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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 DAVID KALT, Individually and on Behalf  
13 of All Others Similarly Situated,

14 Plaintiff,

15 v.

16 GIGAMON INC., PAUL A. HOOPER,  
17 ARTHUR W. COVIELLO, JR., JOAN A.  
18 DEMPSEY, TED C. HO, JOHN H.  
19 KISPERT, PAUL J. MILBURY, COREY  
20 M. MULLOY, MICHAEL C.  
21 RUETTIGERS, ROBERT E. SWITZ,  
22 DARIO ZAMARIAN, GINSBERG  
23 HOLDCO, INC., GINSBERG MERGER  
24 SUB, INC., and ELLIOTT  
25 MANAGEMENT CORPORATION,

26 Defendants.

Case No.:

CLASS ACTION

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF SECTIONS 14(a) AND  
20(a) OF THE SECURITIES EXCHANGE  
ACT OF 1934**

**JURY TRIAL DEMAND**

27 Plaintiff David Kalt (“Plaintiff”), individually and on behalf of all others similarly  
28 situated, alleges the following upon information and belief, including investigation of counsel  
and review of publicly-available information, except as to those allegations pertaining to  
Plaintiff, which are alleged upon personal knowledge:

**NATURE OF THE ACTION**

1. Plaintiff brings this class action on behalf of the public stockholders of Gigamon  
Inc. (“Gigamon” or the “Company”) against Gigamon’s Board of Directors (the “Board” or the

1 “Individual Defendants”) for their violations of Section 14(a) and 20(a) of the Securities Exchange  
2 Act of 1934, 15.U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, arising out  
3 of the Board’s attempt to sell the Company to Elliott Management Corporation through its affiliate  
4 Ginsberg Holdco, Inc. and its wholly-owned subsidiary Ginsberg Merger Sub, Inc. (collectively  
5 “Elliott”).

6 2. Defendants have violated the above-referenced Sections of the Exchange Act by  
7 causing a materially incomplete and misleading preliminary proxy statement (the “Proxy”) to be  
8 filed with the Securities and Exchange Commission (“SEC”) on November 13, 2017. The Proxy  
9 recommends that Gigamon shareholders vote in favor of a proposed transaction (the “Proposed  
10 Transaction”) whereby Gigamon is acquired by Elliott. The Proposed Transaction was first  
11 disclosed on October 26, 2017, when Gigamon and Elliott announced that they had entered into a  
12 definitive merger agreement (the “Merger Agreement”) pursuant to which Elliott will acquire all  
13 the outstanding shares of common stock of Gigamon for \$38.50 per share (the “Merger  
14 Consideration”). The deal is valued at approximately \$1.6 billion.

15 3. The Proposed Transaction does not adequately compensate Gigamon stockholders  
16 for their investment in the Company. Despite the stock trading as high as \$60.35 less than one  
17 year before the Proposed Transaction was announced, and despite the analyses done by the  
18 Company’s own financial advisor, Goldman Sachs & Co. LLC (“Goldman Sachs”), finding an  
19 implied per share equity value for the Company as high as \$50.00, the Board agreed to sell  
20 Gigamon for \$38.50 per share.

21 4. The Proxy describes the sales process as being driven by a Board desperate to sell  
22 the Company before its third quarter financial results are released, agreeing to the Proposed  
23 Transaction even after Elliott lowered its offer twice: once from \$44.00 to \$42.00 per share, then  
24 again to \$38.00 per share. In the span of two weeks at the end of September, the Company  
25 apparently lost hundreds of millions of dollars in valuation, yet the Proxy is silent as to why.

26 5. The Proxy is materially incomplete and contains misleading representations and  
27 information in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the Proxy  
28 contains materially incomplete and misleading information concerning the sales process, financial

1 projections prepared by Gigamon management, as well as the financial analyses conducted by  
2 Goldman Sachs.

3 6. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin  
4 Defendants from taking any steps to consummate the Proposed Transaction, including filing a  
5 definitive proxy statement (“Definitive Proxy”) with the SEC or otherwise causing a Definitive  
6 Proxy to be disseminated to Gigamon’s shareholders, unless and until the material information  
7 discussed below is included in the Definitive Proxy or otherwise disseminated to Gigamon’s  
8 shareholders. In the event the Proposed Transaction is consummated without the material  
9 omissions referenced below being remedied, Plaintiff seeks to recover damages resulting from the  
10 Defendants’ violations.

11 **PARTIES**

12 7. Plaintiff is, and has been at all relevant times, the owner of shares of common stock  
13 of Gigamon.

14 8. Defendant Gigamon is a corporation organized and existing under the laws of the  
15 State of Delaware. The Company’s principal executive offices are located at 3300 Olcott Street,  
16 Santa Clara, California 95054. Gigamon common stock trades on NYSE under the ticker symbol  
17 “GIMO.” Gigamon develops software and applications for IT organizations, specifically programs  
18 that provide visibility into data-in-motion.

19 9. Defendant Paul A. Hooper has been CEO and a director of the Company since  
20 December 2012. Hooper previously served as Gigamon’s vice president of marketing from July  
21 2011 until December 2012.

22 10. Defendant Arthur W. Coviello, Jr. has been a director of the Company since April  
23 2017.

24 11. Defendant Joan A. Dempsey has been a director of the Company since 2016.

25 12. Defendant Ted C. Ho has been a director of the Company since 2014.

26 13. Defendant John H. Kispert has been a director of the Company since 2013.

27 14. Defendant Paul J. Milbury has been a director of the Company since 2014.

28 15. Defendant Corey Mulloy has been a director of the Company since 2010.

1 16. Defendant Michael C. Ruetters has been a director of the Company since 2010.  
2 17. Defendant Robert E. Switz has been a director of the Company since 2015.  
3 18. Defendant Dario Zamarian has been a director of the Company since January 2017.  
4 19. Defendants Hooper, Coviello, Dempsey, Ho, Kispert, Milbury, Mulloy, Ruetters,  
5 Switz and Zamarian are collectively referred to herein as the “Board.”

6 20. Defendant Elliott Management Corporation is a hedge fund located at 40 W. 57<sup>th</sup>  
7 Street, New York, New York 10019.

8 21. Defendant Ginsberg Holdco, Inc. is a Delaware corporation affiliated with Elliott  
9 Management Corporation.

10 22. Defendant Ginsberg Merger Sub, Inc. is a Delaware corporation and is a wholly  
11 owned subsidiary of Ginsberg Holdco, Inc.

12 **JURISDICTION AND VENUE**

13 23. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange  
14 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges  
15 violations of Section 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

16 24. Personal jurisdiction exists over each Defendant either because the Defendant  
17 conducts business in or maintains operations in this District, or is an individual who is either  
18 present in this District for jurisdictional purposes or has sufficient minimum contacts with this  
19 District as to render the exercise of jurisdiction over Defendant by this Court permissible under  
20 traditional notions of fair play and substantial justice.

21 25. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §  
22 78aa, as well as under 28 U.S.C. § 1391, because: (i) the conduct at issue took place and had an  
23 effect in this District; (ii) Gigamon maintains its primary place of business in this District; (iii) a  
24 substantial portion of the transactions and wrongs complained of herein, including Defendants’  
25 primary participation in the wrongful acts detailed herein, occurred in this District; and (iv)  
26 Defendants have received substantial compensation in this District by doing business here and  
27 engaging in numerous activities that had an effect in this District.

28

**CLASS ACTION ALLEGATIONS**

1  
2 26. Plaintiff brings this action on his own behalf and as a class action on behalf of all  
3 owners of Gigamon common stock and their successors in interest and/or their transferees, except  
4 Defendants and any person, firm, trust, corporation or other entity related to or affiliated with the  
5 Defendants (the “Class”).

6 27. This action is properly maintainable as a class action for the following reasons:

7 (a) The Class is so numerous that joinder of all members is impracticable. As  
8 of October 26, 2017, Gigamon had approximately 37.3 million shares outstanding.

9 (b) Questions of law and fact are common to the Class, including, inter alia, the  
10 following:

11 (i) Whether Defendants have violated Section 14(a) of the Exchange  
12 Act and Rule 14a-9 promulgated thereunder;

13 (ii) Whether the Individual Defendants have violated Section 20(a) of  
14 the Exchange Act;

15 (iii) Whether Plaintiff and other members of the Class would suffer  
16 irreparable injury were Defendants to file a Definitive Proxy with  
17 the SEC that does not contain the material information referenced  
18 above and the Proposed Transaction is consummated as presently  
19 anticipated;

20 (iv) Whether Plaintiff and the other members of the Class would be  
21 irreparably harmed were the transaction complained of herein  
22 consummated; and

23 (v) whether the Class is entitled to injunctive relief or damages as a  
24 result of Individual Defendants’ wrongful conduct.

25 (c) Plaintiff is committed to prosecuting this action, is an adequate  
26 representative of the Class, and has retained competent counsel experienced in litigation of this  
27 nature.

28 (d) Plaintiff’s claims are typical of those of the other members of the Class.

1 (e) Plaintiff has no interests that are adverse to the Class.

2 (f) The prosecution of separate actions by individual members of the Class  
3 would create the risk of inconsistent or varying adjudications for individual members of the Class  
4 and of establishing incompatible standards of conduct for the party opposing the Class.

5 (g) Conflicting adjudications for individual members of the Class might as a  
6 practical matter be dispositive of the interests of the other members not parties to the adjudications  
7 or substantially impair or impede their ability to protect their interests.

8 (h) Plaintiff anticipates that there will be no difficulty in the management of  
9 this litigation. A class action is superior to other available methods for the fair and efficient  
10 adjudication of this controversy.

11 **FURTHER SUBSTANTIVE ALLEGATIONS**

12 **A. The Board Sells Gigamon For Too Little out of a False Sense of Desperation**

13 28. “Big data” is data that is large in volume, wide in variety, and/or swift in time  
14 between collection and analysis. Entities may find that their existing systems or infrastructure are  
15 no longer able to manage the amount of data they generate, or entities may need new ways to  
16 analyze their data. Gigamon develops software and applications for entities with big data issues,  
17 specifically intended to assist entities analyze their traffic and increase data security.

18 29. At first glance, the Company’s 2017 financial performance appears to be  
19 disappointing. For example, in a press release issued on April 27, 2017, the Company reported its  
20 results for first quarter 2017. While the Company reported revenue of \$69.6 million compared to  
21 \$67.2 million for first quarter 2016, it reported a net loss of \$2.2 million compared to net income  
22 of \$3.0 million for first quarter 2016.

23 30. The results for the second quarter were on par with those of the first quarter. In a  
24 press release issued on July 27, 2017, the Company reported revenue of \$69.1 million, compared  
25 to \$75.1 million for the second quarter 2016, and a net loss of \$7.3 million compared to net income  
26 of \$34 million for the second quarter of 2016 (which included a one-time tax benefit of \$30.5  
27 million).

28 31. The third quarter showed some improvement. In a press release issued on October

26, 2017, the Company reported revenue of \$79.2 million compared to \$83.5 million for third quarter 2016, and net income of \$2.2 million compared to \$6.1 million for third quarter of 2016.

32. While the financial results for 2017 appear disappointing, they are, in fact, part of an upward trajectory over the past five years. Revenues increased 221.4% between 2012 and 2016, while gross profits increased 235%:

	Fiscal Year Ended				
	December 31, 2016	December 26, 2015	December 27, 2014	December 28, 2013	December 31, 2012
<b>Consolidated Statement of Operations Data:</b>					
Revenue:					
Product	\$215,235,000	\$152,734,000	\$105,594,000	\$101,717,000	\$69,516,000
Service	\$95,620,000	\$69,241,000	\$51,536,000	\$38,578,000	\$27,199,000
<b>Total revenue</b>	<b>\$310,855,000</b>	<b>\$221,975,000</b>	<b>\$157,130,000</b>	<b>\$140,295,000</b>	<b>\$96,715,000</b>
Cost of revenue:					
Product	\$46,029,000	\$38,878,000	\$31,001,000	\$26,103,000	\$18,039,000
Service	\$8,772,000	\$6,917,000	\$6,447,000	\$4,727,000	\$2,246,000
<b>Total cost of revenue</b>	<b>\$54,801,000</b>	<b>\$45,795,000</b>	<b>\$37,448,000</b>	<b>\$30,830,000</b>	<b>\$20,285,000</b>
<b>Gross profit</b>	<b>\$256,054,000</b>	<b>\$176,180,000</b>	<b>\$119,682,000</b>	<b>\$109,465,000</b>	<b>\$76,430,000</b>
Operating expenses:					
Research and development	\$68,084,000	\$49,571,000	\$42,806,000	\$42,067,000	\$17,730,000
Sales and marketing	\$122,661,000	\$87,541,000	\$76,063,000	\$72,024,000	\$39,359,000
General and administrative	\$34,898,000	\$27,459,000	\$20,683,000	\$25,575,000	\$11,665,000
<b>Total operating expenses</b>	<b>\$225,643,000</b>	<b>\$164,571,000</b>	<b>\$139,552,000</b>	<b>\$139,666,000</b>	<b>\$68,754,000</b>
Income (loss) from operations	\$30,411,000	\$11,609,000	(\$19,870,000)	(\$30,201,000)	\$7,676,000
Interest income	\$926,000	\$446,000	\$308,000	\$95,000	\$64,000
Other expense, net	(\$691,000)	(\$191,000)	(\$94,000)	(\$94,000)	(\$70,000)
<b>Income (loss) before income tax benefit (provision)</b>	<b>\$30,646,000</b>	<b>\$11,864,000</b>	<b>(\$19,656,000)</b>	<b>(\$30,200,000)</b>	<b>\$7,670,000</b>
Income tax benefit (provision)	\$18,786,000	(\$5,678,000)	(\$21,134,000)	\$20,663,000	(\$139,000)
<b>Net income (loss)</b>	<b>\$49,432,000</b>	<b>\$6,186,000</b>	<b>(\$40,790,000)</b>	<b>(\$9,537,000)</b>	<b>\$7,531,000</b>

The Company's growth between 2015 and 2016 is equally impressive, with revenue increasing 40% and gross profits increasing 45.3%.

33. Gigamon's stock price reflects a similar trajectory. At the beginning of 2015,

1 Gigamon's stock price closed at \$17.85 per share. By the day the Proposed Transaction was  
2 announced, the stock price had increased 102.5% to close at \$36.15 per share.



34. The financial results for 2017 appear, at first glance, to be a disappointing outlier. Yet for the first nine months of 2017, the Company reported revenue of \$217.8 million and gross profits of \$176.8 million. Those results are in line with results from 2015, which saw revenue of \$221.9 million and gross profits of \$176.1 million. And according to the Company's Class C projections, the Company was expected to bring in revenue of \$314 million and gross profits of \$256 million by the end of 2017. Between 2017 and 2021, according to the Class C projections, revenues are expected to increase approximately 106.3%, while gross profits are expected to increase approximately 101.5%.

(in millions)	Actuals		Management Projections									
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Bookings	\$249	\$341	\$344	\$430	\$516	\$624	\$707	\$790	\$858	\$917	\$968	\$1,013
<b>Revenue</b>	<b>\$222</b>	<b>\$311</b>	<b>\$314</b>	<b>\$400</b>	<b>\$479</b>	<b>\$569</b>	<b>\$648</b>	<b>\$726</b>	<b>\$794</b>	<b>\$854</b>	<b>\$906</b>	<b>\$952</b>
<b>Gross Profit</b>	<b>\$178</b>	<b>\$258</b>	<b>\$256</b>	<b>\$321</b>	<b>\$383</b>	<b>\$454</b>	<b>\$516</b>	<b>\$577</b>	<b>\$629</b>	<b>\$673</b>	<b>\$712</b>	<b>\$746</b>
EBITDA (excl. SBC)	\$48	\$77	\$55	\$96	\$117	\$145	\$178	\$205	\$228	\$245	\$260	\$271
Unlevered Free Cash Flow (less SBC)	\$29	\$14	(\$9)	\$66	\$42	\$66	\$86	\$104	\$120	\$132	\$141	\$148
Net Income (excl. SBC)	\$29	\$48	\$32	\$58	\$71	\$90	\$116	\$139	\$156	\$170	\$179	\$187

35. Despite the Company's success and expected growth, the Board entered into the Merger Agreement on October 26, 2017, agreeing to sell the Company for \$38.50 per share.



1           36.     The Merger Consideration fails to adequately compensate Gigamon stockholders.  
2 Just eleven months before the Proposed Transaction was announced, the Company’s stock price  
3 closed as high as \$60.35 per share.

4           37.     Even the analyses of the Company’s own financial advisors illustrate that the  
5 Merger Consideration may not be high enough. For example, Goldman Sachs’s *Selected*  
6 *Transactions Analysis* found an implied per share equity value as high as \$53.00, while the  
7 *Illustrative Present Value of Future Share Price Analysis* found an implied per share equity value  
8 as high as \$40.00.

9           38.     Despite the Company’s impressive growth and strong prospects for future growth,  
10 the Board appeared desperate to sell the Company. The Proxy states that in a meeting on  
11 September 21, 2017, the non-executive members of the Board “agreed that it would be in the best  
12 interests of the Company and its stockholders to seek to reach an agreement with Elliott on an  
13 acceptable sale price as soon as possible to mitigate the risks associated with lower-than-  
14 anticipated third quarter results.” At that time, Elliott had offered \$42.50 per share, 10% more  
15 than the Merger Consideration.

16           39.     The Board’s decision to sell Gigamon to Elliott for \$38.50 per share is suspect,  
17 given that Elliott stated its belief that Gigamon’s stock was undervalued in a Form SC 13D filed  
18 on May 8, 2017. The Merger Consideration is only 10% higher than Gigamon’s closing stock  
19 price of \$35.00 per share on May 5, 2017, is less than the closing price of \$41.20 on May 8, 2017  
20 and is considerably lower than Elliott’s first offer of \$44.00 to \$46.00 per share on July 31, 2017.  
21 Even if the explanation provided in the Proxy were true, that there were “troubling signs of  
22 softening” in the third quarter and that the Company was then “performing at levels even below  
23 the Case C Projections,” the Company still expected to double its revenues over the course of the  
24 next five years.

25           40.     The Company reported its third quarter financial results in a press release issued on  
26 October 26, 2017. Revenues had decreased approximately \$4 million compared to the third quarter  
27 of 2016, and the Company reported net income of \$2.2 million compared to \$6.1 million for the  
28 third quarter of 2016. That quarter, the Company had reported an increase of \$5 million in

1 operating expenses from the third quarter of 2016. Operating expenses had increased by almost  
 2 \$30 million in the nine months ended September 30, 2017 compared to the nine months ended  
 3 October 1, 2016.

4 41. The Company acknowledged in a Form 10-Q filed with the SEC on November 3,  
 5 2017, that a significant portion of its operating expenses were comprised of personnel costs. Stock-  
 6 based compensation expenses were \$40 million for the first nine months of 2017, compared to  
 7 \$28.9 million for the first nine months of 2016. That is, more than a third of the increase in  
 8 operating expenses between the first nine months of 2017 and those of 2016 consisted of increased  
 9 stock-based compensation expenses. This was part of a larger trend, as stock-based compensation  
 10 and related payroll tax expenses had increased more than 1000% between 2012 and 2016, and the  
 11 Company had more stock-based compensation expenses and related payroll tax expenses in the  
 12 first nine months of 2017 than in all of 2016:

	Three Months Ended				Year Ended			
	September 30, 2017	July 1, 2017	April 1, 2017	December 31, 2016	December 26, 2015	December 27, 2014	December 28, 2013	December 31, 2012
15 Cost of revenue	\$352,000	\$821,000	\$708,000	\$2,011,000	\$1,940,000	\$1,743,000	\$3,496,000	\$153,000
16 Research and development	\$4,114,000	\$5,863,000	\$4,914,000	\$13,270,000	\$9,533,000	\$8,523,000	\$1,1467,000	\$542,000
17 Sales and marketing	\$3,233,000	\$6,177,000	\$4,005,000	\$12,318,000	\$9,792,000	\$8,433,000	\$1,1034,000	\$893,000
18 General and administrative	\$3,473,000	\$3,932,000	\$3,435,000	\$12,401,000	\$9,445,000	\$6,780,000	\$6,546,000	\$2,011,000
19 <b>Total</b>	<b>\$11,172,00</b>	<b>\$16,793,00</b>	<b>\$13,062,00</b>	<b>\$40,000,000</b>	<b>\$30,710,000</b>	<b>\$25,479,000</b>	<b>\$32,543,000</b>	<b>\$3,599,000</b>
20	<b>0</b>	<b>0</b>	<b>0</b>					

21 Approximately 17% of the Company's total operating expenses for the third quarter 2017 consisted  
 22 of stock-based compensation expenses, compared to more than 20% for total operating expenses  
 23 for the nine months ended September 30, 2017.

24 42. The continued increase in stock-based compensation expenses, and operating  
 25 expenses generally, impacted whether the Company reported net income or net loss. Yet the Proxy  
 26 does not mention whether the Board discussed the Company's increasing operating expenses and  
 27 stock-based compensation expenses, let alone whether the Board discussed strategies to stem the  
 28 costs. Instead, the Board attempted to rush a sale to Elliott before third quarter results were

1 released.

2 **B. Gigamon's Officers Stand to Receive Benefits Unavailable to the Class**

3 43. The Proxy acknowledges that the Company's executive officers have interests in  
4 the merger that may differ from those of the stockholders and may create conflicts of interest.

5 44. Stock options, restricted stock and restricted stock units that have been awarded to  
6 and are held by Gigamon's executive officers and directors will vest and be converted into the  
7 right to receive either the Merger Consideration or another amount. The treatment of these equity  
8 awards, in addition to benefits provided to executive officers through change in control severance  
9 agreements and a transition agreement with Helmut Wilke, will create a windfall for Gigamon's  
10 executive officers that is unavailable to the common stockholders. As demonstrated in the  
11 following chart, the executive officers of Gigamon in total stand to receive up to \$20.3 million, if  
12 they are let go without "cause" or resign for "good reason" after the Proposed Transaction closes:

<b>Name</b>	<b>Cash</b>	<b>Equity</b>	<b>Perquisites/ Benefits</b>	<b>Total</b>
Paul A. Hooper	\$435,000	\$7,858,556	\$24,000	\$8,317,556
Rex S. Jackson	\$177,500	\$2,767,188	\$12,000	\$2,956,688
Shehzad T. Merchant	\$161,500	\$2,745,401	\$12,000	\$2,918,901
Sachi Sambandan	\$158,000	\$3,189,893	\$12,000	\$3,359,893
Helmut G. Wilke	\$165,000	\$2,619,742	\$12,000	\$2,769,742

17 45. The members of the Board and the executive officers stand to gain handsomely  
18 even if they stay on after the Proposed Transaction closes. In total, as demonstrated in the  
19 following chart, the executive officers and Board members will obtain more than \$63.3 million:  
20

<b>Gigamon</b>	<b>Total Option Consideration</b>	<b>Total Share &amp; Restricted Stock Consideration</b>	<b>Total Restricted Stock Unit Consideration</b>
<b><i>Gigamon Executive Officers</i></b>			
Paul A. Hooper	\$6,531,795	\$4,990,216	–
Rex S. Jackson	–	\$962,500	\$1,925,000
Shehzad T. Merchant	\$742,477	\$1,703,048	\$1,609,302
Sachi Sambandan	\$2,436,272	\$1,438,399	\$1,896,434
Helmut G. Wilke	\$651,544	\$1,891,544	\$1,968,197
Paul B. Shinn	\$1,183,976	\$477,362	\$1,352,544
Burney Barker	–	–	\$2,117,500
<b><i>Directors</i></b>			
Corey M. Mulloy	\$356,817	\$4,328,555	\$195,657
John H. Kispert	\$654,807	\$455,725	\$195,657
Ted C. Ho	\$951,594	\$12,982,431	\$195,657
Paul J. Milbury	\$637,327	\$455,725	\$195,657

1	Michael C. Ruettgers	\$356,817	\$4,428,925	\$195,657
	Robert E. Switz	–	\$682,105	\$347,386
2	Joan A. Dempsey	–	\$152,383	\$500,346
	Dario Zamarian	–	\$353,161	\$427,928
3	Arthur W. Coviello, Jr.	–	\$37,807	\$407,754

### 4 C. The Preclusive Deal Protection Devices

5 46. As part of the Merger Agreement, Defendants agreed to certain preclusive deal  
6 protection devices that ensure that no competing offers for the Company will emerge.

7 47. By way of example, section 6.2(a) of the Merger Agreement includes a “no  
8 solicitation” provision barring the Company from soliciting or encouraging the submission of an  
9 acquisition proposal. Section 6.1 demands that the Company cease and terminate all solicitations,  
10 discussions or negotiations with any party concerning an acquisition proposal. Nowhere in section  
11 6 allows a “go-shop” period that would allow the Board to rightfully seek out a better offer for the  
12 company

13 48. Despite already locking up the Proposed Transaction by agreeing not to solicit  
14 alternative bids, the Board consented to additional provisions in the Merger Agreement that further  
15 guarantee the Company’s only suitor will be Elliott. For example, pursuant to section 6.3(a) of  
16 the Merger Agreement, the Company must notify Ginsberg Holdco, Inc. of any offer, indication  
17 of interest, or request for information made by an unsolicited bidder. Thereafter, should the Board  
18 determine that the unsolicited offer is superior, section 7.1(c)(ii)(3) requires that the Board grant  
19 Ginsberg Holdco, Inc. four (4) business days to negotiate the terms of the Merger Agreement to  
20 render the superior proposal no longer superior. Elliott can match the unsolicited offer because,  
21 pursuant to this provision, the Company must provide Ginsberg Holdco, Inc. with the identity of  
22 the party making the proposal, the material terms of the superior proposal, and the most current  
23 version of the proposed agreement for the superior proposal eliminating any leverage that the  
24 Company has in receiving the unsolicited offer.

25 49. In other words, the Merger Agreement gives Elliott access to any rival bidder’s  
26 information and allows Elliott a free right to top any superior offer. Accordingly, no rival bidder  
27 is likely to emerge and act as a stalking horse for Gigamon, because the Merger Agreement unfairly  
28

1 assures that any “auction” will favor Elliott and allow Elliott to piggy-back upon the due diligence  
2 of the foreclosed second bidder.

3 50. In addition, pursuant to section 8.4(a)(ii) of the Merger Agreement, Gigamon must  
4 pay Ginsberg Holdco, Inc. a termination fee of \$47.21 million if the Company decides to pursue  
5 another offer, thereby essentially requiring that the alternate bidder agree to pay a naked premium  
6 for the right to provide the shareholders with a superior offer.

7 51. Ultimately, these preclusive deal protection provisions restrain the Company’s  
8 ability to solicit or engage in negotiations with any third party regarding a proposal to acquire all  
9 or a significant interest in the Company. The circumstances under which the Board may respond  
10 to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or would  
11 reasonably be expected to constitute a superior proposal are too narrowly circumscribed to provide  
12 an effective “fiduciary out” under the circumstances. Likewise, these provisions also foreclose  
13 any likely alternate bidder from providing the needed market check of Elliott’s inadequate offer  
14 price.

15 **D. The Materially Incomplete and Misleading Proxy**

16 52. The Individual Defendants owe the stockholders a duty of candor. They must  
17 disclose all material information regarding the Proposed Transaction to Gigamon stockholders so  
18 that they can make a fully informed decision whether to vote in favor of the Proposed Transaction.

19 53. On November 13, 2017, Defendants filed the Proxy with the SEC. The purpose of  
20 the Proxy is, inter alia, to provide the Company’s stockholders with all material information  
21 necessary for them to make an informed decision on whether to vote their shares in favor of the  
22 Proposed Transaction. However, significant and material facts were not provided to Plaintiff and  
23 the Class. Without such information, Gigamon shareholders cannot make a fully informed  
24 decision concerning whether or not to vote in favor of the Proposed Transaction.

25 ***Materially Misleading Statements/Omissions Regarding the***  
26 ***Management-Prepared Financial Forecasts***

27 54. The Proxy discloses management-prepared financial projections for the Company  
28 which are materially misleading. The Proxy indicates that in connection with the rendering of

1 Goldman Sachs’s fairness opinion, Goldman Sachs reviewed “certain internal financial analyses  
2 and forecasts for Gigamon prepared by its management, as approved for Goldman Sachs’ use by  
3 Gigamon, which are referred to herein as the Updated Case C Projections . . . .” Accordingly, the  
4 Proxy should have, but failed to, provide certain information in the projections that Gigamon’s  
5 management provided to the Board and Goldman Sachs.

6 55. Notably, Defendants failed to disclose the financial projections provided by  
7 Gigamon’s management to and relied on by Goldman Sachs for the fiscal years 2017 to 2026,  
8 specifically: revenue (product and service), operating expenses (research and development, sales  
9 and marketing, and general and administrative), depreciation and amortization, EBIT, taxes,  
10 capital expenditures, changes in net working capital, stock-based compensation expense, any other  
11 items used in the calculation of unlevered free cash flow, shares outstanding, and earnings per  
12 share.

13 56. The omission of stock-based compensation expenses from the financial projections  
14 is especially troubling.

15 57. Without information about how stock-based compensation expenses were projected  
16 to impact the Company’s financial results in the future, stockholders cannot make an informed  
17 decision concerning the Company’s future prospects or, ultimately, on whether to vote in favor of  
18 the Proposed Transaction.

19 ***Materially Incomplete and Misleading Disclosures Concerning***  
20 ***Goldman Sachs’s Financial Analyses***

21 58. With respect to the *Discounted Cash Flow Analysis*, the Proxy fails to disclose the  
22 definition of “unlevered free cash flow” utilized by Goldman Sachs in its analysis. In addition,  
23 the Proxy fails to disclose the individual inputs and assumptions utilized by Goldman Sachs to  
24 derive the discount rate range of 16.5% to 18.5%. As well, the Proxy fails to disclose the range of  
25 implied terminal EBITDA multiples resulting from the analysis and the terminal year estimate of  
26 free cash flow to which the selected perpetuity growth rates were applied.

27 59. With respect to the *Illustrative Present Value of Future Share Price Analysis*, the  
28 Proxy fails to disclose the specific inputs utilized by Goldman Sachs to compute the cost of equity

1 of 16.5%. The Proxy also fails to disclose the separate implied values per share calculated by  
2 Goldman Sachs for each of 2018, 2019, and 2020.

3 60. With respect to the *Selected Precedent Transactions Analysis*, the Proxy fails to  
4 disclose the objective selection criteria for each transaction, as well as the individual multiples for  
5 each transaction for EV/LTM revenue, EV/LTM EBITDA, EV/NTM revenue, P/NTM E and  
6 EV/NTM EBITDA.

7 61. Finally, with respect to the *Selected Companies Analysis*, the Proxy fails to disclose  
8 the objective selection criteria for each company, as well as the individual multiples for each  
9 company for the five-year compound annual growth rate of earnings per share, NTM EV/EBITDA,  
10 growth adjusted NTM EV/EBITDA, NTM P/E and NTM P/E/G/ ratio.

11 ***Materially Incomplete and Misleading Disclosures Concerning the***  
12 ***Flawed Process***

13 62. The Proxy also fails to disclose material information concerning the sales process.  
14 For example, the Proxy fails to state whether the confidentiality agreements Gigamon entered into  
15 with 13 parties (other than Elliott) are still in effect and/or contain DADW standstill provisions  
16 that are presently precluding each and every one of these 13 parties from making a topping bid for  
17 the Company.

18 63. The disclosure of the terms of any standstill provisions is crucial to Gigamon  
19 stockholders being fully informed of whether their fiduciaries have put in place restrictive devices  
20 to foreclose a topping bid for the Company. This information is especially important where, as  
21 here, the Proxy is silent as to whether any confidentiality agreements contained a standstill  
22 agreement and whether any standstill agreements have been waived. Two other parties had  
23 indicated interest in a transaction with Gigamon: Party A, whose last proposal on July 31, 2017  
24 had a price range of \$42 to \$43 per share, and Party B, whose last proposal on July 31, 2017 had  
25 a price range of \$40 to \$41 per share. Yet the Proxy is silent as to whether Party A and Party B  
26 may now be foreclosed from making a superior proposal.

27 64. In addition, section 6.1 of the Merger Agreement prohibits the Board from waiving  
28 any previously executed standstill agreement (the “Anti-Waiver Provision”). Whether the Board

1 agreed to that provision knowing that agreements with Party A and Party B, or any other party,  
2 contained such a standstill agreement, must be disclosed to Gigamon stockholders before they  
3 decide on voting for or against the Proposed Transaction.

4 65. Other aspects of the sales process have been omitted from the Proxy. For example,  
5 the Proxy fails to disclose the “statements and sentiments from other Gigamon investors” as sent  
6 via email on June 14, 2017 to Defendants Hooper and Mulloy from a representative of Elliott.

7 66. The Proxy also fails to disclose whether the eight financial sponsors that had  
8 contacted Gigamon or Goldman Sachs as of June 20, 2017 were included in the sale process.

9 67. In addition, the Proxy fails to disclose how the list of strategic partners and financial  
10 sponsors was created and who approved the parties to be contacted.

11 68. The Proxy fails to disclose the nature of the customized information to be presented  
12 to strategic partners and whether such information was presented to strategic partners and, if so,  
13 which parties received that customized information.

14 69. The Proxy fails to disclose the Board’s basis for agreeing on September 10, 2017  
15 to pursue a transaction with Elliott before the third quarter ended when it had concluded on that  
16 same day that the Company would be valued higher than Elliott’s proposal of \$42.00 per share if  
17 it achieved its expected financial results for the third quarter and full year and had been informed  
18 by Defendant Hooper that the Company’s third quarter financial results were expected to exceed  
19 the Company’s issued guidance.

20 70. The Proxy fails to disclose the preliminary financial analysis of the Company as  
21 conducted by Goldman Sachs and discussed with the Board on June 20, 2017, August 25, 2017,  
22 September 10, 2017, and October 25, 2017.

23 71. The Proxy also fails to disclose whether the Board discussed the Company’s  
24 increasing operating expenses and stock-based compensation expenses, and whether the Board  
25 discussed strategies to stem the costs.

26 72. Finally, the Proxy fails to disclose the Board’s basis for deciding on October 5,  
27 2017 that Elliott’s current offer price of \$38.50 per share offered a better valuation of the Company  
28 than the earlier valuation ranges based on the Case B projections.



1           73.     This information is necessary to provide Company stockholders a complete and  
2 accurate picture of the sales process and its fairness. Without this information, stockholders were  
3 not fully informed as to the defendants' actions, including those that may have been taken in bad  
4 faith, and cannot fairly assess the process. And without all material information, Gigamon  
5 stockholders are unable to make a fully informed decision in connection with the Proposed  
6 Transaction and face irreparable harm, warranting the injunctive relief sought herein.

7           74.     In addition, the Individual Defendants knew or recklessly disregarded that the  
8 Proxy omits the material information concerning the Proposed Transaction and contains the  
9 materially incomplete and misleading information discussed above.

10          75.     Specifically, the Individual Defendants undoubtedly reviewed the contents of the  
11 Proxy before it was filed with the SEC. Indeed, as directors of the Company, they were required  
12 to do so. The Individual Defendants thus knew or recklessly disregarded that the Proxy omits the  
13 material information referenced above and contains the incomplete and misleading information  
14 referenced above.

15          76.     Further, the Proxy indicates that on October 26, 2017, Goldman Sachs reviewed  
16 with the Board its financial analysis of the Merger Consideration delivered to the Board an oral  
17 opinion, which was confirmed by delivery of a written opinion dated October 26, 2017, to the  
18 effect that the Merger Consideration was fair, from a financial point of view, to Gigamon  
19 shareholders. Accordingly, the Individual Defendants undoubtedly reviewed or were presented  
20 with the material information concerning Goldman Sachs's financial analyses which has been  
21 omitted from the Proxy, and thus knew or should have known that such information has been  
22 omitted.

23          77.     Plaintiff and the other members of the Class are immediately threatened by the  
24 wrongs complained of herein, and lack an adequate remedy at law. Accordingly, Plaintiff seeks  
25 injunctive and other equitable relief to prevent the irreparable injury that the Company's  
26 shareholders will continue to suffer absent judicial intervention.

27  
28

**CLAIMS FOR RELIEF**

**COUNT I**

**On Behalf of Plaintiff and the Class Against All Defendants for Violations of  
Section 14(a) of the Exchange Act and Rule 14a-9**

78. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

79. Defendants have filed the Proxy with the SEC with the intention of soliciting Gigamon shareholder support for the Proposed Transaction. Each of the Individual Defendants reviewed and authorized the dissemination of the Proxy, which fails to provide the material information referenced above.

80. In so doing, Defendants made materially incomplete and misleading statements and/or omitted material information necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors of Gigamon, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a).

81. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that such communications with shareholders shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

82. Specifically, and as detailed above, the Proxy violates Section 14(a) and Rule 14a-9 because it omits material facts concerning: (i) management’s financial projections; (ii) the value of Gigamon shares and the financial analyses performed by Goldman Sachs in support of its fairness opinion; and (iii) the sales process.

83. Moreover, in the exercise of reasonable care, the Individual Defendants knew or should have known that the Proxy is materially misleading and omits material information that is necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and

1 recommend the Proposed Transaction; indeed, the Proxy states that Goldman Sachs reviewed and  
2 discussed its financial analyses with the Board during various meetings including on October 26,  
3 2017 and further states that the Board relied upon Goldman Sachs's financial analyses and fairness  
4 opinion in connection with approving the Proposed Transaction. The Individual Defendants knew  
5 or should have known that the material information identified above has been omitted from the  
6 Proxy, rendering the sections of the Proxy identified above to be materially incomplete and  
7 misleading.

8 84. The misrepresentations and omissions in the Proxy are material to Plaintiff and the  
9 Class, who will be deprived of their right to cast an informed vote if such misrepresentations and  
10 omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff and the Class  
11 have no adequate remedy at law. Only through the exercise of this Court's equitable powers can  
12 Plaintiff and the Class be fully protected from the immediate and irreparable injury that  
13 Defendants' actions threaten to inflict.

14 **COUNT II**

15 **On Behalf of Plaintiff and the Class against the Individual Defendants for Violations of**  
16 **Section 20(a) of the Exchange Act**

17 85. Plaintiff incorporates each and every allegation set forth above as if fully set forth  
18 herein.

19 86. The Individual Defendants acted as controlling persons of Gigamon within the  
20 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as  
21 officers and/or directors of Gigamon and participation in and/or awareness of the Company's  
22 operations and/or intimate knowledge of the incomplete and misleading statements contained in  
23 the Proxy filed with the SEC, they had the power to influence and control and did influence and  
24 control, directly or indirectly, the decision making of the Company, including the content and  
25 dissemination of the various statements that Plaintiff contends are materially incomplete and  
26 misleading.

27 87. Each of the Individual Defendants was provided with or had unlimited access to  
28 copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to the time the

1 Proxy was filed with the SEC and had the ability to prevent the issuance of the statements or cause  
2 the statements to be corrected.

3 88. In particular, each of the Individual Defendants had direct and supervisory  
4 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had  
5 the power to control or influence the particular transactions giving rise to the Exchange Act  
6 violations alleged herein, and exercised the same. The omitted information identified above was  
7 reviewed by the Board prior to voting on the Proposed Transaction. The Proxy at issue contains  
8 the unanimous recommendation of each of the Individual Defendants to approve the Proposed  
9 Transaction. They were, thus, directly involved in the making of the Proxy.

10 89. In addition, as the Proxy sets forth at length, and as described herein, the Individual  
11 Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The  
12 Proxy purports to describe the various issues and information that the Individual Defendants  
13 reviewed and considered. The Individual Defendants participated in drafting and/or gave their  
14 input on the content of those descriptions.

15 90. By virtue of the foregoing, the Individual Defendants have violated Section 20(a)  
16 of the Exchange Act.

17 91. As set forth above, the Individual Defendants had the ability to exercise control  
18 over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by  
19 their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these  
20 defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate  
21 result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

22 **RELIEF REQUESTED**

23 WHEREFORE, Plaintiff demands injunctive relief in his favor and in favor of the Class and against  
24 the Defendants jointly and severally, as follows:

25 A. Declaring that this action is properly maintainable as a Class Action and certifying  
26 Plaintiff as Class Representatives and his counsel as Class Counsel;

27 B. Preliminarily and permanently enjoining Defendants and their counsel, agents,  
28 employees and all persons acting under, in concert with, or for them, from filing a Definitive Proxy

1 with the SEC or otherwise disseminating a Definitive Proxy to Gigamon shareholders unless and  
2 until Defendants agree to include the material information identified above in the Definitive Proxy;

3 C. Preliminarily and permanently enjoining Defendants and their counsel, agents,  
4 employees and all persons acting under, in concert with, or for them, from proceeding with,  
5 consummating, or closing the Proposed Transaction, unless and until Defendants disclose the  
6 material information identified above which has been omitted from the Proxy;

7 D. In the event that the transaction is consummated prior to the entry of this Court's  
8 final judgment, rescinding it or awarding Plaintiff and the Class rescissory damages;

9 E. Directing the Defendants to account to Plaintiff and the Class for all damages  
10 suffered as a result of their wrongdoing;

11 F. Awarding Plaintiff the costs and disbursements of this action, including reasonable  
12 attorneys' and expert fees and expenses; and

13 G. Granting such other and further equitable relief as this Court may deem just and  
14 proper.

15 **JURY DEMAND**

16 Plaintiff demands a trial by jury.

17  
18 Dated: November 21, 2017

**BRODSKY & SMITH, LLC**

19 By: /s/ Evan J. Smith

20 \_\_\_\_\_  
Evan J. Smith (SBN242352)  
21 9595 Wilshire Boulevard  
Suite 900  
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24 **OF COUNSEL:**

25 **ROWLEY LAW PLLC**

26 Shane T. Rowley  
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27 *Attorneys for Plaintiff*

28

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DAVID KALT, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Larimer County, CO (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Evan J. Smith, Brodsky & Smith, LLC, 9595 Wilshire Boulevard, Suite 900, Beverly Hills, CA 90212, (Tel) (877) 534-2590 Fax: (310) 247-0160 Email: esmith@brodskysmith.com

DEFENDANTS

GIGAMON INC., et al.

County of Residence of First Listed Defendant Santa Clara County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff x 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes categories like Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns for CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- x 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 78aa and 28 U.S.C. § 1331
Brief description of cause: Breach of Fiduciary Duty and Violations of the Exchange Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND x SAN JOSE EUREKA-MCKINLEYVILLE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

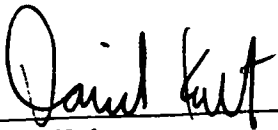
## CERTIFICATION OF PLAINTIFF

I, David Kalt, ("Plaintiff"), declare, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed a draft complaint against Gigamon Inc. ("Gigamon") and its board of directors and has authorized the filing of a complaint substantially similar to the one I reviewed.
2. Plaintiff did not purchase the security that is the subject of the complaint at the direction of Plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. Plaintiff's transactions in Gigamon securities that are the subject of the complaint during the class period specified in the complaint are set forth in the chart attached hereto.
5. In the past three years, Plaintiff has not sought to serve nor has served as a representative party on behalf of a class in an action filed under the federal securities laws.
6. Plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing information is correct to the best of my knowledge.

Signed this 17 day of November, 2017.

  
\_\_\_\_\_  
David Kalt



<b>Transaction</b> (Purchase or Sale)	<b>Trade Date</b>	<b>Price Per Unit</b>	<b>Quantity</b>
Purchase	9-11-2017	\$43.58	1,000
Purchase	10-5-2017	43.35	250
Purchase	10-6-2017	41.02	200

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Gigamon, Others Facing Stockholder's Securities Suit](#)

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