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. 18-cv-12084 (VSB) (KHP)

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

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PRELIMINARY STATEMENT

Defendants fail to rebut the *Basic* presumption because they cannot show, by a preponderance of the evidence, that the 1MDB Statements had ***no*** price impact. There is no mismatch between Goldman's specific denials of its complicity with Jho Low and the 1MDB fraud and the November 8-9, 2018 disclosure of Blankfein's 2013 meeting with Low—which revealed, for the first time, the scope of Goldman's ties to Low and 1MDB (not just rogue bankers Leissner and Ng) and the firm's institutional culpability. As the financial press noted, the Blankfein news caused a precipitous stock drop on November 9 ***and*** 12, 2018. Defendants' expert made no effort to quantify any of the so-called "confounding" news he identifies, and the Court has already found that the alternative explanation for the November 12 stock drop Defendants cite was previously disclosed. On this record, Defendants cannot meet their burden of showing no price impact.[1]

I. DEFENDANTS FAIL TO REBUT THE *BASIC* PRESUMPTION OF RELIANCE

A. There Is No Mismatch Between the 1MDB Statements and the Blankfein-Low Disclosure

The 1MDB Statements were issued in direct response to media inquiries, and were understood by the market as denials of Goldman's complicity in the unfolding 1MDB scandal. Mot. 8-11; *e.g.*, Ex. 52 (12/22/2016 *WSJ*: "***Goldman has consistently said it did nothing wrong and had no way of knowing there might be fraud surrounding 1MDB***."); Ex. 54 (8/7/2018 *NYT*: "***Goldman has repeatedly played down its role in the 1MDB scandal[.]***"). Judge Broderick likewise characterized the 1MDB Statements as denials. ECF 102 at 40 (Goldman "downplay[ed] its knowledge of, and role in, the 1MDB scandal"). [redacted] Defendants'

[1] Unless noted, internal citations and quotations are omitted and emphasis is added; capitalized terms are defined in AP7's opening brief ("Mot.") (ECF 292); citations to "¶ __" refer to the Third Amended Complaint (ECF 272); and citations to "Ex. _" refer to the exhibits to the September 29 and December 15, 2023 declarations of Andrew L. Zivitz.

claim that AP7 "rewrite[s]" the 1MDB Statements (Opp. 15-16) ignores the factual record.

By consistently denying its complicity, Goldman, through the 1MDB Statements, concealed the relevant truth, i.e., "the nature of Goldman's interactions with 1MDB and knowledge of any corruption associated with the fund." ECF 270 at 2-3. In turn, the 1MDB Statements were corrected by the revelation that Blankfein, Goldman's CEO, had met with Low, the mastermind of the fraud, to discuss 1MDB business in 2013, ***after*** Goldman's compliance functions flagged Low as a corruption risk and the three 1MDB deals were consummated despite the myriad red flags known to Goldman. Exs. 64-65. As explained by Dr. Mason, this news constructively revealed that Goldman itself—not just two rogue bankers—was complicit in the 1MDB fraud, causing investors to reassess Goldman's 1MDB exposure. Mason Rep. (Ex. 1) ¶¶ 115-28.[2]

The close match between the 1MDB Statements and the Blankfein-Low disclosure is confirmed by the November 8-9, 2018 *FT* and *WSJ* reports, ***both*** of which cited Defendants' denials in reporting on the 2013 Low-Blankfein meeting. Ex. 64 (*FT*: "Goldman has always maintained that it did not know how the proceeds of the bond offering were spent"); Ex. 65 (*WSJ*: "[t]he bank has said it couldn't have known what would happen to the money it helped raise"). Post-disclosure commentary similarly linked Goldman's stock price declines on November 9 and 12, 2018 to the Blankfein news, as media reports and analysts discussed how investors' assessments of Goldman's reputational and regulatory exposure had changed in light of the news. Mot. 12-14; Mason Rep. ¶¶ 120-25; *see, e.g.*, Ex. 71 (*Barron's* reporting that the Blankfein news

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[2] Defendants' claim that reports of the 2013 Blankfein-Low meeting are inaccurate (Opp. 7 n.1) has no basis. [redacted] Defendants' reliance on the DPA is improper, since it is not admissible by Goldman. FED. R. EVID. 801(d)(2). More importantly, Goldman's stock price declined following the news of the 2013 meeting ***despite*** questions about Low's attendance. Ex. 64 (*FT*: "there is some doubt over whether Mr Low was at [the] meeting"); Ex. 84 (*Agence France Presse*: a source stated that "Low did not attend"). As Dr. Mason explains, regardless of Low's attendance, the disclosure revealed that Goldman was culpable in the 1MDB scandal because its CEO planned to interact with Low after Goldman had identified Low as a corruption risk. Mason Reply (Ex. 75) ¶ 43.

"***spooked investors that the scandal may have broader legal and financial consequences***"); Ex. 69 (*NYT* citing investor "***concern over whether the firm's leaders might be dragged into the case***"). Additionally, following the disclosure, numerous analysts lowered their price targets and ratings of Goldman, citing uncertainty surrounding 1MDB. Mason Rep. ¶¶ 123-25; Mason Reply ¶¶ 53-54. These facts are sufficient to establish price impact under any reading of *Arkansas Teacher Retirement System v. Goldman Sachs Group., Inc.*, 77 F.4th 74 (2d Cir. 2023) ("*ATRS*").

Faced with this copious evidence of price impact, Defendants attempt to graft a mirror-image requirement onto *ATRS* (Opp. 11, 13, 16-17) based on the Second Circuit's statement that "*Goldman* requires that any gap among the front- and back-end statements as written be limited." *ATRS*, 77 F.4th at 99 (citing *Goldman Sachs Grp., Inc. v. Ark. Teacher Ret. Sys.*, 141 S. Ct. 1951 (2021)). But this language addressed gaps in ***genericness***. *Id.* at 99-102. This case involves specific responses to questions from the press—not generic risk disclosures as in *ATRS*. Moreover, *ATRS* does not require a literal match between misstatement and disclosure. In fact, it held the opposite: "***We do not suggest that the inflation-maintenance theory requires a precise match***." *Id.* at 98.[3]

According to *ATRS*, price impact may be shown in at least two ways. *First*, where a corrective disclosure "implicate[s] not just the same topic, but the alleged misstatements themselves." *ATRS*, 77 F.4th at 97 (discussing *Waggoner v. Barclays PLC*, 875 F.3d 79, 87-88 (2d Cir. 2017)). *Second*, even if a disclosure does not "expressly recant" or "reference[] the alleged misrepresentations," a plaintiff can establish an "***equally strong***" match where the disclosure "directly rendered false the … misrepresentations." *Id.* at 98 (discussing *In re Vivendi, S.A. Sec.*

[3] Defendants also assume, incorrectly, that the "searching price impact analysis" required for generic misstatements is required in this case. *ATRS* made clear that this is only required "where (1) there is a considerable gap in front-end-back-end ***genericness*** … , (2) the corrective disclosure does not directly refer …. to the alleged misstatement, ***and*** (3) the plaintiff claims … that a company's ***generic risk-disclosure*** was misleading by omission." *Id.* at 102. None of those circumstances are present here: (1) AP7 is not asserting any claims based on generic risk disclosures (*see* Mot. at 9 n.5), (2) the November 8-9 corrective disclosure expressly referred to multiple 1MDB Statements, and (3) there is no mismatch in genericness (or otherwise). As such, the concerns underlying *Goldman* and *ATRS* are not implicated.

Litig., 838 F.3d 223, 235-37 (2d Cir. 2016)). Defendants' demand for a verbatim match between misstatement and disclosure cannot be reconciled with the Second Circuit's analysis of *Vivendi*.

In *Vivendi*, the company's "alleged misstatements concealed its liquidity risk," and the corrective disclosures included "a series of events" that "made the truth about that liquidity risk come to light," including credit downgrades, "news that Vivendi sold 55 million of its treasury shares," and "that Vivendi sold a stake in its subsidiary." 838 F.3d at 262-63. While "***no specific corrective disclosure ever exposed the precise extent of Vivendi's alleged fraud***," *id.* at 262, *ATRS* found that "the company's lie" was nonetheless "made apparent" through these disclosures and, therefore, "the back-end disclosures' corrective effect upon the affirmative misrepresentations was obvious." 77 F.4th at 98; *see id.* at 99 n.12 (finding "any mismatch in specificity between the misrepresentations and disclosures was ***minimal***") (citing *Vivendi*, 838 F.3d at 234-36). Defendants assert that *Goldman* "requires even more" than *Vivendi* (Opp. 10), but *ATRS* made clear that "*Goldman* does not call into question *Vivendi* itself." *ATRS*, 77 F.4th at 99 n.12.[4]

All of the 1MDB Statements were understood as denials of Goldman's culpability, and were corrected by the revelation of Blankfein's 2013 meeting with Low (Mason Rep. ¶¶ 99-100, 115-28; Mason Reply ¶¶ 15-54), just as "Vivendi's affirmative, repeated representations regarding its cushy cash flow were directly contradicted by news portraying its cash situation as anything but that." *ATRS*, 77 F.4th at 99 n.12; *see Vivendi*, 838 F.3d at 250 (although Vivendi's statements did "not each repeat the precise same refrain," they were "***all collectively aimed at perpetuating a***

[4] Cases applying *Goldman* and *ATRS* confirm that Defendants' mismatch arguments are meritless. *See Ferris v. Wynn Resorts Ltd.*, 2023 WL 2337364, at *9-10 (D. Nev. Mar. 1, 2023) (cited in *ATRS*, 77 F.4th at 102 n.14) (no mismatch where statements denied reports of CEO's misconduct and disclosure exposed sexual harassment by CEO; even though the misstatements "did not specifically reference sexual misconduct," media reports demonstrated that "***the market understood the corrective disclosures as related to the defendants' denials***"); *Del. Cnty. Emps. Ret. Sys. v. Cabot Oil & Gas Corp.*, 2023 WL 6300569, at *10-12 (S.D. Tex. Sept. 27, 2023) ("A public observer could reasonably conclude that the statements … that the pollution issues 'ha[d] been remediated' are contradicted by the … revelation of continuing pollution issues …. ***The fine distinctions on which Cabot relies do not create a genuine mismatch***.").

broader, material lie"). When considered in context, each of the 1MDB Statements has a sufficient ("even if not precise") match with the November 8-9 disclosure. *ATRS*, 77 F.4th at 99 n.11.

Denials Regarding Fees and Commissions. Defendants overlook the context for Goldman's statements defending its fees in the 1MDB deals as justified by the "risks [it] assumed" and denying that "***fees or commissions were paid … to external third parties***" (¶¶ 336, 339, 355, 359), and the significance of the Blankfein-Low disclosure.[5] Opp. 13. As Dr. Mason testified: "The statement about fees and commissions" was "in sum and substance" a "denial [of] involvement or culpability in the 1MDB scandal. And … when we find out that the CEO met with the mastermind of the scheme both before the scheme and after that upends their denial." Ex. 76 at 125; *see* Mason Reply ¶¶ 16-17.[6] Indeed, the first such statement [redacted] was understood as a denial of wrongdoing. Ex. 87 (10/29/2014 *The Edge*: "Goldman says no payments to third parties"); *see also* Exs. 85-86 (denials published in reports detailing Goldman's role in the 1MDB deals and noting that "***Goldman … has not been accused of any wrongdoing***," Ex. 86).

Additionally, the disclosure that Blankfein attended a meeting with Low and Najib to discuss 1MDB business immediately after Project Catalyze belied Goldman's fee-related denials by signaling to investors that Goldman's outsized fees were unjustified and suggestive of misconduct. The November 8-9 *FT* and *WSJ* reports specifically drew this connection. Ex. 64 ("Goldman has faced repeated questions over its role in underwriting bond offerings worth $6.5bn … a service for which it charged a hefty fee of $600m"); Ex. 65 ("Goldman helped 1MDB raise

[5] Tellingly, Defendants focus only on "the volume of Goldman's fees" (Opp. 13), ignoring the rest of their statement.

[6] Defendants disregard Dr. Mason's testimony concerning the match between the 1MDB Statements and the Blankfein-Low disclosure (which was repeatedly interrupted by Goldman's counsel, *see, e.g.*, Ex. 76 at 38, 40, 55-56, 130, 189-90, 201-02, 213-14, 224), instead pointing to testimony that merely acknowledged that the disclosure did not ***literally*** reference certain statements (Opp. 13-15), which is not a requirement to establish price impact. *ATRS*, 77 F.4th at 98 ("not all the corrective disclosures in *Vivendi* expressly referenced the alleged misrepresentations").

more than $6.5 billion … and in the process made around $600 million"). At a minimum, the connection satisfies *Vivendi*, where statements regarding "cushy cash flow" were corrected by disclosures that Vivendi had sold assets. *ATRS*, 77 F.4th at 99 n.12; *Vivendi*, 838 F.3d at 262-63.

Denials of Visibility into Diverted Funds. Goldman's repeated denials of "visibility" into 1MDB's diversion of funds, ¶¶ 343-44, 352-53, 357, 361, match closely with the disclosure of Blankfein's 2013 meeting with Low and Najib. Low's presence alongside Najib at a meeting to discuss 1MDB business signaled to investors that Goldman ***had*** visibility into the diversion of funds and that its denials were untrue. As Dr. Mason testified, "you have the CEO meeting with the guy who distributed billions of dollars to co-conspirators ... and yet [Goldman] said two years prior [it] didn't know." Ex. 76 at 127; *see* Mason Reply ¶¶ 18-19.[7] Indeed, both the November 8 *FT* and November 9 *WSJ* reports expressly made the connection between Goldman's denials of visibility and the 2013 Blankfein-Low meeting. Ex. 64 (*FT*: "Goldman has always maintained that it did not know how the proceeds … were spent"); Ex. 65 (*WSJ*: "The bank has said it couldn't have known what would happen to the money it helped raise."). Defendants' effort to rewrite these reports as referring to the previously-disclosed Leissner plea and Ng indictment fails—both reports were clearly reporting on the news of the Blankfein meeting, and their citation to Goldman's prior denials arose in this context. *Id.* As such, the Blankfein-Low disclosure "implicate[s] not just the same topic, but the alleged misstatements themselves." *ATRS*, 77 F.4th at 97. At a minimum, it "rendered [the statements] false" by making "the company's lie ... apparent." *Id.* at 98.

Denials of Evidence of Low's Involvement. As this Court previously held, the news of Blankfein's 2013 meeting with Low "***contradict[ed]***" Goldman's statement on December 22, 2016 that it had "***found no evidence showing any involvement by Jho Low in the 1MDB bond***

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[7] Defendants claim that AP7 bends the *WSJ* account of the 2013 meeting (Opp. 14 n.3), but AP7 ***quoted*** the *WSJ*'s statement that the meeting "***included discussions of 1MDB***, according to people familiar with the meetings." Ex. 65.

transactions." ECF 270 at 3; *see* ECF 102 at 36 (Judge Broderick discussing ¶ 346: Defendants "downplayed not only their own relationship with Low, but Low's connection to 1MDB"). This contradiction easily satisfies *ATRS* because the disclosure of this meeting "specifically negat[ed]" Goldman's earlier denial. 77 F.4th at 98.[8] Defendants disregard the key details from the *WSJ* report and other information known to the market as of November 8-9 (Opp. 14), including that the 2013 meeting was also attended by a "1MDB Official," "included discussions of 1MDB" and "business opportunities … with 1MDB." Ex. 65, ECF 308-04 ¶ 70. Significantly, both the *FT* and *WSJ* discussed Low's involvement in the bond deals in reporting on the 2013 meeting. The *FT* cited a Goldman executive who claimed that "We did not know there was a middleman," concluding that "the revelation that Mr Low met with Mr Blankfein at least once could ***undermine this 'rogue employee' narrative***." Ex. 64. The *WSJ* revealed how "the role of Mr. Low at the [1MDB] fund was a constant source of concern for the bank's New York-based compliance executives and lawyers," but that "[j]ust a few months later, in September 2013, Mr. Blankfein met Mr. Low for a second time." Ex. 65.[9] Subsequent commentary also drew this connection. Ex. 70 (11/16/2018 *Barron's*: "If Low was so important to Leissner's relationships with 1MDB and [Najib] that he brought Blankfein along to meetings, ***did the bank seriously question whether it could do business with the Malaysian fund without exposing themselves to risks it knew Low posed?***"). The Blankfein-Low disclosure thus "implicated" and "directly rendered false" Goldman's earlier denial. *ATRS*, 77 F.4th at 97-98.

Goldman's June 12-13, 2017 statements (¶¶ 348-49) denying their association with Low

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[8] Defendants argue that price impact requires a "closer fit" (Opp. 15 n.5), but a contradiction between misstatement and disclosure easily meets *ATRS*'s test that a disclosure "directly render[] false" a misstatement. 77 F.4th at 98.

[9] Defendants mischaracterize Dr. Mason's testimony. Opp. 15. Dr. Mason testified that both the *FT* and *WSJ* "talked about Jho Low [in] the context of 1MDB," and that "the disclosure corrected the prior [December 22, 2016] statement by revealing the association between Mr. Blankfein and Mr. Low, which upended prior denials of Goldman Sachs' involvement [and] culpability with the 1MDB scandal." Ex. 76 at 137-38, 145. *See* Mason Reply ¶¶ 20-21.

in the Coastal Energy deal likewise satisfy *ATRS*. [redacted] and as Dr. Mason opines, were corrected by news of the Blankfein meeting, which revealed that Goldman's denials of complicity with Low were false. Mason Reply ¶ 22. Defendants' demand for a literal front-end/back-end match (Opp. 14 n.4) is foreclosed by *ATRS*. 77 F.4th at 98.

Blankfein's Denial of Red Flags. As the Court found, Blankfein's denial that he was "not aware" of senior management's knowledge of "red flags … beforehand" (¶ 364) was undermined by the revelation of the Blankfein-Low meeting in 2013, "where the parties discussed 1MDB business, which took place after multiple warnings from Goldman's Compliance and Legal Departments." ECF 102 at 37. The disclosure also "specifically negat[ed]" Blankfein's statement, *ATRS*, 77 F.4th at 98, since, as the Court found, the *WSJ* "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***." ECF 102 at 37; *see* Ex. 65. Defendants ignore the Court's prior ruling and the *WSJ* report, arguing there is a mismatch because Blankfein's statement did not "specifically refer to a meeting." Opp. 15. There is no such requirement. *ATRS*, 77 F.4th at 98.

B. Purported "Truthful Substitutes" Did Not Counteract the 1MDB Statements

Given "the strong link between" the 1MDB Statements and Blankfein-Low disclosure, the Court may "use the back-end price drop as a proxy for front-end inflation," *ATRS*, 77 F.4th at 98, and there is no need to conduct a separate "truthful substitute" analysis, as Defendants claim (Opp. 17). *ATRS* makes clear that this is only required in cases where there is a gap in ***genericness***, because "unlike the classic inflation-maintenance case," in such cases "the value of the back-end proxy, given the gap in ***specificity***, will be diminished." *ATRS*, 77 F.4th at 102; *see id.* at 98-99.

In any event, Defendants' "truthful substitute" arguments (Opp. 17-21) fail because none of the reports they cite revealed the falsity of the 1MDB Statements; in fact, many of these reports

contained the very denials AP7 alleges were false. Mason Reply ¶¶ 13, 16-20, 66-70 & App'x C-D. Of the 259 reports Dr. Kothari cites in his Appendix E, 59 (or 22%) refer to the 1MDB Statements or state that Goldman was not accused of wrongdoing, *id.* ¶ 13, [redacted] As the Court previously found, "the effect of any such [prior] disclosures were at least partially diminished by Goldman's ***repeated statements during the Class Period downplaying its knowledge of, and role in, the 1MDB scandal***." ECF 102 at 40.

As in *ATRS*, to the extent such reports were "similar to the information" revealed on November 8-9, there is a clear "qualitative difference in the respective buckets of news" before and after the disclosure, especially because news of the 2013 meeting "was ***unencumbered by any of the denials or mitigating commentary*** that had rendered prior reports less jarring." 77 F.4th at 91-92 (rejecting argument that lack of price reaction to allegedly similar prior news rebutted presumption). To rebut the "presumption of reliance," "the corrective information must be conveyed to the public with a degree of intensity and credibility sufficient to counter-balance effectively any misleading information created by the alleged misstatements." *Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 167 (2d Cir. 2000). Defendants cannot make this showing.

Outsized Fees. None of the reports Defendants identify alleged that Goldman's "outsized" fees reflected its complicity in the 1MDB scheme. Opp. 18; Kothari Rep. (ECF 308-1) ¶¶ 48-50, App'x E.1. To the extent the reports "challeng[ed] [the fees'] appropriateness," *id.* ¶ 50, Defendants' statements refuted this, and the press accepted these denials. *E.g.*, *id.* E-1 (11/2/2014: Goldman's 10/29/2014 statement "respond[ed] to *The Edge's* story last week highlighting the fees"); E-7 (3/4/2016: "Goldman has said" its fees were "unusually high … because it temporarily held the risk on its own balance-sheet."); E-12 (7/10/2018: "[Goldman] earned $600 million … ***but has denied any wrongdoing***" and "***contends [its payment] was fair reward for the risks***.").

Diversion of Funds. Defendants do not identify any pre-disclosure reports suggesting that Goldman employees more senior than Leissner were "aware of, or participated in, the diversion of funds" with Low. Opp. 19; *see* Kothari Rep. ¶¶ 51-53; App'x E.2. At most, these reports stated that authorities were "investigating [Goldman's] role." *Id.* at E-27; *see id.* at E-29, -37. Contrary to Defendants' claim (Opp. 19), Leissner's plea confirms that the truth concealed by the 1MDB Statements—Goldman's culpability and complicity with Low—had ***not*** been revealed prior to November 8-9: the DOJ accused "Leissner and his co-conspirators (Ng and Low)" of conspiring to divert the 1MDB bond proceeds (Opp. 6) and alleged that they "***circumvented*** [Goldman's] internal accounting controls in order to carry out the bribery scheme." ECF 308-04 ¶ 19.

Evidence of Low's Involvement. Reports describing the "conspiracy between Low, Leissner, Ng, and others" do ***not*** amount to a disclosure that "***Goldman*** had evidence showing Low's involvement in the 1MDB bond transactions." Opp. 19-20. Defendants do not identify any pre-disclosure reports suggesting that Goldman's senior management knew of Low's involvement. *Id.*; Kothari Rep. ¶¶ 55-57, App'x E.3. Nor did Leissner's indictment allege that Goldman's senior management was complicit in Low's scheme. *See* ECF 308-4 ¶¶ 37-65 (Leissner and Ng "***concealed*** [Low's] involvement"). Indeed, Dr. Kothari acknowledges that at most, these reports discussed the "***potential*** knowledge of Mr. Low's involvement," but did not connect Low to any senior executives during the period of the 1MDB bond deals. Kothari Rep. ¶¶ 55-57.[10]

Red Flags. Earlier reports about "red flags" are not a truthful substitute for ***Blankfein's*** statement that he was "not aware" of whether senior management knew of red flags. To the extent these reports even mention senior management, they suggest Goldman was ***not*** culpable. Kothari Rep. ¶¶ 59-60; *e.g.*, E-75 (11/7/2018 *FT*: "Goldman says the accused bankers were rogue actors.").

[10] Contrary to Defendants' assertion (Opp. 20 n.7), *Billion Dollar Whale* did not claim that Goldman was complicit in Low's schemes, which was the substance of Goldman's June 12-13, 2017 denials. *See* Mason Reply ¶ 22.

C. All the Probative Evidence Supports a Finding of Price Impact

In addition to the close front-end/back-end match, there is ample "indirect evidence" confirming both "the inflation-maintaining nature" of the 1MDB Statements and "the price-dropping capacity" of the Blankfein-Low disclosure. *ATRS*, 77 F.4th at 102; *see id.* at 104 ("market commentary … can serve as indirect evidence of price impact"). While *ATRS* requires only "***some*** indication that investors relied upon the [misstatements] *as written*," 77 F.4th at 100 (last emphasis in original), here there is overwhelming evidence that investors relied on Goldman's denials. Mot. 10-12; Mason Rep. ¶¶ 102-06; Mason Reply ¶¶ 15-31. Following the November 8-9 disclosure, multiple reports cited back to Defendants' denials when discussing the Blankfein-Low news and the resulting stock drop, Exs. 64-66, 70, while post-disclosure commentary demonstrates that "[i]nvestors fear[ed]" that Goldman "was ***complicit in wrongdoing***," were "concern[ed] over whether ***the firm's leaders*** might be dragged into the case," and that "the scandal may have broader … consequences." Exs. 67, 69, 71. Defendants minimize this commentary, and suggest the Court should focus on what commentators did ***not*** say. Opp. 21-23. However, "the presence or absence of analyst commentary … is not a scientifically accepted method of demonstrating price impact or its absence." *Pearlstein v. Blackberry Ltd.*, 2021 WL 253453, at *21 (S.D.N.Y. Jan. 26, 2021); *see also Waggoner*, 875 F.3d at 105 (price impact not rebutted even though analyst reports did not reference alleged misstatements). Even so, Defendants concede that at least one analyst identified the Blankfein-Low meetings as a cause of the decline, Opp. at 22, [redacted]

D. The November 8-9 Disclosure Revealed New Information

Defendants' claim that Blankfein's 2013 meeting with Low had been reported before

November 8-9 is demonstrably wrong. *First*, Defendants' reliance on reports of Blankfein's ***2009*** meeting with Low (Opp. 7, 27) are misplaced because, as Judge Broderick underscored, the 2013 meeting "took place ***after*** multiple warnings from Goldman's Compliance and Legal Departments" and included discussions of "1MDB business" (ECF 102 at 37), signifying Blankfein's and Goldman's complicity with Low and 1MDB. Mason Reply ¶¶ 57-61. *Second*, the November 1, 2018 Leissner criminal filings disclosed only that an ***unnamed*** "high-ranking executive" met with Low in 2013, and there is no evidence investors concluded this individual was Blankfein. *See* Ex. 61 (11/2/2018 *Bloomberg*: "***Mystery Goldman Exec*** at 1MDB Meeting Signals New Woes for Bank"); Ex. 62 (11/8/2018 *Bloomberg*: "[t]here's ***no indication*** that the executive from the later [2013] meeting is the same as the one from 2009."); *see* Mason Reply ¶¶ 66-70. In fact, Defendants' denials appeared in the very reports they claim disclosed the relevant truth. Opp. 7 (citing Exs. 62-63; ECF 308-6); *see supra* at 8-9. *Third*, *Billion Dollar Whale* described Blankfein's meeting with ***Najib*** in 2013, but says nothing about a meeting with ***Low***. Ex. 88 at 237-39; Mason Reply ¶¶ 56, 66-70. Investors thus had no idea until November 8-9 that Blankfein met with Low again in 2013—***after*** the deals were consummated despite the red flags. *Id.* ¶ 69.

Moreover, the lack of a statistically significant price drop following these earlier reports does not disprove price impact (Opp. 27) given the "qualitative difference in the respective buckets of news." *ATRS*, 77 F.4th at 91-92. Prior to November 8-9, the market perceived Goldman's role in the 1MDB scandal as limited to rogue actors (i.e., Leissner and Ng), but afterward, the market believed that Goldman had been institutionally complicit in the misconduct—all the way up to the CEO's suite—and that the bank's compliance function was subordinated to profitmaking expediency. Mason Reply ¶¶ 66-70. As one analyst, Arbat Capital, explained:

> Goldman … tumbled by 11.1% during trading days of 9 and 12 November.… Despite the news about DOJ investigation appeared on November 1, ***GS's quotes***

> ***didn't react then as it was perceived as an investigation just against former GS's bankers. Later, it became evident that GS wouldn't be able to avoid fines.***

Ex. 77. The financial press drew the same conclusion. *See* Ex. 69 (Goldman "seems unlikely to be able to slough off its role in the [1MDB scandal] ... ***as the work of a few miscreants*** .... shares are down … because of concern over whether ***the firm's leaders might be dragged into the case***…."); Ex. 70 ("***Investors initially appeared to shrug off the [Leissner] charges. But ... shares are down…12% since the news about Blankfein***...."); Ex. 68 ("***[T]he bank's attempt to paint Mr. Leissner as a rogue agent has been undercut*** by" Blankfein news); Ex. 67 ("investors fear that [DOJ] will build a case showing that [Goldman] was complicit in wrongdoing"); Ex. 71 (Blankfein news "spooked investors that the scandal may have ***broader legal and financial consequences***").[11]

E. Defendants Cannot Show, by a Preponderance of the Evidence, that the Corrective Disclosure Did Not Cause a Price Decline on November 9 and 12

Defendants concede that Goldman's stock price declined in a statistically significant manner on November 9 and 12, 2018, but argue that they have disproven price impact because the price did not begin to decline in a statistically significant manner until hours after the *FT* and *WSJ* reports discussing Blankfein's 2013 meeting with Low. Opp. 23-25. To begin with, based on Dr. Kothari's own analysis, the price decline was statistically significant at a confidence level of 91% within the first 15 minutes of trading on November 9. Mason Reply ¶ 72.[12] But even if the decline

[11] As this commentary shows, Wood's opinion that the Blankfein-Low meeting "would not have been of interest to investors" (ECF 308-2 ¶ 18) is baseless. Wood's opinions are also irrelevant, [redacted]. Analyzing the November 8-9 disclosure in a vacuum—with no analysis of the misstatements—gives no insight into the likely perspective of investors. Mason Reply ¶¶ 145-50.

[12] Statistical significance at a 90% to 95% confidence level is within a widely accepted range, as noted by courts in rejecting price impact challenges. *Pirnik v. Fiat Chrysler Autos.*, 327 F.R.D. 38, 46 (S.D.N.Y. 2018) (decline 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) (price movement at 84% confidence level "[did] not demonstrate the absence of a price impact"), *aff'd*, 775 F. App'x 51 (3d Cir. 2019); *see also Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC*, 310 F.R.D. 69, 85 (S.D.N.Y. 2015) ("***[T]he Supreme Court ... has [not] indicated whether the abnormal return must meet a particular threshold level.***"). [redacted]

was not significant at a 95% confidence level until 3:00 p.m., that does not disprove price impact as there is nothing unusual about utilizing a "close-to-close" event window, or even a multi-day window, to analyze price impact. *Id*. ¶¶ 92-96. To be sure, these are the standard measures of price impact. *Id.*; [redacted] Defendants' insistence on an intraday price test has no basis in the law or economics. In addition, Dr. Kothari did not quantify the price impact of ***any*** of the so-called "confounding" news events he identifies—all of which were previously disclosed. Therefore, Defendants cannot show that the stock drop is fully explained by these other events and, thus, fail to carry their burden.

1. The November 9 Stock Price Decline

15 Minute Requirement. Defendants' claim that in an efficient market news must be fully incorporated into a stock price "within 15 minutes" (Opp. 25) is refuted by both the case law and the economic literature. Mason Reply ¶¶ 76-93. The Supreme Court has twice held that there is no bright-line rule with regard to the time period it takes for prices to adjust to new information. *Basic, Inc. v. Levinson*, 485 U.S. 224, 248 n.28 (1988) ("***[W]e do not … adopt any particular theory of how quickly and completely publicly available information is reflected in market price***."); *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 272 (2014) ("efficiency is a matter of degree" and *Basic* "does not rest on a 'binary' view'"); *see also In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 102 (S.D.N.Y. 2009) ("*IPO*") (rejecting argument that "share prices would adjust instantaneously" since *Basic* "does not require a perfectly efficient market"); *In re DVI, Inc. Sec. Litig.*, 639 F.3d 623, 635 (3d Cir. 2011) ("***[W]e do not require that public information be absorbed 'instantaneously***.'").

As such, there is no requirement that AP7 must establish immediate statistical significance following the November 8-9 disclosure, or even statistical significance on an intraday basis. Indeed, courts have repeatedly held that analyzing "the ***entirety of the trading for one day*** following the [corrective disclosure] is appropriate," and have endorsed the use of multi-day event windows to measure price impact precisely because it often takes hours or even multiple days for information to be fully digested and acted upon by investors—even in efficient markets. *U.S. v. Hatfield*, 2014 WL 7271616, at *13 (E.D.N.Y. Dec. 18, 2014); *see, e.g., Carpenters*, 310 F.R.D. at 96; *Bos. Ret. Sys. v. Alexion Pharms., Inc.*, 2023 WL 2932485, at *12 (D. Conn. Apr. 13, 2023).

For example, in *Carpenters*, the corrective disclosure occurred before the market opened on June 27, 2012, but the stock price reaction did not occur until "the opening on [June] 28th," or "***roughly 25 hours after the original press release***." 310 F.R.D. at 95-97 & n.191. Judge Scheindlin held that "[b]ecause it is standard for experts to utilize an event window including both the day of the event and the day following an event, this event window was proper," and "the evidence of price movement from June 28, 2012 [the day after the disclosure] … ***supports a finding of efficiency***." *Id.* at 96-97. Similarly, in *Alexion*, a corrective disclosure on Friday, November 4, 2016 did not cause a statistically significant price decline until Monday, November 7, 2016; and a November 9, 2016 after-market disclosure did not cause a statistically significant decline until November 11, 2016. 2023 WL 2932485, at *12. Nevertheless, the court rejected defendants' argument that "price changes more than a day after an alleged corrective disclosure are insufficient to show significant price impact." *Id.*; *see also IPO*, 260 F.R.D. at 101-02 (finding that "[a]lthough [the] announcement was made in the ***morning***, [and] much of [the] price adjustment occurred in the ***afternoon***," the price change "indicates efficiency, not inefficiency"). As these in-Circuit authorities show, there is no requirement that the stock price react within 15 minutes.[13] Rather, courts have found price impact based on statistically significant price

[13] Defendants' lone authority for such a requirement, *Ramirez v. Exxon Mobil Corp.*, 2023 WL 5415315 (N.D. Tex. Aug. 21, 2023), is out of step with the "standard" one-to-two-day window used by courts in this Circuit. *Carpenters*, 310 F.R.D. at 96-97. Further, unlike Dr. Mason, the plaintiff's expert in *Ramirez* "did not analyze or provide an opinion about the alleged [c]orrective [d]isclosure." 2023 WL 5415315, at *15.

movements occurring ***more than 24 hours after the corrective disclosures***—considerably longer than the "15 hours" (Opp. 24) that Defendants claim here. *See also DVI*, 639 F.3d at 635 ("That some information took two days to affect the price does not undermine a finding of efficiency.").

"Confounding" News. Dr. Kothari does not quantify the purported price impact of any of the "confounding" events he identifies; he simply points to "***potentially*** value-relevant confounding news" that "***could*** negatively affect Goldman Sachs' stock price[.]" Kothari Rep. ¶¶ 17(c)(i)(3), 95; *see* Mason Reply ¶¶ 97-102. As Dr. Kothari testified: "***I didn't set out and didn't literally estimate the price decline caused by various confounding news effects***." Ex. 89 at 26, 29-31, 89-90; [redacted]

Having failed to measure any portion of the November 9 decline attributable to any confounding news, Defendants cannot show that the decline is fully explained by these other factors, and thus cannot show a lack of price impact. *See, e.g., In re Signet Jewelers Ltd. Sec. Litig.*, 2019 WL 3001084, at *17 (S.D.N.Y. Jul. 10, 2019) (presumption not rebutted where expert did not assign any value to confounding events through an "empirical analysis"). As the Second Circuit has held, "merely suggesting that another factor also contributed to an impact on a security's price does not establish that the fraudulent conduct complained of did not also impact the price of the security." *Waggoner*, 875 F.3d at 104-05. For a defendant to disprove price impact, "it must demonstrate … that [] ***other events explain the entire price drop***." *Ark. Teacher Ret. Sys. v. Goldman Sachs Grp., Inc.*, 955 F.3d 254, 270 n.18 (2d Cir. 2020), *rev'd on other grounds*, 141 S. Ct. 1951 (2021).

Additionally, the so-called confounding news identified by Dr. Kothari was known to the market prior to November 9. Because Defendants cannot show that each piece of this confounding information was new (much less quantify its price impact), 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)—a point Dr. Kothari concedes. Ex. 89 at 11-12. As Dr. Mason shows (Mason Reply ¶¶ 103-26):

- Goldman disclosed Brexit's potential impact in February 2018 ("Brexit could have a disproportionate effect…compared to … [its] competitors who have more pre-existing operations…outside of the U.K"). *Id.* ¶ 105 n.285. And the data from the November 9 *Bloomberg* article was not discussed by any other media or analysts. *Id.* ¶ 104.
- Leissner's statement in his plea transcript that Goldman's "culture" embraced concealing facts from the bank's compliance functions had been disclosed through Leissner's and Ng's criminal filings on November 1, 2018, and Goldman's 10-Q on November 2 describing these documents, including that "the firm's business culture ... prioritized consummation of deals ahead of ... its compliance functions." *Id.* ¶ 108 n.290; [redacted]
- A November 9 article noted the White House's disavowal of Peter Navarro's comments. Mason Reply ¶ 112. Dr. Kothari does not explain why Navarro's remarks, directed at Wall Street generally, would disproportionately affect Goldman's stock price. *Id.* ¶¶ 114-15.
- The Federal Reserve said nothing new about the proposed capital regulations first unveiled in April 2018. *Id.* ¶ 117-25. And the *Bloomberg* article discussing the impact on Goldman simply repeated the same numbers previously disclosed in September 2018. *Id.* ¶¶ 122-25.

2. The November 12 Stock Price Decline

As noted by this Court, courts have routinely recognized that an "expert's use of a two-to-three-day window in an efficient market" is "appropriate" to measure price impact, and that multi-day price reactions are not inconsistent with market efficiency. ECF 270 at 15 (citing *Carpenters*, 310 F.R.D. at 96 ("***A two-to three-day window is common in event studies***" and can "support[] a finding of efficiency")); *see Dougherty v. Esperion Therapeutics*, 2020 WL 6793326, at *5 (E.D. Mich. Nov. 19, 2020) ("***[M]arket efficiency is not diminished* …. *by the fact that some of the price movements* … *were on the second trading day***."); *Monroe Cnty. Emps.' Ret. Sys. v. S. Co.*, 332 F.R.D. 370, 386, 391 & n.24 (N.D. Ga. 2019) ("examination of stock price effects that occur on the second trading day is perfectly appropriate"); *Aranaz v. Catalyst Pharm. Partners Inc.*, 302 F.R.D. 657, 669 (S.D. Fla. 2014) (2-day decline "strong empirical evidence of market efficiency").

Dr. Mason proffers multiple reasons justifying his use of a two-day event window.

First, the stock price declines on November 9 and 12 were each statistically significant, suggesting that the market continued to react to the November 8-9 disclosure during this window. Mason Rep. ¶ 127. Defendants cannot refute that the financial press linked Goldman's returns on November 12 to the disclosure of Blankfein's meeting with Low. *Id.* ¶¶ 115-26.

Second, the Blankfein-Low disclosure led "analysts and investors to conduct substantial reevaluation" of Goldman's stock price over two trading days. *Monroe Cnty.*, 332 F.R.D. at 386 (multi-day window suitable where disclosure led to "substantial reevaluation of the [c]ompany"); *see also Pelletier v. Endo Int'l PLC*, 338 F.R.D. 446, 486 (E.D. Pa. 2021) (accepting two-day window "where clarifying or contextualizing information is disclosed later."). As Dr. Mason explains, when investors learned that Blankfein met with Low in 2013—news which Judge Broderick found to be "***highly material*** to the scope of Blankfein's and Goldman's connection to Low and the 1MDB scandal" (ECF 102 at 40)—"investors became concerned that Goldman's role … in the 1MDB scandal involved its senior leadership and was not limited to a few rogue actors, as Goldman had previously represented." Mason Rep. ¶ 114. For example, on November 12—not November 9—*Dow Jones* reported that the news of Blankfein's meeting with Low led "investors [to] fear that the U.S. Justice Department will build a case showing that [Goldman] was complicit in wrongdoing," Ex. 67, and *Barron's* reported that Goldman's shares had "tumbled" on the Blankfein news and the "potential fallout … on Goldman." Ex. 66; Mason Rep. ¶ 120(a), (b).

Given the implications of this news, Goldman's two-day price reaction is unsurprising. *Carpenters*, 310 F.R.D. at 93-96 (accepting price decline day after corrective disclosure in reaction to second-day statements suggesting "***collateral consequences***"); *In re Vivendi Universal, S.A. Sec. Litig.*, 634 F. Supp. 2d 352, 359, 372 (S.D.N.Y. 2009) (accepting opinion "that stock declines on August 14, 15, and 16 were all caused by the August 14 disclosures and continued reports on their consequences"). In addition, the November 9 *WSJ* report "expanded upon with further clarification and explanation" what was first reported by the *FT* the night before, *Monroe Cnty.*, 332 F.R.D. at 392, and provided new "contextualizing information." *Pelletier*, 338 F.R.D. at 486. As noted by Judge Broderick, the *WSJ* "placed Blankfein's meeting with Low in context" by reporting that it occurred "***after***"—and despite—"multiple warnings from Goldman's Compliance and Legal Departments" about doing business with Low. ECF 102 at 37.

Third, Dr. Mason shows how trading in Goldman stock gained momentum at the end of trading on November 9 and into November 12, another circumstance justifying a two-day window. Mason Reply ¶ 74. *See Fogarazzo v. Lehman Bros.*, 263 F.R.D. 90, 104 (S.D.N.Y. 2009) (multi-day windows appropriate when there is "momentum trading by investors" late in the trading day).

Fourth, "academic literature supports the use of two-day (or more) event windows." *Monroe Cnty.*, 332 F.R.D. at 391 & n.25 (citing articles); *see, e.g.,* Michael J. Kaufman & John M. Wunderlich, *Regressing: The Troubling Dispositive Role of Event Studies in Securities Fraud Litigation*, 15 STAN. J. L. BUS. & FIN. 183, 192 (2009) (cited by *Carpenters*, 310 F.R.D. at 96 n.183); Craig MacKinlay, *Event Studies in Economics and Finance*, 35 J. ECON. LITERATURE 1, 15 (March 1997) ("In practice, the period of interest is often expanded to multiple days, including at least the day of the announcement and the day after the announcement."); Mason Reply ¶¶ 92-96.[14] [redacted]. While there is "academic literature for the proposition

[14] Dr. Mason never testified that news must be fully incorporated within one day (Opp. 28-29). Rather, he testified that it could take "***days*** … ***or even multiple days*** . . . for investors to digest the various components … and weigh the positives and negatives." Ex. 92 at 56-57. This is precisely what occurred here. Mason Rep. ¶¶ 115-28.

that stock price reactions generally ***begin*** quickly, this does not necessarily mean that stock price reactions always ***end*** quickly." *Monroe Cnty.*, 332 F.R.D. at 392 (emphasis in original).[15]

Finally, Defendants' claim that the November 12 decline was caused by the stale news that Malaysia was seeking a full refund of Goldman's 1MDB fees is diametrically inconsistent with their earlier position—and the Court's prior ruling—that this was first disclosed in June 2018 and thus did not cause a stock drop. *See* ECF 83 at 15-16; ECF 102 at 37. Equally stale was the news that Malaysia would seek consequential losses. Mason Reply ¶¶ 127-38. Indeed, as the Court found, "the Malaysian authorities had repeatedly telegraphed their intention 'to recover as much of the missing 1MDB money as possible.'" ECF 102 at 40 (citing June 2018 report). Regardless, to the extent Defendants contest the quantum of price impact Dr. Mason assigns to this news ($1.61 per share), that is a loss causation argument about disaggregation that is improper at class certification. Indeed, Dr. Mason is not even required to disaggregate confounding news at this stage. *Waggoner*, 875 F.3d at 106 ("failure to disaggregate … did not preclude class certification"). Defendants' disagreement with Dr. Mason's calculation does not rebut the presumption.

II. DEFENDANTS' CONCLUSORY ARGUMENTS SHOULD BE REJECTED

Defendants' arguments (Opp. 30) overlook Dr. Mason's damages model and AP7's prosecution of this case. Mason Rep. ¶¶ 95-96; Mot. 16 n.8. AP7 incorporates ECF 159 at 10-15.

CONCLUSION

AP7 respectfully requests that the Court grant its motion for class certification.

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[15] Defendants' cases (Opp. 28) either support Dr. Mason's opinion or are inapposite. *See In re Sec. Cap. Assurance Ltd. Sec. Litig.*, 729 F. Supp. 2d 569, 600 n.5 (S.D.N.Y. 2010) (stating that "in many cases, the event window will be ... as short as one trading day," but noting that longer windows are often proper). Indeed, the literature cited by the court states that the event window is "***generally two or three days around each release of new information***." Mark Mitchell & Jeffry M. Netter, *The Role of Financial Economics in Securities Fraud Cases: Applications at the Securities and Exchange Commission*, 49 BUSINESS LAWYER 545, 559 (1994). Defendants' remaining cases are inapt. *Erica P. John Fund, Inc. v. Halliburton Co.*, 309 F.R.D. 251, 269 (N.D. Tex. 2015) (no statistically significant decline on first day); *In re Intuitive Surgical Sec. Litig.*, 2016 WL 7425926, at *14 (N.D. Cal. Dec. 22, 2016) (rejecting defendants' expert's use of two trading days to ***disprove*** statistical significance where reaction on first day was statistically significant).

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