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8
9 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10
11 TAD SCHLATRE, Individually and on Behalf
of All Others Similarly Situated,

Case No. 2:21-cv-2209

12
13 Plaintiff,

CLASS ACTION

14 v.

COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

15 MARATHON DIGITAL HOLDINGS, INC.
16 f/k/a MARATHON PATENT GROUP, INC.,
MERRICK D. OKAMOTO, FREDERICK G.
17 THIEL, and SIMEON SALZMAN,

DEMAND FOR JURY TRIAL

18 Defendants.
19

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

5
6 **NATURE OF THE ACTION**

7 1. This is a federal securities class action on behalf of a class consisting of all persons
8 and entities other than Defendants that purchased or otherwise acquired Marathon securities
9 between October 13, 2020 and November 15, 2021, both dates inclusive (the “Class Period”),
10 seeking to recover damages caused by Defendants’ violations of the federal securities laws and to
11 pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the
12 “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its
13 top officials.
14

15 2. Marathon is a digital asset technology company that mines cryptocurrencies with a
16 focus on the blockchain ecosystem and the generation of digital assets in U.S. The Company was
17 formerly known as “Marathon Patent Group, Inc.” and changed its name to “Marathon Digital
18 Holdings, Inc.” on March 1, 2021.

19 3. In October 2020, Marathon announced the formation of a new joint venture with
20 Beowulf Energy LLC (“Beowulf”) purportedly focused on delivering low-cost power to
21 Marathon’s Bitcoin mining operations (the “Beowulf Joint Venture”). In connection with that
22 joint venture, Marathon entered into a series of agreements with multiple parties to design and
23 build a data center in Hardin, Montana (the “Hardin Facility”), issuing 6 million shares of its
24 common stock to the parties of those agreements.
25

26 4. Throughout the Class Period, Defendants made materially false and misleading
27 statements regarding the Company’s business, operations, and compliance policies. Specifically,
28

1 Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Beowulf
2 Joint Venture, as it related to the Hardin Facility, implicated potential regulatory violations,
3 including U.S. securities law violations; (ii) as a result, the Beowulf Joint Venture subjected
4 Marathon to a heightened risk of regulatory scrutiny; (iii) the foregoing was reasonably likely to
5 have a material negative impact on the Company’s business and commercial prospects; and (iv) as
6 a result, the Company’s public statements were materially false and misleading at all relevant
7 times.
8

9 5. On November 15, 2021, Marathon disclosed that “the Company and certain of its
10 executives received a subpoena to produce documents and communications concerning the Hardin,
11 Montana data center facility[,]” and advised that “the SEC may be investigating whether or not
12 there may have been any violations of the federal securities law.”
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14 6. On this news, Marathon’s stock price fell \$20.52 per share, or 27.03%, to close at
15 \$55.40 per share on November 15, 2021.

16 7. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline
17 in the market value of the Company’s securities, Plaintiff and other Class members have suffered
18 significant losses and damages.
19

20 **JURISDICTION AND VENUE**

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

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

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

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

7
8 **PARTIES**

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

12 13. Defendant Marathon is a Nevada corporation with principal executive offices
13 located at 1180 North Town Center Drive, Suite 100, Las Vegas, Nevada 89144. The Company’s
14 common stock trades in an efficient market on the Nasdaq Capital Market (“NASDAQ”) under
15 the trading symbol “MARA”.

16 14. Defendant Merrick D. Okamoto (“Okamoto”) served as Marathon’s Chief
17 Executive Officer (“CEO”) from before the start of the Class Period to April 26, 2021. Okamoto
18 currently serves as the Executive Chairman of the Company’s Board of Directors (the “Board”).

19 15. Defendant Frederick G. Thiel (“Thiel”) has served as Marathon’s CEO since April
20 26, 2021.

21 16. Defendant Simeon Salzman (“Salzman”) has served as Marathon’s Chief Financial
22 Officer since October 19, 2020.

23 17. Defendants Okamoto, Thiel, and Salzman are sometimes referred to herein as the
24 “Individual Defendants.”
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1 18. The Individual Defendants possessed the power and authority to control the
2 contents of Marathon’s SEC filings, press releases, and other market communications. The
3 Individual Defendants were provided with copies of Marathon’s SEC filings and press releases
4 alleged herein to be misleading prior to or shortly after their issuance and had the ability and
5 opportunity to prevent their issuance or to cause them to be corrected. Because of their positions
6 with Marathon, and their access to material information available to them but not to the public, the
7 Individual Defendants knew that the adverse facts specified herein had not been disclosed to and
8 were being concealed from the public, and that the positive representations being made were then
9 materially false and misleading. The Individual Defendants are liable for the false statements and
10 omissions pleaded herein.
11

12 **SUBSTANTIVE ALLEGATIONS**

13 **Background**

14 19. Marathon is a digital asset technology company that mines cryptocurrencies with a
15 focus on the blockchain ecosystem and the generation of digital assets in U.S. The Company was
16 formerly known as “Marathon Patent Group, Inc.” and changed its name to “Marathon Digital
17 Holdings, Inc.” on March 1, 2021.
18

19 20. In October 2020, Marathon announced the formation of a new joint venture with
20 Beowulf—a private, independent infrastructure holding company that develops, builds, owns, and
21 operates power generation and industrial infrastructure facilities worldwide. The Beowulf Joint
22 Venture was purportedly focused on delivering low-cost power to Marathon’s Bitcoin mining
23 operations. In connection with that joint venture, Marathon entered into a series of agreements
24 with multiple parties, including affiliates of Beowulf and Two Point One, LLC (“2PI”), a Delaware
25 limited liability company, to design and build a data center in Hardin, Montana, issuing 6 million
26 shares of its common stock to the parties of those agreements.
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Materially False and Misleading Statements Issued During the Class Period

21. The Class Period begins on October 13, 2020, when Marathon issued a press release announcing the formation of the Beowulf Joint Venture (the “October 2020 Press Release”). That press release represented that the Beowulf Joint Venture was “focused on delivering low cost power to Marathon’s Bitcoin mining operations[,]” while also asserting various purported benefits that would flow to Marathon in connection with that joint venture. Specifically, the October 2020 Press Release stated, in relevant part:

Marathon has entered into agreements with Beowulf to co-locate its Bitcoin Mining Data Center (the “Data Center”) at the Big Horn Data Hub, which comprises 20 acres of land adjacent to Beowulf’s Hardin Generating Station, a 105 MW power facility located in Hardin, Montana. Beowulf will provide power from the Hardin plant to the Data Center at a production cost of \$0.028/kWh. Beowulf will also become an equity shareholder of Marathon as a result of the joint venture. Marathon will retain 100% of the Bitcoin mining output generated at the Data Center.

Marathon will deploy the 11,500 next generation S19 Pro Antminers (110 TH/s) it previously acquired through its partnership with Bitmain Inc. at the Data Center. These miners will generate 1.265 EH/s when fully deployed, with full deployment anticipated through Q2 2021. Currently, 500 of the S19 Pro Antminers have been delivered and deployed at the Data Center. The Data Center has the capacity to deploy up to 30,000 S19 Pro Miners that will generate 3.320 EH/s, providing Marathon with substantial opportunity for future expansion.

The Data Center will lower Marathon’s aggregate mining cost for electricity and data center management to \$0.034/kWh, which is 38% below the Company’s current cost of mining. This low-cost electricity reduces Marathon’s breakeven costs to produce Bitcoin from approximately \$7,500 per Bitcoin today to \$4,600 per Bitcoin, dramatically improving the Company’s future profitability.

22. Additionally, the October 2020 Press Release quoted Defendant Okamoto, who stated that “[t]he closing of this joint venture with Beowulf represents the completion of a long journey to own a Bitcoin mining facility[,]” and that “[p]artnering with an experienced independent power producer enables us to maintain control and certainty of Marathon’s energy and operational costs, at rates that represent some of the lowest in North America.”

1 23. The October 2020 Press Release also quoted Nazar Khan, Executive Vice President
2 of Beowulf, who stated, in relevant part, that “[i]n pursuing the co-location of a Bitcoin mining
3 operation at Hardin, we sought to capture the inherent value to the Data Center of securing a long-
4 term supply of reliable, secure, and low-cost power while benefitting from the significant on-site
5 technical expertise to ensure efficient operations[,] and that the location of “the Data Center has a
6 meaningful competitive advantage on energy pricing, moderate climate, and regulatory stability.”
7

8 24. Also on October 13, 2020, Marathon filed a current report on Form 8-K with the
9 SEC, which provided additional details regarding the Beowulf Joint Venture (the “October 2020
10 8-K”). Specifically, that filing stated, *inter alia*:

11 On October 6, 2020, Marathon . . . entered into a series of agreements with affiliates
12 of Beowulf . . . and [2PI] Beowulf and 2PI have been designing and developing
13 a data center facility of up to 100-megawatts (the “Facility”) that will be located
14 next to, and supplied energy directly from, Beowulf’s power generating station in
15 Hardin, MT (the “Hardin Station”). The Facility is being developed in two phases
to reach its 100 MW capacity, and the Hardin Station will supply the Facility
exclusively with energy to operate Bitcoin mining servers.

16 The projected build out cost for Phase I is approximately \$14 million, which is front
17 loaded as the infrastructure is being built most efficiently for the full 100 MW
18 project. It entails high voltage equipment to break down the full 100 MW load from
19 the generating station, and thereafter, the infrastructure cost per MW is a matter of
20 distributing power at a container level. Assuming market conditions similar to
21 current, the build out cost for Phase II works out to approximately \$200,000 -
\$250,000 per MW. These are all in costs covering all equipment and labor needed
starting from the power coming off the Generating Station distributed down to
running the actual miners: including breakers, transformers, switches, containers,
PDUs, fans, network cables, and the like.

22 Marathon and Beowulf entered into an exclusive Power Purchase Agreement for
23 the initial supply of 30 MW (Phase I), and up to 100 MW in the aggregate (Phase
24 II), of energy load to the Facility at a cost of \$0.028/kWh. The initial term of the
25 Power Purchase Agreement is five years, with up to five additional three-year
26 extensions, as mutually agreed, assuming 75% energy utilization of the initial 30
27 MW of energy supplied to the Facility. Marathon purchased certain mining
28 infrastructure and equipment for the Facility from Beowulf for a purchase price of
\$750,000, and Marathon has the right, at no additional cost, to construct and access
the Facility on land adjacent to the Hardin Station pursuant to a lease agreement
with Beowulf.

1 25. The October 2020 8-K also provided additional details regarding Marathon’s
2 issuance of common stock in connection with completing, operating, and maintaining the Hardin
3 Facility, including that “Beowulf and 2P1 will provide operation and maintenance services for the
4 Facility pursuant to a Data Facility Services Agreement, in exchange for an initial issuance of
5 3,000,000 shares of Marathon’s common stock to each of Beowulf and 2P1”; that “[u]pon
6 completion of Phase I, Marathon will issue to Beowulf an additional 150,000 shares of its common
7 stock”; that “[d]uring Phase II, Marathon will issue to Beowulf an additional 350,000 shares of its
8 common stock – 150,000 shares upon reaching 60 MW of Facility load and 200,000 at completion
9 of the full 100 MW of Facility load”; and that “[a]ll shares issued under the Data Facility Services
10 Agreement are issued pursuant to transactions exempt from registration under Section 4(a)(2) of
11 the Securities Act of 1933.”

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13
14 26. On November 12, 2020, Marathon issued a press release announcing the
15 Company’s 2020 fiscal third quarter financial results. That press release highlighted, in relevant
16 part, the Company’s “joint venture with Beowulf Energy for 105-Megawatt bitcoin mining data
17 center[.]”

18
19 27. Also on November 12, 2020, Marathon filed a quarterly report on Form 10-Q with
20 the SEC, reporting the Company’s financial and operating results for the quarter ended November
21 12, 2020 (the “3Q20 10-Q”). That filing contained substantively the same statements as referenced
22 in ¶¶ 24-25, *supra*, regarding the Beowulf Joint Venture.

23 28. Appended as exhibits to the 3Q20 10-Q were signed certifications pursuant to the
24 Sarbanes-Oxley Act of 2002 (“SOX”), wherein Defendants Okamoto and Salzman certified that
25 “[t]he [3Q20 10-Q] fully complies with the requirements of section 13(a) or 15(d) of the [Exchange
26 Act]” and that “[t]he information contained in the [3Q20 10-Q] fairly presents, in all material
27 respects, the financial condition and results of operations of the Company.”
28

1 29. On November 13, 2020, Marathon filed an amendment to the 3Q20 10-Q on Form
2 10-Q/A with the SEC (the “3Q20 10-Q/A”). That filing contained substantively the same
3 statements as referenced in ¶¶ 24-25, *supra*, regarding the Beowulf Joint Venture.

4 30. Appended as exhibits to the 3Q20 10-Q/A were substantively the same SOX
5 certifications as referenced in ¶ 28, *supra*, signed by Defendants Okamoto and Salzman.

6 31. On March 16, 2021, Marathon issued a press release announcing the Company’s
7 fourth quarter and fiscal year 2020 results (the “4Q/FY20 Press Release”). That press release
8 highlighted, in relevant part, the “[i]nitiating construction of [the] mining facility adjacent to
9 Beowulf’s energy plant in Hardin, MT, supplying Marathon long-term access to electricity at
10 2.8¢/kWh[,]” and the “install[ation of] 3,697 S-19 ASIC miners at the mining facility Hardin, MT,
11 increasing Marathon’s current active mining fleet to 5,690 miners with an additional 6,641 already
12 delivered . . . and in the process of being installed[.]”

13 32. Additionally, the 4Q/FY20 Press Release quoted Defendant Okamoto, who stated,
14 in relevant part, that “we established our 105 MW mining facility in Hardin, MT, where we have
15 consistent access to electricity at rates far below market average, we presciently purchased more
16 than 100,000 of the industry’s top performing Bitcoin miners . . . and we enhanced our balance
17 sheet[,]” and that “[w]ith a solid foundation to grow the business established, we are now focused
18 on continuing to build out our mining facility and bring our miners . . . online.”

19 33. Also on March 16, 2021, Marathon filed an annual report on Form 10-K with the
20 SEC, reporting the Company’s financial and operating results for the quarter and year ended
21 December 31, 2020 (the “2020 10-K”). That filing contained substantively the same statements
22 as referenced in ¶¶ 24-25, *supra*, regarding the Beowulf Joint Venture.

23 34. Appended as an exhibit to the 2020 10-K were substantively the same SOX
24 certifications as referenced in ¶ 28, *supra*, signed by Defendants Okamoto and Salzman.
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1 35. On May 10, 2021, Marathon filed a quarterly report on Form 10-Q with the SEC,
2 reporting the Company’s financial and operating results for the quarter ended March 31, 2021 (the
3 “1Q21 10-Q”). That filing contained substantively the same statements as referenced in ¶¶ 24-25,
4 *supra*, regarding the Beowulf Joint Venture.

5 36. Appended as exhibits to the 1Q21 10-Q were substantively the same SOX
6 certifications as referenced in ¶ 28, *supra*, signed by Defendants Thiel and Salzman.

7 37. On May 12, 2021, Marathon filed an amendment to the 1Q21 10-Q on Form 10-
8 Q/A with the SEC (the “1Q21 10-Q/A”). That filing contained substantively the same statements
9 as referenced in ¶¶ 24-25, *supra*, regarding the Beowulf Joint Venture.

10 38. Appended as exhibits to the 1Q21 10-Q/A were substantively the same SOX
11 certifications as referenced in ¶ 28, *supra*, signed by Defendants Thiel and Salzman.

12 39. On August 13, 2021, Marathon filed a quarterly report on Form 10-Q with the SEC,
13 reporting the Company’s financial and operating results for the quarter ended June 30, 2021 (the
14 “2Q21 10-Q”). That filing contained substantively the same statements as referenced in ¶¶ 24-25,
15 *supra*, regarding the Beowulf Joint Venture.

16 40. Appended as exhibits to the 2Q21 10-Q were substantively the same SOX
17 certifications as referenced in ¶ 28, *supra*, signed by Defendants Thiel and Salzman.

18 41. The statements referenced in ¶¶ 21-40 were materially false and misleading because
19 Defendants made false and/or misleading statements, as well as failed to disclose material adverse
20 facts about the Company’s business, operations, and compliance policies. Specifically,
21 Defendants made false and/or misleading statements and/or failed to disclose that: (i) the Beowulf
22 Joint Venture, as it related to the Hardin Facility, implicated potential regulatory violations,
23 including U.S. securities law violations; (ii) as a result, the Beowulf Joint Venture subjected
24 Marathon to a heightened risk of regulatory scrutiny; (iii) the foregoing was reasonably likely to
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1 have a material negative impact on the Company’s business and commercial prospects; and (iv) as
2 a result, the Company’s public statements were materially false and misleading at all relevant
3 times.

4 The Truth Emerges

5 42. On November 15, 2021, Marathon filed a quarterly report on Form 10-Q with the
6 SEC, reporting the Company’s financial and operating results for the quarter ended September 30,
7 2021. In the “Legal Proceedings” section of that filing, the Company disclosed, in relevant part:

8
9 On October 6, 2020, the Company entered into a series of agreements with multiple
10 parties to design and build a data center for up to 100-megawatts in Hardin, MT. In
11 conjunction therewith, the Company filed a Current Report on Form 8-K on
12 October 13, 2020. The 8-K discloses that, pursuant to a Data Facility Services
13 Agreement, the Company issued 6,000,000 shares of restricted Common Stock, in
14 transactions exempt from registration under Section 4(a)(2) of the Securities Act of
15 1933, as amended. *During the quarter ended September 30, 2021, the Company
16 and certain of its executives received a subpoena to produce documents and
17 communications concerning the Hardin, Montana data center facility described
18 in our Form 8-K dated October 13, 2020. We understand that the SEC may be
19 investigating whether or not there may have been any violations of the federal
20 securities law. We are cooperating with the SEC.*

21 (Emphasis added.)

22 43. On this news, Marathon’s stock price fell \$20.52 per share, or 27.03%, to close at
23 \$55.40 per share on November 15, 2021.

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

27 Post-Class Period Developments

28 45. On December 15, 2021, Marathon announced that Defendant Okamoto “plans to
retire at the end of 2021” and that the Board “has appointed [Defendant] Thiel, Marathon’s current
CEO, to succeed Okamoto on January 1, 2022, at which time, Thiel will maintain the
responsibilities of both chairman and CEO.”

PLAINTIFF’S CLASS ACTION ALLEGATIONS

1
2 46. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
3 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise
4 acquired Marathon securities during the Class Period (the “Class”); and were damaged upon the
5 revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein,
6 the officers and directors of the Company, at all relevant times, members of their immediate
7 families and their legal representatives, heirs, successors or assigns and any entity in which
8 Defendants have or had a controlling interest.

9
10 47. The members of the Class are so numerous that joinder of all members is
11 impracticable. Throughout the Class Period, Marathon securities were actively traded on the
12 NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can
13 be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or
14 thousands of members in the proposed Class. Record owners and other members of the Class may
15 be identified from records maintained by Marathon or its transfer agent and may be notified of the
16 pendency of this action by mail, using the form of notice similar to that customarily used in
17 securities class actions.

18
19 48. Plaintiff’s claims are typical of the claims of the members of the Class as all
20 members of the Class are similarly affected by Defendants’ wrongful conduct in violation of
21 federal law that is complained of herein.

22
23 49. Plaintiff will fairly and adequately protect the interests of the members of the Class
24 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has
25 no interests antagonistic to or in conflict with those of the Class.

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

- 4 • whether the federal securities laws were violated by Defendants' acts as alleged
5 herein;
- 6 • whether statements made by Defendants to the investing public during the Class
7 Period misrepresented material facts about the business, operations and
8 management of Marathon;
- 9 • whether the Individual Defendants caused Marathon to issue false and misleading
10 financial statements during the Class Period;
- 11 • whether Defendants acted knowingly or recklessly in issuing false and misleading
12 financial statements;
- 13 • whether the prices of Marathon securities during the Class Period were artificially
14 inflated because of the Defendants' conduct complained of herein; and
- 15 • whether the members of the Class have sustained damages and, if so, what is the
16 proper measure of damages.

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

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

- 24 • Defendants made public misrepresentations or failed to disclose material facts
25 during the Class Period;
- 26 • the omissions and misrepresentations were material;
- 27 • Marathon securities are traded in an efficient market;

- 1 • the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- 2
- 3 • the Company traded on the NASDAQ and was covered by multiple analysts;
- 4 • the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- 5
- 6 • Plaintiff and members of the Class purchased, acquired and/or sold Marathon securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.
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9 53. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
10 presumption of reliance upon the integrity of the market.

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

15 **FIRST CLAIM FOR RELIEF**

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

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

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

22 57. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and
23 course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions,
24 practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other
25 members of the Class; made various untrue statements of material facts and omitted to state
26 material facts necessary in order to make the statements made, in light of the circumstances under
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1 which they were made, not misleading; and employed devices, schemes and artifices to defraud in
2 connection with the purchase and sale of securities. Such scheme was intended to, and, throughout
3 the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members,
4 as alleged herein; (ii) artificially inflate and maintain the market price of Marathon securities; and
5 (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Marathon
6 securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan
7 and course of conduct, Defendants, and each of them, took the actions set forth herein.
8

9 58. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the
10 Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly
11 and annual reports, SEC filings, press releases and other statements and documents described
12 above, including statements made to securities analysts and the media that were designed to
13 influence the market for Marathon securities. Such reports, filings, releases and statements were
14 materially false and misleading in that they failed to disclose material adverse information and
15 misrepresented the truth about Marathon's finances and business prospects.
16

17 59. By virtue of their positions at Marathon, Defendants had actual knowledge of the
18 materially false and misleading statements and material omissions alleged herein and intended
19 thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants
20 acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose
21 such facts as would reveal the materially false and misleading nature of the statements made,
22 although such facts were readily available to Defendants. Said acts and omissions of Defendants
23 were committed willfully or with reckless disregard for the truth. In addition, each Defendant
24 knew or recklessly disregarded that material facts were being misrepresented or omitted as
25 described above.
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1 60. Information showing that Defendants acted knowingly or with reckless disregard
2 for the truth is peculiarly within Defendants' knowledge and control. As the senior managers
3 and/or directors of Marathon, the Individual Defendants had knowledge of the details of
4 Marathon's internal affairs.

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

18 62. During the Class Period, Marathon securities were traded on an active and efficient
19 market. Plaintiff and the other members of the Class, relying on the materially false and misleading
20 statements described herein, which the Defendants made, issued or caused to be disseminated, or
21 relying upon the integrity of the market, purchased or otherwise acquired shares of Marathon
22 securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the
23 other members of the Class known the truth, they would not have purchased or otherwise acquired
24 said securities, or would not have purchased or otherwise acquired them at the inflated prices that
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1 were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true
2 value of Marathon securities was substantially lower than the prices paid by Plaintiff and the other
3 members of the Class. The market price of Marathon securities declined sharply upon public
4 disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

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

9 64. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
10 other members of the Class suffered damages in connection with their respective purchases,
11 acquisitions and sales of the Company's securities during the Class Period, upon the disclosure
12 that the Company had been disseminating misrepresented financial statements to the investing
13 public.
14

15 **SECOND CLAIM FOR RELIEF**

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

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

19 66. During the Class Period, the Individual Defendants participated in the operation
20 and management of Marathon, and conducted and participated, directly and indirectly, in the
21 conduct of Marathon's business affairs. Because of their senior positions, they knew the adverse
22 non-public information about Marathon's misstatement of income and expenses and false financial
23 statements.
24

25 67. As officers and/or directors of a publicly owned company, the Individual
26 Defendants had a duty to disseminate accurate and truthful information with respect to Marathon's
27
28

1 financial condition and results of operations, and to correct promptly any public statements issued
2 by Marathon which had become materially false or misleading.

3 68. Because of their positions of control and authority as senior officers, the Individual
4 Defendants were able to, and did, control the contents of the various reports, press releases and
5 public filings which Marathon disseminated in the marketplace during the Class Period concerning
6 Marathon's results of operations. Throughout the Class Period, the Individual Defendants
7 exercised their power and authority to cause Marathon to engage in the wrongful acts complained
8 of herein. The Individual Defendants, therefore, were "controlling persons" of Marathon within
9 the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the
10 unlawful conduct alleged which artificially inflated the market price of Marathon securities.
11

12 69. Each of the Individual Defendants, therefore, acted as a controlling person of
13 Marathon. By reason of their senior management positions and/or being directors of Marathon,
14 each of the Individual Defendants had the power to direct the actions of, and exercised the same
15 to cause, Marathon to engage in the unlawful acts and conduct complained of herein. Each of the
16 Individual Defendants exercised control over the general operations of Marathon and possessed
17 the power to control the specific activities which comprise the primary violations about which
18 Plaintiff and the other members of the Class complain.
19

20 70. By reason of the above conduct, the Individual Defendants are liable pursuant to
21 Section 20(a) of the Exchange Act for the violations committed by Marathon.
22

23 **PRAYER FOR RELIEF**

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

25 A. Determining that the instant action may be maintained as a class action under Rule
26 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
27
28

1 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason
2 of the acts and transactions alleged herein;

3 C. Awarding Plaintiff and the other members of the Class prejudgment and post-
4 judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
5

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

7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiff hereby demands a trial by jury.

9 Dated: December 17, 2021

10 Respectfully submitted,

11 **MUEHLBAUER LAW OFFICE, LTD.**

12 */s/ Andrew R. Muehlbauer*

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