

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

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

A hearing in the above-entitled matter was held on February 13, 2015, commencing at 9:34 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lutz Alexander Prager
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Complainant:

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

On Behalf of the Respondent:

STEVEN E. KAPLAN, ESQ.
 PETER J. PETESCH, ESQ.
 Littler Mendelson, P.C.
 1150 17th Street, NW, Suite 900
 Washington, D.C. 20036

1 P R O C E E D I N G S

2 MR. PRAGER: Good morning. This is a continuation
 3 of the case of Belfiore versus Merchant Link, LLC. Before
 4 we started this morning, we had a brief discussion off the
 5 record. Mr. Kaplan, you wanted to inform us about the
 6 request I made for minutes from Board meetings.

7 MR. KAPLAN: Yes, sir.

8 MR. PRAGER: Would you care to expound?

9 MR. KAPLAN: Yes. You had asked a day or so ago
 10 about the Board minutes of Merchant Link right after mister,
 11 the next one after Mr. Belfiore was terminated, and we have
 12 February 22nd, 2012 Board minutes. I provided a copy to Mr.
 13 Belfiore's counsel this morning, and I can provide you a
 14 copy this morning as well for whatever that's worth.

15 MR. PRAGER: Thank you. So that the record will
 16 reflect, this will be marked as Respondent's Exhibit No.
 17 144.

18 MR. PETESCH: It can be that or a Hearing Examiner
 19 exhibit. We're easy. Either way.

20 MR. PRAGER: No. It's not my exhibit.

21 MR. PETESCH: Okay.

22 (Respondent's Exhibit No. 144
 23 was marked for identification.)

24 MR. PRAGER: Do you have an additional copy of
 25 this exhibit with you?

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Barry McCarthy				
By Mr. Petesch:		7		--
By Mr. Johnson:		20		--
Rick Gaskins				
By Mr. Johnson:	61/70			109
By Mr. Kaplan:		67/88		112
Dan Lane				
By Mr. Petesch:	121			--
By Mr. Johnson:		134/156		--
Bill Gore				
By Mr. Petesch:	159			166
By Mr. Johnson:		162		167

E X H I B I T S

Exhibit No.		Marked/Received
For Complainant:		
55H	Manager Meeting Minutes	25/--
63	E-mails Regarding Belfiore Raise	46/61
84A	Report of Rick Gaskins	--/115
84B	Report of Rick Gaskins	--/115
84C	Resume of Rick Gaskins	63/115
90	Donald Temple Report	71/--
For Respondent:		
141	Schedule of W-2 Amounts	previously marked/170
144	2/22/12 Board Minutes	4/--

1 MR. KAPLAN: I do.
 2 MR. PRAGER: All right. May I have it, please?
 3 If you would be kind enough to take this across the hall and
 4 have it hole-punched --

5 MR. KAPLAN: Sure.

6 MR. PRAGER: -- and then you can return it. Thank
 7 you. I think, Mr. Petesch, while Mr. Kaplan's there, you're
 8 able to defend Merchant Link by yourself I take it?

9 MR. PETESCH: I think so.

10 MR. PRAGER: Mr. Johnson, you had something you
 11 wanted to say?

12 MR. JOHNSON: Yes, Your Honor. With regard to
 13 Respondent's Exhibit No. 110, the respondent had redacted
 14 the transmittal information for this particular e-mail, an
 15 e-mail was transmitted to Counsel. We would like to have
 16 access to the e-mail transmission date and time. Not
 17 necessarily, I guess, the name of Counsel but the
 18 transmittal information.

19 MR. PRAGER: All right. And you'd be willing to
 20 have this oral representation from Counsel?

21 MR. JOHNSON: Your Honor, if they can redact the
 22 name of Counsel and just give us, you know, the actual e-
 23 mail outside of the name of Counsel.

24 MR. PRAGER: All right. Is there a problem with
 25 that, Mr. Petesch?

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1 MR. PETESCH: I recall when we looked at the
2 source document there was a comment to Counsel from Merchant
3 Link which would be privileged, and it's my recollection
4 that this was done when various e-mails were forwarded when
5 things were collected to respond to the charge so I would
6 probably object to that but --
7 MR. PRAGER: Well, rather than objecting --
8 MR. PETESCH: I would object. How's that?
9 MR. PRAGER: I think the best approach would be if
10 you would have that brought in on Tuesday and I'll take a
11 look at it and we'll see if it's possible to redact it.
12 MR. PETESCH: Okay, yes. And I don't have a
13 recollection of the date it was forwarded so.
14 MR. PRAGER: Right. All right. We have a witness
15 being called out of order and Mr. Petesch or mister, well,
16 let me ask Mr. Petesch since he's done most of the talking
17 this morning --
18 MR. PETESCH: Sorry.
19 MR. PRAGER: -- who's, who will be questioning
20 this witness?
21 MR. PETESCH: It will be me.
22 MR. PRAGER: All right. And you're ready to
23 proceed, are you?
24 MR. PETESCH: I am.
25 MR. PRAGER: Would you raise your right hand,

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1 please?
2 (Witness sworn.)
3 MR. PRAGER: Please state your full name.
4 THE WITNESS: Barry Christopher McCarthy.
5 MR. PRAGER: Thank you. Mr. Petesch.
6 DIRECT EXAMINATION
7 BY MR. PRAGER:
8 Q Good morning, Mr. McCarthy.
9 A Good morning.
10 Q Can you tell us your occupation?
11 A I work for the First Data Corporation, which is a
12 global payment processor, and the current role that I serve
13 the company is on the Management Committee and I'm
14 responsible for a collection of businesses known as consumer
15 and network solutions.
16 Q And how long have you worked for First Data?
17 A Um, a little over 10 years.
18 Q And I don't want to go through your full career
19 background but I do, I do want to ask whether you're
20 familiar with a company called Merchant Link.
21 A Yes, I am.
22 Q And in what capacity did you become familiar with
23 Merchant Link?
24 A So Merchant Link was a partner, is a partner of
25 the First Data company but I served on the Board of

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1 Directors of Merchant Link.
2 Q Okay. And is that also known as the Board of
3 Managers?
4 A Yes.
5 Q And --
6 A I think, yes.
7 Q Okay. And how was the Board of Managers or the
8 Board of Directors divided on Merchant Link? How was it set
9 up?
10 A There were members from Chase Paymentech and First
11 Data who both collectively own 100 percent of the equity of
12 Merchant Link.
13 Q Okay. And can you describe for me, if you would,
14 the relationship between First Data and Chase Paymentech?
15 A Chase Paymentech historically had been two
16 organizations that came together and was formed as a joint
17 venture between the First Data company and the Chase Bank
18 Corporation. Merchant Link was owned by Chase Paymentech
19 and at the time of the dissolution of the joint venture
20 between First Data and Chase Bank, known as Chase
21 Paymentech, Chase Paymentech became a wholly-owned
22 subsidiary of the Chase Bank.
23 Q And then can you describe, just generally, the
24 ownership structure of Merchant Link when you served on its
25 Board of Managers or Board of Directors?

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1 A The equity was divided between Chase Paymentech
2 and First Data, and I believe the split was approximately
3 51/49 to Chase.
4 Q With Chase being the majority?
5 A The majority, correct.
6 Q Now, while you were on the Board, we'll just refer
7 to it as the Board if that's okay with you --
8 A Yes.
9 Q -- did you also serve on the Compensation
10 Committee?
11 A I believe I did.
12 Q How much time did you spend on site physically at
13 Merchant Link?
14 A I did not ever visit the physical facility.
15 MR. PRAGER: Excuse me, Mr. Petesch.
16 MR. PETESCH: Yes.
17 MR. PRAGER: I'm a little bit confused again about
18 time. You keep saying while you were. Could we establish
19 when he became part of the Board of Managers of Merchant
20 Link and whether he's still there?
21 MR. PETESCH: Sure.
22 BY MR. PETESCH:
23 Q Let's start with are you still there. Are you
24 still on the Board for Merchant Link?
25 A I am not.

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1 Q When did you cease being on the Board for Merchant
2 Link?
3 A Somewhere I believe in 2011.
4 Q Now, were you on the Board of Merchant Link, I'm
5 trying to just get us into proper space and time
6 perspective, were you on the Board of Merchant Link at the
7 time of Mr. Belfiore's termination?
8 A I was.
9 Q Okay. When did you, if you recall, when did you
10 start serving on the Board of Merchant Link?
11 A I think it was at the end of 2008.
12 Q Okay. So would it be fair to say then that you
13 served on the Board continuously from the end of, around
14 2008 until the end of 2011?
15 A I don't recall the specific dates but that range
16 is appropriate, yes.
17 Q Okay. Now, the main subject of this hearing is
18 Mr. Erik Belfiore. Are you familiar with the name?
19 A I am, yes.
20 Q As of 2011, do you recall meeting Mr. Belfiore in
21 person?
22 A I do not recall ever meeting him in person.
23 Q Do you recall speaking with him on the phone over
24 your tenure on the Board?
25 A Yes.

Page 11

1 Q Do you recall Mr. Belfiore helping you with what
2 we'll call, for lack of a better word, deck presentations or
3 Power Point presentations for Board meetings?
4 A I remember in the normal course of business
5 speaking with Erik on the phone.
6 Q Okay. And did he provide you financial
7 information on Merchant Link?
8 A I don't specifically recall if Erik specifically
9 provided that or someone else there, but I do recall being
10 provided financial information.
11 Q In, let's say October of 2011, did you know Mr.
12 Belfiore's race?
13 A I did not.
14 Q In 2011, were were you still serving on the
15 Compensation Committee of Board for Merchant Link?
16 A I believe so, yes.
17 Q Did anything, while you were serving on the
18 Compensation Committee, did anything regarding Mr.
19 Belfiore's compensation jump out to you as being out of
20 line?
21 A I don't specifically recall that. I do recall
22 conversations about improving his compensation.
23 Q Okay. We'll get to that in just a minute. Did
24 his compensation level come to your attention in 2011?
25 A I don't recall the specific date but I do know

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1 that there was a conversation about his compensation.
2 Q Okay.
3 A And improving it.
4 Q Okay. And when you say a conversation, who was
5 involved in the conversation?
6 A I believe that Dan Lane brought forward to the
7 Compensation Committee a proposal and some ideas on how to
8 improve, improve his compensation.
9 Q Okay. And who else served on the Compensation
10 Committee with you?
11 A I believe it was Dan Charron and me.
12 Q Okay. When Dan Lane brought it to your attention,
13 what did you do on the Compensation Committee, if you could
14 just describe the process in general.
15 A The process in general in considering all senior
16 level compensation plans and requests was to review it
17 relative to other leaders in the organization and also, to
18 benchmark against the insight we had in our own
19 organizations in the marketplace for what was appropriate
20 compensation.
21 Q And did you receive information on those matters,
22 the benchmarking for example?
23 A I'm not sure we were ever provided a specific
24 document but from, from inside the company for sure but
25 external benchmarking, I think we're aware of similar roles

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1 in different organizations.
2 Q Did the Compensation Committee ever come to a
3 conclusion approving a salary raise for Mr. Belfiore?
4 A My recollection is that there was a plan to
5 increase his compensation.
6 Q And let me ask this opposite question. While you
7 were serving on the Compensation Committee between the time
8 the issue of his salary came to your attention and the end
9 of Mr. Belfiore's employment, over that period of time, had
10 the Compensation Committee ever rejected the request to
11 raise Mr. Belfiore's salary?
12 A Not that I recall.
13 Q Okay. I'm going to switch gears a little bit and
14 go to allegations of misconduct by Mr. Belfiore. While
15 serving on the Board, did allegations of misconduct by Mr.
16 Belfiore ever come to your attention?
17 A Yes.
18 Q Can you describe, just from 30,000 feet, how that,
19 how that happened? How did it come to your attention?
20 A I think that we were notified about disturbing
21 conversations he had with at least one employee, and that
22 information was provided to the Board. And I believe there
23 was some written documentation that supported those
24 conversations.
25 Q Okay. And how did the information first come to

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1 your attention?

2 A I recall being on a Board call, and I believe Dan

3 Lane brought that information to us. I may have first heard

4 about it from Dan Charron but I do recall a conversation

5 with Dan Lane.

6 Q And were the conversations live, in person or were

7 they telephonic?

8 A Always telephonic.

9 Q Okay. You mentioned being provided some

10 documentation and I'm going to ask you to look at, there's

11 two binders in front of you. One of them is a black binder

12 and one of them is a white binder, and I'm going to ask you

13 to take a look at a document in each binder if I may. I

14 actually have them open to the documents but if you just

15 flip the page. One of them is called Joint Exhibit No. 110.

16 That's in the black binder.

17 MR. PRAGER: Mr. Petesch, for the record, we're

18 talking about an e-mail from --

19 MR. PETESCH: Zachary Minton.

20 MR. PRAGER: -- Zachary Minton?

21 MR. PETESCH: Yes, sir.

22 BY MR. PETESCH:

23 Q And after you've had an opportunity to look at it,

24 my question's going to be whether you recognize this

25 document.

Page 15

1 A Um --

2 Q Take all the time you need to look at it.

3 A Okay. So I recall the contents of what this

4 document says.

5 Q Uh-huh.

6 A And I recall that there were what we considered

7 complete and compelling documentation of the incident, and

8 this would fit part of that recollection.

9 Q Okay. And I'm going to ask you to take another

10 look at another document in the white binder this time which

11 is Belfiore Exhibit No. 82 which on its third page, bears

12 the name of Renee Dantzler. I just wanted to make sure that

13 you're looking at the correct document.

14 A Yes.

15 Q Okay.

16 MR. PRAGER: What exhibit is that? I'm sorry.

17 MR. PETESCH: Belfiore exhibit, Complainant

18 Exhibit 82.

19 MR. PRAGER: Thank you. Go ahead.

20 MR. PETESCH: Sure.

21 BY MR. PETESCH:

22 Q My question after you've had a chance to --

23 A Uh-huh.

24 Q -- review it is whether that document is familiar

25 to you.

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1 A This is -- I also recall the content here, and it

2 would be entirely consistent with my recollection of very

3 complete and compelling information about the situation.

4 Q Okay. As a Board member at Merchant Link, what

5 was your reaction to the, to the allegations or the

6 information provided to you on Mr. Belfiore?

7 A Honestly, I was shocked. I can't recall another

8 time in my career when I was aware of an employee proposing

9 direct damage to the organization.

10 Q Had you ever seen anything analogous to that

11 before in your career?

12 A I have not, and I've led organizations with

13 thousands of people.

14 Q What was your reaction on what should be done?

15 A It was very clear to me that I had a fiduciary

16 responsibility to protect the shareholders and clients of

17 the Merchant Link Corporation and that that responsibility

18 required a termination of an employee that was creating a

19 risk and a threat to the organization.

20 Q Did you see any middle ground on that? In other

21 words, suspension or a reprimand or anything like, along

22 those lines?

23 A I don't know how to compromise when there's a

24 known and what is a believable threat against the

25 institution.

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1 Q As a Board member, would you have been able to

2 trust Mr. Belfiore as a corporate officer moving forward had

3 he not been removed?

4 A Clearly not.

5 Q Now, when the Board discussed this telephonically,

6 do you recall if minutes were taken?

7 A I don't recall that.

8 Q Going back to your perception of Mr. Belfiore's

9 actions, why do you see them as serious?

10 A I think anytime that an employee is trying to

11 engage other employees to hurt or damage the corporation is

12 a very, very serious threat to the organization.

13 Q Did you have any hesitation in supporting

14 termination?

15 A I did not. However, we did discuss that we knew

16 there were other issues we were working on with Mr. Belfiore

17 and we contemplated that but at the end of the day, we

18 believed that the threat was significant and real and that

19 the only responsible course of action was to take the action

20 we took.

21 Q Did the other issues surrounding Mr. Belfiore on

22 his compensation, allegations surrounding his compensation,

23 did that move you toward termination or did that make you

24 think twice about termination?

25 MR. PRAGER: I'm sorry. That's a leading

Page 18

1 question. He hasn't said anything about -- you said there
2 were other issues relating to Mr. Belfiore. He has not
3 identified what those, what those issues are.
4 MR. PETESCH: Very well.
5 BY MR. PETESCH:
6 Q What is your understanding of the other issues
7 involving Mr. Belfiore?
8 A At the time, we were working on improving his
9 compensation and I think around the same time, we became
10 aware that he was, he believed that somehow, the
11 compensation was tied to race or other issues and I, when I
12 first heard that news, honestly, I was startled. Having
13 never met Erik, I didn't know his race. I had no idea. And
14 when that came to my attention, I honestly was startled by
15 that because I just didn't, I didn't know.
16 Q Did that other incident involving his, or the
17 other issue involving his compensation, did you factor that
18 in in favor of terminating Mr. Belfiore?
19 A Absolutely no. It was a reason to pause and
20 consider what was the right thing for the organization, and
21 I think we considered that there was this outstanding
22 situation but it didn't, in any way, slow us from making the
23 right decision and executing our fiduciary responsibility to
24 protect the organization.
25 Q Did you, in your deliberations on the Board of

Page 19

1 Directors, did you, did anyone ask or did you ask to get Mr.
2 Belfiore's side of the story?
3 A I don't specifically recall but I do know that we
4 relied on management of the corporation and the HR function
5 and, to provide us the information and I do recall,
6 apparently, these documents that you've shown me here, what
7 we felt was very complete and compelling messaging around
8 the incident and describing the threat.
9 Q Are you confident today that you did the right
10 thing in making the decision to or ratifying the decision to
11 terminate Mr. Belfiore?
12 A Absolutely.
13 Q I have no -- just let me go back for a moment. I
14 do have one other subject area to touch on if you recall.
15 Were you on the Board of Directors when Mr. Lane was
16 selected as the CEO for the company?
17 A Yes.
18 Q Were you on the Board of Directors when Dan
19 Charron was selected to be, for lack of a better word,
20 interim CEO?
21 A Yes.
22 Q Do you know, do you have any recollection as to
23 whether Erik Belfiore was considered for the position of
24 CEO?
25 MR. PRAGER: Excuse me. Can we have a time? You

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1 asked two different questions.
2 MR. PETESCH: Yes.
3 MR. PRAGER: We have one when Mr. Lane was
4 promoted and one when Mr. Charron was designated. Which
5 time are we talking about?
6 BY MR. PETESCH:
7 Q Let's start with Mr. Lane. When Mr. Lane was
8 promoted to CEO of the company Merchant Link, which I'll
9 represent to you was around March of 2011, did Mr.
10 Belfiore's name come up for consideration as CEO?
11 A I don't specifically recall. I know we considered
12 other candidates but I don't specifically recall.
13 Q Okay. I'm going to ask you the same question
14 regarding when Mr. Charron was selected as interim CEO and
15 unfortunately, I don't have a date or year at the tip of my
16 tongue but if you can focus on the event. Do you recall
17 whether Mr. Belfiore was considered for the CEO position?
18 A I just, I don't recall.
19 Q I have no further questions and I thank you, but
20 you're not off the hook.
21 A Okay.
22 MR. PRAGER: All right. Mr. Johnson?
23 MR. JOHNSON: Yes, Your Honor. Thank you.
24 CROSS-EXAMINATION
25 BY MR. JOHNSON:

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1 Q Now first, good morning, Mr. McCarthy.
2 A Good morning.
3 Q You stated just now in the record that you were
4 unaware of Mr. Belfiore's race, that's correct?
5 A Yes.
6 Q And do you serve with Mr. Dan Charron on the
7 Compensation Committee?
8 A Yes.
9 Q And how many members were part of the Compensation
10 Committee?
11 A At least two. I don't recall if there were more.
12 Q But at least Dan Charron.
13 A Yes.
14 Q And were you aware that Dan Charron knew of Mr.
15 Belfiore's race?
16 A I can't answer. I don't --
17 MR. PETESCH: Objection. Speculation of --
18 MR. PRAGER: Well, he's asking whether or not he
19 knew, so the objection is overruled. You can answer. The
20 question is did you know if Mr. Charron knew of Mr.
21 Belfiore's race.
22 THE WITNESS: I have no idea. We never discussed
23 it.
24 BY MR. JOHNSON:
25 Q And as you stated, Mr. Charron was appointed the

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1 interim CEO, correct?
2 A Correct.
3 Q And he visited Silver Spring as interim CEO,
4 correct?
5 A I don't know that to be true but -- I don't, I
6 don't know. I presume so, but I don't know.
7 Q Now, Mr. McCarty, were you aware that Mr. Belfiore
8 was a corporate officer of Merchant Link?
9 A Yes.
10 Q And were you aware that Mr. Belfiore was paid
11 significantly lower than the other corporate officers of
12 Merchant Link?
13 MR. PETESCH: Objection as a mischaracterization
14 of the evidence.
15 MR. PRAGER: Well, the question is whether or not
16 he was aware. It's true it's somewhat argumentative but
17 that's all right. I'll overrule the objection.
18 THE WITNESS: What I recall is working on
19 approving Mr. Belfiore's compensation.
20 BY MR. JOHNSON:
21 Q And in working on approving Mr. Belfiore's
22 compensation, did you explain that Mr. Belfiore's increase
23 in compensation was very large?
24 A I'm not sure I understand the question.
25 Q In working on Mr. Belfiore's compensation --

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1 A Yes.
2 Q -- did you know or did you believe that the
3 increase of salary was very large?
4 A I know that we were trying to materially improve
5 his compensation. I don't recall the specifics.
6 Q Did you suggest that in order to effectuate an
7 increase in Mr. Belfiore's salary, that you increase the
8 salary in phases?
9 A I don't specifically recall that but I know that
10 is a very common practice.
11 Q Now, were you aware that in May of 2009 after Mr.
12 Dan Lane became CEO -- excuse me. I'm sorry. Were you
13 aware in May of 2009 when Mr. Dan Charron became interim
14 CEO, that he gave Mr. Belfiore a \$15,000 raise?
15 A I don't specifically recall.
16 Q And if Mr. Belfiore was to receive such a raise,
17 wouldn't it be required for there to be a Compensation
18 Committee meeting regarding Mr. Belfiore's raise?
19 A I'd have to look at the bylaws of the organization
20 in what was required. I don't, I'm sorry, I don't
21 specifically recall.
22 Q Is your testimony today you don't know whether
23 corporate officers require the Compensation Committee to
24 meet in order to get a raise?
25 A My point is that the Compensation Committee

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1 reviewed the compensation of senior officers. I don't
2 recall the specific process or how that process was
3 recorded.
4 Q So if Mr. Belfiore was to receive a \$15,000 raise,
5 then you would have had to have known about it, correct?
6 A If that came to the Compensation Committee, that's
7 correct.
8 Q And to your knowledge, did Mr. Belfiore receive a
9 raise in May of 2009 in the amount of \$15,000?
10 A I'm sorry. I just don't specifically recall.
11 Q Sure. In front of you is a white binder, and I'd
12 like to turn your attention to what has already been
13 actually, yes, actually, they have been admitted, to tab no.
14 55.
15 MR. PRAGER: Mr. Johnson, which pages are you
16 going to ask your witness to refer to?
17 MR. JOHNSON: Yes, Your Honor. Actually --
18 MR. PRAGER: We'll go off the record for a moment.
19 (Off the record.)
20 (On the record.)
21 MR. PRAGER: All right. We're back on the record.
22 During the brief recess, Mr. Johnson said in Complainant's
23 Exhibit 55, he was going to ask some questions about those
24 pages that are marked ML0008 though 00010, and for purposes
25 of identification, this will be Complainant's Exhibit 55H.

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1 (Complainant's Exhibit No. 55H
2 was marked for identification.)
3 MR. PRAGER: Mr. Johnson?
4 MR. JOHNSON: Yes. Thank you, Your Honor.
5 BY MR. JOHNSON:
6 Q Now, Mr. Duff. I'm sorry. Mr. Duffy. Mr.
7 McCarthy, in front of you is Complainant's Exhibit marked
8 for identification No. 55H. Do you recognize this
9 particular exhibit?
10 A Which are the pages ML0008 --
11 Q Yes.
12 A -- 9 and 10?
13 Q Yes.
14 A I don't specifically recall this but I can see
15 that I was in attendance at that meeting according this
16 document.
17 Q And pursuant to this document, do you recall any
18 mention as to, in this particular meeting, as to an increase
19 in Mr. Belfiore's salary?
20 A I don't recall.
21 Q And if there was an increase in Mr. Belfiore's
22 salary, it would have to come at the recommendation of the
23 Compensation Committee, correct?
24 A I believe that's true.
25 Q And if the Compensation Committee actually

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1 approved it, it would reflect in the manager's meeting
2 minutes, correct?
3 A Not necessarily.
4 Q And where would it be memorialized?
5 A Um, I believe the Compensation Committee met
6 independently of the full Board meeting, and the
7 Compensation Committee made recommendations along the way.
8 Q And if Mr. Belfiore was to receive a \$15,000
9 raise, how would you communicate this to Mr. Belfiore?
10 A That communication would have been delivered by
11 the management of the company. That was not the
12 responsibility of the Board. The Board was to oversee and
13 approve compensation for senior leaders, but the management
14 and implementation of those plans was the province of the
15 leadership.
16 Q So it's your testimony today that the Compensation
17 Committee meets and makes decisions, but they do not
18 memorialize their decisions?
19 A I don't recall if there were consistent notes or
20 not. That was -- I don't recall that.
21 Q Do you recall the \$15,000 raise by --
22 A I don't specifically recall the number. I
23 remember a conversation about compensation.
24 Q And did you approve it?
25 A My recollection is we had.

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1 Q Now, are you familiar with Mr. Christopher
2 Justice?
3 A Yes, I am.
4 Q And are you familiar about the timeframe when Mr.
5 Christopher Justice resigned from the company?
6 A I recall approximately the time. I don't recall
7 specific dates.
8 Q And do you, did you review any of the
9 documentation that Mr. Justice submitted to the Board
10 concerning his resignation?
11 A I don't recall.
12 Q And do you recall that Mr. Christopher Justice
13 made a recommendation that Mr. Belfiore succeed him as CEO?
14 A I do not recall that.
15 Q Do you recall, during that same timeframe, whether
16 Mr. Dan Lane was considered as a possible CEO for Merchant
17 Link?
18 A I don't recall that either.
19 Q And but you do recall that Mr. Dan Lane became the
20 interim CEO, correct?
21 A Mister --
22 Q Mr. Dan Charron -- I'm sorry. The Dans get me.
23 A Yeah.
24 Q Mr. Dan Charron became the interim CEO.
25 A I do.

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1 Q And do you recall that Mr. Dan Lane fulfilled that
2 position of CEO for approximately two, approximately two
3 years before, Mr. Dan Charron fulfilled the role of CEO
4 approximately two years before Mr. Dan Lane took over?
5 A Yes. I'm aware of that.
6 Q Now, you also testified that your communications
7 with Mr. Belfiore was to inform you, I guess, of the deck,
8 as we all have been describing, prior to the Board meetings,
9 correct?
10 A Yes.
11 Q And did Mr. Belfiore inform you about a 10 percent
12 inflationary factor in the Merchant Link services agreement?
13 A I don't recall if Mr. Belfiore did but I am aware
14 of that situation.
15 Q And what was your position on the 10 percent
16 inflationary factor?
17 A I thought that it was inappropriate.
18 Q And why would it be inappropriate?
19 A At that time in history, inflation was not at 10
20 percent and I was not aware of any other contracts in the
21 business that I do with other suppliers that had any
22 inflationary clauses or the ability to raise price by any
23 amount.
24 Q Now, for the Court's edification, explain the
25 Merchant Link services agreement.

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1 A So Merchant Link, as I think everyone understands,
2 was owned by First Data and Chase Paymentech. At the
3 dissolution of the joint venture known as Paymentech
4 previously that was owned by First Data and Chase Bank, the
5 Merchant Link asset became an equity structure with
6 ownership of the two parents 51 and 49. The operating
7 assets of the company were held inside of the Paymentech
8 data center and Paymentech was offering that, those
9 solutions on behalf of Merchant Link. So hosting that, the
10 platform and all of the technology on behalf of Merchant
11 Link.
12 Q Now, Paymentech was providing a lot of services,
13 hosting a lot of services or providing a lot of services for
14 Merchant Link, correct?
15 A Correct.
16 Q Paymentech was providing a lot of management
17 services for Merchant Link.
18 A Correct.
19 Q And so Paymentech provide tech services for
20 Merchant Link.
21 A I don't specifically recall that but I do know
22 that the core platforms were hosted inside of Paymentech.
23 Q Now, did you introduce this inflationary factor to
24 the Board?
25 A I doubt that I introduced it, but I'm sure I

Page 30

1 discussed it.

2 Q And --

3 MR. PRAGER: Excuse me. I'm a little bit

4 confused. Two things. One is I'm not sure what you're

5 talking about, this 10 percent. I certainly need

6 clarification of that but more importantly, I'm not quite

7 sure what the point of this discussion is at all.

8 MR. JOHNSON: Sure, Your Honor. And if the Court

9 allows, we can inquire the 10 percent through Mr. McCarthy

10 but we also wanted to establish a pattern of behavior from

11 the Board.

12 MR. PRAGER: All right. Well, I'll allow you to

13 ask the questions, but I may cut you off if I find this not

14 to be terribly relevant.

15 MR. JOHNSON: I agree, Your Honor. Thank you.

16 BY MR. JOHNSON:

17 Q Mr. McCarthy, can you explain for the Court the 10

18 percent such that we can understand it?

19 A So Merchant Link had a contract with Chase

20 Paymentech to run the infrastructure that Merchant Link was

21 using, and Chase Paymentech came to Merchant Link and

22 proposed a 10 percent increase in that service contract.

23 Q And that would be a 10 percent payment to Merchant

24 Link.

25 A It would be Merchant Link paying 10 percent more

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1 to Paymentech for hosting the services.

2 Q And that wouldn't have been in the best interest

3 of Merchant Link.

4 A Correct.

5 Q And I guess was this particular inflationary

6 practice or your position on the inflationary practice,

7 basically being against it, was that opposed?

8 A I was, I was advocating in my fiduciary

9 responsibility as a Board member to ensure that our primary

10 supplier did not take advantage of us and force an

11 unnecessary increase on the company.

12 Q And your position was opposed by other Board

13 members.

14 A I believe that Chase Board members wanted to get

15 the, give themselves the raise.

16 MR. PRAGER: All right now, Mr. Johnson, I have a

17 better idea of what was going on. I have no idea what this

18 has to do with Mr. Belfiore's compensation or with Mr.

19 Belfiore's termination. Unless you can --

20 MR. JOHNSON: All right, Your Honor.

21 MR. PRAGER: Unless you can, in the next one or

22 two questions, that you can draw a link to those, I'm going

23 to stop you from asking further questions along this line.

24 MR. JOHNSON: Sure, Your Honor. And in fact, Your

25 Honor, you say one or two questions. Maybe three or four.

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1 MR. PRAGER: Well, ask your next one now. I'll

2 stop you in time.

3 MR. JOHNSON: Thank you, Your Honor.

4 BY MR. JOHNSON:

5 Q Mr. McCarthy, so Dan Charron opposed your position

6 on this, of I guess Paymentech taking advantage of Merchant

7 Link, correct?

8 A I don't specifically recall that, but he was

9 representing Chase.

10 Q And Dan Charron actually told you that you, your

11 grade level, not your grade level, your position wasn't high

12 enough to make a decision on that matter, correct?

13 A I don't recall that, and that wouldn't be

14 factually correct.

15 Q Dan Charron actually --

16 MR. PRAGER: Again, I'm going to stop you.

17 Explain your theory and then --

18 MR. JOHNSON: Sure.

19 MR. PRAGER: What is your theory? Why are we

20 belaboring this?

21 MR. JOHNSON: Well, Your Honor, what we have in

22 the record are some inconsistencies with regard to Dan

23 Charron's role in Mr. Belfiore's compensation and Dan Lane's

24 role in Mr. Belfiore's compensation, and what we have now

25 surmised is that Dan Charron was really in control of all of

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1 this. He's noticeably absent but he, he really opposed Mr.

2 Belfiore getting a raise. He actually ran the Compensation

3 Committee. Mr. McCarthy didn't have any say so.

4 MR. PRAGER: All right. Well, why don't you ask

5 those questions directly rather than fielding with all this

6 other peripheral stuff.

7 MR. JOHNSON: Yes.

8 MR. PETESCH: The objection is this is a services

9 contract with the organization and if he wants to ask him

10 questions about the Compensation Committee, he should ask

11 him questions about the Compensation Committee.

12 MR. PRAGER: At any rate, he's made his, that he

13 believes or the theory is that Mr. McCarthy was, in some

14 fashion, I don't want to put words in your mouth, but

15 subordinate to Mr. Charron in decision-making in 2008 or '09

16 whenever this occurred. Mr. Johnson?

17 BY MR. JOHNSON:

18 Q Mr. McCarthy, Mr. Dan Charron made Board decisions

19 without your input, correct?

20 A I don't believe that is true.

21 Q And Mr. Dan Charron actually approved compensation

22 without your permission, correct? Without your input,

23 correct?

24 A I don't believe that's true.

25 Q And do you know for certain whether or not Mr. Dan

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1 Charron gave Mr. Belfiore a \$15,000 raise without your
2 input?
3 A I don't recall that, but I don't believe that to
4 be true.
5 Q And the basis for your belief is because you
6 actually participated in a conversation or, with Mr. Dan
7 Charron saying I'm going to give Mr. Belfiore a \$15,000
8 raise?
9 A My basis for that belief is knowing how the Board
10 operated in meeting regularly and discussing compensation
11 across the board.
12 Q And but you don't know for certain if you had that
13 particular conversation with Dan Charron.
14 A I have said before I don't specifically recall in
15 2009, I guess when this, when you're asking, who was on the
16 docket for being reviewed for a salary on any particular
17 day.
18 Q Now, Mr. McCarthy, I want you to actually open the
19 respondent's binder to Exhibit 110.
20 A That's the black binder?
21 Q That's the black binder, yes.
22 A Yes.
23 Q I'm sorry. I should make the distinction. And
24 whether the binders are black or white bears no bearing on
25 race right now.

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1 MR. PRAGER: It's the good guys versus the bad
2 guys.
3 MR. PETESCH: Only with hats. Only with hats.
4 MR. PRAGER: Go ahead, Mr. Johnson.
5 BY MR. JOHNSON:
6 Q Now, Mr. McCarthy, you stated to the Court that in
7 Respondent's Exhibit No. 110 that upon seeing this
8 particular document and reading it, you knew that you had to
9 terminate Mr. Belfiore, correct?
10 MR. PRAGER: I'm sorry. I don't think that was
11 the testimony. I don't think he said he had seen this
12 document.
13 MR. JOHNSON: Okay. I'm sorry.
14 MR. PRAGER: You can ask him if he saw the
15 document specifically. I notice that there's nothing to
16 indicate that it was sent to him on this one. As you
17 pointed out, we don't know to whom this document is sent
18 because that is not, it's been redacted so we don't know
19 whether he was a recipient of that at all. You can ask him
20 if he was.
21 MR. JOHNSON: All right. Thank you, Your Honor.
22 BY MR. JOHNSON:
23 Q Mr. McCarthy, did you receive Respondent's Exhibit
24 110?
25 A So I don't specifically recall receiving an e-

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1 mail. I do recall what the contents of this e-mail state
2 and I remember having a conversation about that.
3 Q But you don't recall seeing this particular
4 document.
5 A I may have. It's a long time ago.
6 Q But --
7 MR. PRAGER: Let --
8 MR. JOHNSON: I'm sorry.
9 MR. PRAGER: Let me interrupt. I'm sorry to,
10 train of thought. Let me ask Mr. Petesch if we can make a
11 determination, not right now --
12 MR. PETESCH: Uh-huh
13 MR. PRAGER: -- whether or not this document was
14 ever e-mailed to Mr. McCarthy.
15 MR. PETESCH: Or provided. Or otherwise provided.
16 MR. PRAGER: Or otherwise provided, yes. Thank
17 you. Mr. Johnson?
18 BY MR. JOHNSON:
19 Q Mr. McCarthy, I want to turn your attention to in
20 the white binder, it should be right beside you, to
21 Complainant's Exhibit No. 82. Now, Mr. McCarthy, did you
22 actually receive and read Complainant's Exhibit No. 82?
23 A Again, I don't recall what specific documents I
24 received. I'm very familiar with the content of this letter
25 and familiar with the message of Ms. Dantzler.

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1 Q And --
2 A Which means I may have read this. I don't
3 specifically recall that.
4 Q And can you tell the Court exactly what it was
5 that made you feel that Mr. Belfiore needed to be
6 terminated?
7 A I think two points.
8 Q Sure.
9 A I think that he created an environment that was
10 hostile to employees where we have an employee that was
11 anxious about a conversation and the position she was put in
12 and second, the nature of that conversation was an attempt
13 to do harm to the company. And as I've previously stated,
14 in my entire career, I've never experienced or seen that
15 circumstance before.
16 Q And the circumstance as described to you was I
17 guess horrific.
18 A I perceived it as a threat to the organization and
19 its clients, and I believe I had a fiduciary responsibility
20 that I exercised to protect the organization from a threat.
21 Q And you didn't get this information from Ms.
22 Dantzler firsthand, did you?
23 A I believe that we got, it must have been these
24 documents because I do recall some written communication
25 that we felt, and I believed, was compelling and complete.

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1 Q And did you get information that Mr. Belfiore had
2 been interviewed with regard to these allegations?
3 A I don't specifically recall.
4 Q Did you ask for whether Mr. Belfiore had been
5 interviewed regarding these allegations?
6 A I think we relied on management to provide a
7 complete picture and given what must have been this
8 combination of documents from an employee that had the
9 experience of a supervisor that followed up, I believed that
10 was complete and compelling.
11 Q So if management didn't give you the accurate or
12 complete picture, your determination would have been wrong,
13 correct?
14 MR. PETESCH: Objection. Argumentative.
15 MR. PRAGER: It is argumentative but that's the
16 prerogative of a cross-examination, so it's overruled.
17 THE WITNESS: So I can't hypothesize on what might
18 or might not have been. I can only tell you the facts as I
19 knew them at the time which was compelling evidence that
20 there was an immediate and material threat to the
21 organization and I had a responsibility to act.
22 BY MR. JOHNSON:
23 Q So allow me to create a hypothetical for you to
24 respond to. If management took the side of one employee but
25 did not take the side of another employee and then forwarded

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1 to you one employee's side of the allegation, would that
2 have been the correct way to present information to the
3 Board?
4 A I can't respond to hypothetical situations. All I
5 can respond to is the experience I found myself in.
6 Q So if management was required to follow the
7 company procedures and policy but it did not, would that be
8 flawed information presented to the Board?
9 A Again, I can't, I can't hypothesize on what would
10 or wouldn't be. I can tell you what I've already told you
11 is that I believe that we had adequate information and
12 responded appropriately.
13 Q But do you believe that management is supposed to
14 follow the company policies and procedures?
15 A Of course. The reason that policies and
16 procedures exist.
17 Q And if management does not follow corporate
18 policies and procedures, would that be wrong?
19 A It would be not consistent with the expectations.
20 Q And by not being consistent, that means it would
21 be wrong, correct?
22 MR. PRAGER: I think he's answered the question.
23 MR. JOHNSON: Sure, Your Honor. Thank you.
24 BY MR. JOHNSON:
25 Q So you were relying on the managers to provide the

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1 information, correct?
2 A Absolutely.
3 Q And if the management provides you wrong
4 information, that causes detriment to the company, correct?
5 A If that is a theory, I suppose. I don't think
6 that applies to this circumstance.
7 Q And why not?
8 A I've said before that we felt like we had complete
9 and compelling information regarding the circumstance.
10 Q But --
11 A And based on the documents that you've provided
12 here, we have not only a statement from the employee, we
13 have corroborating evidence in a message from another person
14 that's corroborating that data.
15 Q So you relied on the letter from the employee or
16 employees. You also relied on a second letter. You believe
17 that you had it in your possession at the time.
18 A Or I believe I had the content or the information
19 that was contained.
20 Q Information that was contained. Now, in
21 Complainant's Exhibit No. 82, this is the information that
22 would have been supplied to the Board, correct?
23 A The content is familiar to me.
24 Q And I want you to take an opportunity to just
25 review the page, and I want you to point out what in this

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1 letter you deem to be so bad that Mr. Belfiore should have
2 been terminated.
3 A I found a few things. I'll start with the second
4 paragraph when the employee approached Mr. Belfiore and
5 found a locked door. I have a hard time understanding why a
6 door would be locked during business hours, especially for a
7 senior most executive officer of the company. I don't
8 understand it. I understand a closed door. I don't
9 understand a locked door.
10 Second, I think that there is an implied quid pro
11 quo that Ms. Dantzer had been promoted and somehow due to
12 special favor of Mr. Belfiore which may or may not be true
13 but to use that in some way to indicate that Ms. Dantzer
14 owed a duty to Mr. Belfiore before she owed her duty to the
15 company is clearly unacceptable.
16 Q I'm sorry.
17 MR. PRAGER: You asked him a question.
18 MR. JOHNSON: Okay. I'm sorry.
19 MR. PRAGER: He's answering it. Let him finish
20 his answer.
21 MR. JOHNSON: Sure.
22 THE WITNESS: Third point, this letter makes it
23 very clear that Mr. Belfiore is attempting to get Ms.
24 Dantzer to collude with him on some agenda which is to in
25 some way degrade, diminish or otherwise raise doubt about a

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1 project around CRM and create an environment so alarming and
2 concerning to an employee that she seeks counsel from her
3 husband to understand if this is something that needs to be
4 promoted. I think a workplace that creates that much
5 anxiety for an employee is unacceptable. I'm sure I can
6 give you more but those are a few major issues that I see.

7 BY MR. JOHNSON:

8 Q So, Mr. McCarthy, a corporate officer who has a
9 closed door, and let's say given the timeframe, a closed
10 door commencing October 21st, 2011, that's reason to
11 terminate him?

12 A I did not make that claim.

13 Q So, Mr. McCarthy, the quid pro quo of which you're
14 speaking, if Mr. Belfiore was saying to Ms. Dantzler I
15 helped you get your job, now I want you to pay it forward,
16 is that a fireable offense?

17 A I don't believe that's what this letter says. I
18 think this letter --

19 Q Can you show -- I'm sorry.

20 A I think this letter says that Mr. Belfiore was
21 trying to incite Ms. Dantzler to put her loyalty to Mr.
22 Belfiore above her priority and loyalty to the firm.

23 Q And can you show me exactly where it says that in
24 this letter?

25 A I think it says it throughout, that Mr. Belfiore

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1 is suggesting that in some way, Ms. Dantzler owes him and
2 that he needs her on his side.

3 Q So if he needs her on his side, could he have
4 meant that I need you to help me resolve issues with the
5 CRM?

6 MR. PETESCH: Objection. You're asking the
7 witness to speculate as to the state of mind of a person he
8 hadn't even met in person.

9 MR. PRAGER: I don't --

10 MR. JOHNSON: But he --

11 MR. PRAGER: I don't think that's what he's
12 asking. I think he's asking whether it is possible to infer
13 from the language of Ms. Dantzler's letter, whether that's
14 what Mr. Belfiore was getting at, so would you restate your
15 question?

16 MR. JOHNSON: Sure.

17 BY MR. JOHNSON:

18 Q Mr. McCarthy, is it possible to infer that Mr.
19 Belfiore was asking Ms. Dantzler to help him address an
20 issue with the CRM?

21 A I can't, I can't speculate on that.

22 Q Now, Mr. McCarthy, I want you to look at the
23 second page of the exhibit. At the bottom of the page it
24 says ML00093.

25 MR. PRAGER: I'm sorry. Where? Go ahead. Sorry.

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1 BY MR. JOHNSON:

2 Q Are you on the page?

3 A Yes.

4 Q All right. Mr. McCarthy, I want you to look seven
5 lines down from the top with the sentence that begins with
6 then.

7 A Yes.

8 Q And commencing with the, that line where it says I
9 understand you are working on the dynamic CRM project, and
10 Ms. Dantzler responds I said yes. Is there anything wrong
11 with that particular sentence?

12 A It's hard to comment on any particular sentence in
13 the context of the entire message here.

14 Q Well --

15 MR. JOHNSON: I'm sorry.

16 MR. PRAGER: Mr. Johnson, I think these are
17 significant points but I think it's already been established
18 or the presumption is based on what Mr. McCarthy testified
19 to that he didn't actually see this letter at the time he
20 made the decision. He was given either a synopsis or a
21 review of the letter but not the letter itself and didn't
22 parse it. Is that a fair characterization as far as you
23 might remember?

24 THE WITNESS: And I don't, I don't recall seeing
25 the letter. I may have seen the letter. I have said

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1 clearly that I recognize the content and the message.

2 MR. PRAGER: So I'm not sure that at this point,
3 if going through it line by line achieves much.

4 MR. JOHNSON: All right.

5 MR. PRAGER: In fact, you may get the wrong
6 answers.

7 MR. JOHNSON: Yes. Not a problem, Your Honor.
8 The Court's point is well taken.

9 BY MR. JOHNSON:

10 Q Now, Mr. McCarthy, I want to turn your attention
11 to what has been identified as Complainant's Exhibit No. 63.

12 MR. PETESCH: The white binder.

13 THE WITNESS: Yes.

14 MR. PRAGER: Go ahead.

15 THE WITNESS: I'm reading.

16 MR. PRAGER: Can we go off the record for a
17 minute, please?

18 MR. JOHNSON: Yes, sir.
19 (Off the record.)
20 (On the record.)

21 MR. PRAGER: Mr. Johnson, you were referring Mr.
22 McCarthy to exhibit, your Exhibit 63.

23 MR. JOHNSON: Yes, Your Honor. Complainant wishes
24 to mark for identification Complainant's Exhibit No. 63.
25 Let the record reflect that opposing counsel has an

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1 identical copy.
2 (Complainant's Exhibit No. 63 was
3 marked for identification.)
4 MR. PRAGER: Go ahead.
5 BY MR. JOHNSON:
6 Q Mr. McCarthy, do you recognize Complainant's
7 Exhibit No. 63?
8 A You know, obviously, I was party to this so I
9 appear to have written this.
10 Q And the date of your written response is October
11 20th, 2011, correct?
12 A That's what the document says.
13 Q And this is in response to an e-mail sent to you
14 from Dan Lane on October 19th, 2011, correct?
15 A That's what the document says.
16 Q Yes. And this is a series of documents in which,
17 a series of e-mails, my apology, in which Mr. Dan Lane was
18 attempting to get you to approve a raise for Mr. Belfiore,
19 correct?
20 A That's what this would indicate.
21 Q And your response to this particular e-mail to Dan
22 Lane is, and I can read this for you, Dan Charron and I
23 exchanged messages yesterday. You need to schedule a
24 Compensation Committee review before communicating,
25 communicating any senior salary action. We have had, we

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1 have not had such a meeting and therefore, you cannot keep
2 your commitment at this time. Please arrange a Compensation
3 Committee meeting with Dan Charron and me for us to review.
4 Is that the correct reading of your e-mail?
5 A That's what the page says.
6 Q Now, Mr. McCarthy, in responding to Dan Lane, was
7 it your understanding that an actual raise had already been
8 given to Mr. Belfiore?
9 A The context of this note is about a bigger issue
10 than Mr. Belfiore. Compensation doesn't get decided by the
11 management of the company at this level. It gets decided by
12 the Board. My message back to Dan was not about the
13 compensation specifically. It was about management protocol
14 and ensuring that proper approvals are received before
15 proceeding.
16 Q So it would have been a violation for Dan to have
17 gone forward and giving Mr. Belfiore a raise, correct?
18 MR. PETESCH: Objection. Ambiguous. A violation
19 of what?
20 MR. PRAGER: Yes. Why don't you restate your
21 question.
22 BY MR. JOHNSON:
23 Q It would have been a violation of the bylaws for
24 Mr. Dan Lane to give Mr. Belfiore a raise, correct?
25 A I don't, I don't specifically recall the bylaws

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1 and have not reviewed them for many, many years. The point
2 is that the process was for senior compensation to be
3 reviewed by the Comp Committee.
4 Q Can managers freely violate the company bylaws?
5 Mr. McCarthy?
6 A I'm contemplating your question.
7 Q Is it allowable for a manager to violate the
8 company bylaws?
9 A The process and procedures of the company are
10 expected to be followed.
11 Q And if the process and procedures are not
12 followed, would that manager be reprimanded?
13 A I think it entirely depends on the circumstance.
14 Q And when you say it depends on the circumstances,
15 does it mean that some people have to follow the rules and
16 some people do not?
17 A I did not say that. I do not agree with that
18 statement.
19 Q So if it depends on the facts and circumstances,
20 does the bylaws really mean anything?
21 A Absolutely they do.
22 Q So when somebody violates the bylaws, is that
23 person subject to reprimand?
24 MR. PETESCH: Objection. If he's asking a
25 hypothetical, that's --

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1 MR. PRAGER: Well, I have a further objection.
2 I'm not sure, and I've had this doubt other times. Mr.
3 Lane, as such, is not on trial here. The question is
4 whether or not Mr. Belfiore was discriminated against and
5 whether or not he was retaliated against. Why does it make
6 a difference if Mr. Lane violated the bylaws, assuming he
7 did, in suggesting a raise for Mr. Belfiore? There's no
8 evidence that I see thus far that this was raised with the
9 Board or that the Board somehow felt that it couldn't get to
10 the merits of a raise, so why are we belaboring whether or
11 not Mr. Lane had, did something he shouldn't have?
12 MR. JOHNSON: Well, Your Honor, actually, it shows
13 the treatment, the disparity of treatment between, we could
14 say race actually in this instance because both are
15 corporate officers, Mr. Lane actually did violate the bylaws
16 and Gave Mr. Belfiore a raise which was retracted. However,
17 nobody said anything, nobody did anything. Now, Mr.
18 Belfiore, corporate officer, somebody alleges, a lower level
19 employee alleges that he was going to sabotage the CRM and
20 then once the Board hears that he was going to do this, he
21 immediately gets terminated without an investigation or
22 anything. Now, there's no overt racism in terms of somebody
23 actually saying we're going to fire the black man, but they
24 fired the black man and that's problematic because that
25 shows that the Board treated them differently.

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1 MR. PRAGER: Well, I think you can --
2 MR. PETESCH: We get post-hearing raise.
3 MR. PRAGER: I think there are other ways to do
4 this. I don't want to divert you too much from your
5 questioning but it would seem to me to make more sense to
6 say, as you just characterized it, is the violation of
7 recommending a raise or, I'm sorry, of implementing a raise
8 that is not authorized under the bylaws the same as, is not
9 reprimanding that person the same as the disciplinary action
10 taken with respect to something that is felt to threaten the
11 nature of the business. I just don't see the parallels but
12 I'll let you continue the examination. But as I said
13 before, Mr. Lane himself is not on trial at this point.
14 MR. JOHNSON: We understand, Your Honor.
15 BY MR. JOHNSON:
16 Q Mr. McCarthy, a corporate officer, isn't it true
17 that a corporate officer is bound by his fiduciary duty to
18 the company?
19 A That's my understanding of the law.
20 Q And, Mr. McCarthy, isn't it true that if a
21 corporate officer actually violates those fiduciary duties,
22 he should be reprimanded in one form or another, correct?
23 A I think corrective action needs to be taken.
24 Q And, Mr. McCarthy, if a corporate officer follows
25 or does not follow the bylaws, he's breaching his fiduciary

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1 duty, correct?
2 MR. PETESCH: Objection. He's asking for a legal
3 conclusion from a lay witness.
4 MR. PRAGER: No. He's asking for his opinion of
5 whether or not, as a member of the Board of Managers, if he
6 feels that if there's a breach of fiduciary duty, whether
7 there should be a reprimand. It doesn't mean that his, he's
8 made a correct legal conclusion. The question is whether or
9 not he feels that there is a breach of fiduciary duty. Mr.
10 Johnson, go ahead.
11 MR. JOHNSON: Yes.
12 BY MR. JOHNSON:
13 Q Mr. McCarthy, a corporate officer who violates the
14 company bylaws is breaching his fiduciary duty, correct?
15 A I think managers, in the normal course of
16 operating their business, sometime make false steps that are
17 easily and directly corrected. And the document that you
18 referred to is, I think, a clear representation of a
19 correction of a small and immaterial misstep.
20 Q And in making that determination, that's a
21 discretionary determination, correct?
22 MR. PRAGER: I'm sorry. Who is making the
23 determination?
24 BY MR. JOHNSON:
25 Q Mr. McCarthy, in your making that determination,

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1 that's a discretionary determination, correct?
2 A Every decision of every manager requires
3 discretion.
4 Q And is it possible for race to be considered as
5 part of your discretion?
6 A No.
7 Q And when you say you believe managers make
8 mistakes, is it possible that Mr. Belfiore made a mistake in
9 meeting with Ms. Dantzler?
10 A It was clearly a mistake for Mr. Belfiore to have
11 the conversation he did and to try to incite action against
12 the company in a way that would harm that company. That is
13 in no way a point of discretion. A direct threat to an
14 organization is a direct threat. That is not about
15 discretion.
16 Q And so you got that information about a direct
17 threat from your manager, correct?
18 A From multiple sources.
19 Q And --
20 A So we heard from management and as you have
21 provided, there were two written pieces of documentation.
22 Whether or not I saw them, I was aware of the content of
23 what they provided which provided clear and compelling
24 message around the threat Mr. Belfiore was creating for the
25 organization.

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1 Q But you didn't get that information directly from
2 Ms. Renee Dantzler, correct?
3 A I think in the normal process of Board
4 deliberations, the information is provided in multiple ways.
5 Q And --
6 A And as you can see here, we were provided
7 information in multiple ways.
8 Q And you're absolutely certain that the information
9 provided to you was correct.
10 A I have no reason to doubt it.
11 Q Do you have any 100 percent certainty that it's
12 correct?
13 MR. PRAGER: I think he just answered your
14 question. You're just repeating the question in a different
15 form.
16 MR. JOHNSON: Yes, Your Honor.
17 BY MR. JOHNSON:
18 Q And do you recall getting Mr. Belfiore's side of
19 the story?
20 A As a Board member, it's not my job to be an
21 interrogator of every employee in the company. That is the
22 role of management and believe we were provided adequate and
23 complete information around the situation.
24 Q Should Mr. Belfiore been given a chance to give
25 his side of the story?

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1 A I can't comment on what the nature of that
2 investigation and the information that was provided. That
3 would be speculation.
4 Q So you believe that a one-sided investigation
5 suffices.
6 MR. PETESCH: Objection. Argumentative. Asked
7 and answered.
8 MR. PRAGER: It has been --
9 MR. PETESCH: -- in many forms.
10 MR. PRAGER: -- sort of asked and answered but
11 I'll overrule the objection. The question was do you
12 believe a one-sided investigation is adequate. I think
13 those were his words.
14 THE WITNESS: I don't believe that the information
15 provided was entirely one-sided. It represented the
16 collective view of the management and the employees that
17 were specifically and directly involved.
18 BY MR. JOHNSON:
19 Q So it's just, what you're really providing is your
20 opinion, correct?
21 MR. PRAGER: I think you've made your point,
22 whatever it is, on this point, that he believes he was given
23 sufficient information and, from management and relied on
24 management.
25 MR. JOHNSON: Your Honor, no --

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1 MR. PRAGER: Is that correct?
2 MR. JOHNSON: -- further questions.
3 THE WITNESS: That's correct.
4 MR. JOHNSON: And, Your Honor, no further
5 questions.
6 MR. PRAGER: Okay. I have a number of questions.
7 The first one is about you. Have you severed all of your
8 ties with your principles, that is with Paymentech, with
9 Chase and with Merchant Link, at this point?
10 THE WITNESS: In the nature of our business, we
11 will see Merchant Link and we will see Chase but me
12 personally, I am not involved in any way in Merchant Link
13 and I'm not involved with or company's relationship with
14 Merchant Link.
15 MR. PRAGER: Well, let me then clarify that
16 statement. Who are you employed by at the moment?
17 THE WITNESS: I still work for First Data, but
18 First Data is a company with 24,000 employees, and I work in
19 a business that is not directly engaged with Merchant Link.
20 MR. PRAGER: Thank you. Do you know, during the
21 time you were at, on the Board of Managers in Merchant Link
22 and in particular, the time you were -- let me do a
23 preliminary question. Do you know if all the time that you
24 were on the Board of Managers of Merchant Link, you were
25 also a member of the Board of the Compensation Committee?

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1 THE WITNESS: I don't specifically recall but I
2 think that is probably true.
3 MR. PRAGER: And do you know if there was, in
4 writing anywhere, a policy against increases of more than 10
5 percent for, for higher level employees?
6 THE WITNESS: I don't recall any such policy. I
7 don't recall any such policy.
8 MR. PRAGER: In writing or otherwise?
9 THE WITNESS: I don't recall that.
10 MR. PRAGER: And I would assume, given your role,
11 that you had input in setting compensation for Mr. Belfiore
12 and other higher level officials at Merchant Link before
13 2011.
14 THE WITNESS: Yes. We would review compensation
15 annually and very specifically, around annual bonus. We'd
16 review the bonus plan and compensation for the organization.
17 MR. PRAGER: And how far down in the hierarchy? I
18 would assume you didn't, I mean, again, rephrase that. You
19 wouldn't review the compensation of lower level employees,
20 whatever lower level employees means.
21 THE WITNESS: I don't recall how far it went. I
22 remember reviewing a spreadsheet that had names on it and
23 the compensation year-to-year performance levels, et cetera.
24 MR. PRAGER: But would that primarily be at upper
25 levels of management?

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1 THE WITNESS: That would be my recollection.
2 MR. PRAGER: I think the record reflects this but
3 tell me a little bit. What awareness did you have of the
4 fact that Mr. Belfiore had lodged a complaint of, not only
5 of being inadequately compensated but that a feeling that
6 this was based on his race? Did that come to your
7 attention?
8 THE WITNESS: I think fairly late in the
9 conversation I became aware of that and that is when I was,
10 I recall being startled because I had no idea, having not
11 met Mr. Belfiore, that he, what his race was. And honestly,
12 having grown up with lots of people with names like
13 Belfiore, I presumed he was Italian or some other -- I
14 didn't understand. I didn't know what he was. I didn't
15 know what his race situation was.
16 MR. PRAGER: And it didn't concern you I take it.
17 THE WITNESS: It's not a factor.
18 MR. PRAGER: I'm going to tell you something about
19 the testimony as far as I can recall it and unfortunately,
20 we don't have a daily transcript so I may be
21 mischaracterizing some of this testimony and I'm sure
22 Counsel for both parties will correct me. I believe Mr.
23 Belfiore, when he was testifying about his conversation with
24 Ms. Dantzler, said that what he was trying to do was to get
25 Ms. Dantzler to take up to people at higher levels problems

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1 with this CRM implementation because he had been given, been
2 receiving lots of complaints from his subordinates about how
3 that system was operating. That was his testimony, roughly.
4 Now, let me also tell you that as far as the
5 record indicates, Ms. Dantzler herself was interviewed by
6 two people, one of whom was her supervisor, Mr. Minton, to
7 whom she went after this conversation with Mr. Belfiore, and
8 the other was a Wendy Nussbaum who was the human resources
9 director. Those people, in whatever they wrote or didn't
10 write, whatever they said orally, were basing their
11 determination on what Ms. Dantzler said. They interviewed
12 no one else so it all came down to Ms. Dantzler's
13 representation of the conversation.
14 Yesterday, Mr. Dantzler did go through this letter
15 line by line. She repeated her conclusion, I believe, that
16 she thought that Mr. Belfiore was trying to damage or
17 sabotage, I think the word sabotage came up either in
18 questioning or in answer, the CRM project. But when she was
19 questioned during the course of her testimony, there were
20 many times when she said that, yes, the language she used in
21 this letter was really that Mr. Belfiore was trying to get
22 her to talk to people in the Implementation Committee, not
23 to lower level people but to Mr. Chudasama, who I believe
24 was the head of software development, and others to reflect
25 the difficulties of implementation.

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1 Now, if my characterization is correct, it is a
2 hypothetical and I'm sure, Counsel, and the record will
3 reflect the actual thing but let's assume for the moment
4 that there was ambiguity in what Ms. Dantzler heard or
5 believed, well, heard and wrote, do you think it, there
6 should have been, by management, not necessarily by you, a
7 further investigation by either talking to Mr. Belfiore
8 directly to find out what in fact he meant or that
9 management should have talked to others to see what Mr.
10 Belfiore had told them about the implementation of the CRM
11 project? That's a long-winded question. You may be just as
12 long-winded or not, as you see fit, in responding.
13 THE WITNESS: Can you restate the essence of the
14 question so I can respond appropriately?
15 MR. PRAGER: Well, the essence of the question is
16 that it was the word of one individual on which all this was
17 based and she was recounting the conversation which she
18 tended to admit yesterday had ambiguities. And the question
19 then is given that, should there have been a further
20 investigation by management?
21 THE WITNESS: I think any circumstance, you can
22 always hope for more information. I believe that management
23 believed that they had sufficient information to provide to
24 the Board to get to the conclusion that was made.
25 MR. PRAGER: All right. Thank you. One further

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1 question about Ms. Dantzler. You said, in going through
2 much of the letter you were asked to look through, at some
3 point, you said one of the objections is that a supervisor
4 made a subordinate or a lower ranking employee anxious.
5 Would that be a reason to discharge a supervisor?
6 THE WITNESS: In this particular circumstance, I
7 don't think it was any individual issue. It was the
8 collective weight of what the collective set of actions and
9 conversations represented that created the threat for the
10 organization.
11 MR. PRAGER: Thank you. Mr. Petesch?
12 MR. PETESCH: If you're asking if I have any
13 further questions based on that, I do not.
14 MR. PRAGER: All right. Mr. Johnson, based on
15 just the questions I asked and nothing else, do you have any
16 further questions?
17 MR. JOHNSON: No, Your Honor. I think you covered
18 it. Thank you.
19 MR. PRAGER: All right. Thank you very much, Mr.
20 McCarthy. You're excused, and we will now go off the
21 record.
22 (Off the record.)
23 (On the record.)
24 MR. PRAGER: We're back on the record. Mr.
25 Johnson, your references to Complainant's Exhibit No. 63 but

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1 you didn't phrase admission. I assume that was an
2 oversight?
3 MR. JOHNSON: Yes, Your Honor. Actually,
4 Complainant moves into evidence Complainant Exhibit No. 63.
5 MR. PRAGER: Any objections, Mr. Petesch?
6 MR. PETESCH: Respondent does not object.
7 MR. PRAGER: Complainant's Exhibit 63 is admitted
8 into the record.
9 (Complainant's Exhibit No. 63 was
10 received into evidence.)
11 MR. PRAGER: Mr. Johnson, your witness is here and
12 sitting in the stand, is that correct?
13 MR. JOHNSON: Yes, Your Honor.
14 MR. PRAGER: And who are you calling?
15 MR. JOHNSON: Yes, Your Honor. The complainant
16 calls Mr. Rick Gaskins to the stand.
17 MR. PRAGER: All right. Would you raise your
18 right hand, please?
19 (Witness sworn.)
20 MR. PRAGER: Mr. Johnson.
21 MR. JOHNSON: Yes.
22 DIRECT EXAMINATION
23 BY MR. JOHNSON:
24 Q Good morning, Mr. Gaskins. Could you please state
25 your name for the record?

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1 A Rick Randall Gaskins.
2 Q And, Mr. Gaskins, could you please state your
3 address?
4 A 602 Cromwell Whye Lane, P.O. Box 326, Monkton,
5 Maryland 21111.
6 Q Now, Mr. Gaskins, you have been retained to reach
7 an expert opinion in employment tort damages in this case.
8 Did you reach an opinion concerning the complainant Erik
9 Belfiore?
10 A Yes, I did.
11 Q And we'll talk about your opinion in detail in a
12 few minutes but first, we have to talk about your
13 qualifications to qualify as an expert in this matter. Mr.
14 Gaskins, could you please tell us about your education?
15 MR. PRAGER: Excuse me, Mr. Johnson. It might be
16 helpful to me if I assume his CV is in the record and part
17 of his report, is that correct?
18 MR. JOHNSON: Yes. My apology, Your Honor. Mr.
19 Gaskins had included his CV In his report but he also
20 recently updated his CV, and I had additional copies that I
21 gave Counsel. With the Court's permission, may I approach?
22 MR. PRAGER: Yes, please. Thank you. And, Mr.
23 Johnson, where in the record is the report?
24 MR. JOHNSON: Your Honor, his report is actually
25 in Exhibit 84. And his CV, the one that is prior to the

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1 update, is towards the end of, these pages are actually not
2 numbered but it's actually, there's actually two extra
3 reports in this particular exhibit so we will bifurcate them
4 when we introduce them as 84A and 84B.
5 MR. PRAGER: All right. For purposes of
6 identification, why don't we, at this point, mark this
7 exhibit as 84C. Bear with me for a moment, Mr. Johnson.
8 MR. JOHNSON: Okay, Your Honor.
9 (Complainant's Exhibit No. 84C was
10 marked for identification.)
11 MR. PRAGER: Just so Counsel for both parties
12 should know, I haven't read any part of Exhibit 84 so it's
13 going to take me a while to catch up with what you know
14 about these things so this may be a little slower than it
15 ought to be but at lunchtime, I'll try to catch up. But go
16 ahead Mr. Johnson. Ask away.
17 MR. JOHNSON: Thank you, Your Honor.
18 BY MR. JOHNSON:
19 Q Mr. Gaskins, did you reach an opinion concerning
20 the complainant Erik Belfiore's damages?
21 A I did.
22 Q Mr. Gaskins, we were discussing, would you please
23 tell us about your education?
24 A I have a bachelor's degree from Brown University
25 in Providence, Rhode Island. I had graduate studies in

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1 mathematics and accounting at the University of Rhode Island
2 and I obtained an MBA degree from the Wharton School of the
3 University of Pennsylvania in Philadelphia. Each year, I
4 have at least four years of continuing, 40 hours, excuse me,
5 of continuing professional education.
6 Q Mr. Gaskins, do you hold any certifications?
7 A I'm a certified public accountant licensed in
8 Maryland.
9 Q And how long have you been a certified public
10 accountant?
11 A Since 1977.
12 Q Now, Mr. Gaskins, do you have a particular
13 specialty in your field?
14 A Yes. My specialty is forensics economics and
15 accounting.
16 Q And, Mr. Gaskins, do you have any or belong to any
17 professional affiliations?
18 A Yes. Of course I'm a member of the American
19 Institute of Certified Public Accountants but specific to my
20 work here, I am a charter member of the American Academy of
21 Economic and Financial experts. I served two non-continuous
22 terms on the Board of Directors of that organization. I'm a
23 member of Collegium of Pecuniary Damages Experts for which I
24 was elected vice-president, president and serve that
25 organization and I'm a member of the National Association of

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1 Forensic Economics for which I was elected vice-president of
2 the eastern region. I have also served on the Board of
3 Editors on the Journal of Legal Economics and of the Journal
4 of the Earnings Analyst.
5 Q Now, Mr. Gaskins, has any of your work been
6 published in the field?
7 A Yes, sir. I have a number of papers that were
8 published in peer review journals, and those would be on
9 page 5 of my CV. Worklife Estimates by Occupation: a
10 Comment, I did that with Dr. Paul C. Taylor; The Effect of
11 the Loss of a Parent on the Future Earnings of a Minor
12 Child, I did that with some colleagues, John Kane, Larry
13 Spizman and Jim Rodgers; and Damages Awards Using
14 Intermediate Term Government Bond Funds versus U.S.
15 Treasuries Ladder, Trade-Offs in Theory and Practice, and I
16 did that with Joe Rosenberg.
17 Q And have you served on any Boards in the industry
18 or field of forensic economics?
19 A Yes. I think I mentioned those when I mentioned my
20 memberships, and I've been, served on either the Board of
21 Directors or as an officer of each of those, the three major
22 forensic economics organizations.
23 Q Now, have you held any professorships or performed
24 any academia or teaching in your field?
25 A Yes. Early on I taught at the Georgetown

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1 University School of Business. I taught the senior seminar
2 in the masters of accounting program and some general
3 courses in accounting, and I'm a frequent
4 instructor/presenter at professional meetings for forensic
5 economists.
6 Q And what type of matters are you typically
7 engaged in when it comes to litigation and performing as an
8 expert?
9 A The vast majority of my work is in the area of
10 personal damages which flow typically from personal injury,
11 death, employment torts.
12 Q You were provided information for this particular
13 case. Can you describe for the Court whether or not the
14 information you were provided was sufficient enough for you,
15 or had a sufficient factual basis to exist to support your
16 expert testimony?
17 A I believe it did, and I believe the information I
18 used has been subject to scrutiny in this hearing too so we
19 should be in good, good condition.
20 Q And is the information or your analysis
21 appropriate for expert testimony?
22 A Could you repeat that?
23 Q Your analysis. Is your analysis appropriate for
24 expert testimony?
25 A Yes. I've used the standard methodology.

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1 MR. JOHNSON: Your Honor, at this time, the
2 complainant tenders for Rick Gaskins as an expert witness in
3 the field of forensic economics and damages, and employment
4 tort damages.
5 MR. PRAGER: Mr. Kaplan?
6 MR. KAPLAN: Yes. Just a few questions.
7 CROSS-EXAMINATION
8 BY MR. KAPLAN:
9 Q On page 1 of your CV, you say damages for personal
10 injury, death and employment torts?
11 A Yes.
12 Q I don't know what an employment tort is. Can you
13 explain that?
14 A Wrongful termination, discrimination, sexual
15 harassment.
16 Q In your representative cases, I didn't see any
17 discrimination cases listed.
18 A Well, sir, I've done this now, I think it's 36
19 years. The representative cases, I can't get every type of
20 case I've ever done on that page.
21 Q I understand, but this is a discrimination case.
22 Even identifying discrimination cases on --
23 A I'm not a liability expert, sir. I'm a damages
24 expert. So the issue is really, in distinguishing the
25 handling of damage in an employment tort versus say personal

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1 injury is that the recovery is taxable in the employment
2 torts whereas it's not taxable in the personal injury. So
3 in other words, it doesn't matter to me if someone was
4 injured in an auto accident or by medical malpractice. I do
5 the damages.
6 Q Okay. So you're strictly a numbers guy. Someone
7 provides you with numbers and you'll crunch the numbers and
8 come to a conclusion what may or may not be owed over the
9 course of, a period of time. Is that essentially what
10 you're --
11 A I analyze the damages, correct. Economic damages.
12 Q Economic damages.
13 A I don't do non-economic damages.
14 Q Okay. And you stated that your specialty was
15 forensics economics and accounting.
16 A Yes, sir.
17 Q And how does that relate to this case? What
18 forensic economics and accounting did you perform?
19 A I'm not sure what the question means.
20 Q Well, you said your specialty was forensic
21 economics and accounting. I don't know --
22 A That's correct. In --
23 Q How did that -- that's the question. How does
24 that relate to this case? That's all I'm asking.
25 A Well, it is the specialty within forensic

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1 economics generally that would address damages for loss of
2 earnings and benefits which is the subject of this case.
3 MR. KAPLAN: I have no further questions.
4 MR. PRAGER: Do you have any objection to his
5 participation as --
6 MR. KAPLAN: No. I have no objection.
7 MR. PRAGER: All right. Mr. Gaskins will be
8 admitted as an expert in this case on damages. I do note,
9 however, that on page 2 of his resume, that is Complainant's
10 Exhibit 84C, it does say that he has done forensic
11 accounting economic analysis and expert testimony including
12 economic damages in employment law matters, so I think, Mr.
13 Kaplan, you weren't correctly characterizing --
14 MR. KAPLAN: I was looking at his cases that he
15 had cited on Appendix 3.
16 MR. PRAGER: I see.
17 MR. KAPLAN: And none of those cases dealt with
18 employment discrimination type cases.
19 MR. PRAGER: I thought you had an earlier question
20 but in any event, I don't have, because of this, I wasn't
21 prepared so I'm not looking at the right thing, I don't have
22 that as part of 84C. I assume that was part of his earlier
23 resume, Mr. Johnson, the list of cases?
24 MR. JOHNSON: Your Honor, I think this might be
25 listed, I had it portioned to the updated version to add the

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1 cases.

2 THE WITNESS: It was actually a separate appendix

3 to my report.

4 MR. JOHNSON: Oh, okay. All right.

5 MR. KAPLAN: Appendix 3.

6 MR. PRAGER: So I wasn't looking -- all right.

7 Mr. Johnson?

8 MR. JOHNSON: Yes, Your Honor. Thank you.

9 FURTHER DIRECT EXAMINATION

10 BY MR. JOHNSON:

11 Q Now, Mr. Gaskins --

12 MR. PRAGER: I'm sorry. Sorry to interrupt. I

13 just, this new exhibit which I've given 84C, you had

14 earlier, I think, said there were two parts to the report.

15 Why don't we just find out what those two parts are so we

16 can, rather than list them as 84A and 84B.

17 MR. JOHNSON: Oh, okay. Yes, Your Honor.

18 Actually, under the tab of 84 is the expert opinion of Mr.

19 Rick Gaskins and at the conclusion of Mr. Rick Gaskins'

20 expert report is actually an expert report of Mr. Donald

21 Temple.

22 MR. PRAGER: Okay. We'll go off the record for a

23 moment.

24 (Off the record.)

25 (On the record.)

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1 MR. PRAGER: During the short recess, I heard that

2 Exhibit 84 included not only matters related to Mr. Gaskins'

3 report and his resume but also, a report by another person

4 who may or may not be called, a Mr. Donald Temple, and I'm

5 proposing that 84 now be limited, Complainant's Exhibit 84

6 now be limited only to the Gaskins material and that there

7 be a new exhibit marked Complainant's 90 for Mr. Temple's

8 materials. Is there any objection to any of that, Mr.

9 Kaplan?

10 MR. KAPLAN: No objection.

11 MR. PRAGER: So sorry about that, Mr. Gaskins.

12 That's what lawyers do and hearing examiners and judges do

13 is to clear around papers.

14 THE WITNESS: I understand.

15 MR. PRAGER: And exhibits.

16 (Complainant's Exhibit No. 90 was

17 marked for identification.)

18 MR. PRAGER: So with that interjection, Mr.

19 Johnson, please proceed.

20 BY MR. JOHNSON:

21 Q Mr. Gaskins, you were engaged to provide expert

22 opinion as to the damages suffered by Mr. Erik Belfiore in

23 this matter. Can you please describe to the Court some of

24 the methods and methodologies you use to come to a

25 conclusion?

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1 A Yes. The assessment of damages for loss of

2 earnings and benefits is conceptually simple. It is what

3 should have been or would have been and what was in actual.

4 So on Schedule 2A for instance, I lay out that simple

5 paradigm for the three major types of compensation involved

6 in Mr. Belfiore's occupation.

7 MR. PRAGER: I'm sorry. Which schedule?

8 THE WITNESS: Schedule 2A, sir, of the numerical

9 schedules. Should we use the updated ones I prepared?

10 BY MR. JOHNSON:

11 Q We'll use those in addition to these. We have a

12 range that we're dealing with.

13 A Okay. So --

14 MR. KAPLAN: Object. I just want to make for the

15 record we just got the updated version today. I just wanted

16 that to be on the record. The report should have been done

17 before today and the information should have been provided

18 to, to us long before the day of the, of the, of this

19 testimony.

20 MR. PRAGER: I fully agree. Mr. Johnson, why

21 wasn't this supplied before? This was supposed to have been

22 finished back in October.

23 MR. JOHNSON: Yes, Your Honor. And actually,

24 first let me say that in no way should this or counsel or

25 respondent be prejudiced in these proceedings. The actual

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1 table that was in addition to what we plan to add in

2 addition to was really to help the Court because what was

3 expressed in testimony was a range of AIP and what we

4 included in our submission was the AIP of Mr. Belfiore at 20

5 percent and if the Court so finds, what it should be at 35

6 percent. However, we provided on the record that the actual

7 CO earned an AIP of 45 percent and that particular

8 calculation was not included in the submission so what's

9 being provided is just a scenario of what the compensation

10 would be if the AIP was 45 percent.

11 MR. PRAGER: I see.

12 MR. KAPLAN: The document I received today, is

13 that in addition to the report or to supplement or to

14 replace it?

15 MR. JOHNSON: It doesn't replace the report at

16 all. Actually, Your Honor, it's a supplement. It's an

17 addition to because it's a table that contains the 45

18 percent AIP whereas the other ones contain 35 percent AIP,

19 25 percent AIP and I believe 20 percent AIP.

20 MR. PRAGER: Well, it would be helpful, Mr.

21 Johnson, if I had a copy of that.

22 MR. JOHNSON: Yes, Your Honor. I was going to

23 present it to you.

24 MR. PRAGER: Why don't you bring it up.

25 MR. JOHNSON: Sure. Permission to approach, Your

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1 Honor.

2 MR. PRAGER: Thank you. All right. Mr. Gaskins,

3 you had said I should take a look at Schedule 2A and I've

4 got 2A in front of me.

5 THE WITNESS: Yes, sir. So in columns, column A,

6 I established the period end for the time period we're

7 dealing with. Column B identifies the number of months that

8 are in that period. And then in columns C through G, we

9 begin the analysis of what should have been versus what was,

10 so we have the annual fair salary rate and the annual actual

11 salary rate. And columns E and F, we get those for reduced

12 to the actual period to which they're applied and in column

13 G, we can then calculate what was the fair salary owed for

14 the period being the difference between the fair salary and

15 the actual salary.

16 So in columns C through G, we've dealt with the

17 base salary and then in columns H through L, I deal with the

18 manual incentive program payments the same way. What was

19 the fair bonus percentage, what was the fair bonus, what was

20 his actual bonus. And the difference would be the fair

21 bonus owed for the period. And the last, the next three

22 columns, M, N and O, apply that what should have been versus

23 but for analysis to the long-term incentive program. And

24 finally, in column P, we're adding up the fair salary owed

25 in columns G, L and O.

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1 Now, I did this basic analysis for three different

2 assumptions of front pay. So 2A is assuming a one year of

3 front pay, 3A is identical to 2A except it assumes two years

4 of front pay.

5 MR. PRAGER: I'm sorry. What was the first one?

6 THE WITNESS: 2A assumes one year of front pay.

7 MR. PRAGER: All right.

8 THE WITNESS: 3A assumes two years of front pay.

9 And 4A assumes three years of front pay.

10 MR. PRAGER: All right.

11 THE WITNESS: So I've done my analysis and tried

12 to present it in a way that is understandable and useful to

13 the trier of fact.

14 MR. PRAGER: I hear your words but I'm not fully

15 sure I understand. As I said, I've not looked at this

16 before. But Mr. Belfiore was fired in October of 2011 and

17 under the Montgomery County Human Rights Law, you're

18 entitled to three years of wages going forward. Let's

19 assume we were just talking about his firing, not about what

20 he should have been paid prior to that time. So why are we

21 talking, why are there figures here for 2014 and 2015?

22 Isn't that way beyond the scope of two years no matter how

23 you calculate it. And how does that -- I thought you said

24 2A had to do with two years of wages.

25 THE WITNESS: One year from the date of report.

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1 One year beyond the date of the report.

2 MR. PRAGER: Something is eluding me. One year

3 from the date of your report?

4 THE WITNESS: I'll confirm that.

5 MR. PRAGER: What relevance would that have in any

6 event? The pay to which he would have been entitled would

7 have ended on November 11th, 2013 calculated two years from

8 October, November 11th, 2011. So I guess I don't understand

9 these figures for 14 and 15, and you also have 12 months for

10 13 when it should only have been 11 months at most.

11 THE WITNESS: Well, I was not informed of the two

12 year. I was later, and then I think there's an issue

13 regarding retaliation which complicates this. I'm going to

14 leave that to the lawyers. My schedules identify the period

15 so one can cut off at any point simply by --

16 MR. PRAGER: I understand that.

17 THE WITNESS: -- simply by summing column P up to

18 the cut-off period the Court determines to be appropriate.

19 MR. PRAGER: I understand that, but I thought you

20 had said something. I thought -- that's why I was confused

21 because I thought your testimony was that 2A had a two year

22 limitation. I thought that's what your testimony was.

23 Maybe I misunderstood.

24 THE WITNESS: Well, it was on the basis of one

25 year of front pay from approximately the time of my report

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1 so it would take it up through -- my report was done in 2014

2 so this would take him, because he was indeed unemployed,

3 through June 30th of 2015.

4 MR. PRAGER: All right. So if I understand what

5 you're saying now, the totals in column P are year-by-year

6 totals of, that is the individual figures before the final,

7 the grand total in that column, are year-by-year figures and

8 the grand total at the bottom adds all those up but if you

9 eliminate some years, it would be less than the 1.9 million

10 roughly that's listed there, is that correct?

11 THE WITNESS: That's correct.

12 MR. PRAGER: Thank you.

13 MR. JOHNSON: And a point for clarification, Your

14 Honor, because I think you said column P was a year-by-year.

15 I think it's, each one is segmented I guess according to

16 months in a particular period.

17 THE WITNESS: And some periods are a year but --

18 MR. JOHNSON: And some periods are a year, yes.

19 THE WITNESS: -- to do the analysis, when salary

20 changes would occur, they didn't occur annually so there are

21 periods that are less than annual.

22 MR. JOHNSON: And also, Your Honor, when we, as

23 Mr. Gaskins stated, this is about the, I guess the disparate

24 pay with regard to Mr. Belfiore. The actual retaliation

25 damages are the two years from the period of termination so

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1 ultimately, we decide or determine how much Mr. Belfiore is
2 entitled to receive and then add that by two years for
3 retaliation damages.
4 MR. PRAGER: All right. Well, we'll get to that.
5 MR. JOHNSON: Yes. I just --
6 MR. PRAGER: I wanted to understand Schedule 2A.
7 THE WITNESS: The other element of damages is,
8 flows from the recovery in a lump sum of earnings which
9 would have been earned and taxed over multiple periods, and
10 that's due to our progressive income tax system. So on
11 Schedule 2B, you'll see the analysis determining how much
12 compensation is required to have Mr. Belfiore have the same
13 after tax income but for the torts.
14 So what this does is it takes the analysis,
15 applies the taxation on the left side to the earnings
16 without discrimination and then on the right side, we pick
17 up the base compensation in 2A and we then pick up the
18 earnings he did have in the past that were less than fair
19 and we figure out how much additional there in the tax
20 equalization compensation column, how much compensation is
21 required such that his after tax incomes are the same under
22 both scenarios.
23 MR. PRAGER: Again, I'm not sure I follow the
24 logic but rather than dealing with that now, we'll --
25 THE WITNESS: I can walk through the columns with

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1 you.
2 MR. PRAGER: Well, I'll give Mr. Johnson an
3 opportunity to question you. I'm sure that Mr. Kaplan will
4 have clarifying questions and then what I don't understand
5 after that is when I'll deal with it at that point. So,
6 Mr. Johnson, go ahead.
7 MR. JOHNSON: Your Honor, actually, I think you
8 stated on the record that you wanted to stop at 12:00?
9 MR. PRAGER: No.
10 MR. JOHNSON: Okay.
11 MR. PRAGER: Is there a logical stopping point in
12 terms of your examination?
13 MR. JOHNSON: I wouldn't say a logical stopping
14 point. I think we'd end up stopping in between because we
15 would have to, in order to help the Court to understand the
16 methodology put forth by Mr. Gaskins, we would have to
17 create the relevant period and then address the annual
18 salary versus the actual salary such that we can make a
19 calculation and come up with a total amount. I don't see a
20 stopping point. I think if we stop, we stop in the middle
21 of it.
22 MR. PRAGER: Okay. So may then you're right.
23 Maybe we can break for lunch now but before we do, let me
24 ask a fundamental question of Mr. Gaskins. As I have
25 already said, I haven't seen this report until Mr. Gaskins

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1 got on the stand and 2A, let me give you a hypothetical and
2 say assuming for the moment that it should be decided that
3 Mr. Belfiore was not discriminated against on the basis of
4 race in the setting of his salary but that he was
5 discriminated against, I'm sorry, but he was fired in
6 retaliation, do you have calculations where you could, in
7 your report, where you divorce the two, that is assuming
8 that his pay was pay was appropriate or nondiscriminatory,
9 legally nondiscriminatory at the time he was fired and but
10 that he might be entitled for two years of pay because he
11 was retaliated against? Do your calculations in your report
12 deal with that scenario at all?
13 THE WITNESS: They would. Column P would allow
14 you to identify the periods after his termination for
15 whatever, if you want a two year period but that would, that
16 would be at what Mr. Johnson argues to be fair compensation,
17 not his prior compensation.
18 MR. PRAGER: Right, but I see, for example, that
19 in 2012 and 2013, let's assume that those are the applicable
20 years, you have a fair salary of \$215,000 but let's assume
21 that fair salary would have been here 130,000 or 172,000 or
22 somewhere in between, how does that \$215,000 appear in your
23 calculation as a salary, just a salary?
24 THE WITNESS: That would be, that would be a
25 different analysis, sir.

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1 MR. PRAGER: Okay. That's what I wanted to know.
2 And that's not in your report as such.
3 THE WITNESS: No.
4 MR. PRAGER: You did not bifurcate those two
5 issues.
6 THE WITNESS: It isn't just the bifur -- no. Not
7 that he was not entitled to the fair salary.
8 MR. PRAGER: All right. Thank you, Mr. Gaskins.
9 We'll be adjourned for, until 1:00.
10 MR. JOHNSON: Thank you, Your Honor.
11 MR. PRAGER: We're off the record.
12 (Whereupon, at 12:12 p.m., a luncheon recess was
13 taken.)
14 MR. PRAGER: All right. We're back on the record.
15 Mr. Johnson, you may continue your questioning.
16 MR. JOHNSON: Thank you, Your Honor.
17 BY MR. JOHNSON:
18 Q Mr. Gaskins, where we left off, we were on
19 Schedule 2A. Are you there, Mr. Gaskins?
20 A Yes.
21 Q If you will, please help the Court to understand
22 how you come to the conclusion of the total fair
23 compensation that you find in column P.
24 A All right. Um, I thought we were on 2B.
25 Q Oh, 2 -- I'm sorry.

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1 A And that's where the judge --

2 MR. PRAGER: Let me ask a question while Mr.

3 Johnson -- I have had a chance to look at -- I'm sorry. I'm

4 jumping the gun. Never mind. I apologize. So you were

5 asking, Mr. Johnson, you were asking about 2A.

6 MR. JOHNSON: Yes, Your Honor, and I believe I was

7 corrected. It was 2B.

8 THE WITNESS: That's where we were, yes.

9 MR. JOHNSON: Yes. 2B.

10 THE WITNESS: 2B determines and proves the correct

11 amount of the tax equalization compensation required. On

12 the far left, you have the calendar year and then you have a

13 block of columns that are labeled without discrimination.

14 In the first of those, you would have his fair salary, fair

15 bonus, fair long-term incentive and his total fair taxable

16 earnings. From that is deducted federal income tax and

17 Maryland income tax to get his total after tax fair earnings

18 which are summed over the analysis period?

19 Your Honor, from what you've said today, I'm

20 anticipating that some of the periods for which loss is

21 assessed is going to need to be adjusted based on your

22 guidance but let's follow the example. We have his, if this

23 hadn't happened, we have his total after tax fair earnings

24 of a million four, eighty-eight thousand and change.

25 Now, with the discrimination, the columns, to the

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1 right, we have a different pattern of earnings in taxable

2 periods, so we've got the problem that the long sum recovery

3 is going to be taxed at very high rates due to the marginal

4 progressive nature of our tax system. So this calculates,

5 with the known data, what his after tax earnings would be

6 and that they would be equal with the tax equalization

7 compensation there in the box of 188,000 and change, so it

8 puts him exactly where he would have been after tax.

9 BY MR. JOHNSON:

10 Q Now, Mr. Gaskins, please turn to your Schedule 3A.

11 A All right.

12 Q Now, can you walk through Court through your

13 methodology in determining what is the total fair

14 compensation owed for Mr. Belfiore given, providing for two

15 years of front pay before assumed reemployment?

16 A This schedule follows the exact same methodology

17 and formulas as are in Schedule 2A and again, I think we

18 have the issue raised by His Honor of the applicable periods

19 for the loss assessment.

20 MR. PRAGER: Let me maybe save some time. I hope

21 I'm not --

22 MR. JOHNSON: Sure.

23 MR. PRAGER: -- adding time to it. 2A and 3A are

24 identical except that the cut-off period for your analysis

25 is shorter in 2A than in 3A.

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1 THE WITNESS: Correct.

2 MR. PRAGER: And the same thing is true for 3A and

3 4A.

4 THE WITNESS: Correct, sir.

5 MR. PRAGER: Mr. Johnson, is there any point in

6 going through 3A and 4A since my analysis of the human

7 rights law is that if the latest that Mr. Belfiore could get

8 front pay from the time of his firing would be November

9 11th, 2013, is there any reason to go through 3A and 3B

10 since they're identical figures except for, except for the

11 additions of periods in 2014, '15, '16 and '17?

12 MR. JOHNSON: Yes, Your Honor. Let us establish,

13 actually, the methodology. We identify the actual cut-off

14 dates for the Court for the purposes of calculation and

15 also --

16 MR. PRAGER: Because the figures are the same,

17 aren't they, Mr. Gaskins? That is if you go though each

18 column, as I think I did at lunch, columns C, D, E, F, G, et

19 cetera through P, if you cut the date off let's say at

20 12/31/13, everything above that period is identical in all

21 three of those charts.

22 THE WITNESS: That's correct. You've got the

23 concept of the three different charts.

24 MR. PRAGER: Right. What's the point?

25 THE WITNESS: For your purposes with your

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1 interpretation of the law.

2 MR. PRAGER: Mr. Johnson, so what's the point?

3 MR. JOHNSON: Oh, actually, Your Honor, there

4 should be a difference in those with regard to using

5 different, the AIP is different in terms of the fair bonus

6 percent.

7 THE WITNESS: I don't think you got to that set of

8 documents. This is from the report.

9 MR. JOHNSON: Okay. Oh, okay.

10 MR. PRAGER: 2A, 3A and 4A seem to me to be

11 identical if you cut them off as of 12/31/13.

12 THE WITNESS: That's true, sir.

13 MR. PRAGER: So maybe we have saved some time.

14 MR. JOHNSON: Yes. Okay. I'm sorry, Your Honor.

15 MR. PRAGER: Go ahead.

16 BY MR. JOHNSON:

17 Q And, Mr. Gaskins, the information provided to you

18 with regard to the annual fair salary rate was based upon

19 the, I guess what was believed to be the fair salary that

20 Mr. Belfiore was supposed to make or should have made.

21 A It was represented to me, yes, that that was what

22 would be a fair compensation.

23 MR. PRAGER: Again, I don't want to --

24 THE WITNESS: And I'm not determining that. I'm

25 accepting that assumption.

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1 MR. JOHNSON: Yes.

2 MR. PRAGER: And let me again, just for purposes

3 of saving time, on page 6 of your report, those schedules

4 were prepared by, you say prepared by claimant and his

5 previous counsel and not by you, is that correct?

6 THE WITNESS: That's correct.

7 MR. PRAGER: Thank you. Go ahead, Mr. Johnson.

8 BY MR. JOHNSON:

9 Q Now, Mr. Gaskins, in coming up with the total

10 amount of compensation that Mr. Belfiore should have

11 received, you identify a tax equalization compensation

12 component. Can you describe that for the Court, please.

13 A I did think I just ran through that for His Honor

14 and if His Honor has any questions --

15 MR. PRAGER: No. I --

16 THE WITNESS: -- that would be the 2B.

17 MR. PRAGER: I think you have and to the extent

18 that I have further questions on that, I'll wait until we're

19 finished with questions by both counsel.

20 THE WITNESS: All right, sir.

21 BY MR. JOHNSON:

22 Q And, Mr. Gaskins, with regard to the consequential

23 economic damages that were provided you in Schedule 5 I

24 believe, can you describe to the Court exactly how did this

25 impact your tables with regard to the conversation?

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1 A Well, they don't impact the tables at all. These

2 are standalone consequential economic damages Mr. Belfiore

3 claimed and which I put in Schedule 5 in my report for

4 consideration by the Court.

5 Q Now, Mr. Gaskins, this particular analysis that

6 you provided to the Court due to change?

7 A Well, it would be as I alluded. I think His Honor

8 mentioned an adjustment in fair compensation would change

9 the amounts of the two bonus amounts and then there's the

10 issue of what are the applicable periods for the assessment

11 of damages and if those are resolved, I can produce,

12 rapidly, whatever schedules the Court desires.

13 Q And the information provided in this particular

14 table for the years 12/31/12 and 12/31/13, the tables on

15 Schedule 2B that allows, what I'm using, it allows, that you

16 say allows for two years of front pay, is it your testimony

17 today that these are numbers that the Court could utilize

18 with regard to assessing the damages for a retaliation

19 claim?

20 A Um, I understand, yes, that those are considered,

21 by complainant and the evidence you presented, to be within

22 the range of fair compensation.

23 Q And --

24 A What I had suggested is if the Court will, wishes

25 to provide me with figures, I will remove damages assessed

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1 for periods that the Court feels are not applicable and will

2 use the fair compensation the Court would like to see in the

3 analysis and produce a custom run of this for him.

4 Q Now, is this the methodology that's typically

5 standardly, I guess, used inside the industry with regard to

6 determining workplace torts?

7 A Yes. Lost earnings and benefits, yes.

8 Q And is it your opinion that the tables that you

9 provided in your report state fairly with a reasonable

10 economic degree of certainty that the calculations in the

11 total fair compensation, should the Court decide that Mr.

12 Belfiore's compensation fits in these ranges, are correct?

13 A Yes, I believe they are. And again, with the

14 inclusion of correction of the periods of damage to conform

15 to the Court's interpretation of the law.

16 MR. JOHNSON: Your Honor, at this time, there's no

17 further questions for the expert.

18 MR. PRAGER: Mr. Kaplan?

19 FURTHER CROSS-EXAMINATION

20 BY MR. KAPLAN

21 Q Hi. Good afternoon.

22 A Good afternoon.

23 Q My name is Steve Kaplan. I'm an attorney for

24 Merchant Link. I think we met now for the first time.

25 A All right.

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1 Q Just a few questions. On page 2 of your report,

2 you state the principal sources of information include

3 determination report by Montgomery County Office of Human

4 Rights and schedules of actual compensation, fair

5 compensation and consequential damages prepared by claimant

6 and his previous counsel. Do you see that?

7 A Yes.

8 Q Okay.

9 MR. PRAGER: Just a moment. I -- this is on page

10 2 did you say?

11 MR. KAPLAN: Yes. At the top.

12 MR. PRAGER: All right. Thank you.

13 BY MR. KAPLAN:

14 Q The Hearing Examiner asked you about what was

15 prepared by claimant and previous counsel. I didn't fully

16 understand that. What was prepared by Mr. Belfiore and his

17 previous counsel, what part of this document?

18 A Schedules of actual compensation considered fair

19 compensation and the consequential damages in Schedule 5.

20 Q So Schedule 2A, for example, that was not, that

21 was something that you created out of a document that was

22 provided to you by them?

23 A Correct.

24 Q Have you produced, the information that was

25 provided to you by the claimant and previous counsel, have

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1 you produced that to Mr. Belfiore's new counsel so he could
2 provide it to us for review?
3 A It was provided to me by Mr. Johnson.
4 MR. KAPLAN: We haven't received, we're entitled
5 to that information. We haven't seen that information.
6 It's certainly not privileged, what an expert is relying on.
7 MR. PRAGER: Just a moment. Do you have that
8 information, Mr. Johnson?
9 MR. JOHNSON: Yes, Your Honor. Actually, we
10 provided the same information to him in the, we made a
11 settlement offer and we provided the information to him as
12 well.
13 MR. PRAGER: Mr. Kaplan?
14 MR. KAPLAN: I don't know what he's referring to.
15 I don't know.
16 MR. JOHNSON: And, Your Honor, this may have been,
17 or it definitely was prior to Mr. Kaplan's entry into this.
18 This was May -- okay. Was that after? Okay. I stand
19 corrected. Actually, it was provided to Mr. Kaplan after.
20 MR. KAPLAN: What was provided?
21 MR. PRAGER: Well, just a moment.
22 MR. KAPLAN: Okay.
23 MR. PRAGER: I don't want discussion back and
24 forth between Counsel. We'll get to that point after Mr.
25 Gaskins is finished because at this point, he can't testify

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1 as to something that he didn't create so but let me, let me
2 just make sure I understand, Mr. Gaskins. The column C of
3 Schedule 2A --
4 THE WITNESS: Yes.
5 MR. PRAGER: Each of the figures in that column
6 were figures that were provided to you by Mr. Belfiore's
7 counsel or by Mr. Belfiore himself.
8 THE WITNESS: Correct.
9 MR. PRAGER: These are not figures that you did
10 anything with, that is you didn't alter those figures in
11 any, in any respect.
12 THE WITNESS: No, sir. I'm not a vocational
13 expert or an executive recruiter or anything like that. I
14 took the figures as presented because I don't have expertise
15 in the vocational arena.
16 MR. PRAGER: Fine. So that your, your
17 calculations, at least on Schedule 2A, are based on the
18 difference between what you understood to be Mr. Belfiore's
19 actual salary in column B as opposed to what you were told
20 should have been his salary in Schedule C. That's the first
21 thing. And is that correct?
22 THE WITNESS: That is correct, sir.
23 MR. PRAGER: All right.
24 THE WITNESS: And then the two subsequent columns
25 just account for the period of a year of salary being

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1 expressed as an annual, annual rate.
2 MR. PRAGER: Right. And then the same thing is
3 true with the fair bonus and actual bonus. The fair bonus
4 was supplied to you by Mr. Belfiore and his counsel?
5 THE WITNESS: That's correct. And that's the rate
6 of percentage that is supplied.
7 MR. PRAGER: And you just did the arithmetic
8 calculation for the difference between that and what you
9 were told was his actual salary.
10 THE WITNESS: That's correct, sir.
11 MR. PRAGER: And with respect to the LTIP, again,
12 those figures were, in column M, that was what was proposed
13 by Counsel or Mr. Belfiore.
14 THE WITNESS: Correct.
15 MR. PRAGER: And the actual is what you were told
16 he had actually been given, is that correct?
17 THE WITNESS: That's correct, sir.
18 MR. PRAGER: And all you've done in column P is
19 use those calculations distinguishing between actual and
20 theoretical to come up with the total, is that correct?
21 THE WITNESS: Yes. For the three types of
22 compensation, yes, sir.
23 MR. PRAGER: Good. Does that clarify things for
24 you, Mr. Kaplan?
25 MR. KAPLAN: Yes. Those are the questions I was

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1 going to ask so that's fine. Thank you.
2 MR. PRAGER: So I get part of your salary, do I?
3 MR. KAPLAN: I'm not sure you want my salary.
4 BY MR. KAPLAN:
5 Q A couple questions. How much are you being
6 compensated for your testimony today?
7 A For all my work, it's \$400 an hour.
8 Q And ballpark figure, how many hours did you take
9 to compile this information?
10 A I don't know. The original report was, I don't
11 know, six to eight hours.
12 Q That includes reviewing any data information
13 provided by --
14 A Correct. Back and forth with questions and
15 clarifications.
16 Q Now, your testimony assumes there's liability
17 found, correct?
18 A That's always true, sure.
19 Q And you're not offering an opinion on liability,
20 correct?
21 A No, I'm not.
22 Q And you've not considered whether Mr. Belfiore's
23 job search was reasonable, correct?
24 A No. As I said, I am not a vocational expert.
25 Q On page 1 under background and understanding, the

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1 last sentence, you say he has not been able to secure
2 appropriate, full-time employment since the discrimination.
3 What do you mean by appropriate full-time employment? I
4 don't know what that means.
5 A Well, parking lot attendant would not be an
6 appropriate employment probably for someone of Mr.
7 Belfiore's background.
8 Q What about a job in accounting or finance?
9 A He says he doesn't have any job to my knowledge.
10 I guess we don't have to go into it because I'm not a
11 vocational expert.
12 Q Now, your report does not indicate anyone you
13 would regard as a comparator, correct?
14 A Pardon? I don't understand your question.
15 Q Okay. You didn't compare Mr. Belfiore's
16 compensation with anyone else's compensation?
17 A No. Again, I'm not a vocational expert so I
18 wouldn't be analyzing in the vocational data.
19 Q Going to Schedule 2A of your report, the, again,
20 the Hearing Examiner asked you this question but if any of
21 the information in the fair salary rate is deemed to be not
22 the number that the Hearing Examiner comes up with, then the
23 total compensation would not be, would have to be
24 recalculated, correct?
25 A I think I made that clear in my offer to the judge

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1 to clean it up and use figures that he would consider, would
2 like to consider.
3 Q And the fair bonus percentage, do you know whether
4 anybody outside of the CEO received, you know, 35 percent or
5 more?
6 A No, I don't.
7 Q Okay. And do you know how an LTIP works? Do you
8 know what LTIP even stands for?
9 A Yeah. Long-term incentive.
10 Q And how does it work?
11 A Well, they typically pay it out over a period of
12 years instead of immediately for the past year.
13 Q But for, under Merchant Link's plan, do you know
14 how it works?
15 A I believe you we awarded it and it vested and paid
16 out if you were there.
17 Q Over what period of time?
18 A I don't recall the period for that particular LTIP
19 but it would appear to be a three year payout.
20 Q Have you seen Merchant Link's LTIP program, how it
21 works, or was that just explained to you by opposing
22 counsel?
23 MR. JOHNSON: Objection, Your Honor.
24 THE WITNESS: I don't recall.
25 MR. PRAGER: Excuse me. There's an objection.

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1 What's your objection?
2 MR. JOHNSON: Objection, Your Honor. He's already
3 described what he used, the materials he used to come to
4 these numbers. Counsel's asking him something that was
5 expressly stated at the very beginning as to what he used to
6 calculate these numbers.
7 MR. PRAGER: Right, but I think he asked him
8 about, your expert's understanding of the LTIP and it seems
9 to me it's relevant material. It may not, in the long run,
10 be terribly meaningful but I will allow him to ask the
11 question.
12 MR. KAPLAN: Thank you.
13 MR. PRAGER: Do you want to state it again?
14 MR. KAPLAN: Sure.
15 BY MR. KAPLAN:
16 Q As you sit here, Mr. Gaskins?
17 A I'm with you.
18 Q What is it you're looking at by the way?
19 A My file.
20 Q Your file?
21 A Yeah.
22 MR. KAPLAN: Can I see what he's looking at, what
23 he brought here today?
24 MR. PRAGER: Mr. Gaskins, could you put that away
25 and just talk about the work that you've actually done and

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1 then we can get to this other question later.
2 THE WITNESS: Okay.
3 MR. PRAGER: Go ahead.
4 MR. KAPLAN: Okay.
5 BY MR. KAPLAN:
6 Q So Merchant Link's LTIP award, as you sit here
7 today, can you explain to us how it works?
8 A I believe it was a three year payout but I don't
9 recall seeing the document that says that.
10 Q Do you know how much Mr. Belfiore actually
11 received in LTIP awards in 2008?
12 A According to this, zero.
13 Q 2009?
14 A 6,000.
15 Q 2010?
16 A 29,000.
17 Q 2011?
18 A Zero.
19 Q So if he had received LTIP grants in 2008, 2009 or
20 2010, wouldn't that have been, shouldn't that have been
21 included in some of this compensation analysis?
22 A If what?
23 Q If he had received, let's say for example, a
24 \$75,000 LTIP grant in 2009 and \$75,000 in 2008, should that
25 have been included in his, in your LTIP analysis as actual

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1 LTIP comp?
2 A No. Only what he actually was paid.
3 Q Right.
4 A But, but after he left. I mean, his last LTIP
5 payment was in 2011 sometime and thereafter, anything that
6 he had an entitlement to, in theory, he's only entitled to
7 if he's still employed there so.
8 Q All right. Let me ask you this way. These
9 numbers come directly, the actual LTIP comp numbers come
10 directly from what Mr. Belfiore told you.
11 A Correct.
12 Q Okay. You haven't seen any documentation.
13 A Not that I recall.
14 Q Okay. And this is a discrimination case. You
15 recognize there's a difference between fair compensation and
16 something less discrimination, there's differences there,
17 right? Just because something isn't fair doesn't make it
18 discrimination, correct?
19 A That's a legal issue, sir.
20 Q Okay. So Mr. Belfiore's salary could have been
21 lower based on a number of factors that didn't include
22 discrimination.
23 A I'm not a liability expert, sir.
24 Q Got it. I'm going to ask you some questions about
25 2B, the tax equalization.

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1 A All right.
2 Q Did you take into account whether he filed jointly
3 with his wife?
4 A This assumes he's married, filing separately.
5 Q Okay. So if he filed jointly, then these numbers
6 would be different.
7 A She's not a party to this, sir, so he's isolated
8 for this purpose.
9 Q Okay. But if he filed jointly, which I'll
10 represent for the purposes of this question that he did,
11 then these numbers would not be accurate.
12 MR. JOHNSON: Objection, Your Honor.
13 THE WITNESS: No, sir.
14 MR. PRAGER: What's the objection?
15 MR. JOHNSON: Your Honor, the witness just
16 testified that Mr. Belfiore was isolated and he took the
17 numbers specifically for Mr. Belfiore. Counsel is asking
18 him, asking the witness if his wife was included, these
19 numbers would be wrong. We will admit and accept on the
20 record that if his wife's income was included, the numbers
21 would be different but for purposes of Mr. Belfiore as being
22 isolated, the numbers -- oh, would not be. I'm sorry, Your
23 Honor. Would not be different but for purposes of Mr.
24 Belfiore's analysis, this is specifically about Mr. Belfiore
25 and Mr. Belfiore's income.

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1 MR. PRAGER: I understand but --
2 THE WITNESS: And that's --
3 MR. PRAGER: I understand that but the point that
4 Mr. Kaplan I think was making is that if there is a history
5 of Mr. Belfiore, I gather there is because in discovery, at
6 least part of the Belfiore's 1040s were in fact supplied and
7 presumably, they reflect that, at least according to the
8 representation by Mr. Kaplan, that they were at least either
9 in part or fully, that is for each year, joint filings, not
10 separate, not filing separately. And Mr. Kaplan is asking
11 Mr. Gaskins if indeed going forward or going backwards that,
12 would these figures change if in fact there were joint
13 filings and not filing separately, is that correct?
14 THE WITNESS: What I was trying to explain is that
15 the practice in these cases is for the complainant to stand
16 alone. The introduction of the income or absence of income
17 of the spouse can be, can cause decisions to be made which
18 are not specific to Mr. Belfiore for example. Take, for
19 example, and I had this case, the spouse is a teacher or
20 complainant is a teacher, spouse is a real estate developer
21 making a million dollars a year. Well, a jury can well
22 think what difference does it make, she makes 40,000, she
23 doesn't need compensation, he makes a million. So it's
24 prejudicial to have the other spouse's income incorporated
25 so the practice is for the plaintiff or the complainant to

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1 stand alone for the tax calculation.
2 MR. PRAGER: I'm not sure if that answers Mr.
3 Kaplan's question but, Mr. Kaplan, why don't you proceed and
4 we'll see.
5 BY MR. KAPLAN:
6 Q If Mr. Belfiore filed jointly, these numbers would
7 be different, correct?
8 MR. PRAGER: Let me see.
9 MR. KAPLAN: Okay.
10 MR. PRAGER: The tax rate --
11 MR. KAPLAN: Yes.
12 MR. PRAGER: -- would be different, would it not?
13 That is there's a higher tax rate. No. That's wrong.
14 There is a difference in tax rates for people filing jointly
15 or filing separately and that's why some couples do it one
16 way and some couples do it the other way.
17 THE WITNESS: Correct.
18 MR. PRAGER: All right. So your assumption is
19 that he always filed separately in the years between 2008
20 and 2011, is that correct?
21 THE WITNESS: Correct. And this analysis --
22 MR. PRAGER: And --
23 THE WITNESS: Okay.
24 MR. PRAGER: And if that assumption is wrong, your
25 figures would be, have to be different in terms of talking

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1 about tax losses or tax liabilities, is that right?

2 THE WITNESS: No, sir. I appreciate that Mr.

3 Kaplan wants to applicate things but the tax issue here

4 relates only to Mr. Belfiore's earned income. He may other

5 incomes. He may have rental real estate, right? Are we

6 going to start putting that in here? No. The whole issue

7 of this hearing regards his earned income from the Link. It

8 doesn't concern his other incomes, it doesn't concern his

9 spouse's income. We're only analyzing his income.

10 MR. PRAGER: All right. I think I understand your

11 answer. Mr. Kaplan, would you proceed?

12 BY MR. KAPLAN:

13 Q Can you point me to a single employment case where

14 this tax equalization analysis is accepted?

15 A Sir, the case law in this goes back to the 1980s.

16 There are at least two major papers in the Peer Review

17 Journal of Forensic Economics you could read. One was by

18 Barry Ben-Zion and the other was by James Rodgers.

19 Q But my question was about a case. Do you know of

20 any single employment decision or case where this tax

21 equalization analysis was accepted?

22 THE WITNESS: Mr. Johnson, could you give me the

23 page that I provided you last night regarding this issue?

24 MR. JOHNSON: I don't think I have that. I just

25 have the e-mail.

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1 THE WITNESS: I think it was in the e-mail.

2 MR. JOHNSON: Your Honor, I could provide to

3 counsel the cases if there's anything. Mr. Gaskins e-mailed

4 me approximately 10 cases, citations with excerpts as well

5 as the actual articles in the journals that he identified

6 regarding the tax implications that Mr. Kaplan's speaking

7 of.

8 THE WITNESS: And those journal papers will have

9 cites to the cases.

10 MR. PRAGER: All right. Mr. Kaplan, is that a

11 satisfactory solution to your specific question of --

12 MR. KAPLAN: Well, I can't --

13 MR. PRAGER: -- his names, and you're not going to

14 read them this afternoon --

15 MR. KAPLAN: No.

16 MR. PRAGER: -- the journal articles so, yes, Mr.

17 Johnson, you work that out with Mr. Kaplan and provide him

18 with that information.

19 BY MR. KAPLAN:

20 Q You're not arguing that he should not be paid

21 taxes on wage-related damages, correct?

22 A Could you say that again?

23 Q Sure. You're not arguing that he should not pay

24 taxes on his wage-related damages, are you?

25 A No, I'm not.

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1 Q Okay.

2 A I'm just arguing that his after tax income should

3 not be damaged by the pattern of recovery, so all we're

4 doing is putting him back where he would have been in total

5 for after tax income over the analysis damages period.

6 Q And the cases that Mr. Johnson is going to be

7 sending to me, are those employment cases or are those cases

8 dealing with other issues?

9 A As I was explaining --

10 Q Property damages, injury, not property injury,

11 personal injury is what I'm looking for. Are those personal

12 injury cases or are they employment cases?

13 A No. They wouldn't be because you don't need to do

14 a compensation for personal injury because recovery for

15 physical, personal injury is tax exempt whereas for

16 employment torts discrimination, et cetera, recovery is

17 taxable and that's where the problem comes in, that the

18 single lump sum recovery for income that would have been

19 earned and taxed over a number of years at lower rates is

20 taxed in the year received at a very high rate.

21 MR. PRAGER: Mr. Gaskins, you asked him, your

22 first word was no to a complex question or a compound

23 question. Just to make it clear on the record, some of

24 these cases that you cited were in fact employment

25 discrimination cases or employment cases.

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1 THE WITNESS: They would be that class of cases

2 for which recovery is taxable, so that could be wrongful

3 termination, it could be racial discrimination, sexual

4 harassment, et cetera. Anything that, related to employment

5 that does not involve a physical injury.

6 MR. PRAGER: Thank you.

7 BY MR. KAPLAN:

8 Q And if the Hearing Examiner concludes that Mr.

9 Belfiore has not sufficiently mitigated his damages again,

10 in part or in total, then again, these numbers would have to

11 be redone?

12 A I guess so.

13 Q Okay. On Schedule 5, the consequential damages,

14 did he ever provide you the documentation on these numbers

15 or were they just again him telling you these are it?

16 A The latter.

17 Q They just told you that these are the numbers?

18 A Yes.

19 Q Thank you. And you're not offering an opinion

20 whether he's entitled to consequential damages, correct?

21 A No. I'm not a liability witness.

22 Q One moment. I have no further questions.

23 MR. PRAGER: I have a couple of questions for you.

24 Your testimony was that you were paid \$400 an hour but your

25 report on page 4 uses the figure 380 where it says

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1 subsequent expert services will also be paid at the hourly
2 rate of \$380. Are you changing that for some reason?
3 THE WITNESS: Ha. This report is older than I
4 thought. My current hourly rate is 400 and the current
5 terminology in that paragraph stops at my standard hourly
6 rate period. It doesn't guarantee the rate will hold over
7 time.
8 MR. PRAGER: But as far as this report is
9 concerned, it was at 380.
10 THE WITNESS: Yes.
11 MR. PRAGER: Let's, because the last thing you
12 were asked about was about Schedule 5, let's just run
13 through these. I think the testimony is already clear but I
14 just want to pin it down. The penalties for early
15 withdrawal of retirement funds, you have no way of knowing
16 how that \$30,000 was calculated, is that correct?
17 THE WITNESS: No, I don't, sir.
18 MR. PRAGER: Okay. And is that true of each of
19 the other items, that you have no idea how this was
20 calculated?
21 THE WITNESS: That's correct.
22 MR. PRAGER: Now, just because I'm a little slow
23 at times, run through on Schedule 2B, we'll just do one year
24 of that running across the, across the page horizontally.
25 The fair salary is again, a figure that was given to you and

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1 is, the figure that was given to you and looks like in
2 column E of Schedule 2A, is that right? Those are the same
3 numbers?
4 THE WITNESS: Yes, they are.
5 MR. PRAGER: Okay. And the same thing is true for
6 the bonus. That's the number that was supplied to you and
7 the LTIP. The fair one was also what was supplied to you.
8 THE WITNESS: Yes, sir.
9 MR. PRAGER: And you then, further up this first
10 column of numbers, second column of numbers, third column of
11 numbers, you come up to 303,000, is that right?
12 THE WITNESS: Correct.
13 MR. PRAGER: And then --
14 THE WITNESS: Representing his, his earnings,
15 taxable earnings related to this matter.
16 MR. PRAGER: Right. And then you deducted from
17 that the federal tax that would have been owing on what his,
18 the hypothetical fair earnings and the Maryland tax on those
19 hypothetical earnings and came to a total after tax figure
20 of 175,000.
21 THE WITNESS: And change, yes, sir.
22 MR. PRAGER: And change. Right. Now, you then
23 have something with discrimination. That is the figure
24 that's derived from column B of Schedule 2A, is that right?
25 THE WITNESS: Correct.

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1 MR. PRAGER: And then again, the actual and the
2 bonus and LTIP, and that, in your fourth column on the
3 right, you total that up and that becomes 150,000.
4 THE WITNESS: Correct.
5 MR. PRAGER: And then you calculate the tax, the
6 taxes due on that and come up with a total after tax
7 earnings of 95,000, is that correct?
8 THE WITNESS: Yes, sir. 95 and change.
9 MR. PRAGER: Okay. And then I assume, though it's
10 not divided this way, I assume that you've taken this
11 \$95,000 in the last column on the right and deducted that
12 from the \$175,000 listed in the last column on the left and
13 somehow, that number which for a moment I'm assuming is
14 roughly \$80,000, it is then put into this total in the
15 middle without, without having segregated each of the years.
16 THE WITNESS: No, sir. This is, for most folks,
17 this is, you have to think a bit about this because any
18 compensation to make up for the excess taxes he's paying on
19 his recovery is also taxable so it requires a, what's called
20 an iterative solution. So what this is doing is saying all
21 right. On the left, we have the situation financially
22 without the discrimination. On the right, we have the
23 situation with the discrimination and with his recovery.
24 The question becomes what amount of tax compensation in that
25 box will make it so that his after tax incomes are the same

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1 under each scenario.
2 MR. PRAGER: I think I have a glimmer now what
3 you're talking about. You're saying if he got that as a
4 lump sum, that is the difference between the fair and the
5 actual, if that were paid out today, you took into account
6 how much more he would have to pay in taxes than if it had
7 been done year-by-year, is that correct?
8 THE WITNESS: Exactly, sir. So that's why in the
9 year assumed recovery, we have the 1,933,000, all right, in
10 that line which is where we're generating this excess tax.
11 And we have to figure out what goes in the box so that we
12 solve that equilibrium problem at the bottom where the arrow
13 is saying we've got to make these equal.
14 MR. PRAGER: Okay. I understand now. I
15 understand. Mr. Johnson, do you have some questions?
16 MR. JOHNSON: Just one clarification, Your Honor.
17 FURTHER REDIRECT EXAMINATION
18 BY MR. JOHNSON:
19 Q On the Schedule 2A, Counsel was asking you
20 questions about the LTIP and our confusion, I think, that
21 has been going on is the information that's provided in the
22 LTIP just tells you the amount of the award. Now, the
23 information you received about the actual LTIP from Mr.
24 Belfiore was an indication of the amounts of the LTIP that
25 he actually received, is that correct?

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1 A And, and the amounts that would have been a fair
2 LTIP.
3 Q The next column is what would have been fair had
4 he not been discriminated against.
5 A Right.
6 Q Okay. I just wanted to clarify that.
7 MR. JOHNSON: Your Honor, I have no other point of
8 clarification. One second if you don't mind.
9 MR. PRAGER: Well, I do. I'm glad you raised that
10 because I was confused and I forgot to ask the question.
11 You testified, and the record will support your testimony,
12 that the LTIP is issued every three years, at one point and
13 it's paid out over the three year period.
14 THE WITNESS: That's my recollection.
15 MR. PRAGER: Okay. But your fair compensation for
16 2012 and 2013, now is it your understanding that he would be
17 getting those in both of those years or would that also not
18 be paid out over a three year period? In other words, there
19 would be a corresponding zero, zero, zero just as there was
20 in '08 '09 and '10 and in '11. Wouldn't that be the case?
21 THE WITNESS: It depends on what you're going to
22 provide guidance as to the damage periods I believe.
23 MR. PRAGER: No, no, no. That's not my question.
24 You don't get an LTIP in every year. I thought it was
25 staggered. It basically, maybe I'm wrong and we'll find

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1 out, but my assumption was it's given every three years and
2 paid out over a three year period.
3 THE WITNESS: That's my understanding.
4 MR. PRAGER: Okay. Thank you. So we'll get that
5 clarified exactly how the LTIP works. Mr. Belfiore is
6 anxious to tell us about it but not at this time, and Mr.
7 Lane may be able to expound on it when he testifies. At
8 this point, I think --
9 THE WITNESS: Could I offer a clarification? I
10 notice that my language had changed in the report. When you
11 pointed out the rate, I recall that the other language that
12 changed was often in employment cases, there was no need to
13 do a present value of loss because either all of the losses
14 are behind us at this point or because there is so little
15 loss ahead of us and current interest rates are so very low
16 that it doesn't matter whether you do it or not. It doesn't
17 make any difference really.
18 MR. PRAGER: Actually --
19 THE WITNESS: So there's a paragraph that
20 addresses that issue in my newer report standard.
21 MR. PRAGER: Again, my memory flagged the times.
22 There was another question I was going to ask you. It's
23 actually on page 6. In the last sentence on that page of
24 the taxation, there isn't, there's nothing there. It sort
25 of ends and presumes that there should be some numbers but

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1 there aren't any numbers.
2 THE WITNESS: Page 6?
3 MR. PRAGER: Yes. It says taxation. It started,
4 the top of it says notes and statistical --
5 THE WITNESS: Oh, yeah.
6 MR. PRAGER: That section.
7 THE WITNESS: 6 would be the Appendix 1.
8 MR. PRAGER: Oh, yes. I'm sorry.
9 THE WITNESS: It should say federal and state
10 income taxes and then give an internet link.
11 MR. PRAGER: Oh, it's just an internet link.
12 THE WITNESS: Yes. That's what that --
13 MR. PRAGER: It wasn't that you intended to put in
14 the tax rates for each of those years.
15 THE WITNESS: No. I'm telling you where you can
16 get them if you want.
17 MR. PRAGER: Where I can get them.
18 THE WITNESS: Sure.
19 MR. PRAGER: So you want to put me to work.
20 THE WITNESS: Well, there's no sense publishing
21 more than we need to.
22 MR. PRAGER: Mr. Kaplan, you said you had another
23 question?
24 MR. KAPLAN: Yes.
25 FURTHER RE-CROSS-EXAMINATION

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1 BY MR. KAPLAN:
2 Q Going back to the Schedule 2B, if any of the fair
3 salary, fair bonus or fair LTIP numbers changed based on the
4 Hearing Examiner's findings, is there, there's no way, it
5 would be very difficult for him then to create a new tax
6 equalization chart like you have done on Schedule 2B, is
7 that correct?
8 A Well, that's why I've offered --
9 Q I understand your offer.
10 A -- the judge --
11 Q I understand your --
12 A -- the judge to because right away, there's the
13 issue of the periods for which damages are applicable that
14 needs to be addressed and if he has an issue with what is
15 the fair base compensation, that could be addressed. I'm
16 just here to assist the trier of fact basically so I would
17 offer to present that on the basis the judge would like, and
18 that would come along with a new properly related 2B.
19 Q I think you've answered my question.
20 MR. PRAGER: All right. Thank you, Mr. Gaskins.
21 THE WITNESS: Thank you, sir.
22 MR. PRAGER: We'll go off the record.
23 (Off the record.)
24 (On the record.)
25 MR. PRAGER: We're back on the record. Mr.

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1 Johnson, you called my attention, during the recess, the
2 fact that you had not moved to enter Exhibit 84, is that
3 correct?
4 MR. JOHNSON: Yes, Your Honor. Complainant wishes
5 to move into evidence Complainant's Exhibit No. 84.
6 MR. PRAGER: All right. At some point, we were
7 going to divide that exhibit into parts but we've also
8 already taken out and created an exhibit 90 so we could
9 just, what remains of Exhibit 84, we do have to divide
10 between A, B, and C. It's just one exhibit.
11 MR. JOHNSON: Yes, Your Honor.
12 MR. PRAGER: So with that understanding, the
13 motion is to admit Complainant's 84, to be admitted into
14 evidence. Is there any objection?
15 MR. KAPLAN: Yes. Yes, I object. I think the
16 testimony is very clear that this report is or will be
17 utterly unhelpful to the Hearing Examiner. The years he
18 has, he goes back to 2008 and then he goes front pay a
19 number of years. The years are totally inaccurate. The
20 assumptions are of no basis in our opinion, have no basis in
21 the testimony. The tax equalization, if there's any, any
22 belief, if the Hearing Examiner finds any of the fair salary
23 or fair bonus or fair LTIP is not as as represented by Mr.
24 Belfiore, the tax equalization record is, again, unhelpful
25 and cannot be reproduced. The consequential damages are

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1 just, again, Mr. Belfiore's numbers, he hasn't provided
2 support for that and generally, there's been no foundation
3 for those numbers.
4 MR. PRAGER: All right. I would ordinarily give
5 Mr. Johnson an opportunity to respond to that but I don't
6 need to. Your objection is overruled. It is what it is and
7 it will be given whatever weight it deserves, and I
8 understand that you think, and perhaps I agree, that the
9 numbers may not be useful but I, it is available and the
10 Commission will have a chance to look at it and I will have
11 a chance to look at it and you can argue about its value in
12 your post-hearing briefs. So with that, Complainant's
13 Exhibit 84 will be admitted.
14 (Complainant's Exhibit Nos. 84A
15 through 84C were received into
16 evidence.)
17 MR. PRAGER: Anything further at this time, Mr.
18 Johnson?
19 MR. JOHNSON: Yes, Your Honor. Actually,
20 Complainant does move into evidence Complainant Exhibit No.
21 86 which is the deposition of Wendy Nussbaum.
22 MR. PRAGER: That's a long piece of work.
23 MR. JOHNSON: I think it was they didn't have a
24 Min-U-Script of that one.
25 MR. PRAGER: It's 82 pages. I'm reluctant to

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1 admit it and if you perhaps again, in discussions with
2 Counsel, can come up and designate particular pages that
3 both sides think are useful, that would be a lot more
4 helpful than having this whole thing because I'm not going
5 to read it. And I doubt, I must admit that I doubt it's of
6 great use, but I haven't read it so I don't know, since it
7 seems to be based on her interview of Mr. Dantzler and
8 possibly Mr. Minton which in turn was based on the interview
9 of Mr. Dantzler so I'm not quite sure how useful it will be
10 but I certainly won't prevent you from introducing it but at
11 least let's cut it down.
12 MR. JOHNSON: Sure.
13 MR. KAPLAN: Yes. I would agree that we could
14 probably stipulate to page numbers. That's --
15 MR. PRAGER: Yes. I think that would be --
16 MR. KAPLAN: We could do that together. That
17 makes sense. And then Dan Charron's depo is much shorter so
18 I don't know if you want us to do the same thing there as
19 well?
20 MR. PRAGER: Which one is that?
21 MR. KAPLAN: The Dan Charron deposition.
22 MR. PRAGER: No, no. Where is it?
23 MR. KAPLAN: Oh, it's already been entered into --
24 it's one of their exhibits. I didn't know if you wanted us
25 to jointly come --

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1 MR. PRAGER: First let me, I don't know what
2 you're talking about.
3 MR. KAPLAN: Oh.
4 MR. JOHNSON: I think it's 88.
5 MR. KAPLAN: Whatever is easier.
6 MR. JOHNSON: In the complainant's exhibits.
7 MR. KAPLAN: Whatever is best for Your Honor.
8 MR. PRAGER: 88?
9 MR. JOHNSON: In the complainant's exhibits, 88.
10 MR. PRAGER: Okay. But there's lots of exhibits.
11 MR. JOHNSON: There should be just the deposition
12 of Dan Lane.
13 MR. PRAGER: No.
14 MR. JOHNSON: Oh, I'm sorry. Dan Charron.
15 MR. PRAGER: The exhibit is 34 pages and then --
16 MR. JOHNSON: I guess the exhibits --
17 MR. PRAGER: And there's a Notice of Deposition
18 and --
19 MR. JOHNSON: Yes. Those are the --
20 MR. PRAGER: -- long-term incentive plan, all
21 sorts of other things that were attached to it. I don't
22 know what they are.
23 MR. JOHNSON: Yes. They were the exhibits to the
24 deposition so I guess that's the court reporter attaching
25 exhibits.

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1 MR. KAPLAN: That's probably redundant in our
 2 estimation. If it's relevant, it's probably been marked
 3 already and then turned into evidence.
 4 MR. PRAGER: Let me just see. Yes. It has been
 5 admitted but it would be certainly useful to me, it is much
 6 shorter and obviously, I have no idea what's in there. So
 7 since it's already been admitted, we're fine but I would
 8 appreciate from Counsel, even before your briefing, let me
 9 know next Tuesday which pages I should be paying particular
 10 attention to.
 11 MR. KAPLAN: Do you want that to be presented
 12 jointly or --
 13 MR. PRAGER: Yes.
 14 MR. KAPLAN: We can do that for both of the
 15 depositions, Mr. Johnson.
 16 MR. PRAGER: Well, let me just say it's not that I
 17 won't read the entire thing.
 18 MR. KAPLAN: Sure. The highlights.
 19 MR. PRAGER: Highlight it so I have some idea.
 20 And maybe, maybe I may have some questions on that because
 21 I've never seen it before and so I may ask either Mr.
 22 Belfiore or since Mr. Lane is here, he may recall it, to
 23 answer questions. I don't know if I need to ask questions
 24 but, yes. So let's defer that until next week but it is, at
 25 the moment, in the record so the record speaks for itself.

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1 MR. KAPLAN: And we have no objection to that
 2 Nussbaum deposition obviously.
 3 MR. JOHNSON: And, Your Honor, and the redacted e-
 4 mail we wanted to know, identify the e-mail dates and time.
 5 MR. KAPLAN: We're getting that. It's on our
 6 list.
 7 MR. JOHNSON: And I believe there were, I believe
 8 it was two organizational charts. I think one for 2010 and
 9 one for 2011.
 10 MR. PRAGER: I'm sorry. What was that?
 11 MR. JOHNSON: Your Honor stated that there was an
 12 organizational chart that was supposed to be produced and
 13 Your Honor said 2011, and I think we had asked for 2010
 14 also.
 15 MR. PRAGER: Well, why don't you, when you -- I'll
 16 ask right now. Mr. Lane, was there a difference in the
 17 organizational chart, I'm not talking about the incumbents
 18 but in the organization of Merchant Link, was there a
 19 difference in 2010 and 2011?
 20 MR. LANE: Well, in 2011 when I became CEO, the
 21 organization obviously changed at that point. I don't
 22 believe there was a difference. That was the primary
 23 difference before and after I became CEO in March of 2011.
 24 MR. PRAGER: The boxes changed or the people who
 25 headed those boxes changed?

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1 MR. LANE: Um, there were some changes to the, to
 2 the way the boxes were organized, yes.
 3 MR. PRAGER: Okay. And I think that's right.
 4 2010 to 2011, if you can, if Counsel can agree.
 5 MR. KAPLAN: And --
 6 MR. PRAGER: Just a moment.
 7 MR. KAPLAN: Yes.
 8 MR. PRAGER: You were about to say something, Mr.
 9 Kaplan?
 10 MR. KAPLAN: No. I think you mentioned it
 11 actually. One of the first items was the e-mail that I'll
 12 get to Mr. Johnson later on today.
 13 MR. PRAGER: All right. Mr. Johnson, anything
 14 further?
 15 MR. JOHNSON: Nothing further, Your Honor.
 16 MR. PRAGER: So at this point, you rest your case
 17 in chief?
 18 MR. JOHNSON: Yes, Your Honor. Case in chief is
 19 rested. We'll I guess reserve for rebuttal.
 20 MR. PRAGER: All right. Mr. Petesch, I assume Mr.
 21 lane, you will be asking Mr. Lane your direct examination at
 22 this point?
 23 MR. PETESCH: Yes, Your Honor, to the extent I
 24 didn't cover the issues when I questioned Mr. Lane when he
 25 was called as Mr. Belfiore's adverse witness.

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1 MR. PRAGER: Good. Mr. Lane?
 2 MR. PETESCH: I'll try not to be repetitious in
 3 other words.
 4 MR. PRAGER: I won't let you.
 5 MR. PETESCH: Thank you.
 6 MR. PRAGER: You understand, as I told you the
 7 other day, that you are still under oath.
 8 MR. LANE: Yes, sir.
 9 MR. PETESCH: Your Honor, I can not only say I
 10 would thank you for not letting me be repetitious, but I
 11 believe I can speak for Mr. Lane who I'm sure would also
 12 thank you.
 13 MR. PRAGER: All right. Thank you. Go ahead.
 14 (Witness previously sworn.)
 15 DIRECT EXAMINATION
 16 BY MR. PETESCH:
 17 Q Just a few questions for you. Dan Charron, is he
 18 still associated with Merchant Link?
 19 A No, he isn't.
 20 Q Is he still employed by Paymentech?
 21 A No.
 22 Q He is an independent free citizen?
 23 A Yes. He resigned from Paymentech late last year.
 24 MR. PRAGER: Excuse me. So am I, I'm correct in
 25 saying that at the time this deposition was taken on, that's

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1 referred to as Complainant's 88, he was no longer with
 2 either of those organizations?
 3 THE WITNESS: No. He was, he was, I don't
 4 remember, I believe -- well, he just resigned at the end, he
 5 resigned from Paymentech at the end of last year so I'm
 6 fairly certain he was a Paymentech employee when that
 7 deposition was taken.
 8 MR. PRAGER: And I think you were asked the
 9 question about whether he was still on the Board of Managers
 10 for Merchant Link. Would he have been --
 11 THE WITNESS: Yes.
 12 MR. PRAGER: -- as of May of 2014.
 13 THE WITNESS: Yes. He retained his Board position
 14 through the end of his tenure at Paymentech.
 15 BY MR. PETESCH:
 16 Q Does Mr. Charron reside in this area, in Maryland?
 17 A No. He lives in Atlanta, Georgia. Another person
 18 in Atlanta.
 19 Q I want to shift a little bit and ask you some
 20 series of questions about a number of, excuse me, frog in my
 21 throat, senior management employees at merchant Link during
 22 certain periods of time, okay?
 23 A Okay. Yes.
 24 Q I want to start with Christina Smith. Who is
 25 Christina Smith?

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1 A Well, at the time, she was our chief financial
 2 officer and she was, again, acting, it was understood that
 3 she was coming in on an interim basis to stand up our
 4 financial system and build out our finance and accounting
 5 departments.
 6 Q Okay.
 7 MR. PRAGER: I said I would stop you from
 8 repeating. That was in fact testimony already. Do you want
 9 to ask something about Ms. Smith that wasn't asked whenever
 10 Mr. Lane was already on the stand?
 11 MR. PETESCH: Sure.
 12 BY MR. PETESCH:
 13 Q Who determined her compensation?
 14 A When she came in, it was Dan Charron was still our
 15 acting CEO so her compensation was determined by him and it
 16 was based on the compensation she had been earning at
 17 Paymentech.
 18 Q Okay. To your knowledge, did she earn an LTIP
 19 award?
 20 A She did not.
 21 Q What about an AIP bonus?
 22 A She did not.
 23 MR. PRAGER: That's all also already in the
 24 record. BY MR. PETESCH:
 25 Q Let's go to another employee, Laura Kirby-Meck.

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1 A Yes.
 2 Q Are you familiar with her?
 3 A Yes, I am.
 4 Q Is she still employed with Merchant Link?
 5 A Yes, she is.
 6 Q Did you hire Laura Kirby-Meck?
 7 A Yes, I did.
 8 Q And for what position was that?
 9 A EVP of sales and marketing.
 10 Q Whose position did she occupy? Who was her
 11 predecessor?
 12 A Tim Kinsella.
 13 Q And who does she report to?
 14 A She reports to me.
 15 Q And I'm going to refer you to the joint
 16 stipulation in this matter which I think you have in front
 17 of you to move this along.
 18 A Oh, this document.
 19 Q Yes. And I'm going to refer you to paragraph 22
 20 of the joint stipulation.
 21 A Yes.
 22 Q Which says in 2011, Merchant Link offered Ms.
 23 Kirby-Meck a base salary of \$165,000 and she was eligible to
 24 earn 25 percent of that salary in AIP. Do you see that?
 25 A Yes.

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1 Q Do you have any reason to believe that that is not
 2 correct?
 3 A No.
 4 Q And was Mr. Kirby-Meck awarded an LTIP grant in
 5 2011?
 6 A I believe her first LTIP grant was actually in
 7 2012.
 8 Q Okay. And in paragraph 23 of the joint
 9 stipulation, it says Merchant Link did not provide Ms.
 10 Kirby-Meck an LTIP grant for 2011. Do you have any reason
 11 to believe that is not correct?
 12 A No
 13 Q How was her compensation determined?
 14 A Based on her experience she had, her skillset, my
 15 interview with her, her reputation and her set of
 16 responsibilities that she was going to be running when she
 17 came into Merchant Link.
 18 Q Is her skillset the same as Erik Belfiore's?
 19 A No, it isn't.
 20 Q Let's move on to Ben Chudasama.
 21 A Uh-huh.
 22 Q Oh, let's go back to Laura Kirby-Meck for a
 23 moment. When you hired Laura Kirby-Meck, did you, did you
 24 bother to compare her compensation, total compensation
 25 against Erik Belfiore's total compensation?

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1 A Um, I, I likely would have compared her
2 compensation with other senior members of Merchant Link at
3 the time, yes.
4 Q Including Mr. Belfiore?
5 A Yes.
6 Q Let's move on to Ben Chudasama.
7 A Uh-huh.
8 Q Did you hire Ben Chudasama?
9 A I did, yes.
10 Q And from where did you hire, or where was he
11 working when you hired him?
12 A He had been an employee of Paymentech.
13 Q And what was the position that you hired Ben
14 Chudasama for at Merchant Link?
15 A Director of software development.
16 MR. PRAGER: Excuse me. Mr. Petesch, can you
17 determine when Mr. Chudasama was hired by Mr. Lane?
18 MR. PETESCH: We can ask Mr. Lane.
19 BY MR. PETESCH:
20 Q When was he hired?
21 A I believe it was 2003.
22 Q And I want to focus, for a moment, well, let's
23 focus on his skillset. Can you describe of summarize Mr.
24 Chudasama's skillset?
25 A Yes. He's, he manages a software development

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1 process and a team of software developers. He himself had
2 been a software developer and had management experience
3 managing software developers.
4 Q And is Mr. Chudasama's skillset the same as Mr.
5 Belfiore's skillset?
6 A No, it isn't.
7 Q When he was hired earlier on, did his compensation
8 that he was earning at Paymentech enter into the equation of
9 what his compensation would be at Merchant Link?
10 A Yes.
11 Q How so?
12 A It was one of the factors that was considered for
13 to attract him to Merchant Link such that he would be
14 earning close to what he was earning at Paymentech when he
15 came in.
16 Q Okay. And focusing on his compensation package
17 for 2011 --
18 A Uh-huh.
19 Q -- for the moment, I direct you to Joint
20 Stipulation No. 25, paragraph 25 --
21 A Yes.
22 Q -- which states that in 2011, Ben Chudasama,
23 director of software development, earned a base salary of
24 \$169,371, was eligible to earn 25 percent of that salary in
25 AIP and received an LTIP grant of \$40,000. Do you see that?

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1 A Yes, I do.
2 Q Do you have any reason to believe that that is not
3 accurate?
4 A I believe that's accurate.
5 Q Okay. I believe I have asked you some previous
6 questions before on Jay Konar and hopefully, the Hearing
7 Examiner will forgive me if there is any redundancy. I'll
8 be very quick about it. Did you hire Jay Konar?
9 A Yes, I did.
10 Q And what position, for what position?
11 A Director of network operations.
12 Q And can you describe Mr. Konar's skillset?
13 A Sure. He's experienced running large network and
14 IT infrastructures. Previous to Merchant Link, he was the
15 chief information officer at Trinity College in Washington,
16 D.C. and ran their entire IT and network infrastructure.
17 MR. PRAGER: Now I'm going to have redundancy
18 because I don't remember, what year was Mr. Konar hired
19 approximately?
20 THE WITNESS: Approximately 2006. Perhaps 2007.
21 MR. PRAGER: What I'm trying to do, and maybe
22 you'll help me out on this --
23 MR. PETESCH: Best I can.
24 MR. PRAGER: -- I'm trying to distinguish when Mr.
25 Lane testifies about hiring, whether or not he was then the

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1 chief executive officer or he was doing other work.
2 MR. PETESCH: Certainly. Certainly.
3 BY MR. PETESCH:
4 Q Looking to stipulation number, Joint Stipulation
5 No. 26 --
6 A Yes.
7 Q Let me ask you, and I think I may have asked you
8 before, was Mr. Konar's skillset the same as Mr. Belfiore's?
9 A No, it wasn't.
10 Q Mr. Konar's skillset was in a more technical area?
11 A Yes.
12 Q And how was his compensation determined?
13 A It was based, again, on what the market was, the
14 market rates for technical managers, technical directors.
15 It was based on his salary at Trinity College, what his
16 salary expectations were and again, the experience that he
17 brought into the company and the requirements for the job
18 that he was taking.
19 Q Turning to Joint Stipulation No. 26 focusing on
20 2011 compensation packages --
21 A Yes.
22 Q -- which says Jayakrishnan Konar, vice-president
23 network operations, earned a base salary of \$160,000, was
24 eligible to earn 25 percent of that salary in AIP and
25 received an LTIP grant of \$50,000. Do you see that?

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1 A Yes.

2 Q Do you have any reason to believe that that is not

3 accurate?

4 A I believe that's accurate.

5 Q Let's move to Tim Kinsella who we have talked

6 about some. When was Mr. Kinsella hired to the best of your

7 knowledge?

8 A Mr. Kinsella was also hired in the 2006/2007 time

9 frame.

10 Q Was it by you?

11 A No.

12 Q Was it by Mr. Justice?

13 A Yes.

14 Q And where did Mr. Kinsella come from if you know?

15 A He was the president of a company called HIS which

16 was a subdivision of MICROS out in Phoenix, Arizona that

17 sold lodging software to hotels.

18 Q What position was he hired into?

19 A He was also the EVP of sales. At that point,

20 marketing reported directly to Chris Justice.

21 Q And is that the position that he held throughout

22 his employment at Merchant Link?

23 A Yes. Until Chris Justice left and then they move

24 marketing under Tim as well so he was then the EVP of sales

25 and marketing.

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1 Q And that was an added responsibility for him?

2 A Yes.

3 Q And can you describe his skillset?

4 A Yes. He was responsible and had experience

5 selling, managing salespeople, selling and managing,

6 marketing and account management so when we had exiting

7 large relationships, he was also responsible and experienced

8 with managing the people who were responsible for managing

9 those customer relationships.

10 Q Is that the same skillset that Mr. Belfiore

11 brought to the table?

12 A No.

13 Q What was Mr. Kinsella's, or at least his

14 position's, importance to the Merchant Link organization

15 relative to Mr. Belfiore's position?

16 A They're both important. Mr. Kinsella's

17 responsibility was for bringing revenue into the company by

18 selling new clients and managing the relationships with

19 existing clients. Mr. Belfiore's responsibility, well,

20 again, it changed but it was different than that.

21 Q And I'll ask you to turn to Joint Stipulation No.

22 20, looking at Mr. Kinsella's 2011 compensation package.

23 A Uh-huh.

24 Q It says in 2011, Timothy Kinsella, chief marketing

25 officer, had a base salary of \$167,848, was eligible to earn

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1 25 percent of that salary in AIP and received an LTIP grant

2 of 35,000. Do you see that?

3 A Yes.

4 Q Any reason to believe that that is not accurate?

5 A I believe that's accurate.

6 Q And let's talk about Sue Zloth. In 2011, what was

7 her role at Merchant Link?

8 A Um, in 2011, she was responsible for our product

9 group which was the product managers and quality assurance

10 testing and requirement systems analysts. These are the

11 people that designed and interacted with customers and the

12 market to develop, to provide the business and technical

13 requirements to the software team to develop our products.

14 She also individually managed some of the very large

15 projects within Merchant Link. As an example, Best Buy was

16 a customer that we signed up in 2007 and Sue had a very

17 large long-term, like eight month, implementation period and

18 Sue Zloth was responsible for project managing that entire

19 implementation.

20 Q Okay. What was her skillset or what is her

21 skillset?

22 A She has a technical background and she had

23 experience in both the hospitality industry, she had a

24 master's degree from Cornell in hospitality management, she

25 also had a technical background and a project management

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1 background. She came from MICROS where she had installed

2 and managed installers of point of sale equipment, so she

3 had a variety of skills.

4 Q Did she bring the same skillset to the table as

5 Mr. Belfiore?

6 A No. It was different.

7 Q And let's, focusing on her compensation package

8 for 2011, and I would urge you to turn to Joint Stipulation

9 No. 29, paragraph 29. And that states in 2011, Sue Zloth,

10 vice-president product management, earned a base salary of

11 \$171,910, was eligible to earn 25 percent of that salary in

12 AIP and received an LTIP grant of \$50,000. Do you see that?

13 A Yes.

14 Q Any reason to believe that that's not accurate?

15 A I believe that's accurate.

16 Q Let's talk about you, Mr. Lane. When you became

17 CEO, do you have a recollection of what your salary was?

18 MR. PRAGER: I'm sorry. Before or after?

19 MR. PETESCH: Upon becoming CEO. What would his

20 CEO salary be.

21 MR. PRAGER: Thank you.

22 THE WITNESS: \$225,000.

23 BY MR. PETESCH:

24 Q And did you have an AIP bonus also?

25 A Yes. It was increased from 25 percent to 35

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1 percent.
2 Q As chief technology officer, was your AIP rate at
3 25 percent?
4 A Yes.
5 Q And you said that upon becoming CEO, it was
6 increased to 35 percent?
7 A Yes.
8 Q Has it gone up since then?
9 A No.
10 Q I have no further questions for you, Mr. Lane, and
11 -- well, I have no further questions.
12 MR. PRAGER: Mr. Johnson?
13 MR. JOHNSON: Yes, Your Honor.
14 MR. PRAGER: Limited to the testimony given this
15 afternoon.
16 MR. JOHNSON: Yes, Your Honor.
17 MR. PETESCH: And one more item, Mr. Hearing
18 Examiner. We can assume that Mr. Lane's testimony, previous
19 testimony may be adopted for our case in chief as well?
20 MR. PRAGER: Of course. That was the whole idea.
21 MR. PETESCH: That's what I was hoping.
22 MR. PRAGER: I think the record already reflects
23 that. Now, you are being redundant. Mr. Johnson.
24 MR. JOHNSON: Thank you, Your Honor.
25 CROSS-EXAMINATION

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1 BY MR. JOHNSON:
2 Q Mr. Lane, isn't it correct that all the
3 individuals that you just identified were your direct
4 reports?
5 A Except for Mr. Kinsella. Mr. Kinsella became my
6 direct report after I became CEO but prior to that, he was
7 not.
8 Q Now, you consistently testified that each one of
9 these individuals had a different skillset, correct?
10 A Correct.
11 Q Different skillset from Erik, correct?
12 A Yes. That's correct.
13 Q And were any of the individuals hired as officers
14 of the company?
15 A Well, I learned through this testimony that, that
16 Tim Kinsella was hired as the chief marketing officer. I
17 think he was referred to interchangeably as a CMO and an
18 EVP.
19 Q But was he elected to be an officer of the company
20 by the Board of Managers?
21 A No, he wasn't.
22 Q Now, did any of these individuals have an
23 opportunity or -- I'm sorry. Strike that, Your Honor. Are
24 you saying that each of these individuals' education, level
25 and responsibilities are more important than Erik's

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1 education, level and responsibility?
2 A No. I'm not saying that.
3 Q You seem to hold in a high regard every other
4 manager with the exception of Erik. Why is that?
5 A I don't think that's representative of what I
6 said, no.
7 Q The testimony throughout has been about the
8 varying levels of the organization, correct?
9 A Um, yes.
10 Q And every individual that you have identified are
11 at a lower level than Mr. Belfiore, correct?
12 A Well, it depends what you mean by level. They're,
13 on the org chart, they were at the same level. By title,
14 they were at a lower level except for Mr. Kinsella.
15 Q So on the organizational chart, is it your
16 testimony today that corporate officers are on the same
17 level as the individuals you identified in your testimony?
18 A I'm saying that some corporate officers are on the
19 same hierarchical level on the org chart as senior VPs and
20 EVPs, yes.
21 Q And are the senior VPs or EVPs charged with or
22 tasked with the responsibility of running the company?
23 A Not the entire company but their divisions.
24 Q And isn't it true that the responsibility or task
25 of running the company falls to the corporate officers?

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1 A Um, I think running the entire company falls to
2 the chief executive officer and then running the divisions
3 falls to the people in charge of those divisions.
4 Q So you're saying the corporate officers are in
5 charge of the divisions or the divisions report to the
6 corporate officers?
7 A The divisions report to the corporate officers.
8 Q So everybody that you identified actually report
9 to corporate officers.
10 A I didn't say that, no.
11 Q With the exception of Mr. Tim Kinsella.
12 A No. Everybody -- regardless of whether someone's
13 a VP, an EVP or an officer, they reported to the president
14 or CEO at the time, whether it was me or Dan Charron. I
15 don't think it was -- it wasn't necessarily a hierarchy
16 where everybody had to report up to a corporate officer.
17 Q And could a corporate officer report to one of the
18 vice-presidents?
19 A No. That would be unusual.
20 Q Now, it seems as if you're saying, and correct me
21 if I'm wrong, that Mr. Belfiore's skillset only applies if
22 you have two of the same positions available, is that
23 correct?
24 A I'm not sure I follow the question. I'm sorry.
25 Q Let me strike that. Let me ask that in a

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1 different way. You keep identifying skillset as being
2 different. I'm trying to understand its importance at this
3 stage.
4 A Well, it's important because the, we're asking
5 questions about why someone was paid a certain amount and
6 compensated a certain amount and their skillset and their
7 responsibilities factor into that, so the fact that they had
8 different skillsets is important.
9 Q Isn't it true that only applies if you have two of
10 the same positions available?
11 A Again, I'm not following. I'm not sure I follow
12 that question.
13 MR. PRAGER: I'm not sure I follow it either. I
14 think, from what I get from Mr. Lane's testimony is he's
15 saying that you're comparing, let's say in this case,
16 technical skills with non-technical skills and they can be
17 compensated at different rates. I believe that's the
18 essence of your, of your, I'm simplifying your testimony but
19 is that a fairly accurate representation of what you said?
20 THE WITNESS: Yes, it is. As well as other skills
21 but, yes, that's an accurate representation of what I said.
22 MR. PRAGER: Then because what I understand is Mr.
23 Lane is talking about apples and oranges. You're asking him
24 if he can compare apples. Was that the essence of your
25 question?

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1 MR. JOHNSON: Yes, Your Honor. I would imagine so
2 if we're comparing two of the same skillsets or skillsets,
3 different skillsets for the same position or could you
4 compare different skillsets for the same position.
5 MR. PRAGER: I don't understand your question.
6 Mr. Lane can respond if he understands it but I don't
7 understand it.
8 THE WITNESS: I don't understand it either.
9 MR. JOHNSON: One second, Your Honor.
10 MR. BELFIORE: Can we have an opportunity to
11 confer?
12 MR. PRAGER: I'll give you five minutes. No more
13 than five minutes.
14 (Off the record.)
15 (On the record.)
16 MR. PRAGER: We'll go back on the record.
17 MR. JOHNSON: Thank you, Your Honor.
18 BY MR. JOHNSON:
19 Q Now, Mr. Lane, you have made a point to point out
20 each individual's skillset and state that basically, they
21 were important, correct?
22 A Yes.
23 Q So you're saying, is it correct that you're saying
24 that Ben Chudasama has a different skillset and because he
25 has a different skillset, it's important?

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1 A I'm saying his skillset, along with his
2 responsibilities in Merchant Link, were both important.
3 Q Now, is that because he was a tech employee?
4 A Again, it was, it was his skillset and his
5 responsibilities and, yes, he was responsible for technical
6 aspects of the company, namely the software development
7 functions.
8 Q And the same thing could be said for Mr. Jay
9 Konar. You're saying that because Mr. Jay Konar is a, of
10 this skillset, he is considered or deemed to be important.
11 A Again, Jay Konar's skillset and his scope of
12 responsibilities.
13 Q And this level of importance translates into the
14 salaries that they have received.
15 A Yes.
16 Q Now, Ms. Laura Kirby-Meck.
17 A Yes.
18 Q She also has a skillset.
19 A Yes.
20 Q And Mr. Laura Kirby-Meck's skillset is also
21 considered, according to you, important.
22 A Yes. Her skillset and her scope of
23 responsibilities.
24 Q And is Ms. Laura Kirby-Meck a tech person?
25 A No. I wouldn't describe her that way.

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1 Q But her skillset and importance translates into
2 her salary.
3 A Her skillset and her scope of responsibilities,
4 yes.
5 Q Now, the individuals that you identify, what is
6 their value to Merchant Link relative to Mr. Belfiore?
7 A Do you want me to go one at a time?
8 Q Yes.
9 MR. PETESCH: I'll object. Compound question, but
10 okay.
11 MR. PRAGER: We'll assume it was asked about each
12 of these, so if you can go through the list.
13 THE WITNESS: Okay. I'll do it, try to do it from
14 memory, and please remind me if I forget anybody. But Ben
15 Chudasama's skillset and experience was managing the
16 software development process and the software development
17 teams, and Mr. Belfiore's responsibility at the time was
18 managing the service delivery group. They were different
19 skillsets. They were different scope of responsibility.
20 The software development process was critical to Merchant
21 Link as was the service delivery function.
22 Ms. Kirby-Meck and Mr. Kinsella, they had a
23 different core skillset. Both similar in that they were
24 from the sales and marketing background and similar scope of
25 responsibilities which were the sales and marketing

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1 functions of Merchant Link, very important to the business.
 2 It's the function that brings in the new customers and
 3 maintains our relationships with the existing customers and
 4 is responsible for bringing in all the revenue for the
 5 business. Again, different form Mr. Belfiore.
 6 Mr. Konar ran several divisions within the
 7 technology group, database administrator, system
 8 administrators, network engineers, a 24 by 7 network
 9 operation center with several managers and some directors
 10 under him, and that network and those functions had to be up
 11 all the time, 24/7, and had to handle an enormous amount of
 12 data and transaction volume flowing through there. Again,
 13 it's a different skillset and set of responsibilities than
 14 Mr. Belfiore.
 15 Ms. Zloth, I mentioned the Best Buy project and
 16 she brought, she was responsible for boarding several other
 17 large customers onto Merchant Link's platforms and she ran
 18 the product group that developed many of our key projects
 19 like Transaction Vault, Transaction Shield, our core gateway
 20 functions, and these were the security and gateway products
 21 that we provided to our customer. She managed, also,
 22 different groups and teams of people and also had several
 23 customer facing roles, a different set of skillset and
 24 responsibilities than Mr. Belfiore.
 25 BY MR. JOHNSON:

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1 Q Now, Ms. Sue Zloth, how many people reported to
 2 her?
 3 A Um, well, directly and indirectly, approximately
 4 eight to twelve. I don't remember the exact number.
 5 Q And that was far less than the number of people
 6 that reported to Mr. Belfiore, correct?
 7 A Yes. Correct.
 8 Q And what was Mr. Sue Zloth's relative value to Mr.
 9 Belfiore?
 10 A They were -- well, it's hard to compare relative
 11 value. They were, they each had value. Sue Zloth was
 12 critically important. Without Sue, we wouldn't have had
 13 anyone to develop products, I think the Best Buy project
 14 would have failed. That was worth, they were \$5 million of
 15 our \$50 million worth of revenue and so relative, they,
 16 again, you know, it's hard to compare.
 17 Q And did Sue Zloth leave the company?
 18 A Yes.
 19 Q Okay. Now, Mr. Ben Chudasama, how many people
 20 reported to him?
 21 A Well, it changed over the years. In 2011,
 22 directly and indirectly, I'm guessing around 16 but that's a
 23 guess.
 24 Q That was far less than the number of people who
 25 reported to Mr. Belfiore, correct?

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1 A Yes.
 2 Q And Ms. Laura Kirby-Meck, how would you measure
 3 her relative value to Mr. Belfiore?
 4 MR. PRAGER: I think he's testified about that. I
 5 think it's repetitious.
 6 MR. PETESCH: Along with Mr. Kinsella, yes.
 7 MR. BELFIORE: Well, I haven't heard it.
 8 MR. PRAGER: The record will bear it out. Go
 9 ahead. Ask a question but I, I think you've gone through
 10 her but ask the question again. I'll let him answer it.
 11 MR. JOHNSON: Yes, Your Honor. Thank you.
 12 BY MR. JOHNSON:
 13 Q Mr. Lane, Ms. Laura Kirby-Meck, what is her value
 14 relative to Mr. Erik Belfiore?
 15 A Again, different value. She's responsible for the
 16 revenue relationship management and marketing functions of
 17 the company. Mr. Belfiore's responsibility was the service
 18 delivery functions of the company so they're different
 19 value. It's difficult to compare.
 20 Q And would you say the same thing for Mr. Tim
 21 Kinsella and Mr. Jay Konar?
 22 A Yes.
 23 Q Now, those same individuals, what are their
 24 relative values to you?
 25 A Now or then or when?

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1 MR. PRAGER: I'm not sure I understand what the
 2 question is.
 3 MR. JOHNSON: I want to know whether he can, Mr.
 4 Lane can now talk about the relative value of each
 5 individual as to Mr. Belfiore. I want to know what is the
 6 relative value to Mr. Dan Lane, the CTO, from December 2008
 7 to March 2011.
 8 THE WITNESS: Well, again, going through --
 9 MR. PETESCH: That's probably --
 10 MR. PRAGER: I'm not --
 11 MR. PETESCH: I have a relevancy objection.
 12 MR. PRAGER: Again, I'm not sure. Are you asking
 13 whether he thought that, how he compared Mr. Konar and Mr.
 14 Chudasama, for example? Is that what your question is?
 15 MR. JOHNSON: Yes. No, well, actually, Your
 16 Honor, let me explain for the Court before we go forward.
 17 We're dealing with two Dan Lanes in this particular case,
 18 Dan Lane the corporate officer, Dan Lane the CEO. Dan Lane
 19 the corporate officer and Mr. Belfiore shared the same
 20 position, same level, for 28 months during the relevant
 21 period, the relevant period being from December of 2008 to
 22 the termination date. That's a total of 35 months. So Mr.
 23 Lane and Mr. Belfiore actually shared the same
 24 responsibilities at the same level because they were co-
 25 CEOs, as the testimony has shown, for roughly 80 percent of

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1 the time of the relevant period.
2 So I don't want the Court to get off track and
3 think that Mr. Lane is CEO and he is excluded because
4 realistically, Mr. Lane was CEO for only six months while
5 Mr. Belfiore, during the relevant period that the Court has
6 already determined. So it is very key that we need to
7 understand since we can place relative value, according to
8 Mr. Lane, that Mr. Lane also compares himself as the
9 corporate officer to these same individuals. If Mr. Lane
10 deviates from what he's saying, then we have a problem.
11 MR. PRAGER: All right. Let me understand because
12 I need to know the structure. With the exception of Mr.
13 Kinsella, the people, Mr. Chudasama --
14 THE WITNESS: Mr. Konar.
15 MR. PRAGER: -- Mr. Konar and --
16 THE WITNESS: Ms. Zloth.
17 MR. PRAGER: -- and Ms. Zloth, thank you, all
18 reported to Mr. Lane at the time he was the chief technology
19 officer. Is that correct, Mr. Lane?
20 THE WITNESS: Yes, sir.
21 MR. PRAGER: All right. And I think the testimony
22 has already been, I don't want to repeat it, that for people
23 in his, in his group, that is anybody who is subordinate to
24 him, he had flexibility as to how he would divide the money
25 available to that group to pay the people under him. Now,

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1 is that also correct?
2 THE WITNESS: Yes, sir.
3 MR. PRAGER: All right. So at that point, were
4 you comparing these people to Mr. Belfiore when you were
5 chief technology officer in terms of setting pay?
6 THE WITNESS: No, sir.
7 MR. PRAGER: All right. Does that help you at
8 all, Mr. Johnson?
9 MR. JOHNSON: Yes, Your Honor. Actually, it does
10 because and we can keep, continue going but it basically
11 shows that Mr. Lane, although Mr. Belfiore's equal,
12 undervalued Mr. Belfiore by promoting his own people in
13 terms of salary above Mr. Belfiore.
14 MR. PRAGER: No. It means that Mr. Charron or
15 people above him gave him certain flexibility which had
16 nothing to do with setting Mr. Belfiore's salary. And I
17 think the testimony also is, I can be corrected on this
18 point, that with respect to Mr. Belfiore's subordinates, Mr.
19 Belfiore had the same ability to establish the salaries for
20 that group and so that if he wanted to pay somebody,
21 assuming there was money, more than he was getting, he had
22 the power to do that. We can find that out directly from
23 Mr. Belfiore but am I correct that, as far as you know, Mr.
24 Lane, that Mr. Belfiore had the ability to set rates, that
25 is set salaries the same way you did for his own group?

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1 THE WITNESS: Yes.
2 MR. PRAGER: All right. So I think your premise
3 was incorrect, Mr. Johnson. That's why I intervened. He
4 was valuing people against Mr. Belfiore because he had
5 nothing to do with setting Mr. Belfiore's salary at the
6 time. Other people maybe in Merchant Link itself might have
7 done that but Mr. Lane did not. That's my understanding.
8 MR. JOHNSON: Yes, Your Honor. Thank you.
9 BY MR. JOHNSON:
10 Q Now, Mr. Lane, at the time that you were setting
11 the salaries of these individuals, did you believe that Mr.
12 Belfiore's salary was, I guess, undervalued, his salary was
13 lower than what it should have been?
14 A Well, I can't remember when I exactly became aware
15 of what Mr. Belfiore's salary was so I, I don't know. I
16 don't remember when I learned what Mr. Belfiore's salary
17 was.
18 Q But when you, once you did find out that Mr.
19 Belfiore's salary was lower than it should have been, you
20 were alarmed about that, correct?
21 A No. I don't think I was alarmed, no. I was -- I
22 mean, again, I don't recall exactly when I became aware of
23 it so, and I don't remember my reaction or if I had a
24 reaction.
25 MR. PRAGER: I think the evidence is it's fairly

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1 clear, Mr. Johnson, I just want to hurry this along a little
2 bit, that Mr. Belfiore complained at some point in September
3 or so of 2011 when Mr. Lane was the chief executive officer
4 and at that point, he attempted, unsuccessfully as it turned
5 out, to change that salary. Is there something else that we
6 need to establish?
7 BY MR. JOHNSON:
8 Q Mr. Lane, last question, do you feel Mr. Belfiore
9 was undervalued?
10 A Um, I feel like his salary was lower than it
11 should have been, but I don't feel that had anything to do
12 with Mr. Belfiore's race.
13 MR. JOHNSON: No further questions, Your Honor.
14 MR. PRAGER: I have a couple of questions. We
15 went through this list of people. I'll just do it in the
16 order in which it appears in the Hearing Examiner's Exhibit
17 4 which is the joint stipulation.
18 THE WITNESS: Yes, sir.
19 MR. PRAGER: And just go through Mr. Kinsella. To
20 the best of your knowledge, since we're talking, it says in
21 here 2011, do you have any idea what grade level Mr.
22 Kinsella was at at the time?
23 THE WITNESS: I don't know his grade. It was
24 likely either 15 or 16.
25 MR. PRAGER: And Ms. Kirby-Meck who you did hire,

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1 do you know what her grade level you gave her when you hired
2 her?
3 THE WITNESS: 16.
4 MR. PRAGER: And Christina Smith?
5 THE WITNESS: Um, no. I don't know what her grade
6 level was.
7 MR. PRAGER: And Mr. Chudasama? Again, we're
8 talking about 2011.
9 THE WITNESS: Yeah. I don't remember. Again, it
10 was likely a grade 15. That's a guess.
11 MR. PRAGER: And Mr. Konar?
12 THE WITNESS: Well, in 2011, it was also likely a
13 15.
14 MR. PRAGER: Okay. I'm trying to frame a
15 question. I think you've already answered it so I won't ask
16 it. Tell me, because you had a perspective on Mr.
17 Belfiore's work when you became chief executive officer that
18 you didn't have necessarily when you were not the chief
19 executive officer. The units to, that reported to him, I
20 gather you think were primarily administrative rather than
21 innovative? Is that one of the things that you're saying?
22 THE WITNESS: I'm not sure I would use those two
23 words. They were viewed as a, by some as a help desk and we
24 actually tried to fight that perception so they were
25 somewhere between a help desk and a technical desk. So when

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1 your PC breaks and you call into, you know, Dell Computers
2 or Verizon for support, the folks who were helping you fix
3 that problem were typical of the folks in Mr. Belfiore's
4 group who were providing that support so they were generally
5 viewed as a, as lower responsibility, tended to be more
6 hourly workers with less experience and a limited skillset
7 than the other employees that I'm talking about.
8 MR. PRAGER: All right. And you're speaking now
9 primarily of the service delivery group, is that what you're
10 saying?
11 THE WITNESS: Yes. Which was most of the
12 employees in Mr. Belfiore's group.
13 MR. BELFIORE: Just one part.
14 MR. PRAGER: Mr. Belfiore, please don't interrupt.
15 I can't remember and perhaps you can tell me what were the
16 other groups of people who reported to Mr. Belfiore. Just
17 go through them one-by-one.
18 THE WITNESS: Sure. When Mr. Belfiore started at
19 Merchant Link --
20 MR. PRAGER: No, no. I'm talking about 2011.
21 THE WITNESS: Okay. In 2011, um, he had the, he
22 also had a small billing operations group which was a
23 function that we were in the process of taking in-house from
24 Paymentech, and I believe that was the only other group he
25 had at the time.

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1 MR. PRAGER: Now, if I recall correctly, at some
2 point, he also, and it may not have been in 2011, something
3 about legal or was that already, had that been paved out at
4 that point?
5 THE WITNESS: He had responsibility for legal. I
6 would characterize it as a little bit of a shared
7 responsibility that I had with him, but he had been given
8 that responsibility but we didn't have any in-house
9 employees who provided. We used outside counsel so his
10 responsibility was interacting with outside counsel on legal
11 matters.
12 MR. PRAGER: Now, at some point early on in 2006,
13 2007 or 2008, I'm not quite sure which, Mr. Belfiore also
14 had responsibilities for financial affairs. Did he still
15 have that in 2000, leaving aside billing, did he still have
16 that responsibility in 2011?
17 THE WITNESS: That was in, he had it in late 2010
18 going into 2011 until Christina Smith came in and then she
19 took over those responsibilities and --
20 MR. PRAGER: And --
21 THE WITNESS: And -- and I'm sorry to interrupt.
22 Those responsibilities were primarily in Paymentech so
23 again, we had a very small staff, I think one individual,
24 perhaps two, and she was coming in to basically take on
25 those responsibilities and hire the staff and build a system

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1 for a full finance and accounting department.
2 MR. PRAGER: So if I understand correctly, you're
3 testifying that Mr. Belfiore and his assistant or
4 assistances on this were mainly liaison with Paymentech but
5 Paymentech did the, did the actual work of keeping the
6 finances, is that correct or am I again exaggerating?
7 THE WITNESS: Well, I think that we had some, we
8 did local financial analysis, forecasting and budgeting but
9 many of the accounting and treasury and other functions were
10 done out of Paymentech so it's, I would say, this is a
11 guess, maybe 20 percent of the activities were done in
12 Silver Spring and 80 percent of the activities were at
13 Paymentech.
14 MR. PRAGER: And the understanding was that when
15 Ms. Smith came, she would do 100 percent, or she and her
16 staff.
17 THE WITNESS: She was, over a period of 12 to 15
18 months, she was putting in place those processes and hiring
19 those people, yes, and at the end of that period, Merchant
20 Link would be doing 100 percent of those activities.
21 MR. PRAGER: Thank you. Now, I'm going to switch
22 gears because this has nothing to do with what you've been
23 asked by Mr. Petesch and Mr. Johnson but since you're here,
24 I still don't quite understand, you heard the testimony from
25 Mr. Gaskins about long-term incentive plan.

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1 THE WITNESS: Yes.
2 MR. PRAGER: And he had a chart.
3 THE WITNESS: Yes.
4 MR. PRAGER: And in 2014, 2015, going into
5 perpetuity, he had an amount which I think he said was
6 \$115,000 for LTIP. Did it work that way or have I missed
7 something? Did you get, does one get an LTIP each year even
8 though the payment is over a series of years or at the end
9 of the third year, you get a new LTIP? I just don't
10 understand.
11 THE WITNESS: It's the first characterization. So
12 every year, there is an LTIP grant for whoever the pool of
13 individuals is and that is done every year. So the very
14 first year you receive a grant, let's say hypothetically
15 \$10,000. In year two, you would receive no cash from that
16 grant because it hasn't vested yet. You would receive
17 another grant, let's say hypothetically, \$10,000. In year
18 three, you would receive yet another grant, again \$10,000,
19 plus the cash payout from the first grant because it is then
20 vested. So barring the up and down of the company's
21 performance, you would then receive a cash payout of \$5,000,
22 and that was written into the plan. So once the grant was
23 received and the company performance was factored in, as
24 long as you were employed with the company and you hadn't
25 violated your plan agreement, you would receive that \$5,000

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1 cash.
2 MR. PRAGER: So in year three --
3 THE WITNESS: Uh-huh.
4 MR. PRAGER: -- you would get the LTIP from year
5 one.
6 THE WITNESS: Uh-huh.
7 MR. PRAGER: And you would also get partial from
8 the LTIP that was granted in year two or am I talking about
9 -- in other words, you would --
10 THE WITNESS: Yes.
11 MR. PRAGER: -- you would get two LTIP payments in
12 certain years if you were there long enough?
13 THE WITNESS: That's correct.
14 MR. PRAGER: If one of them was calculated on
15 something that happened in year one and something was
16 calculated in year two. Is that the way it worked?
17 THE WITNESS: Yes. That's correct. So after you
18 had been in the program for a while, you would, your cash
19 payout from the grant would have been the payout from 50
20 percent of a grant that was received two years ago and the
21 payout from 50 percent of the grant that was received three
22 years ago.
23 MR. PRAGER: Thank you very much.
24 THE WITNESS: Uh-huh.
25 MR. PRAGER: I knew sooner or later I might

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1 understand it. It took a while. Mr. Petesch?
2 MR. PETESCH: Nothing from me, thank you.
3 MR. PRAGER: Mr. Johnson, anything based on
4 anything I asked?
5 MR. JOHNSON: Yes, Your Honor. One question.
6 FURTHER CROSS-EXAMINATION
7 BY MR. JOHNSON:
8 Q Mr. Lane, is it true that when Mr. Belfiore was
9 promoted to CO, COO, he took over half of your
10 responsibilities?
11 A When he was promoted to COO. No. I wouldn't
12 characterize it that way. He, he assumed responsibility for
13 a subset of my, of my responsibilities, of what had been my
14 responsibilities as COO.
15 MR. JOHNSON: No further questions, Your Honor.
16 MR. PRAGER: All right. Mr. Lane, I think that
17 does it for you on the witness stand. You're welcome to get
18 off the stand and to enjoy these proceedings from afar.
19 THE WITNESS: Thank you, Your Honor.
20 MR. PRAGER: All right. We'll go off the record
21 for a moment.
22 (Off the record.)
23 (On the record.)
24 MR. PRAGER: Mr. Kaplan, in the recess, you said
25 you had something to report?

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1 MR. KAPLAN: Yes. Earlier this week, you had
2 asked Merchant Link to provide you with the 2011 salaries
3 and job titles to the best we could. I've provided this
4 document to Mr. Johnson a few minutes ago. This is as of
5 November 2011. It shows the salaries of the employees at
6 Merchant Link.
7 MR. PRAGER: Okay. But just the salaries.
8 MR. KAPLAN: Yes. That's what you had asked for.
9 MR. PRAGER: That was a mistake.
10 MR. KAPLAN: The document, the 2010 document and
11 2008 document were just salaries so that's where this came
12 up.
13 MR. PRAGER: I understand. Good. Good. I
14 understand. Can I have another one?
15 MR. KAPLAN: Sure.
16 MR. PRAGER: And who is going to be doing the
17 examination of the witness?
18 MR. PETESCH: Of this witness?
19 MR. PRAGER: Yes.
20 MR. PETESCH: I am.
21 MR. PRAGER: Then, Mr. Kaplan, I'm going to ask
22 you to do a clerical role here for me.
23 MR. KAPLAN: Sure.
24 MR. PRAGER: Would you take this across the hall
25 and get --

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1 MR. KAPLAN: Hole punch, sure.
2 MR. JOHNSON: Your Honor, before we actually get
3 to the point of admitting this particular document, there's
4 some issue with some of the employees. This says employee
5 roster by November 2011 and we do recognize that Ms. Kirby-
6 Meck, Tim Kinsella was gone by May of that year as well as
7 Ms. Sue Zloth as the testimony showed. She was also gone by
8 November, so there's an issue with accuracy.
9 MR. PRAGER: All right. Well, let's defer that
10 because at this point, it's not in the record yet. He's
11 just bringing it up to me and saying that it's available and
12 then after the witness testifies, I assume he's not going to
13 testify about this --
14 MR. PETESCH: He's not.
15 MR. PRAGER: -- you can argue about it. All
16 right. I do, I want to go off the record for one more
17 moment.
18 (Off the record.)
19 (On the record.)
20 MR. PRAGER: Mr. Petesch, your witness is here.
21 Would you identify him, please?
22 MR. PETESCH: William Gore.
23 MR. PRAGER: Mr. Gore, would you raise your right
24 hand, please?
25 (Witness sworn.)

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1 MR. PRAGER: Would you state your full name for
2 the record?
3 THE WITNESS: William Fisher Gore.
4 MR. PRAGER: Thank you. Mr. Petesch.
5 DIRECT EXAMINATION
6 BY MR. KAPLAN:
7 Q Mr. Gore, can you tell us your occupation?
8 A I'm currently CFO for Merchant Link.
9 Q And how long have you been chief financial officer
10 for Merchant Link?
11 A This April will be my third anniversary with the
12 company, so almost three years.
13 Q And do your responsibilities as chief financial
14 officer include responsibility for maintaining certain
15 financial documents and information for the company?
16 A Yes.
17 Q Does that include payroll information?
18 A Yes.
19 Q I'm going to ask you to turn to a binder in front
20 of you. It's actually a black binder.
21 A Uh-huh.
22 Q And I have it turned to the appropriate document
23 which is Joint Exhibit No. 141.
24 A Okay.
25 Q It's actually Merchant Link Exhibit 141 but it's

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1 marked Joint Exhibit 141. And Mr. Gore, can you tell us
2 what this document is?
3 A This is a schedule of amounts reported on W-2 or
4 forms W-2 for each of these respective years for certain
5 employees of the company.
6 Q And who directed the compilation of this document?
7 A I did.
8 Q And what was the source information used to get
9 the dollar numbers in this document?
10 A For each year, we use the information that was
11 reported on the W-2s.
12 Q And are those W-2s kept at Merchant Link?
13 A For the years 2012 and 2013, we have the complete
14 copies of the W-2 that you would receive at your house. For
15 the years 2010, 2011, what we have are reports of the
16 information that's contained on the W-2 so when you look at
17 it, it's not the form itself but it's the information that's
18 reported on the form.
19 Q And do you rely on those documents in the ordinary
20 course of business?
21 A Yes, we would. And -- yes.
22 Q And have you had occasion recently to check the
23 numbers, check and verify the numbers on this table, Joint
24 Exhibit No. 141?
25 A Yes. This week I double-checked each of these

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1 numbers.
2 Q And what did you double-check them against?
3 A I compared them to our payroll records which we
4 store on our computer systems at work in the payroll folder,
5 the electronic payroll folders.
6 Q Okay. Now, there's a final column on Joint
7 Exhibit No. 141 that has some comments. One of them, well,
8 for Mr. Belfiore, term 11/11/2011. Do you see that?
9 A Yes.
10 Q Now, there's another one going down for Tim
11 Kinsella and it's got term 3/26/2007. Do you see that?
12 A Yes.
13 Q Is the 2007 year correct?
14 A No, it is not.
15 Q Okay.
16 MR. PRAGER: Let's ask. What would be the correct
17 year?
18 THE WITNESS: 2011 to the best of my knowledge.
19 BY MR. PETESCH:
20 Q And I probably asked this once before but is this
21 an accurate compilation of the information reflected on the
22 W-2 documentation for the individuals indicated on this
23 list?
24 A Yes.
25 MR. PETESCH: I move for admission of Joint

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1 Exhibit No. 141.
2 MR. JOHNSON: Your Honor --
3 MR. PRAGER: Mr. Johnson?
4 MR. JOHNSON: -- before we do that, may I cross?
5 MR. PRAGER: Before we do it?
6 MR. JOHNSON: Yes. I just have a couple
7 questions.
8 MR. PRAGER: All right. Well, let's, we'll hold
9 your motion in abeyance and then after Mr. Johnson has done
10 his cross-examination, you can certainly --
11 MR. PETESCH: Respond or whatever. Okay. Thank
12 you. Voir dire. He's going to voir dire the witness.
13 MR. PRAGER: No. We'll, I'd rather -- is this all
14 he's going to testify about?
15 MR. PETESCH: Actually, yes.
16 MR. PRAGER: Okay. Do you have any further
17 questions about this document that you want to ask him at
18 this point?
19 MR. PETESCH: I do not.
20 MR. PRAGER: Okay. So, Mr. Johnson, go ahead and
21 ask.
22 CROSS-EXAMINATION
23 BY MR. JOHNSON:
24 Q Good afternoon, Mr. Gore. Were you requested to
25 prepare this document by Counsel?

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1 A By the people in this room?
2 Q By --
3 A By Littler Mendelson, yes, I was.
4 Q And specifically, did they identify the people
5 that you were to include in this document?
6 A I believe I was asked to provide the list of the
7 top ten or most highly compensated people for the company.
8 Q Now, this particular chart, it does not accurately
9 reflect the individuals' salaries, does it?
10 A This chart reflects the amounts that were paid to
11 the individuals in each of the respective years.
12 Q For instance, Mr. Gore, when you were hired, you
13 were hired at a salary of \$215,000 a year, correct?
14 A I, I guess. I don't, I don't recall.
15 Q What is your current salary, Mr. Gore?
16 A Approximately \$219,000.
17 Q So, Mr. Gore, looking at this particular chart,
18 let's look at year 2012, the amount that you received is
19 \$151,933,37, correct?
20 A That's correct.
21 Q And that's your W-2 earnings because you were
22 hired in March, correct?
23 A Well, I started in April, and this reflects my
24 earnings for the year, yes.
25 Q Yes. But your actual salary would have, annually

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1 would have been \$215,000, correct?
2 A When I was hired.
3 Q Yes. So my point when I said to you this chart
4 doesn't accurately reflect the annual salaries of the
5 individuals on this chart, correct?
6 A Well, it never would.
7 MR. JOHNSON: No further questions, Your Honor.
8 MR. PRAGER: All right. Let me ask some
9 questions. I think what Mr. Johnson was asking is two
10 things. First, to the extent that some of these figures
11 don't represent a full year, they're not really comparable.
12 That is, you can't compare Mr. Belfiore who worked for 11
13 months of the year with the next name on the list, Ms.
14 Bodhane, who worked a full 11 months, full year in 2011.
15 Those are comparable because one's a partial year and the
16 other one's a full year.
17 THE WITNESS: If that's the comparison that you're
18 attempting to make, yes. You're correct.
19 MR. PRAGER: Okay. Well, it says so in so many
20 words in the filing that he was terminated on 11/11/2011 and
21 presumably, was not paid thereafter.
22 THE WITNESS: That's correct.
23 MR. PRAGER: And the same thing would be true of
24 all of these people including Mr. Kinsella, who was
25 terminated sometime in 2011, Mr. Konar was terminated --

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1 well, actually, Mr. Konar --
2 THE WITNESS: 2011, right.
3 MR. PRAGER: -- was terminated after Mr. Belfiore.
4 And then with respect to you, you were hired but didn't,
5 weren't paid for the full year. You've already testified to
6 that.
7 THE WITNESS: Yes.
8 MR. PRAGER: Right.
9 THE WITNESS: Uh-huh.
10 MR. PRAGER: So that's question number one.
11 Question number two has to do with some of these people,
12 especially Mr. Kreig, Mr. Gore, that is yourself, and it may
13 also be, have to do with one or more other people. But
14 people who were hired let's say in 2011 would not be
15 entitled to the LTIP award, is that correct? That is, it
16 would not be paid out in that year.
17 THE WITNESS: That's correct.
18 MR. PRAGER: So let's assume for the moment, you
19 may not know this, that Mr. Belfiore had an LTIP award but
20 one or more of these people may or may not have had an LTIP
21 award. Again, you wouldn't be able to compare those people,
22 the ones who didn't have LTIP awards with people who did
23 have LTIP awards, payouts.
24 THE WITNESS: Not from the information presented
25 here.

1 MR. PRAGER: Correct. And finally, Mr. Belfiore,
 2 you may not know this, one of the issues in this case is his
 3 level of pay. His level of pay was increased almost by
 4 accident let's say in 2011 but was then reduced in 2011 as
 5 having been inadvertently or not in accordance with the
 6 procedures that should have been implemented and therefore,
 7 it was reduced for a time until he was fired. That also
 8 wouldn't be reflected in this, that this was, that there was
 9 a jump but it was a jump that shouldn't have in fact taken
 10 place would not have been reflected.
 11 THE WITNESS: It would reflect his salary at each
 12 individual pay date so for each pay period, whatever he was
 13 paid would be reflected here, yes.
 14 MR. PRAGER: Right. But all right. I think I
 15 know what I'm saying. I think Counsel might know what I'm
 16 saying. It's fine.
 17 THE WITNESS: Right.
 18 MR. PRAGER: I don't think I need to ask you
 19 anymore questions about that. Mr. Petesch.
 20 REDIRECT EXAMINATION
 21 BY MR. PETESCH:
 22 Q Mr. Gore, does this purport to be a comparison of
 23 pay rates or sums received?
 24 A This is sums received.
 25 MR. PETESCH: Move for admission of Joint Exhibit

1 or Merchant Link Exhibit No. 141.
 2 MR. JOHNSON: Your Honor, I want to ask Mr. Gore
 3 another question before --
 4 MR. PRAGER: Based on what I asked?
 5 MR. JOHNSON: Yes.
 6 MR. PRAGER: All right.
 7 RECROSS-EXAMINATION
 8 BY MR. JOHNSON:
 9 Q Mr. Gore, in your, in the box that you're in and
 10 you stated to the Court that you didn't, I guess you didn't
 11 receive any LTIP that particular year, correct?
 12 A I received an LTIP award.
 13 Q Award.
 14 A I did not receive an LTIP payment.
 15 Q Okay. And what was your LTIP award?
 16 THE WITNESS: Am I required to provide that
 17 information?
 18 MR. PETESCH: I would say I would object as to
 19 scope, but I think we have a stipulation on this too.
 20 MR. JOHNSON: Stipulation? Okay.
 21 MR. PETESCH: I think so.
 22 MR. PRAGER: Where is that?
 23 MR. PETESCH: Let's double-check.
 24 MR. PRAGER: I think it's in there but --
 25 MR. PETESCH: We may not have a stipulation, Your

1 Honor.
 2 MR. PRAGER: I don't see it.
 3 MR. PETESCH: I don't see it either. I apologize.
 4 MR. PRAGER: I see Mr. Gore's name in there.
 5 MR. PETESCH: I'll object on scope and I would,
 6 since we're bringing in a new person who has come in
 7 subsequently, if you do require him to answer the question,
 8 can we put that page of the transcript under a form of
 9 protective order just to protect Mr. Gore's privacy?
 10 MR. JOHNSON: Would that be different for
 11 everybody else information?
 12 MR. PRAGER: I'm not sure what the distinctions
 13 would be. If I had asked Mr. Lane to tell me what the
 14 award, it wouldn't have been privileged information or
 15 protected information. I'm going to ask Mr. Gore to tell us
 16 what the LTIP award was in 2011 when he was hired.
 17 THE WITNESS: I believe it was \$75,000.
 18 MR. PRAGER: All right. Thank you. Any other
 19 questions, Mr. Johnson?
 20 MR. JOHNSON: Yes.
 21 BY MR. JOHNSON:
 22 Q Mr. Gore, this is not an accurate representation
 23 of the top ten employees, correct?
 24 MR. PRAGER: I'm not sure what your question is.
 25 MR. JOHNSON: I thought there was a statement --

1 MR. PRAGER: A representation, these are not the
 2 top ten employees or --
 3 MR. JOHNSON: Yes.
 4 BY MR. JOHNSON:
 5 Q These are not the top ten employees, correct?
 6 A I don't know exactly whether it is or not. I know
 7 that it reflects the most highly compensated employees.
 8 Q But Mr. Belfiore doesn't work there so he's
 9 definitely not an employee, correct?
 10 A What's that?
 11 Q Mr. Belfiore doesn't work there so he's definitely
 12 not an employee.
 13 MR. PRAGER: Again, Mr. Johnson, I'm not quite
 14 sure. He worked there in 2011. This reflects 2010 and
 15 2011.
 16 MR. JOHNSON: Okay. Now, Your Honor, no further
 17 questions but we would oppose the admission of Respondent's
 18 141. It seems to be a document that was prepared in
 19 anticipation of litigation. It lacks the, just lacks any
 20 type of credibility as to what it serves and the purpose it
 21 serves. It doesn't seem to demonstrate or serve any purpose
 22 for this litigation.
 23 MR. PRAGER: Well, I certainly agree with you that
 24 it's pretty useless as a comparison. I will admit it for
 25 purposes of completeness but I personally will give it very

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1 little weight and you can argue about it in your briefs.
2 MR. JOHNSON: Thank you, Your Honor.
3 MR. PRAGER: It doesn't seem to me to be helpful
4 at all but I won't, I won't exclude it. So given that, I
5 will, Merchant Link's Exhibit 141 will be admitted.
6 (Respondent's Exhibit 141 was
7 received into evidence.)
8 MR. PETESCH: As I said before, I have no further
9 questions for this witness.
10 MR. PRAGER: I may have a question. I'm not sure
11 it's terribly useful but I'll ask Mr. Gore. You weren't
12 here when there was testimony a little while ago by Mr. Lane
13 but you were the successor to Ms. Smith, is that correct?
14 THE WITNESS: Correct.
15 MR. PRAGER: And you have the identical, as far as
16 you know, the identical responsibilities that Ms. Smith had?
17 THE WITNESS: Yes.
18 MR. PRAGER: And we are now well beyond the point
19 of 2011 but, so I'll ask you just about one year. Do you
20 have any idea how many people you supervised in the year --
21 well, let me make a preliminary question. We also heard
22 testimony that a lot of the, all of the financial aspects
23 that were still handled in 2011 by Paymentech had been
24 gravitating toward Merchant Link. By the time you arrived,
25 had they all come over from Paymentech?

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1 THE WITNESS: I arrived right at about the time
2 the transition was really occurring. The main areas of
3 transition for the financials, closing the books, having our
4 own financial system and budgeting system, those went live
5 on April 1st so right about, April 1st of 2012, right about
6 the time I joined. When I joined the company, one of the
7 first things I did was take a trip to Delaware to go visit
8 with the staff there who had been performing the work and
9 review their records and understand the processes that they
10 used so that when I came back and started working with my
11 team, I could assist them in assuming a full responsibility
12 for all the financial records of the company.
13 MR. PRAGER: Okay. We're not going to hold you to
14 exact count but can you estimate at the end of the 2012,
15 which is beyond the time limit that this case is about, but
16 can you estimate for me how many people were under your
17 supervision at that point?
18 THE WITNESS: I would say about 12.
19 MR. PRAGER: Okay. And has it grown since then?
20 THE WITNESS: It has.
21 MR. PRAGER: Mr. Petesch, do you have any
22 questions based on what I just asked?
23 THE WITNESS: No.
24 MR. PRAGER: Mr. Johnson, do you have any
25 questions based on what I asked?

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1 MR. JOHNSON: No, Your Honor.
2 MR. PRAGER: Okay. Thank you very much, Mr. Gore.
3 THE WITNESS: All right. Thank you.
4 MR. PRAGER: You may be excused. Well, this is an
5 unhappy occasion. It may be happy for Counsel and Mr. Lane,
6 Mr. Belfiore but not for me. We've got almost a full hour
7 and there is no witness. You said you had somebody who was,
8 would, Mr. Petesch, be very brief, even briefer than Mr.
9 Gore.
10 MR. PETESCH: We hadn't anticipated presenting
11 this person today and we're still not, haven't resolved
12 whether we're going to present this witness at all so.
13 MR. PRAGER: Well, is this witness available in a
14 half an hour?
15 MR. PETESCH: I doubt it.
16 MR. JOHNSON: Which witness are we speaking of?
17 MR. PRAGER: Well, we'll go off the record.
18 (Off the record.)
19 (On the record.)
20 MR. PRAGER: Mr. Petesch?
21 MR. PETESCH: Yes.
22 MR. PRAGER: Do you have something to say about
23 your next witness?
24 MR. PETESCH: Yes. Well, with apologies to the
25 Court, the witness is, first of all, the witness is more

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1 than an hour away from here. Secondly, and perhaps you can
2 blame us but we did not anticipate how, actually, how brief
3 the expert witness on behalf of Mr. Belfiore would be and
4 thankfully, we had Mr. Lane here to cover the limited area
5 and Mr. Gore on tap but we certainly had no anticipation
6 coming in here this morning that we'd have anywhere close to
7 an opportunity to present a third witness and for that, for
8 that lack of --
9 MR. KAPLAN: And Mr. McCarthy too.
10 MR. PETESCH: And Mr. McCarthy, yes. For that
11 lack of clairvoyance, I apologize.
12 MR. PRAGER: All right. Well, it's unfortunate
13 because I want to try as much as possible -- maybe we'll
14 just go until 7:00 on Tuesday. We're not going to go until
15 next Friday. We're going to finish this case on Tuesday.
16 MR. PETESCH: I fully anticipate that we would be
17 able to and we may be able to close our case Tuesday
18 morning.
19 MR. PRAGER: I'm hoping. I certainly hope so.
20 MR. PETESCH: We may close faster than that.
21 MR. PRAGER: All right.
22 MR. PETESCH: We need to discuss.
23 MR. PRAGER: Well, you have one witness, the
24 mystery witness, plus Mr. Cook, is that correct?
25 MR. PETESCH: Yes. We're going to, we're going

1 to, well, we're going to discuss whether or not we call Mr.
2 Cook, whether we need him or not.

3 MR. PRAGER: Okay. And if you did, how long do
4 you think that testimony will be?

5 MR. PETESCH: Guessing an hour.

6 MR. PRAGER: All right.

7 MR. PETESCH: It could be an hour and 15 minutes.

8 MR. PRAGER: We'll go off the record for a moment.
9 (Off the record.)

10 (On the record.)

11 MR. PRAGER: That concludes the proceedings for
12 today. This hearing will be recessed until Tuesday,
13 February 17th at 9:30. Thank you very much.

14 (Whereupon, at 4:22 p.m., the hearing was
15 concluded.)

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

7
8 Erik Belfiore, Complainant
9 v.
10 Merchant Link, LLC, Respondent
11 Office of Human Rights Referral No.: E-05548
12 OZAH Case No.: 14-02

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By:

Josephine Hayes, Transcriber

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