

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

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:
:
ERIK C. BELFIORE, : OZAH No. 14-02
: HRR No. E-05548
Complainant, :
:
v. :
:
MERCHANT LINK, LLC :
:
Respondent. :
:
-----x

A hearing in the above-entitled matter was held on February 20, 2015, commencing at 9:08 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:

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Laura Kirby-Meck				
By Mr. Kaplan:	4		--	--
By Mr. Johnson:		7		
Erik Belfiore				
By Mr. Johnson:	15		49	--
By Mr. Kaplan:		48		
Dan Lane:				
By Mr. Johnson:	61	--	--	--

E X H I B I T S

Exhibit No.		Marked/Received
C-93	Tech Table for 2010	31
R-144A and B	Organizational Charts	64
R-145	Employee Roster	66 70

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. When we
4 last adjourned, the idea was that we would resume the
5 hearing on February 17th. Because the County was closed
6 that day, we postponed it and are now hearing it on February
7 20th. I understand that, Mr. Kaplan you have your witness
8 here, and are ready to proceed?

9 MR. KAPLAN: Correct.

10 MR. PRAGER: Please call the witness.

11 MR. KAPLAN: Laura Kirby-Meck.

12 (Witness sworn.)

13 MR. PRAGER: Please state your full name.

14 THE WITNESS: Laura Kirby-Meck.

15 MR. PRAGER: All right, Mr. Kaplan.

16 D I R E C T E X A M I N A T I O N

17 B Y M R. K A P L A N :

18 Q Good morning.

19 A Good morning.

20 Q Who are you currently employed by?

21 A Merchant Link.

22 Q And, how long have you been employed with Merchant
23 Link?

24 A Three and a half years.

25 Q When were you hired?

1 A July 19th, 2011.

2 Q What's your current position?

3 A Executive Vice President of Sales and Marketing.

4 Q Is that the position you were hired into?

5 A Yes.

6 Q And, do you know Erik Belfiore?

7 A I do.

8 Q And how do you know him?

9 A Erik worked at Merchant Link at the same time that
10 I did.

11 Q Has Mr. Belfiore ever bullied you?

12 A Yes.

13 Q Can you describe what happened?

14 A On October 13th of 2011, Erik and I hadn't had a
15 lot of interaction prior to that. I was working remote that
16 day and Erik had placed a call. We were going over some
17 reports. During the conversation, it came up that I hadn't
18 yet learned all of our systems and was unable to produce a
19 report. He started yelling at me, and it was uncomfortable.
20 It was to the point of escalation where I just wasn't going
21 to take it anymore. So, I hung the phone up.

22 The phone rang again. Erik was back on the phone,
23 and he said, I apologize, I think we got disconnected. And
24 I said, no, I hung up. And if the tone continues to
25 escalate, I'm going to hang up again. We continued our

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1 conversation, and again, it began to escalate. It was going
2 through some of the -- again, the report issues. I hung the
3 phone up and then I immediately called Dan Lane and let Dan
4 know that -- about the conversation, that I did indeed hang
5 up, and to be prepared should Erik reach out to him or come
6 down to his office.
7 Q Did you hang up on him once or twice?
8 A Twice.
9 Q So, the second time the conversation wasn't ended
10 either?
11 A No.
12 Q And then what'd you do next?
13 A I called Dan Lane to let him know that Erik may be
14 coming down to let him know that I had disconnected -- that
15 I had hung up on him.
16 Q Did Mr. Belfiore use any profanity in those
17 conversations?
18 A He did.
19 Q And, have you ever attended a board meeting?
20 A I have.
21 Q Ever make a presentation at a board meeting?
22 A I attend every quarterly board meeting, and I do
23 make the sales and marketing presentation during those.
24 MR. KAPLAN: I have no further questions.
25 MR. PRAGER: Mr. Johnson?

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1 MR. JOHNSON: Yes.
2 CROSS-EXAMINATION
3 Q Good morning, Ms. Kirby-Meck. Can you state for
4 the court your total compensation with Merchant Link?
5 MR. PRAGER: Excuse me, what year are we talking
6 about, now?
7 MR. JOHNSON: I'm sorry. Let me rephrase that,
8 Your Honor.
9 BY MR. JOHNSON:
10 Q Can you state for the court your total
11 compensation with Merchant Link the year you were hired.
12 A My base salary was \$165,000. My LTIP for first
13 year award was at a prorated amount, I had only been there
14 six months. It was in the \$25,000 to \$30,000 range, and my
15 bonus, again, was prorated as well.
16 Q And, what was your AIP percentage?
17 A Twenty to 25 percent. I apologize, I don't recall
18 the exact number.
19 MR. KAPLAN: Just for point of reference, there's
20 a stipulation on that, Number 21 and 22, and 23, for the
21 record.
22 MR. PRAGER: All right. You're referring to
23 hearing examiner Exhibit 4. And what were the paragraphs?
24 MR. KAPLAN: Number 21 through 23.
25 MR. PRAGER: That should answer your question, Mr.

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1 Johnson.
2 MR. JOHNSON: Yes, it does. Thank you, Your
3 Honor.
4 BY MR. JOHNSON:
5 Q Now, Ms. Kirby-Meck, we heard you testify that you
6 were bullied by Mr. Belfiore, correct?
7 A Yes.
8 Q Now, was this the only incident that you referred
9 to as being bullied? Was that the only incident --
10 A Yes, it was. I'm sorry.
11 Q And, how often did you interact with Mr. Belfiore
12 until his termination in November of 2011?
13 A Maybe once or twice.
14 Q Did you report being bullied by Mr. Belfiore?
15 A I did. I called Dan Lane immediately after the
16 call.
17 Q Did you contact Human Resources to report?
18 A No, I didn't.
19 Q What was Dan Lane's response?
20 A Dan told me it would be fine. That he would talk
21 to Erik, and that I should feel okay in hanging up.
22 Q And to your knowledge, did he actually talk to
23 Erik?
24 A To my knowledge, he did.
25 Q And, are you aware of any other bullying instance

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1 involving Mr. Belfiore?
2 A Only hearsay and rumor through the office.
3 Q At any other time during the time that you spent
4 dealing with Belfiore, did he make you feel uncomfortable?
5 A Only on that call.
6 Q On the date of the call, if you recall, was Erik,
7 out sick on that particular date?
8 A I don't know, sir.
9 Q But you were basically making a call to him at
10 home?
11 A No. Erik called into my phone.
12 Q He called into your home?
13 A Into my phone.
14 Q Oh, into your phone.
15 A I was working remote. Yes, sir.
16 Q I'm sorry.
17 A Uh-huh.
18 MR. JOHNSON: No further questions, Your Honor.
19 MR. PRAGER: All right. I have one question. The
20 record will reveal again, but just help me out. What day --
21 what was the date of these telephone conversations, the two
22 that you had?
23 THE WITNESS: October 13th, 2011.
24 MR. PRAGER: And, you were not a subordinate of
25 Mr. Belfiore, is that correct?

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1 THE WITNESS: That's correct.
2 MR. PRAGER: You were roughly on a par in terms of
3 the reporting directly to Mr. Lane?
4 THE WITNESS: That's correct.
5 MR. PRAGER: All right. And, you said that he
6 used a number of expletives. Were they directed at you in
7 particular? Did he call you names?
8 THE WITNESS: I don't recall. Honestly, I -- as
9 soon as the conversation started to escalate, I shut down.
10 MR. PRAGER: And escalation meant raising of
11 voices or what?
12 THE WITNESS: Raising of voice and tone, and
13 language. Yes.
14 MR. PRAGER: All right. And what was the
15 conversation about?
16 THE WITNESS: I believe from looking back through
17 my notebook that, we were talking about a Heartland
18 campaign, Heartland reports. We had a client that -- a
19 processor client, that was potentially leaving some of our
20 services.
21 MR. PRAGER: Okay. All right. I have no further
22 questions. Mr. Kaplan, any further questions?
23 MR. KAPLAN: No. No further questions.
24 MR. PRAGER: All right. Ms. Kirby-Meck, you're
25 excused. Thank you very much.

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1 MR. JOHNSON: Your Honor?
2 MR. PRAGER: I'm sorry, Mr. Johnson?
3 MR. JOHNSON: Yeah, let me ask her a follow-up
4 question to the line of questioning that you asked her.
5 BY MR. JOHNSON:
6 Q Ms. Kirby-Meck, you're not an officer of the
7 company, correct?
8 A No, I'm not.
9 Q And, the Heartland matter that you spoke of, that
10 involved litigation against the company, correct?
11 A No, sir, that wasn't the conversation.
12 Q That wasn't the conversation?
13 A No, sir.
14 Q Was the Heartland matter litigation against the
15 company?
16 A Potentially, prior to my joining Merchant Link.
17 That had nothing to do with the conversation.
18 Q You were just speaking to Mr. Belfiore about the
19 Heartland account and that's it?
20 A Absolutely. We have a number of processors, and
21 we from time to time will look to put campaigns around them.
22 Q So you wouldn't necessarily be aware of the
23 potential litigation with Heartland then, correct?
24 A No.
25 Q But Mr. Belfiore, as a corporate officer, would,

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1 correct?
2 MR. KAPLAN: Objection.
3 MR. PRAGER: Wait just a moment. What's your
4 objection?
5 MR. KAPLAN: How would she know what is his
6 responsibility. What's in his mind.
7 MR. PRAGER: Ms. Kirby-Meck, please wait. I'm
8 sorry.
9 MR. KAPLAN: The objection is, how would she know
10 what's Mr. Belfiore would know or didn't know.
11 MR. PRAGER: Your objection is overruled. He
12 asked would she know, and she can answer that question.
13 Restate your question.
14 MR. JOHNSON: Yes, Your Honor.
15 BY MR. JOHNSON:
16 Q Would you know whether Mr. Belfiore, as a
17 corporate officer, would be involved in the Heartland
18 litigation or potential litigation?
19 A I honestly don't know.
20 Q And, the events that you spoke of regarding Mr.
21 Belfiore, is there any written documentation as to any
22 complaint that you might have made or your contact with or
23 communication with Dan Lane?
24 A No, sir. It was a verbal conversation.
25 MR. JOHNSON: No further questions, Your Honor.

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1 MR. PRAGER: Ms. Kirby-Meck, thank you very much.
2 You're excused. Mr. Kaplan or Mr. Petesch, what next?
3 MR. KAPLAN: One moment. We have no more
4 witnesses. Pursuant to our conversations last week, we do
5 have some -- the org charts that you had asked for, and the
6 2011 salaries as of November. We can do that now, or we can
7 do that after Mr. Belfiore puts on his rebuttal. Whatever
8 is best for the -- and the deposition designations as well.
9 MR. PRAGER: We're talking about the Nussbaum?
10 MR. KAPLAN: And Charron.
11 MR. PRAGER: Well, Charron I'm going to read, so
12 we don't have to worry about that. All right. I'm a little
13 bit surprised, you've already indicated, so I'm going to
14 take you at your word, but I'm a little bit surprised that
15 you're not going to be presenting your expert witness. So,
16 I will -- if there is further back pay that is due and
17 owing, it will be based on either the expert's witness or my
18 own figuring of what should be paid. Obviously, I will not,
19 since your expert would have been available, I will ignore
20 his report for these purposes.
21 MR. KAPLAN: Understood.
22 MR. PRAGER: All right. If you rest, Mr. Johnson,
23 I think you said you wanted to call Mr. Belfiore for
24 rebuttal? Is that still correct?
25 MR. JOHNSON: Yes, Your Honor.

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1 MR. PRAGER: All right.
2 MR. JOHNSON: Mr. Belfiore and, if permissible,
3 Your Honor, Mr. Dan Lane, to follow-up on issue regarding
4 tech pay.
5 MR. PRAGER: All right. So we'll see. Mr.
6 Belfiore, please take the stand. Mr. Belfiore, you
7 understand that you are still under oath?
8 THE WITNESS: Yes, sir.
9 MR. PRAGER: All right. Mr. Johnson.
10 MR. JOHNSON: Thank you, Your Honor.
11 MR. PRAGER: Now, Mr. Johnson, let me just caution
12 you. This is rebuttal. This is not a repeat of what he's
13 already testified to. So, I will cut you off if I think
14 that you're just repeating what has already been -- what
15 he's already testified to, or bringing up subjects that were
16 not in the original testimony.
17 MR. JOHNSON: Okay.
18 MR. PRAGER: And I expect that Mr. Kaplan or Mr.
19 Petesch, whoever it is, will be objecting along those same
20 lines.
21 MR. JOHNSON: Sure, Your Honor.
22 MR. PRAGER: We'll go off the record for a moment.
23 (Whereupon, a brief recess was taken.)
24 MR. PRAGER: We're back on the record.
25 MR. JOHNSON: Thank you, Your Honor.

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1 MR. PRAGER: MR. Johnson?
2 MR. JOHNSON: Thank you, Your Honor.
3 DIRECT EXAMINATION
4 BY MR. JOHNSON:
5 Q Mr. Belfiore, could you please state for the court
6 your total compensation for 12/31 -- as of 12/31/2008?
7 MR. KAPLAN: Objection. We've gone over
8 compensation at length.
9 MR. PRAGER: Yeah. I'm not sure what's the
10 purpose of this?
11 MR. JOHNSON: Your Honor, actually, there was
12 conflicting testimony presented in terms of what the
13 Respondent provided and what we stated.
14 MR. PRAGER: Well, if it's already in the record,
15 there's a conflict. How does this resolve the conflict if
16 he repeats what he said the first time?
17 MR. JOHNSON: Actually, Your Honor, in support of
18 the rebuttal testimony, we have Mr. Belfiore's actual W-2,
19 just to support what he stated was his compensation during a
20 certain -- well, actually, this was 2011.
21 MR. PRAGER: And is this in the record?
22 MR. JOHNSON: I'm sorry?
23 MR. PRAGER: Is this already in the -- I mean, is
24 this something you marked for the exhibits?
25 MR. JOHNSON: It wasn't in the original binder,

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1 no. Not the original binder. This is simply for, I guess,
2 rebuttal purposes.
3 MR. PRAGER: All right. Have you shown it to
4 opposing counsel?
5 MR. JOHNSON: Yes. Actually, I gave opposing
6 counsel a copy of it actually --
7 MR. PRAGER: May I see it?
8 MR. JOHNSON: There's actually a copy up there on
9 your desk for you as well.
10 MR. KAPLAN: What number are you looking at?
11 MR. JOHNSON: That would be Number 98, I guess.
12 MR. PRAGER: I don't have such a document.
13 MR. JOHNSON: Excuse me, Your Honor, may I
14 approach?
15 MR. PRAGER: Mr. Kaplan?
16 MR. KAPLAN: Yes?
17 MR. PRAGER: Do you have any objection to the
18 introduction of Complainant's Exhibit 98?
19 MR. KAPLAN: I do.
20 MR. PRAGER: And what is that?
21 MR. KAPLAN: This has been stipulated to his 2011
22 compensation. So I don't know what the relevance to this
23 is.
24 MR. PRAGER: Let me take a look. What are you
25 pointing to?

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1 MR. KAPLAN: I'm pointing to his stipulation, 17.
2 Number 17.
3 MR. PRAGER: Well, that's 2011. This is about
4 2008.
5 MR. KAPLAN: Well, this is dated 2011, so I don't
6 -- his representation what this is is different as well.
7 MR. PRAGER: The question, Mr. Johnson, was about
8 2008. What relevance -- I haven't looked at this?
9 MR. JOHNSON: And actually, Your Honor, we were
10 asking about 2008. This is a 2011 W-2.
11 MR. PRAGER: All right. Well, that doesn't have
12 any relevance because, as Mr. Kaplan pointed out, that you
13 stipulated to. All right, Mr. Johnson, continue.
14 MR. JOHNSON: Yes, Your Honor. Thank you.
15 MR. PRAGER: To the extent that you've proffered
16 this Exhibit 98, it's -- there's no value to it.
17 MR. JOHNSON: Yes, Your Honor.
18 BY MR. JOHNSON:
19 Q Mr. Belfiore, how was your duties compared to the
20 other corporate officers of the company?
21 A As of when?
22 Q Between 2008 and March of 2011?
23 MR. PRAGER: Well, let me understand your
24 question. Who do you consider the other officers? I've
25 heard of two officers, and I'm not sure I'm correct in

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1 those. Would you ask about specific people.
2 MR. JOHNSON: Yes. It's already a matter of the
3 record that the only other officer during that time period
4 was Mr. Dan Lane. I didn't want to go back down through
5 there asking that question because then the court already
6 knows that Dan Lane was the only other corporate officer.
7 MR. PRAGER: Right.
8 MR. JOHNSON: So I asked Mr. Belfiore what was his
9 responsibilities compared to Dan Lane from 2008 through
10 April of 2011.
11 THE WITNESS: In May of 2008 I was promoted to
12 Chief Operating Officer by Chris Justice. At the time, Dan
13 Lane was the Chief Operating Officer, and he had
14 responsibility for all of the technical services, merchant
15 services, product management, technology, software
16 development, and for some anomalic reason, he had learning
17 and development. After I was promoted, I was given the
18 merchant services and technical services organizations from
19 Dan Lane, and they were transferred to me. So, in
20 comparison, Dan Lane had significantly less responsibility
21 as CTO, than he had as COO, and I had significantly more
22 responsibility as COO as compared to the manager of
23 financial analysis, and the CFO position that I was given to
24 man the transaction.
25

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1 BY MR. JOHNSON:
2 Q And during that same time period, can you describe
3 the functions of the CEO that you shared with Mr. Dan Lane?
4 MR. KAPLAN: Objection. I don't know what time
5 period he's referring to.
6 MR. JOHNSON: I said the same time period.
7 MR. KAPLAN: I don't know what the same -- three
8 years is a long time. If you can narrow it down --
9 MR. PRAGER: Yes. Why don't you specify. Let's
10 talk about 2008, then 2009, then 2010, and the first four
11 months or three months of 2011.
12 MR. JOHNSON: Yes, Your Honor.
13 BY MR. JOHNSON:
14 Q Mr. Belfiore, during 2008 can you describe the
15 shared CEO functions that you shared with Mr. Dan Lane?
16 A Actually, the shared CEO functions did not come
17 into play until Chris Justice resigned in 2009.
18 Q Okay.
19 A And in 2009, when Mr. Justice left, he parsed his
20 responsibilities from the HR, overall HR control,
21 administration, went to Dan Lane in addition to his
22 responsibilities as a CTO. I was given the overall
23 oversight over the finance function, and the direct
24 supervision of Michael Krolick, and Tim Kinsella was given
25 supervision of Serena Moore, who was manning the marketing

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1 functions of the organization at that time.
2 MR. PRAGER: And who's Mr. Krolick?
3 THE WITNESS: Mr. Krolick is, I believe, now
4 Director of Accounting. But he was basically my support for
5 accounting and finance.
6 BY MR. JOHNSON:
7 Q Mr. Belfiore, did you have any human resources
8 responsibilities?
9 A Not directly. Dan did kind of form a committee
10 that consisted of basically me and him, in assisting him and
11 setting certain policies, employment policies, for the
12 company.
13 Q Now, during the testimony, it was stated that you
14 had the ability to give your employees or your organization,
15 members of your organization a raise. Is that true?
16 A Not entirely. Dan Lane, as head of HR, had the
17 ability to approve all raises, especially atypical raises as
18 his responsibilities in regards to HR. I could recommend
19 changes for my people, but I could not unilaterally approve
20 those changes. Dan Lane had to approve those changes up
21 until the corporate level. Then he would have to go to the
22 Board for their approval if it involved a corporate
23 officer's salary or compensation. So Dan Lane had,
24 basically, province over any changes that I wanted to make
25 in regards to my organization. And, in fact, I had

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1 conversations about changes in compensation that I wanted to
2 make with Dan Lane, that he ultimately vetoed.
3 MR. PRAGER: Excuse me, again, I need to know what
4 time are we talking when Mr. Lane was -- just a moment, let
5 me rephrase it. Let me finish. Are we talking about the
6 time when he was the chief executive officer, or was this
7 earlier than that?
8 THE WITNESS: This spans from the time that I was
9 made a corporate officer up to the time that Dan Lane was
10 made chief executive officer.
11 MR. PRAGER: Thank you.
12 THE WITNESS: So from 2008 through the early part
13 of 2011.
14 MR. PRAGER: Mr. Johnson?
15 MR. JOHNSON: Thank you, Your Honor.
16 BY MR. JOHNSON:
17 Q Now, Mr. Belfiore, are there lower level employees
18 that you would consider to be similarly situated to you?
19 MR. KAPLAN: Objection.
20 MR. PRAGER: I'm not sure I -- I don't know what
21 the objection is, but I also don't understand the question.
22 So, perhaps you can rephrase it and then that would obviate
23 the objection.
24 BY MR. JOHNSON:
25 Q Mr. Belfiore, are there lower level employees at

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1 Merchant Link that you consider to be similarly situated to
2 yourself?
3 A No.
4 Q Mr. Belfiore, are there lower level employees at
5 Merchant Link that, to your knowledge, have a higher salary
6 than you do?
7 A Yes.
8 MR. PRAGER: Again, what time period are we
9 talking about?
10 BY MR. JOHNSON:
11 Q Mr. Belfiore, during the year 2009, were there any
12 lower level employees at Merchant Link that had a higher
13 salary than you?
14 A Yes.
15 Q Mr. Belfiore, in 2010, were there any lower level
16 employees at Merchant Link who had a higher salary than you
17 had?
18 A Yes.
19 Q Mr. Belfiore, during the year 2011, were there any
20 lower level employees who had a higher salary than you?
21 A Yes.
22 Q And can you identify any of these employees?
23 A Ben Chudasama was not an officer of the company,
24 did not have my responsibility in terms of access to the
25 board. In terms of oversight by the board. I had risks

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1 unique to the position of being an officer. If Merchant
2 Link was run the way it was supposed to, they would have had
3 D&O insurance to protect officers of the company and
4 directors of the company from suits that could have been
5 filed against them personally. I would have been on that
6 policy. Ben Chudasama would not have been on that policy
7 because he could not have been sued individually for acts by
8 the company. My organization, in terms of number of people
9 reporting through the organization, was larger than Mr.
10 Chudasama's organization. The layers of my organization
11 were higher. I had a number of layers to my organization,
12 where Mr. Chudasama did not. And, Mr. Chudasama made a
13 higher salary.
14 MR. KAPLAN: I would like to object to this line
15 of questioning. He had an opportunity to present all of
16 this comparisons during his case-in-chief. This is beyond
17 the scope of rebuttal, in our opinion.
18 MR. PRAGER: Well, I think it's consistent with
19 testimony and I think it's not very different from what has
20 already been testified to, but it also includes questions
21 that were given to Mr. Lane, if I recall correctly. Just a
22 little bit, slightly more specific, because it singles out
23 Mr. Chudasama. So, I'll overrule the objection.
24 BY MR. JOHNSON:
25 Q Mr. Belfiore, was Mr. Chudasama's pay justifiably

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1 higher than yours?
2 MR. PRAGER: I don't understand how you can ask
3 that. He's already testified as to what it was. And,
4 whether it's justifiable, I don't understand. How does one
5 go by justification for this?
6 MR. JOHNSON: Okay.
7 BY MR. JOHNSON:
8 Q Mr. Belfiore, what is the -- in your opinion, what
9 is the single most important factor in determining an
10 individual's compensation?
11 A I think the single most important factor in
12 determining compensation is one's job responsibilities, and
13 then beyond that, it's one performance of those
14 responsibilities. So the salary of one's job is driven by
15 the responsibilities inherent in that job, and that is
16 accommodated for by Merchant Link in their salary grades.
17 Jobs are graded by the level of their responsibility. So a
18 higher grade means higher responsibility. It means higher
19 salary. AIP bonus is based on that grade as well. But
20 percentage of your -- of the ultimate percentage of your
21 grade is determined, and the size of your bonus, is whether
22 or not you meet or exceed your performance objectives in the
23 context of your responsibilities.
24 And, I do believe, although I don't know
25 scientifically Merchant Link's methodology for LTIP awards,

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1 but the essence of the award is to continue to incent well
2 performing employees to maintain their relationship with the
3 company. And, I do believe, that that's Merchant Link's
4 policy in regards to compensation indicated by their tables,
5 indicating grades and by the way that they grade a certain
6 position a certain grade.
7 Q Mr. Belfiore, based upon your response regarding
8 your responsibilities and the emphasis placed upon that, in
9 2009, would it have been justifiable for Mr. Ben Chudasama
10 to have been paid more than you?
11 MR. KAPLAN: Objection to the word justifiable,
12 and that's he's already answered that question.
13 MR. PRAGER: Yeah. Again, I'm not sure.
14 BY MR. JOHNSON:
15 Q Mr. Belfiore, based upon your response to the
16 question regarding responsibility and how --
17 MR. PRAGER: Let me see if I can cut through this,
18 Mr. Johnson, if you'll permit me.
19 MR. JOHNSON: Sure.
20 MR. PRAGER: Why don't you explain, perhaps,
21 again, but explain why you think you should have been paid
22 as much or more than Mr. Chudasama, other than what you've
23 already testified, that you were a corporate officer.
24 THE WITNESS: In direct contradiction to the
25 implications put forth by Mr. Lane. He testified that

1 technical employees or technology employees, okay, in some
 2 way, shape or form demanded higher wages. And I don't
 3 refute that. But, technical employees should not have had
 4 higher wages than executive employees. And my contention is
 5 that Mr. Chudasama was not an executive. Not in the formal
 6 sense of the word, okay, and not in the sense of the word,
 7 okay, that the policies of Merchant Link provide for.
 8 Merchant Link's salary tables, okay, they do, they have
 9 three sets of tables. They have a table for sales people,
 10 okay, which were not applicable or relevant to these
 11 proceedings. And then they had a technology table, and they
 12 had a other table.

13 And, it is true that when you look at the grades
 14 and the comparison grades on the technology table versus the
 15 other table that, from, I don't know where it starts, but up
 16 to 15, the ranges for technology people are slightly higher.
 17 But when you get to 16, the range on the other is higher.
 18 The numbers are higher for all of the break points in the
 19 range than it is for the technology people. Also, on the
 20 other, there are additional ranges that account for
 21 executive level compensation, okay, that are not supplied on
 22 the technology side. So there is no executive technology,
 23 okay, range. So, looking at the tables side-by-side, where
 24 it's true that technology people may be more expensive in
 25 the marketplace, okay, it is still not justified that that

1 inflation in their salaries should exceed that of a
 2 corporate officer.

3 And, understanding what I know about management
 4 science, is that you would not want to pay non-corporate
 5 officers less than corporate officers because it should be
 6 an incentive to reach the highest level of the corporation.
 7 And, when you reach the highest level of the corporation,
 8 you have the highest level of responsibilities. You have
 9 the highest level of duties to the organization, and to each
 10 other. Okay. You cannot make decisions in a very task
 11 specific or myopic manner. Mr. Chudasama, when he made
 12 decisions, all he was responsible for was maximizing
 13 software development. I couldn't make decisions to just
 14 maximize the operations. I had to take into account the net
 15 net and the overall impact of my actions and decisions on
 16 the whole company. This is a point that I don't think Dan
 17 Lane fully appreciated.

18 Dan Lane was very, very -- I don't want to
 19 disparage Dan Lane in a manner that he has disparaged me
 20 but, I don't think he just had a level of understanding of
 21 corporate governance and officerships, and all the duties
 22 that came. Even though he claims to have fired me for
 23 breach of duty of due care, breach of loyalty, breach of
 24 good faith, I firmly understand, don't think that Dan
 25 understands what those concepts are. Certainly the legal --

1 MR. PREAGER: All right, Mr. Belfiore, I'm going
 2 to cut you off there because you're now going far beyond my
 3 question.

4 THE WITNESS: Okay.

5 MR. PRAGER: Mr. Johnson?

6 MR. JOHNSON: Thank you, Your Honor.

7 BY MR. JOHNSON:

8 Q Now, Mr. Belfiore, you referred to a different
 9 chart. There's a binder in front of you that's labeled
 10 complainant's rebuttal. And, if you will, turn to tab 93.
 11 There's also in front of you is the Complainant's exhibit
 12 binder, the big binder, the white one. And we want you to
 13 turn to Complainant's Exhibit 13.

14 MR. PRAGER: All right, Mr. Johnson.

15 MR. JOHNSON: Yes.

16 BY MR. JOHNSON:

17 Q Now, Mr. Belfiore, during your testimony you
 18 identified that what could be a table for compensation for
 19 tech employees, correct?

20 A 93 represents the -- from the same time frame,
 21 2010, late 2010, the schedules I received from April Walker,
 22 who was at that time head of HR at Merchant Link, so I could
 23 get an understanding of the people I paid, and what was the
 24 allowable ranges that I could recommend changes in their
 25 compensation, yes.

1 Q And, between the two tables, can you identify the
 2 court -- or express to the court, whether or not there's a
 3 large disparity between the payment of tech people and the
 4 payment of other employees?

5 A There is a disparity to the favor of the
 6 technology employees starting at T7 to T16. I would not --
 7 it's an immaterial difference.

8 Q Now, looking specifically at T16, are tech
 9 employees at the T16 grade level paid more than the other
 10 employees at the 16 grade level?

11 A The ranges at 16 are slightly higher than the
 12 ranges at T16, at each of the breakpoints indicated.

13 Q So, is it your testimony today that the
 14 representations made by Mr. Dan Lane that tech employees at
 15 your prospective grade level deserve a higher employee --
 16 deserve a higher pay? I'm sorry.

17 A It's not driven by policy, no. And I further
 18 observe that the T table does not provide for executive
 19 level compensation.

20 MR. KAPLAN: I'd like to make an objection. Just,
 21 he hasn't moved this into evidence yet but, this document
 22 wasn't identified in their exhibits. There's no date on
 23 this. There's no label on it whatsoever. And it doesn't
 24 say Silver Spring. I don't know what year this was created.
 25 I don't know if it's authentic. So I object for all those

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1 reasons.

2 MR. PRAGER: Mr. Johnson?

3 MR. JOHNSON: Yes, Your Honor. First and

4 foremost, Mr. Dan Lane testified as to the existence of this

5 particular table. And, we found that this table was

6 actually part of the Exhibit 13. It was not -- the full

7 exhibit was not entered. And, Mr. Belfiore testified there

8 were three tables. One involving sales, the sales

9 compensation as well as tech compensation, and other

10 compensation. So in, I guess, completeness with regard to

11 the testimony provided, the tech table should be entered

12 along with the Complainant's Exhibit 13, such that -- and

13 Mr. Lane can testify as to what he meant by tech people

14 getting higher pay.

15 MR. PRAGER: All right. Well, I'll sustain the

16 objection provisionally. Because I don't understand where

17 either -- first of all, I never have gotten a firm date for

18 Complainant's 13, which has been admitted, and I still don't

19 know what year we're talking about for that exhibit.

20 MR. JOHNSON: I think the testimony regarding

21 Complainant's Exhibit 13, I believe, said that these dates

22 were 2010. 2010 in terms of --

23 MR. PRAGER: And who testified to that?

24 MR. JOHNSON: That was Mr. Belfiore testifying for

25 that. He just actually reiterated. But, it was testified

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1 it was 2010 in terms of the tables that he received from Ms.

2 April Walker from the Human Resources at Merchant Link.

3 MR. PRAGER: Right. So that's his testimony, and

4 the record will either confirm it or not. But, Mr.

5 Belfiore, is what your counsel said, is that your testimony

6 now that both of these charts are from sometime in 2010?

7 THE WITNESS: Yes. I received these tables from

8 April Walker, who I believe was manager of HR at the time.

9 She was responsible for populating new salary information

10 into UltiPro at the supervision of Dan Lane. And these are

11 the tables she provided me as I tried to prepare and to see

12 if I was making adequate accommodations for my people in

13 terms of salary increases for budget year 2011.

14 MR. PRAGER: All right. Mr. Johnson, you're going

15 to be calling Mr. Lane and we'll get some confirmation as to

16 whether or not these are accurate. So, provisionally,

17 exhibit -- well, you haven't moved it -- are you moving

18 Complainant's 93 into evidence?

19 MR. JOHNSON: Yes, Your Honor.

20 MR. PRAGER: All right. So, we will -- I'll

21 accept provisionally Plaintiff's Exhibit 93, and we'll see

22 what Mr. Lane testifies about that.

23 (Complainant's Exhibit No. 93 was

24 admitted into evidence.)

25 MR. JOHNSON: Thank you, Your Honor.

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1 MR. PRAGER: Just a moment, please. All right,

2 Mr. Johnson.

3 MR. JOHNSON: Thank you.

4 BY MR. JOHNSON:

5 Q Mr. Belfiore, please identify who you believe to

6 be your comparatives in this proceeding.

7 MR. KAPLAN: Objection.

8 MR. PRAGER: I'm sorry. We've gone through this.

9 What is new about this?

10 MR. JOHNSON: All right, Your Honor. I can strike

11 that line of questioning, Your Honor.

12 BY MR. JOHNSON:

13 Q Mr. Belfiore, what was Mr. Dan Lane's

14 responsibilities before your promotion in December 2008?

15 MR. PRAGER: He just testified to that.

16 BY MR. JOHNSON:

17 Q Mr. Belfiore, were there any other -- Mr.

18 Belfiore, I'm sorry, strike that. Mr. Belfiore, can you

19 identify any other African American's within Mr. Dan Lane's

20 organization that received the status of vice president?

21 A No.

22 MR. PRAGER: Let me understand your question. The

23 way it was phrased was, can you identify. Are you

24 testifying that there were none, or that you don't know?

25 THE WITNESS: To my knowledge, there was never a

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1 African American who reported to Dan Lane at the VP level.

2 MR. PRAGER: Thank you.

3 BY MR. JOHNSON:

4 Q Mr. Belfiore, did Mr. Dan Lane promote any other

5 African Americans or provide them salary greater than yours?

6 MR. KAPLAN: Objection.

7 THE WITNESS: Yes.

8 MR. PRAGER: I'm sorry. There's an objection?

9 MR. KAPLAN: We've already gone through this line

10 of questioning.

11 MR. PRAGER: Restate your question, please.

12 MR. JOHNSON: I asked Mr. Belfiore were there any

13 other African Americans that Mr. Dan Lane promoted ahead of

14 him, and then the follow-up question, provided a greater

15 salary.

16 MR. PRAGER: Well, he's already said that there

17 weren't any. So, I'm not quite sure what that achieves.

18 MR. JOHNSON: Okay.

19 BY MR. JOHNSON:

20 Q Now, Mr. Belfiore, did you pay into a 401K program

21 with Merchant Link?

22 MR. KAPLAN: Objection.

23 MR. PRAGER: What's your objection?

24 MR. KAPLAN: It's my understanding that Mr.

25 Belfiore will attempt now to put on evidence of his damages,

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1 and he had a full opportunity to do that on his case-in-
2 chief. It's beyond the scope of the rebuttal, and I think
3 that this line of questioning would be inappropriate at this
4 time. He had an opportunity before.
5 MR. PRAGER: Right. This is a line of questioning
6 that comes from the testimony of your own witness, that is
7 your expert witness, who said that he was given this
8 information from Mr. Belfiore. The time to have done that
9 would have been at the time of Mr. Belfiore's testimony, or
10 better yet, at the time that Mr. Belfiore gave this
11 information to the expert so that the expert could analyze
12 it. I think it's a little too late. The objection is
13 sustained.
14 MR. JOHNSON: Your Honor, just for the record,
15 yeah, the expert did provide that information. We just
16 wanted to make certain it was clear to the court. But, if
17 the court is satisfied with the expert, which is in
18 evidence, we just -- we'll forego that line of questioning.
19 MR. PRAGER: Well, I know what the expert
20 testified to. I'm not quite sure that his testimony was
21 that it came from Mr. Belfiore, but what the origin, what
22 the underlying support for that is, is a mystery. And,
23 unfortunately, it's too late to solve that mystery. It
24 should have been solved earlier.
25

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1 BY MR. JOHNSON:
2 Q Mr. Belfiore, please describe Mr. Dan Charron's
3 role in setting the salary.
4 MR. KAPLAN: Objection. Beyond the scope of the
5 rebuttal. This is -- already testified in his case-in-chief
6 -- I think you actually asked him about his relationship
7 with Dan Charron after I had done so. I mean, that's been
8 fully testified to.
9 MR. PRAGER: You may be right. But, since I can't
10 at the moment recall it, and since for reasons that are not
11 quite clear to me, and we'll get to that later, Mr. Charron
12 was not called as a witness here, and therefore, I couldn't
13 ask him any questions. I will allow the questioning. I
14 have not read, though I intend to yet this morning, to read
15 the Charron deposition. Mr. Johnson, please restate your
16 question.
17 BY MR. JOHNSON:
18 Q Mr. Belfiore, please describe Dan Charron's role
19 in setting the salary.
20 A Dan Charron, in my opinion, he maintained the
21 complete province of my salary from the time of my promotion
22 till the time of my termination. In May of 2008 when Chris
23 promoted me to COO, he went to Dan Charron in order to
24 adjust the salary with the new responsibilities, and Dan
25 Charron told Chris that --

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1 MR. KAPLAN: Objection, hearsay.
2 MR. PRAGER: It's all right. Hearsay is possible,
3 and I'll give it whatever weight it deserves.
4 THE WITNESS: And Dan Charron's response to Chris
5 was, you can give him the title, you can give him the
6 responsibilities, but we will not pay him the money. Mr.
7 Justice, again, in 2009 alerted the board that there was an
8 issue with my salary amongst others. Mr. Charron responded
9 as the interim CEO, with another \$15,000 raise, and told me
10 that if I didn't feel that that was enough, that I could
11 leave. There was no mention of any audit committee
12 conversation, nor was there any memorialization of the
13 decision that was made in the customary format of a board
14 resolution or board minutes. I had no reason to believe
15 that Mr. McCarthy was even aware of the change, as his name
16 was never brought up in deliberation, nor have I seen where
17 his approval was requested.
18 In addition, Dan Lane mentioned that Dan Charron
19 uncovered a problem with the compatibility of my grade with
20 my title. Certainly that, in my opinion, that mistake could
21 have been caught much sooner if, in fact, the information in
22 the system was correct in terms of title and grade. That
23 was the duty and responsibility of Mr. Lane as head of HR --
24 and the implementation of the new system. He was directly
25 responsible for the integrity of the system, especially if

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1 that system was inaccurate, and that that inaccuracy
2 manifested itself to harm to an employee. And, if that
3 mistake or oversight, or whatever, had then Merchant Link
4 out of compliance with EEOC requirements that people be paid
5 appropriately.
6 MR. KAPLAN: Objection. Beyond your question.
7 MR. PRAGER: I understand. He's answered it. I
8 will take it in due regard for -- and it goes beyond the
9 questioning. Mr. Belfiore, let me tell you, I'm perfectly
10 willing to listen to you but, you're supposed to be
11 answering questions, and the questions -- and most of the
12 questions that are asked -- can be answered in a fairly
13 succinct manner. So, try to keep your answers short,
14 please.
15 BY MR. JOHNSON:
16 Q Mr. Belfiore, did Dan Charron dominate the
17 decisions affecting your compensation?
18 MR. KAPLAN: Objection.
19 MR. PRAGER: Yes. I think we've gone over, and
20 over and over that.
21 BY MR. JOHNSON:
22 Q Mr. Belfiore, do you think Mr. McCarthy's
23 testimony was disingenuous?
24 A Yes.
25 Q And, was it your impression that Mr. McCarthy was

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1 in favor of your raise, but not the deployment of it?
2 A Based on the information that I saw that in the
3 discourse of Mr. McCarthy and Dan Lane via e-mail, that Mr.
4 McCarthy did not articulate any issues with the raise. His
5 suggestion was -- suggested that it be phased in over time,
6 and Dan Lane said that the responsibilities had all been
7 assumed, so maybe that wasn't the best possible approach.
8 MR. PRAGER: That exchange is in the record, so
9 I'm not quite sure what value the additional testimony has.
10 BY MR. JOHNSON:
11 Q Now, Mr. Belfiore, in your opinion, was there any
12 additional justification for the raise necessary?
13 A No. Dan Lane had provided my responsibilities.
14 He had provided that I had been performing those
15 responsibilities for a number of years. He did not provide
16 that there were any performance issues in those
17 responsibilities. He provided those responsibilities. He
18 also provided comparable salaries in the organization, and
19 he also provided market data. So, there was no additional
20 information necessary for Mr. McCarthy to make an informed
21 decision as to the raise.
22 MR. PRAGER: Mr. Johnson?
23 MR. JOHNSON: Yes.
24 BY MR. JOHNSON:
25 Q Mr. Belfiore, would Mr. McCarthy have reason to

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1 know of your ethnicity after the 10/21 e-mail?
2 A I would think he would.
3 MR. PRAGER: I'm sorry, 10/21 what year?
4 MR. JOHNSON: 10/21/2011 e-mail.
5 MR. PRAGER: What e-mail are you referring to?
6 MR. JOHNSON: This was the e-mail Mr. Belfiore
7 sent notifying Mr. McCarthy and Mr. Lane, and all others on
8 the distribution, that he was filing a complaint with regard
9 to his pay according to his race.
10 MR. PRAGER: And this is exhibit which?
11 MR. JOHNSON: This is exhibit, should be exhibit
12 64.
13 MR. PRAGER: Okay. Will you restate your
14 question, please.
15 BY MR. JOHNSON:
16 Q Mr. Belfiore, would Mr. McCarthy have reason to
17 know of your ethnicity after the 10/21/2011 e-mail?
18 A I would think so. It could be possible that he
19 didn't know I was African American, but he knew that I was a
20 member of a protected class, or else there would be no basis
21 for the complaint.
22 Q Now, do you believe that Mr. McCarthy's request
23 for additional information was related to your 10/21/2011 e-
24 mail claim?
25 MR. KAPLAN: Objection. His beliefs and opinions

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1 and this point are not relevant to this proceeding.
2 MR. PRAGER: Right. I don't see, Mr. Johnson, how
3 Mr. Belfiore can testify. It either is or it isn't based on
4 what's in the record.
5 MR. JOHNSON: Yes, Your Honor, thank you.
6 BY MR. JOHNSON:
7 Q Now, Mr. Belfiore, Mr. McCarthy used the term,
8 complete and compelling evidence of the Renee Dantzer
9 meeting. Do you have any information to refute Mr.
10 McCarthy's definition of complete and compelling evidence?
11 A I disagree that he had complete and compelling
12 information. He had no information as to the level and
13 magnitude of the investigation that was done in regards to
14 the allegations. He had no information from me or other
15 people to corroborate that, in fact, what Ms. Dantzer
16 alleged actually transpired.
17 MR. PRAGER: All right, I'm going to cut you off.
18 I think the testimony was very clear that the only evidence
19 one way or another was from Ms. Dantzer, Ms. Nussbaum, and
20 Ms. Dantzer's -- Mr. Minton, Ms. Dantzer's supervisor --
21 and, of course, from Mr. Lane. So I'm not quite sure what
22 this testimony is adding to that.
23 BY MR. JOHNSON:
24 Q Mr. Belfiore, do you believe there was a genuine
25 intent to pay you appropriately?

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1 MR. KAPLAN: Objection.
2 MR. PRAGER: What's your objection?
3 MR. KAPLAN: His opinions are not important at
4 this point. This is just a rebuttal on evidence we
5 presented in our case-in-chief, and this, his opinions
6 aren't important, relevant at all at this point.
7 MR. PRAGER: I tend to agree but, I'm going to let
8 him answer the question because he can explain why he thinks
9 that Mr. Lane was acting in bad faith.
10 THE WITNESS: There are several reasons. Mr.
11 Lane, in his testimony, I believe, was disingenuous in
12 regards to his preferences for his own people, and to the
13 detriment of me. Particularly, we had conversations around
14 the sale of the company and Mr. Lane would have significant
15 conversations, I think he went out with Dan Charron most of
16 the times to dinner when Mr. Charron visited Silver Spring,
17 and it came a point where the probability of selling the
18 company was becoming more and more remote, and so in one
19 particular meeting with Mr. Charron, there came this idea of
20 Plan B. Okay. Plan B was what's the alternative if the
21 company doesn't sell?
22 MR. PRAGER: I'm sorry, were you at that meeting?
23 THE WITNESS: I was at that meeting.
24 MR. PRAGER: All right.
25 THE WITNESS: Plan B, okay, and Mr. Charron said,

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1 yeah, Dan, that sounds like a good idea but I cannot do that
2 with First Data involved. And so, it became an exercise of
3 there were a number of challenges facing the business. We
4 had lost exclusivity with MICROS, which means that the rates
5 that we charged for transport services could actually
6 compress and tumble because they weren't market driven
7 rates, they were contractual rates that were tied to
8 exclusivity. It also took away the fact that if people
9 wanted these transactions that emanated from these MICROS
10 systems would have to get them from Merchant Link, they
11 could actually appeal to MICROS to build interfaces to go
12 directly to, from MICROS point of sale equipment to the
13 processor themselves.

14 MR. PRAGER: Mr. Belfiore, that's very interesting
15 but it's irrelevant. What is it that made you think that
16 Mr. Lane was acting in bad faith?

17 THE WITNESS: Well, because Plan B, and I'm trying
18 to explain to you what Plan B was. It was a way of, if the
19 company didn't sell, then and you didn't want First Data
20 involved, that you were going to project the valuation of
21 the company at a very low number so you could then buy First
22 Data's position in the company, and so it would be a wholly
23 owned chase paymentech corporation, and then the idea was to
24 fold Merchant Link into Chase Paymentech as a advanced
25 products group. So it would no longer be a stand alone

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1 company. It would no longer be a joint venture. It would
2 just be a department of Chase Paymentech. Okay. And the
3 only person who was assured of any continued involvement in
4 that scenario was Dan Lane.

5 Now, in addition to that, Dan Lane came to me
6 specifically and he said, you know, back when we first
7 started to sell the company, okay, Chris brought four people
8 into his office. He brought me, Mr. Lane, Tim Kinsella and
9 himself, and he said, as a management team, we have to
10 impress upon the buyers of the sale that we are a valuable
11 asset to this company. We're the engine that makes the
12 company grow. And, we have to hold together so we can use
13 leverage to make sure we come out in the deal in the
14 position that we want. Dan Lane said that he reiterated
15 that to Dan Charron, but he only went to Dan Charron on his
16 own interest.

17 MR. PRAGER: Where do you get that from?

18 THE WITNESS: From Dan Lane. He came to my office
19 and told me that I went to Dan Charron, and I told him in
20 the event that the company sells or it doesn't, that these
21 are the things that I think that I'm entitled to. Okay.
22 This is what I want. Okay. On the other side of whatever
23 transaction. Dan also talked to me in the same conversation
24 about this number. Okay. Everybody has to have a number.
25 Okay. It's a number that when the kids tuition is paid, and

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1 the mortgage is paid, how much money, entirely liquid assets
2 do you need to feel comfortable retiring. And he told me.
3 His number was \$1.5 million. That he wanted, after the kids
4 had gotten educated, after the house was paid for, if he had
5 \$1.5 million.

6 MR. PRAGER: Okay. I understand. He was looking
7 for his self interest.

8 THE WITNESS: Exactly.

9 MR. PRAGER: Now, are there any other reasons why
10 you think he was disingenuous?

11 THE WITNESS: Okay. The other thing is I think
12 he's disingenuous is because when the time I came back from
13 medical leave, okay, and I told this to Dan, there was a
14 number of changes that had been made that I had not been
15 consulted on, that I should have been consulted on as an
16 officer of the company. People were promoted. People were
17 hired. People were given raises, and all this stuff was
18 happening. And I'm saying, you know, you effectively
19 changed the structure of the organization, you did a lot of
20 stuff, and it's a surprise to me.

21 And, then I told him, that's when I told him that
22 I need three things. Okay. If I'm going to support you and
23 we're going to make this a success, that you need to take
24 care of and you need to correct my salary. You need to
25 prevent the undermining of my authority, and I need to have

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1 full license, carte blanche, as a COO, to run the
2 corporation. Of which he agreed to. But his response was,
3 you know what, Wendy pointed this out to me, okay, while you
4 were on leave. He said to me that Wendy came to him without
5 knowing me, without having met me, just looking at the
6 employee roster and said, your CEO's salary makes no sense.
7 It's out of whack. You need to do something about it. And
8 he didn't. He sat on that information. He didn't come to
9 me to say, hey, Wendy pointed out a problem with your
10 salary, you need to correct it. He wasn't going to do
11 anything about it. And the only reason he did do something
12 about it was because he understood that the salary, okay,
13 was in fact unjustifiable.

14 MR. PRAGER: All right. I think you said CEO, you
15 meant to say COO, I believe, is that right?

16 THE WITNESS: What's that?

17 MR. PRAGER: Well, never mind. The record will be
18 clear.

19 THE WITNESS: Okay.

20 MR. PRAGER: Mr. Johnson?

21 MR. JOHNSON: Yes, thank you, Your Honor.

22 BY MR. JOHNSON:

23 Q Now, Mr. Belfiore, is it your belief that Ms.
24 Wendy Nussbaum, Mr. Dan Lane were involved in a conspiracy?
25 MR. KAPLAN: Objection.

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1 MR. PRAGER: I think he's already just testified
2 to that.
3 BY MR. JOHNSON:
4 Q Mr. Belfiore, do you believe that it was a cover
5 up to occur with regard --
6 MR. PRAGER: I'm sorry. Cover up as to what?
7 MR. JOHNSON: I was -- want to finish the
8 question, Your Honor. A cover up with regard to your
9 termination.
10 MR. KAPLAN: Objection.
11 THE WITNESS: Yes.
12 MR. PRAGER: Just a moment. What's your
13 objection?
14 MR. KAPLAN: His belief whether there's a cover
15 up, again, is just his opinion. The facts have already been
16 -- it's in evidence. His opinions are irrelevant.
17 MR. PRAGER: I tend to agree, but again, I will
18 allow the question and the answer. The answer was yes. Mr.
19 Johnson, continue.
20 BY MR. JOHNSON:
21 Q And, why do you feel this way, Mr. Belfiore?
22 A Well, because on 10/21 I wrote a letter to Mr.
23 McCarthy, Mr. Lane, and Mr. Charron, and said that I could
24 not understand the level of my salary, the changes to my
25 salaries, the changes to my salary --

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1 MR. PRAGER: I'm sorry, I'm going to cut you off.
2 We're talking about Complainant's Exhibit 64.
3 THE WITNESS: Correct.
4 MR. PRAGER: All right. Complainant's Exhibit 64
5 is in the record, you sent the letter, now what?
6 THE WITNESS: Okay. There was a subsequent e-mail
7 generated by Mr. Lane, okay, to the members of -- the people
8 in the distribution of that letter and the letter was copied
9 to Wendy Nussbaum and Harry Jones. And, in the letter --
10 MR. PRAGER: I'm sorry, again, Mr. Johnson, you
11 know this testimony, what are we talking about, what
12 exhibit?
13 MR. JOHNSON: Let's see, 64 and --
14 MR. PRAGER: Well 64 we know.
15 MR. JOHNSON: -- 65.
16 MR. PRAGER: All right. And I believe 65 is also
17 in the record.
18 MR. JOHNSON: Yes.
19 MR. PRAGER: All right, so I see no reason for
20 continuing this. This correspondence did in fact occur.
21 MR. JOHNSON: I think Mr. Belfiore was describing
22 why he believed there to be a cover up.
23 MR. PRAGER: All right. We know that -- Mr.
24 Belfiore without going through what was in 64 and 65, what
25 makes you believe that there was a cover up?

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1 THE WITNESS: Because the information that was
2 requested as additional information for my raise was really
3 not pertinent to the decision for my raise. It was
4 basically to bring forth the data points that was necessary
5 to justify that I was not paid incorrectly, which is the
6 very litigation strategy being proffered by the Complainant.
7 So there was a call to put together evidence, okay, to
8 justify that Mr. Belfiore was not discriminated against.
9 MR. PRAGER: All right. I think you've answered
10 the question. Mr. Johnson?
11 MR. JOHNSON: Yes, thank you.
12 BY MR. JOHNSON:
13 Q Now, Mr. Belfiore, who do you believe were the
14 orchestrators of this strategy?
15 MR. PRAGER: I think he's already testified to
16 that time and time again. So, I think at this point, though
17 I haven't heard the objection, I would sustain it.
18 MR. JOHNSON: All right. Your Honor, no more
19 further questions for this witness.
20 MR. PRAGER: All right, Mr. Kaplan.
21 CROSS-EXAMINATION
22 BY MR. KAPLAN:
23 Q Good morning. I just have a couple of questions.
24 Ben Chudasama, in total compensation, do you know whether
25 you earned more than he did in 2010?

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1 A Earned?
2 Q In total compensation.
3 A Earned?
4 Q Yes.
5 MR. PRAGER: I'm not sure I understand. Did Mr.
6 Chudasama receive more compensation than you did in 2010 is
7 the question.
8 THE WITNESS: No, he didn't.
9 MR. KAPLAN: No further questions.
10 MR. PRAGER: All right. I have no questions
11 either. Mr. Belfiore --
12 MR. JOHNSON: One question responding to -- Your
13 Honor.
14 MR. PRAGER: Mr. Johnson, I'm sorry.
15 MR. JOHNSON: No problem. Thank you, Your Honor.
16 REDIRECT EXAMINATION
17 BY MR. JOHNSON:
18 Q Mr. Belfiore, did Ben Chudasama in 2010 not make
19 more?
20 A Well, Ben, Mr. Chudasama wanted to avoid the JP
21 Morgan onboarding process that was required once Paymentech
22 dissolved, so he changed his status to a contractor status.
23 Contractors were not required to go through the onboarding
24 process and, in doing so, he forfeited his AIP and his LTIP
25 bonuses. But in 2009 when he reengaged with the company as

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1 an employee when Merchant Link had its own finance HR
2 system, I believe those bonuses were reinstated, although he
3 may not have been available for them in 2010.

4 MR. PRAGER: Thank you. Mr. Belfiore, you may
5 step down. Mr. Johnson?

6 MR. JOHNSON: Yes, Your Honor. Complainant calls
7 Mr. Dan Lane to the stand.

8 MR. PETESCH: Mr. Lane would be my witness on
9 this. That said, Mr. Lane was called as a witness by the
10 Complainant, questioned thoroughly over the course of more
11 than a day. We then asked questions of Mr. Lane, they had
12 an opportunity to, a full and fair opportunity to then
13 cross-examine Mr. Lane, and it went back and forth, and are
14 they calling him as a witness to rebut himself or as a
15 mulligan for what they wish they had asked on cross-
16 examination? This is a bit untoward to be calling Mr. Lane
17 as a rebuttal witness for themselves.

18 MR. PRAGER: Mr. Johnson, what do you expect to
19 get from Mr. Lane that you didn't get the first time around,
20 other than to -- I'm not quite sure. What are you -- what's
21 the purpose?

22 MR. JOHNSON: Your Honor, actually, I think
23 counsel misstates. For some reason he's saying a mulligan
24 as to what we didn't get in on direct. There's two recent
25 disclosures that come in direct conflict with Mr. Lane's

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1 testimony. That being the tech schedules, and that also
2 being the e-mail that Your Honor asked them to provide us,
3 the redacted versions. We need to, we feel that we should
4 be able to or allowed to, in rebuttal, allow Mr. Lane to
5 basically describe it as to what this new information now
6 means with regard to this matter.

7 MR. PRAGER: So you're limiting yourself to these
8 two exhibits, one was already in the record, that is C-13,
9 and your new C-93, and that's what you want to ask him
10 about, plus what you call a redacted exhibit, which is, I
11 think, the one that omitted the forwarding address that was
12 sent to counsel?

13 MR. JOHNSON: Yes, Your Honor. Actually, counsel
14 did send us the e-mail, but not necessarily the one that we
15 had requested. But nonetheless, it still disclosed what we
16 felt to be true. We feel like there's information that
17 they're purposely trying not for us to see by giving us this
18 substitute e-mail, but we'd still like to inquire.

19 MR. PETESCH: If I may respond to that. The
20 redacted portion that was produced indicates that the Minton
21 statement was faxed to attorney Harry Jones. The document
22 speaks for itself. If he's going to delve into
23 conversations then with an attorney on eliciting advice,
24 that's clearly barred by attorney/client privilege. With
25 respect to the tech table, there was testimony before that

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1 tech employees were paid on a different scale. He had every
2 ample opportunity on direct when he called Mr. Lane and, in
3 fact, there was another table for tech employees within the
4 joint exhibits. He could have just pulled it right out of
5 our joint exhibits, I believe it was Exhibit No. 71 that had
6 -- we didn't introduce it, but he certainly had the
7 opportunity to. So, again, I don't see how calling Mr. Lane
8 as a witness on either of these things serves any purpose
9 for rebuttal testimony.

10 MR. PRAGER: Mr. Johnson, what is the revised,
11 what you call a redacted e-mail. I believe we substituted
12 the unredacted one with that. Where is that?

13 MR. KAPLAN: I have copies.

14 MR. JOHNSON: The e-mail, Your Honor, that we're
15 speaking of, actually in Complainant's rebuttal binder. One
16 of the issues we had with the e-mail that was redacted, it
17 was obviously an e-mail that was sent to Harry Jones.
18 Counsel is being disingenuous when he says, oh, this was
19 faxed to Mr. Harry Jones. In essence, the e-mail that they
20 provided us actually disclosed that the document was e-
21 mailed to Harry Jones with attachments. The attachments
22 being, I'm assuming Zack Minton's statement, as well as
23 Renee Dantzler's. And we wanted specifically to find out
24 just the information that was provided in the e-mail to Mr.
25 Jones that would be allowable from the court, that's

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1 transmission time, so on and so forth. The time line is
2 confusing. Not to be argumentative, but the time line
3 itself does not provide us with the information we want to
4 specifically verify with regard to the communication to the
5 compensation committee, which right now as I understand was
6 never made. But, you know, we would like to, at least for
7 the court's edification, make certain that, you know, as we
8 make this argument, that there was no compensation committee
9 meeting, that this was an e-mail sent to Mr. Harry Jones in
10 anticipation of termination, and the determination being
11 planned without the board ever getting an opportunity to
12 assess whether or not Mr. Belfiore should be terminated.

13 MR. PRAGER: Well, I understand the argument.

14 MR. JOHNSON: Yes.

15 MR. PRAGER: I'm a little confused. Mr. Kaplan,
16 while you were talking, or just before you were talking,
17 handed me an e-mail that contains the Minton statement and
18 then Nussbaum sent that off to Dan Lane and Francine
19 Spriggs. Is that what we're talking about?

20 MR. JOHNSON: Nussbaum, yes, sent it off to
21 Francine Spriggs.

22 MR. PRAGER: And it said, I sent this e-mail and
23 attached document to Harry?

24 MR. JOHNSON: Yes.

25 MR. PRAGER: All right. And what is it that

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1 you're trying to establish?
2 MR. JOHNSON: Well, the time frame in which it was
3 sent to Mr. Harry Jones, just coordinating, trying to
4 coordinate the whole idea of a compensation committee, which
5 there is no documentation to prove.
6 MR. PRAGER: I don't understand how this relates
7 to -- this relates to discharge. At any rate, let me ask a
8 question. Mr. Petesch, this says, I sent this e-mail and
9 attached document to Harry. That presumably means Harry
10 Jones.
11 MR. PETESCH: Correct.
12 MR. PRAGER: Is there such an e-mail from Ms.
13 Nussbaum to Mr. Jones?
14 MR. PETESCH: No. There's actually a corporate
15 efax that's memorialized as being sent on Thursday, November
16 10th at 1:55 p.m., and part of that, by way of explanation,
17 has to do with the secured system at Merchant Link, that it
18 was easier to send this via efax than to do an encrypted e-
19 mail. If you want me to explain the technology any further,
20 I am way outside of my pay grade on that, but it was indeed
21 faxed. And so when it said I sent this e-mail, she indeed
22 sent this e-mail, for whatever that's worth.
23 MR. PRAGER: Well, I think what Mr. Johnson is
24 saying he's trying to find out, somewhere between 12:06 p.m.
25 and 2:18 p.m. --

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1 MR. PETESCH: Yes.
2 MR. PRAGER: -- something was sent to Mr. Jones.
3 MR. PETESCH: And it was, at 1:55 p.m.
4 MR. PRAGER: Mr. Johnson, does that satisfy you,
5 the representation by counsel that the Minton e-mail was
6 transmitted to Mr. Jones at somewhere between 12:06 and 2:18
7 p.m. and with a specific date? What was that again, Mr.
8 Petesch?
9 MR. PETESCH: The date was November 10th, 2011.
10 MR. PRAGER: At?
11 MR. PETESCH: At 1:55 p.m. that it was corporate
12 efaxed to Harry Jones.
13 MR. PRAGER: All right. Does that satisfy you in
14 terms of time line?
15 MR. JOHNSON: One second, Your Honor.
16 MR. PETESCH: And, if I can further interject --
17 MR. PRAGER: Just a moment.
18 MR. JOHNSON: Yes, Your Honor, in terms of the
19 time line, we would say that we could be satisfied by that.
20 In terms of, I guess, the veracity of the document, we have
21 some questions with regard to this being sent to the
22 compensation committee. Mr. McCarthy says that he --
23 testified on the stand that he didn't receive anything. He
24 just knew the substance of what was going on. I think
25 that's important given the fact that we created a nexus here

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1 with regard to, I would say, the employees of Merchant Link
2 and their communication with the board. We're saying that
3 the communication never happened in terms of the board
4 meeting. And, I do believe that this e-mail kind of
5 indicates or starts to unfurl what is deemed, you know, some
6 activities, if we say conspiracy, that definitely Mr. Dan
7 Lane and Mr. Harry Jones would be complicit to with regard
8 to termination of Erik Belfiore, without board approval.
9 MR. PRAGER: First of all, let's -- what has been
10 handed to me that we've been talking about is a complete
11 version of what had previously been filed and what is, what
12 was that exhibit number?
13 MR. PETESCH: That was Merchant Link Exhibit No.
14 110.
15 MR. PRAGER: All right. And, is it already in the
16 record?
17 MR. PETESCH: Yes, it is.
18 MR. PRAGER: As 110?
19 MR. PETESCH: Yes.
20 MR. JOHNSON: Your Honor, we need to be clear,
21 certain not to confuse it. It's not the exact e-mail that's
22 being given. It's actually a substitute, just a different
23 sender, or a different recipient. The one that was redacted
24 purportedly had the information of Mr. Harry Jones and his
25 communication. So, what we actually received was a

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1 substitute of the original that was from another recipient
2 of the e-mail, which explains why Wendy Nussbaum is stating
3 something. Obviously, that information would not have been
4 redacted.
5 MR. PETESCH: I --
6 MR. PRAGER: Just a moment.
7 MR. JOHNSON: And it's also in the record, Your
8 Honor.
9 MR. PRAGER: Just a moment. First of all, what
10 makes you say, Mr. Johnson, that this is not the unredacted
11 portion of what's now in as Respondent's Exhibit 110?
12 MR. JOHNSON: Well, initially, Your Honor,
13 counsel's representation to the court that it was in fact
14 the e-mail to Mr. Harry Jones. And then, secondarily, Your
15 Honor, the very fact that it was completely redacted. There
16 wouldn't have been any reason to redact this particular e-
17 mail.
18 MR. PRAGER: Right. Yes, Mr. Petesch, what's your
19 answer to that?
20 MR. PETESCH: Well, I didn't do the document
21 production. As you know, we came in later on. My sense is
22 that the top of it was probably redacted because it was just
23 a confirmation that it was forwarded to counsel. And while
24 that in and of itself may not necessarily be privileged, it
25 may have been nonresponsive or just out of an abundance of

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1 caution the person producing the document may have redacted
2 that so as to not even jeopardize or bring into question any
3 waiver of privilege. But the document is, looks to be the
4 same thing that was produced as our Exhibit No. 110, if you
5 just look at the bottom line of the document it ends on the
6 same word and line as in the unredacted version as the
7 redacted version. It's the same thing. And, I may have
8 misspoke when I said the e-mail was forwarded to Mr. Jones,
9 when in fact it says it was sent, and I was educated on the
10 fact that it was faxed rather than an e-mail being forwarded
11 to Harry Jones. It got to him. And, I don't see what the
12 difference is.

13 As for the theory, the grassy knoll theory that
14 the Board of Directors was never consulted, I don't see how
15 forwarding it to counsel for advice or input has any bearing
16 upon whether it was discussed or even provided separately to
17 the Board of Managers. So, the testimony from Mr. McCarthy,
18 and the record will speak for itself, but my best
19 recollection of Mr. McCarthy's testimony was that he either
20 saw the document or was apprised fully of the substance of
21 the document. He didn't recall specifically. So, his
22 testimony will speak for itself.

23 MR. PRAGER: Well, we don't need Mr. Lane for
24 this. If it was sent by someone -- it apparently was sent
25 by Ms. Nussbaum, and Ms. Nussbaum is not here to testify.

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1 So, what we will do is I'll keep both the, this newer
2 version and the older version of this e-mail for Mr. Minton,
3 one of which is redacted and one of which appears not to be,
4 and we will have the original as Respondent's Exhibit 110A
5 and the new version as Respondent's Exhibit 110B, and it
6 will be admitted to that extent. So, Mr. Johnson, so what
7 else do you need from Mr. Lane that you wanted?

8 MR. JOHNSON: Those are the only two issues, Your
9 Honor.

10 MR. PRAGER: Okay. Well, I will allow you to call
11 Mr. Lane to get some clarification on these two exhibits,
12 the ones we've been talking about, C-13 and C-93, but just
13 about the exhibits and not about what this means for Mr.
14 Belfiore. I just wanted to get authenticity and dates. So,
15 for that very limited purpose, Mr. Lane, would you please
16 resume the stand again please. Mr. Lane, you understand
17 that you're still under oath?

18 THE WITNESS: Yes.

19 DIRECT EXAMINATION

20 MR. PRAGER: Mr. Johnson has raised the issue of
21 Exhibit 93, Complainant's 93, have you had a chance to look
22 at it?

23 THE WITNESS: I'm a little confused now. Are we
24 talking about the Nussbaum e-mail?

25 MR. PETESCH: No, the grade table.

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1 THE WITNESS: Okay, yes.

2 MR. PRAGER: Are you familiar with it?

3 THE WITNESS: Yes.

4 MR. PRAGER: All right. And, is this an authentic
5 document as far as you know that something would have been
6 generated by Merchant Link at some point?

7 THE WITNESS: At some point, yes, by either
8 Paymentech or Merchant Link.

9 MR. PRAGER: All right. And, it doesn't have a
10 date on it. The representation was that this was sometime
11 in 2010. Would looking at the numbers, would that be a date
12 that you'd feel comfortable saying this was generated
13 during?

14 THE WITNESS: Yes, it's possible it was generated
15 in 2010.

16 MR. PRAGER: All right. And, if you would go back
17 in the very large binder and look at Complainant's Exhibit
18 13. And is this something that you also would say was
19 something generated by Merchant Link or one of its parents?

20 THE WITNESS: Yes. I believe this was generated
21 by paymentech because of the Silver Spring designation at
22 the top and because of the national designation at the
23 bottom. Merchant Link Paymentech had the concept of
24 national because they had several offices around the
25 country. So I would -- that says to me this was probably

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1 generated pre-2008 or 2009, because it came from Paymentech.
2 I don't think --

3 MR. PRAGER: So you don't think it was 2010?

4 THE WITNESS: I don't think so, no.

5 MR. PRAGER: All right. I'm going to ask Merchant
6 Link to coordinate with counsel and with opposing counsel,
7 and see if we can find a date for this document.

8 THE WITNESS: For 93? Oh, for the Silver Spring?

9 MR. PRAGER: Yes. Right. Preferably for both.

10 But you've already testified that you thought C-93 would be
11 a 2010 document. I'd like to pin down when Complainant's
12 Exhibit 13 was generated.

13 MR. PETESCH: We'll do our best on that, and we
14 note that their exhibit, well, both 13 and 93 don't bear our
15 Bates stamp. So, it would have come not from us. Still,
16 we'll do the best we can.

17 MR. PRAGER: Good. Mr. Johnson, do you have any
18 follow-up questions solely on the basis of the questions
19 I've asked, and only related to these two exhibits?

20 MR. JOHNSON: Yes, Your Honor.

21 BY MR. JOHNSON:

22 Q Mr. Lane, you just mentioned about, I guess,
23 Paymentech, didn't Merchant Link adopt paymentech policies
24 with regard to pay and salaries?

25 A Initially there was a lot of change going on in

1 our HR department as we were separating from Paymentech. So,
2 right after, in very late 2008 and early 2009, we were using
3 Paymentech's grade tables and HR policies, and then it
4 started to change over time. That's why it's difficult to
5 know exactly when these tables were created.

6 Q And, according to the two tables, if you compare
7 them, isn't it true that there really isn't a disparity in
8 compensation between tech employees and other employees with
9 regard to grade 16?

10 MR. PETESCH: Objection. The documents will speak
11 for themselves. I think everyone's capable of reading them,
12 and we don't know the relative dates of the two.

13 MR. PRAGER: Exactly. I agree. The objection is
14 sustained.

15 MR. JOHNSON: Your Honor, just for the record, now
16 these particular grades came from the same schedule. So
17 when we go about, I guess, confirming the dates, are there
18 going to be a series of years that you can provide, or it's
19 just --

20 MR. PETESCH: The hearing is, the evidence for the
21 hearing is almost over, discovery ended a whole long time
22 ago, things were produced.

23 MR. PRAGER: No, I -- I agree, however, that it
24 would be helpful to me to understand for as many years as
25 possible, but certainly with respect to these two exhibits,

1 I want to know what the dates are.

2 MR. JOHNSON: These two exhibits, Your Honor, came
3 from the same file. So, I just want to make certain that we
4 get, you know, I get some consistency, that's all.

5 MR. PRAGER: All right. We'll have a recess
6 shortly and counsel can talk to each other and then we can
7 come back. So, I think that ends your questioning of Mr.
8 Lane with respect to these exhibits?

9 MR. JOHNSON: Yes, Your Honor.

10 MR. PRAGER: Thank you, Mr. Lane, you're excused.
11 We will now take a 10 minute recess and go off the record.
12 (Whereupon, a brief recess was taken.)

13 MR. PRAGER: I just had a conversation with
14 counsel for both parties, and as a result of that
15 conversation and also based on representations made last
16 week, we now have a Merchant Link Organization Chart for
17 early 2011 and a Merchant Link Organization Chart for mid-
18 2011. And, I have told counsel that these will be marked
19 and accepted into the record as Respondent's Exhibits 144A
20 and 144B. Mr. Johnson, do you have anything on the record
21 to say about these two exhibits?

22 MR. JOHNSON: Yes, Your Honor. Just on the
23 record, we had a concern about the -- are you talking about
24 the org charts or the --

25 MR. PRAGER: Organizational charts.

1 MR. JOHNSON: Organizational charts. Nothing
2 about the organization charts, Your Honor.

3 MR. PRAGER: All right, so there's no objection to
4 having them put in the record.

5 MR. JOHNSON: No objection.

6 MR. PRAGER: All right. So they will be admitted
7 and put into the record.

8 (Respondent's Exhibit 144A and
9 144B were marked and admitted
10 into the record.)

11 MR. PRAGER: I had also raised last week a
12 question about the employee roster in 2011, and Merchant
13 Link has now prepared an exhibit which I have premarked as
14 Respondent's Exhibit 145. Mr. Kaplan, would you explain
15 what this exhibit is for the record?

16 MR. KAPLAN: Sure. This is as of the end of
17 November 2011 the names and titles and salaries of the
18 employees at Merchant Link. This was recreated by Merchant
19 Link at your request. This is the salary rate of these
20 employees. We thought it better to be over inclusive than
21 actually miss a person, so if there is an employee on this
22 list that should not be on the list, that is fine. It is
23 what it is. But we thought it made more sense to be over
24 inclusive if we were uncertain about certain employees.

25 MR. PRAGER: And during the recess, Mr. Johnson,

1 you had some questions about this exhibit, and you can
2 consult with your client before answering, and tell me what
3 your problems are with the exhibit.

4 MR. KAPLAN: This was also produced to the
5 Complainant on Wednesday.

6 MR. JOHNSON: Excuse me, Your Honor. Your Honor,
7 after conferring with Mr. Belfiore, the one issue that seems
8 to come to mind is that there are an additional number of
9 employees that have been added to this particular roster.
10 We do not have start dates here in order to evaluate this
11 document which we deem to be helpful if in fact there were
12 start dates added to this.

13 MR. PRAGER: All right. Well, I'm going to call a
14 recess in a few minutes anyway, and I'm going to ask counsel
15 to consult and perhaps we can weed out some of the name that
16 shouldn't be here, or at least give Mr. Johnson a better
17 idea as to who was hired, who wasn't hired at that time.

18 MR. KAPLAN: We produced a first draft of this
19 correspondence and we asked last week, and I had mentioned
20 two employees that should not have been on the list. So we
21 axed them from the list. Since Wednesday, he has not
22 produced or provided us with any other names that should not
23 be on the list. Again, I think it's better to be over
24 inclusive than under inclusive on this issue.

25 MR. PRAGER: All right. Well, since you have to

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1 consult about Ms. Nussbaum, I'll let you also consult about
2 this before making a final determination. I believe I've
3 already stated on the record that this is going to be
4 Exhibit R-145, Respondent's 145. It hasn't been admitted
5 yet, and I'll reserve ruling on that until a later time.
6 (Respondent's Exhibit 145 was
7 marked for identification.)
8 MR. PRAGER: Now, also off the record I talked a
9 bit about getting dates for Complainant's Exhibit 93 and
10 Complainant's Exhibit 13, and asked Merchant Link to provide
11 as best it can by the end of next week -- that would be
12 February 27th -- the approximate dates that these documents
13 were generated, and to do so in consultation with counsel
14 for Mr. Belfiore. And that's the understanding Mr. Kaplan,
15 is that right?
16 MR. KAPLAN: Yes, sir.
17 MR. PRAGER: All right. Now, I'll ask Mr. Johnson
18 first, well, since I assume that counsel has talked about
19 post-trial or post-hearing briefing, what have you come to
20 in terms of the dates that you would prefer to have the
21 proposed hearing brief submitted, Mr. Johnson?
22 MR. JOHNSON: Your Honor, counsel and I discussed
23 it in the hallway, and we agreed to a May 1st date.
24 MR. PRAGER: May 1st?
25 MR. JOHNSON: Yes.

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1 MR. PRAGER: And, Mr. Kaplan, is that an accurate
2 representation?
3 MR. KAPLAN: Yes.
4 MR. PRAGER: All right. Now, we didn't discuss
5 beforehand, I'd like to limit the number of pages in these
6 documents, and so I'm going to, perhaps arbitrarily, say no
7 more than 35 pages. That doesn't require you to write 35
8 pages. But, if as you get closer and closer to that time
9 you feel that there's no way you can be precise or succinct
10 and want to exceed that page limit, you may file a motion to
11 that effect. Motions to exceed the page limit and motions
12 for extensions of time, which probably won't be granted but,
13 if you feel that you must file such a motion, such a motion
14 will be due on April 20th, or no later than April 20th.
15 And, we didn't do this off the record. Mr.
16 Johnson, assuming that these briefs are filed on May 1st,
17 how much additional time will you need to file your request
18 for attorney's fees and expenses after that time?
19 MR. JOHNSON: Your Honor, I guess two weeks after
20 filing, after date of filing.
21 MR. PRAGER: All right. So why don't I say May
22 18th for that. And, I assume that Merchant Link has no
23 expenses that it feels must be paid by Mr. Belfiore if he
24 loses, so I'm not going to ask you for a time to submit
25 anything along those lines. Now, if May 18th is the time

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1 that Mr. Johnson files his request for attorney's fees, how
2 much additional time do you need to file your response to
3 his request?
4 MR. KAPLAN: Three weeks.
5 MR. PRAGER: Three weeks?
6 MR. KAPLAN: Yes.
7 MR. PRAGER: He's only asking for two weeks to do
8 it, and you want three weeks to respond to it?
9 MR. KAPLAN: Well, I think opposing these things
10 may actually be more cumbersome than drafting an initial
11 here's the data.
12 MR. PRAGER: Okay, well, I think I'll give you two
13 weeks, and again, if for good cause shown you can request an
14 additional week. Now, with the exception of designating the
15 pages from Ms. Nussbaum's deposition and discussion about
16 Respondent's Exhibit 145, are there any other issues that
17 remain outstanding Mr. Johnson, I'll give you first crack at
18 this?
19 MR. JOHNSON: One second, Your Honor. No other
20 issues, Your Honor.
21 MR. PRAGER: Okay. And, Mr. Kaplan, do you have
22 anything?
23 MR. KAPLAN: No.
24 MR. PRAGER: All right. So I'll give you five,
25 seven minutes to discuss this and then come back and then

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1 we'll conclude and I will have Mr. Johnson report on the
2 Nussbaum exhibit, and Mr. Kaplan you'll report on
3 Respondent's Exhibit 145 with the understanding that you may
4 not come to an agreement on 145, but to the extent that you
5 can, it would be helpful. So, we're off the record.
6 (Whereupon, a brief recess was taken.)
7 MR. PRAGER: Mr. Johnson, I'd asked you to inform
8 me what you and your opposing counsel have -- what pages of
9 the Nussbaum exhibit the two of you have said I should look
10 at in particular.
11 MR. JOHNSON: We identified pages 6 through 68.
12 MR. PRAGER: Six through 68?
13 MR. JOHNSON: Six through 68.
14 MR. JOHNSON: I think it, that what, leaves out 12
15 pages maybe from this entire exhibit?
16 MR. JOHNSON: Probably about 18, I believe.
17 MR. PRAGER: All right. It's less helpful than I
18 had hoped. All right. I'll take a look.
19 MR. PETESCH: And that certainly subsumes our
20 designation, so. Which were fewer, but they fall within
21 that frame.
22 MR. PRAGER: Good. And, now Mr. Kaplan, I believe
23 it was, have you and Mr. Johnson come to any sort of
24 agreement on this exhibit, Complainant's 145?
25 MR. KAPLAN: I asked Mr. Johnson for some names

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1 that he believes should not be included, and I've not
2 received anything as of now.

3 MR. JOHNSON: I have a list of names that I'm
4 trying to open that was in an e-mail that was on my phone,
5 and it's about 25 names. And, I can't open the file for
6 some reason.

7 MR. PRAGER: All right. Well, rather than
8 spending time, I will give counsel, that is Mr. Johnson,
9 preferably in consultation with Mr. Kaplan or Mr. Petesch, a
10 week, that is until next Friday the 27th, to place in
11 writing, and you can do this by letter, the names of anyone
12 that you jointly agree should not be on this list, and to
13 the extent that you can't agree, Mr. Johnson, you tell me
14 which ones you also wanted to omit that Merchant Link said
15 should not be omitted. All right.

16 MR. JOHNSON: Okay.

17 MR. PRAGER: So, I will admit Respondent's Exhibit
18 145, but with the understanding that it might be redacted in
19 part. We'll go off the record for a moment.
20 (Whereupon, a brief recess was taken.)

21 MR. PRAGER: There was an omission from the
22 record. We will include as Exhibit, Respondent's 110C, the
23 one page e-mail that was originally from Harry Jones to
24 Wendy Nussbaum on November 10th, 2011 at 3:01 p.m., and was
25 retransmitted by Mr. Kaplan at an undisclosed time, but the

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1 time isn't relevant. That will be Respondent's 110C, and
2 Mr. Johnson, I think we've already talked about that. You
3 have no objection to this exhibit being in the record.

4 MR. JOHNSON: No, Your Honor.

5 MR. PRAGER: So, it will be admitted. All right,
6 I believe that concludes this hearing with the following
7 additional statements. I set up a briefing schedule. It
8 would be very helpful to me if counsel, when they transmit
9 their briefs, would also transmit to the Office of Zoning
10 and Administrative Hearings, the briefs in Word or
11 WordPerfect form, whichever you use. The Office of Zoning
12 and Administrative Hearings uses Word, not WordPerfect, but
13 presumably the software will be able to translate it, if you
14 do your work in WordPerfect.

15 So this concludes the hearing. The record is
16 closed with the following exceptions, the exceptions are the
17 two letters that are scheduled to be sent next Friday, the
18 27th. One having to do with Respondent's Exhibit 145, and
19 the other having to do with Complainant's Exhibits 93 and
20 13. And obviously, the record will remain open to receive
21 the briefs, and to receive Mr. Belfiore's request for
22 attorney's fees, and the response to that. The response, by
23 the way, just for the record, is due on June 1st. And, of
24 course, the record remains open to receive the transcripts
25 of the hearings that have already been held.

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1 Mr. Johnson, do you have any last words that you
2 need to say?

3 MR. JOHNSON: Not pertaining to the matter that
4 the court went over now. Are you suggesting that -- I'm
5 sorry, Your Honor, are you talking about actual closing
6 arguments or?

7 MR. PRAGER: No, no, no. Closing arguments will
8 be in the briefs. Is there something that I omitted today
9 that needs to be on the record?

10 MR. JOHNSON: No, Your Honor. I think we cleared
11 up everything in a matter of minutes, actually.

12 MR. PRAGER: Okay. And Mr. Kaplan, is there
13 anything that you think that needs to be said that hasn't
14 been resolved, other than the underlying case on the merits?

15 MR. KAPLAN: No, sir.

16 MR. PRAGER: Okay. With that, the hearing is
17 adjourned, and thank you very much, counsel, and the two
18 witnesses who are still there. Thank you.
19 (Whereupon, at 12:04 p.m., the hearing was
20 concluded.)

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C E R T I F I C A T E

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

Discrimination in Employment
Erik Belfiore v. Merchant Link, LLC
Office of Human Rights Referral No. E-05548
OZAH No. 14-02

By:

Keena Lukacinsky, Transcriber

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