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 REPLY TO DEFENDANT'S OPPOSITION TO MODIFY THE RECORD

I. INTRODUCTION

Plaintiff **MARCELLUS LONG**, proceeding Pro Se, respectfully submits this Reply to Defendant CDW Government LLC's Opposition to Plaintiff's Motion to Correct the Record. Defendant seeks to preserve a finding stated without qualification that Plaintiff "is an at-will employee" in the October 2, 2025 Order, characterizing this language as a harmless standard presumption. The record does not support that characterization.

Defendant proffers a materially inapplicable offer letter from a separate legal entity concerning a distinct role under different compensation terms, then deploys the Court's "at-will" language as a discovery shield to avoid discovery into the actual employment arrangement at issue. Because the nature and terms of Plaintiff's employment relationship with Defendant constitute the central disputed facts underlying Plaintiff's fraud, statutory wage violation, and retaliation claims, and because Defendant is presently leveraging the Court's language to obstruct legitimate discovery, Plaintiff respectfully requests that the Order be modified to reflect that Plaintiff's employment status with CDW Government LLC is disputed and subject to factual determination.

II. ARGUMENT

A. Defendant Is Attempting to Enforce a Sister Subsidiary's Contract, a Tactic the Federal Court Expressly Rejected in CDW v. NETech.

This is not the first time entities within Defendant's corporate family have attempted to enforce one subsidiary's employment contract against an employee who transferred to a different subsidiary. In CDW, LLC v. NETech Corp., 2013 WL 1703518 (S.D. Ind. Apr. 18, 2013), CDW entities sued former employees for allegedly violating non-compete agreements they had signed with Berbee, a CDW subsidiary. After those employees transferred to CDW Direct, LLC (Plaintiff's employer from 2021 to 2023) and later departed to work elsewhere, CDW attempted to enforce the prior subsidiary's employment contracts against them. The federal court rejected this argument, holding that the subsidiaries were distinct corporate entities and that one could not enforce the employment contracts of the other.

Defendant now advances the precise theory the federal court rejected in NETech. There, CDW argued that corporate distinctions should be ignored to allow cross-subsidiary enforcement. The court held otherwise. Here, CDW Government LLC argues it can enforce CDW Direct's 2021 employment agreement despite being a separate entity. Defendant cannot selectively invoke corporate separateness depending on convenience. The federal court's rejection of cross-subsidiary contract enforcement in NETech forecloses Defendant's position here.

Defendant opposes correction of the record by invoking an Offer Letter dated May 5, 2021. (See Def. Opp., Ex. 6). Reliance on this document to establish Plaintiff's employment status with CDW Government LLC during the relevant time period (May 2023 to present) constitutes legal bootstrapping and conflation of distinct employment relationships for three independent reasons:

1 **Different Legal Entity.** The 2021 offer letter emanates from CDW Direct, LLC, a separate corporate entity from Defendant CDW Government LLC. These are two distinct legal entities, each with separate corporate existence, separate federal tax identification numbers, separate legal obligations, and separate contractual capacity. A subsidiary corporation cannot enforce the employment contracts of a sister subsidiary. See CDW, LLC v. NETech Corp., 2013 WL 1703518 (S.D. Ind. Apr. 18, 2013). Employment terms are determined by agreement between the parties. See Duldulao v. Saint Mary of

Nazareth Hosp. Ctr., 115 Ill. 2d 482, 489, 505 N.E.2d 314 (1987). The parties to the 2021 offer letter were Plaintiff and CDW Direct, LLC, not Plaintiff and CDW Government LLC. Defendant has produced no evidence that the CDW Direct employment terms transferred to the CDW Government LLC relationship through assignment, novation, or incorporation by reference. An employment agreement with Entity A does not establish the employment terms with Entity B.

2 **Different Role.** The 2021 letter 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 redesignated "Account Representative") in CDW Government LLC's federal sales division, a materially distinct role involving different responsibilities, reporting structures, customer bases, and performance metrics.

3 **Different Compensation Structure.** The 2021 agreement establishes an hourly wage plus annual bonus structure. The claims in this action 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. Plaintiff alleges Defendant fraudulently induced his transfer to the commission-based role without providing written terms, in violation of 820 ILCS 115/2.

The Stark Contrast in Compensation Is Evident in Plaintiff's Tax Records. Plaintiff's W-2 wages were $85,922.38 in 2022 under the CDW Direct hourly-plus-bonus structure. After transferring to CDW Government LLC's commission-based structure, Plaintiff's wages dropped to $36,836.30 for May through December 2023 (annualizing to $55,254.45) and $49,010.00 for 2024. 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 and that these are materially distinct employment relationships requiring separate written terms. (Ex. 3)

Defendant's Own Conduct Confirms the Transfer Created a New Employment Relationship. Defendant's reliance on the 2021 CDW Direct agreement is further undermined by Defendant's affirmative decision to reset Plaintiff's Length of Service (LOS) upon transfer. When Plaintiff moved from CDW Direct to CDW Government LLC in May 2023, Defendant reset his

LOS to base level without Plaintiff's written consent. This reset delayed Plaintiff's eligibility for higher commission rates by at least 14 months and caused material financial harm.

Defendant cannot simultaneously treat Plaintiff as a "new" employee requiring an LOS reset while invoking the "old" CDW Direct employment agreement to establish at-will status. The LOS reset demonstrates that Defendant itself treated the CDW Government LLC position as a separate, new employment relationship requiring fresh employment documentation under the IWPCA. Having reset Plaintiff's LOS as though he were a new hire, Defendant cannot claim the prior entity's employment terms apply to the new relationship.

Defendant cannot cure its failure to execute a written agreement for the role at issue by retrofitting terms from an expired contract with a different legal entity concerning a different position under a different compensation structure, particularly when Defendant's own administrative actions (the LOS reset) demonstrate it treated the transfer as creating a new employment relationship requiring new terms.

B. Under the Illinois Wage Payment and Collection Act, Defendant's Failure to Produce a Relevant Employment Agreement Precludes Application of the At-Will Presumption and Shifts the Evidentiary Burden.

The Illinois Wage Payment and Collection Act requires employers to maintain records showing "the hours worked... the rate of pay, and the amount earned." 820 ILCS 115/10. Section 12 of the Act provides that where an employer fails to keep such records as required, it is generally presumed that the employee is correct in his or her allegations as to hours worked and rate of pay." 820 ILCS 115/10.

Defendant's Systematic Failure to Comply with IWPCA Notice Requirements. On March 27, 2023, Plaintiff accepted Defendant's employment offer, creating an employment agreement between Plaintiff and CDW Government LLC. (See Ex. 1). In that acceptance, Plaintiff expressly accepted a Department of Defense government sales role with CDW Government LLC. The IWPCA requires employers to provide written notice of employment terms "at the time of hiring," including "the rate of pay and the time of payment." 820 ILCS 115/2. Despite Plaintiff's repeated written requests for basic employment terms, including an April 20, 2023

email requesting "what my new hours will be or anything else I should know," Defendant failed to provide:

- Written notice of work hours or schedule, despite Plaintiff's explicit April 20, 2023 request;
- Any written offer letter, compensation plan, or employment agreement specific to the CDWG role;
- Written disclosure of the Goal Modifier mechanism or commission calculation methods;
- Written notice of the Length of Service reset or its impact on commission rates;
- Written notice of goal-setting procedures or Defendant's authority to modify goals;
- Any written at-will employment acknowledgment for the CDWG position; or
- Written authorization for wage deductions or commission reductions.

Defendant's failure to provide even basic information such as work hours, despite Plaintiff's direct written inquiry, demonstrates willful disregard for IWPCA notice requirements. The statute expressly requires notice of "the time of payment," which necessarily includes work hours and schedule.

Plaintiff alleges that Defendant failed to provide written employment terms specifying the rate and method of compensation before Plaintiff accepted the CDW Government LLC role, in violation of Section 2's notification requirements. Defendant has failed to produce any employment agreement, offer letter, compensation plan, or written terms concerning Plaintiff's employment relationship with CDW Government LLC during the relevant period. Having failed to create or maintain the required employment documentation, Defendant cannot now invoke the common-law presumption of at-will employment to establish the terms of the relationship.

The statutory remedy for an employer's record keeping failure is not to permit the employer to invoke default common-law presumptions but to credit the employee's allegations. Accordingly, Plaintiff's allegations regarding the absence of written at-will acknowledgment, the fraudulent inducement through omission of material terms, and the unauthorized nature of wage deductions must be presumed correct for purposes of discovery and pretrial proceedings. The employment status is therefore a disputed question of fact that cannot be resolved by judicial finding in a preliminary order.

C. Defendant Is Exploiting the Court's "At-Will" Language to Obstruct Discovery Regarding the Actual Terms of Plaintiff's Employment.

Modification of the October 2, 2025 Order is necessary to prevent ongoing prejudice to Plaintiff's discovery efforts. Defendant is presently deploying the Court's "at-will employee" language to justify boilerplate evasion of discovery obligations. Defendant cannot treat the October 2, 2025 Order's "at-will" language, entered in a preliminary procedural posture and on a limited record, as a definitive merits finding regarding Plaintiff's employment status with CDW Government LLC.

In its Responses to Plaintiff's First Set of Requests for Admission, served October 2, 2025, Defendant refused to answer substantive factual questions regarding its compensation practices, payment authorization, and wage deduction procedures on twelve separate occasions by asserting Plaintiff's purported "at-will" status as a basis for objection or qualified response. (See Ex.2 Def. Resp. to RFA Nos. 1, 2, 8, 13, 14, 15, 16, 17, 21, 23, 24, and 25).

Representative examples include:

- **RFA No. 8** (authorization for wage deductions): Defendant responded that "Plaintiff was an at will employee... and agreed to the terms by remaining employed," thereby converting a factual question into a legal conclusion and refusing to address whether express written authorization existed.
- **RFA Nos. 13-17** (goal-setting authority and procedures): Defendant asserted that its authority to unilaterally modify performance goals derives from Plaintiff's at-will status, evading interrogation of the actual contractual or quasi-contractual terms concerning goal establishment.

These responses demonstrate that Defendant is not treating "at-will" as a rebuttable presumption but as an established fact immunizing it from discovery regarding the central disputed issues in this case: whether Defendant provided written employment terms, whether Plaintiff authorized wage deductions, and whether Defendant possessed contractual or statutory authority to implement the challenged compensation practices.

Plaintiff mostly did not recognize the unlawful nature of Defendant's post-calculation commission modifications until after he was constructively demoted, and had sufficient professional distance to analyze the cumulative data reflected in Schedule A, at which point he filed an IWPCA wage claim with the Illinois Department of Labor. Continued employment does not constitute knowing assent to undisclosed compensation mechanics or satisfy the IWPCA's requirements for notice and **express written authorization.** Defendant's "continued employment" theory is misplaced. At-will status concerns the parties' ability to end the relationship, not a waiver of statutory wage protections or a mechanism for retroactive assent to undisclosed pay practices. An employee is not required to resign immediately upon suspecting irregularities; Plaintiff was entitled to remain employed while gathering information and analyzing his compensation, and to challenge unlawful practices once he could verify them. Continued employment therefore does not establish knowing agreement to, or authorization for, the challenged commission reductions. Defendant cannot unilaterally assign a legal meaning to Plaintiff's continued employment as "agreement" to undisclosed compensation mechanics. Even if it is later determined that plaintiff was at-will, Plaintiff retained autonomy to remain employed for his own reasons, including to gather information and assess his pay, without thereby consenting to post-calculation wage reductions or waiving statutory protections. Accordingly, Defendant's "continued employment equals consent" position is unsupported on this record and cannot substitute for the operative written terms and authorizations required by the IWPCA.

If this Court's October 2, 2025 Order remains unmodified, stating categorically that Plaintiff "is an at-will employee," Defendant will continue to cite that judicial finding as dispositive grounds to refuse discovery. This risks prejudicing Plaintiff's ability to prove his claims before he has been provided an opportunity to conduct fact-finding on the actual nature of the employment relationship.

As detailed in Plaintiff's concurrent Reply in Support of Supplemental Discovery, Defendant is now opposing discovery specifically designed to determine whether CDWG provided written at-will acknowledgments to Residency team members, the very factual issue disputed here. This demonstrates that correction of the record is essential not only to prevent abuse of discovery responses but to permit meaningful fact-finding into the actual employment relationship.

Plaintiff respectfully submits that “at-will” is not a self-executing label and, on this record, it begs the threshold questions: At-will with which employing entity, CDW Government LLC or CDW Direct, LLC? At-will as to which job, the Department of Defense government sales Account Manager role Plaintiff accepted in March 2023, or a different position? At-will under what operative written instrument, namely a CDW Government LLC offer letter, at-will acknowledgment, or employment agreement applicable to the May 2023 to present relationship? Defendant has had more than six months to produce that CDW Government LLC-specific documentation, including after this Court compelled production, and Defendant has failed to do so.

D. "At-Will" Employment Status Does Not Authorize Retroactive Wage Modifications or Obviate Statutory Notice and Consent Requirements.

Clarification of the record is essential because even if Plaintiff's employment were ultimately determined to be at-will, such status does not confer upon Defendant the unilateral authority to impose the challenged wage practices.

The "Goal Modifier" mechanism at issue operates as a retroactive reduction of earned commissions based on cumulative performance metrics extending up to twelve months into the past, including periods predating Plaintiff's employment with CDW Government LLC. Section 9 of the Illinois Wage Payment and Collection Act provides that deductions from wages are lawful only if authorized by express written consent "freely given at the time the deduction is made." 820 ILCS 115/9. The statute does not contain an exception for at-will employees.

By designating Plaintiff categorically as "at-will" without qualification, the October 2, 2025 Order creates the misleading impression that Defendant possessed plenary authority to modify Plaintiff's compensation retroactively without written authorization. This is legally incorrect. At-will status concerns termination rights, not wage payment obligations. See 820 ILCS 115/2 (requiring written notice of rate and terms regardless of at-will status); Landers-Scelfo v. Corporate Office Sys., Inc., 356 Ill. App. 3d 1060, 827 N.E.2d 1051 (1st Dist. 2005) (IWPCA wage notice requirements apply to at-will employees).

To ensure adjudication on the merits rather than through premature judicial characterization of disputed employment terms, the record must reflect that Defendant's authority to implement retroactive wage modifications is contested and subject to proof at trial.

E. Illinois Law Requires Express Written Agreement to Authorize Post-Calculation Commission Modifications, and Defendant's Standard Practice of Requiring At-Will Acknowledgments Confirms the Absence Here Was Not Inadvertent.

The compensation structure Defendant implemented differs fundamentally from standard at-will employment. Defendant calculates Plaintiff's commission based on completed sales transactions, labels this amount "Commission Payout" on commission statements, and then applies a separate reduction mechanism (the Goal Modifier) that retroactively modifies the already-calculated payout. This is not a pre-earning commission rate determination—it is a post-calculation modification of wages already earned and identified as payable.

Illinois law does not permit employers to retroactively modify earned wages through implied or assumed consent. When an employer seeks authority to reduce commission payouts after calculation based on performance metrics extending up to twelve months into the past, express written authorization is required. See 820 ILCS 115/9 (requiring written authorization "freely given at the time the deduction is made"). The at-will employment doctrine does not grant employers plenary authority to implement post-earning wage reductions without written consent. See Landers-Scelfo v. Corporate Office Sys., Inc., 356 Ill. App. 3d 1060, 827 N.E.2d 1051 (1st Dist. 2005) (IWPCA requirements apply regardless of at-will status).

Defendant's Standard Practice Confirms the Absence of Written At-Will Acknowledgment Was Not Inadvertent.

Upon information and belief, Defendant maintains a standard practice of requiring express written at-will acknowledgments from all sales employees at the time of hiring. This practice exists precisely because Illinois law requires clear documentation of employment terms, particularly where compensation structures involve complex modifications to earned wages.

If Defendant required every other sales employee in the federal residency to sign written at-will acknowledgments but failed to obtain such acknowledgment from Plaintiff, at-will status cannot

be "assumed" or "implied." The absence of documentation that Defendant routinely obtains from other similarly situated employees demonstrates one of three possibilities: (1) Defendant failed to follow its own standard procedures for Plaintiff's hire, corroborating James E.'s admission that "the way [Plaintiff] was hired was not typically how CDW hires people"; (2) Defendant did not intend to create an at-will relationship with Plaintiff; or (3) Defendant deliberately withheld written employment terms to conceal the Goal Modifier mechanism and other material terms.

Under any of these scenarios, Defendant cannot invoke the at-will presumption to fill the documentary void created by its own failure to follow standard employment documentation procedures. Where an employer maintains a regular practice of obtaining express written acknowledgments of employment status but fails to obtain such acknowledgment in a specific case, the absence of documentation is not neutral—it affirmatively contradicts the presumption Defendant seeks to apply.

This evidentiary gap is particularly significant where, as here, Plaintiff has moved for supplemental discovery specifically seeking: (1) Whether Defendant required other Residency team members to sign at-will acknowledgments; and (2) What standard onboarding procedures exist for commission-based sales employees. Defendant's opposition to this discovery, combined with its assertion that Plaintiff's at-will status should be presumed despite the absence of documentation that Defendant routinely obtains, further demonstrates that the employment status is a disputed question of fact that cannot be resolved through judicial finding in a preliminary order.

The combination of Defendant's abnormal compensation structure (post-calculation wage modifications), statutory requirements for written authorization (820 ILCS 115/9), and Defendant's standard practice of obtaining express at-will acknowledgments from other employees, renders the absence of written employment terms with Plaintiff dispositive. Defendant cannot simultaneously maintain that at-will status should be presumed from the absence of documentation while operating a standard practice that precludes reliance on such presumptions. Where Section 9 requires express written authorization, Defendant cannot satisfy that requirement by arguing implied assent from continued employment. Continued employment

is neither express nor written, and it cannot substitute for the statutory authorization required at the time of the deduction.

F. Defendant's Reliance on Plaintiff's IDOL Wage Claim and 2021 Confidentiality Agreements Further Demonstrates the Impropriety of Applying the 2021 CDW Direct Agreement to the 2023 CDW Government LLC Employment Relationship.

In its Opposition, Defendant attempts to salvage its position by citing Plaintiff's Illinois Department of Labor wage claim, which referenced June 8, 2021 as Plaintiff's hire date, and by invoking two confidentiality agreements Plaintiff signed in May 2021. (See Def. Opp., Exs. 7, 8, 9). Neither supports Defendant's position.

Plaintiff's IDOL Wage Claim. Plaintiff's IDOL wage claim accurately identified his initial hire date with the CDW corporate family as June 8, 2021, the date he began employment with CDW Direct, LLC. The text of Plaintiff's IDOL claim, however, explicitly described the May 2023 event as a "transfer." The wage claim challenged compensation practices implemented during this transfer to CDW Government LLC. Defendant's selective reliance on the "hire date" field while omitting Plaintiff's contemporaneous characterization of the May 2023 event as a "transfer" on the face of the same document misrepresents the record. This further conflates distinct employment relationships and ignores basic principles of corporate separateness.

Defendant's Use of the IDOL Wage Claim to Shift the Evidentiary Burden Is Inconsistent with the Statutory Framework. Defendant cites Plaintiff's IDOL wage claim to argue that Plaintiff acknowledged continuous employment from 2021, thereby attempting to shift the burden to Plaintiff to disprove at-will status. This argument fails on its own terms. IDOL proceedings operate under the same Illinois Wage Payment and Collection Act that shifts the evidentiary burden to employers when they fail to maintain required employment records. Under Under 56 Ill. Admin. Code 300.630(b), where an employer fails to keep records as required by the Act, it is generally presumed that the employee is correct in his or her allegations.

Defendant cannot simultaneously invoke Plaintiff's IDOL wage claim to establish continuous employment while ignoring the IWPCA's burden-shifting provisions that apply in IDOL proceedings. If Defendant wishes to rely on the IDOL claim as evidence of the employment

relationship, it must accept the statutory framework under which that claim operates: the burden is on Defendant to produce employment records establishing the terms of employment, not on Plaintiff to disprove at-will status. Defendant has produced no CDW Government LLC employment agreement, no written at-will acknowledgment, and no compensation plan for the role at issue. Under the IWPCA's burden-shifting provisions, Plaintiff's allegations regarding the absence of written employment terms must be presumed correct.

Defendant's attempt to use the IDOL wage claim to establish continuous employment while declining to produce the employment records that would substantiate the terms of that relationship demonstrates the impropriety of its position. The IDOL claim does not relieve Defendant of its statutory obligation to maintain and produce employment records. Having failed to do so, Defendant cannot shift the burden to Plaintiff by citing a proceeding in which the statutory burden properly rests on Defendant.

Confidentiality Agreements. The May 2021 confidentiality and non-solicitation agreements concern the protection of proprietary information and post-employment restrictions. They do not establish the rate, terms, method of payment, or at-will status of Plaintiff's May 2023 commission-based role with CDW Government LLC. Confidentiality obligations are distinct from employment terms. That Plaintiff signed confidentiality agreements during onboarding with Entity A does not excuse Entity B from providing written employment terms when hiring the same individual into a materially different role nearly two years later.

Defendant's Attempt to Enforce CDW Direct's Restrictive Covenants While Paying Below-Threshold Wages Violates the Illinois Freedom to Work Act. Defendant's reliance on the May 2021 confidentiality and non-solicitation agreements creates an additional legal problem: CDW Government LLC is attempting to enforce restrictive covenants signed with a different employer while paying Plaintiff wages that render such agreements statutorily unenforceable.

The Illinois Freedom to Work Act prohibits employers from entering into or enforcing non-compete agreements with employees earning less than the statutory threshold, which was $75,000 at the Act's inception and adjusts biennially for inflation. 820 ILCS 90/10. For 2024, the threshold is approximately $81,900 annually. The Act defines "non-compete

agreement" broadly to include restrictions on post-employment activities, including non-solicitation provisions. 820 ILCS 90/5.

Plaintiff's W-2 wages demonstrate he has earned substantially below this threshold throughout his employment with CDW Government LLC:

- **2023** (May-December): $36,836.30 (annualizing to $55,254.45)

- **2024** (full year): $49,010.00

Both figures fall more than $25,000 below the statutory threshold for enforceable restrictive covenants. Meanwhile, the confidentiality and non-solicitation agreements Defendant cites were signed in May 2021 during Plaintiff's employment with CDW Direct, LLC, when Plaintiff earned $85,922.38 in 2022 under that entity's hourly-plus-bonus compensation structure.

Defendant cannot simultaneously:

1 Treat Plaintiff as subject to CDW Direct's 2021 restrictive covenants,
2 Pay him $30,000+ less annually than CDW Direct paid him, rendering those covenants unenforceable under Illinois law, and
3 Claim these represent a single continuous employment relationship when invoking the restrictive covenants, while maintaining corporate separateness when it suits Defendant's litigation interests.

This is precisely the corporate structure manipulation the Illinois Freedom to Work Act was designed to prevent. An employer cannot reduce an employee's compensation below the statutory threshold while continuing to enforce restrictive covenants signed when wages exceeded that threshold, particularly when the restrictive covenants were signed with a separate legal entity. If CDW Government LLC wishes to enforce restrictive covenants against Plaintiff, it must either: (1) pay him wages above the statutory threshold, or (2) execute new agreements that comply with current law. It cannot do neither while applying agreements from a sister subsidiary's employment relationship.

This further demonstrates why Defendant's reliance on the 2021 CDW Direct agreements to establish Plaintiff's employment terms with CDW Government LLC is legally untenable. The

agreements Defendant cites are either unenforceable due to Plaintiff's reduced compensation or inapplicable due to corporate separateness. Defendant cannot have it both ways.

The 2021 restrictive covenants are void and unenforceable as applied to Plaintiff's employment with CDW Government LLC.

Distinct Corporate Entities Require Distinct Employment Documentation. Defendant has produced no CDW Government LLC-specific offer letter, at-will acknowledgment, compensation plan, or written employment terms for the role at issue. Having elected to treat Plaintiff as a new hire for compensation purposes (by resetting his Length of Service to base level), Defendant cannot now claim that documentation from a prior employment relationship with a separate legal entity controls the new relationship. Illinois law recognizes corporate separateness, and Defendant cannot disregard it selectively. Defendant cannot selectively invoke it 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).

G. Plaintiff's Fraud Claims Necessarily Place All Employment Terms in Dispute, Including At-Will Status.

Defendant's position ignores the fundamental nature of Plaintiff's claims. Plaintiff alleges in his First Amended Complaint that Defendant fraudulently induced him to accept the CDW Government LLC position through material omissions and concealment of essential employment terms, including the Goal Modifier mechanism, the Length of Service reset, and the commission calculation methods. (See Pl. FAC, Counts I and II). When a plaintiff alleges fraudulent inducement into an employment relationship, the very existence and terms of that relationship are disputed matters requiring factual determination.

A court cannot simultaneously acknowledge fraud claims while making definitive findings about the employment terms allegedly procured through fraud. If Plaintiff proves his fraud claims, the employment relationship itself may be void or voidable due to Defendant's misrepresentations and omissions. At minimum, the terms of the relationship, including whether Plaintiff knowingly agreed to at-will employment with CDW Government LLC, are contested factual issues that cannot be resolved through judicial finding in a preliminary order.

Defendant's attempt to establish at-will status through a 2021 agreement with a different entity, while Plaintiff alleges fraud in the formation of the 2023 employment relationship, is unavailing. The alleged fraud concerns Defendant's failure to disclose material terms of the CDW Government LLC employment relationship. Plaintiff cannot have "agreed" to at-will employment with an entity that failed to provide any written employment terms and allegedly induced his acceptance through fraudulent omissions. **The at-will language assumes a valid, knowing agreement. Plaintiff's fraud allegations directly challenge whether any such agreement exists.**

Allowing the "at-will employee" language to stand while fraud claims are pending would require the Court to make definitive findings about the employment relationship before adjudicating whether that relationship was procured through fraud. This is particularly problematic where, as here, Defendant is using the at-will language to prevent discovery into the very facts necessary to prove the fraud claims.

III. CONCLUSION

Defendant has failed to produce a valid employment agreement concerning the parties, roles, and time periods at issue in this litigation. Instead, Defendant proffers an inapplicable document from a separate legal entity as purported evidence of at-will status, then wields the Court's preliminary language to obstruct discovery into the actual terms of Plaintiff's employment with CDW Government LLC. This contradicts the federal court's holding in CDW, LLC v. NETech Corp., which rejected the argument that sister subsidiaries within the CDW corporate structure can enforce each other's employment contracts.

The nature of the employment relationship, including whether written terms were provided, whether wage deductions were authorized, and whether Defendant complied with IWPCA notice requirements, constitutes the central disputed factual predicate for Plaintiff's claims of constructive fraud, fraudulent concealment, statutory wage violations, conversion, and retaliation. Permitting a definitive judicial characterization of Plaintiff as "at-will" in a preliminary order, based on legally insufficient evidence, prejudices Plaintiff's ability to conduct discovery and adjudicate these threshold issues.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant his Motion and modify the October 2, 2025 Order to either: (1) Remove the definitive characterization of Plaintiff as an "at-will employee"; or (2) Modify the language to state that Plaintiff's employment status with CDW Government LLC is disputed and subject to factual determination.

Respectfully submitted,

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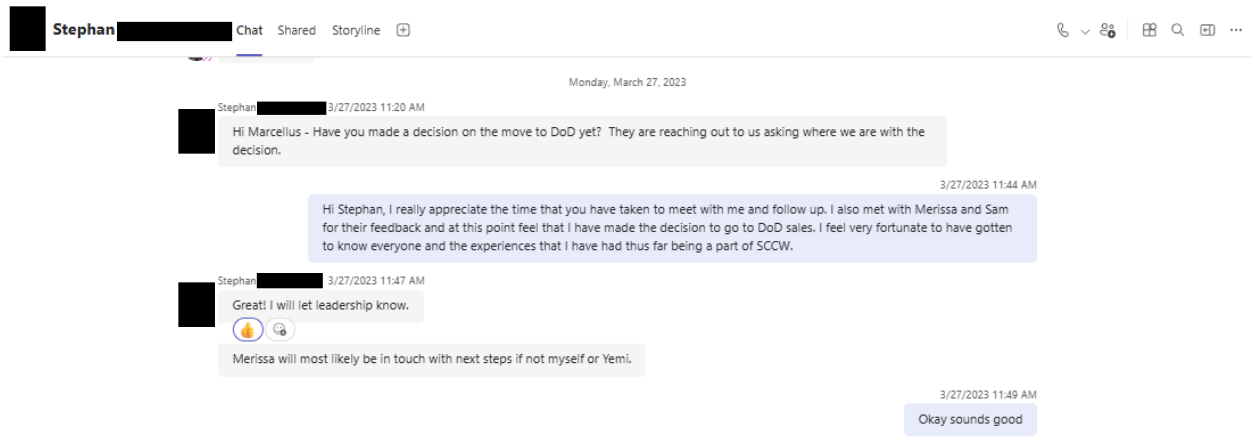
Dated January 27, 2026.

EXHIBITS FOLLOW

Ex. 2 - March 27, 2023 Acceptance of Employment



Ex. 2 -Defendant's Relevant Discovery Responses to Plaintiff's Requests

1. Admit that not at any time did CDW-G ask Plaintiff to sign, authorize, or agree to the Estimator sent to him on May 1, 2023.

RESPONSE: Objection, this request fails to comply with the requirements of Rule 216(b) which requires that copies of the documents shall be served with the request unless copies have already been furnished. Subject to and without waiving said objection Defendant CDW admits that it did not request Plaintiff to sign the Estimator. **Defendant further states that Plaintiff was an at will employee at the time Defendant provided the Estimator to him and Plaintiff authorized and agreed to the terms by remaining employed after he was made subject to such terms of compensation.**

2. Admit CDW-G has not produced any written authorization signed by Plaintiff consenting to reductions of amounts labeled “Commission Payout” via any Goal Modifier.

RESPONSE: Objection, Defendant was under no obligation to get Plaintiff’s written authorization and Defendant further objects as reductions under the compensation plan terms are not reductions or deductions from wages, **and he was an at will employee at the time and agreed to the terms by remaining employed after he was made subject to such terms of compensation.**

3. Admit Defendant, not Plaintiff, assigned Plaintiff’s Goal during the Relevant Period.

RESPONSE: Defendant CDW admits to this Request and further states that Plaintiff was **an at will employee at the time and agreed to the terms by remaining employed after he was made subject to such terms of compensation.**

4. Admit that, around the time of Plaintiff’s June 21, 2023 email requesting removal/refund of the Goal Modifier, Plaintiff’s Army Sales Manager asked Plaintiff for his general feedback on the Goal Modifier.

RESPONSE: Objection, this request is overly broad, unduly burdensome, and vague to respond to, particularly in its use of the term "Army Sales Manager" which individual is not identified, and term "general feedback." **Defendant further states that Plaintiff was an at will employee at the time and agreed to the terms by remaining employed after he was made subject to such terms of compensation.** Subject to and without waiving said objection, Defendant CDW denies the statement in this request.

5. Admit that, in that conversation, Plaintiff responded to the manager referenced above and stated that he thought the Goal Modifier was “absolutely horrible,” or words to that effect.

RESPONSE: Objection, this request is not relevant, overly broad, unduly burdensome, and vague to respond to, particularly in its use of the term "manager referenced above" which individual is not identified, and term "words to that effect." **Defendant further states that Plaintiff was an at will employee at the time and agreed to the terms by remaining employed after he was made subject to such terms of compensation**, subject to and without waiving said objections, Defendant admits Plaintiff complained to his manager Yemi O. about the goal modifier.

6. Admit that the manager referenced in Nos. 13-14 replied to Plaintiff, “You are not alone,” or words to that effect, in reference to Plaintiff’s negative feedback about the Goal Modifier.

RESPONSE: Objection, this request is not relevant, overly broad, unduly burdensome, and vague to respond to, particularly in its use of the term "manager referenced in Nos. 13 and 14" which individual is not identified, term "words to that effect," and term "negative feedback." **Defendant further states that Plaintiff was an at will employee at the time and agre**ed to the terms by remaining employed after he was made subject to such terms of compensation. Subject to and without waiving said objection Defendant CDW admits that Yemi O. said something to the effect of “You are not alone, it is company policy.”

7. Admit that, in the same conversation, the manager referenced in Nos. 13-15 indicated that he himself disapproved of the Goal Modifier or expressed substantially similar sentiment.

RESPONSE: Objection, this request is not relevant, overly broad, unduly burdensome, and vague to respond to particularly in its use of the term "manager referenced in Nos. 13-15" which

individual is not identified, term "disapproved," and term "substantially similar sentiment." **Defendant further states that Plaintiff was an at will employee at the time and agreed to the terms by remaining employed after he was made subject to such terms of compensation, subject to and without waiving said objections**, Defendant denies the statement in this request.

8. Admit that, after Plaintiff submitted an EthicsPoint complaint on or around January 18, 2024, Plaintiff's Residency Sales Manager (not the manager referenced in Requests 13–16) raised Plaintiff's complaint with him in a 1:1 web meeting and stated, "There's no use in keeping you around if you don't want to be here," or words to that effect. This Request seeks only whether those words were spoken by that manager to Plaintiff; it does not call for any characterization, justification, motive, or legal conclusion.

RESPONSE: Defendant admits that Plaintiff submitted an EthicsPoint complaint on January 18, 2024. Defendant objects to the remaining portion of this request because it is not relevant, overly broad, unduly burdensome, and vague to respond to, particularly in its use of the term "Plaintiff's Residency Sales Manager," which individual is not identified, the term "not the manager referenced in Requests 13-16," which individual is not identified, and term "words to that effect." **Defendant further states that Plaintiff was an at will employee at the time and agreed to the terms by remaining employed after he was made subject to such terms of compensation.** Defendant denies the remaining statement contained in this request.

9. Admit Defendant could change Plaintiff's assigned Goal during a Performance Period without obtaining Plaintiff's signed consent.

RESPONSE: Defendant admits that is could change Plaintiff's Goal, denies that it could change Plaintiff's assigned Goal without notifying Plaintiff and further states that Plaintiff was an at will employee at the time and agreed to the terms by remaining employed after he was made subject to such terms of compensation.

10. 24. Admit that the conduct described in Requests Nos. 22-23 occurred on more than one occasion.

RESPONSE: Objection, this request is compound, vague and unintelligible. **Defendant further states that Plaintiff was an at will employee at the time and agreed to the terms by**

remaining employed after he was made subject to such terms of compensation. Subject to and without waiving said objection Defendant admits that Plaintiff's goal was changed more than once between June 2023 and April 2024.

11. If you deny Requests Nos. 21-24 in whole or in part, state with particularity the scope of your inquiry, including each repository searched, each custodian, date ranges, search terms, and whether Goal History/Change Logs and Anaplan/ICM audit trails were reviewed.

RESPONSE: Objection, this is not a proper request to admit seeking an admission or denial of a fact but instead an interrogatory asking for information; thus, no response is necessary. Responding further, **Defendant states that Plaintiff was an at will employee at the time and agreed to the terms by remaining employed after he was made subject to such terms of compensation.**

Ex. 3 – Plaintiff's Tax Records (2 pages)

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

c Employer's name, address, and ZIP code
CDW DIRECT
200 N MILWAUKEE AVE
VERNON HILLS IL 60061

e Employee's name, address, and ZIP code
MARCELLUS LONG
[redacted]

b Employer identification number (EIN) [redacted]0079
a Employee's social security no. [redacted]

7 Social security tips		1 Wages, tips, other comp. 85922.38	2 Federal income tax withheld 12691.01
8 Allocated tips		3 Social security wages 85922.38	4 Social security tax withheld 5327.19
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: X	Third-party sick pay:	14 Other	12b DD 7271.16
			12c
			12d

15 State	Employer's state ID no.	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
IL	3645300790003	79077.58	3804.43			

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

Form **W-2 Wage and Tax Statement** 2023

c Employer's name, address, and ZIP code
CDW DIRECT
200 N MILWAUKEE AVE
VERNON HILLS IL 60061

e Employee's name, address, and ZIP code Suff.
MARCELLUS LONG
[redacted]

b Employer identification number (EIN) [redacted]0079
a Employee's social security no. [redacted]

7 Social security tips		1 Wages, tips, other comp. 28126.90	2 Federal income tax withheld 3747.61
8 Allocated tips		3 Social security wages 28126.90	4 Social security tax withheld 1743.87
9		5 Medicare wages and tips 28126.90	6 Medicare tax withheld 407.84
10 Dependent care benefits		11 Nonqualified plans	12a See instructions for box 12 AA 2993.48
13 Statutory employee:	Retirement plan: ✔	Third-party sick pay:	14 Other	12b DD 674.20
			12c
			12d

15 State	Employer's state ID no.	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
IL	3645300790003	28126.90	1343.84			

Copy B To Be Filed With Employee's FEDERAL Tax Return This information is being furnished to the Internal Revenue Service. OMB No. 1545-0008 Dept. of the Treasury - IRS Visit the IRS Web Site at www.irs.gov/efile

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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** 2023

c Employer's name, address, and ZIP code
CDW GOVERNMENT
230 N MILWAUKEE AVE
VERNON HILLS IL 60061

e Employee's name, address, and ZIP code Suff.
MARCELLUS LONG
[redacted]

b Employer identification number (EIN) [redacted]0110
a Employee's social security no. [redacted]

7 Social security tips		1 Wages, tips, other comp. 36836.30	2 Federal income tax withheld 4219.86
8 Allocated tips		3 Social security wages 36836.30	4 Social security tax withheld 2283.85
9		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
13 Statutory employee:	Retirement plan: ✔	Third-party sick pay:	14 Other	12b DD 6980.46
			12c
			12d

15 State	Employer's state ID no.	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name
IL	3642301100009	36836.30	1745.71			

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

Form 1040 — U.S. Individual Income Tax Return 2024

Department of the Treasury—Internal Revenue Service | 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	Last name	Your social security number
MARCELLUS	LONG [redacted]	7 0 4 4
If joint return, spouse's first name and middle initial	Last name	Spouse social security number
[redacted]		

Election Campaign … you, or your … jointly, want $3 … Checking a … not change … you ☐ Spouse

Filing Status (Check only one box.)
- ☒ Single
- ☐ Married filing jointly (even if only one had income)
- ☐ Married filing separately (MFS)
- ☐ Head of household (HOH)
- ☐ Qualifying surviving spouse (QSS)

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:

☐ 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):

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.) ☐ Yes ☒ No

Standard Deduction **Someone can claim:** ☐ You as a dependent ☐ Your spouse as a dependent
☐ Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness **You:** ☐ Were born before January 2, 1960 ☐ Are blind **Spouse:** ☐ Was born before January 2, 1960 ☐ Is blind

Dependents (see instructions): If more than four dependents, see instructions and check here . . ☐

(1) First name Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instructions): Child tax credit	Credit for other dependents
			☐	☐
			☐	☐
			☐	☐
			☐	☐

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a Form W-2, see instructions.

1a	Total amount from Form(s) W-2, box 1 (see instructions)					1a	49010
b	Household employee wages not reported on Form(s) W-2					1b	
c	Tip income not reported on line 1a (see instructions)					1c	
d	Medicaid waiver payments not reported on Form(s) W-2 (see instructions)					1d	
e	Taxable dependent care benefits from Form 2441, line 26					1e	
f	Employer-provided adoption benefits from Form 8839, line 29					1f	
g	Wages from Form 8919, line 6					1g	
h	Other earned income (see instructions)					1h	
i	Nontaxable combat pay election (see instructions)	1i					
z	Add lines 1a through 1h					1z	49010
2a	Tax-exempt interest	2a		b	Taxable interest	2b	
3a	Qualified dividends	3a		b	Ordinary dividends	3b	
4a	IRA distributions	4a		b	Taxable amount	4b	
5a	Pensions and annuities	5a	16368	b	Taxable amount	5b	6152
6a	Social security benefits	6a		b	Taxable amount	6b	
c	If you elect to use the lump-sum election method, check here (see instructions) ☐						
7	Capital gain or (loss). Attach Schedule D if required. If not required, check here ☐					7	
8	Additional income from Schedule 1, line 10					8	
9	Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your **total income**					9	55162
10	Adjustments to income from Schedule 1, line 26					10	300
11	Subtract line 10 from line 9. This is your **adjusted gross income**					11	54862
12	**Standard deduction or itemized deductions** (from Schedule A)					12	14600
13	Qualified business income deduction from Form 8995 or Form 8995-A					13	
14	Add lines 12 and 13					14	14600
15	Subtract line 14 from line 11. If zero or less, enter -0-. This is your **taxable income**					15	40262

Attach Sch. B if required.

Standard Deduction for—
- Single or Married filing separately, $14,600
- Married filing jointly or Qualifying surviving spouse, $29,200
- Head of household, $21,900
- If you checked any box under *Standard Deduction*, see instructions.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 11320B Form 1040 (2024)

CERTIFICATE OF SERVICE

The undersigned certifies that on or around Jan 27, 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/ Marcellus Long