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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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

Plaintiff,

v.

MARATHON DIGITAL HOLDINGS, INC.,
f/k/a/ MARATHON PATENT GROUP, INC.,
MERRICK OKAMOTO, FRED THIEL,
SIMEON SALZMAN, and DAVID
LIEBERMAN,

Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Marathon Digital Holdings, Inc. f/k/a/ Marathon Patent Group, Inc. (“Marathon” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Marathon; and (c) review of other publicly available information concerning Marathon.

NATURE OF THE ACTION AND OVERVIEW

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Marathon securities between October 13, 2020 and November 14, 2021, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

1 occurred in substantial part in this Judicial District. In addition, the Company’s principal executive
2 offices are in this District.

3 10. In connection with the acts, transactions, and conduct alleged herein, Defendants
4 directly and indirectly used the means and instrumentalities of interstate commerce, including the
5 United States mail, interstate telephone communications, and the facilities of a national securities
6 exchange.

7 **PARTIES**

8 11. Plaintiff _____, as set forth in the accompanying certification,
9 incorporated by reference herein, purchased Marathon securities during the Class Period, and
10 suffered damages as a result of the federal securities law violations and false and/or misleading
11 statements and/or material omissions alleged herein.

12 12. Defendant Marathon is incorporated under the laws of Delaware with its principal
13 executive offices located in Seattle, Washington. Marathon’s common stock trades on the
14 NASDAQ Exchange under the symbol “MARA.”

15 13. Defendant Merrick Okamoto (“Okamoto”) was the Company’s Chief Executive
16 Officer (“CEO”) from August 2017 to April 26, 2021 and is the Executive Chairman of the Board
17 of Marathon.

18 14. Defendant Fred Thiel (“Thiel”) has been the CEO of Marathon since April 26,
19 2021.

20 15. Defendant Simeon Salzman (“Salzman”) has been the Company’s Chief Financial
21 Officer (“CFO”) since October 19, 2020.

22 16. Defendant David Lieberman (“Lieberman”) was the CFO of Marathon from
23 August 2017 to October 2020.

24 17. Defendants Okamoto, Thiel, Salzman, Lieberman (collectively the “Individual
25 Defendants”), because of their positions with the Company, possessed the power and authority to
26 control the contents of the Company’s reports to the SEC, press releases and presentations to
27 securities analysts, money and portfolio managers and institutional investors, i.e., the market. The
28 Individual Defendants were provided with copies of the Company’s reports and press releases

1 alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and
2 opportunity to prevent their issuance or cause them to be corrected. Because of their positions and
3 access to material non-public information available to them, the Individual Defendants knew that
4 the adverse facts specified herein had not been disclosed to, and were being concealed from, the
5 public, and that the positive representations which were being made were then materially false
6 and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

7 **SUBSTANTIVE ALLEGATIONS**

8 **Background**

9 18. Marathon is a digital asset company that mines cryptocurrencies. The Company
10 had previously engaged in other ventures, including the exploration and potential development of
11 uranium and vanadium minerals; real estate investments; and intellectual property licensing.

12 **Materially False and Misleading**

13 **Statements Issued During the Class Period**

14 19. The Class Period begins on October 13, 2020. On that day, Marathon filed a Form
15 8-K with the SEC describing an agreement to design and develop a data center in Hardin,
16 Montana:

17 **ITEM 1.01 Entry into a Material Definitive Agreement**

18 On October 6, 2020, Marathon Patent Group, Inc., a Nevada corporation
19 (“Marathon”) entered into a series of agreements with affiliates of Beowulf Energy
20 LLC, a Delaware limited liability company (collectively and as applicable,
21 “Beowulf”) and Two Point One, LLC, a Delaware limited liability company (“2PI”;
22 Marathon, Beowulf and 2PI each a “Party” and, collectively, the “Parties”).
23 Beowulf and 2PI have been designing and developing a data center facility of up to
100-megawatts (the “Facility”) that will be located next to, and supplied energy
directly from, Beowulf’s power generating station in 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.

24 The projected build out cost for Phase I is approximately \$14 million, which is
25 front loaded as the infrastructure is being built most efficiently for the full 100 MW
26 project. It entails high voltage equipment to break down the full 100 MW load from
the generating station, and thereafter, the infrastructure cost per MW is a matter of
27 distributing power at a container level. Assuming market conditions similar to
current, the build out cost for Phase II works out to approximately \$200,000 -
28 \$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

1 running the actual miners: including breakers, transformers, switches, containers,
2 PDUs, fans, network cables, and the like.

3 Marathon and Beowulf entered into an exclusive Power Purchase Agreement for
4 the initial supply of 30 MW (Phase I), and up to 100 MW in the aggregate (Phase
5 II), of energy load to the Facility at a cost of \$0.028/kWh. The initial term of the
6 Power Purchase Agreement is five years, with up to five additional three-year
7 extensions, as mutually agreed, assuming 75% energy utilization of the initial 30
8 MW of energy supplied to the Facility. Marathon purchased certain mining
9 infrastructure and equipment for the Facility from Beowulf for a purchase price of
10 \$750,000, and Marathon has the right, at no additional cost, to construct and access
11 the Facility on land adjacent to the Hardin Station pursuant to a lease agreement
12 with Beowulf.

13 Beowulf and 2P1 will provide operation and maintenance services for the Facility
14 pursuant to a Data Facility Services Agreement, in exchange for an initial issuance
15 of 3,000,000 shares of Marathon's common stock to each of Beowulf and 2P1.
16 Upon completion of Phase I, Marathon will issue to Beowulf an additional 150,000
17 shares of its common stock. During Phase II, Marathon will issue to Beowulf an
18 additional 350,000 shares of its common stock – 150,000 shares upon reaching 60
19 MW of Facility load and 200,000 at completion of the full 100 MW of Facility
20 load. The cost to maintain and run the Facility will be \$0.006/kWh. All shares
21 issued under the Data Facility Services Agreement are issued pursuant to
22 transactions exempt from registration under Section 4(a)(2) of the Securities Act of
23 1933.

24 20. On November 12, 2020, Marathon filed its quarterly report on Form 10-Q for the
25 period ended September 30, 2020. Regarding its disclosure controls and procedures, the Company
26 stated:

27 [M]anagement concluded that our disclosure controls and procedures were not
28 effective.

Due to our size and nature, segregation of all conflicting duties may not always be
possible and may not be economically feasible. However, to the extent possible, we
will implement procedures to assure that the initiation of transactions, the custody
of assets and the recording of transactions will be performed by separate
individuals.

21. On March 16, 2021, Marathon filed its annual report on Form 10-K for the period
ended December 31, 2020, stating that “our Chief Executive Officer and Chief Financial Officer
concluded that, our disclosure controls and procedures were effective as of December 31, 2020.”

22. On May 10, 2021, Marathon filed its quarterly report on Form 10-Q for the period
ended March 31, 2021, stating that “management concluded that our disclosure controls and
procedures were effective.”

1 2021, inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are
2 Defendants, the officers and directors of the Company, at all relevant times, members of their
3 immediate families and their legal representatives, heirs, successors, or assigns, and any entity in
4 which Defendants have or had a controlling interest.

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

14 29. Plaintiff’s claims are typical of the claims of the members of the Class as all
15 members of the Class are similarly affected by Defendants’ wrongful conduct in violation of
16 federal law that is complained of herein.

17 30. Plaintiff will fairly and adequately protect the interests of the members of the Class
18 and has retained counsel competent and experienced in class and securities litigation.

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

22 (a) whether the federal securities laws were violated by Defendants’ acts as
23 alleged herein;

24 (b) whether statements made by Defendants to the investing public during the
25 Class Period omitted and/or misrepresented material facts about the business, operations, and
26 prospects of Marathon; and

27 (c) to what extent the members of the Class have sustained damages and the
28 proper measure of damages.

1 other members of the Class purchasing the Company's securities at artificially inflated prices, thus
2 causing the damages complained of herein when the truth was revealed.

3 **LOSS CAUSATION**

4 36. Defendants' wrongful conduct, as alleged herein, directly and proximately caused
5 the economic loss suffered by Plaintiff and the Class.

6 37. During the Class Period, Plaintiff and the Class purchased Marathon's securities at
7 artificially inflated prices and were damaged thereby. The price of the Company's securities
8 significantly declined when the misrepresentations made to the market, and/or the information
9 alleged herein to have been concealed from the market, and/or the effects thereof, were revealed,
10 causing investors' losses.

11 **SCIENTER ALLEGATIONS**

12 38. As alleged herein, Defendants acted with scienter since Defendants knew that the
13 public documents and statements issued or disseminated in the name of the Company were
14 materially false and/or misleading; knew that such statements or documents would be issued or
15 disseminated to the investing public; and knowingly and substantially participated or acquiesced
16 in the issuance or dissemination of such statements or documents as primary violations of the
17 federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by
18 virtue of their receipt of information reflecting the true facts regarding Marathon, their control
19 over, and/or receipt and/or modification of Marathon's allegedly materially misleading
20 misstatements and/or their associations with the Company which made them privy to confidential
21 proprietary information concerning Marathon, participated in the fraudulent scheme alleged
22 herein.

23 **APPLICABILITY OF PRESUMPTION OF RELIANCE**

24 **(FRAUD-ON-THE-MARKET DOCTRINE)**

25 39. The market for Marathon's securities was open, well-developed and efficient at all
26 relevant times. As a result of the materially false and/or misleading statements and/or failures to
27 disclose, Marathon's securities traded at artificially inflated prices during the Class Period. On
28 November 9, 2021, the Company's share price closed at a Class Period high of \$76.09 per share.

1 Plaintiff and other members of the Class purchased or otherwise acquired the Company's
2 securities relying upon the integrity of the market price of Marathon's securities and market
3 information relating to Marathon, and have been damaged thereby.

4 40. During the Class Period, the artificial inflation of Marathon's shares was caused by
5 the material misrepresentations and/or omissions particularized in this Complaint causing the
6 damages sustained by Plaintiff and other members of the Class. As described herein, during the
7 Class Period, Defendants made or caused to be made a series of materially false and/or misleading
8 statements about Marathon's business, prospects, and operations. These material misstatements
9 and/or omissions created an unrealistically positive assessment of Marathon and its business,
10 operations, and prospects, thus causing the price of the Company's securities to be artificially
11 inflated at all relevant times, and when disclosed, negatively affected the value of the Company
12 shares. Defendants' materially false and/or misleading statements during the Class Period resulted
13 in Plaintiff and other members of the Class purchasing the Company's securities at such
14 artificially inflated prices, and each of them has been damaged as a result.

15 41. At all relevant times, the market for Marathon's securities was an efficient market
16 for the following reasons, among others:

17 (a) Marathon shares met the requirements for listing, and was listed and
18 actively traded on the NASDAQ, a highly efficient and automated market;

19 (b) As a regulated issuer, Marathon filed periodic public reports with the SEC
20 and/or the NASDAQ;

21 (c) Marathon regularly communicated with public investors via established
22 market communication mechanisms, including through regular dissemination of press releases on
23 the national circuits of major newswire services and through other wide-ranging public
24 disclosures, such as communications with the financial press and other similar reporting services;
25 and/or

26 (d) Marathon was followed by securities analysts employed by brokerage firms
27 who wrote reports about the Company, and these reports were distributed to the sales force and
28

1 certain customers of their respective brokerage firms. Each of these reports was publicly available
2 and entered the public marketplace.

3 42. As a result of the foregoing, the market for Marathon’s securities promptly digested
4 current information regarding Marathon from all publicly available sources and reflected such
5 information in Marathon’s share price. Under these circumstances, all purchasers of Marathon’s
6 securities during the Class Period suffered similar injury through their purchase of Marathon’s
7 securities at artificially inflated prices and a presumption of reliance applies.

8 43. A Class-wide presumption of reliance is also appropriate in this action under the
9 Supreme Court’s holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972),
10 because the Class’s claims are, in large part, grounded on Defendants’ material misstatements
11 and/or omissions. Because this action involves Defendants’ failure to disclose material adverse
12 information regarding the Company’s business operations and financial prospects—information
13 that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to
14 recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable
15 investor might have considered them important in making investment decisions. Given the
16 importance of the Class Period material misstatements and omissions set forth above, that
17 requirement is satisfied here.

18 **NO SAFE HARBOR**

19 44. The statutory safe harbor provided for forward-looking statements under certain
20 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.
21 The statements alleged to be false and misleading herein all relate to then-existing facts and
22 conditions. In addition, to the extent certain of the statements alleged to be false may be
23 characterized as forward looking, they were not identified as “forward-looking statements” when
24 made and there were no meaningful cautionary statements identifying important factors that could
25 cause actual results to differ materially from those in the purportedly forward-looking statements.
26 In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-
27 looking statements pleaded herein, Defendants are liable for those false forward-looking
28 statements because at the time each of those forward-looking statements was made, the speaker

1 had actual knowledge that the forward-looking statement was materially false or misleading,
2 and/or the forward-looking statement was authorized or approved by an executive officer of
3 Marathon who knew that the statement was false when made.

4 **FIRST CLAIM**

5 **Violation of Section 10(b) of The Exchange Act and**

6 **Rule 10b-5 Promulgated Thereunder**

7 **Against All Defendants**

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

10 46. During the Class Period, Defendants carried out a plan, scheme and course of
11 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing
12 public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and
13 other members of the Class to purchase Marathon's securities at artificially inflated prices. In
14 furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant,
15 took the actions set forth herein.

16 47. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made
17 untrue statements of material fact and/or omitted to state material facts necessary to make the
18 statements not misleading; and (iii) engaged in acts, practices, and a course of business which
19 operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to
20 maintain artificially high market prices for Marathon's securities in violation of Section 10(b) of
21 the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the
22 wrongful and illegal conduct charged herein or as controlling persons as alleged below.

23 48. Defendants, individually and in concert, directly and indirectly, by the use, means
24 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
25 continuous course of conduct to conceal adverse material information about Marathon's financial
26 well-being and prospects, as specified herein.

27 49. Defendants employed devices, schemes and artifices to defraud, while in
28 possession of material adverse non-public information and engaged in acts, practices, and a course

1 of conduct as alleged herein in an effort to assure investors of Marathon's value and performance
2 and continued substantial growth, which included the making of, or the participation in the making
3 of, untrue statements of material facts and/or omitting to state material facts necessary in order to
4 make the statements made about Marathon and its business operations and future prospects in light
5 of the circumstances under which they were made, not misleading, as set forth more particularly
6 herein, and engaged in transactions, practices and a course of business which operated as a fraud
7 and deceit upon the purchasers of the Company's securities during the Class Period.

8 50. Each of the Individual Defendants' primary liability and controlling person liability
9 arises from the following facts: (i) the Individual Defendants were high-level executives and/or
10 directors at the Company during the Class Period and members of the Company's management
11 team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and
12 activities as a senior officer and/or director of the Company, was privy to and participated in the
13 creation, development and reporting of the Company's internal budgets, plans, projections and/or
14 reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the
15 other defendants and was advised of, and had access to, other members of the Company's
16 management team, internal reports and other data and information about the Company's finances,
17 operations, and sales at all relevant times; and (iv) each of these defendants was aware of the
18 Company's dissemination of information to the investing public which they knew and/or
19 recklessly disregarded was materially false and misleading.

20 51. Defendants had actual knowledge of the misrepresentations and/or omissions of
21 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to
22 ascertain and to disclose such facts, even though such facts were available to them. Such
23 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and
24 for the purpose and effect of concealing Marathon's financial well-being and prospects from the
25 investing public and supporting the artificially inflated price of its securities. As demonstrated by
26 Defendants' overstatements and/or misstatements of the Company's business, operations, financial
27 well-being, and prospects throughout the Class Period, Defendants, if they did not have actual
28 knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain

1 such knowledge by deliberately refraining from taking those steps necessary to discover whether
2 those statements were false or misleading.

3 52. As a result of the dissemination of the materially false and/or misleading
4 information and/or failure to disclose material facts, as set forth above, the market price of
5 Marathon's securities was artificially inflated during the Class Period. In ignorance of the fact that
6 market prices of the Company's securities were artificially inflated, and relying directly or
7 indirectly on the false and misleading statements made by Defendants, or upon the integrity of the
8 market in which the securities trades, and/or in the absence of material adverse information that
9 was known to or recklessly disregarded by Defendants, but not disclosed in public statements by
10 Defendants during the Class Period, Plaintiff and the other members of the Class acquired
11 Marathon's securities during the Class Period at artificially high prices and were damaged thereby.

12 53. At the time of said misrepresentations and/or omissions, Plaintiff and other
13 members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff
14 and the other members of the Class and the marketplace known the truth regarding the problems
15 that Marathon was experiencing, which were not disclosed by Defendants, Plaintiff and other
16 members of the Class would not have purchased or otherwise acquired their Marathon securities,
17 or, if they had acquired such securities during the Class Period, they would not have done so at the
18 artificially inflated prices which they paid.

19 54. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act
20 and Rule 10b-5 promulgated thereunder.

21 55. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the
22 other members of the Class suffered damages in connection with their respective purchases and
23 sales of the Company's securities during the Class Period.

24 **SECOND CLAIM**

25 **Violation of Section 20(a) of The Exchange Act**

26 **Against the Individual Defendants**

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

1 (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in
2 this action, including counsel fees and expert fees; and

3 (d) Such other and further relief as the Court may deem just and proper.

4 **JURY TRIAL DEMANDED**

5 Plaintiff hereby demands a trial by jury.

6 Dated: _____, 2021

7 By: _____
8 **LAW OFFICES OF HOWARD G. SMITH**
9 Howard G. Smith
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10 Bensalem PA 19020
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11 *Attorney for Plaintiff* _____

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