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IN THE CIRCUIT COURT OF COOK COUNTY
ILLINOIS, COUNTY DEPARTMENT, LAW DIVISION

MARCELLUS LONG

Plaintiff,

vs.

CDW GOVERNMENT LLC.

Defendant.

Case No.: 2025L007458

Judge: Hon. Thomas More Donnelly

Hearing: June 3rd, 2026, 10:00 AM

Trial Date: Unassigned

PLAINTIFF'S FIRST AMENDED MOTION IN LIMINE TO EXCLUDE DOCUMENTS AND EVIDENCE RELATING TO CDW DIRECT, LLC, CDW, LLC, AND CDW, INC.

I. INTRODUCTION

Plaintiff respectfully moves this Court to enter an order in limine excluding all employment documents, contracts, and evidence relating to Plaintiff’s prior employment with CDW Direct, LLC. Defendant CDW Government LLC repeatedly proffers employment documents from CDW Direct, LLC—a separate legal entity—in an attempt to establish the terms of Plaintiff’s employment relationship with CDW Government LLC. This cross-subsidiary contract enforcement violates corporate law principles, contradicts federal precedent, and would prejudice and confuse the factfinder.

As this Court was informed in Plaintiff’s Notice of Supplemental Authority filed concurrently herewith, the United States District Court for the Southern District of Indiana expressly rejected this exact tactic in *CDW, LLC v. NeTech Corp.*, 2013 WL 1703518 (S.D. Ind. Apr. 18, 2013) (Ex. A), holding that sister subsidiaries within the CDW corporate structure are distinct legal entities that cannot enforce each other’s employment contracts.

II. FACTUAL BACKGROUND

A. Two Separate Legal Entities

CDW Direct, LLC and CDW Government LLC are separate corporate entities with:

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- Separate federal Employer Identification Numbers (EINs)
- Separate corporate existence under Illinois law
- Separate legal obligations and contractual capacity
- Separate operational structures and management

B. Two Distinct Employment Relationships

CDW Direct Employment (2021–2023):

- Position: Account Manager
- Compensation: Hourly wage plus annual bonus
- Start date: June 21, 2021
- Offer letter: May 5, 2021 from CDW Direct, LLC (Ex. B)
- 2022 W-2 wages: \$85,922.38 (Ex. C)

CDW Government Employment (2023–2024):

- Position: Federal Account Representative
- Compensation: Hourly and commission paid monthly with Goal Modifier mechanism
- Start date: May 8, 2023
- Offer letter: None
- Transfer accepted: March 27, 2023
- 2023 W-2 wages (May–Dec): \$36,836.30 (Ex. D)
- 2024 1040 wages: \$49,010.00 (Ex. E)

C. Material Differences

The two employment relationships involve:

1. Different employers (separate legal entities)
2. Different job titles and responsibilities
3. Different compensation structures (\$85K+ hourly vs. \$36–49K hourly & commission)
4. Different customer bases (commercial vs. federal government)
5. Different reporting structures and management chains
6. Material \$30,000+ annual wage decrease

D. Defendant’s Length of Service Reset

When Plaintiff transferred from CDW Direct to CDW Government LLC in May 2023, Defendant unilaterally reset Plaintiff's Length of Service (LOS) to base level without Plaintiff's written consent. This reset:

- Delayed Plaintiff's eligibility for higher commission rates by at least 14 months
- Caused material financial harm
- Demonstrates Defendant treated the transfer as creating a new employment relationship requiring new terms

Defendant cannot simultaneously treat Plaintiff as a "new" employee requiring an LOS reset while invoking CDW Direct's "old" employment agreement to establish employment terms with CDW Government LLC.

E. No Written CDW Government LLC Employment Terms

Despite Plaintiff's repeated written requests, including an April 20, 2023 email requesting "what my new hours will be **or anything else I should know**" (Ex. H), Defendant failed to provide:

- Any written offer letter specific to the CDWG role
- Written compensation plan or employment agreement
- Written disclosure of the Goal Modifier mechanism
- Written notice of the LOS reset
- Written at-will employment acknowledgment for the CDWG position
- Written authorization for wage deductions or commission reductions

Defendant has produced no evidence of assignment, novation, or incorporation by reference that would transfer CDW Direct employment terms to the CDW Government LLC relationship.

F. Defendant's Post-Filing Conduct Confirms the Entity-Mixing Is Ongoing and Now Extends to a Third Entity.

This motion was originally filed February 6, 2026. On May 7, 2026, three months after filing, Defendant demonstrated that its substitution of non-CDWG entities for CDW Government, LLC is not a historical anomaly confined to the 2021 offer letter. It is a predatory, continuing, and deliberate practice that has now extended beyond CDW Direct, LLC to encompass a third entity entirely.

As formally identified in Plaintiff's Supplemental Responses to Requests for Production, attached separately hereto as Exhibit 1, at RFP No. 20 Supplement, on May 7, 2026, LeAnn K. ([REDACTED]), an employee of CDW, LLC, not CDW Government, LLC, transmitted to Plaintiff an "Overpayment Acknowledgement and Repayment Agreement." The agreement states

on its face that it is "made and entered into by and between CDW, Inc. and Marcellus Long." Not CDW Government, LLC. CDW, Inc. Plaintiff has never had an employment relationship with CDW, Inc. CDW, Inc. is not a party to this litigation. CDW, Inc. bears no liability for CDW Government, LLC's compensation practices. Yet the agreement demanded that Plaintiff execute, by May 14, 2026, a binding personal financial obligation to that entity, embedded with at-will employment language Plaintiff has contested under oath since November 3, 2025, under threat of 50% or 100% paycheck withholding if Plaintiff refused to sign. As further identified in Plaintiff's Supplemental Response to RFP No. 21, the demand was transmitted on the same day Plaintiff filed his Amended Motion to Strike Improper Certifications, establishing its retaliatory character. As further identified in Plaintiff's Supplemental Response to RFP No. 22, the agreement retroactively reallocates negative gross profit into a performance period during which Defendant's own compensation officer admitted in writing that no goals had been loaded and goal-based mechanics could not calculate, establishing its fraudulent character.

The document Defendant demanded Plaintiff sign was captioned as an agreement because Defendant understands precisely what an agreement is and what the CDW Direct, LLC offer letter is not. The 2021 offer letter expressly states it is not a contract: "This offer letter does not constitute or represent any contractual commitments between CDW and you" Having litigated for over a year on a document that by its own terms is not a contract, Defendant dispatched a CDW, LLC employee to demand a signed agreement from a CDWG employee on behalf of CDW, Inc. under threat of total paycheck withholding.

The pattern is now three entities deep. CDW Direct, LLC documents were substituted for CDW Government, LLC employment terms in discovery. CDW, LLC personnel administered the demand. CDW, Inc. was named as the contracting party. In every instance, the entity receiving Plaintiff's labor is CDW Government, LLC. In every instance, the entity whose documents Defendant proffers is someone else. This Court should treat the May 7, 2026 demand as direct, post-filing evidence that Defendant's entity-mixing conduct is willful, systematic, and continuing. A party engaging in good-faith compliance with employment law does not need three separate non-employer entities to administer documents to a single employee it actually employs.

III. LEGAL STANDARD

A motion in limine seeks to exclude evidence before trial. The purpose is to prevent prejudicial or inadmissible evidence from being presented to the factfinder. *People v. Thurow*, 203 Ill. 2d 352, 786 N.E.2d 1019 (2003). The court should grant such a motion when the evidence is clearly inadmissible on all potential grounds. *Id.*

Evidence is inadmissible when it is not relevant to the matter at issue or when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the factfinder. Ill. R. Evid. 401, 403; *People v. Pikes*, 2013 IL 115171.

IV. ARGUMENT

A. Corporate Separateness Requires Separate Employment Documentation

Illinois recognizes the separate legal existence of subsidiary corporations. “A subsidiary corporation is a separate legal entity, distinct from its parent.” *Vernon v. Schuster*, 179 Ill. 2d 338, 688 N.E.2d 1172 (1997). Each corporate entity has separate contractual capacity and can enter into its own employment agreements. *Id.*

Employment terms are determined by agreement between the parties. *Duldulao v. Saint Mary of Nazareth Hosp. Ctr.*, 115 Ill. 2d 482, 489, 505 N.E.2d 314 (1987). The parties to the May 5, 2021 offer letter (Ex. B) were not Plaintiff and CDW Government LLC.

An employment agreement with Entity A does not establish the employment terms with Entity B, even when both entities share common ownership. The corporate veil exists for a reason. Defendant cannot selectively invoke corporate separateness when convenient (separate entities for liability purposes) while disregarding it when expedient (retroactive application of Entity A’s employment terms to Entity B’s employment relationship).

B. Federal Precedent Bars Cross-Subsidiary Contract Enforcement

This is not the first-time entities within the CDW corporate family have attempted to enforce one subsidiary’s employment contracts against employees who transferred to a different subsidiary.

In *CDW, LLC v. NeTech Corp.*, 2013 WL 1703518 (S.D. Ind. Apr. 18, 2013) (Ex. A), CDW entities sued former employees for allegedly violating non-compete agreements they had signed with Berbee Information Networks, a CDW subsidiary. After those employees transferred to CDW Direct, LLC and later departed to work elsewhere, CDW attempted to enforce the prior subsidiary’s employment contracts against them.

The United States District Court for the Southern District of Indiana rejected this argument, holding:

*“Berbee and CDW Direct are separate corporate entities.....The Court finds that the corporate formalities were observed and that the corporations maintained separate existences.” Id. at *3.*

The federal court held that one CDW subsidiary could not enforce another CDW subsidiary’s employment contracts, even when the employee had transferred between the two entities. *Id.*

Defendant now advances the precise theory the federal court rejected in *NeTech*. Defendant argues it can enforce CDW Direct’s 2021 employment agreement despite being a separate entity. Corporate separateness either matters or it does not. The federal court’s rejection of cross-subsidiary contract enforcement in *NeTech* forecloses Defendant’s position here.

C. The Employment Relationships Are Materially Distinct

Even if cross-subsiary contract enforcement were permissible (which *NeTech* establishes it is not), the two employment relationships are so materially distinct that CDW Direct documents have no probative value regarding CDW Government LLC employment terms.

1. Different Compensation Structures

The 2021 CDW Direct agreement establishes an hourly wage plus annual bonus structure. Plaintiff's claims concern a purely commission-based compensation arrangement featuring complex, undisclosed post-earning reduction mechanisms (the "Goal Modifier") that did not exist under the 2021 terms.

The stark contrast is evident in Plaintiff's tax records:

- 2022 (CDW Direct LLC): \$85,922.38 (Ex. C)
- 2023 (CDW Government LLC, May–Dec): \$36,836.30 (Ex. D) (annualizes to \$55,254)
- 2024 (CDW Government LLC, full year): \$49,010.00 (Ex. E)

This \$30,000 to \$36,000 annual decrease demonstrates that the 2021 agreement does not reflect the economic reality of Plaintiff's CDW Government LLC employment.

2. Different Roles and Responsibilities

The 2021 offer letter (Ex. B) concerns the position of "Inbound Sales Representative" under CDW Direct's organizational structure. Plaintiff's claims arise from his employment as an "Account Manager" (later retroactively demoted to "Federal Account Representative") in CDW Government LLC's federal sales division, a materially distinct role involving:

- Different responsibilities (federal account management vs. inbound all-government contact center)
- Different reporting structures
- Different customer bases (federal government vs. commercial)
- Different performance metrics and commission calculations

D. No Evidence of Assignment, Novation, or Incorporation by Reference

Defendant has produced no evidence that CDW Direct employment terms transferred to the CDW Government LLC relationship through:

Assignment: No written assignment of the CDW Direct employment agreement to CDW Government LLC.

Novation: No agreement among all three parties (Plaintiff, CDW Direct, and CDW Government LLC) to substitute CDW Government LLC as the party to the original agreement.

Incorporation by Reference: No CDW Government LLC employment document that expressly incorporates the CDW Direct terms by reference.

Without one of these legal mechanisms, CDW Direct's employment terms simply do not apply to Plaintiff's relationship with a different legal entity.

E. Defendant's Conduct Confirms Separate Employment Relationships

Defendant's own administrative actions demonstrate it treated the transfer as creating a new employment relationship:

1. Length of Service Reset

Defendant reset Plaintiff's LOS to base level upon transfer, delaying his eligibility for higher commission rates by at least 14 months. This reset demonstrates Defendant treated Plaintiff as a "new hire" for compensation purposes, requiring fresh employment documentation under the Illinois Wage Payment and Collection Act.

2. New Compensation Structure

Defendant implemented an entirely new commission-based compensation system with the Goal Modifier mechanism, a compensation feature that did not exist in the CDW Direct relationship and was not disclosed in the 2021 offer letter (Ex. B).

3. New Role Assignment

Defendant assigned Plaintiff to a different position with different responsibilities, different management, and different performance expectations.

Defendant cannot have it both ways: treating the transfer as creating a new employment relationship for purposes of resetting compensation-related benefits while simultaneously claiming the old employment terms apply.

F. Invalidity of Restrictive Covenants Under the Illinois Freedom to Work Act Due to Insufficient Compensation

The May 2021 agreements concerning confidentiality and non-solicitation were executed between Plaintiff and CDW Direct, LLC for the purpose of protecting proprietary information and imposing post-employment restrictions. These agreements are distinct from, and irrelevant to, the fundamental employment terms of Plaintiff's new, commission-based role with CDW Government LLC, which commenced in May 2023. An individual's prior signing of non-disclosure provisions with one corporate entity (Entity A) does not absolve a second, separate entity (Entity B) from its

statutory duty to provide explicit written employment terms nearly two years later for a fundamentally different position.

Furthermore, CDW Government LLC's attempt to rely on these restrictive covenants creates a serious conflict with Illinois state law. By seeking to enforce agreements signed with a separate legal employer, the Defendant is simultaneously paying Plaintiff a wage that places the agreements outside the bounds of enforceability under the Illinois Freedom to Work Act (IFWA), 820 ILCS 90/10.

The IFWA expressly prohibits the execution or enforcement of non-compete agreements, a definition that includes non-solicitation provisions (820 ILCS 90/5), against employees whose annual earnings fall below the state-mandated threshold. The statutory minimum for 2024 is approximately \$81,900.

Plaintiff's compensation for the CDW Government LLC role falls far short of this legal requirement, as evidenced by his W-2 earnings:

- 2023 (Partial Year, May–Dec): \$36,836.30 (Ex. D) (annualized rate of \$55,254.45)
- 2024 (Full Year): \$49,010.00 (Ex. E)

Both compensation figures are more than \$25,000 below the requisite minimum for a restrictive covenant to be legally enforceable. This contrasts sharply with the period when Plaintiff signed the agreements in May 2021, while employed by CDW Direct, LLC, where his 2022 W-2 wages were \$85,922.38 (Ex. C), exceeding the relevant threshold at that time.

Defendant's position presents a critical inconsistency. It simultaneously seeks to:

1. Assert the continuous validity of restrictive covenants signed under the CDW Direct relationship in 2021.
2. Pay Plaintiff an income that is \$30,000 or more less than his previous CDW Direct wages, thereby nullifying the restrictive covenants under the IFWA.
3. Maintain corporate separateness when convenient for litigation purposes, yet treat the employment as continuous when attempting to enforce the prior subsidiary's agreements.

This strategic corporate maneuvering is precisely what the Illinois Freedom to Work Act aims to prevent. An employer cannot unilaterally drop an employee's pay below the statutory minimum and still enforce restrictive covenants that were signed when the employee's salary met or exceeded that legal threshold, especially when those covenants originated with a distinct legal entity. For CDW Government LLC to validly enforce any restrictive covenant against Plaintiff, it must either increase his wages to the statutory minimum or execute entirely new agreements that conform to current Illinois law. Using outdated agreements from a sister subsidiary while failing to comply with the IFWA is legally impermissible.

**V. DEFENDANT’S DISCOVERY RESPONSES CONFIRM ABSENCE OF CDW
GOVERNMENT LLC EMPLOYMENT DOCUMENTS**

Defendant’s response to Plaintiff’s discovery requests confirms the central issue: the lack of written employment terms specific to the CDW Government LLC relationship.

On June 20, 2025, Plaintiff served an Initial Request for Document Production under Illinois Supreme Court Rule 201(k) specifically seeking: “Any document signed by Plaintiff prior to the start of his employment with CDW Government LLC, authorizing or consenting to wage deductions.” (See Ex. F, Plaintiff’s Request). This document is essential to the defense of Plaintiff’s claims under the Illinois Wage Payment and Collection Act.

Defendant failed to respond, necessitating the filing of a Motion to Compel on July 8, 2025. On July 31, 2025, this Court granted the Motion. (See Ex. F, Motion to Compel and Order).

On September 2, 2025, over two months after the initial request, Defendant finally responded. Instead of producing a document from CDW Government LLC, Defendant provided the May 5, 2021 offer letter from CDW Direct, LLC (Bates CDW000001-2) (Ex. B). (See Ex. F, Defendant’s Answer).

Defendant’s September 2, 2025 production of a May 5, 2021 offer letter issued by CDW Direct, LLC (Ex. B) was a substitution intended to circumvent this Court’s July 31, 2025 Order granting Plaintiff’s Motion to Compel. The production abused the discovery process by tendering an inapplicable document from a non-party entity in lieu of the Court-ordered writing relevant to Plaintiff’s employment relationship with CDW Government LLC. Notwithstanding that Defendant had more than six months from the filing of Plaintiff’s claims to locate and produce the operative writings, Defendant has produced no document satisfying the Illinois Wage Payment and Collection Act’s written-notice and authorization requirements for the CDW Government LLC role and the challenged commission-modification mechanics.

To remove any possible uncertainty regarding the scope of the Court’s Order and the specific document sought, Plaintiff was required to transmit a further clarifying communication to Defendant’s counsel on September 5, 2025 (see Ex. G). That correspondence specified that the required production was a writing attributable to CDW Government LLC reflecting Plaintiff’s express assent to any modification, reduction, or post-calculation adjustment to commission payout. Plaintiff further demanded that Defendant either (1) produce the signed writing, or (2) provide a sworn verification under 735 ILCS 5/1-109 affirming that no such writing exists after a reasonable inquiry. Defendant’s failure to do either constitutes independent, post-Order confirmation that the operative writing does not exist and that Defendant cannot substantiate compliance with the IWPCA’s notice and authorization requirements.

Defendant’s failure to maintain and produce the required records carries a direct statutory consequence. Section 10 of the IWPCA provides that where an employer fails to keep required

records, there is a general presumption in favor of the employee’s allegations as to hours worked and rate of pay. 820 ILCS 115/10. Defendant now attempts to avoid that statutory consequence by relying on a facially irrelevant offer letter from a distinct, non-party corporate entity (Ex. B). That approach is legally improper and materially prejudicial: it invites the Court to treat a non-operative writing as a surrogate for the legally required CDW Government LLC documentation, thereby impairing Plaintiff’s ability to enforce the statutory recordkeeping presumption and to test the authenticity and applicability of the writings at issue.

Because this action sounds in fraud and wage-related statutory violations, the provenance, applicability, and integrity of the proffered writings are central. Defendant’s effort to tender a non-party document in response to a Court order, as if it were responsive to Plaintiff’s CDW Government LLC employment relationship, is improper and should not be credited to cure Defendant’s statutory noncompliance. Accordingly, no writing should be relied upon, admitted, or treated as probative of Plaintiff’s compensation terms unless it is specifically tethered to Plaintiff’s employment with CDW Government LLC and addresses the alleged commission-modification practices at issue.

Rather than admit this failure, Defendant attempts to retroactively apply the terms of a sister subsidiary, the precise conduct that the federal court rejected in *NeTech*.

VI. CDW DIRECT DOCUMENTS ARE IRRELEVANT AND IMPROPER TO CONSIDER IN THIS ACTION

A. Irrelevance

Illinois Rule of Evidence 401 defines relevant evidence as evidence having “any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.”

CDW Direct employment documents have no tendency to make facts about Plaintiff’s CDW Government LLC employment more or less probable because:

- They concern a different employer
- They establish different compensation terms
- They reflect a different employment relationship
- They predate the relevant time period (May 2023–present)

B. Unfair Prejudice and Confusion

Even if marginally relevant, the probative value of CDW Direct documents is substantially outweighed by the danger of:

Unfair Prejudice: The factfinder may improperly assume that terms agreed to with Entity A automatically apply to Entity B, relieving Defendant of its statutory obligation to provide written employment terms specific to the CDW Government LLC relationship.

Confusion of Issues: The factfinder may be confused about which entity's employment terms govern, which compensation structure applies, and whether Plaintiff's statutory wage claims are defeated by documents from an irrelevant prior employment relationship.

Misleading the Factfinder: CDW Direct documents would mislead the factfinder into believing Plaintiff received written employment terms from CDW Government LLC when in fact he received no such documentation.

C. Interference with Statutory Rights

Allowing Defendant to substitute CDW Direct documents for CDW Government LLC employment terms would undermine the Illinois Wage Payment and Collection Act's requirement that employers provide written notice of employment terms "at the time of hiring." 820 ILCS 115/2; 820 ILCS 115/10.

The statute requires written notice from the actual employer at the time of the relevant employment relationship. Allowing an employer to satisfy this statutory obligation by pointing to documents from a different legal entity concerning a different employment relationship would eviscerate the statute's protective purposes.

VII, CONCLUSION

Defendant cannot cure its failure to provide written CDW Government LLC employment terms by retrofitting documents from a separate legal entity concerning a different position under a different compensation structure. The federal court rejected this exact cross-subsidiary contract enforcement in *NeTech*, and this Court should do the same (Ex. A).

CDW Direct employment documents are irrelevant to Plaintiff's employment relationship with CDW Government LLC, have no probative value, and would unfairly prejudice and confuse the factfinder. They should be excluded.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter an order:

1. Excluding all employment documents, contracts, offer letters, acknowledgments, and evidence relating to Plaintiff's employment with CDW Direct, LLC, CDW, LLC, or CDW, Inc. from admission or consideration in this litigation;
2. Prohibiting Defendant from referencing, relying upon, or introducing agreements, documents, or evidence attributable to any CDW subsidiary, affiliate, or related entity other than CDW Government, LLC to establish the terms of Plaintiff's employment with CDW Government, LLC, including but not limited to CDW Direct, LLC, CDW, LLC, CDW, Inc., and Sirius Computer Solutions, LLC, none of which employed Plaintiff in the role at issue in this litigation, and none of which may be substituted or proffered as a surrogate for CDW Government, LLC's independent

legal obligations to Plaintiff;

3. Directing that any determination of Plaintiff's employment terms with CDW Government, LLC must be based exclusively on documents and evidence specific to that employment relationship with that named legal entity, and finding that Plaintiff's W-2 records are dispositive on this point: Plaintiff earned \$85,922.38 from CDW Direct, LLC in 2022 (Exhibit C), and \$36,836.30 from CDW Government, LLC for May through December 2023 (Exhibit D) and \$49,010.00 for the full year 2024 (Exhibit E) — a material reduction of more than \$30,000 annually that demonstrates the two employment relationships operated under entirely different compensation structures, such that CDW Direct, LLC documents have no probative value regarding the terms of Plaintiff's CDW Government, LLC employment;

4. Finding that Defendant's May 7, 2026 demand, captioned "CDW, Inc. and Marcellus Long," transmitted by a CDW, LLC employee, containing at-will employment language Plaintiff has contested under oath, and threatening 100% paycheck withholding upon refusal to sign, constitutes additional evidence of the continuing, deliberate entity-mixing this motion seeks to prevent; and

5. Granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Marcellus Long
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(312) 469-0683

Dated: May 13, 2026

EXHIBIT LIST

Exhibit 1 Attached Separately Herein: Plaintiff's Supplemental Responses to Requests for Production (Rule 214(d), served May 11, 2026), identifying the May 7, 2026 demand at RFP Nos. 20, 21, and 22.

Exhibit A: *CDW, LLC v. NeTech Corp.*, 2013 WL 1703518 (S.D. Ind. Apr. 18, 2013) (Federal Court Precedent)

Exhibit B: Plaintiff's CDW Direct, LLC Offer Letter (May 5, 2021)

Exhibit C: Plaintiff's CDW Direct, LLC 2022 W-2

Exhibit D: Plaintiff's CDW Government LLC 2023 W-2

Exhibit E: Plaintiff's CDW Government LLC 2024 1040

Exhibit F: Discovery Non-Compliance Package (Plaintiff's Request, Motion to Compel, Order, and Defendant's Non-Responsive Production)

Exhibit G: Plaintiff's Clarifying Email to Defense Counsel (September 5, 2025)

Exhibit H: Plaintiff's Written Request for CDWG Employment Terms (April 20, 2023 Email)

Exhibit A: CDW, LLC v. NeTech Corp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CDW LLC, CDW DIRECT LLC, and)	
BERBEE INFORMATION)	
NETWORKS CORPORATION,)	
)	1:10-cv-00530-SEB-DML
Plaintiffs,)	
)	
vs.)	
)	
NETECH CORPORATION,)	
)	
Defendant.)	

**ORDER GRANTING DEFENDANT’S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

This cause is before the Court on the motion of Defendant NETech Corporation (“NETech”) for partial summary judgment. [Docket No. 184]. Specifically, NETech requests that the Court grant partial summary judgment in its favor with respect to the tortious interference with contractual relationship claim of CDW LLC, CDW Direct LLC (“CDW Direct”), and Berbee Information Networks Corporation (“Berbee”) (collectively, “Plaintiffs”). For the reasons detailed herein, NETech’s motion is GRANTED.

I. Factual Background

In September 2006, Berbee Information Networks Corporation (“Berbee”) employed, among others, sales executives Rick D., Ann G., and Nicole S. Berbee’s employees signed employment agreements containing covenants not to

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compete with Berbee. Paragraph 8 of the employment agreement executed by G. [REDACTED] and D. [REDACTED] (the “Garcia/Dinkins Agreement”) provided as follows:

. . . Employee agrees that while employed by Berbee and for a period of equal to his or her length of employment, but not greater than twelve (12) months from the termination of this Agreement for whatever reason, he or she shall not directly or indirectly, whether as an owner, stockholder, partner, employee, consultant, agent, independent contractor or otherwise, for himself or herself, or on behalf of any other person or entity, engage directly or indirectly, or enter into any aspect of the business of Berbee (as such business activities exist as of the date of his or her termination of employment).

The forms of competition prohibited by this paragraph shall include, but not be limited to, the following activities to the extent that any of them are competitive with the business of Berbee: (a) soliciting or assisting in the solicitation of customers of Berbee; (b) supplying goods or rendering services or assisting in such activities, to customers of Berbee; (c) diverting or attempting to divert any customer’s business from Berbee or otherwise interfering with the business relationships between Berbee and its customers; (d) planning for or the organization of any business activity competitive with Berbee’s business; (e) combination or conspiracy with other employees of Berbee for the purpose of acquisition of any such competitive business activity; (f) actively soliciting for hire any employees of Berbee; or (g) use or dissemination of Confidential Business Information, except in furtherance of the business interest of Berbee (subject to the provisions of paragraph 4 hereof).

Garcia/Dinkins Agreements. The employment agreement executed by Nicole S. [REDACTED] also contained a covenant not to compete. In both versions of the employment agreement, competition was restricted as to “Berbee.” While there was no mention of restrictions on competition with any other company, the agreements specifically state that they are binding with regard to any successors of the respective parties.

A. Relationship Between Plaintiffs

The Plaintiffs in this case are CDW LLC and two of its subsidiaries, CDW Direct

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LLC, and Berbee. CDW LLC is the parent company of these and other subsidiaries, including CDW Government. Berbee became a subsidiary of CDW LLC on September 16, 2006 when it merged with CDW Acquisition Sub, Inc, which was created only for purposes of acquiring Berbee. Rother Decl. ¶¶ 4-5. CDW LLC paid \$184,000,000 to purchase Berbee. Id. ¶ 4. Both parties agree that Berbee was the surviving corporation as a result of this merger.¹ Id. ¶ 6. All of these CDW entities sell hardware, software, and technology parts and services. However, they each sell these products to different commercial entities. For instance, CDW Direct sells to commercial businesses and not-for-profit organizations, and CDW Government sells to local, state, and federal governments, educational institutions, and healthcare facilities.

Following the merger, some Berbee employees were transferred to work for other CDW entities, including CDW Direct and CDW Government. For instance, G. ■ and D. ■ became employees of CDW Direct in July of 2008. S. ■ became an employee of CDW Direct in June 2009. Plaintiffs stress that this change in employment was part of several measures to integrate Berbee with CDW LLC and thus Plaintiffs characterize the employees' transfer from Berbee to CDW Direct as "internal," despite the undisputed fact that CDW Direct and Berbee are separate subsidiaries of CDW LLC. Despite the transfer, these employees continued to perform the same work for the same clients, from the same

¹Approximately one year after the merger took place, Berbee's name was officially changed to "CDW Berbee." Rother Decl. ¶ 9. Then, in June 2010, this entity was renamed "CDW Technologies." Id. ¶ 12. However, we will shall use the name Berbee throughout this entry.

offices, and with the same supervisors. Rother Decl. ¶ 7. The employees did not sign new employment agreements as part of their transfers.

Eventually, G., D., and S. all left employment at CDW Direct to work for NETech. Shortly after their departure from CDW Direct, all three received letters from Plaintiffs' law firm stating (in relevant part) as follows:

I represent Berbee Information Networks Corporation and CDW LLC. It has come to my clients' attention that you have become employed by NETech Corporation in violation of certain promises you made in [your employment agreement]. . . .

As you know, the Agreement prohibits you, [for a period specified in each employment agreement], from working with or for a competitor and from soliciting certain of your former colleagues and customers. The Agreement also prohibits you from using or disclosing any of my clients' confidential or secret information, or other technical, business, proprietary or financial information that is not available to the public generally or to competitors. In addition, you specifically agreed that when you left your job, you would promptly return *all* records, memoranda, notes, plans, reports computer tapes and software and other documents and data which constitute Confidential Business Information.

We demand that you *immediately* return any and all information related to Berbee and CDW that is in your possession, whether that information is: (i) a hard copy document; (ii) on a work, home, or laptop computer; (iii) on a blackberry, PDA, iPhone, or cell phone; or (iv) on an external hard drive, thumb drive, or any other peice of extenal medial that permits the storage of information. You cannot keep any copies. You must collect any information that you may have given to others (and all copies) and return that as well. You cannot review or use any of this information.

In addition to requiring the return of all information related to your former employment, as noted above, the Agreement also prohibits you from being employed by a competitor for . . . short period of time after leaving your job. NETech Corporation is clearly competitive with . . . [the] core business of Berbee, as well as with CDW, and we demand that you honor your agreement and cease any work for NETech for at least the term outlined in the

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agreement. To the extent that there was any confusion over whether NETech is a competitor, we write to let you know (pursuant to Section 8 of the Agreement) that NETech is a competitor, and we attach as Exhibit 2 to this letter a representative, non-exhaustive list of other competitors that the Agreement bars you from joining for the limited restricted period. If our information is not correct, and you have not become an employee of NETech in violation of the Agreement, please let me know as soon as possible.

Because we believe you are working for NETech, I am also writing to inform you that my clients may have legal claims against you. Therefore, you must preserve and not destroy documents (including all e-mail and other electronically stored information) relating to Berbee or CDW (that is not otherwise required to be returned), or your recruitment, hiring, or work at NETech, or any third party with whom you have discussed alternative employment. This includes, but is not limited to, any hard copy document and any e-mail in a personal e-mail account and includes all active, archived, and deleted e-mail – including on your home/personal computer. We demand that you *immediately* preserve all such information whether it is: (i) a hard copy document; (ii) on a work, home, or laptop computer; (iii) on a blackberry, PDA, iPhone, or cell phone; or (iv) on an external hard drive, thumb drive, or any other piece of external media that permits the storage of information. If any electronic system has a function that includes deleting materials automatically after a certain time period you must disable such a system so that all materials currently existing, and all materials created on a going forward basis, are preserved.

We take this matter extremely seriously and it is my clients' policy to take swift, appropriate steps to protect their interests. Please direct all future communications to me.

Def.'s Ex. 8.

According to G. and D., they did not consider the referenced employment restrictions enforceable as to them and, thus, continued working for NETech.

G. Decl.

¶ 10; D. Decl. ¶ 10.

B. Procedural Background of the Litigation

In the Spring of 2010, Plaintiffs filed a Complaint against Defendant requesting, inter

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alia, a preliminary injunction. Specifically, Plaintiffs sought an order enjoining NETech from using CDW's confidential information and trade secrets; contacting or soliciting CDW's customers; soliciting or hiring any current CDW workers or workers terminated within the past twelve months; and otherwise unfairly competing against CDW. An evidentiary hearing that spanned several days was conducted by the Court, on the basis of which Plaintiffs' motion for preliminary injunction was granted. Dkt. No. 96. The Court's order enjoined Defendant in the following terms:

1. NETech is enjoined from retention, communication, distribution, or other such use of any confidential materials or trade secret information obtained by CDW's former employees now employed by NETech, and shall forthwith diligently and thoroughly search for and relinquish to CDW any and all such materials in its possession.

2. NETech is enjoined from interfering with the former CDW employees' covenants not to compete or disclose confidential information in any way through territory or account assignments, or directing or encouraging contacts with accounts previously developed or serviced by the former CDW employees while those employees were employed by CDW, or from remunerating these employees for any such work produced on behalf of NETech; or in any other way employing, engaging, or otherwise assisting any former CDW employee to perform any duties or services that would in any respect violate the terms of his/her covenant not to compete and confidentiality agreement as well as this preliminary injunction, both of which prohibitions shall commence with the date of the issuance of this Order and extend for such a time as to be in accordance with the time periods contained in each relevant employee's non-compete agreement. This prohibition shall also be coextensive with the injunction in the parallel Wisconsin State Court litigation;

3. NETech is enjoined from recruiting or hiring any other CDW sales agents to perform work in Indiana who are subject to comparably drawn covenants not to compete, while at the same time placing them in the same territories they served when employed by CDW with responsibility for their former customer accounts, for the duration of and consistent with the non-compete agreements between CDW and its current and former employees. When and

if NETech engages in future recruitment efforts targeted at CDW employees, notice of such contacts must be provided to NETech's counsel who shall thereafter communicate with CDW's counsel to ensure that those contacts are consistent with and do not encourage violations of the targeted employees' non-compete agreements;

4. NETech is not enjoined from attempting further sales to or servicing of CDW customers tied to or otherwise associated with the former CDW employees, so long as the contacts maintained by NETech with those customers are conducted by someone other than the former CDW employees, while such employees are subject to CDW non-compete agreements. Any such sales or servicing must be performed without reliance on confidential CDW materials or information which NETech may have access.

5. This Order in no way impacts or impairs the parties' rights in the related ongoing proceeding in Wisconsin State Court, CDW Direct, LLC, et al. v. Peterson et al., Case No. 10-cv-2144 (Wis.Cir.Ct. June 30, 2010), and shall therefore have no precedential impact on that or any other pending litigation.

Based on the evidence presented at the evidentiary hearing, the Court held that Plaintiffs' employment agreements with its former employees, including D. [REDACTED] and G., [REDACTED] were likely to be found valid and enforceable on the merits. Dkt. No. 96 at 16. We based our conclusion on the Wisconsin Supreme Court's decision in Star Direct, Inc. v. Dal Pra, which held that reasonable restrictions on solicitation of former customers and provisions ensuring the protection of confidential information were reasonable, enforceable restrictions. 767 N.W.2d 898 (Wis. 2009). We found another portion of the Star Direct holding – that otherwise reasonable portions of an employment agreement might be unenforceable if inextricably linked to another portion that is overly broad – inapplicable because the restrictions in Plaintiffs' agreements were specifically enumerated and divisible from potentially over-broad portions of the agreements. We also rejected NETech's argument that

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Plaintiffs could not enforce the employment agreements by virtue of the fact that those agreements were made with Berbee instead of CDW. We so concluded based on the premise that CDW was the surviving entity after its merger with Berbee and based on controlling legal authority that such a surviving entity was entitled to enforce the agreement.² See Dkt. No. 96 at 12 n. 7.

At approximately the same time this Court had before it this litigation during the Spring of 2010, Plaintiffs initiated a parallel proceeding in Wisconsin state court against the individual employees who had left CDW's employ for NETech. A stipulated preliminary injunction was granted in that case enjoining those individual employees from violating the employment agreements that are at issue here in this case. CDW Direct, LLC, et al. v.

Peterson et al., Case No. 10-cv-2144 (Wis. Cir. Ct. June 30, 2010).

On November 18, 2010, NETech filed a motion seeking a modification of the

²The day after the Court issued its preliminary injunction, NETech filed a "request for clarification" regarding this portion of the Court's holding. Dkt. No. 98. Specifically, NETech maintained that only Berbee could enforce the employment agreement because it, and not CDW, was the surviving entity following the merger between Berbee and CDW Acquisitions Sub, Inc. The importance of NETech's contention was two-fold. First, they requested that only Berbee be able to enforce the employment agreements, as opposed to its parent company, CDW, or its sister subsidiary, CDW Direct. Second, NETech hoped to exploit the distinction between these entities in order to support an argument that the employees were no longer employed by Berbee when CDW Direct became their employer, causing the clock on their respective employment agreements to begin to run on that date, rather than at the time they left CDW Direct to work for NETech.

The Court denied NETech's request for clarification, finding that it was actually a "disguised motion for reconsideration" of the Court's order granting Plaintiffs' Motion for Preliminary Injunction. Dkt. No. 102. We further noted that NETech had repeatedly raised this issue at the hearing but had failed to substantiate its theory with evidence or a brief on the subject, despite the Court's express grant of leave to do so. Id.

preliminary injunction (Dkt. No. 130). On January 31, 2011, the Court heard argument on that motion as well as on Plaintiffs' motion for an order to show cause why NETech should not be held in contempt. NETech's request was largely based on a decision handed down in the aforementioned parallel proceeding in Wisconsin that the Dinkins/Garcia employment agreement was void and unenforceable.³ CDW Direct, LLC, et al. v. Peterson et al., Case No. 10-cv-2144 (Wis. Cir. Ct. Nov. 8, 2010). During that hearing, the Court expressed hesitancy about modifying its order based on the Wisconsin decision because that decision was not binding on this Court and because Plaintiffs represented that they intended to appeal the Wisconsin decision making any modification by this Court based on that decision premature. Following that hearing, the Court denied Plaintiffs' request for an order to show cause but, in recognition of the Wisconsin decision, modified Paragraph 2 of the preliminary injunction by substituting the final sentence of the paragraph ordering that the restriction be considered "coextensive" with the Wisconsin State Court litigation with the following

³The Wisconsin state court found that Paragraph 8 of the Dinkins/Garcia Agreement, as quoted above, contained three non-compete provisions: a non-competition covenant found in the first paragraph; a non-solicitation covenant in the second paragraph, sections (a), (b), (c), and (f); and a confidentiality covenant in the second paragraph, section (g). The court found the first non-competition provision, which Plaintiffs admitted they were not attempting to enforce, unreasonable because it contained no geographical restriction and because it found that it was not necessary for Plaintiffs' protection. Then, the court ruled the non-solicitation covenant unenforceable because it was considered indivisible from the non-competition provision. The court reasoned that only the non-competition provision from Paragraph 8 contained a time restraint. The only way to read the non-solicitation provision to contain a time restraint (without which, the provision would be unreasonable per se), according to the Wisconsin court, was to link it to the time limit imposed in the overly broad non-competition covenant. Thus, because the non-solicitation covenant could not be independently read, the court found that it, too, was unenforceable.

sentence: “This prohibition shall apply in all states except Wisconsin, in recognition of the ruling in the parallel Wisconsin State Court litigation and so long as it is in effect.” [Docket No. 169]. The Court expressed its hope that this modification would quell both NETech’s concern regarding its ability to employ individuals whose non-compete agreements had been deemed unenforceable by the Wisconsin courts and Plaintiffs’ concern regarding the need to pursue additional litigation in other states.

Shortly thereafter, NETech filed the instant motion for partial summary judgment requesting that the Court find in its favor that: (1) the non-competition and non-solicitation provisions in the Garcia/Dinkins Agreement are unenforceable; and/or (2) the post-employment obligations contained in all versions of the employment agreements began to run when the employees were transferred from Berbee to CDW Direct. Both of these contentions relate to the merits of Plaintiffs’ claim of tortious interference with contractual relationships against NETech. As discussed below, we agree with NETech with regard to the second of these contentions and that judgment thus should be entered in its favor on Plaintiffs’ tortious interference with contract claim. We decline therefore to address the first of NETech’s contentions since its resolution is unnecessary to the relief granted here.

II. Legal Analysis

Summary judgment is appropriate when the record shows that there is “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Disputes concerning material facts are genuine where the evidence is such that a reasonable jury could

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return a verdict for the non-moving party. A. [REDACTED] v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In deciding whether genuine issues of material fact exist, the court construes all facts in a light most favorable to the non-moving party and draws all reasonable inferences in favor of the non-moving party. See id. at 255. However, neither the “mere existence of some alleged factual dispute between the parties,” id., 477 U.S. at 247, nor the existence of “some metaphysical doubt as to the material facts,” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986), will defeat a motion for summary judgment. Michas v. Health Cost Controls of Ill., Inc., 209 F.3d 687, 692 (7th Cir. 2000).

The moving party “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” Celotex, 477 U.S. at 323. The party seeking summary judgment on a claim on which the non-moving party bears the burden of proof at trial may discharge its burden by showing an absence of evidence to support the non-moving party's case. Id. at 325.

Summary judgment is not a substitute for a trial on the merits, nor is it a vehicle for resolving factual disputes. Waldrige v. Am. Hoechst Corp., 24 F.3d 918, 920 (7th Cir. 1994). Therefore, after drawing all reasonable inferences from the facts in favor of the non-movant, if genuine doubts remain and a reasonable fact-finder could find for the party opposing the motion, summary judgment is inappropriate. See Shields Enterprises, Inc. v.

First Chicago Corp., 975 F.2d 1290, 1294 (7th Cir. 1992); Wolf v. City of Fitchburg, 870 F.2d 1327, 1330 (7th Cir. 1989). But if it is clear that a plaintiff will be unable to satisfy

the

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legal requirements necessary to establish his or her case, summary judgment is not only appropriate, but mandated. See Celotex, 477 U.S. at 322; Ziliak v. AstraZeneca LP, 324 F.3d 518, 520 (7th Cir. 2003). Further, a failure to prove one essential element “necessarily renders all other facts immaterial.” Celotex, 477 U.S. at 323.

NETech maintains that the post-employment contractual obligations of the former employees of Plaintiff Berbee began to run when those employees were transferred to CDW Direct. As noted above, the Court previously rejected this argument on the grounds that CDW LLC was the surviving entity following the merger. Subsequent briefing, however, makes clear that Plaintiffs now concede that Berbee was, in fact, the surviving corporation as a result of the merger between Berbee and CDW Acquisitions Sub, Inc., and not “CDW.”⁴ See Pls.’ Resp. at 7-8. Following the merger of these two entities, Berbee continued on as a wholly owned subsidiary of CDW LLC. Likewise, CDW Direct is a CDW subsidiary and, thus, a “sister subsidiary” of Berbee.

The parties agree that the right to enforce employment agreements, such as those at issue in this case, pass through corporate mergers to the surviving entity. Farm Credit Serv.

of North Central Wis., ACA v. Wysocki, 627 N.W.2d 444, 450-52 (Wis. 2001); Def.’s Reply at 14; Pls.’ Resp. at 19. The parties also do not dispute that the surviving entity to the corporate merger, Berbee, can enforce the rights pursuant to the employment agreements (to the extent those rights exist). Rather, the parties’ dispute centers on whether CDW, LLC (the

⁴The parties also agree that CDW Acquisition Sub, Inc. ceased to exist following the merger with Berbee.

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parent company of Berbee) and/or CDW Direct (another CDW subsidiary) may enforce those rights. Our analysis convinces us that under Wisconsin law they cannot.⁵ Berndt v.

Fairfield

Resorts, Inc., 337 F. Supp. 2d 1120, 1131 (W.D. Wis. 2004) (“Rights made by contract with a subsidiary are the subsidiary’s rights alone. They do not automatically transfer to a parent company solely by virtue of common ownership.”); Frier v. Vilione, 766 N.W.2d 517, 525 (Wis. 2009) (“a corporation does not ‘have independent standing to sue for injuries done to a sister or subsidiary corporation, despite the fact that their businesses are intertwined and the success of one is dependent on that of the other.’”)(quoting 1 William

Meade Fletcher,

Fletcher Cyclopedic of the Law of Corporations § 36 at 95-96 (perm. ed., rev. vol. 2006)). Thus, on the basis of the record now before us, we vacate our previous holding and find that neither CDW LLC or CDW Direct has the right to enforce the contractual rights possessed by Berbee.

Having determined that only Berbee may enforce the employment agreements at issue here, we address whether there is a genuine issue of material fact with regard to whether the employees’ move from Berbee to its sister subsidiary, CDW Direct, constituted the “termination” of the employment agreement. NETech’s position is that

the employees left

⁵The cases Plaintiffs contend hold to the contrary are not binding and, more importantly, are entirely distinguishable. In Siemens Med. Solutions Health Serv. Corp v. Carmelengo, the district court simply held that the surviving company could enforce a covenant not to compete. 167 F. Supp. 2d 752, 759 (E.D. Pa. 2001). Here, as explained above, Plaintiffs concede that Berbee is the surviving company, not the parent, CDW LLC, or its sister subsidiary, CDW Direct. Moreover, in Williams v. Powell Elec. Mfg. Co., Inc., the court held that a *subsidiary* corporation could enforce part of a covenant not to compete entered into by the *parent*. But this

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holding has no bearing on a parent company's rights with respect to the contracts of its subsidiaries.

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one corporation – Plaintiff Berbee – to work for another – CDW Direct – and in so doing, the post-employment obligations began to run at the time of those transfers, in which case any obligations they may have had towards Berbee expired at the time they left CDW Direct for employment at NETech.⁶ Plaintiffs rejoin that, because the employees continued to perform the same job, for the same clients, in the same territories, reporting to the same supervisor, in the same location, and without any fundamental change in their job functions, their post-employment obligations did not begin to run until the employees left CDW Direct for NETech. We are unpersuaded by Plaintiffs’ arguments in this regard.

There simply is no denying that Berbee and its sister subsidiary, CDW Direct, are separate and distinct corporate entities. While they are both subsidiaries of the same parent company, CDW LLC, but they are separate and distinct nonetheless. That fact dictates a finding that the transfers of employment from one such entity to another, whether to perform the identical duties, under identical circumstances, in the same place, marked the end of employment with one entity and the beginning of employment with another. As the Wisconsin Supreme Court observed in Krier:

⁶Rick D., Ann G., Dan R., and Chris J. transitioned from employment for Plaintiff Berbee and to Plaintiff CDW Direct in July, 2008. D., G., R., J. Declarations. Each of these employees had signed 12-month non-compete agreements. If the employees’ transition to CDW Direct constituted a termination of their employment, it means that their respective post-employment obligations expired in July, 2009 – months before any of these employees began to work for NETech. Id. Nicole S. made a similar transition in June, 2009. S. Decl. ¶ 6. Thus, if her transition to CDW Direct constituted a termination of her employment with Berbee, her 6-month non-compete agreement with Plaintiff Berbee expired in December, 2009 – months before she began to work for NETech in April, 2010. S. Decl. ¶ 8.

[The parties] cannot pick and choose when they would like to operate separately and when they would like to operate as one corporation. Their business's interdependence does not blur the entities' distinct corporate structures.

A particular type of corporation may be the preferred method of doing business for any number of reasons including tax and liability implications, and these individuals chose to operate a business by creating separate and distinct corporate entities. Presumably, [Plaintiffs] made a conscious decision to create three different corporations with different types of corporate entities to carry out their operations. While they likely enjoyed certain advantages from doing business as three separate corporate entities, they also are bound by the disadvantages of forming separate corporations.

The plaintiffs essentially assert that because the entities function as one overall business, corporate principles ought to be overlooked in the interest of justice. However, when [Plaintiffs] were joint owners of the three entities, if one of their corporate entities were being sued, [Plaintiffs] would not likely suggest that the corporations were actually interdependent such that the assets of all three entities would be available for damages. In fact, in a business such as waste disposal, there may be deliberate reasons to separate the entity that holds assets from other entities that might have greater exposure to liability. One cannot maintain the corporate structure when it inures to one's benefit and then ignore the constraints of corporate law when it does not. These parties formed separate entities that remain separate entities.

766 N.W.2d at 525. The cases cited by Plaintiffs do not establish that a transfer to a sister subsidiary does not constitute a change in employers. In Peters v. Davidson, for instance, the court held that a merger between the entity with which an employee had negotiated an employment agreement and another company did not terminate that employee's term of employment. 359 N.E.2d 556 (Ind. Ct. App. 1977). Likewise, in Am. Homecare Supply Mid-Atlantic, LLC v. Gannon, the court held that the subsidiary which was the former employer could enforce a restrictive covenant against that former employee, despite the fact that it was sold by one parent company to another. 10 Pa. D. & C.5th 362, 381-85 (Pa. Com.

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Pl. 2009). As explained above, however, in our case, two successive events occurred: first, Berbee merged with CDW Acquisitions Sub, Inc., creating Berbee as the surviving entity; second, the individuals employed by Berbee were transferred to CDW Direct, another CDW LLC subsidiary. This second event, according to NETech, constituted a change in employment and we agree with that analysis. The cases cited by Plaintiffs, if applicable at all, would only be relevant with regard to the first of these two events. That is not the situation before us.

Whatever post-employment limitations obliged the former Berbee employees under their employment agreements were triggered when they ceased to work for that company. By the time the employees were hired by NETech, those obligations had expired. Thus, Plaintiffs' tortious interference claim fails as a matter of law.

III. Conclusion

As discussed herein, there are no genuine issues of material fact underlying Plaintiffs' tortious interference with contract claim against NETech, and NETech is entitled to judgment as a matter of law on this theory of relief. NETech's Motion for Partial Summary Judgment accordingly is GRANTED.

IT IS SO ORDERED.

Date: 02/16/2012



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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Exhibit B: Plaintiff's CDW Direct, LLC Offer Letter (May 5, 2021)



May 5, 2021

Dear Marcellus,

It is our pleasure to offer you the position of Sales Contact Center – Inbound Sales Representative, and I am pleased to be the first to extend formal congratulations following your acceptance. This position will report to me, Shannon Elizabeth [REDACTED]. Your start date will be effective on June 21, 2021.

As part of joining CDW, you will be participating in a virtual orientation program on Monday, June 21, 2021. Detailed information about the program will be emailed to you from our Sales Capability team in the near future.

Compensation

This position carries an hourly rate of \$15.40. This role is full time, and you will be expected to work at least 40 hours/week. Overtime may be required. The position is eligible for overtime pay.

You will be eligible for an annual bonus of \$18,000 paid out monthly which will be pro-rated from your start date. The bonus referenced is not a guarantee but the total amount obtainable at 100% of plan.

Please note that all compensation plans are subject to change at any time at CDW's discretion.

Benefits

You will be eligible to participate in CDW's benefits program including: medical, dental and life insurance after 30 days of employment. You can login as a guest and review our full list of benefit offerings here: [CDW Benefits](#)

Vacation

You will be eligible to accrue 2 weeks of vacation time throughout each year, and will be pro-rated in the current calendar year based on your start date. You will receive 1/12 of your annual vacation hours each month.

Sick and Flex Days

In addition to vacation, you will be eligible for five (5) sick days each year. You will accrue 3.33 hours per month and this time will be pro-rated based on your start date. In 2021 you will also be eligible for two (2) additional flex days that you can use as you choose.

Other Terms

This offer letter does not constitute or represent any contractual commitments between CDW and you; nor

does it in any way modify the "at-will" employment relationship between CDW and you. It is the policy at CDW, in accordance with state law, that you are free to terminate your employment at any time and for any reason. CDW reserves the same right. This offer is contingent upon successful completion of all background and reference checks, as well as a pre-employment drug screen.

In addition, this offer is contingent upon you signing the Third Party Confidential Information Agreement and Acknowledgement and Confidentiality/Non-Solicitation Agreement included in the new hire paperwork that you will receive prior to orientation. As a condition of employment, you will be required to complete the documents prior to your first day of employment.

Feel free to contact me directly if you need any further information. I am genuinely looking forward to working with you.

Welcome to the team!

Sincerely,

Shannon Elizabeth [REDACTED]
Supervisor, SCC

To accept CDW's Offer of Employment on the terms and conditions set out above, please electronically accept.

Acceptance and Signature: I have read, and I understand the above Offer of Employment. I have freely considered the terms and conditions of the Offer of Employment and I have obtained whatever advice I have thought necessary.

Exhibit C: Plaintiff's CDW Direct, LLC 2022 W-2

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This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Form W-2 Wage and Tax Statement 2022		7 Social security tips	1 Wages, tips, other comp. 85922.38	2 Federal income tax withheld 12691.01		
c Employer's name, address, and ZIP code CDW DIRECT 200 N MILWAUKEE AVE VERNON HILLS IL 60061		8 Allocated tips	3 Social security wages 85922.38	4 Social security tax withheld 5327.19		
e Employee's name, address, and ZIP code MARCELLUS LONG [REDACTED]		9	5 Medicare wages and tips 85922.38	6 Medicare tax withheld 1245.87		
		10 Dependent care benefits	11 Nonqualified plans	12a See instructions for box 12 AA 8575.51		
		13 Statutory employee Retirement plan Third-party sick pay <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	14 Other	12b DD 7271.16		
		b Employer identification number (EIN) [REDACTED] 0079		12c		
	a Employee's social security no. [REDACTED]			12d		
15 State IL	Employer's state ID no. 3645300790003	16 State wages, tips, etc. 79077.58	17 State income tax 3804.43	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.) OMB No. 1545-0008 Dept. of the Treasury - IRS

Exhibit D: Plaintiff's CDW Government LLC 2023 W-2

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Form W-2 Wage and Tax Statement 2023 c Employer's name, address, and ZIP code CDW GOVERNMENT 230 N MILWAUKEE AVE VERNON HILLS IL 60061		7 Social security tips	1 Wages, tips, other comp. 36836.30	2 Federal income tax withheld 4219.86	
e Employee's name, address, and ZIP code MARCELLUS LONG [REDACTED]	8 Allocated tips	3 Social security wages 36836.30	4 Social security tax withheld 2283.85		
	9 [REDACTED]	5 Medicare wages and tips 36836.30	6 Medicare tax withheld 534.13		
	10 Dependent care benefits	11 Nonqualified plans	12a See instructions for box 12 AA 3365.90 12b DD 6980.46 12c 12d		
Suff. 13 Statutory employee Retirement plan Third-party sick pay [REDACTED] <input checked="" type="checkbox"/> [REDACTED]	14 Other				
b Employer identification number (EIN) [REDACTED] 0110		a Employee's social security no. [REDACTED]			
15 State Employer's state ID no. IL 3642301100009	16 State wages, tips, etc. 36836.30	17 State income tax 1745.71	18 Local wages, tips, etc. [REDACTED]	19 Local income tax [REDACTED]	20 Locality name [REDACTED]

Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.) OMB No. 1545-0008 Dept. of the Treasury - IRS

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Exhibit E: Plaintiff's CDW Government LLC 1040 2024

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Form 1040	Department of the Treasury—Internal Revenue Service U.S. Individual Income Tax Return	2024	OMB No. 1545-0074	IRS Use Only—Do not write or staple in this space.																																																																																										
For the year Jan. 1–Dec. 31, 2024, or other tax year beginning _____, 2024, ending _____, 20____			See separate instructions.																																																																																											
Your first name and middle initial MARCELLUS		Last name LONG		Married filing jointly? <input type="checkbox"/> 7 0 4 4																																																																																										
If joint return, spouse's first name and middle initial		Last name		Spouse's social security number																																																																																										
[REDACTED]																																																																																														
<p>Filing Status <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married filing jointly (even if only one had income) <input type="checkbox"/> Married filing separately (MFS) <input type="checkbox"/> Head of household (HOH) <input type="checkbox"/> Qualifying surviving spouse (QSS)</p> <p>Check only one box. If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent: _____</p> <p><input type="checkbox"/> If treating a nonresident alien or dual-status alien spouse as a U.S. resident for the entire tax year, check the box and enter their name (see instructions and attach statement if required): _____</p>																																																																																														
<p>Digital Assets At any time during 2024, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>																																																																																														
<p>Standard Deduction Someone can claim: <input type="checkbox"/> You as a dependent <input type="checkbox"/> Your spouse as a dependent <input type="checkbox"/> Spouse itemizes on a separate return or you were a dual-status alien</p>																																																																																														
<p>Age/Blindness You: <input type="checkbox"/> Were born before January 2, 1960 <input type="checkbox"/> Are blind Spouse: <input type="checkbox"/> Was born before January 2, 1960 <input type="checkbox"/> Is blind</p>																																																																																														
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<p>For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 11320B Form 1040 (2024)</p>																																																																																														

**Exhibit F: Discovery Non-Compliance Package (Plaintiff's Request, Motion to Compel,
Order, and Defendant's Non-Responsive Production**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS LAW DIVISION

MARCELLUS LONG,
Plaintiff,

v.

CDW GOVERNMENT LLC,
Defendant.

Case No.: **2025L007458**

PLAINTIFF'S INITIAL REQUEST FOR DOCUMENT PRODUCTION

(Preservation of Rights Under Illinois Supreme Court Rule 201(k))

TO:

CDW Government LLC
c/o Illinois Corporation Service Company
801 Adlai Stevenson Dr.
Springfield, IL 62703

FROM:

Marcellus Long
Pro Se Plaintiff
P.O. Box 60832
Chicago, IL 60660
legal@marcelluslong.com
(312) 469-0683

DATE: 06/20/25

Pursuant to the Illinois Supreme Court Rules and in anticipation of formal discovery, Plaintiff requests that Defendant **produce the following within 14 days of receipt** of this request:

1. Any document signed by Plaintiff *prior* to the start of his employment with CDW Government LLC, authorizing or consenting to wage deductions.

This request is made in good faith. If no response is received within 14 days, Plaintiff will file a motion to compel in accordance with Illinois Supreme Court Rule 201(k).

Enforced by right, not request,

/s/ Marcellus Long
Marcellus Long
Pro Se Plaintiff

**IN THE CIRCUIT COURT OF COOK COUNTY
LAW DIVISION**

MARCELLUS LONG,
Plaintiff,

v.

CDW GOVERNMENT LLC,
Defendant.

Case No. 2025L007458

PLAINTIFF'S MOTION TO COMPEL PRODUCTION UNDER RULE 201(k)

NOW COMES Plaintiff, MARCELLUS LONG, pro se, pursuant to Illinois Supreme Court Rule 201(k), and respectfully moves this Honorable Court for an order compelling Defendant, CDW GOVERNMENT LLC, to produce a document previously requested in discovery. In support thereof, Plaintiff states as follows:

1. On June 23, 2025, Plaintiff served upon Defendant a written request for production, specifically requesting:

“Any document signed by Plaintiff *prior* to the start of his employment with CDW Government LLC, authorizing or consenting to any deduction to Plaintiff's earned wages.”

2. This request was made in conjunction with a good faith notice under Illinois Supreme Court Rule 201(k), clearly stating that if no response was received within 14 days, Plaintiff would move to compel.
3. More than 14 days have passed since the request was served. As of the filing of this Motion, Defendant has not responded to the request, nor provided any objections or indication of compliance.
4. The requested document is central to Plaintiff's claim under the Illinois Wage Payment and Collection Act (820 ILCS 115/1 et seq.), which prohibits wage deductions unless one of the following applies:
 - (a) The deduction is required by law;
 - (b) The deduction is to the benefit of the employee; or
 - (c) The deduction is expressly authorized in writing by the employee at the time of the deduction.

FILED DATE: 7/8/2025 1:54 PM 2025L007458

FILED DATE: 5/13/2026 4:02 PM 2025L007458

Page 35 of 43

5. The discovery request at issue seeks any document signed by Plaintiff authorizing or consenting to deductions made after wages were already deemed earned, as required by 820 ILCS 115/9. Defendant either possesses this document or does not.

6. Plaintiff strongly affirms that no such document exists and respectfully requests that the record reflect this fact.

7. Plaintiff notes that Defendant is a major government contractor, leading Plaintiff to reasonably expect Defendant's strict compliance with the Illinois Wage Payment and Collection act and all applicable recordkeeping obligations.

8. Plaintiff maintains that no genuine dispute exists as to any material fact under Count I, and that the absence of any signed authorization should be formally acknowledged and considered by the Court.

WHEREFORE, Plaintiff, MARCELLUS LONG, respectfully requests that this Honorable Court:

- A. Enter an Order compelling Defendant to produce any document signed by Plaintiff *prior* to the start of employment authorizing or consenting to wage deductions;
- B. Compel Defendant to produce said document within seven (7) days of the Court's Order;
- C. Reserve Plaintiff's right to seek sanctions under Illinois Supreme Court Rule 219 should Defendant continue to delay proceedings instead of acknowledging that no such document exists; and
- D. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

See Exhibit A – Plaintiff's 201(k) Discovery Request Filed June 24, 2025

/s/ Marcellus Long
Marcellus Long
Pro Se Plaintiff
P.O. Box 60832
Chicago, IL 60660
legal@marcelluslong.com
(312) 469-0683

DATED: July 8th, 2025

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Marcellus Long (Plaintiff)

v.

No. 2025 L007458

CDV Government LLC (Defendant)

ORDER

Plaintiff's motion for Sanctions & Amended motion for
571 Sanctions is denied.

4231 Plaintiff has 7 days to respond to Defendant's Affirmative
Defenses. (August 7, 2025)

4331 The initial status date of 8/13/25 is stricken.

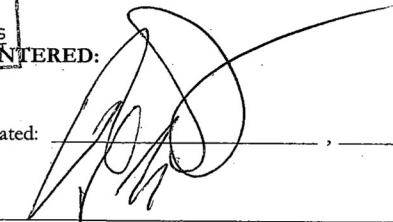
4284 Plaintiff's motion for substitution of judge is
withdrawn.

4215 Plaintiff's motion to compel is granted, Defendant's
are to comply within 30 days. (August 30, 2025).

ENTERED
Judge Thomas More Donnelly-1803
JUL 31 2025
MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

Attorney No.: 43346
Name: Joel Zeld
Atty. for: Defendant
Address: 180 N. Stetson Avenue, Suite 660
City/State/Zip: Chicago, IL 60601
Telephone: 312-960-6119

Dated: _____



Judge

Judge's No.

page 2/3

Mariyana T. Spyropoulos, Clerk of the Circuit Court of Cook County, Illinois



Marcellus Long v. CDW Case No. 25L007458 : Defendant's Response to Plaintiff's Request for Production of Documents [IMAN-WSACTIVE LLP.FID2531415]

8 messages

Joel M. Zeid <JZeid@fordharrison.com>

Tue, Sep 2, 2025 at 4:17 PM

To: "legal@marcelluslong.com" <legal@marcelluslong.com>

Cc: "Craig R. Thorstenson" <CThorstenson@fordharrison.com>, John O'Connor <JOConnor@fordharrison.com>, "David P. Maram" <DMaram@fordharrison.com>

Mr. Long,

Attached please find Defendant CDW's Response to your Request for Production of Documents.

Best,



Joel M. Zeid

Attorney at Law

FORDHARRISON

180 North Stetson Avenue, Suite 1660 | Chicago, IL 60601
JZeid@fordharrison.com | P: 312-960-6119

LTC4 Certified Legal Professional [FHPromise](#) | [Subscribe](#)

ATTORNEY WORK PRODUCT - PRIVILEGED & CONFIDENTIAL

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2 attachments

CDW - Long - Answer to plaintiff's first request for production of documents.pdf
136K

CDW 000001-2.pdf
102K

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

MARCELLUS LONG	,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2025L007458
)	
CDW GOVERNMENT LLC)	Calendar W
)	
Defendant.)	

**DEFENDANT’S ANSWER TO PLAINTIFF’S INITIAL REQUEST FOR
DOCUMENT PRODUCTION**

Defendant CDW Government LLC by their attorneys FordHarrison LLP, answers Plaintiff’s Initial Request for Document Production as follows:

1. Any document signed by Plaintiff prior to the start of his employment with CDW Government LLC, authorizing or consenting to wage deductions.

ANSWER: Objection to the extent Plaintiff is characterizing his compensation plan as a wage deduction, subject to and without waiving said objection, please see BATES CDW000001-2.

Dated: September 2, 2025

Respectfully submitted,

CDW GOVERNMENT, LLC.,

s/Joel Zeid
Attorney for Defendant
Joel Zeid

Joel Zeid (IL ARDC #6340061)
Jzeid@fordharrison.com
FORDHARRISON LLP
180 N. Stetson Ave., Suite 1660
Chicago, IL 60601
Phone: (312) 960-6119
Cook County Atty No. 43346

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

MARCELLUS LONG,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2025L007458
)	
CDW GOVERNMENT, LLC.,)	Calendar W
)	
Defendant.)	

ILLINOIS SUPREME COURT RULE 214
AFFIDAVIT OF ELIZABETH H.

1. I, Elizabeth H. am the Senior Manager of Litigation and IP support for CDW.
2. I have personal knowledge of the matters and facts set forth in this Affidavit, and, if sworn as a witness, I can testify competently to those matters and facts.
3. The documents that CDW produced in response to the First Request for Production propounded by Plaintiff Marcellus Long in this matter are complete in accordance with the First Request for Production.
4. Defendant CDW Government LLC, reserves the right to supplement its response to Plaintiff Marcellus Long’s First Request for Production if additional documents become known to it or come into its possession, custody, or control.
5. I certify that a good faith search was undertaken, and that the production is complete in accordance with the request for “Any document signed by Plaintiff prior to the start of his employment with CDW Government LLC, authorizing or consenting to wage deductions.”
6. I certify that on Tuesday, September 2, 2025, Defendant fully responded to Plaintiff’s first request for production in compliance with this Court’s order.

7. I certify that the production is compliant fully with the requirements of Illinois Supreme Court Rule 214(c).

I, Elizabeth H. [REDACTED] under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, certify that the statements set forth in this instrument are true and correct.

Dated: Sep 10, 2025

Elizabeth H. [REDACTED]

Elizabeth H. [REDACTED]

Exhibit G: Plaintiff's Clarifying Email to Defense Counsel (September 5, 2025)

https://mail.google.com/mail/u/1/?ik=6c4718f8fb&view=pt&search=al...

Legal <Legal@marcelluslong.com>

Thu, Sep 4, 2025 at 5:07 PM

To: "Joel M. Zeid" <JZeid@fordharrison.com>

Cc: "Craig R. Thorstenson" <CThorstenson@fordharrison.com>, John O'Connor <JOConnor@fordharrison.com>

Bcc: Marcellus Long <legal@marcelluslong.com>

Defendant's Counsel,

You were served a Rule 201(k) meet-and-confer on June 23, 2025, but did not respond. At the July 31, 2025 hearing, you represented that you had not received the 201(k) and later acknowledged that you had. The Court then granted Plaintiff's motion to compel directed to the item at issue.

On August 2, 2025, you sent Plaintiff an off-topic email attaching a job offer letter from a completely different company (CDW-D) and objected to Plaintiff's June 23, 2025 Rule 201(k) request. That was non-responsive to both the 201(k) request and the Court's order.

By 5:00 p.m. Central on September 5th, please respond with ONE of the following and nothing else:

OPTION 1 — Produce a writing signed by Marcellus Long authorizing reductions from wages (amounts labeled "Commission Payout"); or

OPTION 2 — Serve a verification under 735 ILCS 5/1-109 from a knowledgeable custodian stating that, after reasonable inquiry, Defendant has no such writing in its possession, custody, or control, and briefly identifying the principal repositories/systems and custodians checked (e.g., personnel file/HRIS; ICM/SPS; e-signature; email archive; shared drives/case systems). An unsworn attorney email is not acceptable.

OPTION 3 — Do nothing. If you intend to take no action, please state that intention immediately so Plaintiff can proceed without awaiting the deadline.

Please do not reply with any legal arguments or justifications. Please limit your reply to "Option 1," "Option 2," or "Option 3." If privilege is claimed for any specific document, serve a contemporaneous privilege log.

If Defendant does not fully comply by the deadline, Plaintiff will, without further notice, file:

- a Motion to Deem Fact Admitted (that no signed authorization exists); and
- a Petition for Rule to Show Cause seeking an adjudication of indirect civil contempt, an evidentiary bar, and a per-day compliance sanction until any purge conditions set by the Court are satisfied, along with costs.

Please confirm receipt and your selection today.

Respectfully,

/s/ Marcellus Long
Marcellus Long, Pro Se
P.O. Box 60832
Chicago, IL 60660
(312) 469-0683
legal@marcelluslong.com

Attachments:

- Plaintiff's motion to compel and the June 23, 2025 Rule 201(k) letter
- July 31, 2025 order granting motion to compel

2 attachments

 **Plaintiff_Motion_to_Compel_Production_Rule_201k_2025L007458.pdf**
227K


 **LD1_2025L007458_07_31_2025_Long Marcellus_93533e4a-15c9-4263-91cc-cbf50ad14b5c.PDF**
34K

Exhibit H: Plaintiff's Written Request for CDWG Employment Terms (April 20, 2023 Email)



Marc Long

RE: Conversation about DoD Opportunity

To: Yemi O. [REDACTED] Cc: Tamica L. [REDACTED]

April 20, 2023 at 10:41 AM

[Details](#)

Good Morning Yemi,

Thank you for the update.

I am really excited about joining!

Can you please let me know what my new hours will be or anything else I should know?

Thank you,

Marcellus Long

Account Manager – West US Region | [REDACTED]
Hours: Monday – Friday 7:00am – 4:00pm (CT)
Direct Line: [REDACTED]
Main Sales Line: [REDACTED]

****RMA (return/credit), Damaged Items, Missing Items, License resends****
Please contact: Customer Relations at [REDACTED]



CERTIFICATE OF SERVICE

The undersigned certifies that on or around May 13, 2026, a true and correct copy of the foregoing was served via email pursuant to Illinois Supreme Court Rule 11 upon counsel of record for Defendant at their designated service addresses.

/s/ Mr. Marcellus Long, MBA