

statements. As this Court recognized in its September 2015 Order, “the Seventh Circuit’s opinion requires a retrial on whether [Schoenholz] ‘made’ the following statements within the meaning of *Janus* [*Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011)]:” seven statements in press releases associated with SEC filings (the “Press Releases”)⁵ and one statement in Aldinger’s presentation to a Goldman Sachs on December 4, 2001 (the “Goldman Sachs Presentation”).⁶ *Dkt. No.* 2042 at p. 2.⁷ Notably, the Seventh Circuit reversed the District Court’s judgment with regard to the Press Releases even though none of the Defendants expressly requested that relief.

Based on the *Janus* precedent, Schoenholz acknowledges that he “made” the Press Releases. Aldinger has conceded that he made the Goldman Sachs Presentation, and the evidence conclusively shows that Aldinger – not Schoenholz – made the challenged statements. Schoenholz did *not* have ultimate authority over or the means of communication of the Goldman Sachs Presentation and, thus, Schoenholz *did not make* the challenged statements in the Goldman Sachs Presentation.

Pursuant to Federal Rule of Civil Procedure 56, the Court should grant summary judgment with regard to the 8 statements at issue with regard to Schoenholz. As explained in more detail in the Memorandum filed contemporaneously with this Motion, David A. Schoenholz asks this Court to enter an order of partial summary judgment finding that: (1) Schoenholz did not “make” the statements contained in the Goldman Sachs Presentation; and (2) Schoenholz made the statements attributed to him in the Press Releases, leaving no remaining triable liability issues with respect to Schoenholz.

⁵ Statement Nos. 16, 18, 21, 23, 24, 29, 36 & 37 (*see Dkt. No.* 1611 (Jury Verdict) and *Dkt. No.* 2042 (Order on Issues to be Retried)).

⁶ Statement No. 23 (*see Dkt. No.* 1611 (Jury Verdict) and *Dkt. No.* 2042 (Order on Issues to be Retried)); *see Glickenhau*s, 787 F.3d at 428.

⁷ *See Glickenhau*s, 787 F.3d at 428.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Tim S. Leonard

Tim S. Leonard
Texas Bar No. 12211200
tleonard@jw.com
1401 McKinney, Suite 1900
Houston, Texas 77010
(713) 752-4439
(713) 752-4221 – (facsimile)

ATTORNEYS FOR DEFENDANT
DAVID A. SCHOENHOLZ

CERTIFICATE OF SERVICE

Tim S. Leonard, an attorney, hereby certifies that on February 24, 2016, he caused true and correct copies of the foregoing **David Schoenholz's Motion for Partial Summary Judgment** to be served via the Court's ECF filing system on the following counsel of record in this action:

Marvin A. Miller, Esq.
Lori A. Fanning, Esq.
MILLER LAW LLC
115 South LaSalle Street, Suite 2910
Chicago, IL 60603

R. Ryan Stoll
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
155 North Wacker Drive
Chicago, Illinois 60606
(312) 407-0700

Michael J. Dowd, Esq.
Daniel S. Drosman, Esq.
Spencer A. Burkholz, Esq.
ROBBINS GELLAR RUDMAN & DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101

/s/ Tim S. Leonard

Tim S. Leonard