

United States District Court  
Northern District of California

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Case No. 4:20-cv-9328-YGR

**IN RE ROBINHOOD ORDER FLOW  
LITIGATION**

**ORDER GRANTING IN PART AND DENYING  
IN PART MOTION TO DISMISS SECOND  
CONSOLIDATED AMENDED COMPLAINT;  
GRANTING IN PART AND DENYING IN PART  
MOTION TO DENY CLASS CERTIFICATION**

Dkt. Nos. 99 and 101

Plaintiff Ji Kwon brings this class action complaint against defendants Robinhood Financial LLC (“Robinhood Financial”), Robinhood Securities, LLC (“Robinhood Securities”), and Robinhood Markets, Inc. (“Robinhood Markets”) (collectively “Robinhood”) on behalf of himself and a class of similarly situated individuals, alleging six false and misleading statements and omissions and fraudulent and manipulative conduct between September 1, 2016 and June 16, 2020 (the “Class Period”) (Dkt. No. 93) (“Consolidated Second Amended Class Action Complaint” or “Compl.”). Plaintiff asserts three causes of action, each alleging a violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5(a), 10b-5(b), and 10b-5(c) respectively.

Having once considered a motion to dismiss, now before the Court is Robinhood’s second motion to dismiss plaintiff’s claims pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) and motion to deny class certification (*see* Dkt Nos. 99 and 101). After carefully considering the papers submitted and the pleadings in this action, and for the reasons set forth below, the Court hereby **GRANTS IN PART** both the motion to dismiss, and relatedly, the motion to deny class certification.

1       **I. BACKGROUND**

2           The below factual background is based on facts from judicially noticeable documents and  
3 allegations from plaintiff’s complaint.<sup>1</sup>

4           **A. Robinhood’s Payment For Order Flow (“PFOF”) Business**

5           Robinhood is a “multi-billion dollar mobile application and website investment service.”  
6 (Compl. ¶ 2.) Users can engage in “self-directed securities brokerage services” by way of  
7 Robinhood’s website and smartphone applications. (*Id.* ¶ 21.) Robinhood has gained popularity  
8 amongst investors by allowing customers to place stock trades “without paying a trading  
9 commission fee.” (*Id.* ¶ 22.)

10           Since at least late 2016, PFOF has been Robinhood’s largest revenue source. (*Id.* ¶ 7.)

11 \_\_\_\_\_  
12           <sup>1</sup> Robinhood presents twenty documents in support of its motion to dismiss. For each,  
13 Robinhood requests that the Court take judicial notice, or incorporate the document by reference,  
14 namely: (1) a copy of Robinhood Financials’ SEC Rule 606 disclosure for the first quarter of 2018  
15 (Ex. A); (2) a copy of Robinhood Financials’ customer agreement, dated November 21, 2016 (Ex.  
16 B); (3) excerpts from trade confirmations (Exs. C and D); (4) media publications concerning  
17 Robinhood’s receipt of payment for order flow (Exs. E -T). (*See* Dkt. No. 99). Plaintiff challenges  
18 each request.

19           The Court concludes that it may properly take judicial notice of Exhibit A since SEC  
20 filings are routinely subject to judicial notice. *See Metzler Inv. GMBH v. Corinthian Colleges,*  
21 *Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008) (explaining that it was proper for the district court to  
22 take notice of defendant’s SEC filings); *see also Dreiling v. Am. Exp. Co.*, 458 F.3d 942, 946 n. 2  
23 (9th Cir. 2006) (SEC filings subject to judicial notice).

24           Similarly, the Court takes judicial notice of Exhibits E through T, not for the truth of their  
25 content, but to “indicate what was in the public realm at the time.” *Von Saher v. Norton Simon*  
26 *Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010); *Gerritsen v. Warner Bros. Entm’t*  
27 *Inc.*, 112 F. Supp. 3d 1011, 1028 (C.D. Cal. 2015) (“The cases in which courts take judicial notice  
28 of newspaper articles and press releases . . . are limited to a narrow set of circumstances . . . e.g., in  
*securities cases* for the purpose of showing that particular information was available to the stock  
market.”); *see also, e.g., Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 n.18 (9th Cir.  
1999) (taking judicial notice “that the market was aware of the information contained in news  
articles submitted by the defendants”).

          However, because plaintiff disputes the contents of Exhibits B through D and the  
complaint does not refer to or explicitly rely upon those documents, the request for judicial notice  
as to these documents is denied. Similarly, the incorporation by reference doctrine does not apply  
to these documents. Nor does it apply to Exhibit A, but that document is judicially noticeable on  
the basis described above.

1 PFOF is the payment or compensation that a brokerage or retail firm receives from principal  
2 trading firms directing orders to different market makers. (*Id.* ¶ 26.) Rule 10b-10(d)(8) of the  
3 Exchange Act defines PFOF to include “any monetary payment, service, property, or other benefit  
4 that results in remuneration, compensation, or consideration to a broker-dealer in return for the  
5 routing of customer orders.” (*Id.* ¶ 27.) The Securities and Exchange Commission (“SEC”)  
6 permits the receipt of PFOF so long as it does not interfere with the brokerage or firm’s other  
7 duties, and as long as such payments are disclosed in the firm’s quarterly SEC Rule 606 report.  
8 (*Id.* ¶ 29.)

9 In addition to PFOF, another incentive that principal trading firms may provide to retail  
10 broker-dealers is “price improvement” on customers’ orders. (*Id.* ¶ 30.) Price improvement  
11 allows customers to receive executed orders at prices better than the national best bid and offer  
12 (“NBBO”). (*Id.* ¶ 31.)

### 13 **B. The Duty of Best Execution**

14 Retail brokers such as Robinhood owe their customers a duty of “best execution.” (*Id.* ¶  
15 34.) Best execution requires that a broker endeavor to execute orders at the most favorable terms  
16 available at the time of execution. (*Id.*) A broker is not required to examine every single order to  
17 determine compliance with its duty of best execution. (*Id.* ¶ 35.) Instead, the duty only requires  
18 regular and rigorous reviews of its quality of orders executions. (*Id.*) PFOF has the potential to  
19 interfere with a broker firm’s way of carrying out its duty of best execution because PFOF is a  
20 benefit that goes straight to the broker whereas other incentives that may be obtained for routing  
21 PFOF, such as price improvement, benefit the customer. (*Id.* ¶ 36.) In conducting its business,  
22 Robinhood agreed to accept less price improvement for its customers than what principal trading  
23 firms were offering in exchange for receiving a higher rate of payment for PFOF. (*Id.* ¶ 63.)

24 In 2016, Robinhood formed a “Best Execution Committee” to monitor its execution speed  
25 and price. (*Id.* ¶ 64.) The committee met at least once per month. (*Id.*) In 2017, Robinhood  
26 developed a proprietary routing algorithm, known as a smart order router, which routed customer  
27 orders to principal trader firms with which Robinhood had payment for order flow arrangements  
28 compete for order flow by routing customer orders to the principal trading firm that had provided

1 the most price improvement for that stock over the prior 30 days. (*Id.* ¶ 66.) The smart router did  
2 not fix Robinhood’s PFOF and did not route to firms with whom Robinhood did not have an  
3 agreement. (*Id.*) Thus, allegedly the committee did not take any steps to determine whether  
4 Robinhood’s PFOF was negatively impacting customers’ orders, nor did the committee conduct  
5 regular reviews to determine whether Robinhood was fulfilling its best execution obligations. (*Id.*  
6 ¶¶ 69-70.) Robinhood chose to stop routing orders to one of its principal trading firms mid-2017  
7 when the firm tried to negotiate a lower PFOF rate. (*Id.* ¶ 71.)

8 In October 2018, Robinhood started comparing its order execution quality to that of its  
9 competitors and found that its quality metric was worse than that of its competitors. (*Id.* ¶ 70.) In  
10 March 2019, after further testing, Robinhood further learned that its execution quality and price  
11 improvement metrics were substantially worse than other retail brokers. (*Id.* ¶ 73.) However, the  
12 Best Execution Committee failed to take the necessary steps to ensure that Robinhood was  
13 complying with its duty to seek the best execution of trades. (*Id.* ¶ 74.)

#### 14 **C. Pre-Class Period Allegations: Robinhood’s Initial FAQ Concerning PFOF**

15 In 2014, prior to its public launch, Robinhood included a Frequently Asked Question  
16 (“FAQ”) page on its website providing information about the company’s anticipated revenue  
17 source. (*Id.* ¶ 47.) In response to the question, “How does Robinhood make money?”, Robinhood  
18 indicated that it anticipated receiving money for PFOF. (*Id.*) During this time, PFOF became  
19 publicly scrutinized and was deemed controversial. (*Id.* ¶¶ 49-50.) In light of these concerns, in  
20 December 2014, Robinhood revised its FAQ to reflect that “the payment for order flow revenue  
21 Robinhood received at the time was ‘indirect’ and ‘negligible’” and that “if payment for order  
22 flow ever became a direct or significant source of Revenue, Robinhood would inform customers  
23 of those facts on the “How does Robinhood make money” FAQ page.” (*Id.* ¶¶ 51-52.)  
24 Robinhood’s FAQ reflected this language from December 2014 until some time in 2016. (*Id.* ¶¶  
25 51, 53, 75.) During this time, PFOF constituted more than 80% of the company’s revenue. (*Id.* ¶  
26 53.)

#### 27 **D. Events During the Class Period**

28 By late 2016, Robinhood removed references to PFOF altogether from its FAQ response.

1 (*Id.* ¶ 75.) Between then and September 2018, the FAQ part of Robinhood’s website did not  
2 include PFOF as a revenue source in its answer to the “How Robinhood Makes Money” FAQ  
3 although PFOF was its largest source of revenue throughout this period. (*Id.*) However, the FAQ  
4 website was updated throughout this period to include smaller revenue sources. (*Id.* ¶ 78.)

5 Robinhood featured its “How Robinhood Makes Money” FAQ in some of its customer  
6 communications, including its website’s homepage. (*Id.* ¶ 80.) Additionally, Robinhood  
7 instructed its customer service representations to direct customers to the FAQ page or use the  
8 language from its response when customers inquired about how Robinhood made money. (*Id.* ¶  
9 81.) Training documents for customer representatives “explicitly instructed them to ‘avoid’  
10 talking about payment for order flow and stated that it was ‘incorrect’ to identify payment for  
11 order flow in response to questions about how Robinhood made money.” (*Id.* ¶ 82.)

12 Robinhood disclosed its receipt of PFOF in its SEC 606 reports, which were published on  
13 Robinhood’s “Disclosure Library” page of its website. (*Id.* ¶ 84.) Robinhood’s customer  
14 agreements and trade confirmations also included language indicating that Robinhood “may”  
15 receive PFOF even though it was “four times the industry standard.” (*Id.* ¶¶ 84, 85.)

16 On October 12, 2018, Robinhood published a new FAQ page that discussed its receipt of  
17 PFOF. (*Id.* ¶ 87.) The new FAQ page also include a statement on Robinhood’s execution quality  
18 which stated:

19 **What is the execution quality for orders on Robinhood?**

20 Reg NMS ensures your order gets executed at the national best bid and offer, or  
21 better, at the time of execution. Our execution quality and speed matches or beat  
22 what’s found at other major brokerages. Even when measured at the time of  
23 routing, our customers’ orders get executed at the NBBO or better. By way of  
24 example, in August 2018, 99.12% of our customers’ marketable orders were  
25 executed at the the [sic] national best bid and offer or better with an execution  
26 speed of 0.08 seconds from routing to execution (for S&P 500 stocks, during  
27 market hours).

28 (*Id.*)

By contrast, Robinhood’s internal analysis conducted after October 2018 showed that  
Robinhood underperformed other retail brokers with respect to the number of accounts receiving  
price improvement. (*Id.* ¶¶ 88-92.) In June 2019, Robinhood removed the language from its FAQ

1 indicating that its execution quality matched or beat that of other brokers. (*Id.* ¶ 94.)

2 **II. LEGAL STANDARDS**

3 **A. Motion to Dismiss**

4 The standards under Federal Rule of Civil Procedure 12(b)(6) are well-known and not in  
5 dispute.

6 Rule 9(b) requires a party bringing a fraud claim to “state with particularity the  
7 circumstances constituting [such] fraud . . . .” Fed. R. Civ. P. 9(b). This “requires . . . an account  
8 of the time, place, and specific content of the false representations as well as the identities of the  
9 parties to the misrepresentations.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007)  
10 (citing Rule 9(b)) (internal quotation marks omitted). Similarly, in pleading a cause of action for  
11 securities fraud under the Private Securities Litigation Reform Act (“PSLRA”), “the complaint  
12 shall specify each statement alleged to have been misleading, the reason or reasons why the  
13 statement is misleading, and, if an allegation regarding the statement or omission is made on  
14 information and belief, the complaint shall state with particularity all facts on which that belief is  
15 formed.” 15 U.S.C. § 78u-4(b). The PSLRA also requires particularity in pleading the required  
16 state of mind: “in any private action arising under this chapter in which the plaintiff may recover  
17 money damages only on proof that the defendant acted with a particular state of mind, the  
18 complaint shall, with respect to each act or omission alleged to violate this chapter, state with  
19 particularity facts giving rise to a strong inference that the defendant acted with the required state  
20 of mind.” *Id.* Thus, the PSLRA requires a plaintiff alleging securities fraud to “plead with  
21 particularity both falsity and scienter.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981,  
22 990 (9th Cir. 2009) (internal quotation and citation omitted); *see also Tellabs, Inc. v. Makor Issues*  
23 *& Rts., Ltd.*, 551 U.S. 308, 313 (2007); 15 U.S.C. § 78u-4(b)(1)–(2). The Ninth Circuit has  
24 dubbed the pleading requirements under the PSLRA “formidable” for a plaintiff seeking to state a  
25 proper claim and avoid dismissal. *Metzler Inv. GMBH*, 540 F.3d at 1055.

26 **B. Motion to Deny Class Certification**

27 “Before certifying a class, the trial court must conduct a rigorous analysis to determine  
28 whether the party seeking certification has met the prerequisites of Rule 23.” *Mazza v. Am. Honda*

1 *Motor Co., Inc.*, 666 F.3d 581, 588 (9th Cir. 2012). Under the Federal Rules of Civil Procedure, a  
2 court may certify if the class meets the numerosity, commonality, typicality, and adequacy  
3 prerequisites of Rule 23(a). In addition to meeting these four requirements of Rule 23(a), class  
4 actions must fall within one of the three types specified in Rule 23(b).

5 Courts are required to determine whether to certify the action as a class action at “an early  
6 practicable time.” Fed. R. Civ. P. 23(c)(1). Rule 23 “does not preclude a defendant from bringing  
7 a ‘preemptive’ motion to deny certification” where the class action plaintiff has yet to seek  
8 certification. *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 941 (9th Cir 2009). While  
9 such a motion is disfavored and may be denied as premature, district courts have “broad  
10 discretion” to control the class certification process and to determine whether discovery will be  
11 permitted. *Id.* at 942. A party seeking class certification is “not always entitled to discovery on  
12 the class certification issue,” but in some cases, “the propriety of a class action cannot be  
13 determined . . . without discovery.” *Id.* The “better and more advisable practice” for a district  
14 court is to provide litigants “an opportunity to present evidence regarding whether a class action is  
15 maintainable.” *Id.*

### 16 **III. MOTION TO DISMISS ANALYSIS**

17 Section 10b makes it “unlawful for any person, directly or indirectly . . . [t]o use or  
18 employ, in connection with the purchase or sale of any security registered on a national securities  
19 exchange or any security not so registered . . . any manipulative or deceptive device or contrivance  
20 in contravention of [the SEC’s rules and regulations].” 15 U.S.C. § 78j. Rule 10b–5 categorizes  
21 violations of the statute into three categories:

22 (a) to employ any device, scheme, or artifice to defraud;

23 (b) to make any untrue statement of a material fact or omit to state a  
24 material fact necessary in order to make the statements made, in  
25 the light of the circumstances under which they were made, not  
26 misleading; or

27 (c) to engage in any act, practice, or course of business which  
28 operates or would operate as a fraud or deceit upon any person, in  
connection with the purchase or sale of any security.

1 17 C.F.R. § 240.10b–5.

2 Courts have generally categorized deceptive and manipulative devices into  
3 misrepresentations, omissions by those with a duty to disclose, or manipulative acts. *Desai v.*  
4 *Deutsche Bank Sec. Ltd.*, 573 F.3d 931, 938 (9th Cir. 2009) (citing *Ganino v. Citizens Utils.*  
5 *Co.*, 228 F.3d 154, 161 (2d Cir.2000)). Misrepresentations and omissions tend to fall under Rule  
6 10b-5(b) and manipulative conduct and acts tend to fall under Rule 10b-5(a) or (c). *Id.* However,  
7 there is overlap among the different subsections. *Lorenzo v. SEC*, 139 S.Ct. 1094, 1102 (2019).

8 Here, plaintiff brings a cause of action under each subsection based on alleged  
9 misrepresentations, omissions, and fraudulent conduct. The Court addresses each below.

10 **A. Second Cause of Action: Violation of Rule 10b-5(b): Claim Based on Alleged False**  
11 **and Misleading Statements and Omissions**<sup>2</sup>

12 Robinhood argues that plaintiff’s Section 10(b) and Rule 10b-5(b) claim should be  
13 dismissed because plaintiff fails to plead with particularity (i) an actionable misstatement or  
14 omission, (ii) facts giving rise to a strong inference of scienter, and (iii) reliance. To state a claim  
15 thereunder, a plaintiff must “show that the defendant made a statement that was ‘misleading as to  
16 a material fact.’” *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 38 (2011) (quoting *Basic*  
17 *Inc. v. Levinson*, 485 U.S. 224, 238 (1988)) (emphasis in original). Thus, a plaintiff must allege:  
18 “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection  
19 between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon  
20 the misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Id.* at 37–38  
21 (quoting *Stoneridge Investment Partners, LLC v. Scientific–Atlanta, Inc.*, 552 U.S. 148, 157  
22 (2008)). Here, Robinhood challenges the sufficiency of the first, second, and fourth elements,  
23 which the Court examines.

24 **i. Material Misrepresentations or Omissions**

25 A material misrepresentation or omission is adequately alleged “when a plaintiff points to  
26 [the] defendant’s statements that directly contradict what the defendant knew at that time.” *Khoja*

27 \_\_\_\_\_  
28 <sup>2</sup> Consistent with the parties’ order of briefing, the Court analyzes plaintiff’s second cause  
of action first.



1 *v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1008 (9th Cir. 2018) (citing *In re Astossa Genetics*  
2 *Inc. Sec. Litig.*, 868 F.3d 784, 794–96 (9th Cir. 2017)). The statement must be “capable of  
3 objective verification.” *Or. Pub. Emps. Ret. Fund. v. Apollo Grp. Inc.*, 774 F.3d 598, 606 (9th Cir.  
4 2017) (internal quotation marks omitted). For example, “puffing”—expressing an opinion rather  
5 than a knowing false statement of fact—is not actionable. *Id.*; see also *Lloyd v. CVB Fin. Corp.*,  
6 811 F.3d 1200, 1206–07 (9th Cir. 2016); *In re Cutera Sec. Litig.* 610 F.3d 1103, 1111 (9th Cir.  
7 2010). Qualitative buzzwords such as “good,” “well-regarded,” or other “vague statements of  
8 optimism” cannot form the basis of a false or misleading statement under the PSLRA. *Apollo*, 774  
9 F.3d at 606 (citations omitted.)

10 Even if a statement is not false, it may be misleading if it omits material information.  
11 *Khoja*, 899 F.3d at 1008–09 (citing *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1054 (9th Cir.  
12 2014)). A plaintiff must prove that the omission is both misleading and material. *In re Alphabet,*  
13 *Inc. Sec. Litig.*, 1 F.4th 687, 699 (9th Cir. 2021). The Ninth Circuit applies an objective standard  
14 of a “reasonable investor” to determine whether a statement is misleading. *Id.* (citing *In re*  
15 *VeriFone Sec. Litig.*, 11 F.3d 865, 869 (9th Cir. 1993)). “A misleading omission is material if  
16 ‘there is ‘a substantial likelihood that [it] would have been viewed by the reasonable investor as  
17 having significantly altered the ‘total mix’ of information made available’ for the purpose of  
18 decisionmaking by stockholders concerning their investments.” *Id.* at 699-700 (citations omitted).

19 That said, omissions are actionable only where they “make the actual statements  
20 misleading”; it is not sufficient that an investor merely “consider[ed] the omitted information  
21 significant.” *Markette v. XOMA Corp.*, No. 15-CV-3425 (HSG), 2017 WL 4310759, at \*7 (N.D.  
22 Cal. Sept. 28, 2017) (internal quotation marks omitted). Section 10(b) and Rule 10b-5(b) “do not  
23 create an affirmative duty to disclose any and all material information,” but instead a duty to  
24 include all facts necessary to render a statement accurate and not misleading, once a company  
25 elects to disclose that material information. *Matrixx Initiatives, Inc.*, 563 U.S. at 44; 17 C.F.R. §  
26 240.10b-5(b). Thus, “[i]f the challenged statement is not false or misleading, it does not become  
27 actionable merely because it is incomplete.” *In re Immune Response*, 375 F. Supp. 2d at 1017  
28 (quoting *In re Vantive Corp. Sec. Litig.*, 283 F.3d 1079, 1085 (9th Cir. 2002)). To provide

1 sufficient notice, plaintiff, “in addition to alleg[ing] the ‘time, place[,] and nature of the alleged  
2 fraudulent activities,’ must ‘plead evidentiary facts’ sufficient to establish any allegedly false  
3 statement ‘was untrue or misleading when made.’” *Wozniak v. Align Tech., Inc.*, 850 F. Supp. 2d  
4 1029, 1034 (N.D. Cal. 2012).

5 Here, plaintiff challenges six specific statements and/or omissions, namely Robinhood’s:  
6 (a) statement that its execution quality and speed matches or beats what is found at other major  
7 brokerages; (b) omission of PFOF from descriptions of its revenue sources on its FAQ page; (c)  
8 failure to disclose its unique business model of charging significantly higher PFOF than other  
9 brokers at the expense of the price improvement available to its customers; (d) statement that the  
10 PFOF revenue it received was “indirect” and “negligible,” and that if PFOF ever became a  
11 significant source of revenue, it would inform customers of those facts on its “How does  
12 Robinhood make money” FAQ page; (e) omission of information about PFOF in communications  
13 with customers; and (f) promise to provide “commission free” trading. The Court discusses each  
14 statement in turn.

15 **a. Statement of Execution Quality, Speed, and Performance**

16 Plaintiff challenges Robinhood’s statement about its execution quality, speed, and  
17 performance relative to other major brokerage companies. On its FAQ page, Robinhood included  
18 the following:

19 **What is the execution quality for orders on Robinhood?**

20 Reg NMS ensures your order gets executed at the national best bid and offer, or  
21 better, at the time of execution. *Our execution quality and speed matches or beat*  
22 *what’s found at other major brokerages.* Even when measured at the time of  
23 routing, our customers’ orders get executed at the NBBO or better. By way of  
24 example, in August 2018, 99.12% of our customers’ marketable orders were  
25 executed at the the [sic] national best bid and offer or better with an execution  
speed of 0.08 seconds from routing to execution (for S&P 500 stocks, during  
market hours).

26 (Compl. ¶ 75; challenged statement in italics.) Plaintiff alleges that this statement is false and  
27 misleading because Robinhood’s “execution quality” was actually inferior to other major  
28 brokerages when comparing Robinhood’s core business model of generating revenue primarily

1 through PFOF. Based on internal analyses, plaintiff points to information showing that  
 2 Robinhood’s “percentage [of] orders receiving price improvement lag[ged] behind that of other  
 3 retail brokerages,” and “that the amount of price improvement obtained for Robinhood customers  
 4 was far lower than at competing broker-dealers.” (*Id.* ¶¶ 88-90.)

5 Plaintiff’s argument conflates issues by divorcing the statement from the remaining  
 6 sentences in the FAQ response. Read in context, the “execution quality” statement only references  
 7 orders being executed at the NBBO, or better. The first sentence in the FAQ guarantees that  
 8 “orders get executed at the national best bid and offer, or better.” The third and fourth sentences  
 9 also reference Robinhood’s execution quality relative to the NBBO. Nowhere in the FAQ  
 10 response did Robinhood represent “quality” related to its price improvement. Thus, the Court finds  
 11 that the statement read in context refers to the quality and execution of trades being executed at the  
 12 NBBO.

13 The complaint does not include any allegations or analyses regarding how Robinhood  
 14 compared to other major brokerages with respect to its execution of trades at the NBBO.<sup>3</sup> Thus,  
 15 the Court finds that plaintiff has not sufficiently alleged that Robinhood’s statement of its quality  
 16 and execution is false or misleading.

17 **b. Omission of PFOF from FAQ Page**

18 Second, with respect to Robinhood’s omission of PFOF from descriptions of its revenue  
 19 sources on its FAQ page, plaintiff alleges that the omission was misleading because PFOF was a  
 20 large source of revenue for Robinhood during the class period. Robinhood argues that the alleged  
 21 omission is not actionable not only because Robinhood disclosed its receipt of PFOF through  
 22 various means, including on other parts of its websites, customer agreements, and customer trade  
 23 confirmations, but that such information was widely reported by various mainstream news  
 24 sources.<sup>4</sup>

25 The Court disagrees. By suggesting that it was answering “How Robinhood Makes  
 26

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27 <sup>3</sup> Given plaintiff’s interpretation, it is not surprising that the complaint does not.

28 <sup>4</sup> The parties do not dispute that Robinhood’s decision to outline some of its revenue sources on its FAQ page created a duty for Robinhood to disclose PFOF as a source of revenue because its other revenue sources were disclosed. (*See* Dkt. No. 104, Defendants’ Reply, at 3-4.)

1 Money” on the FAQ page, Robinhood was under a duty to ensure its disclosures on that page were  
2 complete, accurate, and not misleading.

3 Accordingly, plaintiff has sufficiently alleged that Robinhood’s omission of PFOF from its  
4 FAQ page caused its disclosures on the page to be incomplete, false and misleading. Thus, the  
5 omission is actionable.

6 **c. Failure to Disclose Business Model of Charging Higher PFOF than Other  
7 Brokers**

8 Third, with respect to Robinhood’s alleged omission of its business model of charging  
9 higher PFOF than other brokers and other details of its PFOF arrangements with principal trading  
10 firms, again Robinhood argues that such omissions are not actionable. In particular, Robinhood  
11 claims no independent duty to disclose the detailed level of information that plaintiff has  
12 identified, such as the “material details of Robinhood’s PFOF arrangement with its principal  
13 trading firms,” “the significance of PFOF to Robinhood’s business model,” and that Robinhood’s  
14 receipt of PFOF allegedly came “at the expense of customers’ price improvement.”

15 Here, the Court agrees with Robinhood and finds that plaintiff has not sufficiently alleged  
16 that Robinhood’s disclosure of its revenue sources on its FAQ page or its references to  
17 commission-free trading created a duty for Robinhood to disclose the level of detailed information  
18 about Robinhood’s business model that plaintiff has identified. Robinhood’s FAQ contains only  
19 general, not detailed, information about Robinhood’s other revenue sources. Thus, only general  
20 information is required here.

21 Further, plaintiff fails to connect how Robinhood’s statement of its revenue sources on its  
22 FAQ page, or any statement by Robinhood, was made false and misleading by the omission of  
23 such information regarding the amount of PFOF received compared to other brokers or the other  
24 specific information plaintiff identified.

25 Additionally, to the extent plaintiff relies on Robinhood’s prior assurance that it would  
26 inform customers through its FAQ page if PFOF ever become a significant source of revenue, that  
27 statement does not create a duty for Robinhood to disclose the information that plaintiff identifies  
28 because that statement was made prior to the start of the class period. Plaintiff’s counsel conceded  
as much during the hearing on Robinhood’s first motion to dismiss. (*See* Dkt. No. 97, Feb. 15,

2022, Hr’g Tr. 16:8-17:17.)

Courts in this district have found that actionable statements must fall within the class period. *See Hodges v. Akeena Solar, Inc.*, No. C 09-02147 JW, 2010 WL 3705345, at \*2 (N.D. Cal. May 20, 2010) (“ A securities class action defendant is liable only for those statements made during the class period, not statements made before or after the class period.”); *In re Clearly Canadian Sec. Litig.*, 875 F. Supp. 1410, 1420 (N.D. Cal. 1995) (“As the class period defines the time during which defendants’ fraud was allegedly alive in the market, statements made or insider trading allegedly occurring before or after the purported class period are irrelevant to plaintiffs’ fraud claims.”); *see also In re Int’l Bus. Machines Corp. Sec. Litig.*, 163 F.3d 102, 107 (2d Cir. 1998) (“A defendant, however, is liable only for those statements made during the class period.”)

Accordingly, the Court finds that plaintiff fails to sufficiently allege that Robinhood’s omission of the identified information is actionable.

**d. Description of PFOF as an Insignificant Source of Revenue**

Fourth, with respect to Robinhood’s statement that the PFOF revenue that it received was “indirect” and “negligible,” and that Robinhood would inform customers through its FAQ page if PFOF revenue ever became a significant source of revenue, Robinhood argues it is outside the start of the class period and therefore not actionable.

Plaintiff does not dispute that this information was removed from Robinhood’s FAQ prior to the class period. (*See* Dkt. No. 72 at 17-18.) As noted above, because the statement was posted on the FAQ page and removed prior to the start of the class period, plaintiff’s claim fails. This statement is not actionable.

**e. Omission of PFOF Information in Communications with Customers**

Fifth, with respect to Robinhood’s alleged omission of information about PFOF from its customer service documents and training manual, the issue is whether sufficient particularity was pled. Specifically, the complaint alleges that between 2015 and August 2018, “Robinhood instructed customer service representatives to direct customers to the “How Robinhood Makes Money” FAQ page or use the language of the misleading FAQ answer when responding to general questions about how Robinhood made money.” (Compl. ¶ 81.) The complaint also alleges that

1 “training documents for customer service representatives in early 2018” instructed representatives  
2 to avoid talking about payment for order flow and that it was incorrect to reference PFOF when  
3 discussing Robinhood revenue sources. (*Id.* ¶ 82.). Plaintiff argues that the omissions were  
4 misleading because PFOF was more than 80% of Robinhood’s revenue and Robinhood concealed  
5 that fact from customers.

6 With respect to these allegations, sufficient particularity is lacking. First, plaintiff fails to  
7 point to any specific statements. The alleged instruction to customer service representatives is  
8 conduct, not an actual statement. Similarly, the allegation that Robinhood’s training documents  
9 removed reference to PFOF does not specify the specific statement at issue. Thus, it is unclear to  
10 the Court what statements within Robinhood’s training documents are being challenged in the  
11 complaint. Without more, the Court finds that plaintiff has failed to sufficiently plead a 10b claim  
12 based on these allegations.

13 **f. Promise to Provide Commission-Free Trading**

14 Lastly, with respect to Robinhood’s representations that its platform was “commission  
15 free,” Robinhood argues that the platform is in fact commission free. Plaintiff alleges that the  
16 representation is false and misleading because Robinhood “profited extensively from unsuspecting  
17 customers who executed trades on defendants’ platform at inferior execution prices compared to  
18 what consumers would have received from Robinhood’s competitors.” (*Id.* ¶ 4.) According to  
19 plaintiff, the inferior execution price amounted to a form of “indirect” or “backdoor” commission  
20 fee that imposes a cost on customers which results in profits to Robinhood. (*Id.* ¶¶ 6, 110.) This  
21 cost is the functional equivalent of a commission fee. (*Id.*) Given these allegations, the Court finds  
22 plaintiff has sufficiently alleged that Robinhood’s significant receipt of PFOF acts as a backdoor  
23 or indirect commission fee passed to Robinhood users.

24 In sum, the Court finds that plaintiff has adequately plead fraudulently misleading  
25 statements or omissions with regards to Robinhood’s omission of PFOF as a revenue source on its  
26 FAQ page and with respect to the representation of Robinhood as a commission-free platform.  
27 The rest of the alleged statements and/or omissions are not actionable.

28 ///

1                   **ii.    Scienter**

2                   The Court next reviews whether the allegations as a whole adequately plead scienter. *See,*  
3 *e.g., In re Autodesk, Inc. Sec. Litig.*, 132 F. Supp. 2d 833, 842–43 (N.D. Cal. 2000) (analyzing  
4 scienter after determining that complaint failed to plead falsity with particularity).

5                   The PSLRA requires plaintiff to allege facts to establish a strong inference of scienter.  
6 *Tellabs*, 551 U.S. at 324. Scienter includes knowledge of the falsity or misleading nature as well  
7 as “deliberate or conscious recklessness.” *No. 84 Employer-Teamster Joint Council Persnion Tr.*  
8 *Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 937 (9th Cir. 2003). Scienter may be established  
9 “by alleging facts demonstrating an ‘intent to deceive, manipulate, or defraud’ or ‘deliberate  
10 recklessness.’” *Webb v. Solarcity Corp.*, 884 F.3d 844, 851 (quoting *In re Quality Sys., Inc. Sec.*  
11 *Litig.*, 865 F.3d 1130, 1144 (9th Cir. 2017). “[F]acts showing mere recklessness or a motive to  
12 commit fraud and [the] opportunity to do so” are insufficient. *Zucco*, 552 F.3d at 990–91.

13                   A “‘strong inference’ is an inference that is ‘cogent and at least as compelling as any  
14 opposing inference one could draw from the facts alleged.’” *Webb*, 884 F.3d at 850 (citation  
15 omitted). The inference “must be more than merely ‘reasonable’ or ‘permissible’—it must be  
16 cogent and compelling, thus strong in light of other explanations.” *Tellabs*, 551 U.S. at 323, 324  
17 (scienter claims “need not be . . . the most plausible” but “must be cogent and compelling”).

18                   To meet this pleading requirement, the complaint must contain allegations of “specific  
19 contemporaneous statements or conditions that demonstrate the intentional or the deliberately  
20 reckless false or misleading nature of the statements when made.” *Ronconi v. Larkin*, 253 F.3d  
21 432 (citation omitted). When an omission is at issue, “the plaintiff must plead ‘a highly  
22 unreasonable omission, involving not merely simple, or even inexcusable negligence, but an  
23 extreme departure from the standards of ordinary care, and which presents a danger of misleading  
24 buyers or sellers that is either known to the defendant or is so obvious that the actor must have  
25 been aware of it.’” *Zucco*, 552 F.3d at 991 (citations omitted).

26                   When deciding whether a strong inference of scienter is pled, courts must consider the  
27 “totality of plaintiffs’ allegations.” *In re Daou Sys.*, 411 F.3d 1006, 1022 (9th Cir. 2005). “[T]he  
28 ultimate question is whether the defendant knew [the] statements were false, or was consciously

1 reckless as to their truth or falsity.” *Gebhart v. SEC*, 595 F.3d 1034, 1042 (9th Cir. 2010). A  
 2 complaint need not plead a strong inference that defendants actually knew contradicting facts  
 3 since “[r]ecklessly turning a ‘blind eye’ to impropriety is equally culpable conduct under Rule  
 4 10(b)-5.” *In re Verifone Holdings, Inc. Sec. Litig.*, 704 F.3d 694, 708 (9th Cir. 2012). “Deliberate  
 5 recklessness is an *extreme* departure from the standards of ordinary care, which presents a danger  
 6 of misleading buys or sellers that is either known to the defendant or is so *obvious* that the actor  
 7 must have been aware of it.” *Webb*, 884 F.3d at 851 (quoting *City of Dearborn Heights Act 345*  
 8 *Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605, 619 (9th Cir. 2017)). The Ninth Circuit  
 9 has approved of a dual analysis—“first considering whether any individual allegation gives rise to  
 10 scienter and then assessing the allegations in combination”—to determine scienter. *In re VeriFone*  
 11 *Holdings, Inc. Sec. Litig.*, 704 F.3d at 702–03. Further, the complaint must allege facts showing  
 12 scienter for each alleged falsehood or misrepresentation.

13 Plaintiff’s allegations focus on four avenues, namely Robinhood’s: (a) internal analyses  
 14 regarding its routing practices; (b) PFOF negotiations with broker firms; (c) customer service  
 15 representatives and training documentation; and (d) edits to its FAQ section of its website,  
 16 including the timing. The Court considers each allegation.

17 **a. Robinhood’s Internal Analyses Regarding Routing Practices**

18 First, plaintiff alleges that in March 2019, Robinhood conducted an internal analysis of its  
 19 order routing practices which showed that its execution quality and price improvement metrics  
 20 were far worse than other brokers. In particular, the analysis showed that Robinhood’s  
 21 “percentage of orders that received price improvement and the amount of price improvement,  
 22 measured on a per order, per share, and per dollar basis” was substantially worse than other  
 23 brokers. (*Id.* ¶ 73.) The analysis also concluded that for most orders of more than 100 shares,  
 24 customers would have been better off trading at another broker because the additional price  
 25 improvement that customers would have received at other brokers would have likely exceeded the  
 26 commission costs that other brokers charge. (*Id.* ¶ 91.)

27 The Court finds these allegations sufficient to draw a strong inference of scienter.

28 These allegations plausibly allege that Robinhood intended to deceive, manipulate, or



1 defraud the public and/or acted with a reckless disregard. That is because, based on the internal  
 2 analyses, plaintiff alleges that Robinhood knew, or understood, that the decrease in price  
 3 improvement caused harm to customers. The internal analyses showed that customers would have  
 4 been better off trading at another broker-dealer, even paying a commission fee, because of the  
 5 availability of better price improvement.

6 Based on the foregoing, the Court finds that the allegations in the complaint have the  
 7 necessary connection with Robinhood's previous statement, its internal March 2019 audit, and  
 8 Robinhood's intent. Accordingly, the Court finds plaintiff's allegations concerning the internal  
 9 analyses conducted by Robinhood support a strong inference of scienter.

#### 10 **b. PFOF Negotiations with Broker Firms**

11 Second, plaintiff points to Robinhood's negotiations with principal trading firms, arguing  
 12 that those negotiations led to high payment for order flow at the expense of lower price  
 13 improvement for customers. (*Id.* ¶¶ 57-65.) The complaint alleges that Robinhood was aware that  
 14 "[i]f Robinhood negotiated for higher payment for order flow revenue . . . there would be less  
 15 money available for the principal trading firms to provide price improvement to Robinhood's  
 16 customers." (*Id.* ¶ 58). The complaint also alleges that Robinhood was receiving PFOF at a rate  
 17 nearly four times higher than the industry standard. (*Id.* ¶ 84.) Notwithstanding this, Robinhood  
 18 still represented that it was a commission free platform.

19 Similar to the above conduct, the Court finds these allegations sufficient to draw a strong  
 20 inference of scienter. These allegations plausibly allege that Robinhood was aware of the impact  
 21 of receipt of PFOF, the impact on customers' price improvement, the fact that customers were  
 22 receiving less price improvement.

23 Accordingly, the Court finds plaintiff's allegations concerning Robinhood's PFOF  
 24 negotiations support a strong inference of scienter.

#### 25 **c. Customer Service Interactions and Training Documents**

26 Third, plaintiff also points to various customer service-related conduct, arguing that such  
 27 conduct supports a strong inference of scienter with respect to Robinhood's omission on its  
 28 FAQ page. Specifically, plaintiff allege that "Robinhood instructed customer service

1 representations to direct consumer to the ‘How does Robinhood Make Money’ FAQ page or use  
2 language of the misleading FAQ answer when responding to general questions about how  
3 Robinhood made money” and that training documents for customer service representatives  
4 “instructed them to ‘avoid’ talking about payment for order flow and stated that it was ‘incorrect’  
5 to identify payment for order flow in response to the question how Robinhood makes money.”  
6 (Compl. ¶¶ 81-82.)

7         The Court finds that these allegations, as pled, are insufficient to support a showing of  
8 scienter because the allegations are not pled with the requisite particularity. While the allegations  
9 include some information regarding the content of the statements, the allegations fail to include  
10 information regarding the source of the information and reliability of the documents. For instance,  
11 plaintiff fails to allege with particularity the source of the documents and how plaintiff gained  
12 access to them. *See Zucco*, 552 F.3d at 995 (explaining that allegations must be pled with  
13 particularity to raise an inference of reliability). To the extent these allegations are based on  
14 information from confidential witnesses, plaintiff must also plead personal knowledge and  
15 reliability. *See id.* Even if not based on a confidential witness, the complaint must plead  
16 additional factual allegations to meet the heightened pleading standard. The complaint lacks  
17 information regarding what training documents instructed customer service representatives to  
18 avoid talking about PFOF, as well as any specific instance regarding customers being directed to  
19 Robinhood’s FAQ page.

20         Absent additional allegations, the Court finds that these generalized allegations are  
21 insufficient to support a strong inference of scienter under the heightened pleading standard.

22                     **d. Timing and Updates to FAQ Page**

23         Lastly, plaintiff points to the timing of Robinhood’s FAQ to support a strong showing of  
24 scienter. The Court finds that Robinhood’s publishing and then subsequent removal of reference  
25 to PFOF as a revenue source on its webpage sufficient to show intent to conceal this information  
26 from Robinhood’s FAQ. While PFOF was initially included on Robinhood’s FAQ page, the  
27 complaint alleges that after public scrutiny of the business practice, Robinhood removed its  
28 reference to PFOF from its FAQ in 2016. However, between 2016 and 2018, Robinhood allegedly

1 updated its FAQ to include smaller sources of revenue but failed to include PFOF as a source of  
2 revenue. Taking these allegations as true, as the Court must at this stage, the Court finds the  
3 allegations sufficient to draw a strong inference of scienter.

4 **e. Plaintiff's Allegations Considered as a Whole**

5 Having found plaintiff's allegations with respect to the timing of its FAQ page, internal  
6 analyses, and PFOF negotiations with broker firms sufficient to establish scienter with respect to  
7 both actionable statement/omissions, the Court does not find it necessary to consider the totality of  
8 plaintiff's allegations. *See In re VeriFone Holdings, Inc. Sec. Litig.*, 704 F.3d at 702 (explaining  
9 that holistic analysis is not necessary for a specific statement where an individual allegation  
10 already meets the scienter requirement for that statement).

11 In sum, the Court finds that plaintiff has sufficiently pled scienter with respect to  
12 Robinhood's omission from its FAQ page and Robinhood's commission-free representation.

13 **iii. Reliance**

14 Next, the Court considers the parties' arguments with respect to reliance. Robinhood  
15 argues that plaintiff is required to plead direct reliance because no presumption of reliance applies  
16 to this case. Unsurprisingly, plaintiff disagrees. Plaintiff argues that both the *Basic* Presumption,  
17 *Basic, Inc. v. Levinson*, 485 U.S. 224, 248 n.27 (1988), and the *Affiliated Ute* Presumption,  
18 *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153–54 (1972), applies.

19 “Transaction causation is akin to reliance; it focuses on the time of the transaction and  
20 refers to the causal link between the defendant's misconduct and the plaintiff's decision to buy or  
21 sell securities.” *Nuveen Mun. High Income Opportunity Fund v. City of Alameda, Cal.*, 730 F.3d  
22 1111, 1118 (9th Cir. 2013). To plead transaction causation adequately, a plaintiff must plead that,  
23 “but for the fraud, the plaintiff would not have engaged in the transaction at issue.” *See In re Daou*  
24 *Sys., Inc.*, 411 F.3d 1006, 1014 (9th Cir. 2005).

25 **a. Basic Presumption**

26 Plaintiff argues that the *Basic* presumption applies here because Robinhood's statements  
27 and action impacted the prices of stocks that plaintiff purchased, as well as the marketplace where  
28 the stocks were sold. To be entitled to *Basic*'s fraud-on-the-market presumption of reliance, a

1 plaintiff must establish: (1) the alleged misrepresentations were publicly known, (2) they were  
 2 material, (3) the securities traded in an efficient market, (4) that the misrepresentations would  
 3 induce a reasonable, relying investor to misjudge the value the of shares; and (5) the plaintiff  
 4 traded the securities between the time the misrepresentations were made and when the truth was  
 5 revealed. *Basic, Inc. v. Levinson*, 485 U.S. 224, 248 n. 27 (1988). The presumption establishes  
 6 reliance “when the statements at issue become public” and the “public information is reflected in  
 7 the market price of a security.” *Stoneridge Inv. Partners, LLC*, 552 U.S. at 159. The fraud-on-the-  
 8 market presumption “is available *only* when a plaintiff alleges that a defendant made material  
 9 misrepresentations or omissions concerning a security that is *actively traded* in an ‘efficient  
 10 market,’ thereby establishing a ‘fraud on the market.’” *Binder v. Gillespie*, 184 F.3d 1059, 1064  
 11 (9th Cir. 1999) (emphasis added).

12 Here, plaintiff has not alleged that Robinhood made any false or misleading statements  
 13 about any particular security. Robinhood’s alleged misrepresentations about its sources of revenue  
 14 say nothing about any publicly traded company and thus do not impact any company’s stock price.  
 15 Thus, plaintiff’s reliance on *NYSE Specialists Securities Litigation*, 260 F.R.D. 55 (S.D.N.Y.  
 16 2009) to argue that the presumption extends to cases where there were misstatements about the  
 17 marketplace for securities does not persuade. *NYSE* is distinguishable. *NYSE* concerned allegations  
 18 of market manipulation by the New York Stock Exchange’s market makers. Plaintiff does not  
 19 cite, now is the Court aware of, any binding authority extending the *Basic* presumption to a case  
 20 with analogous facts as the case here.

21 Accordingly, the Court finds that plaintiff cannot invoke *Basic*’s fraud-on-the-market  
 22 theory to plead reliance in this case.

### 23 **b. *Affiliated Ute* Presumption**

24 Next, plaintiff argues that the *Affiliated Ute* presumption applies because the complaint  
 25 primarily alleges omissions. The *Affiliated Ute* presumption is generally available to plaintiffs  
 26 alleging violations of section 10(b) based on omissions of material fact. *Binder*, 184 F.3d at 1063.  
 27 In cases in which both omissions and misrepresentations are alleged, the presumption only applies  
 28 if the case primarily alleges omissions” *Id.* at 1064.

1 Here, plaintiff's case is a mixed case of both misrepresentations and omissions. However,  
 2 the Court finds that plaintiff primarily alleges a case of omissions. The thrust of plaintiff's  
 3 allegations is that Robinhood failed to disclose PFOF as a source of revenue on its FAQ page. The  
 4 Court acknowledges that plaintiff also alleges some misrepresentations, like Robinhood's  
 5 representation of a commission-free platform and its representation of its execution quality.  
 6 However, plaintiff alleges that these misrepresentations are misleading because of their omissions.  
 7 Thus, this case is primarily about what Robinhood did not say. Thus, the Court finds that the  
 8 *Affiliated Ute* presumption of reliance applies.

9 \*\*\*

10 Based on the foregoing, defendant's motion with respect to plaintiff's second cause of  
 11 action is **GRANTED IN PART**. Plaintiff has sufficiently alleged a violation of Rule 10b-5(b) based  
 12 on Robinhood's omission of its receipt of PFOF from its FAQ page and Robinhood's commission  
 13 free representation. However, plaintiff's claim fails with respect to the other alleged omissions  
 14 and/or misrepresentations.

15 **B. First and Third Causes of Action: Violation of Section 10(b) of the SEC Act and**  
 16 **Rules 10b-5(a) and (c)**

17 Under Rules 10b-5(a) or (c), a defendant who uses a device, scheme, or artifice to defraud  
 18 may be liable for securities fraud. *Khoja*, 899 F.3d at 1017 (citations omitted). The scheme must  
 19 "encompass[ ] conduct beyond those misrepresentations or omissions." *Id.* To state a claim under  
 20 Rules 10b-5(a) or (c), a plaintiff must allege a device, scheme or artifice to defraud, or an act,  
 21 practice or course of business which would operate as a fraud, in addition to alleging the standard  
 22 elements of a § 10(b) and Rule 10b-5 violation." *N.Y. City Emps.' Ret. Sys. v. Berry*, 616 F. Supp.  
 23 2d 987, 996 (N.D. Cal. 2009) (citing *Stoneridge*, 552 U.S. at 158).

24 The complaint alleges that Robinhood: (1) engaged in a scheme to mislead customers  
 25 about the commission-free nature of its platform and its receipt of PFOF which was obtained at  
 26 the expense of price improvement for the client (Compl. ¶¶ 109, 110); (2) engaged in a process of  
 27 deceit and omission to conceal the fact that its business relied extensively on PFOF to an extent  
 28 outside the industry standard (*id.* ¶ 3); and (3) that Robinhood entered into contractual agreements

1 with principal trading firms which caused users to receive inferior execution rates and fewer  
2 opportunities for price improvement, despite the fact that this practice failed to satisfy  
3 Robinhood’s duty of best execution (*id.* ¶¶ 126, 155, 159).

4 To the extent plaintiff’s claims are based on Robinhood’s conduct and scheme of failing to  
5 adequately disclose PFOF as a source of revenue on its FAQ page and Robinhood’s commission  
6 free representation, the motion is denied for the reasons outlined above. The parties do not dispute  
7 that a scheme to disseminate false or misleading statements may serve as the basis of a claim  
8 under Rule 10b-5(a) or (c). To the extent plaintiff’s claims are based on the other alleged  
9 omissions and/or statements alleged, they fail for the reasons identified above.

10 Next, to the extent plaintiff bases his claims on Robinhood’s scheme to negotiate receipt of  
11 higher PFOF with other brokers, including the receipt of such PFOF outside of industry standards,  
12 and the impact that such arrangements have on the price improvement, such allegations are  
13 sufficient to state a claim.

14 The complaint sufficiently alleges that Robinhood negotiated and collected PFOF at a rate  
15 outside of industry standards. The complaint also alleges that the amount of PFOF Robinhood was  
16 accepting caused customers’ trades to be executed at inferior rates compared to competing broker-  
17 dealers. According to plaintiff, Robinhood concealed this information from customers.  
18 Accordingly, the Court finds that the complaint sufficiently alleges deceitful conduct.

19 Accordingly, Robinhood’s motion to dismiss is **DENIED** to the extent it is based on: (i)  
20 Robinhood’s conduct of concealing and omitting PFOF as a source of revenue on its FAQ page,  
21 (ii) Robinhood’s commission free representation, and (iii) Robinhood’s conduct with respect to its  
22 negotiations of PFOF with brokers and the amount of such PFOF.

#### 23 **IV. MOTION TO DENY CLASS CERTIFICATION ANALYSIS**

24 Robinhood argues that plaintiff cannot satisfy the requirements of Rule 23 because “the  
25 elements of economic loss and reliance cannot be presumed or established based on common  
26 evidence on a classwide basis.” (Dkt. No. 101, Motion to Deny Class Certification, at 2.) Plaintiff  
27 responds that common evidence such as Robinhood’s contracts with its principal trading firms,  
28 Robinhood’s algorithm for routing customer trades, trading data, and the algorithm by which the

1 SEC relied upon to determine customer disadvantage related to Robinhood’s practices will enable  
2 plaintiff to establish his claims. (Dkt. No. 103, Opposition to Motion to Deny Class Certification,  
3 at 2.)<sup>5</sup> Plaintiff also argues that he and the class members are entitled to a presumption of reliance  
4 based on several different legal theories. (*Id.* at 3.)

5 Having considered the parties’ briefing, and the procedural posture of this case, the Court  
6 hereby **DENIES** Robinhood’s motion to deny class certification. The motion is largely premature.  
7 This case is not one of the rare instances where the pleadings alone will resolve the question of  
8 class certification. Rather, the parties will benefit from having conducted discovery to crystallize  
9 plaintiff’s claims and the available evidence to support or refute such class claims.

10 Next, Robinhood’s argument that plaintiff cannot establish reliance on a classwide basis  
11 does not persuade in light of the Court’s finding that plaintiff and class members are entitled to the  
12 *Affiliated Ute* presumption given that this case is primarily an omissions case. (*See Supra* Section  
13 III.iii.b)

14 However, the Court grants the motion with respect to class certification brought under  
15 Rules 23(b)(1) and (b)(2). Plaintiff has not made a *prima facie* showing that it can seek  
16 certification under either rule. Plaintiff does not argue, nor does plaintiff allege, that such conduct  
17 is ongoing or that it is likely to occur in the future. Thus, plaintiff does not have standing to pursue  
18 certification under Rule 23(b)(2). Nor has plaintiff made a *prima facie* showing that certification  
19 under 23(b)(1) would be apply to the remaining claims in this case.

20 In sum, Robinhood’s motion to deny class certification is **GRANTED IN PART AND DENIED**  
21 **IN PART** for the reasons stated. The denial is without prejudice as the motion is largely premature.

## 22 V. CONCLUSION

23 In light of the foregoing, the Court **GRANTS IN PART AND DENIES IN PART** Robinhood’s  
24 motion to dismiss. Plaintiff may proceed on his Rule 10b-5 claims based only on Robinhood’s  
25 omission of PFOF as a source of revenue on its FAQ page, Robinhood’s commission free  
26 representation, and Robinhood’s conduct with respect to its PFOF negotiations with brokers.

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<sup>5</sup> See <https://www.sec.gov/news/press-release/2020-321> (last visited October 12, 2022).


1           Additionally, Robinhood’s motion to deny class certification is **GRANTED IN PART AND**  
2 **DENIED IN PART.**

3           Robinhood must respond to plaintiff’s complaint within twenty-one (21 days) from the date of  
4 this order. The Court hereby **SETS** a Case Management Conference for Monday, November 21,  
5 2022 at 2:00 PM.

6           This order terminates Docket Numbers 99 and 101.

7           **IT IS SO ORDERED.**

8 Dated: October 13, 2022

9   
10 **YVONNE GONZALEZ ROGERS**  
11 **UNITED STATES DISTRICT JUDGE**

United States District Court  
Northern District of California

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