

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

<p>Plaintiff,</p> <p>v.</p> <p>HORIZON BANCORP, INC., CRAIG M. DWIGHT, and MARK E. SECOR,</p> <p>Defendants.</p>
--

**Case No.**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff individually and on behalf of all others similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States ("U.S.") Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Horizon Bancorp, Inc. ("Horizon" or the "Company"), analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial, additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants that purchased or otherwise acquired Horizon securities between March 9, 2022 and March 10, 2023, both dates inclusive (the "Class Period"), seeking to

recover damages caused by Defendants' violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Horizon operates as the bank holding company for Horizon Bank, which provides a range of commercial and retail banking services.

3. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company's business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company maintained deficient internal accounting controls relating to its classification of certain loan balances and securities; (ii) as a result of the foregoing deficiencies, throughout 2022 the Company issued quarterly financial statements containing errors that would require subsequent revision; (iii) restatement of the foregoing financial statements would hinder the Company's ability to timely file its annual report for 2022; and (iv) as a result, the Company's public statements were materially false and misleading at all relevant times.

4. On March 10, 2023, after trading hours, Horizon filed a notice of the Company's inability to timely file its Annual Report on Form 10-K for the year ended December 31, 2022 with the SEC, announcing receipt of a notice from NASDAQ as a result of failing to timely file its annual report, as well as disclosing that it had identified material weaknesses in its internal controls. Specifically, the material weakness related to:

(i) accounting revisions of previously issued financial statements with respect to the classification of sold commercial loan participation balances, the reporting of indirect loan dealer reserve asset balances and related amortization expense and the classification of certain available for sale and held to maturity securities from private labeled mortgage-backed pools to federal agency mortgage pool, which revisions were previously disclosed in the Earnings Release and the Company's Form 10-Q filings during 2022, in addition to errors in previously issued financial statement disclosures relating to the transfer of available for sale to held to maturity

securities and the cash flow classification of repurchases of outstanding stock from an investing activity to a financing activity, which will be disclosed for the first time in the 2022 Form 10-K, and (ii) a calculation error in the Company's public float as noted above.

5. On this news, Horizon's stock price fell \$1.43 per share, or 10.96%, to close at \$11.62 per share on March 13, 2023.

6. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

7. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

9. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Pursuant to Horizon's most recently filed annual report, as of March 13, 2023, the Company had 43,577,689 shares of common stock outstanding. Horizon's securities trade on the Nasdaq Global Select Market ("NASDAQ"). Accordingly, there are presumably hundreds, if not thousands of investors in Horizon securities located within the U.S., some of whom undoubtedly reside in this Judicial District.

10. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

## PARTIES

11. Plaintiff, as set forth in the attached Certification, acquired Horizon securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

12. Defendant Horizon is an Indiana corporation with principal executive offices located at 515 Franklin Street, Michigan City, Indiana 46360. Horizon's common stock trades in an efficient market on the NASDAQ under the ticker symbol "HBNC".

13. Defendant Craig M. Dwight ("Dwight") has served as Horizon's Chief Executive Officer at all relevant times.

14. Defendant Mark E. Secor ("Secor") has served as Horizon's Chief Financial Officer at all relevant times.

15. Defendants Dwight and Secor are sometimes referred to herein collectively as the "Individual Defendants."

16. The Individual Defendants possessed the power and authority to control the contents of Horizon's SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Horizon's SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of their positions with Horizon, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

17. Horizon and the Individual Defendants are collectively referred to herein as “Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

18. Horizon operates as the bank holding company for Horizon Bank, which provides a range of commercial and retail banking services.

### **Materially False and Misleading Statements Issued During the Class Period**

19. The Class Period begins on March 9, 2022, when Horizon filed an Annual Report on Form 10-K with the SEC, reporting the Company’s financial and operational results for the quarter and year ended December 31, 2021 (the “2021 10-K”). The 2021 10-K stated, in relevant part:

Management is responsible for the preparation and presentation of the consolidated financial statements and related notes on the preceding pages. The statements have been prepared in conformity with accounting principles generally accepted in the United States of America appropriate in the circumstances and include amounts that are based on management’s best estimates and judgments. Financial information elsewhere in the Annual Report is consistent with that in the consolidated financial statements.

In meeting its responsibility for the accuracy of the consolidated financial statements, management relies on Horizon’s system of internal accounting controls. This system is designed to provide reasonable assurance that assets are safeguarded and transactions are properly recorded to permit the preparation of appropriate financial information. The system of internal controls is supplemented by a program of internal audits to independently evaluate the adequacy and application of financial and operating controls and compliance with Company policies and procedures.

20. Further, with respect to the Company’s disclosure controls and procedures, the 2021 10-K stated, in relevant part:

### **Disclosure Controls and Procedures**

Under the supervision of and with the participation of its management, including the Chief Executive Officer and Chief Financial Officer, Horizon has evaluated the effectiveness of the design and operation of its disclosure controls (as defined in Rule 13a–15(e) of the Securities Exchange Act of 1934 (the “Exchange Act”)) as of the end of the period covered by this report. ***Based on such evaluation, such officers have concluded that, as of the evaluation date, Horizon’s disclosure controls and procedures are effective to ensure that the information required to be disclosed by Horizon in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms and are designed to ensure that information required to be disclosed in those reports is accumulated and communicated to management as appropriate to allow timely decisions regarding disclosure.***<sup>1</sup>

### **Management’s Report on Internal Control Over Financial Reporting**

Management of Horizon is responsible for establishing and maintaining effective internal control over financial reporting as defined in Rule 13a–15(f) under the Securities Exchange Act of 1934. Horizon’s internal control over financial reporting is designed to provide reasonable assurance to the Company’s management and Board of Directors regarding the preparation and fair presentation of published financial statements.

Management assessed the effectiveness of Horizon’s internal control over financial reporting as of December 31, 2021. In making this assessment, management used the criteria set forth in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission. ***Based on this assessment, management has determined that Horizon’s internal control over financial reporting as of December 31, 2021 is effective based on the specified criteria.***

21. Appended to the 2021 10-K as exhibits were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by the Individual Defendants, attesting that the “information contained in [the 2021 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

22. On April 27, 2022, Horizon issued a press release announcing the Company’s Q1 2022 results. The press release stated, in relevant part:

---

<sup>1</sup> All emphases herein are added unless otherwise specified.

“The intentional build out of Horizon’s lending teams, technology, durable customer relationships, and low-cost Midwest deposit franchise is reflected in the Company’s first quarter loan growth, higher fees and pre-tax, pre-provision net income, and record earnings,” [Defendant] Dwight said. “We believe our asset sensitive balance sheet, strong credit quality and scalable business model will continue to provide an excellent foundation for organic growth in commercial and consumer lending, revenue and profits, along with incremental improvement in operating leverage through 2022.”

\*\*\*

“Sequential quarter net interest margin expansion begins to illustrate the Company’s asset sensitive balance sheet positioning.” [Defendant] Dwight said. “We expect to see continued NIM improvement in 2022 driven by both rates and loan volume, along with deposit betas that we believe will remain in line with or better than in-footprint competition, given Horizon’s mix of commercial and retail relationships, strong marketplace positioning and conservative expectations for higher-priced deposit runoff.”

\*\*\*

“Our 2.03% annualized non-interest expense to average assets continues to represent an improvement over the prior quarter and the first quarter supports our full-year 2022 target of less than 2% for this performance metric,” [Defendant] Dwight said. “Even with nationwide wage inflation and the ongoing operating costs associated with our branch acquisition last fall, we believe our scalable and technology-enabled model, along with our disciplined expense management culture and annual branch network review process, will enable us to achieve our target for the full year.”

23. On April 28, 2022, Horizon hosted an earnings call with investors and analysts to discuss the Company’s Q1 2022 results (the “Q1 2022 Earnings Call”). During the scripted portion of the Q1 2022 Earnings Call, Defendant Dwight stated, in relevant part:

[. . .] Horizon completed the first quarter reporting record earnings of \$0.54 per share which compares favorably to the \$0.49 per share reported for the fourth quarter. Horizon’s financial metrics are notable at quarter end as we reported return on average assets of 1.31%, return on average tangible equity of 17.7% and an efficiency ratio of 58.7%. Driving the first quarter results were an increase in net interest margin, annualized double-digit organic commercial and consumer loan growth, additional revenue from the acquired offices and the cost saves achieved from the 10 branch closures. Given the size of our balance sheet, highly efficient operations and talented workforce, we believe Horizon is well positioned to

capitalize on significant organic and strategic growth opportunities within our attractive Midwestern markets.

\*\*\*

We have a positive earnings outlook for 2022 which we believe will provide us another opportunity to favorably distinguish Horizon from our peers. To further support that we are a growth company, Horizon's compounded annual growth rate from 2002 to 2021 were 13% for total assets and 20% for net income. Horizon's ability to grow earnings faster than total assets illustrates the company's ability to efficiently increase the bottom line.

\*\*\*

Now for a quick loan update. Core commercial loan growth for the first quarter, excluding PPP and sold participations, was reported at a 13.5% annualized growth rate, as we continue to see loan growth across most business sectors. Contributing to the commercial loan growth is the increase in number of loan officers, an increase in commercial line of credit outstandings, rebound in Midwest manufacturing and regional infrastructure investments. In addition, we have a good momentum going into the second quarter with a commercial pipeline of approximately \$156 million, up from the first quarter's pipeline of approximately \$120 million.

\*\*\*

[G]iven our first quarter production results, current strong loan pipelines, low unemployment rates and pent-up consumer demand, we are adjusting two of our full year 2022 loan growth goals upward and increasing our return on average assets outlook. For commercial loans, excluding PPP loans, we currently expect growth in the range of 10% to 14% which is an increase from our 10% forecast in December 2021. For consumer loans, we currently expect to grow in the range of 10% to 14%, up from our original forecast of 5% to 9%. We are increasing our return on average asset outlook from 1.2% to greater than 1.3%.

24. On May 5, 2022, Horizon filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarter ended March 31, 2022 (the "Q1 2022 10-Q"). With respect to the Company's disclosure controls and procedures, the Q1 2022 10-Q stated, in relevant part:

Based on an evaluation of disclosure controls and procedures as of March 31, 2022, Horizon's Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of Horizon's disclosure controls (as defined in Exchange Act Rule 13a-15(e) of the Securities Exchange Act of 1934 (the "Exchange Act")). **Based**



*on such evaluation, such officers have concluded that, as of the evaluation date, Horizon’s disclosure controls and procedures are effective to ensure that the information required to be disclosed by Horizon in the reports it files under the Exchange Act is recorded, processed, summarized and reported within the time specified in Securities and Exchange Commission rules and forms and are designed to ensure that information required to be disclosed in those reports is accumulated and communicated to management as appropriate to allow timely decisions regarding disclosure.*

25. Appended to the Q1 2022 10-Q as exhibits were signed certifications pursuant to SOX by the Individual Defendants, attesting that the “information contained in [the Q1 2022 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

26. On June 24, 2022, Horizon issued a press release announcing that it was increasing its quarterly dividend by 6.67% to \$0.16 per share. The press release quoted Defendant Dwight, stating, in relevant part:

“This dividend increase reflects the strength and profitability of our business, and further enhances what we believe is the compelling value proposition presented by Horizon’s recent share price[.]” [. . .] “Horizon’s balance sheet, efficient operations, asset quality and commercial and consumer relationships have allowed us to continue generating meaningful retained earnings, building cash, and enhancing capital, all of which enable us to continue our uninterrupted 30-year record of paying quarterly cash dividends while maintaining a payout ratio aligned with profitability.”

27. On July 27, 2022, Horizon issued a press release announcing the Company’s Q2 2022 results. The press release stated, in relevant part:

“We are extremely pleased with our performance during the second quarter of fiscal 2022. Record earnings and profitability can be attributed to strong loan growth and the higher interest rate environment which led to a meaningful increase in pre-tax, pre-provision net income,” [Defendant] Dwight said. “This level of organic growth would not have been possible without the hard work and dedication from our team to meet the evolving needs of our customers. We remain committed to driving organic growth through our investments in commercial and consumer loan production, finding strategic opportunities to deploy capital, and leveraging our asset sensitive balance sheet and strong credit quality to achieve long-term shareholder value.”

\*\*\*

[Defendant] Dwight continued, “Net interest margin continues to expand, illustrating the Company’s highly asset sensitive balance sheet position. Both the expected additional rate increases, and loan volume will continue to positively impact net interest income and NIM through 2022. Pressure on deposit pricing so far has been limited and we believe will remain in line with or better than our competitors. This expectation reflects our confidence in the strength of our commercial and retail relationships.”

\*\*\*

“Our results this quarter were positively impacted by the significant progress towards achieving our goal of an annualized non–interest expense to average assets ratio of less than 2.00%. For the period ended June 30, 2022, our annualized non–interest expense to average assets ratio was 1.95%,” [Defendant] Dwight continued. “We remain disciplined with a focus on expense management which is critical given the economic uncertainty and rise in inflation, however; we are confident in our ability to continue to reduce our annualized target to less than 2.00%.”

28. On July 28, 2022, Horizon hosted an earnings call with investors and analysts to discuss the Company’s Q2 2022 results (the “Q2 2022 Earnings Call”). During the scripted portion of the Q2 2022 Earnings Call, Defendant Dwight stated, in relevant part:

Driving the first quarter’s results, annualized double-digit organic commercial and consumer loan growth, additional revenue from the acquired offices, cost saves achieved from last year’s branch closures and an increase in net interest margin. Given the size of our balance sheet, highly efficient operations, talented workforce and solid recruitment efforts, we believe Horizon is well positioned to capitalize on significant organic and strategic growth opportunities within our attractive Midwestern markets.

So why invest in Horizon? Our investment thesis is simple. Horizon continues to report superior returns with a lower risk profile due to our diversified balance sheet, excess liquidity and low-cost core deposits.

\*\*\*

Now for a quick loan update. We reported strong commercial loan growth for the second quarter and year-to-date, excluding PPP and sold participation, commercial loans reported \$108 million in growth for the quarter at an annualized growth rate of 19.7%, as we continue to see loan growth across most business sectors. Contributing to the commercial loan growth, there’s an increase in the number of

loan officers, an increase in line of credit outstandings, rebounded Midwest manufacturing and regional infrastructure investments.

\*\*\*

Our balance sheet has a diversified loan portfolio, both in product mix and geography with ample liquidity and cash flows to fund future growth, which provides for a lower risk profile than many of our peers. The combination of Horizon's higher returns on tangible capital of 19.9% and lower balance sheet risk profile is a sweet spot for investors, especially given the volatility related to rising interest rates, wage inflation and supply chain disruptions.

29. On August 8, 2022, Horizon filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operational results for the quarter ended June 30, 2022 (the "Q2 2022 10-Q"). With respect to the Company's disclosure controls and procedures, the Q2 2022 10-Q stated, in relevant part:

Based on an evaluation of disclosure controls and procedures as of June 30, 2022, Horizon's Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of Horizon's disclosure controls (as defined in Exchange Act Rule 13a-15(e) of the Securities Exchange Act of 1934 (the "Exchange Act")). ***Based on such evaluation, such officers have concluded that, as of the evaluation date, Horizon's disclosure controls and procedures are effective to ensure that the information required to be disclosed by Horizon in the reports it files under the Exchange Act is recorded, processed, summarized and reported within the time specified in Securities and Exchange Commission rules and forms and are designed to ensure that information required to be disclosed in those reports is accumulated and communicated to management as appropriate to allow timely decisions regarding disclosure.***

30. Appended to the Q2 2022 10-Q as exhibits were signed certifications pursuant to SOX by the Individual Defendants, attesting that the "information contained in [the Q2 2022 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company."

31. On October 26, 2022, Horizon issued a press release announcing the Company's Q3 2022 results. The press release stated, in relevant part:

“We are proud of the performance achieved by our business banking and consumer lending teams who delivered annualized loan growth of 7.8% in the third quarter, excluding PPP loans and sold commercial participation loans,” [Defendant] Dwight said. “This continued strong loan growth led to the increase in net interest income and substantially offset headwinds from lower residential mortgage lending activity and lower wealth management fees, as well as the increase in cost of funds related to rapidly rising interest rates. While the current economic environment remains challenged by rising inflation and supply chain disruption, we remain focused on positioning ourselves to continue to meet the evolving needs of our customers. We believe our investments in talent to enhance our capabilities and prepare for the future support our disciplined growth trajectory, and with the benefit of our balance sheet strength and solid asset quality metrics, will continue to elevate our performance through the end of 2022 and into 2023.”

\*\*\*

[Defendant] Dwight continued, “Net interest income increased by \$387,000 for the quarter as a result of Horizon’s solid loan growth. To support this level of growth, we were required to increase borrowings and that impacted the adjusted net interest margin by four basis points during the quarter. Overall cost of funds was contained at 0.69% providing a strong spread for new loans coming on the books. Competitive pressure on deposit pricing is starting to accelerate as we see several smaller banks and credit unions aggressively seeking lower cost deposit funding. Horizon’s deposit betas were 23% for the third quarter and in line with our expectations of approximately 35%; however additional pressure is expected as the Board of Governors of the Federal Reserve System will likely continue to rapidly increase rates over the next several months.”

\*\*\*

“Our results this quarter were positively impacted by the significant progress towards achieving our goal of an annualized non-interest expense to average assets ratio of less than 2.00%, at 1.99% for the period ended September 30, 2022,” [Defendant] Dwight continued. “We remain disciplined and focused on expense management, a critical component of our strategy given the economic uncertainty and rise in inflation. However, we are confident in our ability to continue to reduce our annualized target to be less than 2.00%. We expect the higher expense run rate we incurred during the third quarter to be greatly reduced starting in Q1 2023. In addition, in 2023 we expect to see the benefit from a full year of seven additional branch closings and their related cost savings.”

32. On October 27, 2022, Horizon hosted an earnings call with investors and analysts to discuss the Company’s Q3 2022 results (the “Q3 2022 Earnings Call”). During the scripted portion of the Q3 2022 Earnings Call, Defendant Dwight stated, in relevant part:

[. . .] Horizon completed the third quarter with quarter-over-quarter loan growth at 7.8% annualized, excluding PPP loans and sold commercial participation loans. Year-to-date total loan growth was 14.5% annualized. This level of growth was achieved in part from year-to-date and annualized strong commercial consumer loan growths of 13.8% and 31.7% respectively.

\*\*\*

[N]otable financial metrics for the quarter end as reported include return on average assets of 1.24% and return on average equity of 13.89%. Year-to-date through September 30, Horizon's return on average assets was reported at 1.29% and ROE of 13.97%. Given the size of our balance sheet, efficient operations, talented workforce and solid additions to our team, Horizon is well positioned to capitalize on significant organic loan growth, to shift lower earning assets to higher yielding assets, and continuation of disciplined expense control.

\*\*\*

Why invest in Horizon? Our investment thesis is simple. Horizon continues to report solid returns with a low credit risk profile due to our diversified balance sheet, excess liquidity and low-cost core deposits.

\*\*\*

To summarize Horizon Bancorp's key franchise highlights, Horizon is a growth company as evidenced by 20% compounded annual growth rate for net income and 13% compounded annual growth rate for total assets over the past 19 years. Our balance sheet has a diversified loan portfolio, both in product mix and geography, with ample liquidity availability and cash flows to fund future growth. The combination of Horizon's year-to-date solid returns on average capital of 13.9% and our diversified balance sheet has proven to be a successful model in varying economic cycles.

33. On November 9, 2022, Horizon filed a Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operational results for the quarter ended September 30, 2022 (the "Q3 2022 10-Q"). With respect to the Company's disclosure controls and procedures, the Q3 2022 10-Q stated, in relevant part:

Based on an evaluation of disclosure controls and procedures as of September 30, 2022, Horizon's Chief Executive Officer and Chief Financial Officer have evaluated the effectiveness of Horizon's disclosure controls (as defined in Exchange Act Rule 13a-15(e) of the Securities Exchange Act of 1934 (the "Exchange Act")). ***Based on such evaluation, such officers have concluded that,***

*as of the evaluation date, Horizon’s disclosure controls and procedures are effective to ensure that the information required to be disclosed by Horizon in the reports it files under the Exchange Act is recorded, processed, summarized and reported within the time specified in Securities and Exchange Commission rules and forms and are designed to ensure that information required to be disclosed in those reports is accumulated and communicated to management as appropriate to allow timely decisions regarding disclosure.*

34. Appended to the Q3 2022 10-Q as exhibits were signed certifications pursuant to SOX by the Individual Defendants, attesting that the “information contained in [the Q3 2022 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

35. On January 25, 2023, Horizon issued a press release announcing the Company’s 2022 results. The press release stated, in relevant part:

“Horizon closed 2022 with record annual earnings reflecting continued strong growth in commercial and consumer loans through the fourth quarter, solid asset quality metrics and continued disciplined expense management,” [Defendant] Dwight said. “We have continued to produce consistent and strong returns with ROAA of 1.24% and ROATE of 18.33% for 2022. As we enter 2023, we believe we are well-positioned with talent, technology and solid pipelines to continue to support our loan growth goals for the year, and focus on reinvesting our cash flows into higher yielding assets. Our well diversified balance sheet and low credit risk profile has performed well through previous economic cycles and, given the strong markets we operate in, we expect similar performance throughout the current economic cycle.”

\*\*\*

“Horizon’s net interest income of approximately \$48.8 million in the fourth quarter was a reduction from the third quarter due to rapidly rising short term interest rates, some lag in repricing adjustable rate loans and lower fee and non-interest related income. In addition, Horizon’s deposit betas increased at a faster pace in the fourth quarter due to the magnitude and velocity of the Federal Reserve Bank’s Open Market Committee raising the targeted federal funds rate. We expect funding costs to stabilize in 2023 as the Federal Reserve Bank tempers the velocity of future rate increases,” [Defendant] Dwight commented.

\*\*\*

“We continued to report solid asset quality metrics, including low net charge-offs and modest levels of non-performing loans to total loans. Asset quality continued to remain a hallmark of our franchise and a credit to our seasoned loan underwriters”, said [Defendant] Dwight.

36. On January 26, 2023, Horizon hosted an earnings call with investors and analysts to discuss the Company’s Q4 2022 results (the “Q4 2022 Earnings Call”). During the scripted portion of the Q4 2022 Earnings Call, Defendant Dwight stated, in relevant part:

Horizon met or exceeded most of our 2022 goals as announced in fourth quarter 2021. And revised upward in the second quarter of 2022. Total loans excluding PPP and sold commercial loan participations increased 14.6% for the year, led by consumer and commercial loan growth of 30.6% and 11.4%, respectively.

\*\*\*

Other notable Horizon financial measures for the year include return on average assets of 1.24% and return on average equity of 13.66%. Given the size of our balance sheet, efficient operation, talented workforce and solid additions to our team, Horizon is well positioned to capitalize on significant organic loan growth as we focus on shifting our balance sheet to higher yielding assets and continue our disciplined approach to expense control.

So why invest in Horizon? Horizon continues to report solid returns to the low credit risk profile due to our diversified balance sheet, excess liquidity and low-cost core deposits. Horizon’s historical credit metrics, even during the Great Recession, have outperformed the U.S. commercial banks as a result of consistent underwriting and active portfolio management. Horizon’s deposit mix has improved compared to our pre-pandemic deposit mix as a result of the stabilizing the prior year’s 14 branch acquisition and good organic growth.

\*\*\*

To summarize Horizon Bancorp’s key franchise highlights. Horizon is a growth company as evidenced by 20 years of compounded annual growth rates for net income and total assets of 15.2% and 12.7%, respectively. Our balance sheet had diversified loan portfolio with a product mix and geography, with ample liquidity and cash flows to fund future growth into higher yielding assets.

Horizon’s asset quality has historically outperformed the industry in varying economic cycles. The combination of Horizon’s historical solid returns in average assets and average equity, our ability to increase market share in our top 10 markets and weather varying economic cycles, our diversified balance sheet and current high dividend yield offer support that we have an attractive long term investment.

37. The statements referenced in ¶¶ 19-36 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company maintained deficient internal accounting controls relating to its classification of certain loan balances and securities; (ii) as a result of the foregoing deficiencies, throughout 2022 the Company issued quarterly financial statements containing errors that would require subsequent revision; (iii) restatement of the foregoing financial statements would hinder the Company’s ability to timely file its annual report for 2022; and (iv) as a result, the Company’s public statements were materially false and misleading at all relevant times.

### **The Truth Emerges**

38. On March 10, 2023, after trading hours, Horizon filed a notice of the Company’s inability to timely file its Annual Report on Form 10-K for the year ended December 31, 2022 with the SEC. The notice stated, in relevant part:

On March 6, 2023, Horizon [. . .] received a letter (the “Letter”) from [the NASDAQ] indicating that, as a result of not having timely filed its Annual Report on Form 10-K for the year ended December 31, 2022 (the “2022 Form 10-K”) by March 1, 2023 with the [SEC], the Company is not in compliance with NASDAQ Listing Rule 5250(c)(1), which requires timely filing of all required periodic financial reports with the SEC.

Prior to receiving the Letter from NASDAQ, the Company believed it qualified as an “accelerated filer,” as defined in Rule 12b-2 under the [Exchange Act], and therefore, the deadline for filing its 2022 Form 10-K was March 16, 2023. As a result, the Company planned to file its 2022 Form 10-K prior to such deadline. However, the Company has now concluded that it made a calculation error in computing its public float and that it instead qualifies as a “large accelerated filer” as defined in Rule 12b-2 under the Exchange Act for purposes of its 2022 Form 10-K. As a result, the filing deadline for the Company’s 2022 Form 10-K was March 1, 2023.



The Company furnished as Exhibit 99.1 to its Form 8-K filed January 25, 2023, a press release (the “Earnings Release”) disclosing the Company’s preliminary and unaudited results for the three and twelve months ended December 31, 2022.

In addition, the Company has identified material weaknesses in the Company’s internal controls over financial reporting relating to: (i) accounting revisions of previously issued financial statements with respect to the classification of sold commercial loan participation balances, the reporting of indirect loan dealer reserve asset balances and related amortization expense and the classification of certain available for sale and held to maturity securities from private labeled mortgage-backed pools to federal agency mortgage pool, which revisions were previously disclosed in the Earnings Release and the Company’s Form 10-Q filings during 2022, in addition to errors in previously issued financial statement disclosures relating to the transfer of available for sale to held to maturity securities and the cash flow classification of repurchases of outstanding stock from an investing activity to a financing activity, which will be disclosed for the first time in the 2022 Form 10-K, and (ii) a calculation error in the Company’s public float as noted above. The Company has already addressed (or expects that, by the filing of the 2022 Form 10-K, it will have addressed) all of these material weaknesses, and they will be further discussed in the 2022 Form 10-K.

The Company does not expect to report any material changes to its financial results previously reported in the Earnings Release.

The Company is working diligently with its auditors to finalize the audit and the 2022 Form 10-K and intends to file its 2022 Form 10-K as soon as possible.

39. On this news, Horizon’s stock price fell \$1.43 per share, or 10.96%, to close at \$11.62 per share on March 13, 2023.

40. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the market value of the Company’s securities, Plaintiff and other Class members have suffered significant losses and damages.

### **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

41. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Horizon securities during the Class Period (the “Class”); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein,

the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

42. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Horizon securities were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Horizon or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

43. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

44. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

45. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Horizon;

- whether the Individual Defendants caused Horizon to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Horizon securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

46. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

47. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Horizon securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Horizon securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

48. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

49. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

### **COUNT I**

#### **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)**

50. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

51. This Count is asserted against Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

52. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and 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; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Horizon securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Horizon

securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

53. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Horizon securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Horizon's finances and business prospects.

54. By virtue of their positions at Horizon, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

55. Information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors of Horizon, the Individual Defendants had knowledge of the details of Horizon's internal affairs.

56. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Horizon. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Horizon's businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Horizon securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Horizon's business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Horizon securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

57. During the Class Period, Horizon securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Horizon securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Horizon securities was substantially lower than the prices paid by Plaintiff and the other

members of the Class. The market price of Horizon securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

58. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

59. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

## **COUNT II**

### **(Violations of Section 20(a) of the Exchange Act Against the Individual Defendants)**

60. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

61. During the Class Period, the Individual Defendants participated in the operation and management of Horizon, and conducted and participated, directly and indirectly, in the conduct of Horizon's business affairs. Because of their senior positions, they knew the adverse non-public information about Horizon's misstatement of income and expenses and false financial statements.

62. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Horizon's financial condition and results of operations, and to correct promptly any public statements issued by Horizon which had become materially false or misleading.

63. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Horizon disseminated in the marketplace during the Class Period concerning Horizon's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Horizon to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were "controlling persons" of Horizon within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Horizon securities.

64. Each of the Individual Defendants, therefore, acted as a controlling person of Horizon. By reason of their senior management positions and/or being directors of Horizon, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Horizon to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Horizon and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

65. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Horizon.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;



C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

Dated: April 20, 2023