

**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
THE DECLARATION OF SCOTT RADER IN SUPPORT OF
DIALIGHT PLC’S OPPOSITION TO PARTIAL SUMMARY JUDGMENT**

Joseph A. Gershman
RICH, INTELISANO & KATZ, LLP
915 Broadway, Suite 900
New York, New York 10010
(212) 684-0300

Michael C. Lieb (admitted pro hac vice)
ERVIN COHEN & JESSUP LLP
9401 Wilshire Boulevard, Ninth Floor
Beverly Hills, California 90212-2974
(310) 273-6333
Attorneys for Plaintiff Sanmina Corporation

PRELIMINARY STATEMENT

Sanmina Corporation (“Sanmina”) asserts the following objections to the Declaration of Scott A. Rader in Support of Dialight plc’s Opposition to Sanmina Corporation’s Motion for Partial Summary Judgment, including the exhibits attached thereto.

As an initial matter, all the exhibits Dialight plc (“Dialight”) submitted in support of its opposition were attached to Mr. Rader’s declaration. Mr. Rader is merely counsel for Dialight, and does not have the personal knowledge necessary to authenticate many of the exhibits attached to his declaration. Sanmina is only objecting to the documents for which there has been no witness testimony regarding the documents, for which the witnesses did not properly authenticate the documents during their depositions, and/or that are inadmissible hearsay. Sanmina is not objecting to the authenticity of documents it produced in discovery, even if not marked as a deposition exhibit, but objects, where necessary to the contents of certain of those documents on the grounds set forth below.

Sanmina objects 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 (SDNY 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 declarant is competent to testify on the matters stated.” Fed.R.Civ.P. 56(c)(4). Mr. Rader’s declaration does not comply with this requirement.

Below is a chart summarizing Sanmina’s objections to specific exhibits attached to Mr. Rader’s declaration.

- The column “Exhibit No.” indicates the exhibit to which Sanmina objects;
- The column “Fact Nos.” indicates to which of Dialight’s additional facts the exhibit is cited in support;

- The column “Response Nos.” indicates to which of Dialight’s responses to Sanmina’s undisputed facts the exhibit is cited in support;
- The column “Marked Depo. Exhibit?” specifies whether the exhibit was previously marked as a deposition exhibit in this matter;
- The column “Testimony?” specifies whether any witnesses testified regarding the exhibit in their depositions; and
- The column “Objections” lists Sanmina’s objections to that exhibit.

As detailed in the chart below, Sanmina asserts the following objections with respect to the exhibits to Mr. Rader’s deposition:

1. Hearsay – The document constitutes an out-of-court statement offered to prove the truth of the matter asserted in the statement – and in the case of a Sanmina statement, without evidence that the declarant meets the criteria set out in Rule 801(d)(2). Fed. R. Evid. 801.

2. Lack of Foundation – Mr. Rader lacks the personal knowledge to state whether the document is indeed a true and correct copy of what he claims it to be. Fed. R. Evid. 602. Such documents therefore are not properly authenticated. Fed. R. Evid. 901. This objection is not asserted concerning documents that *Sanmina* produced.

3. No Translation – The document is inadmissible because it is in Spanish and not 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”); *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.”). Here, Mr. Rader purports to have used a free online translating tool in lieu of obtaining a proper certified translation for each of the specified Spanish-language documents.

4. Improper Expert Opinion – The document constitutes an improper expert opinion. Fed. R. Evid. 702.

Dated: July 18, 2022

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

By: /s/ Michael C. Lieb
Michael C. Lieb (mlieb@ecjlaw.com)
9401 Wilshire Boulevard, Ninth Floor
Beverly Hills, California 90212-2974
(310) 273-6333
Attorneys for Plaintiff and Defendant Sanmina Corporation

OBJECTIONS TO SCOTT RADER DECLARATION

Exhibit No.	Fact Nos.	Response Nos.	Marked Depo. Exhibit?	Testimony?	Objections
3	262	6	No	No	Lack of Foundation, Hearsay
4	76	8	No	No	Lack of Foundation, Hearsay
5	76	8	No	No	Lack of Foundation, Hearsay
6	-	9	No	No	Lack of Foundation, Hearsay
14	-	13	No	No	Lack of Foundation, Hearsay
17	257	19, 57(b)(i), 57(d)(ii), 60	No	No	Lack of Foundation, Hearsay
20	-	22	No	No	Lack of Foundation, Hearsay
37	184	46	No	No	Lack of Foundation, Hearsay
40	153, 257	52, 57(a)(i), 57(b)(i), 60	No	No	Lack of Foundation, Hearsay
44	144	53	No	No	Hearsay
45	144, 145	53, 57(f)(iii), 57(h)(i)	No	No	Hearsay
48	-	54	No	No	Lack of Foundation, Hearsay
65	126, 127	57(f)(iii)	No	No	No Translation
100	256	60	No	No	Lack of Foundation, Hearsay
101	256	60	No	No	Lack of Foundation, Hearsay
105	271	69	No	No	Lack of Foundation, Hearsay
106	271	69	No	No	Lack of Foundation, Hearsay
107	271	69	No	No	Lack of Foundation, Hearsay
108	271	69	No	No	Lack of Foundation, Hearsay
109	271	69	No	No	Lack of Foundation, Hearsay
114	95	-	No	No	Hearsay
115	95	-	No	No	Hearsay
116	95	-	No	No	Hearsay
117	95, 96	-	No	No	Hearsay
118	95	-	No	No	Hearsay
119	95	-	No	No	Hearsay
120	95	-	No	No	Hearsay
121	95	-	No	No	Hearsay
131	153	-	No	No	Lack of Foundation, Hearsay
203	201	-	No	No	Lack of Foundation, Hearsay
204	201	-	No	No	Lack of Foundation, Hearsay
209	221	-	No	No	Hearsay
210	222	-	No	No	Lack of Foundation, Hearsay
212	225	-	No	No	Lack of Foundation, Hearsay
215	232, 235, 236, 237, 238	-	No	No	Lack of Foundation, Hearsay, Improper Expert Opinion
217	244	-	No	No	Hearsay
218	244	-	No	No	Hearsay
220	246	-	No	No	No Translation
221	247	-	Yes	Yes	No Translation
222	250, 251	-	No	No	No Translation
223	255	-	No	No	Lack of Foundation, Hearsay

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 THE DECLARATION OF SCOTT RADER IN SUPPORT OF DIALIGHT PLC’S OPPOSITION TO PARTIAL SUMMARY JUDGMENT** on the interested parties in this action as follows:

Daniel J. Herling (admitted pro hac vice)
MINTZ LEVIN COHEN FERRIS GLOVSKY
AND POPEO, P.C.
44 Montgomery Street, 36th Floor
San Francisco, CA 94104
Telephone: (415) 432-6000
E-mail: DJHerling@mintz.com

Attorneys for DIALIGHT PLC

Scott A. Rader
MINTZ LEVIN COHEN FERRIS
GLOVSKY
AND POPEO, P.C.
The Chrysler Center
666 Third Avenue
New York, NY 10017
Telephone: (212) 692-6751
E-mail: SARader@mintz.com

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