

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

-----X
ERIK C. BELFIORE :
v. : OZAH No. 14-02
MERCHANT LINK, LLC :
-----X

A hearing in the above-entitled matter was held on February 9, 2015, commencing at 9:31 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 N.W., Suite 910
 Washington, D.C. 20005

For the Respondent:

Steven E. Kaplan, Esq.
 Peter J. Petesch, Esq.
 Littler Mendelson, P.C.
 1150 17th Street N.W., Suite 900
 Washington, D.C. 20036

Also Present:

Melony Belfiore

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Erik Belfiore				
By Mr. Johnson:		19		
By Mr. Kaplan:			177	

E X H I B I T S

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E X H I B I T S

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C-59	Communiqué from Dan Charron		117
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P R O C E E D I N G S

1
 2 MR. PRAGER: Good morning.
 3 UNIDENTIFIED SPEAKERS: Good morning.
 4 MR. PRAGER: This is a hearing of Erik Belfiore
 5 versus Merchant Link, LLC, a case brought under Chapter 27
 6 of the Montgomery County Code, the chapter on Human Rights
 7 and Civil Liberties. I'm Lutz Alexander Prager, assigned
 8 responsibility for conducting the hearing. On October 16th
 9 of last year, I scheduled this hearing for today at 9:30.
 10 In December 2011 Mr. Belfiore filed an
 11 administrative complaint with the Montgomery County Office
 12 of Human Rights, alleging that Merchant Link, his employer
 13 at the time, had discriminated against him on the basis of
 14 his race and had retaliated against him in violation of
 15 Sections 27-19(a)(1) and 27-19(c)(1) of the Human Rights
 16 Act. In May 2013 the Office of Human Rights issued a
 17 finding of reasonable cause that Merchant Link had violated
 18 the Human Rights Law on both grounds. Conciliation between
 19 the parties failed in September of 2013, and three months
 20 later, in December of 2013, the County Commission on Human
 21 Rights referred this case to the Office of Zoning and
 22 Administrative Hearings to conduct an evidentiary hearing.
 23 This is that hearing.
 24 Now, I'm going to ask counsel for the parties to
 25 identify themselves. First, counsel for Mr. Belfiore, will

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1 you please rise and state your name?
2 MR. JOHNSON: Good morning, Your Honor. William
3 C. Johnson, Jr., counsel for the complainant, Erik Belfiore.
4 MR. PRAGER: All right. And, Mr. Johnson, do you
5 have any counsel assisting you in this matter?
6 MR. JOHNSON: No, Your Honor --
7 MR. PRAGER: Okay.
8 MR. JOHNSON: -- actually, I'm primary counsel.
9 MR. PRAGER: All right. Thank you very much.
10 MR. JOHNSON: Thank you, Your Honor.
11 MR. PRAGER: You may be seated. Now I'd like
12 counsel for Merchant Link to stand, please, and identify
13 yourselves.
14 MR. KAPLAN: Good morning. I'm Steven Kaplan.
15 I'm representing Merchant Link.
16 MR. PRAGER: Okay. And --
17 MR. PETESCH: And Peter Petesch.
18 MR. PRAGER: Just a moment.
19 MR. PETESCH: Oh, I'm sorry.
20 MR. PRAGER: And you will have someone assisting
21 you?
22 MR. KAPLAN: Yes. We are co-counsel.
23 MR. PRAGER: Okay. Would you identify yourself,
24 please?
25 MR. PETESCH: I'm Peter Petesch, also representing

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1 Merchant Link.
2 MR. PRAGER: Mr. Petesch, thank you.
3 MR. PETESCH: Thank you. May I close --
4 MR. PRAGER: You may be seated.
5 MR. PETESCH: May I close the door?
6 MR. PRAGER: No. This is a public hearing, and --
7 MR. PETESCH: Okay.
8 MR. PRAGER: -- if there's too much noise, since
9 you're sitting closest to that, you can run out --
10 MR. PETESCH: As needed.
11 MR. PRAGER: -- and shush people.
12 MR. PETESCH: Thank you.
13 MR. PRAGER: Now, Mr. Johnson, I should have asked
14 you, you're prepared to -- you don't have to stand up --
15 you're prepared to proceed, I take it?
16 MR. JOHNSON: Yes, Your Honor.
17 MR. PRAGER: Okay. And your witnesses are either
18 here or will be on 30-minute call?
19 MR. JOHNSON: Yes, Your Honor.
20 MR. PRAGER: Okay. And the same thing with you,
21 Mr. Kaplan?
22 MR. KAPLAN: Yes, we're ready to proceed. Thank
23 you.
24 MR. PRAGER: And your witnesses will also be
25 either here or on 30-minute call?

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1 MR. KAPLAN: Yes.
2 MR. PETESCH: Yes.
3 MR. PRAGER: Okay. For the time being, you can
4 tell me which it is, but I'm going to -- for the time being,
5 unless you tell me otherwise, I'm going to assume that,
6 Mr. Kaplan, you are lead counsel.
7 MR. KAPLAN: Sure. Thank you.
8 MR. PRAGER: All right. Good. Mr. Petesch,
9 you're, I know you're the partner and Mr. Kaplan is not, so
10 -- but if --
11 MR. PETESCH: I'm good with that, Your Honor.
12 MR. PRAGER: -- there's role reversal, let me
13 know. As the parties have been informed previously, this
14 proceeding is going to be governed by the Montgomery County
15 Administrative Procedure Act. All testimony will be under
16 oath and subject to penalties of perjury, and as the parties
17 have also been previously advised, under Section 2A-8(i)(5)
18 of the APA, the hearing is going to proceed sequentially,
19 roughly in accordance with the APA.
20 In addition to the APA requirements, the parties
21 should be aware of the following: even though
22 administrative procedures are informal, I frown on leading
23 questions on direct examination; I may interrupt questioning
24 to require questions to be reformulated; after recross
25 examination or at other times, I may pose my own questions

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1 if I think I need clarification of testimony, and those
2 questions that I ask will not necessarily indicate what I
3 believe to be the merits of the testimony; I won't allow
4 repetitious questioning or testimony or the badgering of
5 witnesses.
6 Let me just tell you how we will proceed. Every
7 day of this week we will start at 9:30 and continue on until
8 roughly 5 o'clock in the afternoon. On Wednesday, however,
9 we will be in a different hearing room. We will be upstairs
10 in the seventh-floor hearing room. You have to take the
11 elevator up to the seventh floor, and you'll see that it's
12 the only way you can go. There is a hearing room up there,
13 and that's where we will be.
14 Now, as I've also previously informed the parties,
15 the rule on witnesses will apply. That means that witnesses
16 expected to testify will not be permitted in the hearing
17 room until called to testify. Each party may have one
18 representative present to assist its counsel. Mr. Johnson,
19 who's going to be your representative?
20 MR. JOHNSON: I'm sorry, Your Honor. To assist
21 with counsel?
22 MR. PRAGER: Right. I assume that your witness,
23 your representative will be your client.
24 MR. JOHNSON: Oh, yes. Yes, Your Honor --
25 MR. PRAGER: All right.

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1 MR. JOHNSON: -- the witness, Erik Belfiore.
2 MR. PRAGER: All right. You may be seated; in
3 fact, let me just say, unless there is a reason to, you,
4 counsel should remain seated. There's no point in jumping
5 up and down.
6 MR. JOHNSON: Sorry, Your Honor, force of habit.
7 MR. PRAGER: No, that's fine, I understand, and if
8 you feel better on your feet, though it is harder for the
9 mics to pick you up, when you're doing your questioning, you
10 may stand up if you prefer to do your questioning while
11 standing but you can also remain seated.
12 MR. JOHNSON: Thank you, Your Honor.
13 MR. PRAGER: Now, Mr. Kaplan, I'm going to ask
14 you, who's your representative?
15 MR. KAPLAN: This is Dan Lane. He's the CEO of
16 the company.
17 MR. PRAGER: All right. And, Mr. Lane, you're
18 welcome to sit here. I assume there are -- I see two other
19 people in here. Are you witnesses?
20 UNIDENTIFIED SPEAKER: No.
21 UNIDENTIFIED SPEAKER: No.
22 MR. PRAGER: No, neither one of you. All right.
23 Now, we're going to do some, go into some preliminary
24 matters. First of all, so that the hearing accurately
25 reflects that the procedural requirements for this hearing

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1 have been satisfied, I'm going to propose admitting three
2 documents already in the record in this case, admitting them
3 here for the purposes of hearing exhibits. They are the
4 Belfiore complaint -- Belfiore complaint, rather; the Office
5 of Human Rights referral to the Human Rights Commission; and
6 the Commission's Case Review Board's referral to a hearing
7 examiner. Currently they're identified as Docket Entries
8 1(a), 2, and 3. They're going to be designated as Hearing
9 Examiner Exhibits 1, 2, and 3 respectively -- that's HE
10 Exhibits 1, 2, and 3 respectively -- and entering into the
11 hearing exhibits. Are there any objections to that,
12 Mr. Johnson?
13 MR. JOHNSON: No objections, Your Honor.
14 MR. PRAGER: All right. Mr. Kaplan?
15 MR. KAPLAN: No objections.
16 MR. PRAGER: All right. Now, are there any other
17 preliminary matters to be addressed at this point,
18 Mr. Johnson?
19 (Exhibit Nos. HE-1 through 3
20 were marked for identification
21 and received in evidence.)
22 MR. JOHNSON: No, Your Honor.
23 MR. PRAGER: All right. Mr. Kaplan?
24 MR. KAPLAN: Yes, we have one.
25 MR. PETESCH: Your Honor, a logistical matter on,

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1 on witnesses. First of all -- and Mr. Johnson and I spoke
2 last week -- we have some out-of-town witnesses coming in,
3 and Mr. Johnson anticipated -- but you can't predict these
4 things; things happen over the course of the week -- that he
5 may be closing his case by Thursday in which case it just
6 won't be an issue. That said, if he hasn't closed his case
7 on Thursday, we have two out-of-town third-party witnesses
8 who we would like to have testify on Friday morning, if that
9 is possible, in other words, possibly testify out of order.
10 MR. PRAGER: All right. Mr. Johnson, do you have
11 any objections to that?
12 MR. JOHNSON: Yes, Your Honor, just to -- I'm
13 sorry, Your Honor.
14 MR. PRAGER: Yes.
15 MR. JOHNSON: A limited objection with regard to
16 that. We anticipate to be able to close by Thursday or
17 early Friday with our last witness being our expert
18 designee. So we anticipate being finished, I guess, by
19 Friday morning and to accommodate counsel as well. I
20 understand that we want -- he wants to get his witnesses on
21 the stand, but we want to make certain we maintain
22 continuity in our case-in-chief.
23 MR. PRAGER: Well, that's all right. I understand
24 that. I'm going to defer, obviously, ruling on this until
25 we get close to that time, but my disposition is to allow

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1 the out-of-town witnesses to testify because it is too
2 cumbersome to require them to come back. So we'll see.
3 We'll try to make it as smooth as possible, but there may be
4 an interruption.
5 MR. JOHNSON: Yes, Your Honor.
6 MR. PETESCH: And on that point, Your Honor,
7 there's an interrelated complication with one of the
8 third-party witnesses, and that is a witness by the name of
9 Wendy Nussbaum. Mr. Johnson has filed a proof of service of
10 a subpoena on Wendy Nussbaum at her former address, which is
11 no longer her address; in fact, she sold the house. She
12 lives out of state, in Delaware. So she hasn't effectively
13 been subpoenaed.
14 That said, we intend to have her here, and
15 Mr. Johnson can ask all the questions that he wishes of her
16 provided that she does attend. Her day for attending was
17 going to be Friday, and so that would be one of the
18 individuals -- may shorten his case-in-chief, at least in
19 the presentation, at least.
20 There's a second preliminary item that we would
21 like to raise, and --
22 MR. PRAGER: Well, let me interrupt you. Who's
23 the second mystery witness?
24 MR. PETESCH: The second mystery witness we would
25 anticipate is Barry McCarthy, who's a former, former

1 director of Merchant Link.
 2 MR. PRAGER: Good. All right. So, Mr. Johnson,
 3 you're aware of that. Let me just say with some chagrin
 4 that I looked the other day to the subpoenas that
 5 Mr. Johnson had issued over his signature, and it's my
 6 fault, but the subpoenas went out as if these were witnesses
 7 being called on behalf of Merchant Link. You didn't catch
 8 that error. I didn't catch that error until Friday, but --
 9 when it's too late to do anything about it.
 10 We will assume that they will show up when they're
 11 supposed to show up, notwithstanding that technical error in
 12 the subpoenas -- not your fault. It's your fault for not
 13 proofreading, but it's my fault for not having proofread
 14 either. So that makes, that makes two of us. So are we
 15 done with preliminary matters then?
 16 MR. PETESCH: There was the second one.
 17 MR. PRAGER: Oh, that's -- I'm sorry.
 18 MR. PETESCH: And I realize that it's a, it's a
 19 judgment call. That said, this isn't a jury proceeding;
 20 there's no such thing as a directed verdict motion or
 21 anything of the nature, and in the end, we all put together
 22 our post-hearing briefs and assemble and present the facts
 23 and such in the order as we choose. My proposal would be
 24 for witnesses to testify once.
 25 That said, Mr. Johnson had subpoenaed Dan Lane,

1 the CEO of Merchant Link, to appear. He is here. We
 2 guarantee that he will be here. It would be certainly our
 3 request -- and I've seen it happen in federal jury trials as
 4 well -- that a witness testify once with full, thorough
 5 cross-examination, not limited to the scope of our direct,
 6 but it would move the hearing along quite a bit faster, and
 7 I know Mr. Johnson had disagreed with that and preferred to
 8 present Mr. Lane's testimony in his direct case. That said,
 9 we put that on the table, to propose witnesses testify once.
 10 MR. PRAGER: Mr. Johnson?
 11 MR. JOHNSON: Yes, Your Honor. It's the
 12 complainant's intent to take Mr. Lane's testimony on, in
 13 this case-in-chief. If counsel is recommending that he also
 14 can make a direct examination of Mr. Lane while he, in the
 15 middle of our case-in-chief, then we wouldn't have a problem
 16 with that because it would be akin to a cross, to some
 17 degree. So if counsel is saying that he does not want to
 18 call Mr. Lane again in their case, then we're fine with
 19 that.
 20 MR. PRAGER: All right. Well, we'll hold that in
 21 abeyance until such time as Mr. Lane is ready to be called.
 22 Mr. Petesch, I assume that you would have no objection to
 23 Mr. Johnson's proposal?
 24 MR. PETESCH: If Mr. Johnson were to call Mr. Lane
 25 in his direct case, we would most likely reserve and call

1 Mr. Lane as a witness when we present.
 2 MR. PRAGER: All right. Well, I think that's the
 3 way it's going to work out as we go along, but we'll see as
 4 we do that. Any other preliminary matters?
 5 MR. KAPLAN: Yes.
 6 MR. PRAGER: Well, no, let me just -- I really
 7 would prefer to deal with only one counsel at a time. Why
 8 don't you from now on consult --
 9 MR. KAPLAN: Sure.
 10 MR. PRAGER: -- if you have something to say.
 11 Mr. Kaplan, I thought, was going to be principal counsel for
 12 Merchant Link. If that's not the case, if Mr. Petesch is
 13 going to be that, then consult before. I don't want, I
 14 don't want ping-pong between the two of you.
 15 MR. KAPLAN: Okay. I understand. On Friday I
 16 spoke to Ms. Forbes, and she said there was some confusion
 17 about the exhibits. I just wanted to confirm that you had
 18 everything you needed. So --
 19 MR. PRAGER: I believe so.
 20 MR. KAPLAN: Okay.
 21 MR. PRAGER: All right. With that, Mr. Johnson,
 22 or both, counsel for both sides, I should say, while you're
 23 not prohibited from making opening statements, I don't
 24 really find them necessary because I'm fairly well-versed in
 25 what this case is about and what sort of evidence you're

1 likely to produce. So, Mr. Johnson, do you feel compelled
 2 to make an opening statement?
 3 MR. JOHNSON: Your Honor, I do not feel compelled
 4 to make an opening statement. We could get directly into
 5 the testimony. However, what I would like to say in brief,
 6 that we will be presenting evidence to show that this is a
 7 case of discrimination regarding the pay of the complainant
 8 as well as his treatment and also that the complainant was
 9 not only equal to, similar to, or the same as his
 10 comparators but he also exhibited traits that indicate that
 11 he actually had more experience, had a superior education,
 12 and deserved to be paid the amount, an equitable amount.
 13 Yes, Your Honor.
 14 MR. PRAGER: Are you done?
 15 MR. JOHNSON: Yes.
 16 MR. PRAGER: All right. And, Mr. Kaplan, will you
 17 be making an opening statement either now or at the
 18 beginning of your case?
 19 MR. KAPLAN: No. Well, we can waive those.
 20 MR. PRAGER: Okay. Good. So we can proceed.
 21 Mr. Johnson, would you call your first witness, please?
 22 MR. JOHNSON: Yes, Your Honor. Complainant calls
 23 Mr. Erik Belfiore to the stand.
 24 MR. PRAGER: Mr. Belfiore, would you please come
 25 up here, have a seat? Would you raise your right hand,

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1 please?
2 (Witness sworn.)
3 MR. PRAGER: All right. And would you state your
4 full name, please?
5 THE WITNESS: My name is Erik Charles Belfiore.
6 MR. PRAGER: All right. Mr. Johnson, you may
7 proceed.
8 MR. JOHNSON: Yes, Your Honor. As a matter of
9 convenience, I'm not certain if the witness stand contains
10 the exhibit binders. Can we present Mr. Belfiore with the
11 witness exhibit binder?
12 MR. PRAGER: No, because you'll be needing to
13 present the exhibits to your opposing counsel before, and to
14 me, before it goes to Mr. Belfiore. So --
15 MR. JOHNSON: Not for the purposes of entry of
16 evidence, Your Honor. We actually provided counsel with an
17 identical binder, as well as that for the Court.
18 Mr. Belfiore would need to have the complainant's exhibits
19 with him, as well, as we begin to go through. So until we
20 get to the point where we're actually admitting, I
21 understand the Court's position, but as a matter of
22 convenience and to save time, we will state on the record
23 that counsel has the identical copies.
24 MR. PRAGER: All right. There's no objection, I
25 assume?

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1 MR. KAPLAN: No, no objection.
2 MR. PRAGER: All right. Yes.
3 MR. JOHNSON: Thank you, Your Honor. May it
4 please the Court. Counsel seeks to proceed.
5 MR. PRAGER: Please do.
6 DIRECT EXAMINATION
7 BY MR. JOHNSON:
8 Q Mr. Belfiore, do you understand why you're here
9 today?
10 A Yes.
11 Q And could you explain to the Court why you're
12 here?
13 A I'm here today because in December of, of 2011 I
14 lodged a complaint against my former employer Merchant Link
15 for disparate treatment and pay and conditions of
16 employment, as well as retaliation and wrongful termination.
17 Q And can you please identify your employer?
18 A Merchant Link, LLC.
19 Q And at which location were you employed?
20 A 8401 Colesville Road, Suite 900.
21 Q Now, Mr. Belfiore, please state for the Court your
22 race.
23 A African-American.
24 Q And, Mr. Belfiore, on the record can you please
25 state your address, your current residential address?

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1 A I live at 3617 Martins Dairy Circle, Olney,
2 Maryland, for the last 15 years.
3 MR. JOHNSON: Now, Your Honor, at this time, we
4 want to identify what has been previously marked for
5 identification as Complainant's Exhibit No. 14. Let the
6 record reflect that the opposing counsel has an identical
7 copy of complainant's exhibits, which was provided pursuant
8 to the Court's scheduling order.
9 MR. KAPLAN: Can I make an objection?
10 MR. PRAGER: Pardon?
11 MR. KAPLAN: Can I just make an objection?
12 MR. PRAGER: Yes, go ahead.
13 MR. KAPLAN: We had negotiated joint exhibits,
14 spent lots of time going through and negotiating what would
15 be joint exhibits. My understanding, or a lot of these
16 exhibits that are in complainant's large binder here we
17 negotiated as joint exhibits. Is Mr. Johnson going to be
18 referring to the joint exhibits so we have one exhibit as
19 opposed to different exhibits?
20 MR. PRAGER: Well, my order actually was that
21 there would be a list of complainant's exhibits and
22 respondent's exhibits. Now the parties have done this joint
23 exhibit. I think it is easier for Mr. Johnson to refer to
24 the exhibits that he introduced. They will be identified as
25 C, in this case, 14, and your exhibits, even though you call

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1 them joint exhibits, will be identified, if you introduce
2 them, as R, whatever the exhibit is. So they will be
3 renumbered --
4 MR. KAPLAN: Okay.
5 MR. PRAGER: -- but they'll have the same
6 numbering except, instead of joint, it'll be R.
7 MR. KAPLAN: Okay.
8 MR. PRAGER: Okay? So is there any objection to
9 having this exhibit introduced in the record?
10 MR. KAPLAN: No.
11 THE WITNESS: Excuse me, Your Honor.
12 MR. PRAGER: Just a moment. All right. What is
13 Exhibit 14 for the record?
14 MR. JOHNSON: Exhibit 14 for the record, Your
15 Honor, is Mr. Belfiore's résumé that he was -- that was
16 submitted.
17 THE WITNESS: My glasses.
18 MR. JOHNSON: Oh, Your Honor, if I may approach?
19 I have Mr. Belfiore's glasses.
20 MR. PRAGER: All right.
21 THE WITNESS: Grazie.
22 MR. PRAGER: All right. Exhibit C-14 is admitted
23 into the record.
24 (Exhibit No. C-14 was received
25 in evidence.)

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1 MR. JOHNSON: Permission to proceed?
 2 MR. PRAGER: Yes.
 3 BY MR. JOHNSON:
 4 Q Mr. Belfiore, could you please describe what I've
 5 identified as Exhibit 14 for this Court, please?
 6 A This is my résumé as of October 21st, 2011, as
 7 presented to former counsel.
 8 Q Now, Mr. Belfiore, can you identify for the Court,
 9 where did you attend college?
 10 A I attended undergraduate -- I did my undergraduate
 11 work at the University of Rochester and subsequently went on
 12 to earn my master's of business administration, again, at
 13 the University of Rochester. Consequently, in 2010 I
 14 obtained a juris doctor from The Catholic University of
 15 America.
 16 Q Now, Mr. Belfiore, listed on your résumé, can you
 17 identify your work experience?
 18 A Sure. I will pick that up post-education. I
 19 actually started my career at Bausch & Lomb. After
 20 finishing undergrad, I accepted a position in the internal
 21 audit group at Bausch & Lomb while I pursued my graduate
 22 degree in business administration.
 23 I subsequently went to work full-time for Bausch &
 24 Lomb after graduation for approximately a year, year and a
 25 quarter, in which I traveled the world, doing financial and

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1 operational reviews of Merchant Link wholly owned and
 2 partially owned foreign subsidiaries, going through
 3 comprehensive evaluations, efficiency studies, and reporting
 4 my findings to the audit committee of the board of
 5 directors.
 6 Q Now, you just mentioned Merchant Link. Did you
 7 mean Bausch & Lomb?
 8 A Yes, I meant Bausch & Lomb.
 9 Q And how long did you work for Bausch & Lomb?
 10 A All told, I worked for Bausch & Lomb from '89
 11 through '95 with a brief respite of about a year and a half
 12 as the plant, system plant controller of Corning
 13 Incorporated.
 14 Q And where was Corning located?
 15 A This, this particular facility for Corning was
 16 located in the Mon Valley, south of Pittsburgh, in
 17 Pennsylvania. I was the plant controller responsible for
 18 financial operations for a plant that had about \$50 million
 19 in throughput. I had a staff of about five
 20 accounting/finance personnel working for me. In addition,
 21 it was a part of Corning's financial executive development
 22 program, and at the completion of that stint, I was supposed
 23 to move over to my own plant controllership within Corning's
 24 manufacturing structure.
 25 Q And did you eventually move over to another plant?

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1 A I did not. I actually got a call from my mentor
 2 and manager from Bausch & Lomb who had recently got promoted
 3 to the vice president of finance for the eyewear division,
 4 Bausch & Lomb's largest division at the time, the makers of
 5 the Ray-Ban sunglasses. He had just got the controllership
 6 and the CFO position of that division. He wanted to build a
 7 strong team, and he indicated that I was the first, first
 8 name on his list.
 9 Q And can you describe your duties at Bausch & Lomb
 10 once you returned?
 11 A My duties at Bausch & Lomb was essentially to be a
 12 key lieutenant, to go ahead and to tackle wherever they felt
 13 problem areas in the organization existed. They had issues
 14 in regards to the development and launching of new products
 15 and the accounting for such expenditures, as well as
 16 warranty obligations, and they had major holes in the
 17 distribution of credit and credit operations. So I was
 18 given the lead in those particular areas to straighten out
 19 those processes and areas and to leave them on better
 20 standing.
 21 Q And were you successful at your job?
 22 A Yes, I was.
 23 Q And how long did you stay at Bausch & Lomb the
 24 second time?
 25 A I stayed at Bausch & Lomb until the summer of '95

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1 when I got a call from a, from the mayor of Rochester at the
 2 time who was dealing with some very compelling problems,
 3 because a lot of the corporate infrastructure was moving out
 4 of Rochester, companies such as Xerox -- Kodak was
 5 downsizing tremendously; Xerox was moving their corporate
 6 headquarters from the Rochester area to Stanford,
 7 Connecticut -- and he was very concerned about tax revenue
 8 for much-needed city services, and he wanted my opinion and
 9 commissioned me to do a study to figure out how the city
 10 could respond and mitigate the loss of that revenue. I
 11 started a consulting firm, okay, to do that study and
 12 propose recommendations as to what the city could do to try
 13 to replace some of that much-needed corporate tax revenue.
 14 Q And was this program that you created successful?
 15 A Yes, it was. I created what was called the
 16 Community Commercial Development Plan, which, which, which
 17 leveraged very seriously the Community Reinvestment Act to
 18 get banks and local bank investments to make money and
 19 funding available to small businesses, particularly those
 20 that operated within the city limits. We got a partnership
 21 together with seven of the largest commercial banks in the
 22 area to pledge \$3 million each of which the city matched.
 23 So we had roughly \$25 million of capitalization.
 24 I wrote all the underwriting rules. I wrote the
 25 servicing rules. I managed and negotiated the servicing

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1 agreements. Obviously, the city didn't have the facilities
2 and the operations to service and distribute loans; so we
3 got the banks to agree to jointly participate in those
4 functions, and I personally went out and marketed and
5 underwrote the first 5 to 10 million dollars' worth of loans
6 and then turned the program over to the city.
7 Q Now, how long did you stay in this particular
8 position?
9 A I stayed in that particular position until around
10 the beginning of 1997, and it was because of my experience
11 in dealing with the lawyers of the banks and those types of
12 things, I kind of got a thirst for the law, you know,
13 particularly on the transactional side, and decided that I
14 wanted to go back and get that, that expertise, just got
15 sick and tired of being in these 14-hour meetings and not
16 understanding the language.
17 So I applied for and got admitted to Georgetown
18 Law. Me and my wife had our first child. She was from this
19 area. We needed the help from her parents in helping with
20 our young daughter because my wife was a professional as
21 well, and so we moved here and I took a job with MCI
22 Telecommunications Corporation.
23 Q Now, what was your position at MCI?
24 A I was a senior financial business analyst for
25 partner marketing for MCI. MCI, this was the long-distance

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1 arm, not the business side, but the personal side. I was
2 given the crown jewel of the program, which was the partner
3 marketing programs. These were the programs that were
4 designed to give telecommunication, or to give free
5 frequent-flier miles for telecommunications use. So
6 essentially, we had to buy miles from the airlines, and then
7 when people used their, their calling card, their
8 long-distance calling card, for so much usage, they were
9 rewarded miles. When I took on the program, we had three
10 airlines, four airlines. By the time I left, I had them
11 all, and these deals ranged from a million to \$65 million in
12 value.
13 Q Now, how long did you hold this particular
14 position?
15 A I stayed on with MCI until June of 1998.
16 Q And what was your next employer?
17 A My next employer was e.Spire Communications. I
18 moved to e.Spire Communications because I was at a real fork
19 in the road, turning point, where I had to make a decision
20 on whether to pursue with my legal studies and stop working
21 or pursue with my legal studies and have a less demanding
22 job. But there was a wide-open frontier due to the 1996
23 Telecommunications Act that created a bunch of small
24 select-type communications companies, and they were eager
25 for talent, and they offered me a fairly lucrative position

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1 to come in and standardize and construct their pricing and
2 profitability infrastructure.
3 Q And do you recall the, or can you tell the Court
4 what your job position was at e.Spire?
5 A My job was for all of the new products coming on
6 board and -- for productizing those products and charging a
7 suitable fee in the marketplace for those facilities, for
8 that, for those connections and dial tone, as well as
9 complying with the regulatory requirements of tariffing and
10 making sure that all of the rates were recorded
11 appropriately for compliance.
12 Q And how long did you stay in this position with
13 e.Spire?
14 A I stayed there for about a year, until 1999, May
15 of 1999.
16 Q And who was your next employer after e.Spire?
17 A My next employer was KPMG Consulting. I was
18 called to KPMG by a colleague from the telecommunications
19 issue. One of the key problems plaguing the
20 telecommunications industry at the time was billing, billing
21 for services, especially when you started to talk about data
22 products, the Internet, connectivity to the Internet, what
23 was the appropriate billing and those types of things. All
24 of the major telecommunications companies were grappling
25 with this.

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1 So there was a consulting practice that was
2 commenced within KPMG, specifically focusing on billing and
3 financial systems as they applied to telecommunications
4 companies. So I signed on with him as a senior consultant
5 and project manager to identify some of the best
6 off-the-shelf projects and some of the best programming
7 talent that were coming up with, with feasible and viable
8 solutions to this problem and then helping clients choose
9 the right system, implementing those system so they could,
10 they could meet their business objectives.
11 Q And how long did you stay with KPMG Consulting?
12 A I stayed with KPMG Consulting for about a year and
13 four or five months.
14 Q And who was your next employer?
15 A My next employer was Intermedia Communications.
16 Again, a colleague from the consulting world got a chief
17 marketing position, and he wanted some key business thinkers
18 to come in and help expand his business, grow his business.
19 So he gave me the senior product manager position, where I
20 had responsibility for selling big-type solutions, T1s, DS1s
21 and above, as well as all of the switching, routing,
22 equipment that would go into a well-functioning data center.
23 I was abreast at working cross-matric, across the different
24 departments of the organization, to come up with
25 customer-viable solutions, pricing those solutions, and

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1 closing those deals.
2 Q And what was the title of your position?
3 A I was the senior product manager.
4 Q And how long did you hold this position?
5 A I stayed to, stayed with Intermedia until they
6 sold the business to Allegiance in February of 2002. I had
7 the opportunity to go, to relocate to Dallas, to work for
8 Allegiance in the same capacity. I declined to do so.
9 Q And what was your next employer?
10 A I worked successive contract jobs for, through
11 Accountants Inc. -- one with Department of Energy and the
12 second one with MICROS -- until I took a position as the
13 finance director for the Special Olympics.
14 Q Now, how long did you hold this position at the
15 Special Olympics?
16 A I was at the Special Olympics from May 4th, I
17 mean, from May to, 2004, to September of, of, of '05, just
18 prior to taking the position with Merchant Link.
19 Q And can you describe some of your job duties with
20 the Special Olympics?
21 A Succinctly, my job was to, to mirror the CFO. The
22 board of directors of the Special Olympics had determined
23 that the company or the organization was far too dependent
24 on one person. If she left the company, if she took a
25 vacation, then very key functions would stop. So she was

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1 ordered to find someone who could basically be the CFO in
2 her absence, and that was my position.
3 Primarily, I managed all of the internal
4 accounting and finance functions, as well as going out into
5 the field -- and when I mean the field, I mean somewhere in
6 the world -- to make sure that the funds that we were
7 deploying out into the field to fund these very valuable,
8 critical, meaningful programs were being appropriated
9 correctly and that the proper accounting and controls were
10 in place to make sure that there was no improprieties.
11 Q Could you inform the Court of your next employer?
12 A My next employer was Merchant Link.
13 Q And what was your starting position at Merchant
14 Link?
15 A My starting position at Merchant Link was manager
16 of financial analysis.
17 Q Based upon your experience, were you qualified for
18 this position?
19 A Over.
20 Q When you say over, what do you mean?
21 A Overqualified.
22 Q Now, how long did you hold this particular
23 position?
24 A Formally I held this position until May of 2008
25 when I got a series of promotions: one, the company got

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1 word -- when I say the company, the CEO time of Chris
2 Justice and myself -- we got a call from Dallas,
3 specifically from Dan Charron, to say that we needed to
4 prepare to put the company on the block to be sold, we were
5 the only two people to know about it. And Chris, at that
6 time, knew that going into selling the company, they needed
7 to have a senior financial person on board, and so he
8 elevated my title to chief financial officer.
9 Shortly thereafter, in May of 2008, we had two
10 employees leave, Alicia Hanson and Geoff Krieg, and they --
11 Geoff, I guess, left a void as the director or GM of service
12 delivery, and Chris gave me those responsibilities as well,
13 elevating my title to chief operating officer.
14 Q Now --
15 MR. PRAGER: All right. Before we go on, would
16 you for the record spell the names of the two people that
17 you just identified, their last names?
18 THE WITNESS: Hanson, H-A-N-S-O-N, and Krieg,
19 K-R-I-E-G.
20 MR. PRAGER: All right. Thank you.
21 THE WITNESS: I may have transposed the i and the
22 e, but I believe I'm correct.
23 BY MR. JOHNSON:
24 Q Now, Mr. Belfiore, what was your starting salary
25 at Merchant Link?

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1 A 90,000 per annum.
2 Q And this was your starting salary in 2005?
3 A Yes, sir.
4 Q Did you receive a raise in 2006?
5 A Two percent.
6 Q Did you receive a raise in 2007?
7 A Yes. I believe it was the standard budgeted level
8 of three percent.
9 Q And in 2008 did you receive a raise?
10 A Yes. I received, in recognition of the new
11 responsibilities, after some back-and-forth with
12 Mr. Justice, I received a \$10,000 raise of which Mr. Justice
13 acknowledged was not appropriate and that the discussion --
14 MR. KAPLAN: Objection.
15 THE WITNESS: -- would continue.
16 MR. PRAGER: There's an objection. What's the
17 objection?
18 MR. KAPLAN: Hearsay.
19 MR. PRAGER: All right. As you know, hearsay is
20 permitted in these cases. I understand the objection, but
21 I'll overrule it.
22 THE WITNESS: Yeah, Mr. Justice said that we would
23 continue to work on suitable compensation.
24 BY MR. JOHNSON:
25 Q Now, did you receive an increase in your salary

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1 related to your, the change of your title to chief operating
2 officer?
3 A No, not then. Subsequently in 2009 Chris Justice
4 left, resigned from Merchant Link in the spring, March or
5 April, at which time Mr. Charron was, as a result of a board
6 resolution, instituted as the interim CEO of Merchant Link.
7 Mr. Justice, upon his leaving, communicated a transition
8 document to Mr. Charron. Amongst other things, that
9 document indicated attrition risks for myself,
10 Mr. Davidovic, and Mr. Konar.
11 MR. PRAGER: All right. Would you --
12 BY MR. JOHNSON:
13 Q Can you spell Mr. -- I'm sorry.
14 MR. PRAGER: Would you spell those names, please?
15 THE WITNESS: Bear with me. Davidovic,
16 D-A-V-I-D-O-V-I-C.
17 MR. PRAGER: And Mr. Konar?
18 THE WITNESS: K-O-N-A-R.
19 MR. PRAGER: Thank you. Mr. Johnson.
20 BY MR. JOHNSON:
21 Q Mr. Belfiore, as the chief operating officer, what
22 were your job duties?
23 A Just as the chief operating officer or what were
24 my job duties overall?
25 Q Your job duties overall --

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1 A Okay.
2 Q -- after you took the title of chief operating
3 officer.
4 A After I took the chief operating officer job, I
5 retained the finance function. So I still had control of
6 the finance function. I had control of the service delivery
7 team, which consisted of an implementations team, an
8 installation team, a funds research team, a tech support
9 team, and a newly added billing function so we could try to
10 address, appropriately, the billing problems that we were
11 facing in the company. I also retained all of the
12 officer-level duties in regards to corporate governance and
13 the CFO functions of being the primary spokesperson to the
14 owners at those board of director meetings as to the
15 financial position and performance of the company.
16 Q Now, Mr. Belfiore, please state for the record,
17 what was your grade level upon accepting the job at Merchant
18 Link?
19 A The very beginning?
20 Q The very beginning.
21 A I was a grade level 12.
22 Q And how long did you remain a grade level 12?
23 A I remained a grade level 12 until May of 2008 when
24 I was raised to a grade level 14.
25 Q Now, at this position of chief operating officer,

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1 did you supervise employees?
2 A Yes.
3 Q And can you state for the Court how many employees
4 were under your supervision?
5 A I had Michael Krolick, who was the manager of
6 financial analysis at the time. I had Jomaine Sanders, who
7 was manager of implementations. I had Mesfein Lulseged, who
8 was the manager of, of installations. I had Timothy
9 Robinson, who was manager of billing operations. I had
10 Lonest Eady, who was the manager of the funds research
11 group.
12 MR. PRAGER: I think the question was how many did
13 you supervise.
14 THE WITNESS: Oh, how many was that? Krolick,
15 Sanders, Lulseged, oh, actually, there was Kay Fakunle as
16 well, Lonest, Robinson -- six.
17 MR. PRAGER: All right. And so that we don't have
18 to interrupt your time, these are very complex names, many
19 of them. So when we have a -- when we go off the record
20 later and have a brief pause, will you consult with the
21 court reporter and give the spellings for all of those names
22 and any other names that you use in the future?
23 THE WITNESS: Yes, Your Honor.
24 MR. PRAGER: Thank you. Mr. Johnson.
25 MR. JOHNSON: Yes.

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1 BY MR. JOHNSON:
2 Q Mr. Belfiore, who was responsible for reviewing
3 your performance on your job?
4 A Initially Chris Justice wrestled it away from
5 Dallas, from Paymentech, and then when Chris left, it was
6 the responsibility for the interim CEO, Dan Charron, until
7 2011, sometime in the spring, when I believe Mr. Lane was
8 elevated to the CEO.
9 Q And during that time period, did you ever receive
10 a bad review from either Chris Justice, Dan Charron, or Dan
11 Lane?
12 A I've never received a negative review during my
13 time at Merchant Link.
14 Q Now, Mr. Belfiore, were you, did you receive any
15 awards while working at Merchant Link?
16 A Yes. I --
17 Q Can you identify those awards for the Court?
18 A Yeah. In 2006, I believe, might be a little bit
19 off, 2006, certainly by 2007, Paymentech had a program
20 entitled Stars in Motion. It was an award that was given to
21 an individual in the organization, across the population of
22 some 6,000 people that worked for Paymentech and its
23 subsidiaries, about people who were making significant
24 contributions and going far and beyond the call of duty. I
25 was nominated by Chris, and in 2006 I won the Stars in

1 Motion award -- nice piece of glass and there was, I think,
2 a \$500 cash award.

3 Q Now, just for the Court's understanding, what is
4 the relationship between Paymentech and Merchant Link?

5 A Right now I can't really tell you. I'll tell you
6 the best I can the way I understood it. When I joined
7 Merchant Link, it was a wholly owned subsidiary of Chase
8 Paymentech or Paymentech Holdings of which Chase Paymentech
9 was the key asset. Some -- that was kind of the ownership.
10 It was a 100 percent wholly owned subsidiary.

11 In late 2008 Chase Paymentech, a joint venture
12 between First Data and J.P. Morgan at the time, dissolved
13 due to a clause in their joint venture agreement that
14 stipulated that if one of the owners of the joint venture
15 got acquired, that they could dissolve the joint venture.
16 That posed a problem for the two companies in regards to
17 Merchant Link because unlike their other assets, which were
18 customer merchant agreements, portfolios which could be
19 assigned, one or the other, this was a baby that couldn't be
20 split. So that triggered the mandate from corporate in the
21 summer of 2008 to put the company on the block because,
22 obviously, selling the company, splitting the proceeds would
23 be the most advantageous route to distribute the asset.

24 After the joint venture was dissolved, did Chase
25 Paymentech survive as a legal entity, did Paymentech survive

1 as a legal entity, Paymentech Holdings? There was lot of
2 stratifications to, you know, the way the organizations were
3 corporate and those types of things. Any event, any and all
4 were a wholly owned subsidiary or asset of J.P. Morgan
5 Chase.

6 Q Were you put in a position to facilitate the sale
7 of Merchant Link?

8 A Yes. My, my -- as you know, with a transaction of
9 this magnitude and nature, it's primarily a financial
10 conversation. There's a lot of strategy, backdrop, history,
11 and those types of things, but at the end of the day, the
12 deal is made in relation to the numbers -- the valuation, is
13 it a fair valuation; do due diligence; can that valuation,
14 okay, be validated; and then based on that, buy-sell
15 agreements are drafted. I was the person who spoke to the
16 deal financially.

17 Q Now, was Merchant Link ever sold?

18 A Three unsuccessful attempts that I was a part of.

19 Q And why were the attempts unsuccessful?

20 A The original attempt in 2008 was unsuccessful. I
21 think the major force in that was the kind of collapse of
22 financial markets at that time. The financial crisis of
23 late 2008, you know, put stringent requirements and the cost
24 of debt and those types of things that made the deal -- or
25 just frustrated the close of the deal at that time.

1 The second attempt, okay, was clouded very
2 seriously in regard to litigation that Merchant Link was
3 involved in at the time with no clear understanding or way
4 of creating an expected impact on the disposition of that
5 litigation. So buyers were a little squeamish until that
6 situation had been worked out.

7 The last and final attempt failed primarily due to
8 the fact that the partnership with MICROS, which was
9 responsible, large in part, for the revenues of Merchant
10 Link, the terms were changing and -- changing significantly
11 out of Merchant Link's favor, and to try to ascertain or to
12 extrapolate or extend what the implication or impact on the
13 business, that business relationship would have going
14 forward was far too speculative to base a valuation on.

15 Q Now, Mr. Belfiore, were you compensated for your
16 work with regard to facilitating a sale?

17 A No.

18 Q Given all your job duties and responsibilities,
19 would you consider your compensation from Merchant Link to
20 be fair compared to your colleagues at Merchant Link?

21 A In my mind, my compensation was always in question
22 in my mind, in absolute terms and in comparative terms,
23 while at Merchant Link.

24 MR. JOHNSON: Now, Your Honor, at this time, we
25 would like to turn the witness's attention to Exhibit 41 in

1 the witness binder.

2 BY MR. JOHNSON:

3 Q Mr. Belfiore, if you will, please look at Exhibit
4 41.

5 MR. KAPLAN: We --

6 MR. PRAGER: Just a moment.

7 MR. KAPLAN: Objection to this document.

8 MR. PRAGER: What are you objecting to?

9 MR. KAPLAN: It purports --

10 MR. PRAGER: Thus far, let me just say, all I
11 heard thus far is that Mr. Belfiore's been asked to call his
12 attention to this exhibit.

13 MR. KAPLAN: Okay. I'll let him go. I'll let him
14 continue.

15 MR. PRAGER: Mr. Johnson.

16 MR. JOHNSON: Yes, Your Honor.

17 BY MR. JOHNSON:

18 Q Mr. Belfiore, do you recognize Tab No. 41 in the
19 exhibit binder?

20 A Yes.

21 Q Can you please describe Tab 41 for the Court?

22 A Tab 41 is a matrix that I put together based on
23 source documents obtained in my possession in the course of
24 my work that, that indicate my salary history, the changes
25 of my salary history over time across the three components

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1 of Merchant Link's compensation package, that being base
2 salary, AIP bonus, and LTIP grants. And for the data in my
3 possession, I also did the same type of a comparison across
4 my comparators as well as similarly situated employees at
5 Merchant Link.

6 Q Now, in Tab 41 you describe or you list the base
7 pay, the LTIP program, and the AIP bonus. Can you describe
8 to the Court the basis for your compensation?

9 MR. PRAGER: Well, let me, let's start, you used
10 two terms that are not obvious to anybody reading the
11 transcript.

12 MR. JOHNSON: Yes, Your Honor.

13 MR. PRAGER: What is LTIP?

14 MR. JOHNSON: Yes.

15 BY MR. JOHNSON:

16 Q Mr. Belfiore, could you describe, what is LTIP?

17 A LTIP is the long-term incentive plan. As you
18 know, Merchant Link was not a publicly traded company. This
19 particular portion of the payment was a long-term horizon
20 issue solution so that key decision makers would have a
21 long-term vested interest in the company. So, to simplify,
22 it behaved much like a stock option for a company that did
23 not have stock.

24 MR. PRAGER: All right. And I believe the other
25 term that was used was AIP.

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1 THE WITNESS: And that was the annual incentive
2 program and that basically was, per grade level, there was
3 an associated percentage, bonus percentage that was applied
4 to your base level contingent upon personal and company
5 performance.

6 MR. PRAGER: All right. Mr. Johnson.

7 MR. JOHNSON: Yes.

8 BY MR. JOHNSON:

9 Q Now, Mr. Belfiore, could you explain to the Court
10 the interrelatedness of the AIP that you just described and
11 the LTIP along with your base salary?

12 A I'm not sure I understand the question.

13 Q In calculating your gross compensation, can you
14 explain to the Court how all three components work together?

15 A Okay. A compensation package was your base
16 salary. Your base salary was determined by grade. The
17 grade had an associated AIP percentage, and then there was a
18 third component given. If you were a grade level 12 or
19 above, you participated in the LTIP program, and those LTIP
20 programs consisted of a cash grant, but those grants weren't
21 immediately payable in the year you received them. You
22 typically received or realized the cash payment from the
23 LTIP payment in year two for the first 50 percent of it and
24 in year three for the second 50 percent of it. So the
25 actual grant and realizing the benefit of the grant was two

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1 to three years removed from the grant itself. So for the
2 first two years of working for Merchant Link, if you had
3 gotten a grant in your first year, you would not have gotten
4 an LTIP payment until your third year.

5 MR. PRAGER: And, Mr. Johnson, I'm going to
6 interrupt --

7 MR. JOHNSON: Sure.

8 MR. PRAGER: -- your questioning because it's one
9 of the mysteries. How was the LTIP, which is L-T-I-P --

10 THE WITNESS: Uh-huh.

11 MR. PRAGER: -- how was that calculated?

12 THE WITNESS: It's -- to be honest, Your Honor, as
13 far as what grants were made, how the amount of the grant
14 was determined, the best answer I can give you was it was at
15 the discretion of Dan Charron. Dan Charron gave you what he
16 felt you deserved. Outside of that there may have been a
17 stratification by grade on what the appropriate grant, LTIP
18 grant was for that grade, but I was not privy to that
19 schedule.

20 I know one year I got \$5200 in the first grant I
21 got. The second grant I got was \$8,000, and from Dan
22 Charron's own mouth, he told me that I had gotten screwed
23 with that level, and the following LTIP grant, my grant was
24 \$50,000. The calculus behind that I can't speak to in any
25 level of detail.

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1 MR. PRAGER: Mr. Johnson.

2 MR. JOHNSON: Thank you, Your Honor.

3 BY MR. JOHNSON:

4 Q Now, Mr. Belfiore, is your salary used to
5 calculate your AIP award?

6 A It is part of the calculation. It is the base
7 that the percentage is applied to.

8 Q And what role does your grade level play in the
9 calculation of your AIP award?

10 A There is a table that circulates within the halls
11 of Merchant Link, or certainly did at the time that I was
12 there, that would tell you information such as grade level,
13 midpoint and ranges of salaries, and corresponding AIP
14 percentage.

15 MR. JOHNSON: Now, Your Honor, we now want to
16 identify what has been previously marked for identification
17 as Plaintiff's Exhibit No. 12.

18 BY MR. JOHNSON:

19 Q Mr. Belfiore --

20 MR. PRAGER: Just a moment, please.

21 MR. JOHNSON: Sure.

22 THE WITNESS: Excuse me. Can I get a glass of
23 water?

24 MR. PRAGER: Yes. Can you go off the record for a
25 moment?

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1 (Whereupon, a brief recess was taken.)
 2 MR. PRAGER: Mr. Johnson.
 3 MR. JOHNSON: Thank you, Your Honor.
 4 BY MR. JOHNSON:
 5 Q Mr. Belfiore, do you recognize Complainant's
 6 Exhibit No. 12?
 7 A Yes, I do recognize it, but I don't understand it.
 8 Q And when you say you don't understand it?
 9 A I don't understand it because it's a record that's
 10 generated off of the HR system employed at the time by
 11 Merchant Link, but it claims that my title is director of
 12 business development, Merchant Link. I never held any such
 13 title at Merchant Link, nor was I offered any such title at
 14 Merchant Link.
 15 I see that it corresponds with a salary of
 16 \$120,000, and my salary, when it was at that time, I was
 17 clearly the chief operating officer of Merchant Link at the
 18 time. So I just, I don't understand why this record was
 19 available in the system.
 20 Q So your testimony here today is that this is not
 21 your record?
 22 A This is not an accurate record of my employment
 23 experience at Merchant Link.
 24 MR. JOHNSON: Your Honor, complainant moves into
 25 evidence Complainant's Exhibit No. 12.

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1 MR. PRAGER: All right. Is there an objection to
 2 that?
 3 MR. KAPLAN: No objection.
 4 MR. PRAGER: All right. Exhibit No. 12,
 5 Complainant's Exhibit No. 12 is entered into the record.
 6 (Exhibit No. C-12 was received
 7 in evidence.)
 8 MR. JOHNSON: Your Honor, at this time, plaintiff
 9 seeks to mark for identification what has been previously
 10 marked for identification as Complainant's Exhibit No. 3.
 11 (Exhibit No. C-3 was marked
 12 for identification.)
 13 MR. PRAGER: All right. Mr. Johnson.
 14 BY MR. JOHNSON:
 15 Q Now, Mr. Belfiore, do you recognize Complainant's
 16 Exhibit No. 3?
 17 A Yes, I do.
 18 Q And can you describe Complainant's Exhibit No. 3,
 19 please, for the Court?
 20 A Plaintiff Exhibit No. 3 is the end of the year
 21 2008 salary detailed schedule that's used as an analysis
 22 input for the budgeting process so me and Michael Krolick at
 23 the time, who was reporting to me, could budget the salary
 24 and salary-related expenses for the following year.
 25 Q And in Plaintiff's Exhibit No. 3, can you identify

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1 your salary as listed in this report?
 2 A Yes. Towards the top of the second page, I see my
 3 salary. It's listed at \$105,000 per annum, and my title is
 4 GM of customer service.
 5 Q Would that be a correct title?
 6 A Nowhere have I been offered the position of GM of
 7 customer service, nor have I accepted the position of GM,
 8 customer service.
 9 Q What was your title at that particular time?
 10 A At the end of 2008, I was the chief operating
 11 officer.
 12 Q In the same exhibit, can you find the salary of
 13 Mr. Dan Lane?
 14 A Yes. At the top of the first page of the exhibit,
 15 second name, Daniel J. Lane, COO of Merchant Link; salary,
 16 193845.
 17 Q Are there any other corporate officers listed in
 18 Plaintiff's Exhibit No. 3?
 19 A Timothy Kinsella is listed as chief CMO but was
 20 not formally an officer of the company. I believe
 21 Christopher Justice, yes, Christopher Justice, president of
 22 Merchant Link, 225,000.
 23 MR. PRAGER: I'm sorry. Where did you find
 24 Mr. Kinsella's?
 25 THE WITNESS: Mr. Kinsella's salary can be found,

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1 if you go to the third group of names, fourth from the
 2 bottom.
 3 MR. PRAGER: On which page?
 4 MR. JOHNSON: First page.
 5 THE WITNESS: On the first page. It should have a
 6 check mark against it.
 7 MR. PRAGER: All right. I see it. Thank you.
 8 BY MR. JOHNSON:
 9 Q Now, can you identify on this particular exhibit
 10 Ms. Mary A. Bodhane?
 11 A Yes. Just above Mr. Kinsella's entry is Mary A.
 12 Bodhane, the director of business development, 132870.
 13 Q Was Ms. Mary Bodhane an officer of the company?
 14 A No, she was not.
 15 Q On the same exhibit, can you locate, identify the
 16 Merchant Link employee Jay Konar?
 17 A Yes. Moving upward on the first page to the
 18 second grouping of names, just below midway, Konar, manager
 19 of network operations, 112156.
 20 Q Was Mr. Konar an officer of the company?
 21 A No, he was not.
 22 Q Did you hire Mr. Konar?
 23 A No, I did not.
 24 Q Was Mr. Konar hired after your employment?
 25 A Yes.

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1 Q How much after your employment was Mr. Konar
2 hired?
3 A I believe it was roughly a year, at least a year
4 after I was.
5 Q Is Mr. Konar a, your direct report?
6 A No, he's not.
7 Q Can you explain why Mr. Konar's salary is higher
8 than yours?
9 A Yeah, because Dan Lane made it that way.
10 Q When you say Dan Lane made it that way, please
11 explain.
12 MR. KAPLAN: Objection. Is this based on personal
13 knowledge or --
14 THE WITNESS: Yes, it is.
15 MR. PRAGER: No, just a moment. There's an
16 objection.
17 MR. KAPLAN: Hearsay.
18 MR. PRAGER: No, but presumably Mr. Belfiore has a
19 belief, and he can express his belief, and we'll give it
20 whatever weight --
21 MR. KAPLAN: Sure.
22 MR. PRAGER: -- it's entitled to. And,
23 Mr. Belfiore, you were about to say something -- well,
24 actually, I think, at the moment, there's no question
25 pending, so Mr. Johnson.

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1 MR. JOHNSON: Yes.
2 BY MR. JOHNSON:
3 Q Mr. Belfiore, how do you know Dan Lane made his
4 salary higher than yours?
5 A Because Mr. Konar reported directly to Mr. Lane.
6 Any salary increases to Mr. Konar's compensation would have
7 to have been approved by Mr. Lane.
8 Q Now, Mr. Belfiore, on the second page, can you
9 please identify Susan Zloth?
10 A Okay. Second page, last grouping, the second to
11 the last grouping on the page, last name, Susan M. Zloth,
12 GM, project management.
13 Q Was Ms. Zloth an officer, a corporate officer?
14 A No, she was not.
15 Q What was Ms. Zloth's title?
16 A GM, project management.
17 Q And what is Ms. Zloth's salary as of 2008?
18 A \$153,071, 153 comma 071.
19 Q Now, Mr. Belfiore, please identify in Exhibit 3
20 Mr. Chudesama.
21 A Second to the last name on the page, just above
22 James Reese, Chudesama Ben, director, software development,
23 \$162,784.
24 Q Now, was Mr. Chudesama a corporate officer?
25 A No, he was not.

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1 Q Do you have an explanation as to why his salary is
2 higher than yours?
3 A No, I do not.
4 Q Can you identify on the same page Mr. James Reese?
5 A Yeah. As stated before, just below
6 Mr. Chudesama's salary is an entry for James Reese who was a
7 Software Developer IV, and Mr. Reese's salary was \$142,830.
8 Q Was Mr. Reese an officer of the company?
9 A No, he was not.
10 Q Do you have an explanation for the Court as to why
11 his salary is higher than yours?
12 A I simply don't know.
13 Q Mr. Belfiore, will you identify for the Court on
14 Exhibit 3, on the same page, Misael Henriquez?
15 A In the same grouping, on the same page, third name
16 down, Henriquez Misael, Software Developer IV, 122775.
17 Q Is Mr. Henriquez a corporate officer?
18 A No, he is not.
19 Q Do you have a reasonable explain for the Court as
20 to why his salary is higher than yours?
21 A No, I do not.
22 Q Mr. Belfiore, can you identify on the same page
23 Ahn Lam?
24 A Right beneath Mr. Misael, Mr. Henriquez, is Ahn
25 Lam, Software Developer V, 131380.

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1 Q Is Mr. Ahn Lam a corporate officer?
2 A No, he is not.
3 Q Do you have an explanation as to why his salary is
4 higher than yours?
5 A No, I do not.
6 Q Mr. Belfiore, on the same page, I believe it's the
7 last one, Mr. Christopher Marshall.
8 A Yes, just beneath Mr. Lam --
9 Q Yes.
10 A -- Software Developer V, \$115,000.
11 Q Is Mr. Christopher Marshall a corporate officer?
12 A No, he was not.
13 Q Do you have an explanation or reason as to why his
14 salary is higher than yours?
15 A No.
16 MR. JOHNSON: Your Honor, at this time,
17 complainant moves into evidence Plaintiff's Exhibit 3.
18 MR. KAPLAN: Objection.
19 MR. PRAGER: Any objections?
20 MR. KAPLAN: Yes, a couple of objections -- first,
21 relevance. There's been no evidence or foundation that any
22 of these individuals are proper comparators as a matter of
23 law to date, and total compensation is based on, as he
24 testified, a variety of factors, and this only mentions one
25 out of the three.

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1 MR. PRAGER: All right. Well, I understand the
2 objection, but it's overruled. You'll be able to address
3 whether or not these are proper comparators in either
4 cross-examination or in testimony by your witnesses. And
5 that it's incomplete is not an objection. That, too, would
6 be something that would be subject to cross-examination and
7 further testimony. So the objection is overruled. The --
8 did you have any other objections to this?
9 MR. KAPLAN: No.
10 MR. PRAGER: All right. Let me just ask, since
11 this is being called into issue, I assume this is something
12 that was generated by Merchant Link, is that correct?
13 MR. KAPLAN: Yes. We have no objection to that.
14 MR. PRAGER: All right. No. I just want to --
15 MR. KAPLAN: Yes.
16 MR. PRAGER: -- get on the record that this is a
17 document that was created by Merchant Link and not by
18 Mr. Johnson or Mr. Belfiore.
19 (Exhibit No. C-3 was received
20 in evidence.)
21 MR. KAPLAN: That is correct, and --
22 MR. PRAGER: All right. Thank you.
23 MR. KAPLAN: -- and I would like to reserve
24 argument about whether the 2008 time frame is even at issue
25 in this case.

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1 MR. PRAGER: I understand.
2 MR. KAPLAN: Okay.
3 MR. PRAGER: All right. Go ahead, Mr. Johnson.
4 MR. JOHNSON: Your Honor, we would like to
5 identify what has been previously marked as Complainant's
6 Exhibit No. 6.
7 MR. PRAGER: Just a moment. All right.
8 Mr. Johnson.
9 BY MR. JOHNSON:
10 Q Mr. Belfiore, do you recognize what has been
11 identified as Plaintiff's Exhibit No. 6?
12 A Yes. These are the board of managers meeting
13 minutes, essentially the first meeting minutes from the
14 first Merchant Link joint venture board meeting held on
15 December 4th, 2008.
16 Q And to your knowledge, do you know whether or not
17 you were elected a corporate officer at this particular
18 board of managers meeting?
19 A Yes, I was. I refer you to page 2 -- oh, I'm
20 sorry, page 3 of 5. The minutes read: The board discussed
21 Merchant Link's officers. Upon motion duly made, seconded,
22 and unanimously approved, it was resolved the following
23 persons are elected as officers of Merchant Link to serve in
24 accordance with the bylaws of the company: CEO, Chris
25 Justice; CTO, Dan Lane; COO, Erik Belfiore.

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1 Q And for the record could you describe the acronyms
2 CEO, CTO, and COO?
3 A Chief executive officer, CEO; chief technology
4 officer, CTO; chief operating officer, COO.
5 Q Now, was there a position for the chief financial
6 officer, which would be CFO?
7 A There was no CFO elected, but there was an ongoing
8 search, conducted by myself and Chris Justice, to find a
9 suitable CFO.
10 Q And until a CFO had been found, who was performing
11 those duties?
12 A I was.
13 Q Now, what were your responsibilities as COO?
14 A My responsibilities as the COO was management of
15 the service delivery functions, affectionately known as
16 operations. Again, we had the implementation group, the
17 installation group, funds research, tech support, billing
18 operations, and there was also a technical support group
19 that was geared and manned to solve kind of non-routine type
20 of issues. Dan and I kind of wrangled as to where the
21 responsibility of that organization should lie. Formally it
22 remained in the service delivery area under my umbrella of
23 responsibilities.
24 Q And pursuant to this particular exhibit, were you
25 and Dan Lane on the same level?

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1 A Yes.
2 Q Were you familiar with Dan Lane's responsibilities
3 as a corporate officer?
4 A Yes.
5 Q And what were Dan Lane's responsibilities, as you
6 knew them to be?
7 A Dan had the development team, the network
8 operations team. He had the project product management team
9 managed by Sue Zloth, and in somewhat of an anomaly, he had the
10 learning and development group.
11 Q Now, how long did you and Dan Lane stay on the
12 same level?
13 A Dan Lane and I stayed on the same level until his
14 promotion to CEO in spring of 2011.
15 MR. PRAGER: All right. I'm going to interrupt
16 here because there's something that's not quite clear to me
17 and rather than going back to it later -- you mentioned a
18 number of different units who reported to you, but you
19 previously said that as of May in 2008 you supervised six
20 people. How many did you supervise as of December, the date
21 of this, the date of your elevation to COO?
22 THE WITNESS: It was still six, but he had
23 mentioned specifically my responsibilities under the COO.
24 The sixth person was the manager of financial analysis; he
25 was in finance. So that was kind of my CFO duty.

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1 MR. PRAGER: Well, but you mentioned a number of
2 different units. Were they, did they have more people than
3 the six, or was it six in total that you supervised at that
4 point?
5 THE WITNESS: I supervised the managers of those
6 units --
7 MR. PRAGER: I see.
8 THE WITNESS: -- and then they supervised their
9 subordinates.
10 MR. PRAGER: Okay. And so just clarify for me,
11 what would you estimate at the time of December 2008 the
12 total number of people in those --
13 THE WITNESS: In the organization?
14 MR. PRAGER: -- in those units whose managers
15 reported directly to you?
16 THE WITNESS: I'd say 57, 58 people.
17 MR. PRAGER: Thank you. Mr. Johnson.
18 MR. JOHNSON: Yes.
19 BY MR. JOHNSON:
20 Q And what was the total number of employees at
21 Merchant Link?
22 A About 110, 108, 110 at that time.
23 Q Is your testimony today that you were responsible
24 or supervised the managers of over half the employees of
25 Merchant Link?

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1 A Yes.
2 Q Now, who determines the salary and increases for
3 corporate officers?
4 A All compensation afforded to corporate officers
5 has to come with the approval of the board of directors.
6 Q And did you receive a salary increase related to
7 the board managers meeting of Exhibit 6?
8 A No.
9 MR. JOHNSON: Your Honor, at the Court's
10 recommendation, we were to take a break. I think this might
11 be a good point --
12 MR. PRAGER: All right.
13 MR. JOHNSON: -- to do it at this particular time.
14 MR. PRAGER: Before we do, you've identified
15 Exhibit 41 but you never formally moved to enter it. Is it
16 something you want to move to enter or should we leave it
17 aside at this point?
18 MR. JOHNSON: Actually, leave it aside at this
19 point because there's other information we have to get from
20 there.
21 MR. PRAGER: All right. And what about No. 6,
22 which was also identified?
23 MR. JOHNSON: Yes, Your Honor, actually, we will
24 move that into evidence or request to move that into
25 evidence, and I do have marked a question right before

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1 moving, but I was going to ask Mr. Belfiore, if the Court
2 allows --
3 MR. PRAGER: All right. Well, we'll defer it.
4 MR. JOHNSON: Okay.
5 MR. PRAGER: I didn't want to have it forgotten,
6 so I wanted to make sure.
7 MR. JOHNSON: Oh, Your Honor, it's --
8 MR. PRAGER: All right. It's now, by the clock
9 back there, about two minutes after 11:00. We'll recess
10 until, oh, roughly 12, 13 after and resume. In fact, we're
11 now off the record.
12 (Whereupon, a brief recess was taken.)
13 MR. PRAGER: All right. We're back on the record
14 now. Mr. Johnson.
15 MR. JOHNSON: Yes, Your Honor.
16 BY MR. JOHNSON:
17 Q Mr. Belfiore, pursuant to the board minutes of
18 Exhibit 6, did you receive an increase in your grade level?
19 A No, I did not.
20 Q After becoming COO, did you, did you experience
21 any bump or increase in your salary?
22 A Outside of the normal annual --
23 Q Yes.
24 A Okay. Yes. Shortly after Mr. Justice resigned
25 and Mr. Charron was appointed interim CEO -- this would have

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1 been in the May time frame, sometime in the spring of 2009
2 -- Mr. Charron personally visited me in my office, and in
3 response to the Justice transition document where he
4 indicated the attrition risks based on salary adjustments
5 that were necessary, that he felt were necessary,
6 Mr. Charron said that he realized that given my station and
7 contribution to the company, that I was underpaid but he was
8 willing to give me a \$15,000 increase, that was as much as
9 he was going to do; if I felt that that wasn't satisfactory,
10 then my only recourse would be I could leave the company.
11 Q And for the information of the Court, what was the
12 total compensation that you would receive after you receive
13 the raise?
14 A \$120,000.
15 MR. JOHNSON: Your Honor, complainants move into
16 evidence Complainant's Exhibit No. 6.
17 MR. PRAGER: Any objection, Mr. Kaplan?
18 MR. KAPLAN: No.
19 MR. PRAGER: Complainant's Exhibit No. 6 will be
20 included in the record, admitted into the record.
21 (Exhibit No. C-6 was received
22 in evidence.)
23 MR. JOHNSON: Your Honor, we'd like to identify
24 what has been previously marked for identification as
25 Plaintiff's Exhibit No. 7.

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1 MR. PRAGER: Go ahead.
2 BY MR. JOHNSON:
3 Q Mr. Belfiore, do you recognize Complainant's
4 Exhibit No. 7?
5 A Yes.
6 Q And can you please describe to the Court what
7 Exhibit No. 7 is?
8 A This is a pay stub for the pay period ending
9 October 15th, 2011, that shows net pay of \$3,933.56; gross
10 pay, \$5,420.67; and year-to-date gross earnings, 182272.37.
11 Q And what is your annual salary based on this
12 paycheck stub?
13 A \$130,000.
14 MR. JOHNSON: Your Honor, complainant moves into
15 evidence Complainant's Exhibit No. 7.
16 MR. PRAGER: Any objections by Merchant Link?
17 MR. KAPLAN: No objection.
18 (Exhibit No. C-7 was received
19 in evidence.)
20 MR. JOHNSON: Complainant, Your Honor, seeks to,
21 which has been previously marked for identification,
22 Plaintiff's Exhibit No. 8.
23 MR. PRAGER: All right. Mr. Johnson.
24 BY MR. JOHNSON:
25 Q Mr. Belfiore, do you recognize Complainant's

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1 Exhibit No. 8?
2 A Yes. Again, this is computer-generated output
3 from the UltiPro HR system, a snapshot of my pay history
4 from midsummer to the end of October 2011. It shows that
5 through the varying levels of net pay, that from 6/15
6 through the end of August, a reduced level of net pay, given
7 in part because I was on medical leave and a portion of my
8 salary was paid by disability insurance; the other portion
9 was paid by Merchant Link through vacation time.
10 It also shows that in September my net earnings
11 went up dramatically, indicative of a raise that I had
12 received, to 172,000 per year, and then it subsequently
13 shows that level coming down, starting in October, when the
14 raise was rescinded.
15 Q Now, can you tell the Court specifically the date
16 that you went on medical leave?
17 A I went on medical leave May 15th, approximately a
18 week before my surgery, which was performed on May 23rd,
19 2011.
20 Q And when did you return from your medical leave?
21 A Approximately three months from the date of the
22 surgery, August 25th, 2011.
23 Q Now, you mentioned in this particular document
24 that you received a raise. Who gave you the raise?
25 A Mr. Dan Lane.

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1 Q Now, you also state in this particular document
2 that the raise was retracted. Who retracted the raise?
3 A That's a good question. I know that it is my
4 belief that Christina Smith, the CFO at the time, discovered
5 the raise and discovered that it had not been
6 board-approved, and I don't know if it was her action or the
7 action of the board to cause rescension of the raise.
8 Q Did Mr. Dan Lane offer any explanation as to why?
9 A The raise was rescinded?
10 Q Why the raise was rescinded.
11 A No.
12 Q Did you inquire as to why the raise was rescinded?
13 A Dan Lane, in approximately the first week of
14 October, came to my office and said: Two things, Erik --
15 one, I've got permission to get rid of Christina Smith and,
16 two, I need to get board approval for your raise. And I
17 responded to him in alarm: You didn't get the raise
18 approved? And he said to me: Erik, you need to realize
19 that in life people will make mistakes and you will have to
20 pay for it. And I responded to him: This seems to be a
21 ruse to just open the opportunity for my raise to be
22 retracted. But he never said dispositively that the raise
23 was going to be rescinded. He said that he was going to go
24 to the board to advocate for the raise. He called me the
25 following Friday and said he got off the phone with Dan

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1 Charron approximately 5:00 p.m. on Friday and said that Dan
2 Charron said that he wouldn't have done it but he won't go
3 against it.
4 So between those two conversations, I felt that
5 there was a chance that the raise wouldn't be rescinded. I
6 didn't find out that the raise was rescinded until the week
7 of October 8th maybe, when on Thursday I went into UltiPro,
8 while I was home sick, and I pulled down a copy of my direct
9 deposit slip and was floored that the way I was going to
10 find out that the raise had been taken back was I was going
11 to get a call from my wife, saying the amount of money
12 expected to be in the bank account is not there.
13 Q Now, for the Court, please explain the Ulti source
14 system, just for the record.
15 A UltiPro is an in-house payroll HR system, okay,
16 that goes and calculates salaries based on the method,
17 methodology or frequency that a company determines how
18 frequently they want to pay their employees -- monthly,
19 weekly, bimonthly, biweekly. It calculates all the trust
20 taxes, unemployment taxes, social security, those types of
21 things. It takes into account benefit elections and those
22 types of things, and it also has the ability to run reports
23 that are necessary for accounting. It may be integrated to
24 the financial system, it may not, but it at least generates
25 the reports that journal entries can be booked, but it also

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1 has the ability to transfer funds or approve the transfer of
2 funds so people can get their paychecks electronically.
3 Q Now, was it wrong for your raise to be retracted?
4 A Yes.
5 MR. PRAGER: I don't understand the question. I
6 don't understand the answer. What do you mean by wrong?
7 BY MR. JOHNSON:
8 Q Was it wrong for your raise to be retracted? Did
9 you deserve your raise?
10 A I believe I was entitled to the raise at the time
11 of my promotion. If not, on May 2008, certainly as a result
12 of the board resolution in December of 2008, that I
13 should've had a pay grade, a salary, a total compensation
14 package that was commensurate with my responsibilities, my
15 comparators, and my job title.
16 Q Now, was it wrong for Dan Lane not to get board
17 approval?
18 MR. PRAGER: Again, I don't understand. Wrong in
19 what sense?
20 BY MR. JOHNSON:
21 Q Was it wrong for Dan Lane not to follow the
22 procedures necessary for a salary increase?
23 A Dan Lane approving and implementing a raise was a
24 blatant violation of the bylaws and operating agreement that
25 governed the LLC, a breach of fiduciary duty.

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1 MR. JOHNSON: Your Honor, complainant moves into
2 evidence Plaintiff's Exhibit No. 8.
3 MR. PRAGER: Any objections?
4 MR. KAPLAN: No objection.
5 MR. PRAGER: All right.
6 (Exhibit No. C-8 was received
7 in evidence.)
8 MR. JOHNSON: Your Honor, at this time -- oh, I'm
9 sorry.
10 MR. PRAGER: Just a moment. Go ahead,
11 Mr. Johnson.
12 MR. JOHNSON: Thank you, Your Honor. Your Honor,
13 at this time, complainant seeks to identify what has been
14 previously marked for identification as Complainant's
15 Exhibit No. 9.
16 MR. PRAGER: Go ahead.
17 BY MR. JOHNSON:
18 Q Mr. Belfiore, do you recognize Complainant's
19 Exhibit No. 9?
20 A Yes, I do.
21 Q And can you please describe Plaintiff's Exhibit
22 No. 9 for the Court?
23 A Another UltiPro-generated output, again, salary
24 status, job history from a truncated, small window period of
25 time that shows the actions taken on my employee account up

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1 to the time that the raise was reduced, on 10/1, effective
2 10/1/2011.
3 Q Now, does Exhibit No. 9 indicate where you
4 received the raise you just testified to from Dan Charron?
5 A No.
6 Q And is your testimony today that you haven't
7 received any raise from this particular date to your date of
8 termination with regard to your employment at Merchant Link?
9 A From the date of the salary reduction, there was
10 no change in my salary until my separation from the company.
11 MR. JOHNSON: Your Honor, complainant moves into
12 evidence Complainant's Exhibit No. 9.
13 MR. PRAGER: Any objections?
14 MR. KAPLAN: No objection, Your Honor.
15 MR. PRAGER: Without objection, Complainant's
16 Exhibit No. 9 is admitted. I have a question about this.
17 It might come out later, but since we've got it,
18 Mr. Belfiore, if you look at that exhibit, there's an entry
19 on April the 1st of 2011 which has something in the third
20 subset there: Management request. What are we talking
21 about? What happened on April 1st, as far as you know?
22 (Exhibit No. C-9 was received
23 in evidence.)
24 THE WITNESS: I don't know.
25 MR. PRAGER: All right. Maybe it'll become

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1 clearer --
2 THE WITNESS: Yeah.
3 MR. PRAGER: -- when somebody later testifies.
4 THE WITNESS: I do know that during around the
5 first quarter of, of 2011, I was receiving e-mails from Dan
6 Lane and others about a change to my salary grade, from 14
7 to 16, to be commensurate with my job title, and I know that
8 there was a communiqué directly from Dan Charron, requesting
9 that that change be reflected in the system.
10 MR. PRAGER: Mr. Johnson.
11 MR. JOHNSON: Yes, Your Honor.
12 BY MR. JOHNSON:
13 Q Mr. Belfiore, I want you to --
14 MR. JOHNSON: Your Honor, we're actually going to
15 mark for identification Complainant's Exhibit No. 11.
16 (Exhibit No. C-11 was marked
17 for identification.)
18 BY MR. JOHNSON:
19 Q Mr. Belfiore, do you recognize Complainant's
20 Exhibit No. 11?
21 A Yes.
22 Q Can you describe Plaintiff's Exhibit No. 11 for
23 the Court, please?
24 A Another computer-generated output from UltiPro on
25 my account in regards to compensation, indicates my name, my

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1 title, and my salary grade, S-16, my salary at \$130,000, but
2 it also walks you through a little bit of the history and
3 changes that were made at the bottom of the page, starting
4 in 2010, where I received a raise of three percent; 2011,
5 5.18 percent; and then in the 9/1/2011, it's indicated of
6 the raise and the percentage change in my salary from 130 to
7 172 that was granted by Dan Lane.
8 Q All right. Is that Exhibit 11 or 10?
9 A Oh, I'm sorry. That was 10.
10 Q Okay. Now, do you --
11 MR. PRAGER: Mr. Johnson, does that change your
12 questioning? Are we now on 10 or 11? I'm confused.
13 MR. JOHNSON: Well, actually, there's a timing for
14 this. So I want to stay with the timing because this is
15 actually, should be 11. It's the same source, but the 11 is
16 at the beginning of the year.
17 MR. PRAGER: Right. So we'll go back to No. 11 --
18 MR. JOHNSON: 11, yes.
19 MR. PRAGER: -- and ask your question again.
20 BY MR. JOHNSON:
21 Q Now, Mr. Belfiore, do you recognize Complainant's
22 Exhibit No. 11?
23 A Yes. I apologize, Your Honor. Yeah. Exhibit 11
24 consists of a number of reports of similar type generated
25 off the UltiPro system. The first page shows that effective

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1 1/26/2011 I was the CEO of Merchant Link with a salary grade
2 of S-14. It also indicates that my salary was \$123,600.
3 Q Now, what is the date of this particular page or
4 this exhibit?
5 A It's effective date is 1/26/2011. The date that
6 it was generated was 10/15/2011.
7 Q Now, if you'd turn to the next page of this
8 exhibit.
9 A This says effective 1/1/2011, Merchant Link, COO;
10 salary grade, S-16; salary, 130,000.
11 Q So --
12 A So it's confusing.
13 Q So it appears, by Merchant Link's system, they
14 decreased your grade level?
15 A What it appears to me that happened is that this
16 was my profile before the raises were given for 2011 and, at
17 the time that my raise was put in for 2011, raising my
18 salary to 130, that this person must have either taken the
19 opportunity between these two transactions or at the time of
20 this transaction to reflect the grade change.
21 Q And the grade level 16, is that the grade level
22 that a corporate officer would receive?
23 A No.
24 MR. JOHNSON: Your Honor, complainant moves into
25 evidence Plaintiff's Exhibit No. 11.

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1 THE WITNESS: Oh --
2 MR. PRAGER: Just a moment. Mr. Belfiore, would
3 you, for my sake, just expand on your no? What do you base
4 that on?
5 THE WITNESS: On? I'm sorry, context.
6 MR. PRAGER: You said in answer to the question is
7 the grade level 16 the level at which your corporate
8 officers should have, you said no, but you didn't explain.
9 I'd prefer if you would explain.
10 THE WITNESS: Well, Your Honor, if you turn to the
11 next page in the exhibit, same type of format, same type of,
12 of generated output -- and this isn't user-generated output
13 in the sense that I go in and I can make these changes; no
14 one, someone designated in HR should have been designated as
15 the person to make these changes for control functions --
16 but here you can see the job, COO, Merchant Link, and then
17 the salary grade says, CGE, CGE, and I can only assume, with
18 relative certainty, that CGE meant corporate general
19 executive, a grade higher than 16.
20 MR. PRAGER: All right. Mr. Johnson, you've moved
21 to admit Exhibit No. 11. Is there any objection?
22 MR. KAPLAN: Only to the extent it doesn't look
23 like it's the complete -- it says, page 1 of 1, page 1 of,
24 page 1 of -- each document says page 1 of 2, doesn't seem to
25 be a complete document, but otherwise I don't have any

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1 objection.
2 MR. PRAGER: Mr. Johnson, do you have an
3 explanation for this?
4 MR. JOHNSON: Your Honor, I believe it was, page 1
5 over 2 is -- the second page was a run-over page. It might
6 have been something, wasn't -- it didn't have any pertinent
7 information. This is what we received from his counsel --
8 from his prior counsel, I'm sorry.
9 MR. PRAGER: So this is not something you received
10 from Merchant Link during the discovery? Is that what
11 you're saying?
12 MR. JOHNSON: No. I don't believe --
13 MR. PRAGER: I'm confused as to where this came
14 from.
15 MR. JOHNSON: This came from the Merchant Link
16 system, UltiPro system. That was pulled out.
17 MR. PRAGER: I understand, but how did you receive
18 it?
19 MR. JOHNSON: And I received it from counsel,
20 prior counsel.
21 MR. PRAGER: Okay. I'm going to admit this
22 exhibit but with the proviso that you try to get the missing
23 pages, as pages 2 of each of these, and we'll deal with what
24 happens if you can't.
25 (Exhibit No. C-11 was received

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1 in evidence.)
2 MR. JOHNSON: Okay, Your Honor. Thank you.
3 MR. PRAGER: So it's admitted provisionally.
4 Mr. Johnson.
5 MR. JOHNSON: Thank you, Your Honor.
6 BY MR. JOHNSON:
7 Q Mr. Belfiore, right now we wanted to identify what
8 has been marked for identification as Complainant's Exhibit
9 No. 10.
10 MR. PRAGER: Go ahead.
11 BY MR. JOHNSON:
12 Q Now, Mr. Belfiore, do you recognize Complainant's
13 Exhibit No. 10?
14 A Yes.
15 Q And can you please describe for the Court
16 Complainant's Exhibit No. 10?
17 A This is computer-generated output from the UltiPro
18 system that reflects current compensation as of October 1st,
19 2011, for Erik Belfiore, the CEO of Merchant Link, grade
20 level S-16, with an annual salary of \$130,000.
21 Q Now, Mr. Belfiore, are you in your correct grade
22 level?
23 A No.
24 Q And what should the correct grade level state?
25 A Either GE or CGE or CO.

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1 Q And, Mr. Belfiore, I noticed in this particular
2 exhibit it says: Percentage change. Can you explain that
3 for the Court?
4 A That percentage change is indicative of the
5 reduction of salary from 172 to 130. That was made
6 effective October 1st, 2011, which was when the raise was
7 rescinded and reflected in the system.
8 MR. JOHNSON: Your Honor, complainant moves into
9 evidence Complainant's Exhibit No. 10.
10 MR. PRAGER: Mr. Kaplan?
11 MR. KAPLAN: No objection.
12 (Exhibit No. C-10 was received
13 in evidence.)
14 MR. JOHNSON: Your Honor, we wanted to identify
15 now what has been previously marked for identification as
16 Complainant's Exhibit No. 13.
17 MR. PRAGER: All right.
18 BY MR. JOHNSON:
19 Q Mr. Belfiore, do you recognize Complainant's
20 Exhibit No. 13?
21 A Yes.
22 Q And can you please describe for the Court exactly
23 what Complainant's Exhibit No. 13 is?
24 A These were the recognized salary grades for
25 non-technical Merchant Link staff.

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1 Q And is there a specific grade level for the
2 corporate officers of the company?
3 A Yes.
4 Q And, Mr. Belfiore, is this a document generated by
5 the defendant, respondent, Merchant Link?
6 A This is a Merchant Link document, yes.
7 Q Now, Mr. Belfiore, you explained to the Court the,
8 how total compensation is calculated. Does this particular
9 exhibit also explain how total compensation is calculated?
10 A It, it, in part, explains a portion of the
11 compensation. It gives salary guidelines for the various
12 grades, but more dispositively, it directly links an AIP
13 percentage with a salary grade.
14 Q Now, can you explain to the Court exactly what AIP
15 would be associated with a grade level 14?
16 A Twenty percent.
17 Q And that 20 percent, is that, in determining AIP,
18 is that multiplied with your salary?
19 A It is, it is -- yes. The initial step in
20 calculating AIP is multiplying that percentage against your
21 base salary, and then there is an individual performance
22 factor and then a company performance factor that are also
23 extended against that initial calculation.
24 Q So for the Court's edification, the higher your
25 salary, multiplied by your AIP, means the higher your bonus?

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1 A Correct.
2 Q Just for your testimony, Mr. Belfiore, what is the
3 AIP associated with a corporate officer?
4 A Forty-five percent.
5 Q And having a 45 percent AIP, would that
6 substantially increase your total compensation?
7 A Materially.
8 Q And did you ever receive this corporate
9 officer-level grade?
10 A It at one point was in the system, but have I
11 realized? No.
12 Q And is it your testimony here today that you
13 should have received a corporate officer-level grade?
14 A Yes.
15 MR. JOHNSON: Your Honor, plaintiff moves into
16 evidence Complainant's Exhibit No. 13.
17 MR. PRAGER: Any objections?
18 MR. KAPLAN: No objection.
19 MR. PRAGER: Exhibit 13, Complainant's Exhibit 13,
20 rather, is admitted.
21 (Exhibit No. C-13 was received
22 in evidence.)
23 MR. JOHNSON: Your Honor, at this time, the
24 complainant would like to mark for identification
25 Complainant's Exhibit No. 15.

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1 (Exhibit No. C-15 was marked
2 for identification.)
3 MR. PRAGER: All right. Mr. Johnson.
4 BY MR. JOHNSON:
5 Q Mr. Belfiore, in front of you is Complainant's
6 Exhibit No. 15. Do you recognize Exhibit 15?
7 A Yes, I do.
8 Q And can you describe Exhibit 15 for the Court?
9 A This is the Justice transition document. This is
10 the document that Mr. Chris Justice sent to Dan Charron upon
11 alerting him as to his desire to resign his position, and
12 Mr. Charron subsequently forwarded this document to myself,
13 Mr. Lane, and Mr. Tim Kinsella.
14 Q And to your knowledge, what was your role in the
15 transition, the Justice transition document?
16 A It was the apparent desire of Mr. Charron to make
17 sure that the key activities of Mr. Justice did not fall to
18 the floor and go unaddressed. So it was his desire to
19 apportion Mr. Justice's responsibilities and key activities
20 to the three of the -- the three gentlemen that I just
21 mentioned: myself, Mr. Lane, and Mr. Kinsella.
22 Q Now, for the Court's edification, exactly identify
23 again who Christopher Justice was for the purposes of this
24 document.
25 A Chris Justice was the CEO of Merchant Link prior

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1 to Dan Lane -- prior to Dan Charron.
2 Q And pursuant to this document, was there to be
3 appointed a new CEO?
4 A A new CEO?
5 Q Yes.
6 A I don't see where this document particularly
7 points in that direction.
8 Q And to your knowledge, would there be a new CEO
9 following Mr. Christopher Justice?
10 A Yes.
11 Q And who would that CEO be?
12 A Dan Charron.
13 Q And the actual job duties, responsibilities, and
14 obligations of the CEO, were they performed -- who were they
15 performed by?
16 A They were apportioned between myself, Dan Lane,
17 and Tim Kinsella. Specifically, Chris Justice, as CEO,
18 retained, he retained the marketing function. That function
19 reverted to Mr. Kinsella. There was no CFO. This, this
20 document, okay, alludes to the fact that a CEO search was on
21 its way; therefore, Mr. Justice had finance reporting
22 directly to him. That was shifted to me. In addition to my
23 duties as COO, I was to man the CFO position until the time
24 that a CFO was hired, and Dan Lane got HR. HR reported
25 directly to Chris Justice, but after Chris Justice left,

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1 part of the transition plan was that Dan Lane was now
2 responsible for HR and the implementation of UltiPro.
3 Q Now, were your compensation concerns addressed in
4 the Justice transition document?
5 A My compensation concerns were communicated in the
6 Justice document. At the bottom of page 2, the communiqué
7 clearly alludes to the fact -- and the audience being Dan
8 Charron, chairman of the board -- that require compensation
9 adjustments for Belfiore, Konar, and Davidovic, attrition
10 risks.
11 Q To your knowledge, was Jay Konar's compensation
12 addressed?
13 A Yes.
14 Q And to your knowledge, was Mr. Davidovic's
15 compensation concerns addressed?
16 A That, I don't know.
17 MR. JOHNSON: Your Honor, complainant moves into
18 evidence Complainant's Exhibit No. 15.
19 MR. PRAGER: Are there any objections?
20 MR. KAPLAN: No objection.
21 MR. PRAGER: All right. Exhibit No. 15,
22 Complainant's Exhibit No. 15, rather, is admitted.
23 (Exhibit No. C-15 was received
24 in evidence.)
25 MR. JOHNSON: Your Honor, we want to identify that

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1 which has been previously marked as Complainant's Exhibit
2 No. 16.
3 BY MR. JOHNSON:
4 Q Mr. Belfiore, do you recognize Complainant's
5 Exhibit No. 16?
6 A Yes, I do.
7 Q And can you please describe it for the Court?
8 A This was a company-wide communiqué that Chris
9 Justice announced to the staff of Merchant Link that served
10 several purposes. The initial purpose was that two key
11 employees were leaving the company: Geoff Krieg and Alicia
12 Hanson.
13 The second and most important function of the
14 communiqué was to outlay Chris's strategy for managing the
15 company going forward. Chris, both if words and
16 graphically, depicted his strategy on how he wanted to
17 manage the company by basically creating three strategic
18 vectors: a strategic delivery vector, a service delivery
19 vector, and a revenue delivery vector.
20 The strategic delivery vector was going to be
21 headed by Merchant Link's chief technology officer, CTO; the
22 service delivery vector was going to be headed by Erik
23 Belfiore, Merchant Link's chief operating officer; and the
24 revenue delivery vector was going to be, not headed, but led
25 by Tim Kinsella.

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1 Q Now, the CTO, I guess -- you didn't identify who
2 the CTO would be. So please identify CTO.
3 A Dan Lane.
4 Q And at the time, Dan Lane was also a corporate
5 officer of the company?
6 A Correct.
7 Q Mr. Belfiore, turn to the second page of the
8 exhibit. Do you see an organization chart on the second
9 page?
10 A Yes.
11 Q Can you identify the corporate officers of this
12 exhibit?
13 A Yes, Justice in the top box, Lane to the far left,
14 Belfiore to the far right, and here you can see a graphical,
15 get a graphical understanding of what I was talking about in
16 the transition. When Justice left, HR went to Dan Lane,
17 Kinsella got more for marketing, and then Belfiore absorbed
18 finance.
19 Q Well, according to this organization chart, who
20 are your direct reports?
21 A According to this chart, Linest Eady, Denise
22 Williams, and Kay Fakunle.
23 Q And according to this chart, who are Dan Lane's
24 direct reports?
25 A Jay Konar, Ben Chudesama, Sue Zloth, Zack Minton,

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1 and I can't, I can't read that. I guess that's a
2 placeholder for corporate security officer.
3 Q And are you responsible for or have input as to
4 the compensation of your direct reports?
5 A Yes.
6 Q Now, previously you testified, according to
7 Exhibit 3 that was admitted, that Mr. Konar had a higher
8 salary than you. Does that still maintain true pursuant to
9 this exhibit?
10 A Yes.
11 Q Does Mr. Chudesama have a higher salary than you?
12 A Yes.
13 Q Does Ms. Sue Zloth have a higher salary than you?
14 A Yes.
15 Q And just for clarification, when I say salary,
16 let's say total gross compensation.
17 A Yes.
18 Q Yes. Now, did Dan Lane give Mr. Konar his salary?
19 A Yes.
20 Q Did Dan Lane have to seek board approval for
21 Mr. Konar's salary?
22 A No.
23 Q Did Dan Lane give Mr. Chudesama his salary?
24 A Yes.
25 MR. KAPLAN: Objection. It's just, is this based

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1 on personal knowledge or -- I'm not sure what this is based
2 on, is all.
3 MR. PRAGER: That's a good question. Mr. Johnson,
4 could you clarify your questions and Mr. Belfiore's answers?
5 MR. JOHNSON: Yes, Your Honor.
6 BY MR. JOHNSON:
7 Q Mr. Belfiore, your direct reports, do you have a
8 hand in deciding their salary increases?
9 A Yes, and I answered the questions from personal
10 knowledge. I was the CFO of the company. I had to be aware
11 of all salary changes, how and why they were made. So I
12 know firsthand that Dan Lane was responsible for his direct
13 reports' salaries.
14 Q And continuing on with the line of questioning,
15 did Sue Zloth have a higher salary, total compensation than
16 you?
17 A Yes.
18 MR. JOHNSON: Your Honor, complainant moves into
19 evidence Complainant's Exhibit No. 16.
20 MR. PRAGER: Mr. Johnson, I'm a little bit
21 confused because this doesn't have a date. Can we establish
22 a date for this document?
23 BY MR. JOHNSON:
24 Q Mr. Belfiore, can you establish a date for this
25 particular document or give us an estimation of time and

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1 year?
2 A This had to be late April, just prior to May 1st,
3 as indexed and referenced in the e-mail: We are announcing
4 that Geoff Krieg is leaving the company May 15th -- assuming
5 Geoff Krieg had not left the company then. And he mentions
6 that to meet the challenges head on, we'll refine our focus
7 and tweak the organization effective May 1st. I would --
8 MR. PRAGER: I understand, but that doesn't give
9 me a year.
10 THE WITNESS: This is 2008.
11 MR. PRAGER: Mr. Kaplan?
12 MR. KAPLAN: One moment. No objection.
13 MR. PRAGER: All right. Complainant's Exhibit No.
14 16 is admitted.
15 (Exhibit No. C-16 was received
16 in evidence.)
17 MR. JOHNSON: Thank you, Your Honor.
18 BY MR. JOHNSON:
19 Q Now, Mr. Belfiore, I want to turn your attention
20 to what I've marked for identification as Plaintiff's
21 Exhibit No. 17.
22 MR. PRAGER: Go ahead, Mr. Johnson.
23 BY MR. JOHNSON:
24 Q Now, Mr. Belfiore, do you recognize Plaintiff's
25 Exhibit No. 17?

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1 A Yes.

2 Q And can you please describe Plaintiff's Exhibit

3 No. 17?

4 A This is a performance review for the, I believe,

5 if it was done in February of 2008, it would have been for

6 2007, for the fiscal year 2007.

7 Q And can you describe to the Court your rating in

8 this particular evaluation or review?

9 A Highly competent.

10 Q And who was the person responsible with rating

11 you?

12 A This was by Kathy Smith, Paymentech, CFO.

13 Q And does the review provide a description of your

14 job duties?

15 A It provides a description of my job goals, yes.

16 Q And did you meet your goals?

17 A Yes.

18 Q And then at the top of your job goals, it says:

19 Manager description. Correct?

20 A Yes. That's the manager's description of the

21 goal.

22 Q Okay.

23 A Yes.

24 Q And does it also describe your involvement in

25 other aspects of the business, of Merchant Link's business?

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1 A Yes.

2 Q And can you describe that for the Court as well?

3 A In this particular year, I had, in addition to

4 budget, business support, forecast, general accounting, and

5 finance, I had a special project goal.

6 Q And did you meet your goal?

7 MR. KAPLAN: Objection. Leading.

8 MR. PRAGER: Pardon me?

9 MR. KAPLAN: Leading.

10 MR. PRAGER: He said, did you meet your goal? How

11 is that leading?

12 MR. KAPLAN: I thought he said something else.

13 MR. PRAGER: Yes. It's overruled.

14 MR. KAPLAN: Okay.

15 THE WITNESS: The rating I got for that was,

16 highly competent.

17 BY MR. JOHNSON:

18 Q Now, on the last page, is that your signature on

19 Exhibit 17?

20 A Yes, it is.

21 MR. JOHNSON: Complainant moves into evidence

22 Complainant's Exhibit 17.

23 MR. PRAGER: Mr. Kaplan?

24 MR. KAPLAN: No objection.

25 MR. PRAGER: All right. I have a question about

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1 this. This was a, you said, a review for 2007. This is

2 before you were promoted, or -- and you'd been given a new

3 job title of chief operating officer, is that correct?

4 THE WITNESS: Correct.

5 MR. PRAGER: Thank you.

6 (Exhibit No. C-17 was received

7 in evidence.)

8 BY MR. JOHNSON:

9 Q Now, Mr. Belfiore, I would like to turn your

10 attention to what has been marked for identification as

11 Complainant's Exhibit 18. Mr. Belfiore, do you recognize

12 Complainant's Exhibit No. 18?

13 A Yes.

14 Q Can you describe it for the Court, please?

15 A This is my 2006 long-term incentive award given in

16 March of 2007.

17 Q Is this part of your total compensation?

18 A Yes, although deferred.

19 MR. PRAGER: Mr. Johnson, I'm not quite sure what

20 purpose this ancient history reveals, I mean, what it says

21 about this case. We're talking 2007. What does that have

22 to do with salaries in 2009, 2010, and 2011?

23 MR. JOHNSON: Your Honor, we're just laying the

24 backdrop of his total compensation, how it continued to be

25 the same throughout, up to 2011. I think that would be

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1 relevant if he's making roughly no improvement, no increases

2 from 2007 throughout.

3 MR. PRAGER: I think you've already established

4 that --

5 MR. JOHNSON: Okay, Your Honor. It's not a

6 problem.

7 MR. PRAGER: -- so I'm not quite sure what this

8 exhibit adds to what you've already done. I'll admit it,

9 but I think we can save a little bit of time by not bringing

10 all these extraneous, what I consider to be extraneous

11 matters into it.

12 (Exhibit No. C-18 was received

13 in evidence.)

14 MR. JOHNSON: Not a problem, Your Honor. We

15 appreciate that, and I agree with the Court.

16 BY MR. JOHNSON:

17 Q Mr. Belfiore, I want to turn your attention to

18 what has been marked for identification as Exhibit 19.

19 MR. PRAGER: Well, this goes, again -- we've heard

20 testimony about this -- is there any doubt that he got an

21 award in 2019 as the Shining Star award?

22 MR. JOHNSON: No, there's no doubt, Your Honor.

23 MR. PRAGER: Okay. Does Merchant Link question

24 that he got this?

25 MR. KAPLAN: No.

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1 MR. PRAGER: So what's the purpose?
2 MR. JOHNSON: And, Your Honor, and it would be,
3 once again, just an indication that he was successfully
4 performing his job. I think this would be hard evidence
5 versus his testimony, if the Court needed to see it, but --
6 MR. PRAGER: I don't think so.
7 MR. JOHNSON: Okay.
8 MR. PRAGER: It's been acknowledged by Merchant
9 Link at this point.
10 MR. JOHNSON: Thank you, Your Honor. Your Honor,
11 Court's indulgence so we make an adjustment, Your Honor, so
12 we won't be duplicative.
13 MR. PRAGER: I'm sorry?
14 MR. JOHNSON: I'm making an adjustment so we won't
15 be duplicative.
16 THE WITNESS: With all due respect, can I have a
17 moment too?
18 MR. PRAGER: No.
19 BY MR. JOHNSON:
20 Q Now, Mr. -- sorry.
21 MR. PRAGER: Just a moment. Mr. Johnson, this
22 could be, if you need to readjust your line of questioning,
23 this could be a time that we could break for lunch or we can
24 continue on. Which would you prefer?
25 MR. JOHNSON: Actually, Your Honor, this is an

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1 appropriate time, I think. I have 12:14 on my watch. So
2 I'm --
3 MR. PRAGER: Right.
4 MR. JOHNSON: -- assuming it's lunchtime for most
5 people.
6 MR. PRAGER: Right.
7 UNIDENTIFIED SPEAKER: Uh-huh.
8 MR. PRAGER: So we will recess until 1 o'clock.
9 We're off the record now.
10 (Whereupon, at 12:13 p.m., a luncheon recess was
11 taken.)
12 MR. PRAGER: Mr. Johnson.
13 MR. JOHNSON: Where should we pick up?
14 MR. PRAGER: Well, you identified, or Exhibit No.
15 5 was identified, so continue.
16 BY MR. JOHNSON:
17 Q All right. Mr. Belfiore, please describe
18 Complainant's Exhibit No. 5.
19 A Yes. It's a slide out of the, the, the management
20 descriptive memorandum that was used to, to pitch the
21 business to potential inquirers in 2008. Specifically, it
22 lists the members of the senior management team and some of
23 their backgrounds and, and education. Specifically, it
24 lists Chris Justice as the president, Dan Lane as the chief
25 technology officer, Erik Belfiore as the chief operating

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1 officer, and Tim Kinsella as the executive vice president of
2 sales. It also has some annotations that I put on the
3 sheet, indicating the salary levels of each of the officers
4 at that particular time. Just for clarification, Chris's
5 salary was at 225; Dan's salary was at about 193. At this
6 particular time, my salary was 105, and Tim Kinsella, as an
7 executive vice president of sales, was at 165.
8 Q Now, were you and Mr. Dan Lane serving the same
9 function as corporate officers on this particular exhibit?
10 A Yes.
11 Q And was there any difference as to your job duties
12 and responsibilities as corporate officers?
13 A I mean, he did the strategy and I did the service
14 delivery. We didn't do the exact same things, but the
15 responsibilities were certainly on the same level. In
16 addition, I was also dispensing the CFO duties, in
17 particular, as they pertained to this transaction.
18 Q And is Dan Lane a comparator to your position as a
19 corporate officer?
20 A Yes.
21 MR. KAPLAN: Objection.
22 MR. PRAGER: What's your objection?
23 MR. KAPLAN: That was leading and calls for a
24 legal conclusion.
25 MR. PRAGER: Well, calls for a factual conclusion

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1 as to whether he was a comparator in his eyes and it wasn't
2 leading. It was a question: Was he a comparator?
3 MR. KAPLAN: Okay.
4 MR. PRAGER: The objection is overruled.
5 BY MR. JOHNSON:
6 Q Now, Mr. Belfiore, why do you feel Mr. Dan Lane is
7 a comparator?
8 A Well, because Dan and I served similar functions
9 on the same level of the corporation. We had the same
10 inherent level of responsibilities. We had the same
11 inherent corporate duties, fiduciary duties -- that being of
12 due care, loyalty, and good faith -- as well as, we had the
13 risks that all officers take. Officers of corporations can
14 be sued individually. The company tends to provide
15 insurance for those types of things and indemnify corporate
16 officers. So we went to work every day with the same level
17 of responsibility, the same duties, and the same risks.
18 Q Now, according to the exhibit, Mr. Belfiore, how
19 many years of management experience did you have?
20 A At this point in time in 2008, by the time I left
21 graduate school in 1991, 17 years of management experience.
22 Q Now, in the description of Dan Lane's management
23 experience, how many years had Dan Lane had at that
24 particular time?
25 A This indicates 20 years of management experience.

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1 Q Is it indicating 20 years of management experience
2 at Merchant Link?
3 A I almost have to assume that because there's no
4 other company listed to where Mr. Lane might have received
5 that management experience, maybe with one exception. I
6 think Dan Lane worked for a small failing company by the
7 name of NXT.
8 Q Are you familiar with Mr. Lane's experience at
9 NXT?
10 A No, only from the standpoint that he came to
11 Merchant Link upon the sale of NXT to Chase Paymentech.
12 Q Now, to your knowledge, was Mr. Dan Lane a founder
13 of Merchant Link?
14 A In my legal/financial definition of a founder, no.
15 Q And how --
16 MR. PRAGER: What is the legal definition of
17 founder, in your eyes?
18 THE WITNESS: The legal -- the legal definition in
19 my eyes is that the founder has some property position in
20 either financial, intellectual or some property and some
21 asset where an investment was made, equity of the
22 corporation was granted, and proceeds were paid out to the
23 founder upon sale of the company.
24 MR. PRAGER: Mr. Johnson.
25 MR. JOHNSON: All right. Your Honor, at this

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1 time, complainant moves into evidence Plaintiff's Exhibit
2 No. 5.
3 MR. PRAGER: Mr. Kaplan?
4 MR. KAPLAN: I object to the handwritten notes on
5 this exhibit. They're not contemporaneous to 2008, and they
6 only represent what he believes is a partial, be a part of
7 one's compensation, and it's only page 19 of whatever
8 document this came from.
9 MR. PRAGER: Mr. Johnson?
10 MR. JOHNSON: Your Honor, no objection as to the
11 handwritten --
12 MR. PRAGER: I'm sorry. You have no objections?
13 That's not the question.
14 MR. JOHNSON: Oh, I'm sorry.
15 MR. PRAGER: Mr. Kaplan has objections.
16 MR. JOHNSON: Yes. Well, Your Honor, this
17 particular document was taken from Merchant Link, and this
18 was their, Merchant Link's belief of or identification of
19 the senior management team. The crux of the document should
20 be admitted. If the Court would allow, then we could redact
21 the handwritten portion of it.
22 MR. PRAGER: All right. Well, why don't we do
23 that. Do you have a way of substituting the original
24 without the handwritten material?
25 MR. JOHNSON: I don't have, actually, any type of

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1 Liquid Paper or anything right now, but I --
2 MR. PRAGER: No, I don't mean at this moment. You
3 can produce it by tomorrow, say.
4 MR. JOHNSON: Yes. Yes, Your Honor.
5 MR. PRAGER: All right.
6 THE REPORTER: I need to interrupt again, but I'd
7 like to shut down and start a new file. I'm --
8 MR. PRAGER: All right.
9 THE REPORTER: -- having difficulty. It'll just
10 take a second.
11 MR. PRAGER: We'll go off the record. We'll go
12 off the record.
13 THE REPORTER: Thank you.
14 (Whereupon, a brief recess was taken.)
15 MR. PRAGER: We'll go back on the record then.
16 I've been assured that there is a backup system for
17 recording this hearing and that we should not be concerned.
18 So at this moment, I am not concerned, and so we will
19 continue on. Mr. Johnson --
20 MR. JOHNSON: Thank you, Your Honor.
21 MR. PRAGER: -- you have moved to admit
22 Complainant's Exhibit 5. There's been an objection. I
23 think the objection is well-taken. So with the
24 understanding that you will provide a copy of Exhibit 5 but
25 without the written entries into it, it will be accepted

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1 when you, and filed, when you bring in a clean copy
2 tomorrow.
3 MR. JOHNSON: Yes, Your Honor.
4 MR. PRAGER: You may continue.
5 MR. JOHNSON: Thank you, Your Honor.
6 BY MR. JOHNSON:
7 Q Mr. Belfiore, are there any other employees of
8 Merchant Link you would consider to be a comparator?
9 A Not comparator, but there are other similar
10 situated employees.
11 Q And can you identify those employees for the
12 Court?
13 A Those employees would include Ben Chudesama, Jay
14 Konar, Sue Zloth, Mary Bodhane, and Misael Henriquez, James
15 Reese, Ahn Lam.
16 Q And were any of them officers of the company?
17 A No.
18 Q Now, were there other officers of the company
19 hired by Merchant Link that you would compare yourself to?
20 A Yes. Merchant Link hired a CFO in 2011 by the
21 name of Christina Smith.
22 Q And to your knowledge or recollection, do you know
23 what Christina Smith's salary was at Merchant Link?
24 A I think she was hired in at a \$300,000 base
25 salary, no obvious incentive compensation attached.

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1 Q Are you aware of any other officer that was hired
2 at Merchant Link after you left Merchant Link -- after you
3 were terminated from Merchant Link?
4 A I did hear that after a short period of time,
5 Christina Smith was replaced by a gentleman by the name of
6 Bill Gore.
7 Q And are you aware of a salary that Bill Gore may
8 have received?
9 A I believe I've seen somewhere that his salary was,
10 his base salary was set at 215,000 per year.
11 MR. JOHNSON: Your Honor, at this time, we want to
12 identify what has been previously marked as Complainant's
13 Exhibit No. 2.
14 MR. PRAGER: Go ahead, Mr. Johnson.
15 BY MR. JOHNSON:
16 Q Now, Mr. Belfiore, before you is what has been
17 identified as Complainant's Exhibit No. 2. Do you recognize
18 Complainant's Exhibit No. 2?
19 A Yes, I do.
20 Q And can you describe Complainant's Exhibit No. 2
21 for the Court?
22 A Again, it's a detailed report-generated work
23 product that feeds into the budgeting process that I
24 managed, the final year that I managed the budget process,
25 and it gives the salary level details that go into

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1 forecasting and budgeting the next year's salaries and
2 salary-related expenses.
3 Q Now, you have identified Mr. Dan Lane as a
4 comparator. Is he listed on this particular document?
5 A Yes, he is.
6 Q And what is his title on this document?
7 A Chief technology officer.
8 Q And can you identify his salary on this particular
9 document?
10 A \$195,783.81.
11 MR. PRAGER: Where are you looking, Mr. Belfiore?
12 THE WITNESS: He's the first name on the list,
13 sir.
14 MR. PRAGER: Thank you.
15 BY MR. JOHNSON:
16 Q Now, Mr. Belfiore, are you identified on this
17 particular document?
18 A Yes.
19 Q And what is your title? First, let's find where
20 -- where are you on this particular document?
21 A I am tenth on the list.
22 Q And what is your title on this particular
23 document?
24 A COO, Merchant Link.
25 Q And can you identify your salary?

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1 A \$123,600.
2 Q And pursuant to this exhibit, are there any other
3 corporate officers listed in this document?
4 A No.
5 Q Now, this particular document has the compensation
6 of all individuals listed in ascending order. Can you
7 describe for the Court exactly how many employees are paid
8 more than you on this document?
9 MR. PRAGER: I think you meant to say descending
10 order.
11 MR. JOHNSON: Descending order, I'm sorry, Your
12 Honor.
13 MR. PRAGER: Repeat the question for Mr. Belfiore.
14 THE WITNESS: Nine.
15 MR. PRAGER: I'm sorry. Repeat it for me then.
16 MR. JOHNSON: Yes.
17 BY MR. JOHNSON:
18 Q Mr. Belfiore, on Exhibit 2 it appears that the
19 employees are listed in descending order with regard to
20 their salaries. How many employees have a higher salary
21 than you?
22 A Nine.
23 Q Are any of the employees that have higher salaries
24 than you corporate officers?
25 A One, Dan Lane.

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1 Q Do any of the employees that have a higher salary
2 than you have more management experience than you?
3 MR. KAPLAN: Objection.
4 MR. PRAGER: What's your objection?
5 MR. KAPLAN: Well, to the extent he has personal
6 knowledge of nine people's management background.
7 MR. PRAGER: Well, let's find out. So you can
8 answer the question. Do any of those nine people have more
9 management experience?
10 THE WITNESS: Maybe one or two.
11 MR. PRAGER: All right. Mr. Johnson, would you
12 like to have him amplify this so we can find out where he
13 gets the --
14 MR. JOHNSON: Yes, Your Honor.
15 MR. PRAGER: -- this belief in which two he's
16 talking about, et cetera?
17 MR. JOHNSON: Yes.
18 BY MR. JOHNSON:
19 Q Mr. Belfiore, did you identify Dan Lane as having
20 more management experience than you?
21 A Simply from the exhibits, yes, and he's, he's
22 older.
23 Q Did you identify Mr. Ben Chudesama as having more
24 management-level experience than you?
25 A No.

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1 Q Did you identify Mr. Tim Kinsella as having more
 2 management experience than you?
 3 A No.
 4 MR. KAPLAN: Objection. Same objection as before.
 5 MR. PRAGER: Right. So -- but let me ask the
 6 question then. What are you basing this, other than
 7 Mr. Lane's, which you've explained, where are you getting
 8 these, your beliefs from?
 9 THE WITNESS: I'm getting my beliefs from, these
 10 were my colleagues for over six years. I worked very
 11 closely. We had numerous conversations about past
 12 experiences, education levels, and those types of things.
 13 Also, through the course of discovery, résumés and the like
 14 were provided on these individuals --
 15 MR. PRAGER: All right.
 16 THE WITNESS: -- so I had an opportunity to see
 17 their résumés.
 18 MR. PRAGER: Mr. Kaplan, when you do
 19 cross-examination, you can explore further. At the moment,
 20 his testimony is taken as it is.
 21 BY MR. JOHNSON:
 22 Q Now, Mr. Belfiore, on this list of employees that
 23 had a greater salary, greater than you, there is a Jay
 24 Konar. Now, can you, can you describe or identify for the
 25 Court Jay Konar's management experience?

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1 A No. The only thing I know about Jay is that he
 2 came from academia to Merchant Link. I believe he was
 3 working for one of the smaller universities in D.C., Trinity
 4 or something like that, best of my knowledge.
 5 Q And was Mr. Konar hired after your employment
 6 commenced?
 7 A Yes, he was hired after me.
 8 Q Was he hired at a same rate of pay as you?
 9 A Yes, \$90,000 per year.
 10 Q And Mr. Konar's compensation appears to have
 11 surpassed yours. Can you explain why?
 12 MR. KAPLAN: Objection. The question was about
 13 total compensation, but this document that they're referring
 14 to only talks about salary.
 15 MR. PRAGER: So what is your objection? I
 16 thought --
 17 MR. KAPLAN: It was just confusing because I
 18 thought they were talking about salary and then the question
 19 was about his total compensation.
 20 MR. PRAGER: All right. Let's clarify that.
 21 MR. JOHNSON: Okay. I can rephrase that.
 22 MR. KAPLAN: Yes, sir.
 23 BY MR. JOHNSON:
 24 Q Mr. Belfiore --
 25 THE REPORTER: I'm sorry to interrupt again. I am

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1 going to have to reboot my computer. It will take about
 2 five minutes.
 3 MR. PRAGER: All right.
 4 THE REPORTER: Could we take a break?
 5 MR. PRAGER: Of course.
 6 THE REPORTER: Unexpected. Thank you.
 7 MR. PRAGER: We'll be going off the record. We'll
 8 take a 10-minute break, and so if you have telephone calls
 9 or other business to transact, take this opportunity to do
 10 so.
 11 (Whereupon, a brief recess was taken.)
 12 MR. PRAGER: Mr. Johnson.
 13 MR. JOHNSON: Thank you, Your Honor.
 14 BY MR. JOHNSON:
 15 Q Mr. Belfiore, you had made mention that Mr. Dan
 16 Lane had more management experience than you. Can you
 17 describe Mr. Dan Lane's management experience?
 18 A I believe his management experience is large in
 19 part explained with his experience with Merchant Link and
 20 NXT. From what I could gather in doing research on the
 21 company's --
 22 MR. KAPLAN: Objection.
 23 MR. PRAGER: What's your objection?
 24 MR. KAPLAN: Is he testifying from personal
 25 knowledge or just from --

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1 MR. PRAGER: Well, we'll find out. I'm sorry to
 2 interrupt you.
 3 MR. KAPLAN: Okay.
 4 MR. PRAGER: I understand --
 5 MR. KAPLAN: Okay.
 6 MR. PRAGER: -- the objection.
 7 MR. KAPLAN: Thank you.
 8 MR. PRAGER: We'll find out.
 9 THE WITNESS: In --
 10 MR. PRAGER: Sorry, you were about to say?
 11 THE WITNESS: In doing my research upon joining
 12 Merchant Link and understanding the business model and the
 13 evolution of the corporations, Merchant Link and NXT, per
 14 the standards of the companies that I had worked for, were
 15 very juvenile and infantile and very simplistic. There -- I
 16 doubt very seriously that Mr. Lane garnered any transferable
 17 management skills that he could have taken to a legitimate
 18 Fortune 50 publicly traded company. He had no education, no
 19 experience on management science. His knowledge of
 20 financial statements, of budgets, of analysis, financial
 21 analysis that's done for decision-making was severely
 22 lacking.
 23 BY MR. JOHNSON:
 24 Q And do you know this from personal knowledge?
 25 A Yes, I do.

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1 MR. PRAGER: Would you like to expand that,
2 please?
3 THE WITNESS: Dan Lane, in his own words, okay,
4 would tell me often, I don't understand the financials. He
5 would request that I explain the financial position of the
6 company to him and his staff. He didn't understand
7 accounting. He did not understand it from a managerial
8 perspective. He did not understand it from a practical
9 standard. Okay?
10 For a manager to manage a department, a process, a
11 system, there are certain management skills that Dan Lane
12 had not achieved, not through academia, but the opportunity
13 to, to accumulate those skills were not available in the
14 simplistic corporations and the very small, flat
15 organizations of NXT or Merchant Link.
16 MR. PRAGER: Mr. Johnson.
17 BY MR. JOHNSON:
18 Q Now, Mr. Belfiore, can you describe Merchant
19 Link's policy with regard to increases in salary?
20 A As I know it, every year, per preparation for
21 budget, there was a number determined that was the standard
22 raise. That number could be ratcheted upwards or downwards
23 by personal performance. Someone who exceeded expectations
24 could get higher than a three percent raise. Someone who
25 didn't meet expectations could get lower than a three

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1 percent raise. There was very, very severe downward
2 pressure on significant changes in salaries year over year,
3 including promotion; at least, that was expressed but
4 certainly was not uniformly followed.
5 Q Was there a ceiling on increases above 10 percent?
6 A I never saw that, a policy in writing, no. I
7 heard rumors about it, though.
8 Q Now, did Jay Konar receive a salary increase
9 greater than 10 percent?
10 A Arithmetically I would have to say yes, probably
11 on more than one occasion.
12 Q Now, was he an officer of the company?
13 A No.
14 Q Does he --
15 MR. KAPLAN: Objection to the line of questioning,
16 just as far as, again, this is personal knowledge. What is
17 he basing his answers on? That's all.
18 MR. PRAGER: Well, you can bring that out in your
19 cross-examination --
20 MR. KAPLAN: Okay. Sure.
21 MR. PRAGER: -- no point in interrupting.
22 Obviously --
23 MR. KAPLAN: Okay.
24 MR. PRAGER: -- a lot of this is on his belief,
25 but some of it is also based on his experience with the

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1 company, but you'll have an opportunity to go through this
2 bit by bit.
3 MR. KAPLAN: Thank you.
4 BY MR. JOHNSON:
5 Q Now, does Jay Konar have more experience than you?
6 A Management experience?
7 Q Yes.
8 A No.
9 Q Can you explain for this Court why Jay Konar's
10 salary is greater than yours?
11 A I cannot.
12 MR. JOHNSON: Your Honor, at this time, plaintiff
13 moves into evidence Complainant's Exhibit No. 2.
14 MR. PRAGER: Any objections by Merchant Link to
15 this?
16 MR. KAPLAN: Just the same general objections that
17 none of these individuals have been found to be comparators
18 and it only takes into consideration one-third of the total
19 compensation package.
20 MR. PRAGER: Well, at least two-thirds, because we
21 know about or, at least, I believe we know about the AIP,
22 but in any event, the document is admitted.
23 (Exhibit No. C-2 was received
24 in evidence.)
25 MR. JOHNSON: Your Honor, at this time, we want to

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1 identify which has been previously marked as Complainant's
2 Exhibit No. 44.
3 MR. PRAGER: All right. Mr. Johnson.
4 BY MR. JOHNSON:
5 Q Mr. Belfiore, do you recognize Complainant's
6 Exhibit No. 44?
7 A Yes, I do.
8 Q And could you please describe Plaintiff's Exhibit
9 No. 44?
10 A This is a -- board minutes, memorializing a
11 special action of the board, indicating the resignation of
12 Chris Justice and the election of interim chief executive
13 officer Dan Charron.
14 Q And how long would Dan Charron serve as interim
15 CEO of the company?
16 A From the date of this document until March or
17 April of 2011, when Dan Lane was promoted to the CEO
18 position.
19 Q So would that be approximately two years?
20 A Just about, yes.
21 Q Now, what functions of a CEO did Dan Charron
22 actually perform?
23 A Dan, Dan Charron retained just executive decision
24 authority. In other words, in the meting out and carrying
25 out of the day-to-day operations of the company, it was left

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1 to Dan, myself, and Tim Kinsella to work out. In the event
2 that we could not work it out, Dan was the arbiter and final
3 decision-maker.
4 MR. PRAGER: Now, you mentioned Dan twice. Which
5 Dan are we talking about?
6 THE WITNESS: Dan, there's Dan Lane and then
7 there's Dan Charron.
8 MR. PRAGER: Exactly. So which one --
9 THE WITNESS: Dan Charron was the final arbiter.
10 He didn't really actively involve himself in day-to-day
11 operations, but in the course of us trying to run the
12 company, if we came to disagreements or impasses, then we
13 would circle up to Dan Charron and then he would make the
14 final decision.
15 BY MR. JOHNSON:
16 Q Now, at the time of this exhibit, 44, who were the
17 corporate officers of the company?
18 A Dan Lane was the chief technology officer, I was
19 the chief operating officer, and Dan Lane -- Dan Charron was
20 the interim chief executive officer.
21 Q So during the course of Dan Charron serving as
22 interim CEO, did you share the responsibilities of the CEO
23 with Dan Lane?
24 A Yes.
25 Q And can you describe to the Court, exactly what do

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1 you mean by sharing the responsibilities?
2 A As mentioned before, you can see from Chris's
3 strategy and the way he ran the company as CEO, Dan handled
4 the strategies vector, I handled the service delivery, and
5 he kind of managed the sales and marketing with Tim as a
6 lieutenant and an aide. When Chris left, okay, Dan
7 inherited the HR function from Chris, I inherited the
8 finance function from Chris, and Tim Kinsella inherited the
9 marketing and sales functions of Chris.
10 MR. JOHNSON: Your Honor, at this time,
11 complainant moves into evidence Complainant's Exhibit No.
12 44.
13 MR. PRAGER: Any objections, Mr. Kaplan?
14 MR. KAPLAN: No objection.
15 MR. PRAGER: All right. Are we done with 44
16 otherwise?
17 MR. JOHNSON: Yes, Your Honor.
18 MR. PRAGER: Okay. Well, first of all, Exhibit 44
19 will be admitted, and I have a question. I'm sure I could
20 wait, but seizing the opportunity, the moment, you've
21 mentioned Mr. Charron a number of times, and I understand,
22 at some point, at this point, that you were just testifying
23 about, he was the interim CEO, but do you have any idea what
24 he did before and after -- how does he relate to Merchant
25 Link as a whole, as far as you know?

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1 (Exhibit No. C-44 was received
2 in evidence.)
3 THE WITNESS: When I came on the scene at Merchant
4 Link, Dan Charron was the chief operating officer of Chase
5 Paymentech, which wholly owned Merchant Link, and the
6 officers or the CEO of Merchant Link reported to Dan
7 Charron, although there was also a board consisting of all
8 Chase Paymentech employees, including Mike Duffy, the chief
9 executive officer; Dan Charron, the COO; Kathy Smith, the
10 CFO; and one other high-ranking official that served as the
11 board of Merchant Link; and from day one I was responsible,
12 with Chris, to report on the performance of Merchant Link
13 every quarter. We would fly to Dallas, where they were
14 headquartered, every quarter.
15 The joint venture, Chase Paymentech, as I
16 previously discussed, came to an end, okay, because KKR
17 purchased First Data, and so the joint venture that was
18 Chase Paymentech came to an end. That created Merchant Link
19 as the joint venture because we weren't able to sell the
20 company. So Paymentech Holdings, Chase Paymentech, whatever
21 you want to call it -- they've got a bunch of different
22 legal layers -- okay, they, with First Data, became the
23 owners of Merchant Link, 51 percent for J.P. Morgan, 49
24 percent for First Data. They, in putting together formally
25 the joint venture and the LLC, elected directors or

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1 managers, whatever they called them. There were two from
2 First Data, and there were two from Merchant -- from
3 JPMorgan Chase. The two from JPMorgan Chase happened to be
4 Mike Duffy, CEO, and Dan Charron, COO. It is also my
5 belief, and I can't remember if it was Charron or Duffy who
6 was actually the chairman of the board, and then there were
7 two on the First Data side, one being Barry McCarthy, and
8 then there was another individual. Okay?
9 So at the time that Charron became interim CEO of
10 Merchant Link, he was also a board member of the company.
11 So he was chairman of the board and interim CEO
12 simultaneously.
13 MR. PRAGER: Thank you. Mr. Johnson.
14 MR. JOHNSON: Thank you, Your Honor. Your Honor,
15 we want to identify what has been previously marked for
16 identification as Complainant's Exhibit No. 58.
17 MR. PRAGER: All right.
18 BY MR. JOHNSON:
19 Q Now, Mr. Belfiore, before you is Plaintiff's
20 Exhibit No. 58. Do you recognize Complainant's Exhibit No.
21 58?
22 A Yes, I do.
23 Q And can you describe Plaintiff's Exhibit 58 to the
24 Court?
25 A Exhibit 58 is a copy of an e-mail that was sent

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1 from Dan Lane to me: Subject, Grade Change. Erik, for your
2 information, when I was reviewing the AIP list with Dan C.,
3 he noticed your grade was listed as 14, which is
4 inconsistent with your title. He asked me to correct it. I
5 think it is a vestige of the way your promotion was handled
6 and the date-of-migration issue from CPS to Chase to
7 UltiPro. Anyway, I just asked Fran to make it a 16.
8 Q Now, in this e-mail, when you say Dan C., who are
9 you speaking of?
10 A Dan Charron.
11 Q And the grade increase from 14 to 16, was that
12 correct?
13 A No.
14 Q And what the grade correction, the correct grade
15 level should have been?
16 A It should have been a corporate officer grade, and
17 it should have happened at the time of the promotion in
18 2008.
19 Q And what is the date of this particular e-mail?
20 A January 13, 2011.
21 MR. JOHNSON: Your Honor, complainant moves into
22 evidence Complainant's Exhibit 58.
23 MR. PRAGER: Any objections?
24 MR. KAPLAN: No objection.
25 MR. PRAGER: All right. Exhibit 58 is admitted.

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1 (Exhibit No. C-58 was received
2 in evidence.)
3 MR. JOHNSON: Your Honor, at this time, plaintiff
4 wishes to identify what has been previously marked for
5 identification as Complainant's Exhibit No. 59.
6 MR. PRAGER: All right.
7 BY MR. JOHNSON:
8 Q Now, Mr. Belfiore, do you recognize Plaintiff's
9 Exhibit No. 59?
10 A Yes, I do.
11 Q Can you describe to the Court Plaintiff's Exhibit
12 No. 59?
13 A This is a formal communiqué from Dan Charron,
14 memorializing the change in grade -- let me not embellish
15 here: Update to employee file, Erik Belfiore, COO. Upon
16 the current denotation of Erik Belfiore's title as chief
17 operations officer, Dan Charron has approved and upgraded
18 from a grade 14 to a 16. There will be no other adjustments
19 to title or salary based on the recommended upgrade. The
20 grade change will be effective as of January 1st, 2011, and
21 will be noted in the employee files with all necessary
22 updates made hereafter, signed Dan Lane.
23 Q Now, did you complain about not receiving any
24 adjustment to your salary but just the, I guess, the
25 adjustment to your grade only?

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1 A No. I generally complained that I was an officer
2 of the company without any doubt but yet my compensation
3 package, in any form, did not resemble that of an officer of
4 the company.
5 Q And you have personal knowledge of this exhibit,
6 correct?
7 A Yes.
8 MR. JOHNSON: Your Honor --
9 MR. PRAGER: I'm not sure what -- what's your
10 question mean?
11 MR. JOHNSON: I'm sorry?
12 MR. PRAGER: I don't understand your question.
13 What do you mean personal knowledge?
14 BY MR. JOHNSON:
15 Q Well, do you have personal knowledge of this
16 letter?
17 A Yes.
18 Q Yes.
19 MR. JOHNSON: And, Your Honor, this is just for
20 admissibility purposes. This was a document that was placed
21 in his employee file.
22 MR. PRAGER: Right, I assumed as much, but --
23 MR. JOHNSON: Yes.
24 MR. PRAGER: -- go ahead.
25 MR. JOHNSON: All right. Complainant moves into

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1 evidence Plaintiff's Exhibit No. 59.
2 MR. PRAGER: Any objections?
3 MR. KAPLAN: No objection.
4 MR. PRAGER: Complainant's Exhibit No. 59 is
5 admitted.
6 (Exhibit No. C-59 was received
7 in evidence.)
8 BY MR. JOHNSON:
9 Q Now, Mr. Belfiore, to your knowledge, were any
10 changes made to your salary or grade level from the date of
11 your promotion to COO, December 4th, 2008, through February
12 2011?
13 A There was the normal pay increases through the
14 normal review standard raise process, but in May of 2009,
15 Mr. Charron, after accepting the appointment as the interim
16 CEO, came to my office, acknowledged the fact that I was
17 underpaid, and told me that I'm going to give you a \$15,000
18 increase and, if you don't feel that that is satisfactory,
19 then you can leave.
20 Q And to your knowledge, was there any board minutes
21 or board approval for your raise?
22 A None.
23 MR. PRAGER: Let me just make sure I understand.
24 You did receive the \$15,000 raise. Is that correct?
25 THE WITNESS: Correct.

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1 MR. PRAGER: And as far as you know, the board was
2 not requested to approve it. Is that your --
3 THE WITNESS: Correct.
4 MR. PRAGER: -- is that the nature of your
5 testimony?
6 THE WITNESS: Yes, sir.
7 MR. PRAGER: Thank you.
8 BY MR. JOHNSON:
9 Q And just to add on, that raise that you received
10 was greater than 10 percent? Was that greater than 10
11 percent?
12 A Yes, 15 over 105, excess of 10 percent.
13 MR. JOHNSON: Your Honor, at this time, the
14 complainant wishes to introduce what has been previously
15 identified as Complainant's Exhibit No. 64.
16 MR. PRAGER: Go ahead.
17 BY MR. JOHNSON:
18 Q Mr. Belfiore, do you recognize what has been
19 identified as Complainant's Exhibit No. 64?
20 A Yes, I do.
21 Q And could you please describe Plaintiff's Exhibit
22 No. 64 for the Court, please?
23 A This was the e-mail that, at the virtual end of my
24 rope and being as patient as I could possibly be for three
25 years in trying to get my compensation situation rectified,

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1 I had no other recourse but to write this e-mail to Dan
2 Lane, Dan Charron, and Barry McCarthy, the CEO of the
3 company at the time, as well as the two standing members of
4 the compensation committee of the board, that there was no
5 legitimate non-discriminatory reason that I could develop,
6 devise that would explain why we could not solve this
7 problem and that I was going to seek counsel to figure out
8 whether or not there was a legal remedy to my, to my
9 situation.
10 Q And did you copy your counsel on this particular
11 e-mail?
12 A Yes, I did.
13 Q Now, in this particular e-mail, at the bottom of
14 the e-mail, do you express displeasure with your salary
15 grade not reflecting a corporate officer?
16 MR. PRAGER: Excuse me. Where are you looking at
17 this point?
18 MR. JOHNSON: I'm sorry, still the first page of
19 Exhibit 64, at the bottom of the page.
20 THE WITNESS: I list as one of the items
21 contributing to my frustration and my belief of being
22 treated unfairly, okay, that it was without explanation that
23 you acknowledge nearly three years after my promotion that
24 my pay grade was not commensurate with my position, yes,
25 three years.

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1 BY MR. JOHNSON:
2 Q And to your knowledge, was there a response to
3 your e-mail?
4 A Oh, yeah, there was a response. Mind you, when I
5 wrote that e-mail, I got sick to my stomach that I had to
6 write this e-mail, but I went home sick after I wrote this
7 e-mail, and approximately dinnertime, 7:00 p.m. I received a
8 response from Merchant Link's counsel, Mr. Harry Jones, very
9 heavy-handed, intimidating, condescending, and accusatory,
10 of basically disparaging the reputations of these good
11 professionals with this meritless claim. And in addition, I
12 guess for my lawyer's benefit, he included an excerpt or
13 something that resembled a motion to dismiss or summary
14 judgment to, I guess, intimidate my lawyer to believe that
15 the claims that I were making were baseless and meritless
16 and also indicating that I had a duty to come forth with
17 information and answer questions that I had no
18 responsibility or requirement to answer.
19 MR. JOHNSON: Your Honor, complainant moves into
20 evidence Complainant's Exhibit No., I believe that's 64.
21 MR. PRAGER: Any objection?
22 MR. KAPLAN: No objection.
23 MR. PRAGER: Mr. Johnson.
24 BY MR. JOHNSON:
25 Q Now, Mr. -- I'm sorry.

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1 MR. PRAGER: I'm sorry, my mistake. I just wanted
2 to, for the record, to show that Complainant's Exhibit 64 is
3 admitted in the record.
4 (Exhibit No. C-64 was received
5 in evidence.)
6 BY MR. JOHNSON:
7 Q Mr. Belfiore --
8 MR. JOHNSON: Your Honor, at this time, we'd like
9 to mark for identification what was previously identified as
10 Complainant's Exhibit No. 75.
11 (Exhibit No. C-75 was marked
12 for identification.)
13 MR. PRAGER: All right.
14 BY MR. JOHNSON:
15 Q Now, Mr. Belfiore, do you recognize Plaintiff's
16 Exhibit No. 75?
17 A Yes.
18 Q And how do you recognize Plaintiff's Exhibit No.
19 75?
20 A It is a series of communications between Harry
21 Jones and my counsel at the time, centered around the claims
22 that I raised in the October 21st e-mail.
23 Q Now --
24 MR. KAPLAN: I'd object at this point, now that
25 he's identified these documents. These are -- well, one, I

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1 don't, to the relevance of these communications; and, two,
2 generally, these types of communications are -- you know,
3 settlement discussions are usually just not admissible,
4 trying to learn about someone's claims and whatnot. Again,
5 usually it's not admissible into a hearing or a trial.
6 MR. PRAGER: Well, I'm only looking -- I haven't
7 looked through all of these. There's no evidence in the
8 first page of the series of exhibits -- that is, the Jones
9 e-mail of October 21st -- that this is part of a settlement
10 discussion. It's a response to an allegation, and it's a
11 lawyer trying to get more information, as far as I can tell.
12 So I see no reason why it can't be included in there. One
13 of the things I'd be interested in knowing is, at some
14 point, whether or not there were any answers to these
15 questions.
16 So at least as far as the first page -- now, we
17 can go through these page by page since you've raised the
18 objection -- but the first page of this exhibit will be
19 admitted, and we can go through them, as I say, page by
20 page. Mr. Johnson, would you like to continue?
21 MR. JOHNSON: Yes, Your Honor.
22 BY MR. JOHNSON:
23 Q Now, Mr. Belfiore, do you recall receiving this
24 e-mail from Mr. Harry Jones?
25 A Yes.

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1 Q And were you familiar with Mr. Harry Jones?
2 A Yes, I was.
3 Q And how did you know Mr. Harry Jones?
4 A I was introduced to Mr. Harry Jones in early 2011.
5 We had to dismiss an employee for insubordination, and
6 incidentally, I was out on vacation at the time. When I
7 came back from vacation, I had a subordinate of mine in a
8 panic because human resources had come to him and said that
9 the employee that was dismissed had opened a complaint and
10 it looked pretty damning from him -- for him. So he was
11 pretty scared.
12 So I called Dan Lane, and I said, what is going
13 on? And he told me that Maude Massaquoi, was the
14 ex-employee's name, was filing a claim with the EEOC and
15 that Charron told him not to tell me about it and that they
16 somehow made contact with Harry Jones and Harry Jones was
17 essentially representing the company.
18 Q Now, in this particular e-mail, Mr. Jones is,
19 appears to be asking about race issues. Did he express any
20 concern about your past or prior performance?
21 A No.
22 Q If you go down to the middle of the page, there's
23 a sentence that's concerning me right now I want you to
24 explain for me, to the best of your knowledge. In the
25 bullet points, there is a -- next to the last bullet point,

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1 could you read that sentence?
2 A Next to the last?
3 Q Next to the last.
4 A Is Mr. Belfiore aware of any rules that mandate
5 board approval for a salary increase of the type he
6 describes?
7 Q What is your understanding of this sentence?
8 A That he should have asked Mr. Lane. I'm not
9 understanding why -- of course, I knew. I ran the board
10 meetings. I was perfectly versed. I was a recent law grad.
11 I understood the rules of corporations and corporate
12 governance. It was Mr. Lane who gave me the raise without
13 board approval. Why is he asking me this question and not
14 asking Mr. Lane?
15 Q Now, on the very next page, Mr. Jones sends
16 another e-mail approximately a week later, on October 28th.
17 Were you copied on this e-mail?
18 A Yes.
19 Q And do you recall the contents of this e-mail?
20 A No. May I have a moment to refresh?
21 Q Sure.
22 A Okay. I have refreshed.
23 Q Now, can you describe this e-mail?
24 A Yeah. It's an e-mail from Harry Jones to
25 Mrs. Ramirez and myself, saying that obviously they take the

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1 allegations very seriously, they still -- that they have a
2 desire to eradicate any race-based decision-making, which is
3 noble, but somehow my participation in this or me not coming
4 forward with information is frustrating their efforts and
5 that they invite us to talk to Merchant Link personnel if
6 they don't feel comfortable, I guess, talking to him.
7 Q And who does he invite you to, to sit down and
8 talk with?
9 A Ms. Nussbaum.
10 Q And can you identify her completely? You say
11 Ms. Nussbaum. Her first name?
12 A Wendy Nussbaum.
13 Q And who was Wendy Nussbaum?
14 A She was the director of human resources at the
15 time.
16 Q And was she charged with the responsibility, to
17 your knowledge, to investigate this particular issue?
18 A Yeah, I believe she was kind of designated to
19 gather information from --
20 MR. KAPLAN: Objection. How would he know what
21 Merchant Link --
22 MR. PRAGER: The question was whether or not he
23 was aware of what Ms. Nussbaum's role was at this point. Is
24 that correct?
25 MR. JOHNSON: Yes, Your Honor. I said, to his

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1 knowledge, Your Honor.
2 MR. PRAGER: Okay.
3 THE WITNESS: I know because she came to me,
4 asking for information.
5 MR. PRAGER: So what is your objection?
6 MR. KAPLAN: I understood the question to be what
7 did Merchant Link tell her her role in investigating this
8 discrimination complaint was going to be, and I don't know
9 how he would know --
10 MR. PRAGER: All right.
11 MR. KAPLAN: -- the entirety of the role, is all.
12 MR. JOHNSON: Yes.
13 MR. PRAGER: Mr. Johnson, reframe your question to
14 meet the objection. I'm --
15 MR. JOHNSON: Sure.
16 MR. PRAGER: -- not sure the objection is good,
17 but let's, let's --
18 MR. JOHNSON: I understand, Your Honor. Thank
19 you.
20 BY MR. JOHNSON:
21 Q To your knowledge, what was Ms. Wendy Nussbaum's
22 role with regard to human resource matters?
23 A Mrs. Nussbaum was the director of human resources,
24 and it was her role, formally and informally, to be a
25 go-between, employees and management, in regards to whatever

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1 employee-related issues might come. Okay? Now, I will say
2 this: When I found out that the raise had been rescinded,
3 okay, on October 11th -- no, let me rephrase. That's not
4 true.
5 When Dan Lane came to me in early October and said
6 two things -- I can get rid of Christina Smith, and I have
7 to get your raise approved by the board -- I requested a
8 meeting with Wendy in my office on a Wednesday that she
9 responded to that I, I iterated to her what my issues were,
10 and in fact, I told her: Is there any policy or is there
11 any precedent for the company reducing someone's salary?
12 Now, after she bantered about, about everybody
13 else's pay and what they were paying and this, that, and the
14 other, I felt very uncomfortable talking to Wendy about
15 this, and my suspicions came to fruition because she took
16 that conversation directly to management and their counsel,
17 because the only time that someone commented on somebody's
18 salary being reduced was in the answer to the complaint that
19 was filed with the Office of Human Rights. She was the only
20 one that I complained with about reducing my salary, and my
21 lawyer explained subsequent that we did not feel comfortable
22 talking to Merchant Link staff.
23 Q And, Mr. Belfiore, when was the last, to your
24 knowledge, the last communication made with your lawyer and
25 Merchant Link?

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1 A I believe the last communiqué from my lawyer in an
2 attempt to resolve this issue was November 8th, 2011.
3 Q Now, Mr. Belfiore, to your recollection, were any
4 threats concerning your employment with Merchant Link made
5 after you informed them of your complaint about disparate
6 pay?
7 A In a communiqué from, from Harry Jones, he did
8 indicate that my lack of cooperation would be at my own
9 risk. I assumed that that would be at the risk of something
10 unpleasant, so yes, I received that as a threat.
11 Q And when, if you can recall, did you receive that
12 threat?
13 A I don't know exactly when that threat was made,
14 but it was in the, it was in the course of the e-mails going
15 back and forward.
16 Q Now, Mr. Belfiore, in that same exhibit, please
17 turn to -- actually, there's several pages in between there.
18 We're trying to avoid --
19 MR. PRAGER: All right. Let me help you out a
20 little bit. The document you've referred to now, just for
21 ease, we will take the first page that you have assembled
22 there and make that Complainant's 75(a) and the second one
23 75(b), and now you may continue.
24 (Exhibit Nos. C-75(a) and
25 C-75(b) were marked for

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1 identification.)
2 MR. JOHNSON: Okay. Thank you, Your Honor.
3 MR. KAPLAN: The second one is November 4th?
4 MR. JOHNSON: No. That would be, 75(b) --
5 MR. PRAGER: The second one was --
6 MR. JOHNSON: -- October 28th.
7 MR. PRAGER: October 28th is correct.
8 MR. KAPLAN: Oh, okay. Okay. Got it.
9 BY MR. JOHNSON:
10 Q All right. And there's an e-mail in here dated
11 Tuesday, November the 28th, that --
12 MR. PRAGER: Just a moment. Where are you now?
13 MR. JOHNSON: Behind what has been 75(b), the very
14 next e-mail is dated November 28th.
15 THE WITNESS: October 28th?
16 MR. JOHNSON: November 28th.
17 MR. KAPLAN: November or October?
18 THE WITNESS: October 28th?
19 MR. JOHNSON: I have -- hold on. Let me get this
20 correct. All right. The October 28th, right behind that is
21 November 4th, which has in the caption Settlement Demand.
22 So we're not going to address that with the Court.
23 MR. PRAGER: Okay.
24 MR. JOHNSON: The very next one is November 8th,
25 which is about 9 o'clock a.m. on November 8th.

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1 MR. PRAGER: Now, wait a minute. I have a
2 November 7th. Am I missing something?
3 THE WITNESS: Yeah. Right after the November 4th
4 should be November 8th.
5 MR. JOHNSON: Do you have a November 7th, counsel?
6 MR. KAPLAN: I don't, and the November 8th -- oh,
7 yes, it's behind --
8 MR. JOHNSON: The one you have in your hand is --
9 MR. KAPLAN: It's November 8th --
10 MR. JOHNSON: -- November 8th, yes.
11 MR. KAPLAN: -- and that seems to be a response to
12 your settlement demand. So we would object to that as well
13 as the November 7th e-mail as well.
14 MR. PRAGER: So where are we? What are you
15 looking at now?
16 MR. KAPLAN: I'm not sure.
17 MR. JOHNSON: Actually, Your Honor, this is, this
18 particular e-mail doesn't contain anything related to a
19 settlement. It's a response made by Harry Jones that we
20 would like to --
21 MR. PRAGER: On what date?
22 MR. JOHNSON: On November the 8th.
23 MR. PRAGER: Okay. We'll mark that as 75(c).
24 (Exhibit No. C-75(c) was
25 marked for identification.)

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1 MR. JOHNSON: 75(c). Okay.
2 MR. KAPLAN: We would object. I mean, although it
3 doesn't have any numbers, it certainly refers back to a
4 settlement discussion about comprehensive resolutions. We
5 just don't really think it's appropriate to be included
6 here.
7 MR. PRAGER: Well --
8 MR. KAPLAN: Nor do we see the --
9 MR. PRAGER: -- Mr. Johnson, do you have any
10 response to that?
11 THE WITNESS: These, these documents were
12 provided --
13 MR. PRAGER: I'm asking Mr. Johnson.
14 MR. JOHNSON: Actually, Your Honor, I would oppose
15 that position. It's basically -- they said they're open to
16 your ideas of comprehensive resolutions. This is not
17 necessarily settlement negotiations. These are documents
18 that was provided by Merchant Link to counsel in discovery.
19 I don't see this as being protected settlement negotiations.
20 MR. PRAGER: Well, it seems to me, even if the
21 word settlement is used in here or something like that, this
22 is a request, as were the previous ones, for, by Mr. Jones,
23 for additional information. I see no reason why it should
24 be excluded. On the other hand, of course, I also don't see
25 terribly what its relevance is except that Merchant Link was

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1 trying to get more information about why Mr. Belfiore
2 thought that his salary was a racial matter. So the
3 objection is overruled, and you may continue your
4 questioning about 75(c).
5 MR. JOHNSON: Yes, Your Honor.
6 BY MR. JOHNSON:
7 Q So, Mr. Belfiore, on November 8th, once you
8 received the e-mail from your counsel regarding Harry
9 Jones's e-mail, was there communicated, or at least in your
10 perception, a threat?
11 MR. KAPLAN: Objection just to the extent the
12 document and the letter speak for themselves. I mean --
13 MR. PRAGER: Well, the question is whether --
14 obviously, it's something that I will have to assess -- but
15 the question was whether or not Mr. Belfiore considered it a
16 threat. I'm not quite sure how probative that's going to
17 be, but he can certainly answer the question.
18 THE WITNESS: Yes. Yes. As my lawyer indicated
19 in this exchange with Mr. Jones, that there was obviously a
20 difference of opinion as to what the law deems to be
21 discrimination. Mr. Jones was going down a line of
22 questioning for racial discrimination and harassment on its
23 face. This was not what this case was about. This was
24 about disparate treatment. His questions were not relevant
25 to disparate treatment. Merchant Link had all the

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1 information that they needed to, to validate or invalidate
2 my claims.
3 He imposed this requirement that I had some duty
4 or responsibility to answer his questions when, in fact, I
5 had discretion to answer his questions or not, and he
6 definitely implicated that barring answers to these
7 questions or barring, okay, a relinquishment of this claim,
8 that Merchant Link would spend their time on the veracity of
9 the claim as opposed to any meaningful settlement
10 discussions.
11 We said that. My lawyer said that, that it was an
12 attempt to overwhelm, intimidate, frustrate, delay. She
13 also said that if he feels that the claims are meritless,
14 that those kinds of exchanges would be most appropriate
15 through the process of discovery. I agree with my
16 counselor's assessment of the situation, okay, and I do feel
17 uncomfortable and threatened by the continuing harassment,
18 inquiry, heavy-handed e-mails about answering questions of
19 who used race when he knows that that -- it wasn't about
20 someone using race. That wasn't the essence of the claim.
21 BY MR. JOHNSON:
22 Q Now, Mr. Belfiore --
23 MR. JOHNSON: Actually, Your Honor, complainant
24 wants to move into evidence 75(a),(b), and (c).
25 MR. PRAGER: All right. We've already had

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1 discussions about this. Do you still have objections to
2 these documents?
3 MR. KAPLAN: No objection to those.
4 MR. PRAGER: Okay. At this point, the documents
5 now labeled Complainant's 75(a),(b), and (c), will be moved
6 into evidence.
7 (Exhibit Nos. C-75(a-c) were
8 received in evidence.)
9 BY MR. JOHNSON:
10 Q Now, Mr. Belfiore, on the next day, November 9th,
11 2011, can you describe the events of the day?
12 A A normal day, staff meeting with my service
13 delivery managers. They came, reiterated a concern that
14 Renee Dantzler had been injected into the implementation
15 process. They were concerned, given Renee's experience,
16 given Renee's overall involvement with the project to that
17 point --
18 Q Let me ask you this question.
19 A Uh-huh.
20 MR. PRAGER: Before you do, we're now, I gather,
21 Mr. Johnson, we're now moving from, at least temporarily,
22 from the issue of compensation to this claim of retaliation.
23 Is that correct? Is that what you're doing?
24 MR. JOHNSON: Yes, Your Honor.
25 MR. PRAGER: All right. Why don't we take a

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1 10-minute break at this point, and then we'll continue, and
2 you can continue your line of questioning --
3 MR. JOHNSON: All right.
4 MR. PRAGER: -- about Ms. Dantzler or anything
5 else you want to.
6 MR. JOHNSON: Thank you, Your Honor.
7 MR. PRAGER: We're off the record.
8 (Whereupon, a brief recess was taken.)
9 MR. PRAGER: All right. We're back on the record.
10 Mr. Johnson, you were asking about what happened on --
11 MR. JOHNSON: November --
12 MR. PRAGER: -- November 9th, 2011, and the name
13 of Renee Dantzler came up.
14 MR. JOHNSON: Yes.
15 MR. PRAGER: You continue your questioning.
16 MR. JOHNSON: Thank you, Your Honor.
17 BY MR. JOHNSON:
18 Q Now, Mr. Belfiore, do you know Renee Dantzler?
19 A I know of Renee Dantzler, yes.
20 Q And how do you know Renee Dantzler?
21 A Renee Dantzler was a service delivery employee at
22 the time that I started at Merchant Link.
23 Q And on November 9 did you come to have a
24 conversation with Renee Dantzler?
25 A Yes, I did.

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1 Q And can you describe the conversation with Renee
2 Dantzler?
3 A I asked Renee Dantzler to come to my office. I
4 wanted to ask her some questions about her new role in the
5 CRM implementation. It had been brought to my attention,
6 after I had come back off of medical leave, that from the
7 operations side of view, things weren't going as well as
8 expected. There were significant concerns that the core
9 functionality that was planned to be built into the system
10 was not going to be adequate for the staff to complete their
11 jobs and, given that we had contractual SLAs, that there was
12 concern that they were going to have significant degradation
13 to their customer satisfaction scores and possible breach of
14 contract issues, all of these types of things that were
15 going on.
16 They were also very concerned as to how they were
17 being incorporated in the whole implementation process.
18 There were assurances made in terms of process and
19 functionality, specifically by Dan Lane, to these people,
20 and they were up in arms as to the fact that those promises
21 and assurance were not planned or did not seem to be on the
22 horizon to be delivered before the system went live.
23 Q Now --
24 MR. PRAGER: Before you go any further, you used
25 the initials CRM. What do they stand for?

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1 THE WITNESS: It's customer relation management
2 system.
3 MR. PRAGER: All right. And what about SLA?
4 THE WITNESS: Service-level agreements.
5 MR. PRAGER: All right. Mr. Johnson, would you
6 please ask about -- I have no idea what a service-level
7 agreement is.
8 MR. JOHNSON: Yes, Your Honor. You actually
9 started down the road I was going to go through, but I
10 appreciate that. Thank you.
11 BY MR. JOHNSON:
12 Q Now, Mr. Belfiore, were you part of the process of
13 selecting the CRM?
14 A No.
15 Q And who was responsible for selecting the CRM?
16 A The development group headed by Ben Chudesama. We
17 had, we had bargained very vigorously that the power users,
18 the service delivery managers, as designees for their
19 people, be involved because obviously they touched the
20 system every day, they knew what they needed, the tasks that
21 they needed to do to complete their jobs. And so we thought
22 that they had a very valid opinion as to what the system
23 should, how the system should act and what it should look
24 like, and besides, we had crammed a crappy system down their
25 throat for three years that wasn't even designed to do what

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1 they needed it to do, but we made them live with it for far
2 too long.
3 Q Now, were you part of the implementation of the
4 CRM?
5 A Not directly, no.
6 Q And when you say not directly, please explain for
7 the Court.
8 A I put my staff through vigorous project management
9 training and put them in a role that they could voice their
10 concerns and input and contributions to the CRM
11 implementation without having to go through another level:
12 me. I did not understand their jobs as well as they had
13 been doing them. Most of these people were very seasoned,
14 had been on the job for a long time; so why lose in
15 translation what they needed in the system by having me
16 rearticulate it --
17 Q Now, what were, or I guess --
18 A -- and besides, I was scheduled to go out on
19 surgery. So --
20 Q So when was the CRM implemented?
21 A The CRM implementation began in the spring or
22 first quarter of 2011.
23 Q And to your knowledge, what did the implementation
24 entail?
25 A Like I said, I wasn't close to it, but assuming,

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1 it required that requirements be written, that user
2 requirements distilled to more quantitative programming
3 requirements, and then a hell of a lot of meetings between
4 the internal project managers at Merchant Link with the
5 proprietor software developers from Dynamics so they could
6 see how much programming needed to be done from the system
7 out of the box to make it most useful for Merchant Link's
8 needs.
9 Q Now, you identified Dynamics. Who is or what is
10 Dynamics?
11 A Microsoft Dynamics was the, the system that Dan
12 Lane chose.
13 Q Was there another option or another system that
14 could have been chosen?
15 A There was another system presented and demoed.
16 Q Now, when did you go out on your medical leave?
17 A Middle of May.
18 Q And was the CRM implementation going on prior to
19 your leaving on medical leave?
20 A They had just started.
21 Q And how long were you out on medical leave?
22 A Three months.
23 Q And when did you return from medical leave?
24 A In August.
25 Q August of 2011?

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1 A Correct.
2 Q Now, did you receive any calls or any messages,
3 during the time that you were on medical leave, relating to
4 the CRM?
5 A None.
6 Q Did you receive any calls or messages, while you
7 were on medical leave, from Dan Lane?
8 A Yes.
9 Q And do you recall what the substance of those
10 communications were about?
11 A He called me on one legal issue, some burger
12 franchise or something. I interviewed Laura Kirby-Merk
13 remotely while on medical leave -- you know, these things I
14 did as a favor to Dan -- but that was about it.
15 Q And was Laura Kirby-Merk hired at Merchant Link?
16 A Yes, she was.
17 MR. PRAGER: Let me interrupt. I thought her name
18 was Kirby-Meck.
19 MR. JOHNSON: Did I say it wrong?
20 MR. PRAGER: Mr. Kaplan, is that correct?
21 MR. KAPLAN: That's correct.
22 MR. JOHNSON: Kirby-Meck, I'm sorry.
23 MR. PRAGER: That's M-E-C-K. Go ahead,
24 Mr. Johnson.
25 MR. JOHNSON: Thank you.

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1 BY MR. JOHNSON:
2 Q Now, during your medical leave, who was
3 responsible for documenting the progress of the CRM?
4 A All of the service delivery managers were
5 responsible for documenting the issues that they found in
6 their perspective areas. I had Jomaine Sanders have
7 consolidation responsibilities so they didn't have to get
8 five different documents, but for the more technical
9 discourse, I had Hawk Segrule (phonetic sp.), because his
10 role was documentation and those types of things, that he
11 sat in on all of the more technical implementation things.
12 Q Now, when you returned from medical leave, what
13 did you learn of the CRM and its progress?
14 A I learned that my people were visibly shaken and
15 afraid about what would happen the day they turned on the
16 switch and that they were, felt like their views were being
17 marginalized and cast aside.
18 Q Now, did you urge or coerce or, any of your people
19 to not accept the CRM?
20 A No, I did not. After the meeting with Dan Lane,
21 explaining that they had chosen Dynamics, I said, well, we
22 didn't get what we wanted, but we got to make the best that
23 we can do, and at that point, I was a firm believer in Dan
24 Lane and I honestly felt that he would keep his word. So I
25 didn't think that there were anything to worry about, but

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1 what I told them is, is that it's their job to document
2 issues as they arise with the implementation, as it's with
3 any implementation: you document issues all the time, and
4 you have meetings and tasks to try to resolve those issues.
5 I also told them to document their issues in a
6 very professional way, don't just gripe and say, oh, I don't
7 like it or it doesn't do this; explain the negative impact
8 if the issue is not resolved. So they, they did very
9 professional job in doing that, okay, and it was in very
10 good hands. Jomaine was leading the effort from the service
11 delivery standpoint. In the process, he took the project
12 management training; he passed the course; he became a
13 certified project manager -- all of this so we could give
14 the best support to the implementation of the CRM.
15 Q So back to your meeting with Renee Dantzler on
16 November 9th, what was the subject of the conversation?
17 A The subject of the conversation is that my people
18 wanted me to understand why Renee was now being brought into
19 the system, because the way they understood it, she was
20 being brought in at a late date to document all of the
21 issues that they had already documented and she had a very,
22 very short time frame in which to do that or they would be
23 ignored. My people came to me. Okay? I told them I'm in
24 battle, I'm under the gun, I don't know what you want from
25 me, just ask Renee if she could use our help.

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1 So my purpose for talking with Renee is to say let
2 me understand what you've been charged to do at this late
3 date, okay, and I don't know if what, if there is any
4 penalty or not if you don't get this done, but to give you
5 some help, my service delivery managers, people that you've
6 worked with forever, okay, have done a quite a bit of work
7 on this, my suggestion is maybe you talk to them and they
8 can collaborate and then everybody can come out okay on
9 this.
10 Q And do you recall what Renee's responses were to
11 the information you just communicated?
12 A Specifically to the CRM?
13 Q Yes.
14 A Her response to me was that she and her boss, they
15 had found some issues with the CRM that they felt were
16 untrainable. Okay? So, yes, they knew that there were some
17 issues with the, with the CRM. She did not respond directly
18 to the service delivery managers' efforts to help her.
19 Q Are you aware that Renee Dantzler made a
20 harassment claim against you?
21 A In June of 2012, the summer of 2012, I was made
22 aware that, yes, that, that the reason for my termination
23 had to do with supposedly an inappropriate communication
24 that I had with Ms. Dantzler.
25 Q Now, prior to this communication with Renee

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1 Dantzler, were you accused of harassing any other employee?
2 A No.
3 Q Now, do you specifically know the details of the
4 alleged harassment?
5 A Do I know the details of her claim?
6 Q Of her claim, alleged.
7 A Yes. I have read the cryptic note that either she
8 wrote or dictated to HR.
9 Q Did you use any type of inappropriate language
10 around Renee Dantzler?
11 A No.
12 Q Did you threaten Renee Dantzler's employment or
13 job?
14 A No.
15 Q Now, was there an investigation of the Renee
16 Dantzler claim by human resources?
17 A No.
18 Q Were you interviewed by human resources or Wendy
19 Nussbaum?
20 A No, nor did, did the termination letter that I
21 received make any reference to Renee Dantzler whatsoever.
22 MR. JOHNSON: Your Honor, we want to identify
23 Complainant's Exhibit No. 43, which has been previously
24 marked for identification.
25 MR. PRAGER: All right. Mr. Johnson, you can go

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1 ahead.
2 MR. JOHNSON: Yes.
3 THE WITNESS: You're getting good at this, Judge.
4 BY MR. JOHNSON:
5 Q Mr. Belfiore, do you recognize Plaintiff's Exhibit
6 No. 43?
7 A Yes. It's the Merchant Link Employee Handbook.
8 Q And if you will, turn to, it's identified as page
9 12, but it's the third page from the beginning.
10 A Uh-huh.
11 Q Do you recognize the category Prohibited Conduct
12 in the Workplace?
13 A Yes, I do.
14 Q And in the first bullet point -- can you read the
15 first bullet point, please?
16 A Use of profane, harassing, bias, threatening, or
17 abusive language.
18 Q Now, to your knowledge or recollection, did you
19 use any of this type of descriptive, I guess, profane,
20 harassing, bias, and threatening, abusive language towards
21 Ms. Renee Dantzler?
22 A No, I did not use any profane, harassing, bias,
23 threatening, or abusive language towards Ms. Dantzler.
24 Q Now, Mr. Belfiore, if you will, turn to the next
25 page, which is page 13, and look towards the bottom of the

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1 page.

2 A Harassment?

3 Q Yes. Do you recognize this particular category

4 within the employee handbook?

5 A Yes, I do.

6 Q And to your knowledge, based upon the employee

7 handbook, is there a procedure in which Merchant Link must,

8 or how Merchant Link must handle allegations of harassment?

9 A On the top of page 15, there is a subheading

10 entitled Harassment Reporting Procedure: One, any employee

11 who feels that he or she has been subject to harassment

12 should immediately report his or her concerns to his or her

13 manager, the manager's superior or, if any employee is

14 uncomfortable talking to his or her supervisor, to the human

15 resources department. It is the responsibility of all

16 employees to report their concerns, to ensure that

17 management is aware of any potential harassment situation.

18 There will be no reprisal or retaliation against employees

19 who report such behavior. The company will thoroughly and

20 objectively investigate all reports and will handle the

21 information as confidentially as possible. Where necessary,

22 the company will take disciplinary action against employees

23 involved, depending upon the severity of the misconduct and

24 the number of infractions noted. Such action could range

25 from a warning to termination.

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1 Q Now, Mr. Belfiore, to your recollection, did

2 Merchant Link follow this particular procedure as identified

3 in the employee handbook?

4 MR. KAPLAN: Objection to this line of --

5 MR. PRAGER: What's your objection?

6 MR. KAPLAN: Relevance to this line of

7 questioning. There's been no allegation that he has

8 harassed anyone, that he had violated the harassment policy,

9 assumes facts in evidence. The question sort of assumes

10 that there's a harassment claim here. That's just not part

11 of this case. There's no evidence, one way or the other,

12 this is a harassment claim.

13 MR. PRAGER: Well, if I read Ms. Dantzler's

14 statement, she does accuse him of harassment, not sexual

15 harassment --

16 MR. KAPLAN: Right.

17 MR. PRAGER: -- but harassment. You can say that

18 this general exception doesn't cover what she was

19 complaining about, but that's not intuitively obvious here.

20 So I'm not quite sure how I would sustain your objection, so

21 I overrule it. This is -- you can, and you have your

22 witnesses, you can explain what this section applies to --

23 MR. KAPLAN: Sure.

24 MR. PRAGER: -- but it certainly would fit in, at

25 least on its face, with the claims that Ms. Dantzler made.

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1 Whether they were then subsequently adopted by Merchant Link

2 is a question yet to be answered. The objection is

3 overruled.

4 BY MR. JOHNSON:

5 Q Mr. Belfiore, to your knowledge, do you know

6 whether or not Merchant Link followed the procedures as

7 identified in the employee handbook?

8 A I know that Merchant Link engaged, it seems, in

9 Step 1 of the policy, as I've read her claim that was

10 supplied to human resources; as well as, there is an

11 indication that she may have reported it to her manager. I

12 have seen no evidence that the policy rose to Step 2,

13 involving the investigation.

14 MR. JOHNSON: Your Honor, at this time,

15 complainant moves into evidence Plaintiff's Exhibit No. 43.

16 MR. PRAGER: Any objections, Mr. Kaplan?

17 MR. KAPLAN: Just the same objections that I

18 already have made --

19 MR. PRAGER: Right.

20 MR. KAPLAN: -- which you've already overruled.

21 MR. PRAGER: So the objection is overruled again

22 to its admission. Complainant's Exhibit 43 will be

23 admitted.

24 (Exhibit No. C-43 was received

25 in evidence.)

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1 BY MR. JOHNSON:

2 Q Now, Mr. Belfiore --

3 MR. JOHNSON: Your Honor, at this time, we wanted

4 to mark for identification Plaintiff's Exhibit No. 82.

5 (Exhibit No. C-82 was marked

6 for identification.)

7 MR. PRAGER: All right.

8 BY MR. JOHNSON:

9 Q Mr. Belfiore, do you recognize Plaintiff's Exhibit

10 No. 82?

11 A Yes, I do.

12 Q And could you please identify it for the Court?

13 A This is the alleged complaint proffered by

14 Ms. Dantzler to human resources.

15 Q Now, Mr. Belfiore, in this particular complaint,

16 does this conform to the facts and circumstances that you

17 just testified regarding this particular meeting with Renee

18 Dantzler?

19 A There are some facts that coincide, and there are

20 some facts that are in complete contradiction.

21 Q And which facts are in contradiction?

22 A The, he said, well, you would not have the --

23 MR. PRAGER: Where are you reading from?

24 THE WITNESS: Oh, I'm in the second major

25 paragraph, about 55 percent of the way down, sentence

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1 starting: He said, well, you would have not had the success
2 you have today if it was not for me; I went and told them
3 that they needed to consider you. I did not have that, that
4 -- I did not speak those words to Ms. Dantzler.
5 He continues to talk about folks in service
6 delivery were not given the fling opportunity that I had
7 with certain positions. That is a complete fabrication.
8 I said, excuse your French, and he changed it to
9 flipping. He said he was told that all positions must be
10 posted. She has a colorful imagination, I guess.
11 BY MR. JOHNSON:
12 Q How does that contradict your experiences on that
13 particular day with this particular conversation?
14 A Like I said, the parts of this that conform is I
15 understood that my position relative to Renee's position
16 might make her feel uncomfortable. So to make her feel more
17 comfortable, I tried to put her at ease by letting her know
18 that when it was time to get her position, I put a good word
19 in for her, and she responded by saying, no, no, no, God got
20 me my position. I was kind of taken back by the awkward
21 comment, but that was my cue to get down to business, and
22 that's when I just said: Hey, let me know what's going on
23 with the CRM. Okay? I know you got a tight deadline, but
24 people out there are very, very interested in getting a good
25 system. They're willing to help you if you need help. So

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1 it's on you. You can either ask for their help or not, and
2 see you, Renee, have a nice life.
3 Q At any point in time, did you attempt to sabotage
4 the CRM?
5 A No.
6 Q And based on your recollection from this
7 particular conversation, where could she have conceivably
8 found any inference to a sabotage of the CRM?
9 A I have no idea.
10 Q Is it possible for you to sabotage the CRM?
11 A Me personally?
12 Q Yes.
13 A No.
14 Q Are you rendered in any form or fashion in control
15 of working the CRM?
16 A No. I had no access. Obviously it's been
17 established that I didn't have active participation in the
18 project management. I wasn't scheduling tasks. I wasn't
19 part of planning the schedule. I certainly didn't have any
20 access to the code or the programmers who had access to the
21 code. So I don't even understand where this concept of
22 sabotaging the system comes from.
23 Q Now, when you first learned that there was a
24 problem with the CRM, it occurred after you returned from
25 your medical leave. What did you do once you, once you

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1 started hearing that there was problems?
2 A I, when I started filtering through to make sure
3 that these weren't just general gripe sessions or residue
4 because we didn't get Sage and we love Sage, I said, what is
5 this about, and they were saying, it's about poor
6 competency. So I said, all right, I need to talk with Ben
7 Chudesama, who was heading the CRM project, that we need to
8 sit down and have a conversation and agree on what we feel
9 core competency is. Okay? I'm not trying to take my
10 people's side. I'm not trying to take your people's side.
11 I'm trying to build consensus, that if we can get a
12 consensus on what the basic functions that this system needs
13 to do, then what you're going to have is you're going to
14 have a great advantage of ownership, because the one thing
15 about implementing software, if the people who have to use
16 the software don't take ownership, it will never work right.
17 Okay? So I'm saying, I'm trying to help you, Ben. Why
18 don't you give these guys a little bit of voice. Okay? Go
19 over the merits of their complaint and, if they're right,
20 then do that type of thing.
21 I specifically went to a meeting that I didn't
22 usually go to. I expressed this to Ben, that we need to
23 have a separate meeting to get a consensus on core
24 competency, to put these people on edge, because they are
25 all lining up on the ledge, ready to jump, and Ben told me

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1 in this meeting in front of everyone that would be a
2 complete waste of time. So I asked him, I said, so we are
3 not interested in implementing a system that works.
4 Then I left the meeting and I went straight to Dan
5 Lane's office, and I said, Mr. Lane, you made assurances to
6 these people that you would get a system that would work
7 well for them, especially given their previous experience
8 with PeopleSoft. Okay. We're leading down a dangerous road
9 where these people feel -- and I'm very, and I believe them
10 -- that the system will not work well as being implemented,
11 not that we stop implementing the system, not that we
12 sabotage the implemented system, but that we just do it
13 slightly different way that these users, okay, who are going
14 to have to test the system before it goes into production,
15 are going to say, yeah, this is great and roll with it. And
16 he told me, whatever Ben says goes, and at that point, I
17 washed my hands of it.
18 Q So is it possible to sabotage the CRM through
19 Renee Dantzler?
20 A No.
21 Q Does Renee Dantzler have any control or influence
22 over the CRM?
23 A Renee Dantzler's role -- I mean, first of all, I
24 don't understand why learning and development, at all, was
25 involved with the implementation. As I understand, learning

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1 and development would have learned how to use the
2 implemented system so they could train new employees on how
3 to use the system, but why they were injected in the
4 process, that's a Dan Lane call. Okay?
5 So her documenting problems with the system or the
6 implementation of the system is totally counter to her role
7 in terms of being, having to train people on how the system
8 works, not training people on how the system doesn't work.
9 That was just inconsistent to me. I just wanted to see if
10 she was the person who was going to get the issues in front
11 of the people that she had all the resources available to
12 her for the betterment of the company.
13 Q Now, Mr. Belfiore, why do you think Merchant Link
14 is claiming you're sabotaging the CRM?
15 A (A) because on October 25th, after receiving my
16 claim, they wanted to purposely frustrate my ability to
17 follow through on my pursuit for justice and they knew that
18 as long as I was there, okay, I would have money, okay, to
19 fund the litigation and I would have access to potential
20 information that could support my claim.
21 MR. JOHNSON: At this time, Your Honor, I wanted
22 to identify what has been previously marked for
23 identification as Complainant's Exhibit No. 66.
24 MR. PRAGER: All right. At this point, you're not
25 moving the Dantzler statement into evidence, is that

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1 correct?
2 MR. JOHNSON: I'm sorry, Your Honor. Actually --
3 MR. PRAGER: Exhibit 82, Complainant's Exhibit 82.
4 MR. JOHNSON: Yes, Your Honor, I actually want to
5 move Exhibit 82 into evidence.
6 MR. PRAGER: All right. Is there any objections?
7 MR. KAPLAN: No objection.
8 MR. PRAGER: Complainant's Exhibit 82 will be
9 admitted into evidence. Mr. Johnson, what was the next one?
10 (Exhibit No. C-82 was received
11 in evidence.)
12 MR. JOHNSON: 66.
13 MR. PRAGER: All right. Mr. Johnson.
14 BY MR. JOHNSON:
15 Q Now, Mr. Belfiore, do you recognize Plaintiff's
16 Exhibit No. 66?
17 A Yes.
18 Q And can you describe Plaintiff's Exhibit No. 66
19 for the Court?
20 A This is the memorandum that on the afternoon of
21 November 11, 2011, that Dan Lane and Wendy Nussbaum
22 delivered to my office, terminating my employment with
23 Merchant Link.
24 Q Now, describe that scene of Dan Lane and Wendy
25 Nussbaum delivering this to your office.

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1 A Well, because I knew I was kind of under the gun,
2 I kind of sequestered myself in my office so I wouldn't be
3 accused of various infractions. So there was a knock at the
4 door, and it was Dan and Wendy, and they came in. And I had
5 two chairs, similar to those chairs out there, kind of
6 against the wall, and Dan Lane handed me the, the, the memo,
7 and then he let me know that he needed my, my badge, what
8 have you, my credentials, and that my employment with
9 Merchant Link was being terminated immediately and, you
10 know, I was to leave the premises as expeditiously as
11 possible. And I requested that, you know, I got a lot of
12 stuff in here, I will leave right now, just if we can make
13 arrangements for me to come back and pack up my office.
14 Q Now, the allegations of the letter, did Dan Lane
15 investigate the allegations in this letter?
16 MR. KAPLAN: Objection.
17 MR. PRAGER: I'm sorry. I didn't hear the
18 question. So repeat the question, please.
19 MR. JOHNSON: Yes, Your Honor.
20 BY MR. JOHNSON:
21 Q Did Dan Lane investigate the allegations in this
22 letter?
23 MR. PRAGER: All right. And what's your
24 objection?
25 MR. KAPLAN: Calls for speculation what Dan Lane

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1 did.
2 MR. PRAGER: Well, let's find out if Mr. Belfiore
3 has any idea, and you testify, as best you can, to answer
4 his question.
5 THE WITNESS: Well, I sat in Dan Lane's
6 deposition. He said he didn't, so no.
7 MR. PRAGER: Is there still an objection? He said
8 he based it on deposition testimony by your client.
9 MR. KAPLAN: We'll address that on -- later on.
10 MR. PRAGER: All right. The objection is
11 overruled.
12 BY MR. JOHNSON:
13 Q Mr. Belfiore, did Wendy Nussbaum investigate the
14 allegations of this letter?
15 A No, she did not.
16 Q To your knowledge and recollection, did you make
17 any inappropriate communications to Renee Dantzler?
18 A None.
19 Q Now, to your knowledge and recollection, did you
20 mismanage your position in violation of Merchant Link's
21 policies, code, and mission?
22 A No.
23 Q Mr. Belfiore, to your recollection, did you
24 mismanage your position in violation of your fiduciary
25 duties of due care, good faith, and loyalty?

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1 A No, no, and no.
2 Q Mr. Belfiore, what is the date of this particular
3 letter?
4 A November 11th, 2011.
5 Q Prior to November 11th, 2011, do you have notice
6 of any type of activity that could lead to your termination
7 from Merchant Link?
8 A No, with the exception of the Harry Jones threat.
9 Q Now, Mr. Belfiore -- I'm sorry.
10 MR. JOHNSON: Your Honor, at this time,
11 complainant moves into evidence Plaintiff's Exhibit No. 66.
12 MR. PRAGER: All right.
13 MR. KAPLAN: No objection.
14 MR. PRAGER: Complainant's Exhibit 66 is admitted.
15 (Exhibit No. C-66 was received
16 in evidence.)
17 BY MR. JOHNSON:
18 Q Now, Mr. Belfiore, in Plaintiff's Exhibit No. 66,
19 on the second page there's an e-mail. Can you describe that
20 e-mail?
21 A It's an e-mail from Dan Lane, November 11th, 3:05
22 p.m., to SSP-All; subject, Erik Belfiore: I regret to
23 announce that effective today Erik Belfiore is no longer
24 with Merchant Link. The service delivery department's
25 implementation, installation, tech support, funds research,

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1 process improvement management will report to Denise
2 Williams on an interim basis. Billing operations will
3 report into accounting and finance department.
4 MR. PRAGER: Mr. Johnson, let me ask Mr. Belfiore,
5 do you know what SSP means in this context?
6 THE WITNESS: Yeah. It's kind of a come-over from
7 when we were part of Chase Paymentech, but it means,
8 basically, Silver Spring, all of the employees at Silver
9 Spring. So this, this e-mail would have went to everybody
10 at Merchant Link in Silver Spring that had an SSP e-mail
11 address.
12 MR. PRAGER: All right. And that includes
13 everybody in --
14 THE WITNESS: That, that would include everybody
15 in the company.
16 MR. PRAGER: Right. And I'm sure this is going to
17 be brought out, but let me just ask you right now. When
18 there's a statement here that the service delivery
19 departments, and then there's a list of them, plus the
20 billing operations, are those all departments that, at that
21 point, before the 11th of November in 2011, reported to you?
22 Is that correct?
23 THE WITNESS: Correct.
24 MR. PRAGER: All right. Thank you.
25 MR. JOHNSON: Your Honor, we wanted to identify

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1 that which has been previously marked for identification as
2 Complainant's Exhibit No. 67.
3 MR. PRAGER: All right. I'm not sure you've --
4 sorry, never mind. I take that back. Which was it?
5 MR. JOHNSON: 67.
6 MR. PRAGER: Go ahead.
7 BY MR. JOHNSON:
8 Q Mr. Belfiore, do you recognize Plaintiff's Exhibit
9 No. 67?
10 A Yes.
11 Q And can you describe this for the Court, please?
12 A This is an e-mail that was sent to PTI notify PTI
13 Desktop Services -- these are the people that are
14 responsible for allowing you access to various systems --
15 printed off of Wendy's account, Wendy Nussbaum's account;
16 high importance, that basically, remove any access to
17 Merchant Link systems -- remove my access to any Merchant
18 Link systems.
19 MR. JOHNSON: Your Honor, plaintiff moves into
20 evidence Plaintiff's Exhibit No. 67.
21 MR. PRAGER: Any objections?
22 MR. KAPLAN: No objection.
23 MR. PRAGER: Admitted.
24 (Exhibit No. C-67 was received
25 in evidence.)

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1 BY MR. JOHNSON:
2 Q Now, Mr. Belfiore, we want to talk about your
3 employment history of undermining authority.
4 MR. JOHNSON: So, Your Honor, we'd like to
5 identify what has been previously marked as Complainant's
6 Exhibit No. 28.
7 MR. PRAGER: All right. Mr. Johnson.
8 BY MR. JOHNSON:
9 Q Mr. Belfiore, do you recognize Plaintiff's Exhibit
10 No. 28?
11 A Yes.
12 Q And can you describe Plaintiff's Exhibit No. 28
13 for the Court?
14 A Yes. This is an e-mail that I sent to my lawyer
15 of me responding to Dan Lane's request by e-mail as to why I
16 declined the board presentation view yesterday and declined
17 the upcoming board meeting: Why aren't you able to attend
18 the meetings? As we discussed, we need your participation
19 with board meetings and, in general, with senior management
20 planning meetings.
21 I received Dan's letter put off because Dan Lane
22 and I had worked very closely for over six years and,
23 without fail, first thing in the morning, Dan would call me
24 or I would call him and we would talk about issues, about
25 meetings, about things we wanted to do, things we wanted to

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1 collaborate on or what have you. But I realized that, at
2 this time, okay, after October 21st, I started getting all
3 of this stuff in a way that it could be documented, and I
4 kind of knew that this was a way that Dan was trying to
5 build a case. Okay? So I -- and I expressed that to him:
6 Dan, I reiterate my discomfort with having to respond to
7 these inquiries via e-mail; however, I will answer your
8 question. I --
9 MR. KAPLAN: I just object. To the extent he's
10 trying to testify what's in Mr. Lane's mind, it's all
11 speculation. Why he sent that e-mail, it's all purely
12 speculation.
13 MR. PRAGER: It is speculative, but he's --
14 MR. KAPLAN: Okay.
15 MR. PRAGER: -- it's why he felt that this was,
16 that there was a relationship between his complaint, and
17 since we don't know what's in Mr. Lane's mind and the only
18 way we'll get it is if and when Mr. Lane testifies --
19 MR. KAPLAN: Okay.
20 MR. PRAGER: -- and, of course, he'll testify one
21 way -- I think, at this point, I will allow Mr. Belfiore to
22 speculate. And I don't know what weight I will give that
23 speculation --
24 MR. KAPLAN: Okay.
25 MR. PRAGER: -- but I'll certainly listen to it.

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1 MR. KAPLAN: Thank you.
2 MR. PRAGER: So the objection is overruled.
3 THE WITNESS: Okay, that this was a noticeably
4 different tact and approach to the level of Dan Lane and my
5 communications:
6 I reiterate my discomfort with having to respond
7 to these inquiries via e-mail; however, I will answer your
8 question. I declined the board meeting because I cannot
9 fully discharge my duties to the board of directors if I'm
10 not fully included and apprised of all relevant information
11 germane to the issues to be discussed with the board.
12 Specifically, you left me a voice mail on Wednesday, October
13 12th, expressing a need to reschedule a pricing strategy
14 meeting and if I could, if I could not attend. I informed
15 you that the -- I responded that, via e-mail, by informing
16 you that I was too ill to attend and, if I was required, to
17 reschedule. I was later informed that the meeting did take
18 place on Friday, October 15th. I received no notice or
19 scheduler that indicated your intent to reschedule. It was
20 my understanding that the pricing strategy was the key
21 aspect of the strategic initiatives, that management was
22 responsible to provide the board an update.
23 In regards to the deck review meeting, I was
24 reticent to attend given my declination of the board
25 meeting, but I waited within 30 minutes of the meeting, and

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1 the promise draft deck was not forwarded to me, as indicated
2 in the meeting request, giving me no time to prepare for the
3 meeting. I'm not sure the meeting even took place. I was
4 informed that the socialization of the forecast, a key deck
5 input had not been completed with the principals by the time
6 the meeting was scheduled.
7 In both cases, these instances are frustrating
8 because a chronic complaint of mine has been I continue to
9 endure either exclusion or an undermining of my authority
10 that precludes me of discharging my responsibilities as an
11 officer of the company completely, constructively, reducing
12 the potential contribution that I am capable of making to
13 the company.
14 For the edification of the Court, when you have a
15 board meeting that requires significant amounts of financial
16 information, you do not introduce that information to the
17 board at the board meeting. Board members are required to
18 make informed decisions, and if they're not financial
19 professionals, they're not going to make those decisions
20 unless they get a recommendation from financial expertise
21 that they trust. The socialization process that I allude to
22 this is we tend to set up a meeting weeks before the board
23 deck review to go over the financial information with the
24 financial professionals in each of the principal's
25 organization so they have an opportunity to digest it and

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1 understand it and then make a recommendation to their board
2 designee and so, if that information needs to be decided,
3 it can be decided at the board --
4 MR. PRAGER: Let me --
5 THE WITNESS: -- I had been doing this from the
6 start for Merchant Link.
7 MR. PRAGER: All right. Let me interrupt you
8 because I think you've answered your counsel's question.
9 I've been mystified for a while. What is a deck meeting?
10 THE WITNESS: A deck is a colloquium or a term
11 that people use for a presentation package. Instead of
12 saying, here's the presentation, they say it's a deck. So
13 it's a series of slides that you either plan to present or
14 is used to facilitate a discussion.
15 MR. PRAGER: Thank you. Mr. Johnson.
16 MR. JOHNSON: Thank you, Your Honor. Complainant
17 moves into evidence Plaintiff's Exhibit No. 28.
18 MR. PRAGER: Any objections?
19 MR. KAPLAN: No objection.
20 (Exhibit No. C-28 was received
21 in evidence.)
22 MR. JOHNSON: At this time, the complainant wishes
23 to identify Plaintiff's Exhibit No. 28, which has been
24 previously marked.
25 MR. PRAGER: I'm sorry. We just admitted --

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1 MR. JOHNSON: I'm sorry, 29. 29.
2 MR. PRAGER: All right.
3 BY MR. JOHNSON:
4 Q Mr. Belfiore, do you recognize Plaintiff's Exhibit
5 No. 29?
6 A Yes.
7 Q And can you describe Plaintiff's Exhibit No. 29?
8 A This is a meeting request that I went into Dan
9 Lane's calendar -- because we shared access to calendars, so
10 we all knew what each other was doing -- and that I found
11 out that Christina Smith had organized the meeting for an
12 updated flip deck on the 2nd, okay, that Dan Lane accepted
13 and I was not invited to.
14 MR. PRAGER: All right. Now, let me, let me
15 again, just terminology, what is a flip deck?
16 THE WITNESS: It's the presentation.
17 MR. PRAGER: It's the same thing as the deck?
18 THE WITNESS: Yes.
19 MR. PRAGER: All right.
20 THE WITNESS: Yes. Yes. So this is direct
21 example that Dan Lane's telling me a day before that I need
22 to be at these meetings, why am I not at these meetings; yet
23 these meetings didn't happen. They are rescheduled, but I'm
24 not, I'm not, I'm not in the loop. I only knew that this
25 meeting happened because I went into Dan Lane's calendar

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1 through the Outlook system. That's why my name appears at
2 the top, because I printed it off my machine, but it's a
3 meeting request. Okay? The attendees who are required at
4 that meeting were Dan Lane and Laura Kirby-Meck. He
5 accepted. Did he bring this meeting to my attention? No.
6 MR. PRAGER: Let me ask one other question for
7 identification purposes. Who is Christina Smith? Is she
8 the CFO at this point?
9 THE WITNESS: Correct.
10 MR. PRAGER: Mr. Johnson.
11 MR. JOHNSON: Complainant moves into evidence
12 Complainant's Exhibit No. 29.
13 MR. KAPLAN: No objection.
14 MR. PRAGER: All right. Exhibit, Complainant's
15 Exhibit 29 is admitted.
16 (Exhibit No. C-29 was received
17 in evidence.)
18 MR. JOHNSON: All right. Plaintiff wishes to
19 identify what has been previously marked for identification
20 as Complainant's Exhibit No. 30.
21 MR. PRAGER: All right.
22 BY MR. JOHNSON:
23 Q Mr. Belfiore, do you recognize Complainant's
24 Exhibit No. 30?
25 A Yes.

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1 Q And can you describe for the Court Plaintiff's
2 Exhibit No. 30?
3 A Plaintiff -- the Exhibit 30 is a, just another
4 instance of a meeting scheduled and accepted by Dan Lane
5 behind my back when he is accusing me of missing meetings
6 and basically sabotaging my ability to do my job. Again, I
7 printed it off my computer, but it's his calendar. He
8 accepted it. Christina Smith organized it, and the required
9 attendees were Dan Lane and Laura Kirby-Meck.
10 Q And what is the date of this particular e-mail?
11 A The date of this meeting?
12 Q Date of the meeting.
13 A The date of the meeting was 11/1/2001 -- 2011, I'm
14 sorry.
15 MR. JOHNSON: Complainant moves into evidence
16 Complainant's Exhibit 30.
17 MR. PRAGER: Any objections?
18 MR. KAPLAN: No objection.
19 MR. PRAGER: Complainant's Exhibit 30 will be
20 admitted.
21 (Exhibit No. C-30 was received
22 in evidence.)
23 MR. JOHNSON: Complainant wishes to identify which
24 has been previously marked for identification as
25 Complainant's Exhibit 31.

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1 MR. PRAGER: All right. Before we, I don't want
2 to make a fetish of this, but what's a BOD deck flip?
3 THE WITNESS: Board of directors.
4 MR. PRAGER: Okay.
5 THE WITNESS: Same thing, just --
6 MR. PRAGER: Thank you.
7 BY MR. JOHNSON:
8 Q Mr. Belfiore, do you recognize Plaintiff's Exhibit
9 31?
10 A Yes.
11 Q And can you describe Plaintiff's Exhibit 31 for
12 the Court, please?
13 A Plaintiff Exhibit 31 is an e-mail meeting request
14 that I forwarded to my attorney at the time, but it is a
15 meeting request that Mike Krolick sent to me because he
16 noticed that I was not on the original distro.
17 Q And was this a meeting you were required to
18 participate in?
19 A This was a meeting entitled The Marriott MRT. MRT
20 was known as the management review team. The management
21 review team were, was comprised of myself, Dan Lane, and Tim
22 Kinsella. This seems to be after Tim Kinsella had left the
23 company. So Laura Kirby-Meck would have been in Tim
24 Kinsella's role, but Mike Krolick was surprised that I was
25 not included on the meeting request.

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1 MR. JOHNSON: Complainant moves into evidence
2 Plaintiff's Exhibit No. 31.
3 MR. KAPLAN: No objection.
4 MR. PRAGER: No objection? Well, I don't fully
5 understand. Who is Michael Ryan?
6 THE WITNESS: Michael Ryan is, was a sales
7 professional at the time. While at Merchant Link, I had
8 created a deal-decisioning process, and the process required
9 that the salesperson, okay, who got the lead had to develop
10 the deal to a point that we could deliver the service and
11 those types of things and then he would have to sell his
12 boss, which would be Laura Kirby-Meck, on the merits of the
13 deal and then Laura Kirby-Merk would bring the deal to the
14 MRT, and these were, these were substantial deals. So they
15 weren't everyday standard deals. They were big deals,
16 bigger deals.
17 So we would then meet, typically on a Friday,
18 myself, Dan Lane, VP of sales, discuss the merits of the
19 deal, made sure that we had the capabilities in-house to
20 support the deal, made sure that the economics of the deal
21 were correct and viable, and then we would decision the
22 deal. Okay? Not only did Dan cut me out of the meeting, he
23 changed the process because he started inviting -- I guess,
24 Mike Krolick was my stand-in because I was typically the
25 loudest voice on the financial aspects of the deal and,

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1 usually, we didn't like to go through a lot of, of detailed
2 information in the meetings because it wasn't the best use
3 of our time. So we didn't, didn't invite people less than
4 that level to make those decisions.
5 So on the 1st of 11, obviously Dan Lane is telling
6 me that it's critical that I be at these meetings, but yet
7 he's not even inviting me to the meetings, or when he sees
8 that I'm not invited to the meetings, he's not picking up
9 the phone and saying, hey, we got a big meeting, I need you
10 to be there to help make this decision.
11 MR. PRAGER: So I understand your testimony
12 correctly, in this case, it's not that Lane convened the
13 meeting; it's that he didn't inform you that the meeting had
14 been convened. Is that correct?
15 THE WITNESS: Correct.
16 MR. JOHNSON: Your Honor, we want to now identify
17 that which has been previously marked for identification --
18 MR. PRAGER: What are we going to do about --
19 sorry to interrupt.
20 MR. JOHNSON: I'm sorry. Go ahead.
21 MR. PRAGER: Are you going to move this into
22 evidence?
23 MR. JOHNSON: Yes. Yes, Your Honor. We -- I
24 thought I stated earlier, but yes, we want to move into
25 evidence Complainant's Exhibit 31.

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1 MR. PRAGER: All right.
2 MR. KAPLAN: No objection.
3 MR. PRAGER: Any objections?
4 MR. KAPLAN: No objection.
5 MR. PRAGER: Complainant's Exhibit 31 will be
6 admitted. Mr. Johnson --
7 (Exhibit No. C-31 was received
8 in evidence.)
9 MR. JOHNSON: Yes.
10 MR. PRAGER: -- go ahead.
11 MR. JOHNSON: Your Honor, we want to now identify
12 that which has been previously marked for identification as
13 Complainant's Exhibit No. 32.
14 BY MR. JOHNSON:
15 Q Mr. Belfiore, do you recognize Complainant's
16 Exhibit No. 32?
17 A Yes. This is the first e-mail for the meeting on
18 the board deck, and I was listed as a required attendee, but
19 her note says: Will send a deck out prior to the call. And
20 this is what I was explaining in the e-mail to Dan Lane as
21 to why I said I was not coming, because I wanted that deck
22 to prepare for the meeting before the call. The deck never
23 came.
24 Q And what is the date of this particular e-mail?
25 A October 31st, 2011, and I had accepted the meeting

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1 originally: I plan to attend.
2 MR. JOHNSON: Complainant moves into evidence
3 Complainant's Exhibit 32.
4 MR. KAPLAN: No objection.
5 MR. PRAGER: Complainant's Exhibit 32 will be
6 admitted. Let me just, for my own edification -- though I
7 can look it up, it's a lot faster if I ask the question --
8 when did you first make your written complaint or your oral
9 complaint about not being paid enough? Was that September
10 or October?
11 (Exhibit No. C-32 was received
12 in evidence.)
13 THE WITNESS: October 21st, 2011.
14 MR. PRAGER: October 21st. Okay. Thank you.
15 Go ahead, Mr. Johnson.
16 MR. JOHNSON: Your Honor, we want to now identify
17 that which has been previously marked for identification as
18 Complainant's Exhibit 33.
19 MR. PRAGER: All right.
20 BY MR. JOHNSON:
21 Q Mr. Belfiore, do you recognize Complainant's
22 Exhibit No. 33?
23 A Yes.
24 Q And can you please describe Complainant's Exhibit
25 No. 33?

1 A This is an e-mail string that started from Linest
 2 Eady, one of my direct managers, to Dan Lane and then from
 3 his response and her forwarding his response to me. The
 4 issue here is that we -- one of the chronic complaints in
 5 the service delivery department was that for the type of
 6 skill that they were requiring, these people were underpaid.
 7 When I came on as COO and had responsibility for service
 8 delivery, I set up a number of meetings through my managers
 9 with their teams so I could hear ideas on what was necessary
 10 to make the organization better. Their concerns ranged from
 11 PeopleSoft being a crappy system to being, feeling like
 12 second-class citizens to pay, and I told them that I would
 13 do everything reasonable and within my power to come up with
 14 mutually beneficial solutions to all.

15 One of the things that I noticed is, at the time,
 16 we had a number of open positions, backfill positions,
 17 positions where people had left and we hadn't replaced them.
 18 The significance of that is that it's in the budget. So if
 19 you're not spending the money, it's just a beni to the
 20 budget. I said to my people, I said, I know you guys are
 21 working hard, but I will try to make a case to management
 22 that if we forgo some of the backfills, that maybe we can
 23 then collect a pool of money and then make pay adjustments
 24 to alleviate the complaint about the low pay, because it was
 25 my sincere belief that we were not paying these people

1 enough, and I broached that with Dan, and we mapped it out.
 2 We showed him that, you know, the carrying cost of an
 3 employee for a year. Okay? So if we had 12 backfills and
 4 we only get six, you know, we got \$250,000. Okay? We
 5 didn't even suggest that we take and reappropriate the whole
 6 \$250,000. We only took half of the money to reappropriate
 7 and basically donated the other half to the house, which
 8 helped the CFO, okay, meet their, their numbers by the end
 9 of the year.

10 Dan said, in concept, he was fine with it. Dan
 11 and I had made agreements that if we needed to make
 12 decisions that didn't affect the budget, in other words, we
 13 didn't have to ask for incremental money from mom and pop,
 14 then we felt comfortable making the decision locally. Okay?

15 At the time to execute, Dan pulled out. He said
 16 no. Okay? And so Linest, I guess, went to him and said,
 17 well, she had talked to me and I said that we weren't going
 18 to go ahead with the plan that I had told them that Dan said
 19 we could go along with, and she said, well, then I want to
 20 backfill some employees. So she, I guess, took her request
 21 directly to Dan. Okay? Dan's response to the request was,
 22 he would ask Wendy: Send me a time line; I'll look at stats
 23 and I'll do all this. Well, he's in my garden right now.
 24 If I want to hire more people, it's my decision; it's not
 25 his. Okay? So it's another instance of, what am I doing in

1 the corporation? I'm a COO. These are my people, these are
 2 my decisions to make, and you're going and brokering deals
 3 with my people and you're not even -- he's copying Wendy,
 4 but he didn't add Erik. Where was the, where was the
 5 response, the appropriate response that would have said:
 6 Had you talked to Erik about this? What does Erik think?
 7 So basically he, I guess he decided that I was a non-entity,
 8 so he needed to do my job.

9 MR. JOHNSON: Your Honor, plaintiff moves into
 10 evidence Plaintiff's Exhibit 33. I believe that's the
 11 number, 33.

12 MR. PRAGER: All right. I have a question.
 13 Mr. Belfiore, do you have any idea what happened after this
 14 to this request? Was the request honored or not honored
 15 during the time you were there?

16 THE WITNESS: I don't know. I was gone in two
 17 weeks.

18 MR. PRAGER: All right. So you don't --

19 THE WITNESS: Yeah.

20 MR. PRAGER: -- the answer is you don't know?

21 THE WITNESS: Yeah, I don't know.

22 MR. PRAGER: All right. Thank you. Any objection
 23 to --

24 MR. KAPLAN: No objection to this exhibit, no.

25 MR. PRAGER: Okay. Exhibit, Complainant's Exhibit

1 33 will be admitted.
 2 (Exhibit No. C-33 was received
 3 in evidence.)

4 MR. JOHNSON: Your Honor, this concludes direct
 5 examination with Mr. Belfiore. We are turning over
 6 Mr. Belfiore for cross-examination.

7 MR. PRAGER: All right. Well, this is then an
 8 opportune time for our last break for the afternoon. So
 9 we'll give 10 minutes to everybody, 11 minutes actually.
 10 Mr. Belfiore can recover his voice.

11 (Whereupon, a brief recess was taken.)

12 MR. PRAGER: Back on the record now. Mr. Kaplan,
 13 who is going to do the cross-examination?

14 MR. KAPLAN: I will.

15 MR. PRAGER: All right. You may proceed.

16 CROSS-EXAMINATION

17 BY MR. KAPLAN:

18 Q Good afternoon, Mr. Belfiore. My name is Steven
 19 Kaplan. I'm an attorney for Merchant Link. I think we met
 20 earlier today for the first time. Earlier in your testimony
 21 you talked about -- actually, why don't you look at Claimant
 22 Exhibit No. 2. Want to take that out? This is your, should
 23 be your binder, the binder you had earlier.

24 MR. PETESCH: Yes, let me make sure he's got his
 25 binder. Let me bring it up for him.

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1 MR. PRAGER: I'm sorry. This is not the
2 complainant's binder?
3 MR. KAPLAN: Yes, the -- yes. It got moved.
4 MR. PETESCH: Oh, I got it for him, yes.
5 MR. PRAGER: All right.
6 BY MR. KAPLAN:
7 Q Do you have that open to Claimant 2?
8 A (No audible response.)
9 Q Okay. Earlier in your testimony today, I believe
10 you testified --
11 MR. PRAGER: Mr. Kaplan --
12 MR. KAPLAN: Oh, yes.
13 MR. PRAGER: -- before we get into that --
14 MR. KAPLAN: Sure.
15 MR. PRAGER: -- would you for the purposes of the
16 record just identify this document?
17 MR. KAPLAN: Sure. This is Claimant No. 2, looks
18 like it's 2010 salaries of certain employees.
19 MR. PRAGER: All right. Thank you.
20 BY MR. KAPLAN:
21 Q So earlier today you testified that you knew the
22 management histories of certain employees on this list. Do
23 you recall that testimony?
24 A Yes.
25 Q Okay. And if you look on the list, the second

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1 person down, his name is Ben Chudesama. Do you see that?
2 A Correct.
3 Q Okay. The job prior to him working at Merchant
4 Link, do you know what job that was?
5 A I believe he was with Tsys.
6 Q How do you spell that?
7 A T-Y-S-Y-S.
8 Q Do you know what company that is?
9 A No, but I believe it's in the payment space.
10 Q And do you know what job title he had there?
11 A No, I don't.
12 Q Prior to working at Tsys, do you know what job,
13 where he worked before then?
14 A No, I don't.
15 Q So you don't know what job title he had either?
16 A No.
17 Q How about Timothy Kinsella -- prior to working at
18 Merchant Link, do you know his, where he worked?
19 A He worked at a small company. It was in Arizona,
20 but it was in, it was in a demo deck, but I don't know it
21 offhand right now. I can't recall.
22 Q What does demo deck mean?
23 A When we, when we gave presentation to potential
24 inquirers, we had a deck, a presentation that outlined all
25 of the experience of the top Merchant Link employees.

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1 Q Okay. And do you know what job title he had
2 there?
3 A He was sales vice president.
4 Q Do you know or just is that a guess?
5 A That's what I believe I've seen.
6 Q Do you know how many years he held that position?
7 A No, but I know he has 20 years of management -- or
8 20 years of experience and all of them weren't management.
9 Q I'm trying to ascertain if you know the quality of
10 their management as well. So you don't know how long he
11 had, he held the sales vice president position?
12 A No, I don't.
13 Q Do you know how many employees reported to him?
14 A No, I don't.
15 Q Do you know what his salary was?
16 A No, I don't.
17 Q Prior to that position, do you know where he
18 worked?
19 A No, I don't.
20 Q So you don't know what job title he had?
21 A Nope.
22 Q All right. Going back to Mr. Chudesama, it says
23 here he had a salary of 165,240. Do you see that? Right
24 under Dan Lane.
25 A Yes.

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1 Q Do you know what his total compensation was in
2 2010?
3 A No. I do know he was a 15, a T-15; so presumably
4 he had a 25 percent bonus associated with that. I do not
5 know what his LTIP award was.
6 Q And earlier you, I believe you testified that the
7 LTIP payment schedule is based on two or three years, or is
8 it one to three years? So you get an award; then you're
9 sort of paid at overtime over two or three years. Is that
10 right?
11 A Yeah. It's like a two-year delay.
12 Q Okay. So do you know what his LTIP was in 2009?
13 A No.
14 Q 2008?
15 A No.
16 Q Do you know Mr. Chudesama's pay history before he
17 started working at Merchant Link?
18 A No, I don't.
19 Q Tim Kinsella, do you know what his LTIP was in
20 2009?
21 A Dan Lane communicated it to me that the first year
22 that Merchant Link's LTIP went into place -- because we were
23 still kind of under, I guess, the J.P. Morgan's LTIP; we had
24 to get our own program -- that he got 115, Dan Lane got 115,
25 Tim Kinsella got 100, and I got 70 or 75.

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1 Q Okay. And Susan --
2 MR. PRAGER: I'm sorry. These numbers that you
3 just tossed out were the salaries or --
4 THE WITNESS: No. They were the LTIP grants.
5 MR. PRAGER: I see.
6 BY MR. KAPLAN:
7 Q So Susan Zloth, do you see her name?
8 A Yes.
9 Q It looks like there's a line above her salary. Do
10 you see -- how much of a salary did she earn that year?
11 A For 2010, Susan Zloth, 164. Is that correct, or
12 am I looking at the wrong line?
13 Q I think it's the one right under 164. I can't
14 tell what it says.
15 A Okay. Sue is -- one, two, three, four; one, two,
16 three, four -- looks like 156 or 158898.
17 Q And do you know her LTIPs in the two previous
18 years?
19 A No, I don't.
20 Q And do you know where she worked prior to Merchant
21 Link?
22 A She worked for one of the, the dealers, the
23 equipment dealers that, that sold MICROS equipment.
24 Q Do you know what her job title was?
25 A No.

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1 Q What her salary was?
2 A No.
3 Q Whether she managed people?
4 A Nope.
5 Q James Reese, do you know where he worked prior to
6 coming to Merchant Link?
7 A No.
8 MR. PRAGER: I'm sorry. Where are you --
9 MR. KAPLAN: I'm just going down the list. I just
10 went through --
11 MR. PRAGER: On Exhibit 2?
12 MR. KAPLAN: Yes.
13 MR. PRAGER: All right.
14 BY MR. KAPLAN:
15 Q So James Reese, you don't know where he worked --
16 A Yeah.
17 Q -- prior to coming to Merchant Link?
18 A Yeah. What I do know is that --
19 Q Do you know where he worked prior to coming to
20 Merchant Link?
21 A No. No.
22 Q And you don't know his job title?
23 A No.
24 Q Do you know what his salary was?
25 A No.

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1 Q Do you know if he managed people?
2 A No.
3 Q Do you know what his LTIPs were in 2009 and 2010?
4 A No, but I believe they were forwarded through
5 discovery.
6 Q 2008?
7 A No.
8 Q Mary Bodhane, do you know where she worked prior
9 to Merchant Link?
10 A NXT.
11 Q And what was her role at NXT?
12 A Probably the same as it was for Merchant Link.
13 Q But you don't know?
14 A She was the director of business development.
15 Q At her previous job?
16 A At NXT.
17 Q At NXT. And how many employees did she manage?
18 A None.
19 Q What was her salary?
20 A Probably about 60,000.
21 Q But you don't know?
22 A But I don't know.
23 Q And prior to NXT, do you know where she worked?
24 A No.
25 Q You don't know if she held a management position?

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1 A No.
2 Q Ahn Lam, do you know where she worked prior to
3 Merchant Link?
4 A He, I believe.
5 Q He, I'm sorry.
6 A I believe he came over from NXT too.
7 Q And do you know what his position there was?
8 A Software developer.
9 Q Do you know if he ever held a management position?
10 A No.
11 Q Jay Konar, do you know if he ever held a
12 management position?
13 A No.
14 Q So you were hired in 2005, is that correct, as the
15 manager of financial analysis? Is that correct?
16 A Correct.
17 Q Okay. And what were your job duties as, in that
18 position?
19 A In manager of financial analysis?
20 Q Correct.
21 A I was the resident financial expert. I handled
22 all budget. I handled all accounting. I handled all
23 decision-making, financial decision-making. I handled all
24 financial planning and analysis. Now, granted, we had
25 employees on loan from Dallas because they wanted to use

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1 their financial system. They had the resources. So I did
2 not manage them specifically, but I managed their work. At
3 the end of the day, the integrity of all the financial
4 information coming from Merchant Link rested on my word.
5 Q And who was your immediate supervisor?
6 A Originally it was Kathleen Adams.
7 Q And where did she work?
8 A She worked for Paymentech.
9 Q Okay. So you reported directly to Paymentech?
10 A Correct.
11 Q Okay. Now, was she in Dallas?
12 A She was in Dallas.
13 Q Okay. So in 2005 describe for me what role
14 Paymentech had in your finances and accounting and how that
15 overlapped with what you guys were doing. I'm a little
16 confused about that.
17 A Okay. We had all budget forecast variance
18 analysis type of responsibilities, and we had to feed into
19 their processes because all the financials got consolidated.
20 We had very few journal entries because even the employees
21 of Merchant Link were leased employees of Paymentech. So we
22 got Paymentech pay stubs, all that stuff. Basically, all
23 they did was book the journal entries.
24 Q And was that the same throughout your employment
25 at Merchant Link, throughout, through November 2011?

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1 A No. The job changed, especially when the joint
2 venture got established at the end of 2008. Okay? There
3 were corporate governance types of responsibilities. Okay?
4 There were assurances that had to be rendered for audited
5 financial statements. For the, the, the transaction, the
6 financial statements had to be audited, okay, through due
7 diligence processes. So there was a host of other corporate
8 governance types of activities that came into play along
9 with the M&A-type activity and due diligence activity that
10 came up with the transaction --
11 Q Okay.
12 A -- so the responsibilities expanded dramatically,
13 and we're talking finance at a high level now.
14 Q Okay. And was Paymentech still involved in that
15 process through 2011, or were they, did they drop out by
16 that time?
17 A They dropped out, they dropped out when basically
18 they went away as the wholly owned owner of the subsidiary.
19 Some of the responsibilities transferred back to Silver
20 Spring. Some of the responsibilities were put off on J.P.
21 Morgan staff, and then there was a clear mandate that,
22 Merchant Link, you need to be self-sufficient, so you cannot
23 rely on these resources, and that's -- around 2011 we had to
24 go out, choose a financial system. That's why we wanted to
25 get somebody, a full-time CFO in the job. That's why Chris

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1 and I were out, trying to hire a CFO, and presumably, that's
2 why Dan Charron provided Christina Smith.
3 Q If you would look at our joint exhibit book,
4 Exhibit 100, please.
5 MR. PRAGER: Just a moment. And what was the
6 number of that?
7 MR. KAPLAN: 100, please.
8 MR. PRAGER: Now, Mr. Kaplan, is this different
9 from the exhibit that was introduced at the beginning of
10 this?
11 MR. KAPLAN: This is --
12 MR. PRAGER: Is this a different résumé?
13 MR. KAPLAN: I think the substance is the same,
14 but the other, previous e-mail -- the previous document was
15 part of an e-mail. So this looks like it's more of the
16 actual document, but I -- the substance of it, I believe, is
17 the same.
18 MR. PRAGER: Well, why don't we find out from
19 Mr. Belfiore. Is there, résumé, is there a difference
20 between this exhibit, 100, and the Exhibit 14 that was
21 previously admitted?
22 THE WITNESS: Well, I don't see my Poised to Lead
23 caption on this one.
24 MR. PRAGER: I'm sorry?
25 THE WITNESS: On, on the one on the exhibit, on

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1 the top line I put Poised to Lead. That's not on this one.
2 I think Mr. Kaplan is correct. Substantially, they're the
3 same.
4 BY MR. KAPLAN:
5 Q Yes. I guess, I mean, there's another, there's
6 some other differences, I suppose, minor differences, which
7 I wasn't going to bring up --
8 A Uh-huh.
9 Q -- but the COO position you put 5/08 to current on
10 the Complainant 14, and on JE-100 it just says 5/08 and then
11 doesn't have the word current, but I wasn't going to ask you
12 about those minor differences. I was going to ask you
13 something else.
14 MR. PRAGER: So can you --
15 MR. KAPLAN: I can use Claimant 14.
16 MR. PRAGER: All right. Let's do that then.
17 MR. KAPLAN: Okay.
18 BY MR. KAPLAN:
19 Q Is there anything that's not accurate about this
20 résumé?
21 A Which one am I looking at? 14?
22 Q Claimant 14.
23 A That's not accurate?
24 Q Yes, that's not truthful.
25 A No. This is all truthful.

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1 Q You write you were chief financial officer, CFO,
2 from September 5th through May 8th. That is not a truthful
3 statement. You were the manager of financial analysis from
4 September 2005 through mid-2008, isn't that accurate?
5 A That's, that's correct.
6 Q So you were not the CFO.
7 A No, I was not. Well, in Chris's eyes, I was the
8 CFO.
9 Q You were not the CFO from a formal perspective
10 until --
11 A Merchant Link listed me on their website prior to
12 May '08 as the chief financial officer.
13 Q And that was in 2008?
14 A That was prior to 2008.
15 Q The position that you held at Merchant Link, from
16 a formal perspective, you were being, you were being
17 evaluated as a manager of financial analysis, correct?
18 A (No audible response.)
19 Q Okay. Is that a yes?
20 A Yes.
21 Q Okay. And a CFO is a very different position than
22 a manager of financial analysis, would you agree?
23 A I'd agree.
24 Q Manager of financial analysis, is that like a
25 middle-management position, would you characterize that?

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1 A Middle-management position.
2 Q And a CFO is a, you're, you're higher up, correct?
3 A Correct.
4 Q So, in your mind, is this not a misrepresentation
5 at all? Is it puffing or is this a serious
6 misrepresentation of --
7 A I don't think it's a serious misrepresentation
8 with any substance. Okay? Dan Charron, when I started,
9 said, Erik, I consider you the CFO of Merchant Link; you
10 need to come down to Dallas every quarter and let me know
11 how the company is doing. When I got my LTIP award in 2006
12 and it was \$8,000, okay, Dan Charron said, this is not
13 suitable for a person of your caliber and contribution. The
14 next year he raised the LTIP from 8,000 to 50,000. Okay?
15 All right? Chris Justice, in my performance review, the
16 first one he did when he wrestled away the manager of
17 financial analysis position to be his direct report,
18 indicated that he had already chosen me, because of my skill
19 and ability, to be his successor.
20 Q Do you have --
21 A Every time we met customers I was introduced as
22 CFO. It was on the Merchant Link website as CFO. It was
23 held out to the public. So if it was a misrepresentation,
24 then it was a misrepresentation of Merchant Link to the
25 public.

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1 Q Do you have the copy of the joint stipulations in
2 front of you?
3 A Yes.
4 Q If you look --
5 MR. PRAGER: Just a moment.
6 MR. KAPLAN: Okay.
7 MR. PRAGER: Go ahead, Mr. Kaplan.
8 BY MR. KAPLAN:
9 Q Uncontested Fact No. 1, just so we're clear, you
10 were, your official title was manager comma financial
11 analysis. That's correct?
12 A (No audible response.)
13 Q Okay. As far as you know, the board -- well, was
14 there a board of directors at Merchant Link in 2008? Do you
15 know when there was a board of directors, when that first
16 came into existence?
17 A I believe it was 12/4/2008.
18 Q Okay. That was the first time there was a --
19 A Let me reframe.
20 Q Yes.
21 A There was a group of professionals at Chase
22 Paymentech, when we were a wholly owned subsidiary, that
23 held themselves out as the board of Merchant Link. Chris
24 and I traveled on the quarter religiously -- I think Dan
25 maybe went once -- down to Dallas for a board meeting.

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1 Q And are you aware of whether the board ever
2 approved your job title as CFO?
3 A No.
4 Q No?
5 A No. It was never proposed to the board.
6 Q And you did not receive an increase in pay --
7 A No --
8 Q -- as being the CFO?
9 A -- nor did I seek any.
10 Q And you don't --
11 MR. PRAGER: While we have this --
12 MR. KAPLAN: Yes.
13 MR. PRAGER: -- while you're formulating your
14 thoughts, it seems to me it may be appropriate at this time,
15 since you mentioned the joint stipulation, that the joint
16 stipulation should be admitted as a hearing exhibit. And I
17 propose to make that as the Hearing Examiner's Exhibit No.
18 4. Is there any objection by Mr. Johnson to that, having
19 that exhibit introduced in evidence?
20 MR. JOHNSON: No objection, Your Honor.
21 MR. PRAGER: Mr. Kaplan?
22 MR. KAPLAN: No objection.
23 MR. PRAGER: All right. So this will be Hearing
24 Exhibit, Hearing Examiner Exhibit No. 4, and it's hereby
25 admitted into the record. It was previously Docket No. 64.

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1 (Exhibit No. HE-4 was marked
 2 for identification and
 3 received in evidence.)
 4 BY MR. KAPLAN:
 5 Q And from my understanding you don't dispute that
 6 you were paid appropriately from September 2005 through May
 7 of 2008, is that accurate?
 8 A (No audible response.)
 9 Q Okay.
 10 A Yes.
 11 Q Okay. If, in your mind, you were the CFO, why
 12 doesn't your claim now begin with not being paid
 13 appropriately when you were CFO or acting as CFO, in your
 14 mind? Why isn't that the beginning of this case?
 15 A Well, because Merchant Link had a way of playing
 16 with titles and those types of things and, under the
 17 umbrella of a wholly owned subsidiary, that was appropriate.
 18 Once we became a stand-alone joint venture, operating under
 19 bylaws, operating under the under agreement, with an
 20 official board, okay, once Chris formally promoted me, then
 21 the rules have to be followed.
 22 Q Is it your belief that someone discriminated
 23 against you in May of 2008 from Merchant Link because you're
 24 African-American?
 25 A It is my belief that I was treated differently

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1 from similarly situated comparable employees with no
 2 legitimate non-discriminatory reason proffered.
 3 Q In 2008?
 4 A In 2008.
 5 Q Who are you alleging discriminated against you if
 6 that's, if that's your claim?
 7 A I am alleging that the person who was responsible
 8 and in the position to give me an appropriate equitable
 9 compensation plan and declined not to is responsible or
 10 culpable for the harm.
 11 Q And that was Chris Justice?
 12 A No, it was not Chris Justice. Chris Justice did
 13 not have the responsibility, nor did he have the authority
 14 to correct my compensation. Chris Justice did what he was
 15 supposed to do and to bring it to the attention of the board
 16 for their approval.
 17 Q And that's the board of Paymentech you're
 18 referring to, correct --
 19 A That --
 20 Q -- in May of 2008?
 21 A No. That's the new board, the real board.
 22 Q I'm talking about May of 2008. When you first,
 23 you got promoted to COO --
 24 A Right.
 25 Q -- at the time, there was no Merchant Link board;

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1 there --
 2 A Correct.
 3 Q -- was a Paymentech board, correct?
 4 A Correct.
 5 Q So in May of 2008, is that the time? Is that, so
 6 should Paymentech have then -- is that who you're alleging
 7 here --
 8 A Yes.
 9 Q -- discriminated against you?
 10 A Yes.
 11 Q Their entire board?
 12 A Well, I'm specifically, Dan Charron, because it
 13 was Dan Charron who held authority at that point to give me
 14 an appropriate salary, as Chris appealed to him to do.
 15 Q And how many board members were there at
 16 Paymentech?
 17 A There were, originally there were four board
 18 members that I can remember --
 19 Q So --
 20 A -- Mike Duffy, Dan Charron, Kathy Smith, and Rob
 21 Wechsler.
 22 Q Okay.
 23 A But there were no bylaws. There were no operating
 24 agreement. There was nothing of formality in place.
 25 Q And so I'm clear, who do you believe discriminated

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1 against you in 2009 with respect to your wage claim?
 2 A Merchant Link by way of their board of directors.
 3 Q And that was McCarthy and Dan Charron, is that
 4 correct?
 5 A Those two ultimately had decision-making authority
 6 on compensation matters in regards to officers of Merchant
 7 Link.
 8 Q That's a yes?
 9 A Yes.
 10 Q And same thing in 2010, you -- it's Merchant Link
 11 through McCarthy and Charron who discriminated against you,
 12 who you believe discriminated against you?
 13 A Yes.
 14 Q And 2011 same thing?
 15 A I don't know -- I don't know how the board
 16 membership may have changed. Dan Lane, I mean, Dan Charron
 17 may have stepped off the board; he may have appointed a new
 18 board member. First Data may have appointed new board
 19 members. So I don't know, whoever were the board members
 20 from those respective companies that served on the
 21 compensation committee charged with making those decisions.
 22 Q Now, you didn't file a charge of discrimination in
 23 2008 with the EEOC, the Maryland Civil Rights Commission, or
 24 Montgomery County Office of Human Rights, is that correct?
 25 A Correct.

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1 Q Or in 2009?
2 A Correct.
3 Q Or in 2010?
4 A Correct.
5 Q The first time you filed a formal charge with any
6 county, federal, or state agency was December 13th, 2011, is
7 that correct?
8 A Correct.
9 Q Okay. Now, in 2011 do you know where you fell in
10 terms of total compensation when compared to the other
11 employees you were comparing yourself to?
12 A Yes.
13 Q And where did you fall?
14 A I fell below the majority of them because my
15 earnings in total for 2011 did not eclipse 190,000 and every
16 one of those employees that I list as either competitors or
17 similarly situated eclipsed 200,000, not including a Sue
18 Zloth or Tim Kinsella, who left the company without working
19 a full year.
20 MR. PRAGER: Let me understand your testimony.
21 You didn't work a full year either.
22 THE WITNESS: Right.
23 MR. PRAGER: So are you comparing your 11 months
24 or less than 11 months, 10 months and 11 days, with their,
25 the other people's full-year salary?

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1 THE WITNESS: Correct. I didn't fire myself.
2 BY MR. KAPLAN:
3 Q If you look at Joint Stipulation No. 17, it's, do
4 you see -- it says your total pay was 195,617.61. Do you
5 see that?
6 A On, on Joint Stipulation?
7 Q Joint Stipulation, I'm sorry, the joint
8 stipulation --
9 MR. PRAGER: H-2.
10 BY MR. KAPLAN:
11 Q -- Uncontested Fact No. 17.
12 A Okay. And you're saying that --
13 Q I'm not sure. There's a, the joint stipulations
14 of fact, there's a -- do you know what that is?
15 A No.
16 MR. PRAGER: We'll go off the record for a moment.
17 (Whereupon, a brief recess was taken.)
18 MR. PRAGER: We're back on the record then.
19 BY MR. KAPLAN:
20 Q Okay. If you look at Joint Stipulation 17.
21 A Uh-huh.
22 Q Okay. It says here that you actually earned
23 \$195,617.61. So you earned more than 195,000 -- more than
24 190,000, as you previously testified.
25 A This isn't correct.

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1 MR. PRAGER: Well, you're bound by it, I'm afraid.
2 It's a joint stipulation.
3 THE WITNESS: Okay. Well, I mean, I've got pay
4 stubs and everything else that speak to the contrary. So --
5 MR. PRAGER: Well, Mr. Johnson --
6 THE WITNESS: But total compensation --
7 MR. PRAGER: Excuse me. Mr. Johnson, you did
8 agree to this. If there's a discrepancy, I'll give you an
9 opportunity on recross to introduce evidence, but at the
10 moment, he's bound by this.
11 MR. JOHNSON: Yes, Your Honor. May I see that
12 because it seems like I don't have the same thing you have.
13 MR. KAPLAN: Joint Stipulation.
14 MR. JOHNSON: Same thing?
15 MR. KAPLAN: That's it?
16 MR. JOHNSON: What number?
17 MR. KAPLAN: 17. You may have a previous version.
18 I don't, oh, that's -- I don't know what version you have,
19 but that's --
20 MR. JOHNSON: What you're saying is total
21 compensation is 195?
22 MR. KAPLAN: Yes. That's 15 on yours. I don't
23 know. Is your -- what's your last page?
24 MR. PRAGER: We're going to go off the record
25 again.

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1 (Whereupon, a brief recess was taken.)
2 MR. PRAGER: All right. We're back on the record.
3 Mr. Kaplan.
4 BY MR. KAPLAN:
5 Q If you had not been terminated and you worked the
6 entire year in 2011, do you know what your total
7 compensation would have been, roughly?
8 A Probably slightly over 200,000.
9 Q Well, your annual salary was 130,000 --
10 A Correct.
11 Q -- agree there?
12 A Uh-huh.
13 Q So you were earning about \$2500 a week?
14 A Yeah, about 10,000 a month.
15 Q And you were terminated on November 11th, 2011?
16 A Right.
17 Q So you would have earned another seven weeks of
18 salary?
19 A You can say a month and a half, another 15,000.
20 Q Well, if you were earning 2500 a week and you
21 worked another six or seven weeks, that would have equated
22 to another \$15,000, 17,000, somewhere around that ballpark,
23 right?
24 A It would have been another month and a half --
25 Q Okay.

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1 A -- because I got paid for 11/15. So I had another
2 half-month check and another four-month check: \$15,000.
3 Q So we're talking about, you would have earned
4 about \$215,000, roughly --
5 A Roughly.
6 Q -- give or take?
7 A Well, I mean, if I'm bound by this stipulation,
8 yeah.
9 Q And you received short-term disability while
10 you're off, correct?
11 A Yeah. That short-term disability has to be in
12 this 195. That's --
13 Q That is.
14 A -- that's the only way it makes sense.
15 Q It's incorporated into that number.
16 A Yeah.
17 Q Okay. So --
18 A Right --
19 Q -- does that make sense?
20 A -- but Merchant Link didn't pay me that.
21 Q Your total compensation is 195. We've established
22 that. So if you add 15,000 to the 195, let's just say for
23 argument's sake, your total salary would be -- your total
24 compensation would be what?
25 A Like 210.

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1 Q 210. Now, in terms of how much people actually
2 earned in 2011 -- I understand what you're saying about it's
3 difficult to assess -- but in terms of actual how much
4 people earned on their W-2s --
5 A Uh-huh.
6 Q -- do you know where you fell in that number as
7 far as total compensation, as far as where your ranking was?
8 A I think it's pretty, pretty parallel with the
9 salary.
10 Q What does that mean? You're in the top two or
11 three?
12 A I would think, if you extrapolate everybody's
13 total compensation, starting with their salary and their
14 bonus and whatever they got for LTIP, okay, that their
15 earnings would be above mine and certainly for the
16 comparators, and Dan Lane being the primary competitor, it
17 would be enormously, materially more.
18 Q On direct you talked about the AIP bonus. Do you
19 remember that?
20 A Yes.
21 Q And you talked about the LTIP as well, is that
22 correct?
23 A Correct.
24 Q Okay. Now, in 2008 you received approximately a
25 \$10,000 raise, from 95507 to 105,000, correct?

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1 A When Chris Justice promoted me to COO.
2 Q Right. So you got a \$10,000 raise. And in 2008
3 you received an LTIP of \$50,000, correct?
4 A Right.
5 Q Yes or no?
6 A Yes.
7 Q And in 2009 you received a \$15,000 raise, true?
8 A Yes.
9 Q And that's, I think you testified earlier, that's
10 above 10 percent, 14, 15 percent raise, sound about right?
11 A Yes.
12 Q Do you know anybody else in 2008 who received that
13 high of a raise? No one else received that high of a raise
14 in 2008, correct?
15 A Yeah, and no one else got promoted --
16 Q Yes?
17 A -- to corporate officer either.
18 Q Yes or no? The answer is no, correct?
19 A I know of no one who got that high of a raise --
20 Q Thank you.
21 A -- and no one got promoted to corporate officer.
22 MR. PRAGER: You got the no. Let expand his
23 testimony.
24 BY MR. KAPLAN:
25 Q And in 2009, 2010, and 2011, you received LTIP

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1 grants of 75,000, yes?
2 A Yes.
3 Q Thank you. And as you sit here today, you're not
4 aware of anybody at Merchant Link, other than perhaps the
5 CEO of the company, who received higher LTIPs during those
6 three consecutive years, is that correct?
7 A In nine, I believe --
8 Q Three consecutive years.
9 A Not in three consecutive years, no --
10 Q Okay. Thank you.
11 A -- no, but Tim Kinsella --
12 Q That's my question.
13 A Well, but I'm also telling you that Tim Kinsella
14 had performance issues that would have affected his LTIP.
15 MR. PRAGER: That's not relevant. We'll --
16 MR. KAPLAN: Thank you.
17 MR. PRAGER: -- we'll strike that.
18 BY MR. KAPLAN:
19 Q Now, what years were you attending law school?
20 A 2006 to 2010.
21 Q You were attending at night?
22 A At night.
23 Q Okay. And where did you go to law school?
24 A The Catholic University of America.
25 Q And did you take the bar exam?

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1 A Yes, I did.
2 Q And did you pass?
3 A I did not.
4 Q Have you retaken the bar exam?
5 A No, I have not.
6 Q Okay. So you're not, you're not a lawyer?
7 A No.
8 Q Okay. So earlier, when you testified about a
9 legal opinion, that was just an opinion about -- that was
10 just an opinion from yourself?
11 A It was a definition.
12 Q It was your personal definition; it was not a
13 legal definition, correct?
14 A Correct.
15 Q Okay. Now, did going to law school cut into your
16 work hours at Merchant Link?
17 A No.
18 Q At all?
19 A At all. The only way -- the only time that my, my
20 hours were affected by law school, I took vacation.
21 Q Do you ever study at work?
22 A Lunchtime.
23 Q That's the only time you ever studied at work?
24 A Only time I ever studied.
25 Q Do you ever leave early? Even once, do you leave

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1 early, at all, to go to school?
2 A Not once.
3 Q So you would agree that setting compensation for
4 highly paid compensation, that's not an easy task, correct?
5 A It's as hard and easy as you want to make it.
6 Q Well, in your deposition you acknowledged that it
7 was not an easy task. Do you recall that?
8 A No, I don't.
9 Q Do you have --
10 MR. KAPLAN: Mr. Johnson.
11 MR. PRAGER: We'll go off the record for a moment.
12 (Whereupon, a brief recess was taken.)
13 MR. PRAGER: We're back on the record.
14 BY MR. KAPLAN:
15 Q Okay. If you look at your deposition transcript
16 that you have in front of you, that would be at Tab No. 2 on
17 page 22, on line 10:
18 Question: Setting compensation is not simple, is
19 it?
20 Answer: No, it's not.
21 That was your testimony before. Do you recall
22 that now?
23 A Yeah.
24 Q Okay. So setting compensation is not an easy
25 task. You acknowledge that?

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1 A No. Setting compensation is not a simple task.
2 Q It's not a simple task, correct?
3 A Yeah.
4 Q Okay. Now, do you recall at your deposition that
5 you testified that CFOs, COOs, CEO, and CTO positions, they
6 don't overlap, that they're different positions? Do you
7 recall that testimony?
8 A I recall saying that there are specific tasks that
9 may be different, but there is a commonality in regards to
10 responsibilities, duties, and risks that the positions do
11 overlap.
12 Q You don't want the CTO doing the same job duties
13 as, from a day-to-day basis, as a COO, correct?
14 A That, that would be impractical --
15 Q Right.
16 A -- and ridiculous.
17 Q Thank you. I'm going to identify a bunch of
18 factors that may be reasons why one employee --
19 MR. PRAGER: Mr. Kaplan, I'm going to --
20 MR. KAPLAN: Yes.
21 MR. PRAGER: -- interrupt you before we get to
22 these factors. It is now seven minutes of 5:00. I assume
23 this is, you're going to go into a different phase of your
24 questioning at this point, is that right?
25 MR. KAPLAN: I'm discussing compensation and who

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1 his comparators are.
2 MR. PRAGER: Well, I think maybe we'll defer that
3 until tomorrow --
4 MR. KAPLAN: Sure.
5 MR. PRAGER: -- and I think this is an opportune
6 moment to stop. So with that, we'll go off the record. We
7 will resume tomorrow morning -- we're still on the record, I
8 should say, at this point -- and we will resume tomorrow
9 morning at 9:30, and Mr. Belfiore will still be on the
10 stand.
11 Mr. Belfiore, and I'll ask you this, or I hope to
12 ask you this tomorrow, that you understand you'll still be
13 under oath tomorrow when you testify?
14 THE WITNESS: Yes, sir.
15 MR. PRAGER: And we'll go off the record, go off
16 the record at the moment.
17 (Whereupon, at 4:55 p.m., the hearing was
18 adjourned.)
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C E R T I F I C A T E

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

Erik C. Belfiore v. Merchant Link, LLC

OZAH No. 14-02

By:

Wendy Campos, Transcriber

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