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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 STEVE HOOD, derivatively on behalf of
14 MARATHON DIGITAL HOLDINGS, INC.,

15 Plaintiff,

Case No.: 2:23-cv-01055

16 vs.

17 FREDERICK G. THIEL, MERRICK
18 OKAMOTO, SIMEON SALZMAN, HUGH J.
19 GALLAGHER, GEORGES ANTOUN, KEVIN
20 A. DENUCCIO, SARITA JAMES, JAY
21 LEUPP, SAID OUISSAL, and DOUG
22 MELLINGER,

Defendants,

and

MARATHON DIGITAL HOLDINGS, INC.,

Nominal Defendant.

23 **VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**

24 **INTRODUCTION**

25 Plaintiff Steve Hood (“Plaintiff”), by Plaintiff’s undersigned attorneys, derivatively and on behalf
26 of Nominal Defendant Marathon Digital Holdings, Inc. (“Marathon” or the “Company”), files this
27 Verified Shareholder Derivative Complaint against individual defendants Frederick G. Thiel (“Thiel”),
28

1 Merrick Okamoto (“Okamoto”), Simeon Salzman (“Salzman”), Hugh J. Gallagher (“Gallagher”), Georges
2 Antoun (“Antoun”), Kevin A. DeNuccio (“DeNuccio”), Sarita James (“James”), Jay Leupp (“Leupp”),
3 Said Ouissal (“Ouissal”), and Doug Mellinger (“Mellinger”) (collectively, the “Individual Defendants”
4 and together with Marathon, the “Defendants”) for breaches of their fiduciary duties as directors and
5 officers of Marathon, unjust enrichment, waste of corporate assets, violations of Section 14(a) of the
6 Securities Exchange Act of 1934 (the “Exchange Act”), and for contribution under Sections 10(b) and
7 21D of the Exchange Act. As for Plaintiff’s complaint against the Individual Defendants, Plaintiff alleges
8 the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and
9 belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s
10 attorneys, which included, among other things, a review of the Defendants’ public documents, conference
11 calls and announcements made by Defendants, United States Securities and Exchange Commission
12 (“SEC”) filings, wire and press releases published by and regarding Marathon, legal filings, news reports,
13 securities analysts’ reports and advisories about the Company, and information readily obtainable on the
14 Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein
15 after a reasonable opportunity for discovery.

18 NATURE OF THE ACTION

19 1. This is a shareholder derivative action that seeks to remedy wrongdoing committed by
20 Marathon’s directors and officers from May 10, 2021, through February 23, 2023 (the “Relevant Period”).

21 2. Marathon is a bitcoin digital mining company incorporated in Nevada that maintains
22 offices in Fort Lauderdale, Florida and Irvine, California.

23 3. The Company began in 2010 under the name “Verve Ventures, Inc.” On December 7,
24 2011, the Company changed its name to the “American Strategic Minerals Corporation” and entered
25 the uranium and vanadium exploration business. In June 2012, the Company changed course by
26 dropping the minerals business model and transitioned to real estate investments in Southern
27
28

1 California. By October of that year, the Company again shifted course and tried its hand with
2 intellectual property (“IP”) licensing by changing its name to “Marathon Patent Group, Inc.”

3 4. In 2017, the Company found its current business model when it purchased digital asset
4 mining machines and established a data center in Canada to mine digital assets. Three years later, the
5 Company ended operations in Canada, relocated all mining rigs from Canada to the United States,
6 and began mining bitcoin across the United States. On March 1, 2021, the Company changed its
7 name to Marathon. Marathon centered its business on mining bitcoin and ancillary opportunities
8 within the bitcoin industry.
9

10 5. During the Relevant Period, Marathon focused on mining digital assets with a special
11 emphasis on the blockchain ecosystem and bitcoin.

12 6. Throughout the Relevant Period, the Individual Defendants repeatedly and consistently
13 obfuscated the truth to investors about Marathon’s business, operations, and prospects. Specifically, the
14 Individual Defendants held-back the Company’s true revenue figures from investors while simultaneously
15 claiming that materially misstated, publicly reported revenues were accurate and promoting an image of
16 Marathon that differed from reality. Such falsities were included in the Company’s proxy solicitations
17 filed with the SEC during the Relevant Period, one of which solicited and received shareholder approval
18 to amend a lucrative incentive plan that materially benefited the Individual Defendants, among others, at
19 the Company, based on false pretenses, including Marathon’s actual financial performance and standing.
20

21 7. The Individual Defendants concealed the existence of these control failures from the
22 investing public, instead affirmatively representing throughout the Relevant Period that the Company
23 maintained effective disclosure controls and internal controls over its financial reporting.
24

25 8. The Company’s improperly reported financial statements would ultimately cause
26 Marathon to restate over a year’s worth of its financial statements, resulting in significant losses for the
27 Company.
28

1 9. The truth emerged on February 28, 2023, when Marathon “announc[ed] . . . that it has
2 cancelled its webcast and conference call for the fourth quarter and fiscal year 2022, initially scheduled
3 for today, February 28, 2023, at 4:30 p.m. Eastern time, and will postpone the publication of its
4 corresponding financial results.”

5 10. On the same day, Marathon filed a Form 8-K with the SEC that acknowledged the
6 Company was in receipt of a letter from the SEC pertaining to accounting issues in Marathon’s prior
7 financial statements.
8

9 11. Moreover, and also on February 28, 2023, *Seeking Alpha* observed that since Marathon
10 would need to restate its financial statements, the Company would be unable to timely file its 2022 annual
11 report on Form 10-K. The Company filed a notification of inability to timely file its annual report the same
12 day.
13

14 12. On this news, the price of the Company’s stock dropped from \$7.10 per share at the close
15 of trading on February 28, 2023, the prior trading day, to \$6.51 per share at the close of trading on March
16 1, 2023, representing a loss in value of 8.31%, or \$0.59 per share.

17 13. On March 16, 2023, Marathon filed its annual report on Form 10-K for the fiscal year
18 ended December 31, 2022, which included a restatement of, *inter alia*, the Company’s reported Revenue
19 Recognition, Impairment of Digital Assets, NYDIG Digital Assets Fund, III, LP, and other adjustments,
20 including adjustments to income tax reports (the “Restatement”). The Restatement also included restated
21 consolidated balance sheets as of December 31, 2021, related consolidated statements of operations, and
22 consolidated statements of cash flows for the same year; restated unaudited condensed consolidated
23 financial statements for the interim periods in 2022 and 2021 as reported in Marathon’s quarterly reports
24 filed on Forms 10-Q for the fiscal periods ended March, 31, 2021 and 2022, June 30, 2021 and 2022, and
25 September 2021 and 2022; and an amended management’s discussion and analysis of financial condition
26 and results of operations related to the year ended December 31, 2021.
27
28

1 14. The Restatement admitted that the Company identified additional material weaknesses in
2 its internal controls over financial reporting during its review of the above-mentioned financial statements
3 and admitted that Marathon still had unresolved SEC Staff Comments from 2022.

4 15. During the Relevant Period, the Individual Defendants breached their fiduciary duties by
5 personally making and/or causing the Company to make a series of materially false and misleading
6 statements regarding the Company’s business, operations, and prospects. Specifically, the Individual
7 Defendants willfully or recklessly made and/or caused the Company to make false and misleading
8 statements that failed to disclose, *inter alia*, that: (1) the Company materially misstated its revenue, cost
9 of revenue, and other financial information in its 2021 and 2022 SEC filings; (2) the Company
10 continuously downplayed its serious problems with internal controls; and (3) because of this, Marathon
11 would face scrutiny by the SEC, need to restate several financial statements, and was reasonably likely
12 to suffer significant damage, including reputational harm. As a result of the foregoing, the Company’s
13 public statements were materially false and misleading at all relevant times.

14 16. Moreover, one of the Individual Defendants breached their fiduciary duties by engaging in
15 a lucrative insider sale of Company common stock at artificially inflated prices, obtaining proceeds of
16 over \$3 million.

17 17. In light of the Individual Defendants’ misconduct, which has subjected the Company, its
18 former Chief Executive Officer (“CEO”), its former Chief Financial Officer (“CFO”), and its current CEO
19 to being named as defendants in a federal securities fraud class action lawsuit pending in the United States
20 District Court for the District of Nevada (the “Securities Class Action”), the need to undertake internal
21 investigations, the need to implement adequate internal controls over its financial reporting, the losses
22 from the waste of corporate assets, and the losses due to the unjust enrichment of the Individual Defendants
23 who were improperly over-compensated by the Company and/or who benefitted from the wrongdoing
24 alleged herein, the Company will have to expend many millions of dollars.

1 18. In light of the breaches of fiduciary duty engaged in by the Individual Defendants, most of
2 whom are the Company's current directors, their collective engagement in fraud, the substantial likelihood
3 of the directors' liability in this derivative action, the substantial likelihood of the CEO's, CFO's, and
4 Company's liability in the Securities Class Action, their being beholden to each other, their longstanding
5 business and personal relationships with each other, and of their not being disinterested or independent
6 directors, a majority of the Board cannot consider a demand to commence litigation against themselves
7 on behalf of the Company with the requisite level of disinterestedness and independence.
8

9 **JURISDICTION AND VENUE**

10 19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff's
11 claims raise a federal question under Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1) and Rule
12 14a-9 of the Exchange Act, 17 C.F.R. § 240.14a-9.

13 20. Plaintiff's claims also raise a federal question pertaining to the claims made in the
14 Consolidated Securities Class Action based on violations of the Exchange Act.
15

16 21. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28
17 U.S.C. § 1367(a).

18 22. Additionally, diversity jurisdiction is conferred by 28 U.S.C. § 1332. Plaintiff and the
19 Individual Defendants are citizens of different states and the amount in controversy exceeds the sum or
20 value of \$75,000, exclusive of interest and costs.

21 23. This derivative action is not a collusive action to confer jurisdiction on a court of the United
22 States that it would not otherwise have.
23

24 24. The Court has personal jurisdiction over each of the Defendants because each Defendant
25 is either a corporation conducting business and maintaining operations in this District, or he or she is an
26 individual who is a citizen of Nevada or who has minimum contacts with this District to justify the exercise
27 of jurisdiction over them.
28

1 30. The Company's 2023 Proxy Statement stated the following about Defendant Thiel:

2 Mr. Thiel was named our CEO on April 26, 2021. He was the Chairman of SPROCKET,
3 INC. from June 2017 through 2020, a Blockchain/Cryptocurrency technology and financial
4 services company whose mission is to reduce the risk and friction of cryptocurrency trading
5 across marketplaces, regions and exchanges by establishing a federation of exchanges that
6 together create a single aggregated global trading marketplace with large scale liquidity,
7 rapid execution, minimal counter-party risk, and price transparency. From January 2013
8 until November 2015, Mr. Thiel served as a director of Local Corporation, which was a
9 NASDAQ listed entity which was a leader in on-line local search and digital media, mobile
10 search monetization and programmatic retargeting markets. He served as Chairman of the
11 Board of LOCAL from January 2014 to November 2015 and as its Chief Executive Officer
12 from May 2014 to November 2015. Mr. Thiel has been the principal of Thiel Advisors Inc.
13 since 2013. Thiel Advisors is a boutique advisory firm providing PE and VC firms, as well
14 as public and private company boards of director, with deep technology industry operating
15 expertise and strategic advisory services.

16 Effective April 26, 2021, the Company entered into an Executive Employment Agreement
17 with Mr. Thiel. The Agreement has a term of three years and automatically renews for
18 successive one year terms unless either party provides notice of nonrenewal at least 90 days
19 prior to the end of the initial term or any renewal term. Mr. Thiel's annual base salary is
20 \$500,000 (increased to \$750,000 for 2022) with bonuses at the discretion of the Company's
21 Board of Directors. Mr. Thiel may also receive a grant of restricted stock units, and any
22 such grant shall vest in four equal amounts on the date of grant and the three successive
23 three month anniversaries thereof. In the event of a change in control, all RSUs vest
24 immediately. Mr. Thiel is entitled to 25 paid vacation days per year and is entitled to
25 participate in all Company benefit plans per standard Company policy.

26 Upon any termination of the Agreement, Mr. Thiel is entitled to compensation and
27 reimbursement of expenses through the date of termination as well as payment for any
28 accrued and unpaid vacation days. If the termination is other than for cause, Mr. Thiel's
29 outstanding RSUs shall immediately vest. Upon a termination not for cause by the
30 Company or by Mr. Thiel with good reason or within 180 days of a change in control, he
31 shall receive the greater of his remaining base salary for the remaining term of the
32 Agreement and 12 months base salary plus benefits. The Agreement contains customary
33 and usual definitions of termination for cause and good reason.

34 31. Upon information and belief, Defendant Thiel is a citizen of Florida.

35 **Defendant Okamoto**

36 32. Defendant Okamoto served as the Company's CEO from December 2017 until his
37 retirement on April 26, 2021. He began as a Company director on August 11, 2017, and later became the
38 Executive Chairman on February 28, 2018. He resigned as Executive Chairman on December 31, 2021.
39 According to the Schedule 14A filed with the SEC on June 16, 2021 (the "2021 Proxy Statement"), as of

1 June 14, 2021, Defendant Okamoto beneficially owned 4,163,859 shares of the Company's common
 2 stock, constituting 4.19% of the total outstanding stock as of that date. Given that the price per share of
 3 the Company's common stock at the close of trading on June 14, 2021 was \$29.94, Defendant Okamoto
 4 owned approximately \$124.6 million worth of Marathon stock as of that date.

5
 6 33. For the fiscal year ended December 31, 2021, Defendant Okamoto received \$143,781,988
 7 in compensation from the Company. This included \$371,315 in salary and \$143,410,673 in stock awards.

8 34. During the period when the Company materially misstated information to the investing
 9 public to keep the stock price inflated, and before the scheme was exposed, Defendant Okamoto made the
 10 following sale of company stock at artificially inflated prices:

Date	Shares Sold	Avg. Price Per Share	Proceeds
December 28, 2021	83,333	\$37.02	\$3,084,987

11
 12
 13
 14 Thus, in total, before the fraud was exposed, he sold 83,333 shares of Company common stock at
 15 artificially inflated prices on inside information, for which he received approximately \$3 million. His
 16 insider sale, made with knowledge of material nonpublic information before the material misstatements
 17 and omissions were exposed, demonstrates his motive in facilitating and participating in the scheme.

18 35. The 2021 Proxy Statement stated the following about Defendant Okamoto:

19 Mr. Merrick D. Okamoto, age 60, serves as the President at Viking Asset Management
 20 which he co-founded in 2002. Mr. Okamoto is responsible for research, due diligence, and
 21 structuring potential investment opportunities. He has been instrumental in providing
 22 capital to over 200 private and public companies. He is also responsible for the firm's
 23 trading operations. Prior to Viking, Mr. Okamoto co-founded TradePortal.com, Inc. in
 24 1999 and served as its President until 2001. He was instrumental in developing the
 25 proprietary Trade Matrix software platform offered by TradePortal Securities. Mr.
 26 Okamoto's negotiations were key in selling a minority stake in TradePortal.com Inc. to
 27 Thomson Financial. Prior to that, he held Vice President positions with Shearson Lehman
 28 Brothers, Prudential Securities, and Paine Webber.

36. Upon information and belief, Defendant Okamoto is a citizen of Florida.

1 **Defendant Salzman**

2 37. Defendant Salzman served as the Company’s Chief Accounting Officer from March 31,
3 2022, until November 2022. Previously, he served as CFO from October 19, 2020, until March 31, 2022.
4 According to the Company’s Schedule 14A filed with the SEC on September 12, 2022 (the “2022 Proxy
5 Statement”), Defendant Salzman beneficially owned 84,366 shares of the Company’s common stock.
6 Given that the price per share of the Company’s common stock at the close of trading on September 12,
7 2022 was \$14.43, Defendant Salzman owned over \$1.2 million worth of Marathon stock as of that date.
8

9 38. For the fiscal year ended December 31, 2021, Defendant Salzman received \$700,000 in
10 compensation from the Company. This included \$250,000 in salary, \$200,00 in stock awards, and
11 \$250,000 in bonuses.
12

13 39. The Company’s 2022 Proxy Statement stated the following about Defendant Salzman:

14 Mr. Simeon Salzman was named to our newly created Chief Accounting Officer Position
15 on March 31, 2022. He served as the Chief Financial Officer and Senior Vice President of
16 the Las Vegas Monorail Company, a private non-profit 501c(4) entity, since July 2018.
17 The Las Vegas Monorail Company operates a driverless monorail transit system that
18 carries approximately 4,600,000 passengers annually over a 3.9 mile elevated track. There
19 Mr. Salzman was responsible for overseeing all financial functions including audit,
20 treasury and corporate finance. In addition, he was responsible for internal control
21 compliance and management strategy.

22 Prior to the Las Vegas Monorail Company and from May 2015 to July 2018, Mr. Salzman
23 served as the Chief Financial Officer for Wendoh Media and Corner Bar Management for
24 over three years. Wendoh Media operated a weekly publication, a video editing entity, and
25 a digital advertising entity. Corner Bar Management operates four different bars and
26 restaurants in Downtown Las Vegas. Using his previous experience as the Corporate
27 Controller for various managed nightlife, lounges and restaurants at the most prestigious
28 Resort & Casinos on the Las Vegas Strip, Mr. Salzman was able to parlay his skill set
revitalizing the various food and beverage establishments operated by Corner Bar
Management in Downtown Las Vegas. Through enhanced analytical reviews, budgeting,
internal control implementation and reducing overhead, Mr. Salzman was able to save over
\$1.4 million in aggregate costs and generate EBITDA of over 25% for eight consecutive
quarters.

 Mr. Salzman previously served as the Vice President of Programs and Secretary on the
Board of Director’s for Financial Executives International (FEI). Financial Executives
International connects senior-level financial executives by defining the profession,
exchanging ideas about best practices, educating members and others while working with

1 the government to improve the general economy. He also currently serves as the Treasurer
2 on the Board of Directors of his local neighborhood HOA. Mr. Salzman holds a Bachelor
3 of Science in Accounting and a Bachelor of Arts in Criminal Justice & Criminology from
the University of Maryland, College Park. He is a Certified Public Accountant.

4 40. Upon information and belief, Defendant Salzman is a citizen of Florida.

5 **Defendant Gallagher**

6 41. Defendant Gallagher served as the Company's CFO from March 31, 2022, until his
7 resignation on May 12, 2023.

8 42. For the fiscal year ended December 31, 2022, Defendant Gallagher received \$4,797,517 in
9 compensation from the Company. This included \$337,829 in salary, \$72,500 in bonus awards, and
10 \$4,192,500 in stock awards.¹

11 43. The Company's 2022 Proxy Statement stated the following about Defendant Gallagher:

12 Mr. Gallagher is a seasoned C-level executive and board member who brings to Marathon
13 over 30 years of experience in capital markets, investment analysis, treasury, investor
14 relations, and financial and operational execution. Prior to joining Marathon, Mr. Gallagher
15 held several senior positions at UGI Corporation and AmeriGas Propane, including chief
16 strategy officer - Global LPG (2021-2022); president and CEO of AmeriGas Propane
17 (2018-2021); vice president finance and CFO of AmeriGas Propane (2013-2018); treasurer
18 (2011-2014) and director of investor relations and treasury (2007-2011) at UGI
19 Corporation; director of corporate development (2004-2007); and director of financial
20 planning (2000-2004) at AmeriGas Propane. Mr. Gallagher also served in various roles of
21 increasing responsibility at both UGI and AmeriGas from 1990-2000. Mr. Gallagher holds
22 a CPA certification in the State of Pennsylvania and a bachelor of science in accounting
23 from Drexel University.

24 44. Upon information and belief, Defendant Gallagher is a citizen of Pennsylvania.

25 **Defendant Antoun**

26 45. Defendant Antoun has served as a Company director since May 20, 2021. He also serves
27 as the chair of the Compensation Committee, as a member of the Nominating and Corporate Governance
28 Committee, and as a member of the Audit Committee. According to the 2023 Proxy Statement, as of June
16, 2023, Defendant Antoun beneficially owned 55,384 shares of the Company's common stock. Given

¹ Defendant Gallagher's 2021 compensation is not listed in Marathon's public filings.

1 that the price per share of the Company's common stock at the close of trading on June 16, 2023 was
2 \$9.98, Defendant Antoun owned over \$552,732 worth of Marathon stock as of that date.

3 46. For the fiscal year ended December 31, 2021, Defendant Antoun received \$625,504 in
4 compensation from the Company. This included \$27,198 in fees earned, and \$598,306 in stock awards.
5 For the fiscal year ended December 31, 2022, Defendant Antoun received \$404,527 in compensation from
6 the Company. This included \$138,750 in fees earned, and \$265,777 in stock awards.
7

8 47. The Company's 2023 Proxy Statement stated the following about Defendant Antoun:

9 Mr. Antoun brings to Marathon over 30 years of operational and technical experience,
10 having served in various leadership positions at several global technology companies,
11 including as a member of the board of directors of two publicly traded companies: Ruckus
12 Wireless, Inc. and Violin Memory, Inc. He currently serves as the president of First Solar
13 where he was chief operating officer before being appointed to president, U.S. in July 2015.
14 Prior to joining First Solar, Mr. Antoun served as a venture partner at Technology
15 Crossover Ventures ("TCV"), a private equity and venture firm, which he joined in July
16 2011. Before joining TCV, he was the head of product area IP & broadband networks for
17 Ericsson. Mr. Antoun joined Ericsson in 2007, when Ericsson acquired Redback Networks,
18 a telecommunications equipment company, where Mr. Antoun served as the senior vice
19 president of worldwide sales & operations. After the acquisition, Mr. Antoun was promoted
20 to chief executive officer of the Redback Networks subsidiary. Prior to Redback Networks,
21 Mr. Antoun spent five years at Cisco Systems, where he served as vice president of
22 worldwide systems engineering and field marketing, vice president of worldwide optical
23 operations, and vice president of carrier sales. Prior to Cisco, he was the director of systems
24 engineering at Newbridge Networks, a data and voice networking company. Mr. Antoun
25 started his career as a member of the technical staff at NYNEX (now Verizon
26 Communications), where he was part of the company's science and technology division.
27 Mr. Antoun earned a Bachelor of Science degree in engineering from the University of
28 Louisiana at Lafayette and a master's in information systems engineering from NYU Poly.
The Company has determined he is well suited to serve as a director due to his longstanding
technical and operational expertise with global technology companies.

48. Upon information and belief, Defendant Antoun is a resident of Arizona.

Defendant DeNuccio

49. Defendant DeNuccio has served as a Company director since January 19, 2021. According
to the 2023 Proxy Statement, as of June 16, 2023, Defendant DeNuccio beneficially owned 207,552 shares
of the Company's common stock. Given that the price per share of the Company's common stock at the

1 close of trading on June 16, 2023 was \$9.98, Defendant DeNuccio owned over \$2 million worth of
2 Marathon stock as of that date.

3 50. For the fiscal year ended December 31, 2021, Defendant DeNuccio received \$759,572 in
4 compensation from the Company. This included \$56,250 in fees earned and \$703,322 in stock awards.
5 For the fiscal year ended December 31, 2022, Defendant DeNuccio received \$342,235 in compensation
6 from the Company. This included \$76,458 in fees earned and \$265,777 in stock awards.
7

8 51. The Company's 2023 Proxy Statement stated the following about Defendant DeNuccio:

9 Mr. DeNuccio is the Founder and General Partner of Wild West Capital LLC since 2012
10 where he focused on angel investments, primarily in SAAS software start-ups. He brings
11 to Marathon more than 25 years of experience as a chief executive, global sales leader,
12 public and private board member, and more than a dozen angel investments, managing and
13 growing leading technology businesses. He served in senior executive positions with
14 Verizon, Cisco Systems, Ericsson, Redback Networks, Wang Laboratories and Unisys
15 Corporation. The Company has determined that Mr. DeNuccio is suited to serve on the
16 Board due to his long standing public company, finance and "high tech" experience.

17 52. Upon information and belief, Defendant DeNuccio is a resident of California.

18 **Defendant James**

19 53. Defendant James has served as a Company director since August 6, 2021. She also serves
20 as the chair of the Nominating and Corporate Governance Committee. According to the 2023 Proxy
21 Statement, as of June 16, 2023, Defendant James beneficially owned 37,519 shares of the Company's
22 common stock. Given that the price per share of the Company's common stock at the close of trading on
23 June 16, 2023 was \$9.98, Defendant James owned over \$374,439 worth of Marathon stock as of that date.

24 54. For the fiscal year ended December 31, 2021, Defendant James received \$535,487 in
25 compensation from the Company. This included \$9,194 in fees earned and \$526,293 in stock awards. For
26 the fiscal year ended December 31, 2022, Defendant James received \$373,069 in compensation from the
27 Company. This included \$107,292 in fees earned and \$265,777 in stock awards.

28 55. The Company's 2023 Proxy Statement stated the following about Defendant James:

1 Sarita James has been the Chief Executive Officer of Embark since 2014, responsible for
2 management of the company with a focus on growth. Prior to Embark, she held executive
3 roles at Citigroup, including Chief Operating Officer of Citi Ventures. She has experience
4 building software at Microsoft Corporation where she received two patents and advising
5 technology companies as a consultant at McKinsey & Company. Ms. James has a passion
6 for education and the public sector. Under the Obama administration, she served as a White
7 House Fellow and Acting Branch Chief of the Small Business Administration's Microloan
8 program. During Mayor Bloomberg's second term, she ran the Strategy and Policy division
9 for New York City Economic Development Corporation. She received a B.A. in Computer
10 Science from Harvard College and her M.B.A. from Oxford University's Saïd Business
11 School. The Company believes Ms. James is well suited to serve as a director due to her
12 deep expertise in software and technology.

13 56. Upon information and belief, Defendant James is a resident of New York.

14 **Defendant Leupp**

15 57. Defendant Leupp has served as a Company director since May 20, 2021. He also serves as
16 the chair of the Audit Committee, as a member of the Compensation Committee, and as a member of the
17 Nominating and Corporate Governance Committee. According to the 2023 Proxy Statement, as of June
18 16, 2023, Defendant Leupp beneficially owned 62,552 shares of the Company's common stock. Given
19 that the price per share of the Company's common stock at the close of trading on June 16, 2023 was
20 \$9.98, Defendant Leupp owned nearly \$624,268 worth of Marathon stock as of that date.

21 58. For the fiscal year ended December 31, 2021, Defendant Leupp received \$625,504 in
22 compensation from the Company. This included \$27,198 in fees earned and \$598,306 in stock awards.
23 For the fiscal year ended December 31, 2022, Defendant Leupp received \$404,527 in compensation from
24 the Company. This included \$138,750 in fees earned and \$265,777 in stock awards.

25 59. The Company's 2023 Proxy Statement stated the following about Defendant Leupp:

26 Mr. Leupp is the managing partner of Terra Firma Asset Management, LLC. Prior to co-
27 founding Terra Firma, Mr. Leupp served as a managing director in various roles at Lazard
28 Asset Management, Grubb & Ellis Alesco Global Advisors, RBC Capital Markets and
Robertson Stephens & Co. During his career, he has also held positions at The Staubach
Company, Trammell Crow Company, and KPMG Peat Marwick. Mr. Leupp is also a
member of the American Institute of Certified Public Accountants (AICPA) and serves on
the boards of both non-profit and corporate organizations. Mr. Leupp earned a Bachelor of
Science in business administration from Santa Clara University, and an MBA from Harvard

1 Business School. The Company has determined he is well suited to serve on its Board of
2 Directors due to his extensive audit and finance expertise.

3 60. Upon information and belief, Defendant Leupp is a resident of California.

4 **Defendant Ouissal**

5 61. Defendant Ouissal has served as a Company director since August 6, 2021. He also serves
6 as a member of the Nominating and Corporate Governance Committee, as a member of the Audit
7 Committee, and as a member of the Compensation Committee. According to the 2023 Proxy Statement,
8 as of June 16, 2023, Defendant Ouissal beneficially owned 30,217 shares of the Company's common
9 stock. Given that the price per share of the Company's common stock at the close of trading on June 16,
10 2023 was \$9.98, Defendant Ouissal owned over \$301,565 worth of Marathon stock.

11
12 62. For the fiscal year ended December 31, 2021, Defendant Ouissal received \$535,487 in
13 compensation from the Company. This included \$9,194 in fees earned and \$526,293 in stock awards. For
14 the fiscal year ended December 31, 2022, Defendant Ouissal received \$385,777 in compensation from the
15 Company. This included \$120,000 in fees earned and \$265,777 in stock awards.

16
17 63. The Company's 2023 Proxy Statement stated the following about Defendant Ouissal:

18 Mr. Ouissal has been the Founder & Chief Executive Officer of Zededa since 2016, a next-
19 generation edge software infrastructure start-up for which he raised \$28.5M of VC funding,
20 defined product and built company from inception. He is a seasoned business and product
21 executive with extensive go-to-market experience in high-growth and dynamic turn-around
22 environments, public and private; and a visionary product management and technology
23 leader with deep technical background in various IT/technology domains and inventor of
24 multiple patents. Prior roles include with Violin Memory, where he was the Senior Vice-
25 President of Global Field Operations, Product Management & Business Development,
26 Juniper Networks, where he was Vice-President of Product Management, Ericsson, where
27 he was Vice-President of Strategy & Global Customer Engagement and Redback
28 Networks, where he was the Vice-President of Global Systems Engineering. He is the
inventor of two patents in the broadband access and IP networking technology area. He
received a Bachelor of Science degree in Computer Science from Saxion Hogescholen in
the Netherlands. The Company believes Mr. Ouissal is well suited to serve on its Board
due to his technology background and expertise.

On September 23, 2022, the Company made an incremental \$30 million investment in
Auradine, Inc., bringing its total holdings in Auradine to \$35.5 million based upon a
previously issued and disclosed SAFE instrument. Said Ouissal owns approximately 5%

1 of the issued and outstanding shares of Auradine, and Fred Thiel, the Company's Chairman
2 and CEO, sits on Auradine's Board of Directors. On November 3, 2022, the Company's
3 Board met and determined that Said Ouissal is no longer deemed to be an independent
4 director of the Company. As a result, Mr. Ouissal stepped down from the Company's Board
5 Committees.

6 64. Upon information and belief, Defendant Ouissal is a resident of California.

7 **Defendant Mellinger**

8 65. Defendant Mellinger has served as a Company director since March 31, 2022. According
9 to the 2023 Proxy Statement, as of June 16, 2023, Defendant Mellinger beneficially owned 62,486 shares
10 of the Company's common stock. Given that the price per share of the Company's common stock at the
11 close of trading on June 16, 2023 was \$9.98, Defendant Mellinger owned over \$623,610 worth of
12 Marathon stock as of that date.

13 66. For the fiscal year ended December 31, 2022, Defendant Mellinger received \$285,663 in
14 compensation from the Company. This included \$40,000 in fees earned and \$245,663 in stock awards.

15 67. The Company's 2023 Proxy Statement stated the following about Defendant Mellinger:

16 Doug Mellinger is an active entrepreneur, philanthropist, impact investor, and board
17 member, with extensive experience building and leading public and private companies in
18 the technology and financial industries. Mellinger is a managing director at Clarion Capital
19 Partners, a lower middle market private equity and structured credit asset management
20 company, which he joined in January 2013. He currently serves on the board of directors
21 of Foundation Source, a leading provider of outsourced services and technology for private
22 foundations which he co-founded in 2000; the board of directors of Campden Wealth and
23 IPI (Institute for Private Investors), the largest global membership organization for wealthy
24 families and their family offices; and the board of directors of International Education
25 Corporation (IEC), one of the nation's largest career education colleges. Prior to Clarion
26 Capital Partners, Mellinger was a partner at Palm Ventures and a managing partner at Zeno
27 Ventures. He founded and served as the chairman and CEO of enherent Corp (NASDAQ:
28 ENHT), a global software development and services company that was listed as an Inc.
500 company twice and was featured on Deloitte & Touche's Technology Fast 500 and
Fast 50 lists. Throughout his career, Mellinger has served on the boards of numerous
companies and organizations, including Edgar Online (NASDAQ: EDGR), Sequest
Technologies, Producteev, Schiller International, Young Entrepreneur's Organization
(YEO), and Young President's Organization (YPO), among others. He has also served on
several advisory boards and boards to government agencies, universities, and non-profit
organizations over the past 40 years. Mellinger holds a degree in entrepreneurial science
from Syracuse University. The Board feels Mr. Mellinger is well suited to serve on its
Board due to his extensive finance experience.

FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS

1
2
3 68. By reason of their positions as officers, directors, and/or fiduciaries of Marathon and
4 because of their ability to control the business and corporate affairs of Marathon, the Individual
5 Defendants owed Marathon and its shareholders fiduciary obligations of trust, loyalty, good faith, and due
6 care, and were and are required to use their utmost ability to control and manage Marathon in a fair, just,
7 honest, and equitable manner. The Individual Defendants were and are required to act in furtherance of
8 the best interests of Marathon and its shareholders so as to benefit all shareholders equally.

9
10 69. Each director and officer of the Company owes to Marathon and its shareholders the
11 fiduciary duty to exercise good faith and diligence in the administration of the Company and in the use
12 and preservation of its property and assets and the highest obligations of fair dealing.

13 70. The Individual Defendants, because of their positions of control and authority as directors
14 and officers of Marathon, were able to and did, directly and/or indirectly, exercise control over the
15 wrongful acts complained of herein.

16 71. To discharge their duties, the officers and directors of Marathon were required to exercise
17 reasonable and prudent supervision over the management, policies, controls, and operations of the
18 Company.

19
20 72. Each Individual Defendant, by virtue of his, her, or its position as a director and/or officer,
21 owed to the Company and to its shareholders the highest fiduciary duties of loyalty, good faith, and the
22 exercise of due care and diligence in the management and administration of the affairs of the Company,
23 as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants
24 complained of herein involves a knowing and culpable violation of their obligations as directors and/or
25 officers of Marathon, the absence of good faith on their part, or a reckless disregard for their duties to the
26 Company and its shareholders that the Individual Defendants were aware or should have been aware posed
27 a risk of serious injury to the Company. The conduct of the Individual Defendants who were also officers
28

1 and directors of the Company has been ratified by the remaining Individual Defendants who collectively
2 comprised Marathon's Board at all relevant times.

3 73. As senior executive officers and directors of a publicly-traded company whose common
4 stock was registered with the SEC pursuant to the Exchange Act and traded on the NASDAQ, the
5 Individual Defendants had a duty to prevent and not to effect the dissemination of inaccurate and
6 untruthful information with respect to the Company's financial condition, performance, growth,
7 operations, financial statements, business, products, management, earnings, internal controls, and present
8 and future business prospects, including the dissemination of false information regarding the Company's
9 business, prospects, and operations, and had a duty to cause the Company to disclose in its regulatory
10 filings with the SEC all those facts described in this Complaint that it failed to disclose, so that the market
11 price of the Company's common stock would be based upon truthful and accurate information.
12

13 74. To discharge their duties, the officers and directors of Marathon were required to exercise
14 reasonable and prudent supervision over the management, policies, practices, and internal controls of the
15 Company. By virtue of such duties, the officers and directors of Marathon were required to, among other
16 things:
17

18 (a) ensure that the Company was operated in a diligent, honest, and prudent manner in
19 accordance with the laws and regulations of Nevada and the United States, and pursuant to Marathon's
20 own Code of Business Conduct and Ethics ("Code of Ethics");
21

22 (b) conduct the affairs of the Company in an efficient, business-like manner so as to
23 make it possible to provide the highest quality performance of its business, to avoid wasting the
24 Company's assets, and to maximize the value of the Company's stock;

25 (c) remain informed as to how Marathon conducted its operations, and, upon receipt of
26 notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry in
27 connection therewith, and to take steps to correct such conditions or practices;
28

1 (d) establish and maintain systematic and accurate records and reports of the business
2 and internal affairs of Marathon and procedures for the reporting of the business and internal affairs to the
3 Board and to periodically investigate, or cause independent investigation to be made of, said reports and
4 records;

5 (e) maintain and implement an adequate and functioning system of internal legal,
6 financial, and management controls, such that Marathon's operations would comply with all applicable
7 laws and Marathon's financial statements and regulatory filings filed with the SEC and disseminated to
8 the public and the Company's shareholders would be accurate;

9 (f) exercise reasonable control and supervision over the public statements made by the
10 Company's officers and employees and any other reports or information that the Company was required
11 by law to disseminate;

12 (g) refrain from unduly benefiting themselves and other Company insiders at the
13 expense of the Company; and

14 (h) examine and evaluate any reports of examinations, audits, or other financial
15 information concerning the financial affairs of the Company and to make full and accurate disclosure of
16 all material facts concerning, *inter alia*, each of the subjects and duties set forth above.

17 75. Each of the Individual Defendants further owed to Marathon and the shareholders the duty
18 of loyalty requiring that each favor Marathon's interest and that of its shareholders over their own while
19 conducting the affairs of the Company and refrain from using their position, influence or knowledge of
20 the affairs of the Company to gain personal advantage.

21 76. At all times relevant hereto, the Individual Defendants were the agents of each other and
22 of Marathon and were at all times acting within the course and scope of such agency.

23 77. Because of their advisory, executive, managerial, and directorial positions with Marathon,
24 each of the Individual Defendants had access to adverse, non-public information about the Company.
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1 78. The Individual Defendants, because of their positions of control and authority, were able
2 to and did, directly or indirectly, exercise control over the wrongful acts complained of herein, as well as
3 the contents of the various public statements issued by Marathon.

4 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

5 79. In committing the wrongful acts alleged herein, the Individual Defendants have pursued,
6 or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired
7 with one another in furtherance of their wrongdoing. The Individual Defendants caused the Company to
8 conceal the true facts as alleged herein. The Individual Defendants further aided and abetted and/or
9 assisted each other in breaching their respective duties.

10 80. The purpose and effect of the conspiracy, common enterprise, and/or common course of
11 conduct was, among other things, to: (i) facilitate and disguise the Individual Defendants' violations of
12 law, including breaches of fiduciary duty, unjust enrichment, waste of corporate assets, and violations of
13 the Exchange Act and (ii) conceal adverse information concerning the Company's operations, financial
14 condition, legal compliance, future business prospects and internal controls.

15 81. The Individual Defendants accomplished their conspiracy, common enterprise, and/or
16 common course of conduct by causing the Company purposefully or recklessly to conceal material facts,
17 fail to correct such misrepresentations, and violate applicable laws. In furtherance of this plan, conspiracy,
18 and course of conduct, the Individual Defendants collectively and individually took the actions set forth
19 herein. Because the actions described herein occurred under the authority of the Board, each of the
20 Individual Defendants who is a director of Marathon was a direct, necessary, and substantial participant
21 in the conspiracy, common enterprise, and/or common course of conduct complained of herein.

22 82. Each of the Individual Defendants aided and abetted and rendered substantial assistance in
23 the wrongs complained of herein. In taking such actions to substantially assist the commission of the
24 wrongdoing complained of herein, each of the Individual Defendants acted with actual or constructive
25
26
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28

1 knowledge of the primary wrongdoing, either took direct part in, or substantially assisted in the
2 accomplishment of that wrongdoing, and was or should have been aware of his or her overall contribution
3 to and furtherance of the wrongdoing.

4 83. At all times relevant hereto, each of the Individual Defendants was the agent of each of the
5 other Individual Defendants and of Marathon and was at all times acting within the course and scope of
6 such agency.
7

8 **MARATHON'S CODE OF ETHICS**

9 **Code of Ethics**

10 84. Marathon's Code of Ethics states that it was adopted "for directors, executive officers and
11 employees of the Company." The Code of Ethics is specifically "intended to focus the directors, executive
12 officers and employees on areas of ethical risk, provide guidance to directors, executive officers and
13 employees to help them recognize and deal with ethical issues, provide mechanisms to report unethical
14 conduct, and help foster a culture of honesty and accountability." Further, the Code of Ethics requires that
15 "each director, executive officer, and employee must comply with the letter and spirit of [the Code of
16 Ethics.]"
17

18 85. In a section titled, "Maintain Fiduciary Duties," the Code of Ethics states the following, in
19 relevant part:
20

21 Directors and executive officers must be loyal to the Company and must act at all times in
22 the best interest of the Company and its shareholders and subordinate self-interest to the
23 corporate and shareholder good. Directors and executive officers should never use their
24 position to make a personal profit. Directors and executive officers must perform their
25 duties in good faith, with sound business judgment and with the care of a prudent person.

26 86. In a section titled, "Protection and Proper Use of Company Assets," the Code of Ethics
27 states the following:
28

Directors, executive officers and employees must protect the Company's assets and ensure
their efficient use. Theft, loss, misuse, carelessness and waste of assets have a direct impact
on the Company's profitability. Directors, executive officers and employees must not use
Company time, employees, supplies, equipment, tools, buildings or other assets for

1 personal benefit without prior authorization from the Chairman of the Audit Committee or
2 as part of a compensation or expense reimbursement program available to all directors or
3 executive officers.

4 87. In a section titled, "Fair Dealing," the Code of Ethics states the following:

5 Directors, executive officers and employees shall deal fairly and directors and executive
6 officers shall oversee fair dealing by employees and officers with the Company's directors,
7 officers, employees, customers, suppliers and competitors. ***No one should take unfair
8 advantage of anyone through manipulation, concealment, abuse of privileged
9 information, misrepresentation of material facts or any other unfair dealing practices.***

10 (Emphasis added.)

11 88. In a section titled, "Compliance with Laws, Rules and Regulations," the Code of Ethics
12 states the following:

13 Directors and executive officers shall comply, and oversee compliance by employees,
14 officers and other directors, with all laws, rules and regulations applicable to the Company,
15 including insider-trading laws. Transactions in Company securities are to be governed by
16 any Company policy relating to insider trading that may be in place.

17 89. In a section titled, "Accuracy of Records," the Code of Ethics states the following:

18 ***The integrity, reliability and accuracy in all material respects of the Company's books,
19 records and financial statements is fundamental to the Company's continued and future
20 business success.*** No director, executive officer or employee may cause the Company to
21 enter into a transaction with the intent to document or record it in a deceptive or unlawful
22 manner. In addition, no director, executive officer, or employee may create any false or
23 artificial documentation or book entry for any transaction entered into by the Company.
24 Similarly, executive officers and employees who have responsibility for accounting and
25 financial reporting matters have a responsibility to accurately record all funds, assets and
26 transactions on the Company's books and records.

27 (Emphasis added.)

28 90. In a section titled, "Quality of Public Disclosures," the Code of Ethics provides the
following:

***The Company is committed to providing its shareholders with information about its
financial condition and results of operations as required by the securities laws of the
United States. It is the Company's policy that the reports and documents it files with or
submits to the Securities and Exchange Commission, and its earnings releases and
similar public communications made by the Company, include fair, timely and
understandable disclosure. Executive officers and employees who are responsible for
these filings and disclosures, including the Company's principal executive, financial and***

1 *accounting officers, must use reasonable judgment and perform their responsibilities*
2 *honestly, ethically and objectively in order to ensure that this disclosure policy is*
3 *fulfilled. The Company's senior management is primarily responsible for monitoring the*
4 *Company's public disclosure.*

(Emphasis added.)

5 91. In a section titled, “Failure to Comply; Compliance Procedures,” the Code of Ethics states
6 the following:

7 A failure by any director or executive officer to comply with the laws or regulations
8 governing the Company's business, this Code or any other Company policy or requirement
9 may result in disciplinary action, and, if warranted, legal proceedings.

10 **The Insider Trading Policy**

11 92. Marathon’s Insider Trading Policy states that if a director, officer, or employee possesses
12 material non-public information relating to Marathon, it is the Company’s policy “neither that person nor
13 any related person may buy or sell securities of the Company or engage in any other action to take
14 advantage of, or pass on to others, that information.”

15 93. In a section titled, “Prohibitions of Officers Directors and 5% Stockholders,” the Insider
16 Trading Policy states the following, in relevant part:

17 Officers, Directors and holders of 5% or more of the Company’s securities (“Insiders”)
18 have a special fiduciary responsibility to other holders of the Company’s securities who
19 cannot exert influence over the day to day operations of the Company. Therefore, persons
20 or entities that fall within one of these categories should refrain from certain activity and
21 adhere to certain procedures so as to avoid any appearance of impropriety.

22 **Audit Committee Charter**

23 94. Marathon’s Audit Committee Charter states that the Audit Committee’s purpose is to
24 “provide assistance to the Board of Directors in fulfilling their responsibility to the shareholders, potential
25 shareholders and investment community relating to corporate accounting, reporting practices of the
26 Corporation, the quality and integrity of the financial reports of the Corporation and the Corporation’s
27 compliance with legal and regulatory requirements.”
28

1 95. In a section titled, “Responsibilities,” the Audit Committee is charged with the following
2 responsibilities:

- 3 • Serve as an independent and objective party to monitor the Corporation's financial
4 reporting process and internal control system and complaints or concerns relating
5 thereto;
- 6 • To recommend, for shareholder approval, the independent auditor to examine the
7 Corporation's accounts, controls and financial statements. The Committee shall
8 have the sole authority and responsibility to select, evaluate and if necessary replace
9 the independent auditor. The Committee shall have the sole authority to approve all
10 audit engagement fees and terms and the Committee, or a member of the
11 Committee, must pre-approve any non-audit service provided to the Corporation
12 by the Corporation's independent auditor;
- 13 • Obtain and review at least annually, a formal written report from the independent
14 auditor setting forth its internal quality-control procedures; material issues raised
15 in the prior five years by its internal quality-control reviews and their resolution;
- 16 • Review and appraise the audit efforts of independent auditors of the Corporation
17 and, where appropriate, recommend the replacement of the independent
18 accountants;
- 19 • Consider and approve, if appropriate, major changes to the Corporation's
20 accounting principles and practices as suggested by the independent auditors or
21 management;
- 22 • Establish regular and separate systems of reporting to the Committee by
23 management and the independent auditors regarding any significant judgments
24 made in management's preparation of the financial statements and the view of each
25 as to appropriateness of such . judgments and additional items as required under the
26 Sarbanes-Oxley Act including critical accounting policies;
- 27 • Review with the independent auditors and financial accounting personnel, the
28 adequacy and effectiveness of the accounting and financial controls of the
Corporation, and elicit any recommendations for the improvement of such internal
control procedures or particular areas where new or more detailed controls or
procedures are desirable. Particular emphasis should be given to the adequacy of
such internal controls to assess and manage financial risk exposure and to expose
any payments, transactions or procedures that might be deemed illegal or otherwise
improper;
- Review the financial statements contained in the annual report and quarterly report
to shareholders with management and the independent auditors to determine that
the independent auditors are satisfied with the disclosure and content of the

1 financial statements to be presented to the shareholders. Any changes in accounting
2 principles should be reviewed;

- 3 • Review with management of the Corporation any financial information, earnings
4 press releases and earnings guidance filed with the Securities and Exchange
5 Commission or disseminated to the public, including any certification, report,
6 opinion or review rendered by the independent auditors;
- 7 • Establish procedures for receiving and treating complaints received by the
8 Corporation regarding accounting, internal accounting controls and auditing
9 matters, and the confidential anonymous submission by employees of concerns
10 regarding questionable accounting or auditing matters;

96. In violation of the Code of Ethics, the Insider Trading Policy, and the Audit Committee
11 Charter, the Individual Defendants conducted little, if any, oversight of the Company's scheme to issue
12 materially false and misleading statements to the public and to facilitate and disguise the Individual
13 Defendants' violations of law, including breaches of fiduciary duty, unjust enrichment, waste of corporate
14 assets, and violations of the Exchange Act. Moreover, at least one of the Individual Defendants violated
15 the Insider Trading Policy by engaging in insider trading. Also, in violation of the Code of Ethics, the
16 Individual Defendants failed to maintain the accuracy of Company records and reports, comply with laws
17 and regulations, conduct business in an honest and ethical manner, and properly report violations of the
18 Code of Ethics.

19 **INDIVIDUAL DEFENDANTS' MISCONDUCT**

20 **Background**

21 97. Marathon is a bitcoin digital mining company incorporated in Nevada that maintains
22 offices in Fort Lauderdale, Florida and Irvine, California.

23 98. The Company began in 2010 under the name "Verve Ventures, Inc." On December 7,
24 2011, the Company changed its name to the "American Strategic Minerals Corporation" and entered
25 the uranium and vanadium exploration business. In June 2012, the Company changed course by
26 dropping the minerals business model and transitioned to real estate investments in Southern
27
28

1 California. By October of that year, the Company again shifted course and tried its hand with IP
2 licensing by changing its name to “Marathon Patent Group, Inc.”

3 99. In 2017, the Company purchased digital asset mining machines and established a data
4 center in Canada to mine digital assets. Three years later, the Company ended operations in Canada,
5 relocated all mining rigs to the United States, and began mining bitcoin across the United States. On
6 March 1, 2021, the Company changed its name to Marathon. As of the end of December 2022,
7 Marathon’s business operations have centered exclusively on mining bitcoin and related
8 opportunities within the bitcoin ecosystem.
9

10 100. Bitcoin is a digital asset that is decentralized and functions within a peer-to-peer
11 network, enabling users to exchange payments directly and without intermediaries, like banks. This
12 method of digital transactions is accomplished through utilizing blockchain technology.
13

14 101. Throughout the Relevant Period, and unbeknownst to the investing public until February
15 2023, Marathon utilized improper accounting methods to report its financial information to the SEC. As
16 a result, numerous financial figures, results, and disclosures in Marathon’s quarterly and annual reports
17 filed between 2021 and 2022 were materially false and misleading.

18 102. The Individual Defendants concealed the existence of control failures that led to these
19 significant accounting errors from the investing public, instead affirmatively representing throughout the
20 Relevant Period that the Company maintained effective disclosure and internal controls over its financial
21 reporting.
22

23 103. The Company’s improperly reported financial statements would ultimately cause
24 Marathon to restate over a year’s worth of its financial statements, resulting in significant losses for the
25 Company, the extent of which remains untold, even today.
26
27
28

FALSE AND MISLEADING STATEMENTS***May 10, 2021 Press Release***

104. On May 10, 2021, Marathon issued a press release regarding the Company's first quarter of 2021 results. The press release stated the following, in relevant part:

"As our financial and operational results for the first quarter demonstrate, 2021 is lining up to be a banner year for Marathon as we are transforming our business into one of the largest enterprise Bitcoin mining operations in North America during what is currently one of the most profitable mining environments in Bitcoin's history," said Fred Thiel, Marathon's CEO. "Since the start of 2021, we have taken several steps to establish Marathon as one of the leading pure-play Bitcoin investment opportunities by increasing our hashrate over 689%, rebranding our organization, and increasing our total bitcoin holdings to over 5,324 bitcoins. We 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.

Marathon's chief financial officer, Sim Salzman, commented, "The first quarter marked a substantial improvement in our financial performance as we grew revenues to \$9.2 million, generated net income of \$83.4 million, and earned \$137.4 million in adjusted EBITDA. Additionally, we exited the quarter with \$211.9 million in cash and with a total liquidity, defined as cash and bitcoin holdings, of 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 generate revenues and yielding better economies of scale, which will drive profitability."

May 10, 2021 10-Q

105. Also on May 10, 2021, the Company filed its quarterly report on Form 10-Q with the SEC for the fiscal quarter ended March 31, 2021 (the "1Q21 10-Q"). The 1Q21 10-Q was signed by Defendants Thiel and Salzman, and contained certifications pursuant to Rule 13a-14(a) and 15d-14(a) under the Exchange Act and the Sarbanes-Oxley Act of 2002 ("SOX") signed by Defendants Thiel and Salzman attesting to the accuracy of the financial statements contained therein, the disclosure of any material changes to the Company's internal controls, and the disclosure of any fraud committed by the Company, its officers, or its directors.

1 106. With respect to the Company's controls and procedures, the 1Q21 10-Q stated the
2 following, in relevant part:

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

16 ***

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

22 (Emphasis added.)

23 107. The 1Q21 10-Q also reported Marathon's total revenues, impairment of digital assets,
24 including gains and losses in connection with Marathon's investment in the NYDIG Digital Assets Fund
25 III, LP ("Fund"), accruals for legal expenses, valuation of bifurcated derivatives related to certain
26 investments, accumulated comprehensive income and other income, classification of prepaid expenses
27 between short and long term, among other financial line items.

28 ***June 16, 2021 Proxy Statement***

108. On June 16, 2021, the Company filed the 2021 Proxy Statement. Defendants Okamoto,
Thiel, Antoun, Leupp, and DeNuccio solicited the 2021 Proxy Statement, filed pursuant to Section
14(a) of the Exchange Act, which contained material misstatements and omissions.

1 109. With respect to the Company’s Code of Ethics and corporate governance, the 2021 Proxy
2 Statement stated:

3 We are committed to maintaining strong corporate governance practices that benefit the
4 long-term interests of our shareholders by providing for effective oversight and
5 management of the Company. Our governance policies, including a Code of Business
6 Conduct and Ethics (“Code”) can be found on our website at www.marathonpg.com by
7 following the link to “Investors” and then to “Governance Docs.”

8 Our Code of Business Conduct and Ethics, effective December 2017, applies to directors,
9 executive officers and employees of the Company. This Code is intended to focus the
10 directors, executive officers and employees on areas of ethical risk, provide guidance to
11 directors, executive officers and employees to help them recognize and deal with ethical
12 issues, provide mechanisms to report unethical conduct, and help foster a culture of honesty
13 and accountability. Each director, executive officer and employee must comply with the
14 letter and spirit of this Code.

15 We require that Directors and executive officers must be loyal to the Company and must
16 act at all times in the best interest of the Company and its shareholders and subordinate
17 self-interest to the corporate and shareholder good. Directors and executive officers should
18 never use their position to make a personal profit. Directors and executive officers must
19 perform their duties in good faith, with sound business judgment and with the care of a
20 prudent person.

21 110. With respect to Risk Oversight, the 2021 Proxy Statement stated:

22 Our Board is primarily responsible for overseeing our risk management processes. The
23 Board receives and reviews periodic reports from management, auditors, legal counsel, and
24 others, as considered appropriate regarding the Company’s assessment of risks. The Board
25 focuses on the most significant risks facing the Company and our general risk management
26 strategy, and also ensures that risks undertaken by us are consistent with the Board’s risk
27 parameters. While the Board oversees the Company, our management is responsible for
28 day-to-day risk management processes. We believe this division of responsibilities is the
most effective approach for addressing the risks facing the Company and that our board
leadership structure supports this approach.

111. The 2021 Proxy Statement also called for shareholder approval of, among other things,
the election of directors Thiel, DeNuccio, Ouissal, and James, an amendment to increase in the number
of shares available in the Company’s 2018 Equity Incentive Plan (the “Plan”) by 7,500,000 shares, and
the ratification of RBSM, LLP as the Company’s registered public accountant for the fiscal year ended
December 31, 2021. The Plan, originally approved in 2018, provided for stock options, restricted stock,

1 preferred stock, stock-based awards, and other awards to incentivize employees, directors, consultants,
2 advisors, and other service providers. As disclosed in the 2021 Proxy Statement, as of the date of the
3 solicitation, there were no shares of common stock remaining to be issued under the Plan.

4 112. The 2021 Proxy Statement was false and misleading because, despite assertions to the
5 contrary, the Company's Code of Ethics and other governance policies were not followed, as evidenced
6 by the numerous false and misleading statements alleged herein, and the Individual Defendants' failures
7 to report violations of the Code of Ethics.
8

9 113. The 2021 Proxy Statement also failed to disclose, *inter alia*, that: (1) the Company
10 materially misstated its revenue, cost of revenue, and other financial information in its 2021 and 2022
11 SEC filings; (2) the Company continuously downplayed its serious problems with internal controls; and
12 (3) because of this, Marathon would face scrutiny by the SEC, need to restate several financial statements
13 and was reasonably likely to suffer significant damage, including reputational harm. As a result of the
14 foregoing, the Company's public statements were materially false and misleading at all relevant times.
15

16 114. As a result of the material misstatements and omissions contained in the 2021 Proxy
17 Statement, Company shareholders elected and reelected Board members who were violating their
18 fiduciary duties, thereby enabling the Individual Defendants to perpetuate their misconduct and increased
19 the number of shares available in the Company's Plan by 7,500,000 shares, among other things. This
20 enabled the Individual Defendants and others at the Company to materially benefit, unjustly, therefrom.
21

22 ***August 13, 2021 Press Release***

23 115. On August 13, 2021, Marathon issued a press release regarding the Company's second
24 quarter of 2021 results. The press release stated the following, in relevant part:

25 Marathon's CFO, Sim Salzman, commented, "When comparing Q2 2021 to Q1 2021, we
26 grew our revenues by 220% to \$29.3 million while generating non-GAAP operating
27 income of \$20.1 million. We exited the quarter with \$170.6 million in cash and with a total
28 liquidity, defined as cash and bitcoin holdings, of approximately \$366.5 million. Given the
number of non-cash items that impact our financial results, including but not limited to
depreciation expense and impairments on our mined bitcoin holdings, we have introduced

1 non-GAAP operating income. This metric portrays an operational equivalent to our
2 formerly reported metric, adjusted EBITDA, and we believe it will help investors more
3 objectively track our financial progress. Bitcoin’s future price and the network difficulty
4 rate are subject to change. However, we maintain our belief that Marathon’s financial
performance will continue to improve as more miners come online, increasing our
probability of earning bitcoin.”

5 ***August 13, 2021 Form 10-Q***

6 116. Also on August 9, 2021, the Company filed its quarterly report on Form 10-Q with the
7 SEC for the fiscal quarter ended June 30, 2021 (the “2Q21 10-Q”). The 2Q21 10-Q was signed by
8 Defendants Thiel and Salzman and contained SOX certifications signed by Defendants Thiel and
9 Salzman attesting to the accuracy of the financial statements contained therein, the disclosure of any
10 material changes to the Company’s internal controls, and the disclosure of any fraud committed by the
11 Company, its officers, or its directors.

12 117. With respect to the Company’s internal controls, the 2Q21 10-Q stated the following, in
13 relevant part:
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15 Our management is responsible for establishing and maintaining adequate internal control
16 over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange
17 Act. Our management is also required to assess and report on the effectiveness of our
18 internal control over financial reporting in accordance with Section 404 of the Sarbanes-
19 Oxley Act of 2002 (“Section 404”). Our internal control over financial reporting is a
20 process designed to provide reasonable assurance regarding the reliability of financial
21 reporting and the preparation of financial statements for external purposes of accounting
22 principles generally accepted in the United States. Management assessed the effectiveness
23 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.***

24 ***

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

(Emphasis added.)

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118. The 2Q21 10-Q also reported Marathon's total revenues, impairment of digital assets, including gains and losses in connection with Marathon's investment in the Fund, accruals for legal expenses, valuation of bifurcated derivatives related to certain investments, accumulated comprehensive income and other income, classification of prepaid expenses between short and long term, among other financial line items.

November 10, 2021 Press Release

119. On November 10, 2021, Marathon issued a press release regarding the Company's third quarter of 2021 results. The press release stated the following, in relevant part:

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

November 15, 2021 10-Q

120. On November 15, 2021, the Company filed its quarterly report on Form 10-Q with the SEC for the fiscal quarter ended September 30, 2021 (the "3Q21 10-Q"). The 3Q21 10-Q was signed by Defendants Thiel and Salzman and contained SOX certifications signed by Defendants Thiel and Salzman attesting to the accuracy of the financial statements contained therein, the disclosure of any material changes to the Company's internal controls, and the disclosure of any fraud committed by the Company, its officers, or its directors.

121. With respect to the Company's internal controls, the 3Q21 10-Q stated the following, in relevant part:

1 Our management is responsible for establishing and maintaining adequate internal control
2 over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange
3 Act. Our management is also required to assess and report on the effectiveness of our
4 internal control over financial reporting in accordance with Section 404 of the Sarbanes-
5 Oxley Act of 2002 (“Section 404”). Our internal control over financial reporting is a
6 process designed to provide reasonable assurance regarding the reliability of financial
7 reporting and the preparation of financial statements for external purposes of accounting
8 principles generally accepted in the United States. Management assessed the effectiveness
9 of our internal control over financial reporting as of September 30, 2021. In making this
10 assessment, we used the criteria set forth by the Committee of Sponsoring Organizations
11 of the Treadway Commission (COSO) in Internal Control - Integrated Framework in the
12 2013 COSO framework. ***Based on this assessment, management concluded that our
13 disclosure controls and procedures were effective.***

9 ***

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

13 (Emphasis added.)

14 122. The 3Q21 10-Q also reported Marathon’s total revenues, impairment of digital assets,
15 including gains and losses in connection with Marathon’s investment in the Fund, accruals for legal
16 expenses, valuation of bifurcated derivatives related to certain investments, accumulated comprehensive
17 income and other income, classification of prepaid expenses between short and long term, among other
18 financial line items.

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20 ***March 1, 2022 Press Release and NT 10-K***

21 123. On March 1, 2022, Marathon issued a press release regarding the Company’s fourth
22 quarter of 2021 and fiscal year 2021 results. The press release stated the following, in relevant part:

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

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

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124. The same day, the Company filed a Notification of Inability to Timely File its annual report on Form 10-K with the SEC on Form 12b-25. According to the notice, Marathon encountered a delay in its independent registered accounting firm’s completion of the audit of its financial statements for the year ended December 31, 2021 because of: “(i) the significant increase in amount and complexity of revenues in 2021 over 2020, (ii) the Company’s transition to large accelerated filer status, shortening filing deadlines by 30 days, and (iii) the Company’s first year of being audited for internal controls.” The Company disclosed that it expected to file its 10-K within 15 days of the due date.

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March 10, 2022 10-K

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125. On March 10, 2022, Marathon filed its annual report for the fiscal year ended December 31, 2021 on Form 10-K with the SEC (the “2021 10-K”). The 2021 10-K was signed by Defendants Thiel, Salzman, Ouissal, Leupp, Antoun, DeNuccio, and James and contained SOX certifications signed by Thiel and Salzman attesting to its accuracy.

126. The 2021 10-K included an adverse opinion by Marcum LLP regarding material weaknesses identified in Marathon’s internal controls. Specifically, the 2021 10-K disclosed the following about management’s assessment of Marathon’s internal controls:

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 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 evaluation, management identified a weakness in internal control over financial reporting

1 related to Information Technology General Controls (ITGC). Specifically, the Company
2 did not design and/or implement user access controls to ensure appropriate segregation of
3 duties or program change management controls for certain financially relevant systems
4 impacting the Company's processes around revenue recognition and digital assets to ensure
5 that IT program and data changes affecting the Company's (i) financial IT applications, (ii)
6 digital currency mining equipment, and (iii) underlying accounting records, are identified,
7 tested, authorized and implemented appropriately to validate that data produced by its
8 relevant IT system(s) were complete and accurate. Automated process-level controls and
9 manual controls that are dependent upon the information derived from such financially
10 relevant systems were also determined to be ineffective as a result of such deficiency. In
11 addition, the Company has not effectively designed a manual key control to detect material
12 misstatements in revenue.

13 The material weakness described above did not result in a material misstatement to the
14 Company's previously issued consolidated financial statements, nor in the consolidated
15 financial statements included in this Annual Report on Form 10-K.

16 127. The 2021 10-K also reported Marathon's Consolidated Balance Sheets, Statements of
17 Operations and Cash Flows for the year ended December 31, 2021. For example, the 2021 10-K reported
18 \$268,522 thousand in cash and cash equivalents, \$102,806 thousand in digital assets, \$223,779 thousand
19 in digital assets held in the Fund, and 1,448,245 in total liabilities and stockholders' equity. These
20 amounts (among other line items, including Marathon's reported debt and accrued expenses) were
21 incorrect and would later be restated. In truth, the Company's total liabilities and stockholders' equity for
22 the 2021 fiscal year was \$1,444,331.

23 ***May 4, 2022 Press Release***

24 128. On May 4, 2022, Marathon issued a press release regarding the Company's first quarter
25 of 2022 results. The press release stated the following, in relevant part:

26 **First Quarter 2022 Financial Results**

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

1 “In the first quarter of 2022, we increased our bitcoin production 556% year-over-year and
2 15% from the prior quarter, producing a record 1,259 bitcoin even as the global hash rate
3 rose by approximately 17% in the same period,” said Fred Thiel, Marathon’s chairman and
4 CEO. “At Marathon, we are constantly pushing boundaries to propel our business and our
5 industry forward, but as the first quarter and subsequent events have demonstrated, not
6 every industry operates at the same pace as we do. Innovation is not a linear process, and
7 in the first quarter, we experienced regulatory friction related to breaking the mold on
8 deploying our miners behind the meter at power facilities operated by some of the largest
9 renewable energy companies in the United States. As a result, our deployment schedule
10 shifted by 45 days in the first quarter. Encouragingly, in March, the grid operators in Texas
11 granted permission for all 280 megawatts of the first major facility in Texas to be energized.
12 Currently, the pace of deployment is predominantly determined by the pace of
13 construction, which continued unimpeded as we worked through the regulatory and
14 permitting friction.

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

21 *May 4, 2022 Conference Call*

22 129. Also on May 4, 2022, Marathon held a conference call with analysts and investors to
23 discuss the first quarter of 2022 results. During the call, Defendant Thiel stated, in relevant part:

24 Some strategic and operational highlights. In Q1, we made substantial progress,
25 strengthening Marathon’s competitive advantages to expand our position as the leading
26 Bitcoin miner in North America. A year ago, when I transitioned from the Board of
27 Directors to become CEO, we had 12,000 miners operating. Our hash rate was 1.3x hash
28 and Marathon consisted of 4 full-time employees. Today, we have 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.

29 *May 6, 2022 10-Q*

30 130. On May 6, 2022, the Company filed its quarterly report on Form 10-Q with the SEC for
31 the fiscal quarter ended March 31, 2022 (the “1Q22 10-Q”). The 1Q22 10-Q was signed by Defendants
32 Thiel and Gallagher, and contained SOX certifications signed by Defendants Thiel and Gallagher
33 attesting to the accuracy of the financial statements contained therein, the disclosure of any material

1 changes to the Company’s internal controls, and the disclosure of any fraud committed by the
2 Company, its officers, or its directors.

3 131. With respect to the Company’s controls and procedures, the 1Q22 10-Q acknowledged
4 that disclosure controls were not effective, stating the following, in relevant part:

5
6 Our management is responsible for establishing and maintaining adequate internal control
7 over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange
8 Act. Our management is also required to assess and report on the effectiveness of our
9 internal control over financial reporting in accordance with Section 404 of the Sarbanes-
10 Oxley Act of 2002 (“Section 404”). Our internal control over financial reporting is a
11 process designed to provide reasonable assurance regarding the reliability of financial
12 reporting and the preparation of financial statements for external purposes of accounting
13 principles generally accepted in the United States. Management assessed the effectiveness
14 of our internal control over financial reporting as of March 31, 2022. In making this
15 assessment, we used the criteria set forth by the Committee of Sponsoring Organizations
16 of the Treadway Commission (COSO) in Internal Control - Integrated Framework in the
17 2013 COSO framework. Based on this assessment, management concluded that our
18 disclosure controls and procedures were not effective as of March 31, 2022 for the reasons
19 stated in our Annual Report on Form 10-K for the year ended December 31, 2021.

20 132. Nonetheless, the extent of the deficiencies remained concealed from investors. The
21 1Q22 10-Q also reported Marathon’s total revenues, operating expenses, net losses, impairment of digital
22 assets, realized and unrealized gains on digital assets held in the Fund, and income taxes, among other
23 financial line items.

24 ***August 8, 2022 Press Release***

25 133. On August 8, 2022, Marathon issued a press release regarding the Company’s second
26 quarter of 2022 results, along with bitcoin and digital asset mining operation updates for July 2022. The
27 press release stated the following, in relevant part:

28 “In the second quarter of 2022, we increased our bitcoin production 8% year-over-year,
producing 707 bitcoin, and we continued to install miners in Texas in anticipation of
energization as we worked through both operational obstacles and a challenging macro
environment,” said Fred Thiel Marathon’s chairman and CEO. “Energization delays,
maintenance and weather issues in Montana, and an approximately 56% decline in the price
of bitcoin during the quarter, severely 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

1 we have made since, we are optimistic that Marathon’s operational and financial
2 positioning is improving.

3 ***August 8, 2022 Conference Call***

4 134. Also on August 8, 2022, Marathon held a conference call with analysts and investors to
5 discuss the second quarter of 2022 results. During the call, Defendant Thiel stated, in relevant part:

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

9 ***

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

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

17 ***August 9, 2022 10-Q***

18 135. On August 9, 2022, the Company filed its quarterly report on Form 10-Q with the SEC
19 for the fiscal quarter ended June 30, 2022 (the “2Q22 10-Q”). The 2Q22 10-Q was signed by Defendants
20 Thiel and Salzman, and contained SOX certifications signed by Defendants Thiel and Salzman
21 attesting to the accuracy of the financial statements contained therein, the disclosure of any material
22 changes to the Company’s internal controls, and the disclosure of any fraud committed by the
23 Company, its officers, or its directors.

24 136. With respect to the Company’s controls and procedures, the 2Q22 10-Q acknowledged
25 that disclosure controls were not effective, stating the following, in relevant part:
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27 Our management is responsible for establishing and maintaining adequate internal control
28 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

1 internal control over financial reporting in accordance with Section 404 of the Sarbanes-
2 Oxley Act of 2002 (“Section 404”). Our internal control over financial reporting is a
3 process designed to provide reasonable assurance regarding the reliability of financial
4 reporting and the preparation of financial statements for external purposes of accounting
5 principles generally accepted in the United States. Management assessed the effectiveness
6 of our internal control over financial reporting as of June 30, 2022. In making this
7 assessment, we used the criteria set forth by the Committee of Sponsoring Organizations
8 of the Treadway Commission (COSO) in Internal Control - Integrated Framework in the
9 2013 COSO framework. Based on this assessment, management concluded that our
10 disclosure controls and procedures were not effective as of June 30, 2022 for the reasons
11 stated in our Annual Report on Form 10-K for the year ended December 31, 2021.

12 137. Nonetheless, the extent of the deficiencies remained concealed from investors. The
13 2Q22 10-Q also reported Marathon’s total revenues, operating expenses, net losses, impairment of digital
14 assets, realized and unrealized gains on digital assets held in the Fund, and income taxes, among other
15 financial line items.

16 ***September 12, 2022 Proxy Statement***

17 138. On September 12, 2022, the Company filed the 2022 Proxy Statement. Defendants Thiel,
18 Antoun, DeNuccio, Leupp, James, Ouissal, and Mellinger solicited the 2022 Proxy Statement, filed
19 pursuant to Section 14(a) of the Exchange Act, which contained material misstatements and omissions.

20 139. With respect to the Company’s Code of Ethics and corporate governance, the 2022 Proxy
21 Statement stated:

22 We are committed to maintaining strong corporate governance practices that benefit the
23 long-term interests of our shareholders by providing for effective oversight and
24 management of the Company. Our governance policies, including a Code of Business
25 Conduct and Ethics (“Code”) can be found on our website at www.marathonpg.com by
26 following the link to “Investors” and then to “Governance Docs.”

27 Our Code of Business Conduct and Ethics, effective December 2017, applies to directors,
28 executive officers and employees of the Company. This Code is intended to focus the
directors, executive officers and employees on areas of ethical risk, provide guidance to
directors, executive officers and employees to help them recognize and deal with ethical
issues, provide mechanisms to report unethical conduct, and help foster a culture of honesty
and accountability. Each director, executive officer and employee must comply with the
letter and spirit of this Code.

We require that Directors and executive officers must be loyal to the Company and must
act at all times in the best interest of the Company and its shareholders and subordinate

1 self-interest to the corporate and shareholder good. Directors and executive officers should
2 never use their position to make a personal profit. Directors and executive officers must
3 perform their duties in good faith, with sound business judgment and with the care of a
4 prudent person.

4 140. With respect to Risk Oversight, the 2022 Proxy Statement stated:

5 Our Board is primarily responsible for overseeing our risk management processes. The
6 Board receives and reviews periodic reports from management, auditors, legal counsel, and
7 others, as considered appropriate regarding the Company's assessment of risks. The Board
8 focuses on the most significant risks facing the Company and our general risk management
9 strategy, and also ensures that risks undertaken by us are consistent with the Board's risk
10 parameters. While the Board oversees the Company, our management is responsible for
11 day-to-day risk management processes. We believe this division of responsibilities is the
12 most effective approach for addressing the risks facing the Company and that our board
13 leadership structure supports this approach.

11 141. The 2022 Proxy Statement also called for shareholder approval of, among other things,
12 the election of directors Antoun and Leupp, an increase of the Company's authorized shares of common
13 stock from 200 million to 300 million, and the ratification of Marcum LLP as the Company's registered
14 public accountant for the fiscal year ended December 31, 2022.

15 142. The 2022 Proxy Statement was false and misleading because, despite assertions to the
16 contrary, the Company's Code of Ethics and other governance policies were not followed, as evidenced
17 by the numerous false and misleading statements alleged herein, and the Individual Defendants' failures
18 to report violations of the Code of Ethics.

19 143. The 2022 Proxy Statement also failed to disclose, *inter alia*, that: (1) the Company
20 materially misstated its revenue, cost of revenue, and other financial information in its 2021 and 2022
21 SEC filings; (2) the Company continuously downplayed its serious problems with internal controls; and
22 (3) because of this, Marathon would face scrutiny by the SEC, need to restate several financial statements
23 and was reasonably likely to suffer significant damage, including reputational harm. As a result of the
24 foregoing, the Company's public statements were materially false and misleading at all relevant times.
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1 144. As a result of the material misstatements and omissions contained in the 2022 Proxy
2 Statement, Company shareholders elected and reelected Board members who were violating their
3 fiduciary duties, thereby enabling the Individual Defendants to perpetuate their misconduct and increased
4 the Company's authorized shares of common stock from 200 million to 300 million, among other things.

5
6 ***November 8, 2022 Press Release***

7 145. On November 8, 2022, Marathon issued a press release regarding the Company's third
8 quarter of 2022 results. The press release stated the following, in relevant part:

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

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

25
26 ***November 8, 2022 Conference Call***

27 146. Also on November 8, 2022, Marathon held a conference call with analysts and investors
28 to discuss the third quarter of 2022 results. During the call, Defendant Thiel stated, in relevant part:

29 The third quarter was a transition and rebuilding period at Marathon. With the facility in
30 Hardin, Montana off-line and energization of miners in Texas delayed, we entered the third
31 quarter with only 6,000 miners operational, producing approximately 0.7x exahashes per
32 second. Unsurprisingly, the operational transition that occurred during the third quarter
33 caused our financial results to dip both quarter-over-quarter and year-over-year. However,
34 as our consistently improving Bitcoin production substantiates, our confidence in our
35 ability to rebuild our hash rate while maintaining a healthy balance sheet was well founded.
36 Today, we believe Marathon is a strong foundation on which we can continue to efficiently

1 grow towards our goal of 23 exahashees per second by mid-2023, and expand our position
2 as the leader in securing and supporting the Bitcoin ecosystem.

3 *November 14, 2022 10-Q*

4 147. On November 14, 2022, the Company belatedly filed its quarterly report on Form 10-Q
5 with the SEC for the fiscal quarter ended September 30, 2022 (the “3Q22 10-Q”). The 3Q22 10-Q was
6 signed by Defendants Thiel and Gallagher and contained SOX certifications signed by Defendants
7 Thiel and Gallagher attesting to the accuracy of the financial statements contained therein, the
8 disclosure of any material changes to the Company’s internal controls, and the disclosure of any
9 fraud committed by the Company, its officers, or its directors.
10

11 148. With respect to the Company’s controls and procedures, the 3Q22 10-Q acknowledged
12 that disclosure controls were not effective, stating the following, in relevant part:

13 Our management is responsible for establishing and maintaining adequate internal control
14 over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange
15 Act. Our management is also required to assess and report on the effectiveness of our
16 internal control over financial reporting in accordance with Section 404 of the Sarbanes-
17 Oxley Act of 2002 (“Section 404”). Our internal control over financial reporting is a
18 process designed to provide reasonable assurance regarding the reliability of financial
19 reporting and the preparation of financial statements for external purposes of accounting
20 principles generally accepted in the United States. Management assessed the effectiveness
21 of our internal control over financial reporting as of September 30, 2022. In making this
22 assessment, we used the criteria set forth by the Committee of Sponsoring Organizations
23 of the Treadway Commission (COSO) in Internal Control – Integrated Framework in the
24 2013 COSO framework. Based on this assessment, management concluded that our
25 disclosure controls and procedures were not effective as of September 30, 2022 for the
26 reasons stated in our Annual Report on Form 10-K for the year ended December 31, 2021.

27 149. Nonetheless, the extent of the deficiencies remained concealed from investors. The
28 3Q22 10-Q also reported Marathon’s total revenues, operating expenses, net losses, impairment of digital
29 assets, realized and unrealized gains on digital assets held in the Fund, and income taxes, among other
30 financial line items.

31 150. The statements identified in ¶¶ 104-107, 115-118, 119-137, and 145-149 were materially
32 false and misleading, and failed to disclose material facts necessary to make the statements not false and
33

1 misleading. Specifically, the Company’s financial reports, including its revenues, expenses, losses, and
2 other material line items were incorrectly reported due to Marathon’s improper accounting for
3 impairment on digital assets and designation of the Company as an agent instead of principal in operating
4 third party mining pools. Moreover, the Individual Defendants improperly failed to disclose, *inter alia*,
5 that: (1) the Company materially misstated its revenue, cost of revenue, and other financial information
6 in its 2021 and 2022 SEC filings; (2) the Company continuously downplayed its serious problems with
7 internal controls; and (3) because of this, Marathon would face scrutiny by the SEC, need to restate
8 several financial statements and was reasonably likely to suffer significant damage, including
9 reputational harm. As a result of the foregoing, the Company’s public statements were materially false
10 and misleading at all relevant times.

12 The Truth Emerges

13
14 151. On February 28, 2023, Marathon issued a press release “announc[ing] . . . that it has
15 cancelled its webcast and conference call for the fourth quarter and fiscal year 2022, initially scheduled
16 for today, February 28, 2023, at 4:30 p.m. Eastern time, and will postpone the publication of its
17 corresponding financial results.”

18
19 152. Also on February 28, 2023, Marathon filed a Form 8-K with the SEC that acknowledged
20 the Company was in receipt of a letter from the SEC pertaining to accounting issues in Marathon’s prior
21 financial statements. The 8-K stated, in relevant part:

22 On February 27, 2023, the Company’s Audit Committee of the Board of Directors, after
23 consultation with Marcum LLP, the Company’s independent auditor, concluded that due
24 to certain accounting errors, as described below, the previously issued audited consolidated
25 financial statements contained in the Company’s Annual Report on Form 10-K for the
26 fiscal year ended December 31, 2021 and the previously issued unaudited condensed
27 consolidated financial statements for the interim periods in 2022 and 2021 as contained in
28 the Company’s Quarterly Reports on Form 10-Q for the fiscal periods ended March 31,
2021 and 2022, June 30, 2021 and 2022 and September 30, 2021 and 2022 (the “Impacted
Financial Statements”) should no longer be relied upon. Similarly, related earnings releases
and other financial communications for these periods should no longer be relied upon. The
Company intends to correct the errors and will be restating the Impacted Financial
Statements.

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153. Moreover, also on February 28, 2023, *Seeking Alpha* observed that since Marathon will need to restate its financial statements, the Company would be unable to timely file the 2022 annual report on Form 10-K, among other things. The *Seeking Alpha* article stated the following, 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.

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

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

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

1 154. On this news, the price of the Company's stock dropped from \$7.10 per share at the close
2 of trading on February 28, 2023, to \$6.51 per share at the close of trading on March 1, 2023, representing
3 a loss in value of 8.31%, or \$0.59 per share.

4 155. On March 16, 2023, the Company filed the Restatement. The Restatement included restated
5 Consolidated Balance Sheets as of December 31, 2021, related Consolidated Statements of Operations,
6 and Consolidated Statements of Cash Flows for the year ended December 31, 2021; restated unaudited
7 condensed consolidated financial statements for the interim periods in 2022 and 2021 contained in
8 Marathon's quarterly reports filed on Forms 10-Q for the fiscal periods ended March 31, 2021 and 2022,
9 June 30, 2021 and 2022, and September 30, 2021 and 2022, and an amended Management's Discussion
10 and Analysis of Financial Condition and Results of Operations related to the year ended December 31,
11 2021. The Restatement purported to correct Marathon's reports for Revenue Recognition – Principal
12 versus Agent, Impairment of Digital Assets, NYDIG Digital Assets related to the Fund, Disposal of
13 Assets, Other Adjustments, and related income tax adjustments.

14 156. The Restatement also revealed that during the Company's internal investigation, it
15 discovered additional material weaknesses in its internal controls over financial reporting.

16 157. The Restatement also disclosed that, despite that the Company restated its financial
17 statements, several of the SEC's comments remained unresolved and thus, Marathon could be forced to
18 restate its financial statements further. Specifically, the Restatement outlined the following unresolved
19 SEC Staff Comments:
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- 22 ● Revenue recognition. The Staff commented on the Company's revenue recognition
23 policy in its capacity as a pool operator and in its capacity as a pool participant, with
24 specific attention on the Company's previous net recognition of revenue as an operator of
25 a pool. The Company has, in the restated financial results, revised its revenue to include
26 gross revenue earned as pool operator with any amounts remitted to third party pool
27 participants as cost of revenue. The Staff further commented on the Company's accounting
28 convention to recognize its noncash (bitcoin) revenue using fair value that is not at contract
inception. The Company has evaluated the difference between its current accounting policy
and fair value at contract inception and has determined that any differences in revenue are
not material for all periods stated.

1 ● Impairment of bitcoin. The Staff objected to the Company’s calculation of impairment
2 of bitcoin using a daily closing price. The Company has, in the restated financial results,
3 revised its calculation to calculate impairment of bitcoin using the intraday low price of
4 bitcoin.

5 ● Accounting for investment fund. The Staff commented on whether the Company should
6 have consolidated an investment fund in which the Company was the sole limited partner
7 and, if so, whether its accounting for the income and expenses of the investment fund were
8 appropriately classified within the Company’s Statements of Other Comprehensive Income
9 (Loss). The Company has since determined it would consolidate the NYDIG Fund and
10 updated its classification of income and expenses of the investment fund within the
11 Statements of Other Comprehensive Income (Loss) as part of the restated financial results.

12 ● Statements of Other Comprehensive Income (Loss) Presentation. The Staff has
13 commented on the classification and inclusion of certain items in loss from operation
14 versus in other income (expense). These items include realized gain (loss) on sales of
15 digital assets, interest income, impairment on digital assets and patents, and gain on sale of
16 equipment. The Company has since revised its presentation prospectively, and in the
17 restated financial results.

18 ● Embedded leases in Hosting and Power Arrangements. The Staff has asked the Company
19 for a comprehensive analysis around whether each of its server hosting arrangements
20 contain embedded leases. The Company has provided such analysis and included any
21 required disclosure as a result of such analysis in the Notes to its Consolidated Financial
22 Statements.

23 ● Investments. The Staff has requested fulsome analysis of the Company’s accounting for
24 various Simple Agreements on Future Equity (“SAFEs”) and its investment in equity of
25 certain investees. The Company has provided such analysis and has included impacts of
26 any change in accounting for such investments in the restated financial results.

27 ● Risk factors. The Staff has requested further disclosure on material risks due to
28 regulations, ability to obtain financing, reputational harm, and depreciation of digital assets
prices. The Company has considered such risks and has made the disclosures accordingly.

 ● Bitcoin as collateral. The Staff has raised several comments on the Company’s
accounting for bitcoin used as collateral within the Company’s lending arrangements. The
Company continues to respond to the Staff’s comments based on its application of U.S.
GAAP and has not changed its classification of such bitcoin used as collateral as Digital
assets, restricted.

158. The Restatement disclosed the impacts of the accounting mishaps on Marathon’s Revenue
Recognition and Impairment of Digital Assets as follows:

Three months ended (unaudited)

Year ended

(in thousands)	March 31, 2022 (Restated)	June 30, 2022 (Restated)	September 30, 2022 (Restated)	December 31, 2022	December 31, 2022
Consolidated Statements of Comprehensive Income (Loss) Impact					
Total revenues	5	1	—	—	6
Cost of revenues - energy, hosting and other	(5)	(1)	—	—	(6)
Net income (loss) impact	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

(in thousands)	Three months ended (unaudited)				Year ended
	March 31, 2021 (Restated)	June 30, 2021 (Restated)	September 30, 2021 (Restated)	December 31, 2021 (Restated)	December 31, 2021 (Restated)
Consolidated Statements of Comprehensive Income (Loss) Impact					
Total revenues	—	—	624	8,075	8,699
Cost of revenues - energy, hosting and other	—	—	(624)	(8,075)	(8,699)
Net income (loss) impact	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

* * *

(in thousands)	As of (unaudited)				
	March 31, 2022 (Restated)	June 30, 2022 (Restated)	September 30, 2022 (Restated)	December 31, 2022	
Consolidated Balance Sheets Impact					
Digital assets	(6,204)	(9,344)	(5,433)	—	
Digital assets, restricted - Current assets	—	(3,657)	—	—	
Digital assets, restricted - Other assets	—	—	(3,039)	—	
(in thousands)	Three months ended (unaudited)				Year ended
	March 31, 2022 (Restated)	June 30, 2022 (Restated)	September 30, 2022 (Restated)	December 31, 2022	December 31, 2022
Consolidated Statements of Comprehensive Income (Loss) Impact					
Impairment of digital assets	(3,756)	(6,797)	4,529	—	(6,024)
Net income (loss) impact	<u>(3,756)</u>	<u>(6,797)</u>	<u>4,529</u>	<u>—</u>	<u>(6,024)</u>

(in thousands)	As of (unaudited)				
	March 31, 2021 (Restated)	June 30, 2021 (Restated)	September 30, 2021 (Restated)	December 31, 2021 (Restated)	
Consolidated Balance Sheets Impact					
Digital assets	(204)	(2,148)	(1,597)	(2,448)	
(in thousands)	Three months ended (unaudited)				Year ended
	March 31, 2021 (Restated)	June 30, 2021 (Restated)	September 30, 2021 (Restated)	December 31, 2021 (Restated)	December 31, 2021 (Restated)

	2021 (Restated)	2021 (Restated)	30, 2021 (Restated)	2021 (Restated)	2021 (Restated)
Consolidated Statements of Comprehensive Income (Loss) Impact					
Impairment of digital assets	(204)	(1,944)	551	(851)	(2,448)
Net income (loss) impact	(204)	(1,944)	551	(851)	(2,448)

159. Several other line items were restated between 2021 and 2022, as well, in the Restatement, including the Consolidated Balance Sheets and Comprehensive Income (Loss) of the Fund, Disposal of Assets, accruals for legal expenses, accumulated comprehensive income, prepaid expenses, income tax expenses, total assets, liabilities and stockholders' equity, and more.

160. The Restatement further disclosed specific material weaknesses in Marathon's, including related to its application and interpretation of Generally Accepted Accounting Principles ("GAAP"), stating in relevant part:

management identified a weakness in internal control over financial reporting related to the application and interpretation of generally accepted accounting principles ("GAAP") primarily in the areas of consolidation, impairment of digital assets, disposal of property and equipment and principal versus agent considerations in revenue recognition. In addition, the Company has not designed or implemented user access controls to ensure appropriate segregation of duties, or program change management controls for certain financially relevant systems impacting the Company's processes around revenue recognition and digital assets to ensure that IT program and data changes affecting the Company's (i) financial IT applications, (ii) digital currency mining equipment, and (iii) underlying accounting records, are identified, tested, authorized and implemented appropriately to validate that data produced by its relevant IT system(s) were complete and accurate. Automated process-level controls and manual controls that are dependent upon the information derived from such financially relevant systems were also determined to be ineffective as a result of such deficiency. The Company has also not effectively designed a key manual control to detect material misstatements in revenue.

The material weakness related to the application and interpretation of GAAP, as described above, resulted in a material misstatement to the Company's previously issued consolidated financial statements. The material weakness associated with the manual control over revenue recognition did not result in a material misstatement to the Company's previously issued consolidated financial statements, nor in the consolidated financial statements included in this Annual Report on Form 10-K.

DAMAGES TO MARATHON

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2 161. As a direct and proximate result of the Individual Defendants’ conduct, Marathon has lost
3 and will continue to lose and expend many millions of dollars.

4 162. Such expenditures include, but are not limited to, legal fees associated with the Securities
5 Class Action, and its internal investigation, the SEC’s investigation and the Restatement, and amounts
6 paid to outside lawyers, accountants, and investigators in connection thereto.
7

8 163. These expenditures also include, but are not limited to, compensation and benefits paid to
9 the Individual Defendants who breached their fiduciary duties to the Company and others pursuant to the
10 Plan.

11 164. Additionally, these expenditures include costs associated with remediating the deficiencies
12 in the Company’s disclosure controls and internal controls, including the costs of restating the Company’s
13 false and misleading financial statements described herein.
14

15 165. As a direct and proximate result of the Individual Defendants’ conduct, Marathon has also
16 suffered and will continue to suffer a loss of reputation and goodwill, and a “liar’s discount” that will
17 plague the Company’s stock in the future due to the Company’s and their misrepresentations and the
18 Individual Defendants’ breaches of fiduciary duties, and unjust enrichment.
19

DERIVATIVE ALLEGATIONS

20 166. Plaintiff brings this action derivatively and for the benefit of Marathon to redress injuries
21 suffered, and to be suffered, as a result of the Individual Defendants’ breaches of their fiduciary duties as
22 directors and officers of Marathon, unjust enrichment, waste of corporate assets, violations of the
23 Exchange Act, the aiding and abetting thereof, as well as for contribution under Sections 10(b) and 21D
24 of the Exchange Act.
25

26 167. Marathon is named solely as a nominal party in this action. This is not a collusive action
27 to confer jurisdiction on this Court that it would not otherwise have.
28

1 to pay Defendants Thiel, Antoun, DeNuccio, James, Leupp, Ouissal, and Mellinger their annual salary,
 2 stock awards, option awards, non-equity incentive plan compensation, and/or all other compensation each
 3 year that they violated the Company’s policies. Indeed, the misconduct described herein could not have
 4 been the product of legitimate business judgment as it was based on bad faith and intentional, reckless,
 5 or disloyal misconduct.

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 7 174. In addition, Defendants Thiel, Antoun, Leupp, and DeNuccio caused the 2021 Proxy
 8 Statement to call for a shareholder vote to approve an increase in the number of shares available in the
 9 Plan by 7,500,000, which provided for the grant of stock and cash-based performance awards for officers
 10 and directors, including each of the Director-Defendants. The misrepresentations and omissions set forth
 11 herein were material to shareholders in voting on the increase in the number of shares available in the
 12 Plan who would not have approved the increase of available shares in the Plan, had they been informed
 13 about the Individual Defendants’ misconduct. As such, the Director-Defendants face a substantial
 14 likelihood of liability and demand is futile as to them.

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 16 175. Moreover, Director-Defendants Thiel, Antoun, DeNuccio, James, Leupp, and Ouissal
 17 each received lucrative awards under the Plan between August 2021, when the Plan was amended by way
 18 of the 2021 Proxy Statement, and 2023, the year of this filing. The specific awards of restricted stock
 19 units (“RSUs”) to the Director-Defendants directly linked to the Plan are disclosed in Marathon’s Form
 20 3s and 4s and/or its proxies filed with the SEC include (at least) the following:

Name	RSU Award Total	Received
Thiel	\$3.42 million	August 23, 2021- April 26, 2023
DeNuccio	\$1.63 million	August 23, 2021- January 16, 2023

1 2 3	Antoun	\$792,497	August 23, 2021- January 16, 2023
4 5	Leupp	\$728,455	August 23, 2021- April 25, 2022
6 7	James	\$633,518	August 23, 2021- January 16, 2023
8 9	Ouissal	\$490,255	August 23, 2021- January 16, 2023

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176. These material benefits provided to the Director-Defendants make it unlikely that they would be able to consider a demand challenging the avenue by which such benefits were unlocked with the requisite level of disinterestedness. For this reason, too, any demand on the Director-Defendants would be futile and is excused.

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177. Additional reasons that demand on Defendant Thiel is futile follow. Defendant Thiel is Marathon's CEO and Chairman of the Board and has served in those positions since April 26, 2021, and January 1, 2022, respectively. Thus, as the Company admits, Defendant Thiel is not an independent director. The Company provides Defendant Thiel with his principal occupation, and he receives handsome compensation, including \$18,022,335 in 2021 and \$1,240,249 in 2022 for his services. Defendant Thiel was ultimately responsible for all of the false and misleading statements and omissions that were made, including those contained in each of the Company's SEC filings referenced herein as well as the press releases, cited above, wherein he personally made the false and misleading statements at issue. In addition, he solicited the 2021 and 2022 Proxy Statements which contained false and misleading elements that contributed, *inter alia*, to shareholders reelecting him to the Board and approving the availability of 7,500,000 more common shares in the Plan on false pretenses. As the Company's top officer and trusted Chairman of the Board, he conducted little, if any, oversight of the

1 Individual Defendants' scheme to cause the Company to make false and misleading statements,
2 consciously disregarded his duties to monitor such controls over reporting and engagement in the scheme,
3 and consciously disregarded his duties to protect corporate assets. Furthermore, Defendant Thiel is a
4 defendant in the Securities Class Action. For these reasons, too, Defendant Thiel breached his fiduciary
5 duties, faces a substantial likelihood of liability, is not independent or disinterested, and thus demand
6 upon him is futile and, therefore, excused.
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8 178. Additional reasons that demand on Defendant Antoun is futile follow. Defendant Antoun
9 has served as a Company director since May 2021. He also serves as the chair of the Compensation
10 Committee, as a member of the Nominating and Corporate Governance Committee, and as a member of
11 the Audit Committee. The Company provides Defendant Antoun with handsome compensation,
12 including \$625,504 in 2021 and \$404,527 in 2022 for his services. In addition, he solicited the 2021 and
13 2022 Proxy Statements which contained false and misleading elements that contributed, *inter alia*, to
14 shareholders reelecting him to the Board and approving the availability of 7,500,000 more common
15 shares in the Plan on false pretenses. As a trusted Company director, he conducted little, if any, oversight
16 of the Company's engagement in the scheme to cause the Company to make false and misleading
17 statements, consciously disregarded his duties to monitor such controls over reporting and engagement
18 in the scheme, and consciously disregarded his duties to protect corporate assets. For these reasons,
19 Defendant Antoun breached his fiduciary duties, faces a substantial likelihood of liability, is not
20 independent or disinterested, and thus demand upon him is futile and, therefore, excused.
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23 179. Additional reasons that demand on Defendant DeNuccio is futile follow. Defendant
24 DeNuccio has served as a Company director since January 2021. The Company provides Defendant
25 DeNuccio with handsome compensation, including \$759,572 in 2021 and \$342,235 in 2022, for his
26 services. In addition, he solicited the 2021 and 2022 Proxy Statements which contained false and
27 misleading elements that contributed, *inter alia*, to shareholders reelecting him to the Board and
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1 approving the availability of 7,500,000 more common shares in the Plan on false pretenses. As a trusted
2 Company director, he conducted little, if any, oversight of the Individual Defendants' scheme to cause
3 the Company to make false and misleading statements, consciously disregarded his duties to monitor
4 such controls over reporting and engagement in the scheme, and consciously disregarded his duties to
5 protect corporate assets. This is even more alarming considering his extensive background in operations,
6 finance, and public companies. For these reasons, Defendant DeNuccio breached his fiduciary duties,
7 faces a substantial likelihood of liability, is not independent or disinterested, and thus demand upon him
8 is futile and, therefore, excused.

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10 180. Additional reasons that demand on Defendant James is futile follow. Defendant James has
11 served as a Company director since August 2021. She also serves as the chair of the Nominating and
12 Corporate Governance Committee. The Company provides Defendant James with handsome
13 compensation, including \$535,487 in 2021 and \$373,069 in 2022 for her services. In addition, she
14 solicited the 2022 Proxy Statement which contained false and misleading elements that contributed, *inter*
15 *alia*, to shareholders reelecting her to the Board. As a trusted Company director, she conducted little, if
16 any, oversight of the Individual Defendants' scheme to cause the Company to make false and misleading
17 statements, consciously disregarded her duties to monitor such controls over reporting and engagement
18 in the scheme, and consciously disregarded her duties to protect corporate assets. For these reasons,
19 Defendant James breached her fiduciary duties, faces a substantial likelihood of liability, is not
20 independent or disinterested, and thus demand upon her is futile and, therefore, excused.

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23 181. Additional reasons that demand on Defendant Leupp is futile follow. Defendant Leupp
24 has served as a Company director since May 2021. He also serves as the chair of the Audit Committee,
25 as a member of the Compensation Committee, and as a member of the Nominating and Corporate
26 Governance Committee. The Company provides Defendant Leupp with handsome compensation,
27 including \$625,504 in 2021 and \$404,527 in 2022 for his services. In addition, he solicited the 2021 and
28

1 2022 Proxy Statements which contained false and misleading elements that contributed, *inter alia*, to
2 shareholders reelecting him to the Board and approving the availability of 7,500,000 more common
3 shares in the Plan on false pretenses. As a trusted Company officer and director, he conducted little, if
4 any, oversight of the Individual Defendants' scheme to cause the Company to make false and misleading
5 statements, consciously disregarded his duties to monitor such controls over reporting and engagement
6 in the scheme, and consciously disregarded his duties to protect corporate assets. This is even more
7 alarming considering his extensive background in accounting. For these reasons, Defendant Leupp
8 breached his fiduciary duties, faces a substantial likelihood of liability, is not independent or disinterested,
9 and thus demand upon him is futile and, therefore, excused.

11 182. Additional reasons that demand on Defendant Ouissal is futile follow. Defendant Ouissal
12 has served as a Company director since August 2021. He also serves as a member of the Nominating and
13 Corporate Governance Committee, as a member of the Audit Committee, and as a member of the
14 Compensation Committee. The Company provides Defendant Ouissal with handsome compensation,
15 including \$535,487 in 2021 and \$385,777 in 2022, for his services. In addition, he solicited the 2022
16 Proxy Statement which contained false and misleading elements that contributed, *inter alia*, to
17 shareholders reelecting Defendants Antoun and Leupp to the Board, among other things. As a trusted
18 Company director, he conducted little, if any, oversight of the Individual Defendants' scheme to cause
19 the Company to make false and misleading statements, consciously disregarded his duties to monitor
20 such controls over reporting and engagement in the scheme, and consciously disregarded his duties to
21 protect corporate assets. For these reasons, Defendant Ouissal breached his fiduciary duties, faces a
22 substantial likelihood of liability, is not independent or disinterested, and thus demand upon him is futile
23 and, therefore, excused.

26 183. Additional reasons that demand on Defendant Mellinger is futile follow. Defendant
27 Mellinger has served as a Company director since March 2022. In addition, he solicited the 2022 Proxy
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1 Statement which contained false and misleading elements that contributed, *inter alia*, to shareholders
2 reelecting Antoun and Leupp to the Board, among other things. As a trusted Company director, he
3 conducted little, if any, oversight of the Individual Defendants' scheme to cause the Company to make
4 false and misleading statements, consciously disregarded his duties to monitor such controls over
5 reporting and engagement in the scheme, and consciously disregarded his duties to protect corporate
6 assets. This is even more alarming considering his extensive background in finance. For these reasons,
7 Defendant Mellinger breached his fiduciary duties, faces a substantial likelihood of liability, is not
8 independent or disinterested, and thus demand upon him is futile and, therefore, excused.
9

10 184. Additional reasons that demand on the Board is futile follow.

11 185. Defendants Leupp, Ouissal, and Antoun (the "Audit Committee Defendants") served on
12 the Company's Audit Committee during the Relevant Period. Pursuant to the Company's Audit
13 Committee Charter, the Audit Committee Defendants were responsible for overseeing, *inter alia*, the
14 integrity of the Company's financial statements, the performance of the Company's internal audit
15 function, and the Company's compliance with applicable laws and regulations. The Audit Committee
16 Defendants failed to ensure the integrity of the Company's financial statements, as they are charged to
17 do under the Audit Committee Charter, allowing the Company to file false and misleading financial
18 statements with the SEC and to fail to maintain internal controls. Thus, the Audit Committee Defendants
19 breached their fiduciary duties, are not disinterested, and demand is excused as to them.
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22 186. In violation of the Code of Ethics, the Director-Defendants conducted little, if any,
23 oversight of the Company's internal controls over public reporting and of the Company's engagement in
24 the Individual Defendants' scheme to issue materially false and misleading statements to the public, and
25 facilitate and disguise the Individual Defendants' violations of law, including breaches of fiduciary duty,
26 unjust enrichment, waste of corporate assets, violations of the Exchange Act, and for contribution under
27 Sections 10(b) and 21D of the Exchange Act. Moreover, in violation of the Code of Ethics, the Director-
28

1 Defendants failed to maintain the accuracy of Company records and reports, comply with laws and
2 regulations, or conduct business in an honest and ethical manner. Thus, the Director-Defendants face a
3 substantial likelihood of liability and demand is futile as to them.

4 187. Marathon has been and will continue to be exposed to significant losses due to the
5 wrongdoing complained of herein, yet the Director-Defendants have not filed any lawsuits against
6 themselves or others who were responsible for that wrongful conduct to attempt to recover for Marathon
7 any part of the damages Marathon suffered and will continue to suffer thereby. Thus, any demand upon
8 the Director-Defendants would be futile.

9 188. The Individual Defendants' conduct described herein and summarized above could not
10 have been the product of legitimate business judgment as it was based on bad faith and intentional,
11 reckless, or disloyal misconduct. Thus, none of the Director-Defendants can claim exculpation from their
12 violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority
13 of the Director-Defendants face a substantial likelihood of liability, they are self-interested in the
14 transactions challenged herein and cannot be presumed to be capable of exercising independent and
15 disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company.
16 Accordingly, demand is excused as being futile.

17 189. The acts complained of herein constitute violations of fiduciary duties owed by
18 Marathon's officers and directors, and these acts are incapable of ratification.

19 190. The Director-Defendants may also be protected against personal liability for their acts of
20 mismanagement and breaches of fiduciary duty alleged herein by directors' and officers' liability
21 insurance if they caused the Company to purchase it for their protection with corporate funds, i.e., monies
22 belonging to the stockholders of Marathon. If there is a directors' and officers' liability insurance policy
23 covering the Director-Defendants, it may contain provisions that eliminate coverage for any action
24 brought directly by the Company against the Director-Defendants, known as, *inter alia*, the "insured-
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1 versus-insured exclusion.” As a result, if the Director-Defendants were to sue themselves or certain of
2 the officers of Marathon, there would be no directors’ and officers’ insurance protection. Accordingly,
3 the Director-Defendants cannot be expected to bring such a suit. On the other hand, if the suit is brought
4 derivatively, as this action is brought, such insurance coverage, if such an insurance policy exists, will
5 provide a basis for the Company to effectuate a recovery. Thus, demand on the Director-Defendants is
6 futile and, therefore, excused.
7

8 191. If there is no directors’ and officers’ liability insurance, then the Director-Defendants will
9 not cause Marathon to sue the Individual Defendants named herein, since, if they did, they would face a
10 large uninsured individual liability. Accordingly, demand is futile in that event, as well.

11 192. Thus, for all of the reasons set forth above, all of the Director-Defendants, and, if not all
12 of them, at least four of the Director-Defendants, cannot consider a demand with disinterestedness and
13 independence. Consequently, a demand upon the Board is excused as futile.
14

15 **FIRST CLAIM**

16 **Against Individual Defendants for Violations of** 17 **Section 14(a) of the Exchange Act**

18 193. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
19 above, as though fully set forth herein.

20 194. Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1), provides that “[i]t shall be
21 unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce
22 or of any facility of a national securities exchange or otherwise, in contravention of such rules and
23 regulations as the [SEC] may prescribe as necessary or appropriate in the public interest or for the
24 protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or
25 authorization in respect of any security (other than an exempted security) registered pursuant to section
26 12 of this title [15 U.S.C. § 78l].”
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1 195. Rule 14a-9, promulgated pursuant to § 14(a) of the Exchange Act, provides that no proxy
2 statement shall contain “any statement which, at the time and in the light of the circumstances under
3 which it is made, is false or misleading with respect to any material fact, or which omits to state any
4 material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R.
5 §240.14a-9.
6

7 196. Under the direction and watch of the Director-Defendants, the 2021 Proxy Statement and
8 2022 Proxy Statement (the “Proxy Statements”) failed to disclose, *inter alia*, that: (1) the Company
9 materially misstated its revenue, cost of revenue, and other financial information in its 2021 and 2022
10 SEC filings; (2) the Company continuously downplayed its serious problems with internal controls; and
11 (3) because of this, Marathon would face scrutiny by the SEC, need to restate several financial statements
12 and was reasonably likely to suffer significant damage, including reputational harm. As a result of the
13 foregoing, the Company’s public statements were materially false and misleading at all relevant times.
14

15 197. Moreover, the Proxy Statements were false and misleading when both discussed the
16 Company’s adherence to specific governance policies and procedures, including the Code of Ethics, due
17 to the Individual Defendants’ failures to abide by them and their engagement in the scheme to issue false
18 and misleading statements and omissions of material fact.
19

20 198. In the exercise of reasonable care, the Individual Defendants should have known that by
21 misrepresenting or failing to disclose the foregoing material facts, the statements contained in the Proxy
22 Statements were materially false and misleading. The misrepresentations and omissions were material to
23 Plaintiff in voting on the matters set forth for shareholder determination in the Proxy Statements,
24 including but not limited to, election of directors, ratification of an independent auditor, and changes to
25 the named executives’ compensation plan.
26

27 199. The false and misleading elements of the Proxy Statements led to the increase by
28 7,500,000 of shares available in the Company’s Plan, the increase of authorized shares of Company

1 common stock from 200 to 300 million, and to the re-election of Defendants Thiel, DeNuccio, Ouissal,
2 James, Antoun, and Leupp to the Board, which allowed them to continue breaching their fiduciary duties
3 to Marathon.

4 200. The Company was damaged as a result of the Individual Defendants' material
5 misrepresentations and omissions in the Proxy Statements.

6
7 201. Plaintiff on behalf of Marathon has no adequate remedy at law.

8 **SECOND CLAIM**

9 **Against the Individual Defendants for Breach of Fiduciary Duties**

10 202. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
11 above, as though fully set forth herein.

12 203. Each Individual Defendant owed to the Company the duty to exercise candor, good faith,
13 and loyalty in the management and administration of Marathon's business and affairs.

14 204. Each of the Individual Defendants violated and breached his or her fiduciary duties of
15 candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

16 205. The Individual Defendants' conduct set forth herein was due to their intentional or
17 reckless breach of the fiduciary duties they owed to the Company, as alleged herein. The Individual
18 Defendants intentionally or recklessly breached or disregarded their fiduciary duties to protect the rights
19 and interests of Marathon.
20

21 206. In breach of their fiduciary duties owed to Marathon, the Individual Defendants willfully
22 or recklessly made and/or caused the Company to make false and misleading statements and omissions
23 of material fact that failed to disclose, *inter alia*, that: (1) the Company materially misstated its revenue,
24 cost of revenue, and other financial information in its 2021 and 2022 SEC filings; (2) the Company
25 continuously downplayed its serious problems with internal controls; and (3) because of this, Marathon
26 would face scrutiny by the SEC, need to restate several financial statements and was reasonably likely
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1 to suffer significant damage, including reputational harm. As a result of the foregoing, the Company's
2 public statements were materially false and misleading at all relevant times.

3 207. The Individual Defendants also failed to correct and/or caused the Company to fail to
4 correct the false and misleading statements and/or omissions of material fact, rendering them personally
5 liable to the Company for breaching their fiduciary duties.

6 208. In breach of their fiduciary duties, at least one of the Individual Defendants engaged in
7 lucrative insider sales while the price of the Company's common stock was artificially inflated due to the
8 false and misleading statements of material fact discussed herein.

9 209. Also, in breach of their fiduciary duties, the Individual Defendants failed to maintain
10 effective disclosure controls and procedures and internal controls.

11 210. The Individual Defendants had actual or constructive knowledge that the Company issued
12 materially false and misleading statements, and they failed to correct the Company's public statements
13 and representations. The Individual Defendants had actual knowledge of the misrepresentations and
14 omissions of material facts set forth herein, or acted with reckless disregard for the truth, in that they
15 failed to ascertain and to disclose such facts, even though such facts were available to them. Such material
16 misrepresentations and omissions were committed knowingly or recklessly and for the purpose and effect
17 of artificially inflating the price of Marathon's securities and disguising insider sales.

18 211. The Individual Defendants had actual or constructive knowledge that they had caused the
19 Company to improperly engage in the fraudulent schemes set forth herein and to fail to maintain internal
20 controls. The Individual Defendants had actual knowledge that the Company was engaging in the
21 fraudulent schemes set forth herein, and that internal controls were not adequately maintained, or acted
22 with reckless disregard for the truth, in that they caused the Company to improperly engage in the
23 fraudulent schemes and to fail to maintain adequate internal controls, even though such facts were
24 available to them. Such improper conduct was committed knowingly or recklessly and for the purpose
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1 and effect of artificially inflating the price of Marathon's securities and disguising insider sales. The
2 Individual Defendants, in good faith, should have taken appropriate action to correct the schemes alleged
3 herein and to prevent them from continuing to occur.

4 212. These actions were not a good-faith exercise of prudent business judgment to protect and
5 promote the Company's corporate interests.

6 213. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary
7 obligations, Marathon has sustained and continues to sustain significant damages. As a result of the
8 misconduct alleged herein, the Individual Defendants are liable to the Company.

9 214. Plaintiff on behalf of Marathon has no adequate remedy at law.

10
11 **THIRD CLAIM**

12 **Against Individual Defendants for Unjust Enrichment**

13 215. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
14 above, as though fully set forth herein.

15 216. By their wrongful acts, violations of law, and false and misleading statements and
16 omissions of material fact that they made and/or caused to be made, the Individual Defendants were
17 unjustly enriched at the expense of, and to the detriment of, Marathon.

18 217. The Individual Defendants and others at the Company either benefitted financially from
19 the improper conduct and their making lucrative insider sales or received unjustly lucrative bonuses tied
20 to the false and misleading statements, or received bonuses, stock options, or similar compensation from
21 Marathon that was tied to the performance or artificially inflated valuation of Marathon by way of the
22 Plan, or received compensation that was unjust in light of the Individual Defendants' bad faith conduct.

23 218. Plaintiff, as a shareholder and a representative of Marathon, seeks restitution from the
24 Individual Defendants and seeks an order from this Court disgorging all profits, including from insider
25 transactions, benefits, and other compensation, including any performance-based or valuation-based
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1 compensation, obtained by the Individual Defendants due to their wrongful conduct and breach of their
2 fiduciary and contractual duties.

3 219. Plaintiff on behalf of Marathon has no adequate remedy at law.

4 **FOURTH CLAIM**

5 **Against Individual Defendants for Waste of Corporate Assets**

6 220. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
7 above, as though fully set forth herein.

8 221. As a further result of the foregoing, the Company will incur many millions of dollars of
9 legal liability and/or costs to defend unlawful actions, to engage in internal investigations, and to lose
10 financing from investors and business from future customers who no longer trust the Company.

11 222. Furthermore, the Individual Defendants caused themselves to receive excessive
12 compensation from the Company given their misconduct, thereby wasting the Company's assets.

13 223. As a result of the foregoing, and by failing to properly consider the interests of the
14 Company and its public shareholders, Defendants have caused Marathon to waste valuable corporate
15 assets and to incur many millions of dollars of legal liability and/or costs to defend unlawful actions.

16 224. As a result of the waste of corporate assets, the Individual Defendants are each liable to
17 the Company.

18 225. Plaintiff on behalf of Marathon has no adequate remedy at law.

19 **FIFTH CLAIM**

20 **Against Defendants Okamoto, Thiel, Salzman, and Gallagher for Contribution**
21 **Under Sections 10(b) and 21D of the Exchange Act**

22 226. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
23 above, as though fully set forth herein.

24 227. Marathon, along with Defendants Okamoto, Thiel, Salzman, and Gallagher, are named as
25 defendants in the Securities Class Action, which asserts claims under the federal securities laws for
26

1 violations of Sections 10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder.
2 If and when the Company is found liable in the Securities Class Action for these violations of the federal
3 securities laws, the Company's liability will be in whole or in part due to Defendants Okamoto, Thiel,
4 Salzman, and Gallagher's willful and/or reckless violations of their obligations as officers and/or
5 directors of Marathon.

6
7 228. Defendants Okamoto, Thiel, Salzman, and Gallagher, because of their positions of control
8 and authority as officers and/or directors of Marathon, were able to and did, directly and/or indirectly,
9 exercise control over the business and corporate affairs of Marathon, including the wrongful acts
10 complained of herein and in the Securities Class Action.

11 229. Accordingly, Defendants Okamoto, Thiel, Salzman, Gallagher are liable under 15 U.S.C.
12 § 78j(b), which creates a private right of action for contribution, and Section 21D of the Exchange Act,
13 15 U.S.C. § 78u-4(f), which governs the application of a private right of action for contribution arising
14 out of violations of the Exchange Act.
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16 230. As such, Marathon is entitled to receive all appropriate contribution or indemnification
17 from Defendants Okamoto, Thiel, Salzman, and Gallagher.

18 **PRAYER FOR RELIEF**

19 FOR THESE REASONS, Plaintiff demands judgment in the Company's favor against all
20 Individual Defendants as follows:

21 (a) Declaring that Plaintiff may maintain this action on behalf of Marathon, and that
22 Plaintiff is an adequate representative of the Company;

23 (b) Declaring that the Individual Defendants have breached and/or aided and abetted
24 the breach of their fiduciary duties to Marathon;

25 (c) Determining and awarding to Marathon the damages sustained by it as a result of
26 the violations set forth above from each of the Individual Defendants, jointly and severally, together with
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1 pre-judgment and post-judgment interest thereon;

2 (d) Directing Marathon and the Individual Defendants to take all necessary actions to
3 reform and improve its corporate governance and internal procedures to comply with applicable laws and
4 to protect Marathon and its shareholders from a repeat of the damaging events described herein, including,
5 but not limited to, putting forward for shareholder vote the following resolutions for amendments to the
6 Company's Bylaws or Articles of Incorporation and the following actions as may be necessary to ensure
7 proper corporate governance policies:
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9 1. a proposal to strengthen the Board's supervision of operations and develop and
10 implement procedures for greater shareholder input into the policies and guidelines of the
11 board;

12 2. a provision to permit the shareholders of Marathon to nominate at least four
13 candidates for election to the Board;

14 3. a provision to eliminate the staggered, class-based director election and director
15 term-length system; and
16

17 4. a proposal to ensure the establishment of effective oversight of compliance with
18 applicable laws, rules, and regulations.

19 (e) Awarding Marathon restitution from Individual Defendants, and each of them;

20 (f) Awarding Plaintiff the costs and disbursements of this action, including reasonable
21 attorneys' and experts' fees, costs, and expenses; and
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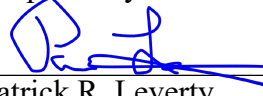
23 (g) Granting such other and further relief as the Court may deem just and proper.
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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: July 8, 2023

Respectfully submitted,



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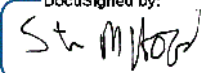
Counsel for Plaintiff

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VERIFICATION

I, Steve Hood am a plaintiff in the within action. I have reviewed the allegations made in this Shareholder Derivative Complaint, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this ___ day of 6/30/2023, 2023.

DocuSigned by:

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