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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

_____, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

MARATHON DIGITAL HOLDINGS, INC.,
MERRICK OKAMOTO, FREDERICK G.
THIEL, SIMEON SALZMAN, and HUGH J.
GALLAGHER,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated,
2 by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the
3 following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and
4 information and belief as to all other matters, based upon, inter alia, the investigation conducted
5 by and through Plaintiff’s attorneys, which included, among other things, a review of the
6 Defendants’ public documents, conference calls and announcements made by Defendants, United
7 States (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press releases
8 published by and regarding Marathon Digital Holdings, Inc. (“Marathon” or the “Company”),
9 analysts’ reports and advisories about the Company, and information readily obtainable on the
10 Internet. Plaintiff believes that substantial, additional evidentiary support will exist for the
11 allegations set forth herein after a reasonable opportunity for discovery.
12

13
14 **NATURE OF THE ACTION**

15 1. This is a federal securities class action on behalf of a class consisting of all persons
16 and entities other than Defendants that purchased or otherwise acquired Marathon securities
17 between May 10, 2021 and February 28, 2023, both dates inclusive (the “Class Period”), seeking
18 to recover damages caused by Defendants’ violations of the federal securities laws and to pursue
19 remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange
20 Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.
21

22 2. Marathon operates as a digital asset technology company that mines digital assets
23 with a focus on the blockchain ecosystem and the generation of digital assets in the United States.

24 3. Throughout the Class Period, Defendants made materially false and misleading
25 statements regarding the Company’s business, operations, and prospects. Specifically, Defendants
26 made false and/or misleading statements and/or failed to disclose that: (i) the Company overstated
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1 the efficacy of its disclosure controls and procedures and internal control over financial reporting;
2 (ii) as a result, the Company’s revenues and cost of revenue were materially misstated during the
3 Class Period; (iii) the foregoing, once revealed, was reasonably likely to have a material negative
4 impact on the Company’s financial condition; and (iv) as a result, the Company’s public statements
5 were materially false and misleading at all relevant times.
6

7 4. On February 28, 2023, Marathon issued a press release “announc[ing] . . . that it
8 has cancelled its webcast and conference call for the fourth quarter and fiscal year 2022, initially
9 scheduled for today, February 28, 2023, at 4:30 p.m. Eastern time, and will postpone the
10 publication of its corresponding financial results.” That same day, Marathon disclosed receipt of
11 a letter from the SEC relating to accounting errors in the Company’s previously issued financial
12 statements. The Company advised investors that the “statements contained in the Company’s
13 Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and the previously
14 issued unaudited condensed consolidated financial statements for the interim periods in 2022 and
15 2021 as contained in the Company’s Quarterly Reports on Form 10-Q for the fiscal periods ended
16 March 31, 2021 and 2022, June 30, 2021 and 2022 and September 30, 2021 and 2022 . . . should
17 no longer be relied upon” and will be restated.
18

19 5. Also on February 28, 2023, market analyst *Seeking Alpha* commented on
20 Marathon’s announcement, stating that “[t]he company said its method for calculating the
21 impairment of digital assets, chiefly bitcoin [], on a daily basis using a standard cutoff time wasn’t
22 in compliance with a requirement that calls for the intraday low price to be used,” and, as such,
23 “Marathon [] now estimates that both its revenue and cost of revenue for the year ended Dec. 31,
24 2021 were understated. Revenue [. . .], energy, hosting and other, are expected to increase in the
25 restated 2021 numbers.”
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1 6. On this news, Marathon's stock price fell \$0.59 per share, or 8.31%, to close at
2 \$6.51 per share on March 1, 2023.

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

6
7 **JURISDICTION AND VENUE**

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

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

13 10. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act
14 (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Marathon is headquartered in this Judicial District,
15 Defendants conduct business in this Judicial District, and a significant portion of Defendants'
16 actions took place within this Judicial District.

17 11. In connection with the acts alleged in this complaint, Defendants, directly or
18 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited
19 to, the mails, interstate telephone communications, and the facilities of the national securities
20 markets.
21

22
23 **PARTIES**

24 12. Plaintiff, as set forth in the attached Certification, acquired Marathon securities at
25 artificially inflated prices during the Class Period and was damaged upon the revelation of the
26 alleged corrective disclosures.
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1 13. Defendant Marathon is a Nevada corporation with principal executive offices
2 located at 1180 North Town Center Drive, Suite 100, Las Vegas, Nevada 89144. Marathon’s
3 common stock and redeemable warrants trade in an efficient market The Nasdaq Capital Market
4 (“Nasdaq”) under the ticker symbol “MARA”.

5 14. Defendant Merrick Okamoto (“Okamoto”) served as the Company’s Chief
6 Executive Officer (“CEO”) from prior to the start of the Class Period until April 2022.

7 15. Defendant Frederick G. Thiel (“Thiel”) has served as the Company’s CEO since
8 April 2022.

9 16. Defendant Simeon Salzman (“Salzman”) served as the Company’s Chief Financial
10 Officer (“CFO”) from prior to the start of the Class Period until March 2022.

11 17. Defendant Hugh J. Gallagher (“Gallagher”) has served as the Company’s CFO
12 since March 2022.

13 18. Defendants Okamoto, Thiel, Salzman, and Gallagher are sometimes referred to
14 herein as the “Individual Defendants.”

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

3 20. Marathon and the Individual Defendants are collectively referred to herein as
4 “Defendants.”

5 **SUBSTANTIVE ALLEGATIONS**

6 **Background**

7
8 21. Marathon operates as a digital asset technology company that mines digital assets
9 with a focus on the blockchain ecosystem and the generation of digital assets in the United States.

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

11 22. The Class Period begins on May 10, 2021, Marathon issued a press release
12 announcing the Company’s Q1 2021 results. The press release stated, in relevant part:

13
14 “As our financial and operational results for the first quarter demonstrate, 2021 is
15 lining up to be a banner year for Marathon as we are transforming our business into
16 one of the largest enterprise Bitcoin mining operations in North America during
17 what is currently one of the most profitable mining environments in Bitcoin’s
18 history,” said Fred Thiel, Marathon’s CEO. “Since the start of 2021, we have taken
19 several steps to establish Marathon as one of the leading pure-play Bitcoin
20 investment opportunities by increasing our hashrate over 689%, rebranding our
21 organization, and increasing our total bitcoin holdings to over 5,324 bitcoins. We
22 have continued to build on that leadership position by becoming the first Bitcoin
miner to produce bitcoin that is fully compliant anti-money laundering laws and
OFAC’s standards by directing all of our hashrate to the Marathon OFAC Pool.
With new miners being delivered and installed every day, we remain on track to
achieve 10.37 EH/s by early 2022, and we look forward to continuing to scale the
business for the betterment of our shareholders and the broader Bitcoin ecosystem
in the coming quarters.”

23 Marathon’s chief financial officer, Sim Salzman, commented, “The first quarter
24 marked a substantial improvement in our financial performance as we grew
25 revenues to \$9.2 million, generated net income of \$83.4 million, and earned \$137.4
26 million in adjusted EBITDA. Additionally, we exited the quarter with \$211.9
27 million in cash and with a total liquidity, defined as cash and bitcoin holdings, of
28 approximately \$504.5 million. While Bitcoin’s future price and the network
difficulty rate are subject to change, we believe Marathon’s financial performance
will continue to improve as more miners come online, increasing our ability to

1 generate revenues and yielding better economies of scale, which will drive
2 profitability.”

3 23. That same day, Marathon filed a Quarterly Report on Form 10-Q with the SEC,
4 reporting the Company’s financial and operating results for the quarter ended March 31, 2021 (the
5 “Q1 2021 10-Q”). With respect to the Company’s disclosure controls and procedures, the Q1 2021
6 10-Q stated, in relevant part:

7 Our management is responsible for establishing and maintaining adequate internal
8 control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under
9 the Exchange Act. Our management is also required to assess and report on the
10 effectiveness of our internal control over financial reporting in accordance with
11 Section 404 of the Sarbanes-Oxley Act of 2002 (“Section 404”). Our internal
12 control over financial reporting is a process designed to provide reasonable
13 assurance regarding the reliability of financial reporting and the preparation of
14 financial statements for external purposes of accounting principles generally
15 accepted in the United States. Management assessed the effectiveness of our
16 internal control over financial reporting as of March 31, 2021. In making this
17 assessment, we used the criteria set forth by the Committee of Sponsoring
18 Organizations of the Treadway Commission (COSO) in Internal Control -
19 Integrated Framework in the 2013 COSO framework. ***Based on this assessment,
20 management concluded that our disclosure controls and procedures were
21 effective.***

22 ***

23 As part of our ongoing program to implement changes and further improve our
24 internal controls and in conjunction with our Code of Ethics, our independent
25 directors have been working with management to include protocols and measures
26 aimed at ensuring quality of our internal controls. Among those measures is the
27 implementation of a whistleblower hotline, which allows third parties to
28 anonymously report noncompliant activity.

(Emphasis added.)

24 24. Appended to the Q1 2021 10-Q as exhibits were signed certifications pursuant to
25 the Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Thiel and Salzman, attesting that “[t]he
26 information contained in the [Q1 2021 10-Q] fairly presents, in all material respects, the financial
27 condition and results of operations of the Company.”

1 25. On August 13, 2021, Marathon issued a press release announcing the Company's
2 Q2 2021 results. The press release stated, in relevant part:

3 Marathon's CFO, Sim Salzman, commented, "When comparing Q2 2021 to Q1
4 2021, we grew our revenues by 220% to \$29.3 million while generating non-GAAP
5 operating income of \$20.1 million. We exited the quarter with \$170.6 million in
6 cash and with a total liquidity, defined as cash and bitcoin holdings, of
7 approximately \$366.5 million. Given the number of non-cash items that impact our
8 financial results, including but not limited to depreciation expense and impairments
9 on our mined bitcoin holdings, we have introduced non-GAAP operating income.
10 This metric portrays an operational equivalent to our formerly reported metric,
11 adjusted EBITDA, and we believe it will help investors more objectively track our
12 financial progress. Bitcoin's future price and the network difficulty rate are subject
13 to change. However, we maintain our belief that Marathon's financial performance
14 will continue to improve as more miners come online, increasing our probability of
15 earning bitcoin."

16 26. That same day, Marathon filed a Quarterly Report on Form 10-Q with the SEC,
17 reporting the Company's financial and operating results for the quarter ended June 30, 2021 (the
18 "Q2 2021 10-Q"). With respect to the Company's disclosure controls and procedures, the Q2 2021
19 10-Q stated, in relevant part:

20 Our management is responsible for establishing and maintaining adequate internal
21 control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under
22 the Exchange Act. Our management is also required to assess and report on the
23 effectiveness of our internal control over financial reporting in accordance with
24 Section 404 of the Sarbanes-Oxley Act of 2002 ("Section 404"). Our internal
25 control over financial reporting is a process designed to provide reasonable
26 assurance regarding the reliability of financial reporting and the preparation of
27 financial statements for external purposes of accounting principles generally
28 accepted in the United States. Management assessed the effectiveness of our
internal control over financial reporting as of June 30, 2021. In making this
assessment, we used the criteria set forth by the Committee of Sponsoring
Organizations of the Treadway Commission (COSO) in Internal Control -
Integrated Framework in the 2013 COSO framework. ***Based on this assessment,
management concluded that our disclosure controls and procedures were
effective.***

As part of our ongoing program to implement changes and further improve our
internal controls and in conjunction with our Code of Ethics, our independent

1 directors have been working with management to include protocols and measures
2 aimed at ensuring quality of our internal controls. Among those measures is the
3 implementation of a whistleblower hotline, which allows third parties to
4 anonymously report noncompliant activity.

(Emphasis added.)

5 27. Appended to the Q2 2021 10-Q as exhibits were substantively similar certifications
6 signed pursuant to SOX as discussed, *supra*, in ¶ 24, by Defendants Thiel and Salzman.

7 28. On November 10, 2021, Marathon issued a press release announcing the
8 Company's Q3 2021 results. The press stated, in relevant part:

9
10 Marathon's CFO, Sim Salzman, commented, "With our increased hash rate and
11 bitcoin's price appreciating, we grew our revenues 76% quarter-over-quarter from
12 \$29.3 million in the second quarter of 2021 to \$51.7 million in the third quarter of
13 2021. This growth coupled with our efficient operations allowed us to generate non-
14 GAAP income from operations of \$43.5 million, or \$0.43 per diluted share.
15 Additionally, our non-GAAP net income, which excludes non-cash items and
16 includes the change in fair value of our investment fund, was \$85.4 million, or
17 \$0.85 per diluted share, as the increase in bitcoin's price drove our investment fund
18 to appreciate as well. We exited the quarter with \$32.9 million in cash and with
19 total liquidity of approximately \$315.6 million. Subsequent to the quarter's end, we
20 obtained a \$100 million line of credit, secured by our bitcoin holdings and USD,
21 which further strengthened our liquidity position. Given our track record and
22 growth trajectory, we maintain our position that Marathon's financial performance
23 will continue to improve as we focus on efficiently increasing our hash rate."

24 29. On November 15, 2021, Marathon filed a Quarterly Report on Form 10-Q with the
25 SEC, reporting the Company's financial and operating results for the quarter ended September 30,
26 2021 (the "Q3 2021 10-Q"). With respect to the Company's disclosure controls and procedures,
27 the Q3 2021 10-Q stated, in relevant part:

28
Our management is responsible for establishing and maintaining adequate internal
control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under
the Exchange Act. Our management is also required to assess and report on the
effectiveness of our internal control over financial reporting in accordance with
Section 404 of the Sarbanes-Oxley Act of 2002 ("Section 404"). Our internal
control over financial reporting is a process designed to provide reasonable
assurance regarding the reliability of financial reporting and the preparation of
financial statements for external purposes of accounting principles generally

1 accepted in the United States. Management assessed the effectiveness of our
2 internal control over financial reporting as of September 30, 2021. In making this
3 assessment, we used the criteria set forth by the Committee of Sponsoring
4 Organizations of the Treadway Commission (COSO) in Internal Control -
5 Integrated Framework in the 2013 COSO framework. ***Based on this assessment,
6 management concluded that our disclosure controls and procedures were
7 effective.***

8 ***

9 As part of our ongoing program to implement changes and further improve our
10 internal controls and in conjunction with our Code of Ethics, our independent
11 directors have been working with management to include protocols and measures
12 aimed at ensuring quality of our internal controls. Among those measures is the
13 implementation of a whistleblower hotline, which allows third parties to
14 anonymously report noncompliant activity.

15 30. Appended to the Q3 2021 10-Q as exhibits were substantively similar certifications
16 signed pursuant to SOX as discussed, *supra*, in ¶ 24, by Defendants Thiel and Salzman.

17 31. On March 1, 2022, Marathon issued a press release announcing the Company's Q4
18 and fiscal year 2021 results. The press release stated, in relevant part:

19 "Our primary objectives for 2022 are to effectively deploy our miners, achieve our
20 growth targets, and continue expanding our competitive moat. Deploying at scale
21 behind the meter involves breaking some new ground, and now that we have
22 overcome some of those initial hurdles, we expect deployments to accelerate this
23 quarter and throughout the rest of the year. We believe Marathon remains well
24 positioned to generate approximately 23.3 Eh/s and for our mining operations to be
25 100% carbon neutral by early 2023. We look forward to another strong year for
26 Marathon as we continue our mission of supporting the adoption, security, and
27 evolution of Bitcoin by building one of the largest, most agile, and most sustainably
28 operated Bitcoin mining operations in the world."

Marathon's CFO, Sim Salzman, commented, "In 2021, we grew our revenues
3,353% year-over-year to \$150.5 million. Due to the leverage in our business
model, we produced non-GAAP income from operations of \$118.7 million and
non-GAAP net income of \$168.7 million, or \$1.70 per diluted share, during the
same time period. In the fourth quarter, we achieved two financial milestones that
strengthened our liquidity position. We obtained a \$100 million line of credit
secured by our bitcoin holdings, and we raised approximately \$747.5 million in a
convertible note offering in which the notes are unsecured and the coupon rate is
1%. Given the strength of our business model, our track record of efficiently
capitalizing on market events, and our current growth trajectory, we continue to

1 believe that our financial and operational performance will continue to improve as
2 we focus on efficiently increasing our hash rate.”

3 32. On May 4, 2022, Marathon issued a press release announcing the Company’s Q1
4 2022 results. The press release stated, in relevant part:

5 **First Quarter 2022 Financial Results**

6 Revenue increased to \$51.7 million, an increase of \$42.6 million, or 465%, from
7 the prior-year quarter and a decrease of \$8.6 million, or 14%, from the fourth
8 quarter of 2021. Bitcoin production increased to 1,259 bitcoin during the period, a
9 556% increase from the prior-year quarter and a 15% increase from the fourth
10 quarter of 2021. The revenue decline from the fourth quarter of 2021 was the result
11 of an approximate 25% decrease in average revenue per bitcoin mined, partially
12 offset by the increase in bitcoin production during the first quarter of 2022.

13 ***

14 “In the first quarter of 2022, we increased our bitcoin production 556% year-over-
15 year and 15% from the prior quarter, producing a record 1,259 bitcoin even as the
16 global hash rate rose by approximately 17% in the same period,” said Fred Thiel,
17 Marathon’s chairman and CEO. “At Marathon, we are constantly pushing
18 boundaries to propel our business and our industry forward, but as the first quarter
19 and subsequent events have demonstrated, not every industry operates at the same
20 pace as we do. Innovation is not a linear process, and in the first quarter, we
21 experienced regulatory friction related to breaking the mold on deploying our
22 miners behind the meter at power facilities operated by some of the largest
23 renewable energy companies in the United States. As a result, our deployment
24 schedule shifted by 45 days in the first quarter. Encouragingly, in March, the grid
25 operators in Texas granted permission for all 280 megawatts of the first major
26 facility in Texas to be energized. Currently, the pace of deployment is
27 predominantly determined by the pace of construction, which continued unimpeded
28 as we worked through the regulatory and permitting friction.

“Our primary focus for 2022 remains the deployment of our miners. This year is all
about execution. Given the progress we have made to date in deploying behind the
meter, we believe we will be through our backlog of miners and fully back on track
with deployments before the end of this year, keeping us on pace to reach 23.3 EH/s
by early 2023. We believe 2022 will be transformational for Marathon as we are in
the process of deploying nearly 200,000 miners and transitioning our operations to
be 100% carbon neutral.”

1 33. That same day, Marathon hosted an earnings call with investors and analysts to
2 discuss the Company’s Q1 2022 results (the “Q1 2022 Earnings Call”). During the scripted portion
3 of the Q1 2022 Earnings Call, Defendant Thiel stated, in relevant part:

4 Some strategic and operational highlights. In Q1, we made substantial progress,
5 strengthening Marathon’s competitive advantages to expand our position as the
6 leading Bitcoin miner in North America. A year ago, when I transitioned from the
7 Board of Directors to become CEO, we had 12,000 miners operating. Our hash rate
8 was 1.3x hash and Marathon consisted of 4 full-time employees. Today, we have
9 approximately 37,000 miners installed. Our hash rate is more than 3x higher and
we have 15 full-time employees. Most of whom are in senior level positions that
extend across technology, operations, strategy and finance.

10 34. On August 8, 2022, Marathon issued a press release announcing the Company’s Q2
11 2022 results and bitcoin and mining operation updates for July 2022. The press release stated, in
12 relevant part:

13 “In the second quarter of 2022, we increased our bitcoin production 8% year-over-
14 year, producing 707 bitcoin, and we continued to install miners in Texas in
15 anticipation of energization as we worked through both operational obstacles and a
16 challenging macro environment,” said Fred Thiel Marathon’s chairman and CEO.
17 “Energization delays, maintenance and weather issues in Montana, and an
18 approximately 56% decline in the price of bitcoin during the quarter, severely
19 impacted our bitcoin production and financial results. These items reduced our
revenues, caused us to record a \$127.6 million impairment on our bitcoin holdings,
and decreased the fair market value of our investment fund by \$79.7 million.
However, given the groundwork we laid during the quarter and the progress we
have made since, we are optimistic that Marathon’s operational and financial
positioning is improving.

20 35. That same day, Marathon hosted an earnings call with investors and analysts to
21 discuss the Company’s Q2 2022 results (the “Q2 2022 Earnings Call”). During the scripted portion
22 of the Q2 2022 Earnings Call, Defendant Thiel stated, in relevant part:

23 The second quarter tested our resilience and our resourcefulness. As a result, even
24 as recent events have demonstrated, we not only weathered the difficult times, but
25 we capitalized on opportunities to improve our operational and financial position
26 subsequent to the quarter's end.

27 ***

1 In summary, the second quarter was challenging for the industry and for Marathon
2 in particular. Bitcoin mining is a nascent industry, and as I mentioned in our last
3 call, there is no playbook. However, given our progress, we're confident that we
4 remain on track to grow our position as a leader in this space. Miners are coming
5 online in Texas. We have hosting arrangements secured to achieve our target of
6 23.3 exahash by mid-next year. Our mining fleet is state-of-the-art, consisting
7 predominantly of the most efficient bitcoin miners available in the market. We have
8 a warchest big point in our liquidity position, balance sheet continued to improve.

9 Overall, we have entered the second half of the year with added confidence that we
10 remain on track to grow our position as a leader in supporting and securing the
11 bitcoin ecosystem.

12 36. On November 8, 2022, Marathon issued a press release announcing the Company's
13 Q3 2022 results. The press release stated, in relevant part:

14 "The third quarter of 2022 was a transition and rebuilding period at Marathon,
15 during which we fully exited the Hardin facility in Montana and began energizing
16 servers at new locations, most notably the 280-megawatt data center that resides
17 behind the meter at the King Mountain wind farm in McCamey, Texas," said Fred
18 Thiel, Marathon's chairman and CEO. "We sequentially improved our bitcoin
19 production each month during the quarter as we rebuilt our hash rate from
20 approximately 0.7 exahashes per second in early July to 3.8 exahashes per second
21 by September 30. This progress continued subsequent to the quarter's end as we
22 increased our hash rate an additional 84% to approximately 7 exahashes per second
23 by November 1. We also realized our highest production month to date in October
24 when we produced 615 bitcoin, nearly equal to our entire production during the
25 third quarter.

26 "We believe Marathon has a strong foundation on which we can continue to build
27 our hash rate. Our near-term goal is to reach approximately 9.0 exahashes per
28 second by the end of the year, and we continue to target 23 exahashes per second
near the middle of 2023 as we strive to establish our position as a leader in
supporting and securing the bitcoin ecosystem."

36. That same day, Marathon 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 Thiel stated, in relevant part:

The third quarter was a transition and rebuilding period at Marathon. With the
facility in Hardin, Montana off-line and energization of miners in Texas delayed,
we entered the third quarter with only 6,000 miners operational, producing
approximately 0.7x exahashes per second. Unsurprisingly, the operational

1 transition that occurred during the third quarter caused our financial results to dip
2 both quarter-over-quarter and year-over-year. However, as our consistently
3 improving Bitcoin production substantiates, our confidence in our ability to rebuild
4 our hash rate while maintaining a healthy balance sheet was well founded. Today,
5 we believe Marathon is a strong foundation on which we can continue to efficiently
6 grow towards our goal of 23 exahashes per second by mid-2023, and expand our
7 position as the leader in securing and supporting the Bitcoin ecosystem.

8 38. The statements referenced in ¶¶ 22-37 were materially false and misleading because
9 Defendants made false and/or misleading statements, as well as failed to disclose material adverse
10 facts about the Company's business, operations, and prospects. Specifically, Defendants made
11 false and/or misleading statements and/or failed to disclose that: (i) the Company overstated the
12 efficacy of its disclosure controls and procedures and internal control over financial reporting; (ii)
13 as a result, the Company's revenues and cost of revenue were materially misstated during the Class
14 Period; (iii) the foregoing, once revealed, was reasonably likely to have a material negative impact
15 on the Company's financial condition; and (iv) as a result, the Company's public statements were
16 materially false and misleading at all relevant times.

17 **The Truth Emerges**

18 39. On February 28, 2023, Marathon issued a press release "announc[ing] . . . that it
19 has cancelled its webcast and conference call for the fourth quarter and fiscal year 2022, initially
20 scheduled for today, February 28, 2023, at 4:30 p.m. Eastern time, and will postpone the
21 publication of its corresponding financial results."

22 40. That same day, in a Form 8-K filed with the SEC, Marathon disclosed receipt of a
23 letter from the SEC relating to accounting errors in the Company's previously issued financial
24 statements. Specifically, the Company advised in relevant part:

25 On February 27, 2023, the Company's Audit Committee of the Board of Directors,
26 after consultation with Marcum LLP, the Company's independent auditor,
27 concluded that due to certain accounting errors, as described below, the previously
28 issued audited consolidated financial statements contained in the Company's

1 Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and the
2 previously issued unaudited condensed consolidated financial statements for the
3 interim periods in 2022 and 2021 as contained in the Company's Quarterly Reports
4 on Form 10-Q for the fiscal periods ended March 31, 2021 and 2022, June 30, 2021
5 and 2022 and September 30, 2021 and 2022 (the "Impacted Financial Statements")
6 should no longer be relied upon. Similarly, related earnings releases and other
7 financial communications for these periods should no longer be relied upon. The
8 Company intends to correct the errors and will be restating the Impacted Financial
9 Statements.

41. Also on February 28, market analyst *Seeking Alpha* commented on Marathon's
announcement, stating, in relevant part:

Marathon [. . .] said Tuesday it will restate its full year 2021 and quarterly earnings
for that year and for the first three quarters of 2022 due to accounting errors.

Specifically, the bitcoin miner determined that it had incorrectly calculated
impairment on a daily basis of its digital assets and it had incorrectly accounted for
revenue from a bitcoin mining pool that it had participated in and operated in late
2021 and early 2022.

Now that Marathon [] needs to restate its previously reported financial statements
for 2021 and 2022, the company will not be able to file its 2022 annual 10-K
statement by the filing deadline of March 1, it said in a filing. It cancelled its
conference call for Q4 earnings and will postpone the publication of its financial
results.

The company said its method for calculating the impairment of digital assets,
chiefly bitcoin [], on a daily basis using a standard cutoff time wasn't in compliance
with a requirement that calls for the intraday low price to be used.

Regarding the bitcoin mining pool's revenue recognition, Marathon [] had
determined that the company acted as an agent in the pool, which included a small
number of unrelated third-party participants. As a result, it recorded revenue on a
net basis, subtracting any revenue allocated to the third-party pool participants from
its revenue as the operator of the pool.

It later found out that its assessment was incorrect and should have concluded that
it acted as principal. That means the company should have recorded gross revenue
rather than net revenue.

Marathon [] now estimates that both its revenue and cost of revenue for the year
ended Dec. 31, 2021 were understated. Revenue and cost of revenue, energy,
hosting and other, are expected to increase in the restated 2021 numbers.

1 The restatement of the impacted financial statement isn't expected to have any
2 effect on total margin, operating income or net income in 2021 or any of the interim
3 periods in 2021 or 2022, it said.

4 Marathon [] also said it no longer operates a pool that includes third parties.

5 The company was expected to post a Q4 loss per share of \$0.17 and revenue of
6 \$33.98M, according to consensus estimates.

7 42. On this news, Marathon's stock price fell \$0.59 per share, or 8.31%, to close at
8 \$6.51 per share on March 1, 2023.

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

12 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

13 44. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
14 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise
15 acquired the Company's securities during the Class Period (the "Class"); and were damaged upon
16 the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants
17 herein, the officers and directors of the Company, at all relevant times, members of their immediate
18 families and their legal representatives, heirs, successors or assigns and any entity in which
19 Defendants have or had a controlling interest.

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

3 46. Plaintiff's claims are typical of the claims of the members of the Class as all
4 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
5 federal law that is complained of herein.
6

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

10 48. Common questions of law and fact exist as to all members of the Class and
11 predominate over any questions solely affecting individual members of the Class. Among the
12 questions of law and fact common to the Class are:
13

- 14 • whether the federal securities laws were violated by Defendants' acts as
15 alleged herein;
- 16 • whether statements made by Defendants to the investing public during the
17 Class Period misrepresented material facts about the business, operations
18 and management of Marathon;
- 19 • whether the Individual Defendants caused Marathon to issue false and
20 misleading financial statements during the Class Period;
- 21 • whether Defendants acted knowingly or recklessly in issuing false and
22 misleading financial statements;
- 23 • whether the prices of Marathon securities during the Class Period were
24 artificially inflated because of the Defendants' conduct complained of
25 herein; and
- 26 • whether the members of the Class have sustained damages and, if so, what
27 is the proper measure of damages.
28

49. 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

1 damages suffered by individual Class members may be relatively small, the expense and burden
2 of individual litigation make it impossible for members of the Class to individually redress the
3 wrongs done to them. There will be no difficulty in the management of this action as a class action.

4 50. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-
5 on-the-market doctrine in that:
6

- 7 • Defendants made public misrepresentations or failed to disclose material
8 facts during the Class Period;
- 9 • the omissions and misrepresentations were material;
- 10 • Marathon securities are traded in an efficient market;
- 11 • the Company's shares were liquid and traded with moderate to heavy
12 volume during the Class Period;
- 13 • the Company traded on the Nasdaq and was covered by multiple analysts;
- 14 • the misrepresentations and omissions alleged would tend to induce a
15 reasonable investor to misjudge the value of the Company's securities; and
- 16 • Plaintiff and members of the Class purchased, acquired and/or sold
17 Marathon 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.

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

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

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

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

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

8 55. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and
9 course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions,
10 practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other
11 members of the Class; made various untrue statements of material facts and omitted to state
12 material facts necessary in order to make the statements made, in light of the circumstances under
13 which they were made, not misleading; and employed devices, schemes and artifices to defraud in
14 connection with the purchase and sale of securities. Such scheme was intended to, and, throughout
15 the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members,
16 as alleged herein; (ii) artificially inflate and maintain the market price of Marathon securities; and
17 (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Marathon
18 securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan
19 and course of conduct, Defendants, and each of them, took the actions set forth herein.
20
21

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

3 57. By virtue of their positions at Marathon, Defendants had actual knowledge of the
4 materially false and misleading statements and material omissions alleged herein and intended
5 thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants
6 acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose
7 such facts as would reveal the materially false and misleading nature of the statements made,
8 although such facts were readily available to Defendants. Said acts and omissions of Defendants
9 were committed willfully or with reckless disregard for the truth. In addition, each Defendant
10 knew or recklessly disregarded that material facts were being misrepresented or omitted as
11 described above.
12

13 58. Information showing that Defendants acted knowingly or with reckless disregard
14 for the truth is peculiarly within Defendants' knowledge and control. As the senior managers
15 and/or directors of Marathon, the Individual Defendants had knowledge of the details of
16 Marathon's internal affairs.
17

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

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7 60. During the Class Period, Marathon securities were traded on an active and efficient
8 market. Plaintiff and the other members of the Class, relying on the materially false and misleading
9 statements described herein, which the Defendants made, issued or caused to be disseminated, or
10 relying upon the integrity of the market, purchased or otherwise acquired shares of Marathon
11 securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the
12 other members of the Class known the truth, they would not have purchased or otherwise acquired
13 said securities, or would not have purchased or otherwise acquired them at the inflated prices that
14 were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true
15 value of Marathon securities was substantially lower than the prices paid by Plaintiff and the other
16 members of the Class. The market price of Marathon securities declined sharply upon public
17 disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

18
19 61. By reason of the conduct alleged herein, Defendants knowingly or recklessly,
20 directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5
21 promulgated thereunder.

22
23 62. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
24 other members of the Class suffered damages in connection with their respective purchases,
25 acquisitions and sales of the Company's securities during the Class Period, upon the disclosure
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1 that the Company had been disseminating misrepresented financial statements to the investing
2 public.

3 **COUNT II**

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

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

7 64. During the Class Period, the Individual Defendants participated in the operation
8 and management of Marathon, and conducted and participated, directly and indirectly, in the
9 conduct of Marathon's business affairs. Because of their senior positions, they knew the adverse
10 non-public information about Marathon's misstatement of income and expenses and false financial
11 statements.
12

13 65. As officers and/or directors of a publicly owned company, the Individual
14 Defendants had a duty to disseminate accurate and truthful information with respect to Marathon's
15 financial condition and results of operations, and to correct promptly any public statements issued
16 by Marathon which had become materially false or misleading.
17

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