

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

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

**SANMINA CORPORATION’S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION FOR RECONSIDERATION OF DENIAL OF SUMMARY ADJUDICATION  
AS TO SANMINA’S “ACCOUNTS RECEIVABLE” CLAIM (COUNT 1 OF FIRST  
AMENDED COMPLAINT)**

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## I. INTRODUCTION

Sanmina Corporation (“Sanmina”) hereby moves this Court for reconsideration of its order denying Summary Judgment on Count One of its Complaint, known as the Accounts Receivable Claim (“A/R Claim”). The denial is set forth in Section E of the Court’s Sealed Opinion and Order dated March 14, 2023. [Dkt. 121, pp. 30-31.]

The Court denied Sanmina’s motion based on deposition testimony of Dialight witness Ronan Sheehy, who stated that Dialight disputed receiving all goods for which Sanmina claimed non-payment. But Sheehy, a Dialight Rule 30(b)(6) designee, did not address whether Dialight provided notice of rejection for any of the specific invoices at issue in Sanmina’s A/R Claim. Nor did Dialight submit a declaration of him or anyone else to address that point, even though Sanmina submitted a declaration stating that, but for one invoice that Sanmina removed from its A/R claim (for \$571.04), Dialight did not provide timely notice of rejection of any invoices that underlie Sanmina’s A/R Claim. [Dkt. 85-1.]

Sanmina thus respectfully submits that Dialight’s Opposition failed actually to present any evidence to dispute its failure to provide timely notice of rejection of the specific invoices supporting the A/R claim. The failure to provide notice of rejection of those invoices constitutes acceptance and obligates Dialight to make payment at the contract price as a matter of law.<sup>1</sup>

## II. RECONSIDERATION STANDARD

“The decision to grant or deny a motion for reconsideration is within the sound discretion of the district court.” *In re Optimal U.S. Litig.*, 813 F. Supp. 2d 383, 403 n.6 (S.D.N.Y. 2011)

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<sup>1</sup> As noted in the moving papers, this is not a “gotcha” issue. Timely notice of rejection is essential “to provide the seller with an opportunity to cure or to allow the seller to attempt to minimize its losses.” *Vitol S.A., Inc. v. Koch Petroleum Grp., LP*, 2005 U.S. Dist. LEXIS 18688, at \*33 (S.D.N.Y. Aug. 30, 2005); *see also Phillips P.R. Core, Inc. v. Tradax Petroleum, Ltd.*, 782 F.2d 314, 321 (2d Cir. 1985) (plaintiff waived right to rely on belatedly alleged defect to justify nonpayment because that failure deprived defendant of opportunity to cure).

(citation omitted). Under Local Rule 6.3, the moving party must “point to controlling decisions or data that the court overlooked — matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Shrader v. CSX Transp. Inc.*, 70 F.3d 255, 256-57 (2d Cir. 1995) (internal citations omitted).

Sanmina submits that it was entitled to judgment on Count One of its Complaint due to Dialight’s failure to reject the specific invoices that underlie that claim—a fact Dialight’s Opposition did not genuinely dispute. Furthermore, the exercise of the Court’s discretion to reconsider its ruling is appropriate because the grant of judgment to Sanmina on Count One would eliminate an entire cause of action from what is already likely to be a complex trial.

### III. ARGUMENT

Sanmina’s evidence, consisting of the Declaration of Jorge Camacho, demonstrated that Dialight did not timely reject any invoice comprising the A/R claim (to avoid a disputed issue of fact, Sanmina removed from its A/R claim the one invoice that Dialight did timely reject). [Dkt. 85-1.] In response, Dialight merely offered deposition testimony of Ronan Sheehy, a witness under Dialight’s control,<sup>2</sup> who never stated that Dialight ever timely rejected any invoice comprising the A/R claim. Dialight designated Sheehy to testify on, *inter alia*, the following topic:

Accounts receivable due from DIALIGHT to SANMINA, including any basis for disputing the accounts receivable claimed in SANMINA’s complaint and any evidence that any goods shipped under invoices supporting SANMINA’s accounts receivable claim were rejected by DIALIGHT or that DIALIGHT revoked its acceptance or otherwise placed SANMINA on notice of a dispute as to any such invoices.

Sheehy Depo., 25:5-6; ex. 48 (topic no. 28) [Dkt. 98-71, p. 26.]

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<sup>2</sup> Dialight compensated Sheehy for his time preparing for and appearing at his deposition in this matter, and Dialight designated Sheehy as a Rule 30(b)(6) witness. Sheehy Deposition Transcript (“Sheehy Depo.”), 17:17-18:19; 22:12-25:8 [Dkt. 98-71, pp. 18-19, 23-26.]

Sheehy did not identify any timely notice of rejection or revocation of acceptance in his deposition and Dialight did not identify in its Opposition a single document that it claimed constituted a timely notice of rejection of any of the invoices that comprise the A/R Claim. *See* Fact no. 67<sup>3</sup> (not disputing the absence of notice of rejection for any invoice underlying the A/R Claim) [Dkt. 93, p. 60.]

Nor did Dialight identify any evidence of timely rejection in discovery. When asked in Special Interrogatory no. 14<sup>4</sup> to identify notices of rejection issued by Dialight, Dialight only identified one such document that it claimed constituted a rejection of an Accounts Receivable invoice at issue in Count One of Sanmina's Complaint. Declaration of Jorge Camacho ("Camacho Decl."), at ¶¶ 11-13 [Dkt. 85-1, pp. 3-4]; Fact no. 67 [Dkt. 93, p. 60.] In order to eliminate an issue of fact, Sanmina removed that rejected invoice from its A/R claim and also voluntarily removed five other invoices that did not represent shipments of products. Camacho Decl., at ¶¶ 11-13 [Dkt. 85-1, pp. 3-4.] Count One of Sanmina's Complaint thus solely seeks judgment on invoices it rendered to Dialight and as to which Dialight's Opposition offered no evidence of rejection.

The Court explained its denial of summary judgment on Sanmina's A/R claim as follows:

"As relevant here, Mr. Sheehy testified that on multiple occasions Sanmina billed Dialight for goods it did not ship (or that were not delivered); *Dialight rejected portions of the relevant goods following inspection*; and Dialight sent Sanmina regular emails detailing its rejection of delivered goods. (Id. at 349-55)."

Sealed Opinion and Order [Dkt. 121, p. 31] (Emphases added.) While Mr. Sheehy did, in fact, testify that Sanmina allegedly invoiced for goods it did not ship [Fact no. 66], and that Dialight

<sup>3</sup> Hereafter referenced as "Fact No."

<sup>4</sup> The Camacho Declaration contains an inadvertent typographical error. As the Court will see from review of Dialight's Objections and Responses to Sanmina's First Set of Contention Interrogatories [Dkt. 85-80, pp. 27-28], reference to Special Interrogatory no. 15 in the Camacho Declaration should actually say Special Interrogatory no. 14.

communicated rejections of certain shipments by what he called discrepancy reports (none of which Dialight offered in opposition to the Motion) [Sheehy Depo., 352:15-23] [Dkt. 98-71, p. 353], Sheehy did *not* testify (and Dialight presented no other evidence) that Dialight ever timely rejected any of the specific shipments for which Sanmina seeks payment (*i.e.*, the “relevant goods” per the Court’s terminology), and which, it is undisputed, were contemporaneously invoiced.<sup>5</sup> Indeed, although Sheehy did testify that some of the goods comprising the A/R claim were rejected “once they had been inspected” [Sheehy Depo., 351:3-12] [Dkt. 98-71, p. 352], he did not testify as to when or how that supposedly occurred, and, most tellingly, Dialight did not even rely on that testimony to dispute Fact no. 67.<sup>6</sup>

Sheehy’s testimony concerning “discrepancy reports,” which is the testimony to which we believe the Court is referring in the above-quoted passage, generally described a *process*, but did not specifically address the A/R Claim:

Q. How did Dialight notify Sanmina when it was rejecting or revoking acceptance of deliveries?

A. So there were discrepancy reports which were sent by email. Sometimes they -- I believe they started off at an individual part level, but then because

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<sup>5</sup> In Dialight’s Rule 56.1 Statement, Fact no. 66, it contends that Sanmina invoiced for goods that it did not ship, but Dialight does not offer any evidence to dispute that the A/R claim is fully documented by invoices that Dialight received. [Fact no. 64 (stating that “Dialight does not view Sanmina[s] accounts receivable claim as based on unpaid invoices issued by Sanmina” without offering any evidentiary support for that statement) [Dkt. 93, p. 59]; Fact no. 65 (“Dialight disputes it owes Sanmina this amount *due to non-delivery of invoiced goods*.” (emphases added)) [Dkt. 93, pp.59-60.]

<sup>6</sup> In its response to Fact no. 67, Dialight did not cite Sheehy’s testimony; it cited the testimony of Angel Escamilla, whose testimony addressed the sorting of goods to find defects:

67. Dialight did not provide Sanmina with notice of rejection of any of the Products shipped, or other charges reflected in, any of the invoices comprising Sanmina’s A/R claim for the delivery of products other than a single invoice that was removed from the computation of damages. [Camacho Decl. ¶¶ 11-12.]

**Dialight’s Response to Paragraph 67:** Disputed. After termination, Dialight received a large number of goods from Sanmina. [Escamilla 221:12-14]. Dialight had to sort the goods into tents to determine which were defective. [Escamilla 201:24-202:22].

[Dkt. 93, p. 60.]

of the quantum they became spreadsheets relating to orders processed on either a daily or weekly basis.

Sheehy Depo., 352:15-24 [Dkt. 98-71, p. 353].

Sheehy is under Dialight's control. He was under contract to Dialight and he was deposed as a Rule 30(b)(6) designee specifically on the issue of whether Dialight rejected any invoices supporting Sanmina's A/R claim. Yet, Dialight chose not to submit a declaration to respond to Mr. Camacho's clear testimony that (but for the single withdrawn invoice) there is no record of any timely notice of rejection of any invoice comprising Sanmina's A/R claim.

Once the moving party has met its burden, "the nonmoving party must come forward with specific facts showing that there is a genuine issue for trial." *Xing v. Mayflower International Hotel, Group Inc.* (E.D.N.Y., Sept. 30, 2022) 2022 WL 4644214, at \*5, citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Simply put, Dialight did not introduce evidence sufficient to carry its summary judgment burden in the face of the Camacho declaration.

Under the Uniform Commercial Code (N.Y. U.C.C. Law §§ 2-602, 2-606, and 2-607), the buyer is deemed to accept all goods it fails to timely reject (§ 2-606) and must pay for them at the contract price (§2-607(1)).<sup>7</sup> Sanmina is thus entitled to judgment on Count One of its First Amended Complaint as a matter of law.

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<sup>7</sup> While the Court stated, without deciding the issue, that it believes the MSA is not a contract for the sale of goods (Dkt. 121, p. 16, n. 5), the transactions underlying the A/R Claim certainly are governed by the UCC because they constitute "transactions in goods." N.Y. U.C.C. Law § 2-102; *see also* 2 Anderson U.C.C. § 2-102:6 (3d. ed.) ("any dealings with respect to "goods" are covered by Article 2 unless the wording of the particular provision is such that it is not appropriate to the particular dealing or transaction.").

**IV. CONCLUSION**

Based on the foregoing, Sanmina respectfully requests that the Court reconsider its denial of Sanmina's Motion for Summary Judgment on Count One of its First Amended Complaint, and on reconsideration, amend its order to grant summary judgment.

Dated March 28, 2023

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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, Twelfth Floor, Beverly Hills, CA 90212-2974.

On March 28, 2023, I served true copies of the following document(s) described as **SANMINA CORPORATION’S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR RECONSIDERATION OF DENIAL OF SUMMARY ADJUDICATION AS TO SANMINA’S “ACCOUNTS RECEIVABLE” CLAIM (COUNT 1 OF FIRST AMENDED COMPLAINT)** 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 March 28, 2023, at Beverly Hills, California.

*/s/ Viktoria Gold*  
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Viktoria Gold