

No. 26-2183

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

IN RE NVIDIA CORPORATION
SECURITIES LITIGATION

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

**BRIEF OF WASHINGTON LEGAL FOUNDATION AND
THE NATIONAL ASSOCIATION OF MANUFACTURERS
AS AMICI CURIAE SUPPORTING PETITIONERS'
RULE 23(F) PETITION FOR LEAVE TO APPEAL**

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RULE 26.1 DISCLOSURE STATEMENTS

Washington Legal Foundation has no parent company, issues no stock, and no publicly held company owns a ten percent or greater interest.

The National Association of Manufacturers has no parent company, issues no stock, and no publicly held company owns a ten percent or greater interest.

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INTEREST OF AMICI CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as an amicus curiae in important disputes over the proper scope of the federal securities laws. *See, e.g., Slack Technologies, LLC v. Pirani*, 598 U.S. 759 (2023); *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.*, 594 U.S. 113 (2021).

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes \$2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps

* No party's counsel authored any part of this brief. No one, apart from amici and their counsel, contributed money intended to fund the brief's preparation or submission. No party opposes the filing of this amicus brief.

manufacturers compete in the global economy and create jobs across the United States.

Amici are concerned that the decision below, unless corrected by this Court, will widen an existing divide among district courts in this Circuit on the proper application of the *Basic* presumption after *Goldman*. Such incoherence will unfairly prejudice a defendant’s ability to defeat class certification in securities-fraud cases.

INTRODUCTION & SUMMARY OF ARGUMENT

So much class litigation ignores the basic reality that many claims—even some securities claims—simply aren’t amenable to class-wide resolution. Class actions are “an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (cleaned up). Rule 23 “imposes stringent requirements for certification that in practice exclude most claims.” *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 234 (2013). When the “inherent tension” between “representative suits” and our “deep-rooted historic tradition that everyone should have his own day in court” runs too high, *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999), the privilege of bringing a class action must give way and the right to a fair legal process must stand firm.

NVIDIA's stock soared more than 3,400% from 2017 to 2018 on AI-driven growth. Even so, Plaintiffs allege that NVIDIA's executives hid the company's reliance on cryptocurrency mining despite repeated disclosures of those revenues and accurate statements that its core business lay elsewhere. The District Court certified a multi-billion-dollar class based on temporary price drops from declining crypto demand. But in doing so, the court misapplied *Goldman* on price impact and sidestepped *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013), on damages.

NVIDIA's Rule 23(f) petition offers the Court an urgent opportunity to issue its first published guidance on the Supreme Court's price-impact framework in *Goldman*, and to resolve the persistent confusion that framework has engendered in this Circuit's district courts. The District Court here candidly described *Goldman* as "somewhat new" and "difficult to apply," Slip Op. at 16 n.12, and the hearing transcript confirms the judge's view that more "particularized guidance from the Ninth Circuit" is needed, Tr. of Mot. Hr'g at 2, Dkt. 284.

Five years after *Goldman*, this Court still has no published opinion clarifying how courts should assess any "mismatch" between alleged misrepresentations and corrective disclosures, or how to apply the "good dose of common sense" the Supreme Court now demands. *Goldman*, 594

U.S. at 122. Without such guidance, district courts have filled the void with inconsistent rulings—some treating back-end price drops as near-automatic proxies whenever statements touch the same general subject, others insisting on a more rigorous inquiry into whether the disclosure conveys any new, corrective information. This disarray is not trivial. It has rendered the *Basic* presumption of reliance “largely irrebuttable” in practice, *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 296 (2014) (Thomas, J., concurring in the judgment). That’s the very evil the Supreme Court has long sought to prevent.

Equally troubling is the District Court’s treatment of the class-wide damages question. *Comcast* requires Plaintiffs to offer “evidentiary proof” that damages are capable of measurement on a class-wide basis. *Comcast*, 569 U.S. at 33–35. Yet the District Court accepted Plaintiffs’ expert’s unexecuted promise to develop an “out-of-pocket” damages methodology later. This increasingly common gambit evades *Comcast*’s rigorous analysis in complex securities cases—marked by differential inflation and confounding events—where such scrutiny is needed most.

The stakes here are enormous. Class certification exposes NVIDIA, a leading global innovator in artificial intelligence, to multi-billion-dollar liability in a case that turns on statements made years ago about a now-

irrelevant cryptocurrency tailwind. Yet the vital doctrinal issues at stake transcend this litigation. Unchecked class certifications in the high-volatility tech sector chill corporate disclosure, inflate the cost of capital, and undermine the efficient operation of public markets that the federal securities laws are designed to protect.

NVIDIA’s petition is the ideal vehicle for the Court at last to implement the guardrails *Goldman* requires. Review now would resolve recurring questions of exceptional importance, correct a manifest legal error in the application of binding Supreme Court precedent, and materially advance the litigation by averting the irresistible settlement pressure that certification so often exerts. *See Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 957 (9th Cir. 2005).

ARGUMENT

I. This Court’s lack of guidance on *Goldman* invites the very inconsistency and uncertainty the Supreme Court has long condemned.

Goldman was not subtle. It instructed courts at the class-certification stage to consider *all* probative evidence of price impact—qualitative as well as quantitative—and to apply “a good dose of common sense.” 594 U.S. at 122. *Goldman* stressed that the inference of front-end inflation from a back-end price drop “starts to break down” when there is

a “mismatch” between the contents of the alleged misrepresentation and the corrective disclosure. *Id.* at 123. Its key insight is that generic front-end statements paired with specific (or non-corrective) back-end disclosures rarely support presuming that the market incorporated any alleged falsehood into the stock price.

District courts in this Circuit have struggled to implement that command. Some have applied a loose “subject-matter” or “sufficiently related” test, effectively treating overlapping topics as capable of triggering the *Basic* presumption. *See, e.g., Jaeger v. Zillow Grp., Inc.*, No. 2:21-cv-01551, 2024 WL 3924557, at *14 (W.D. Wash. Aug. 23, 2024) (certifying class where front-end statements about pricing-model progress and back-end disclosures about inventory and operational pauses were “sufficiently related”); *Crews v. Rivian Auto., Inc.*, No. 2:22-cv-01524, 2024 WL 3447988, at *14 (C.D. Cal. July 17, 2024) (same, where price-raising decision was “sufficiently related” to profitability statements). Others have engaged more rigorously with *Goldman’s* mismatch test, insisting that corrective disclosures must introduce new information that negates the alleged falsehood. *See, e.g., In re FibroGen Sec. Litig.*, No. 3:21-cv-00026, 2024 WL 1064665, at *12 (N.D. Cal. Mar. 11, 2024) (partially denying certification because later disclosures did not supply new

corrective information); *In re Qualcomm Inc. Sec. Litig.*, No. 17-cv-121, 2023 WL 2583306, at *13 (S.D. Cal. Mar. 20, 2023) (rejecting back-end drops as proxies where disclosures were merely confirmatory); *Ferris v. Wynn Resorts Ltd.*, No. 2:18-cv-00479, 2023 WL 2337364, at *10 (D. Nev. Mar. 1, 2023) (same).

This is not healthy experimentation; it is chaos. And *Jaeger v. Zillow Group, Inc.*, No. 24-6605, 2025 WL 2741642 (9th Cir. Sept. 26, 2025), this Court's first and only word on *Goldman*, was unpublished and thus nonbinding. The persisting ambiguity "has sown inconsistency in the lower courts." Michael C. Turk, *The Securities Fraud Class Action After Goldman Sachs*, 59 Am. Bus. L.J. 281, 334 (2022). The District Court's own admission that *Goldman* is "somewhat new" and "difficult to apply" only underscores the point. Tr. of Mot. Hr'g at 2, Dkt. 284.

Here Plaintiffs made almost no attempt to prove that NVIDIA's alleged misstatements inflated its stock price, and the District Court found no front-end price impact. Instead, Plaintiffs relied on back-end price drops after the August and November 2018 disclosures as proxies for that inflation. The court correctly rejected the August disclosure, which merely repeated what the market already knew. Slip Op. at 36. But it committed legal error when it held that NVIDIA had "not convinced the

Court that it is likely that there was no price impact” from the November disclosure. *Id.* at 40.

That ruling cannot stand. The November statement corrected nothing—a classic mismatch that *Goldman* itself flags as fatal to any inference of front-end inflation. NVIDIA merely supplied new forward-looking guidance based on fresh information. Not only could the District Court identify no prior misstatement supposedly corrected by the November disclosure, but it acknowledged that NVIDIA had repeatedly disclosed the very facts that Plaintiffs claimed were hidden. *Goldman* forbids this shortcut. A later stock drop cannot proxy for front-end inflation when the market already knew what was supposedly concealed. Under these circumstances, “there is less reason to infer front-end price inflation—that is, price impact—from the back-end price drop.” *Goldman*, 594 U.S. at 123

The Supreme Court’s adoption of the “mismatch” test in *Goldman* buttressed protections at the class certification stage for generic statements of aspiration, commitment, and risk that have no impact on price. But as applied by the District Court, the “mismatch” test would convert these statements into fodder for a securities-fraud class action anytime the company falls short of its aims. This creates uncertainty and

increases the perceived risk of liability for many types of beneficial, voluntary disclosures that the federal securities laws should facilitate, not hinder. See Kevin S. Haeberle & M. Todd Henderson, *A New Market-Based Approach to Securities Law*, 85 U. Chi. L. Rev. 1313, 1334 (2018) (explaining why “legal uncertainty” creates “little upside” for “disclosing more than that which is required”).

Without clear guidance from this Court, district courts in this Circuit will continue to drift, defendants will effectively face irrebuttable presumptions, and the Supreme Court’s effort to restore balance at the certification stage will be thwarted. See *Halliburton Co.*, 573 U.S. at 296 (Thomas, J., concurring in the judgment) (warning that the *Basic* presumption has become “largely irrebuttable”). The time has come for the Court to supply this much needed clarity.

II. The District Court’s acceptance of an unexecuted damages model exemplifies a recurring *Comcast* evasion that other circuits have already corrected.

The same pattern of uncertainty infects the District Court’s damages inquiry. Because damages class actions are an “exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only,” courts may not certify a class unless plaintiffs carry their burden to meet *all* of Rule 23’s requirements. *Comcast*, 569 U.S. at 33

(quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)); see also *Wal-Mart*, 564 U.S. at 348. Plaintiffs here simply have not shown that their claims can be tried on a class-wide basis and without eliminating NVIDIA’s right to raise individualized defenses.

Comcast is fatal here because Plaintiffs offered no evidentiary proof that class-wide damages are measurable, instead banking on an expert’s promise to conjure an “out-of-pocket” model later. That tactic, which *Comcast* rejects, lets securities plaintiffs certify multibillion-dollar classes without ever showing that individualized damages issues will not overwhelm the litigation. No plaintiff suing individually could survive summary judgment without proof of damages.

That is why *Comcast* requires Plaintiffs to *prove* that damages are measurable on a class-wide basis. 569 U.S. at 33–35. Yet the District Court here accepted Plaintiffs’ expert’s promise to supply a methodology sometime later, relying on *Lytle v. Nutramax Laboratories, Inc.*, 114 F.4th 1011 (9th Cir. 2024). *Lytle* permits a “predictive judgment,” but it does not license Plaintiffs to evade *Comcast*’s rigorous analysis altogether. This rule is even more crucial in complex securities cases presenting differential inflation, confounding events, and the need to carefully disaggregate actionable from non-actionable statements.

The District Court’s approach exemplifies pervasive confusion within this Circuit, as district courts routinely bless unexecuted models in securities cases without proof of class-wide damages. Other circuits have granted Rule 23(f) review to enforce *Comcast* against precisely this tactic. See *In re FirstEnergy Corp. Sec. Litig.*, 149 F.4th 587, 603 (6th Cir. 2025) (vacating certification for overlooking *Comcast*’s “rigorous-analysis requirement”); *In re Boeing Co. Sec. Litig.*, No. 25-1492 (4th Cir. May 2, 2025) (granting review on the identical “promise to develop later” issue). This Court should do the same.

III. This case’s extraordinary stakes and relentless settlement leverage make this an ideal vehicle for interlocutory review.

Finally, the multibillion-dollar exposure for a flagship AI company presents the classic Rule 23(f) scenario where the staggering size of a potential damages verdict would force most companies of NVIDIA’s size “to settle without relation to the merits of the class’s claims.” *Chamberlan*, 402 F.3d at 960 (quoting *In re Lorazepam & Clorazepate Antitrust Litig.*, 289 F.3d 98, 108 (D.C. Cir. 2002)). Without this Court’s intervention now, the monetary stakes of this case, coupled with the hydraulic settlement leverage of certification, would unfairly bring an end to the litigation.

Both Congress and the Supreme Court have recognized that securities fraud class actions are uniquely prone to abuse. *See Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007). While *Basic* allows a plaintiff to bring a securities fraud claim on behalf of a class, the Supreme Court has repeatedly revisited *Basic* to reaffirm that a defendant can defeat class certification by “sever[ing] the link” between an alleged misstatement and any purported price impact. *See Goldman*, 594 U.S. at 113; *Halliburton*, 573 U.S. at 258; *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455 (2013). These decisions have erected important guardrails around the *Basic* presumption to discourage meritless lawsuits brought for “in terrorem” settlement value. *Halliburton*, 573 U.S. at 296, n.7 (Thomas, J., concurring).

By lowering the bar to class certification, the District Court’s application of *Goldman* will also likely accelerate a growing trend of “event-driven” securities lawsuits that hinge on “tenuous” arguments. Elisa Mendoza & Jeffrey Lubitz, *Event-Driven Securities Litigation: The New Driver in Class Action Growth*, Institutional Shareholder Servs. (December 2020), at 2–3. While event-driven securities-fraud claims typically rest on shaky ground, the nature of these claims can exert undue

settlement pressure, particularly if a defendant believes it lacks a viable means to rebut the *Basic* presumption and defeat class certification.

At bottom, unchecked class certification in high-growth technology sectors distorts capital formation and harms the very investors that class actions purport to protect. “If investors believe that fraud is rampant in the capital markets, they are likely to discount the price they are willing to pay for securities below what the security is really worth.” Note, *Congress, the Supreme Court, and the Rise of Securities-Fraud Class Actions*, 132 Harv. L. Rev. 1067, 1083 (2019). Such market distortion “would mean that companies cannot raise as much capital, which could lead to missed investment opportunities and, in turn, reduced value to shareholders.” *Id.*

Amici urge the Court to grant review now, before this Circuit’s post-*Goldman* confusion becomes entrenched and the guardrails the Supreme Court erected are eroded beyond repair.

CONCLUSION

The Court should grant the Petition.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 2,571 words, excluding the items exempted by Fed. R. App. P. 32(f). This amicus brief complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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