

**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 OBJECTIONS TO DIALIGHT PLC’S
RESPONSES TO SANMINA’S STATEMENT OF MATERIAL UNDISPUTED FACTS
(LOCAL RULE 56.1)**

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Sanmina Corporation (“Sanmina”) is not permitted to respond to the counter-statement of Dialight plc (“Dialight”) and thus solely provides its evidentiary objections to the evidence offered by Dialight.

A. Dialight’s Decision to Outsource

6. The parties’ contacts began in June 2015, when Dialight hired a new CEO named Michael Sutsko. An outside hire, Sutsko did not have any outsourcing experience and could not identify anyone else at Dialight who did. [Sutsko, 16:1-20; 76:18-77:1; see also Rapp depo., 38:23-39:8.]

Dialight’s Response to Paragraph 6: Disputed in part. Dialight states that it hired Michael Sutsko in June 2015 [Sutsko Tr. 21:15-17], and that Michael Sutsko first contacted Sanmina in June 2015. [Rader Decl. Ex. 2]. Dialight denies that Michael Sutsko did not have any outsourcing experience; he testified he did not have any experience “managing an outsourcer.” [Sutsko, 76:18-21]. Dialight denies that Michael Sutsko could not identify anyone at Dialight with outsourcing experience. At his deposition which took place a little over six years after his first contact with Sanmina, Michael Sutsko could not remember if anyone at Dialight had outsourcing experience, testifying “I’m not sure” when asked “[d]id anybody at Dialight have that experience that you know of?” [Sutsko, 76:22-77:1]. Throughout the relationship, Dialight had personnel with outsourcing experience heavily involved with Sanmina, including Luis Ramirez, Perla Garcia, and John Kender. [Ramirez 21:8-11; Kender 18:10-13; Rader Decl. Ex. 3].

Sanmina Objection to Dialight Response to Fact no. 6: Mischaracterizes the evidence. It is false that “[t]hroughout the relationship, Dialight had personnel with outsourcing experience heavily involved with Sanmina, and Dialight’s own identification of Ramírez, Garcia and Kender proves that. The MSA was signed effective March 8, 2016. [Ex. 24.] Ramirez arrived at Dialight in August 2017 (Ramirez 21:12-13; 24:1-19); per Rader Exhibit 3, Garcia arrived in January 2018; and Kender was hired to a newly-created position of contract manufacturing manager in February 2018 (Kender 20:8-21:14; 43:17-44:6).

16. [REDACTED]

[REDACTED]

[REDACTED]

Dialight’s Response to Paragraph 16: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The MSA was signed in March 2016, but Sanmina did not begin producing Dialight products and Dialight did not transfer its first product line to Sanmina until August 2016. [Rader Decl. Ex. 16]. The below table provides the transfer dates for each product line transferred to Sanmina:

Product Line	Transfer to Sanmina
Linear	August 2016
Bulkhead	October 2016
SS Linear	October 2016
Flood	November 2016
Highbay	September 2017
Area Light	July 2017

[Rader Decl. Ex. 16]. No product lines were transferred prior to H2 2016 and Dialight in the interim Dialight took steps to address the potential areas of improvement E&Y raised. [See also Response to Paragraph 18 below.]

Sanmina Objection to Dialight Response to Fact no. 16: Hearsay. Rader Exhibit 16 is an effort to use Dialight’s own internal email (written in May 2019) to establish the truth of its contents. This email was also written more than two years after the events it supposedly describes.

18. When asked what Dialight had done to improve operations to enable it to outsource, Sutsko responded: “I don’t remember. I’m sure a number of things.” [Sutsko 69:12-13.]

Dialight’s Response to Paragraph 18: Dialight admits that Paragraph 18 contains an accurate quote from Michael Sutsko’s deposition in July 2021 but the snippet is out of context and incomplete. For example, Dialight’s then-CFO testified that Dialight formed a tiger team “for a 12-month period [to] clean[] up a lot of [Dialight’s] processes, [Dialight’s] products, [Dialight’s] documentation.” [Khanbabi 98:4-13]. When Dialight closed its Newmarket plant, it sent the plant manager to Guadalajara to help the Sanmina team manufacture Dialight’s products. [Khanbabi 99:5-11]. Additionally, Dialight hosted Sanmina personnel at its Newmarket plant prior to transferring the products manufactured there. Sanmina personnel took video recordings of how products were assembled, documentation, engineering drawings, manufacturing assembly steps, and information on assembly of parts and how to set up equipment. [Escamilla 52:12-23]. E&Y also recommended Dialight implement platform engineering. [Rader Decl. Ex. 15 at 6]. Dialight implemented platform engineering. [Sutsko 57:11-17]. This reduced the number of components that went into each product. [Sutsko 57:4-10; Ramirez 171:16-172:1; Rapp 18:3-22]. Dialight platform engineered the Area Light and High Bay product lines when they were transferred to Sanmina. [Khanbabi 265:3-5; Ramirez 172:11-18]. This process helped reduce the complexity of the Area Light and High Bay families. [Khanbabi 272:1-3].

Sanmina Objection to Dialight Response to Fact no. 18: Mischaracterizes the evidence. Sutsko would only testify concerning platform engineering that Dialight “engaged in that process” and “had achieved a degree of that as much as the engineers, as I understand were capable,” but would not directly answer a question asking whether the process was successful. [Sutsko 57:11-58:5.] Only the “first phase” of platform engineering was completed by the time Luis Ramirez joined Dialight in August 2017. [Ramirez 172:11-173:8.] Khanbabi also admitted in an April 2018 memo that the platform engineering process was unsuccessful. [Ex. 96 (authenticated at Lu 160:7-17)] (“The main issue we face is that our platform engineering concept

has not resulted in reducing the complexity within the business. We have reduced the number of power supplies but given all the other sub assembly parts we still have an infinite amount of skus we must re-look at the platform concept and the way we forecast our production.”.)] She made similar comments a year later. [Ex. 175 (Authenticated at Khanbabi 204:20-23) (“The major issue in the lighting business is as follows: . . . proliferation of skus products are not fully platformed [sic] engineered.”.)] Dialight’s 2015 Annual Report states that the platform engineering process was just 17% completed at year-end 2015. [Ex. 150; Sutsko 305:16-306:13.]

32. Sanmina’s initial MSA draft included limitations of liability substantially the same as the final, barring either party from recovering “indirect, consequential, incidental, punitive, or special damages . . .” and including a liability cap containing blanks for the dollar amounts. [Ex. 132, p. 11, § 9.4.]

Dialight’s Response to Paragraph 32: Disputed. The limitation of liability contained in Sanmina’s standard MSA and the limitation of liability contained in the final MSA speak for themselves. Sanmina’s standard MSA contained the following Limitation of Liability provision:

[REDACTED]

[REDACTED]

[Rader Decl. Ex. 19 at § 9.4].

The final MSA contains the following Limitation of Liability provision:

[REDACTED]

[REDACTED]

[REDACTED]

[Rader Decl. Ex. 21, § 22.4].

Sanmina Objection to Dialight Response to Fact no. 32: The “error” messages are not in the actual documents; they appear to be an inadvertent “copy and paste” error by Dialight’s counsel.

33. Dialight’s draft MSA proposed eliminating the liability cap, but retaining the prohibition on “special, incidental, indirect [or] consequential damages” [Ex. 23, § 22.4.]

Dialight’s Response to Paragraph 33: Disputed. Dialight’s draft MSA speaks for itself. The initial draft Dialight sent to Sanmina contains the following limitation of liability clause:

[REDACTED]

[Rader Decl. Ex. 13, § 22.4].

Sanmina Objection to Dialight Response to Fact no. 33: The “error” messages are not in the actual documents; they appear to be an inadvertent “copy and paste” error by Dialight’s counsel.

43. The no liability provision was specifically negotiated. [Sutsko 363:22-364:12.] Dialight’s draft to Sanmina includes a note that states: “Discuss and define ‘Delivery Rate’ and the consequences for failure to meet the 95% rate, including monetary penalties and termination rights.” [Ex. 23, p. 4.] Ultimately this issue was resolved by stating that Sanmina would not have any liability for failing to meet Dialight’s delivery dates. [Ex. 24, § 3.3.]. Mr. Freid told Dialight to agree to this liability exclusion because “financial penalties for late delivery” were “impossible to get.” [Ex. 144.]

Dialight’s Response to Paragraph 43: Disputed. Section 3.3 does not absolve Sanmina of liability for breaching Section 3.4 of the MSA, which provides [REDACTED] [Rader Decl. Ex. 21, § 3.4.]. In his deposition, Robert Freid testified that Section 3.3 “has to do with individual . . . order[s]” because it was impractical and uncommon to assess financial penalties for each individual late order. [Freid 277:1-281:2].

Sanmina Objection to Dialight Response to Fact no. 43: Mischaracterizes the evidence. Dialight attempts to contradict its own Rule 30(b)(6) designee on this issue. Dialight’s Chief Financial Officer, Sheehy, who also was Dialight’s designee on damages, admitted the accuracy of this statement. [Sheehy 80:5-87:20.]

46. The parties executed the MSA on or about March 8, 2016 [Dialight Answer ¶ 6] and proceeded to ramp up the transfer of production from Dialight’s in-house facilities to Sanmina’s Guadalajara, Mexico facilities. [Harris 35:22-36:18.]

Dialight’s Response to Paragraph 46: Disputed. Dialight states the MSA was signed on March 4, 2016 [Rader Decl. Ex. 37] and dated March 7, 2016. [Rader Decl. Ex. 21]. After the MSA was signed, Dialight admits it began transferring products to Sanmina. The below table provides the transfer dates for each product line transferred to Sanmina:

Product Line	Transfer to Sanmina
Linear	August 2016
Bulkhead	October 2016
SS Linear	October 2016
Flood	November 2016
Highbay	September 2017
Area Light	July 2017

[Rader Decl. Ex. 16].

Sanmina Objection to Dialight Response to Fact no. 46: Hearsay. Dialight is seeking to use its own internal email for the truth of its contents (same issue as Dialight response to Fact no. 16).

52. Sanmina did, in fact, have significant experience with high mix/low volume production, including at its Guadalajara facility. [Green 45:12-15; Carral depo., 26:7-29:11; 31:16-32:20; 38:16-22; Sugai depo., 18:5-17; Eulau depo., 17:24-20:7; Gonzalez depo., 26:5-30:18; Camacho depo., 25:10-27:1; Rios depo., 65:15-66:6; 88:11-93:18.]

Dialight’s Response to Paragraph 52: Disputed. Dialight denies Sanmina had significant experience with high mix/low volume manufacturing at its Guadalajara facility. Discovery has shown this representation by Sanmina to be false at the time it was made. Among other things, Dialight’s expert, Robert Freid, concluded in his expert report: “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; Sheehy 116:4-16]. Sanmina’s expert did not rebut this conclusion. Further, Sanmina’s own employee contemporaneously stated Plant 2 did not have the capabilities to handle Dialight’s business, writing “Obviously we had not made the right decision on what needs to be manufactured in which location based on capabilities, expertise where we would have full optimized solution for us and customer.” [Rader Decl. Ex. 39 (Saadat 30:1-3 (confirming “B2” is Plant 2))]. Luis Ramirez contemporaneously

documented a conversation with Javier Carral, where he informed Carral his team in Plant 2 “did not know how to deal with the low volume high mix complexity of our products.” [Rader Decl. Ex. 40]. Dialight engineer Angel Escamilla testified Sanmina’s manufacturing system was “aimed at high volume, low mix.” [Escamilla 75:1-3].

Sanmina Objection to Dialight Response to Fact no. 52: 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)).]

53. Dialight was not misled about Sanmina's machining capacity; rather it was directly involved in capacity planning, ultimately agreeing that the mechanical work, including "CNC" and a new paint line would be placed in Plant 4. [Exs. 258 (Freid depo.,176:20-177:2 (Auth.)), 259 (Freid 184:8-19 (Auth.)), 260 (Freid 184:8-19 (Auth.)); Freid 42:9-44:4; 98:11-99:2; 108:17-109:7; 164:3-168:2; Green 48:6-49:25; 165:25-167:15.]

Dialight's Response to Paragraph 53: Disputed. Sanmina misled Dialight about the space available to accommodate Dialight's paint line and CNC machines. The misrepresentations were well documented contemporaneously by Sanmina internally. In February 2016, prior to signing the MSA, the space Sanmina planned to put Dialight was committed to another customer. Sanmina was "selling the same space to different customers." [Rader Decl. Ex. 41]. Bob Green acknowledged "It would be a deal killer for Dialight to lose the space." [Rader Decl. Ex. 42]. Chris Nelson succinctly explained on February 29, 2016 :

The IMS award for 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 customer sites in Mexico and New Jersey. We negotiated the agreement knowing this requirement.

[Rader Decl. Ex. 25]. When it became clear the space in Plant 6 committed to Dialight was not available and Plant 4 would have to accommodate Dialight, Patrick Macdonald wrote "WE [sic], MSD, were never involved in the space allocation discussion. All I know is that we originally declined this opportunity because we didn't have capability . . . 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]. At his deposition, when asked about the space allocation issue, Bob Green testified "it was just an internal discussion on where [Dialight] was going to be . . . we took care of it internally . . . there wasn't a need to inform Dialight that we didn't have the space or there was any type of issue internally." [Green 196:4-197:15]. But at the time, 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]. The MSA was signed the next day, on March 4, 2016, and Dialight was not informed Sanmina lacked the space for its CNC equipment and paint line. Dialight ultimately had to pay significant, inflated Non-Recurring Engineering Costs ("NRE") to expand Plant 4 and make space for the Dialight equipment, because Sanmina had

none available despite its previous representations. [Rader Decl. Exs. 44; 45]. Dialight had to pay \$978,144.49 to create the space it was promised. [Rader Decl. Ex. 45]. The costs included building an external oven enclosure for the paint line, installing a fire protection system for the new area of the plant, relocating another existing Sanmina client, installation of utilities needed to operate CNC machines, and other fixtures. [Rader Decl. Ex. 45].

Infrastructure improvements	Cost
	\$000's
Build external over enclosure for paint line	428
Fire protection system for new area	201
Contribution to re-location of existing client	94
Installation of utilities for CNC machines	174
Other fixtures	80
Total	978

Sanmina Objection to Dialight Response to Fact no. 53: Hearsay; Mischaracterizes the evidence. Dialight relies primarily on Rader Exhibits 44 and 45. 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 Exhibit 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 (“[t]hank 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.

Dialight also mischaracterizes the evidence because 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”).]

- a. Claimed Misrepresentation No. 1: MSA B: “SANMINA is an expert in the contract manufacturing field for LED products and components.”

Dialight’s Response to Paragraph 57 (a): Dialight admits that in response to Sanmina’s Contention Interrogatories it claimed “SANMINA is an expert in the contract manufacturing field for LED products and components” was a misrepresentation.

- i. Claimed Misrepresentation No. 1 is a true statement. At the time Sanmina entered into the MSA it was manufacturing LED products for two other customers in Guadalajara Plant 2 and previously had a third customer in Plant 2. [Carral 27:2-24; 32:10-16; Gonzalez 27:18-29:25; 30:10--31:1.]

Dialight’s Response to Paragraph 57(a)(i): Disputed. Disputed. Discovery has shown this representation of Sanmina to be false at the time it was made. As Dialight’s expert, Robert Freid, concluded in his expert report: “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 service to Dialight.”

[Rader Decl. Ex. 38 at ¶ 52]. Sanmina’s expert did not rebut this conclusion. Further, Sanmina’s

own employee contemporaneously stated Plant 2 did not have the capabilities to handle Dialight's business, writing "Obviously we had not made the right decision on what needs to be manufactured in which location based on capabilities, expertise where we would have full optimized solution for us and customer." [Rader Decl. Ex. 39 (Saadat 30:1-3 (confirming "B2" is Plant 2))]. Luis Ramirez contemporaneously documented a conversation with Javier Carral, where he informed Carral that Carral's team in Plant 2 "did not know how to deal with the low volume high mix complexity of our products." [Rader Decl. Ex. 40].

Sanmina Objection to Dialight Response to Fact no. 57(a)(i): Hearsay. There is no eyewitness evidence offered for the proposition that Sanmina did not have HMLV experience, which Dialight's own CEO admitted Sanmina had. This is fully addressed in Sanmina's objections to Dialight's response to Fact no. 52, and will not be repeated here.

- b. Claimed Misrepresentation No. 2: MSA Recital D: "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."

Dialight's Response to Paragraph 57 (b): Dialight admits that in response to Sanmina's Contention Interrogatories it claimed MSA Recital D was a misrepresentation.

- i. Claimed Misrepresentation No. 2 is a true statement. [Rios 197:9-198:12; Green 162:24-164:11.]

Dialight's Response to Paragraph 57(b)(i): Disputed. Dialight denies that Sanmina actually had the capability to provide this manufacturing flexibility. The process referred to in Recital D is a special process typically found in high mix, low volume delivery systems, and it would be "reasonable for Dialight to understand this as clear indication of expert HMLV capability at [Guadalajara]." [Rader Decl. Ex. 38 at ¶ 42]. Sanmina did not have high mix, low volume capabilities at Guadalajara. [Rader Decl. Ex. 38 at ¶ 52]. Sanmina lacked the flexibility to

properly manufacture Dialight products. [Ramirez 210:4-10; Khanbabi 53:21-22]. An example of Sanmina's lack of flexibility was its refusal to run MRP more than once a week because it "run[s] MRP over the weekend once a week for all customers" [Shoemaker 130:12-14; Smith 143:10-15] despite Dialight's requests to do so throughout the duration of the relationship [Rader Decl. Exs. 17; 50; 51]. Luis Ramirez contemporaneously documented that he had a conversation with Sanmina's own expert about the "rigidity of Sanmina systems." [Rader Decl. Ex. 40]. He also documented a conversation with Javier Carral, where Luis told him that Javier's "production team admits they have been treating Dialight as the rest of their customer[s] in P2 and they did not know how to deal with the low volume high mix complexity of [Dialight]'s products." [Rader Decl. Ex. 40].

Sanmina Objections to Dialight Response to Fact no. 57(b)(1): Hearsay. Rader Exhibit 38 is an unauthenticated expert report that is hearsay. This is also presented in Dialight's additional Fact no. 153, Sanmina's response to which is incorporated here.

- c. Claimed Misrepresentation No. 3: MSA Recital D: "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."

Dialight's Response to Paragraph 57 (c): Dialight admits that in response to Sanmina's Contention Interrogatories it claimed MSA Recital D was a misrepresentation.

- i. Claimed Misrepresentation No. 3 is a true statement. The "single profit center" is Sanmina. [Green 165:25-167:3.] Dialight's CEO acknowledged this (while also acknowledging that the representation is vague). [Sutsko 181:21-182:9 ("a profit center would be an entity that has accountability for profit and loss. You know, that could be a whole company. You know, I'm just opining, but it could be a whole company, it could be a guy, it could be, you know, a group of facilities all working together, you know, lots of different things.").]

Dialight’s Response to Paragraph 57(c)(i): Disputed. Dialight denies Paragraph 57(c)(i).

Sanmina did not have the ability to provide the listed services from a single profit center. Bob Green and former Sanmina CEO Bob Eulau both testified that Plants 2 and 4 were separate profit centers. [Eulau Tran. 24:23-25-7; Green Tran. 232:18-22]. Michael Sutsko did not admit the single profit center was Sanmina. When asked “is the term profit center different, than, you know, just the term company?” he replied “Um, as I understand it, a profit center would be an entity that has accountability for profit and loss. You know, that could be a whole company.” [Sutsko 181:21-182:4]. Michael Sutsko clearly testified that the fact that Sanmina’s Plants 2 and 4 were separate profit centers did not align with Recital D:

Q. At the time you entered into the contract with Sanmina, did you know that Plant 2 and Plant 4 each had their own P&L?

A. I don’t believe I was aware of that.

Q. And would knowing that information have been relevant or irrelevant to you?

A. Relevant.

Q. Why?

A. Because it goes against the requirement to have a single profit and loss center that we required and indicated in the recitals.

[Sutsko 198:15-199:5].

Sanmina Objection to Dialight Response to Fact no. 57(c)(i): This is a repeat of Dialight’s Additional Fact no. 155, Sanmina’s response and objections to which are incorporated.

- d. **Claimed Misrepresentation No. 6:** Sanmina withheld from Dialight that its credit team viewed Dialight as a “dime a dozen” opportunity and was opposed to extending credit. The finance team was instructed not to let Dialight know that Sanmina credit had changed course.

Dialight’s Response to Paragraph 57(f): Dialight admits that in response to Sanmina’s Contention Interrogatories it claimed Sanmina withholding its credit team viewed Dialight as a “dime a dozen” opportunity and was opposed to extending credit was a misrepresentation.

- i. Far from keeping these concerns confidential, Mr. Soule testified that he brought them to the attention of Dialight's then-CFO (now CEO) Fariyal Khanbabi. Based on that conversation with Ms. Khanbabi, memorialized in a handwritten note marked as Exhibit 385 (Soule 36:5-37:16 (Auth.)), Mr. Soule testified that he was convinced that Dialight was credit-worthy and that its products were unique and not "a dime a dozen." [Soule 36:5-49:13; 78:19-86:12.]

Dialight's Response to Paragraph 57(f)(ii): Disputed. Dialight denies Paragraph 57(f)(ii).

Sanmina's sales team did not want Sanmina's credit team talking to Dialight. [Rader Decl. Ex. 52]. Sanmina's sales team altered the credit teams' slides to be presented to Dialight and told both Dialight and Sanmina's credit team the other was unavailable to meet. [Rader Decl. Ex. 53]. After Sanmina presented its credit proposal to Dialight, Sanmina's credit team withdrew its agreement to extent credit. [Rader Decl. Ex. 54]. Mark Strangie of Sanmina's sales team wrote afterwards that "someone in the company should be fired[.]" [Rader Decl. Ex. 55]. Mike Giggey made it clear that "Since [Sanmina had] not been awarded the business yet [Sanmina was] not communicating none of this to Dialight." [Rader Decl. Ex. 56]. Sanmina's sales team then arranged a meeting between the credit team and then-Dialight CFO Fariyal Khanbabi. Prior to the meeting, Mike Giggey wrote to the credit team "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' for outsourcing award." [Rader Decl. Ex. 57]. Brandon Soule also expressed doubts about Dialight after the meeting with Fariyal Khanbabi. On January 28, 2016, Brandon Soule emailed Bob Green, Chris Nelson, and Mark Strangie, stating "I'm not sure that our \$10M credit line will support \$30M of business." [Rader Decl. Ex. 58]. Mark Strangie brushed off this comment, telling Bob Green "You do not want to have this conversation with him." [Rader Decl. Ex. 58]. When Bob Green asked Mark Strangie to clarify, he said "just anything to do with numbers." [Rader Decl. Ex. 58]. On April 20, 2016,

Brandon Soule wrote in an internal Sanmina email that he had “serious concerns for the \$10M credit limit[.]” [Rader Decl. Ex. 59].

Sanmina Objection to Dialight Response to Fact no. 57(f)(ii): Mischaracterizes the evidence. Dialight is conflating two different issues to try to manufacture evidence of fraud. Sanmina had initial concerns about Sanmina’s credit-worthiness that were addressed with Dialight’s CFO, after which Mr. Soule, who expressed those concerns, was reassured. [Soule 36:5-48:8; 118:3-120:13; Ex. 385.] As the MSA states, the parties ultimately agreed to credit terms, including that there would be an initial credit limit and Sanmina had no obligation to incur any debt in excess of the assigned credit limit. [Ex. 24 (MSA, § 11.6).] Dialight separately complains that, after agreeing to credit terms, the credit line became inadequate to support the business. But in addition to the fact that Dialight’s own cited evidence discloses that Sanmina raised Dialight’s credit limit multiple times, Dialight agreed to credit terms in the MSA and it is undisputed that Sanmina complied with those terms. [Sutsko 364:21-365:5; Harris 45:8-19.] Dialight also treats the credit limit as if it was something out of its control – as the MSA states, it just establishes Dialight’s requirement to pay down its debt if it reached the credit limit.

- e. Claimed Misrepresentation No. 7: Sanmina withheld from Dialight that Plant 4 was against taking on Dialight as a customer because it lacked the capability.

Dialight’s Response to Paragraph 57(g): Dialight admits that in response to Sanmina’s Contention Interrogatories it claimed Sanmina withholding from Dialight that Plant 4 was against taking on Dialight as a customer because it lacked capability was a misrepresentation..

- i. First, “capability,” as used in the memo to which Dialight refers in Claimed Misrepresentation No. 7, means machining equipment. [Ex. 29 (Carral 50:19-52:9 (Auth.)).]

Dialight’s Response to Paragraph 57(g)(i): Dialight denies paragraph 57(g)(i). “Capability” refers to the ability to take on Dialight as a customer in Plant 4.

Sanmina Objection to Dialight Response to Paragraph 57(g)(i): Dialight cites no evidence in support of this contention.

- ii. Finally, Sutsko refused to say that this information even mattered to him, stating that Dialight obviously needed to be able to paint its products but refusing to say that Plant 4's alleged initial reluctance to accommodate the paint line would have mattered to him. [Sutsko 350:23-352:22.]

Dialight's Response to Paragraph 57(g)(iv): Disputed. Dialight denies Paragraph 57(g)(iv).

Michael Sutsko did not refuse to say the ability of Plant 4 to accommodate the paint line would have mattered to him. He testified:

Q. And before entering into the MSA, were you made aware of the position taken by executives at Plant 4 that Plant 4 would not have the capacity long term for paint only?

A. Can you repeat that? It's a little bit confusing for me. Sorry.

Q. 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?

A. No, I didn't have an indication of that.

Q. And were you told before executing the MSA that Plant 4 was not completely on board with the overall opportunity?

A. I don't recall that.

Q. And were you aware that Plant 4 – were you ever made aware that Plant 4 had originally declined the Dialight opportunity because Plant 4 did not have capability?

A. No, I don't recall.

Q. Would knowing this information regarding Plant 4's – would knowing that information I just – withdrawn. Would knowing the information that I have just described have mattered to Dialight before Dialight entered into the MSA?

A. Well, I can say that if we didn't have the ability to machine and paint and finish out metals in the factory, it would have impacted our choice to certainly go to Guadalajara if not overall.

Q. And what about if you had known that Plant 4 was not supportive of the opportunity?

Mr. Lieb: Objection; calls for speculation. Go ahead.

A. It's hard to say. You know, it would have raised questions as to whether we could have come to an agreement to operate there.”

Sutsko [350:23-352:22].

Sanmina objection to Dialight Response to Fact no. 57(g)(iv): The timely objection should be sustained.

- f. Claimed Misrepresentation No. 8: Sanmina told Dialight Paint [sic] 4 could accommodate the paint line.

Dialight's Response to Paragraph 57(h): Dialight admits that in response to Sanmina's Contention Interrogatories it claimed Sanmina's representation to Dialight that it could accommodate the paint line was a misrepresentation.

- i. As stated above, Sanmina moved a wall to fit the paint line in Plant 4.
[Carral 57:8-13.]

Dialight's Response to Paragraph 57(h)(i): Dialight admits Sanmina created new space for Dialight because it did not have the space it promised. Sanmina also forced Dialight to pay to move the wall, in accordance with the instructions of then and current CEO Jure Sola. [Rader Decl. Ex. 66]. As explained in the response to Paragraph 53, Dialight had to pay \$978,144.49 to create the space it was promised. [Rader Decl. Ex. 45].

Sanmina Objection to Dialight Response to Fact no. 57(h)(i): Sanmina incorporates its response to Paragraph 53.

- g. Claimed Misrepresentation No. 18: Sanmina represented itself as having expertise in the Lighting Market.

Dialight's Response to Paragraph 57(r): Dialight admits that in response to Sanmina's Contention Interrogatories it claimed Sanmina's representation that it had expertise in the Lighting Market was a misrepresentation.

- i. This is the same as Claimed Misrepresentation no. 1. Sanmina did have expertise in the lighting market. [Carral 27:2-24; 32:10-16; Gonzalez 27:18-29:25; 30:10-31:1.]

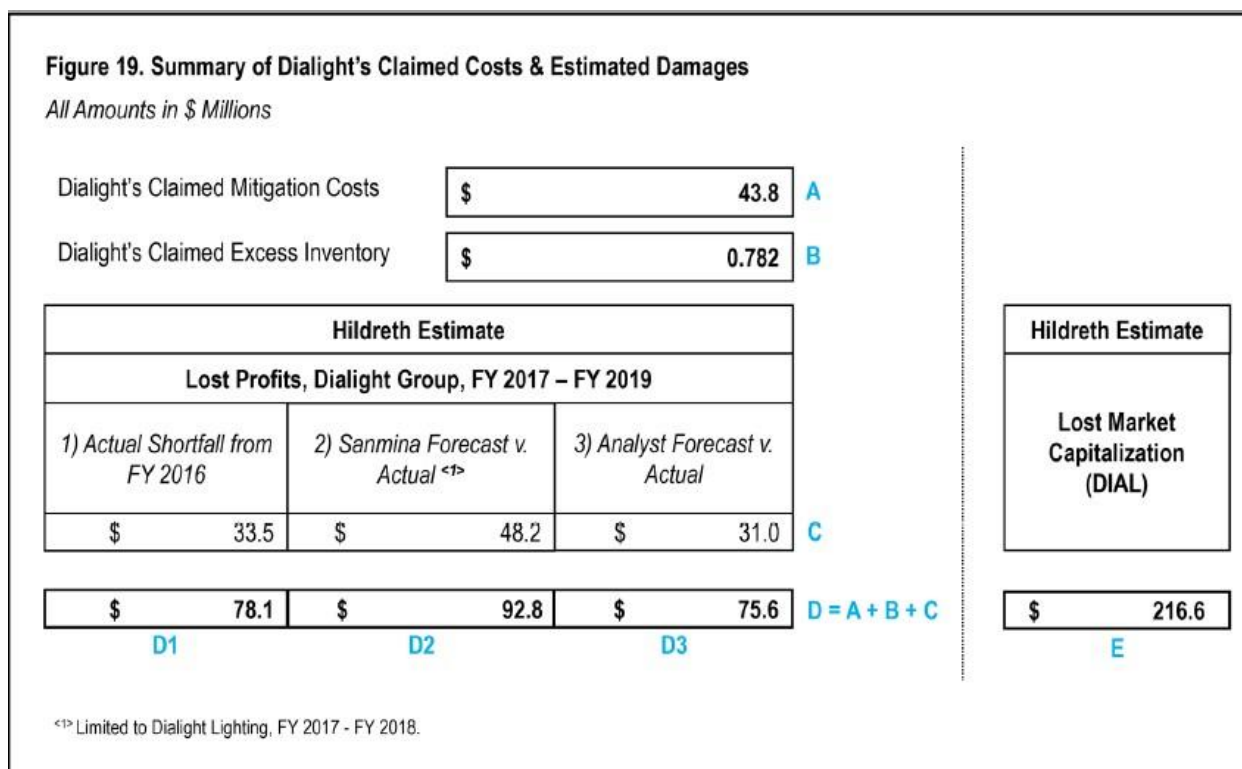
Dialight's Response to Paragraph 57(r)(i): Disputed. Sanmina did not have expertise in the lighting market in its Guadalajara plant as it pertained to the products that Sanmina needed to make for Dialight. [See Escamilla 89:20-91:14].

Sanmina Objection to Dialight Response to Fact no. 57(r)(i): Hearsay. Escamilla had no personal knowledge of Sanmina's experience or expertise.

**FACTS IN SUPPORT OF PARTIAL SUMMARY JUDGMENT ON DIALIGHT’S
THIRD CLAIM FOR GROSS NEGLIGENCE**

62. Dialight seeks the same damages for all three of its claims. [Dialight Complaint ¶ 64.]

Dialight’s Response to Paragraph 62: Disputed. Dialight’s claimed damages are set forth in its expert report and interrogatory responses and reproduced below:



Direct Mitigation / Other Out-of-Pocket Expense	Description	Cost
Additional freight costs	Additional freight charges incurred to expedite late orders.	\$3.6 million
Ensenada	Maintaining Ensenada staff at below optimal production.	\$2.2 million
Production transfer costs	Set-up costs, project management, and dedicated engineering time to the transfer to Sanmina.	\$9.1 million

Severance	Employee severance from the Newmarket and Ensenada plants.	\$6.5 million
Infrastructure improvements paid by Dialight	Cost of expanding Plant 4.	\$824,000
Labor cost to inspect metals		\$269,000
Metals uneconomic to re-work		\$446,000
Third party inspection of finished goods in UK and Australia		\$446,000
Raw materials shipped to Sanmina		\$77,000
Finished goods warranty returns from Europe never replaced		\$54,000
Warranty claim of finished goods failures		\$107,000
Finished goods invoiced but never received in Australia		\$45,000
Equipment sourced by Sanmina not returned		\$1.069 million
Equipment transferred from Dialight not returned		\$55,000
Escrow Fund	Dialight provided Sanmina with a \$5.6 million escrow fund to cover potential E&O expenses.	\$5.6 million

Insourcing Cost	Description	Cost
Cost of moving equipment	The cost of moving Dialight equipment (Paint Line and CNC machines) from Sanmina's premises in Guadalajara and re-installing and calibrating them in Dialight's facility in Tijuana, Mexico.	\$1.2 million
Cost of moving inventory	The cost of getting the inventory purchased from Sanmina (due to the contract termination) to Dialight premises in Mexico and Malaysia in a timely manner to minimize disruption to production.	\$4.2 million

Dual running costs	These consisted of two elements: a) Ramp-up costs for Dialight’s facility in Tijuana which Dialight acquired to house the Paint Line and CNC machines. This covers the ramp-up over a period of 9 months with certification of the site, testing of all parts for quality and acquiring and training staff. (\$2.9 million). b) During the ramp-up period, Dialight used 3 rd party vendors to provide these machining and painting services. This resulted in higher prices as they were smaller vendors and Dialight also had to pay overhead and profit margins. (\$5.0 million).	\$7.9 million
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[See Rader Decl. Ex. 102; 103].

Sanmina Objection to Dialight Response to Fact no. 62: Relevance; Hearsay.

This chart does not segregate damages based on Dialight’s separate causes of action and thus does not support the proposition for which it is cited. The chart itself is from a hearsay document.

Dated: July 18, 2022

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

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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 OBJECTIONS TO DIALIGHT PLC'S RESPONSES TO SANMINA'S STATEMENT OF MATERIAL UNDISPUTED FACTS (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