

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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

**SANMINA CORPORATION’S RESPONSE TO DIALIGHT PLC’S  
STATEMENT OF ADDITIONAL MATERIAL UNDISPUTED FACTS  
IN OPPOSITION TO SUMMARY JUDGMENT  
(LOCAL RULE 56.1)**

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Preliminary Statement: The majority of Dialight’s Additional Material Facts are legally immaterial and irrelevant to the issues raised by Sanmina’s motion. Given the extreme length of this document, Sanmina reserves its relevance objections but has not asserted that objection below in response to each specific proposed additional fact.

Furthermore, Sanmina has separately objected to Mr. Rader’s declaration to the extent it purports to authenticate documents that were never testified about. Sanmina is aware of authorities suggesting that this may be permissible. *See, e.g., Archie MD, Inc. v. Elsevier, Inc.*, 2017 WL 3421167 (S.D.N.Y. 2017). However, the amendments to Rule 56 do not dispose of the requirement that, “[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarants is competent to testify on the matters stated.” Fed.R.Civ.P. 56(c)(4). The Rader declaration does not comply with this requirement. To the extent that the Rader declaration purports to use hearsay to support Dialight’s position, those objections are also identified in the separate objection, but are noted below.

Finally, these responses are given only in connection with this motion. Dialight cites substantial amounts of hearsay that is also not relevant or material. Sanmina has made an effort not to object to or dispute claimed additional facts that are irrelevant and immaterial, but a “fact” identified below as undisputed is undisputed solely for purposes of this motion and is not a stipulated fact in this case.

### **Dialight’s Search for an Outsourcing Partner**

71. *Dialight designs and manufactures industrial light-emitting diode (“LED”) lighting fixtures, among other products, that are used in a variety of high risk and safety critical environments such as factory floors, oil refineries, and telecommunications towers. [Rader Decl. Ex. 17; see also About Us: Company Overview, Dialight.com, <https://www.dialight.com/about/#company-overview>].*

**Sanmina’s Response to Paragraph 71: Undisputed.**

72. *Dialight products utilize high mix, low volume manufacturing. [Khanbabi 30:14-15; Rapp 17:17-19; Escamilla 76:12-17.]*

**Sanmina's Response to Paragraph 72: Disputed in part.** Sanmina does not dispute that certain of Dialight's product lines require high mix/low volume manufacturing; but not all do. [Green 35:24-37:21.]

73. *High mix, low volume manufacturing requires a high number of SKUs per dollar of revenue, meaning customers can customize products that are made to order, rather than mass production of standard products. [Rapp 16:3-18; Escamilla 76:12-18 (“you are going to run . . . little quantities of product A and then little quantities of product B. And the difference between product A and product B, it might be some accessory.”)].*

**Sanmina's Response to Paragraph 73: Disputed in part.** Dialight had three categories of production: ATO (Assemble to Order), MTS (Made to Stock), and CBO (Custom Build Order). [Smith 51:7-52:10.] This proposed fact, which describes customers who “customize” products, seems to describe only CBO.

74. *As of June 2015, Dialight products had over 4,500 unique finished good SKUs and used over 8,000 different raw materials in production. [Rader Decl. Ex. 46].*

**Sanmina's Response to Paragraph 74: Disputed.** Objection: Hearsay. Further, the referenced exhibit states that it was based on data from 2014 and Q1 2015 – not as of June 2015.

75. *In June 2015, Dialight's then-CEO, Michael Sutsko, began exploring outsourcing the company's manufacturing to a contract manufacturing partner. [Sutsko 30:10-19].*

**Sanmina's Response to Paragraph 75: Undisputed.**

76. *As part of that process, Michael Sutsko reached out to three potential contract manufacturers: Sanmina, Flextronics, and Jabil. [Rader Decl. Exs. 2; 4; 5].*

**Sanmina's Response to Paragraph 76: Undisputed.**

77. *Dialight began investigating the possibility of outsourcing the manufacturing of its products so it could focus on its core competencies of technology and sales. [Khanbabi 21:15-24].*

**Sanmina's Response to Paragraph 77: Undisputed** – although the same testimony explains that Dialight's manufacturing capabilities were not very good.

78. *Bob Green of Sanmina was the leader of Sanmina's effort to obtain the Dialight business. [Rader Decl. Ex. 110].*

**Sanmina's Response to Paragraph 78: Undisputed.**

79. *Bob Green was selected to lead Sanmina's effort to obtain the Dialight business because he was based in Pennsylvania which was "relatively close" to Dialight's office in Farmingdale, New Jersey. [Green 32:16-24; Shoemaker 22:17-20].*

**Sanmina's Response to Paragraph 79: Undisputed.**

80. *Bob Green was new to Sanmina, having started in January 2015. [Green 23:18-19].*

**Sanmina's Response to Paragraph 80: Undisputed.**

81. *Bob Green had not yet secured any customers in Sanmina; Dialight was his first. [Green 157:3-6].*

**Sanmina's Response to Paragraph 81: Undisputed.**

82. *Bob Green's compensation was tied to securing new business for Sanmina. [Green 25:18-26-10].*

**Sanmina's Response to Paragraph 82: Disputed.** The referenced testimony states that a successful *partnership* with Dialight would have affected Green's compensation "to some extent." Green also testified that he is "compensated for bringing in new business" as "part of my job." [Green 28:22-29:3.] His testimony indicated that he was unsure if merely securing the account would affect his compensation.

83. *Dialight took steps to ensure Sanmina understood what Dialight required from a manufacturing partner, including providing a breakdown of its Stock Keeping Unit ("SKU") count [Rader Decl. Ex. 46] and a detailed RFQ [Rader Decl. Ex. 9; 12].*

**Sanmina's Response to Paragraph 83: Disputed in Part.** Undisputed that Dialight provided this information; the characterization of Dialight's reasons for providing it is hearsay.

84. *Dialight's 4,500 unique finished good SKUs was a significant number of SKUs. [Green 178:25-179:10].*

**Sanmina's Response to Paragraph 84: Undisputed.**

85. *When selecting an outsourcing partner and later negotiating the MSA, Dialight relied on Sanmina's representations that it had the ability and expertise to manufacture Dialight's products. [Khanbabi 21:18-20].*

**Sanmina's Response to Paragraph 85: Disputed.** Objection: Mischaracterizes the evidence.

First, the cited testimony is: "There were pros and cons on both sides, and, hence, as a board, we made a measured decision based on the representations that Sanmina made." It does not identify the representations to which she is referring. Second, Khanbabi testified that she was only responsible for looking at the financial model behind the decision. [Khanbabi 21:3-11.] She admitted: "I wasn't involved in the negotiations of the MSA . . ." [Khanbabi 113:1-2.]

86. *High mix, low volume manufacturing forecasts have a high degree of variability [Ramirez 37:6-12] and forecast inaccuracies, which is a challenge faced by companies manufacturing high mix, low volume products. [Ramirez 50:12-20].*

**Sanmina's Response to Paragraph 86: Disputed in Part.** The first statement is a fair quote of what Ramirez said; the second is not. The testimony identified to support the second statement concerned the placement of orders for which there is no forecast:

Q. Now, if an order comes in for product that wasn't forecasted, you understood that that might represent a challenge for Sanmina in terms of procuring the materials necessary to build that product; correct?

A. It is the challenge of anybody that is doing business with a low-volume/high-mix opportunity, yes.

87. *Because of this, a key requirement of manufacturing Dialight products is manufacturing flexibility. [Ex 24. § D].*

**Sanmina's Response to Paragraph 87: Disputed.** Objection: Mischaracterizes the evidence.

MSA Recital D's reference to "manufacturing flexibility" pertains to the preceding sentence, which reads: "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.”

88. *Dialight retained a contract manufacturing consultant, Robert Freid, to help Dialight select a contract manufacturing partner. [Sutsko 30:20-31:8].*

**Sanmina’s Response to Paragraph 88: Undisputed.**

89. *Robert Freid traveled to Guadalajara on September 8, 2015, to evaluate whether Sanmina would be an appropriate outsourcing partner. [Rader Decl. Ex. 111].*

**Sanmina’s Response to Paragraph 89: Undisputed.**

90. *On his visit, Robert Freid was not allowed to look at Sanmina product lines running LED lighting with high-mix industrial products up close. [Freid 53:20-54:2].*

**Sanmina’s Response to Paragraph 90: Disputed in Part.** While Sanmina does not dispute this proposed fact for purposes of this motion, Robert Freid did not identify this as a concern in his comprehensive reports to Dialight. [Exs. 128 and 130.] Freid also had no reason to doubt that NDAs with other clients – not a desire by Sanmina to hide something – were behind the limitations placed on his visit, and he described his desire to do a more in-depth walk-through as follows: “it seems that was a strong like to have to do that, but wasn’t -- wasn’t absolutely critical.” [Freid 53:15-56:1.]

91. *Sanmina claimed Robert Freid could not observe the product lines more closely because they had NDAs with those customers. [Freid 54:8-55:8; Green 54:21-55:7].*

**Sanmina’s Response to Paragraph 91: Undisputed.**

92. *After Robert Freid’s visit, Sanmina’s Executive Vice President of the Mechanical Systems Division, Patrick Macdonald, wrote in an internal Sanmina email “Im [sic] not sure where exactly we are going with this Dialight opportunity, however I made it perfectly clear at the very start that we would not be using P4 paintline to paint these diecast items. We will not have capacity long term for paint only!” [Rader Decl. Ex. 112].*

**Sanmina’s Response to Paragraph 92: Undisputed.** But as noted in Sanmina’s briefing, the P4 paint line was not used and Dialight in fact agreed to purchase a new paint line to use in P4. [Freid 43:19-23; Kender 103:14-22.]

93. *Sanmina’s Plant 4 manager, Brian Smillie, followed up Macdonald’s concerns in an email stating “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.” [Rader Decl. Ex. 113].*

**Sanmina’s Response to Paragraph 93: Undisputed.** But as noted, Dialight also understood this and agreed to transfer its CNC machines to Dialight due to the lack of machining capacity. [MSA (Ex. 24) § 19.7(a); Khanbabi 269:19-270:4; Ex. 564, p. 3.]

94. *Additionally, Sanmina showed Robert Freid where the Dialight business would be; in a “well lit, modern looking area.” [Freid 50:18-51:12].*

**Sanmina’s Response to Paragraph 94: Disputed.** Objection: Mischaracterizes the evidence. The citation to Robert Freid’s testimony is misleading and artificially truncated. The full Q&A runs from 50:16-51:17. Freid said that he was shown a space in the plant that would be the “likely” location for Dialight. [Freid 50:16-23.] He concluded his answer by stating that Dialight was aware this supposedly promised space was not available before signing the MSA. [Freid 51:13-17 (“Unfortunately, subsequently, as the contract got closer to getting signed, the – that location they said was no longer available . . .”).<sup>1</sup>] This also is not alleged in the complaint and the MSA specifically states that space would be determined post-execution, thus precluding reliance on this representation, even if made. [Ex. 24. § 19.7.]

95. *To help it evaluate potential contract manufacturing partners, Robert Freid prepared a detailed RFQ for potential partners to complete. [Rader Decl. Ex. 38 at ¶¶ 30-35; 114; 115; 116; 117; 118; 119; 120;121].*

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<sup>1</sup> Freid subsequently said he did not recall when he was told the supposedly promised space was not available. [Freid 53:9-14.]

**Sanmina's Response to Paragraph 95: Disputed in Part.** Sanmina does not dispute that Dialight provided a RFQ. Deposition Exhibits 10 and 11 are Sanmina's initial RFQ response and, to the extent they include elements of the RFQ, their authenticity is not in dispute. Rader Exhibits 38, 114, 115, 116, 117, 118, 119, 120, and 121 are not properly authenticated and Sanmina does not know whether all of these documents comprise the RFQ.

96. *The instructions to the RFQ state that proposed sites must have, among other things, a "Strong focus on high mix, medium to ultra-low volume production." [Rader Decl. Ex. 117].*

**Sanmina's Response to Paragraph 96: Disputed in Part.** Sanmina does not dispute that Rader Exhibit 117 says this; Sanmina does not know whether the document was included in the RFQ.

97. *In the RFQ, Dialight told potential contract manufacturing partners to "Expect continuous production of higher volume units, but wide variations from forecast in product mix in terms of finished products." [Rader Decl. Ex. 9]. Sanmina responded "No problem we can support this." [Rader Decl. Ex. 9].*

**Sanmina's Response to Paragraph 97: Disputed in part.** While Rader Exhibit 117 is not properly authenticated, Deposition Exhibits 10 and 11 are, and the language appears there. However, there is a substantive disconnect between Dialight's contention that Sanmina should have expected forecast inaccuracy, while still expecting 95% OTD. The following is the testimony of Marco Gonzalez:

Q. So Sanmina was aware going into this contract because Dialight was a high mix/low volume customer, that the forecasting accuracy would not be higher than probably around 65 to 70%?

A. Yes, that's correct. Just that assembly lead time or the expectation on lead time was the issue. Not so much the forecast accuracy but the expectation on lead time. You can have a very lousy forecast, but if you set the expectation up front that if you order something from the order book that was not forecasted, you'll have to wait for the product to be procured and assembled; right? But if that expectation is misaligned with the lead time of the part and the assembly, that creates a problem.



[Gonzalez 189:3-189:16.] The MSA, in fact, addresses this issue, providing that upside orders outside of forecast are to be handled on a “reasonable efforts” basis. [Ex. 24 § 3.4.]

98. *The RFQ also asked “What level of IT systems/integration is required between the Dialight ERP system and your ERP system?” Sanmina responded “No requirement for the initial engagement however Sanmina has the capability to integrate the ERP systems to improve efficiency and accuracy both upstream and down stream [sic].” [Rader Decl. Ex. 9].*

**Sanmina’s Response to Paragraph 98: Undisputed.**

99. *Dialight also emphasized the need for manufacturing flexibility in a cover letter it sent to Sanmina along with the first draft of the MSA, writing “We trust that you appreciate the nature of our business. Our end-customer average order size is small. Also, because of corporate selling, customer sites ordering only a few units a month suddenly and unexpectedly can ramp to hundreds.” [Rader Decl. Exs. 11; 12].*

**Sanmina’s Response to Paragraph 99: Undisputed** that Rader Exhibit 11 contains the quoted statement.

100. *Bob Green drafted and transmitted Sanmina’s RFQ responses on September 20, 2015. [Rader Decl. Ex. 8].*

**Sanmina’s Response to Paragraph 100: Disputed in Part.** Sanmina does not dispute the transmission by Bob Green; he testified that the RFQ responses were the product of input of several people (e.g., the “we can support this” response was “the response back from operations management”). [Green 102:6-16; 103:16-23.]

101. *Unbeknownst to Dialight, Bob Green had no personal knowledge of the manufacturing capabilities of Sanmina’s Guadalajara campus, but relied on conversations he had with Jorge Rios and Javier Carral, who worked in Guadalajara. [Green 46:3-47:22].*

**Sanmina’s Response to Paragraph 101: Disputed.** There is no evidence cited for the “Unbeknownst to Dialight” portion of this proposed fact, and the quoted document actually identifies the responsible Sanmina parties as Messrs. Garcia and Rios, thus belying Dialight’s

claim that it believed Mr. Green knew all of this information of his own personal knowledge. [Rader Ex. 8.] Other aspects of the RFQ also identify Jan Finkas as a responsible party. [*Id.*]

102. *Bob Green testified that Jorge Rios and Javier Carral understood the nature of the Dialight business because “they were involved in some of the discussions of Dialight and had seen the RFP quote.” [Green 47:8-17].*

**Sanmina’s Response to Paragraph 102: Undisputed.**

103. *Although Bob Green believed Jorge Rios understood Dialight’s product mix because he had seen the RFQ, Jorge Rios did not see the RFQ until after the MSA was signed. [Rios 96:17-22].*

**Sanmina’s Response to Paragraph 103: Disputed.** Objection: Mischaracterizes the evidence.

The evidence shows that, although Mr. Rios didn’t physically receive a copy of the RFQ, he had nonetheless discussed it and provided information for use in the response. [Rios 96:13-22.] Furthermore, Mr. Freid testified that he discussed this issue personally with Mr. Rios prior to execution of the MSA. [Freid 31:20-33:7.]

104. *Jorge Rios provided answers to the RFQ over the phone, without looking at the document. [Rios 96:17-22].*

**Sanmina’s Response to Paragraph 104: Undisputed.** While the statement is literally true, its implication that Mr. Rios wasn’t aware of the substance of the RFQ when he provided input for Sanmina’s response is incorrect for the reasons stated in the response to Fact no. 103.

105. *On September 22, 2015, Sanmina gave Dialight a presentation on Sanmina’s supply chain capabilities. [Rader Decl. Exs. 67; 68].*

**Sanmina’s Response to Paragraph 105: Undisputed.**

106. *The presentation purported to explain Sanmina’s supply chain tools that would be available to Dialight. [Rader Decl. Exs. 67; 68].*

**Sanmina’s Response to Paragraph 106: Disputed.** These tools were described as Sanmina’s supply chain tools; neither Rader Exhibit 68 nor any testimony states that Dialight would be

allowed to use these tools. *See also* Fact no. 107 (undisputed). Indeed, Luis Ramirez confirmed this. [Ramirez 78:11-20.]

107. *Bob Green testified that Sanmina presented the supply chain tools as ones Sanmina had, and that “I’m sure we presented them that if they were needed we would use them . . . I would – if I understand it correctly, that Dialight would assume or they would expect – if we are presenting it, then – as our capabilities, then they would expect we would – we could use them, I would assume so.” [Green 115:11-25].*

**Sanmina’s Response to Paragraph 107: Undisputed.**

108. *Dialight relied on this presentation, because supply chain management was “extremely important to [Dialight].” [Khanbabi 31:6-9].*

**Sanmina’s Response to Paragraph 108: Disputed.** This citation is to Fariyal Khanbabi’s testimony, but she testified that she was responsible for looking at the financial model behind the decision and admitted that she was not involved in the negotiation of the MSA. [Khanbabi 21:3-11; 113:1-2.]

109. *Despite Sanmina’s representations about the supply chain tools it possessed, Sanmina internally observed that the materials group in Guadalajara “barely uses any of the tools given to them in Oracle.” [Rader Decl. Ex. 69].*

**Sanmina’s Response to Paragraph 109: Disputed.** Objection: Hearsay. Sanmina objects to the use of Rader Exhibit 69 on the ground that it is hearsay within hearsay. It shows someone on Sanmina’s Sales team, Mark Strangie (who was not deposed), relaying what two other people (one stationed in New Hampshire and the other in Ottawa (Giggey 135:21-137:12)) told him about plant operations in Guadalajara (not specifically pertaining to Dialight). There is no showing that anything Mr. Strangie, or the people whose comments he was relaying, said would qualify as an opposing party’s statement under FRE 801(d)(2). The only person questioned about this document who had any information on this issue was Marco Gonzalez, who testified that it could not possibly be accurate: “we couldn’t possibly run almost a \$2 billion operation in

Mexico without using Oracle as the primary tool for MRP, shipping, receiving, and so on. Just impossible.” [Gonzalez 145:16-24.]

110. *Kinaxis is an example of Sanmina not using the supply chain tools it represented it would use. As explained by Sanmina’s own Supply Chain manager Tom Sugai, Kinaxis’s Rapid Response tool allows Sanmina to run what-if scenarios. [Sugai 73:16-75:19].*

**Sanmina’s Response to Paragraph 110: Disputed.** There is no citation for the first sentence, which is false and can be shown to be false based on Dialight’s own document production. [Response to Fact Nos. 111-113; Camacho Supplemental Decl. ¶ 6, Exh. 3-5.] The description of what Kinaxis does (second sentence) is undisputed.

111. *At Sanmina, Rapid Response is run at the plant level. [Sugai 75:12].*

**Sanmina’s Response to Paragraph 111: Undisputed.**

112. *In its September 22, 2015 presentation to Dialight, Sanmina stated it had Rapid Response available. [Rader Decl. Ex. 68 at 3].*

**Sanmina’s Response to Paragraph 112: Undisputed.**

113. *Sanmina did not run Kinaxis for Dialight because Sanmina wanted Dialight to pay more to use it (which was not disclosed to Dialight prior to signing the MSA); but Dialight thought it “was a fundamental tool that [Sanmina] should use in order to deal with a business as complex as Dialight.” [Ramirez 80:7-18].*

**Sanmina’s Response to Paragraph 113: Disputed.** The only evidence offered on this point is Mr. Ramirez’s (Dialight’s COO) equivocal testimony, in reference to “Kinaxis RapidResponse,” that “. . . it’s possible, but I don’t believe that those tools were used.” [Ramirez 76:22-24.] But they *were* used and the results were regularly provided to Dialight. [Camacho Supplemental Decl. ¶¶ 4-6, Exs. 1-5.] Indeed, Dialight’s reliance on Mr. Ramirez’s vague testimony on this point is particularly misleading given that numerous contemporaneous documents (many produced by Dialight) demonstrate that Kinaxis was used. [*Id.*] Also contrary to Ramirez’s testimony (Ramirez 79:18-80:2), Sanmina did not demand additional payment for running Kinaxis scenarios. [Camacho Supp. Decl., ¶ 7.]

114. *When Dialight and Sanmina were negotiating the MSA, there were multiple instances where Sanmina internally discussed lying to Dialight to avoid losing the potential business and give Dialight the message that Sanmina was unified in its support of the Dialight opportunity. [Rader Decl. Exs. 26; 56; 57; 113; 228].*

**Sanmina’s Response to Paragraph 114: Disputed.** Per the cited exhibits, this raises two issues addressed at length in Sanmina’s briefs: plant 4 space allocations and Dialight credit-worthiness. As noted in the briefing, Dialight did not allege in its complaint that either of these issues fraudulently induced it to enter into the MSA even though Dialight knew how the placement of its paint line and CNC machines was handled and, if any credit constraints affected Dialight’s operations, it would have known of those as well. To address the exhibits specifically – none of which show anyone lying to anyone:

Rader Exhibits 26, 113 and 228 are internal discussions concerning finding the space to handle Dialight’s paint and CNC operations in-house (Rader Exhibit 26 discusses the possibility of using a third-party vendor). There were space constraint issues that were fully discussed with Dialight (Freid 198:23-201:17; Ex. 265) and the MSA disclaims any representation that Sanmina offered Dialight any specific space (Fact no. 28). Indeed, Freid acknowledged that the parties had not identified the space to be used for Dialight’s work prior to execution of the MSA. [Freid 203:10-204:5 (“Plant 4 space planning issues were not resolved prior to the execution of the MSA.”).] Furthermore, even during the MSA negotiation process, Dialight was unsure how it would address the painting of Sanmina-produced products, and was considering the possibility of using a third-party vendor. [Exs. 250, 251, 266; Rader Ex. 44; Freid 108:17-109:7, 134:22-136:6.] Sanmina did, in fact, find space to accommodate those operations. [See Ex. 266 (“This is a reasonable NRE charge given the high complexity of this program. Brian [Smillie - Sanmina P4] is “going the length to meet his commitment of adequate paint/CNC space”)]. So any Sanmina representation that it would have the space to accommodate the paint lines and CNC machines was true.

Dialight also mischaracterizes Rader Exhibit 26. Bob Green's email states that Sanmina needs to "keep this in house." In the context of his email exchange with Chris Nelson, another Sanmina business development person, the word "this" plainly refers to the paint line and CNC machines; it does not say anyone should lie to Dialight.

Rader Exhibits 56 and 57 pertain to Mr. Soule's concerns about Dialight's credit-worthiness (expressed around 6 months before the MSA was signed). These concerns were addressed in a discussion (five months before the MSA was signed) with Dialight's COO Fariyal Khanbabi (Soule 36:5-48:8; 118:3-120:13; Ex. 385), and the actual credit terms were fully negotiated (Soule 61:13-65:4; Ex. 391) and memorialized in the fully-integrated MSA (Ex. 24, § 11.6). Dialight also admits that Sanmina did not breach the MSA credit provisions (Sutsko 364:21-365:5; Harris 45:8-19).

115. *On September 9, 2015, Sanmina's Director of Global Treasury, Risk, & Credit wrote to the Sanmina sales team "If I may throw my 2 cents in, LED companies are a dime a dozen, and they all feel they have their special niche . . . Personally, I don't see much that's attractive here." [Rader Decl. Ex. 54].*

**Sanmina's Response to Paragraph 115: Undisputed.** But all of the back-and-forth in Dialight's proposed fact nos. 115-122, which occurred six months before the MSA was signed, precede a call in which Brandon Soule and Brian Casey of Sanmina discussed Sanmina's credit concerns with Dialight CFO Fariyal Khanbabi and resolved them to Sanmina's satisfaction. [Soule 36:5-48:8; 81:22-83:6; 118:3-120:13; Ex. 385.]

116. *On September 19, 2015, after Dialight attempted to set up a meeting with the Sanmina finance team, Mark Strangie instructed Bob Green to "[t]ell the customer that we can't get to aligning finance until at least Wednesday. Tell our people the same thing. We see how the meeting goes Tuesday and then if we need them to talk, we do it after Tuesday's discussion. I am planning on altering Brandon [Soule's] slides. At the end of the day, this is our job to sell and win this deal, not finances or Erik's group. If we win the deal and it's a piece of shit then I will own that." [Rader Decl. Ex. 53].*

**Sanmina's Response to Paragraph 116: Undisputed.**

117. On September 22, 2015, Brandon Soule informed the Sanmina sales team he was withdrawing his agreement to extend any credit to Dialight. [Rader Decl. Ex. 54].

**Sanmina's Response to Paragraph 117: Undisputed.** But, again, this precedes Soule's call with Ms. Khanbabi on September 25 in which his concerns were addressed. [Soule 37:9-16.]

118. In response, Erik Swennumson wrote "We made commitments today to a company based on your credit assessment." [Rader Decl. Ex. 54].

**Sanmina's Response to Paragraph 118: Undisputed.**

119. On September 23, 2015, Mike Giggey wrote to Erik Swennumson, "Hey Mr [sic] Deal . . . I just talked with Chuck K on this he's pretty fired-up at Brandon [Soule] and Brian [Casey] . . . Since we've not been awarded the business yet not communicating none of this to Dialight." [Rader Decl. Ex. 56].

**Sanmina's Response to Paragraph 119: Undisputed.**

120. After setting up a call between Sanmina's finance team and Dialight's then-CFO Fariyal Khanbabi, Bob Green and Mike Giggey discussed listening in on the call and make sure the finance team did not reveal their true opinions on the Dialight account. [Rader Decl. Ex. 122].

**Sanmina's Response to Paragraph 120: Disputed.** Objection: Mischaracterizes the evidence. The cited document does not say anything about concealing anyone's true opinions. It says Mr. Giggey "sent a separate note to them to keep professional and just get questions answered."

121. Bob Green observed that they would "probably need to at least let our guys know if we were going to listen in." [Rader Decl. Ex. 122].

**Sanmina's Response to Paragraph 121: Undisputed.**

122. Prior to the call, on September 25, 2015, Mike Giggey told Brian Casey and Brandon Soule "Dialight does NOT know SANM Credit has changed course, so please do not comment on it. We've positioned this call as final SANM finance checkpoint with Dialight while they review various RFP's for outsourcing award." [Rader Decl. Ex. 57].



**Sanmina's Response to Paragraph 122: Undisputed.**

123. *Brandon Soule and Brian Casey followed Mike Giggey's instructions and did not inform Dialight that Sanmina credit had changed course. [Soule 99:18-100:4].*

**Sanmina's Response to Paragraph 123: Disputed.** Objection: Mischaracterizes the evidence.

Dialight mischaracterizes Mr. Soule's testimony. He testified that Sanmina credit had not changed course because "there wasn't a course to change at that point." [Soule 99:18-22.]

124. *Then-Dialight CEO Michael Sutsko testified that knowing the true opinions of the Sanmina finance team would have affected his decision to outsource with Sanmina because Dialight was "relying on the credit facilities to scale and build the business . . . we had understood that the credit extension would have a direct relationship on the, their ability or desire to order and hold raw materials to meet the production and quality delivery requirements, and that knowing that the finance team didn't support the whole program would have caused concern that they would continuously undermine the ability to execute." [Sutsko 349:18-350:22].*

**Sanmina's Response to Paragraph 124: Undisputed.** But Mr. Sutsko also admitted that Sanmina complied with the MSA credit terms. [Sutsko 364:15-365:5.]

125. *In his 30(b)(6) deposition, Bob Green testified that the call with Fariyal Khanbabi was not an example of Sanmina being transparent with Dialight. [Green 22-24].*

**Sanmina's Response to Paragraph 125: Undisputed.**

126. *Credit would remain an issue throughout the duration of the relationship and the Dialight account was put on a credit hold multiple times. [Rader Decl. Exs. 60; 61; 62; 63; 64; 65].*

**Sanmina's Response to Paragraph 126: Disputed.** Dialight did not question any witness about any of the contents of Rader Exhibits 60, 61, 62, 63, 64, and 65. There is thus no testimony associated with these exhibits. There was, however, testimony concerning credit extensions and credit holds. The testimony was that any credit hold was transitory and did not affect production or ordering. [Soule 36:5-48:8; 118:3-120:13; Sutsko 364:21-365:5; Harris



45:8-19; Ex. 385.] Credit issues also were not alleged in Dialight’s complaint despite the fact that, if they truly were an issue, Dialight would have known about them. And, consistent with the Sanmina testimony, Rader Exhibit 64 shows consistent increases in Dialight’s credit line from the original \$10 million to, ultimately, \$50 million.

127. *On at least one of these occasions, Sanmina chose not to inform Dialight it was even on credit hold. [Rader Decl. Ex. 65].*

**Sanmina’s Response to Paragraph 127: Disputed.** Sanmina objects to the absence of an English translation. *Heredia v. Americare, Inc.*, 2020 U.S. Dist. LEXIS 122880, at \*11 (S.D.N.Y. July 13, 2020) (Spanish-language documents unaccompanied by certified translations “are inadmissible and will not be considered by the Court”); *see also Sicom S.P.A. v. TRS Inc.*, 168 F. Supp. 3d 698, 709 & n.9 (S.D.N.Y. 2016) (foreign-language documents, even if authenticated, “cannot be reviewed or relied on by the Court . . . unless they are accompanied by certified translations into English”); *NV Petrus SA v. LPG Trading Corp.*, 2017 U.S. Dist. LEXIS 69935, 2017 WL 1905820, \*2 (E.D.N.Y. May 8, 2017) (reminding parties “that they must provide certified translations of any foreign language documents that they seek to introduce at trial”); *Quiroga v. Fall River Music, Inc.*, 1998 U.S. Dist. LEXIS 19039, 1998 WL 851574, at \*2 n.3 (S.D.N.Y. Dec. 7, 1998) (“Translations of foreign-language documents which are not certified as true and accurate translations and which do not even identify the translator are not properly authenticated and are not admissible evidence.”).

Further, the English part of the document to which this “fact” apparently refers states: “No, do not inform Dialight, *we will work internal [sic] to get the account off hold.*” [Rader Ex. 65, p. 5 (emphasis added).] So there is nothing nefarious about this exchange; it is consistent with deposition testimony that Sanmina generally addressed credit holds internally. [Gonzalez 54:15-56:2; Soule 85:2-86:12.]

128. *In October 2015, Robert Freid asked Bob Green for Sanmina’s wage information to use in financial modeling. [Rader Decl. Ex. 123].*

**Sanmina's Response to Paragraph 128: Disputed.** Objection: Mischaracterizes the evidence. Rader Exhibit 123 is a request for Guadalajara area wage rate information, not Sanmina wage rates.

129. *Mark Strangie emailed Jorge Rios and Ramiro Garcia and asked "[c]an we come up with some type of 'bullsh\*t' matrix with a few general ideas to try and make him go away on this?" [Rader Decl. Ex. 123].*

**Sanmina's Response to Paragraph 129: Undisputed.**

130. *Green shared the "bullsh\*t" matrix with Robert Freid. [Rader Decl. Ex. 123].*

**Sanmina's Response to Paragraph 130: Disputed.** Objection: Argumentative;

Mischaracterizes the evidence (Rader Exhibit 123 does not even show what was shared).

Dialight did, in fact, produce the matrix to which Rader Exhibit 123 pertains. It is attached to the Declaration of Jorge Rios as Exhibit A. It shows that Sanmina provided a matrix of general market rates, and not only is there no evidence that anything in it was false or misleading, but the only person who was asked about it was Jorge Rios, who testified: "My understanding was to give him an explanation, some sort of explanation of the information he was looking for." [Rios 187:14-22.] Mr. Rios did not testify that anything in the matrix was inaccurate (and in fact Dialight's counsel did not even ask that question). In fact, there was nothing inaccurate in the matrix. [Rios Decl. ¶ 3.]

131. *Sanmina also continuously misled Dialight about Plant 4's capability to handle the Dialight business. [Sutsko 351:6-11; Rader Decl. Ex. 43].*

**Sanmina's Response to Paragraph 131: Disputed.** Objection: Vague; Argumentative;

Mischaracterizes the evidence. As to the mischaracterization objection: Mr. Sutsko (under questioning from Dialight's counsel) was asked "Before entering into the MSA, were you aware that Plant 4's view was that Plant 4 would not have the capacity long term for paint only?" In addition to the fact that no affirmative misrepresentation is shown, this is referring to Rader Exhibit 43, which discusses the known fact that Sanmina "didn't have machining capability, and we only had a limited amount of paintline capacity . . . ." It is undisputed that Dialight *knew*

*from the beginning* that Sanmina’s painting capability was inadequate (Ex. 128, p. 12 (Freid report to Dialight dated 9/28/15)), which is why, at least since November 2015, it had planned to purchase a new paint line for P4 (Ex. 251, p. 4), and it knew Sanmina did not have sufficient machining capacity (Ex. 128 at p. 19), which is why that same report (Ex. 251) plans to transfer Dialight’s CNC machines to Sanmina (Ex. 251, p. 4). [Accord, MSA §§ 13.1(a), 19.7(a); Ex. 266; Rader Ex. 44.]

It is also a fact that P4 space issues were not resolved prior to the execution of the MSA, so Dialight could not have been induced to sign the MSA based on such representations. [Freid 203:10-204:5 (“Plant 4 space planning issues were not resolved prior to the execution of the MSA.”); MSA §19.7(a) (requiring Sanmina to provide floor space plans following execution of the MSA).] And, of course, if Dialight did feel misled by floorspace planning issues, or where its operations were located, it could have alleged those claims in its complaint, but it did not.

132. *Sanmina reported to Robert Freid that there was “excellent space available – 25k ft<sup>2</sup> [sic]” for the MSD business. [Rader Decl. Ex. 124]*

**Sanmina’s Response to Paragraph 132: Disputed.** Objection: Mischaracterizes the evidence. Sanmina objects to Dialight’s mischaracterization of Rader Exhibit 124, which does not state that Sanmina reported anything to Mr. Freid; this appears to be Mr. Freid’s conclusion. The same document also states that Sanmina’s existing P4 paint capacities were not adequate except as a short-term solution and that a “consigned” Dialight paint system was the best option (in other words, Dialight would have to buy and install a paint system at P4, which it did, and for which it never complained the space was inadequate or unsuitable). [Rader Ex. 124.] MSD means “Mechanical Systems Division.” [Gonzalez 41:12-13.] Plant 4 was an MSD plant. [Green 57:15-20.] Plant 2 was an IMS plant. [Green 55:14-56:2.]

133. *These representations were important to Dialight, because if Dialight “didn’t have the ability to machine and paint and finish [it’s] metals in the factory, it would have impacted [Dialight’s] choice to certainly go to Guadalajara if not overall.” [Sutsko 352:7-12].*

**Sanmina’s Response to Paragraph 133: Disputed.** Vague; Mischaracterizes the evidence.

The vagueness objection is asserted because it is not clear to which “representations” Dialight refers. This mischaracterizes the evidence because Rader Exhibit 124 plainly states that Sanmina did not have existing painting capacity suitable for Dialight and, in fact, Mr. Freid testified that the ultimate plan was to install a new Dialight-purchased paint system in P4 and to move CNC machines from Dialight’s Ensenada facility to P4. [Rader Ex. 124; Freid 42:25-44:4; Ex. 251.] Furthermore, in December 2015, Mr. Freid traveled to Guadalajara to “survey” an outside painting company “as a possible option for painting the casted products.” [Freid 157:2-15; 158:10-25 (also referenced in Rader Ex. 24).] And, again, if there had been a misrepresentation on any of these issues, Dialight could have so alleged in its complaint.

134. *In January 2016, Bob Green sent an internal email to Chris Nelson expressing his view that personnel from Sanmina Plant 4 should not join an internal call about Dialight because “My fear is that that [sic] MSD will dismiss this quickly as they have not been completely on board with the overall opportunity . . . If we completely refuse to bring into [sic] the CNC and paint line, it will likely jeopardize the entire engagement.” [Rader Decl. Ex. 126].*

**Sanmina’s Response to Paragraph 134: Disputed.** Objection: Mischaracterizes the evidence.

Mr. Green doesn’t state that Plant 4 personnel should not join an internal call about Dialight. [Rader Ex. 126.] Rader Exhibit 126 also reconfirms that, at least by January 2016 (and Ex. 130 indicates several months before) Dialight intended to “pay for and install a separate paint line . . . .” [Rader Ex. 126.]

135. *Bob Green’s concern over Plant 4 were not unfounded; on January 18, 2015, Patrick Macdonald wrote in an internal Sanmina email “We need to get agreement on this before you do anything. I’m not sure where we would put another paintline in P4, and I’m not sure I would want to. Every square foot of space in that factory needs to be utilized in the best way to make money. I can’t see how that’s going to work here.” [Rader Decl. Ex. 126].*

**Sanmina’s Response to Paragraph 135: Disputed.** Objection: Argumentative. The statement

“Bob Green’s concern over Plant 4 were [sic] not unfounded” is argument and not appropriate

for the statement of facts. Moreover, the citation to Rader Exhibit 126 is misleading, as it leaves out Mr. Macdonald's conclusion: "Anyway, let's discuss," which shows he was open to further discussion on the subject. There is also a typo in this proposed fact; the date was January 18, 2016. Finally, many of these facts seem to attack Sanmina for the effort it undertook to figure out how to fit Dialight's machining operations into Sanmina. Ultimately, the wall between Plants 4 and 6 was moved to create more room in Plant 4 to accommodate Dialight's needs. [Gonzalez 46:2-47:23; Carral 53:1-55:2; 57:21-13; 61:6-20.] Dialight cannot point to any evidence that it had any complaints about this solution – and it alleged none in its complaint.

136. *In late February 2016, Sanmina realized the space it had committed to Dialight in Plant 6 was no longer available; Brian Smillie emailed Ramiro Garcia "Can you help me understand who controls Plant 6 warehouse space? I am being requested to move out and shrink to 6k sq ft in total by March 7 for other customers that are planned to go in this area from Plant 6 projects . . . not sure who may not be on the same page but did we not just commit this area to Dialight for 35k-40k sq ft?" [Rader Decl. Ex. 127].*

**Sanmina's Response to Paragraph 136: Disputed.** Objection: Argument. Dialight did not ask any witness about Rader Exhibit 127. Sanmina has no objection to the court considering the document but the characterization that Sanmina realized the space was no longer available is pure argument. As noted above, ultimately the wall between Plants 4 and 6 was moved to accommodate Dialight (Gonzalez 46:2-47:23; Carral 53:1-55:2; 57:21-13; 61:6-20), and if Dialight believed it was aggrieved by the process of locating space for its operations, it could have alleged that issue in its complaint – it surely knew where its lights were being made.

137. *Bob Green and Jaime Glez had an IM conversation:*

*Jaime Glez: Just saw the e-mail from Brian regarding space that does not look good for Dialight.*

*Bob Green: What does it mean. Thought Javier committed the space?*

*Jaime Glez: I don't know man but it does not sound good.*

*[Rader Decl. Ex. 128].*

**Sanmina's Response to Paragraph 137: Undisputed.**

138. Brian Smillie later commented "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." [Rader Decl. Ex. 41].

**Sanmina's Response to Paragraph 138: Undisputed.**

139. Bob Green recognized the importance of this development; noting that "It would be a deal killer to lose the space." [Rader Decl. Ex. 42].

**Sanmina's Response to Paragraph 139: Disputed.** Objection: Argument. The statement "Bob Green recognized the importance of this development" is argument and not appropriate for the statement of facts. Sanmina does not object to the court considering the contents of Rader Exhibit 42, which further explains Rader Exhibit 26, in which Mr. Green reaffirmed that the paint and CNC operations needed to be kept in-house at Sanmina. [See, e.g., Fact no. 143.]

140. On February 29, 2016, Chris Nelson wrote internally "The IMS award from Dialight was contingent on Sanmina supporting the CNC and painting requirements on the Guad campus and specifically in the Plant 6 space. It was discussed numerous times with the customer, on conference calls, site visits to Guad, and even during our previous visits to our customer sites in Mexico and New Jersey. We negotiated the agreement knowing this requirement." [Rader Decl. Ex. 25].

**Sanmina's Response to Paragraph 140: Undisputed.**

141. Bob Green also acknowledged on March 1, 2016 in an email to Mike Giggey and Mark Strangie that "the agreement with Dialight is based on Sanmina's commitment to support a paint line and CNC machines in Plant 6." [Rader Decl. Ex. 129].

**Sanmina's Response to Paragraph 141: Disputed in Part.** Although Sanmina does not dispute that the email says this, as Mr. Freid acknowledged, Plant 4 space planning issues were not finally resolved until after the MSA was signed. [Freid 203:10-204:5.] Ultimately, Plant 6 space was incorporated into Plant 4 by moving a wall between the plants. [Gonzalez 46:2-47:23; Carral 53:1-55:2; 57:21-13; 61:6-20.]

142. On March 1, 2016, Patrick Macdonald wrote "WE, MSD, were never involved in the space allocation discussion. All I know is that we originally declined this opportunity because we didn't have capacity . . . All the communication I have seen is that there was 35k of space being allocated from IMS to this project, and it was shown to Dialight. Now they are at the point of signing up, and the space is no longer there?" [Rader Decl. Ex. 43].

**Sanmina's Response to Paragraph 142: Undisputed.**

143. On March 3, 2016, Bob Green wrote to Chris Nelson "Bottom line is we need to keep this in house, or the whole relationship blows up." [Rader Decl. Ex. 26].

**Sanmina's Response to Paragraph 143: Undisputed.**

144. Because Sanmina did not disclose the space set aside for Dialight was no longer available, Dialight had no other choice but to pay increased NRE costs to expand Plant 4 to make space for the Dialight business. Dialight was forced to pay \$978,144.49 [Rader Decl. Exs. 44; 45].

**Sanmina's Response to Paragraph 144: Disputed.** Objection: Hearsay. There was no testimony on Rader Exhibits 44 and 45. Rader Exhibit 44 is authored by Dialight and cited for its truth. It is not clear who prepared Rader Exhibit 45. It is not clear whether either of these documents represents a final allocation of NREs. The cited documents also do not support Dialight's claim that it paid \$978,144.49 to expand Plant 4. The figure cited in Rader Exhibit 44 is for all NREs – not for moving a wall. Rader Exhibit 45 shows an allocation of NREs between Dialight and Sanmina, with Sanmina being allocated expenses for "Current Warehouse P4 Relocations, Expansion and MRO Tool Cribs." [Rader Ex. 45, p. 4.] This is consistent with testimony that Sanmina paid most of the costs associated with the P6/P4 reconfiguration. [Carral



61:18-20.] Rader Exhibit 45 also shows that most of the \$978k paid by Dialight was installation costs for Dialight equipment. Finally, all of these expenses were known and negotiated to the satisfaction of both parties. [Rader Ex. 44 (“Thank you for your excellent support to have the NREs negotiation completed”).] [See also Ex. 266 (Freid memo describing all of the charges related to P4 as “a reasonable NRE charge . . .”).] That Sanmina appears to have paid for the wall relocation is also consistent with Freid’s testimony that Sanmina (not Dialight) found the “costs of other options, such as building a new plant unacceptable.” [Freid 205:15-206:24.] Nor was Dialight unaware that it would have to pay substantial NREs. Mr. Freid wrote in his initial report that Dialight should anticipate substantial NRE charges, including for special tooling and set-up. [Rader Ex. 130, p. 3.] Finally, despite all of this back-and-forth, confirming that Dialight was contemporaneously aware of this issue, Dialight’s complaint does not mention it.

145. *The \$978,144.49 included the cost of building an external oven enclosure for the paint line, adding a fire protection system to the new area, relocating an existing Sanmina client, installing CNC machines, and other fixtures. [Rader Decl. Ex. 45].*

**Sanmina’s Response to Paragraph 145: Disputed.** Objection: Hearsay. Again, no witness was asked about Rader Exhibit 45, and there is thus no evidence as to who prepared it, or that it is a final document or even accurate. Assuming that it is accurate and final, Dialight’s characterization of it is wrong. At a minimum it states that the charge for relocation of a current Sanmina client is to be borne by Sanmina.

146. *Dialight and Sanmina signed the MSA on March 4, 2016 [Rader Decl. Ex. 37] dated March 7, 2016. [Rader Decl. Ex. 21].*

**Sanmina’s Response to Paragraph 146: Undisputed.**

147. *The MSA contained explicit representations in the recitals regarding Sanmina’s existing capabilities that were the basis of Dialight’s selection of Sanmina as its manufacturing partner. [Rader Decl. Ex. 21; Giggey 216:24-25].*

**Sanmina’s Response to Paragraph 147: Disputed.** The MSA speaks for itself. [Ex. 24.] There is no evidence cited in support of this “fact” that any particular representation was “the



basis of Dialight's selection of Sanmina . . . ." There is also nothing specific about the Recitals. The cited Giggey testimony merely states "I just thought it was kind of a, just a background to, to the opportunity."

148. *Recital B of the MSA provides: "Sanmina is an expert in the contract manufacturing field for LED products and components." [Rader Decl. Ex. 21, § B].*

**Sanmina's Response to Paragraph 148: Undisputed.**

149. *Recital D of the MSA provides:*

*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.*

*[Rader Decl. Ex. 21, § D].*

**Sanmina's Response to Paragraph 149: Undisputed.**

150. *The language in Recital D referring to "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" refers to a special process typically found in high mix, low volume delivery systems, "Supermarket" Work-in-Process, and is a clear indication of high mix, low volume capabilities [Rader Decl. Ex. 38 at ¶ 42] and was the most important recital. [Freid 268:3-270:20].*

**Sanmina's Response to Paragraph 150: Disputed.** Objection: Best evidence (the MSA speaks for itself); Hearsay. Rader Exhibit 38, an unauthenticated expert report, is hearsay. Further, Dialight's only evidence that Recital D was the most important recital is the testimony of non-party Robert Freid, who also testified that he "wasn't negotiating this MSA. I was providing from time to time some observations." [Freid 173:9-19.]

151. *Bob Green testified in his 30(b)(6) deposition that Sanmina understood Recital D was a determining factor in Dialight's selection of Sanmina. [Green 163:13-22].*

**Sanmina's Response to Paragraph 151: Disputed.** Sanmina objects to the cited Robert Green testimony on the ground that the question called for speculation (and it was timely objected to on that ground). [Green 163:13-22.]

152. *Sanmina did not, in fact, have high mix, low volume capabilities at its Guadalajara Plant 2; 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, or at any time afterwards during its two years of services to Dialight." [Rader Decl. Ex. 38 at ¶ 52].*

**Sanmina's Response to Paragraph 152: Disputed.** Objection: Hearsay. Sanmina objects to the use of Rader Exhibit 38 on the ground that it is hearsay. It also contradicts Freid's non-expert writings. Freid actually confirmed prior to the execution of the MSA that Sanmina *did indeed* have this experience (Ex. 128, pp. 9, 12, 21), and his claim to the contrary is not a proper expert opinion because he purports to opine on a factual issue (*i.e.* did Sanmina have HMLV services in place at the time they executed the contract, or at any time afterwards during its two years of services to Dialight?). Mr. Freid also cannot testify to this issue factually because he simply purports to be summarizing what he read in depositions to reach this conclusion. [12-26-21 Freid 129:5-130:25.] His sole support for the opinion consists of the following: "The fact that the transfer of Dialight's HMLV program turned quickly disastrous in quality and delivery makes it self-evident that Sanmina falsely represented Plant 2 as having HMLV expertise." [Rader Ex. 38, ¶ 53; *see also* 12-26-21 Freid 46:1015 (opinion based on performance and witness testimony).] In other words, because the results were bad, Freid surmises that Sanmina did not have the expertise to perform well.

Freid also ignores information that Dialight confirmed that Sanmina actually had the experience it said it did:

Q. Okay. Do you – do you have any understanding of how many other customers Sanmina had at the time of the Dialight relationship that were high mix/low volume customers?

\* \* \* \*

A. Okay. There were – I couldn’t give you an exact number, but it was described to me by the Dialight folks as being in multiple, multiple customers with high mix/low volume and at least one that had even more complexity in terms of their – of their mix than Dialight.”

[12-16-21 Freid 46:16-47:3.] And Freid was right about what Dialight had determined.

Dialight’s former CEO testified and then re-testified that he believed (and still believes) that Sanmina had experience with high mix/low volume manufacturing:

Q. Sanmina represented to Dialight that it had experience with high mix low volume production; correct?

A. I believe so.

Q. Okay. Do you believe that representation was false?

A. I believe that they -- no, I believe that they did have experience with it.

[Sutsko 108:7-15.]

Q. Okay. Go, just one other page I want to look at. It’s the page that ends with 533.

A. 533. Okay.

Q. And again I just want to focus on the very first part of this. Under criteria it says, “High mix low volume focus,” and then under, “Sanmina Guadalajara, it says, quote, “True focus in HM/LV industrial products and components. Multiple LED products customers including one with 3500 SKUs across four product families, many less than 50 units per month. Work cell production experience with leak test. Paint booths (3) equipped for quick color change and small qual” -- “quantities.”

Do you have any reason to believe any of those facts stated there were inaccurate?

A. No. At the time, no, I would believe those were accurate.

Q. Again I’m not asking you at the time. I’m asking you, as you sit here today, do you have any reason to believe any of those statements are inaccurate?

A. Nope. I said no in case you didn’t hear.

[Sutsko 149:22-151:2 (testifying on Freid’s 9/28/15 report (Ex. 128).]

*153. Multiple Dialight and Sanmina personnel who spent a significant amount of time at Sanmina’s Guadalajara campus testified that Sanmina did not have high mix, low volume*

*capabilities. [Sutsko 101:19-24 (Sanmina did not have the capability “to manage a high mix low volume type of operation”); Escamilla 75:1-3 (Sanmina’s “manufacturing system . . . was aimed at high volume, low mixed parts”); Rader Decl. Exs. 39 (internal Sanmina email stating “obviously we had not made the right decision on what needs to be manufactured in which location based on capabilities, expertise”); 40 (Luis Ramirez contemporaneously states that Plant 2 “did not know how to deal with the low volume high mix complexity of our products”); 130 (internal Sanmina message stating Plant 2 has no idea what Dialight’s requirements are); 131 (Luis Ramirez recaps conversation with Jorge Rios where Rios stated “the current mix is more challenging due to the ATOs and low volume configuration” and Ramirez “reminded them their statement that low volume high mix is their sweet spot”)].*

**Sanmina’s Response to Paragraph 153: Disputed.** Objection: Hearsay as to Rader Exhibit 40.

As to the balance: Mischaracterizes the evidence.

First, there is no testimony cited of a single Sanmina employee who “testified that Sanmina did not have high mix, low volume capabilities.”

The only statements attributed to Sanmina are: (i) that Sanmina did not make the right decision based on capabilities, expertise; (ii) that the Dialight business was more challenging than Sanmina expected.

As to the first statement, the author of the email, Mr. Saadat, was questioned extensively about this statement. He testified that this was an issue unique to Dialight due to “[t]oo many configurations, poor demand management, too many priorities changes, and too many surprise shortages to AVL [Approved Vendor List] controlled by Dialight.” [Saadat 36:12-37:2.] And then the following Q&A occurred:

Q. And who would you say was responsible for these various issues?

A. Dialight.

Q. For all of them?

A. Yes.

[Saadat 37:3-7.] The second statement is hearsay (presented as an email by Dialight’s COO recounting a conversation with Jorge Rios), but is also clearly discussing specifically the “Q1 [2018] plan.” It is not a general statement.

This proposed “fact” also appears to collect all of the evidence Dialight can muster that Sanmina misrepresented its high mix low volume experience. The evidence is not clear and convincing; most of it is not even admissible evidence.

As to the testimony by Dialight witnesses, Dialight quotes the testimony of its former CEO Mr. Sutsko at page 101 of his transcript; seven pages later, as noted above, he testified as follows: “Q: Sanmina represented that it had experience with high mix low volume production; correct? A. I believe so. Q. Okay. Do you believe that representation was false? A. I believe that they -- no I believe that they did have experience with it.” [Sutsko 108:7-15.] He then gave the same testimony 40 pages later. [Sutsko 149:22-151:2.] And that really explains the difference between evidence of existing facts and representations of ability to perform. Sutsko admitted that Sanmina had the experience it touted; he just didn’t think Sanmina handled Dialight’s business properly. The rest of the testimony is more of the same – not testifying about Sanmina’s experience, but about its apparent inability to handle Dialight’s ways of doing business.

Every Sanmina witness who was asked testified factually (most in great detail) that Sanmina had HMLV capabilities as summarized in Fact no. 52. [Green 45:12-15; Carral 26:7-29:11; 31:16-32:20; 38:16-22; Sugai 18:5-17; Eulau 17:24-20:7; Gonzalez 26:5-30:18; Camacho 25:10-27:1; Rios 65:15-66:6; 88:11-93:18.] The cited Dialight witness testimony says that Sanmina did not perform (at most, a breach of contract claim) but not that it lied about its experience in HMLV production. There is no admissible witness testimony that Sanmina lied about its prior HMLV experience.

*154. Sanmina also represented in Recital D that it could provide services to Dialight from a single profit center. [Rader Decl. Ex. 21, § D].*

**Sanmina’s Response to Paragraph 154: Undisputed.**

155. *The single profit center portion of Recital D was false when made because Sanmina’s former CEO Bob Eulau and a Sanmina 30(b)(6) witness Bob Green both testified that Plant 2 and Plant 4 were separate profit centers; “they have their own P&L that they have to report up through the organization” and “each plant has to be responsible for their own operations.” [Green 232:18-22; Eulau 24:23-25:7].*

**Sanmina’s Response to Paragraph 155: Disputed.** As addressed in Fact no. 57(c)(i) of Sanmina’s objections to Dialight’s counter-statement, the single profit center representation did not have anything to do with the issue of whether P2 and P4 were on separate P&L’s. Mr. Freid, who inserted that recital (Sutsko 181:10-182:9; 197:8-12; Ex. 137), testified that the issue of whether the plants were on separate P&Ls was never even discussed with Sanmina. [Freid 100:1-101:1.] Freid admitted that the representation was inserted to ensure that there was no markup on materials plant 4 supplied to plant 2 (*id.*) – an issue that would only have been relevant to Freid if he knew that the two plants were, in fact, on separate P&Ls, which the MSA exhibits also confirm. Further, Mr. Green testified that the term “single profit center,” in his understanding, referred to Sanmina. [Green 166:19-167:3.] Dialight’s current CEO agrees. [Khanbabi 253:16-24.] Her predecessor, Mr. Rapp, admitted that it didn’t matter to him either. [Rapp 77:15-78:11.]

156. *Dialight’s then-CEO Michael Sutsko testified he would not have entered the MSA if he knew Recital D was false. [Sutsko 195:8-23, 198:15-199:5].*

**Sanmina’s Response to Paragraph 156: Disputed.** Objection: Mischaracterizes the evidence. The first Sutsko cite above asked Mr. Sutsko whether he would have hired Sanmina if he knew Sanmina was not capable of “provid[ing] manufacturing flexibility” – a question that Sanmina also timely objected to as calling for speculation. Sutsko had already twice testified that he believed – even with the benefit of hindsight – that Sanmina had the experience it claimed, and of course a representation that a company can provide manufacturing flexibility is not actionable as fraud. The second cite is to Sutsko testifying that it would have been “relevant” to him if he knew P2 and P4 were on separate P&Ls, but that fact was self-evident from the exhibits to the

MSA, which presumably Sutsko read before signing the agreement. Sutsko also did not say he would not have agreed to the MSA if he had known – and, of course, the person who inserted that recital admitted he never even discussed whether the plants ran separate financial statements.

157. *When the MSA was executed, Sanmina no longer had the space shown to Robert Freid available and placed Dialight at the very end of the plant. [Freid 51: 13-17].*

**Sanmina’s Response to Paragraph 157: Disputed.** As noted in Fact no. 28, the MSA acknowledges that no space commitments had been made pre-signing (and thus no such commitments could have fraudulently induced Dialight into signing the MSA). [Ex. 24, § 19.7(c).] Further, contrary to Dialight’s argument that the supposedly-promised space was taken away “when the MSA was executed,” Freid testified that he found out the space Sanmina supposedly promised would not be available earlier – “as the contract got closer to getting signed” (Freid 50:16-51:17), and he also admitted that P4 space was not finalized before signing the MSA. [Freid 203:10-204:5.] And, of course, Dialight knew where its operations were located, and did not allege any false representation about it or harm from its space assignments.

#### **Sanmina’s Performance During the MSA**

158. *Sanmina provided services to Dialight from Plant 2 and Plant 4 in Guadalajara, Mexico. [Khanbabi 33:1-5].*

**Sanmina’s Response to Paragraph 158: Undisputed.**

159. *Plant 2 is part of Sanmina’s Integrated Manufacturing Services Division (“IMS”). [Giggey 269:16-20; Gonzalez 111:6-9].*

**Sanmina’s Response to Paragraph 159: Undisputed.**

160. *Plant 2 handled, among other things, top level assembly and testing. [Rader Decl. Ex. 132 at 6].*

**Sanmina’s Response to Paragraph 160: Undisputed.**

161. *Plant 4 is part of Sanmina’s Manufacturing Services Division (“MSD”). [Green 188:4-9].*

**Sanmina’s Response to Paragraph 161: Undisputed.**

162. *Plant 4 housed Dialight's CNC machines and paint line. [Rader Decl. Ex. 124].*

**Sanmina's Response to Paragraph 162: Undisputed.**

163. *Sanmina shipped products directly to Dialight customers in North America, and to Dialight owned distribution centers in Australia and Europe (which made up approximately 25% of shipments). [Sheehy 67:15-68-5].*

**Sanmina's Response to Paragraph 163: Disputed.** As testified to by Ms. Khanbabi: "all of our products within North America get transacted through distribution and some of our distributors are stocking distributors so there will be inventory that sits on their shelves for a period of time." [Khanbabi 220:6-17.] She also testified that finished goods may go directly to an end customer or may go into the warehouse of distributors. [Khanbabi 234:5-19.]

164. *From the start of the relationship, Sanmina's Plant 2 failed to devote sufficient resources to load the Bill of Materials ("BOM") that Dialight provided. [Rader Decl. Ex. 76].*

**Sanmina's Response to Paragraph 164: Disputed.** Sanmina objects to Dialight's mischaracterization of the cited documents and testimony. Rader Exhibit 76 does not state that insufficient resources were allocated; it is an internal email asking whether more resources have been added, while also noting that Dialight is not sending clean BOMs, and includes a statement that Dialight's concerns were addressed within a week. [Rader Ex. 76.] Mr. Green also testified extensively to the issues with Dialight's faulty BOMs interfering with the BOM loading process. [Green 213:5-217:4.] Also, Rader Exhibit 76 is from 2017, not "the start of the relationship."

165. *The BOM must be loaded into Oracle in order to purchase materials. [Shoemaker 33:20-34:8, 41:11-21].*

**Sanmina's Response to Paragraph 165: Undisputed.**

166. *Sanmina also refused to provide information to Dialight it requested about Sanmina's efforts to fix the issue. [Rader Decl. Ex. 133].*

**Sanmina's Response to Paragraph 166: Disputed.** Sanmina objects to Dialight's mischaracterization of Rader Exhibit 133, which shows Sanmina personnel working to ensure Dialight gets the information it requested, and complains that Sanmina is not receiving



information on what additional BOMs will be provided or when. [Rader Ex. 133, p. 6.] Further, while the brief focuses on the absence of fraudulent inducement allegations in the Dialight complaint, the absence of this “fact” from the Dialight contract claim, despite the fact that the contemporaneous emails reflect Dialight displeasure about the issue, both undermines the validity of this issue and bars Dialight’s reliance.

167. *In April, 2017, Sanmina had still not allocated sufficient resources to load Dialight’s Bill of Materials (“BOM”). Bob Green wrote in an internal email in April 2017 “Yes, the immediate concern/request is Area Light BOMs being loaded. Mainly because we are going into mass production in April, we have had the BOMs for almost 4 weeks and they are still not loaded. Big concern, since currently we are not driving any demand until they are loading into the system. The big picture is we have just received and will continue to receive a huge amount of documentation for Obstruction and Hi Bay. They have zero confidence that we can load them in time.” [Rader Decl. Ex. 76].*

**Sanmina’s Response to Paragraph 167: Disputed.** This proposed “fact” is argument inappropriate for a statement of undisputed facts. Rader Exhibit 76 doesn’t state insufficient resources were allocated; it just reflects Bob Green asking whether more resources have been added. [Rader Ex. 76.] And Mr. Green acknowledges in Rader Exhibit 76 that Dialight is not sending clean BOMs. [*Id.*] Mr. Green also testified that the issue was resolved. [Green 91:18-92:20.]

168. *Earlier, in January 18, 2017, when Dialight asked for information on resources dedicated to loading BOMS, Frank Shoemaker wrote in an internal email “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??” [Rader Decl. Ex. 133].*

**Sanmina’s Response to Paragraph 168: Undisputed** that the email says this. It also discusses working to ensure Dialight gets the information that Dialight requested.

169. *Frank Shoemaker testified he was brought in to assist Bob Green with the Dialight account due to its complexity. [Shoemaker 13:3-12].*

**Sanmina's Response to Paragraph 169: Undisputed.**

170. *Frank Shoemaker was actually brought in to assist with the Dialight account because there were "so many issues going on with the ramp" up of production and Bob Green was "swamped." [Rader Decl. Ex. 130].*

**Sanmina's Response to Paragraph 170: Disputed.** Objection: Mischaracterizes the evidence.

Rader Exhibit 130 doesn't discuss the reason Mr. Shoemaker was brought in (nor is Mr. Shoemaker even on the IM chain). [Rader Ex. 130.]

171. *He was also brought in to help Bob Green "on the Mexico BS" because he was "up to [his] knees in it!!" [Rader Decl. Ex. 134].*

**Sanmina's Response to Paragraph 171: Undisputed,** but note that the cited email is authored by Mr. Green expressing gratitude for the help.

172. *When Bob Green informed Francisco Montero that Frank Shoemaker would be assisting with the account, Francisco Montero noted he had been in meetings with Plant 2 and they had "no idea" what Dialight's requirements were which "really scare[s] us." [Rader Decl. Ex. 130].*

**Sanmina's Response to Paragraph 172: Disputed in Part.** This seems to be cited as evidence of Sanmina incompetence, but it seems more to be a critique of the lack of clarity from Dialight's communications. Dialight does not cite any witness testimony clarifying the issue.

173. *This was the first time in 15-20 years Frank Shoemaker was asked to help manage an account that he did not bring in to Sanmina. [Shoemaker 17:18-18:13].*

**Sanmina's Response to Paragraph 173: Undisputed.**

174. *Section 3.4 of the MSA provides that "SANMINA will achieve an on-time Delivery Rate of 95% or better." [Rader Decl. Ex. 21, § 3.4].*

**Sanmina's Response to Paragraph 174: Undisputed.**

175. *By Sanmina's own measurements, it never came close to achieving a 95% on-time delivery rate, consistently achieving an on-time deliver rate of about 50%. [Rader Decl. Ex. 36; 71; 73; 74; 75].*

**Sanmina's Response to Paragraph 175: Disputed in Part.** It appears that neither party used the MSA OTD provisions to measure OTD. [Giggey 149:20-150:9.] Also, Dialight admitted that it never came close to a 95% OTD rate when it was manufacturing its own products. [Khanbabi 82:7-22.] And, often, Sanmina's inability to deliver came from Dialight's inability to deliver materials needed to complete production. [Gonzalez 149:14-150:7.]

176. *At his deposition, Marco Gonzalez claimed that Section 3.4 of the MSA did not require on-time delivery of anything that fell outside Dialight's forecast. [Gonzalez 193:20-24].*

**Sanmina's Response to Paragraph 176: Undisputed.**

177. *This explanation contradicts the on-time delivery rates Sanmina reported to Dialight on a weekly basis. [See Rader Decl. Exs. 135; 136; 137; 138; 139; 140; 141; 142; 143; 144; 145; 146; 147; 148; 149; 150; 151; 152; 153; 154; 155; 156; 157; 158; 159; 160; 161; 162; 163; 164; 165; 166; 167; 168; 169; 170; 171; 172; 173; 174; 175; 176; 177; 178; 179; 180; 181; 182; 183; 184; 185; 186; 187; 188; 189; 190; 191; 192; 193; 194].*

**Sanmina's Response to Paragraph 177: Disputed.** There is no conflict between the testimony and the exhibits. Sanmina compiled OTD based on Dialight orders and, for a time, separately based on Sanmina order commitments. [Rios 48:4-49:14.] The MSA bases OTD on Orders, which are defined as accepted POs. [Ex. 24 (MSA), §§ 1.4, 3.4.] Reporting based on Dialight's orders was simply informational to the customer and not an attempt to construe the terms of the MSA. In fact, these reports list the "mandate" at 100%, which also does not pertain to the MSA. [Rader Exs. 135-194.]

178. *Frank Shoemaker testified that no one ever expressed the view, to his knowledge, that the on-time delivery metric Sanmina used in its weekly reports was the wrong metric. [Shoemaker 91:25-92:6].*

**Sanmina's Response to Paragraph 178: Undisputed.**

179. *Sanmina personnel recognized in internal emails how poorly the operations team in Guadalajara was performing. [Rader Decl. Ex. 68; 82; 84].*

**Sanmina’s Response to Paragraph 179: Disputed.** Sanmina objects to the use of Rader Exhibit 68 as it is irrelevant. Sanmina further objects to Dialight’s mischaracterization of Rader Exhibits 82 and 84, which as noted in Sanmina’s motion, are examples of the sales team members with no personal knowledge of what is happening in Guadalajara criticizing plant operations and advocating for their customer (Dialight). [Rader Exs. 82, 84.]

180. *On February 22, 2017, Francisco Montero expressed concern to Plant 2 about “the lack of space in your warehouse to manage all of the incoming Dialight shipments from P4. In that same tone, NO space has been allocated in Plant 2 to create the Supermarket that Dialight is constantly requesting Sanmina, if that would be the case, we need you to immediate [sic] remove the supermarket from the demand and inform Dialight that we will not be following their instructions.” [Rader Decl. Ex. 196].*

**Sanmina’s Response to Paragraph 180: Disputed.** Sanmina objects to Dialight’s mischaracterization of Rader Exhibit 196. There was extensive testimony on creating a “supermarket.” Jorge Rios testified that Sanmina “worked to fulfill” any supermarket requests, but the materials were always consumed by unforecast orders. [Rios 106:1-17.] With respect to taking materials from P4 to fill a supermarket, “what we were doing is maintaining a supermarket of metal parts needed to support POs, but not in excess of what the supermarket was designated for.” [Rios 136:15-23.] Regarding Mr. Montero’s complaint that P2 lacked adequate supermarket space (and Dialight did not ask to depose Mr. Montero), Mr. Rios corrected under oath several statements Mr. Montero made. [Rios 133:12-142:13.] Mr. Montero did not work at Plant 2 (Rios 133:18-21); Mr. Rios was Plant 2’s manager (Rios 20:22-21:5).

181. *In February 23, 2017, after continued infighting between Plant 2 and Plant 4 over pulling materials, Frank Shoemaker commented to Bob Green that it was “World War III between plants.” [Rader Decl. Ex. 82].*

**Sanmina’s Response to Paragraph 181: Disputed in Part.** Undisputed that the quoted statement appears in the email. The balance is just argument to which Sanmina objects.

182. *Infighting between Plant 2 and Plant 4 was relentless. [Escamilla 74:15-25].*

**Sanmina's Response to Paragraph 182: Disputed.** Sanmina objects to the cited testimony on the ground that it lacks foundation and mischaracterizes the testimony. This is a cite to testimony of a Dialight witness, and the description is inaccurate because he did not mention "infighting," nor did he describe it as "relentless." His testimony was: "There was a lot of friction between -- internally between them, between plants." [Escamilla 74:15-25.]

183. *Jorge Rios, a Sanmina 30(b)(6) witness testified that his "first job is to protect Sanmina. [His] second job is to protect [his] plant."* [Rios 137:15-16].

**Sanmina's Response to Paragraph 183: Disputed in Part.** This is an accurate but misleadingly incomplete quote. Mr. Rios was not asked what his role was as a 30(b)(6) witness; he was asked what his role was as plant manager concerning the "metrics" of the operation. [Rios 137:12-16.] The quoted testimony describes Mr. Rios's role as plant manager of Plant 2 in protecting the "metrics" of Sanmina and then Plant 2. [*Id.*]

184. *Brian Smillie of Plant 4 also recognized each plant had to look after itself, telling executives at Plant 2 that each plant had to take care of itself financially as he sought payment he believed Plant 2 contractually wrote Plant 4: "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."* [Ex. 37].

**Sanmina's Response to Paragraph 184: Disputed.** Sanmina objects to Dialight's mischaracterization of Exhibit 37, as Mr. Smillie did not make statement attributed to him. [Ex. 37.]

185. *This animosity between Plants 2 and 4 has an effect on Sanmina's performance, and on November 28, 2017, Hossein Saadat informed Luis Ramirez that the plants were "not communicating and sharing critical information[.]"* [Rader Decl. Ex. 30].

**Sanmina's Response to Paragraph 185: Disputed.** Objection: Mischaracterizes the evidence. Sanmina objects to Dialight's mischaracterization of Rader Exhibit 30, which says nothing about animosity, but merely highlights communications issues that needed to be addressed. [Rader Ex. 30.] More importantly, as Mr. Saadat testified, in this email, he was relaying statements made by

Dialight's COO Luis Ramirez; it was not, as characterized by Dialight in its Rule 56.1 Statement, Mr. Saadat "informing" Mr. Ramirez:

"Q. Were you the person that told Luis that P2 and P4 were not communicating and sharing critical information?

A. No. Q. Do you know where he learned that information from?

A. I don't know. . . .

Q. And prior to your meeting with Luis, had you heard from anyone else that there were communication issues between P2 and P4?

A. No.

Q. So this information was brand-new to you during your meeting with Luis?

A. Yes."

[Saadat 76:5-22.]

186. On February 28, 2017, Bob Green lamented that "My opinion is still that we either don't have the right people owning the action and/or not enough people." [Rader Decl. Ex. 197].

**Sanmina's Response to Paragraph 186: Undisputed.**

187. On May 20, 2017, Brian Smillie of Plant 4 wrote to Bob Green about Plant 2's inability to improve performance, stating that 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." [Rader Decl. Ex. 81].

**Sanmina's Response to Paragraph 187: Undisputed.**

188. On May 25, 2017, Hossein Saadat of Plant 4 emailed Bob Green and other personnel from the Sanmina's sales team that

[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 [sic] is going to see, I will not be surprised if they ask us to stop production till [sic] re [sic] engineer process, flow, cycle time, capacity planning, .....etc.** Obviously we had not made the right decision on what needs to be manufactured in which location based

*on capabilities, expertise, where would [sic] have full [sic] optimized solution for us and customer.*

[Rader Decl. Ex. 39].

**Sanmina's Response to Paragraph 188: Undisputed.**

189. *Following Saadat's email, Mark Strangie commented to Mike Giggey "When this guy says B2, he is meaning P2 or Plant 2. Do you realize how bad he is slamming the P2 folks? Brian has the same commentary towards [sic] those folks." [Rader Decl. Ex. 198].*

**Sanmina's Response to Paragraph 189: Undisputed.**

190. *Hossein Saadat confirmed in his deposition that he was referring to Plant 2 in his May 25<sup>th</sup> email. [Saadat 30:1-2].*

**Sanmina's Response to Paragraph 190: Undisputed.**

191. *On May 31, 2017, Frank Shoemaker internally reported on a meeting with Dialight that, the "Situation has reached a critical stage within Dialight Board of Directors because they are losing customer orders and has created a major impact on Dialight revenues this quarter." [Rader Decl. Ex. 51].*

**Sanmina's Response to Paragraph 191: Disputed.** Objection: Hearsay, to the extent that it is offered for the truth of the Dialight statements that Shoemaker was relaying.

192. *On September 2, 2017, Frank Shoemaker wrote to Mike Giggey "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." [Rader Decl. Ex. 83].*

**Sanmina's Response to Paragraph 192: Undisputed.**

193. *On November 18, 2017, Director of Sales-Northeast Region Mark Strangie wrote "if Michael [Sutsko] goes, heads should fall within our organization and responsibility should get as high as Marco [Gonzalez] as this is squarely on the Mexico Ops team. [Rader Decl. Ex. 71].*

**Sanmina's Response to Paragraph 193: Undisputed.**



194. On November 29, 2017, Frank 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." [Rader Decl. Ex. 199].

**Sanmina's Response to Paragraph 194: Disputed.** Objection: Hearsay. This appears to be offered for the truth of a Dialight contention that Shoemaker was simply reporting on.

195. On December 1, 2017, Francisco Montero informed Bob Green that the situation was "getting worst" and "Dialight mess . . . Is not even near the mess in the rest of the plant." Francisco Montero later asked "Does P2 really care about the business?" [Rader Decl. Ex. 85].

**Sanmina's Response to Paragraph 195: Undisputed.**

196. After Dialight's then-CEO Michael Sutsko was removed by the Dialight board, Mark Strangie wrote "I don't think you will see anyone on our side hold operations in Guad accountable, which is a major part of the problem." [Rader Decl. Ex. 84]. Bob Green replied "The plants inability to execute basically cost Michael his job." [Rader Decl. Ex. 84].

**Sanmina's Response to Paragraph 196: Undisputed.**

197. On December 13, 2017, Frank Shoemaker reported "Now we have major quality issues." [Rader Decl. Exs. 200; 201].

**Sanmina's Response to Paragraph 197: Disputed.** Objection: Hearsay. This appears to be offered for the truth of the matter asserted, but it is simply Shoemaker relaying what Dialight told him and is thus inadmissible for the truth of Dialight's statements. No witness with personal knowledge is offered on this point.

198. Bob Green responded to this development with "WTH. Who is even overseeing this operation." [Rader Decl. Ex. 91].

**Sanmina's Response to Paragraph 198: Undisputed.**

199. On December 23, 2017, Bob Green wrote to Frank 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." [Rader Decl. Ex. 79].



**Sanmina's Response to Paragraph 199: Undisputed.**

200. *Sanmina's highest ranking executives took the view that Dialight was trapped at Sanmina having transferred its entire manufacturing there, so Sanmina's egregious performance was not something Dialight could address: "I told Bob yesterday that I was sure Dialight was going to fire us if we didn't help fill their loss in some way. 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."* [Rader Decl. Ex. 202].

**Sanmina's Response to Paragraph 200: Disputed.** Objection: Mischaracterizes the evidence. This document reflects differing views among Sanmina executives about whether Dialight would terminate the MSA. It concludes with Gerry Fay expressing his belief that Dialight had the ability to move to another manufacturer or take the business back in-house, and Fay's statement that Sutsko told him that the Dialight board would order him to "move the business." Thus, to the extent this offered to show that Sanmina disregarded Dialight's interests because it was trapped, it does not do that. Furthermore, Sanmina's interests were completely aligned with Dialight's – Sanmina only got paid for shipping products.

201. *Dialight had made a significant investment of \$2,965,700 for a new paint line for Sanmina.* [Rader Decl. Exs. 203; 204].

**Sanmina's Response to Paragraph 201: Disputed.** Objection: Hearsay. No witness testified regarding Rader Exhibits 203 or 204, or about the level of investment specified. It is also notable that the paint line was moved back to Ensenada post-termination.

202. *On January 8, 2018, Frank Shoemaker wrote to Bob Green about Plant 2's inability to meet its representations to Dialight: "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."* [Rader Decl. Ex. 205].

**Sanmina's Response to Paragraph 202: Disputed.** Objection: Hearsay. There is no evidence that Shoemaker had any knowledge of Sanmina's build commitment for the quarter and he is therefore not a person authorized to speak on this subject on Sanmina's behalf. FRE

801(d)(2). Indeed, as Dialight knows, Shoemaker was unaware of the facts. The true commitments made by Sanmina were contingent and are fully and accurately described in Deposition Exhibit 161, which shows that Sanmina’s commitment was \$15.18 million for the last four months of 2017, with specific “at risk” items identified based on supply constraints. [Ex. 161, p. 4.] Fariyal Khanbabi at first testified that she was familiar with Exhibit 161 and that it was presented to her in a meeting with Jorge Rios of Sanmina, but when she recognized that it did not support Dialight’s narrative, she denied having seen it. [Khanbabi 68:10-74:6.] Dialight’s Winnie Lu acknowledged that Exhibit 161 shows a commitment (clear to build) of only \$15.18 million. [Lu 102:1-103:9.] Dialight did not question any Sanmina witnesses about this document, but the commitment Sanmina made is as depicted in the document. [Gonzalez 113:24-117:24 (also culminating in the statement that Sanmina’s commitments were solely constrained by material availability – often materials Dialight was supposed to supply).]

203. *In his deposition, Frank Shoemaker testified about the January 8, 2018, email: “If I wrote that, then I believe it’s true. It must have been based on prior communications and production plans for revenue commitments.” [Shoemaker 72:5-8].*

**Sanmina’s Response to Paragraph 203: Undisputed.**

204. *On March 20 to March 22, 2018, Sanmina Supply Chain Manager Tom Sugai visited Plant 2 and, with respect to Sanmina’s production floor, observed: “Bins with no labels; No labels on the cards; Label on cart doesn’t match the two different part#s [sic] stack on the cart; Two different part#s [sic] in the same bin; I took pictures and can provide as requested.” [Rader Decl. Ex. 95].*

**Sanmina’s Response to Paragraph 204: Undisputed.**

205. *On May 15, 2018, Frank Shoemaker wrote about Plant 2 in an internal email to Bob Green and Mark Strangie: “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.” [Rader Decl. Ex. 86].*

**Sanmina’s Response to Paragraph 205: Undisputed.**

206. On May 16, 2018, Gerry Fay criticized Sanmina: “What is unacceptable is the lack of response and the continued surprises from the factory that causes us continued ill will with the customer.” [Rader Decl. Ex. 206].

**Sanmina’s Response to Paragraph 206: Undisputed.**

207. Frank Shoemaker later responded to Marco Gonzalez’s complaint that he was getting to many emails: “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.” [Rader Decl. Ex. 89].

**Sanmina’s Response to Paragraph 207: Undisputed.**

208. In June 2018, after meeting with then-Dialight CEO Marty Rapp, then-Sanmina CEO wrote to him “I am disappointed in our results and I know Sanmina can do better for you. We are making progress but not fast enough for either company.” [Rader Decl. Ex. 98].

**Sanmina’s Response to Paragraph 208: Undisputed,** but the quote is incomplete and the entire exhibit in context is more appropriate for consideration.

209. The Sanmina sales team prepared a business assessment of the Dialight account on June 5 2018. [Rader Decl. Exs. 72; 73].

**Sanmina’s Response to Paragraph 209: Undisputed.**

210. The report notes “Keep in mind we are 2 years into this account and are still experiencing major problems . . . Too many PowerPoint presentations have been given to Dialight management in the past that have not fixed the problems or improved the overall performance to meet Dialight’s expectations.” It went on to say “Dialight On-time Delivery requirement is 95% to their mandate as [sic] the Guad Plant 2 average OTD rate is 48% for 2018 year to date. There has to be a fundamental issue with how the operations are being managed when we cannot achieve 70 or 80% in two years . . . On a weekly basis, Sanmina plant 2 misses their delivery commitments by greater than 50%. This is a major concern with Dialight management as they have used our delivery commits to commit to their sales management and customers . . . This is all due to the fact that in two plus years, Sanmina has been unable to meet

*[Dialight] business objectives, manufacturing requirements and customer service levels.”*

*[Rader Decl. Ex. 73].*

**Sanmina’s Response to Paragraph 210: Undisputed.**

211. *In September 2018, when it became clear to the Sanmina sales team that Dialight would be leaving Sanmina, Frank Shoemaker wrote “It’s very sad that everyone worked so hard to bring in and ramp up what we had as a \$110M account only to see our manufacturing execution drive it into the ground . . . I don’t see how Javier [Carral] or anyone from the Plant can defend themselves against the facts.” [Rader Decl. Ex. 36].*

**Sanmina’s Response to Paragraph 211: Undisputed.**

212. *At this time, when Sanmina suspected Dialight would terminate the MSA, it refused to release control plans which contained the steps to manufacture Dialight products. [Rader Decl. Ex. 207].*

**Sanmina’s Response to Paragraph 212: Disputed.** Objection: Mischaracterizes the evidence. Rader Exhibit 207 actually directs Sanmina personnel to cooperate with Dialight’s request for information. [Rader Ex. 207.] This breach allegation is also not an issue raised by the complaint despite Dialight obviously having been aware of this issue based on Dialight’s own emails.

213. *Per Section 9 of the MSA, Dialight was entitled to the control plans. [Rader Decl. Ex. 21, § 9; 207].*

**Sanmina’s Response to Paragraph 213: Disputed.** Section 9 refers to the release of IP created by Sanmina in the course of the relationship. In Rader Exhibit 207, Dialight’s Escamilla claims there is “no real IP created here.” It is not clear what he is requesting. It should also be noted that despite 14 paragraphs in the complaint identifying provisions of the MSA Dialight claims Sanmina breached, Section 9 is not cited. [Complaint ¶¶ 80-93.]

214. *Frank Shoemaker recognized in an internal email Sanmina had an obligation to turn over the instructions, writing “My only comment is that it really doesn’t matter why they want it, how much they want it or when they want it, there is a contractual obligation on our part*

*to provide the documentation they are requesting which I have reviewed with our legal team and they agree.” [Rader Decl. Ex. 207].*

**Sanmina’s Response to Paragraph 214: Undisputed** that Shoemaker stated this. In terms of Sanmina’s actual obligations, the MSA speaks for itself.

215. *Despite this obligation, Sanmina delayed providing Dialight with a response “for well over a month.” [Rader Decl. Ex. 207].*

**Sanmina’s Response to Paragraph 215: Disputed in Part.** The “despite this obligation” language is argument. Again, it should be noted that no breach of Section 9 is alleged in Dialight’s complaint.

216. *Mike Giggey informed Gerry Fay, Sanmina’s Chief Business Officer, that he was “stalling releasing any documentation to Dialight[.]” [Rader Decl. Ex. 208].*

**Sanmina’s Response to Paragraph 216: Disputed in Part.** Objection: Vague. The full quote is: “I’m stalling releasing any documentation to Dialight until Luis [Ramirez of Dialight] comes clean with us . . . .” Nobody was questioned about this document so there is no explanation of what this means or whether there were appropriate grounds for Sanmina to withhold this information pending receipt of some information being withheld by Dialight’s Ramirez.

217. *Sanmina was also overcharging Dialight for labor and pallets. [Rader Decl. Exs. 88 (“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 that they have been overcharging for labor on a monthly basis. Some months invoicing close to \$200k for DL, when in reality they hardly shipped any items”); 95 (“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 new pallets for other warehouse requirements after the [sic] use the Plant 4 Mechanical’s”)].*

**Sanmina’s Response to Paragraph 217: Disputed in Part.** The cite to Rader Exhibit 95 is a mis-cite so Sanmina cannot respond. The only testimony on Rader Exhibit 88 consists of Mr. Shoemaker not remembering anything about the issue. [Shoemaker 96:12-97:8.] However, this pertains, on its face, to “fixed cost charges” meaning that, by definition, they represent an

allocation and not a representation of direct out-of-pocket expenses. On the issue of pallets, Mr. Saadat testified that some customers were charged for a fixed number of pallets per month and some were charged based on demand. [Saadat 160:3-10.] Furthermore, per Exhibit 434, it appears that this claim of breach was the subject of a dispute in June 2018, but it is not alleged in Dialight's complaint.

218. *Additionally, on May 23, 2017, Bob Green told his Sanmina colleagues "there 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."* [Rader Decl. Ex. 104].

**Sanmina's Response to Paragraph 218: Disputed.** Objection: Hearsay. Rader Exhibit 104 refers to a complaint made by Dialight and does not purport to reflect any personal knowledge of any Sanmina personnel.

219. *This pattern was consistent from the directive of then-Sanmina CEO (and current CEO after a time away from the company) to "charge for everything you can, as much as you can."* [Rader Decl. Ex. 92].

**Sanmina's Response to Paragraph 219: Disputed.** This is argumentative to the extent it implies wrongdoing. Charging for as much as allowed for everything allowed under the MSA is not wrong; it is simply an instruction to exercise Sanmina's contract rights.

### **Sanmina Quality**

220. *Sanmina's quality was poor throughout the duration of the MSA.* [Escamilla 100:14-16].

**Sanmina's Response to Paragraph 220: Disputed.** Objections: Mischaracterizes the evidence; Hearsay. The citation to Mr. Escamilla's transcript is incomplete. Mr. Escamilla testified that Dialight had quality issues with its own manufacturing (Escamilla 34:3-17); that he did not compile quality cost information but "saw the report" (Escamilla 60:2-9); that he did not remember how the defect rate for Dialight's Ensenada production compared to the defect rate at Sanmina (Escamilla 124:11-16); that by the time the MSA was terminated "Sanmina's quality

had caught up to [Dialight] Ensenada's quality" (Escamilla 73:19-74:1); and Deposition Exhibit 444 confirms that Sanmina's quality appears consistent with Dialight's. [Ex. 444; Escamilla 109:22 and following.]

221. *Sanmina made simple errors like sending lights to Australia with a missing top-hat, which was described as Dialight Australia as "sort of like selling a car with no wheels[.]" [Rader Decl. Ex. 209].*

**Sanmina's Response to Paragraph 221: Disputed.** Objection: Hearsay. No witness testified regarding Rader Exhibit 209. Further, none of the Dialight witnesses who testified about anything shipped to Australia had any personal knowledge of anything shipped to Australia.

222. *Due to the high number of Sanmina quality issues, Dialight had to hire a third party to inspect all goods received by Dialight distribution centers in Australia and the UK. [Sheehy 68:19-69:15; Rader Decl. Ex. 210].*

**Sanmina's Response to Paragraph 222: Disputed.** Objection: Hearsay. No witness testified regarding Rader Exhibit 210. This also pertains to complaints from Dialight personnel in Australia who have not testified, and Mr. Escamilla's email simply reports on what he is being told.

223. *On March 15, 2018, Luis Ramirez reported to Sanmina there was "a 10-15% failure rate on incoming inspection of product from Sanmina[.]" [Rader Decl. Ex. 211].*

**Sanmina's Response to Paragraph 223: Disputed in Part.** Objection: Hearsay if offered for the truth (*i.e.*, defect rate, for which no support or personal knowledge is established).

224. *When he received the March 15, 2018, email, Marco Gonzalez responded "this is unacceptable." [Rader Decl. Ex. 211].*

**Sanmina's Response to Paragraph 224: Undisputed.**

225. *Quality issues were so prevalent in Australia Sanmina had to send two technicians to Australia to try and address the issues coming in. [Rader Decl. Exs. 212; 213].*

**Sanmina's Response to Paragraph 225: Disputed.** Objection: Mischaracterizes the evidence. Although no witness testified regarding Rader Exhibits 212 and 213, there is extensive testimony



on the team Sanmina sent to Australia. That team discovered that the products were failing because the specified Loctite used by Sanmina per Dialight's instructions was incorrect, which resulted in screws loosening. When the Sanmina team reported its findings to Dialight, Dialight acknowledged that it had been using different Loctite than its own specifications called for, but never told Sanmina. [Camacho 67:6-69:3; Gonzalez 170:17-171:9; 180:15-183:5 Ex, 295.] Further, the cited exhibits show that most of the quality issues were design and specification issues. Page 4 discusses the "AreaLight" Loctite issue. Pages 8-10 identify 12 "bulkhead" issues, only three of which identify Sanmina as the root cause. And only pages 13 and 14 identify High Bay issues that appear attributable primarily to Sanmina. But these appear to be isolated incidents. [Rader Ex. 213.]

### **The Epidemic Defect**

226. *Sanmina's poor quality led to an epidemic defect in Dialight safety lanyards produced by Sanmina. [Rader Decl. Ex. 214].*

**Sanmina's Response to Paragraph 226: Disputed.** Objection: Hearsay. Rader Exhibit 214 is a lawyer's letter making an accusation of a manufacturing "Epidemic Defect," asserted more than a year after Dialight provided notice of termination and nine months after Sanmina ceased manufacturing products for Dialight. [Rader Ex. 214.] It is no more evidence of its contents than Dialight's complaint.

227. *Dialight formally notified Sanmina of the epidemic defect on October 4, 2019. [Rader Decl. Ex. 214].*

**Sanmina's Response to Paragraph 227: Undisputed.**

228. *The safety lanyards are a critical safety feature of Dialight products; they serve as a "secondary, fail-safe, retention for heavy industrial light fittings . . . [l]ight fittings which, if they fall from height, could, very obviously, cause serious actual and/or economic harm to persons and/or property." [Rader Decl. Ex. 214].*

**Sanmina's Response to Paragraph 228: Disputed.** Objection: Hearsay. Dialight is relying on its own lawyer's letter as evidence of the allegations made in that letter. [Rader Ex. 214.]



229. *Dialight explained in the epidemic defect notice: “[w]ithin this context, the failure rate of these critical safety items speaks volumes about the level of care, professionalism and manufacturing competency exercised by Sanmina in performing its obligations under the MSA.” [Rader Decl. Ex. 214].*

**Sanmina’s Response to Paragraph 229: Disputed in Part.** Objection: Hearsay if offered for the truth. Undisputed that Dialight’s lawyer’s letter makes this claim.

230. *Dialight estimates that between Q4-2017, 2018, and Q1-2019, approximately 1,006 of the 3,083 lanyard units shipped by Sanmina were defective; a 32.6% failure rate. [Rader Decl. Ex. 214].*

**Sanmina’s Response to Paragraph 230: Disputed in Part.** Objection: Hearsay if offered for the truth. Undisputed that Dialight’s lawyer’s letter makes this claim.

231. *Dialight described the manufacturing of the lanyards as follows:*

“The lanyard sub-assembly incorporates two crimped loops. Adherence to the specified method of crimping is critical to product functionality and safety. If the crimp is not made, or is inconsistently made, then the crimp will fail at a breaking strain below that of the constituent stainless steel wire, rendering the product inoperative and hazardous.”

[Rader Decl. Ex. 214].

**Sanmina’s Response to Paragraph 231: Disputed in Part.** Objection: Hearsay if offered for the truth. Undisputed that Dialight’s lawyer’s letter makes this claim.

232. *Dialight discovered that Sanmina was using an incorrect tool to crimp safety lanyards used for Dialight products. [Rader Decl. Ex. 215; Escamilla 148:7-17].*

**Sanmina’s Response to Paragraph 232: Disputed.** Objection: Hearsay; Improper expert testimony. No witness testified regarding Rader Exhibit 215. Even if hearsay Rader Exhibit 215 were authenticated (and it is not), it would constitute improper expert opinion of an anonymous undesignated expert. Mr. Escamilla’s testimony is that he concluded that Sanmina was using the wrong tool, but the Sanmina engineers denied that and Mr. Escamilla never saw the tool that was

used. [Escamilla 148:22-149:23.] He has not been designated as an expert witness. Mr. Escamilla also identified an issue with safety lanyards in a report issued in November 2018 (Deposition Exs. 445, 446, p. 4 (Escamilla 146:11-150:17)) thus casting further doubt on the supposed seriousness of the issue, which was only raised as an epidemic defect with a “critical safety item” 11 months later. Finally, the “incorrect tool” claim is misleading because the Dialight specification suggested a tool “or equivalent” (Camacho 153:21-155:3) and did not prescribe any “pull test” to be performed. [Ex. 446, p. 4 (11/5/18 Dialight report on, *inter alia*, the lanyard issue, stating: “a weakness was identified on our manufacturing process where no testing is being called after assembly; engineering will be adding a pull test to the drawings); Escamilla 136:2-11 (authenticating Ex. 446); *see also* Sheehy 278:18-279:1.]

233. *A “significant number of lanyards . . . failed a simple hand-pull test performed by customer installers and by Dialight staff.” [Rader Decl. Ex. 214].*

**Sanmina’s Response to Paragraph 233: Disputed in Part.** Objection: Hearsay if offered for the truth. Undisputed that Dialight’s lawyer’s letter makes this claim.

234. *A pull test done by having a person pull on the lanyard to see if it comes apart. [Escamilla 153:13-15].*

**Sanmina’s Response to Paragraph 234: Disputed.** A pull test is done by using a machine. [Camacho 148:20-149:5.]

235. *In October 2019, Dialight performed a Tyler Crimp Tool Test to determine what tool Sanmina used to crimp the lanyards. [Rader Decl. Ex. 215].*

**Sanmina’s Response to Paragraph 235: Disputed.** Objection: Hearsay. No witness testified regarding Rader Exhibit 215. Rader Exhibit is unauthenticated hearsay, and even if authenticated would constitute improper expert opinion of an anonymous undesignated expert.

236. *Dialight’s build engineering drawings made clear that a Nicopress tool should be used. [Rader Decl. Ex. 215].*

**Sanmina’s Response to Paragraph 236: Disputed.** Objection: Hearsay; Improper expert testimony. No witness testified regarding Rader Exhibit 215. Even if authenticated, Rader

Exhibit 215 would constitute improper expert opinion of an anonymous undesignated expert. Furthermore, the engineering drawings are not cited or authenticated, and the only testimony on this issue was that the drawings called for a Nicopress “or equivalent” tool. [Camacho 153:21-155:3.]. Thus the statement that the specifications required use of a Nicopress is clearly untrue.

237. *Sanmina told Dialight it had used a Tyler Tool. [Rader Decl. Ex. 215].*

**Sanmina’s Response to Paragraph 237: Undisputed.** While Rader Exhibit 215 is inadmissible, Sanmina does not dispute that it advised Dialight of its belief that a Tyler Tool was used for at least some crimps.

238. *Dialight was unable to reproduce the crimped Sanmina lanyards using a Tyler Tool. [Rader Decl. Ex. 215].*

**Sanmina’s Response to Paragraph 238: Disputed.** Objection: Hearsay; Improper expert testimony. No witness testified regarding Rader Exhibit 215. Rader Exhibit 215 is unauthenticated hearsay and inadmissible anonymous expert testimony.

239. *Sanmina did not use a Tyler Tool to crimp the lanyards, but instead used a generic pair of pliers. [Escamilla 149:2-10].*

**Sanmina’s Response to Paragraph 239: Disputed.** Objection: Improper expert testimony. The cited Escamilla testimony constitutes an inadmissible expert opinion from a non-expert.

240. *When Angel Escamilla traveled to Guadalajara and asked to see the tool Sanmina was using, they informed him they could not find it. [Escamilla 149:18:32; Camacho 151:8-13].*

**Sanmina’s Response to Paragraph 240: Undisputed.**

241. *The issue first came to Dialight’s attention in the fall of 2018 when a customer reported the lanyards they received were crimped improperly. [Rader Decl. Ex. 216].*

**Sanmina’s Response to Paragraph 241: Disputed.** Objection: Hearsay. Rader Exhibit 216 is inadmissible hearsay. It is an internal Dialight email offered for its truth.

242. *On November 2, 2018, Angel Escamilla reported internally at Dialight that the customer “was able to pull the cable out from the crimp[.]” [Rader Decl. Ex. 216].*

**Sanmina's Response to Paragraph 242: Disputed.** Objection: Hearsay. Rader Exhibit 216 is inadmissible hearsay. It is an internal Dialight email offered for its truth.

243. *During the fall of 2018, Dialight believed the improperly manufactured lanyards were an isolated issue because of Sanmina's representation in its corrective action report. [Ramirez 266:21-267:2].*

**Sanmina's Response to Paragraph 243: Disputed.** Objection: Mischaracterizes the evidence. Mr. Ramirez testified that Dialight reviewed a Sanmina corrective action report, but also held this belief due to Dialight's own testing of lanyards in stock. [Ramirez 267:2-23; Ex. 110, p. DIA688067.]

244. *On May 15, 2019, Dialight informed Sanmina another customer received an improperly crimped lanyard:*

*"Two end users reported safety lanyards coming apart from crimping sleeve using minimal hand force. First report was sent to Sanmina on November 2nd 2018. We have a new report from a different customer. Upon further review and inspection of the failed units, improperly crimped in [sic] lanyards were discovered. Inspection of about 30 pieces in one end user stock revealed that the person was able to pull the cable out of the crimp on at least 8 of the first 20 pieces he inspected. From customer provided pictures, we can see the markings are not consistent with correct crimping tool as the assembly drawing calls for."*

*[Rader Decl. Exs. 217; 218].*

**Sanmina's Response to Paragraph 244: Disputed in Part.** If offered as notice, this is not disputed. If offered for its truth, Objection: Hearsay. No witness testified regarding Rader Exhibits 217 or 218. Rader Exhibit 217 is just a transmittal; Rader Exhibit 218, however, is a Dialight internal report as to which no Dialight witness has offered any testimony. It is dated in May 2019, substantially after the parties' relationship terminated, and appears to have been drafted by someone named Edgar Ferniza, who is not even identified as a witness in Dialight's interrogatory responses or initial disclosures. It also appears to be an incomplete document. Much of it is blank and the last sentence (labeled "Problem (Effect)") is cut off.

245. *Since being informed of the lanyard issue, Sanmina has consistently denied any responsibility. [Rader Decl. Ex. 219].*

**Sanmina's Response to Paragraph 245: Disputed.** Objection: Mischaracterizes the evidence. While Rader Exhibit 219 was never marked as a deposition exhibit, Sanmina does not dispute its authenticity or admissibility. To that extent, the document speaks for itself. But this is a response to the October 4, 2019 Notice of Epidemic Failure and does not reflect all of the communications on the subject since the issue was first raised. Further, the Notice of Epidemic Defect alleged that Dialight's damages were "in the range of \$1,900,000-\$2,500,000. [Ex. 460, p. 3.] Dialight now concedes that the value of this claim, if meritorious, is approximately \$100,000. [Dialight Response to Sanmina Contention Interrogatories, no. 6 (Attachment 80 to Sanmina's Compendium of Evidence).]

246. *In May 2019, Jorge Camacho, Senior Program Manager for the Dialight account, stated "We need to look at how we can lead him to some lack of documentation from Dialight is possible." [Rader Decl. Ex. 220 (translated using DeepL)].*

**Sanmina's Response to Paragraph 246: Disputed.** Objection: Lack of certified translation. Rader Exhibit 220 is a Spanish-language document without a required certified translation; this is particularly important given the stilted nature of this unofficial translation and failure to question any witness about it.

247. *An internal Sanmina email confirmed that Sanmina did not have any written approval to deviate from the Dialight build instructions. [Rader Decl. Ex. 221].*

**Sanmina's Response to Paragraph 247: Disputed.** Objection: Lack of certified translation. Rader Exhibit 220 is a Spanish-language document without a required certified translation; this is particularly important given the stilted nature of this unofficial translation and failure to question any witness about it.

248. *In a letter responding to Dialight's epidemic defect notice, Sanmina insisted Sanmina used a Tyler Tool to crimp the lanyards, despite the results of the Dialight tests. [Rader Decl. Ex. 219].*

**Sanmina’s Response to Paragraph 248: Disputed.** Objection: Mischaracterizes the evidence. Dialight mischaracterizes Rader Exhibit 219, which speaks for itself. In particular, there is no evidence that Sanmina had an opportunity to examine Dialight’s test results.

249. *Sanmina’s response letter also stated that Dialight misconstrued; “the MSA and the limited services Dialight engaged Sanmina to provide: contract manufacturing and assembly services (not design services) performed according to Specifications Dialight provided.” [Rader Decl. Ex. 219].*

**Sanmina’s Response to Paragraph 249: Undisputed.**

250. *In an internal email, dated May 6, 2019, Horacio Velasco wrote: “Attached is evidence of the tooling we used for crimping the harness.” [Rader Decl. Ex. 222(translated using DeepL)].*

**Sanmina’s Response to Paragraph 250: Disputed.** Objection: Lack of certified translation. Rader Exhibit 222 is a Spanish-language document without a required certified translation; this is particularly important given the stilted nature of this unofficial translation and failure to question any witness about it. It is a “well-established rule that a document in a foreign language is generally inadmissible unless accompanied by a certified English translation.” *Heredia v. Americare, Inc.*, 2020 U.S. Dist. LEXIS 122880, at \*11 (S.D.N.Y. July 13, 2020) (Spanish-language documents unaccompanied by certified translations “are inadmissible and will not be considered by the Court”); *see also Sicom S.P.A. v. TRS Inc.*, 168 F. Supp. 3d 698, 709 & n.9 (S.D.N.Y. 2016) (foreign-language documents, even if authenticated, “cannot be reviewed or relied on by the Court . . . unless they are accompanied by certified translations into English”); *NV Petrus SA v. LPG Trading Corp.*, 2017 U.S. Dist. LEXIS 69935, 2017 WL 1905820, \*2 (E.D.N.Y. May 8, 2017) (reminding parties “that they must provide certified translations of any foreign language documents that they seek to introduce at trial”); *Quiroga v. Fall River Music, Inc.*, 1998 U.S. Dist. LEXIS 19039, 1998 WL 851574, at \*2 n.3 (S.D.N.Y. Dec. 7, 1998) (“Translations of foreign-language documents which are not certified as true and accurate

translations and which do not even identify the translator are not properly authenticated and are not admissible evidence.”).

251. *Horacio Velasco included a picture of a set of pliers in his May 6, 2019 email. [Rader Decl. Ex. 222].*

**Sanmina’s Response to Paragraph 251: Disputed.** Objection: Lack of certified translation.

Rader Exhibit 222 is a Spanish-language document without a required certified translation; this is particularly important given the stilted nature of this unofficial translation and failure to question any witness about it.

252. *The set of pliers in Horacio Velasco’s email is not the Tyler Tool Sanmina claimed it used. [Compare [Rader Decl. Ex. 222 with Rader Decl. Ex. 214].*

**Sanmina’s Response to Paragraph 252: Disputed.** Objections: Lack of certified translation;

Hearsay. Rader Exhibit 222 is a Spanish-language document without a required certified translation; this is particularly important given the stilted nature of this unofficial translation and failure to question any witness about it. Rader Exhibit 214 is Dialight’s lawyer’s letter. In addition to the fact that they are both hearsay, putting them together does not even establish the point asserted.

253. *Jorge Camacho was designated as Sanmina’s 30(b)(6) witness on Topic 21 of the 30(b)(6) deposition notice, which stated: “Sanmina’s manufacture or assembly of safety lanyards as referenced in the epidemic defect notice provided by Dialight in October 2019.” [Camacho 145:23-146:6].*

**Sanmina’s Response to Paragraph 253: Undisputed.**

254. *Jorge Camacho testified the lanyards were “getting loose” and he did not know how the lanyards were used. [Camacho 147:7-16].*

**Sanmina’s Response to Paragraph 254: Disputed.** Objection: Mischaracterizes the evidence.

Dialight mischaracterizes the cited testimony, in which Mr. Camacho says “they [Dialight] were saying they [the lanyards] were getting loose.” The context makes the meaning of the two



“they” clear. It refers to claims made by Benjamin Rodriguez. Benjamin Rodriguez was from Dialight, not Sanmina. [Camacho 62:15-63:6.]

255. *Dialight ultimately recalled the safety lanyards to prevent potential bodily injury. [Rader Decl. Ex. 223].*

**Sanmina’s Response to Paragraph 255: Disputed.** Objections: Hearsay. No witness testified regarding Rader Exhibit 223, which is unauthenticated hearsay.

#### **Sanmina’s Lack of Improvement**

256. *Dialight tried to help Sanmina improve, but ideas presented by Dialight personnel were not accepted by Sanmina. [Rapp 125:10-16; Rader Decl. Exs. 100; 101].*

**Sanmina’s Response to Paragraph 256: Disputed.** Objection: Hearsay. No witness testified regarding Rader Exhibits 100 or 101, which are unauthenticated hearsay. Dialight is relying on its own internal emails to try to establish the truth of their contents. Moreover, the Rapp testimony appears to be hearsay: “this is all kind of second hand because I wasn’t there when they [Dialight personnel] were doing their work.” [Rapp 126:2-14.]

On the general issue of improvement or lack thereof, Rapp wrote to Sanmina’s then-CEO Bob Eulau in June 2018, saying, among other things “[b]oth the Sanmina team and the Dialight team have been and remain fully committed to improving results; and “we are both committed to improvement.” [Ex. 380.] In August, Luis Ramirez then updated Mr. Rapp on his Sanmina visit, confirming substantial improvement, including the comment: “I will provide more details, but I must say it felt like a different Sanmina.” [Ex. 519 (authenticated in Rapp at 149:6-9).]

257. *One way Dialight thought Sanmina could improve was by running MRP more than once a week. [Rader Decl. Exs. 17; 40; 51].*

**Sanmina’s Response to Paragraph 257: Disputed in part.** Sanmina admits the witnesses for both parties have testified to discussions about running MRP more frequently. The cited exhibits, however, are hearsay. Dialight is relying on its own documents to try to establish the truth of their contents.



258. *Despite this, Sanmina never ran MRP more than once a week for Dialight because Sanmina has “always had a standard practice of once a week.” [Shoemaker 143:17-22].*

**Sanmina’s Response to Paragraph 258: Disputed.** Objection: Mischaracterizes the evidence. Dialight mischaracterizes the cited testimony, which does not say Sanmina never ran MRP more than once a week for Dialight. Further, the MSA does not obligate Sanmina to run the MRP system more than once per week (Ex. 24), and numerous Sanmina witnesses explained why weekly MRP runs were optimal “to avoid giving misdirections to the suppliers.” [Camacho 36:12-37:1.]

259. *Dialight believed MRP required human involvement; “you get a dispatch list out of MRP that tells you recommendations. There is a human being that then has to make a decision if that recommendation is going to be accepted or not accepted . . . there has got to be a human intervention that understand[s] the information and make[s] decisions so that, you know, you’re not creating expedites or being short in terms of materials.” [Ramirez 88:15-90:14].*

**Sanmina’s Response to Paragraph 259: Undisputed** to the extent Mr. Ramirez speaks for Dialight on this issue.

260. *Tom Sugai, Sanmina Supply Chain Manager, testified planners should only plan based off demands generated by MRP. [Sugai 178:19-180:3].*

**Sanmina’s Response to Paragraph 260: Undisputed** – though this is only a partial paraphrase of the cited testimony.

261. *In order to help Sanmina, multiple Dialight employees spent a significant amount of time at Sanmina’s Guadalajara campus. [Ramirez 108:9-18 (60-70% of his time spent in Guadalajara), Kender 33:8-16 (50% of his time spent in Guadalajara), Lu 178:13-20 (traveled to Guadalajara every few weeks), Smith 90:7-21 (traveled to Guadalajara seven times for approximately one week at a time)].*

**Sanmina’s Response to Paragraph 261: Undisputed** – this is an accurate summary of the testimony of the witnesses of their time spent at Sanmina’s Guadalajara facility during their

employment. Sanmina further notes that the MSA specifically contemplates having Dialight employees on-site and required Sanmina to provide space for them. [Ex. 24 § 19.5.]

262. *On January 4, 2018, Dialight hired a full time employee, Perla Garcia, to be stationed at the Sanmina Guadalajara plant. [Rader Decl. Ex. 3].*

**Sanmina's Response to Paragraph 262: Disputed.** Objection: Hearsay. No witness testified regarding Rader Exhibit 3, which again represents Dialight trying to use its own internal emails to establish the truth of their contents.

263. *Gerry Fay, Sanmina's Chief Business Officer, testified that he thought Marco Gonzalez "was too biased at looking at what potentially the customer has done wrong versus maybe what [Sanmina] could improve on" and that he could not be relied upon to give an accurate read on the Dialight situation. [Fay 42:8-22].*

**Sanmina's Response to Paragraph 263: Undisputed.**

264. *The June 2018 internal Sanmina business assessment of the Dialight account states: "in the past two plus years, Sanmina has been unable to meet their business objectives, manufacturing requirements and customer service levels." [Rader Decl. Ex. 73].*

**Sanmina's Response to Paragraph 264: Undisputed.**

265. *While Dialight was working to help Sanmina improve, Sanmina personnel were making derogatory comments about then-Dialight CFO Fariyal Khanbabi. [Rader Decl. Exs. 224; 225].*

**Sanmina's Response to Paragraph 265: Disputed.** The authenticity of Rader Exhibits 224 and 225 is undisputed. The attempt to tie them into the underlying facts, however, is groundless.

### **Termination of the MSA**

266. *Sanmina knew on September 24 that Dialight was going to terminate the MSA because of Sanmina's abysmal performance, as Frank Shoemaker described "I would be surprised if they do not pull out of Sanmina 100% It's very sad that everyone worked so hard to bring in and ramp up what we had as a \$110M account only to see our manufacturing execution*

*drive it into the ground. And I thought the email from Fariyal to me was bad....I don't see how Javier or anyone from the Plant can defeat themselves against the facts.” [Rader Decl. Ex. 36].*

**Sanmina’s Response to Paragraph 266: Disputed in part.** Objection: Mischaracterizes the evidence. Dialight mischaracterizes Rader Exhibit 36 through its editorialization, though the quoted language accurately quotes a part of the document. [Rader Ex. 36.]

267. *Dialight terminated the MSA on September 27, 2018, stating:*

*Dialight entered into the MSA based on Sanmina’s representations of its expertise and capacity to produce goods in sufficient quality to fulfill Dialight’s needs, which were well understood. Based upon those representations, Dialight shuttered its own facilities that were able to manufacture the products. Since the inception of the MSA, however, Sanmina has failed to meet certain key contractual commitments. Dialight has continued to rely, in good faith but to its detriment, on Sanmina’s representations as to its expertise and its ability to remedy these performance deficiencies. We have dismissed this in many meetings between our two companies over the last two years and, as we have discussed, Dialight has suffered lost customers, lost sales, lost goodwill, lost profits, and many other losses as a result.*

*[Rader Decl. Ex. 1].*

**Sanmina’s Response to Paragraph 267: Undisputed.** But any statements of fact in the letter are objected to as hearsay.

268. *After termination, Sanmina attempted to hold Dialight’s equipment hostage to force payments Dialight disputed. [Rader Decl. Ex. 226].*

**Sanmina’s Response to Paragraph 268: Disputed.** Objection: Mischaracterizes the evidence. Dialight mischaracterizes Rader Exhibit 226, which consists of internal emails warning Sanmina employees to consult with Sanmina legal before taking any position with respect to equipment. This is also irrelevant because Dialight asserts no damage from any delays in equipment transfer.

269. *Bob Green wrote that he was not sure “Sanmina could legally prohibit [Dialight] from removing the equipment.” [Rader Decl. Ex. 227].*

**Sanmina’s Response to Paragraph 269: Undisputed.**

270. Frank Shoemaker instructed that “Any communication about holding [Dialight’s] equipment should be done verbally.” [Rader Decl. Ex. 227].

**Sanmina’s Response to Paragraph 270: Undisputed.**

271. After the termination of the MSA, Dialight invoiced Sanmina for fixed assets it paid for at Sanmina and other items including the cost of inspecting metals, metals uneconomic to re-work, third party inspection of finished goods in Australia and the UK, raw materials shipped to Sanmina, finished goods warranty returns from Europe never replaced, warranty claim on finished good failures, and finished goods invoiced but never received in Australia. [See Rader Decl. Exs. 105; 106; 107; 108; 109].

**Sanmina’s Response to Paragraph 271: Disputed.** Objection: Hearsay. No witness testified regarding Rader Exhibits 105-109 – even whether they were sent to Sanmina. Their actual contents are unauthenticated hearsay. It is also notable that some of these invoices are dated more than one year following termination, including one that is dated about one month before the parties filed suit.

272. Sanmina has not paid the invoices. [Sheehy 359:18-23].

**Sanmina’s Response to Paragraph 272: Disputed.** Objection: Mischaracterizes the evidence. Dialight mischaracterizes the cited testimony, as Sheehy did not testify about these invoices. He did testify that Dialight had issued “about \$3.4 million” in invoices to Sanmina that Sanmina did not pay. [Sheehy 359:18-23.] It is not clear that he is referring to these invoices. Sanmina believes Dialight is correct that it did not pay the referenced invoices.

273. Sanmina also holds \$5.3 million of Dialight’s money in escrow. [Sheehy 359:18-23].

**Sanmina’s Response to Paragraph 273: Disputed in part.** Sanmina admits the approximate amount held in the Offset Inventory Reserve Account. Sanmina denies the characterization of these funds as “Dialight’s money;” it was money Dialight deposited, per the terms of the MSA, to pay for excess and obsolete materials purchased by Sanmina per Dialight forecasts, but not

consumed by Dialight purchase orders. [Ex. 24.] Dialight owed additional sums but refused to deposit those.

Dated: July 18, 2022

ERVIN COHEN & JESSUP LLP  
and  
RICH, INTELISANO & KATZ, LLP

By: /s/ Michael C. Lieb

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*Attorneys for Plaintiff and Defendant Sanmina  
Corporation*

**PROOF OF SERVICE**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 9401 Wilshire Boulevard, Ninth Floor, Beverly Hills, CA 90212-2974.

On July 18, 2022, I served true copies of the following document(s) described as **SANMINA CORPORATION'S RESPONSE TO DIALIGHT PLC'S STATEMENT OF ADDITIONAL MATERIAL UNDISPUTED FACTS IN OPPOSITION TO SUMMARY JUDGMENT (LOCAL RULE 56.1)** on the interested parties in this action as follows:

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**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be electronically transmitted to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 18, 2022, at Beverly Hills, California.

/s/ Ayesha Rector  
\_\_\_\_\_  
Ayesha Rector