

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

\_\_\_\_\_, INDIVIDUALLY AND ON §  
BEHALF OF ALL OTHERS SIMILARLY §  
SITUATED, §

Plaintiff, §

v. §

DIRECT DIGITAL HOLDINGS, INC., §  
MARK D. WALKER, and DIANA P. DIAZ, §

Defendants §

Civil Action No.: DRAFT

CLASS ACTION COMPLAINT  
JURY TRIAL DEMANDED

LAW OFFICES OF HOWARD G. SMITH

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 Direct Digital Holdings, Inc. (“Direct Digital” 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 Direct Digital; and (c) review of other publicly available information concerning Direct Digital.

#### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Direct Digital securities between November 9, 2023 and April 1, 2024, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Direct Digital is a digital advertising agency that operates in both the demand and supply side of the business, providing services for companies trying to purchase advertising and publications trying to sell advertising. The Company purports to operate as an end-to-end programmatic advertising platform which focuses on providing advertising technology, data-driven campaign optimization, and other solutions to underserved and less efficient markets.

3. On March 20, 2024, after the market closed, the Company issued a press release announcing it would postpone the release of fourth quarter and full year 2023 financial results “to provide additional time to complete the audit of its financial statements.”

4. On this news the Company's stock fell \$2.99, or 9.4%, to close at \$28.80 on March 21, 2024. The Company's stock continued to fall the next day, falling \$2.46, or 8.5%, to close at \$26.34 on March 22, 2024.

5. On March 26, 2024, after the market closed, Direct Digital announced fourth quarter and full year 2023 results, disclosing that the Company significantly missed revenue growth estimates due to "measures" the Company took due to "changing macro industry trends" leading the Company to "[a]ccelerat[e] [its] transition towards a "cookie-less" advertising environment." The Company reported full year revenue was \$157.1 million, representing 76% growth year-over-year, falling short of the Company's projected \$170-190 million, or 101% year-over-year growth, which the Company had previously stated demonstrated the Company's "favorable market trends."

6. On this news, Direct Digital's stock price fell \$10.47, or 39.5%, to close at \$16.04 per share on March 27, 2024, on unusually heavy trading volume.

7. Finally, on April 2, 2024, before the markets opened, Direct Digital disclosed it would be unable to timely file its annual report and that a material weakness had been "identified in [its] review of internal control over financial reporting as of December 31, 2023."

8. On this news, Direct Digital's stock price fell \$1.31, or 10.4%, to close at \$12.82 per share on April 2, 2024, on unusually heavy trading volume.

9. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Direct Digital lacked effective internal controls regarding the material weakness identified in its review of internal control over financial reporting as of December 31, 2023; (2) that, as a result, the

Company would be unable to timely release its full year 2023 fiscal results; (3) that the Company was experiencing changing macro industry trends; (4) that, as a result, the Company would have to accelerate its transition to “cookie-less” advertising; (5) that, as a result, the Company would fail to meet full year 2023 revenue growth expectations; and (6) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

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

#### **JURISDICTION AND VENUE**

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

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

13. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. Further, Direct Digital is headquartered in this Judicial District.

14. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the

United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

15. Plaintiff \_\_\_\_\_, as set forth in the accompanying certification, incorporated by reference herein, purchased Direct Digital securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

16. Defendant Direct Digital is incorporated under the laws of Delaware with its principal executive offices located in Houston, Texas. Direct Digital's Class A common stock trades on the NASDAQ exchange under the symbol "DRCT."

17. Defendant Mark D. Walker ("Walker") was the Company's Chief Executive Officer ("CEO") as well as Co-Founder, and Chairman, at all relevant times.

18. Defendant Diana P. Diaz ("Diaz") was the Company's Chief Financial Officer ("CFO") at all relevant times.

19. Defendants Walker and Diaz (together, the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive

representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

## SUBSTANTIVE ALLEGATIONS

### Background

20. Direct Digital is a digital advertising agency that operates in both the demand and supply side of the business, providing services for companies trying to purchase advertising and publications trying to sell advertising. The Company purports to operate as an end-to-end programmatic advertising platform which focuses on providing advertising technology, data-driven campaign optimization, and other solutions to underserved and less efficient markets.

### **Materially False and Misleading**

#### Statements Issued During the Class Period

21. The Class Period begins on November 9, 2023. On that day, Direct Digital announced its financial results for the third quarter ended September 30, 2023 (the “3Q23 Press Release”).<sup>1</sup> The 3Q23 Press Release reported, in relevant part:

Third Quarter 2023 Revenue Up 129% Year-Over-Year to \$59.5 Million

***Company Raises Full-Year 2023 Revenue Guidance to \$170 Million - \$190 Million***

\* \* \*

***For fiscal year 2023, we expect revenue to be in the range of \$170 million to \$190 million, or 101% year-over-year growth at the mid-point.***

"We are thrilled to announce the raising of our fiscal year 2023 revenue guidance to \$180 million at the midpoint, a 101% increase over full-year 2022 results. ***This increase reflects our belief in our ability to execute on our various growth strategies, demonstrates the strength of our operating leverage and highlights the favorable market trends that we expect to continue for the remainder of this year,***" commented Diana Diaz, Chief Financial Officer.

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<sup>1</sup> Unless otherwise stated, all emphasis in bold and italics hereinafter is added, and all footnotes are omitted.

22. The 3Q23 Press Release provided the following consolidated statements of operations, in relevant part:

	For the Three Months Ended		For the Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
<b>Revenues</b>				
Buy-side advertising	\$ 7,850,058	\$ 7,130,736	\$ 27,092,816	\$ 22,283,044
Sell-side advertising	51,622,066	18,854,639	89,006,018	36,333,976
<b>Total revenues</b>	<b>59,472,124</b>	<b>25,985,375</b>	<b>116,098,834</b>	<b>58,617,020</b>
<b>Cost of revenues</b>				
Buy-side advertising	3,113,491	2,471,170	10,650,541	7,694,987
Sell-side advertising	44,605,815	16,053,461	77,189,787	30,344,670
<b>Total cost of revenues</b>	<b>47,719,306</b>	<b>18,524,631</b>	<b>87,840,328</b>	<b>38,039,657</b>
<b>Gross profit</b>	<b>11,752,818</b>	<b>7,460,744</b>	<b>28,258,506</b>	<b>20,577,363</b>

23. On November 9, 2023, the Company submitted its quarterly report for the period ended September 30, 2023 on a Form 10-Q filed with the SEC, affirming the previously reported financial results (the “3Q23 10-Q”). The report stated the following regarding internal controls over financial reporting:

#### **ITEM 4. Controls and Procedures**

##### **Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports we file or submit under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) is recorded, processed, summarized and reported within the time periods specified in the U.S. Securities and Exchange Commission’s rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), as appropriate to allow timely decisions regarding required disclosure. In connection with the preparation of this Quarterly Report on Form 10-Q, our management carried out an evaluation, under the supervision and with the participation of the CEO and CFO, of the effectiveness and operation of our disclosure controls and procedures as of September 30, 2023.

24. The 3Q23 10-Q asserted that “[b]ased upon that evaluation, the CEO and CFO have concluded that, as of such date, based on the identification of the material weakness described

below, our disclosure controls and procedures were not effective” specifically as to a material weakness previously identified in the Company’s 2022 Annual Report 10-K filing in Note 16, as restated in the 3Q23 10-Q, which was limited to “invoices [] not sent to a particular, individual customer during the period from August 1, 2022 through December 31, 2022.” The 3Q23 10-Q asserted that *“there were no material misstatements as a result of this material weakness; however, it could have resulted in understated revenue that could have resulted in a material misstatement[.]”* The 3Q23 10-Q further asserted that *“Management has implemented remediation steps to address the material weakness and to improve our internal control over revenue recognition.”* The portion of the 3Q23 10-Q concerning the Company’s plan to remediate the material weakness concluded, stating in relevant part:

However, our management, including *our Chief Executive Officer and Chief Financial Officer, has concluded that*, notwithstanding the identified material weakness in our internal control over financial reporting, *the financial statements fairly present, in all material respects, our financial condition, results of operations and cash flows for the periods presented in conformity with U.S. GAAP.*

25. On November 13, 2023, Direct Digital issued a press release announcing the Company had “placed 108<sup>th</sup> on the Deloitte Technology Fast 500” which stated, in relevant part:

*The Company attributes its significant growth to current market dynamics benefitting its technology-driven and differentiated approach to advertising solutions.* On November 9, 2023, the Company reported its third quarter earnings ended September 30, 2023. *Direct Digital Holdings’ sell-side advertising segment revenue grew to \$51.6 million or 174% growth* over the \$18.9 million of sell-side revenue in the same period of 2022. *The Company’s buy-side advertising segment revenue grew to \$7.9 million* or 10% growth over the \$7.1 million of buy-side revenue in the same period of 2022.

26. On February 29, 2024, Direct Digital issued a press release which announced the Company “will report financial results for the fourth quarter and fiscal year 2023 ended December 31, 2023 on Thursday, March 21, 2024 after the U.S. stock market closes.”



27. The above statements identified in ¶¶ 21-26 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Direct Digital lacked effective internal controls regarding the material weakness identified in its review of internal control over financial reporting as of December 31, 2023; (2) that, as a result, the Company would be unable to timely release its full year 2023 fiscal results; (3) that the Company was experiencing changing macro industry trends; (4) that, as a result, the Company would have to accelerate its transition to "cookie-less" advertising; (5) that, as a result, the Company would fail to meet full year 2023 revenue growth expectations; and (6) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

**Disclosures at the End of the Class Period**

28. On March 20, 2024, after the market closed, the Company issued a press release announcing it would postpone the release of fourth quarter and full year 2023 financial results "to provide additional time to complete the audit of its financial statements."

29. On this news the Company's stock fell \$2.99, or 9.4%, to close at \$28.8 on March 21, 2024. The Company's stock continued to fall the next day, falling \$2.46, or 8.5%, to close at \$26.34 on March 22, 2024.

30. Then, on March 26, 2024, after the market closed, Direct Digital announced the Company's fourth quarter and full year 2023 results, disclosing that the Company significantly missed revenue growth estimates due to "measures" the Company took due to "changing macro industry trends" leading the Company to "[a]ccelerat[e] [its] transition towards a "cookie-less" advertising environment." (the "FY23 Press Release"). The FY23 Press Release reported the

Company's full year revenue was \$157.1 million, representing 76% growth year-over-year, falling short of the Company's previously estimated \$170-190 million or 101% year-over-year growth.

31. Specifically, the Company's FY23 Press Release quoted the Company's CEO, Defendant Walker, who commented in relevant part:

Although performance in the fourth quarter was not as strong as we initially expected due to *proactive measures we are taking in the face of changing macro industry trends*, we are confident our company is in a position to build on the successes of 2023, expand on emerging channel and inorganic growth opportunities and continue our strong revenue growth and market share gains in 2024.

32. The FY23 Press Release reported the quarterly business highlights, including that the Company:

Accelerated our transition towards a "cookie-less" advertising environment during the quarter to place the organization in a position to successfully navigate expected changes in 2024 and beyond.

33. On this news, Direct Digital's stock price fell \$10.47, or 39.5%, to close at \$16.04 per share on March 27, 2024, on unusually heavy trading volume.

34. Then, on April 2, 2024, before the markets opened, Direct Digital disclosed it would be unable to timely file its annual report, and that a material weakness had been "identified in [its] review of internal control over financial reporting as of December 31, 2023."

35. On this news, Direct Digital's stock price fell \$1.31, or 10.4%, to close at \$12.82 per share on April 2, 2024, on unusually heavy trading volume.

### **CLASS ACTION ALLEGATIONS**

36. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Direct Digital securities between November 9, 2023 and April 1, 2024, inclusive (, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their

immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

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

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

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

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

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

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

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

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

#### **UNDISCLOSED ADVERSE FACTS**

42. The market for Direct Digital's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, Direct Digital's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Direct Digital's securities relying upon the integrity of the market price of the Company's securities and market information relating to Direct Digital, and have been damaged thereby.

43. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Direct Digital's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about Direct Digital's business, operations, and prospects as alleged herein.

44. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Direct Digital's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

#### **LOSS CAUSATION**

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

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

#### **SCIENTER ALLEGATIONS**

47. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced

in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Direct Digital, their control over, and/or receipt and/or modification of Direct Digital's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Direct Digital, participated in the fraudulent scheme alleged herein.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE**

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

48. The market for Direct Digital's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Direct Digital's securities traded at artificially inflated prices during the Class Period. On March 15, 2024, the Company's share price closed at a Class Period high of \$32.51 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of Direct Digital's securities and market information relating to Direct Digital, and have been damaged thereby.

49. During the Class Period, the artificial inflation of Direct Digital's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Direct Digital's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Direct Digital and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of

the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

50. At all relevant times, the market for Direct Digital's securities was an efficient market for the following reasons, among others:

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

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

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

(d) Direct Digital was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

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

**NO SAFE HARBOR**

53. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Direct Digital who knew that the statement was false when made.



**FIRST CLAIM**

**Violation of Section 10(b) of The Exchange Act and  
Rule 10b-5 Promulgated Thereunder**

**Against All Defendants**

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

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

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

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

58. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Direct Digital's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Direct Digital and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

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

60. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Direct Digital's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

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

62. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems

that Direct Digital was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Direct Digital securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

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

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

## **SECOND CLAIM**

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

#### **Against the Individual Defendants**

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

66. Individual Defendants acted as controlling persons of Direct Digital within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were

issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

67. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

68. As set forth above, Direct Digital and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: April 11, 2024

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