



Fed. R. Civ. P. 26(e)(1), no sanction against Mr. Kepas is justified under Rule 37. Rule 37 of the Federal Rules of Civil Procedure<sup>1</sup> provides, in part, that

If a party fails to provide information or identify a witness as required by Rule 26(a) or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.

Fed. R. Civ. P. 37(c)(1). Rule 26(e), in turn, provides as follows:

A party who has made a disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, *and* if the additional or corrective information *has not otherwise been made known to the other parties during the discovery process* or in writing . . . .

Fed. R. Civ. P. 26(e)(1) (emphasis added).

As conceded by eBay in its Motion to Strike, the identity of each of the witnesses that it now seeks to preclude from the Arbitration was discovered during the deposition of Joyce Whalen, a former Director at eBay. And eBay’s counsel was present during the deposition. Thus, because the identity of those witnesses was “made known” to eBay during the discovery process, Mr. Kepas was not required to supplement his discovery responses under Rule 26(e).

eBay’s claim that it “would be greatly prejudiced by the untimely disclosures” because “eBay has no recourse for determining what possible relevancy the New Witnesses have to this case” is wholly without merit. The testimony provided by Ms. Whalen during her deposition clearly establishes the relevancy of each of the witnesses eBay now seeks to preclude from the

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<sup>1</sup> Although the parties agreed that the Utah Rules of Civil Procedure would govern this proceeding, eBay’s motion to strike is based on the Federal Rules of Civil Procedure. For ease of reference and because the rules are substantially similar, Mr. Kepas will likewise address the Federal Rules of Civil Procedure in his response to eBay’s motion.

Arbitration. Indeed, as it relates to Carol Dombrowski, Ms. Whalen testified that Ms. Dombrowski was present during conversations Ms. Dutton had with eBay Managers in which she described the multiple cosmetic surgeries she had. (*See* Deposition of Joyce Whalen (“Whalen Depo.”) at 10. A copy of relevant portions of the Whalen Depo. is attached hereto as Exhibit A.) Moreover, Ms. Whalen testified that Ms. Dombrowski was present when Ms. Dutton discussed her plastic surgery with Ms. Jones, an eBay Vice President, and “displayed her breast at the table.” (*Id.* at 14.) Ms. Whalen also testified that Ms. Dombrowski was one of the employees that received “favourable treatment” from Ms. Jones. (*Id.* at 23.) And this testimony is extremely relevant in light of the documents produced by eBay on May 7, 2008, containing the full investigation it conducted into Ms. Dombrowski’s claims of sexual harassment by Ms. Jones.

With respect to Kristen VanCampen, Ms. Whalen testified that Ms. VanCampen was also present when Ms. Dutton exposed her breast to Ms. Jones and other eBay employees. (*Id.* at 14.) Ms. Whalen also testified that Ms. VanCampen was present and had a conversation with Ms. Jones in which Ms. Jones made statements regarding age. (*Id.* at 24.)

As to Lynn Harden and Joe Wood, Ms. Whalen testified that both former eBay employees told her about eBay’s “wild” Christmas parties and Ms. Dutton’s behavior at the parties. Specifically, Ms. Whalen testified that Mr. Wood described the lap dance Ms. Dutton performed for Maynard Webb, eBay’s former Chief Operating Officer. (*Id.* at 52.) And Ms. Whalen testified that Mr. Harden told her that Ms. Dutton “acts kind of wild when she drinks and that she acted kind of wild at [the] party.” (*Id.*)

With respect to Kathy Dalpes, Ms. Whalen testified that she was present during a conversation in which Ms. Jones implied that people who reach “a certain age . . . were not going to be very valuable.” (*Id.* at 25.) And Ms. Dalpes was also witness to and discussed her concerns about Ms. Dutton’s conversations with eBay employees regarding her plastic surgery. (*Id.* at 45-46.)

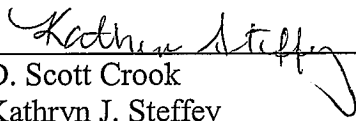
Lastly, with respect to Michelle Parker, Ms. Whalen testified that, after she complained about Ms. Jones’ ageist comments and started to receive negative treatment from Ms. Jones, Ms. Parker told her that Ms. Jones had been made aware of her complaints. (*Id.* at 27-28.)

Clearly, based on Ms. Whalen’s testimony, it is apparent that these witnesses have pertinent information that is relevant to the present proceedings. Moreover, despite eBay’s claim that it “has no recourse for determining what possible relevancy” these witnesses may have, it is Mr. Kepas’ understanding that each of the six employees, with the exception of Mr. Harden and Mr. Wood, are current eBay employees and may be interviewed by eBay at any time. Indeed, Mr. Kepas has refrained from contacting those employees for exactly that reason. Thus, eBay’s claim that it has “no recourse” is without merit.

## CONCLUSION

Because eBay was aware of the identity of the six individuals identified in its Motion to Strike and the relevancy those witnesses had to this case, Mr. Kepas was not required to supplement his disclosures pursuant to Rule 26(e). Therefore, eBay’s Motion to Strike should be denied.

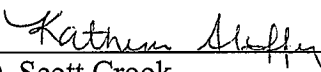
Dated this 13<sup>th</sup> day of May, 2008.

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of May, 2008, I caused to be sent, via e-mail, a true and correct copy of the **MEMORANDUM IN OPPOSITION TO RESPONDENT EBAY INC.'S MOTION TO STRIKE UNTIMELY RULE 26 WITNESS DISCLOSURES** addressed as follows:

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*Attorneys for Claimant*

1 was about to undergo or had undergone that I personally  
2 considered fairly private.

3 Q. Okay. Let's go back on that.

4 You said how drunk she was the night before. Did  
5 she ever get into details about what she would do when  
6 she was drunk or what she thought she had done?

7 A. No, although I did hear her say that she  
8 couldn't remember what she had done and that she still  
9 felt drunk from the night before when she was at work.

10 Q. When she spoke about her son's behavior, what  
11 specifically did she talk about? Do you remember?

12 A. Where they wouldn't get along or he wasn't  
13 doing something that she wanted him to do and several  
14 times I heard her on the phone with him and raising her  
15 voice -- in an open cubicle area raising her voice with  
16 him and arguing with him on the phone and then to hang up  
17 and say something along the lines of -- not he's a jerk.  
18 It was more expletive than that, but I can't remember the  
19 exact wording. Something like, "He's just being a  
20 prick," or, "He's being a dick."

21 Q. And lastly, the medical procedures, you  
22 mentioned that she would discuss medical procedures.  
23 What specific procedures would she discuss?

24 A. She talked in fairly large groups of people,  
25 they would all be managers that I had seen, and she was  
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1 Dutton speak in a sexual manner?

2 MR. DURHAM: Vague and ambiguous.

3 THE WITNESS: A specific one that I heard  
4 from Susan was actually not her being sexual, but she was  
5 complaining about Scott Newman, my first boss there, and  
6 how he would touch her hair and invited her into a  
7 meeting because he said -- again now, this is third  
8 party -- but Susan was telling me that he invited her in  
9 to a meeting and said, "There's a really hot guy here  
10 that I know you'll want to meet."

11 Q. Have you ever heard --

12 A. I'm sorry, let me say one other thing with  
13 Susan too. Again, with the conversation around Scott  
14 Newman, that he supposedly asked her -- or commented that  
15 she would make a good plural wife for him.

16 Q. And when she told you this, what was her  
17 reaction?

18 A. A little annoyed with him.

19 Q. Do you know if she ever complained about  
20 that?

21 A. I heard that she did, but I don't know  
22 specifically that she did.

23 Q. Who did you hear that from?

24 A. I don't remember specifically. I think it  
25 was a peer of hers that -- who said that she had gone to  
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1 talking about some cosmetic surgery she was going to get,  
2 liposuction, something with her breasts. I don't know if  
3 they were enhancements or lifts or whatever, injections  
4 into her buttocks to round those out. And then after the  
5 surgery, she talked about what that procedure felt like,  
6 how it went.

7 Q. Do you recall who she told this to? I know  
8 you said managers. Do you remember any of them in  
9 particular?

10 A. Monica --

11 Q. Paluso?

12 A. -- Paluso and myself and Carol Dombrowski.  
13 And I'm thinking of a specific meeting that we were in  
14 when she spoke of that.

15 Q. Was this during a meeting at eBay, a work  
16 meeting?

17 A. Correct.

18 Q. Was this a common occurrence that she would  
19 talk about personal matters like that?

20 MR. DURHAM: Vague and ambiguous.

21 THE WITNESS: I don't know if I would say it  
22 was common, but she had that conversation, conversations  
23 about what I consider personal issues more than once,  
24 more than twice.

25 Q. (BY MS. STEFFEY) Have you ever heard Susan  
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1 Human Resources about that issue.

2 Q. Have you ever heard Susan Dutton use the F  
3 word?

4 A. Yes.

5 Q. Was it a frequent occasion she would use the  
6 F word?

7 A. Again, I don't know how I would define  
8 frequent, but it wasn't a one-shot deal where you might  
9 say, "Oh, that person was really angry at the time, but  
10 it's out of character for them." She used it on a fairly  
11 frequent basis. I would say I probably heard it in my  
12 tenure there of four years at least a dozen times from  
13 her.

14 Q. Okay. Now, were you close to her? Was your  
15 cubicle close to her cubicle? How often would you  
16 interact with her on a daily basis?

17 A. I would say once or twice on a daily basis I  
18 would see her or be in her company at a meeting or walk  
19 by her desk.

20 Q. Did you ever hear any of your employees speak  
21 about Susan Dutton?

22 A. I did.

23 Q. And what would they tell you?

24 A. One of my previous employees told me that  
25 there was a Christmas party before I joined eBay that  
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1 Susan had participated in and had gotten pretty drunk and  
2 had been dancing seductively in front of our -- he was  
3 the head of technology at the time, Maynard Webb. I  
4 think that's his last name.

5 Q. When you say dancing seductively, could that  
6 be described as a lap dance?

7 A. That's exactly how it was described to me.

8 Q. Who was that employee who told you that?

9 A. My memory is -- I'm remembering the first  
10 name, Joe Wood I think his name is, he left after I had  
11 been with the company for about a year. And there was a  
12 previous director -- two previous directors who had  
13 mentioned it, Lynn Hardin and Keith -- I'm forgetting  
14 Keith's name, but his claim to fame was he was the number  
15 six employee at eBay.

16 Q. Do you know when that Christmas party  
17 happened?

18 A. I believe it was the year before I joined, so  
19 probably 2003 or 2002.

20 Q. Was this common knowledge among the  
21 directors?

22 A. Yes.

23 MR. DURHAM: Vague and ambiguous.

24 THE WITNESS: The fact that I heard it from  
25 more than one person to me seems to be fairly common  
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1 Q. Were there any other incidents that any of  
2 your other employees told you about regarding Susan  
3 Dutton?

4 A. Nothing that comes to mind.

5 Q. Have you ever heard of an incident where  
6 Susan Dutton was dancing topless in New Orleans?

7 A. I had not heard of that.

8 Q. Did you ever have occasion to witness Susan  
9 Dutton and Wendy Jones interact?

10 A. I did.

11 Q. How would you classify their relationship?  
12 Would you say that it appeared that they were friends or  
13 was it more of a professional basis?

14 MR. DURHAM: Vague and ambiguous, calls for  
15 speculation.

16 THE WITNESS: It appeared that they enjoyed  
17 working with each other and shared some things on a  
18 personal level, interests on a person level.

19 Q. (BY MS. STEFFEY) Why do you say that?

20 A. They would talk about if they went out to  
21 dinner or if -- let me remember specifics, please.

22 Q. Okay.

23 A. They would talk about the things they did  
24 after work, specifically of going to get a drink together  
25 or having dinner together, whether it be when Susan would  
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1 knowledge.

2 Q. (BY MS. STEFFEY) Did any of your employees  
3 report anything else about Susan Dutton?

4 A. Yes. The last year -- so I think this would  
5 have been 2006, in about June of 2006 -- my year may be  
6 wrong -- but it was the eBay gala that we would have eBay  
7 Live they called it. And it was in New Orleans. And  
8 several of my employees -- and I did not attend that --  
9 and when my employees came back from that, because  
10 several of them went, they recapped a night when the  
11 executive team was out for dinner and that Susan was  
12 having a discussion with Wendy Jones about her surgery  
13 that she had had. And in the mix of men and women at the  
14 table, she talked about how the color of her breast had  
15 changed. And when asked for specifics like, "How did it  
16 change?" she displayed her breast at the table.

17 Q. And Wendy Jones was present?

18 A. Correct.

19 Q. Do you know who else was present?

20 A. Christine VanCampen and Carol Dombrowski.  
21 Brad Krinhop was also there. There were others, and I'm  
22 sorry, I don't know who the others were.

23 Q. Which employee told you this?

24 A. Christine VanCampen and Carol Dombrowski both  
25 told me.

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1 fly up to Vancouver to work with the people in that  
2 location or jointly having an event in St. George -- San  
3 Jose, that type of thing.

4 Q. Did you ever have any interaction with Wendy  
5 Jones?

6 A. Yes.

7 Q. What type of interaction did you have with  
8 her?

9 A. She was my boss's boss, and I have had  
10 extensive work with her on a professional level,  
11 obviously, and also on a personal level.

12 Q. What do you mean, on a personal level?

13 A. Going out to dinner together.

14 Q. How would you describe Wendy Jones?

15 MR. DURHAM: Vague and ambiguous.

16 THE WITNESS: I don't have a lot of respect  
17 for her on a personal or a professional level.

18 Q. (BY MS. STEFFEY) Why not?

19 A. Because of incidents that I experienced and  
20 witnessed with her that made me question her integrity  
21 and ethics.

22 Q. Could you describe some of those incidents?

23 A. Yes. In meetings, including one meeting in  
24 Vancouver where all of the employees were there, she was  
25 making jokes about the managers that I felt were very

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1 different." And again, her relationship with me and the  
2 way she treated me at work I would say plummeted after  
3 that event and I feel it was because I didn't support the  
4 way she was behaving that night.

5 Q. (BY MS. STEFFEY) I have a couple of  
6 questions about what you just said.

7 First, you said that she would start talking  
8 negatively about you to your employees?

9 A. Correct.

10 Q. What would she say?

11 A. What I heard from my employees were things  
12 like, "Let's just do this, I don't need Joyce to know,"  
13 with an assignment.

14 Or would invite them to come up to Vancouver to  
15 work on something with her and they would say, "Well, I  
16 need to check with Joyce and what my schedule is and what  
17 assignments I have." And she would dismiss that and say,  
18 "Oh, never mind, I'm telling you what to do."

19 Q. Then you also said that you felt your  
20 relationship with her plummeted and that she was  
21 marginalizing you?

22 A. Correct.

23 Q. Other than what she was doing with your  
24 employees, what else did she do to marginalize you?

25 A. The eBay Live event in New Orleans, she told  
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1 Q. (BY MS. STEFFEY) I was going to ask you  
2 about that later on. Just one minute.

3 THE WITNESS: I thought I was still  
4 responding to the comments of why I thought she might not  
5 be professional.

6 Q. (BY MS. STEFFEY) Did you ever feel that  
7 Wendy Jones had certain employees at eBay that she would  
8 favor or that she preferred?

9 A. Absolutely.

10 Q. And they got favorable treatment?

11 A. Yes.

12 Q. Why did you feel that way?

13 A. Because I was one of them in the early times.  
14 And when I fell out of favor. Then another person would  
15 take my place. Carol Dombrowski was one of them. I  
16 heard that Susan Dutton was moving into that spot.  
17 Carolyn Patterson had been favored, and she also seemed  
18 to have fallen out of liking.

19 Q. Were there any male employees that Wendy  
20 Jones favored?

21 A. Nothing that I'm aware of.

22 Q. They were all females?

23 A. Yes.

24 Q. Going back to the age comments, did you ever  
25 hear Wendy Jones specifically make any comments about age

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1 me I didn't need to go to that, even though all of the  
2 directors were invited to go in each of the years that we  
3 had had eBay Live.

4 She would start criticizing me for things that  
5 were completely out of my control. So it might be  
6 something that happened in Trust & Safety or in general  
7 support that were not my employees and she would say,  
8 "You need to know about these things. Why aren't you in  
9 there taking care of that?"

10 Shortly after that meeting, the incident with the  
11 drinks in Vancouver, the spillage, my boss came to me  
12 after several years of just strong reviews and had a  
13 sheet listed that recapped what I would consider minor  
14 things from taking a phone call in a meeting six months  
15 ago to things that were several years old that had never  
16 been reported in my annual appraisals. And I questioned  
17 why I was suddenly getting challenged on my performance.

18 And he later, Brad Krinhop, later confided in me  
19 that Wendy had basically said, "We need to get rid of  
20 Joyce."

21 Q. Okay.

22 A. Another concern I had with Wendy was comments  
23 she would make about age.

24 MR. DURHAM: I'm going to object. This is  
25 not responsive to the question. Move to strike.

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1 or older people?

2 A. Yes.

3 Q. When was the first time you heard her say  
4 something?

5 A. That's all documented somewhere in the files  
6 that I had started keeping. I don't remember the exact  
7 date offhand, but I would say around October or November  
8 of 2005, approximately.

9 Q. What were the circumstances?

10 A. In the same meeting at the bar with Christine  
11 VanCampen, Wendy asked Christine how old she thought --  
12 so Wendy said, "Christine, how old do you think I am?"  
13 And Christine said, "I really have no idea. I'm terrible  
14 at guessing ages." And Wendy said, "I'm 48."

15 And Christine said, "Wow, that's good. Yeah, you  
16 look great."

17 And then Wendy said -- and I was 50, 51 at the  
18 time -- and Wendy said, "Oh, my God, I can't believe that  
19 you think I'm 48. I'm not that old. I don't look that  
20 old, do I?" And I was personally offended by that  
21 comment and reported it to HR.

22 Q. Who did you report that to?

23 A. Jeff Anderson.

24 Q. Did you give him any documentation?

25 A. I did document it in an e-mail that said who

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1 was at -- who was present and who -- what the words were  
2 that Wendy said.  
3 Not very long after that, certainly within the  
4 next few weeks, we were in a meeting with managers -- I'm  
5 sorry, with directors, and Tim Payne was the director  
6 over Trust & Safety at the time, myself, Wendy, Brad  
7 Krinhop, Kathy Dalpes, and Wendy was talking -- and  
8 Carolyn Patterson. And Wendy was talking with Carolyn  
9 about training to do a race and they were both trying to  
10 train together to do -- I don't know how long the race  
11 was, 5K or 10K, and she said, "Well, I know I have to do  
12 this kind of thing now because once I hit a certain age"  
13 -- and I honestly don't remember if she said if it was a  
14 milestone year, like, "Once I hit 40 or once I hit 50, I  
15 wouldn't be able to do that anymore. I'll be too old to  
16 do that kind of thing."

17 And Tim Payne is a very, very active man, and I  
18 made a comment that said, "Well, actually, look at Tim,  
19 you know, he's beyond that age, that milestone," whatever  
20 she referred to. And he's still very active and does  
21 lots of biking and things like that. But again, the  
22 implication was that once you got to a certain age, you  
23 were not going to be very valuable.

24 Q. Did you report that comment?

25 A. I did.

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1 Q. When did you leave again eBay?

2 A. April of 2006.

3 Q. So about four or five months after you  
4 reported?

5 A. It might have been earlier reporting, because  
6 I remember from the time that I reported until the time I  
7 left was more around six months.

8 Q. Why did you leave?

9 A. I left because I expected that Wendy would  
10 find a reason to fire me.

11 Q. Were you getting treated worse?

12 A. Much worse.

13 Q. Can you give us some examples of what she was  
14 doing to you?

15 A. Exclusion from meetings, removing my  
16 responsibilities and giving them to sometimes a manager  
17 level.

18 Q. Do you know if Wendy Jones learned about your  
19 complaints to Jeff Anderson?

20 A. Yes, she did.

21 Q. How did she learn about those?

22 MR. DURHAM: Lacks foundation.

23 THE WITNESS: And I don't know specifically  
24 how she learned about them. My assumption is that Jeff  
25 actually talked with her.

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1 Q. Who did you report that to?

2 A. Jeff Anderson.

3 Q. Did you also document that one?

4 A. Yes, I did.

5 Q. Were there any other comments you heard from  
6 Wendy regarding age?

7 A. I don't recall the specifics at this meeting.

8 Q. What happened after you reported your  
9 complaints to Jeff Anderson? Did he investigate? Do you  
10 know?

11 MR. DURHAM: Lacks foundation, calls for  
12 speculation.

13 THE WITNESS: And I don't know.

14 Q. (BY MS. STEFFEY) Did he tell you that he  
15 would take any action?

16 A. He did say that he would talk to Wendy.

17 Q. Do you know if he ever did talk to Wendy?

18 A. I don't know.

19 Q. The last time you reported something to Jeff  
20 Anderson, do you know approximately when that was?

21 A. I would say around the November, December  
22 time frame of 2005.

23 Q. And at that time did you already feel like  
24 you were in disfavor or out of favor with Wendy Jones?

25 A. Absolutely.

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1 Q. (BY MS. STEFFEY) How do you know that she  
2 learned about them?

3 A. I heard from other people.

4 Q. Who told you?

5 A. Michelle Parker, Brad Krinhop.

6 Q. What did they tell you?

7 MR. DURHAM: Compound.

8 THE WITNESS: That she had heard about them  
9 and wasn't happy with my reporting it and wanted me gone.

10 Q. (BY MS. STEFFEY) Did you enter into an  
11 agreement with eBay when you left?

12 A. Yes, I did.

13 Q. And what was that pertaining to?

14 A. I felt that the -- it was imminent that Wendy  
15 would fire me and I wanted to do some additional work and  
16 I would be okay with leaving eBay.

17 I asked -- I handed in my resignation with a  
18 fairly lengthy time frame, about six months, saying that  
19 I would retire in six months.

20 And they accepted my resignation and agreed to  
21 that six-month period. I guess that was the agreement.

22 Q. Did they pay you a severance?

23 A. Yes. Actually, I'm not sure. I would need  
24 to review that document, which I don't have.

25 Q. Okay. Did you get any kind of large payment

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1 Q. Did Kathryn?  
2 A. Not that I'm aware of. Kathy.  
3 Q. Did you report any of those comments to HR?  
4 A. No.  
5 Q. The comments about medical procedures, did  
6 you complain about or report those comments to anyone in  
7 management at eBay?  
8 A. Yes, Kathy and -- Kathy Dalpes and Tim Payne  
9 and Brad Krinhop. And I would say I had a conversation  
10 with them about it versus filing a report.  
11 Q. What was Kathy Dalpes' position at the time?  
12 A. Director.  
13 Q. She was a peer of yours?  
14 A. She was.  
15 Q. And Tim Payne's position?  
16 A. A peer.  
17 Q. What was the substance of the conversation  
18 with Kathy Dalpes on the subject of Ms. Dutton's  
19 surgeries?  
20 A. We talked about is that appropriate for her  
21 to have that conversation with her peers? And that  
22 everyone was aware of what surgery she was going to have,  
23 because Susan was very open with that, with that  
24 information.  
25 Q. What did Kathy say?

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1 few years younger than me, so he's probably 51, 52.  
2 Q. Did you ever discuss these conversations  
3 about Ms. Dutton's surgery with some of the managers you  
4 identified like Monica Paluso?  
5 A. No.  
6 Q. Did you discuss it with Carol Dombrowski?  
7 A. I don't remember.  
8 Q. Did anyone ever come to you and complain  
9 about these conversations other than the conversation we  
10 have talked about with you and Kathy and Tim?  
11 A. I don't recall.  
12 Q. During the time that you were employed at  
13 eBay, were you aware of eBay's policies on discrimination  
14 and harassment?  
15 A. Yes.  
16 Q. What was your understanding of eBay's policy  
17 on discrimination?  
18 A. Equal opportunity employer, racism, sexism,  
19 et cetera would not be tolerated as a company.  
20 Q. What was your understanding of what you  
21 should do if you experienced or observed discrimination  
22 in the workplace?  
23 A. That I should talk to my manager and/or HR.  
24 Q. How did you become aware of these policies?  
25 A. They are covered every year we review our

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1 A. She felt it was inappropriate too.  
2 Q. Did you report it to HR?  
3 A. I did not.  
4 Q. Did Kathy? Do you know?  
5 A. I don't know.  
6 Q. What about your conversations with Tim Payne?  
7 What was the substance of that conversation?  
8 A. He was actually with us in the discussion.  
9 It wasn't a meeting held to specifically talk about  
10 Susan. It was an after meeting conversation that said  
11 yes, Tim said Susan was leaving to go have her surgery  
12 and Kathy and I were saying yes, everybody knows about  
13 Susan's surgery because she's made it so public.  
14 Q. So this was a conversation that occurred with  
15 you and Tim and Kathy?  
16 A. Correct.  
17 Q. Was there more than one conversation that you  
18 had with your peers about this on this subject?  
19 A. I don't remember more than one conversation.  
20 Q. How old is Kathy Dalpes? Do you know?  
21 A. I don't know.  
22 Q. What is your estimate?  
23 A. I would say 35.  
24 Q. How old is Tim Payne? Do you know?  
25 A. I don't know exactly. I believe he's just a

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1 policies.  
2 Q. Did you ever report to HR Ms. Dutton's use of  
3 the F word in the workplace?  
4 A. No. However, I did talk with Tim Payne about  
5 that.  
6 Q. Tell me about that conversation. Where did  
7 it occur?  
8 A. Where did it occur?  
9 Q. Yes.  
10 A. I believe at Tim's desk, but I'm not exactly  
11 sure. It could have been at my desk.  
12 Q. When did it occur?  
13 A. I don't have a firm understanding of what  
14 date that was.  
15 Q. Can you give me a general idea?  
16 A. Yeah, sometime in the four years that I  
17 worked at eBay.  
18 Q. Any better than that?  
19 A. Not specifically, no.  
20 Q. And just so I'm clear, he was a peer of yours  
21 at that time, correct?  
22 A. He was.  
23 Q. Did you have more than one conversation with  
24 him about it?  
25 A. I don't recall more than one.

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1 Q. Anyone else that you discussed it with?  
2 A. I don't recall.  
3 Q. What was the substance of the conversation  
4 with Tim?  
5 A. General around, you know, inappropriate  
6 language behavior, et cetera. I think it actually arose  
7 because an employee had talked with me about Susan and  
8 Monica sitting at their desk together having fairly  
9 private conversations and that others could hear and that  
10 at one time they were talking about an employee who --  
11 and saying something negative about that employee. And  
12 so I talked with Tim about, "Hey, maybe they need to tone  
13 that stuff down just because other people can hear and  
14 find a conference room if it's anything confidential."  
15 Q. Was Tim Susan's supervisor?  
16 A. Tim was, yes.  
17 Q. Do you know what, if anything, he did about  
18 these comments?  
19 A. I don't know.  
20 Q. Tell me about this conversation between  
21 Ms. Dutton and Ms. Paluso. You didn't hear it yourself?  
22 A. I did not hear it, no.  
23 Q. Where did you hear about it?  
24 A. I heard it from one of my employees, Kelly.  
25 I can't remember Kelly's last name. And she said, "Hey,  
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1 sounds like a great thing." And he said, "Yeah, well,  
2 there were a lot of incidents at that party, here's one  
3 of them," and he talked about Susan.  
4 Q. Did he tell you about any others?  
5 A. I don't recall any others.  
6 Q. Now, what year would it have been that this  
7 party occurred?  
8 A. I think it would have been 2000 or 2001.  
9 Q. Okay. Was anyone else present when Joe Wood  
10 told you about this situation?  
11 A. No. Oh, I do remember hearing it from one  
12 other person, Richard Nelson.  
13 Q. Tell me about your conversation with Richard  
14 Nelson. Who was Richard Nelson?  
15 A. Richard was one of my direct reports. He  
16 worked in the Training Department. He left after a while  
17 to go and work for Keith and just would talk about the  
18 wild times, what eBay used to be like, what the old  
19 culture was like, how much more informal I guess it was.  
20 Q. When did this conversation occur?  
21 A. My guess is sometime in 2002.  
22 Q. And was anyone else present for this  
23 conversation?  
24 A. No.  
25 Q. When did the Joe Wood conversation occur?  
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1 listen, this is what I overheard and maybe you can talk to  
2 these guys, Joyce, and get them to stop having  
3 conversations that are so public."  
4 Q. Do you know who they were talking about?  
5 A. I don't.  
6 Q. Are you aware of them having any such  
7 conversations after the point in time that you spoke with  
8 Tim Payne?  
9 A. Conversations about another employee?  
10 Q. Yes.  
11 A. No.  
12 Q. You weren't present at the Christmas party  
13 where Susan Dutton allegedly danced seductively?  
14 A. It was before I arrived.  
15 Q. Have you identified everyone from whom you  
16 have heard that allegation?  
17 A. I think I have.  
18 Q. When did Joe Wood tell you about this?  
19 A. After I arrived at eBay, I think it was when  
20 we were planning the next year's Christmas party for all  
21 employees, and Joe was recapping the previous one and how  
22 much money eBay had spent on this and that he felt that  
23 Keith, No. 6 employee of eBay, had also contributed a lot  
24 of his money to it, black tie, very formal event up in  
25 Park City. And I was saying, "It sounds really cool, it  
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1 A. In 2002.  
2 Q. How about your conversation with Lynn Hardin?  
3 When did that occur?  
4 A. My best estimate is 2002.  
5 Q. And what did Lynn tell you exactly?  
6 A. That the previous parties at eBay could  
7 sometimes get pretty rowdy with a lot of drinking and a  
8 lot of partying and sometimes inappropriate displays.  
9 Q. And what did Lynn tell you specifically about  
10 Susan Dutton?  
11 A. He wasn't as specific as the others. He just  
12 said that everyone had a lot to drink and Susan acts kind  
13 of wild when she drinks and that she acted kind of wild  
14 at this party.  
15 Q. Did he give you any additional specifics?  
16 A. No.  
17 Q. What did Joe Wood tell you?  
18 A. I think he was the first person to describe  
19 it as a lap dance.  
20 Q. Tell me exactly what you recall him telling  
21 you.  
22 A. That Susan was flirting fairly heavily with  
23 Maynard Webb and at one time started dancing directly in  
24 front of him and dancing very suggestively.  
25 Q. Have you ever met Maynard Webb?  
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