

ERVIN COHEN & JESSUP LLP

9401 Wilshire Blvd., 9th Floor
Beverly Hills, CA 90212-2974
mlieb@ecjlaw.com
PH: 310.281.6338
FX: 310.859.2325

December 28, 2023

VIA ECF and E-MAIL

Hon. Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square, Courtroom 618
New York, N.Y. 10007

E-Mail: Failla_NYSDChambers@nysd.uscourts.gov

MEMO ENDORSED

Re: **Sanmina Corporation v. Dialight plc: USDC (SDNY) Case no. 1:19-cv-11710**
Dialight plc v. Sanmina Corporation: USDC (SDNY) Case no. 1:19-cv-11712

Dear Judge Failla:

In accordance with the Court's November 28, 2023 Sealed Order [Dkt. 141], the parties have met and conferred to address: (i) potential redactions to the earlier March 14, 2023 Order [Dkt. 122, 107]; and (ii) their suggestions for next steps in the litigation. This letter is submitted on behalf of both parties.

1. **Redaction:**

In the parties' joint letter dated April 11, 2023 [Dkt. 132], Sanmina asked the Court to redact one sentence from its March 14, 2023 order because that sentence describes in detail a liability cap provision in the parties' contract that is subject to negotiation. Having that provision in the public record could cause Sanmina future harm in its negotiation of such caps. The sentence (critical elements removed and replaced by ellipses) reads: "It further capped either party's liability 'for claims arising out of or relating to this agreement' at ' . . . under [the MSA].'" (*Id.*). Order at 5-6. Sanmina suggested that simply removing the word "at" and the words that follow the word "at" that are replaced by the ellipses, would fully address Sanmina's concerns.

Dialight originally did not agree with the proposed redaction. However, the Court indicated its inclination to adopt Sanmina's suggested redaction, and Dialight has withdrawn its objection to that redaction.

Hon. Katherine Polk Failla
December 28, 2023
Page 2

The parties agree that there is no redaction necessary to the Court's November 28, 2023 Sealed Opinion and Order, and that it can thus be unsealed in its entirety.

2. Next Steps: The parties are in agreement that a trial of this matter most likely would require ten business days. The proposed schedule below for pretrial motions (*i.e.*, motions *in limine* and *Daubert* motions) assumes that the Court would have time to adjudicate these motions sufficiently in advance before the Court's earliest available trial date. The parties would appreciate the opportunity to confer with the Court to arrive at a schedule that is more consistent with the Court's calendar if this assumption is incorrect.

The Court and the parties previously agreed that it was reasonable in this case for the parties to defer making motions to exclude or limit expert testimony until Sanmina's motion for summary judgment was decided. Sanmina anticipates making one or more such motions, and also anticipates bringing certain other motions *in limine*; and Dialight is contemplating the need to make such motions as well. The parties would suggest the following schedule for briefing such motions:

- February 23, 2024: Deadline to File Motions in Limine including *Daubert* Motions
- March 25, 2024: Deadline for Oppositions
- April 26, 2024: Deadline for Replies

The parties respectfully request that they be ordered to confer on a final pretrial order after the Court rules on the motions described above. The parties further recognize that the foregoing proposed schedule differs from Rule 7.B. of the Court's Individual Rules of Practice, and suggest that, as an alternative, the Court schedule a conference in accordance with Rule 7.A. of its Individual Rules of Practice.

Counsel do not have any trial "blackout" dates to request at this time. However, we would appreciate an opportunity to revisit the issue once we learn the anticipated timeframe for trial.

ERVIN COHEN & JESSUP^{LLP}

Hon. Katherine Polk Failla
December 28, 2023
Page 3

Respectfully submitted,

/s/
Michael C. Lieb
ERVIN COHEN & JESSUP LLP

/s/
Scott A. Rader
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

The Court is in receipt of the parties' above letter (19-cv-11712, Dkt. #116; 19-cv-11710, Dkt. #143).

The Court will issue unsealed versions of its March 14, 2023 Order (19-cv-11712, Dkt. #106; 19-cv-11710, Dkt. #121) and November 28, 2023 Order (19-cv-11712, Dkt. #114; 19-cv-11710, Dkt. #141) under separate cover.

The parties are hereby ORDERED to appear for a telephone conference regarding the schedule for the anticipated pre-trial motions and trial in this matter on **January 3, 2024**, at **2:30 p.m.** The dial-in information is as follows: At **2:30 p.m.** the parties shall call (888) 363-4749 and enter access code 5123533. Please note, the conference will not be available prior to **2:30 p.m.**

The Clerk of Court is directed to file this Order in both cases cited in the subject line of the parties' letter.

Dated: December 29, 2023
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE