

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY
Discrimination in Employment

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

A hearing in the above-entitled matter was held on February 11, 2015, commencing at 9:37 a.m., at the Office of Zoning and Administrative Hearings, Stella B. Werner Council Office Building, 100 Maryland Avenue, 7th Floor Council 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:

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C O N T E N T S

Witnesses: Direct Cross Redirect Recross
Jomaine E. Sanders 7
By Mr. Kaplan: 27 35
By the Court: 32
Daniel Lane
By Mr. Petesch: 37 157

E X H I B I T S

Complainant's Exhibit No. Marked/Received
1 Memorandum /92
23 Three partial documents 91/
23(a) Bylaws of Merchant Link /108
27 Document re CRM issues 24/27
54 E-mail 148/151
55(b) Documents ML00057 and ML00058 113/118
55(c) Documents ML00059 and ML00060 116/118
65 E-mail from Dan Lane 104/110
88 Deposition of Dan Charron /6
Respondent's Exhibit No.
84 E-mail chain /205
137 Cover letter and grant form /169

P R O C E E D I N G S

1 MR. PRAGER: This is a continuation of a hearing
2 in the case of Belfiore v. Merchant Link, LLC. Mr. Johnson,
3 are you prepared to proceed?
4 MR. JOHNSON: Yes, Your Honor.
5 MR. PRAGER: And, Mr. Kaplan, are you ready?
6 MR. KAPLAN: Yes, sir.
7 MR. PRAGER: All right. Mr. Johnson, would you
8 call your next witness, please?
9 MR. JOHNSON: Yes, Your Honor. Prior to calling
10 the witness, I wanted to actually place on the record, the
11 Complainants want to identify/introduce into evidence
12 Complainants' Exhibit 86 and Complainant's Exhibit 88.
13 MR. PRAGER: Just a moment, please. While I'm
14 looking them up, could you describe what they are?
15 MR. JOHNSON: Yes. Complainant's Exhibit 86 is
16 the deposition of Ms. Wendy Nussbaum. And Complainant's
17 Exhibit 88 is the deposition of Mr. Dan Charron. Complaints
18 seek to introduce this into evidence as being declarants
19 unavailable pursuant to Maryland Rule 2-2 -- or 2-
20 419(a)(3)(b), as both witnesses are Directors of the
21 company, whether CEO or Board of Directors, and they are
22 both out-of-state witnesses.
23 MR. PRAGER: Mr. Kaplan, what's your response to
24 that?
25

1 MR. KAPLAN: We have no objection. It doesn't
2 look like Ms. Nussbaum can attend this week. I don't know
3 what her schedule looks like next week or March, but she
4 said this week she was definitely not available. As far as
5 Mr. Charron, we have no objection.
6 MR. PRAGER: All right. Given that, I will grant
7 your motion to have Mr. Charron's deposition admitted into
8 evidence. And I will hold in abeyance your motion to have
9 Ms. Nussbaum's deposition held in abeyance. You can renew
10 that if it turns out that she will not be available on other
11 days of this hearing. All right?
12 MR. JOHNSON: Thank you, Your Honor.
13 MR. PRAGER: I'll ask you to renew your motion
14 before the end of the hearing.
15 MR. JOHNSON: Thank you, Your Honor.
16 MR. PRAGER: It would be helpful -- and we don't
17 have to do it now with a live witness, but sometime after
18 this witness concludes or sometime during the course of the
19 day -- while I can certainly read the entire deposition, it
20 might be helpful if you could provide which pages in
21 particular you are interested in, and Mr. Kaplan, in turn,
22 can tell me which ones he thinks I should take particular
23 note of. Okay? We are talking now about Mr. Charron at the
24 moment, which seems to be a shorter transcript. But you can
25 be prepared to do that also through Ms. Nussbaum that is

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1 introduced.
2 So with that, I will let Complainant's Exhibit 88
3 will be admitted.
4 (Complainant's Exhibit 86 is
5 admitted into evidence.)
6 MR. PRAGER: All right, Mr. Johnson.
7 MR. JOHNSON: Yes, Your Honor. The Complainant
8 calls to the witness stand, Mr. Jomaine Sanders.
9 COURT REPORTER: And keep your voice up, because
10 these mikes just go in my ear.
11 THE WITNESS: Oh, okay.
12 COURT REPORTER: So they don't really project
13 around the room. Okay?
14 THE WITNESS: Gotcha. I have a big mouth. No
15 problem.
16 (WITNESS SWORN)
17 THE WITNESS: I do.
18 MR. PRAGER: Would you state your full name
19 please?
20 THE WITNESS: Jomaine Edmund Sanders.
21 MR. PRAGER: All right. Mr. Johnson?
22 WHEREUPON
23 JOMAINE SANDERS,
24 having been called for examination by counsel for
25 complainant and having been first duly sworn by the Clerk,

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1 was examined and testified as follows:
2 DIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT
3 BY MR. JOHNSON:
4 Q Good morning, Mr. Sanders. Could you state for
5 the Court your current address?
6 A My current address is 6550 Shadybrook Lane. And
7 that's in Dallas, Texas.
8 Q And how long have you been at this address?
9 A Approximately two-and-a-half years.
10 Q Mr. Sanders, did you attend college?
11 A I did. Yes.
12 Q And where did you attend college?
13 A Undergrad Northwestern State University in
14 Louisiana, and graduate school at Liberty University.
15 Q And did you earn a degree?
16 A I did.
17 Q And would you identify for the Court the degree
18 you earned?
19 A Undergrad computer information systems, and I have
20 my Masters in business administration.
21 Q And Mr. Sanders, were you ever employed by the
22 respondent, Merchant?
23 A I was, from roughly 2003 -- end of 2003 all the
24 way up to 2012 -- October 2012.
25 Q And where are you currently employed?

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1 A The company is called PFS Web, Inc. in Dallas,
2 Texas.
3 Q Now, Mr. Sanders, what was your position at
4 Merchant Link?
5 A I held several positions, but the most current was
6 I was a Manager of the Implementation Department and the
7 Manager of the Tech Support Department right before I left.
8 Q Mr. Sanders, could you please describe your
9 responsibilities for the Court?
10 A My responsibilities at Tech Support was -- in both
11 of those roles were managing the service delivery area,
12 which basically, as the Implementation Manager, I managed
13 the group of individuals that would actually implement
14 clients onto our solutions system. So we would handle the
15 implementation process, and then from Tech Support, we
16 handled the ongoing support, as Manager there.
17 Q And when you say implementation system, can you
18 identify for us specifically any -- or if you can identify
19 what systems you were actually implementing?
20 A Typically they were microsystems, a majority, but
21 POS systems, any point of sale system that wanted to
22 integrate with Merchant Link or use Merchant Link solutions.
23 Q Now, Mr. Sanders, what was your salary at Merchant
24 Link?
25 A Right before I left, it was at \$77,000.

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1 Q And do you recall your grade level?
2 A Yes. My grade level was at 12.
3 Q Now was that a tech grade level, or do you know if
4 that was tech grade level?
5 A No. I think that was the manager's levels there.
6 It's a management level.
7 Q Now, Mr. Sanders, are you familiar with the
8 Complainant, Erik Belfiore?
9 A I am. Yes.
10 Q And please describe your relationship to Mr.
11 Belfiore?
12 A Erik was -- I was his report from about 2008, when
13 he got promoted to executive. All of the service delivery
14 managers would report in to Erik. So, yes, I got to know
15 him around 2008.
16 Q Was Mr. Belfiore a mentor to you?
17 A Absolutely. I think he was a mentor to all of us.
18 You mentioned grade 12. Typically management inside service
19 delivery didn't -- were not able to achieve grade 12s, but
20 he came and he fixed that. He was a good mentor in the
21 sense that he wanted us to have a say in the company with
22 regards to our individual functional areas.
23 Q Now, did Mr. Belfiore give you responsibility in
24 your job?
25 A A lot. Yeah. He definitely gave us a lot of

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1 responsibility. With that, I'd say he would make us make
2 business cases, and if we had a good business case, he would
3 be the first one to go to bat to make sure that we got what
4 we wanted implemented.
5 Q Now did Mr. Belfiore provide autonomy for you in
6 your job?
7 A Absolutely. Like I said, as long as it was tied
8 to a business case, he was very short on -- he was very --
9 very big about that. So if you came in and you had a good
10 reason to do what you were doing and you could convince him
11 that it was good for the business, then you had as much
12 autonomy as you could ask for in your position.
13 Q Now, did Mr. Belfiore hold the best interest of
14 the company?
15 MR. KAPLAN: Objection.
16 MR. PRAGER: What's your objection?
17 MR. KAPLAN: He's asking the witness to say what
18 his state of mind is, and when, what timeframe? I'm not
19 sure what the relevance is.
20 MR. PRAGER: Well, it's relevant to whether or not
21 he had the best interest of the company in mind. But, Mr.
22 Johnson, you can reframe it to tell it -- ask about a time
23 limit and how he would know what -- how he would observe
24 whether or not Mr. Belfiore had the best interest of the
25 company in his mind.

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1 MR. JOHNSON: Yes, Your Honor.
2 BY MR. JOHNSON:
3 Q Mr. Sanders, during the year of 2011, do you
4 believe Mr. Belfiore held the best interest of the company?
5 A Yes, I do.
6 Q And can you explain to the Court why you hold this
7 belief?
8 A Based on multiple conversations he would have with
9 not only myself, but all the other management, in which he
10 was -- we would come and we'd brainstorm ways that we can
11 improve not only our functional areas, but the company as a
12 whole. He even went so far to, you know, allow us to come
13 up with different ways that we can sell our services in the
14 industry, and see if we can just kick around some ideas
15 there. So I think that that would be -- I wouldn't think
16 somebody would do that if they didn't have the best interest
17 of the company at heart.
18 MR. JOHNSON: Now, Your Honor, what has been
19 previously marked as Holt (phonetic sp.) Exhibit 40, we seek
20 to identify as Complainant's Exhibit 40, or directly request
21 that opposing counsel has the exact copy of Complainant's
22 Exhibit 40.
23 MR. PRAGER: Just a moment, please. You can go
24 and do the introduction.
25

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1 BY MR. JOHNSON:
2 Q Mr. Sanders, in front of you is a white binder
3 that has Complainant's Exhibit 40. Do you have that in
4 front of you?
5 A I do.
6 Q now, Mr. Sanders, do you recognize Complainant's
7 Exhibit 40?
8 A I do.
9 Q And could you please describe Complainant's
10 Exhibit 40 for the Court, please?
11 A This is an affidavit, my affidavit, from -- I
12 think this is 2011 -- 2012?
13 Q And, on the very next page is the sentence -- is
14 that your signature?
15 A That is. Yes.
16 Q And you were asked to provide this affidavit on
17 behalf of Mr. Belfiore?
18 A I was. Yes.
19 Q Now, Mr. Sanders, what is the CRM?
20 A The CRM referenced there was the customer -- it's
21 a customer relationship management tool, which was -- which,
22 at Merchant Link, was used to house all our customer data.
23 We also drove billing out of there. So it was heavily used
24 by the service delivery areas, implementation, and tech
25 support.

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1 Q Was it a item or project that you used?
2 A Yes. Well, yes, my team would definitely have to
3 use it, as well as myself. So, yes.
4 Q And was the service delivery department involved
5 with the CRM?
6 A We were, yes. The Management Team was. I
7 probably more than most.
8 Q Okay. Now, who was the head of the implementation
9 of the CRM?
10 A At that time it would have been Judy Summer
11 (phonetic sp.).
12 Q How were you involved with the CRM?
13 A We worked with -- with Ben -- well, we were trying
14 to work with Ben early on to select the tool, which CRM we
15 were going to use. What happened was we were transitioning
16 off of our Legacy customer relationship management tool and
17 transitioning to a new one. So, at Erik's request, he asked
18 that Ben include us in the selection process. So we got to
19 sit through all the vendor selections. So we sat through
20 there, and then we provided him our feedback since we were
21 the power users of the tool.
22 And then later on, I was -- we were involved,
23 myself and another individual named Kay Fakunle, who was the
24 Manager of tech support at the time. He -- we both had a
25 heavy role in the actual implementation of the tool after it

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1 was selected.

2 Q Now, to your knowledge, was Mr. Belfiore involved

3 in the CRM project?

4 A No. Only with regard that we reported up to him

5 issues or things that we had concerns about.

6 Q And, to your knowledge, were there any issues with

7 the CRM?

8 A Yes, there was a lot. We did not receive the tool

9 that we -- that service delivery wanted. So we had brought

10 that to Erik. Erik told us to make a business case for why

11 we chose -- we wanted to go with the one we wanted, which I

12 think was Sage at the time -- we wanted a tool called Sage.

13 They selected Microsoft Dynamics. So we made a business

14 case to Erik. Erik had a meeting. They still decided to go

15 with Microsoft Dynamics. And then so we -- after that, we

16 went that route. We were going that route and nobody was

17 really happy, at least a service delivery standpoint with

18 how the implementation was going for Microsoft Dynamics. So

19 there were a lot of complaints and going back and forth

20 between myself, Kay, and Ben Chudasama's team about the gaps

21 that we felt we were going to get in Sage versus what was

22 actually available in Microsoft Dynamics.

23 Q Now, to your knowledge, were any promises made by

24 Dane Lane about the functionality of the CRM?

25 A Yes. One promise he made was, he said that -- him

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1 and Ben Chudasama said that we would get -- although we

2 didn't get the product that we wanted, Sage, he said that he

3 would make Microsoft Dynamics have all the functionality

4 that was in Sage, or at least the ones that we thought were

5 show stoppers.

6 Q And were the promises made by Dan Lane kept?

7 A Not to the time when I left. No. There was a lot

8 of problems with that CRM. So it was not up to par when I

9 left. I know where it stands today.

10 Q Now, were you part of the implementation of the

11 CRM?

12 A I was. Yes, heavily involved.

13 Q And when did the CRM implementation commence?

14 A Probably the summer of 2011.

15 Q Now, to your knowledge, was Mr. Belfiore present

16 for the CRM implementation?

17 A No. The great majority of it when we -- after we

18 selected it, he went out for surgery. He had like hip

19 surgery or something like that.

20 Q Now, did you like using the CRM?

21 A I don't think anybody liked using the CRM

22 originally.

23 Q Did anybody complain about using the CRM?

24 A Yeah, probably about 75 percent of my team.

25 Q Now, did Mr. Belfiore influence your team in any

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1 way to complain about the CRM?

2 A No. No. Erik actually wanted us to try to make

3 the CRM work. He said work with Dan, work with Ben, and

4 make sure that your concerns are heard, but make sure your

5 concerns are not just frivolous and light, but make sure

6 that they are necessary for the business and -- and accept

7 it, and do what's best for the Department and the company as

8 a whole.

9 Q To whom did the employees or your team complain to

10 when it came to the CRM?

11 A Myself, and then I would roll those complaints up.

12 While Erik was out, I rolled those complaints up straight up

13 to ben Chudasama at the time, and his project manager. His

14 name was Arash.

15 Q Now, when Erik returned from medical leave, did he

16 receive complaints about the CRM?

17 A Yeah. I was probably in his office a lot

18 complaining about it.

19 Q And, in your affidavit, you say that we called a

20 meeting with him to bridge the gap. What gap are you

21 referring to?

22 A Basically when he left, that was the gap.

23 Basically we felt that -- and not only myself. I think it

24 was all the Service Delivery Managers felt that there was a

25 gap between what we wanted, Sage, and the functionality, and

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1 even existing functionality that we have in our Legacy tool,

2 and what we were provided in Dynamics. So there was a gap

3 in functionality. So we called a meeting with Erik to say

4 hey, look, we are not getting what they said they were going

5 to give us. So we were -- we called a meeting to best

6 discuss how we are going to bridge that gap.

7 Q And would you say that Mr. Belfiore's role was a

8 middle man or a conduit to Mr. Lane with regard to the

9 problems of the CRM?

10 A Absolutely. Absolutely. I felt that that was the

11 -- the great part of what I felt was the layout. I felt

12 that we had an executive in the service delivery side that

13 could take all our concerns up, and talk at the C (phonetic

14 sp.) level about our concerns with service delivery. We

15 hadn't had that before.

16 MR. JOHNSON: Your Honor, at this time, the

17 Complainant moves into evidence Complainant's Exhibit 40.

18 MR. KAPLAN: Objection.

19 MR. PRAGER: Mr. Kaplan?

20 MR. KAPLAN: This contains multiple levels of

21 hearsay. He's already testified as to the stuff that Mr.

22 Johnson wants him to testify about. He can still testify

23 about what's in this document to the extent it's admissible,

24 but there's a lot of layers of hearsay in this document.

25 MR. PRAGER: Well, I don't know about the hearsay,

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1 pervasive discriminatory policy of paying African-Americans
2 less than others. It wouldn't show necessarily that there
3 was discrimination against his client. So I'm willing to
4 view more liberal on that aspect of it, but I take very
5 seriously your objection about the time. Why is 2006/2007
6 relevant to this case?
7 MR. JOHNSON: Your Honor, actually when you said
8 2006/2007, what we were saying to that, that is a pattern.
9 It shows behavior by Mr. Dan Lane and his treatment of
10 African-American employees. What we will show eventually,
11 as the testimony evolves, not particularly Mr. Sanders, but
12 also Mr. Lane, that Mr. Lane basically treated African-
13 Americans differently than he treated non-African-Americans
14 at the company.
15 MR. PRAGER: Well, let me understand. I'm going
16 to ask you, Mr. Sanders, do you know when Ms. Hall left
17 employment at Merchant Link?
18 THE WITNESS: Roughly I want to say 2007, I think.
19 MR. PRAGER: All right. I don't find any
20 relevance. There's no foundation that Mr. Lane had anything
21 to do with setting her salary, nothing to indicate that this
22 had any bearing salaries after 2008, which is the relevant
23 period when Merchant Link became independent. So I will
24 sustain the objection.
25 MR. JOHNSON: But, Your Honor, what I would ask

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1 for the Court to do in this instance then, until Mr. Lane
2 actually gets an opportunity to testify, and which we can
3 establish that particular pattern and also a relationship
4 with how Mr. Lane treated his direct reports, which is also
5 an issue, and will come up in relation to Kia Hall; that the
6 Court hold that particular ruling in abeyance until we have
7 an opportunity to hear Mr. Lane.
8 MR. PRAGER: Well, are you going to have your
9 witness here the entire time for that purpose?
10 MR. JOHNSON: No. Actually once we have Mr. Lane
11 on the stand, Mr. Sanders is free to go unless counsel --
12 MR. PRAGER: Right. So the objection is
13 sustained. That doesn't necessarily mean that you can't ask
14 Mr. Lane about it. We'll deal with that question when the
15 time comes.
16 MR. JOHNSON: Sure.
17 MR. PRAGER: At this point, no more questions
18 about Ms. Hall.
19 MR. JOHNSON: Sure.
20 BY MR. JOHNSON:
21 Q Now, Mr. Sanders, I want you to --
22 MR. JOHNSON: Actually we want to mark for
23 identification Complainant's Exhibit 27.
24 MR. PRAGER: All right, Mr. Johnson.
25

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1 (Complainant's Exhibit 27 is
2 marked for identification.)
3 BY MR. JOHNSON:
4 Q Mr. Sanders, before you in the binder there is an
5 exhibit identified as Complainant's Exhibit 27.
6 A Mmm-hmm.
7 Q Do you have that in front of you?
8 A I do.
9 Q Now, Mr. Sanders, do you recognize Complainant's
10 Exhibit 27?
11 A I do.
12 Q Can you please describe Complainant's Exhibit 27?
13 A Basically this is a -- a meeting that we had to
14 discuss the -- myself and Kay Fakunle created this document
15 to create -- to document all the concerns we had with the
16 implementation.
17 Q And what was your role in documenting indicated
18 issues of the CRM?
19 A I took -- me and Kay took a lead role in getting
20 the feedback from all the Service Delivery Managers and the
21 team -- team members.
22 MR. PRAGER: Now, let me interrupt you and ask if
23 -- it's not clear to me -- did you write this document?
24 THE WITNESS: Yes. Yes. I compiled it. Well, I
25 compiled the document. So what happened was we had every

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1 functional area Manager -- it was like four of us -- and I
2 would go around and ask them to document their issues, and I
3 just kind of combined all the issues into one document.
4 MR. PRAGER: Thank you. Mr. Johnson.
5 BY MR. JOHNSON:
6 Q And was the purpose of this particular document to
7 undermine or sabotage the CRM?
8 A No.
9 Q What was the purpose of the document?
10 A The purpose of the document is to help make good
11 on what we felt was the commitment of the Company to give us
12 the tool that we -- that we -- the functionality in the tool
13 that we wanted or needed.
14 Q Now, did you instruct anyone to make complaints
15 about the CRM?
16 A No. No.
17 Q Do you control the CRM in any manner?
18 A Do I control it? No.
19 Q Were you concerned with the document communicated
20 to Mr. Belfiore?
21 A Yes.
22 Q What was Mr. Belfiore's response?
23 A His response was to set up a meeting with Ben
24 first. So we sat and we met with Ben to go over the
25 concerns. Ben seemed dismissive of the concerns that we

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1 had, so Erik then took our concerns to Dan Lane. Also he
2 told us that he was going to take them to Dan Lane.
3 Q Did Renee Dantzler work on the CRM project as it
4 relates to component information for this document?
5 (No audible response.)
6 Q To your knowledge is it possible for Ms. Renee
7 Dantzler to sabotage the CRM?
8 A No.
9 Q Did she have any type of authority related to the
10 CRM?
11 A No.
12 Q To your knowledge did Mr. Belfiore ask Renee
13 Dantzler to sabotage the CRM?
14 A No.
15 Q Did Mr. Belfiore influence you to saying anything
16 negative about the CRM in making this report?
17 A No.
18 Q To your knowledge, did Mr. Belfiore influence
19 anyone to do or say anything negative about the CRM?
20 A No.
21 MR. JOHNSON: Your Honor, at this time Complainant
22 moves into evidence Complainant's Exhibit 27.
23 MR. KAPLAN: No objection.
24 MR. PRAGER: All right.
25 MR. JOHNSON: Your Honor, at --

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1 MR. PRAGER: Wait just a moment.
2 MR. JOHNSON: I'm sorry.
3 MR. PRAGER: Complainant's Exhibit 27 is admitted
4 into evidence.
5 (Complainant's Exhibit 27 is
6 Admitted into evidence.)
7 MR. JOHNSON: Your Honor, at this time, the
8 Complainant turns over the witness for cross-examination.
9 MR. PRAGER: Who's going to be doing the cross-
10 examination?
11 MR. KAPLAN: I am.
12 MR. PRAGER: Mr. Kaplan.
13 CROSS-EXAMINATION BY COUNSEL FOR RESPONDENT
14 BY MR. KAPLAN:
15 Q Good morning. My name is Steve Kaplan. I'm an
16 attorney for Merchant Link. I have a few questions for you.
17 A No problem.
18 Q When Mr. Belfiore came back from medical leave,
19 when was the first time you spoke to him about the CRM
20 project?
21 A Probably shortly thereafter. I would say the
22 first couple of weeks when he came back.
23 Q Okay. And you testified you spoke to him almost
24 every day, or you complained to him a lot. Do you recall
25 that testimony?

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1 A Yeah. Yeah. I complained to him a lot. Not only
2 myself. I think all the Service Delivery Managers, at one
3 point.
4 Q And how many Service Delivery Managers were there?
5 A At the time there were four.
6 Q And who were the other four?
7 A Besides myself, there was Mesfein Lulseged, and
8 then there were Linest Eady, and then Kay Fakunle.
9 Q Okay.
10 A And then myself. Yes.
11 Q Okay. On page 2 of your declaration --
12 A Mmm-hmm.
13 Q -- you state any stance that would be anti-
14 Dynamics, CRM would have stemmed from us. Do you see that?
15 A Yes.
16 Q What do you mean by anti-Dynamics stance?
17 A I mean that any complaints that you alluded to,
18 any -- it had grown to the point where people started to
19 really not like the tool.
20 Q Okay.
21 A So it went from we didn't get what we wanted to,
22 okay, we are going to maybe -- we didn't get what we wanted,
23 but they said that they are going to make it look like what
24 we wanted. And then it went to we don't like this tool, and
25 then it got pretty, you know, to where people were actually

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1 not liking Dynamics a lot.
2 Q And was the CRM project -- was that a very
3 important project at Merchant Link?
4 A For service delivery it was vital, yes, because
5 that was there every day. We used it every day. So that's
6 how we did our job.
7 Q Okay. And do you know if there was a timeframe
8 when this needed to be rolled out?
9 A I don't know. No, I don't know if there was a
10 deadline. I know that there -- I believe that we were
11 supposed to roll off of the old Legacy at some point, so I
12 know there was some timeline, but I don't recall there being
13 like a hard date that we needed to meet.
14 Q Okay. So People Soft, was that the prior --
15 A People Soft, yes.
16 Q Okay. And was Paymentech, if you know, putting
17 pressure on Merchant Link to get off the Legacy program, do
18 you know?
19 A I remember that that was -- that was stated, yes,
20 by -- by some people. But I don't remember that being an
21 issue when we first started looking. Towards the end they
22 started saying that.
23 Q Okay. Now, on page one, the second to last
24 paragraph, you say, there have been no complaints about
25 using expletives. What do you mean by that?

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1 A Meaning they were asked had -- was -- the question
2 was, was there any -- did I know of any time where people
3 complained about somebody cursing in the company at all?
4 And although many people cursed -- I personally don't -- but
5 although many people cursed, I never heard it being
6 complained. There were no complaints about it.
7 Q Have you ever heard Mr. Belfiore use the word
8 fucking or fucked in the conversation, not towards anyone,
9 but just sort of saying it in a sentence?
10 A Not that I recall. I do know -- I'm not saying
11 that he doesn't curse though, because I do think he does
12 curse --
13 Q Mmm-hmm.
14 A -- so I don't remember -- I don't remember any
15 particular curse word though more than --
16 Q Any person at work who's done that?
17 A Umm --
18 Q Or just once that you can recall?
19 A Maybe, yeah. Possibly.
20 Q Okay. And are you friends with Mr. Belfiore
21 outside of work?
22 A Yeah, I would say -- I would say --
23 Q Go golfing with him on occasion?
24 A What's that?
25 Q Ever go golfing with him on occasion?

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1 A Golfing with him from Dallas, no.
2 Q When you were here?
3 A Yeah. He used to take a few of us golfing at
4 times.
5 MR. PRAGER: Excuse me. What do you mean a few of
6 us? Who's the us?
7 THE WITNESS: Umm.
8 MR. PRAGER: I don't mean the names --
9 THE WITNESS: Management.
10 MR. PRAGER: Are these employees?
11 THE WITNESS: Clearly employees, yes.
12 MR. PRAGER: All right. Thank you.
13 BY MR. KAPLAN:
14 Q Now Renee Dantzler, what was her role in the CRM?
15 Do you know?
16 A I guess they -- they got tired of us complaining,
17 so they, meaning Ben Chudasama and Arash, they got tired, so
18 they said, hey look, why don't we have Renee help document
19 the complaints. So she was just brought on towards the end
20 of the implementation actually. It was actually after they
21 had -- they had done a substantial amount of the
22 development, and we were actually in the testing phase and
23 kind of trying it out. They brought her in towards the end
24 to help document what we felt was show stoppers versus nice
25 to have as far as functionality.

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1 Q Was she also involved in the CRM prior to Mr.
2 Belfiore going on leave? Did she ever attend any meetings
3 that you are aware of?
4 A No.
5 Q Okay. Were you concerned about Renee's role at
6 all?
7 A No.
8 MR. KAPLAN: No more questions.
9 MR. PRAGER: All right. I have a couple of
10 questions for you, Mr. Sanders.
11 THE WITNESS: Sure.
12 CROSS-EXAMINATION BY THE COURT
13 BY MR. PRAGER:
14 Q How many people did -- were in the Service
15 Delivery Section or Division at the time you were the
16 Manager?
17 A In all Service Delivery, I would say well over 50.
18 So maybe 50/60 individuals.
19 Q And you were the only Manager?
20 A No, no, no. Service Delivery -- I'm sorry -- I
21 should have clarified -- Service Delivery incorporated all
22 the -- those four departments that I laid out. So one was
23 Financial Resolutions. They probably had about six or seven
24 people there. Technical Support, which I was the Manager of
25 when I most recently left. That was probably like 35/36

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1 employees. And then Implementation, which I was the Manager
2 of before. That one had about 10-15 employees. And then
3 Installation.
4 Q At the time of the CRM implementation -- we are
5 talking now in the period, let's say, from March through
6 November of 2011 --
7 A Mmm-hmm.
8 Q -- what was your position at that point?
9 A Technical Support Manager.
10 Q And that's when you supervised 10-15 people?
11 A No. I actually -- that's when I supervised about
12 35 people. The Tech Support was the biggest group.
13 Q Thank you. Do you know that Mr. Belfiore was fired
14 in November 2011?
15 A Yes.
16 Q At the time that he was fired, were you
17 interviewed by anyone from the Relations Division, Ms.
18 Nussbaum or any of her subordinates?
19 A No, absolutely not.
20 Q Were you interviewed by Mr. Lane?
21 A Nope.
22 Q Do you know of anyone under your -- well, do you
23 know of anyone with whom you worked who was interviewed by
24 Ms. Nussbaum or Mr. Lane about Mr. Belfiore's termination?
25 A No, not anybody that I know.

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1 Q No one that you knew of?
2 A No one that I knew of, no.
3 Q Thank you. This has not come up yet in this
4 hearing, but there had been some statement by at least one
5 potential witness that Mr. Belfiore was a bully. Is that a
6 fair characterization of Mr. Belfiore?
7 A No. I don't feel he was a bully. No, I just
8 don't feel that's a fair characterization.
9 Q Okay.
10 A I don't think the majority of people would have
11 shared that opinion.
12 Q Did he yell at his subordinates that you were
13 aware of?
14 A Yell at them? Nah, he didn't really have to yell.
15 I mean he was an executive, so we pretty much did -- he was
16 -- he's a passionate person though. So he would tell you
17 what he thought. If he thought you were doing subpar work,
18 he would definitely tell you, but to the point where he
19 would yell at you, I personally haven't been yelled at by
20 him.
21 Q Okay.
22 MR. PRAGER: I don't think I have any other
23 questions. Mr. Johnson?
24 MR. JOHNSON: Your Honor, no redirect for the
25 witness.

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1 MR. PRAGER: Okay. Mr. Kaplan, based on the
2 questions I asked, do you have any questions?
3 MR. KAPLAN: Just one or two questions.
4 MR. PRAGER: Okay.
5 RE-CROSS-EXAMINATION BY COUNSEL FOR RESPONDENT
6 BY MR. KAPLAN:
7 Q You weren't in Mr. Belfiore's office when he had a
8 conversation with Ms. Renee Dantzer on November 7th or 8th,
9 were you?
10 A No.
11 MR. KAPLAN: No more questions.
12 MR. PRAGER: Mr. Sanders, thank you very much for
13 being here.
14 THE WITNESS: No, problem.
15 MR. PRAGER: You are excused.
16 THE WITNESS: Thank you so much.
17 MR. PRAGER: Mr. Johnson, who's your next witness?
18 MR. JOHNSON: Your Honor, the Complainant calls
19 Dan Lane to the stand.
20 MR. PRAGER: All right. So as not interrupt Mr.
21 Lane's testimony unnecessarily, why don't we at this point
22 take a 10-minute recess, and we'll resume at approximately
23 25 of 11:00.
24 MR. KAPLAN: Thank you.
25 MR. PRAGER: And we're off the record.

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1 (Brief recess)
2 (OFF THE RECORD)
3 (ON THE RECORD)
4 MR. PRAGER: Mr. Johnson, you may call your next
5 witness.
6 MR. JOHNSON: Yes, Your Honor. The Complainant
7 calls Mr. Dan Lane to the stand.
8 (Witness Sworn)
9 THE WITNESS: I do.
10 MR. PRAGER: All right. Would you state your full
11 name, please?
12 THE WITNESS: Daniel Joseph Lane, Jr.
13 MR. PRAGER: Mr. Johnson.
14 MR. JOHNSON: Yes. Your Honor, permission to use
15 leading questions with regard to Mr. Lane. Mr. Lane is a
16 adverse witness.
17 MR. PRAGER: I assume, Mr. Petesch, you have no
18 objection to that?
19 MR. PETESCH: Well, we assumed, so, no, no
20 objection.
21 MR. PRAGER: Right. Mr. Johnson.
22 MR. JOHNSON: Thank you, Your Honor.
23
24
25

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1 WHEREUPON
2 DANIEL JOSEPH LANE, JR,
3 having been called for examination by counsel for
4 complainant and having been first duly sworn by the Clerk,
5 was examined and testified as follows:
6 DIRECT EXAMINATION BY COUNSEL FOR COMPLAINANT
7 BY MR. JOHNSON:
8 Q Good morning, Mr. Lane. Could you please state
9 your address for the record, please?
10 A Sure. 11539 Parsippany Terrace, Gaithersburg,
11 Maryland.
12 Q And do you understand why you are here today?
13 A I do.
14 Q Now isn't it true you are here because Mr.
15 Belfiore has filed a claim against the Respondent, Merchant
16 Link, for disparate pay?
17 A Uh -- he's filed a claim of -- my understanding is
18 it's a discrimination case.
19 Q And, Mr. Lane, what is your race?
20 A Caucasian.
21 Q Mr. Lane, did you attend college?
22 A I attended college at William and Mary College in
23 Virginia.
24 Q And did you earn a degree?
25 A I did.

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1 Q And what degree did you earn?
2 A Bachelor of Science in computer science.
3 Q And do you have any advanced degree?
4 A I do not.
5 Q And, Mr. Lane, did you find employment after you
6 graduated from William and Mary College?
7 A I did.
8 Q And where did you work?
9 A My first job after college?
10 Q Yes.
11 A Timenet.
12 Q And what were your duties?
13 A I was a -- my title was, I believe, a Sr.
14 Communications Consultant, and I was essentially a network
15 engineer helping to implement x.75 gateways between our
16 network and other gateways around the world.
17 Q And what was your salary?
18 A I don't remember. I remember my starting salary
19 out of college was \$18,000. I don't remember what it was
20 when I left.
21 Q how long did you work for this employer?
22 A Six years, approximately.
23 Q Were you ever promoted to a Manager level
24 position?
25 A No, I was not.

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1 Q Mr. Lane, in any of your employment prior to
2 Merchant Link, were you ever a Manager or a Manager-level
3 employee?
4 A Yes.
5 Q Can you identify that employer?
6 A Digital Radio Networks.
7 Q And what was your job title?
8 A I was hired -- I don't remember my title. It's in
9 a Technical Services Department, and I was promoted to the
10 Manager of the Technical Services Department.
11 Q And could you state your job duties?
12 A I managed a small group of people, approximately
13 five, and we were responsible for doing quality assurance
14 testing of the software, as well as problem solving some of
15 the more advanced problems that would occur with our
16 customers.
17 Q And do you recall your salary at this particular
18 job?
19 A I don't. I'm sorry.
20 Q And what was your next employer in which you
21 served as a Manager, or Manager level?
22 A Creditlink.
23 Q And for --
24 MR. PRAGER: Excuse me, Mr. Johnson. This is all
25 interesting about Mr. Lane, but I'm not sure I understand

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1 its relevance. Why are we spending time on this?
2 MR. JOHNSON: You Honor, we are trying to
3 ascertain Mr. Lane's management experience. It is relative
4 with regard to Mr. Belfiore's management experience. And
5 when we tried to make the comparison -- because we
6 identified Mr. Lane as comparative, we wanted to be able to
7 compare management experience, as well as education and all
8 the other factors that go into it.
9 MR. PRAGER: All right. I'll let you -- I'll be
10 tolerant and let you do this, but let's go through it
11 quickly, but I'm much more interested in what happens after
12 2007/2008.
13 MR. JOHNSON: Yes, sir.
14 MR. PRAGER: Go ahead.
15 MR. JOHNSON: Sure.
16 BY MR. JOHNSON:
17 Q Mr. Lane, can you describe your duties as a
18 Manager at Creditlink?
19 A Sure. Creditlink was a small credit card -- it
20 was called an ISOS -- it's independent sales organization
21 selling credit card processing to merchants in the D.C.
22 area. And I don't remember my exact title, but it was,
23 again, a Manager of a technology department.
24 Q Now, Mr. Lane, when did you become employed by the
25 Respondent, Merchant Link?

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1 A It was late 1992 or early 1993.
2 Q And what was your job title?
3 A I believe my title was VP of Technical Services.
4 It was a small company. We were -- there were two of us, so
5 we weren't really focused on titles.
6 Q When you say two of us, who was the other
7 individual?
8 A Jim Margolis.
9 Q Is Jim Margolis the founder of Merchant Link?
10 A He and I were both founders.
11 Q Did you own stock in Merchant Link?
12 A I had equity in Merchant Link.
13 Q What type of equity did you have with Merchant
14 Link?
15 A I had 10 percent of the company in an instrument
16 called phantom shares.
17 Q Isn't it true that phantom shares is a contract to
18 not allow individuals that have equity in the company?
19 A To not allow individuals?
20 Q Yes.
21 A No, that's not true.
22 Q Isn't it true that phantom shares is a tool used
23 by closely held companies to prevent individuals from having
24 ownership shares?
25 A No, I wouldn't characterize it that way.

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1 Q How would you characterize it?

2 A Phantom shares are a contract between a person and

3 a company that tie the equity to the shareholders shares.

4 So, in my case, I had 10 percent -- a contract that said I

5 had 10 percent of the shareholder's shares. Jim Margolis

6 had 100 percent of the stock. And the contract is such that

7 when the shares are sold, the Phantom -- the contract for

8 the phantom shares gets executed, and the holders of the

9 phantom shares get a cash disbursement. So they are treated

10 essentially just like stock in the company.

11 Q So isn't it true that phantom stock doesn't have

12 any voting rights?

13 A That's true.

14 Q Now, isn't it true that Merchant Link, after it

15 was started was originally sold to Chase Paymentech?

16 A That is true. Yes.

17 Q Do you recall how much it was sold for?

18 A Yes. It was sold for -- it was a little bit

19 complex. It was -- the initial price was \$5.5 million

20 dollars, and then there was an additional -- excuse me -- \$5

21 million dollars. There's an additional \$4.5 million dollars

22 that was in an earn out structure over an 18-month period,

23 so that each six months following the initial closing of the

24 deal, there was a ability to achieve another \$1.5 million

25 dollars in earn out targets based on myself and Jim Margolis

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1 hitting the prescribed targets as part of the sale of the

2 company. So the total price was \$9.5 million.

3 Q And did you realize any gain from the sale of

4 Merchant Link to Chase Paymentech?

5 A I did.

6 Q And how much did you realize?

7 A \$950,000, which was 10 percent of the \$9.5

8 million.

9 Q Now, after leaving Merchant Link, isn't it true

10 that you started -- Jim Margolis started a company called

11 NXT?

12 A No. That was started before we left Merchant Link.

13 Q And --

14 A And I'm still at Merchant Link. Before the

15 company -- NXT was started before Merchant Link was sold to

16 Paymentech.

17 Q And isn't it true that you followed Mr. Margolis

18 to NXT?

19 A Yes.

20 Q Now, isn't it true that Mary Bodhane worked for

21 NXT?

22 A Yes.

23 Q Isn't it true that Ahn Lam worked for NXT?

24 A Yes.

25 Q Isn't it true that James Reese worked for NXT?

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1 A Yes.

2 Q And isn't it true that Misael Henriquez worked for

3 NXT?

4 A Yes, I believe that's true.

5 Q Now, isn't it true that NXT was a failing company?

6 A NXT was bought in 2000 by US Wireless Data. US

7 Wireless Data was a failing company.

8 Q So did NXT merge into US Wireless Data?

9 A Yes.

10 Q Did you take a position in US Wireless Data?

11 A Yes.

12 Q Now, isn't it true that US Wireless Data was also

13 purchased by Chase Paymentech?

14 A No. US Wireless Data sold NXT to Chase

15 Paymentech.

16 MR. PETESCH: Your Honor, I'm all for a warm-up,

17 and I love history as much as anybody, but at some point --

18 well, I suppose at this point I'll interject a relevance

19 objection.

20 MR. PRAGER: Yeah. I'm not sure where we are

21 getting with this either. As I say, it's interesting, but we

22 are not here to deal with history. We are dealing with a

23 claim by Mr. Belfiore that his pay was -- after 2008, was

24 not commensurate with pay being paid to others. So I'm not

25 quite sure with what you are getting at, or why and whether

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1 we should be spending time on it.

2 MR. JOHNSON: Yes, Your Honor. A very interesting

3 piece when he says -- counsel says history. We all

4 understand if we don't know our history, we are destined to

5 repeat it. Under the circumstances, the history -- and we

6 just went through a line of questioning in which we

7 identified all of the people who worked for this NXT

8 company, who are also now, as evidence will show, the same

9 individuals who work for Merchant Link, who Mr. Lane has

10 promoted, and all of which have superior salaries to Mr.

11 Belfiore. So we are actually laying a foundation for the

12 relationship.

13 And, as the Court has known from all the previous

14 testimony that has been provided, that Mr. Lane has promoted

15 these individuals, gave them salary increases ahead and

16 beyond Mr. Belfiore. We laid a foundation for Mr. Lane

17 stating that he was the founder. We believe that the

18 approach is that that's supposed to give him some type of

19 value in excess of what Mr. Belfiore should be earning as

20 well. So we wanted the Court to understand how we arrived

21 at this conclusion. And that foundation should help the

22 Court.

23 MR. PRAGER: Well, I think it's very peripheral.

24 I understand you are discussing these individuals that you

25 mentioned, Ms. Bodhane, Mr. Reese, Henriquez and one other

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1 --
2 MR. PETESCH: And we didn't object to that
3 material.
4 MR. PRAGER: -- but you can bring that in in some
5 other fashion in going back. Let's be more current than you
6 have been.
7 MR. JOHNSON: Well, yes. Well, Your Honor, that's
8 actually -- once we laid that foundation, which we basically
9 completed, we are now at Merchant.
10 MR. PRAGER: All right. Let's -- please go there.
11 MR. JOHNSON: Thank you.
12 BY MR. JOHNSON:
13 Q Now, Mr. Lane, isn't it true that upon the merger
14 of NXT -- or the sale of NXT to Merchant Link that the key
15 employees that we just identified had their salaries nearly
16 doubled pursuant to the merger -- pursuant to the sale?
17 A I'm not -- just one clarification. Paymentech
18 bought NXT and then combined it with Merchant Link. And I
19 don't believe any salaries were changed as a part of that
20 acquisition except for mine, if that's what you are asking?
21 MR. PRAGER: And, Mr. Lane --
22 THE WITNESS: I'm not sure I understood the
23 question.
24 MR. PRAGER: Mr. Lane, just so I understand, when
25 was this sale made to Paymentech?

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1 THE WITNESS: 2002. So, in 1997, Paymentech
2 bought Merchant Link, and Jim Margolis and I continued to
3 run NXT. NXT was sold to US Wireless Data around 2000. And
4 then Paymentech bought NXT in 2002 and merged it in with
5 Merchant Link. And these employees came over as part of
6 that transaction, as well as some other employees.
7 MR. PRAGER: And again, I'm not terribly
8 interested in what happened in 2002, Mr. Johnson. I really
9 see no point to it. Some people were already employed, and
10 Mr. Belfiore came in. You can address that, but 2002
11 doesn't interest me, and it's not relevant to this case.
12 MR. JOHNSON: Okay, Your Honor. We want to expound
13 on one question, and we'll move into Merchant Link. Just
14 one question with regard to Mr. Lane's testimony where he
15 said that none of the salaries were changed except for his.
16 I just want to ask how his salary was changed?
17 MR. PRAGER: All right. You can ask that
18 question.
19 BY MR. JOHNSON:
20 Q Mr. Lane, you stated that no other salaries were
21 changed except for yours. Can you explain or describe how
22 your salary changed?
23 A Yes. I was offered a job as Chief Operating
24 Officer at \$180,000, and I think previous to that I was
25 earning somewhere in the neighborhood of \$165,000.

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1 Q Now, Mr. Lane, before you on the stand is
2 Complainant's binder. We'd like to -- well, we've already
3 actually introduced it as Complainant's Exhibit 5. Could
4 you open the binder to Exhibit 5, please?
5 A Okay.
6 Q Now, Mr. Lane, do you recognize Complainant's
7 Exhibit 5?
8 A Yes.
9 Q And, on Complainant's Exhibit 5, you are the Chief
10 Technology Officer, correct?
11 A Yes.
12 Q And you are a corporate officer of the company,
13 correct?
14 A Yes. I'm not exactly sure what year this was.
15 There were -- it was part of a sale attempt, and there were
16 multiple sale attempts. But, yes.
17 Q And how long have you been a corporate officer of
18 the Respondent, Merchant Link?
19 A Well, I was hired as Chief Operating Officer in
20 2002, so since -- whatever the math on that is -- 13 years.
21 Q Now, as the Chief Operating Officer -- strike that
22 -- as the Chief Technology Officer, are you on the same
23 level as the Chief Operating Officer?
24 A As the Chief Technology Officer, we are at the
25 same level on the organizational chart, in that we both --

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1 both Erik and I reported to Chris Justice. Yes.
2 Q And you --
3 MR. PRAGER: Excuse me.
4 MR. JOHNSON: I'm sorry.
5 MR. PRAGER: Because I'm not clear. You testified
6 that you became Chief Operating Officer in 2002, but this
7 chart in 2008 says you were Chief Technology Officer. When
8 did your title change?
9 THE WITNESS: Middle of 2008. And Chris Justice
10 asked that I take the Chief Technology Officer role, which
11 at the time we didn't have. And so I moved over from Chief
12 Operating Officer to Chief Technology Officer.
13 MR. PRAGER: All right, Mr. Johnson.
14 BY MR. JOHNSON:
15 Q And in 2008, your former title of Chief Operating
16 Officer was given to Mr. Belfiore, correct?
17 A Correct.
18 Q So Mr. Belfiore performed the same functions that
19 you performed, correct?
20 A No, that's not correct.
21 Q When he took over the office of Chief Operating
22 Officer, did the duties and responsibilities of Chief
23 Operating Officer change?
24 A Yes.
25 Q And how did it change?

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1 A When I was Chief Operating Officer, I had the
2 service delivery area, all the technology areas, product and
3 project management, and the learning and development group.
4 And when Erik took the Chief Operating Officer role his
5 responsibilities were limited to the service delivery area.
6 Q And wasn't Erik responsible for billing?
7 A Actually billing -- well billing was in
8 transition, and prior to that billing was done out of
9 Paymentech in Dallas. All of our financial operations were
10 handled by Paymentech in Dallas. We recognized the need
11 that we were going to need a billing department, so
12 somewhere in the late 2008 or 2009 timeframe we started a
13 billing department locally, and that was under Erik's
14 responsibility.
15 Q So it's your testimony today that Erik performed
16 the service delivery function that you used to perform,
17 correct?
18 A Correct.
19 Q And then the billing function came later, and
20 which he was also in charge of, correct?
21 A Correct.
22 Q So based upon the fact that the two of you
23 actually performed the service delivery function -- the same
24 service delivery function, is it safe to say that the two of
25 you were similarly situated in that regard?

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1 A No, because at this time -- at the time I was
2 performing the service delivery function, I had
3 responsibility for service delivery. I also had
4 responsibility for many other departments in the
5 organization; all of the technology, software development,
6 training departments, engineering, IT. Whereas, when Erik
7 had responsibility for service delivery, it was simply the
8 Service Delivery Department.
9 Q So when the functions of service delivery was
10 transferred to Erik, is it your testimony today that it was
11 just a different function altogether?
12 A No. I'm saying it was a subset of the functions
13 that I had. The service delivery function that I managed
14 was transferred over to Erik to manage.
15 Q And also, you were functioning as a corporate
16 officer of the company, correct?
17 A Correct.
18 Q And you took on the jobs that required
19 responsibility and decision-making, correct?
20 A I'm not sure I understand the question.
21 Q The projects, the jobs that, as a corporate
22 officer, you were actually responsible for those jobs,
23 correct?
24 A Again, I'm not sure I understand the question.
25 Q You had the obligation, pursuant to the office as

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1 a corporate officer, your position as corporate officer --
2 A Yes.
3 Q -- to take responsibility for all of the job
4 functions you were performing, correct?
5 A Correct.
6 Q And Mr. Belfiore had the same obligation and
7 responsibility with regard to his functions as corporate
8 officer, correct?
9 A Correct.
10 Q And the actual jobs could not overlap because it
11 would be redundant, correct?
12 A Correct. There wasn't very much overlap.
13 Q Now, isn't it true that from the period of 2008
14 until April of 2011, you continued your role as a corporate
15 officer?
16 A Yes.
17 Q And isn't it true, from 2008 until April of 2011,
18 Mr. Belfiore was also a -- continued his role as a corporate
19 officer?
20 A Yes.
21 Q And, from April 2011, you were then -- you then
22 became the CEO, correct?
23 A I'm sorry, April of 2011?
24 Q You were formally by the Board --
25 A Yeah. I was just trying to get the dates in my

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1 head. Yes, it was approximately -- it was, I think, late
2 March of 2011.
3 Q And this is for the purposes of just building a
4 timeframe in mind. But, from April 2011 until November of
5 2011, you were CEO for a period of five -- six months before
6 -- seven months before Mr. Belfiore was terminated, correct?
7 A Correct.
8 Q So would it be fair for us to -- or would you
9 understand -- rather not say fair -- would you understand
10 that we will make a distinction between Dan Lane, the CTO
11 corporate officer, and Dan Lane, the CEO?
12 A Yes, sir.
13 Q Now, Mr. Lane, in front of you what has been
14 previously admitted into evidence as Complainant's Exhibit 6
15 --
16 A Yes, I have.
17 MR. PRAGER: Mr. Johnson?
18 MR. JOHNSON: I'm sorry, Your Honor.
19 BY MR. JOHNSON:
20 Q Now, Mr. Lane, do you recognize Complainant's
21 Exhibit 6?
22 A Yes.
23 Q And just for a quick identification, can you
24 describe Complainant's Exhibit 6?
25 A These were Minutes from a Board meeting held in

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1 Greenwood Village, Colorado shortly after the Merchant Link
2 became a joint venture of Paymentech and First Data.
3 Q Now, Mr. Lane, I'm still talking about the
4 responsibilities of a corporate officer, but I want you to
5 tell the Court were you at any point in time both the COO
6 and the CFO of the corporation?
7 A Was I at any point of time both the COO --
8 Q Both functions -- I'm sorry.
9 A No, I wasn't.
10 MR. PRAGER: I'm sorry. I didn't understand the
11 question. The initials you used were COO and CFO?
12 MR. JOHNSON: Yes. I'm sorry, Your Honor.
13 BY MR. JOHNSON:
14 Q Just for clarification, Mr. Lane, did you serve as
15 COO and CFO at any time?
16 A And the answer was, no, I did not.
17 Q Now, isn't it true that the CTO has or had half
18 the responsibilities of the COO?
19 A No, that's not true. I think the CTO had more
20 responsibilities than COO.
21 Q And please describe.
22 A We are not talking about this document, right?
23 Q Oh, no. I'm just --
24 A Okay. The CTO -- I had responsibility for the
25 software development, the entire network infrastructure, the

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1 desktop IT services, the product development, project
2 management of our large projects, and the learning
3 development group. This was all the key technology that
4 drove the company. And the COO had the responsibility for
5 the Service Delivery group and a small billing operations
6 group, which was also important, but I don't think it was as
7 important or critical to the business as the technology.
8 Q Now, how many employees does Merchant Link have?
9 A At the end of this year --
10 MR. PRAGER: Excuse me.
11 THE WITNESS: Yes.
12 MR. PRAGER: Excuse me. What time frame are we
13 talking about, Mr. Johnson?
14 MR. JOHNSON: I'm sorry, Your Honor.
15 BY MR. JOHNSON:
16 Q During the time that you were operating as Dan
17 Lane, the corporate officer.
18 MR. PETESCH: Well --
19 BY MR. JOHNSON:
20 Q The CTO corporate officer.
21 A So that was between 2008 and 2011. I don't know.
22 There were approximately 130 employees or so. It was --
23 it's been growing every year. So it was, I don't know
24 exactly, somewhere between 120 and 170, approximately 130.
25 Q And of the 130, how many of these people actually

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1 were employees, actually reported directly to you?
2 A Again, which, at what time period are you --
3 Q Between 2008 and 2011.
4 A Well, the org chart was, the organization chart
5 changed during that period, but direct reports -- you have
6 to give me a second here -- the VP of software development,
7 the director VP of product, the manager of IT, the director
8 of network engineering, the manager of learning and
9 development. So it was approximately five or six direct
10 reports, and under them was their respective organizations.
11 Q And how many comprised their organizations during
12 that same time period?
13 A Again, approximately 130 in the --
14 Q So the entire --
15 A -- the entire organization.
16 Q -- organization reported to -- was directly in
17 your organization?
18 A No. I think I misunderstood your question --
19 Q Sure.
20 A -- your earlier question. Are you asking how many
21 people were in my organization?
22 Q Yes.
23 A I don't know exactly. It was approximately 50 to
24 60, I think, maybe -- I don't know. It was in that, so
25 about half the organization.

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1 Q Now, Mr. Lane, I want to turn your attention to
2 what has been identified as Plaintiff's Exhibit No. 13.
3 A Okay.
4 MR. PRAGER: Just a moment. Go ahead,
5 Mr. Johnson.
6 BY MR. JOHNSON:
7 Q Mr. Lane, are you familiar with Complainant's
8 Exhibit No. 13?
9 A Yes.
10 Q And can you describe it for the Court, please?
11 A This is a grade table for the grade ranges that
12 were in place for Silver Spring from Paymentech, and I don't
13 know what year it was.
14 Q Now, Mr. Lane, what is your grade -- what was your
15 grade during 2008 and 2011 pursuant to this chart, this
16 table?
17 A I don't think this chart was in use between 2008
18 and 2011, or it may have been at the very beginning. This
19 was a Paymentech chart, and shortly after 2008 we started to
20 move our HR processes out of Paymentech into Merchant Link
21 and we were developing our own grade tables and grade
22 charts, but in early 2008 it was either a grade 15 or a
23 grade 16.
24 Q And in 2011 do you recall what your grade would
25 have been?

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1 A I believe it was a grade 16.
2 Q Is that the appropriate --
3 MR. PRAGER: I'm sorry.
4 MR. JOHNSON: I'm sorry.
5 MR. PRAGER: What year did you ask him about?
6 MR. JOHNSON: 2011.
7 MR. PRAGER: All right. Thank you.
8 BY MR. JOHNSON:
9 Q Is the grade 16 the appropriate level for the
10 corporate officer or a corporate officer?
11 A Well, again, the grade that we have in place today
12 that was started to be put in place when we were separating,
13 I believe a grade 16 is the highest grade on that table.
14 This chart came from Paymentech, and the corporate officer
15 and whatever the, the GECO and CEO were not grades that were
16 in use by Merchant Link.
17 Q Is your testimony today that those designations do
18 not exist today?
19 A They don't exist on our -- that's correct, they
20 don't exist on our grade chart that's used by Merchant Link
21 today.
22 MR. PRAGER: The question was today -- we're not
23 interested in today. Were they in use any time between 2008
24 and 2011, as far as you know?
25 THE WITNESS: When, yes, when we -- before

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1 Merchant Link was divested or became a joint venture, we
2 were using the Paymentech HR and payroll processes. So the
3 Dallas, the Paymentech Dallas HR department constructed a
4 grade table for our business, and this was it. Shortly
5 after that we began to pull the HR processes in-house and
6 developed our own grade table. On the Merchant Link grade
7 chart, there's no designation for the -- they're just
8 numerical grades.
9 MR. PRAGER: All right. And I'm not quite sure I
10 fully understand your testimony. What year was this divorce
11 between this schedule and the implementation of your
12 schedule? What would you say was the approximate date of
13 that?
14 THE WITNESS: Approximately mid-2009.
15 MR. PRAGER: Thank you. Mr. Johnson.
16 BY MR. JOHNSON:
17 Q Now, Mr. Lane, I want you to turn your attention
18 -- and we want to inform the Court that this is an exhibit
19 that was previously admitted -- but I want to turn your
20 attention to Complainant's Exhibit No. 15.
21 A Yes.
22 Q Now, Mr. Lane --
23 MR. JOHNSON: I'm sorry, Your Honor. Are you
24 ready?
25 MR. PRAGER: No, no. Go ahead.

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1 BY MR. JOHNSON:
2 Q Now, Mr. Lane, do you recognize Complainant's
3 Exhibit No. 15?
4 A I've become familiar with it through this
5 proceeding, but yes.
6 Q And this is -- and you sat through the testimony,
7 obviously -- but this is the Justice transition document, as
8 the witness testified. Isn't it true, isn't it true that
9 this document was put in place to facilitate the, I guess
10 the, not the termination, but the end of Mr. Justice's
11 position as CEO?
12 A Yes, apparently, that's what it was for, yes.
13 Q And isn't it true that the duties of the CEO was
14 going to fall on the shoulders or responsibilities of
15 yourself, Mr. Belfiore, and Mr. Tim Kinsella?
16 A They were going to fall on the shoulders of Dan
17 Charron, who was our, who was -- came in as acting CEO.
18 Q And Mr. Charron was identified as the interim CEO,
19 correct?
20 A Correct.
21 Q And Mr. Charron did not get involved in the
22 day-to-day operations of Merchant Link, correct?
23 A Correct.
24 Q So the day-to-day functions of the CEO went to
25 you, Mr. Belfiore, and Mr. Tim Kinsella, correct?

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1 A Dan Charron was the acting CEO. So the, so the
2 day-to-day functions of running the company fell on me, Erik
3 Belfiore, and Tim Kinsella, yes.
4 Q Now, Mr. Lane, did you have an opportunity to
5 interview for the CEO position after Mr. Chris Justice
6 resigned the position?
7 A Well, I, I would have had an opportunity had I
8 expressed interest in the position, but I didn't express
9 interest; so I didn't, I didn't interview for it.
10 Q Now, do you know whether or not Mr. Belfiore had
11 an opportunity to interview for the position of CEO?
12 A I do not.
13 Q Now, did you have a position on whether or not
14 Mr. Belfiore should have been named CEO?
15 A Did -- I don't think he was qualified to be the
16 CEO, no.
17 Q And were you aware that Mr. Justice had been
18 grooming Mr. Belfiore to be CEO?
19 A I've become aware of that in this testimony that
20 that's his testimony, but I was not aware of it at the time.
21 Q Were you aware that Mr. Justice also made that
22 particular assessment to the board of directors?
23 A I'm not aware of that.
24 Q Do you read the board minutes?
25 A Do I read the what minutes?

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1 Q The board minutes, the board of managers minutes.
2 A Yes, I, I do read them now, yes.
3 Q As a corporate officer, isn't your responsibility
4 to read the board of managers meeting minutes?
5 A No. It's the responsibility of the CEO to read
6 them because he signs them. It's not the responsibility of
7 all the officers to read them.
8 Q Isn't it true that you told Mr. Chris Justice that
9 you did not want Mr. Belfiore to be CEO?
10 A No, that's not true.
11 MR. JOHNSON: The complainant wishes to identify
12 what has previously been admitted to evidence as
13 Complainant's Exhibit No. 16.
14 THE WITNESS: Yes, I'm looking at it.
15 MR. PRAGER: All right. Mr. Johnson.
16 BY MR. JOHNSON:
17 Q Mr. Lane, do you recognize Complainant's Exhibit
18 No. 16?
19 A Yes, I do.
20 Q And can you briefly describe Complainant's Exhibit
21 No. 16?
22 A I believe this is an e-mail that Chris Justice
23 sent to the entire staff of Merchant Link to announce some
24 organization changes in, sometime in the 2008 time frame.
25 MR. PRAGER: I may have misheard. I thought you

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1 said defendant's exhibit. You're talking about
2 Complainant's Exhibit 16, is that correct?
3 MR. JOHNSON: Complainant's exhibit. I don't know
4 where I got defendant from, if I said that.
5 MR. PETESCH: We know what he meant.
6 MR. JOHNSON: Complainant's exhibit, my apologies.
7 THE WITNESS: It's this one, right? The
8 complainant's?
9 BY MR. JOHNSON:
10 Q The white one.
11 MR. PETESCH: The white binder.
12 BY MR. JOHNSON:
13 Q Yes.
14 A Yes. Okay.
15 Q And on the second page, Mr. Lane, do you, can you,
16 do you recognize the organization chart?
17 A I do.
18 Q And in the organization chart, Mr. Lane, are you
19 considered to be on the same level as Mr. Belfiore?
20 A Yes, in this, in this organization chart, I'm on
21 the same level as Mr. Belfiore.
22 Q Now, Mr. Lane, in this particular organization
23 chart, can you identify the, I guess, the direct reports
24 underneath your name?
25 A Sure, Jay Konar, Ben Chudasama, Zack Minton, Sue

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1 Zloth, and an open position for a chief information security
2 officer.
3 Q Isn't it true that all the persons listed under
4 your, under your box on the organization chart were, with
5 the exception of Zack Minton, were also fellow NXTers?
6 A No. Ben Chudasama was not from NXT. Sue Zloth
7 and Jay Konar were from NXT, and the chief information
8 officer, security officer, wasn't from NXT.
9 Q And isn't it true, isn't it true that these
10 individuals, you were responsible for --
11 A I'm sorry --
12 Q I'm sorry. Go ahead.
13 A -- I'd like to correct that. I was speaking too
14 fast. The only NXTer was Sue Zloth. Jay Konar was also not
15 from NXT. I hired him after the -- so it was only Sue
16 Zloth.
17 Q Okay. Thank you.
18 A I stand corrected.
19 Q Now, Mr. Lane, isn't it true that you were in
20 charge of or had oversight over the human resource function?
21 A Not when this org chart was distributed, but yes,
22 subsequent to this, I did.
23 Q And isn't it true that you provided or gave raises
24 to each one of these individuals?
25 A Yes, that's true.

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1 Q Now --
2 MR. PRAGER: Excuse me. What period are we
3 talking about?
4 MR. JOHNSON: 2008 through 2011.
5 MR. PETESCH: And, also, objection. For
6 clarification, these individuals?
7 MR. PRAGER: Well, I assume he's talking about the
8 people who are listed under his name in that chart, but we
9 can get that clarified.
10 MR. JOHNSON: Sure.
11 MR. PRAGER: Let me see if I can clarify it. In
12 2008 you would have had the authority to grant raises to
13 people under your supervision?
14 THE WITNESS: Yes.
15 MR. PRAGER: And was that true also in 2009 and
16 2010?
17 THE WITNESS: Yes.
18 MR. PRAGER: All right. When you became chief
19 executive officer in 2011, was that still true?
20 THE WITNESS: That I was able to grant raises for
21 people under my supervision?
22 MR. PRAGER: Yes, that's the question.
23 THE WITNESS: Yes, except for officers. When I
24 became chief executive officer, officer increases would have
25 had to have been approved by the board.

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1 MR. PRAGER: Thank you. Mr. Johnson.
2 MR. JOHNSON: Thank you, Your Honor.
3 BY MR. JOHNSON:
4 Q Now, Mr. Lane, isn't it true that you hired Zack
5 Minton?
6 A Yes.
7 Q Can you identify Zack Minton's title?
8 A Manager of learning and development.
9 Q Now, isn't it true that Zack Minton does not have
10 a college degree?
11 A That may be true. I don't remember.
12 MR. PRAGER: And, Mr. Johnson, it would be helpful
13 to me and perhaps the witness if you could, as a preliminary
14 matter, either state what date you're talking about or, if
15 you don't know, ask the witness about the dates. I have no
16 idea when Minton was hired.
17 MR. JOHNSON: Sure. Thank you, Your Honor.
18 BY MR. JOHNSON:
19 Q Mr. Lane, for the record, do you know when Zack
20 Minton was hired?
21 A I don't remember exactly. It was either 2006 or
22 2007, approximately. I don't remember exactly.
23 Q And does Mr. Zack Minton report to you?
24 A He doesn't work at Merchant Link any longer,
25 but --

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1 Q Any longer?
2 A Yeah -- but he did at the time, yes.
3 Q Now, is Zack Minton a white male?
4 A Yes.
5 Q And whom did Zack Minton replace once you hired
6 him?
7 A Kia Hall.
8 Q And do you recall Zack Minton's starting salary?
9 A I do not, no.
10 Q Now, Mr. Lane, I'm going to turn your attention to
11 what has already been admitted to evidence as Complainant's
12 Exhibit No. 3.
13 A Okay.
14 Q Now, was Mr. Zack Minton employed by Merchant Link
15 in the year 2008?
16 A Yes.
17 Q And can you find Mr. Minton on this particular
18 count chart, and if you -- it's the very first page, about
19 five spaces down.
20 MR. PETESCH: Spaces?
21 BY MR. JOHNSON:
22 Q Or five, I guess, blocks; so if you want to look
23 at it in blocks, I'm sorry.
24 MR. PETESCH: Oh, okay.
25 THE WITNESS: Yes, I have -- I found him.

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1 MR. PRAGER: I'm sorry. I haven't -- oh, yes, I
2 have. Go ahead.
3 MR. PETESCH: Oh, got it. Okay.
4 BY MR. JOHNSON:
5 Q Isn't it true that in 2008 Zack Minton's salary
6 was \$78,027?
7 A Yes, in -- yeah. That --
8 Q And his hire date was December 31st of 2007?
9 A Yes.
10 MR. JOHNSON: Now, Your Honor, at this time,
11 complainants wish to identify as Complainant's Exhibit No.
12 46.
13 THE WITNESS: Okay. I'm there.
14 MR. PETESCH: Your Honor, well, let's get to the
15 exhibit first, but --
16 MR. PRAGER: At this point, all he's been asked to
17 do is to take a look at it. So --
18 MR. PETESCH: Yes.
19 MR. PRAGER: -- I think you're premature. So
20 let's --
21 MR. PETESCH: Fair enough.
22 MR. PRAGER: Go ahead, Mr. Johnson.
23 MR. JOHNSON: Yes.
24 BY MR. JOHNSON:
25 Q Mr. Lane, do you recognize Complainant's Exhibit

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1 No. 46?
2 A Yes, I do.
3 Q And do you recognize the recipient of, I'm sorry,
4 the sender of the e-mail, Ms. Kia Hall?
5 A Yes, I do.
6 Q And isn't it true Ms. Kia Hall is an
7 African-American employee of Merchant Link?
8 A She was at the time, yes.
9 Q Now, isn't it true that she contacted you directly
10 to inform you of her dissatisfaction with her current
11 compensation?
12 MR. PETESCH: At this point, I'm going to
13 interpose an objection. The date on this is June of 2007.
14 The claim is one of Mr. Belfiore. Having a separate case or
15 a trial within a trial does not a pattern and practice make.
16 So I'm objecting to the probative relevancy of this, the
17 overall relevancy in time. Moreover, this is an individual
18 at a different level within the Merchant Link corporation,
19 and I think that just about does it for my relevancy
20 objection.
21 MR. PRAGER: Well, I'll hold that in abeyance.
22 Let's see what other questions Mr. Johnson has. I reserve
23 ruling, and it may be irrelevant, but go ahead and ask your
24 question.
25 BY MR. JOHNSON:

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1 Q Now, didn't Ms. Kia Hall complain to you about her
2 dissatisfaction with her compensation?
3 A Yeah.
4 MR. PRAGER: Let's -- the answer was yes.
5 MR. JOHNSON: Okay.
6 MR. PRAGER: Can we cut to the chase a little bit?
7 How much was she earning at the time? Do you know?
8 THE WITNESS: I don't remember exactly. It was
9 part of our annual review process, and she complained to me
10 that her increase was not large enough.
11 MR. PRAGER: And so you don't know how much she
12 was being paid at the time?
13 THE WITNESS: I don't remember, no.
14 MR. PRAGER: Mr. Johnson, is there any evidence in
15 the record as to how much she was being paid at the time?
16 MR. JOHNSON: Yes, Your Honor, if Mr. Lane would
17 turn to the next page of the same exhibit.
18 THE WITNESS: Okay.
19 BY MR. JOHNSON:
20 Q Mr. Lane, in Ms. Hall's letter to you, does she
21 identify what her current base salary is?
22 A Can you point me to it? I don't see it on the
23 next page.
24 Q The very next page from the e-mail. It should be:
25 Dear Dan Lane.

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1 A Oh, sorry, I went two pages. Yes, \$61,812.72.
2 MR. JOHNSON: Your Honor, can I step outside for a
3 second?
4 MR. PRAGER: We'll go off the record for a moment.
5 (Whereupon, a brief recess was taken.)
6 MR. PRAGER: We'll go back on the record at this
7 point, and Mr. Johnson is out of the room for a moment, but
8 we are going to take a 10-minute recess. We will resume at
9 approximately 10 of 12:00. We're now off the record.
10 (Whereupon, a brief recess was taken.)
11 MR. PRAGER: All right. We're back on the record.
12 Mr. Johnson.
13 MR. JOHNSON: Yes. Thank you, Your Honor.
14 BY MR. JOHNSON:
15 Q Mr. Lane, on the second page of what has been
16 marked for identification as Complainant's Exhibit No. 46,
17 isn't it true that Ms. Kia Hall had a bachelor's degree in
18 mathematics?
19 A Yes.
20 Q And isn't it true that Ms. Kia Hall had a master's
21 degree in computer information sciences?
22 A Sorry, I was on the wrong page again. Yes.
23 MR. PETESCH: I'm going to renew the objection
24 articulated earlier to the extent that any -- if there's any
25 relevance at all to Kia Hall's individual situation. One

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1 other individual situation does not a pattern or practice
2 make, and that, again, if he can even connect the dots on
3 that, at most, makes its an allegation of another me-too
4 situation, and I think we only had scheduled one trial in
5 this matter.
6 MR. PRAGER: Well, I tend to agree with you, but I
7 think, Mr. Johnson, the point you've made, I think, to the
8 extent that it is relevant -- and we'll discuss relevance
9 and weight at another point -- I think you've tried to
10 establish and have established that Ms. Hall had a lower
11 salary than Mr. Kinsella and that she, at least from the
12 point of view of her education level, had more degrees than
13 Mr. Kinsella. Is there anything else you want to point out,
14 because I do think that this line of questioning is lapsing
15 into things that aren't terribly relevant.
16 MR. JOHNSON: Okay, Your Honor. Actually, we will
17 point out, Your Honor, we will point out that Mr. Zack
18 Minton --
19 MR. PRAGER: Sorry, Minton? I thought we were
20 talking about --
21 MR. JOHNSON: Kia Hall. Kia Hall is the
22 African-American woman that was replaced by Zack Minton.
23 MR. PRAGER: Oh, I'm sorry. I said Kinsella. I
24 meant --
25 MR. JOHNSON: Yes.

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1 MR. PRAGER: I'm sorry.
2 MR. JOHNSON: It's a short line of questioning,
3 Your Honor, but we're just making certain that the Court has
4 all the steps that went in the process, and we will
5 associate it with Mr. Belfiore later on.
6 MR. PRAGER: Okay. And what other steps are
7 there?
8 MR. JOHNSON: Actually, Ms. Hall asked for a
9 salary of \$85,000.
10 MR. PRAGER: Well, I don't think that's terribly
11 relevant, what she asked for. Her replacement earned more
12 than she did.
13 MR. JOHNSON: Yes. Well, he was, the replacement
14 was hired at \$78,000 with no degree, white male.
15 MR. PRAGER: All right. I get the point. I don't
16 think we need any more testimony.
17 MR. JOHNSON: Sure. Your Honor, if we're not
18 going to have any more testimony on Ms. Kia Hall -- and also
19 relevant, Your Honor, the position actually required a
20 degree --
21 MR. PETESCH: But if I can further object then.
22 If the inference that you're drawing is that she was earning
23 \$61,000 as of the time she wound up her employment, because
24 this is a June 27th, 2007, document, and if you're looking
25 at a delta between \$61,812 and some \$78,000, then that's not

1 a valid comparison either because these are two different
2 time frames. One is as of 12/31/2007, and this is as of
3 June. If we're going to be drawing any inferences, then we
4 should at least fill in the blanks between the June time and
5 the December time, but I think it's all irrelevant in total.

6 MR. JOHNSON: Yes --

7 MR. PRAGER: Again, I'm not sure. Are you saying
8 that there was a massive inflation then between December and
9 June?

10 MR. PETESCH: I'm saying that the inference is
11 that Kia Hall left, making \$61,812. If that's going to be
12 the inference that's left, I would object and I think we
13 probably do need to fill in the cracks a little bit more on
14 this. Again, I think the whole line of questioning on a
15 separate me-too is irrelevant, but I don't want to, I don't
16 want to leave with half a, half an inference and an
17 inaccurate one at that.

18 MR. PRAGER: Mr. Johnson.

19 MR. JOHNSON: Yes, Your Honor. I think counsel
20 misses the point. Primarily, this is not a me-too type of
21 situation. This is a situation whereby it can be shown that
22 in the mind or position or actions of Mr. Lane, Mr. Lane did
23 not take into consideration the individual's experience, he
24 did not take into consideration the individual's education,
25 and he actually just eschewed the requirements of the

1 position itself, and basically, Mr. Lane hired an
2 unqualified white male at \$20,000 more in a very short
3 period of time, which shows that he has the ability and has
4 -- and demonstrated the actual history to give raises to
5 undeserving individuals and obviously not to those who
6 actually deserve it.

7 MR. PRAGER: All right. I --

8 MR. PETESCH: I don't know that he's shown that
9 Mr. Minton was not qualified for the job. I don't know
10 that --

11 MR. JOHNSON: Well, the job posting --

12 MR. PETESCH: There's a lot of different variables
13 out there.

14 MR. JOHNSON: The job posting in and of itself
15 says must have a degree. That means not qualified.

16 MR. PRAGER: Why don't we do this --

17 MR. PETESCH: Again, we're starting a whole new
18 trial here.

19 MR. PRAGER: -- why don't you ask -- again, while
20 I understand Mr. Petesch's concerns, I will allow you to ask
21 Mr. Lane to explain, as best he can, what the distinctions
22 were in terms of why he was willing to give Mr. Minton a
23 salary considerably higher than the salary that Ms. Hall was
24 earning at the time or six months earlier.

25 Did you -- rather than having Mr. Johnson restate

1 what I just stated, you heard it. So can you --

2 THE WITNESS: Okay.

3 MR. PRAGER: -- can you explain that?

4 THE WITNESS: My recollection of the events, I
5 promoted Kia Hall into the learning and development manager
6 position from tech support. When I promoted her, she was
7 making significantly less than the 61,000. I promoted her
8 over two employees who were in that department, and she --
9 who had been doing that job, one of whom applied for that
10 position. I selected Kia. In her annual review process, I
11 tried to give her an increase to -- that was significantly
12 above what the prescribed amount was. Kia expressed that
13 she was not satisfied with that. I asked her to provide
14 some backup documentation so that I could make a case to get
15 her a larger increase, and she provided me this
16 documentation, and I wasn't able to get the increase, and
17 she left Merchant Link shortly after, dissatisfied with her
18 increase.

19 Zack Minton -- and I, I recall during this
20 exchange, there was another woman, and I can't recall her
21 name, who I hired, I believe, between Kia and Zack, and she,
22 she only stayed with Merchant Link for a few months. Zack
23 Minton was hired from MICROS. MICROS was our biggest
24 partner, and he had been doing training for MICROS, and we
25 had to, we actually -- he was a valued employee at MICROS.

1 We got a call from MICROS. They weren't happy that we hired
2 him away actually, but we asked them to make an exception
3 that -- it was sort of a rule of thumb that we wouldn't hire
4 their employees, but we really wanted to get him in, and we
5 really valued the training experience that he had and that
6 he was, had acquired at MICROS. I don't remember his
7 degree, his academic credentials.

8 MR. PRAGER: All right. With that answer,
9 Mr. Johnson, you can follow up, if you wish.

10 BY MR. JOHNSON:

11 Q So, Mr. Lane, what was the key difference between
12 Zack Minton and Kia Hall in terms of their capacity to do
13 the learning manager job?

14 A Well, they were different people. They had a
15 different -- Zack had done training of MICROS employees in
16 their lodging, lodging division. We had hospitality and
17 lodging products. Kia had done training, as well, I believe
18 shortly after she had gotten out of school. She did not
19 have experience doing training on the point-of-sale
20 equipment that our employees were trained on or the -- but
21 she was familiar with Merchant Link, she had been there a
22 couple of years, and she was also well qualified.

23 Q And what is the basis for a \$20,000 distinction
24 between the two of them?

25 A Well, I believe when she left, it was, I -- and,

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1 again, this is from memory -- but I believe it was, I was
2 offering her \$72,000, which was an increase from her salary
3 at the time. It was a significant increase again. So I
4 don't think this was -- this was the number going into the
5 review at the end of the review process. Her increase was
6 larger, and there were a number of factors: I was, I had
7 promoted her from technical support, where she had been
8 earning significantly less than \$61,000, I want to say in
9 the neighborhood of \$40,000 or high 30s, and Zack was coming
10 in; his salary, his salary, leaving MICROS, was higher; he
11 had worked many years at MICROS; and he had a -- and he had
12 experience on the equipment that our employees were
13 supporting.

14 Q And ultimately, Zack Minton became a, under, in
15 your -- within your organization?

16 A When I hired him, yes.

17 Q And did you have an opportunity to meet with Zack
18 pursuant to his job functions?

19 A Yes.

20 Q And did you have an opportunity to experience
21 Zack's ability to perform his job?

22 A Yes.

23 Q And did --

24 MR. PRAGER: Again, I'm not sure. Where is this
25 leading?

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1 MR. JOHNSON: I'm sorry, Your Honor?

2 MR. PRAGER: Where is this leading?

3 MR. JOHNSON: Just establishing a relationship
4 between Mr. Lane and Zack Minton.

5 MR. PRAGER: All right. Well, let's focus a
6 little more to your -- for Mr. Lane, what else do you want
7 to establish?

8 MR. JOHNSON: And his rapport with Mr. Lane,
9 whether or not Mr. Lane confided into Zack.

10 MR. PRAGER: All right. You may ask that
11 question.

12 BY MR. JOHNSON:

13 Q Mr. Lane, can you describe for the Court your
14 rapport with Mr. Zack Minton?

15 A It was good. He worked for me, so it was a
16 supervisor rapport. I wasn't friends with Zack, but we
17 certainly had a good working relationship.

18 Q And you discussed the business of Merchant Link
19 with Zack?

20 A Yes.

21 MR. JOHNSON: Your Honor, we would like to move
22 into evidence the two exhibits that we just discussed,
23 Exhibit 45 and 46.

24 MR. PETESCH: And we would renew our relevancy
25 objection, particularly in view of the fact that there's

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1 testimony filling in, as I alluded to earlier, some of the
2 cracks implied by this documentation. So it's a relevancy
3 objection on the two exhibits.

4 MR. PRAGER: I agree that these exhibits serve no
5 pressing evidentiary purpose. So they will not be admitted,
6 and they will be placed, however, in a separate file as
7 exhibits that were rejected during the hearing so that if
8 there is -- when there is a further review by the
9 Commission, Mr. Johnson, you'll be able to explain that they
10 were rejected, but I see no reason to admit them at this
11 point.

12 MR. JOHNSON: Very good. Thank you, Your Honor.

13 MR. PRAGER: We'll go off the record for a moment.
14 (Whereupon, a brief recess was taken.)

15 MR. PRAGER: All right. We'll go back on the
16 record. During the short recess, I got clarification that
17 it is only Complainant's 46 that's been moved into evidence,
18 and it is Complainant's Exhibit 46 that is rejected as
19 evidence in this case. There is no, there's been no attempt
20 to introduce Complainant's 45, and there's been no ruling on
21 Complainant's 45. Mr. Johnson.

22 MR. JOHNSON: Yes, Your Honor.

23 BY MR. JOHNSON:

24 Q Mr. Lane, I would like to turn your attention to
25 what has been previously identified as Complainant's Exhibit

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1 No. 1.

2 MR. PRAGER: We'll go off the record again.
3 (Whereupon, a brief recess was taken.)

4 MR. PRAGER: Then we'll go back on the record.

5 THE WITNESS: I have it.

6 BY MR. JOHNSON:

7 Q Mr. Lane, do you recognize Complainant's Exhibit
8 No. 1?

9 A Yes.

10 Q And can you describe that for the Court, please?

11 A It appears to be two pages from a document that
12 was prepared to attempt to sell Merchant Link.

13 Q And will you turn to the second page, please?

14 A Okay.

15 Q And do you recognize the second page as well?

16 A Yes.

17 Q And the date of this particular document is May
18 31st, 2008, correct?

19 A The date on the bottom is July 2008, and it -- the
20 date of the table appears to be May 31st, 2008.

21 Q And pursuant to Plaintiff's Exhibit, Complainant's
22 Exhibit No. 1, the full-time employees -- I'm assuming, if
23 you can correct me, FTE stands for full-time employees?

24 A Correct.

25 Q It identifies them as, number being, a total

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1 number being 108, correct?
2 A Yes.
3 Q And can you please identify the departments for
4 which you were responsible in May 31st of 2008?
5 A Well, I don't remember the exact timing with
6 regards to the, to the move from COO to CTO, but if this
7 happened after that change, then I would have been
8 responsible for the product development, development,
9 network services, technology, and training and documentation
10 department. If it happened before that change, or this was
11 produced before that change, it would have been also the
12 merchant services and technical services department.
13 Q So isn't it true that pursuant to the change of
14 your responsibilities, you manage less people?
15 A Yes, that's true.
16 Q So isn't it true most of the responsibilities
17 associated with these people moved to Mr. Belfiore?
18 A Yes, those two departments, they moved to
19 Mr. Belfiore.
20 MR. PRAGER: I'm sorry. Which two departments are
21 you talking about?
22 THE WITNESS: The technical services, which was
23 our technical support group, and the merchant services,
24 which was our implementation and installation departments.
25 BY MR. JOHNSON:

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1 Q And isn't it true, when the responsibilities
2 shifted to Mr. Belfiore, he was also still in charge of
3 finance?
4 A Yes, I believe that is true, although I believe
5 the finance group, I don't remember, it may have reported
6 directly to Chris Justice after they shifted the
7 responsibilities of the service delivery group over to, to
8 Erik.
9 Q Would it be correct to say that Mr. Belfiore's
10 responsibilities after the move exceeded your
11 responsibilities?
12 A No, that's not correct.
13 Q And how could you justify it not being correct
14 when your responsibilities and the number of people that
15 you're responsible for shifted to Mr. Belfiore?
16 A Well, the -- I feel that the product development,
17 development, network services, technology, and training and
18 documentation departments were at least equal, if not, more
19 responsibility than managing the technical services and
20 merchant services departments.
21 Q Now, it is your understanding today and your
22 testimony today that Merchant Link is a service company,
23 correct?
24 A No. It's a technology company.
25 Q And so your position is different from that of the

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1 then-CEO, Mr. Christopher Justice, correct?
2 A My position then was different than the then-CEO,
3 Chris Justice?
4 Q Yes.
5 A Yes, that's correct.
6 Q And do you believe that --
7 MR. PRAGER: I'm not sure I understand either the
8 question or the answer.
9 THE WITNESS: I'm not sure I understood the
10 question either. I'm sorry.
11 MR. PRAGER: What was your question?
12 MR. JOHNSON: I asked Mr. Lane if his position on
13 the, I guess, the shifting of the responsibilities --
14 MR. PRAGER: Wait. Let me understand. You're
15 asking whether or not, before Justice left, whether Mr. Lane
16 was exercising the same role as Mr. Justice?
17 MR. JOHNSON: No. No. Actually, Mr. Justice
18 yesterday identified the company as being a service company,
19 and --
20 MR. PETESCH: Well, his testimony will speak for
21 itself.
22 MR. JOHNSON: Yes. Yes. Mr. Justice basically
23 stated the company was a service company.
24 MR. PRAGER: The transcript will determine that,
25 but go ahead.

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1 MR. JOHNSON: Exactly, and Mr. Lane has now said
2 it was a technology company, and I asked him was his
3 position different from Mr. Justice, and he said yes.
4 And --
5 MR. PRAGER: His position. That's the -- his
6 characterization of the company --
7 MR. JOHNSON: Of the company.
8 MR. PRAGER: -- may be different. Is that what
9 you're asking about?
10 MR. JOHNSON: Yes. Yes.
11 MR. PRAGER: All right. Then ask it that way,
12 please.
13 MR. JOHNSON: Yes, not a problem. Thank you, Your
14 Honor.
15 BY MR. JOHNSON:
16 Q Now, Mr. Lane, is your characterization --
17 MR. BELFIORE: That's the question.
18 MR. JOHNSON: I'm sorry?
19 MR. PRAGER: No, go ahead. I'm sorry. Continue,
20 Mr. Johnson.
21 BY MR. JOHNSON:
22 Q Now, Mr. Lane, is your characterization of the
23 company as a technology company different from Mr. Justice's
24 characterization of the company as a service company?
25 A Thanks. I misunderstood the question. Merchant

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1 Link provided both technology and services to its customers,
2 but I would, yes, I would characterize the company as a
3 technology company.
4 Q And why would you do that?
5 A Because our customers pay us a lot of money for us
6 to deliver technology to, to them. We're a payment gateway.
7 We provide very complex technical products to our customers,
8 and I think when our customers think of us, they think of us
9 as a technology company.
10 Q And do you believe that belief is what drive, or
11 drives you with regard to the importance of employees to the
12 company?
13 A Yes, I do.
14 Q And does that belief support your giving raises to
15 individuals in the company?
16 A In some cases, it does, yes.
17 MR. JOHNSON: I'm sorry. One second, Your Honor.
18 MR. PRAGER: All right.
19 BY MR. JOHNSON:
20 Q And, Mr. Lane, can you identify, what technology
21 did Merchant Link develop?
22 A Yes. There's a lot of technology we developed.
23 We have at a core, at the core of our company or our gateway
24 our, what's called a transaction switch, which is running
25 lots and lots of software that was developed over many years

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1 by many individuals that takes credit card transactions from
2 merchant locations, translates those transactions, and
3 switches them out to the credit card banks that provide the
4 authorization. These are very big, complex systems. They
5 currently carry over almost 5 billion transactions a year
6 with -- worth 3 or \$400 billion of funds going through those
7 switches.
8 In addition, we provide security systems that
9 protect that credit card data so that when those credit card
10 transactions flow through the system, we put what's called
11 tokens on our point-of-sale -- on the point-of-sale systems
12 so if the customer is hacked, the bad guys can't get the
13 credit card data. So Best Buy is an example of a customer
14 that's using our tokenization technology that was developed
15 by Merchant Link, and they alone send about a billion
16 transactions a year through our system. So these, again,
17 are -- and this is just the start of the list. I could go
18 on, but it's a very big, complex system that's, that the
19 technology is running.
20 MR. PETESCH: To the extent we're on a public
21 record -- and nobody's been divulging any trade secrets so
22 far -- but I would, if it does get to a point of something
23 becoming a matter of trade secrets, I would hope that --
24 THE WITNESS: Thanks for that reminder, yes.
25 MR. PETESCH: -- would hope that you would stop

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1 and --
2 THE WITNESS: Yes.
3 MR. PETESCH: -- we would react accordingly with
4 the record on this.
5 THE WITNESS: Yes. Thank you.
6 MR. PETESCH: No objection so far.
7 MR. PRAGER: Mr. Johnson, your next question.
8 MR. JOHNSON: Yes, Your Honor.
9 BY MR. JOHNSON:
10 Q Mr. Lane, what is a message format?
11 A A message format is when the point-of-sale system
12 -- when the credit card is swiped on the point-of-sale
13 system, a message is created in the point-of-sale system to
14 carry that credit card transaction and it has a prescribed
15 format so the computers at each end can understand the
16 message. So it's a general term to mean the, the format of
17 the message that's used to carry data back and forth between
18 systems.
19 Q And what does, I think, VISA-K mean?
20 MR. PRAGER: I'm sorry. What was that?
21 MR. JOHNSON: VISA-K.
22 THE WITNESS: VISA-K is one of the message formats
23 that's used in the credit card industry to carry credit card
24 transactions.
25 BY MR. JOHNSON:

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1 Q Does Merchant Link use it?
2 A Yes.
3 Q Did Merchant Link develop it?
4 A Merchant Link developed software to carry VISA-K
5 transactions. Merchant Link did not develop the VISA-K
6 message format, no.
7 Q Is VISA-K the pertinent technology for the
8 transportation technology?
9 A It's --
10 MR. BELFIORE: Transaction.
11 BY MR. JOHNSON:
12 Q Transaction technology.
13 A It's one of the, it's one of the message formats
14 that's used to carry credit card transactions through our
15 gateway --
16 Q And --
17 A -- through the Merchant Link gateway.
18 Q And what other formats do you use?
19 MR. PRAGER: Let me interrupt you here. I'm not
20 sure where this is going, but I'm not going to cut it off,
21 but it seems to me you're no longer discussing Complainant's
22 Exhibit 1, are you?
23 MR. JOHNSON: In relation to, we're determining,
24 we're basically asking questions along the line as to who
25 performs what functions and its association to or relation

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1 to Mr. Lane.
2 MR. PRAGER: All right. Well, why don't we defer
3 that until after lunch, and at this point, I will declare
4 about a three-quarters of an hour recess until 1:15. We're
5 off the record.
6 (Whereupon, at 12:27 p.m., a luncheon recess was
7 taken.)
8 MR. PRAGER: We're back on the record.
9 Mr. Johnson, you may resume your questioning.
10 MR. JOHNSON: Thank you, Your Honor.
11 BY MR. JOHNSON:
12 Q Mr. Lane, please tell us what technology Merchant
13 Link has sold to other companies.
14 A We have sold our payment gateway technology, a
15 product called TransactionVault, a product called
16 TransactionShield, our e-commerce gateway, and custom
17 software development, among others.
18 Q And do you provide licensing, too, for this
19 software?
20 A Typically, no. We, we typically provide it as a
21 service from a cloud, but sometimes we provide custom
22 software development that we do deliver on a license basis.
23 Q And typically, how do you bill for your services?
24 A Typically, we bill it through either a per
25 transaction model, so every time a transaction flows through

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1 the gateway, we bill a few cents for that transaction, or we
2 bill it on a monthly subscription basis, so a customer can
3 subscribe to the service and they can get, can send as many
4 transactions as they like at a fixed monthly rate.
5 Q And do you also bill for tech support?
6 A Yes, we do.
7 Q And do you also bill for installation?
8 A Yes, we do.
9 Q And tech support is a service, correct?
10 A Correct.
11 Q And installation is a service also, correct?
12 A Correct.
13 Q Mr. Lane, I want to --
14 MR. JOHNSON: At this time, Your Honor, we want to
15 mark for identification Plaintiff's Exhibit No. 23.
16 (Exhibit No. 23 was marked
17 for identification.)
18 MR. PRAGER: Did you want to introduce Exhibit 1
19 into the record? You haven't moved to do so.
20 MR. JOHNSON: Yes, Your Honor. I thought I had
21 checked it off. I might have checked it off inadvertently.
22 Yes, Your Honor, complainant seeks to move into evidence
23 Complainant's Exhibit No. 1.
24 MR. PRAGER: Is there an objection?
25 MR. PETESCH: Only on the rule of completeness.

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1 It purports to be pages 29 and 30 of what's most likely a
2 larger document, but beyond that, no objection.
3 MR. PRAGER: All right. Complainant's Exhibit No.
4 1 will be admitted. Mr. Johnson, though I've admitted the
5 exhibit, as Mr. Lane testified, there are two different
6 dates on page 2 of that document, and there are no, because
7 page 1 is blacked out in part, there's no date for that. Do
8 you have a clean copy of that which would indicate the date?
9 (Exhibit No. 1 was received
10 in evidence.)
11 MR. JOHNSON: This was, as everybody has testified
12 so far, the memorandum for the sale of the business, and for
13 the purposes that we introduced it, the document itself
14 expresses what date, as of May 31st, 2008, the number of
15 employees. This, at the bottom, is dated July 2008. So I'm
16 assuming this was used contemporaneously for the marketing
17 and sale of the business. My understanding, there have been
18 other memorandums with, I guess, varying dates in terms of
19 attempts to sell the business, but specifically, we used
20 this particular memorandum and this date.
21 MR. PRAGER: Okay. And your answer then to my
22 question is, no, you don't have a clean copy?
23 MR. JOHNSON: Oh, no. I'm sorry, Your Honor. No,
24 we don't have a clean copy. This is the only piece of the
25 memorandum that we have.

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1 MR. PRAGER: Did you get this from Merchant Link?
2 MR. JOHNSON: Yes. Actually, there was -- I
3 believe Exhibit 5, which had been admitted, was an excerpt
4 from the confidential memorandum as well, which was a 2008
5 memorandum testified to by Mr. Belfiore and Mr. Justice.
6 And --
7 MR. PETESCH: Exhibit 1 does not bear a Merchant
8 Link Bates stamp, indicating production in this matter. So
9 we don't know exactly where the document came from. The
10 testimony is what it is, though.
11 MR. PRAGER: Right. Well, we'll assume for
12 purposes of this hearing that page 1 was produced
13 simultaneously with page 2 of the exhibit; that is, page 29
14 is part of the same document as page 30 in that it, too, was
15 produced in July of 2008.
16 MR. JOHNSON: And, Your Honor, if in fact there is
17 a complete version, we'll be certain to turn it over to
18 opposing counsel.
19 MR. PRAGER: Thank you. You may proceed.
20 MR. JOHNSON: Thank you, Your Honor.
21 BY MR. JOHNSON:
22 Q Mr. Lane, do you identify what has been -- do you
23 recognize what has been identified as Complainant's Exhibit
24 No. 23?
25 A 23 looks to be three, at least three different

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1 documents. There's part of a, part of an employee handbook,
2 an LTIP agreement, and part of a, part of a, looks to be the
3 governing laws of the business, of Merchant Link.
4 MR. PETESCH: And on that basis, we, albeit
5 prematurely, object to that document as just being, well, an
6 incomplete mishmash of a variety of things, but the short
7 objection would be rule of completeness.
8 MR. JOHNSON: And, Your Honor, what we would do
9 is, complainants will identify the first two pages as being
10 23(a). This is if the Court will recognize, at the bottom
11 right-hand corner of the document, it's an incomplete
12 document, really at the expense of the complainant. This
13 was produced in discovery by Merchant Link, and they only
14 produced these specific pages as 83 and 84.
15 MR. PRAGER: All right. Exhibit 23(a), consisting
16 of the first two pages of the proffered exhibit,
17 Complainant's Exhibit 23, have been identified, and for the
18 moment the questioning will only be with relation to that.
19 MR. JOHNSON: Thank you, Your Honor.
20 MR. PRAGER: You may proceed.
21 BY MR. JOHNSON:
22 Q Mr. Lane, do you recognize what has been marked
23 for identification as Complainant's Exhibit No. 23(a)?
24 A Yes, sir.
25 Q And can you please describe that for the Court?

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1 A It appears to be two pages from the governing
2 rules of Merchant Link.
3 Q And are you personally familiar with the governing
4 rules of Merchant Link?
5 A Yes, not every single rule, but generally, I'm
6 familiar with them.
7 Q And do you follow the governing rules of Merchant
8 Link?
9 A Yes.
10 Q And the governing rules of Merchant Link, was this
11 drafted by the board of directors or board of managers?
12 A I'm not sure who drafted them. They were drafted
13 by the two owners, Paymentech and First Data.
14 Q Now --
15 MR. PRAGER: Mr. Johnson --
16 MR. JOHNSON: Sure.
17 MR. PRAGER: -- as I've asked you a couple times
18 today, could we at least get a date for this document or, at
19 least, an approximate date for this document?
20 BY MR. JOHNSON:
21 Q Mr. Lane, to your knowledge, is this, this is a --
22 is this a recent copy, or do you know the date of this
23 particular, of the bylaws?
24 A The bylaws were, I believe they were originally
25 drawn up shortly, either during or shortly before or after

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1 the failed sale attempt of Merchant Link. So when Merchant
2 Link became a joint venture of Paymentech and First Data,
3 these bylaws were drawn up --
4 Q And --
5 A -- I believe. I don't know the exact date.
6 Q Do you know the exact date of the merger or the
7 buyout?
8 A Yes. The -- Merchant Link became a joint venture
9 in, I believe it was, November 1st, 2008.
10 Q And, to your knowledge, have these bylaws been
11 amended?
12 A Not to my knowledge, no.
13 Q Now, Mr. Lane, at the bottom of page 20, as listed
14 here, of page 1 of the exhibit, there's a section on the
15 general powers of the board of managers, 7.3. Do you see
16 7.3?
17 A I do.
18 Q And are you familiar with 7.3?
19 A Give me a second to read it, please. Yes, I'm
20 familiar with this.
21 Q And isn't it true that 7.3 in the bylaws, they
22 have, it has the power, the board of managers has the power
23 to hire or terminate corporate officers?
24 A Yes.
25 MR. PRAGER: Where are you pointing to in 7.3? It

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1 has several subsections.
2 MR. JOHNSON: 7.3(a).
3 MR. PRAGER: Right, and that, my quick reading
4 says, pursuant to Article 8. Somewhere in this original
5 Exhibit 23 is there an Article 8?
6 MR. JOHNSON: Not in this particular exhibit, Your
7 Honor. This is the actual last page of what was provided to
8 the complainant.
9 MR. PRAGER: Had you asked for --
10 MR. JOHNSON: Yes.
11 MR. PRAGER: -- what did you ask for in discovery?
12 MR. JOHNSON: We asked for bylaws.
13 MR. PRAGER: And this is what you were given?
14 MR. JOHNSON: This is what we were given.
15 MR. PETESCH: I have to --
16 MR. PRAGER: Just a moment. Just a moment. All
17 right. Mr. Petesch, could you -- not this afternoon,
18 obviously -- but could you arrange to have Article 8
19 produced by tomorrow morning?
20 MR. PETESCH: I don't see why not. Somebody could
21 certainly --
22 THE WITNESS: Yes.
23 MR. PETESCH: -- get it to us.
24 MR. PRAGER: Are you asking the witness if it
25 could be produced? Is that what you --

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1 MR. PETESCH: Yes.
2 MR. PRAGER: -- question is?
3 MR. PETESCH: Yes.
4 MR. PRAGER: All right. Then I will turn my
5 attention to you rather than to Mr. Petesch. Do you think
6 that you could provide Article 8 for us?
7 THE WITNESS: Yes, I think so. They're in our
8 office in Silver Spring; so we should be able to get them
9 here by tomorrow morning.
10 MR. PRAGER: During the next recess, you could
11 make arrangements to get them here.
12 THE WITNESS: Okay. Yes, sir.
13 MR. PRAGER: Thank you.
14 MR. PETESCH: Can we go off the record for one
15 moment?
16 MR. PRAGER: We can. We'll be off the record.
17 (Whereupon, a brief recess was taken.)
18 MR. PRAGER: All right. We're back on the record.
19 I think, Mr. Lane, you testified, or I'm sorry.
20 Mr. Johnson, you had called attention to subparagraph (a) of
21 paragraph 7.3 in Article 7 for the board of managers in
22 Exhibit 23(a), is that correct?
23 MR. JOHNSON: Yes, Your Honor.
24 MR. PRAGER: All right. Let me just make sure I
25 understand. Previously I think everybody has referred to

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1 people, Mr. Charron, Mr. Duffy, Mr. McCarthy, I can't
2 remember the other persons' names, that they were board of
3 directors. These are really board of managers, Mr. Lane?
4 THE WITNESS: Yes. Those terms can be used
5 interchangeably. The, I guess, technical term was board of
6 managers, but they were commonly referred to as the board of
7 directors.
8 MR. PRAGER: Thank you.
9 THE WITNESS: Uh-huh.
10 MR. PRAGER: Mr. Johnson.
11 MR. JOHNSON: Thank you, Your Honor.
12 BY MR. JOHNSON:
13 Q And, Mr. Lane, in, I guess we're going to call it
14 paragraph 7.3(b) on the second page, which is page 21 of
15 Exhibit 23(a), isn't it true that the setting of the
16 compensation of officers is in the sole province of the
17 board of managers?
18 A Yes.
19 Q Now, Mr. Lane, you were responsible for setting
20 the salary of Mr. Erik Belfiore after you were promoted to
21 CEO, correct?
22 A Yes.
23 Q And were you aware at that particular time that
24 Mr. Belfiore had an issue with his compensation?
25 A I became aware of it after I was promoted, yes.

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1 Q And how did you become aware of it?
2 A I became aware of it because Mr. Belfiore told me
3 he had an issue with it.
4 Q And did Mr. Belfiore ask you for a, for assistance
5 in getting a raise?
6 A He asked me for a raise.
7 Q And did you give him a raise?
8 A I attempted to give him a raise.
9 Q And tell us the process and procedure you went
10 through in giving him a raise.
11 A I, I negotiated a salary increase for Erik. I
12 wasn't familiar with the internal procedure for doing an
13 out-of-cycle increase; so I sent an e-mail to someone in my
14 HR or payroll department to tell me the procedure. They
15 gave me a form or some paperwork, which I completed, or --
16 and, and, and then the raise went into effect.
17 Q And so is your testimony today that you were
18 unfamiliar with the bylaws at that particular time?
19 A Yes. I was, I, I was -- I knew they existed, but
20 I was unfamiliar with this part of the bylaws, yes.
21 Q Is it your testimony today that human resources
22 was unfamiliar with the bylaws at this time?
23 A Yes.
24 Q Now, had you used this particular procedure before
25 to get other individual raises?

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1 A Yes, not specifically since I had been CEO, no,
2 but prior to that, when I had been COO and CTO, out-of-cycle
3 raises were unusual but when -- I used whatever procedure
4 was in place at that time.
5 Q When did you learn that you had used the wrong
6 procedure with regard to granting Mr. Belfiore a raise?
7 A Within, I don't know, a week or two of submitting
8 the, the paperwork for the raise.
9 Q And who informed you that it was the wrong
10 procedure?
11 A I believe it was Christina Smith, who was our CFO
12 at the time, but I don't recall exactly. It may have been
13 Nancy Hamlin, who worked in our accounting department.
14 Q Did you hire Christina Smith?
15 A I did not hire Christina Smith.
16 Q Now, once you realized that Mr. Belfiore's salary
17 had been incorrectly granted, did you inform Mr. Belfiore?
18 A I, yes, I went up to tell Mr. Belfiore that I
19 realized I had made a mistake and that the increase needed
20 board approval and that I didn't, I hadn't gotten board
21 approval yet.
22 Q And what was Mr. Belfiore's response?
23 A He was surprised. He was angry. I don't remember
24 what his exact response was.
25 Q Now, describe to the Court your relationship with

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1 Mr. Belfiore.
2 A Mr. Belfiore reported to me.
3 Q And were you friends?
4 MR. PRAGER: I'm sorry. I got your answer, but he
5 reported to you when?
6 THE WITNESS: At the time that I told him that
7 the, that the, that I needed to get board approval for the
8 raise, which was in late October/early November 2011.
9 MR. PRAGER: But just to make, to clarify, before
10 you became CEO, he did not report to you?
11 THE WITNESS: That's correct.
12 MR. PRAGER: Thank you.
13 BY MR. JOHNSON:
14 Q Now, what was your relationship with Mr. Belfiore?
15 A At the time?
16 Q Yes.
17 A He reported to me.
18 Q And were you friends?
19 A Yes, we, we were friends.
20 Q And would you say that you were advocating on his
21 behalf with regard to getting the raise?
22 A Yes.
23 Q And did you continue to advocate for Mr. Belfiore
24 until the time of his termination?
25 A Yes.

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1 Q And did there come a time where Mr. Belfiore
2 complained to you in a written format that he was going to
3 seek legal counsel?
4 A Yes.
5 Q And when you received that particular
6 communication, what did you do?
7 A Well, the morning I got that communication I went
8 into my HR director's office and shared it with her. I
9 can't remember if she received it, if she was copied on the
10 e-mail correspondence or not. We contacted our attorney,
11 and --
12 MR. PETESCH: I'll object to any communications
13 with the attorney, but the fact of the contact is certainly
14 not privileged.
15 MR. PRAGER: All right. The objection is noted.
16 At the moment, it's overruled to this particular question,
17 but it's also already been answered.
18 MR. PETESCH: And I interrupted the witness.
19 Maybe there's more.
20 THE WITNESS: And that's what I did.
21 BY MR. JOHNSON:
22 Q Now, did the board meet to discuss Mr. Belfiore's
23 compensation after the October 21st e-mail that you
24 received?
25 A Actually, the board met on the day; I believe it

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1 was the same day. The meeting had already been scheduled.
2 When we received the e-mail, we met that day.
3 Q And did the board meet on October 25th to discuss
4 Mr. Belfiore's compensation?
5 A Refresh my memory what -- I can't remember that
6 date. I don't remember the exact dates of, but if you
7 refresh my memory of when that was relative to that letter,
8 I might remember.
9 Q October 25th, 2011.
10 MR. JOHNSON: Your Honor, at this time, we want to
11 mark for identification what has been previously marked as
12 Exhibit No., Complainant's Exhibit No. 65.
13 (Exhibit No. 65 was marked
14 for identification.)
15 MR. PRAGER: All right.
16 BY MR. JOHNSON:
17 Q Now, Mr. Lane, are you familiar with Complainant's
18 Exhibit No. 65?
19 A Yes.
20 Q And is this an e-mail from you?
21 A Yes.
22 Q Now, can you explain or describe Complainant's
23 Exhibit No. 65?
24 A Yes. This was a recap of the compensation
25 committee meeting that we had to discuss Mr. Belfiore's

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1 raise.
2 Q And in discussing this raise, isn't it true that
3 the committee decided to, to seek more information with
4 regard to Mr. Belfiore's request?
5 A Yes.
6 Q During the, I guess, committee meeting, was it
7 discussed that Mr. Belfiore had received his promotion back
8 in December 4th, 2008?
9 A I don't remember if that was discussed.
10 Q Do you recall whether or not the information
11 provided at the compensation committee meeting included
12 Mr. Belfiore's accomplishments and employee file?
13 A It did not include his employee file. We
14 generally discussed Erik Belfiore's responsibilities.
15 Q And was it discussed that Mr. Belfiore had never
16 been reprimanded by the court, I mean, by the company?
17 A No, I don't think that was discussed.
18 Q Was it discussed that Mr. Belfiore was actually a
19 key component to the, I guess, driving the company's goals
20 and objectives?
21 A That may have been discussed as part of his
22 overall responsibilities, yes.
23 Q Was there any other additional information that
24 you needed to get to evaluate Mr. Belfiore?
25 A Yes. That compensation committee -- I provided

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1 some salary information, and the compensation committee
2 didn't feel like they had total visibility into his
3 compensation, and so they asked me and our HR director,
4 Wendy Nussbaum, to gather more information and present it in
5 a more organized fashion, to include his bonuses and LTIP
6 grants.

7 Q Now, at the time of this particular meeting, was
8 the compensation committee aware of his October 21st e-mail
9 in which he threatened, I guess, threatened suit with regard
10 to his compensation?

11 A Yes, they were.

12 Q And was that discussed during the compensation
13 committee?

14 A No, not, not very much. They were definitely
15 aware of it. I think, quite honestly, it made us more
16 careful in the discussion that we needed to make sure that
17 we were considering all the factors in the request for the
18 increase.

19 Q Now, by comparison, when you received an increase,
20 did the compensation committee meet and request more
21 information?

22 MR. PRAGER: I'm sorry. Again, I don't know --
23 what are we talking about? When he was promoted to CEO, or
24 are we talking some other point?

25 MR. JOHNSON: Yes, my apologies, I needed to be

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1 more specific on that particular question.

2 BY MR. JOHNSON:

3 Q Mr. Lane, when you were promoted to CEO --

4 A Yes.

5 Q -- did the compensation committee meet to discuss
6 your salary?

7 A I don't know.

8 MR. JOHNSON: First, Your Honor, complainant moves
9 into evidence Complainant's Exhibit No. 25(a). I don't
10 think we stated that for the record.

11 MR. KAPLAN: I have 23(a).

12 MR. PETESCH: Subject to our earlier objection on
13 completeness and the subsequent request for --

14 MR. KAPLAN: No, it was 23(a).

15 MR. PETESCH: Was it 23(a)?

16 MR. PRAGER: Yes.

17 MR. KAPLAN: Yes, but you said 25.

18 MR. PETESCH: You meant 23(a).

19 MR. JOHNSON: Did I say 25?

20 MR. PRAGER: And I'm sorry --

21 MR. PETESCH: The reference was to Section 7 of
22 the bylaws or that governing document.

23 MR. PRAGER: Section 8.

24 MR. PETESCH: And we will be endeavoring to
25 produce Section 8 as well.

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1 MR. PRAGER: Right. Complainant's Exhibit 23(a),
2 consisting of the first two pages of what had previously
3 been marked as Complainant's Exhibit 23, will be admitted.
4 (Exhibit No. 23(a) was
5 received in evidence.)

6 BY MR. JOHNSON:

7 Q Now, Mr. Lane, standing back on a, or getting back
8 on a particular subject, the e-mail in Complainant's Exhibit
9 65 states that it will, that the compensation committee will
10 follow up in approximately two weeks to discuss thoughts and
11 recommendations on the action, is that correct?

12 A Yes.

13 Q To your knowledge, did the compensation committee
14 meet again?

15 A I'm trying to remember. I don't remember if we
16 met again or not. I don't believe so, but I don't remember.

17 Q Now, are meetings of the board of managers
18 captured in the board of manager minutes?

19 MR. PRAGER: I'm sorry. Was that a question of
20 whether --

21 MR. JOHNSON: Yes.

22 MR. PRAGER: -- they're in the board of managers
23 minutes?

24 MR. JOHNSON: Yes.

25 MR. PRAGER: Okay. Thank you.

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1 THE WITNESS: Yes, there, there are minutes kept
2 of the board of managers meetings.

3 MR. JOHNSON: Your Honor, the complainant wishes
4 to move into evidence Complainant's Exhibit No. 65.

5 MR. PETESCH: No objection.

6 MR. PRAGER: All right. This is not, has nothing
7 to do with your motion, moving it into admission, but I have
8 a question, the terminology. This -- you've been talking
9 about the compensation committee.

10 THE WITNESS: Yes.

11 MR. PRAGER: I noticed that there is a, this is an
12 e-mail sent from you to Mr. McCarthy and to Mr. Charron.
13 Who's the committee?

14 THE WITNESS: Those two people, Barry McCarthy and
15 Dan Charron, and they were both board -- they were also
16 board of director members, and as a subset of the board of
17 directors, they served as the compensation committee.

18 MR. PRAGER: Okay. Just the two of them?

19 THE WITNESS: Yes.

20 MR. PRAGER: It's not that somebody was missing
21 that day?

22 THE WITNESS: Correct, yes.

23 MR. PRAGER: Thank you. Is there any objection,
24 did you say?

25 MR. PETESCH: No, there's no objection, and we

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1 thank you for the clarification question.
2 MR. PRAGER: Complainant's Exhibit 65 is admitted.
3 Okay. Mr. Johnson.
4 (Exhibit No. 65 was received
5 in evidence.)
6 MR. JOHNSON: Yes.
7 BY MR. JOHNSON:
8 Q Now, Mr. Lane, also on that particular e-mail,
9 there is a Mr. Harry Jones. Did Mr. Harry Jones have any
10 input on Mr. Belfiore's compensation?
11 A No --
12 MR. PETESCH: Objection. Mr. Harry Jones is an
13 attorney. To the extent that the question elicits
14 attorney-client communications, that is privileged.
15 MR. PRAGER: All right. Well, I think we've
16 already got an answer, which I'll clarify with Mr. Lane.
17 Your answer, I believe, was no?
18 THE WITNESS: No, sir, yes.
19 MR. PRAGER: Thank you.
20 THE WITNESS: No, sir.
21 MR. PRAGER: And your objection, to the extent
22 that it was timely, is overruled.
23 MR. PETESCH: Thank you.
24 MR. JOHNSON: All right. At this time, Your
25 Honor, we want to mark for identification what has been

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1 previously marked as Complainant's Exhibit No. 55.
2 MR. PRAGER: All right.
3 MR. PETESCH: Portions of this have been
4 previously admitted, yes?
5 MR. PRAGER: Let me just check that.
6 MR. JOHNSON: Just, there was a 55(a).
7 MR. PRAGER: Yes, No. 55(a).
8 MR. PETESCH: And then we had an addition to that.
9 MR. PRAGER: Was ML000912 through --
10 MR. PETESCH: Yes.
11 MR. PRAGER: -- through 917, is that what you're
12 referring to, Mr. Johnson?
13 MR. JOHNSON: Actually, no, Your Honor. We're
14 going to another, a couple other actual meetings just to
15 express certain points.
16 BY MR. JOHNSON:
17 Q Now, Mr. Lane, isn't it true that no actual board
18 minutes were generated with regard to Mr. Belfiore's,
19 Mr. Belfiore's letter or e-mail regarding his discontent
20 with his salary?
21 A I don't think there were any board minutes as a
22 result of his e-mail, no. I'm not sure what the question --
23 I'm not sure I understood the question.
24 Q Now, Mr. Lane, isn't it true that --
25 MR. PRAGER: Are you reformulating the question?

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1 He --
2 MR. JOHNSON: Yes.
3 MR. PRAGER: -- didn't understand it.
4 MR. JOHNSON: Yes.
5 BY MR. JOHNSON:
6 Q Mr. Lane, isn't it true that no board of managers
7 meeting minutes were generated with regard to Mr. Belfiore's
8 termination?
9 A I don't remember. I don't remember. There may
10 have been.
11 Q Now, Mr. Lane, in front of you is Complainant's
12 Exhibit No. 55.
13 A Uh-huh.
14 Q It's a fairly large one, but we can actually get
15 through it by the dates. I am located at, which on this
16 particular document says, ML00057.
17 MR. PETESCH: Just for clarification, are we on a
18 document dated September 29th, 2011?
19 MR. JOHNSON: Yes.
20 MR. PETESCH: Okay. Thank you.
21 MR. PRAGER: All right. Just a moment. All
22 right. This is a two-page document which is marked for
23 identification purposes as Complainant's Exhibit 55(b), and
24 the two pages seem to be ML00057 and 00058. All right.
25 Mr. Johnson.

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1 (Exhibit No. 55(b) was marked
2 for identification.)
3 BY MR. JOHNSON:
4 Q Now, Mr. Lane, isn't it true that pursuant to the
5 September 29th, 2011, board minutes, there's no mention of
6 Mr. Belfiore or any complaints that he may have about his
7 salary?
8 MR. PETESCH: Never mind.
9 MR. PRAGER: Well, I have a question. I thought
10 that Mr. Belfiore complained after September 29th, or have I
11 gotten that wrong?
12 MR. JOHNSON: Well, Mr. Belfiore has been
13 complaining all along, but they actually received --
14 MR. PRAGER: No, I understand, but --
15 MR. JOHNSON: -- the, in October, yes, he received
16 -- they received the first notice in October in terms of the
17 e-mail, October 21st.
18 MR. PRAGER: Okay. So I'm not quite clear what --
19 what relevance does the September 29th, do the 29th minutes
20 have to, to this case?
21 MR. JOHNSON: Actually, Your Honor, this is
22 creating a time line, September 29th of 2011 and then the
23 next set of board minutes are November the 2nd, 2011, which
24 was after, and we want to show that there were no, no other
25 board minutes to have occurred.

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1 MR. PRAGER: All right. Thank you. I'm not
2 sure --
3 THE WITNESS: So, I'm sorry, could you repeat the
4 question?
5 MR. PRAGER: Right. Please do.
6 MR. JOHNSON: Sorry.
7 BY MR. JOHNSON:
8 Q Now, Mr. Lane, isn't it true that there's no
9 mention of any complaints about salary or salary increases
10 by Mr. Belfiore in the September 29th, 2011, board minutes?
11 A Except for the blacked-out part, that's true, and
12 I'm not, I'm not sure why there's various parts that are
13 blacked out, but yes, that appears to be true.
14 MR. PRAGER: That, I think, is because you have
15 lawyers.
16 MR. JOHNSON: Yes.
17 MR. PETESCH: I suspect, if it was about Erik
18 Belfiore and it was non-privileged, it would not be blacked
19 out. It's -- I can't make a representation, one way or the
20 other, whether it was about other business or anything. So
21 -- but I do note that it was before October 21st.
22 BY MR. JOHNSON:
23 Q Now --
24 MR. PRAGER: Mr. Johnson, yes, go ahead.
25 MR. JOHNSON: Sorry.

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1 MR. PRAGER: I'm sorry. We interrupted each
2 other. Go ahead.
3 BY MR. JOHNSON:
4 Q Now, Mr. Lane, if you will, please turn to the
5 next meeting of board managers, which would be two pages
6 later.
7 A Uh-huh.
8 Q And could you state for the record the date of
9 this particular meeting of board managers?
10 A November 2nd, 2011.
11 MR. JOHNSON: And let the record reflect that this
12 is provided by the respondent as Respondent 59, I mean,
13 ML00059 and ML00060.
14 BY MR. JOHNSON:
15 Q Now --
16 MR. PRAGER: Wait just a moment. I think either
17 I, I'm looking at the wrong pages or Mr. Lane got confused,
18 but what I have here is November 2nd, 2011.
19 MR. JOHNSON: November --
20 MR. PRAGER: He said November 11th.
21 THE WITNESS: No. I said 2nd. I'm sorry.
22 MR. PRAGER: Oh, I'm sorry. Then I misheard. I
23 apologize. For purposes of identification, we will identify
24 these two pages as Complainant's Exhibit 55(c), and they
25 consist of pages ML0059 and 0060. Go ahead, Mr. Johnson.

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1 (Exhibit No. 55(c) was marked
2 for identification.)
3 MR. JOHNSON: Thank you, Your Honor.
4 BY MR. JOHNSON:
5 Q Now, Mr. Lane, were you present at this particular
6 meeting of board of managers?
7 A Yes, I was.
8 Q And isn't it true that no mention was made of
9 Mr. Erik Belfiore, his complaints about salary, or the
10 October 21st letter notifying Merchant Link that he had a
11 grievance with his salary?
12 A Again, there's -- there doesn't appear to be any
13 mention, but there's some blacked-out sections, but --
14 Q Prior to October 2nd, had there been any other
15 board meeting that could have possibly reflected any claims
16 by Mr. Belfiore since October 21st, 2011?
17 A I'm sorry. Can you repeat that?
18 Q Prior to November 2nd --
19 A Yes.
20 Q -- to your knowledge, has any other board meeting,
21 board of managers meeting, occurred that has not been
22 memorialized that would reflect that Mr. Belfiore had a
23 complaint with his compensation?
24 A No, I don't think so.
25 MR. JOHNSON: Your Honor, complainant moves into

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1 evidence Complainant's Exhibit 55(b).
2 MR. PETESCH: No objection.
3 MR. JOHNSON: And 55(c).
4 MR. PETESCH: No objection.
5 MR. PRAGER: Well, let me ask you --
6 MR. PETESCH: Yes, on relevance, but --
7 MR. PRAGER: Let me ask you a question. Do we
8 really need to clutter up the record with these? The
9 testimony has been that Mr. Belfiore's name does not appear
10 in the minutes for, in the board minutes, for September 29th
11 and November 2nd, and there were no meetings in between. Do
12 we need to have these also in the record?
13 MR. JOHNSON: I think it supports the record,
14 testimony being given as well, but these are the board
15 minutes, board of manager minutes. So I think it protects
16 the record and, at the same time, it benefits the Court to
17 have access to it.
18 MR. PRAGER: Well, I will admit them, but I must
19 admit that -- which is a different use of the word admit --
20 I have to admit that I'm reluctant to admit them, but I will
21 do so. It's the case of unnecessary suspenders and belts,
22 but we'll do it. The exhibits marked, identified previously
23 as Exhibits 55(b) and 55(c) are admitted, but that raises
24 another question for me. Well, let's go off the record.
25 I'm going to raise the question off the record.

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1 (Exhibit Nos. 55(b) and 55(c)
2 were received in evidence.)
3 (Whereupon, a brief recess was taken.)
4 MR. PRAGER: All right. We'll go back on the
5 record. While we were off the record, I had asked whether
6 or not Merchant Link or its counsel could determine whether
7 the redacted portions of the minutes for November 2nd, the
8 ones that have been identified as Complainant's Exhibit
9 55(c), C as in Charlie, whether those minutes in unredacted
10 form make any mention of Mr. Belfiore, and counsel has said
11 that he would try to determine that from the records in his
12 office or at Merchant Link. Is that an accurate
13 representation of what you said?
14 MR. PETESCH: That is an accurate representation
15 of what I said, and we have Mr. Kaplan disobeying the
16 no-texting-during-the-hearing rule to try to expedite that
17 process.
18 MR. PRAGER: I'm not sure where that rule came
19 from. It wasn't one that I had --
20 MR. PETESCH: Common courtesy.
21 MR. PRAGER: In any event, in any event,
22 Mr. Johnson, please go ahead.
23 MR. JOHNSON: Yes.
24 BY MR. JOHNSON:
25 Q Now, Mr. Lane, you previously testified that you

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1 were Mr. Belfiore's friend, correct?
2 A Yes.
3 Q And you testified that you were advocating for his
4 raise, correct?
5 A Yes.
6 Q And you didn't bring this up in the board minutes,
7 correct?
8 A No, I don't think I did.
9 Q And you were the -- actually, you were responsible
10 for actually authoring or writing or putting together the
11 board manager minutes, correct?
12 A Yes, but -- well, the board of manager minutes
13 were typically recorded by our attorney, the representative
14 from Morris Manning, and sent to me for review. So they
15 were actually authored by David Calhoun, and then I would,
16 they were -- I would sign off on.
17 Q And why didn't you ask for Mr. Belfiore's raise to
18 the board of managers since that's the proper place to ask
19 for it, I'm sorry, ask for the raise?
20 A I don't, I don't think it was the proper place to
21 ask for it because the compensation committee needed to sign
22 off on it first and then -- and then, when I had their
23 sign-off, it would have come to the board of directors.
24 Q The compensation committee, Mr. Charron and
25 Mr. McCarthy, were also part of the board of managers,

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1 correct?
2 A Correct.
3 Q And the board of managers consist of a total of
4 four individuals, correct?
5 A Yes, sir.
6 Q So it was something that could have been stated at
7 the board of managers meeting, correct?
8 A It could have been stated, yes, sir.
9 Q And you elected not to do it, correct?
10 A Yes, sir.
11 Q Now, the e-mail that we just discussed that's
12 previously been identified as the October 25th e-mail in
13 which the compensation committee apparently met, you stated
14 that the compensation committee would get together in
15 approximately two weeks, correct?
16 A Yes, sir.
17 Q And two weeks from October 25th, 2011, is actually
18 Tuesday, November 8th, correct?
19 A I'll take your word for it, yes.
20 Q This particular day, Tuesday, November the 8th, a
21 compensation committee meeting did not happen, correct?
22 A I don't think so, no.
23 Q And this is the date in which Mr. Belfiore met
24 with Ms. Renee Dantzler, correct?
25 A I'm sorry. Tuesday, November 8th, is that what

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1 you said? Yes.
2 Q Now, when did you learn of the Renee Dantzler
3 complaints?
4 A I believe that I learned of it the day after the
5 meeting took place; so that would have been Wednesday,
6 November 9th.
7 Q And did hearing of this particular meeting with
8 Renee Dantzler impact the compensation committee decision
9 not to meet?
10 A No.
11 Q Then why didn't the compensation committee meet
12 the next day?
13 A Well, it was up to me to schedule it, and both Dan
14 and Barry are very difficult, very difficult to schedule,
15 and we were also -- we had been given a homework assignment
16 to research the AIP and LTIP history of Erik and other
17 people to present that back to them; so we just hadn't
18 pulled that together yet and scheduled the meeting.
19 Q So you didn't reach out to Mr. Charron nor
20 Mr. McCarthy, did you?
21 A Can you clarify the question?
22 Q After you heard about the Renee Dantzler
23 complaint, you didn't reach out to Mr. Charron nor
24 Mr. McCarthy, did you?
25 A Well, after -- yes, I did. I, I reached out to

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1 them to recommend that we terminate Erik Belfiore.
2 Q And prior to that, you didn't reach out to
3 Mr. McCarthy or Mr. Charron about scheduling the
4 compensation committee meeting?
5 A I don't remember, but I don't believe so, no.
6 Q Now, from whom did you first hear about the Renee
7 Dantzler complaint?
8 A From Wendy Nussbaum, our HR director.
9 Q And did Wendy Nussbaum state to you or indicate to
10 you that she needed to investigate the circumstances
11 surrounding the allegations of Renee Dantzler?
12 A Yes, she did.
13 Q And did this actually take place?
14 A Yes, it's my understanding it took place.
15 Q And when did the investigation take place?
16 A It took place the day and the -- I believe that
17 day and the next day from when Wendy had heard about the
18 incident.
19 Q And did you participate in the investigation?
20 A I did not, no.
21 Q And as part of the investigation, was Mr. Belfiore
22 interviewed?
23 A He was not. That's -- my understanding is that he
24 was not.
25 Q So what type of investigation can occur without

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1 discussing Mr. Belfiore's side of the allegations, sir?
2 A My understanding is Wendy interviewed Renee
3 Dantzler and Renee's manager, Zack Minton.
4 Q Now, did Zack Minton communicate with you about
5 Mr. Belfiore or his complaint that he filed with human
6 resources about Mr. Belfiore?
7 A No, I don't believe he did.
8 Q Did you get an opportunity to read Mr. Zack
9 Minton's allegations against Mr. Belfiore?
10 A I did.
11 Q And what did you communicate to Mr. Dan Charron
12 and Mr. McCarthy and the board of managers as your reason
13 for terminating Mr. Belfiore?
14 A I communicated that Erik had called an employee in
15 his office and attempted to, in my opinion, get her to
16 sabotage the CRM project and that he intimidated her and did
17 that, you know, against her wishes.
18 Q And what was your belief based upon with regard to
19 Mr. Belfiore's attempting to sabotage the CRM?
20 A What was my belief based on? It was based on the
21 e-mail that I read from Renee, the e-mail I saw that Zack
22 wrote, and the conversations I had with Wendy Nussbaum after
23 she spoke with those individuals.
24 Q Now, did the board recommend that it investigate
25 Mr. Erik Belfiore regarding the allegations against him?

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1 A No, they didn't.
2 Q Now, you also stated that there was an
3 inappropriate communication, correct?
4 A In that meeting?
5 Q In the meeting between Ms. Renee Dantzler and
6 Mr. Belfiore.
7 A Yes.
8 Q And can you state for the Court what that
9 inappropriate communication was?
10 A Erik implied that he helped Renee get her job, and
11 Erik used curse words in the conversation and raised his
12 voice.
13 Q Racist words?
14 A Racist words?
15 Q Did you say racist words?
16 A I'm sorry, raised his voice.
17 Q Oh.
18 MR. JOHNSON: Just one second, Your Honor. Your
19 Honor, complainant would like to mark for identification
20 what has been previously marked as Complainant's Exhibit No.
21 66, Your Honor.
22 MR. PRAGER: 66 has previously been admitted.
23 So --
24 MR. JOHNSON: Yes.
25 MR. PRAGER: -- Mr. Johnson, go ahead.

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1 BY MR. JOHNSON:
2 Q Mr. Lane, do you recognize what has been
3 identified as Complainant's Exhibit No. 66?
4 A Yes, I do.
5 Q And this was a letter that you sent on November
6 11th, 2011, correct?
7 A Well, the first page is a memo that I
8 hand-delivered to Erik on November 11th, and the second page
9 is an e-mail I sent on November 11th to the Silver Spring
10 office or the entire company.
11 Q Now, Mr. Lane, you identify in here as reasons for
12 Mr. Belfiore's termination inappropriate communications and
13 mismanagement of your position, correct?
14 A Yes.
15 Q Can you describe to the Court, exactly what do you
16 mean by mismanagement of your position?
17 A I mean using his influence as a senior, senior
18 executive in the company to try to influence another
19 employee to do something destructive to Merchant Link.
20 Q Now, you didn't know firsthand that he did
21 anything to, or he used his influence to coerce an employee,
22 correct?
23 A I knew from the report I got from Wendy Nussbaum.
24 Q And Wendy Nussbaum didn't, she didn't interview or
25 conduct any type of investigation, correct?

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1 A She did conduct an investigation, yes.
2 Q And the investigation wasn't thorough and
3 objective, was it?
4 A Yes, it was objective, and I was trusting her to,
5 to make sure it was thorough. She interviewed two people,
6 and she had written statements from two people.
7 Q She interviewed two people who made the same
8 allegation, correct?
9 A Yes.
10 Q So she never actually got the other side of the
11 allegation, correct?
12 A That's correct.
13 Q So that's not a thorough investigation, correct?
14 MR. PRAGER: Are you testifying, Mr. Johnson?
15 MR. JOHNSON: I'm leading, Your Honor, leading.
16 I'm sorry.
17 MR. PETESCH: He's leading. It's close, but --
18 MR. JOHNSON: I'm sorry.
19 MR. PETESCH: I'll object, argumentative, just to
20 get in line, but --
21 BY MR. JOHNSON:
22 Q The investigation wasn't thorough, was it?
23 A The investigation could have been more thorough,
24 but at the time, I asked Wendy if she investigated the
25 incident; she said she had. I read the documentation, and I

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1 believe the accident happened. I believe the incident
2 happened to this day.
3 Q And why do you believe the incident happened?
4 A Because Wendy investigated, she talked to those
5 people, and we had written statements from those people,
6 saying that the incident happened.
7 Q Now, throughout Mr. Belfiore's career, has
8 anything of this nature happened before?
9 A No, not of this nature.
10 Q Was there anything documented in his employee file
11 that indicated that something like this would have happened?
12 A Not to my knowledge, no.
13 Q So your knowledge, or your testimony today that
14 you knew that it was true doesn't have any support, does it?
15 A I don't agree with that. I think it does have
16 support in that I had written e-mails and documentation from
17 my HR department -- I had no reason to believe those were
18 not credible or real -- documenting the incident.
19 Q But this belief that you are now stating to the
20 Court emanated from an approximately 10-minute conversation
21 between Mr. Belfiore and Ms. Dantzler, correct?
22 A Correct.
23 Q And there's nothing provided here thus far today
24 that indicates that Mr. Belfiore did anything wrong,
25 correct?

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1 A There -- yes, Erik did something wrong. I don't
2 know if anything's been provided here today to indicate
3 that, but Erik did something wrong.
4 Q Now, you're the CEO of the company. You felt
5 fine, you felt fine with firing someone, a corporate
6 officer, without getting his side of the story?
7 A I didn't feel fine about it, but I felt it was the
8 right thing to do.
9 Q And as CEO of the company, you didn't decide to
10 get involved, to make certain that this was properly
11 investigated?
12 A I felt certain that it was properly investigated.
13 I did not feel the need to get more involved than I did.
14 Q So your testimony today is that you felt that
15 Wendy did her job?
16 A Yes.
17 Q And if, in fact, we find that Wendy didn't her
18 job, would you say that you were wrong in getting
19 Mr. Belfiore terminated?
20 A If Wendy -- if we learn that Wendy didn't do her
21 job, which I, I don't think is possible, but then I, then I
22 made -- I still believe I made the right decision. I
23 believe the incident happened. I think, I don't -- I don't
24 think if Wendy did a complete investigation, that, that it
25 would change my view on, on the outcome of this case.

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1 MR. JOHNSON: So, Your Honor, at this time, I want
2 to identify for the record -- I believe it's already in --
3 this is Plaintiff's Exhibit No. 43.
4 MR. BELFIORE: I apologize. Your Honor, I have to
5 step out for a second.
6 MR. JOHNSON: Can we go off the record?
7 MR. PRAGER: Yes, we can go off the record.
8 (Whereupon, a brief recess was taken.)
9 MR. PRAGER: We're back on the record. During
10 recess, Mr. Petesch informed us that he has some information
11 about Article 8 of the Merchant Link bylaws --
12 MR. PETESCH: I do.
13 MR. PRAGER: -- and would you tell us on the
14 record now what you have?
15 MR. PETESCH: Yes. We have sent to us to a copy
16 of Article 8. It's short enough that I'd propose to read it
17 into the record --
18 MR. PRAGER: Please do.
19 MR. PETESCH: -- and am more than happy to provide
20 paper copies as well. Article 8 has but one part. Article
21 8 is entitled Officers, and it has one paragraph, 8.1,
22 entitled Appointment of Officers:
23 The Managers shall have the right to appoint
24 officers of the company to assist with the day-to-day
25 management of the business affairs of the company -- by the

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1 way, the word managers was capital, capital M for managers
2 -- the officers shall not have greater power and authority
3 than the Managers, capital M, and shall not, on behalf of
4 the company, authorize, engage in, or enter into any
5 transaction or action reserved to the Managers, capital M,
6 under Section 7.3, or to the Members, capital M, under
7 Section 5.6, without the requisite prior approval in respect
8 thereof. Each officer shall have the authority to execute
9 such agreements, instruments, and other documents on behalf
10 of the company, as the Managers, capital M, may from time to
11 time delegate to each such officer, paren, subject to any
12 approvals for such agreements, instruments, or documents
13 that are otherwise required by this agreement, closed paren,
14 period, end of paragraph.
15 MR. PRAGER: Thank you. You also had something
16 about minutes.
17 MR. PETESCH: Yes. There was a request for a
18 representation on redacted portions of the November 2nd,
19 2011, minutes. I received an unredacted copy of said
20 minutes. The redacted portions concerned certain
21 representations on the financial statements, distributions,
22 and other business wholly unrelated to Mr. Belfiore, no
23 mention of Mr. Belfiore.
24 MR. PRAGER: All right. Mr. Johnson, do you want
25 to make any comments to what you just heard?

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1 MR. JOHNSON: No, Your Honor. The complainant
2 receives that in evidence, and we will get a copy of it.
3 MR. KAPLAN: No, you're not going to get a copy of
4 that one.
5 MR. PETESCH: Not the redacted.
6 MR. JOHNSON: No, of the 8. We don't --
7 MR. PETESCH: Oh, yes, sir.
8 MR. JOHNSON: Yes.
9 MR. PETESCH: Yes, you can have a copy of that.
10 MR. PRAGER: All right. Mr. Johnson, will you
11 continue your questioning, please?
12 MR. JOHNSON: Yes, Your Honor.
13 BY MR. JOHNSON:
14 Q Mr. Lane, you just testified that even if
15 Ms. Wendy Nussbaum did not follow her duties, that you would
16 have terminated Mr. Belfiore anyway, correct?
17 A By duties, I meant if she had not, if she hadn't
18 done a full investigation. My understanding was that she
19 had, but you proposed a hypothetical situation that if the
20 Court learned that she hadn't, I would have done the, I
21 would have terminated Mr. Belfiore anyway because I was, I
22 believed and I still believe she did a thorough
23 investigation.
24 Q Now, wouldn't that be corporate malfeasance?
25 MR. PETESCH: Objection as eliciting a legal

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1 conclusion from a laywitness.
2 MR. PRAGER: Well, we understand that he's a
3 laywitness. He can answer the question, and it will be
4 given the weight that it deserves from a laywitness. Your
5 objection is overruled.
6 MR. PETESCH: Thank you.
7 THE WITNESS: I don't know exactly what corporate
8 malfeasance is, but it wouldn't have been -- I don't, no, I
9 don't think so.
10 BY MR. JOHNSON:
11 Q Now, you understand what a breach of duty is,
12 correct?
13 A Correct.
14 Q And --
15 MR. JOHNSON: Oh, I'm sorry. I thought you said
16 something.
17 MR. PETESCH: No. I was clearing my throat. I'm
18 sorry.
19 MR. JOHNSON: Oh, okay. All right.
20 BY MR. JOHNSON:
21 Q Now, you understand what a breach of a duty is,
22 correct?
23 A Yes, sir.
24 Q And according to you, Mr. Belfiore breached his
25 duty, correct?

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1 A Yes, sir.
2 Q Which duty did Mr. Belfiore breach?
3 A He breached his duty to, to uphold the mission and
4 the goals and the initiatives of the company. He breached
5 his duty to not use his influence over another employee and
6 another department to do something destructive to the
7 company.
8 Q You terminated him because you believe that he had
9 made inappropriate remarks towards Renee Dantzler, correct?
10 A In part, but the inappropriate remarks were as
11 part of an attempt to get her to do something destructive to
12 Merchant Link.
13 Q All right. We'll get back to that. Would any
14 other employee who makes an inappropriate remark get the
15 same treatment and be terminated as well?
16 A Just an inappropriate remark, no, that's unlikely.
17 Q So, when Renee Dantzler called someone a stupid
18 negro, that wasn't enough to have her terminated, correct?
19 A No. If -- no, it wasn't. I wasn't aware of that
20 situation until these proceedings, but no, it obviously
21 wasn't.
22 Q It went to human resources, correct?
23 A Again, I wasn't aware of it, but based on what
24 I've heard here, yes, it did.
25 Q And Wendy Nussbaum didn't feel the need to contact

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1 you, correct?

2 A No, I don't think it was Wendy Nussbaum when that

3 happened, but no, I was never contacted as part of that

4 incident.

5 Q Now, you mentioned during -- I'm sorry if the

6 record reflects differently -- but we're talking really

7 about, you felt like he was going to sabotage the company

8 and you needed to act quickly, correct?

9 A Correct.

10 Q And isn't it true that wasn't a justified response

11 to Mr. Belfiore's actions?

12 A I think it was justified.

13 Q And it's justified why?

14 A Because it was so destructive and so intentional

15 that it was egregious.

16 Q So tell the Court: What is egregious about

17 communicating the complaints of your employees regarding the

18 CRM?

19 A I'm sorry. Could you ask that again?

20 Q Tell the Court --

21 A Yes.

22 Q -- what is egregious about communicating the

23 complaints of the employees, that the employees have --

24 A Uh-huh.

25 Q -- about the CRM?

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1 A The, the information I got from Renee and Zack was

2 not that Renee was going to communicate the complaints.

3 What was -- that he was asking Renee to elicit bad feedback,

4 to stir the pot, to go out and try to work counter to what

5 her job was, which was to train the employees on how to use

6 the system; and, instead of that, to, to ask and encourage

7 the employees to speak up and find fault with the system.

8 Q Now, you got that information from Zack, correct?

9 A Zack and Renee.

10 Q No. Renee told you exactly that?

11 A No. Renee told Wendy Nussbaum that.

12 Q Now, if Renee says that she didn't actually hear

13 that, would you change your stance?

14 A If she told me she didn't hear that -- yes, if she

15 said she didn't, if she didn't hear that Erik was asking her

16 to do that, I would change my position.

17 Q And if Renee says, has said that he didn't

18 actually say it but he, I felt like he implied that, would

19 that also change your stance?

20 A No.

21 Q So because he implied, or she felt like he

22 implied, that wasn't enough for you to investigate, correct?

23 A Well, I don't think -- I think she heard him say

24 that, and implied can be -- if she said implied, I would

25 still feel that, that it was, that that was a strong enough

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1 influence, that it was the correct thing to do.

2 Q Now, you're the CEO, correct?

3 A Correct.

4 Q And as CEO, you understand the CRM, correct?

5 A Yes.

6 Q And you do understand there's absolutely nothing

7 Renee could do to sabotage the system, correct?

8 A I don't believe that's correct. I think she could

9 have significantly delayed the project and put the project

10 in jeopardy.

11 Q Now, the complaints about the CRM existed long

12 before Mr. Belfiore got involved, correct?

13 A Yes.

14 Q And the employees came to Mr. Belfiore with their

15 complaints about the CRM, correct?

16 A Yes.

17 Q And Mr. Belfiore came to you about the employees'

18 complaints with the CRM, correct?

19 A Yes.

20 Q At that particular time, did you think that

21 Mr. Belfiore was urging his employees in his organization to

22 sabotage the CRM?

23 A No. I think he was angry about the direction of

24 the project and the, that his, that his voice wasn't being

25 heard as part of the project, but I don't think he was

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1 asking anyone to sabotage anything at that point.

2 Q So at that particular time, everybody was angry

3 about the CRM, correct?

4 A No.

5 Q The employees wasn't, were not angry about the

6 CRM?

7 A Some employees were angry about it, and other

8 employees were not angry about it.

9 Q So the only employees that were not angry about

10 the CRM, would you say, was just the tech people?

11 A No. There, there were many people involved in the

12 project, and by tech people, I assume you mean the software

13 developers. They were working hard on it. The CRM affected

14 reporting, billing, many departments within service

15 delivery, and some people -- it was a big, long, hard

16 project. People were working hard on it, and it was

17 challenging, and some people, some people felt that there --

18 you know, like any new big project, there were some positive

19 aspects and some negative aspects, and certainly some people

20 felt more negative about it than others, and other people

21 felt very good about it.

22 Q But the feelings of the people that we're speaking

23 of now, I'm talking about the employees, their feelings

24 wasn't Mr. Belfiore's doing, was it?

25 MR. PETESCH: I'm going to object as to eliciting

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1 speculation on the state of mind of, I don't know, multiples
2 of 10 employees, 50 employees, I don't know.
3 MR. JOHNSON: Well, Your Honor, let's withdraw
4 that and continue on with the line of questioning.
5 MR. PRAGER: All right.
6 BY MR. JOHNSON:
7 Q Now, Mr. Lane, Mr. Belfiore's organization was the
8 largest in the company, correct?
9 A By head count I believe it was the largest in the
10 company, yes.
11 Q And the employees of Mr. Belfiore's organization
12 came to Mr. Belfiore with a problem with the CRM, correct?
13 A Some of his employees did, yes.
14 Q So given Mr. Belfiore had the largest
15 organization --
16 A Uh-huh.
17 Q -- within the CRM, would it be safe to assume or
18 safe to say that the vast majority of the people who used
19 the CRM disliked it?
20 A No, I don't think that's a fair statement.
21 Q Do you have a head count as to how many disliked
22 the CRM?
23 A I don't have a head count. I know that several
24 employees in Erik's organization were unhappy with the
25 progress of the project; some others were unhappy with the

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1 selection of the vendor, but I wouldn't say that it was a
2 vast majority of the employees.
3 Q And this knowledge would be based upon what?
4 A My knowledge?
5 Q Of how many employees or it's not a vast majority
6 of his organization.
7 A It's based on the people that I spoke to about the
8 project at the time.
9 Q There were at least 58 people in Mr. Belfiore's
10 organization. Did you speak to all 58?
11 A No, sir.
12 Q How many did you speak to?
13 A Four or five probably, maybe more over the course
14 of the project.
15 Q And that four or five that you spoke to would have
16 been the managers who were canvassing the other employees
17 about their dislikes of the CRM, correct?
18 A Yes. It was managers and supervisors and perhaps
19 an occasional hallway conversation with one of the people in
20 the department.
21 Q Now, your decision to terminate Mr. Belfiore never
22 showed up in the board managers meetings, correct?
23 A I don't know if there are minutes from the board
24 meeting that we held to terminate Mr. Belfiore. I believe
25 there are.

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1 Q And did your counsel produce those board meetings?
2 A I don't know.
3 Q If the last board meeting that we have under
4 Exhibit 55 relating to, I guess, Mr. Belfiore's termination
5 is November the 2nd, 2011, would that be a correct
6 statement?
7 A The last document that's in here?
8 Q Yes, the last board of managers meeting that we
9 just, I believe we entered into the record.
10 A Yes, that we just reviewed, yes, was November 2nd.
11 Q And nothing after that has posted as a board of
12 managers meeting, correct?
13 A I'm not sure I understand.
14 Q There's no other statement of the termination of
15 Erik Belfiore in the board of managers meeting, correct?
16 A I don't know. I don't know. I believe there are
17 minutes from the board of managers meeting where we
18 terminated Erik Belfiore, but I don't, I don't remember.
19 Q And nothing was produced by your attorneys either,
20 correct?
21 A Okay. I'll take your word for it.
22 Q Well, it's here in Exhibit 55. Do you want to
23 look for it?
24 A No. I'll take your word for it.
25 MR. PRAGER: Well, while you're searching,

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1 Mr. Petesch --
2 MR. PETESCH: Yes, sir.
3 MR. PRAGER: -- it is a gap. Obviously, November
4 2nd was not the last board of managers meeting --
5 MR. PETESCH: Sure.
6 MR. PRAGER: -- there would have been one after
7 that. We don't know --
8 MR. PETESCH: Presumably.
9 MR. PRAGER: -- we don't know when that meeting
10 was, but I think it should be produced, and whether it was
11 properly omitted from discovery, I don't know, but I think
12 it ought to be produced in this hearing and perhaps in
13 redacted form; that is, there's nothing in there about
14 Mr. Belfiore and the redactions only concern matters that
15 should be kept private. The redacted portions should be
16 produced.
17 MR. KAPLAN: The unredacted.
18 MR. PRAGER: The unredacted portion, rather.
19 Thank you.
20 MR. PETESCH: To the extent that there's something
21 responsive on that, we will produce it.
22 MR. PRAGER: Well, there have to be minutes beyond
23 November 2nd, 2011.
24 MR. PETESCH: Presumably, yes.
25 MR. PRAGER: So it would be whatever the next

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1 meeting would have been, whenever it was. If it was 2013,
2 we'd like to know that, but --
3 MR. PETESCH: Sure.
4 MR. PRAGER: -- presumably, it was somewhere in
5 November or December of 2011. Mr. Johnson.
6 MR. JOHNSON: Your Honor, before we proceed,
7 because it sounds to me that you're asking counsel to
8 produce minutes if they exist, it's our position that they
9 do not exist. So I don't know what we can do to ensure that
10 they're not fabricated.
11 MR. PRAGER: Well, let's --
12 MR. JOHNSON: That's a legitimate question, Your
13 Honor.
14 MR. PETESCH: I have a strong incentive not to be
15 visiting the other building down the street. So I would
16 assure you that I will not be in the business of fabricating
17 minutes.
18 MR. PRAGER: Well, he's not talking about counsel.
19 MR. JOHNSON: I wouldn't expect counsel to do it.
20 Don't get me wrong.
21 MR. PRAGER: Gentlemen --
22 MR. PETESCH: No, I didn't take it that way,
23 but --
24 MR. JOHNSON: Yes. Okay.
25 MR. PRAGER: Gentlemen, gentlemen, first of all,

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1 none of that can be heard or should be heard on the record,
2 but more to the point, that's not the issue at this point.
3 At this point, the issue is I'd asked Mr. Petesch to produce
4 what he can and to report back what he can, and we'll
5 determine then whether or not this is a fraudulent document,
6 which I doubt it would be, and we'll go from there. And
7 assumptions about the non-existence of things is too
8 epistemological for me to go with at this moment. So move
9 along, please.
10 BY MR. JOHNSON:
11 Q Now, Mr. Lane --
12 MR. KAPLAN: Can I step back for a moment, minute?
13 MR. JOHNSON: Sure.
14 MR. KAPLAN: I'm going to try to get you those
15 documents.
16 MR. PETESCH: We don't need to go off the record.
17 We can continue.
18 MR. PRAGER: Yes. Mr. Johnson.
19 MR. JOHNSON: Yes, Your Honor. Thank you.
20 BY MR. JOHNSON:
21 Q Now, Mr. Lane, is it also your position today that
22 Mr. Belfiore violated his fiduciary duties of due care, good
23 faith, and loyalty?
24 A Yes.
25 Q And can you please identify what particular act

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1 violated his duties of good faith, due care, and loyalty?
2 A His act of, of asking Renee Dantzler to sabotage
3 the CRM system.
4 Q And is that his violation of due care?
5 A Due care? No. No, sir.
6 Q Is that a violation of his duty of good faith?
7 A Yes, sir.
8 Q Is that a violation of his duty of loyalty?
9 A Yes, sir.
10 Q And if it's found that Renee Dantzler did not
11 actually hear him suggest that she sabotage the CRM, would
12 you say that you were wrong in terminating Mr. Belfiore?
13 A No, I wouldn't say that because, at the time, I
14 believed that that was what had happened and I acted in the
15 best interest of Merchant Link at the time.
16 Q Now, at the time that it happened, Mr. Belfiore
17 was also, had engaged in a protected activity by informing
18 Merchant Link that he was about to sue Merchant Link for not
19 paying him properly, correct?
20 A Correct.
21 Q And you knew this when you made the decision to
22 terminate Mr. Belfiore, correct?
23 A Yes, sir.
24 Q And you didn't think at any particular time that
25 this would have an impact on Mr. Belfiore and his suit,

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1 correct?
2 A No, sir, I thought it would have an impact. I was
3 actually fairly cautious because I felt like it would appear
4 that we were retaliating against Mr. Belfiore when that
5 wasn't the case, but I still felt like it was the right
6 thing to do.
7 Q So the close proximity of Mr. Belfiore's claim and
8 your termination did come into play in terms of what you
9 were thinking about being cautious, correct?
10 A Yes, sir.
11 Q So you knew that if you were wrong about Renee
12 Dantzler, then you had been deemed to retaliate against
13 Mr. Belfiore, correct?
14 MR. PETESCH: Objection. Argumentative, asked and
15 answered, and a compound question.
16 MR. PRAGER: I'm not sure how much of a compound
17 question it is. It's obviously argumentative, but I will
18 permit a certain amount of argument from counsel.
19 MR. PETESCH: Sure.
20 MR. PRAGER: If you remember the question,
21 Mr. Lane, you can answer it, but if you don't, we can have
22 Mr. Johnson repeat it.
23 THE WITNESS: Yes, could you repeat it, please?
24 BY MR. JOHNSON:
25 Q Yes. Isn't it true that you knew and you

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1 understood that the close proximity of Mr. Belfiore's claim
2 would be considered related to or retaliation against
3 Mr. Belfiore?
4 A Yes, sir.
5 Q And in taking that into account, isn't it true
6 that you chose not to investigate whether Wendy Nussbaum had
7 properly performed her function in a human resource -- as a
8 human resource manager?
9 A Wendy Nussbaum told me that she properly
10 investigated. I trusted her. She had the expertise, she
11 was our director of human resources, and so I trusted her,
12 her investigation.
13 Q And you substantially relied upon Wendy Nussbaum,
14 correct?
15 A For the investigation, yes.
16 Q Now, Mr. Lane, I want to turn your attention to
17 what has been marked for identification as Plaintiff's
18 Exhibit 67.
19 MR. JOHNSON: 67, Your Honor, has already been
20 admitted into evidence, I believe.
21 MR. PETESCH: I believe it has.
22 MR. PRAGER: Well, my notes, which aren't
23 necessarily accurate -- and the transcript will reveal it --
24 THE REPORTER: It has been.
25 MR. PRAGER: All right. Then my notes are

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1 incomplete. We heard the court reporter that Complainant's
2 67 has been admitted; so we'll admit it, and we will go on
3 with your question.
4 MR. PETESCH: We have no objection to the
5 document, in any event.
6 MR. JOHNSON: Thank you, Your Honor.
7 MR. PRAGER: Go ahead, Mr. Johnson.
8 MR. JOHNSON: Thank you, Your Honor.
9 BY MR. JOHNSON:
10 Q Mr. Lane, what has been previously admitted as
11 Complainant's Exhibit No. 67 is in front of you. Do you
12 recognize Complainant's Exhibit No. 67?
13 A Yes, sir.
14 Q And can you describe to the Court exactly what
15 this is?
16 A This is a documented -- this is an e-mail that
17 Wendy Nussbaum received from our TERF, NERF/TERF system,
18 which were acronyms used for new hire and terminated
19 employee. A TERF stood for terminated employee response or
20 something like that, and so it was the notification of -- to
21 the parties that had to turn off the access of terminated
22 employees.
23 Q Now, Mr. Lane, did you communicate Mr. Belfiore's
24 termination to the entire Merchant Link employee workforce
25 at the Silver Spring station?

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1 A Yes. I sent -- that was in the other exhibit -- I
2 sent an e-mail to the entire company.
3 Q Did you send this particular communication, as to
4 Mr. Belfiore's termination, to any of the employees outside
5 of the Silver Spring station?
6 A This, this communication? This communication came
7 from our NERF and TERF system, and I did fill out the form
8 that generated this e-mail, and it went -- the PTI Notify
9 and PTI Desktop Services were distribution groups of e-mail
10 addresses of the employees that needed to be informed when
11 any employee left the organization. So this was
12 automatically generated by the system.
13 Q Now, Mr. Lane, I want to --
14 MR. JOHNSON: Actually, Your Honor, I want to mark
15 for identification as Complainant's Exhibit No. 54. I don't
16 believe that has been entered on the record.
17 (Exhibit No. 54 was marked
18 for identification.)
19 MR. PRAGER: I don't have it noted as having been
20 previously admitted.
21 MR. PETESCH: Nor do I.
22 MR. JOHNSON: Okay.
23 BY MR. JOHNSON:
24 Q Mr. Lane, do you recognize Complainant's Exhibit
25 No. 54?

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1 A No, I do not.
2 Q Mr. Lane, in Complainant's Exhibit No. 54, it
3 appears to be a compensation committee approval of your
4 compensation around the time that you were promoted to CEO.
5 Would that be your understanding of the e-mail?
6 A Give me just a second.
7 Q Sure.
8 MR. PETESCH: And I'll object to say the document
9 speaks for itself and the witness has already responded that
10 he's not familiar with the document.
11 MR. PRAGER: Your objection is held in abeyance.
12 What was the question, Mr. Johnson, if there was one?
13 MR. JOHNSON: Yes, Your Honor. I asked Mr. Lane
14 if he understood this to be an approval of his compensation
15 around the time that he became CEO.
16 THE WITNESS: Yes. It looks -- it does look like
17 that, yes.
18 MR. JOHNSON: And --
19 MR. PRAGER: It seems to me that though it does
20 speak for itself, I'm certain Mr. Lane is competent to --
21 MR. PETESCH: Sure.
22 MR. PRAGER: -- to read it and to explain what he
23 understood it to be. So --
24 MR. PETESCH: Very good.
25 MR. PRAGER: -- to that extent, your objection is

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1 overruled.

2 MR. PETESCH: Thank you.

3 MR. PRAGER: Mr. Johnson.

4 BY MR. JOHNSON:

5 Q Now, Mr. Lane, in the body of the e-mail, which is

6 an e-mail from Mr. Dan Charron dated March 1st, 2011, do you

7 recognize the two different compensation schedules, I will

8 call it, for yourself?

9 A Yes, I do.

10 Q And --

11 MR. PRAGER: Well, I don't. What two are you

12 talking about?

13 MR. JOHNSON: Okay.

14 BY MR. JOHNSON:

15 Q And, Mr. Lane, the 2011 current salary at

16 \$201,657.32 reflects your salary as the CTO, correct?

17 A Yes.

18 Q And underneath it the 2011 compensation that was

19 proposed, which increases your salary to \$225,000, reflects

20 your salary as the CEO?

21 A Yes, sir.

22 Q So based on the information that's provided in

23 this e-mail, is it, could we accurately determine that your

24 salary as Dan Lane, the CTO, is equal to approximately

25 \$410,000? And I'm sorry. When I say salary, I meant your

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1 compensation as Dan Lane, the CTO, is equal to approximately

2 \$410,000.

3 A Let me just do the math real quick. Yes, with the

4 -- yes, my overall compensation with my 2011 LTIP grant was

5 around \$410,000, yes.

6 Q And your increase in compensation as Dan Lane, the

7 CEO, equals \$513,750, correct?

8 A Let me just do the math again, please.

9 Q Actually, I think they add it up for you at Total

10 Compensation Package.

11 A Oh, right. Thank you. Yes, sir, that's correct.

12 MR. JOHNSON: Your Honor, complainant moves into

13 evidence Complainant's Exhibit No. 54.

14 MR. PRAGER: Any objections?

15 MR. PETESCH: None.

16 MR. PRAGER: All right. Complainant's Exhibit 54

17 will be admitted into the record. Mr. Johnson.

18 (Exhibit No. 54 was received

19 in evidence.)

20 MR. JOHNSON: Thank you, Your Honor.

21 BY MR. JOHNSON:

22 Q Now, Mr. Lane, isn't it true that your 2011 salary

23 of approximately \$410,000 was nearly double that of the

24 complainant, Erik Belfiore, in 2011?

25 MR. PETESCH: Objection to the term salary. I

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1 think he meant total compensation.

2 MR. JOHNSON: Compensation, I'm sorry. I keep --

3 MR. PETESCH: It's okay.

4 MR. JOHNSON: -- going to salary. I apologize.

5 BY MR. JOHNSON:

6 Q And, Mr. Lane, let me rephrase that so we can have

7 a very clean record with regard to this question. Mr. Lane,

8 isn't it true that your compensation in 2011 was \$410,000,

9 which is nearly double that of the complainant, Erik

10 Belfiore?

11 A I remember Erik's salary. I don't remember his

12 LTIP grant that year, but -- so, again, let me do the math

13 on this. His salary was approximately \$130,000 at the

14 beginning of the year; he was receiving, I believe, 25

15 percent AIP bonuses. So that's approximately \$170,000 in

16 compensation; plus whatever his LTIP grant was that year

17 would have been his compensation.

18 MR. JOHNSON: Your Honor, I think we need to

19 calculate. I believe Mr. Belfiore's AIP was 20 percent,

20 according to the schedule.

21 THE WITNESS: Okay. I stand corrected.

22 MR. PETESCH: Yes. We have a joint stipulation on

23 that --

24 MR. JOHNSON: Yes.

25 MR. PETESCH: -- which I'd be happy to read into

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1 the record to help things along.

2 MR. PRAGER: Mr. Petesch, why don't you just tell

3 what paragraph it is in the stipulation.

4 MR. PETESCH: Yes. On the joint stipulation,

5 paragraph 16 was on a \$75,000 LTIP. There's also a

6 paragraph on his total, on his salary and -- well, yes,

7 paragraph 14 of the joint stipulation shows a base salary

8 increase from 123600 to 130,000. We have an LTIP grant of

9 75,000, and then we have in 2010 a payment of an AIP bonus

10 of 22,399. So we don't have the percentage on the

11 stipulation.

12 MR. KAPLAN: There's an e-mail that said it would

13 be increased --

14 MR. PRAGER: Just a moment. Mr. Petesch was

15 talking.

16 MR. PETESCH: There was another exhibit -- and I

17 don't know the number of it -- mentioning a change in pay

18 grade that I think also mentioned the percentage of change

19 in the AIP bonus, but I don't remember the number of that

20 exhibit. It was introduced over the course of the last two

21 days.

22 MR. JOHNSON: Yes. I --

23 MR. PRAGER: Well, the question that was asked,

24 whether or not Mr. Lane's salary as of, total compensation,

25 rather -- now you have me doing it -- was, whether it was

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1 about twice Mr. Belfiore's pay, and the answer is, and the
2 record will show, was not quite twice Mr. Belfiore's, but it
3 was, it was substantially more, but can we stay with that,
4 because the record will be clear as to what it actually was?
5 MR. JOHNSON: Yes, Your Honor, we can stand with
6 that.
7 MR. PRAGER: Mr. Johnson.
8 MR. JOHNSON: Yes, Your Honor. One second, Your
9 Honor.
10 MR. PRAGER: Yes.
11 MR. JOHNSON: Your Honor, actually, we have no
12 more further questions for this particular witness, and we
13 can turn him over for cross-examination.
14 MR. PRAGER: All right. Mr. Petesch.
15 MR. PETESCH: I believe, let me just check my
16 margins, but we will reserve our right to call the witness
17 in our case-in-chief, and I will represent that his direct
18 will be shorter than I thought it was going to be when that
19 time comes, but --
20 MR. PRAGER: Let me just say that I have a fervent
21 wish that whatever is crucial as to what has already been
22 asked today will be asked today and not, not repeated next
23 week or whenever he's called again. So, at that point, I
24 hope that you will be introducing new evidence, not evidence
25 that's already in the record.

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1 MR. PETESCH: Are you saying that the scope of my
2 direct cannot touch upon Mr. Belfiore's termination or on
3 his compensation?
4 MR. PRAGER: Oh, no, because that, that would --
5 no, but I think, at this point, you have the opportunity to
6 deal with the reasons for Mr. Belfiore's termination based
7 on the questions that have already been asked. You can
8 address anything you want that Mr. Lane can testify to. I'm
9 not quite sure what the purpose is of delaying it until next
10 week to go over the same thing we've gone over today.
11 MR. PETESCH: Well, hopefully, it won't be --
12 hopefully, it won't be next week. Hopefully, it will be --
13 MR. PRAGER: Well, whenever.
14 MR. PETESCH: -- sooner than that.
15 MR. PRAGER: My point, if I'm not clear enough, is
16 let us dispose, as much as possible, of anything that was
17 addressed today that you feel needs amplification by
18 Mr. Lane.
19 MR. PETESCH: Sure.
20 MR. PRAGER: If there is additional testimony by
21 other witnesses that you want to address with Mr. Lane, I
22 can understand that, but insofar as we've dealt with what
23 has been testified to thus far in this proceeding, including
24 Mr. Lane's own testimony, I think that this is the time to
25 deal with that.

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1 MR. PETESCH: In terms of clarification of
2 questions already asked of Mr. Lane --
3 MR. PRAGER: Well, let me go beyond questions
4 asked. It's subject matter discussed.
5 MR. PETESCH: Well, we, I mean, we reserve our
6 right to present our case and our witnesses when we are
7 called upon to do so, but he's not closed his case yet,
8 and --
9 MR. PRAGER: Well, I understand. I don't -- we're
10 not going to get into arguments about this. I want, as much
11 as possible, for you to deal with the subject that we, the
12 things that have been testified to thus far now that you
13 have your client up on the stand --
14 MR. PETESCH: Yes.
15 MR. PRAGER: -- rather than deferring that until
16 next week, though you will have an opportunity next week
17 whenever the --
18 MR. PETESCH: When the time comes.
19 MR. PRAGER: -- time comes, to open new subjects,
20 if there are any, or to address matters that have been
21 raised between the time Mr. Lane testifies and the time he
22 is recalled by you.
23 MR. PETESCH: If I may indulge in a quick break to
24 confer with Mr. Kaplan?
25 MR. PRAGER: Of course.

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1 MR. PETESCH: Thank you.
2 MR. PRAGER: We'll give it about 12 minutes. Will
3 that be sufficient for you?
4 MR. PETESCH: More than sufficient.
5 MR. PRAGER: All right. Well, we're going on a
6 break and resuming about 25 of 4:00, and we're off the
7 record.
8 (Whereupon, a brief recess was taken.)
9 MR. PRAGER: We'll go on the record then, please.
10 Mr. Petesch.
11 MR. PETESCH: Subject to my earlier objection on
12 presenting our case-in-chief, we reserve the right to
13 present our case-in-chief and call any and all witnesses
14 listed for our case-in-chief, including Mr. Lane, and to ask
15 them questions on subject matters that we intended to cover
16 with them. That said, the subject of those objections and
17 in the interest of moving things along and conserving time
18 and resources, as best as possible, I will go forward with a
19 series of questions to Mr. Lane covered on his direct from
20 Mr. Johnson.
21 MR. PRAGER: Please do.
22 CROSS-EXAMINATION BY COUNSEL FOR RESPONDENT
23 BY MR. PETESCH:
24 Q Mr. Lane, who were the founders of Merchant Link?
25 A Myself and Jim Margolis.

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1 Q And, Mr. Lane, do you hold any patents relating to
2 the business of Merchant Link?
3 A Yes. My --
4 MR. JOHNSON: Objection, Your Honor. I think
5 that's outside of the scope. I don't think we mentioned
6 patents.
7 MR. PETESCH: Well, I seem to be getting two
8 different sets of directions. So --
9 MR. PRAGER: Well, he made an objection, and the
10 objection is overruled. You may ask your question.
11 BY MR. PETESCH:
12 Q Do you hold any patents relating to the business
13 of Merchant Link?
14 A Yes. My name's on two patents around the security
15 and encryption products that we provide.
16 Q And who else's name is on those patents?
17 A Sue Zloth. On one of them is Ben Smith. I don't
18 remember all the other patent -- all the other names on the
19 patents. There's about six or so. Between the two patents,
20 there's about six names on the two patents.
21 Q Let's go back to the beginning of Merchant Link.
22 Who ran Merchant Link in the beginning?
23 A When Merchant Link was initially founded, it was
24 only me and Jim Margolis. Jim was more the deal side of the
25 business, and I was running the day-to-day operations of the

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1 business, and we, we slowly hired employees, and the, those
2 were -- that was the division of responsibilities. Jim did
3 the deals, he handled the financial side, and I ran the, the
4 day-to-day business.
5 Q Where was it run from?
6 A Bethesda, Maryland.
7 Q And we've covered what Merchant Link does, I
8 believe. What industries does Merchant Link serve?
9 A In general, it serves the payments industry. The
10 payments industry is divided into the issuing side, which is
11 the credit cards you have in your wallet, and the acquiring
12 side, which is facilitating the acceptance of credit cards
13 for merchants. So it serves the -- well, it's at the
14 crossroads of a payments company and a technology industry,
15 and it serves retailers, restaurants, and lodging merchants.
16 Q Hospitality industry?
17 A Hospitality and retail, yes.
18 Q Okay. Now, I believe in your direct that the term
19 POS, or point of sale, may have been mentioned. What is, in
20 your understanding, a point of sale?
21 A A point-of-sale system is in the old days what was
22 called a cash register and nowadays is more sophisticated.
23 It's typically a PC-based system that runs in a restaurant,
24 retail, or hotel, and when you walk into a restaurant and
25 you see the servers tapping on the screens, that's the

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1 point-of-sale system. It can be the system that's used to
2 check people into hotels, and sometimes a more broad way,
3 there's websites and other things interacting with the point
4 of sale.
5 Q Is there an actor or a company involved in
6 manufacturing or designing these point-of-sale devices?
7 A There's many, many of the companies. The one
8 that's most important to Merchant Link is MICROS Systems in
9 Columbia, Maryland.
10 Q Okay. Can you describe the relationship between,
11 between Merchant Link and MICROS or MICROS Systems?
12 A Certainly. Merchant Link had an exclusive
13 contract with MICROS to provide the technical support
14 services and payment technology that the, that MICROS used
15 to carry their credit card transactions.
16 Q And what industries does MICROS serve?
17 A Retail, restaurant, and lodging industries.
18 Q Same ones as Merchant Link?
19 A Yes.
20 Q What's the significance to Merchant Link of the
21 relationship with MICROS Systems?
22 A MICROS has been -- MICROS was the very first
23 contract that Merchant Link signed. They were -- they are a
24 larger company than Merchant Link, and for many years they
25 were nearly a hundred percent of our business, and now

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1 they're approximately, depending on how you measure it, 60
2 to 75 percent of our business. So they are our biggest
3 customer and most important partner, by far.
4 Q Is there a Merchant Link without MICROS Systems?
5 A Not -- it would be much smaller, and it would be
6 struggling to survive today.
7 Q Now, I want to switch subjects a little bit.
8 You've described, I think, in your direct exam -- and we
9 don't need to repeat exactly what Merchant Link does -- but
10 I want to, I want to focus you on -- well, does anything
11 ever go wrong in the systems that you provide and in the
12 technology that you provide?
13 A Yes, certainly. When -- again, these are big,
14 complex systems, and we, we work very hard and spend a lot
15 of money and a lot of expertise to try to make sure the
16 systems don't go down or don't fail, but from time to time,
17 things happen and systems go down and things fail.
18 Q What happens when things are what we call in the
19 airline industry irregular operations?
20 A There's, there's a lot of different scenarios, but
21 a typical scenario is we have a 24-by-7 network operation
22 center that has a bank of screens that they're monitoring.
23 So there'll be an alert put up on the screen that's a
24 high-severity alert that indicates something is down.
25 Typically, there's a procedure then to move all of the

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1 credit card transaction traffic to another data center, and
2 then those people in the network operations center page the
3 experts and the people who can get on the phone to fix the
4 problem, and those are either software developers or various
5 engineers, depending on the nature of the problem.
6 Q And during your tenure at Merchant Link, did those
7 areas of operations, whose control do they ultimately fall
8 under?
9 MR. JOHNSON: Objection, Your Honor. Relevance.
10 MR. PRAGER: Well, I'm sure he's coming to some
11 point. I'm not quite sure I understand it, but I mean, I
12 will overrule the objection and allow the testimony to
13 proceed.
14 MR. JOHNSON: Thank you, Your Honor.
15 THE WITNESS: Well, it changed over a period of
16 time but, generally, the person in the director of network
17 operations, whoever was the director of network operations
18 at the time.
19 BY MR. PETESCH:
20 Q And who did that person report to?
21 A That person reported to me until very recently.
22 Now we have a CIO, and now they report to the CIO.
23 Q Okay. And CIO is chief information officer?
24 A Yes.
25 Q If something goes wrong overnight, during the

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1 history of your tenure at Merchant Link, who would get the
2 overnight call?
3 A Well, it would start out with the engineers who
4 could fix the problem. If it was severe, then the director
5 of network operations would be brought in, and if it was
6 even more severe, then I would be called and we'd all be on
7 the phone together, talking about the issue.
8 Q Okay. Now, did those responsibilities that you've
9 just described ever fall under Mr. Belfiore's control or
10 domain --
11 A No.
12 Q -- while he was at Merchant Link?
13 A No, they didn't.
14 Q I want to go over a little bit, switch subjects to
15 management structure and titles at Merchant Link, if I may.
16 A Uh-huh.
17 Q What's the significance of titles at Merchant
18 Link?
19 MR. PRAGER: I'm not sure I understand the
20 question. Can you be a little more specific --
21 MR. PETESCH: Sure.
22 MR. PRAGER: -- because I am not sure whatever
23 answer I would get from Mr. Lane would be responsive to what
24 you're asking. So --
25 BY MR. PETESCH:

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1 Q Mr. Lane, you've received a, held various
2 different titles at Merchant Link, right?
3 A Yes. I've held three different titles at Merchant
4 Link, I -- well, since the Paymentech acquisition, three
5 different titles at Merchant Link and before that a number
6 of other titles.
7 Q Okay. Do you have any understanding as to the --
8 and I'm focused right now on senior executive leadership at
9 Merchant Link. Okay?
10 A Uh-huh.
11 Q Is there any significance to, in your experience
12 at Merchant Link, as between the titles of vice president,
13 senior vice president, chief operating officer?
14 A The titles -- I would say in some situations that
15 titles were important; in other situations, they were not
16 important. I think titles of our officers and the weight of
17 the title of an officer became more important when we became
18 a joint venture of Paymentech and First Data.
19 Q Who was the chief executive officer of Merchant
20 Link directly prior to you?
21 A Dan Charron.
22 Q Okay. And who was the chief executive officer
23 prior to Dan Charron?
24 A Chris Justice.
25 Q Can you describe, generally, your responsibilities

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1 today as chief executive officer, a 30,000-foot view, a very
2 brief --
3 A I'm responsible for the entire company --
4 operations, sales, finance, growing the business, reporting
5 to the board of directors, and -- all aspects of running the
6 company.
7 Q And do you supervise other officers of the
8 company?
9 A I do.
10 Q I want to go over some of your expectations as a
11 chief executive officer of, of senior executives at Merchant
12 Link. I want to go over a number of different qualities and
13 ask you if it's a quality that is important and part of your
14 expectations as a, as chief executive officer of Merchant
15 Link. Okay?
16 A Yes.
17 Q Okay. Integrity, is that an important quality of
18 a senior executive?
19 A Yes.
20 Q Leadership?
21 A Yes.
22 Q What about accessibility?
23 A Yes.
24 Q Work ethic?
25 A Yes.

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1 Q Leading by example?
2 A Yes.
3 Q Recognizing, mentoring, and developing other
4 employees?
5 A Yes.
6 Q Understanding the business?
7 A Yes.
8 Q Promoting the goals or the plan of the business?
9 A Yes.
10 Q Loyalty?
11 A Yes.
12 Q Can you think of any other qualities that you look
13 for in a senior executive that I haven't mentioned?
14 A Intelligence, organization, good communication
15 skills, experience, those things.
16 Q Okay. Well, let's talk a little bit about, just
17 generally about executive compensation at Merchant Link.
18 We've used the term LTIP over the last couple of days.
19 A Yes.
20 Q Can you just repeat for us what LTIP is --
21 A Yes. LTIP --
22 Q -- what it stands for?
23 A Long-term incentive program.
24 Q Okay. Can you explain just very briefly -- this
25 has been explained somewhat already -- but how is it, how is

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1 it paid out to people?
2 A LTIP grants are issued each year, and a grant is
3 essentially an issuance of a deferred cash bonus, in
4 essence, and it's designed as a longer-term incentive
5 program, both to reward, reward performers and to incent
6 people to stay at the company.
7 So when a grant is issued, then the first 50
8 percent of the grant vests after two years and then that
9 cash is then paid to that employee after that two-year
10 vesting date. The second 50 percent of the grant vests
11 after the third year, and that second 50 percent is then
12 paid as a cash bonus after that third year. And then those
13 two payouts, the first 50 percent and the second 50 percent,
14 are further subject to either going up or going down based
15 on our year-to-year performance against our plan that year,
16 and that's averaged out over either the two-year period or
17 the three-year period for those respective grants.
18 Q Okay. And based on that, historically speaking at
19 Merchant Link, how have the LTIPs been paid out? Have they
20 been paid out generally in their entirety? Have they kept,
21 people been getting extra? Have people been getting less?
22 Has it been close to a hundred percent?
23 A Yes, it's been between -- year over year Merchant
24 Link has performed very close to a hundred percent of our
25 plan. So over the last several years, it's been paid out at

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1 nearly a hundred percent, between 90 and 100 percent of
2 plan.
3 Q Okay. I'm going to ask you to go into the black
4 book entitled Joint Exhibits, but we'll call them Merchant
5 Link Exhibits, and I want you to go toward the back of that
6 book to what's been marked as Joint Exhibit No. 137.
7 MR. PRAGER: Bear with me for a minute.
8 MR. PETESCH: Sure. I'm not there yet either.
9 MR. PRAGER: Did you say 137?
10 MR. PETESCH: Yes, sir.
11 THE WITNESS: Okay. I'm there.
12 BY MR. PETESCH:
13 Q Do you recognize --
14 MR. PRAGER: Just a moment. I am not.
15 MR. PETESCH: Sure.
16 MR. PRAGER: All right. Go ahead.
17 BY MR. PETESCH:
18 Q Do you recognize this document?
19 A Yes.
20 Q Can you tell us what it is?
21 A This is a cover letter and a, and the grant form
22 for Erik Belfiore's LTIP grant for 2011.
23 Q And what is the overall value of the LTIP grant?
24 A \$75,000.
25 Q And do you have an understanding as to,

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1 recollection -- and we can always rely on joint stipulations
2 -- as to what Mr. Belfiore's LTIP grants were in the years
3 prior to 2011, and by that, I mean 2009 and 2010?
4 A No, I don't.
5 Q Okay. Is this a record kept in the ordinary
6 course of business at Merchant Link?
7 A Yes.
8 MR. PETESCH: I move for admission of Joint
9 Exhibit No. 137.
10 MR. JOHNSON: No objection.
11 BY MR. PETESCH:
12 Q Still on the --
13 MR. PRAGER: Just a moment.
14 MR. PETESCH: Sure.
15 MR. PRAGER: I normally need to rule on motions
16 that you make. All right. Respondent's Exhibit No. 137
17 will be admitted.
18 (Exhibit No. 137 was received
19 in evidence.)
20 BY MR. PETESCH:
21 Q I'm going to --
22 MR. PRAGER: Go ahead, Mr. Petesch.
23 MR. PETESCH: Thank you.
24 BY MR. PETESCH:
25 Q I'm going to move, move along in the, still in the

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1 area of executive compensation at, at Merchant Link, and I
2 want to, I want to ask you about some of the factors driving
3 executive compensation at Merchant Link and go over a few
4 factors, and you can tell me whether it is or isn't a factor
5 driving compensation. Okay?
6 A Okay.
7 Q The individual's prior salary, either inside or
8 outside of the company?
9 A It is a factor.
10 Q What about the individual's --
11 MR. PRAGER: I'm sorry. You asked about both
12 inside and outside. Let's divide that in two.
13 MR. PETESCH: Sure, I'm happy to.
14 BY MR. PETESCH:
15 Q For somebody coming into Merchant Link from
16 outside of Merchant Link, is their total compensation,
17 changing my terminology, outside of Merchant Link a factor
18 in the setting of what their total compensation will be at
19 Merchant Link?
20 A Yes.
21 Q And is that equally true with respect to someone
22 ascending to a new position within Merchant Link?
23 A Yes.
24 Q And by that, I meant their compensation, total
25 compensation --

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1 A Yes.
2 Q -- they were receiving previously at Merchant
3 Link.
4 A Yes.
5 Q Okay. What about their experience --
6 A Yes.
7 Q -- is that a factor?
8 A Yes, it is a factor.
9 Q Okay. What about their contributions to Merchant
10 Link, and by that, I mean their hand in developing
11 technology, holding a patent --
12 A Yes.
13 Q -- their history with the company?
14 A That's a factor.
15 MR. PRAGER: And you mentioned two. Are those the
16 two that you're asking about, or are there other --
17 MR. PETESCH: I'm asking about those two, and I'll
18 ask about any others.
19 BY MR. PETESCH:
20 Q Any other contributions to the company that might
21 impact one's compensation?
22 A I think, in general, past one-time contributions
23 are less, less a factor but they're certainly a factor in
24 compensation decisions, yes.
25 Q Okay. What about the individual's skill set?

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1 A Yes.
2 Q What about the outside market price for that skill
3 set?
4 A Yes.
5 Q And I'd ask you to focus on employees with
6 specific technical skills that match Merchant Link's
7 mission. Can you generally describe the market for persons
8 of those skill sets, the technological skill sets?
9 A Yes. Technical people and, even more
10 specifically, certain disciplines within the overall
11 technology are much more difficult to locate, especially in
12 the D.C. area, and also to attract into the corporation.
13 Lately, as an example, it's very, very difficult to find
14 security engineers, and security is a big part of what we're
15 providing and protecting our customers' data. So we're
16 having to pay a lot of money for security engineers.
17 Q Okay. Historically at Merchant Link, when senior
18 executives were brought into the company, were there
19 negotiations over their compensation?
20 A Yes.
21 Q So did the individual's, I suppose, for lack of a
22 better word, negotiation skills enter into as a factor,
23 driving their compensation?
24 A Certainly.
25 Q Are there any other factors that you can think of

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1 as driving compensation?
2 A Not at the moment, no.
3 Q What about the individual's age?
4 A No, it's not a factor.
5 Q Gender?
6 A No.
7 Q Race?
8 A No.
9 Q Switching subjects right now to Erik Belfiore, how
10 long have you known Erik Belfiore?
11 A Since about 2006, so nine years.
12 Q Have you known Erik Belfiore ever since he came to
13 Merchant Link?
14 A Yes.
15 Q What level was he at in the company?
16 A When he joined Merchant Link?
17 Q Yes, sir.
18 A He was a manager.
19 Q Okay. And would you put that in senior executive
20 -- in the tier of senior executives, upper management,
21 middle management, below middle management? Where would you
22 put that in the scheme of things?
23 A Middle management.
24 Q And I want to focus a little bit, Mr. Johnson
25 asked you about your relationship with Mr. Belfiore. I'll

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1 ask you specifically, were you friends outside of work?
2 A Yes.
3 Q Did you have family interactions?
4 A Yes.
5 Q Have you ever done anything to help his kids?
6 A Yes.
7 Q And has Erik ever done anything to help your kids?
8 A Yes.
9 Q Were you aware that Erik Belfiore was in law
10 school while at Merchant Link?
11 A Yes.
12 Q Was that something that Merchant Link, as a
13 company, asked him to do?
14 A No.
15 Q Did Merchant Link or you ever do anything to
16 support his efforts toward obtaining a law degree?
17 A Yes. I participated in a mock trial for Erik,
18 which was a small contribution, and Merchant Link was
19 accommodating of his, of his schedule and his, you know,
20 accommodating. They would, they would let him study at the
21 office during the workday at times.
22 MR. PRAGER: I'm sorry. I didn't quite understand
23 the answer. When you refer to they, who is they?
24 THE WITNESS: They is the general pronoun for
25 Merchant Link. So during that time, Erik didn't report to

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1 me; so Erik's supervisors would allow Erik to study and
2 allow his schedule to accommodate his law school, which was
3 in the evening.
4 MR. PRAGER: All right. I'm not quite sure I
5 understand that part of the answer either.
6 THE WITNESS: Okay.
7 MR. PRAGER: Who are his supervisors at Merchant
8 Link itself that would give that --
9 THE WITNESS: Well, I don't remember when Erik
10 entered law school, whether he was in law school when he
11 joined the company or he entered law school while he was at
12 Merchant Link. So Erik was initially hired by Chuck Harris
13 and then reported to Chris Justice and then Dan Charron, but
14 during the period of time while Erik was in law school,
15 reporting to those different people, at times he would --
16 well, he had night classes; so he left right at 5 o'clock
17 sharp or sometimes a little earlier in order to make his
18 night class schedule, and he was sometimes studying in the
19 afternoon --
20 MR. JOHNSON: Objection, Your Honor.
21 MR. PRAGER: Your objection?
22 MR. JOHNSON: Yes, Your Honor. I think there was
23 testimony already that Mr. Belfiore attended school at
24 night, that he -- if he studied at work, it was only during
25 his lunch break, and that he came and worked on the

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1 weekends, as well, or came back after class to Merchant
2 Link.
3 MR. PRAGER: Well, that's Mr. Belfiore's
4 testimony --
5 MR. JOHNSON: Yes.
6 MR. PRAGER: -- it can be contradicted.
7 MR. JOHNSON: Yes.
8 MR. PRAGER: So your objection is overruled.
9 MR. JOHNSON: No problem. Thank you, Your Honor.
10 MR. PRAGER: I'm not quite sure where you were
11 with your answer.
12 THE WITNESS: So, so his managers at the time
13 would accommodate those things.
14 MR. PRAGER: All right. Now, let me just, so I
15 can understand this, Mr. Justice left in 2008, and
16 Mr. Charron was the chief executive officer, but he was not
17 on the scene. He was elsewhere, wasn't he?
18 THE WITNESS: That's correct, yes. He was remote.
19 MR. PRAGER: So is it your testimony that on a
20 day-to-day or week-to-week or month-to-month basis, that
21 Mr. Charron would give Mr. Belfiore permission to study at
22 work?
23 THE WITNESS: No. I think -- I'm not sure whether
24 Dan was aware. If he was, it was probably only vaguely
25 because he didn't come to the office very often. And, and

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1 certainly before that Chris Justice and, and Chuck Harris
2 were aware that, or would have been aware that Erik was
3 studying.
4 MR. PRAGER: All right. I needed to understand
5 the earlier answer to your question, Mr. Petesch. Please
6 resume.
7 MR. PETESCH: Sure. Thank you.
8 BY MR. PETESCH:
9 Q You said that Mr. Belfiore, when he started at
10 Merchant Link, was a manager. Was his title manager of
11 financial analysis?
12 A Yes.
13 Q Okay. And can you describe the finance department
14 such as it was at Merchant Link at the time that
15 Mr. Belfiore came in?
16 A The finance department was very small. It might
17 have been just Erik or Erik and one other employee, and the
18 -- because Merchant Link was a wholly owned subsidiary of
19 Paymentech at the time, there were certain departments and
20 functions that Paymentech provided to Merchant Link, namely,
21 HR, legal, finance and accounting, and there may have been
22 one other. So Erik was the Merchant Link local financial
23 analyst for Merchant Link, but many of the accounting and
24 finance functions were provided out of Paymentech in Dallas,
25 Texas.

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1 Q And for how long was that the case?
2 A That was the case until 2011, early 2011, and we
3 began transitioning the finance, finance and accounting
4 department from Dallas to Silver Spring.
5 Q Okay. Now, I'm going to jump around a little bit
6 to some of your roles at Merchant Link. I believe you
7 mentioned that you were the chief operating officer for a
8 period of time at Merchant Link.
9 A Yes.
10 Q Can you describe your duties and your role and the
11 significance to the company of what, what you did as chief
12 operating officer?
13 A In 2002, when I came back to Merchant Link as part
14 of the NXT acquisition, I was chief operating officer and I
15 was in charge of all aspects of the company except for sales
16 and finance and HR. So I had responsibility for our service
17 delivery department. I had responsibility for our software
18 development, product management, all of our network
19 engineering infrastructure, and all the various departments
20 that manage the technology, as well as the desktop IT
21 services and the learning and development group and our
22 project management functions. So it was all the day-to-day
23 operations of the business.
24 Q Okay. And to compare and contrast, when
25 Mr. Belfiore became chief operating officer, did he perform

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1 the same range of duties that you did?
2 A No, he didn't.
3 Q How would you compare and contrast them?
4 A He performed a subset of those duties, namely, the
5 service delivery department that I had previously been
6 managing.
7 Q Now, when you became chief technology officer and
8 Erik Belfiore became the chief operating officer, who was
9 the lucky camper to get the HR responsibility?
10 A That still reported to Chris Justice.
11 Q Okay. And did that ever come to change?
12 A Yes. When Chris Justice left, there were --
13 myself, Tim Kinsella, and Erik Belfiore started reporting to
14 Dan Charron, and Dan wanted to consolidate responsibilities;
15 so there were additional functions that Chris was managing
16 that Dan didn't want to manage directly anymore. So he
17 moved the marketing function under Tim. He moved the --
18 Q Tim Kinsella?
19 A Tim Kinsella, I'm sorry, and he moved the HR
20 function under me.
21 Q Okay. And now, there's been talk about Dan
22 Charron acting as CEO from a distance.
23 A Yes.
24 Q And that there were three individuals -- I believe
25 there was an exhibit marked previously with three different

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1 circles. I believe it was yourself, Mr. Belfiore, and
2 Mr. Kinsella in the exhibit. I don't know if you recall
3 seeing that or not.
4 A Uh-huh.
5 Q Was there any understanding between Mr. Charron
6 and the three of you as to who was in charge when
7 Mr. Charron wasn't physically there?
8 A Yes. Mr. Charron told us that if there were any
9 decisions that had to be made and he wasn't available, that
10 Dan Lane would make the call.
11 Q That'd be you?
12 A That would be me.
13 Q Okay. During that period of time, did you attend
14 board of directors meetings --
15 A Yes.
16 Q -- or board of managers meetings?
17 A Yes.
18 Q Who would run the board of directors meetings?
19 A Which period of time are you talking about?
20 Q While you were chief technology officer.
21 A Chris Justice.
22 Q Okay. And then who would run the board of
23 directors meetings after Chris Justice left?
24 A Dan Charron.
25 Q Okay. And then after Dan Charron left?

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1 A Me.
2 Q Okay. I want to go into the subject of creation
3 of technology for the company --
4 A Uh-huh.
5 Q -- and the engineering of technology of the
6 company. Did Mr. Belfiore have any role in terms of
7 creating technology or engineering of any of Merchant Link's
8 product?
9 A No.
10 Q Does, jumping around a little bit, does Merchant
11 Link have a chief operating officer today?
12 A No, they don't.
13 Q Why not? Any reason?
14 A The -- because officers are expensive from a
15 salary line. So we have a, we have a couple of other
16 officers and myself who have, who have picked up what are a
17 lot of the operational duties of the business. So all of
18 the duties, the technology duties are reporting into our
19 chief information officer, the operational-related, as well
20 as, actually, the service delivery responsibilities. The --
21 some of the product functions and those areas are reporting
22 into our EVP of product, and learning and development is now
23 in our human resources department, which is part of our, our
24 finance; it's managed by our chief financial officer.
25 Q Okay.

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1 MR. PRAGER: You used the word, the initials EVP.
2 I guess that's executive vice president?
3 THE WITNESS: Executive vice president, yes.
4 MR. PRAGER: Thank you.
5 BY MR. PETESCH:
6 Q Who is currently in charge of service delivery?
7 A Denise Williams.
8 Q Female?
9 A Yes.
10 Q Is she Caucasian?
11 A She's African-American.
12 Q And has she been running service delivery ever
13 since Mr. Belfiore's employment ended?
14 A Yes.
15 Q Okay. I want to switch subjects back to
16 Mr. Belfiore. There was a period of time in 2011 that he
17 was on a leave of absence. I just want to get you there in
18 terms of time and space.
19 A Okay. Yes.
20 Q Prior to his leave of absence, in terms of overall
21 work performance and such, how would you evaluate
22 Mr. Belfiore's work?
23 A He was getting the job done. Overall, I think he
24 was doing his job.
25 Q So what were his strengths?

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1 A I have to -- give me a second. I have to go back
2 to that time period.
3 Q Sure. Sure, and we're looking at the 2010/early
4 2011 time period.
5 A Well, I think he was decisive; he made quick
6 decisions. I think he delegated responsibility effectively,
7 and overall, he addressed problems quickly when they came
8 up. I'd say those were his strengths.
9 Q Did he have any rough spots?
10 A Yes.
11 Q Can you describe what those were?
12 A He didn't get along with other management or other
13 employees often; so he was sometimes surly, grouchy, and
14 difficult to work with. I don't think he understood a lot
15 of aspects of our business very well. He understood his
16 department, but I don't think he understood our technology
17 very well, primarily those.
18 Q Okay. Now, for the, I guess for the rough spot
19 that you described as surliness, did that -- were there any
20 changes in that area when he returned from his leave of
21 absence?
22 A Yes. I think it had gotten worse.
23 Q So I want to talk a little bit more about
24 Mr. Belfiore's office demeanor and such in the 2010 and 2011
25 period, including after his return from his leave of

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1 absence, and ask you a few questions about that. Was
2 Mr. Belfiore the open-door and welcoming type?
3 A No, he wasn't.
4 Q Can you elaborate on that?
5 A Yeah. He often, particularly, again, in 2011, he
6 shut his door, sometimes locked his door, had his lights out
7 in his office, so was difficult to approach. I think if he
8 -- whenever I approached, it was, he was, you know, it
9 wasn't an issue, but when certain other employees
10 approached, Erik barked at them or told them that he didn't
11 want to talk to them and, basically, go away.
12 Q How did that fit into the Merchant Link culture?
13 A It doesn't fit our culture. We're, we're very
14 open, a helpful culture.
15 Q Did you discuss those traits with him ever, as his
16 friend or as the CEO?
17 A Yes.
18 Q Can you describe those discussions, generally?
19 A Generally, would ask Erik -- say that I got a
20 report that he was rude with someone, and he would typically
21 argue with me or give me a reason as to why he was.
22 Q Now, is this the kind of thing that you would
23 stick in his personnel file, or were they just conversations
24 that you had?
25 A Just conversations.

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1 Q What about participation in meetings at Merchant
2 Link -- was Mr. Belfiore always an active participant in
3 meetings held at Merchant Link?
4 A He was when he, again, earlier in his career at
5 Merchant Link, but in late 2010 and 2011 or even earlier,
6 but throughout that time period, he was missing a lot of
7 meetings or skipping meetings.
8 Q Did you talk to him about that?
9 A I did.
10 Q Did you do, make any effort to encourage him to
11 attend more meetings?
12 A I asked him why he was missing meetings, and he
13 said things like, I don't have time for that or that holds
14 no, that meeting holds no value for me, and dismissed it.
15 Q You know, I want to talk a little bit about, ask
16 you some questions about his demeanor in the office. I want
17 to go external with that and ask you whether the issues with
18 his demeanor ever spilled into client relationships or
19 customer relationships with Merchant Link.
20 A Yes. There was one incident. Erik didn't have a
21 lot of client interaction, but there was one incident where
22 MICROS was, was in a dispute with us over, it was a billing
23 dispute, and Erik's team was assembling documentation of
24 work orders and installation evidence to show as part of the
25 dispute to -- over a period of actually almost a year, where

1 we were going back and forth with MICROS, trying to
2 reconcile our records and our database with their records
3 and their database. And during that time, it was, there
4 was, it was a -- there was a tense relationship between us
5 and MICROS during that time, and we were also doing,
6 conducting business with them. And Erik was responsible for
7 sending over commission reports or his, someone in his group
8 was or Erik was, to MICROS, and Erik was surly in his
9 e-mails and some phone calls with our main contact over at
10 MICROS to the point where he requested that Erik be moved
11 off of that effort.

12 Q Who is he?

13 A I'm sorry, Peter Rogers, our main contact at
14 MICROS.

15 Q And was he removed from contact with MICROS?

16 A Well, Dan Charron was our CEO at the time. He
17 came in and asked Erik, you know, that he needed to
18 cooperate more. Erik's position was that the, they were
19 pushing us around and he didn't want to, he didn't want to
20 get pushed around by them. And Dan asked him and said, hey,
21 look, you need to do this, they're our biggest customer, and
22 Erik really wasn't willing to do that; so Dan said, I'm
23 going to have to find someone else to do these
24 responsibilities.

25 Q And did he?

1 A Yeah. I mean, I picked up some, Dan himself did,
2 and some of Erik's staff were brought in more directly.

3 MR. PRAGER: Can we have an idea as to when that
4 was?

5 THE WITNESS: Yeah. I believe it was in 2010,
6 over the period of 2010.

7 MR. PRAGER: Thank you.

8 BY MR. PETESCH:

9 Q Going back to Erik Belfiore's period of time on
10 leave of absence in 2011 --

11 A Uh-huh.

12 Q -- did you keep in touch with him while he was on
13 leave of absence?

14 A Yes.

15 Q About how often? He was on leave of absence for
16 approximately how long?

17 A Five to six months. Kept in touch with him every
18 three to four weeks, on average, I would say.

19 Q And over that time, when he was on leave, what was
20 his level of engagement in company matters?

21 A Not terribly engaged. He would get engaged at
22 times, but for the most part, he was not terribly engaged
23 with the company.

24 Q And what were some of the matters going on at
25 Merchant Link over the period of time when he was on leave

1 of absence? What was, what was happening at Merchant Link?
2 Anything out of the ordinary?

3 A Well, we were, we've talked about the CRM system.
4 We were in the middle of our CRM system implementation. We
5 were also in the middle of a big financial system
6 implementation because we were, similar to the CRM, we were
7 in the process of transitioning the finance and accounting
8 departments out of Paymentech into Merchant Link. So we
9 were bringing online a financial management system.

10 Q Okay. And was Mr. Belfiore engaged in those
11 initiatives?

12 A Well, not during his leave of absence. He and his
13 team were part of the CRM implementation. He was not
14 engaged in the financial system implementation.

15 Q Okay. When, when Mr. Belfiore returned from his
16 leave of absence, did you have any discussions with him on
17 his level of engagement?

18 A Actually, shortly before he returned, I had a
19 conversation with Erik as I felt like he was becoming less
20 and less engaged with Merchant Link and more frustrated and
21 bitter about, about our circumstances. And by that, I mean
22 I think he was frustrated that we weren't sold to an outside
23 party way back in 2008 and that, with Dan Charron as our
24 acting CEO during that time period, we weren't, we weren't
25 paid attention to, there was no investment made in the

1 company, and I think he felt more and more frustrated by our
2 situation, and that became more exacerbated when Christina
3 Smith came in, who was, came from Paymentech. He felt like
4 -- I don't think he trusted Christina. Anyway --

5 Q And when approximately did Christina come in?

6 MR. PRAGER: Don't interrupt the witness.

7 MR. PETESCH: Sure.

8 THE WITNESS: So, so I was sensing that Erik was
9 pretty frustrated and not engaged with Merchant Link, and I
10 had a conversation with him towards the end of that time
11 period about whether he was going to come back engaged and,
12 and sort of reinvigorated with, with the business or, you
13 know, to do his job.

14 BY MR. PETESCH:

15 Q And did Mr. Belfiore provide any feedback in that
16 conversation?

17 A Well, his -- he was frustrated about his pay. He
18 said, that depends on whether I get, whether you're going to
19 support me and give me, take care of me, and by that, he
20 meant whether I was going to give him an increase.

21 Q And is that when you started having discussions on
22 his salary?

23 A Yes, that was a conversation. We didn't have any
24 specific discussions at that time. We had a conversation
25 later on, after he had come back to the office, on the

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1 specific -- the specifics of his salary.
2 Q Okay. I'm going to get to that in just a little
3 bit, but he did, in that, in that more generalized
4 conversation, make a statement to the effect that, that you
5 needed to take care of him?
6 A Yes.
7 Q What was your response to that?
8 A I said I would take care of him if he came back
9 and, you know, became engaged and, and, and -- I don't know
10 my exact words but, basically, came back as a motivated,
11 engaged officer of the company.
12 Q Oh, I'm looking in the wrong book. Give me a
13 moment. I'm going into the white book, Mr. Belfiore's
14 exhibits, and I would direct you to Exhibit No. 58. That's
15 Complainant's Exhibit No. 58.
16 MR. PRAGER: Just a moment.
17 MR. PETESCH: Sure.
18 MR. PRAGER: All right. That's a document that's
19 already been admitted.
20 MR. PETESCH: Right.
21 BY MR. PETESCH:
22 Q And my only question is whether you're familiar
23 with this document?
24 A Yes.
25 Q Okay, at this point. Can you tell me what you

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1 were trying to accomplish through this e-mail to Erik?
2 A Yes. I was trying to notify him that his grade
3 had been changed from a 14 to a 16.
4 Q And was that your grade also, grade 16?
5 A Yes.
6 MR. PRAGER: Excuse me. I didn't notice this the
7 other day, and just so I am a little clearer on this, on
8 January 13th, 2011, you were not the CEO, is that correct?
9 THE WITNESS: Yes, sir; that's correct, sir.
10 MR. PRAGER: So am I correct in saying, at that
11 point, you yourself did not have authority to, to change
12 grade levels?
13 THE WITNESS: That's correct. At that time, HR
14 reported to me. That was one of the departments that Dan
15 moved under me. So, but -- so I didn't have the authority
16 to go in and change grade levels, correct.
17 MR. PRAGER: Okay. Thank you.
18 BY MR. PETESCH:
19 Q Did you send this in connection with your duties
20 as overseeing HR?
21 A Yes.
22 Q Okay. I'm going to ask you to go to Exhibit No.
23 59 in the same book that's been, I believe, previously
24 admitted and ask if --
25 MR. PRAGER: Just a moment.

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1 MR. PETESCH: Sure.
2 MR. PRAGER: Yes, you're correct, 59 had been
3 admitted.
4 BY MR. PETESCH:
5 Q Can you tell us what this document is?
6 A This was a memo to memorialize the grade change
7 from grade 14 to grade 16.
8 Q Okay. And is that your signature on the bottom?
9 A Yes. Yes, it is.
10 Q Okay. And was that done in connection with your
11 responsibilities in overseeing HR?
12 A Yes.
13 Q Were you involved in any decisions regarding
14 setting Mr. Belfiore's salary or total compensation when he
15 was promoted in 2008?
16 A No, I wasn't.
17 Q What about in 2009?
18 A No, I wasn't.
19 Q Okay. 2010?
20 A Well, let me clarify. I was --
21 Q Sure.
22 A -- I was, I was involved in the, in the activities
23 around them. I wasn't involved in setting the salary,
24 though. So, again, as part of HR, we had spreadsheets with
25 salaries and bonuses that were being populated by managers,

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1 and so I was involved in managing that process, but I wasn't
2 involved in actually setting Erik's compensation.
3 Q Okay. Were you ever asked to make recommendations
4 regarding Mr. Belfiore's salary or compensation in 2008 or
5 2009?
6 A No.
7 MR. PRAGER: Well, that leaves something hanging.
8 What about in 2010?
9 THE WITNESS: No.
10 BY MR. PETESCH:
11 Q Okay. When was the first time you, Dan Lane,
12 learned of any issues or dissatisfaction that Erik Belfiore
13 had with his compensation at Merchant Link?
14 A That's difficult to answer. I may have learned of
15 it prior to Erik reporting of me, through hallway
16 conversation or through a conversation with Erik. Erik I
17 don't think ever directly complained to me about his
18 compensation, but he may have, but I, I really became aware
19 of it when Erik and I started talking, when he reported to
20 me.
21 Q Okay. And so when was the first time, well, when
22 was the first actual direct complaint to you that you
23 recall?
24 A It was in that conversation in the summer when he
25 was out on medical leave.

1 Q Okay. And in that conversation when he was still
 2 out on medical leave, do you recall him ever using the word
 3 equitable with you?
 4 A I don't recall the details of the conversation.
 5 Q Do you ever recall him, prior to October 21st of
 6 2011, ever using the word discriminate or discrimination?
 7 A No.
 8 Q Okay. I want to switch the subject right now to
 9 Mr. Belfiore's request for a raise in salary. Okay?
 10 A Okay.
 11 Q Did you and Mr. Belfiore engage in conversations
 12 regarding his salary?
 13 A Yes.
 14 Q Trace for us, if you could, what those
 15 conversations were.
 16 A Erik, again, had come to me and said he was
 17 unhappy with his salary, he felt like he was underpaid, and
 18 I agreed, I thought his salary was low. I said, you know --
 19 there was a negotiation. I offered him 160,000 as a salary,
 20 which I thought was fair, and I said, but Erik, I want to
 21 make sure it meets your expectations because I don't want to
 22 do this and find you're still unhappy. So I said, what,
 23 what, what would your, what would make you satisfied, and he
 24 said \$172,000, and that was, in my mind, close enough that
 25 it wasn't -- it was still within what I felt was reasonable.

1 So I said okay and said I would make that change for him.
 2 Q Okay. And did you attempt to make that change for
 3 him?
 4 A I did.
 5 Q Okay. Now, when you were having the conversations
 6 with Erik on him feeling as if he was underpaid -- and I
 7 believe you said you agreed that you thought his salary was
 8 low, correct?
 9 A Yes.
 10 Q Were you offering an opinion on prior years, or
 11 were you offering your opinion for the current year that you
 12 were focused on?
 13 A The current year and his job and his
 14 responsibilities.
 15 Q Were you offering an opinion on his salary, or
 16 were you offering an opinion on his total compensation?
 17 A His salary.
 18 Q Did Mr. Belfiore's race have anything to do with
 19 where he stood among the other Merchant Link senior
 20 executives in terms of total compensation?
 21 A No, it didn't.
 22 Q Did Erik Belfiore ask you for more than \$172,000
 23 in salary?
 24 A No, he didn't.
 25 Q In terms of his total compensation, salary being

1 just one of the factors --
 2 A Uh-huh.
 3 Q -- or elements of total compensation, did you
 4 believe that Mr. Belfiore was being fairly compensated given
 5 his duties, given the size of the company, and what other
 6 people were making at the company?
 7 A Yes. Again, I felt like his salary was low, but I
 8 felt like the other components of his compensation were,
 9 were right in line with his responsibilities.
 10 Q Did you believe that Mr. Belfiore necessarily
 11 needed to be making more than the other senior executives at
 12 Merchant Link?
 13 A No, I didn't.
 14 Q Why?
 15 A Well, I felt that --
 16 MR. PRAGER: Let me ask for clarification. Other
 17 senior executives, Mr. Petesch, who are we talking about, or
 18 can you get Mr. Lane to explain who they are?
 19 MR. PETESCH: I think we should probably get
 20 Mr. Lane to explain who he's referring to as the other
 21 senior executives.
 22 THE WITNESS: There were both my direct -- my
 23 direct reports, I think, with the exception of David
 24 Davidovic -- I can't remember the exact org chart at the
 25 time -- and Zack Minton were all VP, director VP- or

1 officer-level employees, and they all had different skills
 2 and areas of responsibility. And so depending -- so, for
 3 example, Ben Chudasama ran our entire software development
 4 organization, and I felt like he should have been right up
 5 there with Erik. Sue Zloth ran our product management and
 6 project management areas, and I felt like she should have
 7 been on par with Erik. Jay Konar ran all of our network and
 8 IT infrastructure, and I felt like he should also be on par
 9 with Erik. Tim Kinsella, we had some performance issues,
 10 but he, he was our chief marketing officer and ran our sales
 11 and marketing area, and he should also have been on par with
 12 Erik and/or his replacement.
 13 BY MR. PETESCH:
 14 Q Okay. So those are the individuals who you're
 15 referring to when I ask you about other senior executives at
 16 Merchant Link?
 17 A Yes.
 18 Q Okay. In 2011, when you were having these
 19 discussions with Erik on his salary component --
 20 A Uh-huh.
 21 Q -- was his total compensation package -- and by
 22 that, I mean salary, LTIP grant, and AIP bonus -- was it
 23 comparable to the other senior executives who you named or
 24 was it far behind or was it way ahead of them? Where was
 25 it?

1 A I think his LTIP and AIP were comparable and his
2 salary was a little bit behind.

3 Q Do you know of other senior executives who had a
4 lower LTIP than Erik Belfiore?

5 A Yes, there were, but I couldn't tell you, sitting
6 right here.

7 Q All right. You worked to get Mr. Belfiore a
8 higher salary in 2011. I'm just getting you there --

9 A Yes.

10 Q -- switching the subject again just a little bit.

11 A Yes.

12 Q Did he start getting paid a higher salary, to your
13 knowledge?

14 A He did.

15 Q Did that last?

16 A No. We, we retracted the raise.

17 Q And why was that?

18 A Because we realized that we had failed to get our
19 board to approve the increase, and so we had to retract the
20 raise in order to -- until we got the board to approve the
21 salary increase.

22 Q Was your instance with Mr. Belfiore in raising his
23 salary, was that, as CEO of the company, was that your first
24 time or was, or had you had previous instances of attempting
25 to raise the salary or compensation package for company

1 officers?

2 A That was the -- that was the first time that, as
3 CEO, that I had done, that I had gone through the process of
4 getting somebody a raise.

5 Q Okay. And was this the normal time of year to be
6 giving a raise, or was this not the season?

7 A Our normal merit increases were done at the
8 beginning of the year. So the process started typically in
9 late December/early January, and the increases were, were
10 effective in mid-February. So this was an out-of-cycle type
11 of event.

12 Q And had Mr. Belfiore already received a salary
13 increase in January or February of 2011?

14 A Yes.

15 Q Okay. And you may have already answered this and
16 I apologize. How did you find out that, that there was a
17 problem with what you had done with Mr. Belfiore's salary?

18 A I did answer this. I believe it was Christina
19 Smith brought it to my attention, but I'm not -- it may have
20 been Nancy Hamlin, but I think Christina Smith was our CFO.

21 Q Okay. And did --

22 MR. PRAGER: Excuse me, Mr. Petesch.

23 MR. PETESCH: Yes, sir.

24 MR. PRAGER: I'm just curious. I think that was
25 your testimony before. Do you recall whether or not it was

1 called to your attention in writing, or was it called to
2 your attention orally?

3 THE WITNESS: Orally. I think Christina told me
4 first and then copied me on e-mails to process the, to
5 process the reduction again of his increase.

6 MR. PRAGER: And I'll ask both counsel, first
7 Mr. Petesch, is that e-mail that he's referring to in your
8 records, in your --

9 MR. KAPLAN: It is, Your Honor.

10 MR. PRAGER: -- documents?

11 MR. KAPLAN: It is.

12 MR. PRAGER: All right.

13 MR. PETESCH: Do you have a number for that one,
14 Steve?

15 MR. KAPLAN: We can get it, but it's in our
16 binder. So we'll, we'll introduce it.

17 MR. PRAGER: All right. We'll do a brief recess
18 after this, but I'd like to have that identified.

19 MR. KAPLAN: Sure.

20 MR. PETESCH: Sure. We could take a brief recess
21 now, and we can find it and then move with it.

22 MR. PRAGER: Well, we're going to stop in about
23 five minutes anyway. So --

24 MR. PETESCH: Okay.

25 MR. PRAGER: -- keep asking questions, and then

1 we'll get to that.

2 MR. PETESCH: Okay. Maybe Steve will look for it
3 while I'm asking questions.

4 MR. PRAGER: Yes.

5 BY MR. PETESCH:

6 Q Did you have any conversations with Mr. Belfiore
7 on what was happening with his salary in terms of after you
8 had had this conversation with Christina Smith? We talked
9 about the early ones.

10 A Yes. I went up to Erik and told him that I had
11 failed to get board approval for the increase and that I
12 needed to do that.

13 Q Okay. And I believe you were asked on direct
14 about this, but what was his reaction?

15 A Yes, I was asked. He was angry, surprised,
16 frustrated.

17 Q So what did you do?

18 A Well, I, I attempted to -- well, I didn't attempt
19 to. I contacted both members, both owners, in other words,
20 the compensation committee members of our board -- that was
21 Dan Charron and Barry McCarthy -- and I asked each of them
22 to, to approve my recommended increase of Erik's salary, and
23 I can't remember; I believe I shared with them that I had
24 already made that commitment to Erik --

25 Q Yes.

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1 A -- and each of them asked me for, or had a
2 different response, but I started working with each of them
3 to get them to approve the salary.
4 So Dan Charron initially was more receptive. He,
5 he didn't, I don't think, necessarily agreed with the amount
6 of the increase, but he said he would support it if that was
7 my recommendation. Barry McCarthy definitely didn't agree
8 with the amount of the increase, and he said he would like
9 me, before he would approve it, he would like me to start to
10 establish a series of milestones or goals for Erik to meet
11 so that that increase could be phased in, because he felt
12 like it was too much to increase somebody's salary all at
13 once, and so he gave me that direction. And then they asked
14 me to call a compensation committee hearing so that they
15 could discuss it between themselves as well, which --
16 Q Okay. Did you go forward and do that?
17 A And I did. I scheduled that meeting.
18 Q Okay.
19 MR. PRAGER: All right. Let me interrupt once
20 again and ask you, in your interactions at this point with
21 Mr. Charron and Mr. McCarthy, was that all oral?
22 THE WITNESS: Yes. It was phone calls with each
23 of them.
24 MR. PRAGER: Okay. And there's no written --
25 THE WITNESS: I take that -- I'm sorry -- take

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1 that back, sorry to interrupt you. There was an e-mail with
2 Barry McCarthy, and I don't -- I believe I sent the e-mail
3 first, and then I had a conversation with him. Dan Charron,
4 I definitely spoke to him first, and there is an e-mail that
5 I sent to Barry, sort of reiterating my points for
6 requesting the increase with --
7 MR. PETESCH: And we'll be --
8 THE WITNESS: -- or Erik's increase.
9 MR. PRAGER: All right. Thank you very much. I
10 think we're at that point where we're almost set to adjourn.
11 So let me ask, first of all, on this earlier question as to
12 whether or not there's a commemoration in writing, what is
13 the --
14 MR. PETESCH: I'd like to, yes, I wanted to just
15 refer us to that document, and then I can finish for the day
16 at least.
17 MR. PRAGER: Well, first, I'd like to do that.
18 MR. PETESCH: Yes.
19 MR. PRAGER: So give me the number.
20 MR. PETESCH: That would be, again, in the black
21 binder, what's been marked as Joint Exhibit but is now
22 called Merchant Link Exhibit 84.
23 MR. PRAGER: Mr. Johnson, did you have an
24 opportunity to look at this?
25 MR. JOHNSON: Yes, Your Honor.

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1 MR. PRAGER: All right. Mr. Petesch, are you
2 moving to admit this, this --
3 MR. PETESCH: Well --
4 MR. PRAGER: Well, first, let's let him identify
5 it.
6 MR. PETESCH: -- I'll ask Mr. Lane to identify it,
7 and then I will.
8 MR. PRAGER: Yes, by all means.
9 BY MR. PETESCH:
10 Q Mr. Lane, could you take a look at Exhibit No. 84?
11 A Yes.
12 Q You've referred to a written exchange regarding
13 the, the adjustment to his salary and then the need to get
14 approval by the compensation committee, communications with
15 Christina Smith. Is this that e-mail chain?
16 A Yes, it is.
17 MR. PETESCH: Okay. Now I move to admit Exhibit
18 No. 84.
19 MR. PRAGER: Any objections, Mr. Johnson?
20 MR. JOHNSON: No, Your Honor.
21 MR. PRAGER: All right. Respondent's Exhibit No.
22 84 is admitted. Now, Mr. Lane just testified that there was
23 some sort of written communication with Mr. McCarthy. I
24 remembered that there was --
25 MR. PETESCH: Yes.

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1 MR. PRAGER: -- something with Mr. McCarthy that's
2 already, I believe, in the record, but let's go to that,
3 make sure that that's the one he was referring to.
4 (Exhibit No. 84 was received
5 in evidence.)
6 MR. PETESCH: Okay. I think we would be going
7 then --
8 MR. KAPLAN: There's several.
9 MR. PETESCH: -- to 85 or 86.
10 MR. KAPLAN: There's several e-mails: 87, 88, 89.
11 MR. PETESCH: Yes.
12 MR. PRAGER: And, Mr. Johnson, can you help us
13 out, because one of these -- are you talking about the
14 complainant's exhibit?
15 MR. PETESCH: No. We're -- I'm sorry.
16 MR. PRAGER: Well, let's see if this is already a
17 document in the record. Yes, it is already in the record.
18 I recognize it, but I don't have the number. Mr. Johnson,
19 can you help us out?
20 MR. JOHNSON: In complainant's exhibits it would
21 be, I think, 61. Is that 61, or actually --
22 MR. KAPLAN: No.
23 MR. JOHNSON: -- the redacted version.
24 MR. KAPLAN: 62.
25 MR. JOHNSON: 62?

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1 MR. KAPLAN: It's 62 for sure --
2 MR. PRAGER: Do you want to --
3 MR. KAPLAN: -- and 63.
4 MR. PRAGER: -- compare these two, Mr. Petesch and
5 Mr. Johnson? First of all, is there something that you
6 think in your exhibit that is necessary to be added to --
7 MR. JOHNSON: Yes, Your Honor. It's actually not
8 a complete communication because the attachment to the
9 McCarthy e-mail also included the salary survey.
10 MR. KAPLAN: We're not talking about that. We're
11 talking about a different -- 62.
12 MR. JOHNSON: That was the --
13 MR. KAPLAN: Your 62. Your 62.
14 MR. JOHNSON: Yes, our 62 doesn't include the
15 McCarthy -- doesn't include the salary survey. So it's the
16 same e-mail as 61 except we had an issue with, with the
17 defendant regarding their redaction of 61, which is the
18 identical e-mail, but 62 should also include the salary
19 survey.
20 MR. PRAGER: I'm sorry. 62 is already in the
21 record.
22 MR. KAPLAN: Okay.
23 MR. PRAGER: Now, I --
24 MR. PETESCH: And that corresponds with Joint
25 Exhibit 87 of ours, yes?

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1 MR. PRAGER: Yes, I thought so.
2 MR. PETESCH: Yes.
3 MR. JOHNSON: But, I mean, it's incomplete, but I
4 guess we can just get it in through redirect, I guess.
5 MR. PRAGER: It's incomplete in what sense?
6 MR. JOHNSON: The salary survey is not attached.
7 MR. PRAGER: Well, it was never attached. When
8 you introduced it, it wasn't attached.
9 MR. JOHNSON: Yes, it was a part of the e-mail,
10 and I guess that was a -- I guess that's an error because
11 the, 61 and 62 are the identical e-mail, and one's redacted
12 and one's not.
13 MR. PRAGER: Well, but 62 is the one that's in --
14 MR. JOHNSON: Yes. So, I mean --
15 MR. PRAGER: -- in the record, and 61 is not --
16 MR. JOHNSON: All right. Well --
17 MR. PRAGER: -- and what I'm trying to do is to
18 simply the record --
19 MR. JOHNSON: Sure.
20 MR. PRAGER: -- so we don't have duplicates of
21 each document. And is there a difference between 87 and --
22 MR. PETESCH: No.
23 MR. KAPLAN: No.
24 MR. PRAGER: -- Respondent's 87 and Complainant's
25 62?

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1 MR. KAPLAN: No.
2 MR. JOHNSON: No.
3 MR. PETESCH: Not that we see.
4 MR. PRAGER: Well, actually --
5 MR. PETESCH: In overall size, but I think that's
6 a factor of the photocopying more than anything else.
7 MR. KAPLAN: Same number on the bottom.
8 MR. PETESCH: Yes, it's the same number. The
9 number, the Merchant Link Bates stamp number is just cut off
10 because the duplicating on the photocopy that is
11 Complainant's Exhibit No. 62 is --
12 MR. JOHNSON: Number 62?
13 MR. PETESCH: -- well, larger and easier to read.
14 MR. PRAGER: All right. But there is a
15 difference. At least on my version of your Exhibit 86,
16 there is --
17 MR. PETESCH: Oh, I'm referring to 87. I'm sorry.
18 MR. PRAGER: I'm sorry. I take it back. All
19 right. 87?
20 MR. PETESCH: Yes, sir.
21 MR. PRAGER: Okay. So why don't you proceed to
22 ask about 62.
23 MR. PETESCH: Okay.
24 BY MR. PETESCH:
25 Q Going into the white binder, Dan --

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1 A Yes.
2 Q -- Complainant's Exhibit No. 62 --
3 A Yes.
4 Q -- my question is, is this part of that e-mail
5 exchange that you described with Mr. McCarthy?
6 A Yes, it is.
7 MR. PRAGER: All right. With that, we will
8 adjourn for the day. We will resume tomorrow morning at
9 9:30. Mr. Lane, you understand, of course, that when you
10 take the stand again tomorrow, you'll be still under oath?
11 THE WITNESS: Yes, sir.
12 MR. PRAGER: All right. I may ask you that again
13 tomorrow morning --
14 THE WITNESS: Yes, sir.
15 MR. PRAGER: -- then again, I may not. We'll go
16 off the record now.
17 (Whereupon, at 4:57 p.m., the hearing was
18 adjourned.)
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C E R T I F I C A T E

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

Erik C. Belfiore v. Merchant Link, LLC

OZAH No. 14-02

By:

Wendy Campos, Transcriber

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