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 Trial Date: Unassigned

PLAINTIFF'S FIRST AMENDED OPPOSITION TO DEFENDANT'S RULE 2-619.1 MOTION TO DISMISS PLAINTIFF'S OPERATIVE COMPLAINT AND MEMORANDUM OF LAW

I. INTRODUCTION

Defendant's March 17, 2026 Motion to Dismiss should be denied. This is Defendant's second Rule 2-619.1 motion directed at Plaintiff's claims, and it recycles the same arguments this Court already considered and rejected. On December 2, 2025, this Court **DENIED** Defendant's Motion to Dismiss the First Amended Complaint, finding that the motion **lacked merit**. On February 17, 2026, this Court **DENIED** Defendant's Motion to Strike the operative complaint. Defendant now returns with a filing that, beneath updated paragraph citations, advances the identical legal theories: that the CDW Direct, LLC offer letter establishes at-will status binding on CDW Government, LLC, that Plaintiff "agreed" to undisclosed compensation terms by continuing to

work, that the fraud claims are insufficiently pled, and that the complaint is too long. None of these arguments has improved with repetition. And critically, ten days after filing this Motion to Dismiss, Defendant's own Sr. Director of Global Compensation sent a company-wide email to approximately 11,000 sales employees announcing for the first time that Defendant would begin requiring signed acknowledgment of compensation plans, describing it as a "best practice" to ensure "clarity and shared understanding of plan terms." Defendant filed a motion telling this Court that Plaintiff's claims have no merit. Ten days later, **Defendant's compensation leadership told its entire salesforce that the process Plaintiff's claims demand was never in place**. These positions cannot coexist.

After a full year of litigation, Defendant has not produced a single CDWG-specific offer letter, a single CDWG-specific signed compensation agreement, or a single CDWG-specific written authorization for wage deductions. Defendant's own Sales Manager described the Goal Modifier in writing as a "deduction" that would be "paid back." Defendant's Federal Sales Manager told employees the mechanism caused them to "lose" money. Defendant admitted under Rule 216 that other employees have complained about the Goal Modifier. Defendant's internal Case Close Review confirmed that "No evidence of additional information shared or time spent" to explain the mechanism to Plaintiff. And Defendant's IDOL Employer's Answer characterized the mechanism using the word "deductions," then shifted to calling it a "calculation" in this Court. These are Defendant's own words from Defendant's own agents in Defendant's own documents, and no motion to dismiss can erase them.

Plaintiff respectfully requests that this Court deny Defendant's Motion in its entirety or, in the alternative, grant Plaintiff's pending motion for default judgment as a sanction for Defendant's pattern of dilatory conduct and discovery obstruction.

II. PROCEDURAL HISTORY

This action was commenced on June 10, 2025. The procedural history relevant to this motion is as follows:

June-July 2025. Plaintiff filed the original Complaint. On July 8, 2025, Plaintiff filed a Motion to Compel Production under Rule 201(k), 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." This motion was granted on July 31, 2025. Defendant has never produced a responsive CDWG authorization document.

September 2025. Defendant responded to the compel order by submitting a CDW Direct, LLC offer letter (BATES CDW000001-2) and an affidavit from Elizabeth H. Plaintiff filed a Petition for Rule to Show Cause on September 12, 2025, demonstrating that the CDW Direct documents were non-responsive to an order directed at CDW Government, LLC.

October 2, 2025. This Court granted Plaintiff leave to file a First Amended Complaint and requested greater detail regarding the claims, specifically directing Plaintiff to plead dates, what happened, who was involved, and how the conduct runs afoul of the law. (Pl.'s Opp. to Mot. to Strike, Feb. 10, 2026, at 2.) The operative complaint is the direct product of that directive. Defendant now attacks as "verbose" the very specificity this Court requested.

December 1-2, 2025. Defendant filed its first Rule 2-619.1 Motion to Dismiss (three days late). At the December 2, 2025 status hearing, this Court **DENIED** Defendant's Motion to

Dismiss. The Court separately struck the First Amended Complaint as a case management mechanism after Plaintiff represented to the Court that he wished to refine certain allegations, and the Court explicitly instructed Plaintiff to "make your complaint even better." (Pl.'s Opp. to Mot. to Strike, Feb. 10, 2026, at 2.) This was not a ruling in Defendant's favor in any respect. Defendant's Motion to Dismiss was **DENIED**. The complaint was struck solely to facilitate refinement at Plaintiff's own request, not because Defendant's motion identified any legal insufficiency.

January 2026. Plaintiff filed the refined operative complaint on January 22, 2026. Defendant filed a Motion to Strike on January 29, 2026 but filed no substantive response to the operative complaint itself. **Defendant chose not to answer or otherwise plead, leaving the operative complaint without a responsive pleading for fifty-six consecutive days**, from January 22, 2026 through March 17, 2026. Fifty-six days of silence from one of the nation's largest management-side labor and employment firms. This Court, consistent with its obligation to provide every party a fair opportunity to engage, did not default Defendant for that silence. Plaintiff, proceeding without counsel, made every accommodation available under the rules. Defendant took none of those opportunities to answer on the merits.

February 17, 2026. Having filed no responsive pleading to the operative complaint, Defendant appeared at the February 17, 2026 hearing without having answered or otherwise engaged with the substance of the claims. To resolve any timeliness issues created by Defendant's silence, this Court had Plaintiff re-file the operative complaint instanter that same day and gave Defendant twenty days to respond. It was only in response to that Court-ordered deadline that Defendant filed the instant Motion to Dismiss on March 17, 2026. This Court **DENIED** Defendant's Motion to Strike on February 17, 2026, finding that the motion **lacked**

merit. Both this Court and Plaintiff have afforded Defendant every available opportunity to comply with the law and engage honestly with these claims. Defendant has chosen obstruction over compliance at every stage.

February 2026. Plaintiff filed a Motion in Limine to Exclude CDW Direct Documents (February 6, 2026), supported by a Notice of Supplemental Authority citing CDW LLC v. NeTech Corp., No. 1:10-cv-00530-SEB-DML (S.D. Ind. Feb. 16, 2012), in which federal Judge Sarah Evans Barker held that CDW subsidiaries are distinct corporate entities and cannot enforce each other's employment contracts.

March 17, 2026. Defendant filed the instant Motion to Dismiss, its second Rule 2-619.1 motion. It is directed at the same claims, under the same statutory framework, with the same core arguments this Court found lacked merit in December 2025.

III. THE MARCH 17 MOTION REPEATS ARGUMENTS THIS COURT HAS ALREADY CONSIDERED AND REJECTED.

Defendant's March 17, 2026 Motion to Dismiss does not present new legal theories. It presents the same theories under updated paragraph citations. A side-by-side comparison of the two motions demonstrates the overlap:

CDWG's Recycled Argument No. 1: At-will status via CDW Direct offer letter. The December 2025 MTD argued that the CDW Direct offer letter establishes Plaintiff's at-will status and that "all compensation plans are subject to change at any time at CDW's discretion." (Dec. MTD at 1-2.) The March 2026 MTD advances the identical argument. (Mar. MTD at 3-6.) The

only new element is a citation to Carey v. Hartz, 2024 IL App (1st) 231323, for the proposition that Defendant may reference the offer letter even though Plaintiff removed it from the operative complaint. This argument fails for the reasons briefed in Plaintiff's Motion in Limine and Notice of Supplemental Authority: under CDW LLC v. NeTech Corp., CDW subsidiaries cannot enforce each other's employment contracts, and the CDW Direct offer letter is therefore legally irrelevant to Plaintiff's employment with CDW Government, LLC.

CDWG's Recycled Argument No. 2: "Agreed by remaining employed." The December 2025 MTD argued that Plaintiff accepted compensation changes by continuing to work. (Dec. MTD at 14.) The March 2026 MTD repeats this argument. (Mar. MTD at 6.) As briefed in Plaintiff's Opposition to the Motion to Strike, this theory presupposes that the employee knew what the "terms" were. Defendant's own Case Close Review confirms Plaintiff did not. One cannot "agree" to terms one has never been told.

CDWG's Recycled Argument No. 3: Absence of CDWG offer letter is "a red herring." The December 2025 MTD expressly characterized the absence of a CDWG offer letter as "a red herring." (Dec. MTD at 14.) The March 2026 MTD continues to avoid producing one. The absence of a CDWG offer letter is not a red herring. It is the central evidentiary fact. The IWPCA requires written notice of pay terms (820 ILCS 115/10) and express written consent for deductions to commission payouts (820 ILCS 115/9). No such document exists for CDWG, and Defendant's characterization of that absence as irrelevant is a concession that it cannot satisfy the statutory requirements.

CDWG's Recycled Argument No. 4: Fraud claims insufficiently pled. The December 2025 MTD argued that the fraud counts are conclusory. (Dec. MTD at 7-13.) The March 2026

MTD repeats this argument. (Mar. MTD at 7-13.) As set forth below, the operative complaint pleads fraud with the heightened specificity Illinois law requires, including the who, what, when, where, and how of Defendant's omissions, supported by time-stamped documentary exhibits.

CDWG's New Argument No. 5: Complaint too long. The March 2026 MTD adds a Section 2-603 argument that the complaint is too verbose and contains too many exhibits. (Mar. MTD at 14-15.) This argument is addressed in full in Section IV below.

This Court has already weighed these core arguments and found them lacking in merit. The December 2, 2025 denial of the first Motion to Dismiss established that position. Defendant has not identified any material change in law or fact that warrants a different result. The motion should be denied on the threshold ground that it is an improper successive motion raising arguments this Court has already considered and rejected.

IV. THE OPERATIVE COMPLAINT COMPLIES WITH SECTION 2-603 AND THE HEIGHTENED PARTICULARITY REQUIREMENTS FOR FRAUD.

Defendant's final argument reduces to this: the complaint is too long. A motion to dismiss under 2-619.1 is not the appropriate vehicle for this objection. After a year of litigation, two motions to dismiss, and a prior finding by this Court that those arguments lacked merit, Defendant still has not articulated a single legally cognizable theory under which the Goal Modifier survives scrutiny under the IWPCA, under the common law of fraud, or under any other body of Illinois law. Instead, Defendant attacks the number of pages in the complaint, as though the volume of documented misconduct is Plaintiff's burden to apologize for.

A. Defendant Waived the 2-603 Objection by Failing to Raise It for Five Months Across Two Prior Motions.

Before addressing the substance of the 2-603 argument, this Court should recognize what Defendant is doing procedurally. Defendant is raising a complaint-length objection for the first time on March 17, 2026, nearly five months after receiving the detailed complaint structure it now attacks.

The timeline is dispositive. Plaintiff filed the First Amended Complaint on October 31, 2025. That complaint contained the same element-by-element structure, the same background sections, the same headings and subheadings, and substantially the same paragraph count that Defendant now characterizes as violating 2-603. Defendant received that complaint in early November 2025. In response, Defendant filed a Rule 2-619.1 Motion to Dismiss on December 1, 2025. That motion raised at-will status, fraud insufficiency, and IWPCA defenses. It did not raise 2-603. It did not mention the complaint's length. It did not object to the number of background paragraphs, the incorporation by reference structure, or the exhibits.

This Court then struck the complaint on December 2, 2025 for case management purposes, giving Plaintiff leave to re-plead with further refinement. The Court did not strike any portion of the background sections, did not identify the complaint's length as a deficiency, and did not flag the organizational structure as problematic.

Plaintiff re-filed the refined operative complaint on January 22, 2026. Defendant filed a Motion to Strike on January 29, 2026. That motion attacked the filing timeline (the brief delay after the

MLK holiday) and mischaracterized the complaint as a "Third Amended Complaint." It did not raise 2-603. It did not mention length, verbosity, paragraph count, or exhibits.

On February 17, 2026, this Court denied both the Motion to Dismiss and the Motion to Strike. The complaint survived two challenges without a single objection to its length or structure.

Now, on March 17, 2026, after exhausting every other procedural and substantive theory, Defendant raises 2-603 for the first time. This is not a genuine objection to the form of the pleading. This is a defendant searching for new material to pad a recycled motion after its prior arguments were rejected. The 2-603 argument appears in this motion because Defendant needed something it had not already tried, not because the complaint's structure suddenly became problematic after five months.

Under Illinois practice, formal defects in pleadings that a party is aware of and fails to raise are subject to forfeiture. Defendant was aware of the complaint's structure since October 31, 2025. Defendant filed two motions attacking that complaint without raising 2-603. A defendant that responds substantively to a complaint across multiple rounds of motion practice, demonstrating full comprehension of every count and every allegation, cannot then claim months later that the same complaint is too confusing to understand. The objection is forfeited by conduct, and even if not technically waived, its tardiness eliminates any claim of prejudice. Defendant has already demonstrated, repeatedly, that the complaint's structure poses no impediment to its ability to respond.

This Court should view the 2-603 argument for what it is: the last untried procedural objection available to a defendant that has failed to defeat the claims on substance.

B. The Heightened Specificity Required for Fraud Claims Confirms the Complaint's Detail Is Legally Mandated, Not Excessive.

Illinois law requires that fraud be pled with specificity. See 735 ILCS 5/2-603; Connick v. Suzuki Motor Co., 174 Ill. 2d 482, 496-97, 675 N.E.2d 584 (1996) ("All matters constituting fraud or mistake must be pleaded with specificity."); Board of Education v. A, C & S, Inc., 131 Ill. 2d 428, 457, 546 N.E.2d 580 (1989) ("a plaintiff must allege facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made them, and to whom they were made"). This heightened pleading obligation is not satisfied by generic assertions; it demands the kind of granular factual detail that Defendant now complains about.

Two of the six counts in this action sound in fraud. Count I (Constructive Fraud Based on Breach of Statutory Duties) alleges that Defendant breached seven separate statutory obligations under the IWPCA, each of which must be identified with specificity and supported by particular facts demonstrating the who, what, when, and how of the breach. Count II (Fraudulent Concealment) requires Plaintiff to plead with particularity that Defendant concealed material facts, intended to induce false belief, and prevented discovery through reasonable inquiry. These statutory and common law requirements leave Plaintiff no choice but to construct a detailed factual narrative establishing the precise timeline of Defendant's omissions and the specific statutory requirements that were violated.

To plead fraud with the specificity Illinois law requires and then be penalized for the detail that specificity demands would be an internally contradictory standard. Defendant cannot simultaneously insist that fraud be pled with particularity and complain when the complaint provides that particularity.

C. A Six-Count Complaint Addressing Complex Statutory Violations Requires the Meticulous Narrative Defendant Now Attacks.

The operative complaint asserts six causes of action: (1) Constructive Fraud Based on Breach of Statutory Duties; (2) Fraudulent Concealment; (3) Failure to Pay Wages and Unauthorized Deduction under the IWPCA (820 ILCS 115/1 et seq.); (4) Conversion; (5) Unjust Enrichment (in the alternative); and (6) Retaliation under the IWPCA (820 ILCS 115/14(c)). Each count involves distinct legal elements, distinct statutory frameworks, and distinct applications of overlapping but non-identical facts. Each count required its own subsections for legal basis, elements, specific conduct (ultimate facts), application of facts to elements, and relief, as this Court requested at the October 2, 2025 hearing. The length of the complaint is proportional to the number and complexity of the legal theories asserted, not an indication of verbosity.

D. This Court Specifically Requested the Organizational Structure Defendant Now Attacks.

At the October 2, 2025 hearing, this Court granted Plaintiff leave to amend and requested greater detail regarding the claims. At the December 2, 2025 hearing, this Court instructed Plaintiff to "make your complaint even better." In doing so, this Court required Plaintiff to plead

element-by-element, with headings and subheadings that outline the applicable law and demonstrate how Defendant's specific conduct satisfies each element of each cause of action. Plaintiff complied. The operative complaint is structured with precisely the headings, subheadings, statutory references, element-by-element analysis, and fact-to-law mapping that this Court ordered.

Defendant now asks this Court to dismiss a complaint for doing exactly what this Court told Plaintiff to do. The complaint's organizational structure, including the headings and subheadings that Defendant characterizes as "legal analysis" (MTD at 14, citing Op. Comp. ¶¶ 52, 53, 143, 146), exists because this Court required Plaintiff to demonstrate his understanding of each element and its applicability. Dismissing on this basis would penalize compliance with this Court's own directives.

E. The Complexity of Defendant's Scheme Necessitates Detailed Pleading.

Defendant operated a systematic, undisclosed post-calculation commission extraction mechanism across multiple sales channels affecting thousands of employees. This was not a simple breach of contract or a single unpaid invoice. The Goal Modifier was engineered to be invisible to employees, applied after commissions were calculated but before they were paid, and concealed within payroll systems that did not separately itemize the deduction on official adjustment ledgers. Defendant's own Sales Manager, Yemi O., described the mechanism in writing as a "deduction" that would be "paid back," and Defendant's Federal Sales Manager, Dustin "Duke" K., told employees they could "work to make back" what was "lost." Defendant's Rule 216 admission confirms that other employees have complained.

The sophistication of this scheme, its documented operation spanning no fewer than five to ten years as established by Defendant's own Rule 216 admission (Request No. 4: "Admitted," confirming CDWG reviewed complaints about the Goal Modifier from other employees within that period), and the breadth of approximately 10,900 customer-facing employees affected across five U.S. sales channels require a factual narrative sufficient to expose the architecture of the conduct. A complaint that merely stated "Defendant withheld wages" would not satisfy the specificity requirements for fraud, would not establish the pattern of concealment, and would not capture the scope of harm that gives rise to statutory damages and punitive relief. The length of the complaint reflects the depth of documented wrongdoing, not any pleading deficiency.

F. Count I Identifies Seven Interconnected Statutory and Common Law Failures, Warranting Punitive Damages.

Defendant’s conduct in Count I—Constructive Fraud based on the breach of statutory duties—is so systemic that the Complaint identifies seven specific failures to comply with the mandatory disclosure and consent requirements of the IWPCA (820 ILCS 115/2, 115/9, and 115/10) prior to Plaintiff’s acceptance of the role: (1) the failure to provide a written offer letter; (2) the failure to provide written employment terms; (3) the failure to notify Plaintiff of the rate and terms of pay; (4) the failure to disclose the Goal Modifier mechanism; (5) the failure to disclose the amount of deductions to be withheld; (6) the failure to disclose the LOS reset and title downgrade; and (7) the failure to obtain express written consent for wage deductions (Complaint ¶¶ 79, 81, 94).

The excessive and punitive nature of Defendant’s conduct, characterized by these seven distinct omissions within a single cause of action, is reflected in the necessary length and detail of the Complaint. A defendant that breached a single notice requirement might warrant a brief

pleading; however, a defendant that systematically withheld seven material components of a compensation plan while promising "no dips" in pay (Complaint ¶ 87) warrants a proportionally detailed record to properly plead Constructive Fraud with the requisite particularity. This multi-layered breach of statutory duties under Sections 2, 9, and 10 of the IWPCA, leveraged by Defendant's superior knowledge, underscores the "willful and wanton" nature of the conduct for which Illinois law permits punitive damages.

G. The Exhibits Are Required by the Legal Standards Defendant Itself Invokes.

Defendant characterizes the operative complaint's ten exhibits as excessive. This argument ignores both the pleading requirements for fraud and the evidentiary demands of the IWPCA.

First, there is nothing in Section 2-603 or any other provision of Illinois law that prohibits exhibits attached to a complaint. To the contrary, 735 ILCS 5/2-606 provides that where a claim is founded upon a written instrument, the instrument or a copy thereof must be attached to the pleading as an exhibit. Exhibits are not only permitted; in many circumstances they are mandatory.

Second, the heightened specificity requirements for fraud require Plaintiff to allege "what misrepresentations were made, when they were made, who made them, and to whom they were made." Board of Education v. A, C & S, Inc., 131 Ill. 2d 428, 457 (1989). This Court reinforced that standard at the October 2, 2025 hearing by requesting all specific dates and the identities of the actors involved. Plaintiff cannot identify specific representatives of Defendant and plead the precise statements they made, on precise dates, without providing the time-stamped documentary

evidence that corroborates those allegations. The Yemi O. emails, the Estimator, the compensation continuity correspondence, and the March 27, 2023 acceptance message are not extraneous attachments. They are the very instruments through which Defendant's fraud was communicated and through which the timeline of concealment is established. Removing them would strip the complaint of the specificity that both the law and this Court require.

Third, the IWPCA claims impose their own distinct evidentiary burden that compels the inclusion of commission documentation. Under 820 ILCS 115/9, a wage deduction is unlawful unless it satisfies one of three statutory exceptions. To demonstrate that the Goal Modifier constitutes a post-earning deduction rather than a legitimate calculation, Plaintiff must show that commissions were first computed at a specific rate applied to gross profit, and then reduced by a separate mechanism after that computation. This requires exhibition of actual commission summaries showing the payout stage, the calculated commission amount, and the subsequent application of the Goal Modifier as a clawback from that already-calculated figure. Without these exhibits, Plaintiff's IWPCA claim would rest on conclusory assertions rather than documented proof that the deduction occurred after the earning event. The commission summaries are the best evidence that the Goal Modifier operates as an unauthorized post-earning extraction, and their inclusion is not excessive; it is indispensable.

Fourth, Defendant's own prior MTD criticized Plaintiff's earlier complaint for being too conclusory and lacking factual support. Plaintiff responded by attaching the documentary evidence that substantiates every allegation. Defendant now complains that the substantiation is too thorough. Plaintiff cannot simultaneously be too conclusory and too detailed. These positions are mutually exclusive, and Defendant's oscillation between them reveals that the true objection is not to the form of the pleading but to the strength of the evidence it presents.

Fifth, Plaintiff already reduced the number of exhibits in direct response to this Court's case management. The original First Amended Complaint filed October 31, 2025 contained at least seventeen lettered exhibits (Exhibits A through Q), each supporting specific factual allegations across multiple counts. When this Court struck that complaint for case management purposes and granted leave to re-plead, Plaintiff proactively streamlined the documentary record from seventeen-plus exhibits down to ten numbered exhibits, retaining only those documents essential to satisfy the fraud specificity requirements and the IWPCA evidentiary burden. Defendant demanded more specificity and received it. Defendant demanded fewer exhibits and received those too. Defendant now calls the result "verbose." The operative complaint's ten exhibits represent a deliberately curated subset of the available documentation after Plaintiff exercised substantial restraint. Defendant's characterization of ten exhibits as "excessive" for a six-count case involving two fraud theories, a statutory wage claim, conversion, unjust enrichment, and retaliation is unsupported by any authority and is contradicted by the documented reduction Plaintiff already made.

Sixth, several of the exhibits Defendant now characterizes as excessive exist precisely because Defendant demanded them. In its first Motion to Dismiss, Defendant argued that no "agreement" governed the commission relationship. Plaintiff responded in the operative complaint by including the March 27, 2023 written acceptance of the CDWG role (Op. Comp. Ex. 2) and the compensation continuity correspondence in which Defendant solicited Plaintiff's prior pay information to ensure no "dips or shortfalls" in compensation (Op. Comp. Ex. 1), each of which establishes an agreement to work for commissions. The IWPCA defines "wages" to include commissions (820 ILCS 115/2), and 56 Ill. Admin. Code 300.500 recognizes that commission agreements may be established through the parties' communications and conduct.

Plaintiff provided the written proof of the agreement that Defendant said was missing. Defendant now calls that proof "verbose."

The Estimator (Op. Comp. Ex. 3) is included not as evidence of an agreement but as evidence of Defendant's awareness of the commission structure while concealing the Goal Modifier. It was sent by Plaintiff's manager on May 1-2, 2023, over five weeks after Plaintiff's acceptance of the role on March 27, 2023, and days before Plaintiff's start date. It cannot establish, modify, or retroactively authorize anything with respect to that acceptance. Its presence in the record exposes that Defendant knew exactly how commissions would be calculated and said nothing about the post-earning clawback that would reduce them.

Defendant cannot demand documentation, receive it, and then object that the documentation exists. Defendant's inability to produce a CDWG-specific offer letter or compensation agreement is not a pleading deficiency in Plaintiff's complaint. It is evidence of Defendant's failure to comply with the IWPCA's affirmative obligation to provide written notice of pay terms (820 ILCS 115/10) and to maintain accurate records. That failure is Defendant's compliance problem, not Plaintiff's pleading problem.

H. Defendant Has Been Informed of These Claims Through Multiple Channels Over Multiple Years, Not Merely Through the Complaint.

The purpose of Section 2-603 is to ensure that a defendant is "reasonably inform[ed]... of the claim upon which [it is] called to answer." McKeel v. Edwina T, 18-L-681, 2018 Ill. Cir. LEXIS 10724, 1 (Cir. Ct. Cook Cty. Law Div. June 5, 2018). This is Defendant's own citation. Under the standard Defendant itself invokes, the question is whether Plaintiff's complaint

reasonably informs Defendant of the claims it must answer. That standard is plainly met. Defendant has been informed of these claims through every channel available: internal complaint, formal investigation, written refund demands, regulatory proceedings, and now twelve months of litigation. Defendant's citation to McKeel refutes its own argument.

Pre-Litigation: Defendant's Own Investigation Exposed the Claims (2023-2024). Plaintiff filed internal complaints through Defendant's HR/Coworker Services channel. Defendant opened an internal investigation. Defendant's investigator conducted interviews. The resulting Case Close Review (Op. Comp. Ex. I, Case No. 10129) exposed the very facts that form the basis of this lawsuit. The Synopsis of that review states: "his leaders could have taken extra time to ensure that the reporter understood thoroughly the difference between his old plan and the plan he transferred info." That is Defendant's own investigation concluding that Plaintiff's leaders failed in their disclosure obligations. The investigation was not a good faith effort to resolve Plaintiff's concerns. It was a one-sided review, conducted by an investigator who accepted management's account without scrutiny, then closed the case as "No action taken" despite documenting the disclosure failure in the Synopsis. The investigation gave Defendant actual, documented knowledge of the nondisclosure that forms the core of this lawsuit, and Defendant chose to bury it.

Pre-Litigation: Manager Admissions in Writing (July 2023). During this same period, Plaintiff's Sales Manager Yemi O. described the Goal Modifier in writing as a "deduction" that would be "paid back." These were spontaneous, pre-litigation statements by a company agent, made without attorney involvement. They are not ambiguous. They are not subject to reinterpretation. Defendant's own manager used the word "deducted" to describe what happened to Plaintiff's commissions, then submitted the exact dollar amount to be "paid back."

At that moment, Defendant understood the claim exactly as Plaintiff has pled it: earned commissions were being deducted from Plaintiff's pay without authorization and without consent.

Pre-Litigation: Plaintiff Provided Defendant the Very Documents Defendant Now Claims Not to Understand. During the internal investigation, Defendant specifically requested that Plaintiff provide copies of his communications. Plaintiff complied. The emails and documents that Plaintiff turned over at Defendant's request are the same documents that now form the exhibits to the operative complaint. Defendant received them, reviewed them, and used them to conduct its investigation. For Defendant to now claim that it cannot understand allegations supported by the very documents it solicited and reviewed is not credible and is contradicted by the record.

Pre-Litigation: Three Written Objections and Refund Demands (June 21, 2023, November 30, 2023, and January 18, 2024). Plaintiff submitted written objections and formal demands for refund of withheld commissions on three separate occasions. Each communication specifically identified the Goal Modifier as an unauthorized post-earning deduction from commission payouts, requested a full refund, and put Defendant on notice of the precise harm at issue. Defendant received and responded to each of these three communications. The claims were understood at each point. What Defendant lacked was not understanding. What Defendant lacked was the willingness to act.

Litigation: Defendant's Knowledge Is Demonstrated by Every Filing It Has Made (2025-2026). Since this action was commenced in June 2025, Defendant has filed an Answer and Affirmative Defenses (July 23, 2025), an opposition to Plaintiff's Motion for Preliminary

Injunction (August 14, 2025), Rule 216 responses (October 2, 2025), a first Rule 2-619.1 Motion to Dismiss (December 1, 2025) that this Court found lacked merit, three oppositions to Plaintiff's pending motions (January 2, 2026), a Motion to Strike (January 29, 2026), and now a second Rule 2-619.1 Motion to Dismiss (March 17, 2026). Not one of these filings reflects confusion about the nature of Plaintiff's claims. Each engages with specific paragraphs, specific counts, and specific legal theories. The filings do not reflect a defendant struggling to understand the complaint. They reflect a defendant that understands the claims precisely and is doing everything in its power to avoid answering for them.

The Court's Request for Greater Detail Was Itself a Recognition of the Gravity of These Claims. At the October 2, 2025 hearing, this Court requested greater detail regarding the claims, directing Plaintiff to plead dates, what happened, who was involved, and how the conduct runs afoul of the law. (Pl.'s Opp. to Mot. to Strike, Feb. 10, 2026, at 2.) Courts do not ask for precision on claims they consider frivolous. They ask for precision on claims they take seriously enough to warrant a meticulous factual record. That directive was a signal that this Court understood the allegations as serious and warranted careful, specific pleading. Plaintiff heard that signal and complied fully. The operative complaint is the direct product of this Court's recognition that these claims deserved to be pled with the care their gravity demands.

The only party that has declined to take these claims seriously is Defendant. While this Court was requesting the specific factual detail that serious allegations require, Defendant was recycling the same arguments this Court had already considered and found wanting, submitting sworn certifications from individuals who do not work for the named Defendant, characterizing documented unauthorized deductions from commission payouts as a "red herring," and filing a second motion to dismiss rather than answering a single allegation on the merits. That is brazen

conduct. The gravity of these allegations, already recognized by this Court through its own directive to plead them with precision, stands in direct contrast to Defendant's continued refusal to engage with them honestly. In addition to the headings, subheadings, numbered paragraphs, and element-by-element structure that this Court requested, Plaintiff also ensured that the operative complaint complies with this Court's standing order regarding electronic filing by bookmarking every section of the document. The complaint contains a detailed Table of Contents with navigable bookmarks that allow any reader to locate any count, any subsection, any element, or any exhibit with a single click. This is the functional equivalent of a roadmap through the complaint. If Defendant's counsel cannot locate the allegations they wish to address, the bookmarks are available. Defendant's 2-603 argument would have this Court believe that an 87-page complaint with numbered paragraphs, headings, subheadings, a Table of Contents, and navigable bookmarks is somehow too disorganized to understand. That position is not sustainable.

The Claim of Confusion Is a Substitute for a Defense on the Merits. What is truly happening is that Defendant has no legally cognizable defense to Plaintiff's claims and has made no good-faith effort to resolve this matter at any stage. Defendant understood these claims when its own manager called the mechanism a "deduction." Defendant understood these claims when its own investigator confirmed nondisclosure. Defendant understood these claims when it filed sworn responses at IDOL. And Defendant understands these claims now. The 2-603 argument is not a genuine assertion of confusion. It is the last procedural refuge of a defendant that, after exhausting every other delay tactic, still cannot explain how the Goal Modifier survives scrutiny under the IWPCA, the common law of fraud, or any other body of Illinois law.

I. Defendant's True Objection Is to the Evidence, Not the Pleading.

What Defendant actually objects to is not the length of the complaint but the comprehensiveness of the factual record it documents. Every chronological section Defendant characterizes as "convoluted background material wholly unrelated to the claims" (MTD at 14) establishes specific facts supporting specific elements: the recruitment pattern, the omitted disclosures, the concealed mechanics, the contemporaneous manager admissions, the internal investigation that confirmed the informational asymmetry, and the retaliatory conduct that followed Plaintiff's complaints. These are not "narrative" digressions. They are the ultimate facts that Illinois fact-pleading requires.

Defendant's true position is that after a year of litigation, including a prior Motion to Dismiss that this Court denied, two Motions to Strike, discovery objections, and the submission of CDW Direct documents that are not responsive to CDWG-directed discovery orders, Defendant still cannot identify a legally cognizable defense to the substance of Plaintiff's claims. The 2-603 argument is a request to avoid addressing the merits by penalizing Plaintiff for documenting the misconduct too thoroughly. This Court should decline the invitation.

V. EACH COUNT OF THE OPERATIVE COMPLAINT STATES A VIABLE CLAIM AND DEFENDANT'S ARGUMENTS FAIL TO MEET THE APPLICABLE LEGAL STANDARDS.

Under both Section 2-615 and Section 2-619, this Court must construe the complaint in the light most favorable to Plaintiff, accept all well-pled facts as true, and draw all reasonable inferences in Plaintiff's favor. Marshall v. Burger King Corp., 222 Ill. 2d 422, 429 (2006). A complaint should not be dismissed "unless it is clearly apparent that no set of facts can be proved

that would entitle the plaintiff to recovery." Id. Defendant's Motion fails this standard on every count. This presumption of truthfulness is further reinforced by the IWPCA itself, which places the burden of record-keeping on the employer: under 820 ILCS 115/10, the employer bears the affirmative obligation to maintain accurate records of hours worked and wages paid. Where an employer has failed to maintain records adequate to rebut an employee's account of wages owed, the employee's account of what was earned and what was deducted is controlling. Defendant's failure to produce a single CDWG-specific authorization document, compensation agreement, or signed acknowledgment does not create a factual dispute in Defendant's favor. It is evidence that the records Defendant was legally required to maintain do not exist, and under the IWPCA's framework, that failure inures to Plaintiff's benefit, not Defendant's.

A. Count I: Constructive Fraud Based on Breach of Statutory Duties Survives Dismissal.

Defendant's argument: Constructive fraud requires a fiduciary relationship, no fiduciary relationship exists between employer and at-will employee, and the IWPCA does not create one. (MTD at 8, citing Kovac v. Barron, 2014 IL App (2d) 121100; Hess v. Kanoski & Assocs., 668 F.3d 446 (7th Cir. 2012).)

Why this fails:

First, Defendant attacks a claim Plaintiff did not plead. Count I is titled "Constructive Fraud Based on Breach of Statutory Duties," not "Constructive Fraud Based on Breach of Fiduciary Duties." (Op. Comp. ¶¶ 75-110.) Plaintiff does not allege a fiduciary relationship anywhere in Count I. Illinois law recognizes constructive fraud arising from the breach of a legal or equitable duty, including statutory obligations, where the breach operates to deceive another

to their detriment. The seven statutory duties imposed by the IWPCA (820 ILCS 115/2, 115/4, 115/9, 115/10) are precisely the kind of legal obligations whose breach, when combined with superior knowledge, material omissions, and detrimental reliance, supports a constructive fraud claim without any requirement of a fiduciary relationship. Count I meets every element of constructive fraud on this theory: Defendant possessed statutory duties, Defendant had superior knowledge of compensation mechanics it was obligated to disclose, Defendant omitted material facts, Plaintiff reasonably relied on those omissions in accepting the CDWG role, and Plaintiff suffered quantified damages. Defendant itself acknowledges the disconnect: "Plaintiff's entire Count I speaks in terms of a statutory, not fiduciary, duty." (MTD at 8.) Having correctly identified Plaintiff's actual theory, Defendant proceeds to argue against a theory Plaintiff never asserted. A 2-615 motion must "specify wherein the pleading or division thereof is insufficient." 735 ILCS 5/2-615(b). Defendant has specified an insufficiency that does not exist in the pleading.

Second, Defendant argues against a timeline that does not exist. Count I is specifically pled around the pre-acceptance period: what Defendant knew, what Defendant failed to disclose, and what Plaintiff relied upon *before* March 27, 2023, the date Plaintiff accepted the CDWG role. (Op. Comp. ¶¶ 80-107, Sections C.1 through C.7.) This timeline is the heart of the constructive fraud theory. There is no evidence in the record, and Defendant has cited none, that Plaintiff was informed of the Goal Modifier, the LOS reset, or any other material compensation term before March 27, 2023. Not a single document. Not a single email. Not a single communication of any kind.

The Estimator that Defendant repeatedly invokes (Op. Comp. Ex. 3) is dated May 1-2, 2023, over five weeks *after* Plaintiff accepted the role on March 27, 2023 (Op. Comp. Ex. 2).

Whatever the Estimator did or did not disclose is irrelevant to Count I, because Count I concerns the omissions that induced Plaintiff's acceptance, and the Estimator did not exist at the time of acceptance. Defendant's argument that Plaintiff "was informed of the compensation plan" through the Estimator (MTD at 9-10) collapses under the weight of Defendant's own exhibit dates. The fraud was complete the moment Plaintiff accepted the role based on Defendant's half-truths and omissions. Discovering the undisclosed terms after the fact, whether through a commission statement, the portal, or a conversation with a manager, does not cure a fraud that was already consummated.

Third, all claims are pled within the applicable statutory limitations. Defendant has not raised a statute of limitations defense, and properly so, because the claims are timely. However, to the extent Defendant implies that Plaintiff "should have known" about the Goal Modifier sooner, that argument has no place in a motion to dismiss Count I. A victim of fraud is not barred from bringing claims because the fraud was eventually discovered. To the contrary, Illinois law provides that the statute of limitations for fraud does not begin to run until the plaintiff knew or reasonably should have known of the fraud. 735 ILCS 5/13-215. Many employees separate from employers, consult counsel, and only then learn that specific payroll practices violated the law. The fact that Plaintiff did not immediately identify the Goal Modifier as an IWPCA violation upon seeing his first commission statement does not mean the fraud did not occur. It means the concealment was effective, which is precisely what Count I alleges.

Fourth, Defendant's own Sr. Director of Compensation has now conceded the statutory duty Plaintiff alleges was breached. On March 27, 2026, ten days after filing the instant Motion to Dismiss, Mike D., Defendant's Sr. Director of Global Compensation, sent a company-wide email to all sales employees, estimated at approximately 11,000 individuals

across the company's sales channels, announcing a new policy. The email contains the following:

"Why is CDW Doing this: It is best practice to provide all sellers a copy of their plan and receive a signed acknowledgement. This helps ensure clarity and shared understanding of plan terms and expectations."

CDWG is doing this in 2026. For the first time. After years of not doing it. After Plaintiff filed this lawsuit. After Plaintiff raised this exact issue in every internal channel available to him. After Plaintiff filed with government agencies. And ten days after CDWG's lawyers filed a motion to dismiss telling this Court that Plaintiff's claims have no merit.

Plaintiff will acknowledge that defendant has, at last, shown the first sign of recognition that its prior practices were deficient. But recognition without accountability is not resolution. Defendant cannot tell approximately 11,000 salespeople in a company-wide email that it is implementing signed acknowledgment of compensation plans for the first time as a "best practice" and then simultaneously tell this Court that its prior practices were adequate. What the D. email also reveals is that what must change is not merely the compensation plan. What must change is the company. CDW Government, LLC's entire approach to commission transparency, employee disclosure, and wage compliance requires a fundamental institutional correction. These positions cannot coexist. And the scale of what this admission represents cannot be minimized: approximately 11,000 human beings who were employed to sell CDWG's products, many of whom may have been subject to the same Goal Modifier, never had a fair opportunity to understand or consent to the compensation mechanics that affected their earnings. This pattern of undisclosed wage modification is not new to CDWG. Government investigators

have previously found that CDWG engaged in fraudulent conduct in the administration of its employee compensation practices. The volume of wage-related claims, settlements, and regulatory findings across CDWG's channels is not the statistical noise of a large employer. It is a documented institutional pattern. If this is among the largest undisclosed wage modification practices in Illinois employment history, it is because CDWG chose to operate this way for years while possessing every resource necessary to comply with the law.

This email corroborates every element of Count I: that a statutory duty to disclose existed, that CDWG possessed superior knowledge of compensation mechanics it did not share, that CDWG breached the duty through omission, and that the breach was systemic rather than limited to Plaintiff. CDW's own remedial conduct confirms that Plaintiff's complaint identified a real and company-wide compliance gap.

Fifth, the at-will argument does not defeat the fraud claim. Defendant contends that Plaintiff is an at-will employee and therefore his compensation could be changed unilaterally, citing Geary v. Telular Corp., 341 Ill. App. 3d 694 (2003). Even if the at-will premise were established (which it is not, given the entity mismatch), Geary involved an employee who was *informed* of changes and continued working. Here, Defendant's own Case Close Review confirms that Plaintiff was *not* informed. (Op. Comp. Ex. I, Finding No. 5.) The right to change compensation prospectively, with notice, does not include the right to conceal material compensation mechanics before acceptance and then apply them retroactively through undisclosed post-earning deductions. Geary does not authorize fraud by omission.

B. Count II: Fraudulent Concealment Is Pled With Particularity and Defendant Ignores Plaintiff's Documented Responses to Prior Arguments.

Defendant's argument: Plaintiff fails to allege a duty to speak, fails to allege intent to induce false belief, and "had access to all compensation documents." (MTD at 8-10.)

Why this fails:

First of all, Defendant controverts the complaint's factual allegations rather than testing legal sufficiency. Under 2-615, all well-pled facts are taken as true. Under 2-619, a motion is "not an appropriate method for a defendant to utilize merely to controvert the allegations of ultimate facts in the complaint." Michel v. Gard (citing Venezky v. Central Illinois Light Co.). Defendant's argument that Plaintiff was adequately informed disputes Plaintiff's allegations. It does not identify a legal deficiency in the pleading.

Second, on duty to speak: The IWPCA creates a statutory duty to provide written notice of pay terms (820 ILCS 115/10) and to obtain written authorization before deductions (820 ILCS 115/9). Plaintiff alleges that Defendant violated both duties. (Op. Comp. ¶¶ 114-118.) These statutory obligations create a duty to speak as a matter of law. Defendant does not argue that the IWPCA does not impose these duties; Defendant argues that it complied with them. That is a factual dispute for trial or administrative hearing.

Third, on intent: Plaintiff alleges that Defendant designed the Goal Modifier to be invisible to employees, that Defendant held "How Do I Get Paid" sessions during the investigation rather than before employment, and that Defendant's investigator acknowledged nondisclosure while the company took "No action." (Op. Comp. ¶¶ 123, 125, 127.) Intent may be inferred from circumstantial evidence, and at the pleading stage, these allegations are sufficient.

Fourth, on the "had access to documents" argument: This is the argument that Plaintiff is, frankly, tired of seeing. Defendant has repeated this assertion across multiple filings while ignoring the fact that Plaintiff specifically and comprehensively addressed it in the operative complaint itself.

The operative complaint contains an entire section devoted to portal access and systems not being updated. (Op. Comp. ¶¶ 26-47 of the supporting affidavit; Op. Comp. narrative Sections 2-3.) Plaintiff alleges, with specific dates and supporting documentation, that: (a) the compensation portal only displays the plan associated with whatever job and company code is currently active in HR; (b) Plaintiff's company code was not updated to the CDWG Army Sales role until *after* he had already accepted the role and begun working; (c) before HR changed the title, Plaintiff could only see his old SCC inbound plan in the portal; (d) Plaintiff sent Teams messages to management between May 8 and May 17, 2023 documenting that his systems were not updated; and (e) the portal displayed "No new records" because the HR transition had not been processed.

This is not an open question. Plaintiff addressed it. Defendant ignored the response and repeated the assertion.

Moreover, this issue was raised and addressed in real time. During the February 14, 2024 confrontation with Josh D. (Op. Comp. Ex. 8), Josh D. himself offered the defense that Plaintiff could have checked the portal. Plaintiff responded directly to Josh that he did not have access to the portal until after he had already started the role, and that was the entire issue. Plaintiff then documented this exchange contemporaneously in text messages (Op. Comp. Ex. 8),

putting both Josh D.'s defense and Plaintiff's response on the record. Plaintiff is the one who surfaced and addressed this argument. Defendant is simply repeating Josh D.'s in-meeting defense without acknowledging that Plaintiff rebutted it at the time it was made, in the very document Defendant has in its possession.

Defendant's own Case Close Review is the most damaging admission in this case. The Synopsis states: "his leaders could have taken extra time to ensure that the reporter understood thoroughly the difference between his old plan and the plan he transferred info." (Op. Comp. Ex. I, Synopsis.) That is Defendant's own internal investigation concluding, after interviewing Yemi O. and Josh D., that Plaintiff's leaders failed in their disclosure obligations. And in the Investigative Findings, the investigator confirmed: "There was no evidence of additional information shared or time spent to help Marcellus understand the difference between SCC comp plans and Federal Comp plan specifically." (Op. Comp. Ex. I, Finding No. 5.) Defendant cannot override its own investigator's documented conclusion with a conclusory assertion in a motion to dismiss.

C. Count III: The IWPCA Claim Is Established by Defendant's Own Admissions.

Defendant's argument: Commissions are only owed pursuant to an "agreement," no agreement exists, and Plaintiff is an at-will employee whose compensation can be changed unilaterally. (MTD at 6-7.)

Why this fails on multiple independent grounds:

First, the "no agreement" theory is self-defeating. If no agreement exists, then no agreement authorized the Goal Modifier deductions. The IWPCA requires express written consent for any deductions to commission payouts (820 ILCS 115/9). The absence of any written agreement between CDWG and Plaintiff means that every Goal Modifier deduction was unauthorized as a matter of law. Defendant's theory does not negate the IWPCA claim; it establishes it.

Second, Defendant contradicts itself. Defendant argues that the CDW Direct, LLC offer letter governs the employment relationship (establishing at-will status and the right to change compensation), while simultaneously arguing that no agreement exists (which, under Defendant's own theory, would eliminate any authorization for the Goal Modifier deductions from Plaintiff's commissions). These positions are mutually exclusive. Either a governing document exists or it does not. Defendant cannot invoke the CDW Direct, LLC letter to establish at-will terms and then disclaim the existence of any agreement to defeat the IWPCA claim.

Third, an agreement does exist, and it is established without the Estimator. Plaintiff's written acceptance of the CDWG role on March 27, 2023 (Op. Comp. Ex. 2) and the compensation continuity correspondence in which Defendant solicited Plaintiff's prior compensation details to ensure no "dips or shortfalls" (Op. Comp. Ex. 1) together establish an agreement to pay commissions. Under 56 Ill. Admin. Code 300.500, a commission agreement may be established through the parties' communications and conduct. Defendant solicited Plaintiff's prior pay information, Plaintiff accepted the role in writing, and commissions were earned and paid. That is an agreement, and commissions earned under it are wages protected by the IWPCA.

The Estimator (Op. Comp. Ex. 3), which Defendant invokes in its MTD, was not sent until May 1-2, 2023, five weeks after Plaintiff's acceptance on March 27, 2023. It cannot establish, modify, or retroactively authorize anything with respect to Plaintiff's acceptance. It is post-acceptance conduct that confirms Defendant knew precisely how commissions would be calculated while concealing the Goal Modifier's post-earning effect. The IWPCA is an employee protection statute. Its provisions are not designed to give employers the tools to construct elaborate post-hoc defenses around compensation mechanisms that were invisible to the very employees whose commissions they affected. Common law doctrines likewise reject attempts to obscure straightforward misconduct through retrospective justification. Where the elements of a claim are met, liability cannot be avoided by layering complexity onto compensation practices that were not disclosed to the affected party

Fourth, Defendant's own managers confirmed the deduction. Yemi O. described the Goal Modifier in writing as a "deduction" that would be "paid back." (Op. Comp. Ex. 6.) Significantly, Yemi O. also stated words to the effect that he personally did not agree with the Goal Modifier and did not think it was right, communicating to Plaintiff that his frustration was understandable because other employees shared it. (Op. Comp. ¶ 70.) This admission is remarkable: a senior sales manager, responsible for enforcing CDW Government, LLC's compensation structure, acknowledged under no legal compulsion that the mechanism he was required to administer was one he himself found objectionable. When even the managers charged with enforcing the Goal Modifier do not believe it is right, the suggestion that it was a transparent, well-understood, consensual compensation feature collapses entirely. Dustin "Duke" K., known within CDW as "the Duke," told employees they could "work to make back" what was "lost." These are Defendant's agents using Defendant's words. Under 820 ILCS 115/2, "wages" include commissions. Under 820 ILCS 115/9, deductions from commissions require

express written consent. No such consent exists for CDWG. The claim is established by Defendant's own admissions.

Fifth, Defendant's IDOL position confirms the violation. In its Employer's Answer to Wage Claim No. 24-0004707, Defendant characterized the Goal Modifier using the word "deductions." Defendant then shifted to calling it a "calculation" in this Court. This position-shifting is itself evidence of consciousness of liability. A mechanism that Defendant calls a "deduction" before an administrative agency is a deduction for purposes of the IWPCA.

D. Count IV: Conversion Is Properly Pled With Specific, Identifiable Funds.

Defendant's argument: Plaintiff has not alleged that CDW took "specific, identifiable funds." (MTD at 11.)

Why this fails: The funds are specific and identifiable. Plaintiff's commission statements (Op. Comp. Ex. 4) show the calculated commission amount on the "Commission Payout" line. The Goal Modifier reduction does not appear in the Adjustment Ledger alongside other legitimate deductions tied to specific transactions. Instead, it appears as a separate line item applied only after the Commission Payout has already been calculated, confirming that it is a post-earning clawback from commissions Plaintiff had already earned rather than a component of the initial commission calculation. This is the precise distinction between a legitimate compensation structure and an unauthorized deduction: the commission is first calculated as earned, displayed as earned, and then reduced by an amount extracted after the fact through a mechanism Plaintiff was never told about. The total of these unauthorized post-earning deductions from Plaintiff's commissions is quantified at $4,801.09 (Op. Comp. ¶ 157). These are

not speculative sums. They are line items on Defendant's own records, calculated by Defendant's own systems, and reduced by a mechanism Defendant's own managers called a "deduction."

Whether Defendant had the right to take those funds is a merits question for trial or administrative hearing. Whether the funds are sufficiently identifiable to support a conversion claim is a pleading question, and Plaintiff has answered it by identifying the exact amounts, the exact source documents, and the exact mechanism by which the funds were taken.

E. Count V: Unjust Enrichment Is Properly Pled in the Alternative.

Defendant's argument: Plaintiff has an adequate remedy at law (the IWPCA), so unjust enrichment fails. (MTD at 12.)

Why this fails: Count V is expressly pled "in the alternative" to Count IV (Conversion). Illinois law permits alternative pleading. 735 ILCS 5/2-613(b). The purpose of alternative pleading is to preserve theories in case the primary theories do not succeed. Dismissing the alternative theory at the pleading stage, before any determination on the merits of the primary theories, defeats the entire purpose of alternative pleading.

Defendant relies on this Court's October 2, 2025 observation that Plaintiff "cannot establish the absence of an adequate legal remedy" because he is "actively pursuing claims under the IWPCA." However, that observation was made in the context of a preliminary injunction analysis, which requires a showing of irreparable harm and inadequacy of legal remedies as a prerequisite for equitable relief. The standard for whether an alternative theory may be pled at the complaint stage is different and far more permissive. At this stage, the only question is

whether the complaint states a cause of action for unjust enrichment, and it does: Defendant was enriched by retaining Plaintiff's earned commissions, Plaintiff was impoverished by losing them, the enrichment and impoverishment are directly related, and it would be unjust for Defendant to retain funds taken through an unauthorized, undisclosed mechanism.

F. Count VI: IWPCA Retaliation Is Pled as Retaliatory Discrimination Under the Statute, Not Common Law Adverse Action, and Defendant Continues to Argue Against the Wrong Legal Standard.

Defendant's argument: Illinois does not recognize constructive demotion as an adverse action, and the other alleged adverse actions are insufficient. (MTD at 12-13, citing Zimmerman v. Buchheit of Sparta, Inc., 164 Ill. 2d 29 (1994); Dobrov v. Hi-Tech Paintless Dent Repair, Inc., 2021 WL 1212796; Sloan v. Am. Brain Tumor Ass'n., 901 F.3d 891 (7th Cir. 2018).)

Why this fails:

First, and most fundamentally, Defendant argues the wrong legal standard. Count VI is pled exclusively under 820 ILCS 115/14(c), which prohibits an employer from "discharging or in any other manner **discriminating against**" an employee who has made a wage complaint. (Op. Comp. ¶ 204.) The statute does not use the phrase "adverse employment action." It uses "discriminating against." These are different standards. Plaintiff's Count VI is titled "Retaliation (Illinois Wage Payment and Collection Act)" and ¶ 205 explicitly states that "This Count is pleaded solely under the anti-retaliation provision of the IWPCA. It alleges that Defendant 'discriminated against' Plaintiff, by subjecting him to materially adverse terms, conditions, and privileges of employment."

Defendant's cited authorities apply the wrong framework. Common law refers to judge-made law developed through court decisions over time, as distinguished from statutory law enacted by a legislature. It establishes baseline standards of civil conduct, and any meaningful departure from those standards that causes harm may give rise to liability. *Zimmerman v. Buchheit of Sparta* (1994) addressed whether Illinois common law recognizes a tort of retaliatory demotion. That is a common law retaliatory discharge theory, not an IWPCA statutory discrimination theory. *Dobrov* and *Sloan* apply the "adverse employment action" standard drawn from federal employment discrimination law (Title VII, ADA), which is narrower than the IWPCA's "discriminating against" language. Defendant has repeatedly, across multiple filings, analyzed Count VI as though it were a common law retaliation claim or a federal employment discrimination claim. It is neither. It is an IWPCA statutory discrimination claim, and the IWPCA provides its own standard.

The IWPCA's use of "discriminating against" is deliberately broad. It encompasses any change in the terms, conditions, or privileges of employment undertaken because the employee exercised statutory rights. This includes conduct that falls short of the "adverse employment action" threshold applied in federal discrimination cases. By citing common law and federal standards, Defendant avoids engaging with the statute Plaintiff actually invoked.

Second, the operative Count VI was completely restructured after the first MTD to address every concern the Court and Defendant raised, and Defendant ignores the revisions. After this Court denied Defendant's first MTD and granted leave to re-plead for case management purposes, Plaintiff completely rewrote Count VI. The prior version contained

general references to hostility and retaliation that this Court characterized as conclusory. The operative Count VI (Op. Comp. ¶¶ 203-213) is streamlined and pled with specificity:

Paragraph 204 identifies the precise statutory basis (820 ILCS 115/14(c)).

Paragraph 205 identifies the nature of the claim as retaliatory discrimination.

Paragraph 206 identifies three specific protected complaints with exact dates and exhibit references (June 21, 2023; November 30, 2023; January 18, 2024).

Paragraph 207 identifies the specific discriminatory act (discriminating against Plaintiff when he tried to become employed elsewhere within the company) with the specific actor (Josh D.), the specific date (February 14, 2024), the specific statements made, and the specific exhibit documenting them (Ex. 8). During that confrontation, D. stated words to the effect that Plaintiff needed D.'s permission to seek employment elsewhere within CDW Government, LLC, and that there was no use keeping Plaintiff around if Plaintiff did not want to be there. D. was not only upset about Plaintiff's wage complaint. He was upset that Plaintiff had applied for an internal transfer, treating the exercise of Plaintiff's professional right to seek other employment within the company as an act requiring managerial approval, which it was not, and as grounds for constructive termination.

Paragraphs 209-213 plead causation through temporal proximity (48 hours), explicit reference to protected activity (D. cited the wage complaint), HR admission of improper conduct (E. confirmed D. "was not supposed to do that"), and pattern of discrimination.

Defendant's March 17 MTD does not acknowledge any of these changes. Defendant repeats the same arguments directed at the prior, superseded version of Count VI, as though Plaintiff never revised it. A defendant that demands greater specificity, receives it, and then pretends the revisions do not exist is not engaging with the operative complaint in good faith.

Third, Defendant concedes protected activity and causation. Defendant states that it "need not address whether Plaintiff engaged in protected activity or if a causal connection exists." (MTD at 12.) This concession leaves only the question of whether Defendant "discriminated against" Plaintiff within the meaning of 820 ILCS 115/14(c). Given the specific conduct pled, including the February 14, 2024 confrontation where Josh D. explicitly referenced Plaintiff's wage complaint and threatened separation, the discriminatory interference with Plaintiff's attempt to become employed elsewhere within the company, and Defendant's own HR investigator's admission that D.'s conduct violated internal policy, the complaint states a claim for retaliatory discrimination under the IWPCA. The question of whether that discrimination was justified is for trial or administrative hearing, not for a motion to dismiss that applies the wrong legal standard.

Fourth, Defendant's response to the retaliatory conduct confirms the discrimination: the actors were promoted. Josh D., the manager who confronted Plaintiff on February 14, 2024, explicitly referenced Plaintiff's wage complaints, threatened separation, and engaged in conduct that Defendant's own HR investigator admitted "was not supposed to" happen, was subsequently promoted within CDW. Dustin "Duke" K., known within CDW as "the Duke," who told employees during a mandatory training session that they could "work to make back" money they had "lost" to the Goal Modifier, was also promoted. Plaintiff, who did nothing more than exercise the statutory rights the IWPCA expressly guarantees, was constructively demoted, discriminated against when he tried to become employed elsewhere within the company, and ultimately forced out.

This pattern reveals something more systemic than individual retaliation. Under 820 ILCS 115/14(c), "discriminating against" an employee who exercises wage rights encompasses the full spectrum of an employer's response to protected activity, including how that employer treats the actors on both sides of the complaint. When a company promotes the managers who engaged in retaliatory conduct and demotes the employee who filed the complaint, it sends an institutional message: retaliation is rewarded; protected activity is punished. That is not a coincidence. That is a corporate culture, and it is the same culture that produced the Goal Modifier in the first place. A compensation mechanism engineered to reduce commission payouts without disclosure, enforced by managers who personally found it objectionable but were required to apply it anyway, concealed through fraudulent omission, and defended through a year of procedural obstruction, does not exist in a vacuum. It exists because the institution that created it is structured to reward those who enforce it silently and punish those who name it openly. The retaliation against Plaintiff is not separate from the fraud. It is the fraud's enforcement mechanism.

Employees, scholars, and courts have used the word "toxic" to describe workplaces where retaliation against protected activity is normalized and where those who perpetuate that culture are elevated rather than disciplined. Plaintiff uses that word here deliberately, and he is not alone in using it. The former employee quoted at paragraph 73 of the operative complaint described the "anxious toxic environment this leadership has created" without any connection to Plaintiff and without knowledge of this litigation. These are not Plaintiff's words echoing back. They are independent confirmation from a separate employee that the culture Plaintiff experienced is real, documented, and recognized by those who lived it. Marginalized employees and vulnerable workers, those with the least institutional power to push back, absorb the most harm from these environments. The IWPCA's anti-discrimination provision exists precisely to

protect them. Rewarding the agents of retaliation while punishing the target is the most direct form of retaliatory discrimination the statute prohibits. This Court should not dismiss a claim that the facts, as pled, establish in full.

VI. DISMISSAL WOULD CAUSE IRREPARABLE HARM TO PLAINTIFF, OTHER AFFECTED EMPLOYEES, AND THE PUBLIC INTEREST IN IWPCA ENFORCEMENT.

This Court's consideration of this motion should not be limited to whether the complaint meets technical pleading standards. It should also account for what dismissal would mean in context: a Fortune 500, publicly traded corporation (NASDAQ: CDW) with approximately 15,100 employees and $21.4 billion in annual revenue would escape accountability for a systematic, undisclosed commission extraction mechanism affecting approximately 10,900 customer-facing salespeople across five U.S. sales channels.

CDWG is not a small business navigating complex employment regulations for the first time. CDWG is a sophisticated corporate enterprise with a Global Ethics & Compliance department, a dedicated compensation team led by a Sr. Director of Global Compensation, a litigation department with a Senior Manager of Litigation, and outside counsel at one of the nation's largest management-side labor and employment firms. Every resource necessary to comply with the IWPCA's straightforward disclosure and authorization requirements has been available to CDWG at all times. The Goal Modifier should never have been implemented without written notice and signed authorization. The fact that it was implemented without those safeguards was not an oversight. It was a design choice. And the fact that CDWG is only now, in

March 2026, implementing signed acknowledgment of compensation plans for the first time confirms that this design choice persisted for years across the entire salesforce.

The harm extends far beyond Plaintiff. This is not CDWG's first encounter with wage-related claims, and it will not be the last. CDW has faced multiple commission-related claims across its channels, including cases that have proceeded to trial, been settled, and are currently pending before the Illinois Department of Labor from employees other than Plaintiff. That volume of wage-related claims from a single employer is not normal. It is a pattern. Defendant's own Rule 216 admission (Request No. 4: "Admitted") confirms that HR, Legal, Sales Management, and Sales Operations at CDWG reviewed at least one complaint or negative feedback from another employee concerning the Goal Modifier within the last five to ten years. That admission encompasses an unknown number of workers whose identities Defendant has refused to disclose despite Plaintiff's supplemental discovery requests.

The human cost of this pattern is not abstract. A former employee posted a complaint posted online on July 9, 2024 describing their experience, stating:

"[Other companies] value and incentivize their employees in a positive manner, not instill fear of losing a large portion of their check each month for not hitting a goal. Negative modifiers just added to the anxious toxic environment this leadership has created."

(Op. Comp. ¶ 73.) This employee independently used the word "modifiers," independently described losing "a large portion of their check," and independently described the emotional toll as "fear" and an "anxious toxic environment." This is not Plaintiff's language being read back to the Court. This is a separate person, at a separate time, describing identical

conduct in identical terms. Dismissal of this case leaves that employee, and every employee whose complaint Defendant has admitted to receiving, without a judicial forum and without recourse. Other employees who have observed this case have a legal right to take notice of these proceedings. Dismissal forecloses their opportunity to seek justice through a process they may be watching closely. The Goal Modifier continues to operate. The deductions from commissions continue. The "No action" finding of CDW's own internal investigation continues to be the institutional response.

Defendant's conduct in this matter has been brazen. Entire families, including Plaintiff's own, have been blindsided by commission modifications that were never disclosed, never consented to, and never authorized in writing. These are not abstract accounting adjustments. They are reductions to take-home pay that families relied upon for mortgages, childcare, student loans, and basic expenses. CDW operated this system for no fewer than five to ten years, across approximately 10,900 employees, with the full knowledge of its compensation leadership, its legal department, and its senior sales management. The brazenness is evident not only in the conduct itself but in CDW's response to it: internally, "No action taken." In court, characterize the claims as a "red herring." In discovery, submit certifications from employees who don't work for the named Defendant. In briefing, argue against a fiduciary duty theory that was never pled, while ignoring the statutory duty theory that was.

The IWPCA is unambiguous on one point that Defendant has consistently evaded: at-will employment status does not authorize unauthorized deductions from commissions. A commission once earned is a wage. A wage cannot be deducted without express written consent. This protection applies regardless of whether the employee is at-will. This protection applies regardless of whether the employee continued to work. This Court should note that Plaintiff did

not passively accept the Goal Modifier. Within weeks of starting the role, Plaintiff objected in writing and never stopped. Plaintiff raised the issue on June 21, 2023, November 30, 2023, and January 18, 2024. Additionally, Defendant itself asked Plaintiff to remain. The "continued employment" argument carries no weight when the employer actively asked the employee to stay. More fundamentally, the IWPCA requires written consent before deductions, not acquiescence inferred from continued presence. Under 820 ILCS 115/9, the standard is express and written. No interpretation of Plaintiff's conduct satisfies that standard because CDWG never asked Plaintiff to sign anything authorizing the Goal Modifier. That is why Mike D.'s March 27, 2026 email is so damaging: CDWG is implementing for the first time the very process the IWPCA required all along.

Multiple law enforcement and government agencies are engaged with this matter. Those agencies have indicated willingness to investigate. Dismissal of this case while government agencies are independently reviewing the same conduct would be inconsistent with the public interest in coordinated enforcement of wage protection statutes.

The IWPCA exists to protect every Illinois worker, from entry-level employees to senior professionals, from unauthorized wage deductions. Its provisions are deliberately straightforward: tell employees what they will be paid, put it in writing, and do not deduct from their wages without written consent. These are not complex regulatory burdens. They are basic obligations of honest dealing between employer and employee. When a Fortune 500 company systematically circumvents those obligations through a mechanism engineered to be invisible to the very employees whose earnings it reduces, the IWPCA's enforcement provisions must be given full effect. Dismissal at this stage, on a motion that fails to meet its own legal standards,

would signal that the scale and sophistication of the employer is a shield rather than an aggravating factor.

Defendant's repeated characterization of Plaintiff's claims as a "red herring" is not a legal argument. It is a rhetorical device designed to trivialize the documented extraction of earned wages from a professional who was recruited through CDWG's own affinity initiative (Black Excellence Unlimited), transferred into a role with undisclosed compensation penalties, and then discriminated against when he sought to become employed elsewhere within the company when he complained. The "red herring" label is inappropriate in any context involving documented wage violations, and it is particularly inappropriate when directed at an employee whose commission earnings dropped from roughly $85,000 (2022, CDW Direct, LLC) to approximately $49,010 (2024, CDW Government, LLC) while performing the same type of work for the same corporate family. That is not a red herring. That is a $36,912 annual reduction in commissions that Plaintiff was never told about before accepting the role.

This Court has demonstrated public leadership in promoting restorative justice principles. The facts of this case speak directly to those principles. Plaintiff sought resolution at every available stage before filing suit. He filed an internal complaint. He submitted formal objections. He requested a transfer. He engaged with regulatory bodies. At each step, Defendant's response was either no action, active obstruction, or continued litigation. At its core, restorative justice is grounded in accountability for documented harm and a genuine opportunity for redress for those who suffered it. Dismissal at this stage, on a motion that fails to meet its own legal standard, would foreclose that opportunity entirely for Plaintiff and for every employee whose complaint Defendant has admitted to receiving.

CDWG partners with universities, including Indiana University, the University of Chicago, and Florida A&M University, a historically Black college and university, to recruit students into internship-to-work programs. CDW went further in Plaintiff's case: CDW asked Plaintiff to serve as a mentor to some of those very students. As a confirmed Anglican, Plaintiff's faith calls him to account for his stewardship of others. He accepted that mentorship role in good faith, believing he was helping young people enter a legitimate career path with an employer he was representing honestly.

What Plaintiff did not fully grasp at the time he was mentoring those students was that he was guiding them toward the same Goal Modifier that was silently reducing his own commission payouts through a mechanism he had never been told existed. That moral dissonance, being asked by CDW to advocate for the company to the next generation of professionals while simultaneously fighting that same company for commissions it unlawfully withheld, is not merely an emotional consequence of this litigation. It is a dimension of the harm that cannot be reduced to a dollar figure. Every student Plaintiff encouraged toward CDW, every family that trusted their son or daughter was walking into a lawful employment relationship, was walking into a compensation structure that CDW's own Director of Compensation has now acknowledged was never properly disclosed.

CDW's use of affinity networks and professional mentorship relationships to recruit employees and students into roles with undisclosed compensation penalties is not just a legal violation. It is a breach of human trust that extends to every person in that pipeline. The IWPCA's protections are not optional for Fortune 500 companies. They apply with the same force to CDW as they do to every other Illinois employer, and CDW must be held to the same standard of compliance that the statute demands.

This entire lawsuit could have been avoided. Plaintiff raised the Goal Modifier internally. Defendant investigated (Case #10129). Defendant's own investigator confirmed nondisclosure. Defendant took "No action." Plaintiff filed written objections on June 21, 2023, November 30, 2023, and January 18, 2024. Each was received and responded to, but nothing changed. Plaintiff filed with IDOL. Defendant submitted sworn responses. Nothing changed. Plaintiff filed this lawsuit. Defendant filed two motions to dismiss, a motion to strike, and obstructed discovery for twelve months. At every stage, the resolution was the same: acknowledge the unauthorized deductions from commissions, return the money, and fix the system. Defendant chose to litigate instead. This Court should not reward that choice with dismissal.

The Complaint's Length Reflects the Evidentiary Threshold for Punitive Damages.

Plaintiff seeks punitive damages on Count I (Constructive Fraud), Count II (Fraudulent Concealment), and Count IV (Conversion). Illinois courts require that a plaintiff seeking punitive damages allege conduct that is "outrageous," that shows "an evil motive or reckless indifference" to the rights of others, or that constitutes willful and wanton conduct. Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 186 (1978). At the pleading stage, a plaintiff must include sufficient factual allegations to support the inference that Defendant's conduct rises to this level. Conclusory allegations of "willfulness" are insufficient; specific facts about the nature, duration, scope, and character of the conduct are required. The operative complaint does exactly this. Every "verbose" section that Defendant attacks serves the precise evidentiary function that punitive damages pleading requires: it establishes that the Goal Modifier was not a mistake, not an oversight, and not a miscommunication. It was a deliberate mechanism, known to senior management, applied uniformly across thousands of employees, maintained for no fewer than five to ten years, and suppressed through active concealment and institutional inaction. That is not a short story. It

cannot be told in three paragraphs. The complaint is as long as it needs to be because the misconduct is as egregious as it is.

Defendant's Own First Answer and Affirmative Defenses Demonstrate Why This Motion Must Fail. Defendant's July 23, 2025 Answer and Affirmative Defenses are themselves a study in self-defeating legal positions. Defendant's first affirmative defense consists of company policy documents that were never provided to Plaintiff, sourced from an entity (CDW Direct, LLC) that is not a party to this action, under agreements that expressly disclaim their own binding force. The CDW Direct, LLC offer letter states that it "does not constitute or represent any contractual commitments between CDW and you." A document that disclaims its own binding force cannot simultaneously bind Plaintiff to any obligation or authorize any deduction from his commissions. More remarkable still, Defendant's Answer characterized the commission payout shown on Plaintiff's commission statements as an "advance" on commissions. That characterization is untenable under the IWPCA. The IWPCA does not permit employers to pay commissions, call them "advances," and then claw them back through a post-earning mechanism without written consent. 820 ILCS 115/9 is explicit: deductions require express written authorization. "Advance" or not, the mechanism extracts earned funds from commission payouts without consent. Defendant submitted this theory in a court of law. The fact that Defendant could not sustain its own affirmative defenses through the pleadings stage, and has now resorted to a second motion to dismiss rather than answering the operative complaint, confirms that Defendant's litigation strategy has never been about addressing the merits. It has been about delay.

VII. PRAYER FOR RELIEF

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

1. **Denying** Defendant's Rule 2-619.1 Motion to Dismiss the Operative Complaint in its entirety, on the ground that Defendant's arguments fail to meet the legal standard for dismissal under either Section 2-615 or Section 2-619;

2. **In the alternative, or in addition to relief under Item 1,** entering default judgment against Defendant under Illinois Supreme Court Rule 219(c) based on Defendant's willful, systematic, and continuing pattern of: (a) filing successive meritless dispositive motions rather than answering the operative complaint; (b) obstructing discovery through boilerplate objections, non-compliant certifications from non-party employees, and substitution of CDW Direct, LLC documents for CDWG-specific materials; and (c) refusing to produce a single CDWG-specific authorization document despite a year of court-ordered discovery;

3. **If the Court denies Items 1 and 2,** ordering Defendant to file an Answer to the Operative Complaint within fourteen (14) days, addressing each count and each factual allegation on the merits;

4. **In addition to the above,** entering such other and further relief as this Court deems just and appropriate, including but not limited to:

(a) Deeming established under Rule 219(c) that no signed CDWG authorization exists for the Goal Modifier deductions from commission payouts;

(b) Barring Defendant from relying on CDW Direct, LLC documents to establish terms of Plaintiff's CDW Government, LLC employment;

(c) Awarding Plaintiff costs associated with responding to this successive motion;

5. **Reserving** Plaintiff's right to file a cross-motion for judgment on the pleadings pursuant to 735 ILCS 5/2-615(e) following Defendant's answer to the operative complaint.

Respectfully submitted,

/s/ Mr. Marcellus Long, MBA
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Dated 5/14/26

CERTIFICATE OF SERVICE

The undersigned certifies that on or around May 14 2026, a true and correct copy of the foregoing was served via email pursuant to Supreme Court Rule 11 upon counsel of record for Defendant at their designated service addresses.

/s/ Mr. Marcellus Long, MBA