EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID G. RAY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. TIERONE CORPORATION, GILBERT G. LUNDSTROM, EUGENE B. WITKOWICZ, MICHAEL J. FALBO, AND CHARLES W. HOSKINS, Defendants.	Case No. 8:10-cv-00199 **DECLARATION OF PHILLIP KIM IN SUPPORT OF LEAD PLAINTIFFS' MOTIONS FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AWARD TO LEAD PLAINTIFFS**
DOUGLAS L. STEJSKAL, Plaintiff, v. GILBERT G. LUNDSTROM, Defendant.	Member Case No. 4:10-cv-3177
DOUGLAS L. STEJSKAL, Plaintiff, v. JAMES A. LAPHEN, Defendant.	Member Case No. 8:10-cv-332

I, PHILLIP KIM DECLARE:[1]

1. I am an attorney with the Rosen Law Firm, P.A., court-appointed Lead Counsel in this Action. I submit this Declaration in support of lead plaintiffs Vincent Valentino, Raoul and Sharon Turcot, and Eric Follestad (collectively, or "Lead Plaintiffs" or "Plaintiffs") Motions For: (1) Final Approval of Class Action Settlement and Plan of Allocation; and (2) An Award of Attorneys' Fees, Reimbursement of Expenses, and Award to Lead Plaintiffs.

2. This action has been settled for a payment of $3,100,000 in cash (the "Settlement").

3. The purpose of this Declaration is to set forth the basis for and background of the Action, its procedural history, and the negotiations that led to the proposed settlement. The facts set forth in this Declaration, along with Lead Plaintiffs' Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation (the "Settlement Brief"), demonstrate why the proposed settlement is fair, reasonable and adequate, and should be approved by the Court.

4. Specifically, I submit this Declaration in support of the proposed settlement that will resolve this litigation against the Defendants on behalf of a "Class" of persons who purchased common stock of TierOne Corporation ("TierOne" or the "Company") during the period from August 9, 2007 and May 14, 2010, inclusive, and were damaged thereby. Excluded from the Class are the Defendants, any members of Defendants' immediate families, any entity in which any Defendant has a controlling interest, directors and officers of TierOne, the affiliates, legal representatives, heirs, predecessors, successors and assigns of any such excluded party, and those who validly sought exclusion from this case.

[1] Unless otherwise defined, capitalized terms herein have the same meanings attributed to them in the Stipulation and Agreement of Settlement, dated May 25, 2012.

5. This Declaration is also submitted in support of the plan of allocation of the settlement's proceeds to Class Members (the "Plan of Allocation"), and in support of Lead Plaintiffs' Memorandum of Law in Support of Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Award to Lead Plaintiffs. (the "Fee Brief").

6. The Settlement was reached only after Lead Counsel's aggressive and comprehensive prosecution efforts, including, *inter alia*: (a) review and analysis of relevant filings made by TierOne with the United States Securities and Exchange Commission (the "SEC"); (b) review and analysis of defendants' public documents, conference calls and press releases; (c) review and analysis of securities analysts' reports and advisories concerning the Company; (d) review and analysis information readily obtainable on the Internet; (e) interviews of over a dozen witnesses with personal knowledge of the relevant facts through Lead Counsel's private investigators; (f) consultation with experts in banking and banking regulations, forensic accounting, and damages; (g) substantial motion practice, including the drafting of the Initial Complaint, Consolidated Amended Complaint and Second Amended Consolidated Complaint; (h) pressing and preserving the Class' claims in the bankruptcy court; (i) preparation and participation in extensive settlement negotiations with the aid of a nationally regarded mediator, Judge Layn R. Phillips (ret.); and (j) obtaining the settlement offer following arm's-length negotiations with defense counsel and prepare the documents necessary to obtain preliminary and final approval of the settlement.

I. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

7. On May 20, 2010 and thereafter, several actions were filed in the United States District Court for the District of Nebraska against Gilbert G. Lundstrom, Michael J. Falbo,

Eugene B. Witkowicz, and Charles W. Hoskins and TierOne Corp., alleging violations of Sections 10(b) and 20(a) of the Exchange Act of 1934.

8. On June 24, 2010, defendant TierOne filed for Chapter 7 bankruptcy.

9. By Report and Recommendation dated August 11, 2010, Chief Bankruptcy Judge Thomas Saladino determined that while proceedings in *Ray v. Lundstrom*, No. 8:10-cv-00199 are stayed as to TierOne pending resolution of TierOne's bankruptcy, the case may proceed against the Individual Defendants.

10. By Order dated October 12, 2010, the Court appointed the Valentino Group as Lead Plaintiffs and the Rosen Law Firm, P.A. as Lead Counsel.

11. By Orders dated December 2, 2010 and January 21, 2011, the Court consolidated these actions under the caption *Ray v. Lundstrom*, under No. 8:10-cv-00199 (the "Action).

12. On March 2, 2011, Lead Plaintiffs filed a Consolidated Amended Complaint alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated by the Securities and Exchange Commission ("SEC").

13. On May 2, 2011, the Individual Defendants filed a joint (omnibus) motion to dismiss the consolidated amended class action complaint. Defendants Laphen, Hoskins, and Falbo also filed separate, individual motions to dismiss and defendants Lundstrom and Witkowicz filed a separate, joint motion to dismiss. Defendants' primarily moved to dismiss on the grounds that complaint failed to plead: (a) falsity and materiality as the alleged false statements of loan loss reserves were merely estimates or forward looking statements with adequate cautionary language, (b) each individual defendants' scienter in making an allegedly false statements; (c) loss causation; and (d) and control person liability.

14. On August 23, 2011, in lieu of a response, the Court granted Lead Plaintiffs' motion for leave to file a second amended consolidated complaint.

15. On August 24, 2011, Lead Plaintiffs filed the operative second amended complaint (the "Complaint"), alleging: violations of Section 10(b) of the Exchange Act and Rule 10(b)-5 promulgated thereunder against defendants TierOne, Lundstrom, Witkowicz, and Hoskins; and violations of Section 20(a) of the Exchange Act against Lundstrom, Falbo, Witkowicz, Hoskins, and Laphen (collectively, the "Individual Defendants"). The Action was brought on behalf of all persons other than defendants who purchased common stock of TierOne between August 9, 2007 and May 14, 2010, inclusive (the "Class Period"). Plaintiffs' allege that Defendant misstated TierOne's true financial condition. According to the Complaint, TierOne's SEC filings and other public statements were materially false and misleading because: (a) TierOne failed to adequately disclose its systemic internal control deficiencies, and (b) TierOne misrepresented the quality of its loan portfolio by underreporting the allowance for loan losses on the TierOne's balance sheet and the provision for loan losses on the income statement.

16. On August 25, 2011, the Parties filed a joint notice of mediation and request for entry of proposed mediation reference order, indicating their agreement to pursue an early mediation in the Litigation. The order was issued on August 26, 2011.

II. OVERVIEW OF THE SETTLEMENT NEGOTIATIONS

17. On October 27, 2011, Lead Counsel, counsel for Defendants, and representatives of Defendants' insurer along with the parties and counsel in the ERISA Actions participated in a hard-fought all-day mediation with nationally regarded mediator retired U.S. District Judge (W.D. Okla.) Layn R. Phillips in Chicago, Illinois.

18. In preparation for the mediation, we prepared extensive mediation briefs. Our initial mediation submission was akin to an opposition to Defendants' motions to dismiss as it addressed the points and arguments that Defendants raised in their extensive motions to dismiss. We also submitted a damages analysis conducted by financial damages expert, John C. Hammerslough. After reviewing Defendants' mediation submissions, we researched and drafted a reply. Given the extensive investigation that culminated in the filing of the Complaint the pre-mediation briefing, Lead Plaintiffs and Lead Counsel were fully informed about the strengths and weaknesses of the Action.

19. With the aid of Judge Phillips the parties engaged in extensive discussions and arm's-length negotiations and agreed in principle to resolve this action through settlement in the amount of $3,100,000. Over the course of the next few weeks, however, Lead Counsel counsel and Defendants' counsel continued to engage in negotiations in order to hammer out the details of the Settlement.

20. On April 30, 2012, Lead Plaintiffs filed a motion for preliminary approval of the class action settlement. Because the plaintiffs in the ERISA Actions voiced concerns about the settlement documents, the parties notified the Court that revised settlement documents would be filed addressing the ERISA plaintiffs' concerns; avoiding unnecessary motion practice.

21. On May 29, 2012, Lead Plaintiffs filed a new motion for preliminary approval of the class action settlement and a new Stipulation of Settlement dated May 25, 2012. On July 12, 2012, the Court entered an Order preliminarily approving the settlement; certifying the Class for settlement purposes; providing for Notice; and setting the date of the Settlement Hearing for October 25, 2012 at 1 p.m. (the "Preliminary Approval Order"). As demonstrated herein and in the accompanying Settlement Brief, the Settlement is fair, reasonable and adequate, and should

be approved by this Court. The Settlement confers a substantial benefit on the Class, and eliminates the risk of continued litigation under circumstances where a favorable outcome cannot be assured. Moreover, the proposed Plan of Allocation is a fair and reasonable method for distributing the proceeds of the Settlement to the members of the Class, and, therefore, also should be approved.

22. As set forth herein, and in the accompanying Settlement Brief, the settlement represents approximately 13.5% of maximum provable damages - *should* a class be certified, *should* all of the claims alleged survive to trial, *should* a jury adopt Lead Plaintiffs' expert's damages model, and *should* TierOne and other defendants have the ability to pay such a judgment. An immediate cash settlement that provides a substantial benefit in the face of these challenges – not to say anything of the appeals that would likely be filed should Lead Plaintiffs prevail -- is a favorable outcome. In light of these circumstances, and especially when the settlement is the product of comprehensive legal and factual investigation, vigorous litigation, and arm's-length negotiations by experienced counsel, there is ample support for a finding that the Settlement is fair, reasonable and adequate.

23. For creating this substantial benefit, Plaintiffs' Counsel request a fee of one-third (33.3%) of the Settlement Fund plus interest earned thereon, and reimbursement of litigation expenses. Here, the total lodestar or value of legal services performed by Lead Counsel and counsel working under their direction ("Plaintiffs' Counsel") in the Action is $527,007. Counsels' fee request is equal to approximately 1.96 times their lodestar. That counsel's requested fees here are in line with the multipliers awarded in other similar class actions demonstrates that the fee request is clearly reasonable.

24. Further, Lead Counsel's requested 33.3% fee is also within the reasonable range of percentages typically awarded in securities class actions in the Eighth Circuit.

25. The favorable reaction of the members of the Class also supports the reasonableness of the Settlement and the fee request. The date for filing objections to the Settlement is October 11, 2012. The date for requests for exclusion to the Settlement is September 14, 2012. To date, there have been only seven requests for exclusion filed and two objections, following the withdrawal of one objection. *See* Declaration of Josephine Bravata, attached hereto as Exhibit 2 to the Index of Exhibits filed herewith ("Bravata Decl."), ¶¶ 9-10. The two objections represent only 300 shares (Bravata Decl., Ex. E) out of the over 12 million estimated damaged shares. To date, the claims administrator, Strategic Claims Services ("SCS") has received 1,848 claims. Thus, the overwhelming majority of the Class clearly supports the Settlement.

III. CLASS NOTICE

26. At Lead Counsel's direction, and pursuant to the Preliminary Approval Order, Summary Notice of the Settlement was published in *Investor's Business Daily* and electronically on the *GlobeNewswire* on August 9, 2012 by SCS. *See* Bravata Decl., ¶ 7. A copy of the Notice and Claim Form, Preliminary Approval Order, Stipulation, and Complaint were made available on SCS's website, www.strategicclaims.net. *Id.*, at ¶ 4.

27. SCS additionally mailed, by first class mail, the Notice and Claim Form approved by the Court to all individuals and organizations identified by TierOne's transfer agent, and individuals identified by nominee accounts held by major brokerages and institutional groups. *Id.*, at ¶ 4-5. To date, 13,986 Notices and Claim Forms have been mailed. *Id.*, at ¶ 5.

28. On returned mail where forwarding addresses were provided by the Post Office, upon notice SCS immediately re-mailed Notice and Claim Forms. On mail that was returned "undeliverable" by the Post Office, SCS "skip-traced" to obtain updated addresses and re-mailed the Notice and Claim Forms if updated addresses were provided. *Id.*, at ¶ 6.

29. To date, SCS has received 1,848 claims. The claims filing deadline was September 14, 2012. *Id.*, at ¶ 11.

30. The Notice and Claim Form was also made available on Lead Counsel's website: http://www.rosenlegal.com/uploads/cases/TierOne_Notice_ClaimForm.pdf.

IV. PLAN OF ALLOCATION

31. Pursuant to the Preliminary Approval Order, the proposed Plan of Allocation herein was fully described in Paragraph 7 of the Notice sent to the Class. The Plan of Allocation was formulated by Lead Counsel, in consultation with a damages expert, John C. Hammerslough, with the goal of reimbursing Class members in a fair and reasonable manner.

32. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed among Class members who timely submit appropriate Claim Forms. Pursuant to the Plan of Allocation, SCS, under the direction of Lead Counsel will determine each claimant's *pro rata* share of the Net Settlement Fund based upon each claimant's Net Recognized Loss. Each similarly situated Authorized Claimant will receive a *pro rata* share of the Net Settlement Fund (*i.e.*, $3,100,000 plus interest, less attorneys' fees and expenses and awards to Lead Plaintiffs), with that share to be determined by the ratio that the Authorized Claimant's allowed claim bears to the total allowed claims of all Authorized Claimants.

33. The Plan of Allocation is tailored to equitably compensate the losses of the Class Members and reflects the partial corrective disclosures that occurred during and through the

Class Period. Thus, the artificial inflation is decreased over time during the Class Period in relation to each of the partial corrective disclosures.

34. Lead Counsel, with consultation of its damages expert, determined that the maximum amount of artificial inflation caused by the alleged fraud on TierOne's stock price was $2.64/share. The first partial corrective disclosure occurred on January 15, 2009 which caused TierOne stock to fall $1.28/share. Thus, for purchases after January 15, 2009, the artificial inflation recognized by the Plan of Allocation is $1.28/share less or $1.36/share. *See* Notice at 5, attached as Ex. A to the Bravata Declaration. The artificial inflation is lowered again for the other corrective disclosures in this Action.

35. In short, the Plan of Allocation has a rational basis and does no discriminate against Class Members as Authorized Claimants will receive their *pro rata* share of Net Settlement Fund based upon the number of shares they acquired during the Class Period.

V. THE FAIRNESS AND REASONABLENESS OF THE SETTLEMENT

36. Lead Counsel, experienced securities class action attorneys, evaluated the prospects of obtaining a better result at trial, one that would withstand later attack. The following factors were taken into consideration in determining that the Settlement is reasonable, fair and adequate. A copy of Lead Counsel, The Rosen Law Firm P.A.'s firm resume is attached as Exhibit 5 of the Index. A copy of counsel working under the direction of Lead Counsel, Ryan and Maniskas LLP is attached as Exhibit 6 of the Index.

37. First and foremost, there is no guarantee that Plaintiffs' claims would survive the pleadings stages or at the proof stages. Indeed, as described in their Motions to Dismiss, Defendants vigorously contested a number of issues with respect to Plaintiff's allegations. Defendants contend that Plaintiffs failed to adequately allege falsity and materiality, as the

alleged false statements of loan losses reserves were estimate or predication and accompanies by adequate cautionary language. Defendants also argue that Plaintiffs failed to adequately allege that each individual defendant made knowingly false statement, i.e. make false statements with scienter.

38. While Plaintiffs believe they have adequately alleged knowing or intentional conduct that would overcome these defenses, alleging such conduct to satisfy the PSLRA is notoriously difficult and would have presented a formidable challenge at the proof stage—since no one ever admits of knowingly making false statements to investors. At the proof stage knowledge would have to be established through circumstantial evidence.

39. Defendants would also likely present expert testimony concerning loss causation. Indeed, as set forth in the Notice and argued throughout this case, Defendants will likely hire experts to opine that the alleged stock drops were not the proximate cause of the revelation of the fraud; or attempt to demonstrate that a portion of the alleged stock drops were attributable to things unrelated to the fraud or were instead attributable to general market movement. This would have involved the proverbial "battle of the experts," and fraught with uncertainty and risk as Plaintiffs could not be assured that the fact finder would credit the testimony of Plaintiffs' or Defendants' prospective experts.

40. Expensive and protracted expert discovery on banking regulations and accounting rules would come into play as well. Plaintiffs would rely on such experts to demonstrate the obviousness of a particular rule or regulation which would be probative as to whether a particular defendant was acting knowingly or merely negligently.

41. Plaintiffs also faced the risk of establishing the proper amount of damages. Plaintiffs' best case scenario, as estimated by Plaintiffs' damages expert, determined class-wide

damages of approximately $23 million. These figures were hotly disputed by Defendants and they estimated damages to be "closer" to the settlement value of $3.1 million. There was no assurance that the fact-finder would agree with Plaintiffs' best case scenario of damages.

42. Beyond the costs and challenges posed by gathering proof of Plaintiffs' claims in discovery, prosecuting the case through summary judgment and trial would have first required Lead Plaintiffs to secure class certification. There is no guarantee that this would occur. While believing this action is squarely in the purview of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure governing damages Class Actions, Plaintiffs' Counsel is also cognizant of various appellate court decisions across the country which have heightened the class certification inquiry in recent years, as well as the Court's discretion under the federal rules to decertify a class at any point in time before final judgment is entered.

43. Similarly, the risks inherent in trying to prove the various elements of the claims alleged have been increased by the ever-changing legal landscape in the area of securities class actions.

44. Finally, there are significant pragmatic considerations that must be taken into account with respect to this Action. TierOne has filed a Chapter 7 bankruptcy petition and is nearly judgment proof. The Individual Defendants' wealth was tied to their ownership of TierOne securities and their compensation from TierOne. TierOne's stock is worthless. In addition, TierOne and certain individual defendants are subject to ongoing civil, regulatory, and upon information and belief, criminal investigations or proceedings, which makes future recovery after a prolonged litigation questionable—as defense costs chip-away at any remaining insurance coverage as the various related matters move forward--in this Action alone, there are four law firms representing the various Defendants. To date, over $6.9 million of insurance

proceeds out of $25 million in available proceeds have been spent on defense costs in connection with the various matters--according to filings made in the Bankruptcy Court. Thus, the Settlement eliminates the risk that Plaintiffs could receive no recovery.

45. As a result, there are significant risks to the continuation of this Action. Thus, in view of the Company's strained financial condition, the Settlement, which offers an immediate and definite cash benefit to Class members, is clearly preferable to continued and protracted litigation.

VI. THE FEE APPLICATION

46. The Notice informed Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 33.3% of the Settlement Fund, plus interest, and for reimbursement of counsel's litigation expenses in an amount not to exceed $100,000. Similar disclosures were made in the Summary Notices that were published in print and on-line. As set forth in the Fee Brief, awards of 33.3% of the common fund created by the efforts of counsel are common within the Eighth Circuit.

47. Lead Counsel achieved a favorable result for the Class at the risk and expense to themselves. Throughout this litigation, Plaintiffs' Counsel were committed to the interests of the Class, and invested the time and resources necessary to resolve the Class' claims. Moreover, Plaintiffs' Counsel took this case on a contingency basis, with no assurance of success.

Plaintiffs' Counsel's Work and Expertise

48. The total number of hours expended by attorneys and paralegals employed by Plaintiffs' Counsel is over 913 hours. This number is derived from the time records regularly maintained by Lead Counsel the Rosen Law Firm, P.A. ("Rosen Firm") and counsel working under the direction of the Rosen Firm, Ryan and Maniskas LLP ("Ryan Firm").

Rosen Firm

49. A listing of the professionals at the Rosen Firm who worked on this matter, the number of hours spent by each such professional, and their hourly rates, is set forth in detail in the Declaration of Laurence Rosen on Behalf of the Rosen Law Firm, P.A. Concerning Fees and Expenses ("Rosen Fee Decl.") at ¶5, attached hereto as Exhibit A. The total value of the services performed in this case by Rosen Firm, based upon our current rates, is $400,757 for 724 hours of professional time expended.

Ryan Firm

50. A listing of the professionals at the Ryan Firm who worked on this matter, the number of hours spent by each such professional, and their hourly rates, is set forth in detail in the Declaration of Katherine M. Ryan on Behalf Ryan & Maniskas, LLP Concerning Attorneys' Fees and Expenses ("Ryan Fee Decl.") at ¶ 5, attached hereto as Exhibit B. The total value of the services performed in this case by Ryan Firm, based upon their current rates, is $126,250.00 for 189.9 hours of professional time expended.

51. In total, Plaintiffs' Counsel have expended 913.9 hours in the prosecution and investigation of this litigation. The resulting lodestar is $527,007. An award of 33.3% of the Settlement would equal $1,033,333. This award, results in a 1.96 multiplier and is in line with fee awards in other securities class actions and compensates Plaintiff's Counsel for the significant risk of non-payment that Counsel bore in litigating the case.

52. Counsel are experienced and skilled practitioners in the securities litigation field, and have a successful track record in such securities and other complex class action cases, as reflected in the firm resume. *See* Firm Resumes of the Rosen Firm and Ryan Firm, attached as 5 & 6, to the Index, respectively.

Standing and Caliber of Opposing Counsel

53. The quality of the work performed by Plaintiffs' Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition.

54. Plaintiffs were opposed in this litigation by attorneys from Jenner & Block LLP (representing Defendant Charles W. Hoskins), Foley & Lardner, LLP (representing Defendant Michael J. Falbo), Koley Jessen P.C., L.L.O. (representing Defendants Gilbert G. Lundstrom and Eugene B. Witkowicz) and Kutak Rock LLP (representing Defendant James A. Laphen). These firms are all nationally respected law firms that are highly experienced in complex litigation. This required Plaintiffs' Counsel to perform at the highest professional level.

55. In the face of this knowledgeable, formidable, and well-financed opposition, Plaintiffs' were nevertheless able to develop a case that was sufficiently strong to persuade the Defendants to settle it on terms that were favorable to the Class.

The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk, Contingent Securities Cases

56. This prosecution was undertaken by Plaintiffs' Counsel entirely on a contingent fee basis. The risks assumed by counsel in bringing these claims to a successful conclusion are described above and in the Settlement Brief.

57. Those risks are also relevant to an award of attorneys' fees. Here, the risks assumed by Plaintiffs' Counsel, and the time and expenses incurred without any payment, were extensive, and are described in detail above and in the accompanying Fee Brief.

58. From the outset, Plaintiffs' Counsel understood that they were embarking on a complex, expensive and probably lengthy litigation with no guarantee of ever being compensated for the enormous investment of time and money the case would require. In undertaking that responsibility, Plaintiffs' Counsel were obligated to ensure that sufficient resources were

dedicated to the prosecution of this litigation, and that funds were available to compensate staff and to cover the considerable out-of-pocket costs that a case such as this one requires.

59. With an average lag time of a few years for securities class actions to conclude, the financial burden on contingent fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs Counsel has received no compensation during the course of this litigation and has incurred $77,907.41 in out-of-pocket expenses in prosecuting this action for the benefit of the Class.

60. Counsel also bore the risk that no recovery would be achieved. As set forth herein and in the accompanying Settlement and Fee Briefs this case presented a number of risks and uncertainties that, at any juncture, could have prevented recovery. Despite the most vigorous and competent of efforts, success in contingent fee litigations, such as this one, is never assured.

61. The commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint and to take a case to trial. Only as a result of such efforts will sophisticated defendants engage in serious settlement negotiations at meaningful levels.

62. As a result of extensive and persistent efforts in the face of substantial risks and uncertainties, Lead Counsel achieved a significant recovery for the benefit of the Class. In circumstances such as these, and in consideration of Lead Counsel's hard work and the favorable result achieved, the requested 33.3% fee, representing a multiplier of 1.96 is reasonable and should be approved.

The Reaction of the Class to the Requested Fee

63. As set forth above, over 13,000 Claim Packets have been mailed to potential Class Members. The Notice advised Class Members that Lead Counsel would apply for an award of attorneys' fees not to exceed 33.3% of the Settlement Fund (plus interest). The Summary Notice that was published in *Investor's Business Daily* and electronically on *GlobeNewswire* on August 9, 2012. Bravata Decl., ¶ 7, & Ex. C.

64. To date only one objection has been received challenging the requested fee award, submitted by Gary Peck- a holder of 200 shares of TierOne stock. *See* Bravata Decl., Ex. D. Mr. Peck lacks standing to object because he has also requested exclusion from the Class. *Id.* Therefore, his objection should be overruled.

65. Given that over 13,000 copies of the Notices were mailed to Class Members, including sophisticated institutional and professional investors, and summary notices were published in *Investor's Business Daily* and online on *Globenewswire.com,* Mr. Peck's purported objection does nothing to change the fact that the Class has overwhelmingly approved the requested fee.

VII. REIMBURSEMENT OF THE REQUESTED EXPENSES IS FAIR AND REASONABLE

66. The Notice (Bravata Decl., Ex. A) and Summary Notices (Bravata Decl., Ex. C) stated that Lead Counsel would seek reimbursement of expenses in an amount not to exceed $100,000. To date, no specific objection to the requested expenses. Because Lead Counsel is seeking an amount materially less than $100,000, the appropriateness of requested reimbursement of expenses is heightened.

67. Plaintiffs' Counsel has incurred $77,907.41 in litigation expenses reasonably and actually incurred by Plaintiffs' Counsel in connection with the commencing and prosecuting the claims against Defendants.

68. From the beginning of the case, Plaintiffs' Counsel was aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the case was successfully resolved. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds they advanced to prosecute this action. Thus, counsel was motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

69. Lead Counsel expended a total of $75,619.54 in unreimbursed expenses in connection with the prosecution of this litigation. A listing of the expenses incurred by the Rosen Firm compiled from the regularly maintained records, are set forth in the Rosen Fee Decl., ¶ 7 (attached as Exhibit A hereto).

70. The expenses incurred pertaining to this case is reflected in the books and records of Lead Counsel. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. They are also available, upon request, for inspection by the Court.

71. The litigation expenses for which Lead Counsel seek reimbursement were largely incurred for professional expert and consultant fees such as the services of forensic accountants, damages consultants, banking experts, and private investigators; and for the valuable services of Judge Phillips (Ret.) as mediator and were critical to the prosecution and successful resolution of this action.

72. The other expenses for which Lead Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. Those expenses include, among others, telephone conferencing and facsimile charges, postage and delivery expenses, filing fees, photocopying and scanning, and travel, lodging and meals in connection with court appearances, mediation attendance, and meetings with clients and defense counsel.

73. Likewise, Lead Counsel also seeks reimbursement of expenses incurred by the Ryan Firm that were necessary to the successful prosecution of this Action. Those unreimbursed expenses total $2,287.87 and consist of expenses that a normal hourly paying client would be billed. *See* Ryan Fee Decl., Ex. B, hereto.

74. All of the litigation expenses incurred by Plaintiffs' Counsel totaling, $77,907.41, were necessary to the successful prosecution and resolution of the claims against Defendants.

75. In light of the inherently complex nature of securities class action litigation and the difficulties in pleading and ultimately proving liability, as well as proving causation and damages at trial, the litigation expenses incurred were reasonable and necessary to pursue the interests of the Class. Accordingly, Lead Counsel respectfully submits that the expenses incurred are reasonable in amount.

VIII. A NOMINAL AWARD TO LEAD PLAINTIFF IS WARRANTED

76. Like the requested fee and expenses, the Notice and Summary Notices advised Class Members that Lead Plaintiffs would seek an award of $2,500. No specific objection has been submitted relating to these awards.

77. Lead Plaintiffs each seek an award for their lost time and efforts in prosecution and oversight of this action pursuant to the PSLRA, in the amount of $2,000 each, which will

total $6,000. Lead Plaintiffs were actively involved in this litigation, reviewed the various complaints, participated in the settlement negotiations, discussed case strategy with Lead Counsel, and engaged in numerous communications with counsel. Lead Plaintiffs' efforts in this case were important and led to the successful resolution of this matter. Additionally, Lead Plaintiff Vince Valentino actually appeared at the Preliminary Approval hearing on behalf of the Lead Plaintiff Group.

78. Given these important contributions and the time and effort expended by Lead Plaintiffs a nominal award of $2,000 each is warranted.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 25, 2012

/s/ Phillip Kim
Phillip Kim

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID G. RAY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. TIERONE CORPORATION, GILBERT G. LUNDSTROM, EUGENE B. WITKOWICZ, MICHAEL J. FALBO, AND CHARLES W. HOSKINS, Defendants.	Case No. 8:10-cv-00199 **DECLARATION OF LAURENCE M. ROSEN ON BEHALF OF THE ROSEN LAW FIRM, P.A. CONCERNING ATTORNEYS' FEES AND EXPENSES**
DOUGLAS L. STEJSKAL, Plaintiff, v. GILBERT G. LUNDSTROM, Defendant.	Member Case No. 4:10-cv-3177
DOUGLAS L. STEJSKAL, Plaintiff, v. JAMES A. LAPHEN, Defendant.	Member Case No. 8:10-cv-332

I, Laurence M. Rosen, declare and state, under penalty of perjury, that the following is true and correct to the best of my knowledge, information and belief:

1. I am an attorney duly licensed to practice law in New York, New Jersey, California and Florida. I am duly admitted *pro hac vice* in this matter.

2. I am the managing attorney of The Rosen Law Firm, P.A., Lead Counsel for Lead Plaintiffs and the Class in this litigation (the "Action"). I have personal knowledge of the matters set forth herein and, if called upon, I could and would completely testify thereto.

3. The Rosen Law Firm, P.A. has been involved in this Action from the pre-filing investigation beginning in April 2010 and continuing throughout all other aspects of this Action.

4. My firm rendered the following legal services in connection with the prosecution of this Action: conducted lengthy case investigation and assessment of the factual and legal bases of the action; communicated with clients; drafted the initial complaint; prepared the motion for appointment of lead plaintiffs and lead counsel; researched and prepared the consolidated amended complaints; identified and developed leads for witnesses and interview over a dozen witnesses; pressed and preserved the Class claims in Bankruptcy Court; consultation with experts in banking and banking regulations, forensic accounting, and damages; participated in mediation and negotiated and prepared the settlement documents, and conferring with clients about the Settlement.

5. The chart below is a summary of time expended by the attorneys and professional staff of the Rosen Law Firm, P.A. on this Action, and the lodestar calculation based on their current billing rate. The chart was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. Time spent in preparing this Declaration in support of my firm's application for fees and reimbursement of expenses and any other time related to billing or periodic time reporting has not been included in this chart:

Professional (position)*	Hourly Rate	Hours Worked	Total Lodestar
Laurence Rosen (P)	$750	157.1	$117,825
Phillip Kim (A)	$575	336.7	$193,603
Christopher Hinton (OC)	$575	74.9	$43,068

Timothy Brown (A)	$475	4.1	$1,948
Jonathan Horne (A)	$375	28.5	$10,688
Yu Shi (A)	$340	6.8	$2,295
Kevin Chan (A)	$325	55.5	$18,038
Leonid Prilutskiy (PL)	$220	2.1	$469
Erica Stone (PL)	$220	4.0	$880
Yevgeniy Yalon (PL)	$220	5.1	$1,122
Zachary Halper (PL	$220	3.0	$660
Ilya Glinchenko (PL)	$220	46.2	$10,164
TOTALS:		724.0	$400,757

* Partner (P), Associate (A), Of Counsel (OC), Paralegal (PL). Law Student (LS)

6. From the inception of this Action through September 25, 2012, my firm performed a total of 724 professional work hours in the prosecution of this Action. The total lodestar amount for my firm is $400,757.

7. The Rosen Law Firm expended a total of $75,619.54 in un-reimbursed expenses in connection with the prosecution of this Action broken down as follows:

Online Legal and News Research, & Document Retrieval	$ 1,609.16
Private Investigators	11,468.27
Mediation Fees	9,862.50
Financial Consultants for Damages	8,700.00
Banking & Regulatory Consultant	3,200.00
Forensic Accountant	29,400.00
Filling fees/Service of Process, Pacer fees	402.40
Travel/transportation	7,198.06
Photocopying/Scanning	1,627.47
FedEx, Postage & Messenger	341.58
Press Releases to Class Members	1,685.00
Conference Calling Service & E-Fax Service	125.10
Total expenses for Rosen Law Firm	**$ 75,619.54**

8. The expenses set forth above are reflected in the firm's books and records. These books and records are prepared from expense vouchers, check records, and financial statements prepared in the normal course of business for my firm and are an accurate record of the expenses incurred in the prosecution of this Action.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 25th day of September 2012 at New York, NY.

Laurence Rosen, Esq.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID G. RAY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. TIERONE CORPORATION, GILBERT G. LUNDSTROM, EUGENE B. WITKOWICZ, MICHAEL J. FALBO, AND CHARLES W. HOSKINS, Defendants.	Case No. 8:10-cv-00199 **DECLARATION OF KATHARINE M. RYAN ON BEHALF OF RYAN & MANISKAS, LLP CONCERNING ATTORNEYS' FEES AND EXPENSES**
DOUGLAS L. STEJSKAL, Plaintiff, v. GILBERT G. LUNDSTROM, Defendant.	Member Case No. 4:10-cv-3177
DOUGLAS L. STEJSKAL, Plaintiff, v. JAMES A. LAPHEN, Defendant.	Member Case No. 8:10-cv-332

I, Katharine M. Ryan, declare and state, under penalty of perjury, that the following is true and correct to the best of my knowledge, information and belief:

1. I am an attorney duly licensed to practice law in Pennsylvania.

2. I am the managing partner of Ryan & Maniskas, LLP, Counsel for Plaintiffs and the Class in this litigation (the "Action"). I have personal knowledge of the matters set forth herein and, if called upon, I could and would compently testify thereto.

3. Ryan & Maniskas, LLP ("R&M") has been involved in this Action from the pre-filing investigation beginning in early 2010 and continuing throughout all other aspects of this Action.

4. My firm rendered the following legal services in connection with the prosecution of this Action: conducted lengthy case investigation and assessment of the factual and legal bases of the action; communicated with clients; prepared the motion for appointment of lead plaintiff and lead counsel; researched and worked on the consolidated amended complaints; legal research and drafted parts of mediation statement.

5. The chart below is a summary of time expended by the attorneys of R&M on this Action, and the lodestar calculation based on their current billing rate. The chart was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. Time spent in preparing this Declaration in support of my firm's application for fees and reimbursement of expenses and any other time related to billing or periodic time reporting has not been included in this chart:

Professional	**Hourly Rate**	**Hours Worked**	**Total Lodestar**
Katharine M. Ryan	$700	123.1	$86,170.00
Richard A. Maniskas	$600	66.8	$40,080.00
TOTALS:		189.9	$126,250.00

6. From the inception of this Action through September 17, 2012, my firm performed a total of 189.9 professional work hours in the prosecution of this Action. The total lodestar amount for my firm is $126,250.00

7. R&M expended a total of $2,287.87 in un-reimbursed expenses in connection with the prosecution of this Action broken down as follows:

LIST OF UNREIMBURSED EXPENSES

Category	Amount
Research	$2,030.00
Postage	$125.37
Phone	$132.50

8. The expenses set forth above are reflected in the firm's books and records. These books and records are prepared from expense vouchers, check records, and financial statements prepared in the normal course of business for my firm and are an accurate record of the expenses incurred in the prosecution of this Action.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of September 2012 at Wayne, Pennsylvania.

Katharine M. Ryan

Katharine M. Ryan, Esq.