IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, on Behalf of Itself and All Others Similarly)
Situated, Plaintiff,) Case No. 02-C-5893
V.)
HOUSEHOLD INTERNATIONAL, INC., et al., Defendants) Judge Jorge L. Alonso)

DEFENDANT DAVID A. SCHOENHOLZ'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY

Defendant David A. Schoenholz ("Schoenholz") files this Motion for Partial Summary Judgment on Liability (the "Motion") and shows:

David Schoenholz is the former Chief Financial Officer of Defendant Household International, Inc. ("Household"). Plaintiffs sued Schoenholz, Household, and two other Household officers, including former Chief Executive Officer William F. Aldinger ("Aldinger"), for allegedly making 40 misrepresentations in violation of the Securities Exchange Act of 1934.²

The jury found that 23 of the alleged misrepresentations were *not* actionable, and it also found that Schoenholz was *not* liable for a statement co-defendant Gary Gilmer ("Gilmer") made to the media.³ With regard to the 16 remaining statements, it is undisputed that Schoenholz made seven statements in Household's Securities and Exchange Commission ("SEC") filings and one statement at an Investor Relations Conference,⁴ but, the Seventh Circuit reversed and remanded the District Court's judgment in favor of Plaintiffs with regard to eight remaining

¹ Glickenhaus & Co. v. Household Int'l, Inc., 787 F.3d 408, 426 (7th Cir. 2015).

² *Id.* at 413.

³ *Id.* at 414 and 428; *Dkt. No.* 1611 (Jury Verdict dated May 7, 2009).

⁴ *Id.* at 428.

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 Glickenhaus, 787 F.3d at 428.

⁷ See Glickenhaus, 787 F.3d at 428.

Respectfully submitted,

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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:

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