

Commonwealth of Massachusetts
Superior Court
Middlesex, SS.

Civil Action #: MICV2009-04616

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Chuan Wang

Plaintiff,

vs.

International Business Machines Corp.,
Artech Information Systems LLC

Defendants.

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**AFFIDAVIT OF CHUAN WANG IN SUPPORT HIS CROSS-MOTION
FOR SUMMARY JUDGMENT, AND IN OPPOSITION TO
ARTECH'S MOTION FOR SUMMARY JUDGMENT, AND
IBM'S MOTION FOR SUMMARY JUDGMENT**

I swear the following statements are true, accurate, complete and known to me on personal knowledge unless otherwise indicated.

A. I Performed Service for Artech and IBM from February to April of 2008.

(a) I was solicited by Artech and IBM for services.

1. I received an e-mail from Vishwadeep Sharma of Artech Information Systems LLC on about February 1, 2008. Said e-mail, with a subject of "SAN Storage Engineer is required urgently for a Work From Home Position !!! Reply ASAP !!!", and my response to the active solicitation by Artech is shown in Exhibit 23. Said e-mail from Sharma is the first contact between Artech and me. Before February 1, 2008, I had no contact with Artech and knew nobody of Artech. I was told that said work would be for Artech's client, IBM.

2. Before my job interview by IBM, as requested, I provided to Artech with my resume (Exhibit 24), my Background Check Permission Form (Exhibit 25), and a copy of my US passport (Exhibit 26).
3. I was told that my personal information was required for IBM. Said information includes my Birth Date (Exhibits 25 & 26), Birth Place (Exhibit 26) that can be used by Artech and IBM to determine my age and national origin. My personal information also include my Social Security Number, Driver License Number, that I am a Massachusetts resident, and that I earned by BS college degree in China in 1982. The request is supported by IBM's Exhibit 2, Section 5.3(b) (in Page 11) of the contract between IBM and Artech. I was told that Artech submitted my resume with my personal information to IBM because every job applicant must submit his/her resume to IBM for each work that IBM sought.

(b) I was interviewed by IBM for said work.

4. I received an e-mail with a subject of "Interview Confirmed with IBM !!! Kindly Acknowldge and Confirm your availabilty !!! " from Sharma of Artech. Sharma arranged me a job interview with IBM on February 22, 2008. Exhibit 27 is a copy of the e-mails for said arrangement of the job interview. I was told that the job interview was required by IBM.
5. I was interviewed by IBM Manager named Sandra G. Blackwell and her team via a conference call as arranged by Artech at 3:30 PM on February 22, 2008 by Conference Call Number of 1-877-422-0052 and Passcode of 167139. The access to sad Conference Call was provided by IBM. Said Conference Call Number and Passcode were provided in said e-mail (Exhibit 27).

(c) I got a Job offer extended by IBM.

6. On February 22, 2008, I received an e-mail with a subject of “Offer Extended By IBM !!! Kindly Accept and Acknowledge this email ASAP !!!!” from Sharma. Exhibit 28 is a copy of the e-mails about said job offer.
7. I was asked to work full-time exclusively for IBM from my home.
8. I was told to work for IBM from my home office that would be required to be equipped with high-speed Internet and telephone communication systems.
9. After accepted said job offer, I set up the required high-speed Internet and telephone systems, as requested, so that the services for IBM can be performed.

(d) Employment agreement is unfair and in violation of Massachusetts Wage Laws.

10. On about February 26, 2008, I received an express mail from Artech by DHL with a tracking number of 31822960212, including two copies of Employment Agreement proposed by Aertech. Exhibit 29 is a copy of said Employment Agreement originally proposed by Artech with the signature of Menist of Artech.
11. Artech and I had extensive discussions about the dispute via both e-mail and phone conversation. Exhibit 4 is a copy of one of said e-mails about said disputes. In said e-mails, I disputed with Artech that Paragraph 10 and other things in the proposed Employment Agreement are unfair and illegal. Paragraph 10 (in Exhibit 29) states, “If employee is terminated by the client for cause or employee departs this assignment for any reason prior to the expiration of the probationary trial period or end of the project, Employee shall reimburse Artech for the amounts paid to employee as a draw during the probationary trial period.” I contended that Paragraph 10 is very unfair to any employee and in violation Massachusetts laws. Reimbursing the employer “for the amounts paid to employee” for the

services already performed would have the same effect as non-paying in part to the employee already earned. Such a demand is in violation of M.G.L. c.149 §148.

Paragraph 10 further states, “In that connection, employee acknowledges and understands that Artech will receive no payment for services performed hereunder by Employee from the proposed client if the proposed client terminates Employee during the probationary trial period.” The word of “client” here is referred to IBM. Section of Probation Period (Paragraph 10) clearly stated that both Artech and IBM demanded and claimed to have rights to terminate my work for whatever reasons. Section of Probation Period further demanded the rights for both Artech and IBM not to pay me for my services already performed when IBM determines to terminate my work for whatever reasons within 30 days. Such demands clearly are violation of M.G.L. c.149 §148. In her e-mail (Exhibit 4), Menist further explained said demands by both IBM and Artech as, “The reason that we include this clause into our employment agreement is because we cannot bill the client (IBM) if you leave or are terminated within the first 30 days of the project.” Artech clearly explained their reasons for demand and intent that Artech demand for reimbursing Artech for the amounts that employee has already earned, or non-payment in part, in case either I decided to quit the work or IBM decided to terminate my work, because IBM demanded to do so. Such demands by both Artech and IBM are in violation of M.G.L. c.149 §148.

As shown in the e-mail (Exhibit 4), both IBM and Artech demanded rights not to pay the service already performed by employees when an employee decides to quit the job or IBM decided to terminate employee’s job. However, instead of making demand directly to employee, IBM asked Artech to make such illegal demands to employee in form of Artech

employment agreement. Such an employment arrangement is a scheme of IBM so that IBM can evade employment obligation imposed by Massachusetts laws of employment, labor, and wages. Without involvement of Artech, I would be obviously an employee of IBM because I actually performed full-time services exclusively for IBM under full control and direction of IBM.

12. On about two days before my work was terminated and about 30 days for extensively fighting disputes, I responded the e-mails from Menist that is similar to e-mail from her supervisor, Darren M. Crocker. Exhibit 14 shows said e-mails. Menist clearly threaten me in her e-mail, "I can not put you on payroll without this signed." She tried to force me to agree an employment agreement that is in violation of Massachusetts laws. That was what actually Artech did to me. Artech failed and refused to pay me for my service already performed for over three years.

In my e-mail, I clearly contented, "The drafts suggested by you were written so that provides you ability not to pay me for the work I performed. Therefore, it is no way for me to accept them. Just as you stated in THIS e-mail, you intend not to pay me even though I have performed my work for IBM that is arranged by you." I further stated, "I am entitled to be paid for all my services. I will not agree to surrender my rights that provide me to be paid for my services as STATED in your suggested draft of agreement." My statements are clearly described what the disputes were about that is about my right to be paid for my service that is provided by M.G.L. c.149.

13. During the period between February 26, 2008 and March 28, 2008, I and Artech had extensive dispute about Section of Arbitration of Paragraph 19 in the proposed Employment

Agreement. On the day when my work was terminated, March 28, 2008, I responded Menist e-mail with a subject of "Missing Paperwork" (Exhibit 16). In her e-mail, Menist continued to demand, "paragraph 19 which states that you can only take us to Arbitration in Morristown NJ." Such Section of Arbitration of Paragraph 19 is in violation of M.G.L. c.149, and designed to evade Massachusetts statue, M.G.L. c.149. I performed my services for IBM and Artech from my home in Massachusetts. Therefore, Massachusetts laws apply, instead of New Jersey laws. In my e-mail, I defended my rights provided under M.G.L. c.149, and further characterized the disputes as, "If Artech intend not to pay for my services, you left me no choice other than seeking other means to get me paid for whatever I am entitled to." Even after service done over three years ago, and many complaints filed with government agencies and many courts, and many demand letters, both Artech and IBM continue to refuse to me for service I performed.

(e) I performed service exclusively for IBM who thus deemed as employer.

14. On March 10, 2008, Vishwadeep Sharma sent me an e-mail with a subject of "STARTING DETAILS WITH IBM !!! KINDLY CONFIRM AND ACKNOWLEDGE !!!", and ask me to start work with IBM. Exhibit 30 is a copy of said e-mail.
15. Sandra G. Blackwell called me on March 11, 2008 for me to work, and subsequently worked under her supervision with full direction and control of IBM. She arranged a laptop computer and passwords for me to access IBM computers, IBM internal computer network, and many other IBM systems. E-mails in Exhibits 31 through 37 documented some work I performed full-time service exclusively for IBM.
16. I subsequently worked exclusively for IBM under the direction and control of IBM. Exhibit 38 shows a part of direction of IBM how to work with IBM computer systems, computer

networks, and information of IBM from March 11, 2008 to March 28, 2008. Exhibits 31 through 37 documented how I worked for IBM under the direction and control of IBM. Artech had no control nor provide me direction for said IBM work.

Sandra G. Blackwell also asked Stacy St Germain and Ronnie Stovall to coordinate with me to work with other member of Storage Management Solution and Transition Team of IBM Global Services and other IBM teams. The e-mail dated March 12, 2008 from Germain to me (Exhibit 31) listed members of IBM team I worked with.

As shown in said e-mail dated March 13, 2008 from Germain to me (Exhibit 32), I was assigned to Novartis Transition Project by IBM. Since then, I worked on Novartis Transition Project on daily basis. The e-mail dated March 18, 2008 from Germain to me (Exhibit 33) shows my work at IBM.

Many works I performed for IBM require me to access IBM password protected computer networks, computer systems, and work related information. The e-mail dated March 21, 2008 from Blackwell (Exhibit 34) shows a process that IBM provided such accesses. IBM fully controls any access to their computer networks, computer systems, and work related information. IBM have records who, when and how accessed their password protected computer networks, computer systems, and work related information.

The e-mail dated March 25, 2008 from Stovall to me (Exhibit 35) shows that I was continuing to work on Novartis transition project exclusively for IBM. Said work involved several IBM teams worldwide: many from Argentina while others from many states of US.

The e-mail dated March 26, 2008 from Stovall to me (Exhibit 36) shows a part of my work on Novartis transition project for IBM on March 26, 2008.

The e-mail dated March 27, 2008 from Stovall to me (Exhibit 37) shows a part of my work on Novartis transition project for IBM on March 27, 2008.

17. I shall be deemed to be an employee of both Artech and IBM because I actually performed full-time work for them pursuant to Massachusetts Wage and Hour Laws, including M.G.L. c.149 §148B(a).

(f) Neither Artech nor IBM paid my wage timely, in violation of M.G.L. C149 §148.

18. Neither Artech nor IBM paid me timely for my services timely required by M.G.L. c.149 §148.

B. Artech and IBM Terminated My Work in Retaliation, in Violation of M.G.L. C149 §148A.

19. I repeat my affidavit in Paragraphs 10, 11, 12 and 13. As a result of defending my rights provided by M.G.L. c.149 §148, my work was terminated. Such retaliatory action is expressly prohibited by M.G.L. c.149 §148A. The statute, §148A, provides, “No employee shall be penalized by an employer in any way as a result of any action on the part of an employee to seek his or her rights under the wages and hours provisions of this chapter.”

20. On March 28, 2008, Artech asked IBM for permission to terminate my work for IBM.

Exhibit 39 is a copy of an e-mail sent at 1:07 pm March 28, 2008, from Anthony J. Alfonso

of Artech to Sandra Blackwell of IBM. Based on said e-mail, Alfonso and Blackwell had had a conference call “about Chuan Wang” before said e-mail sent. They decided that “we have no option but to terminate Chuan Wang as an Artech employee effective today 3/28/08.” For “permission”, said e-mail stated, “To insure a safe exit from the Blue Network, I **request you advise** when his account has been closed at which time I will notify him of the termination.” (Emphasis added). To replace Chuan Wang, Alfonso further stated, “I have already contacted my recruiting team to source backfill candidates immediately. I will submit them to you via email while we await the CSA.” Clearly, Artech requested permission from IBM for (1) terminating Wang’s work for IBM, and (2) replacing Wang with others.

21. On March 28, 2008, I received an e-mail from Anthony J. Alfonso of Artech at 5:33 pm. He told me that my work for IBM was terminated effective immediately. Exhibit 40 shows a copy of said e-mail.
22. On March 28, 2008, Alfred Blitzer, VP of Artech, sent a letter dated March 27, 2008 to Wang, stated that my work for IBM was terminated. Blitzer threatened not to pay me in his letter and stated, “I need the signed agreement back immediately in order to pay you.” Said letter was mailed by certified mail post marked March 28, 2008. Exhibit 41 is a copy of said letter and the envelope. Artech’s decision was made after Artech had IBM’s permission (Exhibit 39). My work for IBM was terminated because I defending my rights provided by M.G.L. c.149.
23. I sent an e-mail to my supervisor of IBM, Sandra G. Blackwell, to request to continue work for IBM. Exhibit 42 is a copy of said e-mail. In said e-mail, I told IBM that the dispute between me and Artech is about my wage right. Blackwell did not respond my e-mail and phone call. I then called several times to IBM Human Resource for request of continuing

work and unpaid wages. I was told by IBM that the disputes must be resolved with Artech. In effect, IBM consented Artech's decision to terminate my work, and thus shall be also liable for the action of firing me.

24. On May 2, 2008, I sent an e-mail again to Sandra G. Blackwell, to request to continue work for IBM after CDI submitted my resume to IBM for work IBM sought. Exhibit 73 is a copy of said e-mail. In said e-mail, I wrote, "I would like you to know that I applied the position via CDI Corp. I would like to continue working with you and the team for the projects. I promise that I will work out required documents with CDI quickly and smoothly." Again, Blackwell did not respond my e-mail.

25. As my work for IBM was terminated, I subsequently became unemployed.

C. I Further Fought for My Rights Under M.G.L. c.149.

26. Neither Artech nor IBM paid me wages in violation of M.G.L. c.149 §148. §148 provides, "Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him ... and any employee discharged from such employment shall be paid in full on the day of his discharge".

27. Although I repeatedly requested for my wages, Artech refused to pay me for the service I performed for IBM. Exhibit 43 is such an example of a copy of my e-mail to Menist of Artech dated April 4, 2008. It is contrary to Artech allegation that I did not report hours I worked for IBM. In said e-mail, I reported the "regular" 112 hours (8 hours per day, 14 days from March 11, 2008 to March 28, 2008) as previously "agreed" although I actually worked more than 112 hours for IBM. I was told by Artech that my work was full-time exclusive for IBM. Menist of Artech told me that any work beyond regular daily hours (8 hours per day) would not be payable unless it was approved in advance by my IBM supervisor.

28. Exhibit 44 documented the additional disputable services I performed for Artech and IBM after I was told that my work was terminated on March 28, 2008. Exhibit 44 is a copy of e-mail chain between me and David Kim of Artech. As shown in said e-mail, on March 28, 2008, Kim provided me a prepaid UPS shipping label (Exhibit 76) and requested me return IBM computer to Artech. As requested, I cleaned up computer filesystems and security settings back to the original condition, and delivered IBM computer to a UPS store. Meanwhile, I received a letter dated April 7, 2008 from Alfred Blitzer (Exhibit 45). In his letter, Blitzer stated, Artech “contact the local authorities and open criminal charge against you for their”. I spent substantial time for criminal charge against me and suffered emotional distress. Due to the mistake of Artech on UPS shipping label, said IBM computer mailed back to me (Exhibit 76), instead of Artech, several days later. On April 10, 2008, I asked Kim to provide me a correct UPS shipping label, and delivered IBM computer to a UPS store second time. In addition, I performed work, before March 11, 2008, on setting up the computer networking and telephone systems that were required to perform works for IBM. Artech refused to pay for these works because Artech considered no employment agreement and they are outside IBM project window, from the beginning date determined by Artech on March 11, 2008, to the termination date by determined Artech on March 28, 2008.
29. In said e-mail (Exhibit 44), Kim repeated Artech wage payment policy (Exhibit 72) as, “In order to process your paycheck, we need you to send us your timesheets with the correct hours you've worked while on the project with IBM. Please be sure that the hours you send concur with the hours submitted in the IBM Intranet Labor CLAIM.” Such a requirement of “timesheet plus hours submitted in the IBM Intranet Labor CLAIM system” is contrary to Artech allegation that Artech would pay me if I submitted my timesheets only without “the hours submitted in the IBM Intranet Labor CLAIM” system. The IBM Intranet Labor

CLAIM is a password protected system. Although I repeated made request for the access, for whatever reasons, IBM did not provide me the access. This is a main reason that I could not submit my timesheets with “the hours submitted in the IBM Intranet Labor CLAIM.”

30. I filed a complaint for Non-Payment of Wage and retaliatory discharge with the Attorney General office against Artech and IBM on about April 14, 2008. I was fired because I defending my rights under M.G.L. c.149 §148 that is expressly prohibited by M.G.L. c.149 §148A. Subsequently, the Attorney General issued me a Suit Authorization. Exhibit 46 is copies of said documents.
31. I filed several complaints with the Attorney General office against IBM for Non-Payment of Wage and retaliatory discharge. I was fired because I defending my rights under M.G.L. c.149 §148 that is expressly prohibited by M.G.L. c.149 §148A. Subsequently, the Attorney General issued me two Suit Authorization letters. Exhibit 47 shows copies of said documents.
32. On about July 18, 2008, my attorney made demand for non-paid wage to Artech (Exhibit 21). In said demand letter, my attorney wrote, “M.G.L. c. 149, §150 provides that any employee aggrieved by a violation of §148 has a civil cause of action for any damages incurred, including treble damages for any loss of wages or other benefits, plus attorney fees. Under Massachusetts law, corporate officers can be sued individually for failing to pay wages.”
33. On about July 18, 2008, my attorney made demand for non-paid wage to IBM. Exhibit 48 is a copy of said demand letter. In said demand letter, my attorney pointed out, “Under the law, IBM will be considered to be an ‘employer’ of Mr. Wang despite the involvement of Artech.”

34. On about January 13, 2009, Plaintiff filed a complaint of age discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) against Defendants. Exhibit 49 is a copy of said complaint filed with EEOC.
35. I filed another complaint for Non-Payment of Wage and retaliatory discharge with the Attorney General office against IBM on about March 16, 2009. Exhibit 50 is a copy of said compliant letter with the Attorney General office. I was fired because I defending my rights under M.G.L. c.149 §148 that is expressly prohibited by M.G.L. c.149 §148A.
36. In March and April of 2009, Plaintiff filed two complaints of employment discrimination with Massachusetts Commission Against Discrimination (“MCAD”) against Defendants. Exhibit 51 shows said complaints.
37. On about April 28, 2009, MCAD notified IBM about the complaint filed by Plaintiff. Exhibit 52 is a copy of said notice and complaint.
38. On about February 12, 2009, Plaintiff filed a complaint against IBM and Artech in Massachusetts Concord District Court. Plaintiff filed an Amended complaint later. Exhibit 53 is a copy of said complaints.
39. On about March 12, 2009, Defendant Artech answered Wang ‘s Complaint filed in Concord District Court. Exhibit 54 is a copy of said Artech’s Answer. Artech contented, “if plaintiff set up a computer network and telephone systems for International Business Machines Corp, he did so as a volunteer because he had no employment contract with the defendant.” Artech further contented, “plaintiff was never employed by the defendant.”
40. On about April 14, 2009, Defendant IBM answered Plaintiff’s Amended Complaint filed in Concord District Court. Exhibit 55 is a copy of said IBM’s Answer. In its Answer, IBM “admits that Plaintiff e-mailed Ms. Blackwell.”

41. On about March 12, 2009, Defendant IBM filed an answer (Exhibit 56) with EEOC to respond Plaintiff's Complaint. In said Answer, IBM argued, (1) "Mr. Wang was a CDI and Artech employee but was never an IBM employee"; (2) "the EEOC has no jurisdiction over this claim because Mr. Wang never applied for employment with IBM." (subtitles of Answer in Exhibit 56). In said Answer, IBM admitted IBM manager had Wang's resume. (the second to last paragraph in Page 4 of IBM Answer to EEOC, Exhibit 56). In said Answer, IBM further stated, "Ms. Foster rated Mr. Wang's skills as a "medium" resource and he was not selected to support the project for early 2009. However, Mr. Wang remains eligible for submission by CDI for upcoming projects and he could be assigned if his skills match a particular IBM opportunity." (the last paragraph in Page 4 of IBM Answer to EEOC, Exhibit 56).
42. On about January 4, 2011, I filed a complaint against Samuel J. Palmisano and Mark Loughridge (who were dismissed in this case), and others in United States District Court, Massachusetts. Exhibit 57 is a copy of said complaints.
43. Defendant MacDonald of IBM filed a motion to dismiss my Complaint in United States District Court. Exhibit 58 is a copy of said Motion for Dismiss. In his motion, MacDonald contented, (1) United States District Court has no personal jurisdiction over MacDonald and Palmisano and Loughridge who are also the officers of IBM and New York residents; and (2) that "action is duplicative of a pending action in Middlesex Superior Court and thus constitutes improper claim-splitting." Mr. Pomarole, the same counsel for the defendants in both cases, are well aware of the fact that this court already ruled that all individual defendants, Palmisano and Loughridge, were dismissed from this case. Thus Palmisano and Loughridge are no long defendants in this case. In said motion, Mr. Pomarole intentionally and willfully misled United States District Court, and stated, "the plaintiff has already filed

litigation against IBM and **various IBM corporate officers** in Middlesex Superior Court, which alleges the same causes of action based on the same operative facts.” (Emphasis added).

44. Exhibit 59 is a copy of my Opposition to Defendant’s Motion for Dismiss filed in United States District Court. In my Opposition, I contended that, (1) United States District Court has a proper jurisdiction over MacDonald and Palmisano and Loughridge, (who were already dismissed from this case of Massachusetts Superior Court) pursuant to 28 U.S.C. §1332; and (2) United States District Court has recognized several exceptions to the rules against claim-slitting. Those exceptions apply in the case of US District Court, including (a) Palmisano and Loughridge and MacDonald implicitly assents and in effect acquiesced plaintiff may split claims, and (b) Collateral Estoppel does not apply to the case of US District Court.

D. I Was Repeatedly Refused by IBM for Subsequent Works in Retaliation.

45. After my work for IBM was terminated on March 28, 2008, IBM continued to seek for hundreds of works that I was also qualified for. I made many applications for said IBM works by submitting my resume with my personal information to IBM, including five job interviews by IBM. On information and belief, IBM chose hundreds of workers for said works, instead rejected all of my work applications. Exhibits 60-69 are e-mails that are about said job applications.

46. I repeat my affidavit in Paragraphs 10 through 37. As a result of defending my rights provided by M.G.L. c.149 §148, including filing complaints with Attorney General, EEOC and MCAD, all my applications were repeated rejected by IBM. Such retaliatory action is expressly prohibited by M.G.L. c.149 §148A. M.G.L. c.149 §148A provides, “No

employee shall be penalized by an employer in any way as a result of any action on the part of an employee to seek his or her rights under the wages and hours provisions of this chapter.”

47. In April of 2008, my resume was submitted to IBM several times by Infinite Computer Solutions. Exhibits 60-62 are copies of e-mails about submissions.

48. On about May 5, 2008, I was interviewed by an IBM Manager, Stephen Wheatley, for one of said job applications. Exhibit 63 is a copy of e-mail of CDI that arranged for said job interview. Said job interview was arranged by Bret Benites of CDI.

49. On about May 6, 2008, I received an e-mail from Benites. Exhibit 64 is a copy of said e-mail. Because his commission related income, Benites was eager to get the business and want to know the result. The decision-maker for the hiring was not CDI, instead, IBM made the decision.

50. On about June 27, 2008, I was interviewed by an IBM Manager, Gina Koppel, for one of said job applications. Exhibit 65 is a copy of e-mail of CDI that arranged for said job interview.

51. On about July 31, 2008, I was interviewed by an IBM Manager, Ramakrishna Talkad, for one of said job applications. Exhibit 66 is a copy of e-mail of CDI that arranged for said job interview.

52. On about August 5, 2008, I was interviewed by an IBM Manager, Janet Hamilton, for one of said job applications. Exhibit 67 is a copy of e-mail of CDI that arranged for said job interview.

53. On about December 11, 2008, I was interviewed by an IBM Manager, Linda Foster for one of said job applications. Exhibit 68 is a copy of e-mail of CDI that arranged for said job interview.

54. On numerous occasions during the course of said work applications, I was told that IBM sought multiple workers, sometimes more than 10 workers, when my resume was submitted to IBM.
55. IBM rejected all of my work applications for a large number of workers IBM sought after I was discharged on March 28, 2008.
56. As I asked about the decisions on my job applications, Ferris of CDI told me that IBM rejected all of my work applications. In her e-mail, she wrote, “unfortunately they did not ask me to extend an offer to you.” Here the word of “they” referred to IBM not CDI. Exhibit 69 is a copy of said e-mail. Ferris’s statement is contrary to IBM’s contention that IBM made no decision for works I made applications for. In fact, IBM made every decision for each of all works I made applications for.
57. A determining factor in the rejection of all my applications was because I defended my rights provided by M.G.L. c.149 §148 previously. Such retaliatory actions by IBM are expressly prohibited by M.G.L. c.149 §148A.

E. I Was Repeatedly Refused by IBM for Subsequent Works in Discrimination.

58. I repeat my affidavit in Paragraphs 60 through 70. After I was discharged on March 28, 2008, my resume with my personal information was submitted to IBM many times. (Exhibits 60-69). Almost every work I applied for was required for exceptional ability that generally requires at least college bachelor degree plus at least 5 to 10 years working experience in the related field. I was told that IBM sought multiple workers to do work for IBM. Exhibit 70 is a copy of my resume that CDI submitted to IBM.
59. On numerous occasions, I was told that IBM sought more than ten workers for said works that IBM sought.

60. As shown in my resume submitted to IBM (Exhibit 70), I well qualified to perform almost every work that IBM sought. I have had more than 20 years working experience in US after earned my Ph.D. degree. Among these experiences, I had more than 15 years working experience in the field of the works that IBM sought. I have developed several techniques with Storage Area Network (SAN) that is a key element of IBM work requirements. Said my techniques have been granted by US Patent and Trademark Office for patents in recognition of the superior and revolutionary results of my techniques compared to the existing SAN technologies, including SAN techniques developed by IBM.
61. Despite my qualification, IBM rejected each and every said work application made by me. I made said work applications for hundreds works that IBM sought between April of 2008 and December of 2008.
62. Instead, IBM offered said works to other hundreds workers despite that those workers are significantly younger than me and have significantly less qualification than me.
63. Contrary to IBM allegation that I was CDI's employee, CDI paid me nothing whatsoever since 2008. After I was discharged on March 28, 2008, every work that I applied for was rejected by IBM. Every time after IBM rejected my work application, CDI had nothing to offer me for work.
64. For each work that IBM sought, I was required to submit my resume to IBM. Such a resume requirement is true for every work applicant. Based on personal information in resume submitted to IBM, age and national origin for each applicant can be approximately determined. For example, my resume (Exhibit 70) shows that I earned my college bachelor degree in China in 1982. Since most people earn their bachelor degree when they are old than 22 years old, my age can be estimated to be old than 48 years old in 2008 ($2008-1982+22=48$). In fact, I was 52 years old in 2008, clearly a member in the protected

group. Because I had my education in China, my national origin can be approximately determined as China. Similarly, for those hundreds workers preferred by IBM, their age and national origin can be approximately determined based on their personal information in their resumes provided to IBM.

65. On information and belief, I was significantly older than the majority of said hundreds workers preferred by IBM. I was a minority among those hundreds workers.
66. On information and belief, a determining factor in the rejection of all my applications was my age.
67. On information and belief, a determining factor in the rejection of all my applications was my race and national origin.
68. Such retaliatory actions by IBM is expressly prohibited by M.G.L. Chapter 151B §4.
69. Soon after IBM and Artech answered the complaint, I made several discovery requests. Exhibit 71 is copies of said discovery requests. However, IBM and Artech refused to answer discovery request I made.

Respectfully submitted,


Chuan Wang

Dated: May 25, 2011