

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

Discrimination in Employment

-----X  
ERIK BELFIORE, :  
                  Complainant, :  
                                  : Office of Human Rights  
v.                              : Referral No.: E-05548  
                                  : OZAH Case No.: 14-02  
MERCHANT LINK, LLC, :  
                  Respondent. :  
                                  :  
-----X

A hearing in the above-entitled matter was held on February 10, 2015, commencing at 9:30 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lutz Alexander Prager

Hearing Examiner

A P P E A R A N C E S

On Behalf of the Complainant:

WILLIAM C. JOHNSON, JR., ESQ.  
Law Offices of William Johnson, LLC  
1101 15th Street, NW, Suite 910  
Washington, D.C. 20005

On Behalf of the Respondent:

STEVEN E. KAPLAN, ESQ.  
PETER J. PETESCH, ESQ.  
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Washington, D.C. 20036

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
<b>Erik Belfiore (Resumed)</b>				
By Mr. Johnson:		--		103
By Mr. Kaplan:		4		140
<b>Christopher Justice</b>				
By Mr. Johnson:		143		195
By Mr. Petesch:			169	

E X H I B I T S

Exhibit No.	Marked/Received
<b>For Complainant:</b>	
38 Christopher Justice Affidavit	previously identified/121
53A Tim Kinsella 2010 Agreement	previously identified/143
55A ML000912 through ML000915	previously identified/150
<b>For Respondent:</b>	
72 3/18/11 E-mail	previously identified/45
73 8/25/11 E-mail	previously identified/46
74 Complaint to Dan Lane	previously identified/41
75 9/20/11 E-mail	previously identified/43
76 10/18/11 E-mail	previously identified/43
79 11/2/11 E-mail	previously identified/51
82 11/4/11 E-mail	previously identified/48
98 Job Application	previously identified/76
99 Job Application	previously identified/74

P R O C E E D I N G S

1 MR. PRAGER: Good morning. This is a resumption  
2 in the hearing of the case of Belfiore versus, Belfiore  
3 versus Merchant Link. Mr. Kaplan, are you ready to proceed  
4 with your cross-examination?  
5 MR. KAPLAN: Yes, sir.  
6 MR. PRAGER: Mr. Johnson, you're ready I take it?  
7 MR. JOHNSON: Yes, Your Honor.  
8 MR. PRAGER: Okay. Mr. Belfiore, would you please  
9 resume the stand? And then as I mentioned yesterday, you're  
10 still under oath. You understand that?  
11 MR. BELFIORE: Yes, sir.  
12 MR. PRAGER: All right. Mr. Kaplan, please  
13 proceed.  
14 MR. KAPLAN: Thank you.  
15 (Witness previously sworn.)  
16 CROSS-EXAMINATION (Resumed)  
17 BY MR. KAPLAN:  
18 Q Do you recall yesterday you talked about your work  
19 history prior to Merchant Link? Do you recall that  
20 testimony generally?  
21 A Yes.  
22 Q Before working at Merchant Link, was the highest  
23 base salary you earned \$90,000?  
24 A Um, no.

1 Q What was the highest in base salary that you  
2 earned?  
3 A I left the Special Olympics at about \$100,000 a  
4 year.  
5 Q Okay. \$100,000?  
6 A Uh-huh.  
7 Q If you look at Claimant's No. 41, please, you have  
8 the big --  
9 MR. JOHNSON: Your Honor, permission to approach  
10 the witness to see that he has the binder.  
11 MR. PRAGER: Yes. Go ahead.  
12 BY MR. KAPLAN:  
13 Q And also, can you look at the same time the Joint  
14 Exhibit No. 141? Look at them at the same time, please.  
15 MR. PRAGER: Well, just so the record is clear,  
16 you have labeled these as a joint exhibit but it really is a  
17 Merchant Link exhibit and I think from now on, even though  
18 you've labeled them as joint exhibits, I will consider them  
19 and the record will reveal them as the Merchant Link  
20 exhibits.  
21 MR. KAPLAN: Sure.  
22 MR. PRAGER: What was the number?  
23 MR. KAPLAN: 141, please.  
24 MR. PRAGER: Bear with me.  
25 MR. KAPLAN: Sure. Take your time.

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1 MR. PRAGER: All right.  
2 BY MR. KAPLAN:  
3 Q Yesterday, you testified that you believed the  
4 total compensation on Claimant's 41 was accurate. Do you  
5 recall that testimony?  
6 A Yes.  
7 Q And you put this together through information you  
8 received from Merchant Link?  
9 A Correct.  
10 Q Is that while you were employed at Merchant Link  
11 or is that during discovery in this case? When was this  
12 document actually created?  
13 A This document was created in October of 2011.  
14 Q Before or after you submitted your complaint of  
15 discrimination?  
16 A Um, before.  
17 Q If you look at Mr. Kinsella on your, on Claimant  
18 41, it says total compensation earned in 2010, \$305,696.25.  
19 Do you see that?  
20 A Yes.  
21 Q If you look at exhibit, Merchant Link 141, if you  
22 scroll down or look down, he actually earned only  
23 \$243,203.96. Do you see that?  
24 A Yes.  
25 Q So your document is off by about \$60,000. Do you

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1 see where that, where I get that number?  
2 A Yes. I see that.  
3 Q Okay. Let's go to Ben Chudasama. You claim he  
4 earned \$255,000 in 2010. Do you see that?  
5 A Yes.  
6 Q Okay. If you look at Merchant Link 141 under  
7 2010, he actually only earned \$164,000. Do you see that?  
8 A Yes.  
9 Q A difference of about \$90,000, would you agree?  
10 A It seems about that, yes.  
11 Q James Reese. Look at your document. You say he  
12 earned \$225,000. Do you see that in 2010?  
13 A Yes.  
14 Q And in reality, he only earned \$195,000. Do you  
15 see that?  
16 A Yes.  
17 Q And Jay Konar, you state here that he earned  
18 \$204,000. Do you see that?  
19 A Yes.  
20 Q Okay. And in reality, he only earned \$164,000.  
21 Do you see that?  
22 A Yes, but I don't understand that.  
23 Q That wasn't my question. And that's a difference  
24 of about \$40,000?  
25 A Correct.

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1 Q And Mary Bodhane.  
2 A Uh-huh.  
3 Q You state he earned \$207,000?  
4 A Uh-huh.  
5 Q And in reality, she only earned \$200,000. Do you  
6 see that?  
7 A Yes.  
8 Q Okay. You can put those aside. Now, I'm going to  
9 identify a bunch of factors or reasons why one employee's  
10 compensation may be different than another employee's  
11 compensation. This is just in the abstract, not related to  
12 this case necessarily, okay? Let me know if it's a  
13 legitimate reason for the differences in compensation.  
14 Job responsibilities?  
15 A That's a factor, yes.  
16 Q And relatedly, how one company would value job  
17 responsibilities over another job responsibilities?  
18 A I don't understand that.  
19 Q Well, how one company values, for example, a COO  
20 position and a CEO position.  
21 A I don't, I don't agree with that.  
22 Q Market rate?  
23 A That's a factor.  
24 Q Education?  
25 A Big factor.

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1 Q Experience?  
2 A Big factor.  
3 Q Negotiation skills?  
4 A Minimal factor.  
5 Q Pay history?  
6 A Nonfactor.  
7 Q So if an employee is earning \$100,000 and wants to  
8 come over to Merchant Link --  
9 A Uh-huh.  
10 Q -- but says I'm not going to, a very valued  
11 employee wants, you know, Merchant wants that employee but  
12 that employee says I'm not going to come over for, unless  
13 I'm making \$110,000. I want to make \$10,000 more than I'm  
14 making. Wouldn't that be a legitimate factor to consider?  
15 A No.  
16 Q Longevity with the company? One employee has been  
17 working with the company for 25 years and another employee  
18 has been working for five years. Can that explain the  
19 difference between salary?  
20 A There are other factors that factor into that.  
21 Q That's a factor.  
22 A I don't know how much of a factor.  
23 Q How about if one employee is grandfathered as part  
24 of a different pay scale?  
25 A I don't, I don't, I don't think a company needs to

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1 recognize the pay, the pay aspects of a previous employer's  
2 compensation package in regards to their own.  
3 Q Now, Tim Kinsella, what was his job title? He was  
4 chief marketing officer, correct?  
5 A No. It was executive vice-president of sales.  
6 Q In 2011, the parties have agreed that his title  
7 was chief marketing officer. If you look at uncontested  
8 fact no. 20 --  
9 MR. PRAGER: Just a moment. Mr. Belfiore, do you  
10 have that exhibit in front of you?  
11 THE WITNESS: No, I don't.  
12 MR. JOHNSON: Your Honor, permission to approach.  
13 MR. KAPLAN: Yes, please.  
14 BY MR. KAPLAN:  
15 Q Do you see where the parties have stipulated his  
16 title was chief marketing officer at least in 2011?  
17 A Um --  
18 Q Just do you see that? That's all, that's the  
19 question.  
20 A Yeah. I see that. I see that.  
21 Q And Mr. Kinsella had different job  
22 responsibilities than you, correct?  
23 A Some different, some same.  
24 Q And from day-to-day, you testified at your  
25 deposition that you didn't really know what he did from day-

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1 to-day. Do you recall that testimony?  
2 A Yeah. I didn't know what he did. I know what he  
3 was supposed to do.  
4 Q And he was in sales.  
5 A He was in sales.  
6 Q And you were not in sales.  
7 A I was not in sales.  
8 Q And he was hired in 2007, is that correct, before  
9 you were promoted to COO?  
10 A Um, is that stipulated?  
11 Q I'm asking you if that's --  
12 A I don't remember. I remember interviewing Mr.  
13 Kinsella.  
14 Q Let's look at Merchant Link No. 58.  
15 MR. PRAGER: I didn't understand the question. He  
16 interviewed you or you interviewed him?  
17 THE WITNESS: I interviewed him.  
18 BY MR. KAPLAN:  
19 Q Let's look at Joint Exhibit No. 58, please. I  
20 mean Merchant Link 58.  
21 A Okay.  
22 Q You have Merchant Link 58?  
23 A Correct.  
24 Q Okay. Is that Tim Kinsella's offer letter?  
25 A Merchant Link's 58?

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1 Q Yes. You're in the wrong, that's the wrong  
2 binder. That's your binder.  
3 MR. JOHNSON: The black binder.  
4 BY MR. KAPLAN:  
5 Q The black binder.  
6 A Okay. I see Tim Kinsella's offer letter.  
7 Q Okay. It says he was hired March 12th, 2007. Any  
8 reason to doubt that date?  
9 A No.  
10 Q Do you know his initial salary when he was hired  
11 at Merchant Link?  
12 A \$160,000 per the letter.  
13 Q Okay. And you were not privy to the negotiations  
14 that went into giving Mr. Kinsella that salary, correct?  
15 A No.  
16 Q Do you know how much he was earning right before  
17 he began working at Merchant Link?  
18 A No. I do not.  
19 Q Why don't we look at Exhibit 57.  
20 MR. KAPLAN: Before we get to 57, I'd like for  
21 what's been marked as 58 to be introduced into evidence,  
22 admitted to evidence before we get to the next exhibit.  
23 MR. PRAGER: Well, you're going to have to do that  
24 through your witnesses.  
25 MR. KAPLAN: We stipulated to the authenticity of

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1 these documents. I thought we could get these in since  
2 we've already stipulated to the authenticity.  
3 MR. PRAGER: Well, they're authentic. Well, let  
4 me hear from Mr. Johnson.  
5 MR. JOHNSON: Yes, Your Honor, we did agree to  
6 stipulate as to authenticity but I think in terms of laying  
7 a foundation and properly admitting it before the Court, it  
8 would have to go through their witness. I thought he was  
9 just laying, trying to lay a foundation through Mr.  
10 Belfiore.  
11 MR. PRAGER: Right. I agree. I think you're --  
12 MR. KAPLAN: Sure.  
13 MR. PRAGER: -- going to have to do that through  
14 your witnesses.  
15 MR. KAPLAN: No problem.  
16 MR. PRAGER: Now, that's not to say that if during  
17 the course of your questioning you move others and Mr.  
18 Johnson agrees, then we'll let them in.  
19 MR. KAPLAN: Yeah. I was just trying to save time  
20 since we had agreed, but we can call another witness if  
21 necessary.  
22 MR. PRAGER: All right.  
23 BY MR. KAPLAN:  
24 Q All right. If you look at Exhibit 57, this looks  
25 like Timothy Kinsella's job application for employment. Do

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1 you see that?  
2 A Yes.  
3 Q And if you look on the second page that's dated  
4 February 28th, 2007, do you see that?  
5 A Yep.  
6 MR. PRAGER: Excuse me. I'm not --  
7 MR. KAPLAN: Oh.  
8 MR. PRAGER: I'm not with you yet.  
9 MR. KAPLAN: Okay.  
10 MR. PRAGER: You're looking at the bottom of the  
11 page?  
12 MR. KAPLAN: Yes. It says --  
13 MR. PRAGER: Okay.  
14 MR. KAPLAN: It's dated February 28th, 2007.  
15 MR. PRAGER: All right. Thank you.  
16 BY MR. KAPLAN:  
17 Q Now, if you look on page 3 -- bear with me one  
18 moment. One second. All right. I'll tell you what. We'll  
19 come back to this one. Okay. I'm sorry. If you look at  
20 the page that's not marked. It's marked on the bottom. It  
21 says ML000678.  
22 A Uh-huh.  
23 Q It looks like right before working for Merchant  
24 Link, he worked for Micros. Do you see that?  
25 A Yes.

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1 Q Okay. And it says his final annual salary was  
2 \$175,000 plus \$80,000 in potential bonus. Do you see that?  
3 A I do.  
4 Q Okay. So Merchant Link took his, that salary into  
5 consideration. Do you have any reason to doubt that that's  
6 an accurate, this is accurate?  
7 A It says what it says.  
8 Q If Merchant Link took his salary and his  
9 compensation into consideration at Micros into consideration  
10 what to pay him at Merchant Link, that would be a legitimate  
11 reason to pay him for what they paid him?  
12 A In that particular instance?  
13 Q Correct.  
14 A It could have been a factor.  
15 Q Thank you.  
16 MR. PRAGER: I do note, just by the way, it may or  
17 may not be a factor. If you have testimony on this that he  
18 in fact lost his job that year, the position was eliminated,  
19 he was laid off --  
20 MR. KAPLAN: Okay.  
21 BY MR. KAPLAN:  
22 Q Okay. When Merchant Link promoted you to COO in  
23 2008, you were earning below \$100,000 in base salary,  
24 correct?  
25 A Correct.

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1 Q Given you were earning below \$100,000 before your  
2 promotion, how much of a salary increase, in your opinion,  
3 would have been nondiscriminatory?  
4 A Um, that --  
5 Q In 2008.  
6 A In 2008?  
7 Q Correct.  
8 A It would have been a salary commensurate with  
9 other similarly situated employees who had similar  
10 responsibilities.  
11 Q I'm asking you for a number. In 2008 --  
12 A 165.  
13 Q So just so we're clear on this, you expected a  
14 \$70,000 raise in 2008?  
15 A Yes, sir.  
16 Q We're very clear on that.  
17 A Uh-huh.  
18 Q Okay. Mr. Kinsella is Caucasian, is that correct?  
19 A Correct.  
20 Q Are you familiar with the reasons why he left  
21 Merchant Link?  
22 A Um, yes, I am.  
23 Q And do you know if Mr. Lane, the CEO, played a  
24 part in Mr. Kinsella's departure?  
25 A Yes, he did.

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1 Q Okay. Ben Chudasama, what was his position, do  
2 you know?  
3 A At what point in time?  
4 Q In 2011.  
5 A Um, I believe he was the director of software  
6 development.  
7 Q And do you know what he did?  
8 A Yes. He was responsible for back office  
9 application installation and maintenance.  
10 Q And you agree that in no way, shape or form his  
11 responsibilities resembled yours as COO, correct?  
12 A No. His responsibilities were on a lower level.  
13 Q That wasn't my question. They were different than  
14 yours, correct?  
15 A His job tasks were different, yes.  
16 Q Thank you. Now, if you look at 141 again,  
17 Merchant Link 141, in 2010, you earned more than he did,  
18 correct? Yes or no?  
19 A This says Ben earned \$164,451 which was less than  
20 I made that year.  
21 Q And in 2011, had you not been terminated, your  
22 compensation would have been more than \$205,000 as we talked  
23 about yesterday, correct?  
24 A Correct.  
25 Q Sue Zloth, do you know what her job title is?

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1 A Um, I believe she was --  
2 Q In 2011.  
3 A -- vice-president of product, product management  
4 or project management. Something like that.  
5 Q Product management sound accurate?  
6 A Uh-huh.  
7 Q And do you know what her responsibilities are or  
8 were?  
9 A I generally had a misunderstanding as exactly what  
10 were Sue's responsibilities.  
11 Q Do you know whether she holds a patent on any  
12 Merchant Link product?  
13 A I'm not aware that she owns a patent. It would  
14 seem that company policy would dictate that whatever she  
15 developed on her, in her employ of Merchant Link would be  
16 Merchant Link's property.  
17 Q So you don't know whether she holds a patent.  
18 A I don't know.  
19 Q Do you know how long she's been with the company?  
20 A Um, no, I don't.  
21 Q If I said she's been with the company since 1997,  
22 would that sound accurate?  
23 A I, I can't dispute it.  
24 Q Let's look at Claimant No. 3 on the second page.  
25 A Uh-huh.

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1 Q Susan Zloth, it says service date began April 7th  
2 of 1997. Do you have any reason to doubt that date?  
3 A No, I don't.  
4 Q Now 2011, if you look back on Exhibit 141 --  
5 A Uh-huh.  
6 Q -- again, had you not been terminated, you would  
7 have earned more than \$206,000, is that correct?  
8 A Correct.  
9 Q Jay Konar, what was his job title, do you know?  
10 A Um --  
11 Q In 2011.  
12 A Vice-president network operations.  
13 Q And do you know what he did, what his job  
14 responsibilities were?  
15 A Monitor, maintenance, indirectly, the data center  
16 through Paymentech.  
17 Q Do you know if he worked on weekends?  
18 A I didn't see him on the weekends. I worked most  
19 weekends.  
20 Q Do you know if he worked at night?  
21 A Um, I didn't see Jay. Through my years of working  
22 and going to law school, I often returned to the office at  
23 night and I often worked on the weekends and I did not see  
24 Mr. Konar.  
25 Q You don't know if he worked from home, if he

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1 answered phone calls from home, would you?  
2 A No.  
3 Q Do you agree that his responsibilities are  
4 different from yours, correct?  
5 A In some aspects, yes. In some aspects, no.  
6 Q But you were not in charge of IT infrastructure,  
7 correct?  
8 A No. I was not.  
9 Q And that was his principal job.  
10 A That was his principal job.  
11 Q And let's go back to Exhibit 141. In 2010, you  
12 earned more than he did, correct? In total compensation,  
13 you earned more than he did in 2010.  
14 A Yes. According to the schedule, yes.  
15 Q And in 2011, had you not been terminated, you  
16 would have earned more than him in 2011 as well, correct?  
17 A According to the schedule.  
18 Q Jim Reese, do you know who Jim Reese is?  
19 A I've seen him once or twice.  
20 Q Do you know what his responsibility was, his role  
21 was, what he did?  
22 A Essentially, he was a programmer I suspect.  
23 Q Do you know how long he's been with the company?  
24 A Um, I believe he came over with the other NXT  
25 employees.

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1 Q So about 1995 sound about right?  
2 A Sounds about right.  
3 Q Let's look at 2011, at Merchant Link 141. Had you  
4 not been terminated, you would have earned more than James  
5 Reese in 2011, correct?  
6 A According to this schedule, yes.  
7 Q Mary Bodhane, do you know what her job title was?  
8 A Um, director of business development.  
9 Q Different job responsibilities than yours?  
10 A Lower responsibility, yes.  
11 Q Different job responsibility?  
12 A Lower and different.  
13 Q And do you know how long she's been with the  
14 company?  
15 A Not offhand, no.  
16 Q If I said 1998, would that sound accurate do you  
17 know?  
18 A It is what it is.  
19 Q Why don't we look at Claimant No. 3 again. Do you  
20 see on the first page, the service date April 13th, 1998?  
21 A Yes.  
22 Q Any reason to doubt that is not accurate?  
23 A No.  
24 Q Christina Smith, do you know who she is?  
25 A Yes, I do.

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1 Q She was hired as a CFO, correct?  
2 A Correct.  
3 Q In 2011?  
4 A Yes. Although she served some role with the  
5 company from the beginning of the year. I don't know what  
6 that relationship was characterized as.  
7 Q And she worked at Chase Paymentech prior to  
8 Merchant Link, is that correct?  
9 A Correct.  
10 Q And you have no knowledge into how Merchant Link  
11 set her salary, correct?  
12 A No, I don't. I do know that she was laid off from  
13 Chase Paymentech.  
14 Q Do you know whether she had an LTIP?  
15 A No, but I do believe she had a severance agreement  
16 with Chase.  
17 Q That wasn't my question. Do you know if she had  
18 an LTIP from Merchant Link, sir?  
19 A She did not have an LTIP with Merchant Link.  
20 Q Or AIP?  
21 A Yes, because it was prevented by her severance  
22 agreement from Chase.  
23 Q That wasn't my question, sir. Do you know how  
24 much she was earning at Chase Paymentech?  
25 A No, I do not.

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1 Q Let's look at Merchant Link 67. This looks like  
2 her application with Merchant Link.  
3 A Uh-huh.  
4 Q Would you agree?  
5 A Agreed.  
6 Q Page 3 stated in June of 2011, do you see that?  
7 A Uh-huh.  
8 Q Okay. And page 4, she says she was working at  
9 Chase Paymentech and her final salary was \$254,000. Do you  
10 see that?  
11 A And her position was eliminated.  
12 Q That wasn't my question, sir. Do you see where it  
13 says her total salary?  
14 A Yes. I'm just reflecting my observations.  
15 Q And look at page 1, please. She is looking for a  
16 salary between \$300,000 and \$350,000. Do you see that?  
17 A I see that.  
18 Q So you don't know what went into those  
19 negotiations to pay her what they paid her, correct?  
20 A Not entirely, no.  
21 Q Would you agree that whatever compensation an  
22 employee earned in 2011 doesn't necessarily speak to whether  
23 you were discriminated in 2008?  
24 A No I don't agree with that.  
25 Q Let me rephrase that.

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1 MR. PRAGER: I'm sorry. I didn't understand your  
2 question.  
3 MR. KAPLAN: Yes. Let me rephrase. Let me strike  
4 that now.  
5 BY MR. KAPLAN:  
6 Q Laura Kirby-Meck, do you know who she is?  
7 A Yes. I interviewed Laura.  
8 Q Okay. And what position did she have in 2011, do  
9 you know?  
10 A Senior vice-president of sales and marketing  
11 maybe.  
12 Q Close. If I said executive vice-president in  
13 sales and marketing, would that sound accurate?  
14 A Tomato, tomato.  
15 Q And her job, just like Tim Kinsella's job, that  
16 was different than yours, correct?  
17 A Yes. And the fact that they were not officers.  
18 Q If you look at Exhibit, I'm sorry, 141 again,  
19 Merchant Link 141, do you see here she earned \$75,000 that  
20 year? You earned more than her that year, correct?  
21 A Yeah.  
22 Q And in fact, you earned more than her, even if,  
23 she earned only \$188,000 in 2012 so you still would have  
24 earned more than her what your total compensation was in  
25 2011, correct?

Page 25

1 A I don't know what I would have earned in 2012.  
2 Q Right, but your 2011 compensation was more than  
3 she made in 2012. Do you see that?  
4 A I see that.  
5 Q Okay. Yesterday, you testified that the LTIP  
6 award is paid out in two to three, two years, two, three  
7 years?  
8 A Uh-huh.  
9 Q Okay. So if someone's hired in 2011 or 2012,  
10 sometime after you had left, it's a little bit difficult to  
11 sort of compare the total compensation because your  
12 compensation is based, on part, on what you may have earned  
13 in two previous years with your LTIP, correct?  
14 A It would have been somewhat a function of what  
15 those grants would have been in those perspective years,  
16 yes.  
17 Q Okay. And we don't know what you would have  
18 earned in 2012, as you said.  
19 A No. We don't know.  
20 Q Okay. You also, I believe, mentioned Jeffrey  
21 Krieg, correct, Krieg I think was compensated more than you  
22 were? If you look at --  
23 A I did not.  
24 Q Oh, you did not mention him?  
25 A No.

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1 Q Dan Lane, he was your prime comparator, correct?  
2 A He is my prime comparator.  
3 Q That's who you believe -- okay. Yesterday when  
4 you were asked a question whether he was the founder of the  
5 company, I don't know if you remember this but you sort of  
6 hesitated and you sort of said well, not legally, he's not  
7 the founder. Do you remember that testimony?  
8 A Yeah. Sans the hesitation, yes.  
9 Q So you don't remember the hesitation.  
10 A I don't remember hesitating.  
11 Q Okay. So you still don't believe that he was the  
12 founder of the company. Is that still your testimony?  
13 A Yes.  
14 Q Okay. Do you know how long Dan Lane's been with  
15 the company?  
16 A Um, I believe he's been there since the beginning.  
17 Also, since the beginning of NXT.  
18 Q So when you were the COO, it's my understanding  
19 that you were responsible for service delivery, correct?  
20 A Correct.  
21 Q And finance?  
22 A Correct.  
23 Q And when Dan lane was COO --  
24 A And, and billing operations.  
25 Q Oh, I thought that was a part of finance.

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1 A No, it was not.  
2 Q And Dan Lane was COO for a time. He was  
3 responsible for service delivery, product technology,  
4 software development, network operations and training. Do  
5 you recall that? Is that accurate?  
6 A Yes.  
7 Q Now, your relationship with Dan Charron, you  
8 testified at your deposition that you had a tenuous working  
9 relationship with him. Do you recall that?  
10 A Yes.  
11 Q Why do you say it was a tenuous working  
12 relationship?  
13 A Um, because Dan Charron was a very domineering  
14 leader who didn't take very kindly to opposing positions or  
15 alternative solutions to the problems that were facing the  
16 company. Dan Charron also crossed the line a number of  
17 times in regards to his treatment of Merchant Link for the  
18 betterment of other organizations, namely Chase Paymentech.  
19 And my responsibility as an officer, my duty as an officer  
20 was to protect the interest of the company and when those  
21 conflicts arose, I was not timid about voicing what I  
22 thought the appropriate things to do were.  
23 Q Was questioning the strategy of Dynamics CRM  
24 initiative an example of that?  
25 A No, it is not.

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1 Q Now, in 2011, your AIP bonus was raised from 20  
2 percent to 25 percent. Do you recall that?  
3 A Yes, I do.  
4 Q And that was at Dan Charron's suggestion?  
5 A The way I heard it, it was because Dan Lane and  
6 Dan Charron discovered it as they were going over AIP  
7 calculations.  
8 Q Let's look at Merchant Link 12, please. Do you  
9 see that?  
10 A Yes I do.  
11 Q This is an e-mail from Dan Lane to you regarding a  
12 grade change, and he says that Dan Charron noticed your  
13 grade was listed at 14, which was inconsistent with what you  
14 should have been paid, and we are increasing it to 16. Do  
15 you see that?  
16 A I, I see when I was reviewing the AIP with Dan  
17 Charron, Dan noticed your grade list was listed at 14.  
18 Q I was reviewing, right, and he noticed.  
19 A Right.  
20 Q Okay. And you received the increase, correct?  
21 A No.  
22 Q You didn't receive the increase from 20 to 25  
23 percent, is that what --  
24 A I never realized the increase from 20 to 25  
25 percent.

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1 Q Well, let's look at Exhibit 13, Merchant Link 13.  
2 Do you see here, this is correspondence that was in your  
3 file saying that they upgraded your AIP from 14 to 16. Do  
4 you see that?  
5 A I do.  
6 Q And at the time in January of 2011, Dan Lane was  
7 the CTO, is that correct, and Dan Charron was the CEO?  
8 A The interim CEO, correct.  
9 Q Okay. Any reason to doubt that Exhibits 12 and 13  
10 are not accurate?  
11 A No.  
12 Q And if they had noticed that your grade was low,  
13 should have been 16, increasing it from a 14 to 16 wasn't  
14 discriminatory, was it?  
15 A Yes and no. One, I don't believe the grade 16 is  
16 to corporate officer, okay, salary grade. Second, this is  
17 an admission that you had been underpaying me for more than  
18 two years.  
19 Q Well, if this --  
20 A And there was no, there was no instance or no  
21 indication that you uncovered this mistake and that there  
22 was no, no accommodation retroactively that you discovered  
23 this. This mistake had been in place for over two years,  
24 and he did not mention that oh, we're going to go back and  
25 correct the problem.

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1 Q The key --

2 A That, that is a perpetuation of the

3 discrimination.

4 Q Okay. The key word is mistake. If something's a

5 mistake, it's not necessarily discriminatory, correct?

6 A Um, no. But at the same time, if it was

7 reasonably foreseeable that they could have uncovered this

8 mistake prior to this, okay, negligence is not a defense.

9 It's still culpable.

10 Q You graduated law school in May of 2010 and you

11 took the Bar in February of 2011?

12 A Yes, I did.

13 Q Okay.

14 A I took the Bar in February of 2011 because Dan

15 Charron said in the summer of 2010 that he wanted to sell

16 the company, so I ate \$3,000 for my Bar exam prep class so

17 we could sell the company and took the exam cold.

18 Q Now from, you testified yesterday that from May of

19 2011 through August 25th, you were out on medical leave.

20 A Correct.

21 Q Now, turning to the fall of 2011, when exactly did

22 you approach Dan Lane about the raise?

23 A When I returned to Merchant Link on the 25th, I

24 had two people, two groups of people standing at my door.

25 One was Nicole Robinson saying Erik, you've got to help me,

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1 they want to remove me to the seventh floor, I don't feel

2 comfortable on the seventh floor but Wendy is mandating that

3 I move to the seventh floor. And I said I haven't heard

4 anything about this.

5 Q Sir, my question isn't about Nicole Robinson. My

6 question was very simple. When did you approach Dan Lane

7 about your raise?

8 A Unfortunately, it's got sub-tangents to it so for

9 me to give you a complete answer, I have to go through the

10 motions.

11 Q Go ahead.

12 A Okay. So the second group of people were the SD

13 managers complaining about CRM. I then called up Dan and

14 said there's a couple of issues that we need to talk about.

15 I then noticed that Dan had increased the salaries of

16 several Merchant Link employees including Jay Konar, Susan

17 Zloth, Michael Krolick, Francine Spriggs. I also noticed

18 that Dan had hired several new people including Wendy

19 Nussbaum, Laura Kirby-Meck, Christina Smith and Chris

20 Sutherland. And I simply stated to Dan what's happening

21 around here, there's a number of changes that are going on

22 that I am not apprised of and I'm not aware of.

23 Now, Dan called me several times while I was on

24 medical leave to keep me abreast of certain items in regards

25 to the company, even to request that I participate on the

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1 interview schedule with Laura Kirby-Meck. I simply asked

2 Dan you didn't want my input on any of these, he said no.

3 So I said, Dan, do these people, these new hires, did you

4 hire them at a higher salary than me, and he said yes. And

5 I said what do I need to do to get equitable treatment in

6 this company, and he said all you have to do is ask.

7 And I said there are three things I need to do to

8 feel comfortable going forward in my position. I need an

9 executive level compensation package, I need for you to

10 prevent people from circumventing my authority and I also

11 need the license, the full license and title to a COO to

12 render his responsibilities. Dan agreed to all three.

13 Within 24 hours, we had a telephone conversation as to what

14 a suitable salary would be. He first mentioned to me

15 \$160,000. I told him that I believe I should be one of the

16 highest compensated staff in the company by way of my

17 position as a corporate officer and COO. He agreed. He

18 proffered a salary of \$160,000. I don't know where he got

19 that from.

20 And I told him, I said, you know, Dan, ordinarily,

21 if you would have come to me without me having to come to

22 you because this would have been the more appropriate thing

23 to do to preserve the parity in the compensation structure

24 within the company, I would accept that but I'm not. And I

25 said \$172,000 and he said to me that's a lot of money and I

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1 said that's the number, and then he said okay. A couple

2 days later, okay --

3 Q You answered the question.

4 A Okay.

5 Q I'll follow up. I promise.

6 A Okay.

7 Q Okay. So you just testified that you asked him,

8 you demanded that you were paid one of the highest in

9 compensation but according to Exhibit 141, based on your

10 LTIPs over the course of the previous years, you in fact

11 were one of the highest paid compensated in Merchant Link,

12 right?

13 A I said I wanted one of the highest salaries.

14 Q Okay. That's not what you testified to. You just

15 said I wanted to be in the highest in compensation. That's

16 what you said.

17 A One of the highest. Exactly.

18 Q And you were. Okay. Now, agreeing to the request

19 was not racially discriminatory, correct?

20 A No, it was not.

21 Q Okay. And you understand that the Board of

22 Directors sets officer compensation, not the CEO, correct?

23 A Correct.

24 Q Okay. So you also understand that the

25 compensation had to be approved by the Compensation

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1 Committee and Board of Directors, correct?  
2 A Yes, I did.  
3 Q Okay. And you understand that Dan Lane made a  
4 mistake and did not get the Board approval before making you  
5 the officer, correct?  
6 A Dan Lane made a blatant violation of the bylaws  
7 and operating agreement of the LLC.  
8 Q He should have gone to the Compensation Committee  
9 first. It was a mistake.  
10 A Big mistake. Breach of fiduciary duty.  
11 Mismanagement of office.  
12 Q Now, when Dan Lane told you he had to get the  
13 raise approved, you were pretty upset?  
14 A Of course.  
15 Q Now, do you know how Dan Lane first learned that  
16 he had to get the raise approved?  
17 A Dan Lane was voted an officer of the company in  
18 December of 2008 to serve as an officer of the company in  
19 accordance with the bylaws. He should have known.  
20 Q Do you know how he learned? Are you familiar with  
21 -- You sat in his deposition. We talked about that  
22 yesterday. If you don't remember, you don't remember. I'm  
23 asking --  
24 A Do I --  
25 Q -- you just if you recall.

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1 A Did I, did I learn how he found out he -- no. I  
2 never know, knew why, when he found out he didn't, he should  
3 have.  
4 Q Okay. Fine.  
5 A He violated the bylaws.  
6 Q Now, Dan Lane also said to you that he thought he  
7 would get the raise approved, correct?  
8 A Dan --  
9 Q He told you that he thought, in his mind, he would  
10 get it approved.  
11 A He told me very specifically he had a conversation  
12 with Charron. Charron said that he wouldn't have done it  
13 but he wouldn't oppose it.  
14 Q And as far as you know, Dan Lane actually did  
15 submit your raise to the committee, correct?  
16 A Outside a series of e-mails where Dan attempted to  
17 get the raise approved.  
18 Q Okay. Now, you weren't privy to the conversations  
19 between the Compensation Committee and your raise, right?  
20 A Nor should I have been.  
21 Q And February was generally the normal time for a  
22 raise, is that correct?  
23 A That was typically the annual review period.  
24 Q Typically?  
25 A Especially for senior level officers.

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1 Q So February at this point is just a few months  
2 away?  
3 A Correct.  
4 Q Okay. Do you recall whether Wendy Nussbaum sent  
5 you an e-mail asking for more information to provide to the  
6 Compensation Committee in order to support your raise?  
7 A Yes. After I had raised my claim.  
8 Q And do you recall whether you responded to her  
9 request?  
10 A I did not. I don't recall if I responded to her  
11 request but I had given Wendy all of the information that  
12 she needed from me for my raise just after Dan Lane apprised  
13 me that he had to get it approved so there was no reason,  
14 and I had no information to provide to Wendy.  
15 Q I'm going to go on to a next topic. I'm happy to  
16 continue or we can take a break.  
17 MR. PRAGER: No. We can, we'll go off the record  
18 for a moment.  
19 (Off the record.)  
20 (On the record.)  
21 MR. PRAGER: We're back on the record.  
22 BY MR. KAPLAN:  
23 Q Now, with respect to your undermining and  
24 circumventing claim, I'm a little confused about that.  
25 Yesterday, you testified that there were two or three

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1 meetings that you were not invited to after October 21st?  
2 Do you recall that testimony?  
3 A Yes, I do.  
4 Q So is it your claim that the people that didn't  
5 invite you to the meetings, that they were retaliating  
6 against you, that they had somehow knew you had complained,  
7 or is it that Dan Lane should have been -- what is your  
8 claim then?  
9 A My, my claim is that Dan Lane, in one instance, is  
10 complaining about me not showing up to meetings that my  
11 presence is required but yet, he's fettering through  
12 meetings, okay, that my presence is required and he's going  
13 through those meetings, okay, not questioning why I was not  
14 invited to the meeting, okay, and then subsequently  
15 questioning why I wasn't at the meeting. That is a clear  
16 indication that I was not put in a position to understand  
17 what I needed to do to so call 'do my job' that Mr. Lane was  
18 claiming I was not doing.  
19 Q Now, this was in the same time he was trying to  
20 get you a significant raise, so now you're saying he was  
21 undermining your, undermining your authority and at the same  
22 time, he was trying to get you this raise. Is that the  
23 timing of it --  
24 A Well --  
25 Q -- as far as you know?

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1 A -- let's, let's break that down a little bit.  
2 Q Is the timing of it, that's the same time --  
3 A I'm going to explain it to you.  
4 MR. PRAGER: All right. Just answer his question  
5 and then we'll give you an opportunity to embroider.  
6 THE WITNESS: Okay.  
7 MR. PRAGER: Rephrase the question, please.  
8 MR. KAPLAN: Sure.  
9 BY MR. KAPLAN:  
10 Q Your complaint is that after October 21st, he was  
11 undermining your authority in some respect. At the same  
12 time, you make that allegation he is trying to get you that  
13 significant raise with the company. Timing-wise, it's the  
14 same time period, correct?  
15 A No, it's not. No, it's not. Dan Lane was  
16 feverishly trying to get me a raise until shortly after the  
17 10/21 e-mail. There's a 10/25 e-mail, a recap of the Board  
18 of Directors, that the whole process of getting my raise had  
19 changed, the whole reason and rationale for my raise had  
20 changed. And then after 10/25, Dan Lane was no longer  
21 feverishly trying to get me a raise and he was, he was  
22 investing in these undermining tactics, so the timelines do  
23 not overlap.  
24 Q Okay. Now, prior to October 21st, 2011, before  
25 you complained, you also complained of not being invited to

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1 meetings, correct?  
2 A I --  
3 Q That people undermined and circumvented your  
4 authority, correct?  
5 A For a period of years, I've had issues with  
6 specific individuals, okay, that I would go to Dan  
7 routinely, okay, to request his assistance, given his  
8 relationship with these people, that I would prefer that  
9 they handle the business the correct way.  
10 Q Let's look at Merchant Link 81, please. You  
11 there?  
12 A Um-hum.  
13 Q This is the e-mail that you, November 3rd e-mail  
14 that you had sent to him about, in response to his question  
15 about why you weren't at that one meeting, correct?  
16 A Correct.  
17 Q Okay. Now, you referred to an October 15th  
18 incident and an October 12th incident, but both of those  
19 dates occurred before October 21st, before you complained of  
20 discrimination, correct?  
21 A Correct.  
22 Q Okay. Let's look at Exhibit 74.  
23 MR. KAPLAN: Oh, I'd like to move Merchant Link 81  
24 into evidence.  
25 MR. PRAGER: Isn't it already in evidence?

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1 MR. KAPLAN: Oh, it's -- oh, I got it. I suppose  
2 it is through the claimants. I guess it's the same exhibit.  
3 MR. PRAGER: Mr. Johnson, help us out.  
4 MR. KAPLAN: Yes. It's the same exhibit. It's  
5 the same.  
6 MR. JOHNSON: It's the same exhibit.  
7 MR. PRAGER: And do you have the number?  
8 MR. KAPLAN: If it makes more sense, we can talk  
9 off the record. There may be other documents that we may  
10 need to do this for. We can do this off the record if it's  
11 easier.  
12 MR. PRAGER: Let's get this one done.  
13 MR. KAPLAN: Okay.  
14 MR. PRAGER: It's exhibit, if I see it correctly,  
15 it's Complainant's Exhibit 28. Is that correct?  
16 MR. KAPLAN: Yes.  
17 MR. PRAGER: All right.  
18 MR. KAPLAN: That's fine. Thank you.  
19 BY MR. KAPLAN:  
20 Q Let's look at Merchant Link 74.  
21 A Yes.  
22 Q You there?  
23 A Uh-huh.  
24 Q So here is a complaint that you thought Christina  
25 Smith was going to slow and you complained to Dan Lane. Do

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1 you see that?  
2 A Yes.  
3 Q This event occurred before October 21st before  
4 your complaint of discrimination?  
5 A Correct.  
6 MR. KAPLAN: I'd like to move Merchant Link 74  
7 into evidence.  
8 MR. PRAGER: Any objection, Mr. Johnson? It's one  
9 of your exhibits as well.  
10 MR. JOHNSON: Let me look at it, Your Honor. I  
11 haven't --  
12 MR. PRAGER: That is not one that you moved to  
13 admit.  
14 MR. JOHNSON: No objection, Your Honor.  
15 MR. PRAGER: All right.  
16 BY MR. KAPLAN:  
17 Q Let's look at --  
18 MR. PRAGER: Merchant Link Exhibit 74 is admitted.  
19 MR. KAPLAN: Thank you.  
20 (Respondent's Exhibit No. 74  
21 was received into evidence.)  
22 BY MR. KAPLAN:  
23 Q Let's look at Merchant Link 75.  
24 MR. PRAGER: Bear with me for a moment.  
25 MR. KAPLAN: Sure.

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1 MR. PRAGER: All right. Go ahead.  
2 BY MR. KAPLAN:  
3 Q This e-mail is dated September 20th, 2011.  
4 A Yes.  
5 Q And you're complaining that you're not included on  
6 some e-mails.  
7 A Correct.  
8 Q And this occurred before October 21st before your  
9 complaint of discrimination, correct?  
10 A Yes, but we need the --  
11 Q Yes or no?  
12 A Yes, before October 21st but after I had went to  
13 Dan Lane to complain about this. I had complained to Dan  
14 Lane in August about circumvention of authority, pay and  
15 other issues.  
16 Q And the complaint in August was before your  
17 complaint of discrimination on October 21st, correct?  
18 A No. It was, it was the time that I brought my  
19 issues to Dan Lane for resolution before concluding that  
20 they were for nefarious reasons.  
21 MR. KAPLAN: I'd like to move into evidence  
22 Merchant Link 75.  
23 MR. PRAGER: Mr. Johnson?  
24 MR. JOHNSON: No objection, Your Honor.  
25 MR. PRAGER: Okay. Just a moment. All right.

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1 Respondent's Exhibit No. 75 will be admitted.  
2 (Respondent's Exhibit No. 75  
3 was received into evidence.)  
4 BY MR. KAPLAN:  
5 Q Please look at Merchant Link 76. This is an e-  
6 mail dated October 18th, 2011. Do you see that?  
7 A Yes, I do.  
8 Q And do you remember bringing up during discovery  
9 in this case that this, they were not happy that you were  
10 not included in, on this e-mail?  
11 A Yes, I did.  
12 Q And this occurred before October 21st, 2011,  
13 correct?  
14 A October 18th, 2011.  
15 Q Right.  
16 MR. KAPLAN: I would like to move Merchant Link 76  
17 into evidence.  
18 MR. PRAGER: Mr. Johnson?  
19 MR. JOHNSON: No objection.  
20 MR. PRAGER: All right. Merchant Link, that is  
21 Respondent's Exhibit 76 will be admitted.  
22 (Respondent's Exhibit No. 76  
23 was received into evidence.)  
24 BY MR. KAPLAN:  
25 Q Let me backtrack. Why don't you look at exhibit,

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1 Merchant Link 72. This is an e-mail dated March 18th, 2011.  
2 Do you see that?  
3 A Yes.  
4 Q Okay. And you're unhappy because, well, why don't  
5 you explain why you're unhappy in this e-mail.  
6 A I'm unhappy with this e-mail because as I  
7 previously explained, when I got back from medical leave, I  
8 had a number of people at my door complaining about things  
9 that were happening in and around the organization. I  
10 broached this with Dan Lane because Dan Lane and I jointly  
11 made the decision, for various business reasons, that Nicole  
12 should be on the ninth floor.  
13 Q This is 72. Are you looking at Merchant 72?  
14 A Oh I'm sorry. Big binder. Okay. Um, yes.  
15 Q Okay. So why don't you explain what you're  
16 unhappy about on March 18th.  
17 A On March 18th, this is just one instance of the  
18 long-running saga that I had with Dan and members of his  
19 friends and family, that he allowed them to overstep their  
20 jurisdiction and usurp the authority of other people, of not  
21 just me. There were other professionals that, in the  
22 organization that complained about Sue or Mary overstepping  
23 their bounds, putting pressure on them, going around them,  
24 circumventing, and they could always go to Dan Lane and Dan  
25 Lane would, he would perpetually take their side even though

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1 acknowledging in certain instances that they were doing what  
2 he called the end run.  
3 This is just another incident documented where  
4 they wanted a member of my staff to participate into some, a  
5 deal that my involvement of my people in any situation had  
6 to be done with my approval and my authority and they saw  
7 fit to go around me and around the people that needed to be  
8 involved in this discussion to Dan Lane to get things done.  
9 Dan Lane facilitated this often. And this is just an  
10 indication of me pointing out to Dan that look, we want to  
11 be included in these discussions, especially if they require  
12 any level of effort from us or our organization, and we  
13 don't want decisions or executive decisions to be made  
14 without our input. This is simply what this is, and this is  
15 just an expression of frustration and a go-between that  
16 spoke to that very situation.  
17 MR. KAPLAN: I'd like to move 72 into evidence.  
18 MR. PRAGER: Mr. Johnson?  
19 MR. JOHNSON: No objection, Your Honor.  
20 MR. PRAGER: All right. Merchant Link, I mean  
21 Respondent's, I'll get it straight sooner or later,  
22 Respondent's Exhibit 72 will be admitted.  
23 (Respondent's Exhibit No. 72  
24 was received into evidence.)  
25 BY MR. KAPLAN:

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1 Q Now, turn the page to Merchant Link 73. This e-  
2 mail is dated August 25th, 2011. Do you see that?  
3 A Yes, I do.  
4 Q Okay. And this is the incident, this is your  
5 first day back.  
6 A It's my first day back.  
7 Q First day back.  
8 A First day back.  
9 Q And Nicole Robinson is Wendy Nussbaum's direct  
10 report?  
11 A Right.  
12 Q Okay. And you are upset because you wanted her to  
13 be on the ninth floor and Wendy wanted her to be on the  
14 seventh floor, correct?  
15 A No. I'm upset because the decision was made to  
16 be, for her to move without me having an opportunity to hear  
17 and voice an opinion.  
18 MR. KAPLAN: I'd like Merchant Link 73 to be  
19 admitted into evidence.  
20 MR. PRAGER: Mr. Johnson?  
21 MR. JOHNSON: No objection, Your Honor.  
22 MR. PRAGER: All right. Respondent's Exhibit 73  
23 will be admitted.  
24 (Respondent's Exhibit No. 73  
25 was received into evidence.)

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1 BY MR. KAPLAN:  
2 Q I'd like you to take a look at Merchant Link 82.  
3 This is dated November 4th.  
4 A Correct.  
5 Q This e-mail chain.  
6 A Uh-huh.  
7 Q And this is a meeting that you were in fact  
8 invited to, correct? If you look on page 2, it looks like  
9 you're on the e-mail chain.  
10 A Yes.  
11 Q Okay.  
12 MR. PRAGER: Let me just catch up with you.  
13 MR. KAPLAN: Sure.  
14 MR. PRAGER: All right. Go ahead.  
15 MR. KAPLAN: My only question was whether he was  
16 invited to this meeting and he said he was. I would like  
17 Merchant Link 82 to be admitted into evidence.  
18 MR. PRAGER: Well, let me ask a question of Mr.  
19 Belfiore. What is the MRT?  
20 THE WITNESS: The MRT is what we called the  
21 management review team. At the time, it was manned by Dan  
22 Lane, myself and the executive vice-president of sales and  
23 marketing.  
24 MR. PRAGER: All right. You moved, Mr. Kaplan, to  
25 have this admitted?

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1 MR. KAPLAN: Yes, please.  
2 MR. PRAGER: Mr. Johnson? What's your response to  
3 that?  
4 MR. JOHNSON: No opposition, Your Honor.  
5 MR. PRAGER: All right. Respondent's Exhibit 82  
6 will be admitted.  
7 (Respondent's Exhibit No. 82  
8 was received into evidence.)  
9 BY MR. KAPLAN:  
10 Q I'd like you to please look at Merchant Link 78.  
11 Do you see it?  
12 MR. PRAGER: Before we go on to that, I believe  
13 that's already in evidence.  
14 MR. KAPLAN: Yes. We have to figure out where.  
15 MR. PRAGER: I believe it's Complainant's Exhibit  
16 32, is that correct?  
17 THE WITNESS: Yes.  
18 MR. KAPLAN: Yes.  
19 MR. PRAGER: All right.  
20 MR. JOHNSON: I think, Your Honor, on some of  
21 these exhibits, in the bottom corner, there seems to be I  
22 guess a corresponding exhibit number indicating that it's  
23 maybe, I guess counsel has associated with our exhibits. If  
24 it's there, I guess we can help things along.  
25 MR. PRAGER: Good. Thank you.

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1 MR. KAPLAN: Okay.  
2 BY MR. KAPLAN:  
3 Q This is dated October 31st, 2011. This is after  
4 you complained of discrimination, correct?  
5 A Correct.  
6 Q And you were invited to this meeting?  
7 A Yes.  
8 Q And it was a flip deck meeting?  
9 A Correct.  
10 Q And you don't know whether Christina Smith  
11 actually ever sent out the deck to anybody. You don't know  
12 if anyone received it, correct?  
13 A I know I didn't receive it.  
14 Q Okay. You don't know if she sent it out to  
15 anybody else as we sit here today.  
16 A I have no idea.  
17 Q Okay.  
18 MR. KAPLAN: This is already admitted I guess.  
19 BY MR. KAPLAN:  
20 Q Merchant Link 79, please. This is an e-mail dated  
21 November 2nd, and it's an e-mail to you from, to Dan and  
22 you're declining a meeting. Do you see that?  
23 A Yes.  
24 Q Okay. But whatever meeting this was, you were  
25 obviously invited to it.

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1 A Yes.

2 Q Do you know what time the meeting was scheduled

3 for the next day? Do you recall? It was a long time ago.

4 A I just knew I had to pick up my daughter from

5 school.

6 Q And did you know you had to pick her up from

7 school before that day?

8 A I knew I had to pick her up from school before the

9 day I had to pick her up from school.

10 Q Well, this is the day before. Did you know prior

11 to the day before that?

12 A All I know is that I had to pick up my daughter

13 from school at a time that conflicted with the meeting, so I

14 declined the meeting.

15 Q Okay.

16 MR. KAPLAN: I'd like 79 to be admitted.

17 MR. JOHNSON: No objection.

18 MR. PRAGER: For clarification, Mr. Kaplan, this

19 has at the top Sims E. Ashley. Would you tell for the

20 record what that means?

21 MR. KAPLAN: Sure. She's a former attorney at

22 Littler. That's part of the document production, just how

23 it was sent to opposing side.

24 MR. PRAGER: All right. Exhibit 79 will be

25 admitted. That's Respondent's 79.

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1 (Respondent's Exhibit No. 79

2 was received into evidence.)

3 MR. KAPLAN: Okay. Again, I'm moving to new

4 topics now if anyone wants to take a break.

5 MR. PRAGER: All right. I think that's an

6 appropriate time. It's now a little bit before 11:00. We

7 will break until about 11:00. Thank you.

8 (Whereupon, at 10:50 a.m., a brief recess was

9 taken.)

10 MR. PRAGER: Mr. Kaplan?

11 MR. KAPLAN: Yes.

12 BY MR. KAPLAN:

13 Q The Dynamics CRM project, do you remember talking

14 about that yesterday?

15 A Yes.

16 Q And CRM stands for customer relations management.

17 Does that sound right?

18 A Close enough, yes.

19 Q And was that an important project for Merchant

20 Link?

21 A Yes, it was.

22 Q And why is that?

23 A Um, it is because it is the primary tool that was

24 used for the majority of the operations functions. We put a

25 customer demographic record in there. We used that for the

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1 services that we provided the customer. We used that fed

2 into billing. We also used it for a ticketing type system

3 so when people called in with complaints and problems, they

4 had some visibility into the history of the account and a

5 tool for troubleshooting and problem-solving.

6 Q Do you know if there were any deadlines as far as

7 when this had to actually be in, be in, you know, actually

8 start working?

9 A I was not familiar with the project plan.

10 Q Now, the prior program, was that PeopleSoft?

11 A Yes.

12 Q And why, if you know, did they have to get rid of

13 PeopleSoft?

14 A Um, there are probably a number of reasons but the

15 biggest reason was when Chase Paymentech, the joint venture

16 got dissolved and Merchant Link became essentially a

17 standalone entity, there was this massive separation project

18 to where we had to separate the services that Chase

19 Paymentech was, was supplying for us and we had to kind of

20 stand on our own two feet.

21 Q Okay. Now, initially, were you not in favor of

22 Dynamics CRM? Was there another software that you would

23 have preferred?

24 A I had no opinion on any of the considered systems.

25 Q What about your employees? What did they prefer?

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1 A Um, based on the demonstrations, they preferred

2 Sage.

3 Q And do you know why they didn't like Dynamics CRM

4 and why they preferred Sage at that time?

5 A Just indirectly in the staff meetings when we

6 would talk about it, they said that Sage certainly

7 aesthetically looked and felt better, and they could almost

8 instantly go in and perform the functions that they needed

9 to perform without a lot of customization.

10 Q Do you know if Merchant Link is still using

11 Dynamics CRM today?

12 A I don't know.

13 Q Now, since you were in charge of service delivery,

14 it was your service delivery department that was primarily

15 in charge of cultivating and using this program, is that

16 correct?

17 A I don't know what you mean by cultivating.

18 Q Using the system, that would have been service

19 delivery.

20 A The service delivery team were the primary uses of

21 the system, correct.

22 Q And you were overseeing the service delivery

23 people?

24 A Correct.

25 Q Okay. Now, when you returned from medical leave,

Page 54

1 you mentioned that your people came to you and said they  
2 were unhappy with this program. Do you recall that  
3 testimony?  
4 A Yeah. They were very distraught. Their primary  
5 complaint was looking at the implementation phases, that the  
6 phase 1 functionality did not include the very basic  
7 functions that they needed the system to perform.  
8 Q Okay. And yesterday, you described they're coming  
9 to you as they were, quote, up in arms, unquote. You said,  
10 quote, visibly shaken, unquote, and quote, afraid, unquote.  
11 Do you recall that testimony?  
12 A Um, yeah. They were, they were pretty upset about  
13 it.  
14 Q Okay.  
15 A They take a lot of pride in their job.  
16 Q So in response to their complaints, you went to  
17 Ben Chudasama, is that correct?  
18 A Yeah. Once I had them fetter out their complaints  
19 in a very professional and constructive manner, I requested,  
20 actually, I walked down to Ben's office, bad hip and all,  
21 and said Ben, you know, man-to-man, you know, let's do  
22 what's right for the company.  
23 Q And did you say, and I quote, you can't keep  
24 forcing these people, this down their throat and you can't  
25 keep ignoring their concerns?

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1 A Not in that word, not in those words but the  
2 sentiment.  
3 Q The sentiment was there?  
4 A Yeah.  
5 Q Okay. And didn't you tell him, quote, I'm  
6 responsible for the quality of service that the organization  
7 provides, I'm not going to let an ill-equipped system  
8 inhibit my ability to do that, end quote? Do you recall  
9 saying that?  
10 A Not those exact words but --  
11 Q That sentiment.  
12 A -- that's the appropriate stance, yes.  
13 Q Okay. And the conversation ended badly? You  
14 couldn't resolve the situation at that point?  
15 A No. I don't think the conversation ended that  
16 way. Actually, I attended a meeting with a document and  
17 asked Ben let's go through with the group, all of the  
18 stakeholders, to come up with a consensus on the  
19 stakeholders, and Ben responded that that was a complete  
20 waste of time.  
21 Q And then you went to Dan Lane?  
22 A Yes, I did.  
23 Q Okay. And you complained about the system to Dan  
24 Lane. And when was that conversation?  
25 A It was right after the meeting that I had with

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1 Ben.  
2 Q Were you frustrated with the response you got from  
3 Dan Lane?  
4 A I was taken aback. I thought it was  
5 unprofessional. I thought it was totally outside of the  
6 interest of the company. I couldn't understand why Dan  
7 wouldn't be just as interested as I to get a viable working  
8 system, especially given our prior experience with  
9 PeopleSoft.  
10 MR. PRAGER: Excuse me. The question was asked  
11 when was this, and you said it was right after the meeting -  
12 - when was this in terms of months and years?  
13 THE WITNESS: This, this was, this was, it had to  
14 be in that September/October timeframe. I don't know exact  
15 date.  
16 BY MR. KAPLAN:  
17 Q Year?  
18 A 2011.  
19 MR. PRAGER: Okay.  
20 BY MR. KAPLAN:  
21 Q And then you met with Renee Dantzler on November  
22 8th, correct?  
23 A Um, it was either the 8th or the 9th, yeah.  
24 Q Okay. Now, we'll get to that conversation but do  
25 you know whether she submitted an internal complaint against

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1 you after that meeting as you sit here today?  
2 A Yeah. In June of 2012.  
3 Q And can you tell me what her complaint was as you  
4 sit here today? What is that you understand her complaint  
5 to be?  
6 A Um, my, from my understanding of everything that  
7 I've heard about the complaint, specifically what I heard  
8 directly from Renee is that I made her feel uncomfortable by  
9 reminding her about my assistance in her getting her  
10 position and that I implied that I wanted her to sabotage  
11 the CRM.  
12 MR. PRAGER: Excuse me one moment, please. What  
13 I'm trying to find out is are we talking about the, the  
14 exhibit that was introduced yesterday that was Ms.  
15 Dantzler's --  
16 MR. KAPLAN: Yes.  
17 MR. PRAGER: -- statement.  
18 MR. KAPLAN: Yes, sir.  
19 MR. PRAGER: Mr. Johnson, can you remind me what  
20 number that is?  
21 MR. KAPLAN: 82. 82 maybe.  
22 MR. JOHNSON: 82.  
23 MR. PRAGER: 82. Just a moment.  
24 MR. JOHNSON: I wrote down June of 2012. I don't  
25 know where I got that number from.

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1 THE WITNESS: That's, that's when I found out.  
2 MR. PRAGER: Just a moment.  
3 MR. JOHNSON: Oh, okay.  
4 MR. KAPLAN: Yes. It's 82.  
5 MR. PRAGER: So that the record is clear, this is  
6 a document dated November 10th, 2011, it's Complainant's  
7 Exhibit 82. And I believe, Mr. Belfiore, you were saying  
8 you did not learn about its existence until --  
9 THE WITNESS: June of 2012.  
10 MR. PRAGER: -- June of 2012, but you understand  
11 that this was generated at an earlier stage.  
12 THE WITNESS: Yes.  
13 MR. PRAGER: Thank you.  
14 MR. KAPLAN: Okay.  
15 BY MR. KAPLAN:  
16 Q Now, Ms. Dantzler is African American?  
17 A Yes.  
18 Q Why did you want to meet with Ms. Dantzler in  
19 November of 2011?  
20 A I wanted to meet with Ms. Dantzler at the request  
21 of my managers who had just recently been apprised that she  
22 was given a special task at a late date to document issues  
23 with the CRM and she had a very tight window, almost  
24 impossible window, to complete it.  
25 MR. PRAGER: Mr. Kaplan, this repeats testimony

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1 that he gave yesterday. Is there something new that you  
2 want to bring out about this?  
3 MR. KAPLAN: Yeah I'm going to get into this.  
4 MR. PRAGER: All right. Let's not be repetitive.  
5 BY MR. KAPLAN:  
6 Q If you had concerns about the CRM, why didn't you  
7 go to their supervisor, Zachary Minton, instead of going  
8 directly to her?  
9 A Because my, my managers asked me to talk to her.  
10 Q And if the situation were reversed and Renee  
11 Dantzler was your employee and Mr. Minton went to Ms.  
12 Dantzler and had a similar conversation and she complained  
13 and she was, again, your direct report, you would have been  
14 up in arms about Mr. Minton undermining or circumventing  
15 your authority by not going to you first.  
16 A Was Mr. Minton the COO?  
17 Q No. Mr. Minton was her direct supervisor,  
18 correct?  
19 A Correct.  
20 Q So you would have been up in arms if that happened  
21 in the service delivery department for example.  
22 A Not necessarily, no.  
23 Q Okay. Now, you asked her to come to your office  
24 on several occasions, is that correct?  
25 A I mentioned a couple times to her in passing that

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1 yeah, I'd like to talk to you.  
2 Q And when she arrived, was the door open or locked  
3 or closed? Did she knock on the door?  
4 A She probably knocked on the door, yes.  
5 Q Okay. And then she came in?  
6 A Right.  
7 Q And then did you lock the door behind her?  
8 A I closed the door.  
9 Q Closed the door behind her. And you started the  
10 meeting by I guess your acknowledgment. You said I put in a  
11 good word for you to get your training manager's job. Do  
12 you remember that testimony?  
13 A I said you might not know this but, you know, when  
14 you got your job in training, I put in a good word for you.  
15 Q Okay. And yesterday, you testified you said that  
16 in order to put her at ease. Do you remember that  
17 testimony?  
18 A Exactly. I was the COO. She was very low on the  
19 chain. I didn't want her to feel that I was asking her to  
20 do something or coercing her. I wanted to add levity to  
21 the, to the discourse.  
22 Q But didn't you testify at your deposition that you  
23 in fact mentioning that had nothing to do with putting her  
24 at ease? You mentioned that she had an obligation to do  
25 something in return?

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1 A Did I say that at the deposition?  
2 Q Yes.  
3 A No.  
4 Q Let's look at your deposition testimony, 199. Are  
5 you there?  
6 A Yeah.  
7 Q Okay.  
8 MR. PRAGER: Just a moment. Go ahead.  
9 BY MR. KAPLAN:  
10 Q Okay. Line 10, "Question, tell it to me like  
11 verbatim," and your answer --  
12 A What page?  
13 Q Page 199. Do you see line 10? It says, "Tell it  
14 to me like verbatim." This is regarding the conversation  
15 you had with Ms. Dantzler. Do you see that?  
16 A Uh-huh.  
17 Q Okay. If you look at lines starting at 15, you  
18 say, "And the reason I'm telling you this is because, you  
19 know, if you find someone in the need of help or whatever,  
20 the only obligation is you help, is you need to pay that  
21 kind of gesture forward." So didn't you mention that you  
22 put in a good word for her because you wanted her to do  
23 something in return?  
24 A Not for me. My, my thing was in order for --  
25 look. I did a good deed for you. The only repayment is

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1 that if you find somebody in your life in the future that is  
2 in the need of help, extend the gesture.  
3 Q That's not what you testified to yesterday and a  
4 few minutes ago. You said to put her mind at ease. Those  
5 are very different things.  
6 A Well, to say that that was no obligation to me to  
7 pay the favor forward was still in the, in the essence of  
8 trying to put her mind at ease that she was no, under no  
9 obligation to me. I don't think that's inconsistent.  
10 Q And what word did you put in for her, do you  
11 recall? You said you put in a good word for her. What is  
12 it that you did for her?  
13 A When I got the responsibility service delivery  
14 from Chris Justice in May of 2008, Denise Williams came over  
15 to me because there were a number of positions that were  
16 opened or had just recently been hired for. She was  
17 frustrated because the L and D department, I guess now that  
18 was being headed by Zach, okay, was taking their time in  
19 terms of hiring new people to train and we were falling  
20 behind because we did not have enough people on the deck.  
21 So she came to me and she told me that Renee Dantzler had  
22 tried several times to apply for the job and got no  
23 response. I went to Dan Lane and I said, Dan, why are we  
24 not looking at Renee Dantzler, what we need is people who  
25 can show people what they do on the deck. She's been on the

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1 deck for a number of years per Denise, so why don't we give  
2 her a shot?  
3 Q So that's what you're referring to when you say  
4 you put in a good word for her to Dan Lane?  
5 A That's when I put in a good word with Dan Lane and  
6 then usually, my working relationship with Dan Lane, just  
7 with the Nicole situation and any other situation, when it  
8 made sense, we would make a decision and he would follow  
9 through.  
10 Q And you never talked to Zach Minton about --  
11 A No. I never talked to Zach.  
12 Q Okay. And Zach was the one who interviewed? Do  
13 you know who interviewed Ms. Dantzler?  
14 A I'm assuming Zach interviewed her with, and there  
15 may have been some other people. I know I specifically sat  
16 in, I don't know what they call it, an audition of her  
17 giving a training session that I believe was a part of her  
18 interview process.  
19 Q Let's take a look at Claimant 82. You're at the  
20 statement, her statement?  
21 A Yes.  
22 Q Okay. Second paragraph, Ms. Dantzler writes he  
23 said, well, you would not have had the success you had today  
24 if it was not for me. I went and told them that they need  
25 to consider you. Do you see that?

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1 A Uh-huh.  
2 Q Okay. Now, as you sit here today, is it your  
3 testimony that you did not use the word success?  
4 A I didn't use any of those words.  
5 Q Now, she wrote the statement it looks like two  
6 days after the incident, does that look about right?  
7 A Um, yes.  
8 Q And the first time that you sort of kind of  
9 remember about this conversation was you said June of 2012?  
10 A Correct.  
11 Q Some seven months later?  
12 A Seven months later.  
13 Q Okay. And you had trouble, you know, remembering  
14 exactly what word for word what you had said in that  
15 conversation.  
16 A When I first had, when I first heard it, I had to  
17 think hard about exactly what happened in the conversation,  
18 yes.  
19 Q Right. Do you recall how Ms. Dantzler responded  
20 when you said something to the effect of you put in a good  
21 word for her?  
22 A I think she said, no, I didn't, that God did.  
23 Q So she didn't take kindly to you.  
24 A She rebuffed my attempt at levity, yes.  
25 Q In the last sentence, page 1, she says he

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1 continues to talk about his folks in service delivery where  
2 we're not giving him the same fucking opportunity, and she  
3 said excuse your French, and you changed it to flippin'. Do  
4 you recall that? Do you see that?  
5 A I see that.  
6 Q And yesterday you testified that you do not say  
7 the word fucking.  
8 A I did not.  
9 Q Is that right?  
10 A Yes.  
11 Q Okay. I would like to have you look at Merchant  
12 Link 113. If you look at page 10, I'm sorry, page 9, do you  
13 see that?  
14 A Yes.  
15 Q So these, just for the record, these are your  
16 answers to the interrogatories that we had originally been  
17 sent to you during discovery in this case and you had  
18 responded, if you look, the specific question, it starts on  
19 page 8, asks you to describe in detail your November 8th,  
20 2011 meeting with Renee Dantzler and then after certain  
21 objections, you have your answer. And then if you look at  
22 the last paragraph, you say why I cannot say for certain  
23 that I used an expletive for certain. Do you see that?  
24 A Uh-huh.  
25 Q So at the time you wrote this interrogatory, you

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1 actually couldn't be certain whether you used the word  
2 fucking, is that correct?  
3 A Correct.  
4 Q But now you're 100 percent sure you didn't?  
5 A Yes, because Renee Dantzler said I didn't.  
6 MR. PRAGER: I'm sorry. What did you say?  
7 THE WITNESS: Renee Dantzler, in her deposition,  
8 said I didn't.  
9 BY MR. KAPLAN:  
10 Q Again, looking back on Claimant's 82, her written  
11 statement, do you see where it says in the second paragraph,  
12 he said this conversation is between me, between you and me.  
13 He said you do not have to tell Zack. Do you see that?  
14 A Yes.  
15 Q Is that accurate? Was she mistaken? Did you not  
16 say that?  
17 A I didn't say that.  
18 Q Did you say anything about Zack?  
19 A I don't say anything -- Zack was a nonentity to  
20 me.  
21 Q Was Zack even part of that conversation?  
22 A No. She may have mentioned his name but I did  
23 not.  
24 Q So she may have said hey --  
25 A She may have said why didn't you talk to Zack.

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1 Q And your response was?  
2 A Probably no.  
3 Q You never told her to keep the conversation  
4 confidential?  
5 A No, because I was requesting that she seek help or  
6 she ask or if she felt that the SD managers could help them  
7 so certainly, I wanted her to at least talk to them so there  
8 was no expectation of confidentiality.  
9 Q You didn't tell her that she shouldn't tell Zack  
10 Minton about the conversation?  
11 A I didn't mention the name Zack in the  
12 conversation.  
13 Q So on page 2, midway through that first paragraph,  
14 she writes I asked him if he met with Zack regarding his  
15 concerns and he said, no, Zack is not on my level and I do  
16 not see what good it would do to talk to Zack. Do you  
17 recall that?  
18 A Yeah. I would put particular credence on the  
19 quotation marks because that's what I said, no.  
20 Q So you say anything about Zack is not on my level?  
21 A No.  
22 Q So do you understand what her perception of this  
23 conversation seems to have been?  
24 A I understand what she has implicated that it has  
25 been, yes.

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1 Q Right. And that is that you had asked her to  
2 somehow help sabotage the CRM project. Do you understand  
3 that's her perception?  
4 A That's --  
5 Q Whether you agree with it or not, that's her  
6 perception.  
7 A I don't agree with it.  
8 Q Right.  
9 A But she seems to indicate that that was her  
10 perception.  
11 Q Thank you. Have you ever cursed at Merchant Link  
12 in conversations?  
13 A Yeah.  
14 Q Did you ever yell at anybody at Merchant Link?  
15 A In a reprimanding fashion?  
16 Q Yes.  
17 A No.  
18 Q But sometimes you become passionate in your  
19 arguments?  
20 A Yeah. It could be laughing, you know, it could be  
21 hey down the hall, something like that, but not yelling.  
22 I'm a professional.  
23 Q Now, Dan lane became CEO in early 2011, mid-2011,  
24 is that correct as far as you know?  
25 A I think that's been well-established.

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1 MR. PRAGER: That's not an answer.  
2 THE WITNESS: Yes.  
3 BY MR. KAPLAN:  
4 Q And are you aware that he recommended to the Board  
5 that you be terminated?  
6 A No.  
7 Q You don't know that, whether it was his  
8 recommendation or not. You sat in his deposition. You  
9 don't know?  
10 A I don't know.  
11 Q You and Dan Lane were friends, is that correct?  
12 A I thought Dan --  
13 Q You thought you were.  
14 A -- and I were friends, yes.  
15 Q And he went to your daughter's soccer games  
16 before, at least one?  
17 A At least a couple.  
18 Q And did he ever invite you to his house?  
19 A Yes.  
20 Q Did you ever play basketball with him?  
21 A Sure. He's not very good.  
22 Q And did he help your daughter get a try-out for a  
23 soccer team?  
24 A Yeah. He, his son, his brother coached a soccer  
25 team and we tried out for his team.

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1 Q And did Dan help you with a mock trial in law  
2 school?  
3 A Yes. Again, he wasn't very good.  
4 Q And did you ever write a recommendation for one of  
5 Dan's children?  
6 A Yes. His son Patrick.  
7 Q And at least you testified at your deposition that  
8 this is sort of difficult for you to accept, that Dan Lane  
9 may have discriminated or retaliated against you. Do you  
10 recall that testimony?  
11 A The most hurtful thing about this whole ordeal has  
12 been the actions of Dan Lane. Under no circumstances, had  
13 the roles been reversed, I would have insulated Dan from all  
14 of this nonsense.  
15 Q Now, in your answers to interrogatories, you  
16 stated that you applied to about 810 jobs. Do you recall  
17 that?  
18 A Yeah. Estimation.  
19 Q Was that an exaggeration?  
20 A No, it was not.  
21 Q So your testimony is, correct me if I'm wrong,  
22 that you applied to about 30 jobs per month for a total of  
23 27 months --  
24 A Yes.  
25 Q -- to get to 810?

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1 A I sent out typically a resume, at least one resume  
2 a day.  
3 Q And do you recall during discovery in this case  
4 that you were required to provide some information about  
5 those jobs, that job search?  
6 A Yes.  
7 Q You have not produced a single job advertisement  
8 that you applied for. Are you aware of that?  
9 A That's not true.  
10 Q And you only produced one resume post-employment  
11 with Merchant Link that you sent out, correct?  
12 A Correct.  
13 Q And only two job applications post-employment were  
14 sent to Merchant Link?  
15 A Two physically filled out job applications.  
16 Q Yes. Out of 810, you sent two.  
17 A Right. The majority of the other job  
18 applications, if there were job applications, were  
19 electronic.  
20 Q And you only produced one cover letter post-  
21 employment, correct?  
22 A Exactly.  
23 Q Correct?  
24 A I produced --  
25 Q One cover letter.

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1 A I produced an example of a cover letter, an  
2 example of a resume that went out with the majority of the  
3 solicitations for jobs as requested by the judge in the  
4 order.  
5 Q You only had two interviews since, since you had  
6 been terminated, correct?  
7 A Two physical call-in interviews.  
8 Q Two interviews.  
9 A Correct.  
10 Q Given that you weren't getting interviews, why not  
11 apply to like general accounting or financial jobs where  
12 you're earning \$90,000 and then working your way up again?  
13 I mean, in your deposition testimony, you said I would not  
14 accept a job for \$90,000.  
15 A There, there -- I reserve the right to choose my  
16 employment, okay? I don't think that I'm compelled by law  
17 to have to take any job, okay? I accept a job that I want  
18 to work at my credentials and my investment and my  
19 professional skills. Why would I want to take a \$90,000 job  
20 and then be in the job for a week and it's not enough money  
21 and I'm back on the job market?  
22 Q So you were looking for only senior type jobs.  
23 That's what you testified to, right?  
24 A I was looking for jobs that were commensurate with  
25 my skills, education and experience.

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1 Q Could you look at Merchant Link 99?  
2 MR. PRAGER: Just a moment, please. Go ahead.  
3 BY MR. KAPLAN:  
4 Q Do you have --  
5 A Yeah.  
6 Q This is one job application to K-Force, is that  
7 correct?  
8 A Correct.  
9 Q And on page 4 of 5, there's a box called applicant  
10 acknowledgement.  
11 A Uh-huh.  
12 Q And the first sentence says I have reviewed the  
13 information provided on this application and acknowledge by  
14 my signature that the below is true, complete and accurate.  
15 Do you see that?  
16 A Yes.  
17 Q And then you signed and you represented that  
18 everything was accurate. Do you see that?  
19 A Uh-huh.  
20 Q And like yesterday, we talked about this, you  
21 claimed that you were hired in as a CFO. You still believe  
22 that you didn't misrepresent anything on this application,  
23 is that correct?  
24 A The person that took this application looked at my  
25 resume. They looked at my resume and they saw that I had

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1 manager of financial analysis and CFO with the exact same  
2 responsibilities. And he told me do you have, were you ever  
3 the CFO and I said, yes. And he said well, this is  
4 redundant and you have an awful long resume, why don't you  
5 just eradicate this information off, okay, and present your  
6 resume that way because you were in fact the CFO, your  
7 duties were the same, okay, and it saves space on your  
8 resume. Per his recommendation, I made the change.

9 Q And look at --

10 MR. KAPLAN: I'd like to get that admitted.

11 MR. PRAGER: Any objection, Mr. Johnson?

12 MR. JOHNSON: No objection.

13 BY MR. KAPLAN:

14 Q And this --

15 MR. PRAGER: Just a moment.

16 BY MR. KAPLAN:

17 Q And --

18 MR. PRAGER: Just a moment.

19 MR. KAPLAN: Yes.

20 MR. PRAGER: All right. Exhibit 99 will be  
21 admitted, that's Respondent's 99. Go ahead, Mr. Kaplan.  
22 (Respondent's Exhibit No. 99  
23 was received into evidence.)

24 BY MR. KAPLAN:

25 Q Please look at Exhibit 98, page 2 and the

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1 paragraph at the end, do you see where it says any  
2 falsification, misrepresentation or omission of relevant  
3 information will be grounds for cancellation of this  
4 application or termination of employment, I have read,  
5 understood and agree to all the above stated conditions of  
6 employment, and then you signed your name?

7 A Yes.

8 Q And here too you said you started the position as  
9 the CFO. You started writing in probably your proper  
10 position and then you changed it to CFO. Do you see that?

11 A Again, if I started, the same instruction.

12 MR. PRAGER: Where are you looking at?

13 MR. KAPLAN: On page 2.

14 MR. PRAGER: Yes.

15 MR. KAPLAN: It says, the second box where it says  
16 from month, year, '05, 2005 to 5/08, 36 months.

17 MR. PRAGER: Yes.

18 MR. KAPLAN: As a starting position, he started to  
19 write an M and he crossed it out and put CFO.

20 MR. PRAGER: I see.

21 MR. KAPLAN: Okay. I'd like to move this exhibit  
22 into evidence.

23 MR. PRAGER: Mr. Johnson?

24 MR. JOHNSON: Your Honor, I was trying to be, I  
25 guess, lenient to some degree with regard to Counsel's

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1 attempts to admit documents through Mr. Belfiore. If he's  
2 intending to introduce these to ascertain whether or not Mr.  
3 Belfiore applied for a job, I wouldn't have a problem with  
4 it but if its sole purpose is to just look at whether or not  
5 he used the right label for a position, I'm going to object  
6 to that.

7 MR. PRAGER: Well, you can bring that out in your,  
8 in your recross but the application speaks for itself.

9 MR. JOHNSON: Okay.

10 MR. PRAGER: And it will be admitted. To clarify,  
11 Respondent's Exhibit 98 is admitted.  
12 (Respondent's Exhibit No. 98  
13 was received into evidence.)

14 BY MR. KAPLAN:

15 Q Please take a look at Exhibit 122.

16 MR. PRAGER: Whose exhibit?

17 MR. KAPLAN: Merchant Link 122. It corresponds to  
18 one of the claimant's exhibits.

19 MR. PRAGER: We'll go off the record for a moment.  
20 (Off the record.)  
21 (On the record.)

22 MR. PRAGER: All right. We're back on the record.  
23 As I understand it, Counsel have agreed that Exhibit 15,  
24 which was admitted yesterday, is the same as proposed  
25 exhibit, Merchant Link 122, is that correct?

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1 MR. KAPLAN: That's correct.

2 MR. JOHNSON: That's correct, Your Honor.

3 MR. PRAGER: All right. Mr. Kaplan?

4 BY MR. KAPLAN:

5 Q Why don't you tell me what this exhibit is.

6 A It's the Justice transition document.

7 Q On page 2 where it says risks at the end --

8 A Yes.

9 Q -- with required compensation adjustment for  
10 Belfiore, Konar and Davidovic.

11 A Correct.

12 Q Neither Konar nor Davidovic are African American,  
13 is that correct?

14 A Correct.

15 Q And is Davidovic Caucasian?

16 A Serbian, yes.

17 MR. KAPLAN: I'd like to go, a short break. I may  
18 be done but want to confer with Counsel.

19 MR. PRAGER: Five minutes?

20 MR. KAPLAN: Perfect.  
21 (Whereupon, at 11:46 a.m., a brief recess was  
22 taken.)

23 MR. PRAGER: We're back on the record. Mr.  
24 Kaplan, do you have any additional questions you want to  
25 propose?

1 MR. KAPLAN: I'm through with my examination.  
 2 MR. PRAGER: All right. Mr. Belfiore, tell me a  
 3 little bit about your relationship, you mentioned some of  
 4 them this morning, with Mr. Charron over the years starting  
 5 in 2005 working your way up to 2011 as best you can remember  
 6 them.

7 THE WITNESS: Um, my relationship I felt started  
 8 off really well with Mr. Charron. About a week after I  
 9 started, Dan visited the offices in Silver Spring. He  
 10 called me in the office. He told me a lot was expected of  
 11 me. He actually used the word CFO. I expect you to be the  
 12 CFO of Merchant Link, I expect you to work very closely with  
 13 the people in Dallas. Matter of fact, I expect that you be  
 14 of tremendous assistance to the new CEO once they were hired  
 15 and that you, you know, ride shot-gun with him as he charts  
 16 course strategically and builds this company from what was  
 17 perceived as just a major contract with Micros to a viable  
 18 revenue-producing diversified customer-generating company.  
 19 Um, so that started out well.

20 We went for the first couple of trips down for the  
 21 Board meetings. They went extremely well. They were very  
 22 receptive in terms of what we wanted to do in some of the  
 23 products and the direction and strategies that we wanted to  
 24 employ and they felt very comfortable that they knew exactly  
 25 what the financial position of the company was after I gave

1 them my reports, my financial reports. So impressed that  
 2 Mr. Justice came to my office after and said in 60 days,  
 3 you're going to want to kiss me, and I said I doubt that  
 4 very seriously but I think you're alluding to something nice  
 5 might happen in 60 days.

6 And apparently, they, impressed with my talents,  
 7 didn't understand why I was reporting so low in the  
 8 organization and that they were going to do something about  
 9 it. What I heard subsequently when the change didn't happen  
 10 was that they were going to go to the CFO of Chase  
 11 Paymentech, Kathy Smith, and request that my reporting  
 12 relationship be changed directly to her. And she balked at  
 13 the idea because she believed that there would be people in  
 14 her organization that that jump would have kind of offended  
 15 the parity within her organization so she basically vetoed  
 16 the idea. So I went through with my normal activities not  
 17 understanding. I didn't find out that until after 90 days  
 18 when my wife reminded me that hey, Chris said something  
 19 about 60 days, it's been more than 60 days, what happened.  
 20 And Chris was like yeah, you know what, they were going to  
 21 try to bump your reporting relationship or what have you but  
 22 Kathy wasn't in tune with it.

23 Shortly after that, that's when I got the \$8,000  
 24 LTIP award, I believe in 2007. Mr. Charron came to me again  
 25 in a very amicable way and he asked me flat out, what did

1 they give you for your LTIP award. So I said well, let me  
 2 see and I dug in my files and I gave it to him and he, he  
 3 got visibly angry so I got angry because he apprised me of  
 4 the fact that in his words, I got screwed and he said to me  
 5 I'm going to take care of this, okay. So I thought this may  
 6 have had something to do with the 60 days and that type of  
 7 thing or whatever but a full year later, he says hey, I told  
 8 you I was going to take care of it and he hands me an LTIP  
 9 award, \$50,000, okay, which I appreciated the gesture but  
 10 given the fact of how LTIP works, it's not like he was  
 11 giving me \$50,000 that day. He was giving me somewhere  
 12 around \$50,000 two or three years from now, okay, and at  
 13 that point, I wasn't thinking two or three years ahead so it  
 14 was like nice, but it's just a piece of paper.

15 But I appreciated it and I continued to perform my  
 16 duties with passion that he recognized on more than one  
 17 occasion. On more than one occasion, he would call me and  
 18 say I really appreciate your work. If there were issues in  
 19 the company, he would call me and he would say I'm not  
 20 worried about you, okay, but if there was ever a major issue  
 21 in the company, I was one of the first people he called. I  
 22 got phone calls from Mr. Charron in the car. I got phone  
 23 calls from Mr. Charron, okay, in the midst of law school  
 24 class after work, and that's kind of how things went.

25 Now, Mr. Lane told me that he had a conversation

1 with Mr. Charron and Mr. Charron indicated to him that he  
 2 felt I was greedy and that the move to operations was a  
 3 smart move on my part because there was no way I was going  
 4 to be able to get the kind of consideration and remuneration  
 5 in the finance function, okay, but by moving to operations,  
 6 okay, that was a smart move. I didn't orchestrate the move.  
 7 Chris brought the move to me. Chris had, through my  
 8 recommendations and through his conversations with Charron,  
 9 had identified me as a viable successor and he had been  
 10 having those conversations with Charron all along.

11 The problem occurred that when Chris moved on that  
 12 and he promoted me in May of 2008 to the COO position, and I  
 13 told Chris that I can't work that job at this salary given  
 14 the demands, given the risk, given the responsibilities, all  
 15 the other things involved, we've got to do something. Chris  
 16 went back to Dan and said hey, we've got to do something  
 17 for, for this guy. The fallout of that was a \$10,000 raise  
 18 and a move from a grade level 12 to a grade level 14. And  
 19 Chris said Charron told me, and I quote, we can give him the  
 20 title, we can give him the responsibility, we won't give him  
 21 the money. So but he said I'm not, I'm not giving up that  
 22 easy, okay, so trust me, we'll continue to work on this and  
 23 I said, Chris, I trust you. I didn't have any kind of  
 24 reaction, negative reaction. I didn't plan my private sit-  
 25 in. I didn't sabotage any systems or anything like that. I

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1 continued to support Merchant Link to the best of my  
2 ability.

3 Then there came a rush because the deadline for  
4 the Chase Paymentech joint venture to dissolve was coming to  
5 a head and so we went through a transaction process. We  
6 weren't able to get it done so in the process of that  
7 transaction, we had to create a separation strategy because  
8 once the business sold, all of the assets, all of the  
9 platforms, all of the things that we were sharing with  
10 Paymentech, either the new company who acquired it had to  
11 provide or Merchant Link had to provide on its own. So we  
12 did a very detailed analysis to show what services and  
13 assets were being shared with the parent company and what it  
14 would cost Merchant Link to, to foot the bill on its own.

15 So when the company didn't sell, Dan Charron  
16 turned that into a servicing contract so they would no  
17 longer allocate those costs or provide those services for  
18 free. We would have to pay Paymentech for those services.  
19 It was affectionately referred to as the services agreement.  
20 Chris was very uncomfortable, okay, with signing the  
21 contract. Ultimately, the contract was signed on behalf of  
22 Merchant Link by Dan Charron and on behalf of Chase  
23 Paymentech by Mike Duffy who was the CEO of Chase  
24 Paymentech. Both Chris and I had strong misgivings about  
25 the contract and the ethical nature of it and, you know, me,

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1 I guess not being mature enough to shut my mouth, I let my,  
2 my feelings about the contract be known.

3 But it was at that time I started looking at Mr.  
4 Charron differently in terms of what his objectives and what  
5 his incentives were and Mr. Charron's objectives and  
6 incentives were very much to further the interest of Chase  
7 Paymentech and it did not matter if there was a cost to  
8 Merchant Link. So when he became chairman of the board, I  
9 followed suit, I did what I was told, I did my job. When  
10 Micros threatened to sue, we went through all kinds of  
11 analysis and those types of things to, to make sure Mr.  
12 Charron understood where we were. I participated very  
13 actively in trying, with the group that triumvirate put  
14 together, the business terms that we hoped would govern the  
15 new contract with Micros. I gave best effort in all of  
16 those cases but there were other issues.

17 There was a business deal with Visual Matrix that  
18 Chase Paymentech was, was going after and it required that  
19 Merchant Link really cut the costs on some of the services  
20 we would provide. And we're on a telephone call and Dan  
21 Charron's talking to the sales rep from Chase Paymentech and  
22 the three of us and he says don't worry about it because I'm  
23 on both sides of the deal so I'll make sure it gets done.  
24 And I'm thinking to myself did he say that out loud, you  
25 know, because basically, he said we will hamper and hinder

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1 Merchant Link for the sake of Chase Paymentech and in his  
2 position as interim CEO of Merchant Link and as chairman of  
3 the board of Merchant Link, that just struck me as a  
4 conflict of interest.

5 And it was, it was kind of confusing for me  
6 because he would talk about, when we would get into battles  
7 with Micros, he would always say it's not a noble company,  
8 they're not noble people. And I would sit there and I would  
9 shake my head and I'm like wow, I really need to understand  
10 how he defines noble.

11 MR. PRAGER: Let me interrupt you here. You gave  
12 a long answer. I know you're not finished but I'm more  
13 focused on your personal relationships with him rather than  
14 in making some business decisions that you think were  
15 questionable or where you disagreed with him. How did that,  
16 how was that reflected in his attitude to you or your  
17 expressed attitude towards him following 2008?

18 THE WITNESS: Um, like I said, 2008, I mean, in my  
19 conversations with Dan Lane, he expressed to me that Dan  
20 didn't, wasn't very receptive of the idea that he had to  
21 sell me on his ideas, okay? I didn't have a personal  
22 relationship with Mr. Charron, okay? It was all business  
23 and he was remote so it wasn't like I saw him in the hall or  
24 I saw him at the water cooler and we played golf, you know,  
25 or I got to, you know, really hammer him on the basketball

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1 court like I did Mr. Lane but we just didn't, we just did  
2 not associate on that level. It was 100 percent business  
3 all the time.

4 MR. PRAGER: And now you said, if I understand  
5 your testimony correctly, I believe it was in 2008 but maybe  
6 in a different point, that Mr. Charron agreed that you would  
7 get a promotion and get a title but not more money, is that  
8 correct?

9 THE WITNESS: Yeah. That, that was brought to my  
10 attention.

11 MR. PRAGER: And when did that occur?

12 THE WITNESS: That occurred around the original  
13 promotion in May of 2008.

14 MR. PRAGER: All right. What sort of  
15 relationship, if any, did you have with Mr. McCarthy?

16 THE WITNESS: The only relationship I had with Mr.  
17 McCarthy is I mentioned yesterday about those socialization  
18 type discussions that we had outside of the Board, so he was  
19 the one Board member that, that required being in those  
20 meetings. So when we had a budget, if we were going to  
21 present our budget for the year, okay, or if we were going  
22 to prevent a major transaction, he would want to get some of  
23 the details and a deeper understanding of the financial  
24 ramifications, okay, the financial analysis so when we got  
25 to the Board and then the budget came up for a vote, he

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1 could make and feel comfortable about his vote but that was  
2 it. It was either in those socialization prior pre-Board  
3 meetings or in the Board meetings itself. Those were my  
4 only interactions with Mr. McCarthy.  
5 MR. PRAGER: And did you ever feel that there was  
6 any sort of animosity emanating from him or that he would  
7 feel that there was animosity coming from you?  
8 THE WITNESS: Um, no. I mean, there was one issue  
9 where in regards to the service agreement, it had a 10  
10 percent inflation factor in it. He was very strongly  
11 against it and he, you know, Charron's not going to get  
12 this, Charron's not going to get this. And I said well,  
13 then you've got to make sure you talk to Charron about it  
14 because we have to budget for it because it's contractually  
15 obligated. And he said no, no, no, I need you to do me a  
16 favor, I need you to broach the issue in the Board meeting  
17 and then I'll pick it up from there. And I said you're  
18 asking me to do some, some, you know -- Charron's, Charron  
19 can come down pretty heavy, you know, on that regard but I  
20 did bring up as a matter of fact that the budget included 10  
21 percent inflationary factor. Barry chimed up and then Duffy  
22 and Charron jumped on him.  
23 MR. PRAGER: Okay.  
24 THE WITNESS: So I don't know if he held any  
25 animosity after that reaction but did I hear him say

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1 anything about me personally disparagingly about the quality  
2 of my work? I wasn't, I heard nothing.  
3 MR. PRAGER: What about Mr. Duffy?  
4 THE WITNESS: Mr. Duffy, like I said in the, you  
5 know, may he rest in peace, Mr. Duffy was on the same lines  
6 as Mr. Charron in the beginning, and Mr. Duffy was always  
7 fairly sick so the real face and energy of the organization  
8 came from Mr. Charron. But I did interact with Mr. Duffy in  
9 the Board meetings both before and after the joint venture.  
10 I know he respected my work, he respected me. I was, I  
11 believe, an advocate for the, you know, the 60 day thing,  
12 whatever was supposed to happen or whatnot. I know when he  
13 visited Merchant Link, which was maybe once during the time  
14 I was there, I was one of the few people that he could look  
15 to and say oh, yeah, I know Erik. But I'm sure that in  
16 regards to the May 2008 promotion and the adjustment to the  
17 raise that was, I, I, I would have trouble not believing  
18 that he had some input into that.  
19 MR. PRAGER: Now, you said may he rest in peace.  
20 Did he die?  
21 THE WITNESS: Yeah. I believe May 2013.  
22 MR. PRAGER: All right. But he was still on the  
23 Board, as far as you know, at the time that --  
24 THE WITNESS: He was --  
25 MR. PRAGER: -- you were fired?

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1 THE WITNESS: No. I don't think he was on the  
2 Board at the time I was fired. I think he got replaced.  
3 MR. PRAGER: All right.  
4 THE WITNESS: But he was there initially. I don't  
5 know how long before he removed himself and, and another  
6 Chase Paymentech employee took his place.  
7 MR. PRAGER: I will find out from Merchant Link  
8 who was on the Board at the time but do you know anybody  
9 else who was on the Board?  
10 THE WITNESS: At the time that I was fired?  
11 MR. PRAGER: Yes.  
12 THE WITNESS: Um, Charron, McCarthy. I think  
13 George White may have taken Duffy's spot on the Chase  
14 Payment side, and I don't remember who the fourth First Data  
15 person was.  
16 MR. PRAGER: And what was your relationship with  
17 Mr. White?  
18 THE WITNESS: Um, he was a high-ranking IT  
19 technical professional in the Chase Paymentech organization.  
20 He ran I think one of, if not their largest, data center.  
21 He was a, a close colleague of Mr. Charron's.  
22 MR. PRAGER: But you had no interactions with him  
23 as far as you recall.  
24 THE WITNESS: I was on, I was on I think one Board  
25 meeting call where he was on the call but my role in terms

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1 of running the meeting had changed.  
2 MR. PRAGER: Now yesterday, your counsel, I can't  
3 remember which exhibit it was but it doesn't really make any  
4 difference, introduced a document that was an annual review  
5 for you I believe in 2008 which was, and there was also a  
6 document in which you had gotten an award.  
7 THE WITNESS: Stars in Motion. Stars in Motion.  
8 MR. PRAGER: That's right. Stars in Motion. What  
9 is missing in the record thus far, as far as I'm concerned,  
10 is any reviews after 2008. Were there such reviews?  
11 THE WITNESS: Chris gave me my last review, um,  
12 when he left which would have been for 2008.  
13 MR. PRAGER: So my understanding from your  
14 testimony now is there were never any employee reviews by --  
15 THE WITNESS: Mr. Charron?  
16 MR. PRAGER: -- by anyone above you who would be  
17 supervising your work?  
18 THE WITNESS: Formally, no. Mr. Charron would  
19 have been the person who would have given me those reviews  
20 from the time Chris left to the time Mr. Lane became the CEO  
21 and I, I don't remember having any formal sit-downs over, I  
22 mean, I got, I got whole bonuses which give the implication  
23 that performance was satisfactory. The only thing that I  
24 got close to a review is I believe on my 2010 LTIP award, he  
25 wrote I appreciate your passion and concern for the company.

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1 MR. PRAGER: And --  
2 THE WITNESS: A handwritten note.  
3 MR. PRAGER: And that was Mr. Charron wrote that?  
4 THE WITNESS: Mr. Charron wrote that, yes.  
5 MR. PRAGER: Did you write reviews of your  
6 subordinates?  
7 THE WITNESS: Yes.  
8 MR. PRAGER: But just, well, you've already said  
9 it, but you never got one from your superiors.  
10 THE WITNESS: Not --  
11 MR. PRAGER: After 2008.  
12 THE WITNESS: Not after Mr. Justice left, no.  
13 MR. PRAGER: Let me turn to some other questions I  
14 have for you. Thus far, some of these have been identified,  
15 others not so let me just go through a series of names. It  
16 may not be all of the names that I should have included, but  
17 tell me the race of Mr. Chudasama.  
18 THE WITNESS: I believe he is Indian.  
19 MR. PRAGER: All right. And Mr. Konar?  
20 THE WITNESS: Also Indian.  
21 MR. PRAGER: And Ms. Zloth?  
22 THE WITNESS: Caucasian.  
23 MR. PRAGER: And Ms. Kirby-Meck?  
24 THE WITNESS: Caucasian.  
25 MR. PRAGER: I think you've already identified Mr.

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1 Kinsella as Caucasian, is that right?  
2 THE WITNESS: Correct.  
3 MR. PRAGER: How about Ms. Bodhane or Bodhane?  
4 THE WITNESS: Bodhane.  
5 MR. PRAGER: Bodhane, sorry.  
6 THE WITNESS: Caucasian.  
7 MR. PRAGER: And this is not directly relevant to  
8 your race discrimination claim but what is Mr. Minton's  
9 race?  
10 THE WITNESS: Caucasian.  
11 MR. PRAGER: Now yesterday, you, if I recall  
12 correctly, you testified about an employee who was dismissed  
13 and I think it was somebody by the name of Maude --  
14 THE WITNESS: Maude Massaquoi?  
15 MR. PRAGER: Massaquoi, right. Was that a  
16 recommendation you made to, to terminate her?  
17 THE WITNESS: Yes, I did.  
18 MR. PRAGER: All right. And what sort of  
19 opportunity did she get to protest your recommendation or to  
20 have a hearing?  
21 THE WITNESS: A hearing by Merchant Link?  
22 MR. PRAGER: Yes.  
23 THE WITNESS: Okay. She was given, there were  
24 several meetings. The issue in the Maude Massaquoi case was  
25 we had promoted a couple of employees on the tech support

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1 desk to higher positions so we had to balance the shifts.  
2 So she had to go to working a series of days that she did  
3 not want to but the policy was that the more tenured  
4 employees, okay, got preference.  
5 MR. PRAGER: Right. I understand. Let's assume  
6 that there was a reason you had for recommending her  
7 discharge. What happened after your recommendation? How  
8 did-- was there a hearing? Was she given an opportunity to  
9 present her side of the issue to anyone other than to  
10 yourself?  
11 THE WITNESS: Yeah. There was two levels of  
12 supervision, shift supervisor, the manager of tech support  
13 and then to me. And then I think she also presented her  
14 side to HR.  
15 MR. PRAGER: All right. I'll pick up my, if there  
16 are any further questions, after lunch. We'll go off the  
17 record now.  
18 (Whereupon, at 12:19 p.m., a luncheon recess was  
19 taken.)  
20 MR. PRAGER: All right. We're back on the record.  
21 There were some questions that I believe this morning you  
22 were asked by Mr. Kaplan about certain figures that appear  
23 on your exhibit, Complainant's 41. Am I correct, Mr.  
24 Kaplan, that's the exhibit that you were asking about?  
25 MR. KAPLAN: That is correct.

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1 MR. PRAGER: I'll wait until you get there.  
2 THE WITNESS: We'll get there.  
3 MR. PRAGER: Mr. Belfiore, who compiled this  
4 exhibit?  
5 THE WITNESS: I did.  
6 MR. PRAGER: And what did you base it on?  
7 THE WITNESS: I based it on the source records  
8 that I pulled off of the system for my personal records, and  
9 I used the exhibits that we went over yesterday in terms of  
10 the budget detail exhibits for pay grades and salaries and  
11 I, I calculated the bonuses as well as the LTIP as I  
12 understood them to be in those perspective years.  
13 MR. PRAGER: And did you rely at all on something  
14 that's not yet in the record but will be? That is did you  
15 look at Mr. Cook's analysis when you were compiling this?  
16 THE WITNESS: No.  
17 MR. PRAGER: All right. So this was before the  
18 Cook analysis.  
19 THE WITNESS: Yes.  
20 MR. PRAGER: And you did not revise it thereafter.  
21 THE WITNESS: No, I did not.  
22 MR. PRAGER: Okay. Now yesterday, you testified  
23 about e-mail correspondence with, between your lawyer and  
24 Mr. Jones, and we went through Exhibit 75A, that's  
25 Complainant's Exhibit 75A, 75B and 75C. I'm going to ask

1 you the same questions that Mr. Jones asked you because you  
2 are claiming, in addition to the, your claim that you were  
3 not properly compensated, you are, you have inserted  
4 necessarily in this case the racial issue. And I believe  
5 that Mr. Jones has formulated some questions and perhaps you  
6 could, since you didn't answer his, perhaps you can answer  
7 mine.

8 Let's start in the middle of the page. Has anyone  
9 at Merchant Link used any racial epithets or insults, did  
10 that ever happen to you as far as you know? As far as you  
11 remember rather.

12 THE WITNESS: Have they used any to me or --

13 MR. PRAGER: Right. Or about you.

14 THE WITNESS: About me? Not that I know of.

15 MR. PRAGER: Okay. And did anybody ever bring up  
16 your race in regard to the compensation decisions?

17 THE WITNESS: Not that I know of.

18 MR. PRAGER: And who at Merchant Link do you  
19 believe used your race as a factor in deciding compensation  
20 levels? That is the names of the individuals that you think  
21 used race as a consideration.

22 THE WITNESS: Um, I'm not sure I understand the  
23 question.

24 MR. PRAGER: Well, you're accusing Merchant Link  
25 as a whole of having perpetrated an unlawful act based on

1 your race. Now, who at Merchant Link do you hold  
2 responsible for having done that? Which individuals, if  
3 any?

4 THE WITNESS: Um, Dan Lane, Dan Charron, Barry  
5 McCarthy. Those people who were responsible for setting the  
6 level of my compensation in an equitable manner. Those I  
7 believe are the individual perpetrators.

8 MR. PRAGER: Okay. Now, there is a further  
9 question that Mr. Jones propounded but I'm going to rephrase  
10 it because a number of times yesterday and today, you seemed  
11 somewhat incensed about the fact that Mr. Lane, after having  
12 said to you, I believe, that he would recommend an increase  
13 of your salary first to \$160,000 an when you balked, to  
14 \$172,000, you seemed incensed that he had, he did that  
15 without first consulting with the Board. Is that what I'm,  
16 is that a correct understanding of why you got excited and  
17 said that he had violated the bylaws and had somehow  
18 violated the bylaws?

19 THE WITNESS: Yes.

20 MR. PRAGER: All right. And why do you think that  
21 Mr. Lane did that? Did he do it knowingly or was this a  
22 mistake on his part as far as you know, as far as you think,  
23 believe?

24 THE WITNESS: I believe he did it knowingly.

25 MR. PRAGER: And with what goal in mind?

1 THE WITNESS: Um, I believe he did it because he  
2 didn't believe that Dan Charron would approve of it and if  
3 it had any opportunity of getting enacted, he would kind of  
4 have to slip it through. If not that, then he did it  
5 knowingly that at some point, it would be found out and it  
6 would be retracted, as it was, and that he could rest his  
7 head in his conversations with me that he attempted to get  
8 me a raise despite the fact that I didn't feel that the  
9 attempt was genuine

10 MR. PRAGER: All right. Suppose he had said to  
11 you I can't make you any promises but I will make a formal  
12 request of the Board, would that have changed matters in any  
13 way as far as you're concerned in proper procedure?

14 THE WITNESS: Absolutely. If he, if he would have  
15 suggested to me that, yes, I'm going to take this to the  
16 Board and I can't make you any promises, that's actually the  
17 only way it should have been handled.

18 MR. PRAGER: And but since the ultimate decision-  
19 makers were Mr. Charron and the rest of the Board members,  
20 why would there have been a difference in outcome as far as  
21 you believe?

22 THE WITNESS: I don't think there would have been  
23 a difference in outcome. I think it would have been a  
24 difference in the way I viewed Dan's role in this. If Dan  
25 had come to me and said that he was going to the Board to

1 help me get a raise and it did not, then I would have no  
2 issues with Dan. I would say you did your best, that's  
3 fine, okay? It would not have prevented my claim, okay,  
4 because I do feel that I was not paid on the level that I  
5 was supposed to be paid in relation to my comparators and I  
6 would want that resolved.

7 MR. PRAGER: Did you make any protests at the time  
8 that you had this conversation warning him that the best  
9 thing to do is don't make this, don't make the proposal yet  
10 or don't grant me this but go to the Board first?

11 THE WITNESS: I had no idea that when he said I'm  
12 going to give you a raise, inherent in that, I thought he  
13 was going through the proper channels. It was a surprise to  
14 me, and my reaction to him when he let me know that he had  
15 to get it approved was you didn't get it approved, because  
16 it didn't occur to me that he would try to go ahead and give  
17 me a raise without getting it approved.

18 MR. PRAGER: Right. So if I understand your  
19 testimony, you think this was a connivance by him to prevent  
20 you from getting a raise.

21 THE WITNESS: Um, I think that there is a very  
22 real possibility of that. I also believe that the fact that  
23 there was no reprimand to Dan Lane for the act was a double  
24 standard.

25 MR. PRAGER: And do you think that this tactic,

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1 let's call it, by Mr. Lane was racially motivated, that is  
2 he did not want a black man getting more pay?  
3 THE WITNESS: I know that throughout my course of  
4 work at Merchant Link, and I don't know if it was a black  
5 man or if it was me, Dan Lane had his own personal judgments  
6 and valuations of my worth and what I should be paid. He  
7 had those same personal valuation and judgments versus other  
8 people and he felt that despite my position, despite my  
9 officership, despite any of that, there were certain people,  
10 because it was me, I can't tell you if it was I was short,  
11 if I was black or whatever, that I was not going to make  
12 more money than those people.  
13 MR. PRAGER: And Mr. Lane only took the position  
14 of CEO as of, I believe, February or March of 2011?  
15 THE WITNESS: Correct.  
16 MR. PRAGER: So that would have been eight months,  
17 nine months before you were terminated, is that right?  
18 THE WITNESS: Correct.  
19 MR. PRAGER: And so the pay that had been set  
20 before that time, he didn't have anything to do with it.  
21 THE WITNESS: No. But he did have a very close  
22 relationship with Dan Charron. He was given the  
23 responsibility of the CEO for HR matters, as his e-mail  
24 indicated, for the rate change. That there were  
25 conversations that he had with Mr. Charron about

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1 compensation levels, bonuses and things of that nature, it  
2 is very difficult for me to believe that they did not have  
3 conversations about salaries and in particular, the salaries  
4 of the more highly remunerated employees. In addition, he  
5 had direct control over similarly situated people's salaries  
6 and he had no problem with paying them at a higher level  
7 than he would pay me even though they were on a lower level  
8 of the organization.  
9 MR. PRAGER: But he wouldn't, he wouldn't be  
10 setting your salary or the salary of your subordinates  
11 before --  
12 THE WITNESS: That --  
13 MR. PRAGER: -- before March, or February or March  
14 of 2011.  
15 THE WITNESS: Not directly.  
16 MR. PRAGER: And did you have the same ability to  
17 set salary levels for your group that he had for his group?  
18 THE WITNESS: Yes.  
19 MR. PRAGER: So theoretically, you could have had  
20 one of your subordinates making more than one of his  
21 subordinates, is that correct?  
22 THE WITNESS: Theoretically.  
23 MR. PRAGER: That is you had the power.  
24 THE WITNESS: No.  
25 MR. PRAGER: I'm not sure. Why did he have the

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1 power but you didn't?  
2 THE WITNESS: He had the power to set his  
3 subordinates' salaries above mine.  
4 MR. PRAGER: And why couldn't you, I'm sorry to  
5 interrupt, why couldn't you play tit for tat and raise your  
6 subordinates' higher than his?  
7 THE WITNESS: Because he again had the CEO control  
8 function of the HR function, okay? I could have proposed it  
9 but he would have not allowed it.  
10 MR. PRAGER: I'm sorry. Who is he? I thought he  
11 didn't have, I thought before March of 2011 he didn't have  
12 that authority.  
13 THE WITNESS: After April of 2009 when Mr. Chris  
14 Justice resigned, he gave the HR authority, the authority of  
15 all of HR, to Dan Lane, okay? So Dan Lane, theoretically,  
16 had control over salaries of everybody's salary except mine.  
17 MR. PRAGER: Okay. Now I understand.  
18 THE WITNESS: Okay?  
19 MR. PRAGER: Now I understand. Before this  
20 November 10th, 9th I guess it was or 8th, I can't remember,  
21 meeting with Ms. Dantzler in 2011, what was your  
22 relationship with her?  
23 THE WITNESS: None.  
24 MR. PRAGER: Well, you said that you had  
25 recommended that --

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1 THE WITNESS: I had --  
2 MR. PRAGER: -- she be --  
3 THE WITNESS: I had recommended Ms. Dantzler but  
4 the first formal introduction that I had with Ms. Dantzler,  
5 you know, when I say formal introduction, I'm not hey,  
6 hello. This was on the 9th --  
7 MR. PRAGER: Right.  
8 THE WITNESS: -- of November.  
9 MR. PRAGER: So you wouldn't, prior to that, there  
10 wouldn't have been any particular animosity that you  
11 detected on her part or any reason that you could think of  
12 why she would have animosity when you called her to your  
13 office on that day.  
14 THE WITNESS: None that I would know of.  
15 MR. PRAGER: And tell me about your relationship  
16 with Mr. Minton. You've tried to minimize so just explain  
17 again what were they, if any?  
18 THE WITNESS: At the time that, again, I got  
19 control of service delivery. Technically, the learning and  
20 development group was a part of service delivery. I had a  
21 good working professional relationship with the manager of  
22 learning and development, Ms. Kia Hall, prior to her leaving  
23 and Zack Minton coming on line. Ms. Hall had very serious  
24 concerns about her treatment and about the way, and the  
25 support she was getting from Dan Lane, and she would come to

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1 me for mentorship and guidance as did a vast majority of  
2 Merchant Link employees. She was heavily credentialed --  
3 MR. KAPLAN: Objection. I mean --  
4 MR. PRAGER: Yes. I think we're going, you're  
5 going a little bit astray. I'm asking now about --  
6 THE WITNESS: Well --  
7 MR. PRAGER: -- your relationship with Mr. Minton.  
8 THE WITNESS: Okay. So in any event, I was a  
9 little bit upset about the handling of Kia Hall and when  
10 Zach was presented as a candidate, I told Dan that you know  
11 what, if it's your guy, why don't you take that department  
12 and you handle it. And from that point on, I had little or  
13 nothing to do with learning and development as long as my  
14 managers felt they were getting what they needed from that  
15 organization.  
16 MR. PRAGER: Did you have any interactions with  
17 Mr. Minton after he was promoted to Ms. Kia's position?  
18 THE WITNESS: I think that's the position he came  
19 in as so he was always the manager of learning development.  
20 MR. PRAGER: I see.  
21 THE WITNESS: I mean, that was my understanding.  
22 And, no. I did not have --  
23 MR. PRAGER: Any?  
24 THE WITNESS: -- any interactions.  
25 MR. PRAGER: Well, I had another question but I've

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1 forgotten it so we'll, we'll hope or I'll hope that I'll  
2 remember it but in the meantime, I'll reserve asking  
3 additional questions later. We're ready for redirect. Mr.  
4 Johnson, are you prepared to start questioning?  
5 MR. JOHNSON: Yes, Your Honor. Thank you.  
6 REDIRECT EXAMINATION  
7 BY MR. JOHNSON:  
8 Q Mr. Belfiore, I want you to open up the  
9 respondent's binder book to Exhibit 141.  
10 MR. PRAGER: Before you start --  
11 MR. JOHNSON: Sure.  
12 MR. PRAGER: -- asking him questions about this,  
13 Mr. Johnson, I think that this is an exhibit that you had  
14 already received prior to today.  
15 MR. JOHNSON: Yes.  
16 MR. PRAGER: Thank you.  
17 BY MR. JOHNSON:  
18 Q Mr. Belfiore, I also want you to open up  
19 Complainant's Exhibit No. 2 as well because we will be  
20 speaking about both exhibits and I don't think it will be  
21 easy for everybody to be flipping back and forth.  
22 MR. PRAGER: What do we need, 1?  
23 MR. JOHNSON: 2.  
24 MR. PRAGER: 1 and 2?  
25 MR. JOHNSON: Just 2.

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1 MR. PRAGER: Just 2. While you're doing that,  
2 we'll go off the record.  
3 (Off the record.)  
4 (On the record.)  
5 BY MR. JOHNSON:  
6 Q Mr. Belfiore, you were asked on cross-examination  
7 to describe or discuss Respondent's Exhibit 141, and this  
8 appears to be a list of select employees. Now, isn't this  
9 particular schedule or list of employee salaries, isn't this  
10 consistent with the information that you provided the Court  
11 in Exhibit 2?  
12 A Um, no. There are certain disconnects.  
13 Q And what disconnects would you be speaking of?  
14 A Um, they mentioned in 2011 that Laura Kirby-Meck  
15 made \$75,182. These, the information in these schedules  
16 were full-year budgeted salary levels for this number,  
17 \$75,182, does not resemble Mrs. Meck's salary, annual salary  
18 in any shape or form. It must be her W-2 wages as the  
19 schedule is indicated so it must be a partial year. In  
20 addition, the \$195,617.61, I don't have a W-2 that has that  
21 number on it. In addition, these W-2 wages, okay, is not a  
22 proper comparison to the build-up of a person's potential  
23 compensation given the three phases of the salary, the AIP  
24 and the LTIP.  
25 Q So is it your testimony today that this particular

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1 chart does not take into consideration, or at least  
2 consistently take into consideration, the AIP awards or the  
3 LTIP awards?  
4 MR. KAPLAN: Objection. Leading.  
5 MR. PRAGER: I think he just testified. I think  
6 he's restating what he's already said, so the objection is  
7 overruled.  
8 THE WITNESS: This particular table gives a very  
9 distorted view without going into the underlying  
10 circumstances regarding the individuals and where, whether  
11 they may have worked partial year, whether they have had  
12 disciplinary manifestations that, that affected their pay,  
13 their bonus. It doesn't take into an account of, of a  
14 direct comparison over someone who would have gotten the  
15 full benefits of the three phases of the compensation.  
16 BY MR. JOHNSON:  
17 Q So is this, these two charts, this is a comparison  
18 of apples to oranges in your estimation.  
19 A Yes. This chart does not compare the potential  
20 compensation package to determine whether or not this  
21 particular person had a higher compensation package than  
22 another. It's regulated to the circumstances that happened  
23 to that particular individual in that particular year, their  
24 start date. Their bonuses may have been prorated because  
25 they didn't work a full year. If they just started, they

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1 wouldn't have had an LTIP payment. So there are a bunch of  
2 vagaries that really make these numbers not comparable.  
3 Q So --  
4 MR. PRAGER: So --  
5 MR. JOHNSON: I'm sorry.  
6 MR. PRAGER: You were just testifying about the  
7 Respondent's Exhibit 141 when you said this exhibit.  
8 THE WITNESS: Yes. Correct.  
9 MR. PRAGER: Let me interject a question because  
10 I'm still not quite clear, it's something you testified  
11 today on cross-examination and you sort of had, yesterday, I  
12 had asked a question. I'm sure not quite sure how the LTIP  
13 works. Let's assume that on January 1st of year one you're  
14 granted an LTIP of \$15,000.  
15 THE WITNESS: Uh-huh.  
16 MR. PRAGER: Now, you say it doesn't vest until  
17 three years later? Is that the way it works?  
18 THE WITNESS: No. You take the \$15,000, okay?  
19 MR. PRAGER: Right.  
20 THE WITNESS: Cut it in half. So you've got --  
21 MR. PRAGER: In half.  
22 THE WITNESS: Yes. So you've got \$7,500, \$7,500.  
23 The first \$7,500 vests after one year.  
24 MR. PRAGER: Okay. In the first year.  
25 THE WITNESS: In the --

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1 MR. PRAGER: Or --  
2 THE WITNESS: End of the first year.  
3 MR. PRAGER: Right.  
4 THE WITNESS: Okay? After the second year, it  
5 then becomes payable so you will see the first 50 percent of  
6 the grant, okay, after the second year and then you would  
7 receive the second 50 percent of the grant in the third  
8 year.  
9 MR. PRAGER: All right. We're at the beginning of  
10 the third year.  
11 THE WITNESS: Right.  
12 MR. PRAGER: We're now talking about January 1st  
13 of the, January 1st of each year assuming that's --  
14 THE WITNESS: Now, there's one other piece of  
15 calculus too. The vesting, the original grant amount can  
16 fluctuate. It fluctuates based on the performance of the  
17 company. So if the company performs at 110 percent, okay,  
18 then the amount that vests, okay, would be indexed for that  
19 so it would be a greater amount, okay? If the company  
20 performs less than 100 percent, then you're going to receive  
21 less than the original granted amount.  
22 MR. PRAGER: All right. Let me now talk about at  
23 the end of the first year because I'm still not quite  
24 certain.  
25 THE WITNESS: Uh-huh.

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1 MR. PRAGER: On January 1st of year two, do you  
2 get, do you get a check for \$7,500 or what?  
3 THE WITNESS: No.  
4 MR. PRAGER: How does it work?  
5 THE WITNESS: Basically what will happen is you  
6 will get \$7,500 indexed against company performance.  
7 MR. PRAGER: We'll assume that that stays at 100  
8 percent.  
9 THE WITNESS: Okay. And then you will not receive  
10 that check until the second year.  
11 MR. PRAGER: And then you get both?  
12 THE WITNESS: No. You just get one, the first  
13 half. And then the third year, you get the second half.  
14 MR. PRAGER: I think I understand. I'm not, still  
15 not quite sure but I'm sure that other witnesses will  
16 discuss this as well.  
17 THE WITNESS: Now once, once you get to a point  
18 where you've worked three years, okay, you will get a check  
19 because presumably, you will be getting grants every year  
20 and they will all be somewhere in that process of vesting  
21 and become payable. So if you look at for Laura Kirby-Meck  
22 for instance, if she was hired in 2011, she didn't get any  
23 LTIP cash and she would have gotten a small percentage,  
24 prorated percentage of her bonus. So if she had a salary of  
25 \$100,000 and she was in the 25 percent bracket and she got a

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1 \$25,000 bonus, okay, and she only worked half the year, then  
2 presumably, her bonus would be \$12,500.  
3 MR. PRAGER: I understand.  
4 THE WITNESS: Okay?  
5 MR. PRAGER: Mr. Johnson, I'm sorry to have  
6 interrupted you but I just did not understand and wanted to  
7 get that clarified.  
8 MR. JOHNSON: Yes, Your Honor. Thank you.  
9 THE WITNESS:  
10 BY MR. JOHNSON:  
11 Q Mr. Belfiore, I want you to look on Complainant's  
12 Exhibit No. 2 and find Mr. Ben Chudasama's salary for year  
13 2010.  
14 A Ben is the second name from the top. It's  
15 \$165,240.  
16 Q Now, I want you now to turn to Respondent's  
17 Exhibit No. 141 and find Ben Chudasama on the exhibit and  
18 determine his W-2 compensation.  
19 A For 2010, it's \$164,451.42.  
20 Q Now, is this accurate?  
21 MR. KAPLAN: Objection.  
22 MR. PRAGER: What's your objection?  
23 MR. KAPLAN: If it's accurate. How would he know  
24 if it's accurate?  
25 MR. PRAGER: Well, that's a --

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1 MR. KAPLAN: Based on -- I don't understand the  
2 question.  
3 MR. PRAGER: Well, you can find out in your  
4 recross, but I'll let him answer the question.  
5 BY MR. JOHNSON:  
6 Q Now --  
7 MR. JOHNSON: I'm sorry.  
8 MR. PRAGER: You can restate the question --  
9 MR. JOHNSON: Sure.  
10 MR. PRAGER: -- because I'm not sure --  
11 MR. JOHNSON: Yes, Your Honor.  
12 MR. PRAGER: -- has answered it yet.  
13 MR. JOHNSON: Yes.  
14 BY MR. JOHNSON:  
15 Q Now, the respondent's exhibit --  
16 MR. PRAGER: I thought you were going to ask him  
17 if it's accurate.  
18 MR. JOHNSON: Oh, I'm sorry. I thought, Your  
19 Honor --  
20 BY MR. JOHNSON:  
21 Q Mr. Belfiore, is that amount accurate?  
22 A Um, no. It's confusing. It's confusing from the  
23 standpoint that we know that Mr. Ben Chudasama's salary was  
24 \$164,587, we know that Mr. Chudasama was also a high-ranking  
25 employee with an LTIP of about 25 percent and presumably, I

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1 mean, an AIP of 25 percent and presumably, an LTIP unless  
2 there's some explanation as to why Mr. Chudasama did not  
3 have access to either his AIP or his LTIP. And I know I  
4 have a, an explanation for the LTIP. I'm not so sure what  
5 happened in regards to the AIP but the explanation may cover  
6 both in the same.  
7 In 2008 when the Chase Paymentech joint venture  
8 went away and so Merchant Link's employees were no longer  
9 leased employees, we had to convert onto J.P. Morgan Chase's  
10 human resources system and being a financial services  
11 company, being a bank, they had a very stringent onboarding  
12 process in regards to background checks, in regards to  
13 criminal background charges and those types of things and  
14 there were a number of employees that got let go from  
15 Merchant Link because either they had committed a trust  
16 crime or they had committed some type of crime and did not  
17 report it and those are against the rules of the J.P.  
18 Morgan's onboarding process.  
19 And Ben, not comfortable with his prospects, okay,  
20 moved off of the J.P. Morgan Merchant Link system until in  
21 2009, the system, the Merchant Link system came on board and  
22 then he came back to Merchant Link as an employee. He had a  
23 contractor status. Contractors were not subjected to the  
24 onboarding process. So Ben Chudasama, when he left the  
25 company, forfeited his rights to his LTIP grants so

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1 presumably, he would have to start again as if tier one so  
2 he probably didn't get any LTIP cash awards because of the  
3 deferred aspect of them. But that, that same set of  
4 circumstances may have precluded him from a bonus but if  
5 this is accurate and it was his W-2 wages, Ben did not get  
6 an AIP bonus and he did not get an LTIP award.  
7 MR. PRAGER: Let me insert myself once again.  
8 This 2010 exhibit, Complainant's No. 2, Mr. Johnson, could  
9 you just explain to me why there's no 2011 documentation or  
10 do you have 2011?  
11 MR. JOHNSON: No, Your Honor. We had 2008 and  
12 2010 were the two years that we had. This was a, as we  
13 testified yesterday, a report generated for Mr. Belfiore's  
14 group through Mr. Michael Krolick.  
15 MR. PRAGER: So this is not generated by Merchant  
16 Link.  
17 MR. JOHNSON: Well, that would be Merchant Link.  
18 Mr. Belfiore can answer that question.  
19 MR. PRAGER: All right.  
20 THE WITNESS: The reason that there's no 2011 is  
21 because there was a different CFO responsible for the budget  
22 so I did not get these work products because the budget was  
23 not mine to complete.  
24 MR. PRAGER: I understand that, but am I to  
25 understand that in discovery, there was no request for 2011

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1 data?  
2 MR. JOHNSON: Not for 2011. No, Your Honor.  
3 THE WITNESS: No. We requested it.  
4 MR. JOHNSON: In terms of we requested the, we did  
5 request from Michael Krolick the data and we received I  
6 believe the 401k information.  
7 THE WITNESS: We requested these specific reports.  
8 We didn't get them.  
9 MR. PRAGER: All right. Mr. Kaplan, can you  
10 enlighten us as to why there's no, nothing comparable to  
11 this 2010 report, 2011?  
12 MR. KAPLAN: I cannot at this time. I would have  
13 to look back at discovery. As you know, we sort of entered  
14 the case sort of after discovery closed so I'd have to see  
15 what was asked and I'd have to go through the records and I  
16 would just have to see that.  
17 MR. PRAGER: Right.  
18 MR. KAPLAN: I don't know.  
19 MR. PRAGER: Well, I think I would like to have  
20 you request Merchant Link to generate that and to submit it  
21 both to Mr. Johnson and for the record here.  
22 MR. KAPLAN: Sure.  
23 MR. PETESCH: So you're asking for, just to be  
24 clear, you're asking for a parallel document to this  
25 people's salary rates --

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1 MR. PRAGER: If one exists.  
2 MR. PETESCH: -- in 2011?  
3 MR. PRAGER: Yes. If one exists. And if not, to  
4 report back that it doesn't and perhaps explain why it  
5 doesn't. And if it exists in a different form that is not  
6 exactly the same way, let us know why. Mr. Johnson, I keep  
7 interrupting you so --  
8 MR. JOHNSON: No problem, Your Honor.  
9 BY MR. JOHNSON:  
10 Q Mr. Belfiore, turning your attention to  
11 Respondent's Exhibit 141 again, listed on the exhibit is Mr.  
12 Tim Kinsella. Do you see Mr. Kinsella?  
13 A Yes.  
14 Q And Mr. Kinsella has two years of income of which  
15 the 2011 income appears to be lower than the 2010. Can you  
16 explain, based on this chart, why that may be?  
17 A Mr. Tim Kinsella left the company in May of 2011.  
18 I should say Mr. Tim Kinsella resigned from the company in  
19 May of 2011.  
20 Q So does this chart reflect his full year's salary?  
21 A It cannot possibly.  
22 MR. PRAGER: Again, I'm going to interrupt a  
23 minute and ask Mr. Kaplan because there seems to be a  
24 discrepancy between what was just testified to. It says  
25 termed 3/26/2007. Is that a misprint with respect to Mr.

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1 Kinsella?  
2 MR. KAPLAN: We'll have to get back to you on  
3 that. I don't know off the top of my head.  
4 MR. PRAGER: All right. Would you please?  
5 MR. KAPLAN: I don't know. We can check.  
6 MR. PRAGER: Thank you. Mr. Johnson.  
7 MR. JOHNSON: Yes, Your Honor.  
8 BY MR. JOHNSON:  
9 Q Now, you stated that Mr. Kinsella resigned. Do  
10 you understand the circumstance under which he resigned?  
11 A Um, yes, I do.  
12 Q Can you state that for the Court?  
13 A Um, there had been questions about Mr. Kinsella's  
14 performance as indicated by the sales number and  
15 specifically, by not meeting those sales numbers as well as  
16 there was particular behavior by Mr. Kinsella that Dan, I  
17 and other folks felt was not becoming of someone of Mr.  
18 Kinsella's stature, so Mr. Lane had come to the conclusion  
19 in early 2011. It was his hope that Mr. Charron would have  
20 taken care of the problem prior to turning over the CEO  
21 position to him, but he was still undaunted in his desire to  
22 get rid of Mr. Kinsella.  
23 He consulted Harry Jones, he consulted myself and  
24 we talked about the best way of processing Mr. Kinsella out  
25 of the company. I suggested that we alert Tim that his

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1 performance was not acceptable, it wasn't helping us meet  
2 our growth targets for the company and to provide a  
3 performance improvement plan that would give him a  
4 reasonable number of months to raise the level to an  
5 acceptable level and apprising him that in the event that  
6 the behavior did not mesh with the expectation, that it  
7 could be cause for termination. Mr. Lane and Mr. Jones felt  
8 that offering Tim the opportunity to resign with a severance  
9 package or be terminated, it was either his choice.  
10 In the meantime, Mr. Kinsella obtained other  
11 employment and he elected for the severance agreement with  
12 Merchant Link. I don't know the specific terms of the  
13 severance but I do know that it reserved the right for him  
14 to say that he resigned from the company and that it  
15 refrained or had a mutual agreement for non-disparaging  
16 language one party against the other, and there was some  
17 monetary value to the agreement.  
18 MR. KAPLAN: We just went, may I, we just went  
19 through some of our discovery and a question was asked of us  
20 to provide all information about new hires from January 1st,  
21 2011 through December 31st, 2013, and that was provided to  
22 them.  
23 THE WITNESS: We asked for operating plans too.  
24 MR. PRAGER: Just a moment. You have it, Counsel  
25 to respond.

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1 MR. KAPLAN: Oh, okay.  
2 MR. PRAGER: But that wasn't my question. My  
3 question wasn't just new hires. It was about all employees.  
4 MR. KAPLAN: I understand that. I just wanted to  
5 bring that to your attention.  
6 MR. PRAGER: Mr. Johnson, do you have any reaction  
7 to what Mr. Kaplan just said?  
8 MR. JOHNSON: Yes, Your Honor. We actually didn't  
9 receive those documents that we requested in terms of  
10 production of documents, specifically the financial plan  
11 that has, Mr. Belfiore articulated that he had actually  
12 performed so there was no budget, salary budget for 2011  
13 that we received. We didn't receive that.  
14 MR. KAPLAN: I just, sorry. I just want this --  
15 MR. PRAGER: We'll deal with that later.  
16 MR. KAPLAN: Okay.  
17 MR. PRAGER: At the moment --  
18 MR. KAPLAN: No problem.  
19 MR. PRAGER: -- let's continue with the questions  
20 for the witness.  
21 BY MR. JOHNSON:  
22 Q Mr. Belfiore, I want you to look on Complainant's  
23 Exhibit No. 2 and look for the salary of 2010 for Mr. Jay  
24 Konar.  
25 MR. PRAGER: What page is that on, please?

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1 THE WITNESS: It's Exhibit 2 --  
2 MR. JOHNSON: Exhibit 2, very --  
3 THE WITNESS: First page.  
4 MR. JOHNSON: -- first page  
5 THE WITNESS: First page, about the eighth name  
6 down, network operations, \$134,550.01.  
7 BY MR. JOHNSON:  
8 Q Mr. Belfiore, I want you to compare that to the  
9 salary that's identified on Respondent's Exhibit 141 for the  
10 year 2010.  
11 A \$164,374.86.  
12 Q Now, is it your testimony today that that  
13 particular number on Respondent's Exhibit No. 141 includes  
14 Mr. Konar's AIP and LTIP award?  
15 A It is extremely doubtful that it includes an LTIP  
16 award. Mr. Konar was at least a grade 13. He would have  
17 received \$20,000 bonus, a 20 percent bonus. A 20 percent on  
18 136 is about \$27,000. That would explain the difference  
19 between the salary indicated on Complainant's Exhibit 2 and  
20 the amount shown on 141. There has to be a circumstance as  
21 to why Mr. Konar, who in 2010 should have been privy or  
22 entitled to an LTIP payment, he was hired in as a grade 12  
23 so he was eligible for the program so unless there is  
24 specific evidence that he did not receive a grant, there is  
25 no explanation as to why this number should be higher.

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1 Q Now, I want to turn your attention to  
2 Complainant's Exhibit No. 53.  
3 A Okay.  
4 MR. PRAGER: Just a moment. Mr. Johnson, you  
5 didn't introduce this yesterday. What are you responding to  
6 at this point in your, in your redirect?  
7 MR. JOHNSON: To the salary of, well, several  
8 individuals actually. The salary listed here and amounts  
9 that do not add up to what has been awarded. In fact, what  
10 has been awarded is substantially higher.  
11 MR. PRAGER: All right.  
12 BY MR. JOHNSON:  
13 Q Mr. Belfiore, looking at Complainant's Exhibit No.  
14 53, the very first page you should see the name Timothy J.  
15 Kinsella. Is that your page as well?  
16 A Yes.  
17 Q And can you tell the Court exactly what is, the  
18 very first page, page 53.  
19 A It is an award letter, long-term incentive plan,  
20 by Daniel J. Charron for Timothy Kinsella, award date being  
21 February 2010, the award value being \$80,000.  
22 Q And in helping the Court understand exactly how  
23 this particular amount is distributed, can you explain?  
24 A Um, if you look at the table, the \$80,000, it  
25 tells you that that's the first award year. The second

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1 award year, 50 percent vests and then the third award year,  
2 the first 50 percent is payable, second period, second 50  
3 percent vests.  
4 Q And is this amount added on top of the salary that  
5 they will receive in the year 20, for year 2011?  
6 A He would, he would have received \$40,000, not  
7 taking into account performance of the company, in actually  
8 2012.  
9 Q Are they reporting any income for Mr. Kinsella for  
10 2012 in respondent's exhibit?  
11 A No.  
12 Q Mr. Belfiore, I want to turn your attention to  
13 Respondent's Exhibit 141.  
14 MR. PRAGER: Mr. Johnson, were you introducing  
15 this, moving this exhibit in?  
16 MR. JOHNSON: Oh, yes, Your Honor. Complainant  
17 moving into evidence Complainant Exhibit No. 53.  
18 MR. PRAGER: You've only dealt with the first page  
19 of that or the first document so I'm going to make this 53A.  
20 MR. JOHNSON: 53A is fine, Your Honor.  
21 MR. PRAGER: All right. Just a moment. Any  
22 objection, Mr. Kaplan?  
23 MR. KAPLAN: No objection.  
24 MR. PRAGER: All right. What has now been marked  
25 as 53A, the 2010 award year agreement no. 002 for Mr.

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1 Kinsella is admitted as 53A.  
2 (Complainant's Exhibit No. 53A  
3 was received into evidence.)  
4 BY MR. JOHNSON:  
5 Q Mr. Belfiore, I'd like you to look at Respondent's  
6 Exhibit 141 and on Respondent's Exhibit 141, please identify  
7 the salary of Mr. Bill Gore in the year 2012.  
8 A 151,933.37.  
9 MR. KAPLAN: Objection.  
10 MR. PRAGER: What's your objection?  
11 MR. KAPLAN: Just to the term salary. This says  
12 total compensation chart.  
13 MR. PRAGER: All right.  
14 MR. KAPLAN: It's confusing if he changes those  
15 terms.  
16 BY MR. JOHNSON:  
17 Q Okay. The total compensation.  
18 A 153,993.37 total compensation.  
19 Q Now, I want you to turn your attention to Exhibit  
20 55 of the Complainant's binder.  
21 MR. KAPLAN: What was the exhibit?  
22 MR. JOHNSON: 55.  
23 MR. KAPLAN: Thank you.  
24 THE WITNESS: 55.  
25 BY MR. JOHNSON:

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1 Q Are you at Exhibit 55?  
2 A Board minutes?  
3 Q Yes. The Board minutes, yes.  
4 A Okay, yes.  
5 Q And I want you to find where it's been Bates  
6 Stamped at the bottom of the right-hand corner of the page,  
7 ML00091.  
8 A Okay. Approval of --  
9 MR. PRAGER: Just a moment, please. We'll go off  
10 the record for a moment.  
11 (Off the record.)  
12 (On the record.)  
13 MR. PRAGER: All right. We're back on the record.  
14 Mr. Johnson?  
15 MR. JOHNSON: Yes. There's a correction as to the  
16 location of the document we've identified as Complainant's  
17 Exhibit 55. We stated on the record that it was ML00091.  
18 In actuality, in the official copy that we submitted to the  
19 Court, it's actually ML000912.  
20 MR. PRAGER: We'll go off the record again.  
21 (Off the record.)  
22 (On the record.)  
23 MR. PRAGER: We'll go back on the record. Mr.  
24 Kaplan, did you --  
25 MR. KAPLAN: Yes. I'd like to object, just this

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1 seems to be outside the scope of the direct.  
2 MR. PRAGER: What is the relevance of this, Mr.  
3 Johnson given the objection?  
4 MR. JOHNSON: Actually, Your Honor, it is inside  
5 of the scope. It addresses the compensation that was listed  
6 in respondent's exhibit for Bill Gore. Respondent is  
7 offering this as being Bill Gore's compensation for 2012.  
8 For purposes, for the Court's purposes, we want to remove  
9 any confusion with regard to these numbers as put forth by  
10 the respondent.  
11 MR. PRAGER: All right. The objection is  
12 overruled. You may ask about this exhibit.  
13 MR. JOHNSON: All right.  
14 BY MR. JOHNSON:  
15 Q Mr. Belfiore, in front of you is Complainant's  
16 Exhibit No. 55. Do you recognize Complainant's Exhibit No.  
17 55?  
18 A Yes, I do.  
19 Q And in Complainant's Exhibit No. 55, in paragraph  
20 2, it states the election of chief officer. Is that the  
21 same that you have before you?  
22 A Yes, it does.  
23 Q And who does this particular exhibit recognize as  
24 being elected as chief officer?  
25 A The election of chief financial officer, William

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1 Gore.  
2 Q And in the very next paragraph, it states the  
3 salary of Mr. Gore. Can you state that for the record?  
4 A The Compensation Committee of the Board has  
5 recommended an annual base salary of \$215,000 for Mr. Gore  
6 for the calendar year 2012.  
7 Q Does this exhibit or does that amount in this  
8 particular exhibit, is that amount stated in Respondent's  
9 Exhibit No. 141?  
10 A No, it's not.  
11 Q And what is the amount stated in Respondent's  
12 Exhibit 141?  
13 A For 2012, Mr. Gore's realized salary was  
14 151,933.37.  
15 Q And would Mr. Gore receive an AIP percentage?  
16 A Yes.  
17 Q And to your knowledge, do you know what that AIP  
18 percentage would be?  
19 A Um, the Board minutes allude to it being revealed  
20 on Exhibit A but I don't see that Exhibit A was provided.  
21 MR. PRAGER: I have an Exhibit A. It's numbered  
22 ML000915 and it says AIP bonus, the name William Gore,  
23 target AIP bonus \$75,250. Have you found that?  
24 THE WITNESS: No, Your Honor.  
25 MR. JOHNSON: No.

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1 BY MR. JOHNSON:  
2 Q MR. Belfiore, basically --  
3 MR. PRAGER: Just a moment.  
4 MR. KAPLAN: I don't know what document you're  
5 referring to. I don't have it.  
6 MR. PRAGER: You don't have page 000915?  
7 MR. KAPLAN: No. What's the --  
8 MR. PRAGER: Well, it starts with the exhibit that  
9 Mr. Johnson has been asking about.  
10 MR. KAPLAN: Yes.  
11 MR. PRAGER: Which starts at 000912, 3, 4 and 5,  
12 13, 14, 15 follow that.  
13 MR. KAPLAN: Can I see what it looks like?  
14 MR. JOHNSON: I don't have it in --  
15 MR. KAPLAN: You don't have it.  
16 MR. JOHNSON: I don't have that copy either. I  
17 have the --  
18 MR. KAPLAN: I don't have it either.  
19 MR. JOHNSON: I found the exhibit page.  
20 MR. PRAGER: When we have a recess in a while, you  
21 can ask across the hall to have copies of this made for your  
22 purposes. Just believe me for the moment that it does  
23 indeed say, based on what I have in front of me, target,  
24 it's a two -- I'll read the whole thing. It says Exhibit A  
25 on one line. The next line is AIP bonus. Then there are

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1 boxes. One box is labeled name and underneath it is William  
2 Gore. Another box is titled target AIP bonus and underneath  
3 it is a box that says \$75,250. I think for purposes of  
4 examination and cross-examination, that should be sufficient  
5 for the present.

6 MR. JOHNSON: Thank you, Your Honor.

7 BY MR. JOHNSON:

8 Q Mr. Belfiore, is it your opinion that Respondent's  
9 Exhibit 141 is misleading as to compensation of employees at  
10 Merchant Link?

11 MR. KAPLAN: Objection to opinion. He's a fact  
12 witness. He doesn't get to offer opinions on documents.

13 MR. PRAGER: Well, he's talking about facts. He  
14 said that he has worked there, that he has compared what he  
15 has himself developed or had developed for 2010. He could  
16 perfectly well testify. You can find out, you can undermine  
17 his testimony by cross-examining him or by presenting  
18 evidence to the contrary. I overrule the objection.

19 THE WITNESS: With respect to trying to establish  
20 whether or not I was paid either higher or lower than the  
21 individuals indicated in the chart on 141, the chart is  
22 woefully ineffective and confusing.

23 BY MR. JOHNSON:

24 Q Mr. Belfiore, on cross, your relationship with Dan  
25 Charron was mentioned. Can you provide any type of

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1 testimony today that Dan Charron purposely refused to raise  
2 your salary?

3 MR. KAPLAN: Objection. Asked and answered by the  
4 Hearing Examiner. He had an opportunity to speak about Mr.  
5 Charron, the entire length of his employment. He answered  
6 that question pretty completely.

7 MR. PRAGER: He did, but I will allow the question  
8 as long as it's, the answer is short and specific as to  
9 specific instances. Would you restate your question?

10 BY MR. JOHNSON:

11 Q Mr. Belfiore, are you aware of any statement or  
12 anything in which Dan Charron has said that he did not want  
13 to give you a raise in your salary?

14 A I know of three instances. It was, it was  
15 communicated to me by Mr. Chris Justice that when he  
16 attempted to negotiate a more appropriate compensation  
17 package for me upon my promotion to chief operating officer  
18 in May of 2008, a promotion he approved, that he responded  
19 to Mr. Justice you can give him the money, or you can give  
20 him the job title, you can give him the responsibility but  
21 we won't give him the money.

22 MR. PRAGER: Okay. You've testified as to that.  
23 What's the second?

24 THE WITNESS: The second is in May of 2009 after  
25 accepting the interim CEO position, Mr. Charron came to my

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1 office and he gave me a \$15,000 raise and he told me if that  
2 wasn't enough, that I could leave. And the third is Mr.  
3 Lane apprised me of a conversation that he had with Mr.  
4 Charron that he felt that I was greedy but I had made a  
5 smart move by moving out of finance and into the operations  
6 group.

7 MR. PRAGER: Right. You're testified to that.  
8 It's just repetition as Mr. Kaplan said but there's no harm,  
9 so we'll just let it stand.

10 BY MR. JOHNSON:

11 Q Now, Mr. Belfiore, can you describe to the Court  
12 the relationship between Dan Charron and Dan Lane?

13 A Um, formally, Dan Lane reported to the Board of  
14 Directors. Dan Charron was largely responsible for Mr. Lane  
15 getting the promotion to chief executive officer of Merchant  
16 Link in February of 2011, February, March. Prior to that,  
17 as interim CEO, Mr. Lane, as with myself and Mr. Tim  
18 Kinsella, reported to Dan Charron as interim CEO. Prior to  
19 Chris Justice leaving, Dan Lane reported to Chris Justice  
20 and then formally, Chris Justice reported to Dan Charron.  
21 Dan Charron was at the point of the initial Merchant Link  
22 acquisition, I mean Chase Paymentech acquisition of Merchant  
23 Link and also, at the point of the acquisition of NXT and  
24 subsequent merger of NXT to Merchant Link. Um, he has  
25 always been kind of the one person that Dan Lane felt the

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1 need to answer to.

2 Q Ultimately, Mr. Belfiore, who was in control of  
3 your salary rates?

4 MR. KAPLAN: Objection. This should have been  
5 asked on direct. I don't know how this is related to my  
6 cross. Again, I think this is outside the scope.

7 MR. PRAGER: Mr. Johnson?

8 MR. JOHNSON: Yes, Your Honor. Counsel actually  
9 has brought up testimony regarding Dan Charron and Dan  
10 Charron's role and the fact that Dan Charron was at  
11 Paymentech before Merchant Link, so it is imperative that we  
12 make a distinction as to who actually controlled the  
13 approval of raises. Although Mr. Lane did it wrongfully,  
14 the ultimate approval was Dan Charron so we just want to get  
15 that on the record.

16 MR. PRAGER: All right. I'll allow the question.  
17 I see no harm in it and I think it certainly falls, if not  
18 directly on your cross, within the boundaries of anything I  
19 may have asked so, Mr. Johnson, restate your question,  
20 please.

21 BY MR. JOHNSON:

22 Q Mr. Belfiore, who was ultimately responsible for  
23 approving the raising of salary?

24 A Um, Dan Charron is responsible for my level of  
25 compensation at, while my tenure at Merchant Link.

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1 Q Now, Mr. Belfiore, Counsel introduced evidence of  
2 undermining. When, to your knowledge, when did the  
3 undermining of your authority occur?  
4 A Um, the actual undermining of my authority  
5 happened upon receiving the promotion to the service  
6 delivery department and the corporate officership. I was  
7 never given the proper pay nor the proper discretion to  
8 dispense my abilities for the time that I was approved by  
9 the Board to be the chief operating officer. I constantly  
10 brought these to Dan's attention. More pertinently in  
11 September and August of 2011 when I returned from hip  
12 surgery. I specifically said to Dan Lane I need to have a  
13 suitable compensation package, I need for you to prevent  
14 this undermining of my authority and I also need to have  
15 full latitude and license to dispense my responsibilities as  
16 the COO of this company.  
17 Dan Lane agreed, and then he did not do what he  
18 gave me his word that he would do. He did give me the raise  
19 that got retracted but I constantly brought to him e-mails,  
20 e-mails that Counsel provided as evidence today of  
21 undermining of my authority and I got little or no  
22 assistance from Mr. Lane as he assured me that I would. And  
23 it is because of that undermining of authority and  
24 continuing of the undermining of my authority that gave rise  
25 to the October 21st e-mail complaining about the treatment.

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1 Q Now, prior to your accepting the service delivery  
2 responsibility, who held that responsibility?  
3 A I never, I never accepted the service delivery  
4 responsibility.  
5 Q Were you director of service?  
6 A Oh, you mean, you mean control of the department,  
7 okay.  
8 Q Yes.  
9 A Dan Lane.  
10 Q Prior to you becoming COO, who was COO?  
11 A Dan Lane.  
12 MR. KAPLAN: I just want to object again to this  
13 line of questioning. It seems like it's out of the scope of  
14 my direct, I mean cross-examination. He identified people  
15 that he believed he was similarly situated to. He had an  
16 opportunity to go through that, these arguments, these  
17 questions and it seems like a lot of this is just repetitive  
18 or could have been asked before.  
19 MR. PRAGER: You may be technically correct but  
20 since this goes to the heart of one of the claims or could,  
21 it may even exonerate your client, I'll let the question  
22 stand. The question, I believe, was who was chief operating  
23 officer before you took over and I believe your answer was  
24 Mr. Lane, is that right?  
25 THE WITNESS: Dan Lane, yes.

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1 MR. PRAGER: Mr. Johnson?  
2 MR. JOHNSON: Your Honor, let me put on the record  
3 because once the Court reviews the record as to a response  
4 to what Counsel stated, Counsel actually stated Dan Lane was  
5 responsible for service delivery which prompted the  
6 question.  
7 BY MR. JOHNSON:  
8 Q Mr. Belfiore, Counsel asked you if you had said to  
9 Renee Dantzler the word fucking. Is that the type of  
10 language you use around your colleagues and employees?  
11 A No.  
12 Q On that particular day, did you actually say  
13 anything inappropriate to Ms. Dantzler?  
14 A No.  
15 MR. PRAGER: I don't understand. What's the word  
16 inappropriate?  
17 MR. JOHNSON: Inappropriate.  
18 MR. PRAGER: Are you talking about the use of  
19 expletives?  
20 BY MR. JOHNSON:  
21 Q Expletives, anything offensive, cursing. Anything  
22 inappropriate to Ms. Dantzler.  
23 A No.  
24 Q Now, Counsel also asked you about a statement you  
25 made to Ms. Dantzler about paying, paying it forward. Is

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1 that a common phrase you use with your employees?  
2 A Yes, it is. I mean, I constantly preached to my  
3 employees the value of teamwork, the value of helping each  
4 other out, helping and contributing to the common good. I  
5 go out of my way to help a number of employees and I helped  
6 a number of employees at Merchant Link, and a number of  
7 those employees have come to me and said hey, thank you, you  
8 know? Dan Lane himself, at a dinner with potential  
9 acquirers looked at me and said you know, you're a really  
10 good egg, and I sensed that sends to me that, you know,  
11 you're a kind of upstanding, honest guy and a good friend.  
12 And my response typically to all the people that I helped,  
13 and it's a lot of people, was that don't worry about it, pay  
14 it forward.  
15 Q I want to turn your attention to Complainant's  
16 Exhibit No. 19. Mr. Belfiore --  
17 MR. PRAGER: Just a moment. Go ahead, Mr.  
18 Johnson.  
19 BY MR. JOHNSON:  
20 Q Mr. Belfiore, do you see Plaintiff's Exhibit No.  
21 19?  
22 A Yes.  
23 Q Do you recognize Plaintiff's Exhibit No. 19?  
24 A Yes, I do.  
25 Q And what is Exhibit No. 19?

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1 MR. KAPLAN: Objection.  
2 THE WITNESS: Um --  
3 MR. KAPLAN: Objection.  
4 MR. PRAGER: Just a moment.  
5 BY MR. JOHNSON:  
6 Q Hold on.  
7 MR. PRAGER: What is the objection?  
8 MR. KAPLAN: This is dated 2006. I don't know  
9 what this has to do with this case at all. I certainly  
10 don't know what it has to do with redirect, but we are  
11 getting way off base here.  
12 MR. PRAGER: I thought he said, or did I  
13 misunderstand, this is your exhibit?  
14 MR. JOHNSON: Yes. Complainant's Exhibit 19.  
15 MR. PRAGER: I'm sorry. I was looking at the  
16 wrong -- I thought you said defendant's.  
17 MR. JOHNSON: Sure, Your Honor. I'm sorry if I  
18 might have, I thought I said complainant but.  
19 MR. PRAGER: I understand the objection. What is  
20 your answer to the objection?  
21 MR. JOHNSON: Your Honor, in cross-examination,  
22 Counsel made it a point to misconstrue what I believe the  
23 words of Mr. Belfiore as it relates to pay it forward and I  
24 think it would benefit the Court to have an understanding of  
25 just what Mr. Belfiore means and, when he says pay it

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1 forward. And this particular exhibit, particularly at the  
2 bottom of the page, exemplifies the attitude that Mr.  
3 Belfiore has towards his employees and it would support his  
4 testimony with regard to his approach to his employees.  
5 MR. PRAGER: Well, it might or might not but it's  
6 five years old at the time of this and people change. I  
7 think it's history and not terribly illuminating so the  
8 objection is sustained.  
9 BY MR. JOHNSON:  
10 Q Mr. Belfiore, you testified that you had a meeting  
11 with Ben Chudasama, and who was present at that particular  
12 meeting?  
13 A Um, I'm not going to be able to answer completely  
14 but it was Ben was on the phone working remotely, it was  
15 myself, it was Jomaine, it was Haq Subriul, it was, and I  
16 can't remember the names but it was Ben's project manager at  
17 the time, I cannot remember his name, and it was, I also  
18 believe O'Mead might have been there as well. These are a  
19 couple of the people that worked on, on Ben's staff.  
20 That's, that's best of my recollection.  
21 MR. PRAGER: And so I understand, do you, all of  
22 the people you've mentioned are on Chudasama's staff?  
23 THE WITNESS: With the exception of Haq and  
24 Jomaine who were on my staff.  
25 MR. PRAGER: All right. Thank you.

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1 BY MR. JOHNSON:  
2 Q And you said Ben's project manager, you mentioned  
3 Ben's project manager?  
4 A Yeah.  
5 Q Okay. And this particular meeting was just to  
6 discuss the CRM?  
7 A It was a normal kind of issue vetting type of  
8 meeting that I got on the agenda with the sole purpose of  
9 trying to build consensus around core competency of the  
10 system.  
11 Q Mr. Belfiore, turn your attention to the job  
12 applications mentioned by Counsel.  
13 MR. PRAGER: All right. We're going to go off the  
14 record for a moment.  
15 (Off the record.)  
16 (On the record.)  
17 MR. PRAGER: We're back on the record. Mr.  
18 Johnson? MR. JOHNSON: Thank you, Your Honor.  
19 BY MR. JOHNSON:  
20 Q Mr. Belfiore, can you discuss with the Court the  
21 job application process you went through?  
22 A Yes. The first thing I did was I canvassed my  
23 network and an opportunity for a job came up for RCN. They  
24 wanted to start to build out a payments platform in  
25 Charlotte, North Carolina. I got a call from a recruiter

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1 and then I got forwarded to a consultant who was helping  
2 this particular recruiter or company find suitable talent  
3 who requested my resume for discussion. That process lasted  
4 for about three weeks, a number of conference calls, phone  
5 calls and those types of things. The process resulted in no  
6 offer and there was no application filled out but it was an  
7 application for a job. I was applying for the job and they  
8 recognized me as applying for the job.  
9 The second thing I did was I went to employment  
10 agencies, Kforce, Rose Financials, not to fill out a job  
11 application for a job per se but to fill out a job  
12 application so they could go out and look for suitable jobs  
13 based on my experience and information. Those jobs did  
14 result in one particular interview with a small company in  
15 Rockville. I interviewed with the, with the company for a  
16 week, week-and-a-half. It resulted in no offer. They did  
17 not ask me to fill out an application beyond that which I  
18 filled out for Rose Financial Services.  
19 The last step in my job search process was to  
20 enlist in TheLadders.com for six figure type jobs. They  
21 require you to fill out a profile. They send you,  
22 electronically, job openings. Typically, the process for  
23 applying to those job openings is sending your resume and  
24 you have the option of a cover letter. There is no  
25 requirement to fill out an application, okay? They send you

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1 back a remittance saying here's your application, here's the  
2 resume you sent, here's the cover letter, here's the  
3 responsibilities of the job and if you're requirements or  
4 the requirements of the job fit your skill set, then expect  
5 a call from the recruiter and/or the hiring manager.  
6 Q And did you get any interviews?  
7 A I did. I got interviews at Sage. Sage  
8 interviewed me on the basis of the resume that I submitted.  
9 They never asked me to fill out a job application.  
10 Typically, my experience, professionally, has been job  
11 applications are not usually filled out until offers are  
12 made. It's different. It's not the 1950s where you get the  
13 want ads and you walk down the street and you sit in a job  
14 and you sign your application and you hope they call you  
15 back. It doesn't work that way in the electronic world.  
16 It's all done on job board and all that type of thing, and  
17 nobody wants to invest the time of you signing an  
18 application or that type of thing before they feel they have  
19 an interest in talking to you so there, there is, by design,  
20 a reason that there aren't the formal traditional  
21 applications that Counsel was looking for but that does not  
22 discount the level of effort that I put in a job search  
23 because frankly, I need a job so it wasn't, it wasn't in my  
24 best interest to sit around and not aggressively pursue a  
25 job.

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1 Q And what's the total number of applications you  
2 believe you submitted?  
3 A After going through the mailbox of where I  
4 catalogued all of the correspondence pertaining to my job  
5 search and eliminating redundancy, um, it was 700 and  
6 something, some odd job applications, not materially  
7 different than the 810 estimate that I gave prior.  
8 Q Now, you also mentioned or you discussed the  
9 October 25th, 2011 e-mail where you were informed that they  
10 were reviewing your file in consideration of a raise. When  
11 I say they, I'm talking about the Compensation Committee,  
12 the Board. Did the Board ever reach a decision?  
13 A Um, none that was communicated to me. The  
14 interesting thing about the October 25th e-mail was that the  
15 Board's decision had changed from correcting a salary  
16 discrepancy to me having to prove that I, that I should get  
17 the raise. I didn't understand that but the Board, Dan  
18 Charron had communicated that they had made a mistake in  
19 regards to my pay grade. It wasn't commensurate with my  
20 title. It follows fairly closely that if you made a mistake  
21 with my pay grade, you made a mistake with my salary. I was  
22 certainly entitled to some retroactive relief in regards to  
23 the mistake. That wasn't addressed but now it seems I  
24 needed to justify a raise that my promotion justified three  
25 years prior. Um, that, to me, started to convey that there

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1 was no raise forthcoming.  
2 Q And finally, Mr. Belfiore, I know you've been on  
3 the stand quite a while, there has been an inquiry as to the  
4 role of objective racism in this particular case. Did you  
5 bring this case because somebody said a racial epithet  
6 towards you?  
7 A No. I brought this case under the intent of the  
8 Montgomery County Code, okay, that outlaws disparate  
9 treatment, okay, for discriminatory reasons and  
10 understanding that the law works, that if Merchant Link can  
11 provide a legitimate nondiscriminatory reason for why I was  
12 not paid, why my pay grade was not what it was supposed to  
13 be, why a bunch of people made more money than me, then we  
14 would not be here to this date. And I waited for three  
15 years for Merchant Link to articulate to me a rationale,  
16 legitimate, nondiscriminatory reason as to why I was not  
17 paid or treated as an officer of the company, a position  
18 that I fulfilled and earned.  
19 MR. JOHNSON: No further questions, Your Honor.  
20 MR. PRAGER: All right. Mr. Kaplan?  
21 RECROSS-EXAMINATION  
22 BY MR. KAPLAN:  
23 Q If Bill Gore worked half a year on his, on that  
24 141, it wouldn't have his entire compensation, correct?  
25 A Correct.

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1 Q So if it says on the Board minutes he's owed  
2 \$200,000, for example, and it says on the sheet he earned  
3 \$151,000 and only worked six or seven months, that could  
4 very well be accurate.  
5 A The number, the number is accurate.  
6 Q Okay. Thank you. AIPs are generally given in  
7 January, February of the next year, correct?  
8 A Correct.  
9 Q Right. So then those, that part of the  
10 compensation would be then given the next year. Just  
11 because someone is owed it in 2011 --  
12 A Correct.  
13 Q -- it would actually be on the W-2 for the next  
14 year, correct?  
15 A Correct.  
16 Q Thank you. And given the compensation structure  
17 at Merchant Link and you have the LTIP grants going for a  
18 couple of years, would you agree that in order to actually  
19 compare what one person is making with what somebody else is  
20 making, you'd really have to compare all three, AIP, salary  
21 and LTIP grants?  
22 A Correct.  
23 MR. KAPLAN: I have no further questions.  
24 MR. PRAGER: All right. I have only one because  
25 I'm not quite clear. Have you had any employment since

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1 November of 2011?  
2 THE WITNESS: No, Your Honor.  
3 MR. PRAGER: All right. At this point, we will go  
4 off the record.  
5 (Off the record.)  
6 (On the record.)  
7 MR. PRAGER: Mr. Belfiore, that seems to be the  
8 end of the questioning for you. You may be recalled by your  
9 counsel obviously for rebuttal testimony later and at that  
10 point, you will still be under oath but you are excused at  
11 this point from further testimony today.  
12 THE WITNESS: I understand. Thank you.  
13 MR. PRAGER: Thank you. We'll go off the record.  
14 (Whereupon, at 2:44 p.m., a brief recess was  
15 taken.)  
16 MR. PRAGER: All right. We'll go back on the  
17 record. During the recess, I had copies made for Counsel  
18 who were missing a page of exhibit, Complainant's Exhibit  
19 55. It was page ML000915. I now distributed that page to  
20 both counsel. And so that the record will be clear, the  
21 only part of Exhibit 55 that has been entered will be  
22 entered into the record are the four pages that start on  
23 ML000912 and go through 000917. That's the complete  
24 document, and it has to do with the action of the Board of  
25 Managers taken to be effective on May 16th, 2012. That's at

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1 the top of the first, in the first paragraph of that page  
2 ML000912 for identification purposes. And that will be now  
3 labeled as Exhibit 55A and as that number, it will be  
4 entered into the record.  
5 (Complainant's Exhibit No. 55A  
6 was received into evidence.)  
7 MR. PRAGER: All right, Mr. Johnson. You may call  
8 your next witness.  
9 MR. JOHNSON: Your Honor, the complainant calls to  
10 the stand Mr. Christopher Justice.  
11 MR. PRAGER: Mr. Justice, will you come up here  
12 please and have a seat at the far end of this desk.  
13 MR. PETESCH: And, Mr. Prager, this will be my  
14 witness in terms of as between Mr. Kaplan and myself.  
15 MR. PRAGER: All right. Mr. Justice, would you  
16 please raise your right hand?  
17 MR. PETESCH: Yes, sir.  
18 (Witness sworn.)  
19 MR. PRAGER: Would you state your full name?  
20 MR. PETESCH: Christopher Justice.  
21 MR. PRAGER: All right. Mr. Johnson.  
22 MR. JOHNSON: Yes.  
23 DIRECT EXAMINATION  
24 BY MR. JOHNSON:  
25 Q Good afternoon, Mr. Justice. Could you state your

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1 address for the record, please?  
2 A 337 Greyhaven Lane, Marietta, Georgia 30068.  
3 Q And how long have you been at this address?  
4 A A year-and-a-half.  
5 Q And what was your previous address?  
6 A 1217 Lexham Drive, Marietta, Georgia 30068.  
7 Q Now, Mr. Justice, what is before you is the  
8 complainant's binder. It's the white binder in front of  
9 you, very large.  
10 A Okay.  
11 Q If you will, please turn to what has been  
12 identified, marked for identification as Complainant's  
13 Exhibit No. 38.  
14 A Do I need the black one at all?  
15 Q No. Not right now.  
16 A Okay. And where did you want me to --  
17 Q Plaintiff's Exhibit No. --  
18 MR. PRAGER: Hold on, Mr. Justice.  
19 THE WITNESS: Yes, sir.  
20 MR. PRAGER: All right, Mr. Johnson.  
21 BY MR. JOHNSON:  
22 Q Yes.  
23 MR. PETESCH: And, Your Honor, we have an  
24 objection. This has been called the affidavit of Chris  
25 Justice. It's always been my understanding that we use our

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1 court declarations and such possibly for impeachment  
2 purposes, but it would appear as if we have a live witness  
3 so I have an objection as to the document.  
4 MR. PRAGER: But I don't understand your document.  
5 He's going to testify, presumably, that the things he says  
6 in here are what he believes and he's going to be questioned  
7 about some of the statements he makes so I don't understand.  
8 The document itself has not been introduced into evidence.  
9 We're talking at this point about using it as perhaps to, to  
10 remind him of what he said back on July 20th, 2012 which was  
11 quite a while ago. I can't remember what I did yesterday.  
12 So your objection is overruled.  
13 MR. PETESCH: Thank you.  
14 MR. PRAGER: Mr. Johnson.  
15 THE WITNESS: So where am I going again? I'm  
16 sorry.  
17 BY MR. JOHNSON:  
18 Q To Complainant Exhibit No. 38.  
19 A Okay.  
20 Q Now, this is --  
21 A Is it okay if I swap chairs?  
22 MR. PRAGER: Yes. We'll go off the record for a  
23 moment.  
24 THE WITNESS: Okay.  
25 (Off the record.)

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1 (On the record.)  
2 MR. PRAGER: All right. We're back on the record.  
3 BY MR. JOHNSON:  
4 Q Mr. Justice, do you recognize Complainant's  
5 Exhibit No. 38?  
6 A Yes, sir. This is the affidavit that we wrote  
7 after I had had a conversation I guess with somebody at your  
8 office.  
9 Q And, Mr. Justice, can you state where you attended  
10 college?  
11 A The University of Tennessee.  
12 Q And did you earn a degree?  
13 A Yes. A bachelor of arts of economics.  
14 Q And when did you earn your degree?  
15 A 1990.  
16 Q And can you describe your, your employment after  
17 you earned your degree?  
18 A Um, well, my employment. So primarily, I've been  
19 in the payments industry for the last 18 plus years,  
20 primarily on the acquiring and integrated payments side of  
21 the business which is part of the reason that, or part of  
22 the expertise that led me to Merchant Link.  
23 Q And were you ever employed by Merchant Link?  
24 A Yes. I was the president of Merchant Link.  
25 Q And how did you come to be employed by Merchant

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1 Link?  
2 A I ran national accounts for a company called First  
3 Data which is one of the parent companies to, at the time it  
4 was a parent company of Paymentech and I was asked by Mike  
5 Duffy and Dan Charron to come over to lead the company.  
6 Q How long were you employed by Merchant Link?  
7 A From 2005 to -- I'm sure, let's see. It probably  
8 says in here. Yeah. December 2005 to March 2009.  
9 Q And was chief executive officer the only position  
10 you held at Merchant Link?  
11 A I started out as the president of the company. We  
12 were a wholly-owned subsidiary of Chase Paymentech and along  
13 about 2008, if I remember correctly, the, we were being put  
14 on the block as a private equity spin-off and that deal  
15 failed and at that point, the company was then becoming a  
16 joint venture of First Data and J.P. Morgan Chase and so I  
17 became the CEO of the joint venture.  
18 Q And what was your salary while at Merchant Link?  
19 A Um, I went back and looked it up. I think, did I  
20 not put it in here? Yes. It was \$225,000 plus a bonus of  
21 \$35,000, and then a long term incentive program which was  
22 \$200,000 a year.  
23 Q And can you describe for the Court your job duties  
24 as the president of Merchant Link?  
25 A Well, fundamentally, I had responsibility for the

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1 whole company so from human resources to technology to  
2 operations, product sales, marketing, everything. So full  
3 P&L responsibility.  
4 Q How did you come to know the complainant Erik  
5 Belfiore?  
6 A Erik was responsible for the financial operations  
7 of the business when I joined the company.  
8 Q And did you get an opportunity to assess his work  
9 performance?  
10 A Frequently. Certainly on an annual basis but more  
11 of my style is to appraise people as we're going along just  
12 to make sure that by the end of the year when those annual  
13 performance reviews go along that, you know, there are no  
14 surprises.  
15 Q What was your initial assessment of Erik Belfiore?  
16 A Um, I thought Erik was a very capable, very  
17 capable guy. Anytime I needed anything from a financial  
18 perspective, I looked to Erik to be able to deliver  
19 financial models, analysis, be able to bounce ideas off of  
20 Erik and help me develop the strategies that we needed to  
21 make the business successful.  
22 Q And did you come to know also Mr. Dan Lane?  
23 A Absolutely.  
24 Q And what position did Dan Lane hold?  
25 A Dan was CTO or CIO. I can't remember the exact

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1 title.  
2 Q And --  
3 MR. PRAGER: Excuse me.  
4 THE WITNESS: Yes, sir.  
5 MR. PRAGER: What would CTO be?  
6 THE WITNESS: Chief technology officer or chief  
7 information officer.  
8 MR. PRAGER: All right. Thank you.  
9 BY MR. JOHNSON:  
10 Q All right. On to marked for identification, what  
11 has been previously marked as Complainant's Exhibit No. 5.  
12 MR. PRAGER: Just a moment. That exhibit is  
13 already in the record.  
14 MR. JOHNSON: Yes, Your Honor. And actually, Your  
15 Honor, complainant moves into evidence Complainant's Exhibit  
16 No. 38.  
17 MR. PETESCH: Objection. No foundation for  
18 recollection refreshed or it's hearsay. We have a live  
19 witness, so that's the objection.  
20 MR. PRAGER: Well, the objection will be  
21 overruled. It is what it is and you can cross-examine the  
22 live witness about anything that it says in that document or  
23 that he testifies to, so the objection is overruled.  
24 Complainant's Exhibit 38 will be admitted.  
25 (Complainant's Exhibit No. 38

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1 was received into evidence.)  
2 MR. PRAGER: Mr. Johnson?  
3 MR. JOHNSON: Yes, Your Honor. Thank you.  
4 BY MR. JOHNSON:  
5 Q Mr. Justice, are you familiar with Plaintiff's  
6 Exhibit No. 38?  
7 A Yes, sir. This was a document --  
8 MR. PRAGER: I'm sorry. Did you say 38?  
9 MR. JOHNSON: I'm sorry. Plaintiff's Exhibit 5.  
10 MR. PRAGER: Right.  
11 THE WITNESS: Oh, okay.  
12 MR. JOHNSON: I'm sorry. I said 38.  
13 THE WITNESS: Yes. This was a document that, or  
14 part of a document that we created for the sale of the  
15 business to private equity in 2008 I believe.  
16 BY MR. JOHNSON:  
17 Q And in this particular document, you identify the  
18 senior management team. Are there any other corporate  
19 officers identified other than Dan Lane and Erik Belfiore?  
20 A Are there any other -- well Tim Kinsella is on  
21 here.  
22 Q Is he a corporate officer or is he a director or  
23 executive?  
24 A Oh, he was part of the executive team but not as  
25 far as the actual officers in the company.

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1 Q Now, Erik Belfiore's title on this particular  
2 document says chief operating officer. Was he held out as  
3 any other type of officer for the company?  
4 A He was one of the, he was on the, he was one of  
5 the corporate officers as we were spinning the company off.  
6 Q And at times, was he referred to as the chief  
7 finance officer?  
8 A Correct. Well, he was the chief financial officer  
9 prior to me promoting him to the COO. I wouldn't say it's a  
10 promotion. It was more of a movement of him out of the  
11 financial operations into the overall operations because  
12 part of the goal of what I was trying to do was to help  
13 groom Erik to be my successor. So part of that was to give  
14 him the additional information, additional background and  
15 expertise that he needed to be part of that process.  
16 Q Now, did Dan Lane get any consideration to be your  
17 successor as well?  
18 A He did. Yeah. I actually had a conversation with  
19 Dan about, had conversations with Dan and Erik both about,  
20 about those roles and at the time, Dan didn't want to take  
21 that, take that move. He was comfortable in the position  
22 that he was in.  
23 Q In terms of status in the organization, would Dan  
24 and, Dan Lane and Erik Belfiore be on the same level?  
25 A Absolutely.

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1 Q In terms of their job duties, can you describe  
2 their job functions in terms of similarities?  
3 A Well, in terms, so in terms of similarities. So  
4 both of which I think had critical roles in the company in  
5 terms of Dan really owned the, really the IT side of the  
6 house, everything from development, product, all of the  
7 technology infrastructure. Erik initially owned the  
8 financial operations and then moving into the COO role, took  
9 over the implementation, the implementation group, call  
10 center, basically the operations components of the business.  
11 Both had a significant percentage of the employee base  
12 reporting in to them.  
13 MR. JOHNSON: At this time, the complainant wishes  
14 to identify what has been previously marked as Complainant's  
15 Exhibit No. 6 and, Your Honor, it also has already  
16 previously been admitted into evidence.  
17 MR. PRAGER: Go ahead.  
18 BY MR. JOHNSON:  
19 Q Mr. Justice, right before you is Complainant's  
20 Exhibit No. 6. Do you recognize Complainant's Exhibit No.  
21 6?  
22 A It looks like a Board meeting minute or Board  
23 minutes.  
24 Q And can you identify for the Court the date of the  
25 Board meeting minutes?

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1 A December 4th, 2008. So this would have been  
2 immediately, the first or second Board meeting right after  
3 we were spun out of being a wholly-owned subsidiary of Chase  
4 Paymentech to be a, to be the joint venture between J.P.  
5 Morgan and First Data.  
6 Q Now, is it the Board's sole authority to elect  
7 corporate officers?  
8 A Correct. I have no jurisdiction to be able to  
9 elect officers nor to be able to, frankly, determine what  
10 the compensation was for any of my direct reports.  
11 Q Now, must the election of corporate officers be  
12 approved by the Board?  
13 A Correct.  
14 Q Is it the Board's sole province to terminate  
15 corporate officers?  
16 A Yes.  
17 Q Now, must the termination of corporate officers be  
18 approved by the Board?  
19 A Correct. It's a Board decision.  
20 Q Now, in this particular exhibit, on page 3 of 5,  
21 do you recall Mr. Belfiore being made an officer of Merchant  
22 Link?  
23 A Absolutely. It was discussed at the Board meeting  
24 and approved by the Board as was Dan Lane.  
25 Q Now, pursuant to Mr. Belfiore being elected to the

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1 Board, was there, to your knowledge, an increase in his  
2 salary?  
3 A Not that I recall.  
4 Q Did you ever request an increase in his salary?  
5 A On several occasions. So as I had stated a few  
6 minutes ago, the, I didn't have the capability or the  
7 authority to make changes to my direct reports. All of  
8 those changes had to be submitted in writing and then  
9 approved, well, post-separation by the Board. Prior to that  
10 had to be approved by Dan Charron and the folks at  
11 Paymentech.  
12 Q And when you made the request to increase Mr.  
13 Belfiore's salary, what was Mr. Dan Charron's response?  
14 A Well, it was, there were numerous times when I had  
15 asked to right size Erik because frankly, he was, his  
16 compensation level compared to the rest of his peer group,  
17 as well as the rest of my direct reports, was significantly  
18 out of whack so I made those requests initially to Dan  
19 Charron and Mike Duffy at Chase Paymentech, and those  
20 requests typically were denied stating a corporate policy  
21 was that no one would ever get more than 10 percent increase  
22 in their compensation.  
23 Q Now, have you ever seen that policy in writing?  
24 A I don't recall if I've seen it in writing.  
25 Q Upon Mr. Belfiore's promotion to corporate

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1 officer, was there a change in his compensation grade level?  
2 MR. PRAGER: I'm not sure I understand the  
3 question. Maybe the witness does.  
4 THE WITNESS: Well, I can --  
5 MR. PRAGER: Is --  
6 THE WITNESS: Would you like me to explain?  
7 MR. PRAGER: Is it the grade level that you're  
8 asking about?  
9 MR. JOHNSON: Yes. The grade level. I said  
10 compensation grade level. Grade level.  
11 THE WITNESS: So there were, so what the,  
12 fundamentally what those differences were, titles could  
13 change but the grade of the job may stay the same from, I  
14 guess that's an HR policy bucket if you will. So by not  
15 changing the grade level, the band within, the compensation  
16 band would remain the same, so somebody might have a title  
17 but still stay within that band so it would get to the next  
18 band is when their compensation could theoretically get  
19 higher.  
20 I don't recall any change in grade level from a  
21 Chase Paymentech perspective. If that occurred, I don't  
22 know. Dan's, Dan Charron, excuse me, Dan Charron's typical  
23 response was it wasn't his fault if Erik signed up for a  
24 lower pay grade starting out, that company policy was the 10  
25 percent increases and that was all there was to it.

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1 BY MR. JOHNSON:  
2 Q I would like to turn your attention to what has  
3 been marked for identification as Complainant's Exhibit No.  
4 13.  
5 MR. JOHNSON: And, Your Honor, Complainant's  
6 Exhibit No. 13 was also previously admitted.  
7 BY MR. JOHNSON:  
8 Q Mr. Justice --  
9 MR. PRAGER: Before you --  
10 MR. JOHNSON: Sure.  
11 MR. PRAGER: -- do that, can you remind me, Mr.  
12 Petesch, see if he agrees, did we ever establish the date of  
13 this document?  
14 MR. PETESCH: I don't believe so.  
15 MR. JOHNSON: No, Your Honor. We didn't establish  
16 the date of this document.  
17 MR. PRAGER: Okay. Maybe that's one of the first  
18 questions you want to ask.  
19 MR. PETESCH: And I would just --  
20 MR. PRAGER: Maybe Mr. Justice knows.  
21 MR. PETESCH: I would further note, Your Honor,  
22 that it doesn't bear a Merchant Link Bates Stamp from our  
23 productions.  
24 MR. PRAGER: Okay. Well, we can talk about that.  
25 It's now in the record. It was introduced yesterday. It's

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1 part of the record. If you have questions for Mr. Justice  
2 about it, you may, you may talk about it but at the moment,  
3 it's in here. Mr. Justice, let me ask the question. Do you  
4 have any idea of the date of this document? Have you ever  
5 seen it before?  
6 THE WITNESS: I don't know if I've seen this one  
7 specifically but it's in the format of a Chase Paymentech HR  
8 document that outlines the grade levels for the various  
9 positions and the salary bands of each of those positions.  
10 Typically, these documents were listed by city, state or  
11 jurisdiction to be able to provide variances in cost of  
12 living, so there would have been one for Dallas, one for  
13 Tampa, one for Silver Spring as being the main offices and  
14 there may have been other, well, probably another one for  
15 Canada.  
16 MR. PRAGER: Mr. Johnson?  
17 MR. JOHNSON: Yes. Thank you, Your Honor.  
18 BY MR. JOHNSON:  
19 Q Mr. Justice, in Complainant's Exhibit No. 13, at  
20 the top of the chart, you see, do you see a city identified?  
21 A Correct. Silver Spring.  
22 Q And this would be reflective of a grade scale for  
23 the Silver Spring office, correct?  
24 A Well, this applied to all Merchant Link employees  
25 whether they were in Colorado or Silver Spring or wherever.

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1 Q Mr. Justice, according to the first column, that  
2 is the grade column, is there a designation for corporate  
3 officer?  
4 A Well, there's a CO level, yes.  
5 Q And if any person who is an actual corporate  
6 officer, should they receive a corporate officer grade  
7 level?  
8 A Typically, yes.  
9 MR. JOHNSON: Your Honor, we want to move to what  
10 has been previously identified as Complainant's Exhibit No.  
11 15.  
12 MR. PRAGER: It's not only been identified but it  
13 is part of the record.  
14 BY MR. JOHNSON:  
15 Q Mr. Justice, do you recognize Complainant's  
16 Exhibit No. 15?  
17 A Yes. This was the document that I created to  
18 provide to the executive team upon my departure from the  
19 company to align all of the various initiatives and things  
20 that I was working on that needed somebody's attention to  
21 make first move transition.  
22 Q I notice the very first category, you mention Best  
23 Buy. Specifically what were you identifying when you said  
24 Best Buy?  
25 A We had secured a very large piece of business with

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1 Best Buy that increased the company's eVida significantly  
2 and it was one of those accounts that I was intimately  
3 involved with the executive team at Best Buy, and so this  
4 was really the talk about all of the various things that we  
5 were doing with them in preparation for the next phases of  
6 that particular launch.  
7 Q Did Mr. Belfiore play a role in the Best Buy  
8 account?  
9 A Oh, absolutely. Um, Erik was primarily with me  
10 arm and arm in terms of helping to develop the strategy, all  
11 of the financial modeling, the go-to market pricing, you  
12 know, how we were going to go through and model out the  
13 staffing and the various pieces of technology that we were  
14 going to need in order to support it.  
15 Q Now, down the page of this first page, there's a  
16 category entitled finance.  
17 A Yes, sir.  
18 Q And can you describe to the Court exactly what  
19 this category entails?  
20 A Well, this was again post, this was post-  
21 separation or this was after forming the joint venture  
22 between J.P. Morgan and First Data. I had already moved  
23 Erik out of the CFO role into the COO role and we had begun  
24 a search for a replacement to CFO to take over that, take  
25 over that role. We had had a couple interviews and weren't

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1 successful at filling that position at that time.  
2 Q Now, did Erik Retain, Mr. Belfiore retain some of  
3 the responsibilities of the CFO?  
4 A Much to his chagrin, yes.  
5 Q Can you turn to the next page of Exhibit 15?  
6 A Okay.  
7 Q Now, down to the bottom of the page, there is a  
8 category entitled risks.  
9 A Yes, sir.  
10 Q And can you describe to the Court exactly what  
11 that means?  
12 A Well, risks just in terms of what are some  
13 challenges with the business that are going to create  
14 vulnerability either economic or with, certainly in the case  
15 of compensation here, relative to HR issues as well.  
16 Q Now, were there specific risks with regard to Mr.  
17 Belfiore that you were concerned about?  
18 A Well, I was in the fact that fundamentally, his  
19 compensation was dramatically different than the rest of the  
20 senior team. It was conversation that I had been having not  
21 only with the Board but with the leadership of Chase  
22 Paymentech prior to the separation.  
23 MR. JOHNSON: Your Honor, the complainant would  
24 like to mark for identification what is identified as  
25 Complainant's Exhibit No. 16.

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1 MR. PRAGER: You don't need to mark it. It's  
2 already in the record.  
3 MR. JOHNSON: It's already in the record.  
4 MR. PRAGER: Just a moment, please. I'm sorry,  
5 Mr. Justice. I got distracted. You used the phrase  
6 dramatically what with respect to Mr. Belfiore's  
7 compensation?  
8 THE WITNESS: Oh, it was just dramatically  
9 different than --  
10 MR. PRAGER: Different.  
11 THE WITNESS: -- the rest, right. The, I think  
12 the, certainly the base compensation, annual bonus as well  
13 as the long-term incentive programs were significantly  
14 disproportionate.  
15 MR. PRAGER: Thank you.  
16 THE WITNESS: Yes, sir.  
17 BY MR. JOHNSON:  
18 Q Mr. Justice, in front of you is Complainant's  
19 Exhibit No. 16. Do you recognize this document?  
20 A Yes. This is a document to effectively announce a  
21 variety of changes that were, we were undergoing in the  
22 business with the departure of Jeff Krieg and Alicia Hanson.  
23 Q And in this document, did you assign new roles and  
24 obligations for the corporate officers, Erik Belfiore and  
25 Dan Lane?

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1 A So with, so in here with -- so Dan had then  
2 responsibility for product development, really the network  
3 operations as well as the IT support of the business and  
4 from a service delivery perspective, that's the COO role,  
5 Erik took over then the call center, the implementation  
6 team, I guess you would call it the technical help desk as  
7 well as some of the financial research that had to be done  
8 in the business perspective.  
9 Q And if you will, turn to the next page, please. I  
10 guess the last page of the exhibit.  
11 A The last page, okay.  
12 Q And at the bottom of the page, you see an  
13 organization chart. Is that clear for you?  
14 A Yes, sir.  
15 Q Now, at the top of the chart, I see that you're  
16 the CEO so you're at the top of the chart. The very next  
17 level, would that represent the corporate officers?  
18 A No. It just, that represented the folks that were  
19 directly reporting to me so there were, we had a number of  
20 people that were on the, part of my direct reports that I  
21 would also have as a part of the executive team for weekly  
22 meetings but fundamentally, Dan and Erik were the only two  
23 corporate officers.  
24 Q And I guess by corporate, by direct reports,  
25 individuals such as Tim Kinsella, just was that a matter of

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1 convenience to make him a direct report?  
2 A No. Sales is one of my things so I kept sales and  
3 marketing as something I wanted to focus on and wanted a  
4 heavier hand in.  
5 Q Now, I want to turn your attention to what has  
6 marked for identification as Complainant's Exhibit No. 20.  
7 MR. PRAGER: Just a moment. All right. This  
8 document is not yet in the record but you can ask him about  
9 it.  
10 BY MR. JOHNSON:  
11 Q Mr. Justice, do you recognize Complainant Exhibit  
12 No. 20?  
13 A Yes. This is one of the annual reviews for Mr.  
14 Belfiore.  
15 Q And is this a review that you performed on Mr.  
16 Belfiore?  
17 A Correct. Yes.  
18 Q And was it your sole responsibility and province  
19 to perform reviews on Mr. Belfiore?  
20 A Yes, sir.  
21 Q And could you describe to the Court exactly what  
22 your assessment of Mr. Belfiore was pursuant to this review?  
23 MR. PRAGER: We had this conversation. I was a  
24 little surprised that no one was jumping up and down but  
25 this is 2006 and I fail to see much relevance to the issues

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1 that are before me and before the Commission to 2006. Is  
2 there any -- I'm not quite sure what point you're trying to  
3 make, Mr. Johnson. We assume that it was a glowing report.  
4 You've already shown that Mr. Justice believed that Mr.  
5 Belfiore did a splendid job and deserved a promotion. I'm  
6 not quite sure why we need to go back to 2006 and even  
7 though there's been no objection, I need --  
8 MR. PETESCH: I'll throw one in for fun and  
9 giggles, but it's worth what it's worth.  
10 MR. JOHNSON: Your Honor, that's not a problem. I  
11 think Mr. Justice has adequately proven that he has reviewed  
12 Mr. Belfiore's work while COO so it's not a problem.  
13 MR. PRAGER: Good.  
14 BY MR. JOHNSON:  
15 Q Mr. Justice, let me ask you a question. Are you  
16 familiar with Renee Dantzler?  
17 A Yes.  
18 Q And what do you know about Renee Dantzler?  
19 A Um, Renee had I guess a variety of different  
20 positions within the company. She's an African American  
21 woman. I'm not sure what else you would like me to say  
22 about her.  
23 Q Are you familiar with any type of situation  
24 involving Renee Dantzler involved with altercations with  
25 other employees?

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1 A Um, yes. Um, I think there were a couple of I  
2 guess HR-related issues where we had to bring in, I guess  
3 Alicia Hanson at the time and I can't remember if April  
4 Walker did anything but employee complaints were, I don't  
5 really remember all the details but there were a few times  
6 where she would have to go in to HR and then effectively get  
7 repurposed within the company into a different role.  
8 Q Mr. Justice, at the point in time that you chose  
9 to resign from the Merchant Link, was there an immediate  
10 successor to you at the CEO position?  
11 A No. I think that position remained, the technical  
12 position remained vacant for a year. The -- Dan and Erik  
13 and Tim Kinsella really split up, I think, the company's  
14 main, main roles and Dan Charron took over as acting CEO. I  
15 don't think so much from a day-to-day but from a, somebody  
16 to bounce things off of.  
17 Q And is it your testimony today that all three men  
18 shared the responsibilities of the CEO?  
19 A Well, certainly I think at least what I would have  
20 thought is Dan and Erik would have taken over primary,  
21 primary leadership roles there and that Tim would have been  
22 the supporting effort primarily just driving the sales  
23 initiatives.  
24 Q Now, did you, at any particular time, use an  
25 outside company entitled 360 Degree Assessments?

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1 A Yes. 360s were done on myself as well as the, all  
2 of my direct reports.  
3 Q And specifically, if you can recall, what was the  
4 360 Degree Assessment of Erik?  
5 MR. PRAGER: Before you answer that question,  
6 explain what -- is 360 a company or a form a schedule or  
7 what? Explain the 360, please.  
8 THE WITNESS: Sure. So a 360 review is taking a  
9 look at somebody through a number of different lenses, so  
10 effectively, if you were to look at people all the way  
11 around. So it's the assessment of the person from not only  
12 their boss but their peer group and their direct reports as  
13 well as others within the organization who they may be  
14 collaborating with.  
15 MR. PRAGER: And this would be done in-house?  
16 THE WITNESS: Typically -- well, you could do it  
17 in-house but typically, you'd have a disinterested third  
18 party so in this case, we hired an outside firm who would  
19 lead the, lead the practice of asking the questions,  
20 formulating the answers in a confidential way so that when  
21 the review was presented back to the subject, it would be  
22 innocuous in that I couldn't determine whether you said  
23 something bad about me or whoever it, wherever it came. It  
24 was just purely statements were being made, reviews were  
25 being done so you could almost look at it as genericizing it

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1 down to getting truly what the results are of those  
2 individual folks.  
3 MR. PRAGER: Thank you.  
4 THE WITNESS: Yes, sir.  
5 MR. PRAGER: Mr. Johnson:  
6 MR. JOHNSON: Yes.  
7 BY MR. JOHNSON:  
8 Q Do you recall the 360 degree report of Erik?  
9 A I remember it probably from a high level  
10 perspective.  
11 MR. PETESCH: Objection, Your Honor. We're  
12 talking about a report. We have not marked a document so my  
13 objection of the testimony would be on the basis of the best  
14 evidence rule. The secondary objection would be on the  
15 basis of relevance. We don't have a year. We've certainly  
16 beaten a prior exhibit like a dead horse from the year 2006.  
17 Is there any relevance to this?  
18 MR. PRAGER: Right. Mr. Johnson?  
19 MR. JOHNSON: Yes, Your Honor. And obviously, Mr.  
20 Justice will have the opportunity to testify to it but the  
21 360 Degree report that he ordered was toward the end of his,  
22 towards his exit and is part of his review, and we think it  
23 is pertinent to be part of the record with regard to Mr.  
24 Belfiore's performance seen through the eyes of a third  
25 party as well as Mr. Dan Lane's.

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1 MR. PRAGER: I take it this is not an exhibit that  
2 you've marked, you do not have it?  
3 MR. JOHNSON: No. We do not have the actual  
4 report but we have the actual recipient of the report  
5 testifying.  
6 MR. PETESCH: And it's a best evidence objection.  
7 He's testifying as to the contents of a document that's not  
8 here for anybody to look at.  
9 MR. PRAGER: What do you say to that, Mr. Johnson?  
10 MR. JOHNSON: Your Honor, actually, even if we  
11 never mentioned the 360 Degree, we can still ask him if a  
12 third party review was performed and what was the results  
13 that he learned from the report.  
14 MR. PETESCH: And I'd have a relevancy and a  
15 hearsay objection notwithstanding your prior rulings on  
16 hearsay.  
17 MR. PRAGER: Well, I'm assuming for the moment  
18 that the report was relatively glowing. Otherwise, Mr.  
19 Johnson wouldn't bring it up. And can we leave it at that?  
20 Would that be a fair characterization without going into the  
21 details, that this was a good review for Mr. Belfiore?  
22 THE WITNESS: Yes, sir.  
23 MR. PRAGER: All right.  
24 BY MR. JOHNSON:  
25 Q And, Mr. Justice, with regard to Mr. Dan Lane, was

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1 it also a glowing report?  
2 A Yes, sir.  
3 MR. JOHNSON: No further questions, Your Honor. I  
4 turn the witness over for cross-examination.  
5 MR. PRAGER: All right. Mr. Petesch.  
6 MR. PETESCH: Yes.  
7 CROSS-EXAMINATION  
8 BY MR. PETESCH:  
9 Q Good afternoon.  
10 A Hello.  
11 Q I introduced myself when you walked into the room.  
12 A Indeed.  
13 Q Peter Petesch. We haven't met before, have we?  
14 A No.  
15 Q You have met previously with Mr. Johnson though,  
16 right?  
17 A We talked on the phone to come up here, yes.  
18 Q I'm going to ask you to take a look at, in the  
19 white binder, Exhibit No. 5. That's the complainant's  
20 exhibit. It's the document entitled senior management team  
21 from 2008.  
22 A Yes, sir.  
23 Q I believe you indicated, but correct me if I'm  
24 wrong, that this is a document that you said we created?  
25 A That we, Merchant Link?

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1 Q Yes.  
2 A Yes. That is correct.  
3 Q Okay. And did you take any part in creating this  
4 document?  
5 A Yes.  
6 Q And did you review it for accuracy?  
7 A I would think so. Sure.  
8 Q Did you notice any information in here that was  
9 not accurate?  
10 A Let me go back and look in here. I don't, don't  
11 see anything that's really standing out.  
12 Q Okay. Under Dan Lane's name, under the chief  
13 technology officer, it also says co-founder. It's your  
14 understanding that he was a co-founder of the company?  
15 A Oh, he was a co-founder. He was one of the, I  
16 think, first five employees if I remember correctly.  
17 Q Could have been one of the first two?  
18 A Could have been.  
19 Q And I think you had mentioned that one of Dan's  
20 strengths was on the technical side of the company.  
21 A Correct.  
22 Q And to be fair, to characterize the nature of the  
23 business, this was a technical company, technical business?  
24 A We processed credit card transactions.  
25 Q So you would call it a tech company for lack of a

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1 better word?  
2 A Well, I guess I think of it really more as a  
3 service company than a technology company.  
4 Q The technology --  
5 A Our motto was one call solves all, so it was  
6 really around the combination of people and technologies all  
7 blended together.  
8 Q Okay. The company actually used certain  
9 technology developed by people at the company including Dan  
10 Lane, right?  
11 A Sure.  
12 Q Moving along, you, I think you mentioned that Mr.  
13 Belfiore played the role or had the role of chief financial  
14 officer.  
15 A Correct.  
16 Q There was no Board action actually approving Mr.  
17 Belfiore as holding the title of chief financial officer,  
18 was there?  
19 A That was done underneath Paymentech so we weren't  
20 having formal Board meetings as such, as a wholly-owned  
21 subsidiary of Paymentech. Those decisions were made by Mike  
22 Duffy and Dan Charron.  
23 Q Now, there was a Board of Directors approval in  
24 making Erik Belfiore the chief operating officer though,  
25 right?

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1 A Correct, because that was post-spinoff.  
2 Q And that was in 2008, correct?  
3 A Correct.  
4 Q You were asked some questions about a Tim  
5 Kinsella.  
6 A Yes.  
7 Q And I believe you identified him as a vice-  
8 president in the marketing area?  
9 A He's, he led sales.  
10 Q Okay. In sales and marketing?  
11 A Well, sales and account management. Marketing was  
12 run by Serena Moore.  
13 Q Now, are you familiar with him ever holding the  
14 title of chief marketing officer?  
15 A I think we -- that was the title for the spinoff,  
16 yes.  
17 Q And he was hired in the role of chief marketing  
18 officer?  
19 A I don't recall.  
20 Q I'm going to direct your attention to another  
21 binder in front of you. We've got lots of thick binders for  
22 this.  
23 A You've all been busy.  
24 Q We've been busy. And I --  
25 A The black one I assume. The thick one or the thin

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1 one?  
2 Q It's thick, it's black, and I'm asking you to take  
3 a look at tab no. 58.  
4 MR. PETESCH: And if I may approach, I can help  
5 him get the right binder.  
6 MR. PRAGER: Yes. You may approach.  
7 THE WITNESS: I got it. 58.  
8 BY MR. PETESCH:  
9 Q You got the right one.  
10 A Okay.  
11 MR. PRAGER: Just a moment, Mr. Petesch. All  
12 right. This is also a document that's previously been  
13 admitted.  
14 BY MR. PETESCH:  
15 Q You were the chief --  
16 A Okay.  
17 Q You were the chief executive officer of Merchant  
18 Link in 2007?  
19 A I would have been the president.  
20 Q You would have been the president. That would be  
21 one of the top roles in the company or the division,  
22 correct?  
23 A Correct. Correct.  
24 Q This looks to you to be a business record --  
25 A Right.

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1 Q -- kept in the ordinary course of business by  
2 Merchant Link?  
3 A Yes. It's Tim's offer letter.  
4 Q And what is the title in the second line?  
5 A Chief marketing officer.  
6 Q Does that refresh your recollection as to title  
7 for Tim Kinsella?  
8 A Yes.  
9 Q For which he was hired?  
10 A Yes.  
11 Q And that was chief marketing officer?  
12 A Correct.  
13 Q Okay.  
14 MR. PETESCH: In case we haven't moved for  
15 admission of 58, if it is in, I don't need to bother but --  
16 MR. PRAGER: You didn't listen. I just said it's  
17 already in.  
18 MR. PETESCH: It has been admitted. My apologies.  
19 BY MR. PETESCH:  
20 Q Now, you had expressed the opinion in your, I  
21 think it was Exhibit No. 22, excuse me, this is, now we're  
22 going back to the white binder.  
23 A Okay.  
24 Q And we're going to your transition memo, and that  
25 is Exhibit No. 15.

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1 A Okay.  
2 Q It was your opinion at that time that Mr.  
3 Belfiore, that you wanted to see Mr. Belfiore be your  
4 successor as chief executive officer?  
5 A Correct.  
6 Q And Mr. Belfiore was not a founder of the  
7 organization, was he?  
8 A A founder of Merchant Link?  
9 Q Yes, sir.  
10 A No. Merchant Link was owned by Paymentech.  
11 Q And Mr. Belfiore hadn't developed any of the  
12 patents for the technology for Merchant Link, had he?  
13 A No.  
14 Q In fact, Mr. Belfiore's strength came from the  
15 financial side of the, of the equation, right?  
16 A His strengths were financial but certainly as well  
17 as just business acumen, helping to drive the business  
18 model, helping position, helping position the company with  
19 our pricing models and how we went to market.  
20 Q It would be fair to say though that it didn't come  
21 from the technical side, right?  
22 A From the technical side, correct.  
23 Q The selection of your successor or of any CEO is a  
24 call made by the Board of Directors, correct?  
25 A Correct.

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1 Q Now, you had mentioned this 360 Degree review but  
2 you also submitted an affidavit in this matter, and that has  
3 previously been marked as, I believe it as Exhibit No. 48.  
4 MR. JOHNSON: 38.  
5 MR. PETESCH: 38. Thank you.  
6 BY MR. PETESCH:  
7 Q On the second page of this, and this is your  
8 declaration, correct?  
9 A Yes, sir.  
10 Q And that is your signature on the third and final  
11 page of it?  
12 A Yes, sir.  
13 Q On the second page, you had said I thought, and  
14 this is the second to the last paragraph just for --  
15 A Okay.  
16 Q -- your reference, I thought both Dan Lane and  
17 Erik did a great job. Though each was very different,  
18 relative to the role that they played within the company.  
19 Do you see that?  
20 A Yes, sir.  
21 Q I groomed Erik to be my successor. He had a  
22 better grasp of the overall business aspect. Do you see  
23 that?  
24 A Yes, sir.  
25 Q Okay. And then in the last line, you say while

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1 both Dan and Erik were excellent, so you meant that about  
2 both Dan Lane and Erik Belfiore.  
3 A Absolutely.  
4 Q In your opinion, right?  
5 A Correct.  
6 Q I felt that Erik would be a better fit to drive  
7 the company long-term. Do you see that?  
8 A Yes.  
9 Q Did you communicate that opinion to Dan Lane?  
10 A Dan and I had a conversation about taking over,  
11 getting ready to get groomed for the role, and Dan didn't  
12 want to do anything other than continue on with the role  
13 that he had.  
14 Q Okay. And you communicated to Dan that you  
15 thought Erik would be perhaps a better fit to take on the  
16 role of CEO?  
17 A I don't recall if I ever communicated that to Dan  
18 or not.  
19 Q You didn't conceal that from him though, did you?  
20 A No. I don't think so.  
21 Q Now, during the time, you nonetheless expressed  
22 the opinion that Dan was an excellent employee, correct?  
23 A Without a doubt.  
24 Q You would agree that his character was equally  
25 excellent?

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1 MR. PRAGER: Mr. Petesch, where are we going with  
2 this? Mr. Lane is not on trial except insofar as he set or  
3 helped set salary levels. I don't really care whether he's  
4 a good employee. What bearing does this have on the issues  
5 in this case?  
6 BY MR. PETESCH:  
7 Q You've never seen --  
8 MR. PETESCH: I'll withdraw that question.  
9 BY MR. PETESCH:  
10 Q Mr. Justice, you have never witnessed or seen Dan  
11 Lane act in a manner that is racially discriminatory toward  
12 any other employee, have you?  
13 A No.  
14 Q You wouldn't term him as a bigot, would you?  
15 A Dan Lane? No.  
16 Q You also said in your declaration words to the  
17 effect that you had never seen anyone terminated at Merchant  
18 Link for having a disagreement.  
19 A Right.  
20 Q Do you recall that?  
21 A Correct.  
22 Q And you've reviewed your declaration prior to  
23 arriving today?  
24 A No, but I can.  
25 Q Okay. You did say words to the effect that you

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1 hadn't seen anyone terminated for having a disagreement,  
2 right?  
3 A Correct.  
4 Q Now, you would agree with me that asking an  
5 employee to undermine a company program and to keep it  
6 secret is something different from a disagreement, right?  
7 MR. JOHNSON: Objection, Your Honor.  
8 MR. PRAGER: What's your objection?  
9 MR. JOHNSON: He's assuming facts in evidence  
10 having a company, an employee undermine or sabotage a  
11 program. That has not been established.  
12 MR. PRAGER: Well, I understand. It's a clever  
13 way of getting something into evidence, but I'm not sure  
14 it's relevant without that but since the claim is that there  
15 was undermining, it's a hypothetical. If there was  
16 undermining, would that be different from a disagreement.  
17 So using it as a hypothetical and framing it as that, would  
18 you restate your question?  
19 BY MR. PETESCH:  
20 Q Hypothetically speaking, in your experience in  
21 running companies, you'd agree with me that taking actions  
22 to undermine a company program would be different from  
23 having a disagreement.  
24 A I guess I'm not quite sure what you're even  
25 asking. Undermining, I really don't have a, I don't think I

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1 have any experience with somebody trying to undermine a  
2 program that we agreed to go pursue, so are you talking  
3 about just not performing their job or can you give me some  
4 guidance of --  
5 Q It's --  
6 A -- or something in example?  
7 Q It's a hypothetical question. I don't want to go  
8 overboard with describing it but having a disagreement is  
9 one thing, right, over, you think we should do X and  
10 somebody else thinks we should do Y, and that would be fair  
11 to characterize as a disagreement, correct?  
12 A Absolutely. Under my watch, people were free to  
13 argue and debate all they wanted.  
14 Q Okay. And debate is a healthy thing, right?  
15 A Absolutely.  
16 Q But taking steps to undermine a program or that  
17 the company has resolved to undertake, that would be  
18 different from a simple disagreement or a debate, right?  
19 A It would be different.  
20 Q You would agree with me that loyalty to the  
21 company is an important trait for a company senior  
22 executive?  
23 A Yes.  
24 Q It's a very important trait?  
25 A Yes.

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1 Q In working with Erik Belfiore, would it be fair to  
2 say that you and Erik shared a common vision on the company  
3 financial picture?  
4 A Yes.  
5 Q Did there come a time when your trust in Chase  
6 Paymentech became, for lack of a better word, eroded?  
7 A Yes.  
8 Q And Erik Belfiore shared in that distrust of Chase  
9 Paymentech?  
10 A I don't know if Erik shared in that or not.  
11 Q He didn't express that to you one way or the  
12 other?  
13 A I don't recall if he did or not.  
14 MR. PRAGER: Mr. Justice, could you keep your  
15 voice up, please?  
16 THE WITNESS: Oh, yes. I'm sorry.  
17 BY MR. PETESCH:  
18 Q After your departure from Merchant Link, you came  
19 to work for an organization called Ingenico?  
20 A That is correct.  
21 Q And while Erik Belfiore was still working at  
22 Merchant Link, you had a conversation with Mr. Belfiore  
23 about perhaps joining you at Ingenico?  
24 A I don't recall if we did or not.  
25 Q You may or may not have.

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1 A May or may not have. I don't remember.  
2 Q You stayed in touch with Mr. Belfiore after you  
3 left Merchant Link, right?  
4 A I stayed in touch with Erik, Dan, Tim. Pretty  
5 much everybody that worked for me, yes.  
6 Q Mr. Belfiore visited you in the Atlanta area?  
7 A Yes.  
8 Q Did you ever make him a job offer at Ingenico?  
9 A Not that I recall.  
10 Q You testified on direct about conversations with  
11 Dan Charron about Erik Belfiore's compensation.  
12 A Yes, sir.  
13 Q I'm trying to get you there mentally.  
14 A Yes.  
15 Q And it was your testimony that Dan Charron said  
16 words to the effect to you that it's not my fault that he  
17 signed up for a lower pay grade.  
18 A Correct.  
19 Q Mr. Belfiore came from, for lack of a better term,  
20 the ranks of middle management at Merchant Link?  
21 A Correct.  
22 Q Are you aware that after your departure, and you  
23 may or may not be aware, that Mr. Charron provided Mr.  
24 Belfiore three LTIP grants of \$70,000 or over?  
25 A I'm not aware.

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1 Q Not aware one way or the other?  
2 A No.  
3 Q LTIP grant though is a critical part of an  
4 individual's total compensation?  
5 A Correct.  
6 Q At the senior executive level.  
7 A Yes, sir.  
8 Q \$70,000 would be a relatively high LTIP grant  
9 compared to other senior executives?  
10 A I'd have to go back and look at the documents but  
11 relative to peer group, I don't think it's on par.  
12 Q You don't think it's on par?  
13 A No.  
14 Q It's low, it's high?  
15 A I think it's low relative to peer group.  
16 Q You were asked some questions about some tables,  
17 and that would be Exhibit No. 13 in the white binder.  
18 A In the white binder?  
19 Q Yes, sir.  
20 A Okay. Okay. I've got it.  
21 Q Dan Lane, I think you testified, was at the  
22 corporate officer level at Merchant Link, right?  
23 A I really don't remember where everybody was.  
24 Q So you don't know whether he was at --  
25 A My assumption would be yes, that Dan was at the CO

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1 level.  
2 Q But you don't know.  
3 A But I don't know. I would have at the time, but I  
4 don't know.  
5 Q Do you know what his AIP was, his AIP percentage  
6 was when you were there?  
7 A Not off the top of my head. If you've got  
8 documents, I can look at them and verify.  
9 Q It wasn't 60 percent though, was it?  
10 A Sixty percent?  
11 Q Yes.  
12 A I don't know.  
13 Q Do you know if it was 45 percent?  
14 A I mean, there should be HR documents that would  
15 prove out whatever he was.  
16 Q Okay. So it's fair to say you don't know.  
17 A Correct.  
18 Q Now, in addition to this table, are you aware of  
19 any other table for pay grades for technical employees?  
20 A Yes.  
21 Q That was a different table? There was a T dash  
22 whatever and then --  
23 A Correct.  
24 Q -- a grade?  
25 A Correct.

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1 Q Do you have any understanding as to why there was  
2 a separate table for technical employees?  
3 A Technical, technical employees are harder to  
4 recruit.  
5 Q And by being harder to recruit, that would also,  
6 in some instances, drive up salaries to get them to compete  
7 for that talent?  
8 A Well, there, there was a differential between this  
9 particular grade, grading system and the technical grading  
10 system, yes.  
11 Q And some of the highly compensated people at  
12 Merchant Link were indeed technical employees, right?  
13 A Correct.  
14 Q And it would be fair to say that that compensation  
15 level had to do with market prices for that level of talent  
16 in that skill set.  
17 A Correct.  
18 Q You were also asked some questions about Renee  
19 Dantzier.  
20 A Yes.  
21 Q And had mentioned that she had had, for lack of a  
22 better word, some issues that were dealt with by HR.  
23 A Correct.  
24 Q Do you know what year that was?  
25 A I don't.

1 Q Do you have any way of estimating what year that  
2 was?

3 A I really didn't get too involved in what was  
4 happening with the rank and file employees but when folks  
5 were disciplined, typically, the HR person would pull them  
6 into their office, things were done privately and, you know,  
7 but there was a process and a policy that we had so that  
8 folks could deal with their issues. I would think our HR  
9 documents would plot those out.

10 Q Give me one second.

11 A Sure.

12 Q This is usually a sign that I have nothing left or  
13 barely anything left.

14 A Ah. You can keep going, sir. Whatever you need.

15 Q I was right. It means I have nothing left. Thank  
16 you.

17 A Sounds good. Thank you.

18 MR. PRAGER: All right. I have some questions for  
19 you.

20 THE WITNESS: Yes, sir.

21 MR. PRAGER: But before we get to them, we're  
22 going to go off the record for a minute.

23 (Whereupon, at 4:03 p.m., a brief recess was  
24 taken.)

25 MR. PRAGER: All right. We're back on the record.

1 Mr. Justice, I'm still a neophyte in this case even though  
2 I've been with it for a while. No one has really explained  
3 to me, and I should have asked Mr. Belfiore but now I have  
4 you to explain it to me --

5 THE WITNESS: Yes, sir.

6 MR. PRAGER: -- give me a relatively brief, but  
7 not too brief, description, if that makes any sense to you,  
8 of what Merchant Link does.

9 THE WITNESS: What Merchant Link does. In --

10 MR. PRAGER: Or did in 2008.

11 THE WITNESS: Sure. Sure. Well, it did and  
12 probably still does. Merchant Link helps restaurants accept  
13 credit cards so in the two seconds between card swipe and  
14 receipt printing, lots of stuff can happen. Merchant Link  
15 helps to manage that process between the point of sale, the  
16 register system, all the way through the bank that's  
17 actually moving the money.

18 MR. PRAGER: And it goes through Merchant Link.  
19 Is that the idea?

20 THE WITNESS: Correct. It would go from the  
21 restaurant/retailer/merchant to Merchant Link, to the  
22 financial institution, from the financial institution off to  
23 Visa/MasterCard, another financial institution, and the  
24 money moves back to the customer's account.

25 MR. PRAGER: And why do the banks need you as near

1 and dear?

2 THE WITNESS: Um, there, I guess early on, very,  
3 very few standards as to how certain things needed to be  
4 done so as Visa and MasterCard make changes every October  
5 and every April, they give those change out to the financial  
6 institutions and their processors who do what they do to  
7 make that change or invoke that change in their system which  
8 means that there's, one change at Visa becomes 13 changes  
9 that have to be managed across all of those various  
10 processors. Merchant Link would be sitting in the middle to  
11 do all of the mapping to handle those changes so that the  
12 point of sale provider wouldn't have to do any work.

13 MR. PRAGER: I see. Thank you.

14 THE WITNESS: To make it easier.

15 MR. PRAGER: Thank you. Why did you leave  
16 Merchant Link in 2008?

17 THE WITNESS: Um, well, I left really for two  
18 reasons. One, it was a better opportunity, and the second  
19 one was I felt like I was being put in a very terrible  
20 position between what would fundamentally become my two  
21 owners.

22 MR. PRAGER: And what was your relationship with  
23 Mr. Charron at the time?

24 THE WITNESS: I reported to Dan.

25 MR. PRAGER: But was it a friendly --

1 THE WITNESS: Oh, excuse me.

2 MR. PRAGER: -- friendly relationship?

3 THE WITNESS: Yes. Yes. Are you talking about --  
4 well, at the time I left or during the entire process?

5 MR. PRAGER: I'm talking mainly about the time you  
6 left, but you can embroider if you wish.

7 THE WITNESS: Okay. So I reported to Dan up until  
8 the joint venture was formed in 2008 and then I reported to  
9 the Board of Directors following the, following that time.

10 But I had a, I think I had a positive relationship with Dan.

11 MR. PRAGER: All right. And did you recommend any  
12 other subordinate of yours to get more than a 10 percent  
13 increase during that time?

14 THE WITNESS: No, sir.

15 MR. PRAGER: Do you know if anyone did get more  
16 than a 10 percent increase?

17 THE WITNESS: I think we've had a couple of, there  
18 were a couple of folks through that time. I think Jay Konar  
19 had a couple of, couple of increases because we were trying  
20 to save and keep him from going somewhere. I think we did  
21 something else for, I know we were trying to do something  
22 for David Davidovic. I can't recall if Zach Minton was, I  
23 can't recall if we did something, I know we were trying to  
24 do some stuff with Zack. Let me just go through and take a  
25 minute here. Those were the, probably the top ones on my

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1 list.

2 MR. PRAGER: Right. And since you mentioned those

3 two names, Konar and Davidovic who were also in that memo of

4 yours, would you know if they got larger increase?

5 THE WITNESS: As I recall, Jay did. I don't

6 think, I don't think we were ever able to get anything for

7 David, at least prior to my departure.

8 MR. PRAGER: Now, there's been some testimony, do

9 you think that the functions, while you were there in 2008,

10 that the job of a CEO is on par with the job of a COO?

11 THE WITNESS: The CEO and a COO?

12 MR. PRAGER: Yes.

13 THE WITNESS: No. I think those two roles are

14 very different.

15 MR. PRAGER: And would they have been normally

16 compensated differently as well?

17 THE WITNESS: Yes, sir.

18 MR. PRAGER: And --

19 THE WITNESS: Are you saying CEO and COO or CTO

20 and --

21 MR. PRAGER: No. CEO.

22 THE WITNESS: CEO and COO would be compensated

23 differently.

24 MR. PRAGER: And who would get the higher pay?

25 THE WITNESS: The chief executive.

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1 MR. PRAGER: You also testified about, early on

2 this afternoon, when the chart, the flowchart or the, more

3 exactly, the boxes of the company were displayed, that some

4 people were called company officers and other people were

5 called executive officers. Was this just terminology or was

6 there an operating significance to the, that terminology?

7 THE WITNESS: The operating significance really

8 comes in relative to the actual HR designations that, that

9 folks occupy each one of these boxes so this is -- well,

10 it's still here so if a, as a CEO, then I lived in this box

11 and --

12 MR. PRAGER: Let me interrupt you. I'm not asking

13 any particular boxes. You mentioned Mr. Kinsella --

14 THE WITNESS: Yes.

15 MR. PRAGER: -- who is an executive vice-president

16 I believe or --

17 THE WITNESS: Well, I guess he was brought in as

18 the chief marketing officer.

19 MR. PRAGER: Right.

20 THE WITNESS: But so there's a difference in terms

21 of the HR designation and the marketing designation. So

22 titles on business cards may be completely different than

23 their corporate title or their corporate grade level.

24 MR. PRAGER: And was it your understanding that

25 somebody who is a COO is necessarily the number two person

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1 in the organizational chart or are they, could they be

2 equivalent or even under the, report to people other than

3 the CEO?

4 THE WITNESS: I guess it's possible that they can

5 report to others.

6 MR. PRAGER: So the job title -- I'm trying to

7 determine, because job title is one of the factors that have

8 been discussed here. What is the significance of being a

9 chief operating officer?

10 THE WITNESS: Well, relative to being a chief

11 operating officer, it's how does that, that person has the

12 responsibility to drive decision-making for the operation

13 side of the business.

14 MR. PRAGER: The operation side.

15 THE WITNESS: Correct. So challenges come up,

16 policies need to change, things of significance are

17 happening within the business from an operational

18 perspective, that person should be making those decisions.

19 MR. PRAGER: And again, I'm trying to figure out

20 what is the relationship between these titles and grade

21 levels?

22 THE WITNESS: Fundamentally, the titles and the

23 grade levels should be similar. Typically, from a sales and

24 marketing perspective is when you started to get a deviation

25 from what an actual grade level was to actually, the

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1 customer facing title primarily because senior executives in

2 a company didn't want to talk to a salesperson as much as

3 they might want to talk to the vice-president of sales. So

4 somebody might have a vice-president of sales title but

5 still be a grade level equivalent to a sales employee.

6 MR. PRAGER: And if someone is promoted, let's say

7 from a level 14 to a 16, would that, in your day,

8 automatically had meant that that person would also get an

9 increase in pay?

10 THE WITNESS: Correct.

11 MR. PRAGER: During the time that you were at

12 Merchant Link, were you involved in the disciplining of

13 employees?

14 THE WITNESS: If it was significant enough, um, my

15 opinion would be asked but for the most part, the human

16 resources folks would typically resolve the issue.

17 MR. PRAGER: All right. And would someone who is

18 being disciplined or was disciplined in your day, would

19 either you or somebody in human resources talk to the

20 employee before taking discipline?

21 THE WITNESS: Yes.

22 MR. PRAGER: Would that be a normal occurrence?

23 THE WITNESS: Well, absolutely. Well, you'd have

24 to have both sides of the story so, and some of these

25 conversations would bubble up to our weekly, weekly

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1 meetings. I might decide to have some just incredibly  
2 smelly lunch that I want to eat at my desk. All the  
3 employees around them start to complain, they take that to  
4 HR. The HR person would have me in to say, tell me about  
5 the lunch that you had, how about you not eat at my desk. I  
6 mean, that's probably a very light example, but what were  
7 you having for lunch. They're going to try to get both  
8 sides of the story as opposed to just making some kind of an  
9 edict.

10 MR. PRAGER: Well, suppose it were a much more  
11 serious infraction?

12 THE WITNESS: Well, if it's still, it's a more  
13 serious infraction, HR is going to have the person in. Even  
14 if it were something along the lines of sexual harassment,  
15 for example, absolutely. At that point, HR, as well as  
16 myself, would be sitting down, having a very serious  
17 conversation with the person to find out what their side of  
18 the story is. There would be a lot of extra effort done to  
19 evaluate all of the, all of the particulars of that  
20 situation and then we would, we would have an executive  
21 meeting to have a decision as to what we're going to do.

22 MR. PRAGER: Okay. I think those are all the  
23 questions I have at this time. Mr. Johnson?

24 MR. JOHNSON: Thank you, Your Honor.

25 REDIRECT EXAMINATION

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1 BY MR. JOHNSON:

2 Q Mr. Justice, we have a couple quick questions for  
3 you. Specifically, was Tim Kinsella a corporate officer?

4 A No.

5 Q And you described two different pay grades or  
6 grade scales rather, one for technical engineers and one for  
7 other employees. The pay scale for the technical engineers,  
8 was there a corporate officer heading that pay scale as  
9 well?

10 A Not that I recall. Thinking about the technical  
11 -- so you've got this, I'm still on page whatever that is,  
12 13. So there's this, this grade channel and then there was  
13 the separate one for what the technology folks are.  
14 Primarily, that was really related, as I recall, back to  
15 more the development staff, database engineers, system  
16 admins, those kinds of folks.

17 Q So on the organizational chart, corporate  
18 organizational chart, would the technical people be on the  
19 same level as a corporate officer?

20 A No. Corporate officers really have far more  
21 business decision-making. I mean, it's really not about  
22 program and code and turning screwdrivers as much as it is  
23 about making right decisions based on good, sound business  
24 principles.

25 Q And one final question I believe. You responded

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1 to the question by Hearing Examiner Prager regarding the  
2 comparison between a CEO and a CO, and you stated that a CEO  
3 was above a CO. However, not however. In terms of CO,  
4 corporate officers, is one above the other?

5 A Is this --

6 MR. PRAGER: I'm sorry. I don't understand the  
7 question.

8 BY MR. JOHNSON:

9 Q In terms of CO, corporate officers, the chief  
10 technology officer and the chief operating officer, is one  
11 above the other?

12 A In terms -- well, no. In terms of C-level roles,  
13 you would fundamentally have a CEO and then the other C, C-  
14 level people. I guess can folks fill a role where, can they  
15 have different levels of responsibility and what have you  
16 and still have that C title? Absolutely. But I really,  
17 frankly, the both of them sitting here. I mean, these were  
18 my right-hand guys. If you can have two right-hand guys,  
19 they're doing a good job.

20 MR. JOHNSON: No further questions, Your Honor.

21 MR. PRAGER: Mr. Petesch?

22 MR. PETESCH: One second.

23 (Off the record.)

24 (On the record.)

25 MR. PRAGER: We're back on the record. Mr.

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1 Petesch?

2 MR. PETESCH: No further questions.

3 MR. PRAGER: All right. I have one further  
4 questions based on what Mr. Johnson has just asked you.  
5 Corporate officers aren't all that is at the secondary  
6 level. I'm not talking about the CEO. The other corporate  
7 officers, such as they are, aren't necessarily paid at the  
8 same scale. It's within a band but the band can be fairly  
9 broad, is that correct?

10 THE WITNESS: They are within a band. And all  
11 corporate officers, frankly, aren't even employees of the  
12 company per se because the, John Yates was our corporate  
13 secretary, he was our corporate attorney.

14 MR. PRAGER: Right. And let me understand again  
15 this terminology of corporate officer. Is this something  
16 that has a basis, a legal requirement? In publicly traded  
17 companies of course, the FCC requires certain people to be  
18 CEOs and chief financial officers. I don't know to what  
19 extent they require chief operating officers. Was that also  
20 a requirement of Merchant Link at the time, or how did these  
21 titles of chief operating officer, chief technical officer,  
22 what was the foundation for that, if any?

23 THE WITNESS: Well, so I think just to, so that  
24 I'm clear, we're talking corporate positions now and Board  
25 level positions? Corporate officers versus company

1 officers, so I look at them really a lot -- they're  
2 connected but they're also distinctly different. So as a  
3 company officer, CTO, COO, CFO, what have you, that's the  
4 decision-making body of the organization setting policy,  
5 procedure, helping to drive the business, think about it  
6 from a leader's intent coming from the CEO saying I went  
7 ahead in this direction. It's each of those people's  
8 position to get their organizations in line and moving in  
9 that direction. So corporate level positions.

10 When you get into company officer, there's a  
11 fiduciary responsibility back to the Board and the  
12 shareholders to be making the right decisions for the  
13 organization as a whole and effectively communicating those  
14 decisions back to the Board and the ownership. So there are  
15 legal ramifications to being a corporate officer that aren't  
16 necessarily associated back to the business itself, of being  
17 a C-level person in the business.

18 MR. PRAGER: All right. Thank you. Mr. Johnson,  
19 do you have anything to ask based on his further testimony?

20 MR. JOHNSON: Nothing further, Your Honor.

21 MR. PRAGER: Mr. Petesch?

22 MR. PETESCH: No, sir.

23 MR. PRAGER: Okay. Well, Mr. Justice, thank you  
24 very much for being here, and you're excused.

25 THE WITNESS: Thank you.

1 MR. PRAGER: And we're going off the record.  
2 (Off the record.)

3 (On the record.)

4 MR. PRAGER: We'll go back on the record. I have  
5 asked Counsel if there is anything further that we need to  
6 do today. We do not have any additional witnesses for today  
7 so with that, I close the hearing for today and we'll resume  
8 tomorrow morning at 9:30 on the seventh floor of this  
9 building.

10 MR. PETESCH: Thank you.

11 MR. KAPLAN: Thank you.

12 MR. JOHNSON: Thank you, Your Honor.

13 (Whereupon, at 4:39 p.m., the hearing was  
14 concluded.)

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C E R T I F I C A T E

1  
2 DEPOSITION SERVICES, INC., hereby certifies that  
3 the attached pages represent an accurate transcript of the  
4 electronic sound recording of the proceedings before the  
5 Office of Zoning and Administrative Hearings for Montgomery  
6 County in the matter of:

7  
8 Erik Belfiore, Complainant

9 v.

10 Merchant Link, LLC, Respondent

11 Office of Human Rights Referral No.: E-05548

12 OZAH Case No.: 14-02

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15 By:

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22 Josephine Hayes, Transcriber  
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Merchant Link**

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