UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANMINA CORPORATION, Plaintiff, vs. DIALIGHT PLC, Defendant.	:	Case No. 1:19-cv-11710-KPF
		related to
DIALIGHT PLC, Plaintiff, vs. SANMINA CORPORATION, Defendant.	:	Case No. 1:19-cv-11712-KPF

DIALIGHT'S MEMORANDUM OF LAW IN OPPOSITION TO SANMINA'S PARTIAL MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Sanmina Corporation ("Sanmina") continues to erroneously treat this lawsuit as a basic collections and contract action, ignoring that the essence of the claim is Sanmina's egregious fraud and willful misconduct. But for Sanmina's demonstrably false representations as to then-existing material facts, Dialight plc ("Dialight") never would have entered into the Manufacturing Services Agreement ("MSA") with Sanmina that jeopardized Dialight's survival as a company and caused it documented out of-of-pocket damages of over ninety million dollars and a loss of market capitalization of well over two hundred millions dollars (reflecting a loss of 75 percent of its total market capitalization). Sanmina's own contemporaneous internal emails produced in discovery, hidden from Dialight at the time, reveal the extent of its deliberately fraudulent conduct. Because it is well-settled law that limitation of liability caps are unenforceable against claims of fraudulent inducement and willful misconduct, Sanmina cannot rely upon the MSA's damages cap to immunize itself from its deliberate wrongdoing.

At minimum, whether Sanmina engaged in fraudulent conduct that induced Dialight to enter into the MSA or intentional wrongdoing after the MSA was signed is a question for the factfinder, given the extensive evidence of Sanmina's wrongdoing as told in Sanmina's own contemporaneous words, and as reflected by the sheer weight of the evidence that contradicts Sanmina's statement of purportedly undisputed facts and that supports Dialight's statement of additional material facts, as set forth in Dialight's accompanying Rule 56.1 submission ("SOF").

Finally, Sanmina is not entitled to summary judgment on its breach of contract claim because the claim involves disputed material factual issues, and Dialight's counterclaims and set-off defense involve further disputed factual issues that must be resolved by the trier of fact.

STATEMENT OF FACTS

A. Sanmina Induces Dialight to Enter Into the MSA Through Misrepresentations

Dialight designs and manufactures industrial light-emitting diode ("LED") lighting fixtures and other products that are used in high risk environments. (SOF ¶ 71.) In June 2015, Dialight's then-CEO, Michael Sutsko, began exploring outsourcing the company's manufacturing to a contract manufacturing partner to support growth, which would allow Dialight to focus on the design and sale of its products, and he contacted Sanmina, among others. (*Id* . ¶¶ 75-77.)

Bob Green of Sanmina's sales team led Sanmina's effort to land Dialight's business for its Guadalajara, Mexico plant. (*Id*. ¶ 78.) Green had not yet landed a contract for Sanmina and needed to obtain the Dialight business due to his commission-based compensation. (*Id*. ¶¶ 80-82.) To do so, Green and his Sanmina colleagues made a series of fraudulent representations.

1. Sanmina Conceals Its Lack of Capacity to Provide Required Services

In late June 2015, Dialight engaged a contract manufacturing consultant, Robert Freid, to help Dialight assess potential outsourcing partners. (SOF ¶ 88.) On September 8, 2015, Freid went to Sanmina's Guadalajara factory for a site visit as part of Dialight's due diligence of Sanmina. (*Id*. ¶ 89.) During the visit, Sanmina represented to Freid that Sanmina had the necessary capacity to serve Dialight's manufacturing needs and prevented him from seeing anything that would suggest otherwise by falsely telling him that other customers' NDAs precluded him from observing other manufacturing lines. (*Id*. ¶¶ 90-91.) On September 10, 2015, Brian Smillie, the manager of Sanmina's Plant 4 in Guadalajara, informed Green that Freid had been deceived because the plant lacked the required paint line capacity and "***there is no machining capacity either for this type of wor****k*. ***I am a little confused on why these were not made clear for the customer during the tours***." (*Id*. ¶ 93.) Sanmina concealed this fact from Dialight to induce it to sign the MSA. (*Id*. ¶ 53.)

2. Sanmina Makes False Representations to Dialight in Its RFQ Reponses

Freid drafted Dialight's Request for Quotation ("RFQ") that specifically communicated Dialight's manufacturing and service requirements so potential outsourcing partners like Sanmina could understand Dialight's unique needs and respond truthfully about whether and how these needs could be met. (SOF ¶¶ 95-99.) Green drafted Sanmina's RFQ responses and transmitted them to Dialight on September 20, 2015. (*Id.* ¶ 100.) The responses contained materially false representations so Sanmina could win the business. For example, Dialight's RFQ told prospective partners to "Expect continuous production of higher volume units, but wide variations from forecast in product mix in terms of finished products." (*Id.* ¶ 97.) Sanmina responded: "No problem we can support this." (*Id.*) This was false, as Sanmina did not have this capability at the time, as evidenced by the voluminous evidence produced in discovery. (*See, e.g.*, *id.* ¶¶ 57(b)(i), 153.) Sanmina also represented that "no integration was required" between its IT system and Dialight's IT system, but this also was untrue. (*Id.* ¶¶ 57(n)(i)-57(n)(ii).)

Green testified that he was relying on a Sanmina executive at the Guadalajara plant to verify the accuracy of Sanmina's RFQ responses because he had no personal knowledge of Sanmina's representations about its operational capabilities, but this same executive testified he never saw Dialight's RFQ until after the MSA was signed. (*Id.* ¶¶ 100-104.)

3. Sanmina Misrepresents Its Supply Chain Capabilities

On September 22, 2015, Sanmina gave a presentation to Dialight about Sanmina's supply chain capabilities. (SOF ¶ 105.) The presentation explained in detail Sanmina's supply chain tools that were represented to be in-use and available to use on the Dialight account by Sanmina's Guadalajara plant. (*Id.* ¶ 106.) Sanmina testified that it knew that Dialight was relying on this presentation as material to its decision to enter into the MSA. (*Id.* ¶¶ 107-108.) However, Sanmina's Guadalajara plant was in fact not using these tools. (*Id.* ¶¶ 57(i)(iv); 109-113.)

4. Sanmina Misrepresents Its Support of the Dialight Opportunity

Sanmina falsely represented to Dialight that Sanmina was unified in its support of the Dialight opportunity. (SOF ¶ 114.) Discovery has shown that, immediately before Sanmina's finance team had a pivotal September 22, 2015 call with Dialight's finance, Brandon Soule, Sanmina's Director of Global Treasury, Risk & Credit, wrote to his Sanmina colleagues:

> "If I may throw my 2 cents in, ***LED companies are a dime a dozen,*** and they all feel they have their own special niche. . . . ***Personally, I don't see much attractive there***."

(*Id*. ¶ 115.) In response, Mike Giggey, Sanmina's VP of Sales, told Soule to misrepresent his view of the Dialight opportunity on Soule's call with Dialight's CFO:

> ***Dialight does NOT know SAMN Credit has changed course, so please do not comment on it. We've positioned this call as final SAMN finance checkpoint with Dialight*** *while they review various RFP's for outsourcing award.*

(*Id*. ¶ 122.) Soule admitted at his deposition that he followed Giggey's instruction, (*Id*. ¶ 123), and Green conceded on behalf of Sanmina at his 30(b)(6) deposition that Sanmina did not act with transparency during this pivotal meeting. (*Id*. ¶ 125.) This misrepresentation was critical because, as Dialight's then-CEO has testified, Dialight would not have entered into the MSA if it knew that Sanmina's credit team was against the Dialight opportunity because Dialight needed the support of Sanmina's credit team for the Dialight-Sanmina relationship to work, given the amount of credit that Sanmina would need to extend during the Dialight-Sanmina relationship. (*Id*. ¶ 124.)

5. Sanmina Provides Misleading Financial Information

On September 30, 2015, Freid asked Green for Sanmina's wage information to use in outsourcing financial modeling. (SOF ¶ 128.) Green's boss, Mark Strangie, instructed Green to provide Dialight "***with some type of 'bullsh*t' matrix with a few general ideas to make [Freid] go away on this***." (*Id*. ¶ 129.) Green did so on October 19, 2015. (*Id*. ¶ 130.)

6. Sanmina Falsely Represents Its Available Space

On December 3, 2015, Sanmina told Freid during a follow-up site visit that there was "excellent space available" for the Mechanical System Division ("MSD") work. (SOF ¶ 132.) But internally Sanmina's executives in Guadalajara were telling the Sanmina sales team that no such space was available, stating expressly in an internal email before the MSA was signed that Sanmina was falsely representing its available space to Dialight:

> I just want you all to be aware that someone has committed 40,000 sq ft of manufacturing space to a customer called Dialight who will install a Paint Line, Wash system, and 30x CNC Machining centers with secondary machining operations, this does not appear to be considered on your layout below and I just want the right people to be aware as ***it looks like we are selling the same space to different customers that might not be available to them all, just sharing a concern.*** If this space is already spoken for with a Plant 6 customer then ***I have no idea where 40,000 sq ft for Dialight would go as it does not fit in Plant 4***.

(*Id*. ¶ 138.) The Sanmina sales team lied about this to Dialight because they recognized that "[b]ottom line is we need to keep this in house, or the whole relationship blows up." (*Id*. ¶ 143.)

7. Sanmina Makes False Representations In Its Recitals to the MSA

Sanmina made explicit representations in the Recitals to the MSA regarding its existing capabilities that were the basis of Dialight's selection of Sanmina as its manufacturing partner:

> DIALIGHT's Finished Products share common sub-assemblies that may be manufactured and held in work-in-process locations until required for final configuration into a Finished Product. ***SANMINA's expressed capability to provide this manufacturing flexibility is one determining factor in the selection of SANMINA by DIALIGHT as the manufacturer of the products. Another factor is SANMINA's ability to provide from a single profit center complete vertical integration capabilities***, including sheet metal fabrication, machining, printed, circuit board assembly, paint line, and final Product assembly operations.

(SOF ¶ 149.) As the recitals memorialize, Dialight would not have entered into the MSA on March 7, 2016 if it had known that these representations were false when made. (*Id*. ¶¶ 151, 156.)

B. Sanmina's Willful Misconduct After the MSA Was Executed

After the MSA was signed, Sanmina acted in a deceptive and deliberately wrongful manner. ***The following narrative of Sanmina's willful and callous conduct toward Dialight is set forth entirely in the words of Sanmina's own employees, contemporaneously during the Dialight engagement, in internal emails hidden at the time from Dialight***.[1]

At the outset, Sanmina concealed from Dialight that it was failing to devote sufficient resources to load the Bill of Materials ("BOM") that Dialight was providing. (SOF ¶ 167.) A Sanmina sales executive, Frank Shoemaker, stated in a January 18, 2017 email to his colleagues: "***Let's discuss internally, I do not understand why the plant does not want to present this level of information, are we trying to hide something??***" (*Id*. ¶ 168.)

Sanmina needed two plants in Guadalajara to work on the Dialight account: Plant 2, which handled top level assembly and testing, and Plant 4, which handled the machining and paint line. (*Id*. ¶¶ 158-162.). Contrary to Sanmina's representation that it had the ability to serve Dialight from a single profit center, these plants had independent profit and loss ledgers ("P&Ls") upon which executives from each plant were independently compensated. (*Id*. ¶ 155.) The two plants were run by entirely different teams solely invested in maximizing their own P&L's. (*Id*. ¶¶ 155, 183-84.) Brian Smillie of Plant 4 explained to his counterpart in Plant 2 during an internal dispute relating to the Dialight account: "***We understand that you are looking after the wellbeing of your operation and I respect that. I do have to look after the wellbeing of mine***." (*Id*. ¶ 184.) Sanmina's sales team commented that the infighting between Plant 2 and Plant 4 that impacted Sanmina's ability to perform for Dialight was "***World War III between plants***." (*Id.* ¶ 181.)

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[1] The evidence of Sanmina's misconduct is amplified when viewed in light of Dialight's own contemporaneous emails, as shown in Dialight's accompanying Statement of Facts. (*See, e.g.*, SOF ¶ 158- 265.)

Sanmina's sales team and Sanmina's Plant 4 executives constantly berated Plant 2 internally for its callousness and wanton disregard toward Dialight. Nearly one year after the MSA was signed, on February 28, 2017, Green stated to his Sanmina sales colleagues internally that Plant 2 still was not devoting correct resources to the Dialight account: "***My opinion is still that we either don't have the right people owning the action and/or not enough people***." (*Id.* ¶ 186.) On March 14, 2017, Sanmina's sales team again stated that Sanmina *still* did not have sufficient resources to load Dialight's bill of materials into the system, with Green calling this a "big concern" because "***without loading these BOMs the entire process is stalled***." (*Id.* ¶ 167.)

On May 20, 2017, Smillie of Plant 4 wrote to Green with respect to Plant 2's ongoing callousness towards Dialight's needs:

> The errors and confusing signals simply continue, ***no progress and no engagement from Plant 2 senior management***, we will keep trying. ***Only F.Y.I, its truly painful, worst service level, support and responsiveness I have experienced and witnessed***.

(*Id.* ¶ 187.) On May 23, 2017, Green told his Sanmina colleagues:

> ***[T]here is a major ongoing problem where we are invoicing the customer and we are not shipping product***. Additionally, they are not being notified until they actually call Sanmina. (*Id.* ¶ 218.)

On May 25, 2017, Hossein Saadat of Plant 4 emailed Green, stating that it was clear Plant 2 lacked the capabilities and expertise promised to Dialight and observing that Dialight likely would ask Sanmina to stop production if it learned the truth about the operations at Plant 2:

> [I] had [the] opportunity to be part of the team and take a tour from our B2 [*sic*] in Guadalajara factory. As of now, ***if this is what customer is going to see, I will not be surprised if they ask us to stop production . . . Obviously we had not made the right decision on what needs to be manufactured in which location based on capabilities, expertise*** . . . (*Id.* ¶ 188.)

The Sanmina sales team commented on Saadat's email, stating "***When this guy says B2, he is meaning P2 or Plant 2. Do you realize how bad he is slamming the P2 folks***?" (*Id.* ¶ 189.)

On May 31, 2017, Shoemaker internally reported that the "***[s]ituation has reached a critical stage within Dialight Board of Directors because they are losing customers orders and has created a major impact on Dialight revenues this quarter***." (*Id.* ¶ 191.)

By August 2017, Sanmina's sales team was beside itself with anger over Plant 2's willful misconduct. Shoemaker wrote to Giggey on September 2, 2017:

> "Bob [Green] and I are beside ourselves, ***something needs to change in Guad, no support, no commitment, no involvement, lack of engagement, it's unacceptable***." (*Id.* ¶ 192.)

On September 11, 2017, Green emailed Giggey to inform him that Sanmina was overcharging Dialight and did not want Dialight to find out, stating:

> MSD ***does not want the new COO at Dialight digging into the fixed cost charges over the past year. After taking a closer look, it is pretty obvious they have been overcharging for labor on a monthly basis***. Some months invoicing close to $200k for DL, when in reality they did hardly shipped any items. (*Id.* ¶ 217.)

On November 29, 2017, Shoemaker wrote to Plant 2 with respect to Sanmina's failure to provide services for products intended for one of Dialight's major customers: "***Dialight now has a very high risk of losing this account which will be a major problem for both Dialight and Sanmina***." (*Id.* ¶ 194.) And Plant 4's Materials Director wrote to a colleague that the "***Dialight mess . . . Is not even near the mess in the rest of the plant***." (*Id.* ¶ 195.)

On December 13, 2017, Shoemaker wrote internally to his sales colleagues at Sanmina: "***Now we have major quality issues.***" (*Id.* ¶ 197.) Green replied internally, "***WTH***. ***Who is even overseeing the operation.***" (*Id.* ¶ 198.) On December 23, 2017, Green lamented to Shoemaker about Sanmina's failure to perform: "***How does this even happen. We don't ship on time, when it is an urgent order and Dialight is not even informed***." (*Id.* ¶ 199.)

On January 8, 2018, Shoemaker emailed Green as to Plant 2's responsibility for its failures:

> The Plant committed to $21M, then $18M then $15M and actually built $12M, ***so who in operations is going to be held accountable from our side for not making any of the numbers***. (*Id*. ¶ 202.)

Shoemaker testified at his deposition with respect to this and similar emails: "If I wrote that, then I believe it's true. It must have been based on prior communications and production plans for revenue commitments." (*Id*. ¶ 203.)

Meanwhile, Sanmina's highest executives took the view that Dialight was trapped at Sanmina because it had transferred its manufacturing there. (*Id*. ¶ 200.) As Marco Gonzalez, Sanmina's COO, told Bob Eulau, Sanmina's CEO: "***It was too hard for [Dialight] to leave*** because of the paint booth they bought." (*Id.*) Dialight had paid approximately $2,965,700 to buy the paint line, and Sanmina knew that moving it would be exceedingly difficult. (*Id*. ¶ 201.)

On May 15, 2018, Shoemaker wrote internally to his colleagues about Plant 2:

> I got nothing, ***I have never seen anything like this, they are pulling business and they won't reply, engage, communicate, respond or do anything about it, no accountability***." (*Id*. ¶ 205.)

On May 16, 2018, Shoemaker wrote to Marco Gonzalez, Sanmina's COO, stating: "***The reason for so many emails is because no one responds with an improvement plan and we have the customer on our backs with no information to communicate***." (*Id*. ¶ 207.)

On June 4, 2018, Green wrote to Strangie about the gravity of Sanmina's failures:

> On-time delivery requirement is 95% to their mandate. Guad plant 2 average OTD rate is 48% for 2018 year to date, ***there has to be a fundamental issue with how the operations is being managed when we cannot achieve 70 or 80% in two years*** … (*Id*. ¶ 210.)

On June 22, 2018, Shoemaker emailed Giggey, Strangie, and Green regarding further ongoing fraud in Sanmina's Guadalajara operation, stating:

> Just an example of how disconnected it is, ***Plant 4 is charging Dialight for 800 new pallets every month, the shipments from Plant 4 to Plant 2 don't come close to that number and Plant 2 is using the pallets for other warehouse requirements*** after the use

> the Plant 4 Mechanical's. That was discovered by John Kender of Dialight and Bob this week while they were in Guad. (*Id.* ¶ 217.)

C. MSA Termination

On September 27, 2018, Dialight terminated the MSA, stating in its termination notice that Dialight "has suffered lost customers, lost sales, lost goodwill, lost profits, and many other losses as a result" of the outsourcing relationship. (SOF ¶ 267.) Sanmina attempted to hold Dialight's equipment hostage to force payments Dialight disputed. (*Id.* ¶¶ 268-70.) Green voiced concern that Sanmina could not "legally prohibit [Dialight] from removing the equipment" and Shoemaker replied: "Any communication about holding equipment should be done verbally." (*Id.*)

STANDARD OF REVIEW

Summary judgment may only be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The court must "'construe the facts in the light most favorable to the non-moving party' and 'resolve all ambiguities and draw all reasonable inferences against the movant.'" *Hanks v. Voya Ret. Ins. & Annuity Co.*, 492 F. Supp. 3d 232, 239 (S.D.N.Y. 2020). "It is the initial burden of the movant to come forward with evidence sufficient to entitle the movant to relief in its favor." *Id.* Then "'the nonmoving party must come forward with admissible evidence sufficient to raise a genuine issue of fact for trial.'" *Id.* A district court should only grant summary judgment when "no reasonable trier of fact could find in favor of the nonmoving party." *Id.*

ARGUMENT

I. New York Law Applies to Dialight's Claims

Sanmina erroneously argues that the UCC applies to Dialight's claims. The MSA provides that New York law applies to all claims relating to the "formation, construction, and performance of the Agreement." (SOF ¶ 26.) The MSA precludes the application of the international version

of the UCC, which is the only potentially applicable version of the UCC, given that Sanmina's factories were located in Mexico and the manufactured products were shipped worldwide to Dialight's customers. (*Id*. ¶¶ 158, 163.) Thus, New York law applies per the parties' agreement.

Further, UCC Article 2 only applies to "transactions in goods." N.Y. U.C.C. Law § 2-102. "In determining whether or not a contract is one of sale or to provide services," the court "must look to the 'essence' of the agreement." *Marbelite Co. v. National Sign & Signal Co.*, 2 Fed. Appx. 118, 120 (2d Cir. 2001). The essence of the MSA is the provision of manufacturing services, as the name of the agreement demonstrates. Sanmina's own in-house lawyers have described the agreement as Sanmina providing "limited services," specifically "manufacturing and assembly services," to Dialight. (SOF ¶ 249.) The manufactured products were ordered by and shipped to Dialight's customers. (*Id*. ¶ 163.)

Sanmina's cited cases are inapposite. For example, in *NewSpin Sports, LLC v. Arrow Elecs., Inc.*, Arrow directly sold components to NewSpin for use in NewSpin's own manufacturing, making the case a true sale of goods. 910 F.3d 293, 297 (7th Cir. 2018). A more apt comparison is *Arrow Elecs., Inc. v. Delco Lighting, Inc.*, 2019 U.S. Dist. LEXIS 179988 (D. Col. Aug. 9, 2019), where Delco manufactured LED products and contracted with Arrow due to its shipping capabilities. The contract involved the sale of goods, but the essence of the agreement was the provision of services because the "reason for it being entered into, and the primary role it played in the parties' interactions, was one for services." *Id*. at *12-13.

II. Sanmina's Fraudulent Inducement Renders the MSA's Liability Cap Ineffective

A. A Contractual Liability Cap Is Unenforceable Under New York Law and the UCC When a Contract Is Procured by Fraud

It is well-established under both New York common law and the UCC that a contractual limitation of liability cap is unenforceable where a contract was procured as a result of fraud. *See,*

e.g., *Turkish v. Kasenetz*, 27 F.3d 23, 27-28 (2d Cir. 1994) ("It is well settled that parties cannot use contractual limitation of liability clauses to shield themselves from liability for their own fraudulent conduct"); *Aplications, Inc. v. Hewlett-Packard Co.*, 501 F. Supp. 129, 136 (S.D.N.Y. 1980) (holding in a UCC case that a contractual liability cap could not be enforced at summary judgment because where a "plaintiff's claims for fraudulent misrepresentation is heard at trial, the contractual limitation precluding recovery of consequential damages is ineffective").

B. Sanmina Fraudulently Induced Dialight to Enter Into the MSA

Sanmina cannot obtain summary judgment on Dialight's fraudulent inducement claim because the evidence overwhelmingly supports every element of Dialight's claim: (1) a false representation of existing fact, (2) which was material, (3) which was made with scienter, (4) which was offered to deceive another or induce him to act, and (5) which that other party relied on to its injury. *Cortes v. 21st Century Fox Am., Inc.*, 751 Fed. Appx. 69, 72 (2d Cir. 2018).

1. Sanmina Made Misrepresentations of Existing Facts

The representation of a present ability to perform under a contract is actionable as fraud. *See Merrill Lynch & Co. v. Allegheny Energy, Inc.*, 500 F.3d 171, 184 (2d Cir. 2007) ("New York distinguishes between a promissory statement of what will be done in the future that gives rise only to a breach of contract cause of action and a misrepresentation of a present fact that gives rise to a separate cause of action for fraudulent inducement."); *Wild Bunch, SA v. Vendian Entm't, LLC*, 256 F. Supp. 3d 497, 506 (S.D.N.Y. 2017) ("Courts . . . cannot recharacterize statements that are unmistakably about present facts and made for the purpose of inducing a party to enter a contract as being about future intent to perform."). Here, Sanmina made numerous misrepresentations that fraudulently induced Dialight to enter into the MSA. (SOF ¶ 57.) Each representation taken alone serves as a basis for liability and, when viewed in the composite, paints an overwhelming picture of fraud.

a. Sanmina Misrepresented Its Machining and Paint Line Capacity

Sanmina represented to Dialight that it had the machining and paint line capacity to handle Dialight's manufacturing needs. (*Id.* ¶ 132, 138, 140, 142.) But internally Sanmina's executives at Plant 4 were telling Sanmina's sales team that this promised capacity did not exist. (*Id.* ¶ 93 ("There is no machining capacity either for this type of work. I am a little confused on why these were not made clear for the customer during the tours"); *see also id.* ¶¶ 134-143.)

b. Sanmina Made Misrepresentations in Its RFQ Responses

Sanmina represented to Dialight in its RFQ responses that it could support "continuous production of higher volume units, but wide variations from forecast in product mix in terms of finished products" and that "no integration" was required between Dialight's and Sanmina's IT systems. (*Id.* ¶¶ 96-98.) The evidence demonstrates that these statements were untrue when made. (*Id.* ¶¶ 153; Resp. SOF ¶¶ 57(b)(i), 57(n)(i)-57(n)(ii).)

c. Sanmina Misrepresented Its Supply Chain Capacities.

On September 22, 2015, Sanmina represented to Dialight that it had specific supply chain tools that were in-use at the Guadalajara plant and would be available to use on the Dialight account. (*Id.* ¶ 105.) The evidence demonstrates that Plant 2 was not in fact using these tools and they were not available to use on the Dialight account. (*See, e.g.*, *Id.* ¶¶ 109-113.)

d. Sanmina Misrepresented Its Support of the Dialight Opportunity

On September 25, 2015, Sanmina's finance and credit team had a pivotal call with Dialight's CFO in which Sanmina's finance team expressed its support for the Dialight opportunity. (*Id.* ¶¶ 122-123.) Unbeknownst to Dialight, Brandon Soule, Sanmina's Director of Global Treasury, Risk & Credit, had written internally to his sales colleagues before the call that "LED companies are a dime a dozen, and they all feel they have their own special niche. . . . Personally, I don't see much attractive there." (*Id.* ¶ 115.) Sanmina's sales team directed

Soule and the finance team to conceal this from Dialight so Sanmina could win the business, directing: "Dialight does NOT know SAMN Credit has changed course, so please do not comment on it." (*Id.* ¶ 122.) Sanmina conceded at its 30(b)(6) deposition that its finance team followed this instruction and did not act with transparency during this critical meeting. (*Id.* ¶ 125.)

e. Sanmina Provided Misleading Financial Information

Dialight asked Sanmina for financial information to use for its due diligence of its outsourcing financial modeling. (*Id.* ¶ 128.) In response, Sanmina provided Dialight "with some type of 'bullsh*t' matrix" to make Dialight "go away on this." (*Id.* ¶¶ 129-130.)

f. Sanmina Misrepresented Its Available Space

Sanmina told Dialight before it signed the MSA that there was "excellent space available" (*Id.* ¶ 132.) But Sanmina's operations team in Guadalajara was stating internally that this was not true because "we are selling the same space to different customers that might not be available to them all . . . If this space is already spoken for with a Plant 6 customer then I have no idea where 40,000 sq ft for Dialight would go as it does not fit in Plant 4." (*Id.* ¶ 138.)

g. Sanmina Made Misrepresentations in the Recitals to the MSA

Sanmina represented in the Recitals to the MSA that it could provide complete vertical integration capabilities "from a single profit center." (*Id.* ¶149.) This representation was false when it was made because the two Sanmina plants in Guadalajara that were necessary for providing complete vertical integration capabilities had two different P&Ls and were two different profit centers. (*Id.* ¶ 155.) As the head of Plant 4 said internally to his counterpart in Plant 2: "We understand that you are looking after the wellbeing of your operation and I respect that. I do have to look after the wellbeing of mine." (*Id.* ¶ 184.) The Sanmina sales team commented internally that it was "World War III between plants." (*Id.* ¶ 181.)

Sanmina also represented in the Recitals to the MSA that it had the capability to provide the manufacturing flexibility requested by Dialight. (*Id.* ¶ 149.) This also was false. (*See, e.g.*, *Id.* ¶ 153 ("Jorge stated that . . . the current mix is more challenging due to the ATOs and low volume configuration. I reminded them their statement that low volume high mix is their sweet spot"); ¶ 153 (reporting contemporaneously that Sanmina "did not know how to deal with the low volume high mix complexity of our products"); ¶ 153 (Sutsko testifying Sanmina did not have the capabilities "to manage a high mix low volume type of operation"); ¶ 153 (Escamilla of Dialight testifying Sanmina's "manufacturing system . . . was aimed at high volume, low mixed parts"); ¶ 172 (internal Sanmina discussion stating that Plant 2 has "no idea . . . what Dialight requirements are"); ¶ 188 (internal Sanmina email stating "[o]bviously we had not made the right decision on what needs to be manufactured in which location based on capabilities, expertise"); *see also Id.* ¶¶ 52; 57(b)(i)). As Dialight's expert concluded after reviewing the materials in the record, "Sanmina did not have HMLV services in place at the time they executed the contract." (*Id.* ¶ 152.)

* * *

The evidence demonstrates that each of the above representations pre-dating the signing of the MSA was false when made. At minimum, this issue must be decided by a jury and not resolved on summary judgment. *See Davis-Garett v. Urban Outfitters, Inc.*, 921 F.3d 30, 46 (2d Cir. 2019) (a court "may not make credibility determinations or weigh the evidence" on a motion for summary judgment and "must draw all reasonable inferences in favor of the non-moving party"); *Scanner Techs. Corp. v. Icos Vision Sys. Corp.*, 253 F. Supp. 2d 624, 634 (S.D.N.Y. 2003) (credibility of expert witness is "a matter for the jury, and not a matter to be decided on summary judgment").

2. Sanmina's Misrepresentations Were Material

Materiality is defined as a misrepresentation significant to a reasonable person considering whether to enter into a transaction. *Illuminex Diamonds Corp. v. Chou*, 2022 U.S. Dist. LEXIS 1259, at *10 (S.D.N.Y. Jan. 24, 2022). This is ordinarily a question for the jury. *Allen v. Westpoint-Pepperell, Inc.*, 945 F.2d 40, 45 (2d Cir. 1991).

The evidence demonstrates that each misrepresentation cited above was material. For example, Dialight's then-CEO, Sutsko, testified that Dialight would not have entered into the MSA if it knew that Sanmina lacked the capacity, manufacturing flexibility, systems integration, space or expertise that Sanmina falsely promised was then in existence. (SOF ¶¶ 124, 133, 156.) Further, Sutsko testified that Dialight would not have entered into the MSA if it had been told the truth about Sanmina's finance team's negative assessment of the Dialight opportunity because the full support of Sanmina's credit team was necessary to prevent Dialight from suffering recurring credit holds during the course of the MSA (which is what happened). (*Id.* ¶¶ 124, 126.) Sanmina's promised ability to provide complete vertical integration services from a single profit center was material because, as Sutsko testified, Dialight would not have transferred its entire manufacturing operation to a company that had two plants competing against each other for profits.

3. Sanmina Made Its Misrepresentations with Scienter

Scienter can be established by demonstrating "an intentional or reckless misstatement made with the intent that plaintiff rely upon it." *Taylor Precision Prods. v. Larimer Grp., Inc.*, 2018 U.S. Dist. LEXIS 221784, at *59 (S.D.N.Y. Mar. 26, 2018). "This may be achieved through circumstantial evidence that supports a strong inference that the defendants possessed the requisite fraudulent intent." *Id.* at *60. "This strong inference can be shown (a) by alleging facts to show that defendants had both motive and opportunity to commit fraud, or (b) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness." *Id.* The issue

of scienter is typically one for a jury to decide at trial. *See Press v. Chemical Inv. Servs. Corp.*, 166 F.3d 529, 538 (2d Cir. 1999) ("The Second Circuit has been lenient in allowing scienter issues to withstand summary judgment based on fairly tenuous inferences" because "[w]hether a given intent existed is generally a question of fact, appropriate for resolution by the trier of fact").

Here, Sanmina's sales team's compensation was tied to winning new accounts and Sanmina would benefit from obtaining additional profit and revenues, providing both a motive and opportunity to commit fraud. In addition, the facts reflect strong circumstantial evidence of conscious misbehavior or recklessness, a far cry from fairly tenuous inferences. Sanmina testified at its 30(b)(6) deposition that during its finance team's meeting with Dialight's CFO it hid the truth and did not act transparently. Based on these circumstances and the deliberateness of the misrepresentations, there is ample evidence from which a jury could find scienter.

Further, Sanmina's assurance to Dialight that it had the ability to manufacture Dialight's products was based, at minimum, on recklessness. Green testified that he relied on information from Jorge Rios of Sanmina's operations team in Guadalajara for his representations in Sanmina's RFQ responses about Sanmina's then-existing operational capabilities. (SOF ¶ 100-01.) But Rios testified he did not see Dialight's RFQ until after the MSA was signed. (*Id* ¶ 103.) This evidence shows that Sanmina acted with "at least reckless disregard for truth." *See Rodrigues v. It's Just Lunch Int'l*, 2013 U.S. Dist. LEXIS 58652, at *11 (S.D.N.Y. Apr. 23, 2013).

4. Dialight Relied Upon Sanmina's Representations

Green testified at his 30(b)(6) deposition that Sanmina understood that Dialight was relying on the truth of Sanmina's representations about its capacity, capabilities, expertise, and space as the reasons as its basis for entering into the MSA. (SOF ¶¶ 107, 151.) Dialight's then-CEO also has testified that Dialight was relying upon the truth of these representations as its basis for entering into the MSA. (*Id*. ¶¶ 124, 133, 156.) And Dialight's consultant testified that the representations

in the Recitals to the MSA were critical and that Dialight relied upon them as its basis for entering into the MSA, as the Recitals themselves state explicitly. (*Id.* ¶ 150.) This testimony from Sanmina, Dialight, and Dialight's consultant about Dialight's reliance on Sanmina's representations coupled with the relevant documentary evidence (*see, e.g. Id.* ¶¶ 107, 124, 133, 147, 150, 151, 156), provides overwhelming evidence to support a finding of reliance.

5. Dialight's Reliance Was Reasonable

"The reasonableness of a plaintiff's reliance is a nettlesome and fact intensive question, and thus is often a question of fact for the jury rather than a question of law for the court." *FIH, LLC v. Found. Capital Partners LLC*, 920 F.3d 134, 141 (2d Cir. 2019).

Here, Dialight made reasonable inquiries into the alleged misrepresentations prior to signing the MSA and Sanmina deliberately frustrated Dialight's due diligence. For example, Dialight sent its consultant to conduct a site visit, and Sanmina falsely represented that it had the required capacity but said that the consultant could not see the production lines due to purported customer NDAs. (SOF ¶ 91.) Sanmina also lied to Dialight's CFO about its finance team's support for the Dialight opportunity during a call where Dialight vetted the Sanmina opportunity. (*Id.* ¶¶ 122-123.) Consequently, Dialight could not detect the hidden fraud; and even if somehow it could have, Dialight "should not be denied recovery merely because hindsight suggests that it might have been possible to detect the fraud when it occurred." *DDJ Mgt., LLC v. Rhone Group L.L.C.*, 15 N.Y.3d 147, 154 (2010).

The Recitals of the MSA further memorialized that Dialight was entering into the MSA based on specific representations from Sanmina. (SOF ¶¶ 147.) Dialight thus took "reasonable steps to protect itself against deception" as it went "to the trouble to insist on a written representation that certain facts are true" and therefore would have been "justified in accepting

that representation rather than making its own inquiry." *DDJ*, 15 N.Y.3d at 154.[2] And Dialight did far more than simply accepting this written representation; it hired a consultant at great expense and had numerous diligence calls and communications, but Sanmina hid the truth from Dialight at every occasion. (*see, e.g.* SOF ¶¶ 83-85, 88-99-104, 120-122, 129, 136-143.)

6. Sanmina's Misrepresentations Caused Dialight Damages

Causation and damages "is typically an issue properly left to the trier of fact because it can involve thorny fact issues." *Subramanian v. Lupin Inc.*, 2020 U.S. Dist. LEXIS 153402, at *70 (S.D.N.Y. Aug. 21, 2020). Dialight suffered extensive damages directly traceable to and caused by Sanmina's misrepresentations that jeopardized Dialight's survival. Dialight's expert has calculated Dialight's out-of-pocket damages caused by Sanmina's fraudulent inducement as over ninety million dollars and Dialight's loss of market capitalization directly attributable to Sanmina as well over two hundred millions dollars. (SOF ¶ 62 (breaking out damages).)

C. The MSA's General Integration Clause Does Not Immunize Sanmina for Its Fraudulent Inducement

Section 25.14 of the MSA provides that the MSA "is the entire agreement between the Parties, and supersedes all prior and contemporaneous representations." As the Second Circuit has held about analogous language, "[s]uch a general merger clause is ineffective, however, to preclude parol evidence that a party was induced to enter the contract by means of fraud."

[2] Sanmina's asserts in its moving brief that (i) Dialight retained the law firm of Wilson Sonsini to help negotiate the MSA, (ii) "rushed" into outsourcing, (iii) Dialight's Chief Operations Officer resigned soon after Sutsko was hired, and (iv) Ernst & Young ("EY") did a report and gave certain recommendations to Dialight about improving its readiness for outsourcing. Even if true, none of these factors absolves Sanmnina of its fraud nor undercuts the reasonableness of Dialight's reliance in any way. If anything, Dialight's retention of a law firm to help negotiate the MSA underscores that Dialight's reliance was reasonable as Dialight made significant efforts to protect itself, including hiring a law firm and memorializing aspects of its reliance in the MSA itself. Sutsko's exploration of outsourcing soon after he was hired and the resignation of Dialight's COO for a different job opportunity did not give Sanmina a license to commit fraud on Dialight. And EY's report underscores that Dialight on its end was doing everything possible to assess its own weaknesses in preparation for an outsourcing engagement. These purported facts, even if true, are either irrelevant to or support Dialight's claims. And in any event there are significant inaccuracies in how Sanmina describes them. (*See* Resp. SOF ¶¶ 16-18.)

Manufacturers Hanover Trust Co. v. Yanakas, 7 F.3d 310, 315 (2d Cir. 1993). Sanmina cites *28th Highline Assocs., L.L.C. v. Roache* to argue that if the "alleged misrepresentations were truly material to Defendant, he certainly had the sophistication, guidance, and means to ensure that the Agreement required Plaintiff to affirm them." 2019 U.S. Dist. LEXIS 30057, at *30 (S.D.N.Y. Feb. 22, 2019). But this is exactly what Dialight did in including statements it was relying upon as Recitals to the MSA. (SOF ¶¶ 148-151.) Thus, this is not a case, as Sanmina argues, where Dialight's fraud claim is "inconsistent with other specific recitals in the contract." *Emergent Capital Inv. Mgmt., LLC v. Stonepath Group, Inc.*, 165 F. Supp. 2d 615, 622 (S.D.N.Y. 2001). Rather, Dialight's fraud claim is consistent with – and based in part upon – the recitals of the MSA.

D. Sanmina's Argument that Dialight Cannot Use Evidence That Emerged in Discovery to Support Its Fraud Claim Is Baseless.

Sanmina argues that, although Dialight pled fraudulent inducement in its Complaint and cited specific examples referenced herein, Dialight cannot use other specific misstatements whose falsity only emerged in discovery to further its fraud claim. This makes no sense. A party cannot make numerous false representations, wait until discovery for the full picture of its misconduct to emerge, and then claim immunity for those additional false statements not pled in the Complaint that the other party had no way of learning about earlier. Further, Dialight's pleading in its Complaint was broad enough to capture the full gamut of Sanmina's misconduct. *See* SOF ¶ 50.

Sanmina also is not facing any prejudice or surprise from the evidence of fraud that Dialight describes in this motion. The evidence is based on Sanmina's ***own*** documents and testimony and is addressed by Sanmina in its moving brief, underscoring the absurdity of Sanmina's claim that Dialight is ambushing it with this evidence in its summary judgment opposition. *See Cruz v. Coach Stores, Inc.*, 202 F.3d 560, 569-70 (2d Cir. 2000) (holding failure to plead claim in

complaint "did not preclude the district court's consideration of that issue on summary judgment" where opposing party could not show the alleged lateness disadvantaged it).

III. Sanmina's Willful Misconduct Further Defeats Its Effort to Immunize Itself from Damages

Sanmina's post-MSA willful misconduct further prevents Sanmina from relying upon the liability cap to immunize itself from damages. Sanmina argues that the Court of Appeals decision in *Matter of Part 60 Put-Back Litig.*, 36 N.Y.3d 342 (2020) prevents Sanmina's own intentional misconduct from voiding the liability cap. But as subsequent courts have explained, the New York Court of Appeals "considered only the public policy exception for gross negligence; it did not discuss the public policy exception for willful misconduct." *IS Chrystie Mgt. LLC v. ADP, LLC*, 2022 N.Y. App. Div. LEXIS 2879, at *3-4 (1st Dep't May 3, 2022); *see also Spoleto Corp. v. Ethiopian Airlines Grp., Inc.*, 2022 U.S. Dist. LEXIS 20657, at *24 n.3 (S.D.N.Y. Feb. 3, 2022) ("The New York Court of Appeals recently clarified that grossly negligent conduct will render unenforceable only exculpatory or nominal damages clauses in a contract. That subtlety is of no moment here, because the basis on which [Plaintiff] purports to avoid the damage-limitation provision is conduct that it claims was intentionally wrongful.").

Sanmina's actions throughout the duration of the relationship rise to the level of willful misconduct. A claim of willful misconduct has four elements: (1) the existence of a duty; (2) a breach of that duty; (3) injury as a result thereof; and (4) conduct that evidences "a conscious indifference or I don't care attitude which is the prerequisite of wanton behavior." *Taylor Precision Prods. v. Larmer Grp., Inc.*, 2022 U.S. Dist. LEXIS 20560, at *52 (S.D.N.Y. Feb. 4, 2022). Each element is met based upon Sanmina's post-MSA conduct.

First, a duty existed separate from the MSA because Sanmina held itself out as an expert in contract manufacturing (SOF ¶ 1), and it therefore owed a duty to Dialight separate from the

MSA. Additionally, Sanmina had to be certified under ISO 9001 or ISO 9002. (*See Id.* ¶ 59.) These industry standards promulgated by the International Organization for Standardization provide the standard of care for the industry. *See Uzhca v. Wal-Mart Stores, Inc.*, 2020 U.S. Dist. LEXIS 167662, at *21-23 (S.D.N.Y. Sept. 14, 2020) ("[I]n the absence of any identified authority expressly indicating that the ISRI guidelines is not to be used as an industry standard governing entities like Defendants . . . the question of whether these guidelines govern Defendant's conduct should be for a jury to decide."). Lastly, "[w]here a person contracts to do certain work he is charged with the common law duty of exercising reasonable care and skill in the performance of the work required to be done by the contract." *William Wrigley Jr. Co. v. Waters*, 890 F.2d 594, 602 (2d Cir. 1989).[3]

Second, Sanmina breached its duty. Sanmina's own post-MSA internal emails listed above provide compelling evidence from which a reasonable jury could find that Sanmina breach its duty. (*See supra*, at 6-10; SOF ¶¶ 158-265.)

Third, Dialight suffered massive damages from Sanmina's willful misconduct and breach of duty, as demonstrated in Dialight's damages expert's report. (SOF ¶ 62.)

Fourth, Sanmina's conduct was deliberate as it evidences, at the very least, "a conscious indifference or I don't care attitude which is the prerequisite of wanton behavior." Sanmina argues that it could not have acted with willful misconduct on the factually incorrect basis that there are no internal Sanmina emails saying "who cares about Dialight?" but instead emails saying "we need to fix this!" (Br. at 20.) This characterization is directly contradicted by Sanmina's actual emails. (*Id.* ¶ 188 (internal Sanmina email stating: "I had opportunity to be part of the team and take a

[3] While *William Wrigley* is a gross negligence case, the duty prong of claims of gross negligence and willful misconduct are identical. *See Taylor*, 2018 U.S. Dist. LEXIS 221784, at *55 n.13 (""Gross negligence and willful misconduct are tort claims of a similar strain, with slight disparity between their fourth [prong] . . . ".).

tour from our [P]2 in Guadalajara factory. As of now if this is what customer is going to see, I will not be surprised if they ask us to stop production. . . Obviously we had not made the right decision on what needs to be manufactured in which location based on capabilities, expertise[.]"); ¶ 192 (internal Sanmina email stating: "I just want you to know that Bob and I are beside ourselves, something needs to change in Guad, no support, no commitment, no involvement, lack of engagement, it's unacceptable."); ¶ 193 (internal Sanmina email stating: "heads should fall within our organization and responsibility on this should get as high as Marco [Gonzalez] as this is squarely on Mexico Ops team."); ¶ 195 (internal Sanmina email stating: "Does P2 really care about the business?"); ¶ 198 ("WTH. Who is even overseeing this operation…"). These emails are in line with the message that Jorge Rios of Sanmina testified Sanmina's CEO and Chair, Jure Sola, gave him: "charge for everything you can, as much as you can." (*Id.* ¶ 219.)

The issue regarding safety lanyards described in Dialight's Complaint further illustrates Sanmina's "I don't care attitude." These lanyards are a critical safety feature for heavy items weighing up to 79 pounds suspended from a ceiling. (*Id.* ¶ 228.) Failure could lead to death. (*Id.*) Sanmina used an incorrect tool to crimp the safety lanyards that did not conform to the agreed specification and as a result this secondary safety device that should have been able to retain up to a 79 pound weight could, upon delivery by Sanmina, be pulled apart by hand. (*Id.* ¶¶ 230-39.) Sanmina's failure was compounded by its lack of safety/conformity testing and quality control. (*Id.* ¶ 229.) When Sanmina was informed of the error, the initial reaction of Jorge Camacho, Senior Program Manager for the Dialight account, was: "We need to look at how we can lead him to some lack of documentation from Dialight if possible." (*Id.* ¶ 246.) Thus, Sanmina's immediate concern was covering up its mistake and blaming Dialight. Subsequent testing has demonstrated that Sanmina's work was done with hand held pliers, not the required tooling. (*Id.* ¶¶ 235-239.)

Sanmina argues that Dialight "does not allege any personal injury claims resulting from the alleged lanyard defects." (*Id.* ¶ 61.) But the reason there were no personal injury claims, or worse, loss of life, was not because the lanyards manufactured worked, but because Dialight took actions to quarantine and recall the lanyards manufactured in Sanmina. (*Id.* ¶ 255.) What Sanmina completely misses – and what the lanyard issue demonstrates – is that Sanmina's failure to follow instructions for a piece of critical safety equipment and single-minded focus on how to cast blame indisputably qualifies as "conscious indifference or I don't care attitude." At minimum, the question of "[w]hether the challenged conduct rises to the level of 'intentional wrongdoing' is a question of fact" and should be left to the jury. *Spoleto*, 2022 U.S. Dist. LEXIS 20657, at *24.

IV. The Court Should Not Consider Paragraph 57 of Sanmina's Statement of Undisputed Facts Because It Violates the Governing Procedural Rules

Local Rule 56.1 requires a summary judgment movant to submit a statement of "material facts as to which the moving party contends there is no genuine issue of material fact." Local R. 56.1. "*Rule 56.1 statements are not argument*" and "should not contain conclusions." *Labarbera v. NYU Winthrop Hosp.*, 527 F. Supp. 3d 275, 288 (E.D.N.Y. 2021) (emphasis in original). And Rule 5(C)(ii) of this Court's Individual Rules of Practice in Civil Cases further requires the moving party to organize the 56.1 Statement into "numbered paragraphs" with "each numbered paragraph [containing] only one factual assertion."

Sanmina's Paragraph 57 violates these rules. The Paragraph is ten pages long, broken up into seventy-five subsections with numerous factual and legal assertions, and effectively serves as an additional argument section. Sanmina repeatedly argues that various alleged misrepresentations "do not raise a triable issue of fact," "are non-actionable," and even presents "corresponding legal arguments." *See* SOF ¶ 57. Because Sanmina improperly uses this Paragraph to make legal arguments, the Court should disregard Paragraph 57 and underlying exhibits in support. *See*

Congregation Rabbinical College of Tartikov, Inc. v. Vill. Of Pomona, 138 F. Supp. 3d 352, 394 (S.D.N.Y. 2015) ("[T]he Court can . . . disregard legal conclusions or unsubstantiated opinions in a Local Rule 56.1 statement.").

V. Sanmina Should Not Receive Summary Judgment On Its Accounts Receivable Claim

Roughly twenty percent of Sanmina's accounts receivable claim is in factual dispute because the evidence shows it is based on product that never shipped or shipped with material defects. (SOF ¶¶ 64-68.) Moreover, Dialight has issued invoices to Sanmina on warranty and other claims in the amount of roughly $3.4 million that remain outstanding. (*Id.* ¶¶ 271-272.) Further, Sanmina has admitted that it possesses over $5.3 million in an excess and obsolete ("E&O") escrow fund, and Dialight will show at trial that this money properly belongs to Dialight (as Sanmina has not moved for summary judgment on its E&O claim). (*Id.* ¶ 273.) Consequently, even putting aside Dialight's fraud claim, Sanmina currently owes Dialight money, precluding a grant of summary judgment on this claim for Sanmina. *See* MSA at § 11.5 ("Each party may at any time set off an amount owed by the other Party to such Party against any amount payable to the other Party from such Party, arising out of this Agreement."); *STMicroelectronics, N.V. v. Credit Suisse Sec. (USA) LLC*, 648 F.3d 68, 82 (2d Cir. 2011) ("Allowing [Defendant] to pay just its *net* obligation avoids the absurdity of making A pay B when B owes A.").

CONCLUSION

For the foregoing reasons, Dialight requests that this Court deny Sanmina's partial motion for summary judgment and enable Dialight to present its voluminous evidence in support of its fraudulent inducement and willful misconduct claims to the fact-finder at trial.

Dated: New York, New York
June 16, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Scott A. Rader, hereby certify that on June 16, 2022, I caused to be served a true and correct copy of the foregoing **DIALIGHT'S MEMORANDUM OF LAW IN OPPOSITION TO SANMINA'S PARTIAL MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF filing system, which will send notification of such filing to all attorneys on record.

Dated: June 16, 2022
New York, New York

/s/ Scott Rader
Scott A. Rader