UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

SANMINA CORPORATION'S REPLY IN SUPPORT OF MOTION IN LIMINE NO. 3 TO EXCLUDE MARKET CAPITALIZATION DAMAGES ANALYSIS

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)
Zoe Vallier (admitted pro hac vice)
Jacqueline McGuinness (admitted pro hac vice)
ERVIN COHEN & JESSUP LLP
9401 Wilshire Boulevard, Twelfth Floor
Beverly Hills, California 90212-2974
(310) 273-6333

Attorneys for Plaintiff Sanmina Corporation

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I. INTRODUCTION

Dialight plc ("Dialight") relies on case law holding that shareholders cannot sue for an injury to the corporation to support its contention that Dialight has standing to assert a claim for diminution in the company's market capitalization ("market cap"). The entire argument is a non-sequitur. The cited cases simply hold that a shareholder cannot turn a claim for harm to a corporation into a personal claim by arguing that shares of the company stock lost value. They do not support the converse argument that a corporation can sue for harm suffered by the shareholders. Dialight then doubles down by relying on "event study" case law that has no relevance here. Dialight also never disputes that market cap is an inappropriate measure of fraud damages, meaning that the argument is legally irrelevant because Dialight is trying to offer evidence of $216 million of market cap losses as a measure of consequential contract damages that it cannot recover at all—and would in any case be capped at $1 million of damages.

Dialight also addresses the myriad methodological flaws in Hildreth's event study by trying to rewrite it. For example, Dialight tries to explain the enormous disparity between the true decline of Dialight's stock price during the term of the MSA and the $216 million result from Hildreth's event study by suggesting a different timeframe that Hildreth never used. Dialight also tries to reverse Hildreth's sworn admissions that he did not account for confounding factors. Lastly, Dialight blames Sanmina for not demanding data that Hildreth testified under oath that he destroyed.

II. THE EVENT STUDY DOES NOT MEASURE A LOSS TO DIALIGHT.

A. Dialight Cannot Sue for Loss of the Value of its Shareholders' Shares of Stock.

The Second Circuit unequivocally holds loss of market cap is damage suffered by shareholders, not the company. *Strougo v. Bassini*, 282 F.3d 162, 175 (2d Cir. 2002) ("The

corporation cannot bring the action seeking compensation for these injuries because they were suffered by its shareholders, not itself"); *Frigitemp Corp. v. Fin. Dynamics Fund, Inc.*, 524 F.2d 275, 281 (2d Cir. 1975) (finding that corporation did not have standing to sue because "[t]o recognize a corporate loss in image or prestige without monetary loss as a basis for liability would extend s 10(b) beyond its farthest reach" as "a rise or fall in the market price of the corporate shares does not make the corporation richer or poorer"); *Rediker v. Geon Indus., Inc.*, 464 F. Supp. 73, 82 (S.D.N.Y. 1978) (finding that corporate "plaintiff has not stated a viable derivative claim under Section 14(e) because the alleged reduction in the market price of [company] stock is an injury to the shareholders and not to the corporation itself.").

Dialight relies on two lines of cases, neither of which offer it any assistance.

First, Dialight cites a string of cases ruling that shareholders cannot convert corporate claims into their own personal claims by alleging that, as a result of harm to the corporation, the value of their shares of stock declined. In *JFURTI, LLC v. Downey Brand LLP*, 2018 WL 3471810, at *3 (S.D.N.Y. July 9, 2018), the shareholders in a REIT tried to sue the REIT's lawyers for failing to record deeds, alleging "Defendant's failure to record the Contributed Deeds caused them injury ***by devaluing First Capital REIT, and thus, devaluing Plaintiff's shares***." (Emphasis added.) In *O'Neill v. Warburg, Pincus & Co.*, 39 A.D.3d 281, 833 N.Y.S.2d 461 (2007), the court dismissed an action by minority shareholders who alleged that the majority shareholder's actions caused a loss of profits to the startup which, in turn, caused the value of their shares to decline.[1] In *Rand v. Anaconda-Ericsson, Inc.*, 794 F.2d 843, 846 (2d Cir. 1986), the Court held that shareholders could not pursue antitrust and RICO claims on behalf of the

[1] Dialight takes out of context the court's statement that "[a] claim for diminution of the value of stock holdings is a derivative cause of action belonging to the corporation and not to plaintiffs individually." *Id.* at 281-82. The court was not saying that the corporation could sue for the decline in its share price, but rather that the shareholders could only sue derivatively on behalf of the corporation for the harm to the corporation caused by the defendant's actions.

corporation. None of these cases grants corporations the right to sue for a drop in the value of the shareholders' stock. They simply hold that shareholders cannot gain standing to sue for damages to the corporation by alleging that the harm the defendant inflicted on the corporation affected the value of their shares.

Dialight next cites to out of state cases that all involve unique facts and do not apply New York law. In *Overstock.com, Inc. v. Gradient Analytics, Inc*., 61 Cal. Rptr. 3d 29 (2007), the defendants ***intended*** to harm plaintiff's business:

> "[C]ustomers who wanted negative reports prepared on subject companies—and who supplied negative information or guidance to Gradient in connection with a custom report—either held short positions in the securities of those companies or intended to take short positions upon publication of the reports. These negative reports on public companies were a key component in the customers' efforts to profit from the anticipated depression of the trading price of the subject companies' stock."

Id. at 35. In other words, the defendant intended to affect the stock price and the stock price impact was the gravamen of the claimed wrongdoing.

In *Cooper Tire & Rubber Co. v. Farese*, 2008 WL 5188233, at *5 (N.D. Miss. Dec. 9, 2008), as more fully explained in an earlier Fifth Circuit ruling, the defendants leaked defamatory information from a former employee to the media that resulted in an immediate 25% drop in its share price. The district court relied on a Mississippi Supreme Court case that, similar to the cases discussed in the preceding paragraph, simply states that a shareholder cannot recover for damage to the corporation. *Id.* at *5.

In *Tullett Prebon PLC v. BGC Partners, Inc.*, 2014 WL 9913157, at *6 (N.J.Super.L. Aug. 14, 2014), the court allowed stock drop evidence to be admitted, after many of the key employees of plaintiff's subsidiaries were hired away by a competitor and the parent's share price immediately dropped 16.3%. In an arbitration proceeding, FINRA awarded over $32

million to the subsidiaries that had been improperly raided. The issue before the court was whether the parent could separately recover its damages. The court declined to enter summary judgment for defendants and allowed plaintiff to offer evidence of its stock drop to demonstrate the damage it suffered due to the loss in value of its untraded subsidiaries. *Id*. This ruling, in a unique setting, is contrary to both New York and Second Circuit precedents, cited above, as well as countless courts outside of the Second Circuit, all of which stand for the proposition that a corporation cannot sue to recover losses in its stock price. *See, e.g.*, *Sargent v. Genesco, Inc.*, 492 F.2d 750, 765 (5th Cir. 1974) ("Of course, a low selling price for Leeds' stock might incidentally make it difficult for the company to obtain equity capital in the future, but a depressed price is, without more, a shareholder injury."); *Carnegie Int'l Corp. v. Grant Thornton, LLP.* , 2005 WL 851064, at 7, 9 (Md. Cir. Ct. Apr. 6, 2005) (finding that Carnegie cannot recover market capitalization (the second method of calculating damages) because the method assumes that "a loss in market capitalization constitutes harm to a company rather than to the company's shareholders"); *Ergobilt Inc. v. Neutral Posture Ergonomics. Inc.*. 1998 WL 483624 at 3 n. 6 (N.D. Tex. Aug. 10, 1998) (explaining that "the fact that [company's] complaint is based solely on the depreciation of its own share value may raise a more fundamental standing question" because "a drop in a corporation's share value would not directly injure the corporation itself. Rather, it would injure those who own stock in that corporation); *Vaso Active Pharms., Inc. v. Robinson & Cole LLP*, 2009 WL 971161, at 4 (Mass. Super. Jan. 23, 2009) (finding that company's "shareholders could and did sue the company for the misrepresentations, and the company incurred costs to defend and settle those suits; those costs, as well as other costs arising from the misrepresentation, may be recoverable against [defendant]. But the drop in share price

in itself is not injury to [company], and cannot be a direct component of [company's] damages.").

Thus, in addition to being inconsistent with New York law, the defendants in *Overstock.com, Cooper Tire,* and *Tullet* all tried to harm the plaintiff's business. While Dialight pleads willful breach of contract, Dialight has never alleged that Sanmina tried to harm Dialight's business or that it could derive any benefit from doing so.

Indeed, the decisions on which Dialight relies are careful to circumscribe their application. For instance, in *Cooper Tire,* the Court limited its holding to the "unique circumstances of this case," noting that the "plaintiff will not be denied a substantial recovery if he has produced the best evidence available and it is sufficient to afford a reasonable basis for estimating the loss." 2008 WL 5188233, at *3. Hildreth's market capitalization is an alternative damages measure, not the only measure available to estimate Dialight's alleged loss, and relying on this methodology here would be inappropriate and not helpful to the jury. (Ex. 3 at 20:1-4) (Hildreth Dep. Tr.)

Dialight also cites Tabak, David I. and Dunbar, Frederick C., "Materiality and Magnitude: Event Studies in the Courtroom," *Nat'l Econ. Rsch. Assoc.* at 16 (1999). That paper does not assist Dialight. It fails to cite a single case applying lost market cap measures to claims for breach of contract or fraud. Indeed, the paper itself notes that measuring damages based on market cap is "not common in litigation." (*Id.* at 4).

Hildreth's market cap method simply cannot support a claim of damages by Dialight.

III. LOSS OF MARKET CAP IS NOT A FRAUD MEASURE.

Dialight does not dispute that changes in market cap are not recoverable as fraud damages; nor does it dispute that Hildreth's market cap analysis hinges on Sanmina's alleged

breach of the MSA. *Compare* (Mot. at 4) *with* (Opp. at 4). Instead, Dialight argues that, if it can prove fraudulent inducement or willful misconduct, then the contractual limitation on liability will be unenforceable, allowing it to use the market cap decline to measure breach of contract damages.

As discussed in the briefing on Motion *in Limine* ("MIL") no. 1, Dialight is wrong. First, under the UCC and New York law, neither gross negligence nor willfulness will void the contractual limitations of liability. Second, if Dialight seeks a contract measure of damages then, even if it proves that the contract was induced by fraud, the contract limitations of liability would still apply to contract damage measures such as loss of market cap.

IV. HILDRETH'S EVENT STUDY IS UNRELIABLE.

Where the Court finds an event study lacks sufficient reliability, the event study cannot be presented to a jury. *S.E.C. v. Badian*, 822 F. Supp. 2d 352, 362 (S.D.N.Y. 2011), amended on reconsideration in part, 2012 WL 2354458 (S.D.N.Y. June 20, 2012) ("An event study may be rejected ... if it is methodologically unsound or unreliable."); *see also*, *Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse Sec. (USA) LLC*, 752 F.3d 82, 95 (1st Cir. 2014) (excluding event study as unreliable); *IBEW Loc. 90 Pension Fund v. Deutsche Bank AG*, 2013 WL 5815472, at *15 (S.D.N.Y. Oct. 29, 2013) (same).

A. Hildreth's Event Study Estimates Damages $200 Million Greater than the Actual Decline in Dialight's Market Cap.

As noted in Sanmina's motion, Dialight's market cap declined by only $16.29 million between March 8, 2016 (the day the MSA was executed) and September 28, 2018 (the day after Dialight terminated the MSA). Dialight disputes the relevance of this period, asserting "Sanmina provides no justification for using September 28, 2018." (Opp. at 6). However, that is just wrong. We have explained that these dates mark the public disclosure of the beginning and end of the

parties' relationship, and ***these dates are consistent with those used by Hildreth***. Hildreth's Report states: "I estimate damages in terms of lost market capitalization for the DIAL share price (i.e., Dialight Group). Between March 2016 (*i.e.* the date at which the Sanmina production deal was known by the market) and September 2018 (*i.e.* the termination of the MSA), Dialight lost approximately $270 million in market capitalization." (Ex. 4 at ¶ 17). (Hildreth R.). It is difficult to think of a greater indictment of Hildreth's methodology than that the market cap decline he measured during the contract term is even greater than his final conclusion and dwarfs even further the actual real-life decline in that same period.

Keeping with their strategy of trying to clean up Hildreth's work, Dialight's counsel attempts to rebut Sanmina's argument by suggesting that his work is supported by a February 27, 2017 to December 20, 2019 timeframe that is inconsistent with the dates Hildreth used in his analysis, which starts at March 2016. It is clearly intended to inflate Dialight's damages, and Dialight cannot invent its own event study, using timeframes even its expert did not use, to salvage its expert's opinion.

B. Hildreth's Event Study Does Not Account for Confounding Factors.

Hildreth does not account for confounding factors or impacts of non-Sanmina related information contained in Dialight's announcement on the stock price.[2] (Ex. 3 at 33:19-33:25; 36:10-37:8) (Hildreth Dep. Tr.). Dialight's suggestion that the event study inherently accounts

[2] While Sanmina is not responsible for identifying confounding factors for Hildreth, here are just a few. For instance, the July 24, 2017 event, during which Dialight discussed, *inter alia*, operational results, noted factors like a weakening GBP and a decline in lighting sales due to the discontinuation of certain product lines. (Ex. 4 at ¶ 63) (Hildreth R). Hildreth also mentions, but does not account in his study for, an adverse judgment related to pension scheme liabilities, raw materials shortages, and "uncertainty with the China-US trading relationships as potential headway." *Id.* Nor does Hildreth's Report address the confounding effect of significant events like Dialight's July 2, 2019 announcement about weakening in the Signals & Components business due to market uncertainty and excess inventory, or its November 19, 2019 announcement that the Signals and Components business had a difficult year, with market conditions remaining weak. (Ex. 5) (Dialight plc Trading update and Directorate changes, 02 July 2019) (Ex. 6) (Dialight plc Trading update, 19 November 2019).

for confounding variable is wrong. (Opp. at 8). *Bricklayers*, 752 F.3d at 95 (affirming exclusion of event study as unreliable because, expert failed to "address confounding information that entered the market on the event date"); *IBEW*, 2013 WL 5815472, at *16 (excluding event study because, among other reasons, "analysis fails to account for the particular circumstances impacting financial institutions during the financial crisis."). Hildreth admitted in his deposition that the "estimated change in market cap could be [due to] a number of different factors" and puts the burden on the factfinder to disentangle the events. (Ex. 3 at 37:9-40:21) ("But, as I said, that estimated change in market cap could be a number of different factors. And if it's decided by the finder of fact that you cannot disentangle the events for 7/26/17, and that the 28.61 should be taken out, then you're looking at an estimated change in market cap at $190 million and change"). Hildreth's failure to properly account for confounding factors renders his event study inadmissible.

C. Hildreth's Event Window Is Overbroad.

Hildreth's event study is also unreliable because it uses a nonstandard event window. Dialight's response to Sanmina's critique of its 1,200-day estimation window is merely to assert that "there is no absolute rule on how long an estimation window should be" (Opp. at 8), without providing any authority to support the estimation period Hildreth used. In contrast, Sanmina points to Second Circuit case law suggesting that a standard estimation window is between 100 and 200 days *preceding* the event. *S.E.C.*, 822 F. Supp. 2d at 361–62 (S.D.N.Y. 2011).

D. Sanmina Could Not Have Sought Data That Was Destroyed.

Finally, Dialight responds to the point that Hildreth **destroyed** the data for the event windows he tested, but did not choose, by claiming that Sanmina is at fault for not demanding them. How? Hildreth confirmed in his deposition that such documentation no longer existed. (Ex. 3 at 47:18-49:16) (Hildreth Dep. Tr.). And if Dialight wishes to play the "should have"

game, after learning that its witness had spoliated evidence, Dialight should have done everything in its power to see if that evidence could be resurrected and produced.

Hildreth tested approximately five event windows, and Dialight tries to defend his conclusions by positing one window that he may or may not have tested. His destruction of that other evidence substantially undermines his credibility. *See Rink v. Cheminova*, 400 F.3d 1286, 1293 n.7 (11th Cir. 2005) ("In evaluating the reliability of an expert's method . . . a district court may properly consider whether the expert's methodology has been contrived to reach a particular result").

E. Hildreth's Efficient Market Analysis Is Not Proper.

There is no dispute that Hildreth's Report relies on the existence of an efficient market to trade Dialight's stock. Hildreth's efficient market analysis is based on three main points: (1) Dialight stock was and continues to be covered by multiple analysts; (2) there was and continues to be regular news coverage; and (3) the stock traded with weekly turnovers exceeding 2% on multiple occasions since January 2016. (Ex. 4 ¶ 65) (Hildreth R.). However, as outlined in Sanmina's MIL no. 3, these points are unsupported or irrelevant.

Dialight uses its Opposition to introduce additional data and analysis not included in Hildreth's Report in an effort to prove that Dialight traded on an efficient market. These arguments are misplaced because Hildreth did not evaluate them and thus could not be examined on them. The issue here is the validity of ***Hildreth's*** analysis. That Dialight feels compelled to supplement that analysis only emphasizes its fundamental flaws.

Hildreth's entire event study is inadmissible absent proof of an efficient market, and that proof is nearly impossible without the market efficiency presumption that arises if there is, at a minimum, an ***average weekly turnover of 1%***. Yet, the data Hildreth used—DIAL share price from January 4, 2016 to November 2, 2020—shows the ***average weekly turnover*** was only

0.88%. (Ex. 4 ¶ 60) (Hildreth R.). While the numbers are strategically not outlined in Dialight's Opposition, Dialight's MIL to Exclude Hall and Mooney shows that Dialight only reaches 1.0082% in weekly turnover by incorporating data from 2014-2020, a period that Hildreth did not analyze (and predates and postdates the Sanmina relationship by two years on either side. *See* (Dialight Mot. to Exclude Hall at 17). Moreover, that Dialight's stock turned over by more than 2% in select weeks does not represent the relevant ***average weekly turnover***, which is essential for establishing a market efficiency presumption.

Furthermore, Dialight contends that it meets the "cause and effect factor," which it claims is the most important factor. (Opp. at 10). Again, Dialight's attorneys are just trying to turn themselves into expert witnesses. Hildreth did not even include this factor in his Report.

Dialight's efforts to retroactively supplement Hildreth's Report with data and analysis missing from his Report compellingly evidences the deficiencies in his analysis.

V. CONCLUSION

For the foregoing reasons, all evidence and argument that Sanmina is responsible for a decline in Dialight's market cap should be excluded.

Dated April 25, 2024

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

By: */s/ Michael C. Lieb*

Michael C. Lieb (mlieb@ecjlaw.com)
9401 Wilshire Boulevard, Twelfth Floor
Beverly Hills, California 90212-2974
(310) 273-6333
Attorneys for Plaintiff Sanmina Corporation

PROOF OF SERVICE

Sanmina Corp. v. Dialight PLC
Case No. 1:19-cv-11710-KPF

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 April 25, 2024, I served true copies of the following document(s) described as **SANMINA CORPORATION'S REPLY IN SUPPORT OF MOTION IN LIMINE NO. 3 TO EXCLUDE MARKET CAPITALIZATION DAMAGES ANALYSIS** 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

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

Attorneys for DIALIGHT PLC

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

Executed on April 25, 2024, at Beverly Hills, California.

/s/ Zoe M Vallier
Zoe M Vallier