

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933



AKERNA CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

83-2242651

(I.R.S. Employer
Identification No.)

**1550 Larimer Street, #246
Denver, Colorado 80202**

(Address of principal executive offices)(Zip Code)

AKERNA CORP. 2019 LONG TERM INCENTIVE PLAN

(Full title of the plans)

**Jessica Billingsley
Chief Executive Officer
Akerna Corp.
1630 Welton Street, Floor 4
Denver, Colorado 80202**

(Name and Address of Agent for Service)

(888) 932-6537

(Telephone Number, including area code, of agent for service)

(Address, including zip code, and telephone number,
including area code, of agent for service)

Copies to:

**Jason K Brenkert, Esq.
Dorsey & Whitney LLP
1400 Wewatta Street, Suite 400
Denver, Colorado 80202
Telephone: (303) 352-1133
Fax Number: (303) 629-3450**

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

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 7(a)(2)(B) of the Securities Act.

INTRODUCTORY STATEMENT

This Registration Statement on Form S-8 is filed pursuant to General Instruction E to Form S-8 by Akerna Corp. (the “**Registrant**”), in order to register 525,000 additional shares of common stock, par value \$0.0001 per share (“**Common Stock**”) which have been reserved for issuance pursuant to awards of options, stock, restricted stock, restricted stock units or appreciation rights (“**Awards**”) to be granted under the Akerna Corp. 2019 Long Term Incentive Plan (the “**Plan**”) to our employees, officers, directors, consultants and “affiliates” as such term is defined in Rule 405 under the Securities Act, which shares may include “control securities” as such term is defined in General Instruction C to Form S-8.

An aggregate of 78,251 shares of Common Stock reserved for issuance under the Plan were previously registered with the United States Securities and Exchange Commission (the “**Commission**”) on the Registrant’s Registration Statements on Form S-8 filed with the Commission on August 27, 2019 and August 7, 2020 (File Nos. 333-233480 and 333-233480) (the “**Prior Registration Statement**”). The Registrant incorporates by reference herein the contents of the Prior Registration Statements.

If an Award issued under the Plan expires without the recipient having vested in all of the shares of Common Stock to which such recipient was entitled, the unvested shares of Common Stock shall be released from their allocation and reservation, in the case of options or restricted stock units, or repurchased and canceled by the Registrant, in the case of restricted stock, and shall be again available for the purposes of the Plan.

PART I. INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this Registration Statement on Form S-8 (the "**Registration Statement**") in accordance with the provisions of Rule 428 under the Securities Act of 1933, as amended (the "**Securities Act**"), and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I of Form S-8 will be delivered to the participants in the equity benefit plans covered by this Registration Statement as specified by Rule 428(b)(1) under the Securities Act.

PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed or furnished by the Registrant with the Securities and Exchange Commission (the “**Commission**”) are hereby incorporated by reference in this registration statement:

- (a) the Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2022, filed with the Commission on March 21, 2023 (File No. 1-39096);
- (b) the Registrant’s Amended Annual Report on [Form 10-K/A](#) for the fiscal year ended December 31, 2022 filed with the Commission on May 1, 2023 (File No. 1-39096);
- (c) the Registrant’s Quarterly Reports on Form 10-Q for the quarters ended [September 30, 2023](#), [June 30, 2023](#) and [March 31, 2023](#), filed with the Commission on November 14, 2023, August 14, 2023 and May 15, 2023, respectively (File No. 1-39096);
- (d) the Registrant’s Current Reports on Form 8-K filed with the Commission on [January 18, 2023](#), [January 27, 2023](#), [February 3, 2023](#), [March 28, 2023](#), [May 1, 2023](#), [June 15, 2023](#), [July 7, 2023](#), [August 10, 2023](#), [September 7, 2023](#), [September 15, 2023](#), [September 22, 2023](#), [October 4, 2023](#), [October 12, 2023](#), [November 17, 2023](#), [November 21, 2023](#), [December 6, 2023](#), [December 20, 2023](#), [December 22, 2023](#), [December 29, 2023](#), [January 4, 2024](#) (Accession No. 0001213900-24-001224), and [January 4, 2024](#) (Accession No. 0001213900-24-001238), [January 24, 2024](#) and [February 2, 2024](#) (each filing under (File No. 1-39096));
- (e) the audited annual financial statements of Gryphon Digital Mining Inc. as at and for the years ended December 31, 2022 and 2021 and the report of the independent registered public accounting firm thereon contained on pages F-71 through F-108 of the Registrant’s registration statement on [Form S-4/A](#) as filed with the Commission on January 8, 2024 (File No. 333-271857);
- (f) the unaudited condensed consolidated financial statements of Gryphon Digital Mining Inc. as at September 30, 2023 and for the three and nine month periods ended September 30, 2023 and 2022 contained on pages F-109 through F-139 of the Registrant’s registration statement on [Form S-4/A](#) as filed with the Commission on January 8, 2024 (File No. 333-271857);
- (g) Gryphon Digital Mining, Inc. management’s discussion and analysis of financial condition and results of operations contained on pages 237 through 257 of the Registrant’s registration statement on [Form S-4/A](#) as filed with the Commission on January 8, 2024 (File No. 333-271857);
- (h) the unaudited pro forma condensed combined financial information contained on pages 282 through 292 of the Registrant’s registration statement on [Form S-4/A](#) as filed with the Commission on January 8, 2024 (File No. 333-271857);
- (i) all other reports of the Registrant filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the United States Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), since the end of the fiscal year covered by the Annual Report incorporated by reference herein pursuant to (a) above; and
- (j) The description of the Common Stock contained in the registration statement on [Form 8-A](#), filed by MTech with the SEC on January 26, 2018 (File No. 1-38368), the Company is the successor issuer to MTech, including any amendment or report filed for purposes of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment that indicate that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

Our Amended and Restated Certificate of Incorporation provides that all our directors, officers, employees and agents shall be entitled to be indemnified by us to the fullest extent permitted under the Delaware General Corporation Law. Our Amended and Restated Bylaws provide for indemnification of our officers, directors and others who become a party to an action on our behalf by us to the fullest extent not prohibited under the Delaware General Corporation Law.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers, and controlling persons pursuant to the foregoing provisions or otherwise, we have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment of expenses incurred or paid by a director, officer or controlling person in a successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to the court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

The Exhibit Index set forth below is incorporated herein by reference.

Item 9. Undertakings.

- (a) The undersigned Registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the “**Securities Act**”);
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represents no more than 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement;
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;
- provided, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) that are incorporated by reference in this Registration Statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
 - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act, (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Denver, State of Colorado, on this 8th day of February, 2024.

AKERNA CORP.

/s/ Jessica Billingsley

Name: Jessica Billingsley
Title: Chief Executive Officer
(Principal Executive Officer)

/s/ L. Dean Ditto

Name: L. Dean Ditto
Title: Chief Financial Officer
(Principal Financial and Accounting Officer)

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Jessica Billingsley his/her true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for them in any and all capacities, to sign any amendments to this registration statement, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorneys-in-fact, or their substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<u>/s/ Jessica Billingsley</u> Jessica Billingsley	Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	February 8, 2024
<u>/s/ L. Dean Ditto</u> L Dean Ditto	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	February 8, 2024
<u>/s/ Scott Sozio</u> Scott Sozio	Director	February 8, 2024
<u>/s/ Tahira Rehmatullah</u> Tahira Rehmatullah	Director	February 8, 2024
<u>/s/ Matthew Kane</u> Matthew Kane	Director	February 8, 2024

EXHIBIT INDEX

Exhibit Number	Description
4.1*	<u>Akera Corp. 2019 Long Term Incentive Plan (incorporated by reference to Exhibit 4.1 to the registrant's Registration Statement on Form S-8 (File No. 333-233480)).</u>
4.2*	<u>Specimen Stock Certificate (incorporated by reference to Exhibit 4.1 to the registrant's Registration Statement on Form S-4 (File No. 333-228220)).</u>
4.3*	<u>Form of Option Grant Certificate (incorporated by reference to Exhibit 10.12 on Current Report on Form 8-K filed by the registrant on June 21, 2019).</u>
4.4*	<u>Form of Restricted Stock Unit Award (incorporated by reference to Exhibit 10.13 on Current Report on Form 8-K filed by the registrant on June 21, 2019).</u>
4.5*	<u>Form of Stock Award (incorporated by reference to Exhibit 10.14 on Current Report on Form 8-K filed by the registrant on June 21, 2019).</u>
4.6*	<u>Form of Restricted Stock Award (incorporated by reference to Exhibit 10.15 on Current Report on Form 8-K filed by the registrant on June 21, 2019).</u>
4.7*	<u>Form of Appreciation Rights Award (incorporated by reference to Exhibit 10.16 on Current Report on Form 8-K filed by the registrant on June 21, 2019).</u>
4.8*	<u>Form of Voting Agreement (incorporated by reference to Exhibit 10.5 to the Current Report on Form 8-K filed by the registrant on June 8, 2020).</u>
4.9*	<u>Specimen Warrant Certificate (incorporated by reference to Exhibit 4.2 to the registrant's Registration Statement on Form S-4 (File No. 333-228220)).</u>
4.10*	<u>Form of Warrant Agreement (incorporated by reference to Exhibit 4.3 on Current Report on Form 8-K filed by the registrant on June 21, 2019).</u>
4.11*	<u>Stock Purchase Agreement, dated September 13, 2021, relating to the 365 Cannabis acquisition (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by the registrant on September 21, 2021).</u>
4.12*+	<u>Form of Secured Convertible Notes (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by the registrant on October 5, 2021).</u>
4.13*	<u>Form of Security Agreement (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K filed by the registrant on October 5, 2021).</u>
4.14*	<u>Form of Guaranty Agreement (incorporated by reference to Exhibit 10.4 to the Current Report on Form 8-K filed by the registrant on October 5, 2021).</u>
4.15*	<u>Amendment and Waiver Agreement dated June 30, 2022 to the Securities Purchase Agreement dated October 5, 2021 (incorporated by reference to Exhibit 4.9 to the Quarterly Report on Form 10-Q filed by the registrant on August 14, 2023).</u>

4.16*	Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.10 to the registrant’s Form S-1 as filed on June 29, 2022).
4.17*	Form of Warrant (incorporated by reference to Exhibit 4.9 to the registrant’s post-effective amendment to Form S-1 as filed on July 1, 2022).
4.18*	Form of Underwriter’s Warrants (incorporated by reference to Exhibit 4.11 to the registrant’s post-effective amendment to Form S-1 as filed on July 1, 2022).
4.19*	Waiver dated September 27, 2022 by and between Akerna Corp. and the Holders in accordance with the Securities Purchase Agreement dated October 5, 2021 (incorporated by reference to Exhibit 4.1 to the registrant’s Quarterly Report on Form 10-Q as filed on November 14, 2022).
4.20*	Amendment No. 1 to the Exchangeable Share Support Agreement (incorporated by reference to Exhibit 10.1 to the registrant’s Current Report on Form 8-K as filed on November 18, 2022).
4.21*+	Form of Promissory Noted dated April 28, 2023 (incorporated by reference to Exhibit 4.15 to the Quarterly Report on Form 10-Q filed by the registrant on August 14, 2023).
4.22*+	Form of Security and Pledge Agreement dated April 28, 2023 (incorporated by reference to Exhibit 4.16 to the Quarterly Report on Form 10-Q filed by the registrant on August 14, 2023).
4.23*	Form of Guaranty Agreement dated April 28, 2023 (incorporated by reference to Exhibit 4.17 to the Quarterly Report on Form 10-Q filed by the registrant on August 14, 2023).
4.24*	Subordination and Intercreditor Agreement dated April 28, 2023 (incorporated by reference to Exhibit 4.18 to the Quarterly Report on Form 10-Q filed by the registrant on August 14, 2023).
4.25*	Waiver by and among Akerna and certain noteholders dated April 28, 2023 (incorporated by reference to Exhibit 4.19 to the Quarterly Report on Form 10-Q filed by the registrant on August 14, 2023).
5.1	Opinion of Dorsey & Whitney LLP
23.1	Consent of Marcum LLP
23.2	Consent of RBSM LLP
23.3	Consent of Dorsey & Whitney LLP (contained in exhibit 5.1)
24.1	Powers of Attorney filed with the signature pages hereto
107	Filing Fee Table

* Incorporated by reference herein



February 8, 2024

Akerna Corp.
1550 Larimer Street, #246
Denver, Colorado

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to Akerna Corp., a Delaware corporation (the “Company”), in connection with a Registration Statement on Form S-8 (the “Registration Statement”) filed by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”), relating to up to 525,000 additional shares of the Company’s common stock, par value \$0.0001 per share (the “Shares”), that may be issued pursuant to the Company’s 2019 Long Term Incentive Plan (as amended, the “Plan”).

We have examined such documents and have reviewed such questions of law as we have considered necessary or appropriate for the purposes of our opinions set forth below. In rendering our opinions set forth below, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures and the conformity to authentic originals of all documents submitted to us as copies. We have also assumed the legal capacity for all purposes relevant hereto of all natural persons. As to questions of fact material to our opinions, we have relied upon certificates or comparable documents of officers and other representatives of the Company and of public officials.

Based on the foregoing, we are of the opinion that the Shares, when issued and delivered in accordance with the terms of the Plan, will be validly issued, fully paid and non-assessable.

Our opinions expressed above are limited to the Delaware General Corporation Law.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

Dorsey & Whitney LLP

JKB/AWE



INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Akerna Corp. on Form S-8 of our report dated March 20, 2023, which includes an explanatory paragraph as to the Akerna Corp.'s ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Akerna Corp. as of December 31, 2022 and 2021 and for the years ended December 31, 2022 and 2021 appearing in the Annual Report on Form 10-K of Akerna Corp. for the year ended December 31, 2022.

Marcum LLP

Marcum LLP
Los Angeles, CA
February 8, 2024

Marcum llp / 777 S. Figueroa Street / Suite 2900 / Los Angeles, CA 90017 / Phone 310.432.7400 / marcumllp.com



CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement of Akerna Corp., on Form S-8, of our report dated April 16, 2023, except for Note 10 which is September 6, 2023 and Note 1, Digital Assets, Revenue and cost of revenue is December 8, 2023, with respect to our audits of Gryphon Digital Mining, Inc.'s, (the "Company"), consolidated financial statements as of December 31, 2022 and 2021 and for each of the years in the two-year period ending December 31, 2022, which appears in Akerna Corp.'s registration statement on Form S-4/A as filed with the Commission on January 8, 2024, (File No. 333-271857). Our report includes an explanatory paragraph as to the Company's ability to continue as a going concern.

We consent to the use of our name as it appears under the caption "Experts".

/s/ RBSM LLP
RBSM LLP
Larkspur, CA

February 8, 2024

Calculation of Filing Fee Tables

Form S-8
(Form Type)

Akerna Corp.
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.0001 per share, issuable under the Akerna Corp. Akerna Corp. 2019 Long Term Incentive Plan	Rule 457(c) and Rule 457(h)	525,000 ⁽¹⁾ \$	0.2395 ⁽²⁾ \$	125,738 ⁽²⁾	0.0001476	\$ 18.56
	Total Offering Amounts				<u>\$ 125,738</u>		<u>\$ 18.56</u>
	Total Fees Previously Paid						-
	Total Fee Offsets						-
	Net Fee Due						<u><u>\$ 18.56</u></u>

(1) Pursuant to Rule 416(a), this Registration Statement also covers additional securities that may be offered as a result of stock splits, stock dividends, or similar transactions relating to the shares covered by this registration statement. In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.

(2) Estimated solely for the purpose of determining the registration fee pursuant to Rule 457(c) and (h) and based upon the average of the high and low sales price of the registrant's common stock on February 7, 2024, as reported by the NASDAQ Capital Market.