

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
Omaha Division**

SECURITIES AND EXCHANGE)	
COMMISSION,)	
Plaintiff,)	Civil Action No. 12-cv-00343
)	
v.)	COMPLAINT
)	
GILBERT G. LUNDSTROM,)	JURY TRIAL DEMANDED
JAMES A. LAPHEN, and)	
TREVOR A. LUNDSTROM,)	
)	
Defendants.)	

Plaintiff, Securities and Exchange Commission (“Commission”), alleges that:

I. SUMMARY OF ACTION

1. This case involves fraudulent misstatements and omissions regarding mounting loan-related losses at the Lincoln, Nebraska-based financial institution known as TierOne Bank during the height of the financial crisis in 2008 and 2009.

2. Between approximately October 2008 and November 2009 (the “relevant period”), defendant Gilbert G. Lundstrom (“G. Lundstrom”), the former chairman of the board and chief executive officer of TierOne Corporation (with its wholly-owned subsidiary TierOne Bank, referred to collectively hereafter as “TierOne”), and defendant James A. Laphen (“Laphen”), TierOne’s former president and chief operating officer, participated in a scheme to mislead TierOne’s bank regulator and investors about TierOne’s true financial condition. They did so by materially understating TierOne’s loan losses and losses on real estate repossessed by the bank (commonly referred to as “other real estate owned” or “OREO”) so that the bank would appear to meet its mandated regulatory capital requirements. G. Lundstrom and Laphen also made and/or caused TierOne to make material misstatements in TierOne’s public filings with the

Commission, including its Form 10-K for the year ended December 31, 2008, and the Forms 10-Q for the quarters ended March 31, 2009, and June 30, 2009.

3. TierOne was a century-old thrift bank that had historically focused on residential and agricultural loans in the Nebraska/Iowa/Kansas region. Beginning in about 2004, TierOne expanded into riskier types of lending in high-growth geographic regions such as Las Vegas, Florida, and Arizona. By the second half of 2008, as a result of the financial crisis and accompanying crash in real estate markets, TierOne was experiencing a significant rise in high-risk problem loans.

4. In June 2008, due to these high-risk problem loans, the United States Office of Thrift Supervision (“OTS”), which oversaw thrift banks like TierOne, directed TierOne to maintain elevated core and risk-based capital ratios or face formal enforcement actions. To appear to comply with the new heightened capital requirements, G. Lundstrom and Laphen materially understated TierOne’s loan and OREO losses. In particular, G. Lundstrom and Laphen disregarded information showing that the collateral securing certain of TierOne’s loans and TierOne’s OREO was substantially over-valued due to the bank’s reliance on stale and inadequately discounted appraisals. G. Lundstrom and Laphen also signed untrue management representation letters that were provided to the bank’s outside auditor and knowingly circumvented and failed to implement an effective system of internal controls at TierOne.

5. As a result, G. Lundstrom and Laphen made and/or caused TierOne to make material misstatements in three periodic filings with the Commission regarding its loan and OREO losses and, in turn, to materially understate its net losses in those periodic filings and the related earnings releases in Forms 8-K filed on February 25, 2009, May 7, 2009, and August 10, 2009. In addition, TierOne reported that it had met or exceeded the OTS-required elevated

capital ratios in each of the three periodic filings. TierOne met those ratios only by understating its losses, and thereby overstating its reported capital.

6. G. Lundstrom certified the periodic filings at issue, when he knew, or was severely reckless in not knowing, that those filings contained material misrepresentations.

7. The full extent of TierOne's loan-related losses did not become publicly known until late 2009, after OTS required TierOne to obtain new appraisals for its impaired loans. TierOne ultimately disclosed over \$130 million of additional loan losses. Had TierOne recorded these additional loss provisions in the proper quarters, it would have missed the OTS-required capital ratios as of the end of December 31, 2008, and for each quarter thereafter. Following the announcements of the additional loss provisions, TierOne's stock price dropped more than 70 percent. TierOne eventually filed for bankruptcy shortly after the bank was shut down by OTS in June 2010.

8. Separately, in 2009, G. Lundstrom tipped his son, Trevor A. Lundstrom ("T. Lundstrom"), with material non-public information about an anticipated asset sale between TierOne and Great Western Bank ("Great Western"). Having received this material non-public information from his father, T. Lundstrom bought nearly 210,000 TierOne shares between June 2009 and September 2009 in anticipation of the asset sale. Following the announcement of the proposed transaction on September 4, 2009, T. Lundstrom sold his TierOne holdings and realized approximately \$225,921 in illicit profits.

II. JURISDICTION AND VENUE

9. The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d), 21(e), and 21A(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e) and 78u-1(a)].

10. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A(a), and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78u-1(a), and 78aa]. Defendants, directly and indirectly, have made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged herein.

11. Venue lies in this Court pursuant to Sections 27 and 21A(d)(4) of the Exchange Act [15 U.S.C. §§ 78aa and 78u-1(d)(4)] because certain of the acts, transactions, practices, and courses of business constituting the violations of law alleged herein occurred within the District of Nebraska. Moreover, defendants G. Lundstrom and Laphen reside in this District.

III. DEFENDANTS AND RELEVANT ENTITY

12. Gilbert G. Lundstrom, age 70, is a resident of Lincoln, Nebraska. At all relevant times, G. Lundstrom served as TierOne's chairman of the board and chief executive officer ("CEO"). He signed and certified TierOne's periodic filings with the Commission at issue in this matter.

13. James A. Laphen, age 63, is a resident of Omaha, Nebraska. At all relevant times, Laphen served as TierOne's president and chief operating officer ("COO") and as a member of the board of directors. Laphen signed TierOne's Form 10-K for the year ended December 31, 2008.

14. Trevor A. Lundstrom, age 41, is a resident of Birmingham, Alabama, and is G. Lundstrom's son.

15. TierOne Corporation, a Wisconsin corporation, was, at all relevant times, a holding company for TierOne Bank, a federally chartered savings bank. Prior to May 7, 2010, TierOne's shares were listed on the NASDAQ GS exchange under the stock symbol "TONE."

TierOne's common stock was thereafter quoted on the Pink Sheets, which is operated by OTC Markets Group Inc. OTS closed TierOne Bank on June 4, 2010. The Federal Deposit Insurance Corporation ("FDIC") was named receiver and Great Western took over the bank's assets and deposit accounts. TierOne filed for Chapter 7 bankruptcy protection on June 24, 2010.

IV. SUMMARY OF VIOLATIONS

16. Through the activities alleged in this Complaint, defendant G. Lundstrom, directly or indirectly, engaged in transactions, acts, practices, and courses of business that violated Exchange Act Sections 10(b) and 13(b)(5) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, and 240.13b2-2], and that aided and abetted TierOne's violations of Exchange Act Sections 13(a) and 13(b)(2) [15 U.S.C. §§ 78m(a) and 78m(b)(2)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]. As TierOne's chairman/CEO, defendant G. Lundstrom has control person liability under Exchange Act Section 20(a) [15 U.S.C. § 78t(a)] for TierOne's violations of Exchange Act Sections 10(b), 13(a), and 13(b)(2) [15 U.S.C. §§ 78j(b), 78m(a), and 78m(b)(2)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

17. Through the activities alleged in this Complaint, defendant Laphen, directly or indirectly, engaged in transactions, acts, practices, and courses of business that violated Exchange Act Sections 10(b) and 13(b)(5) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2] and that aided and abetted TierOne's violations of Exchange Act Sections 10(b), 13(a), and 13(b)(2) [15 U.S.C. §§ 78j(b), 78m(a), and 78m(b)(2)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13

thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

Defendant Laphen, as TierOne's president/COO, has control person liability under Exchange Act Section 20(a) [15 U.S.C. § 78t(a)] for TierOne's violations of Exchange Act Sections 10(b), 13(a), and 13(b)(2) [15 U.S.C. §§ 78j(b), 78m(a), and 78m(b)(2)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

18. Through the activities alleged in this Complaint, defendant T. Lundstrom, directly or indirectly, engaged in transactions, acts, practices, and courses of business that violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

19. As set out in Section VII below, the Commission seeks an injunction permanently restraining and enjoining each defendant from engaging in the acts, practices and courses of business alleged in this Complaint; an order requiring defendant T. Lundstrom to disgorge ill-gotten gains together with pre-judgment and post-judgment interest, and directing each of the defendants to pay civil penalties; an order permanently prohibiting defendants G. Lundstrom and Laphen from acting as an officer or director of any public company; and the grant of such other relief as is appropriate.

V. FACTS

A. **Background of TierOne's Asset and Capital Problems**

20. Although TierOne had traditionally focused on residential and agricultural loans in the Midwest, beginning in approximately 2004, TierOne opened loan production offices ("LPOs") in several high-growth areas, such as Las Vegas, Florida, and Arizona. A significant number of the LPO loans were made to real estate developers in which repayment was

contingent on the completion and sale or refinancing of the projects. This strategy made the bank particularly vulnerable to the fallout from the financial crisis, as the high-growth areas in which TierOne had opened its LPOs were hardest hit by the dramatic fall in real estate prices. By at least 2008, a significant number of real estate projects funded by TierOne's LPO loans had faltered or were faltering.

21. In June 2008, OTS concluded that TierOne's asset quality had deteriorated and directed TierOne to maintain higher core and risk-based capital ratios. These heightened regulatory capital requirements were ultimately incorporated into a formal Supervisory Agreement that OTS imposed on TierOne in January 2009.

22. Complying with the terms of the Supervisory Agreement, including meeting its elevated capital requirements, was needed to prevent further enforcement actions. Such actions could have included the removal of management or the seizure of the bank.

23. Meeting the OTS-required capital ratios was difficult, and became increasingly more difficult, given the bank's rising level of non-performing loans. As detailed below, rather than properly calculating its loan and OREO losses – and face regulatory sanctions – G. Lundstrom and Laphen materially misstated the value of the bank's collateral and OREO properties. Their purpose was to allow the bank to falsely report to OTS and the investing public that TierOne had met and was continuing to meet the new, higher, OTS-mandated capital requirements.

B. G. Lundstrom and Laphen Engaged in a Scheme to Defraud OTS and TierOne's Investors

24. Generally Accepted Accounting Principles, or "GAAP," provides that a loan becomes "impaired" when it is probable that the bank will be unable to collect all amounts due

under the original loan agreement. In addition, TierOne's written lending policy stated that a loan greater than 90 days past due should be considered impaired.

25. Under GAAP, TierOne was required to assess probable losses associated with its impaired loans and record those losses in its allowance for loan and lease losses ("ALLL"). GAAP permits the impairment to be measured using the fair value of the underlying collateral if the loan is collateral dependent, which is the method that was typically utilized by TierOne.

26. Any increase in ALLL (a balance sheet item) must be accompanied by the recording of a provision for loan losses (an income statement item), thereby increasing reported loss and further eroding the bank's capital, which, in turn, negatively impacted the bank's ability to meet the OTS-required elevated capital ratios.

27. Some of TierOne's real estate loans were eventually foreclosed upon and the underlying collateral became the property of the bank, or OREO. GAAP required TierOne to carry OREO on its books at the lower of the property's book value or fair value, less costs to sell the property.

28. Thus, a key consideration under GAAP regarding the existence and magnitude of losses for impaired loans or OREO is the fair value of the collateral or OREO property. A recent appraisal performed by an independent and certified real estate appraiser is normally the best evidence of a property's fair value. In the absence of a current appraisal, all relevant and current information known at the time must be used. This information includes: the most recent evidence of market declines, broker price opinions ("BPO"), recent comparable sales, internal determinations of value, current project status and offers to purchase or sell.

29. In this case, TierOne intentionally delayed the process of obtaining current appraisals for properties that had declined in value, relying instead on inaccurate data and assumptions.

30. In addition to the GAAP requirements, TierOne's written lending policy contained detailed sections describing when new appraisals should be obtained. For example, this policy expressly noted that "[i]n a rapidly escalating or deteriorating market" – such as the one the bank was facing in 2008 and 2009 – "an appraisal may be valid for only a few months." TierOne's lending policy also required new appraisals for loan modifications involving the extension of additional credit "if the market or property has deteriorated to the point where the Bank's collateral is threatened." As described below, G. Lundstrom and Laphen failed to adhere to these policies.

31. TierOne evaluated its loan loss provisions through an informal committee that included TierOne's chief credit officer and TierOne's special assets executive (who was involved in certain troubled loan workouts). The conclusions of the committee were documented in spreadsheets that contained estimates of collateral values and loan impairment determinations. Once the final ALLL numbers were determined by the committee, a report including the reserves for each impaired loan was presented to TierOne's formal Asset Classification Committee, on which G. Lundstrom and Laphen sat, for approval.

32. TierOne also had a Sarbanes-Oxley Act of 2002 ("SOX") 302 Certification Disclosure Committee ("SOX 302 Committee") that reviewed TierOne's periodic filings before they were filed with the Commission. G. Lundstrom and Laphen were members of this committee. As part of the SOX 302 Committee meetings, each of the members provided positive assurances that: (1) there was no reason to believe that the company's internal controls

were inadequate to ensure all material information was known to TierOne's officers; (2) no one believed the financial statements failed to present fairly in all material respects the company's results of operations and financial condition; (3) no one believed the periodic report contained material misstatements or omissions; and (4) there was no other reason why it would be unwise or inappropriate for the certifying officers to swear to the disclosures in the periodic report.

33. Rather than comply with GAAP and the bank's own policies, G. Lundstrom and Laphen manipulated TierOne's loss provisions, primarily by relying on stale and inadequately discounted real estate appraisals while ignoring other available information that would require write-downs. For example:

1. Gemm Homes

34. In January 2008, TierOne foreclosed on a real estate development loan to borrower Gemm Homes. A September 2007 appraisal valued the Gemm Homes property at \$5.1 million.

35. In late June 2008, TierOne received several BPOs for the property that had an average value of around \$3 million. In October 2008, TierOne's participating lender obtained an appraisal that similarly showed a property value of \$3 million.

36. In early March 2009, TierOne's special assets executive informed Laphen of the \$3 million appraisal, but Laphen ignored it.

37. In May 2009, the participating lender wrote a letter to the special assets executive (copying Laphen) demanding that TierOne respond to its proposal to market and sell the Gemm Homes property in the \$3 million range.

38. In an email dated May 21, 2009, the special assets executive summarized the Gemm Homes situation to Laphen:

The [Gemm Homes] appraisal was delivered to [TierOne] in the 4th quarter of 2008, and [TierOne] chose to not accept this appraisal, as it would have resulted in a \$1.8MM additional write-down. . . . [The participating lender] has been insisting on listing the property for something in the \$3MM range, and after discussing this matter with Management, TOB elected not to list the property at the recommended \$3MM amount, as it would have also triggered the required \$1.8MM write-down. . . . [O]ur refusal to accept the updated appraisal and market the [Gemm Homes] property is imprudent.

39. Notwithstanding this information, Laphen rejected the special assets executive's recommendation to write-down the Gemm Homes property.

40. G. Lundstrom and Laphen then approved TierOne's purchase of the participating lender's interest in the transaction (even though it was apparent TierOne would ultimately incur a sizeable loss). This acquisition effectively covered up TierOne's improper failure to write-down the Gemm Homes property.

41. TierOne did not book the appropriate \$1.8 million OREO loss provision for Gemm Homes during the relevant period. Further, neither G. Lundstrom nor Laphen alerted TierOne's accounting staff or outside auditor to the October 2008 appraisal.

2. Escapa loans

42. TierOne made a series of loans, totaling approximately \$17 million, to Las Vegas developer Escapa. By at least early 2008, these loans were impaired.

43. On September 18, 2008, TierOne's loan workout consultant located in Las Vegas sent an email to Laphen, later forwarded to G. Lundstrom, with his written estimates of the value of the collateral for several Escapa loans. These estimates showed millions of dollars of losses within the Escapa portfolio as compared to the amounts TierOne had on its books.

44. Neither G. Lundstrom nor Laphen caused TierOne to order new appraisals or otherwise re-evaluate the value of the collateral supporting the Escapa loans. As a result,

TierOne's loss provisions associated with the Escapa loans were inadequate by millions of dollars.

3. Towne Vistas loan

45. Towne Vistas was a large condominium project in Las Vegas financed by a \$32.3 million loan from TierOne, one of the largest loans at the bank.

46. In the first quarter of 2009, TierOne's Las Vegas workout consultant informed Laphen that the project was likely worth only \$15 million, or half the loan amount. However, Laphen did not cause TierOne to order a new appraisal or otherwise re-evaluate the collateral value supporting the loan, or share this information with TierOne's internal accountants or external auditor. Instead, the \$15 million value was ignored and the loan was deemed "not impaired" for the first quarter of 2009 based on a stale, un-discounted 2005 appraisal showing a value of \$46.5 million.

47. In mid-June 2009, both G. Lundstrom and Laphen were informed that the \$15 million value for the Towne Vistas project was based on a residential appraisal recently obtained by the borrower on a finished condo unit in the project. However, a new appraisal for the entire project was not ordered, the \$15 million value was ignored, and the stale 2005 appraisal was again used with no discount to support the decision not to impair the Towne Vistas loan for the second quarter of 2009.

4. Brother Sonny/Jericho loans

48. Brother Sonny was a real estate development project in Las Vegas financed by a \$17.5 million loan from TierOne in 2006. The loan was supported by a November 2006 appraisal showing the real estate was worth \$23.5 million, if completed.

49. By September 2008, the Brother Sonny loan was over 90 days delinquent and millions were owed to various project vendors. These factors should have caused the loan to be deemed impaired under GAAP. Instead, TierOne extended an additional \$13.6 million in credit purportedly supported by a second lien position in a separate piece of real estate collateral called Jericho. In an email dated August 28, 2008, TierOne's chief credit officer wrote: "I am totally bewildered that [Jericho] could ever be worth/appraised for numbers even half of what we're being told it's worth."

50. Even though TierOne's own lending policy required new appraisals, neither G. Lundstrom nor Laphen caused TierOne to obtain appraisals for the Brother Sonny and Jericho collateral when they approved the loan modification in early September 2008. Instead, the loan modification recommendation relied on the 2006 appraisal for the Brother Sonny property and an unsigned, expired letter of intent from a third party to purchase the Jericho parcel. As a result, G. Lundstrom and Laphen masked the Brother Sonny delinquency so that the loan would be treated as a performing rather than impaired loan. No impairment charge was taken during the relevant period, and TierOne understated its loan losses on the Brother Sonny/Jericho loan by millions of dollars.

C. G. Lundstrom and Laphen Knew, or Were Severely Reckless in Not Knowing, that TierOne's Loss Provisions Were Materially Understated

51. In addition to the specific information on property values discussed above, G. Lundstrom and Laphen were also each alerted through repeated emails and reports to the accounting improprieties that occurred at TierOne.

52. For example, on February 18, 2009, prior to the filing of TierOne's Form 10-K for the year ended December 31, 2008, G. Lundstrom and Laphen received an email from TierOne's special assets executive that stated, among other things:

I'm not sure how to address these issues, but I remain concerned that we continue to expose ourselves adversely on both the [ALLL] analysis and our OREO properties with out-dated appraisals. I understand the write-downs we would experience would likely be astronomical, but in good conscience how long can we continue to believe these are properly reserved?

The email went on to list many loans and OREO (including Gemm Homes) that had stale appraisals. G. Lundstrom and Laphen ignored this February 18, 2009 email.

53. Further, in early 2009, G. Lundstrom requested an analysis of the losses within TierOne's loan portfolio. TierOne's chief credit officer (and others) conducted what was, in substance, a loan reserve analysis. The chief credit officer summarized the findings in an email dated February 17, 2009:

[I] spent the day estimating loss potential by location and loan type and without a clear explanation of the purpose of the exercise – so, completely in the dark as to the reasons for the “drill,” we concluded that we needed another \$65mm [million] of reserves over and above those currently allocated.

54. At approximately the same time, G. Lundstrom and Laphen rejected a contemporaneous recommendation from TierOne's internal audit department (which was unaware of the February 17, 2009 email) to establish a mandatory annual re-appraisal policy for OREO, which would have been consistent with addressing the special assets executive's concerns.

55. Around mid-April 2009, G. Lundstrom requested a more detailed breakdown of the anticipated loan losses. The chief credit officer and others estimated the embedded losses on a loan-by-loan basis and documented their conclusions in a spreadsheet presented to G. Lundstrom and Laphen on or before April 28, 2009. This analysis (the “Best/Worst Case Scenario”) contained estimates of losses associated with over 120 properties/loans, many located in Las Vegas, and showed that TierOne needed additional loan loss provisions ranging between \$36 million (best case), \$60 million (expected case), and \$114 million (worst case).

56. As shown in the following chart, the example loans discussed above in paragraphs 42 through 50 were estimated to have multi-million dollar losses within the Best/Worst Case Scenario that, standing alone, would have caused TierOne to miss the OTS-mandated capital ratios:

Loan	Best/Worst Case Scenario		
	Best	Expected	Worst
Escapa	\$5,760,000	\$7,980,000	\$10,200,000
Brother Sonny/Jericho	0	0	\$13,000,000
Towne Vistas	\$5,000,000	\$10,000,000	\$20,000,000
TOTAL	\$10,760,000	\$17,980,000	\$43,200,000

57. The Best/Worst Case Scenario was not, however, used to develop the ALLL and associated loan loss provisions that G. Lundstrom and Laphen approved and TierOne reported in the company's periodic filings for the first or second quarters of 2009.

58. On August 3, 2009, a week before TierOne filed its Form 10-Q for the second quarter of 2009, Laphen learned of a memorandum drafted by TierOne's special assets executive. The memo detailed TierOne's continued reliance on stale appraisals and failure to book appropriate loan and OREO loss provisions. The memo stated, among other things:

- a. "I remain convinced that we continue to fail to properly risk rate our loans and we refuse to update collateral valuations, out of the fear of what impact these actions may have on reserve levels."
- b. "I am concerned that we are misleading the public. All this compounded by the fact that we are basing so much off of significantly aged collateral valuations."

c. “I fully comprehend the impact updating collateral valuations on both our watch credits and our OREO properties will have on the organization.”

d. “I am unable to support the timing of reappraisals to delay loss recognition or increases to the reserves into later quarters.”

59. Laphen immediately told G. Lundstrom of the existence of the memo. As with the February 18, 2009 email, no action was taken to correct the loan and OREO losses in TierOne’s financial statements. Instead, G. Lundstrom and Laphen provided positive assurances at the SOX 302 Committee meeting that took place three days later that no one believed that the financial statements contained material misstatements or omissions.

D. The Scheme Was Exposed in the Third Quarter of 2009

60. In August 2009, OTS directed TierOne to obtain updated appraisals. The new appraisals revealed the actual values of TierOne’s collateral for impaired loans and OREO. On October 14, 2009, TierOne filed a Form 8-K reporting an additional \$13.9 million in loan loss provisions for the second quarter of 2009. TierOne also announced that it intended to restate its second quarter 2009 financial statements, and that the bank’s capital ratios would fall below the levels required by OTS. In the days following this news, TierOne’s stock price fell over 17 percent, from approximately \$3.27 per share to \$2.69 per share.

61. The situation worsened as more OTS-mandated appraisals came in. On November 10, 2009, TierOne filed another Form 8-K reporting an additional loan loss provision of \$120.2 million for the third quarter of 2009. TierOne’s stock price dropped a further 54 percent over the next three trading days, from approximately \$1.71 per share to \$0.78 per share.

62. TierOne was shut down by OTS on June 4, 2010, and filed for bankruptcy later that month.

E. G. Lundstrom and Laphen Made Materially False Statements in TierOne's Periodic Filings with the Commission

63. TierOne's periodic filings with the Commission (and related earnings releases) contained the following loan loss provisions and net losses that materially understated – by millions – the amounts required by GAAP:

- a. TierOne's Form 10-K for the year ended December 31, 2008, and its February 25, 2009 Form 8-K, reported provisions for loan losses of \$10.8 million for the fourth quarter and \$84.4 million for the year, and net losses of \$3.8 million for the fourth quarter and \$75.2 million for the year.
- b. TierOne's Form 10-Q for the quarter ended March 31, 2009, and the May 7, 2009 Form 8-K, reported provisions for loan losses of \$12.2 million and a net loss of \$9.8 million.
- c. TierOne's Form 10-Q for the quarter ended June 30, 2009 and its August 10, 2009 Form 8-K, reported provisions for loan losses of \$21.7 million and a net loss of \$16.1 million.

64. In addition, each of TierOne's periodic filings at issue reported that TierOne was in compliance with its elevated regulatory capital requirements. In particular, the filings stated as follows:

- a. Form 10-K (filed 3/13/09):

We are subject to various regulatory capital requirements administered by federal banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a direct material adverse effect on our financial condition and results of operations . . . [T]he OTS has required that the Bank maintain a ratio of 11.0% (as opposed to 10.0%) with respect to total risk-based capital to risk-weighted assets and a ratio of 8.5% (as opposed to 5.0%) with

respect to core (Tier 1) capital. As of December 31, 2008, the Bank exceeded these elevated ratios mandated by the OTS.

b. Form 10-Q (filed 5/8/09):

[T]he OTS has required that the Bank maintain a ratio of 11.0% with respect to total risk-based capital to risk-weighted assets and a ratio of 8.5% with respect to core (Tier 1) capital. As of March 31, 2009, the Bank exceeded these elevated ratios mandated by the OTS.

c. Form 10-Q (filed 8/10/09):

[T]he OTS has required that the Bank maintain a ratio of 11.0% with respect to total risk-based capital to risk-weighted assets and a ratio of 8.5% with respect to core (Tier 1) capital. As of June 30, 2009, the Bank met or exceeded these elevated ratios mandated by the OTS.

65. Had TierOne recorded appropriate loss provisions for each quarter at issue, it would have fallen below its required capital ratios from at least the period ending December 31, 2008. Thus, all of these periodic filings contained materially false disclosures concerning TierOne's regulatory compliance.

66. G. Lundstrom signed the Form 10-K for the year ended December 31, 2008, and the Forms 10-Q for the quarters ended March 31, 2009, and June 30, 2009; Laphen signed only the 2008 Form 10-K.

F. G. Lundstrom Falsely Certified TierOne's Public Filings

67. As TierOne's CEO, G. Lundstrom was also required to certify that he had reviewed the bank's public filings and that, based on his knowledge, they did not contain any material misstatements or omissions.

68. Although G. Lundstrom knew, or was severely reckless in not knowing, that TierOne's periodic filings contained material misrepresentations concerning its loan and OREO losses and compliance with the OTS-mandated capital ratios, he certified the Form 10-K for the

year ended December 31, 2008, and the Forms 10-Q for the quarters ended March 31, 2009, and June 30, 2009.

G. G. Lundstrom and Laphen Circumvented TierOne's Accounting Controls and Caused TierOne's Accounting Records to Be Falsified

69. G. Lundstrom and Laphen failed to implement an effective system of internal accounting controls, circumvented TierOne's accounting controls, and caused TierOne's accounting records to be falsified. As discussed above, they failed to inform the bank's accounting staff of information showing that TierOne had not taken adequate loan and OREO loss provisions. They also approved the final reported ALLL even though they had information, including the Best/Worst Case Scenario described above in paragraphs 55 to 57, showing that TierOne was grossly under-reserved. They further failed to adhere to TierOne's own lending policy, which adversely impacted the bank's financial reporting.

70. In addition, on March 11, 2009, G. Lundstrom falsely certified in TierOne's Form 10-K for the year ended December 31, 2008, that he had evaluated the bank's internal controls over financial reporting and that the controls were effective.

H. G. Lundstrom and Laphen are Liable For TierOne's Securities Law Violations as Control Persons

71. As set forth herein, TierOne, through the acts and omissions of its officers, violated Exchange Act Sections 10(b), 13(a), and 13(b)(2) [15 U.S.C. §§ 78j(b), 78m(a), and 78m(b)(2)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 [7 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

72. G. Lundstrom, as TierOne's chairman/CEO, and Laphen, as its president/COO/director, exercised control over the general operations of TierOne and possessed

the power to determine the specific acts or omissions upon which TierOne's violations are predicated.

I. G. Lundstrom and Laphen Made Materially False Statements and/or Omissions to TierOne's Auditors

73. To further advance their scheme, G. Lundstrom and Laphen made false representations to TierOne's external auditors.

74. In management representation letters to the auditors signed by G. Lundstrom in May and August 2009, he falsely claimed that: (1) TierOne's financial statements were fairly presented in conformity with GAAP; (2) when material, provisions for loan and OREO losses had been recorded; (3) there were no loss contingencies required to be disclosed under the relevant GAAP; (4) he had no knowledge of any allegations of fraud or fraudulent activity received from employee communications; and (5) he had no knowledge of an officer taking actions to mislead the external auditor. G. Lundstrom and Laphen made similar false statements in a management representation letter that they each signed on March 11, 2009.

75. As noted above, G. Lundstrom and Laphen failed to alert the auditors when they received information showing that specific loan and OREO losses were understated and did not provide the auditors with the Best/Worst Case Scenario.

J. Insider Trading By T. Lundstrom and G. Lundstrom

76. As TierOne's chairman/CEO, G. Lundstrom owed a duty to TierOne and its shareholders. Specifically, G. Lundstrom had a duty not to disclose any confidential information he learned during the course of his service as an officer and director, and not to use the information for his benefit or for the benefit of others.

77. Prior to June 2009, G. Lundstrom knew, or was severely reckless in not knowing, that TierOne had a written "Statement of Policy and Procedures Governing Trading in Shares of

TierOne Corporation” (“Insider Trading Policy”) prohibiting the dissemination of any nonpublic information.

78. The Insider Trading Policy stated, in pertinent part:

- a. “All Company Personnel are expected to maintain the confidentiality of nonpublic information obtained in the course of their relationship with [TierOne]”;
- b. “sales of substantial assets” is a type of information that should be kept confidential; and
- c. “[Y]ou are prohibited from ‘tipping’ others. The concept of unlawful tipping includes passing on information to family members”

79. T. Lundstrom was aware prior to June 2009 that his father served as the chairman/CEO of TierOne and knew, or was severely reckless in not knowing, that his father owed a duty to TierOne and its shareholders.

80. In approximately January 2009, G. Lundstrom discussed with Great Western a possible sale of substantial assets by TierOne. From approximately January through September 2009, G. Lundstrom acted as one of TierOne’s lead negotiators concerning the asset sale to Great Western.

81. As a result of TierOne’s potential asset sale to Great Western, and pursuant to TierOne’s Insider Trading Policy, on May 29, 2009, certain TierOne officers and directors, including G. Lundstrom, were subjected to a “Blackout Period” prohibiting purchases and sales of TierOne securities. The Blackout Period extended from June 10, 2009, through August 5, 2009, and was later extended through September 4, 2009.

82. On June 15, 2009, G. Lundstrom, on behalf of TierOne, executed a confidentiality agreement with Great Western regarding the potential asset sale transaction.

83. On June 16, 2009, G. Lundstrom and other executives and advisors for TierOne met with representatives of Great Western in Chicago, Illinois, to discuss the terms of the proposed asset sale, which included the sale of specific TierOne branch offices, performing loans, and other assets.

84. On June 17, 2009, a working model of the asset sale was sent to certain TierOne personnel, including G. Lundstrom, valuing the sale at \$1.6 billion.

85. On June 17, 2009, T. Lundstrom arrived in Lincoln, Nebraska, from Birmingham, Alabama, to visit his father and participate in a three-day golf tournament at a country club in which G. Lundstrom was a member. T. Lundstrom stayed at G. Lundstrom's home from Friday, June 17 through Sunday, June 21, 2009.

86. On June 18, 2009, G. and T. Lundstrom spent many hours together playing as a team in the golf tournament at the country club.

87. On or about June 18, 2009, G. Lundstrom tipped T. Lundstrom with material nonpublic information regarding TierOne's potential asset sale to Great Western.

88. At approximately 10:30 p.m. on June 18, 2009, T. Lundstrom placed an order to purchase 10,000 shares of TierOne common stock for approximately \$19,500. This was the first in a series of 113 purchase orders for TierOne stock that T. Lundstrom placed in accounts he owned or controlled between June 18, 2009, and September 2, 2009.

89. Within ten days from his June 18th purchase, T. Lundstrom liquidated all non-TierOne equities held in the brokerage accounts he owned and controlled in order to purchase TierOne common stock.

90. In addition, the next month T. Lundstrom leveraged his insider trading by borrowing funds at significant interest rates to acquire TierOne stock. On July 10, 2009, T. Lundstrom applied for a personal, unsecured \$75,000 bank loan with an interest rate of 8.95 percent. He received these funds on July 24, 2009, and used the funds for the sole purpose of purchasing TierOne stock. On July 26, 2009, T. Lundstrom applied for a credit card with a \$53,000 limit and interest rate of 10.99 percent. On August 4, 2009, he obtained a \$50,000 cash advance from the credit card and used the funds for the sole purpose of purchasing TierOne stock.

91. While G. Lundstrom continued to negotiate the asset sale with Great Western, T. and G. Lundstrom continued to communicate periodically and T. Lundstrom continued to purchase TierOne stock.

92. Between June 18, 2009, and September 2, 2009, T. Lundstrom acquired 209,985 shares of TierOne stock for a total purchase price of \$431,332 in accounts he owned and controlled on the basis of material nonpublic information supplied by his father.

93. On Friday, September 4, 2009, at approximately 8:00 a.m., TierOne announced that it had agreed to sell to Great Western \$1.1 billion in deposits, \$800 million in loans, and \$20 million in real estate. G. Lundstrom e-mailed the September 4th announcement to T. Lundstrom shortly after its release.

94. Following the announcement, TierOne's stock price closed up over 45 percent to \$3.13 per share.

95. T. Lundstrom thereafter sold all of the TierOne stock that he had acquired between June 18, 2009, and September 2, 2009. T. Lundstrom's total ill-gotten gains from the

TierOne stock that he purchased on the basis of inside information tipped from his father is approximately \$225,921.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Fraud - Section 10(b) of the Exchange Act and Rule 10b-5 (Insider Trading)
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

96. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

97. Defendants G. Lundstrom and T. Lundstrom, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce or by use of the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

98. By reason of the foregoing, G. Lundstrom and T. Lundstrom violated, and unless restrained and enjoined will in the future violate, Section 10(b) of the Exchange Act and Rule 10b-5.

SECOND CLAIM FOR RELIEF

Fraud - Section 10(b) of the Exchange Act and Rule 10b-5 (Financial Fraud)
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

99. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

100. Defendants G. Lundstrom and Laphen, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce or by use of the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to

make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

101. By reason of the foregoing, G. Lundstrom and Laphen violated, and unless restrained and enjoined will in the future violate, Section 10(b) of the Exchange Act and Rule 10b-5.

THIRD CLAIM FOR RELIEF

Aiding and Abetting Fraud - Section 10(b) of the Exchange Act and
Rule 10b-5 (Financial Fraud)
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

102. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

103. TierOne, through the acts and omissions of its officers, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by use of the means or instrumentalities of interstate commerce or by use of the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

104. Defendant Laphen aided and abetted TierOne, in that he, with a general awareness of his role in the primary violations by TierOne, provided substantial assistance to TierOne in the commission of its violations of Section 10(b) of the Exchange Act and Rule 10b-5.

105. By reason of the foregoing, Laphen aided and abetted, and unless restrained and enjoined will in the future aid and abet, violations of Section 10(b) of the Exchange Act and Rule 10b-5.

FOURTH CLAIM FOR RELIEF

False Certifications - Exchange Act Rule 13a-14
[17 C.F.R. § 240.13a-14]

106. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

107. Defendant G. Lundstrom certified falsely that to the best of his knowledge there were no untrue statements of material fact or omissions of a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading in reports filed by TierOne with the Commission under Section 13(a) of the Exchange Act.

108. By reason of the foregoing, G. Lundstrom violated, and unless restrained and enjoined will in the future violate, Exchange Act Rule 13a-14.

FIFTH CLAIM FOR RELIEF

Circumvention of Internal Controls and Falsified Books and Records-
Section 13(b)(5) of the Exchange Act
[15 U.S.C. § 78m(b)(5)]

109. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

110. Defendants G. Lundstrom and Laphen knowingly circumvented, or knowingly failed to implement, an effective system of internal accounting controls, or knowingly falsified books, records or accounts of TierOne.

111. By reason of the foregoing, G. Lundstrom and Laphen violated, and unless restrained and enjoined will in the future violate, Section 13(b)(5) of the Exchange Act.

SIXTH CLAIM FOR RELIEF

Falsified Books and Records - Exchange Act Rule 13b2-1
[17 C.F.R. § 240.13b2-1]

112. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

113. Defendants G. Lundstrom and Laphen, directly or indirectly, falsified or caused to be falsified books, records or accounts of TierOne.

114. By reason of the foregoing, G. Lundstrom and Laphen violated, and unless restrained and enjoined will in the future violate, Exchange Act Rule 13b2-1.

SEVENTH CLAIM FOR RELIEF

Deceit of Auditors - Rule 13b2-2 of the Exchange Act
[17 C.F.R. § 240.13b2-2]

115. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

116. Defendants G. Lundstrom and Laphen made or caused to be made materially false or misleading statements to an accountant in connection with audits, reviews or examinations of TierOne's financial statements or in the preparation or filing of TierOne documents or reports required to be filed with the Commission; or omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with audits, reviews or examinations of TierOne's financial statements or in the preparation or filing of TierOne documents or reports required to be filed with the Commission.

117. By reason of the foregoing, G. Lundstrom and Laphen violated, and unless restrained and enjoined will in the future violate, Exchange Act Rule 13b2-2.

EIGHTH CLAIM FOR RELIEF

Aiding and Abetting False SEC Filings - Section 13(a) of the Exchange Act
and Rules 12b-20, 13a-1, 13a-11, and 13a-13
[15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]

118. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

119. TierOne, an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed materially false and misleading annual, quarterly and current reports with the Commission that made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they

were made, not misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

120. Defendants G. Lundstrom and Laphen each aided and abetted TierOne, in that they, with a general awareness of their role in the primary violations by TierOne, provided substantial assistance to TierOne in the commission of its violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

121. By reason of the foregoing, G. Lundstrom and Laphen aided and abetted, and unless restrained and enjoined will in the future aid and abet, violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13.

NINTH CLAIM FOR RELIEF

Aiding and Abetting False Books and Records – Section 13(b)(2) of the Exchange Act
[15 U.S.C. § 78m(b)(2)]

122. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

123. TierOne, an issuer of securities registered pursuant to Section 12 of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements, in violation of Section 13(b)(2) of the Exchange Act.

124. Defendants G. Lundstrom and Laphen each aided and abetted TierOne, in that they, with a general awareness of their role in the primary violations by TierOne, provided substantial assistance to TierOne in the commission of its violations of Section 13(b)(2) of the Exchange Act.

125. By reason of the foregoing, G. Lundstrom and Laphen aided and abetted, and unless restrained and enjoined will in the future aid and abet, violations of Section 13(b)(2) of the Exchange Act.

TENTH CLAIM FOR RELIEF

Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. §78t(a)] for Violations by TierOne of Sections 10(b), 13(a), and 13(b)(2) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13. [15 U.S.C. §§ 78j(b), 78m(a), and 78m(b)(2) and 17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]

126. Paragraphs 1 through 95 are hereby realleged and incorporated by reference.

127. As set forth above, TierOne, through the acts and omissions of its officers, violated Sections 10(b), 13(a), and 13(b)(2) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13.

128. As TierOne's chairman/CEO and president/COO/director, respectively, defendants G. Lundstrom and Laphen each exercised control over the general operations of TierOne and possessed the power to determine the specific acts or omissions upon which TierOne's underlying violations of Sections 10(b), 13(a), and 13(b)(2) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 are predicated.

129. By reason of the foregoing, G. Lundstrom and Laphen are liable as control persons pursuant to Section 20(a) of the Exchange Act for TierOne's violations of Sections 10(b), 13(a), and 13(b)(2) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13.

VII. PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Find that defendants committed the violations alleged.

II.

Enter injunctive relief permanently restraining and enjoining each defendant from, directly or indirectly, to the full extent provided by Rule 65(d) of the Federal Rules of Civil Procedure, violating the provisions of law and rules alleged in this Complaint.

III.

Order defendant T. Lundstrom to disgorge and pay over, as the Court may direct, all ill-gotten gains received, or benefits in any form derived, from the conduct alleged in this Complaint, together with pre-judgment and post-judgment interest as provided by law.

IV.

Order defendants G. Lundstrom and Laphen to pay civil money penalties pursuant to Section 21(d)(3)(iii) of the Exchange Act.

V.

Order defendants G. and T. Lundstrom to pay civil money penalties pursuant to Section 21A of the Exchange Act.

VI.

Order that defendants G. Lundstrom and Laphen be permanently prohibited from acting as an officer or director of any public company.

VII.

Grant other relief as this Court may deem just or appropriate.

JURY DEMAND

Plaintiff demands a jury trial in this matter.

TRIAL – OMAHA

Plaintiff hereby requests that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Respectfully submitted, this 25th day of September 2012.

By: /s/ Nicholas Heinke
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