE LITIGATION

Class certification is also inappropriate because Plaintiff is subject to unique defenses that threaten to become the focus of litigation. Defendants incorporate by reference their earlier-briefed arguments. *See* ECF No. 146, at 21–25.

CONCLUSION

Goldman respectfully requests that the Court deny Plaintiff's motion for class certification.

Dated: New York, New York
October 30, 2023

**PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP**

By: */s/ Robert Y. Sperling*
Robert Y. Sperling
Audra J. Soloway
Staci Yablon
Gregory F. Laufer
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3148
(212) 757-3990 (fax)
rsperling@paulweiss.com
asoloway@paulweiss.com
syablon@paulweiss.com
glaufer@paulweiss.com

Attorneys for Defendant The Goldman Sachs Group, Inc.

**PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP**
Brad S. Karp
Andrew J. Ehrlich
Kristina Bunting
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000
(212) 757-3990 (fax)
bkarp@paulweiss.com
aehrlich@paulweiss.com
kbunting@paulweiss.com

Attorneys for Defendant Lloyd C. Blankfein

MILBANK LLP
Scott A. Edelman
Grant R. Mainland
55 Hudson Yards
New York, New York 10001
(212) 530-5000
(212) 530-5219 (fax)

sedelman@milbank.com
gmainland@milbank.com

Attorneys for Defendant Gary D. Cohn