EXHIBIT 12

Volcon, Inc. (now Empery Digital Inc.): Form 8-K filed July 17, 2025, and Form S-3ASR filed August 18, 2025 (selling stockholders)

Nejmeh v. Theriva Biologics, Inc., No. 3:26-cv-00705-ART-CSD (D. Nev.)
Cited in the First Amended Verified Complaint, paragraph(s) 93

Source

- Volcon, Inc. Form 8-K filed July 17, 2025, SEC Accession No. 0001683168-25-005160: pages 1, 3, 5, 6, 8, 10 of 11, as printed from the document on sec.gov (https://www.sec.gov/Archives/edgar/data/1829794/000168316825005160/volcon_8k.htm).
- Empery Digital Inc. Form S-3ASR filed August 18, 2025, SEC Accession No. 0001683168-25-006260: pages 1, 20, 22, 23, 28 of 48, as printed from the document on sec.gov (https://www.sec.gov/Archives/edgar/data/1829794/000168316825006260/empery_s3asr.htm).

Where only some pages are reproduced, the complete document is publicly available at the address shown.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 17, 2025 (July 11, 2025)

Volcon, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**001-40867**	**84-4882689**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

3121 Eagles Nest Street, Suite 120
Round Rock, TX 78665
(Address of principal executive offices and zip code)

(512) 400-4271
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-14(c)).

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.00001 per share	VLCN	NASDAQ

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Registration Rights Agreement

In connection with the Private Placements, the Company and the Purchasers entered into a Registration Rights Agreement, dated July 17, 2025 (the "**Registration Rights Agreement**"), providing for the registration for resale of the Shares and the Pre-Funded Warrant Shares that are not then registered on an effective registration statement, pursuant to a registration statement (the "**Registration Statement**") to be filed with the Securities and Exchange Commission (the "**SEC**") no later than August 16, 2025. The Company has agreed to use reasonable best efforts to cause the Registration Statement to be declared effective as promptly as possible, but in no event later than 30 days after closing of the Private Placements, and to keep the Registration Statement continuously effective from the date on which the SEC declares the Registration Statement to be effective until (i) the date on which the Purchasers shall have resold all the Registrable Securities (as such term is defined in the Registration Rights Agreement) covered thereby, or (ii) the date on which the Registrable Securities may be resold by the Purchasers without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144 as promulgated by the SEC under the Securities Act ("**Rule 144**"), without the requirement for the Company to be in compliance with the current public information requirement under Rule 144 or any other rule of similar effect.

The Company has granted the Purchasers customary indemnification rights in connection with the Registration Rights Agreement. The Purchasers have also granted the Company customary indemnification rights in connection with the Registration Rights Agreement.

The foregoing description of the Purchase Agreements, Registration Rights Agreement and the Pre-Funded Warrant is not complete and is qualified in its entirety by reference to the full text of the Purchase Agreements, Registration Rights Agreement and form of Pre-Funded Warrant, which are filed as Exhibits 10.1, 10.2, 10.3 and 4.1, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

Placement Agent Engagement Letters

Clear Street LLC ("**Clear Street**") and Aegis Capital Corp. ("**Aegis**") have agreed to serve as the Company's non-exclusive placement agents in connection with the Private Placements, pursuant to (i) that engagement letter, dated as of July 17, 2025, between the Company and Clear Street; and (ii) that engagement letter, dated as of July 17, 2025, between the Company and Aegis (together, the "**Engagement Letters**"). Pursuant to the Engagement Letters, the Company has agreed to: (a) pay Clear Street and Aegis a total cash fee equal to 2.55% and 1.373% of the aggregate gross proceeds raised in the Private Placements, respectively, and (ii) certain reasonable and documented fees and expenses of legal counsel for Clear Street and other out-of-pocket expenses. In addition, the Company has agreed to issue to Placement Agents or their designees warrants to purchase shares of Common Stock (the "**Placement Agent Warrants**") with an exercise price of $10.00 per share and a five-year term, such Placement Agent Warrants will be exercisable into 0.3269% of the number of Securities to be issued in the Private Placements. Upon issuance, the Placement Agents Warrants will be unvested and non-exercisable and shall vest and become exercisable in 20% installments based upon the achievement of certain milestones tied to the Company's volume weighted average price ("**VWAP**") of the Company's Common Stock, fully vesting if the VWAP reaches $30.00 (the "**Applicable Vesting Schedule**").

The Engagement Letters contain customary representations and warranties, agreements and obligations, conditions to closing and termination provisions.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

As previously reported, on May 13, 2025, the Company received a deficiency letter from the Listing Qualifications Department (the "Staff") of the Nasdaq Stock Market ("Nasdaq") notifying the Company that the minimum closing bid price per share for its common stock was below $1.00 for a period of 30 consecutive business days and that the Company did not meet the minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Rule").·

Following a June 24, 2025, hearing with a Nasdaq Hearings Panel (the "Panel"), the Panel issued its determination, indicating the Company shall demonstrate compliance with the Bid Price Rule by exhibiting a closing bid price at or above $1 for twenty consecutive trading sessions; and if the Company became deficient with the Bid Price Rule prior to November 10, 2025, the Company would be delisted. The Company believes it has met the 20 consecutive day term of the Panel determination and is waiting for a final compliance determination.

Item 3.02 Unregistered Sales of Equity Securities.

The information contained in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 3.02.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Director Appointments

In connection with the Private Placement, the board of directors of the Company (the "**Board**") elected Ryan Lane, Ian Read, Rohan Chauhan and Matthew Homer to serve on the Board until elections are held the Company's next shareholder meeting. Mr. Lane will also serve as both Chairman of the Board and Co-Chief Executive Officer.

Mr. Lane, age 47, founded Empery Asset Management, LP in July 2008 and has served as a principal and managing member since then. Mr. Lane, along with his firm, has negotiated and invested in hundreds of publicly listed companies since 2008. He has a deep understanding of capital markets, capital structure and capital formation. Mr. Lane received a BA in Finance and Accounting from Franklin & Marshall College in 2000.

In connection with Mr. Lane's appointment as Chairman and Co-Chief Executive Officer of the Company, Mr. Lane entered into an employment agreement with the Company pursuant to which he will receive a base salary of $225,000, a signing bonus of $225,000 on or prior to the closing of the Private Placement and will be granted stock options pursuant to a stock plan of the Company to be approved by the stockholders of the Company (the "**New Plan**") in a number equal to 3.0% of the Shares Deemed Outstanding. The options will be exercisable at a price of $10.00 per share, have a term of 10 years from issuance and will vest according to the Applicable Vesting Schedule.

Mr. Read, age 72, has served as a senior operating executive for The Carlyle Group's Global Healthcare Group since June 2020. Mr. Read previously served as Chief Executive Officer of Pfizer from 2010 to 2018 where he was also the Executive Chair in 2019. Mr. Read served as a director on Kimberly-Clark's board of directors from 2007-2022, serving as Lead Director between 2017 and 2022, and was chairman of DXC Technology from 2019 to 2023. Mr. Read received a BS in Chemical Engineering from Imperial College London in 1974.

Mr. Homer, age 42, has served as the managing member of venture capital firm The Venture Dept. since 2023. Mr. Homer has served as a board member of the Gemini Trust Company, LLC and Standard Custody & Trust Company, LLC, since 2022, and also currently serves as an operating partner for Nyca Partners, which he has been affiliated with since 2021. From 2019 to 2021, Mr. Homer served as executive deputy superintendent for the NYS Department of Financial Services. Mr. Homer has experience in fintech and digital asset regulation, venture capital and early-stage investing, board level governance, regulatory compliance frameworks and strategic policy development and government engagement. Mr. Homer received a BA in Economics from the University of Utah in 2007 and a Master of Public Policy from Harvard's Kennedy School in 2010.

Mr. Chauhan, age 37, is a markets specialist with extensive experience designing trading systems, infrastructure, and cost models. He has served as Director of Strategy at Gemini Trust Company, LLC since September 2024, before which he served in Business Development at Hudson River Trading from July 2022 to January 2025. From 2018 until July 2022, Mr. Chauhan served as a Trader at GIC, Singapore's Sovereign Wealth Fund. Mr. Chauhan received a Bachelor of Engineering in 2009 and a Master of Engineering in 2010 from The Cooper Union for the Advancement of Science and Art, and is a CFA charterholder.

In connection with the appointment of each of Messrs. Read, Homer and Chauhan as directors (each a "**Director Nominee**"), each Director Nominee signed an offer letter with the Company pursuant to which he will receive an annual fee of $40,000 plus a $10,000 fee for any committee such Director Nominee serves on, both of which will be paid quarterly. Each Director Nominee will also be granted stock options under the New Plan in a number equal to 0.5% of the of the Shares Deemed Outstanding. Such options will be exercisable at a price of $10.00 per share, have a term of 10 years from issuance and will vest according to the Applicable Vesting Schedule.

Each of the Director Nominees and Mr. Lane will enter into an indemnification agreement with the Company in substantially similar form as Exhibit 10.11 to the Company's Annual Report on Form 10-K filed with the SEC on March 31, 2025.

In connection with the Private Placement, the current independent directors on the Company's board will receive an aggregate payment of $600,000, with each individual amount based on their board tenure. In addition, each director will receive 10,000 stock options under the New Plan with an exercise price of $10.00 per share, a term of 10 years from issuance and will vest according to the Applicable Vesting Schedule.

Executive Officer Appointments

In connection with the Private Placement, the Board also appointed Mr. Lane, Timothy Silver and Brett Director to serve on the Company's management team. Mr. Lane will serve as Co-Chief Executive Officer alongside John Kim, the Company's current Chief Executive Officer and President. Mr. Silver will serve as Chief Operating Officer. Mr. Director will serve as Vice President of Legal.

Mr. Silver, age 37, served as a portfolio manager at Empery Asset Management, LP since May 2021 and was previously an associate at Lazard from August 2018 to April 2021. Mr. Silver received a BA in Mathematical Economics from Colgate University in May 2010 and an MBA from Columbia University in May 2018. Mr. Silver is a CFA charterholder.

In connection with his appointment as Chief Operating Officer of the Company, Mr. Silver entered into an employment agreement with the Company pursuant to which he will receive a base salary of $150,000 and will be granted stock options under the New Plan in a number equal to 1.0% of the of the Shares Deemed Outstanding. Such options will be exercisable at a price of $10.00 per share, have a term of 10 years from issuance and will vest according to the Applicable Vesting Schedule.

Mr. Director, age 55, has served as General Counsel and Chief Compliance Officer at Empery Asset Management, LP since October 2014, prior to which he practiced as a Special Counsel at Schulte Roth & Zabel LLP since 1998. Mr. Director has three decades of experience focused primarily on structuring, negotiating and documenting capital raising transactions, including the issuance of equity, equity-linked and debt securities in private placements and public offerings. Mr. Director received a BA in Accounting from Franklin & Marshall College in 1990 and a JD from the Syracuse University College of Law in 1995.

In connection with his appointment as Vice President of Legal, Mr. Director entered into an Employment Agreement with the Company pursuant to which he will receive a base salary of $200,000 and will be granted stock options under the New Plan in a number equal to 0.5% of the of the Shares Deemed Outstanding. Such options will be exercisable at a price of $10.00 per share, have a term of 10 years from issuance and will vest according to the Applicable Vesting Schedule.

The employment of each of Messrs. Lane, Silver and Director will be for an initial term of one year and shall be automatically extended for additional consecutive twelve-month periods. If such executive's employment is terminated at the Company's election without "Cause" (as defined in the agreement), which requires 90 days advance notice, or by such executive for "Good Reason" (as defined in the agreement), the executive shall be entitled to receive severance payments equal to six months of their base salary. In addition, if such executive's employment is terminated prior to the end of the term of the agreement by the Company without "cause" or by the executive for "good reason," and such termination occurs within six months prior to a change in control or within six months after a change in control, such executive shall be entitled to receive, in addition to the severance discussed above, an additional six months of their base salary. During the term of their employment with the Company, each of Messrs. Lane, Silver and Director are permitted to continue to hold one or more positions with Empery Asset Management, LP and its affiliates, so long as they devotes such business and professional time and energy to the Company as they deem necessary in their reasonable discretion.

Existing Executive Officer Employment Agreements

In connection with the Private Placement, the Company entered into new employment agreements with each of: (a) John Kim, pursuant to which Mr. Kim agreed to continue to serve as the Company's Co-Chief Executive Officer, president and director, and (b) Greg Endo, pursuant to which Mr. Endo agreed to continue to serve as the Company's Chief Financial Officer and executive vice-president. The new employment agreements will supersede and replace the existing employment agreements between the Company and each of Mr. Kim and Mr. Endo. Mr. Kim has served as the Company's Chief Executive Officer since January 2024 and Mr. Endo has served as the Company's Chief Financial Officer since June 2021.

Pursuant to the new employment agreement with Mr. Kim, Mr. Kim will receive a base salary of $225,000 per year, a signing bonus of $225,000 on or prior to the consummation of the Private Placement and will be granted stock options pursuant to the New Plan in a number equal to 2.5% of the Shares Deemed Outstanding. Such options will be exercisable at a price of $10.00 per share, have a term of 10 years from issuance and will vest according to the Applicable Vesting Schedule.

Pursuant to the new employment agreement with Mr. Endo, Mr. Endo will receive a base salary of $300,000 per year, a signing bonus of $150,000 on or prior to the consummation of the Private Placement and will be granted stock options pursuant to the New Plan in a number equal to 1.25% of the Shares Deemed Outstanding. Such options will be exercisable at a price of $10.00 per share, have a term of 10 years from issuance and will vest according to the Applicable Vesting Schedule.

The employment of each of Messrs. Kim and Endo will be for an initial term of one year and shall be automatically extended for additional consecutive twelve-month periods. If such executive's employment is terminated at the Company's election without "Cause" (as defined in the agreement), which requires 90 days advance notice, or by such executive for "Good Reason" (as defined in the agreement), the executive shall be entitled to receive severance payments equal to six months of their base salary. In addition, if such executive's employment is terminated prior to the end of the term of the agreement by the Company without "cause" or by the executive for "good reason," and such termination occurs within six months prior to a change in control or within six months after a change in control, such executive shall be entitled to receive, in addition to the severance discussed above, an additional six months of their base salary. During the term of Mr. Kim's employment with the Company, he is permitted to continue to hold one or more positions with D2G Industries ("D2G"), so long as he devotes such business and professional time and energy to the Company as he deems necessary in his reasonable discretion.

The foregoing descriptions of the employment agreements with each of Messrs. Lane, Silver, Director, Kim and Endo are not complete and are qualified in their entirety by reference to the full text of the relevant employment agreements, which are filed as Exhibits 10.8, 10.9, 10.10 and 10.11 and 10.12, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

Item 7.01 Regulation FD Disclosure.

On July 17, 2025, the Company issued a press release announcing the Private Placements and related transactions, including the launch of its digital asset treasury strategy. The Company intends to continue to pursue its current lines of business in addition to the pursuit of its digital asset treasury strategy.

In connection with the Private Placements, the Company delivered an investor presentation to potential investors on a confidential basis.

The press release and investor presentation are attached as Exhibit 99.1 and Exhibit 99.2, respectively, to this Current Report on Form 8-K and incorporated into this Item 7.01 by reference. The information in this Item 7.01, including Exhibits 99.1 and 99.2 attached hereto, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as expressly set forth by specific reference in such filing.

9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
4.1	Form of Pre-Funded Warrant
4.2	Form of Placement Agent Warrant
4.3	Form of Gemini Warrant
4.4	Form of Consultant Warrant
10.1	Cash Purchase Agreement
10.2	BTC Purchase Agreement
10.3	Form of Registration Rights Agreement
10.4	Strategic Digital Assets Services Agreement
10.5	Custodial Services Agreement
10.6	Consultant Termination Agreement
10.7	ATM Amendment Sales Agreement
10.8	Employment Agreement dated July 17, 2025 by and between Volcon, Inc. and Ryan Lane
10.9	Employment Agreement dated July 17, 2025 by and between Volcon, Inc. and Timothy Silver
10.10	Employment Agreement dated July 17, 2025 by and between Volcon, Inc. and Brett Director
10.11	Employment Agreement dated July 17, 2025 by and between Volcon, Inc. and John Kim
10.12	Employment Agreement dated July 17, 2025 by and between Volcon, Inc. and Greg Endo
99.1	Press Release, dated July 17, 2025
99.2	Investor Presentation
99.3	Supplemental Risk Factors
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Certain schedules, exhibits and similar attachments have been omitted pursuant to Item 601(a)(5) of Regulation S-K and portions of this exhibit have been redacted pursuant to Item 601(b)(2) of Regulation S-K. The Company will provide a copy of such omitted materials to the Securities and Exchange Commission or its staff upon request.

As filed with the Securities and Exchange Commission on August 15, 2025

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

EMPERY DIGITAL INC.

(Exact name of registrant as specified in its charter)

Delaware	**84-4882689**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

3121 Eagles Nest Street, Suite 120
Round Rock, TX 78665
Telephone: (512) 400-4271
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Greg Endo
Chief Financial Officer
3121 Eagles Nest Street, Suite 120
Round Rock, TX 78665
Telephone: (512) 400-4271
(Name, address including zip code, and telephone number, including area code, of agent for service)

With copies to:
Christopher J. Capuzzi
Michael R. Littenberg
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Telephone: (212) 596-9000

From time to time after the effectiveness of the registration statement.
(Approximate date of commencement of proposed sale to the public)

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 (the "Securities Act"), other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

We are registering the resale of the above-referenced securities to permit each of the selling stockholders identified below, or their permitted transferees or other successors-in-interest that may be identified in a supplement to this prospectus or, if required, a post-effective amendment to the registration statement, of which this prospectus is a part, to resell or otherwise dispose of the securities in the manner contemplated under "Plan of Distribution" in this prospectus (as may be supplemented and amended). This prospectus covers the sale or other disposition by the selling stockholders of up to the total number of shares of Common Stock that were issued or issuable upon exercise of the Pre-Funded Warrants, the Gemini Warrant, the Placement Agent Warrants and the Consultant Warrant. Throughout this prospectus, when we refer to the securities being registered on behalf of the selling stockholders, we are referring to the shares of Common Stock or shares of Common Stock issuable upon the exercise of the Pre-Funded Warrants and Warrants. When we refer to "selling stockholders" in this prospectus, we mean those persons listed in the table below, as well as their permitted transferees, pledgees or donees or other successors-in-interest that may be identified in a supplement to this prospectus or, if required, a post-effective amendment to the registration statement, of which this prospectus is a part. The selling stockholders may sell some, all or none of their shares of Common Stock. We do not know how long the selling stockholders will hold the shares before selling them, and we currently have no agreements, arrangements or understandings with the selling stockholders regarding the sale or other disposition of any of the shares. The shares of Common Stock covered hereby may be offered from time to time by the selling stockholders.

The following table sets forth the name of each selling stockholder, the number and percentage of shares of Common Stock beneficially owned by the selling stockholders as of August 13, 2025, the number of shares of Common Stock that may be offered under this prospectus, and the number and percentage of Common Stock beneficially owned by the selling stockholders assuming all of the shares of Common Stock registered hereunder are sold. Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the Common Stock. Generally, a person "beneficially owns" shares of the Common Stock if the person has or shares with others the right to vote those shares or to dispose of them, or if the person has the right to acquire voting or disposition rights within 60 days of August 13, 2025.

The number of shares described under the column "Shares of Common Stock Beneficially Owned Prior to this Offering" for each selling stockholder includes all shares of our Common Stock beneficially held by such selling stockholder as of August 13, 2025, including without limitation (i) all shares of our Common Stock purchased by such selling stockholder in the Private Placements, (ii) all of the shares of Common Stock issuable upon exercise of the Pre-Funded Warrants purchased by such selling stockholder in the Private Placements, subject to the applicable Pre-Funded Warrant Beneficial Ownership Limitation, and (iii) all of the shares of Common Stock issuable upon exercise of the Warrants held by such selling stockholder, subject to the applicable Warrant Beneficial Ownership Limitation. Because each selling stockholder may dispose of all, none or some portion of such shares of Common Stock, no estimate can be given as to the number of shares of Common Stock that will be beneficially owned by a selling stockholder upon termination of this offering.

The selling stockholders may have sold, transferred or otherwise disposed of, or may sell, transfer or otherwise dispose of, at any time and from time to time, any or all of their shares of Common Stock in transactions exempt from the registration requirements of the Securities Act after the date on which the information in the table is presented. See the section titled "Plan of Distribution."

Name[1]	**Shares of Common Stock Beneficially Owned Prior to this Offering**	**Maximum Number of Shares of Common Stock Offered[2]**	**Shares of Common Stock Beneficial Ownership After this Offering[3]**	
			Shares	**%(4)**
Entities affiliated with Anson Funds Management LP [5]	7,500,000	7,500,000	0	–
J. Goldman Master Fund, L.P. [6]	3,500,000	3,500,000	0	–
Hartz Capital Investments, LLC [7]	2,500,000	2,500,000	0	–
Birch Lane Capital, LLC [8]	2,500,000	2,500,000	0	–
DRW Investments LLC [9]	2,228,351	2,228,351		
Affiliates of Empery Asset Management, LP[10]	2,526,594	2,500,000	26,594	*
Citadel CEMF Investments Ltd.[11]	2,200,000	2,200,000	0	–
YA II PN[12]	2,000,000	2,000,000	0	–
Streeterville Capital, LLC [13]	1,500,000	1,500,000	0	–

Name[1]	Shares of Common Stock Beneficially Owned Prior to this Offering	Maximum Number of Shares of Common Stock Offered[2]	Shares of Common Stock Beneficial Ownership After this Offering[3]	
			Shares	%(4)
WO Select Investments, LLC [16]	1,200,000	1,200,000	0	–
Entities affiliated with Pantera Capital Partners, LP [17]	1,500,000	1,500,000	0	–
Infinitum Cayman Master, Ltd. [18]	1,000,000	1,000,000	0	–
Alyeska Master Fund, LP [19]	1,000,000	1,000,000	0	–
Polar Multi-Strategy Master Fund [20]	1,000,000	1,000,000	0	–
Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B [21]	1,000,000	1,000,000	0	–
Hudson Bay Master Fund Ltd. [22]	1,000,000	1,000,000	0	–
CVI Investments, Inc. [23]	1,000,000	1,000,000	0	–
Gemini NuSTAR, LLC [24]	901,542	901,542	0	–
Entities affiliated with Special Situations Funds [25]	900,000	900,000	0	–
Woodline Master Fund LP [26]	750,000	750,000	0	–
Entities affiliated with Aristeia Capital [27]	600,000	600,000	0	–
Sabby Volatility Warrant Master Fund, Ltd. [28]	866,510	500,000	366,510	*
Boothbay Absolute Return Strategies, LP [29]	500,000	500,000	0	–
Meteora Select Trading Opportunities Master, LP [30]	500,000	500,000	0	–
Jain Global Master Fund Ltd [31]	400,000	400,000	0	–
Bigger Capital Fund, LP [32]	329,818	300,000	29,818	*
Solios, Inc. [33]	300,000	300,000	0	–
MYDA Advantage, LP [34]	300,000	300,000	0	–
Hexstone Capital, LLC [35]	300,000	300,000	0	–
Andy Kershner	300,000	300,000	0	–
Iroquois Capital Management Group LLC [36]	315,692	300,000	15,692	*
Iroquois Master Fund Ltd [37]	311,011	300,000	11,011	–
Borderless Multi-Strategy Fund V LP [38]	250,000	250,000	0	–
Empyrean Capital Overseas Master Fund, Ltd. [39]	250,000	250,000	0	–
Alpine Partners (BVI), L.P. [40]	250,000	250,000	0	–
Entities affiliated with Aegis Capital Corp.[41]	207,381	207,375	6	–
District 2 Capital Fund LP [42]	200,000	200,000	0	–
Funicular Funds, LP [43]	200,000	200,000	0	–
Woodmont Investing LLC [44]	200,000	200,000	0	–
Tephra Digital Master Fund Ltd. [45]	200,000	200,000	0	–
RK Trading I LLC [46]	200,000	200,000	0	–
Saltwater Capital LLC [47]	200,000	200,000		
Mank Capital, LLC [48]	200,000	200,000	0	–

Name[1]	Shares of Common Stock Beneficially Owned Prior to this Offering	Maximum Number of Shares of Common Stock Offered[2]	Shares of Common Stock Beneficial Ownership After this Offering[3]	
			Shares	%(4)
Leonite Fund I, LP [49]	200,000	200,000	0	–
Entities affiliated with CoinFund [50]	200,000	200,000	0	–
Great Point Capital, LLC [51]	160,000	160,000	0	–
Entities affiliated with Saba Capital Management [52]	150,000	150,000	0	–
L1 Capital Global Opportunities Master Fund [53]	150,000	150,000	0	–
Entities affiliated with Connective Capital Management [54]	300,000	150,000	150,000	*
Clear Street LLC [55]	121,554	121,554	0	–
Ryan Lane [56]	100,000	100,000	0	–
Fifth Lane Partners Fund LP [57]	100,000	100,000	0	–
Isaac Eide [58]	100,000	100,000	0	–
Anthony Lapadula [59]	100,000	100,000	0	–
Robert Forster	100,000	100,000	0	–
Intracoastal Capital LLC [60]	100,000	100,000	0	–
Brian Barr	85,000	85,000	0	–
TQ Master Fund LP [61]	75,000	75,000	0	–
Andrew Gladstein	62,500	62,500	0	–
Brian Falik	50,000	50,000	0	–
Torno Capital, LLC [62]	50,000	50,000	0	–
Nadav Livni [63]	50,000	50,000	0	–
3i, LP [64]	50,000	50,000	0	–
Steven Y. Wang	50,000	50,000	0	–
Jason Kaplan	50,000	50,000	0	–
Relayer Capital Master Fund Ltd. [65]	50,000	50,000	0	–
Conosh, LLC	40,000	40,000	0	–
Gray's Creek Capital Partners Fund I, LP [66]	40,000	40,000	0	–
Olmsted Investments LLC [67]	40,000	40,000	0	–
Lazy Jack LLC[68]	40,000	40,000	0	–
Rafael Murdakhaiev	40,000	40,000	0	–
Ian Read [69]	30,000	30,000	0	–
John Kim [70]	202,879	22,500	180,379	*
Greg Endo [71]	92,155	20,000	72,155	*
Karin-Joyce Tjon [72]	20,005	20,000	5	*
Jonathan Foster [73]	20,004	20,000	4	*
Brett Director [74]	308,802	10,000	298,802	*
Orn Olason [75]	10,000	10,000	0	–
Riley Noble [76]	10,004	10,000	4	*
Adrian Solgaard [77]	10,000	10,000	0	–
Timothy Silver [78]	600,104	2,500	597,604	1.26%
Michael Blum [79]	25,000	25,000	0	*
All Other Selling Securityholders [80]	492,000	492,000	0	–

(*) Represents less than 1%.

(18) John Yetimoglu, in his capacity as Founder and Chief Investment Officer of Infinities Partners, may be deemed to have voting and investment control of the shares held by Infinitum Cayman Master, Ltd. ("Infinitum"). The address of Infinitum is 200 East Broward Blvd, Suite 1105, Fort Lauderdale, FL 33301.

(19) Alyeska Investment Group, L.P., the investment manager of Alyeska Master Fund, L.P. ("Alyeska"), has voting and investment control of the shares held by Alyeska. Anand Parekh is the Chief Executive Officer of Alyeska Investment Group, L.P. and may be deemed to be the beneficial owner of such shares. Mr. Parekh, however, disclaims any beneficial ownership of the shares held by Alyeska. The registered address of Alyeska Master Fund, L.P. is at c/o Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street George Town, Grand Cayman, KY1-1104, Cayman Islands. Alyeska Investment Group, L.P. is located at 77 W. Wacker, Suite 700, Chicago IL 60601.

(20) Polar Multi-Strategy Master Fund (the "Polar Fund") is under management by Polar Asset Management Partners Inc. ("PAMPI"). PAMPI serves as Investment Advisor to the Polar Fund and has control and discretion over the shares held by the Polar Fund. As such, PAMPI may be deemed the beneficial owner of the shares held by the Polar Fund. PAMPI disclaims any beneficial ownership of the reported shares other than to the extent of any pecuniary interest therein. The business address of the Polar Fund is c/o Polar Asset Management Partners Inc., 16 York Street, Suite 2900, Toronto, Ontario M5J OE6, Canada.

(21) Ayrton Capital LLC, the investment manager to Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B ("Alto"), has discretionary authority to vote and dispose of the shares of Common Stock held by Alto and may be deemed to be the beneficial owner of these shares. Waqas Khatri, in his capacity as Managing Member of Ayrton Capital LLC, may also be deemed to have investment discretion and voting power over the shares of Common Stock held by Alto. Ayrton Capital LLC and Mr. Khatri each disclaim any beneficial ownership of these shares. The business address of Alto is c/o Ayrton Capital LLC, 55 Post Rd West, 2nd Floor, Westport, CT 06880.

(22) Hudson Bay Capital Management LP, the investment manager of Hudson Bay Master Fund Ltd. ("Hudson Bay"), has voting and investment power over these securities. Sander Gerber is the managing member of Hudson Bay Capital GP LLC, which is the general partner of Hudson Bay Capital Management LP. Each of Hudson Bay and Sander Gerber disclaims beneficial ownership over these securities. The business address of Hudson Bay is c/o Hudson Bay Capital Management LP, 290 Harbor Drive, Fl 3, Stamford, CT 06902.

(23) Heights Capital Management, Inc., the authorized agent of CVI Investments, Inc. ("CVI"), has discretionary authority to vote and dispose of the shares held by CVI and may be deemed to be the beneficial owner of these shares. Martin Kobinger, in his capacity as President of Heights Capital Management, Inc., may also be deemed to have investment discretion and voting power over the shares held by CVI. Mr. Kobinger disclaims any such beneficial ownership of the shares. CVI Investments, Inc.is affiliated with one or more FINRA member, none of whom are currently expected to participate in the sale pursuant to the prospectus contained in this registration statement of shares held by CVI. The principal business address of CVI is c/o Heights Capital Management, Inc., 101 California Street, Suite 3250, San Francisco, California 94111.

(24) Consists of 901,542 shares of Common Stock issuable upon the exercise of the Gemini Warrant. Dan Chen, in his capacity as Chief Financial Officer of Gemini Space Station, LLC, has voting control and investment discretion over the shares of Common Stock underlying the Gemini Warrant. The address of record is 600 Third Ave, 2nd Floor, New York, NY 10016. Rohan Chauhan, an employee of an affiliate of Gemini, and Matt Homer, a director of an affiliate of Gemini, are members of the Company's Board of Directors. Gemini is also a party to the Strategic Digital Assets Services Agreement with the Company. The Gemini Warrant held by Gemini is subject to the Warrant Beneficial Ownership Limitation.

(25) Includes (i) 391,680 shares of Common Stock held by Special Situations Fund III QP, L.P. ("SSF III"), (ii) 69,073 shares of Common Stock held by Special Situations Technology Fund, L.P. ("SSTF"), (iii) 330,927 shares of Common Stock held by Special Situations Technology Fund II, L.P. ("SSTF II"), and (iv) 108,320 shares of Common Stock held by Special Situations Cayman Fund, L.P. ("SSCF" and, together with SSF III, SSTF and SSTF II, the "Special Situation Funds"). AWM Investment Company, Inc. ("AWM") is the investment adviser to each of the Special Situations Funds. David Greenhouse and Adam Stettner are the principal owners of AWM. Through their control of AWM, Messrs. Greenhouse and Stettner share voting and investment control over the portfolio securities of each of the Special Situations Funds. Messrs. Greenhouse and Stettner disclaim any beneficial ownership of the reported shares other than to the extent of any pecuniary interest each of them may have therein. The address of AWM, each of the Special Situations Funds and Messrs. Greenhouse and Stettner is 527 Madison Avenue, Suite 2600, New York, NY 10022.