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

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	Civil Action No. 12-cv-00344
v.	)	COMPLAINT
DON A. LANGFORD,	)	JURY TRIAL DEMANDED
Defendant.	)	

Plaintiff, Securities and Exchange Commission ("Commission"), alleges as follows for its Complaint against Don A. Langford ("Defendant"):

I. SUMMARY

1. From mid-2008 through November 2009, during the height of the recent financial crisis, Langford, the chief credit officer at the Lincoln, Nebraska-based TierOne Bank, played a pivotal role in a bold scheme to hide millions of dollars in losses from investors and from the bank's federal regulators.

2. TierOne Bank (with its public holding company, TierOne Corporation, referred to collectively hereafter as "TierOne") was a century-old thrift bank that had historically focused on residential and agricultural loans in the Midwest, specifically Nebraska, Iowa, and Kansas. Beginning in about 2004, however, 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.

3. 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. Generally speaking, capital ratios are a gauge of a bank's financial strength. A key component of these capital ratios was the bank's loan losses and losses on real estate repossessed by the bank (commonly referred to as "other real estate owned" or "OREO"): higher loan and OREO losses drove the capital ratios down. To feign compliance with the new heightened capital requirements, Langford and other senior executives began a scheme to manipulate and materially understate TierOne's loan and OREO losses.

4. The bank's losses were tied, in large part, to the value of the collateral securing the problem loans and the value of the OREO properties. If the value of the collateral dropped below the book value of the loan, or if the value of the OREO properties fell, the bank was typically required to record and report a loss. As a key part of the scheme, Langford 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.

5. As a result of the scheme, TierOne made material misstatements in several filings with the Commission regarding its loan and OREO losses and, in turn, materially understated its net losses in those periodic filings. Specifically, TierOne made material misstatements in its Form 10-K for the year ended December 31, 2008, its Form 10-Q for the quarter ended March 31, 2009, and its Form 10-Q for the quarter ended June 30, 2009 (the "periodic filings"). The misstatements regarding net losses were also included in the related earnings releases in Forms 8-K filed on February 25, 2009, May 7, 2009, and August 10, 2009. In addition, TierOne falsely 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. 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.

7. Through the activities alleged in the Complaint, Langford, directly or indirectly, has engaged, and unless enjoined will continue to engage, in violations of Section 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5(a) and (c), 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5(a) and (c), 240.13b2-1, and 240.13b2-2]. In addition, Langford aided and abetted TierOne's violations of Exchange Act Section 10(b), 13(a), and 13(b)(2)(A), 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)(A) and 17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13].

II. JURISDICTION AND VENUE

8. The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to permanently restrain and enjoin Langford from engaging in the acts, practices and courses of business alleged in this Complaint, for imposition of civil penalties, and for other relief.

9. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

10. Langford and others, 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 Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the acts, transactions, practices, and courses of business constituting the violations of law alleged herein occurred within the District of Nebraska.

III. DEFENDANT AND RELEVANT ENTITY

12. Don A. Langford, age 61, is a resident of Gibsonia, Pennsylvania. Langford served as TierOne Bank's chief credit officer and a senior vice president between January 2008 and June 2010.

13. 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 OTC Link (symbol "TONEQ"), 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 Bank took over the bank's assets and deposit accounts. TierOne filed for Chapter 7 bankruptcy protection on June 24, 2010.

IV. FACTS

A. Background of TierOne's Asset and Capital Problems

14. 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.

15. In June 2008, OTS conducted a periodic exam of TierOne. The results were dramatic: OTS provided the bank with a report describing significant concerns with management's performance and with the bank's financial condition, asset quality, underwriting practices, credit administration practices, and loan loss provisions. As a result of its findings, OTS 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.

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

17. 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 facing regulatory sanctions – Langford participated in a scheme to manipulate and materially misstate the value of the bank's collateral and OREO properties. The purpose of the scheme 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. TierOne's Accounting for ALLL and OREO

18. Generally Accepted Accounting Principles, or "GAAP," provide 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.

19. 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.

20. 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.

21. 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.

22. 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. Absent an actual sale, a recent appraisal performed by an independent and certified real estate appraiser is normally the best evidence of a property's fair value. If there is no 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, recent comparable sales, internal determinations of value, current project status, and offers to purchase or sell.

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

24. 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."

25. TierOne's lending policy also stated that Langford was, together with TierOne's chief appraiser, "responsible for the overall appraisal efforts of the bank."

26. As described below, Langford knowingly failed to adhere to these policies.

27. Langford was directly and substantially involved in TierOne's informal committee that purported to evaluate the bank's impaired and potentially impaired loans, and their related loss provisions. The conclusions of the committee were documented in spreadsheets

that contained estimates of the value of the collateral underlying the loans and loan impairment determinations (the "impaired loan templates"). Langford knew that the completed impaired loan templates were then provided to TierOne's outside auditor in connection with its annual audit and quarterly review test work.

28. Although TierOne's special assets executive, who reported to Langford, prepared the initial drafts of the impaired loan templates, Langford had significant input into the ultimate estimate of the value of the underlying collateral. For example, if an appraisal was stale, Langford would sometimes apply a discount percentage to the appraised value. TierOne's discounts were seemingly random, unsupported, and, at times, inconsistent with discounts used in the same geographic region.

29. Once the informal committee completed its work, a report including the reserves for each impaired loan was presented to TierOne's formal Asset Classification Committee, on which Langford also sat, for approval.

30. Langford was also a member of TierOne's Sarbanes-Oxley Act of 2002 ("SOX") 302 Certification Disclosure Committee ("SOX 302 Committee"), which reviewed TierOne's periodic filings before they were filed with the Commission. As part of the SOX 302 Committee meetings, each of the members would provide positive assurances that: (1) there was no reason to believe that 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 results of operations and financial condition; (3) no one believed the periodic report contained material misstatements or omissions; and (4) there is no other reason why it would be unwise or inappropriate for the certifying officers to swear to the disclosures in the periodic report.

31. Rather than comply with GAAP and the bank's own policies, Langford engaged in a scheme to manipulate TierOne's loan and OREO loss provisions.

C. Langford Engaged in a Scheme to Defraud OTS and TierOne's Investors, and Aided and Abetted TierOne's Fraud

32. Between approximately mid-2008 and November 2009 (the "relevant period"), Langford and others knowingly 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 or additional reserves on TierOne's impaired loans and OREO. Langford's conduct included: (1) ignoring new appraisals; (2) failing to obtain updated appraisals of collateral and OREO even when observable market conditions established that there was substantial deterioration in value since the last appraisal; (3) masking problem loans by extending additional credit to establish interest reserves ("extend and pretend"); and (4) failing to properly evaluate loans for impairment. For example:

1. Gemm Homes

33. In January 2008, TierOne foreclosed on a real estate development loan to borrower Gemm Homes, taking a partially-improved, but undeveloped, parcel of land in Loveland, Colorado into OREO. A September 2007 appraisal valued the Gemm Homes property at $5.1 million.

34. In late June 2008, TierOne was working with its participating lender to list and sell the Gemm Homes property. At this time, Langford was informed of several broker price opinions for the property that had an average value of around $3 million. Langford initially did not take issue with these valuations, and seemed interested in disposing of the property.

35. Just weeks later, however, Langford changed his position, and explicitly linked the need to avoid OREO losses from selling the Gemm Homes property to TierOne's capital problems. On July 15, 2008, Langford wrote:

> [I]f their goal is to get a listing at the $2.5MM that they are hinting is today's realistic value . . . then we will likely have a no go situation and have to sit on the [O]REO for some extended number of decades while we scratch our way back to a surplus capital position. We can't book an asset in January based on a new appraisal and turn around and sell it out of [O]REO at half the number 6 months later – we no longer have the luxury of hitting the loan loss reserves – any charge due to an [O]REO short sale is straight against cash earnings and $2.3MM would be a very big number for us today.

This e-mail was sent less than a week after meeting with OTS representatives regarding the bank's computation of ALLL.

36. The practical effect of Langford's change in position was to thwart efforts by the participating lender to list and sell the Gemm Homes property so that TierOne could delay taking the large loss.

37. After months of stalling by TierOne, in October 2008, the participating lender proceeded with its own efforts to list the Gemm Homes property and obtained an appraisal that showed a property value of $3 million, which was consistent with the June 2008 broker price opinions.

38. In early 2009, TierOne's special assets executive learned of the October 2008 appraisal regarding the Gemm Homes property. After he informed Langford of the new appraisal, Langford told the special assets executive that he did not believe the value in the new appraisal and that he should string the participating lender along.

39. In March 2009, the special assets executive had the October 2008 appraisal on the Gemm Homes property reviewed by TierOne's internal chief appraiser. In an email dated March 4, 2009, the chief appraiser stated: "It's apparent the 2008 appraisal reflects a more conservative

forecast than the 2007 appraisal, which is understandable given the economic events of the past year." The special assets executive forwarded this email to Langford, yet Langford continued to disregard the appraisal.

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

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

> 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.

42. Notwithstanding this information, Langford continued to disregard the special asset executive's recommendation to write-down the Gemm Homes property.

43. Instead, Langford approved TierOne's purchase of the participating bank'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, and ensured that TierOne could control when and if a write-down occurred.

44. TierOne did not book the appropriate $1.8 million OREO loss provision for Gemm Homes during the relevant period. Nor did Langford inform TierOne's accounting staff or outside auditor of the October 2008 appraisal or the similar broker price opinions.

45. After OTS was alerted to issues with TierOne's use of stale appraisals to understate its loss provisions, Langford attempted to conceal his misconduct in connection with Gemm Homes. For example, Langford falsely claimed, in a memo to TierOne's internal audit department, that he had no knowledge of the October 2008 appraisal. In addition, Langford falsely told TierOne's controller that the appraisal had been rejected because the appraiser had missed infrastructure improvements because of snow on the property. However, the photos accompanying the appraisal reflect that there was no snow on the property when the appraiser inspected it.

2. Irishstone

46. Gemm Homes was not the first time TierOne's special assets executive had witnessed Langford disregard a new appraisal. In the fall of 2008, shortly after the special assets executive began work at the bank, one of his subordinates requested approval to order a new appraisal on a Nebraska OREO property called Irishstone. The special assets executive gave approval, the appraisal was ordered, and, when received, showed that an OREO loss provision of approximately $800,000 should have been taken by the bank.

47. Langford became furious when he discovered this new appraisal had been ordered without his prior knowledge, going so far as to instruct the special assets executive to fire the employee who Langford believed had ordered the appraisal. As with the Gemm Homes property, Langford disregarded the Irishstone appraisal. No new appraisal was obtained, and no write-down was taken on the property during the relevant period.

3. Escapa Loans

48. TierOne made a series of loans, totaling in the millions of dollars, to Las Vegas developer Carlos Escapa. By at least early 2008, these loans were impaired.

49. By September 2008, the value of the collateral supporting the loans had further declined. For example, on September 11, 2008, TierOne's workout consultant in Las Vegas sent an email to Langford asking if he could accept offers on one of the Escapa properties for approximately 36 percent of the book value. Langford responded:

> Though I have no doubt your take on the market is accurate in today's circumstances I will unofficially predict the chances of us moving forward to consummate a sale below a price of more like $140-150K/lot as being near zero – maybe even ground zero and digging. We have a 2008 appraisal which would allow us to book into [O]REO and hold at our current reserved position and that's all we can afford until we earn our way out.

50. On September 19, 2008, the Las Vegas workout consultant sent an email to Langford 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.

51. Although Langford knew of significant deterioration in the value of the Escapa collateral, he did not order new appraisals for the Escapa properties, nor did he take into consideration the Las Vegas workout consultant's estimates in preparing the impaired loan templates for the Escapa loans. Instead, Langford used the same stale collateral values from March 2008. As a result, TierOne's loss provisions associated with the Escapa loans were understated by millions of dollars.

52. Langford also failed to inform TierOne's accounting staff or outside auditor of the Las Vegas workout consultant's estimates.

4. Towne Vistas Loan

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

54. By the summer of 2008, Langford knew the Towne Vista project was faltering and that the collateral backing the loan was inadequate. In an update email dated July 9, 2008, he wrote: "[W]e extended [the Towne Vistas loan] to November maturity but we'll need a new appraisal to go past November and that appraisal will undoubtedly show us as being wildly deficient on collateral since there will still be no sales to show."

55. What's more, before TierOne filed its Form 10-Q for its first quarter of 2009, TierOne's Las Vegas workout consultant informed Langford that the project was likely worth only $15 million, or half the loan amount. Langford, however, did not order a new appraisal or otherwise re-evaluate the collateral value supporting the loan. Instead, the impaired loan template for the first quarter of 2009 was based on a stale, undiscounted 2005 appraisal showing a value of $46.5 million.

56. In mid-June 2009, Langford was 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. Once again, Langford did not order a new appraisal or otherwise re-evaluate the collateral value supporting the loan. And once again, the stale, undiscounted 2005 appraisal was used for purposes of the impaired loan template for the second quarter of 2009.

57. Had TierOne used all available information to value the Towne Vistas collateral, it should have recognized millions of dollars of additional loan loss provisions relating to the Town Vistas loan.

58. Langford also failed to inform TierOne's accounting staff or outside auditor of the Las Vegas workout consultant's estimates or the newly-obtained residential appraisal.

5. Brother Sonny/Jericho Loans

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

60. 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, Langford 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."

61. Langford did not obtain appraisals for the Brother Sonny and Jericho collateral when he approved the loan modification in early September 2008, even though TierOne's own lending policy required the new appraisals, real estate values in Las Vegas had plummeted, and the loan, as modified, would be among TierOne's largest. Instead, the loan modification recommendation relied on the stale 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, Langford masked the Brother Sonny delinquency so that the loan would be treated as a performing rather than impaired.

62. Indeed, Langford acknowledged the "extend and pretend" scenario for the Brother Sonny/Jericho loan in an email dated September 11, 2008:

> If we continue to "fix" our Vegas problems as in [Towne Vistas] and [Brother Sonny/Jericho] by doubling up rather than throwing them out of the Bank we may need to revisit hiring someone to live in Vegas and manage the portfolio for the next many years.

63. In January 2009, before the Form 10-K for 2008 was filed, Langford also understood that TierOne's second lien position on the Jericho property was essentially worthless. Specifically, Langford knew that the FDIC had obtained three appraisals on the property valuing it at around $10 million, well short of the FDIC's $17 million priority lien on the Jericho property.

64. Despite this knowledge, Langford continued to rely on stale, undiscounted appraisals, and did not take the FDIC appraisals into account, in the impaired loan templates for the fourth quarter of 2008 and afterwards.

65. No impairment charge was taken during the relevant period, and TierOne understated its loan loss provision on the Brother Sonny/Jericho loan by millions of dollars.

66. Langford also failed to inform TierOne's accounting staff or outside auditor of the FDIC appraisals on the Jericho property.

6. Mansions at Canyon Creek Loans

67. Mansions at Canyon Creek ("Mansions") was a condominium project in Kansas financed by $23.7 million in loans from TierOne.

68. In June 2008, in response to OTS's general observation that Mansions might be an impaired credit, Langford agreed with OTS's recommendation to get a new appraisal when the loan matured in October 2008. But contrary to Langford's promise, no appraisal was obtained when the loan matured. Instead, when the interest reserves ran out, TierOne lowered the interest burden on the loans, but the borrower was still unable to make timely interest payments.

69. By March 2009, the Mansions loans were in default and reported as over 90 days delinquent on the quarterly delinquency reports that Langford received on April 8, 2009. That

same day, TierOne's special assets executive prepared and delivered to Langford an impaired loan template for the first quarter of 2009 recommending a multi-million dollar additional loss provision for Mansions. Two days later, TierOne received a partial interest payment from Mansions that was retroactively applied to improperly move Mansions out of the 90 day delinquency category on the final delinquency report, which was sent to Langford on April 21, 2009. Around the same time, the Mansions loans were inappropriately deemed "not impaired" and the impaired loan template for Mansions was removed from the final package of templates provided to TierOne's external auditor.

70. In the second quarter of 2009, Langford approved TierOne's formal forbearance agreement with Mansions, which again lowered the interest burden. Despite this effort, the loans remained in default and over 90 days delinquent by the end of June. As such, they were listed on TierOne's impaired loan listing report for June 30, 2009, and the special assets executive prepared another impaired loan template showing the delinquency and recommending a $5.8 million charge-off. This document was provided to Langford in July 2009, along with the other second quarter impaired loan templates. Langford overruled the impairment determination, despite the bank's lending policy deeming 90-day overdue loans impaired. The Mansions impairment loan template was deleted from the final package of templates provided to TierOne's external auditor.

71. Around this time, Langford also told TierOne's special assets executive that he knew the Mansions loans were impaired, but TierOne could not afford the losses that would result from that determination.

72. Had TierOne used all available information, it would have recorded millions of dollars of additional loss provisions for the Mansions loans.

73. By end of June 2009, TierOne had only approximately $510,000 in excess core capital, and its core capital ratio was met by a mere one one-hundredth of a percent. The Mansions impairment, standing alone, would have caused TierOne to miss its OTS-mandated capital ratios for the second quarter of 2009, and thus to violate the Supervisory Agreement. Violation would have subjected the bank to serious sanctions, including possible seizure, by OTS.

74. In August 2009, OTS returned to TierOne for a pre-exam field visit. OTS examiners focused on reviewing TierOne's acquisition and development loans, including the Mansions loans. During the field visit, TierOne's special assets executive provided the OTS examiners with the second quarter impaired loan template showing that the Mansions loans needed a $5.8 million charge-off that was not recorded. Based on this information, OTS directed TierOne to take an appropriate charge-off based on a newly ordered appraisal.

75. Around the time of the OTS visit, Langford, in another attempt to cover up his misconduct, sent TierOne's internal audit department head an email falsely claiming that he did not see the second quarter impaired loan template for Mansions before August 20, 2009, a position that was later incorporated into the bank's formal response to OTS regarding Mansions.

7. Langford Repeatedly Received Information Showing TierOne's Material Understatement of Loss Provisions

76. In addition to his involvement in specific valuation decisions discussed above, Langford was aware of the accounting improprieties that occurred at TierOne through repeated emails and reports that he received.

77. For example, on February 18, 2009, prior to the filing of TierOne's Form 10-K for the year ended December 31, 2008, Langford 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.

78. Langford ignored this February 18, 2009 email and did not share this information with TierOne's accounting staff or outside auditor. He also failed to raise the issue during the SOX 302 Committee meeting on March 10, 2009.

79. In early 2009, TierOne's chief executive officer requested an analysis of the losses within TierOne's loan portfolio. Langford and others, using information known at the time, conducted what was, in substance, a loan reserve analysis. Langford summarized the findings in an email dated February 17, 2009, in which he stated:

> [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 $65[million] of reserves over and above those currently allocated.

80. Around mid-April 2009, the chief executive officer requested a more detailed breakdown of the anticipated loan losses. At a series of meetings, Langford and others estimated the embedded losses on a loan-by-loan basis and documented their conclusions in a spreadsheet that was eventually presented to TierOne's chief executive officer and chief operating officer. 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).

81. As shown in the following chart, the example loans discussed above in paragraphs 48 through 75 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:

	Best/Worst Case Scenario		
Loan	**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
Mansions	$5,000,000	$5,000,000	$12,000,000
TOTAL	**$15,760,000**	**$22,980,000**	**$55,250,000**

82. The Best/Worst Case Scenario was not, however, used by Langford in preparing the impaired loan templates or to develop the ALLL and associated loan loss provisions approved by him and reported in the company's periodic filings for the first or second quarters of 2009. Nor was the Best/Worst Case Scenario shared with TierOne's accounting staff or outside auditor. In fact, TierOne's outside auditor ultimately resigned from the TierOne engagement in April 2010 after it discovered the existence of the Best/Worst Case Scenario and that it had been withheld.

83. In early August 2009, just a week before TierOne filed its Form 10-Q for the second quarter of 2009, Langford received 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."

84. As with the February 18, 2009 email, no action was taken to correct the loan and OREO losses in TierOne's financial statements. Nor was the August 3, 2009 memo forwarded to TierOne's accounting staff or outside auditor. Moreover, Langford did not mention the memo at the SOX 302 Committee meeting that took place just three days later, when he provided positive assurances that no one believed that the financial statements contained material misstatements or omissions.

D. Langford Acknowledged He Was Aware of the Scheme

85. Langford exchanged numerous emails with TierOne's Las Vegas workout consultant that make plain Langford's awareness that he and others at the bank were improperly deferring losses. For example:

a. On April 7, 2009, Langford wrote that he "would love to have [TierOne's president and chief executive officer] start acting like ethical intelligent adults and take action to save the bank instead of hiding the ball from stockholders and regulators."

b. The next day, Langford explained: "My belief is that [TierOne's president] is totally aware of the irrational position he is displaying but that he is

concerned about the recognition of charge-offs in Vegas because he is so indelibly linked to all of our exposure there. Any bad news will be associated with him and I think he is trying desperately to forestall his dismissal and the resultant loss of a paycheck – not an illogical motive."

c. On April 9, 2009, Langford acknowledged that TierOne's president "won't sell Vegas because he's told [TierOne's chief executive officer that] Vegas will come back first and the losses currently in the works can be avoided with a little patience."

d. The next month, on May 8, 2009, Langford sent an email to the Las Vegas workout consultant expressing hope that foreclosure and a new appraisal on a Las Vegas property could be pushed into the next quarter, to which the Las Vegas workout consultant responded: "I'd like to be wrong but frankly, you should just board them up and wait for better times. You're just hiding the loss."

e. Four days later, Langford stated: "I've been telling people around here for months now that this unwillingness/inability to admit to what appears to be reality must come to an end with new appraisals in hand before the regulators show up in October. " The Las Vegas workout consultant responded: "As you've pointed out numerous times, the next round of appraisals are going to be killer for you, and not in a good way."

86. Given Langford's knowledge of the value of the collateral underlying TierOne's impaired loans and its OREO properties, detailed above, Langford did not honestly believe the values he used in developing the impaired loan templates, or the ALLL and associated loan loss provisions.

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

87. 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.

88. The situation worsened as more OTS-mandated appraisals came in. On November 10, 2009, TierOne filed another Form 8-K reporting a 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.

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

F. Langford's Participation in the Scheme Resulted in Materially False Statements in TierOne's Periodic Filings with the Commission

90. As a result of the scheme to defraud, TierOne's periodic filings with the Commission (and related earnings releases) were materially false.

91. 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.

92. 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.

93. In addition, TierOne's periodic filings 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 $84.4 million for the year and a net loss before income taxes of $93.3 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 before income taxes 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 before income taxes of $16.1 million.

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

94. Langford falsified TierOne's impaired loan templates when he failed to include information he knew about the true value of the collateral underlying the impaired loans. Additionally, Langford approved the bank's reported ALLL even though he had information indicating that TierOne's impaired loan portfolio had significant undisclosed losses and was grossly under-reserved.

95. Langford knowingly circumvented TierOne's accounting controls by failing to inform the bank's accounting staff of information showing that TierOne had not taken adequate loan and OREO loss provisions.

96. Finally, Langford knowingly failed to adhere to TierOne's lending policy, which adversely impacted TierOne's financial reporting.

H. Langford Deceived TierOne's Auditor

97. To further advance the scheme to defraud, Langford knowingly made false representations to TierOne's outside auditor.

98. Langford misled TierOne's auditor regarding TierOne's loss provisions by, among other things, falsifying the impaired loan templates, which were provided to the auditor, failing to inform the auditor of appraisals and other valuation information that demonstrated significant declines in the collateral underlying the bank's impaired loans, and withholding the Best/Worst Case Scenario analysis.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

99. Paragraphs 1 through 98 are hereby realleged and incorporated by reference.

100. Defendant, 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; 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, Defendant violated, and unless restrained and enjoined will in the future violate, Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c).

SECOND CLAIM FOR RELIEF

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

102. Paragraphs 1 through 98 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 aided and abetted TierOne, in that he, with knowledge of 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, Defendant 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.

THIRD 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)]

106. Paragraphs 1 through 98 are hereby realleged and incorporated by reference.

107. Defendant knowingly circumvented a system of internal accounting controls or knowingly falsified books, records, or accounts of TierOne.

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

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

109. Paragraphs 1 through 98 are hereby realleged and incorporated by reference.

110. Defendant, directly or indirectly, falsified or caused to be falsified books, records, or accounts of TierOne.

111. By reason of the foregoing, Defendant violated, and unless restrained and enjoined will in the future violate, Exchange Act Rule 13b2-1.

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

112. Paragraphs 1 through 98 are hereby realleged and incorporated by reference.

113. Defendant 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.

114. By reason of the foregoing, Defendant violated, and unless restrained and enjoined will in the future violate, Exchange Act Rule 13b2-2.

SIXTH 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]

115. Paragraphs 1 through 98 are hereby realleged and incorporated by reference.

116. 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.

117. Defendant aided and abetted TierOne, in that he, with knowledge of 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.

118. By reason of the foregoing, Defendant 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.

SEVENTH CLAIM FOR RELIEF

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

119. Paragraphs 1 through 98 are hereby realleged and incorporated by reference.

120. 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 in violation of Section 13(b)(2) of the Exchange Act.

121. Defendant aided and abetted TierOne, in that he, with knowledge of 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.

122. By reason of the foregoing, Defendant 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.

VI. PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Find that Defendant committed the violations alleged.

II.

Enter injunctive relief permanently restraining and enjoining 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.

Enter an Order directing Defendant to pay civil money penalties pursuant to Section 21(d) of the Exchange Act.

IV.

Enter an Order that Defendant be permanently prohibited from acting as an officer or director of any public company.

V.

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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