Mr. Jones is likely to be deemed an agent of Microhard when he accepted the offer to supply plaintiff Office Supply’s offer to furnish 10,000 desk chairs at $50 each. Mr. Jones wasn’t a “real” agent who had the power to bind the company, since he was a newly hired, probationary employee of Microhard at the time of the contract. But that’s only one way to be found an agent under California law. *Bear Stearns v. Associated Business Co.*, 28 Cal. 4th 256, 278 (2004). When Ms. Jones from Office Supply called Microhard and asked to be connected to the individual in charge of purchasing office supplies, she was transferred to Mr. Jones by the switchboard operator and Mr. Jones identified himself as Microhard’s Physical Plant Manager. This then is an example of the second way to establish agency: when the company lets a situation develop such that the purported agent has the apparent authority to bind the company because a third party would reasonably believe in the employee’s authority to bind it. *Id.* at 278.

The rules regarding agency were explained in *Bear Stearns*, a case similar to that presented herein. There the court set forth a “totality of the circumstances” test, holding that under the totality of the circumstances, Bear Stearns was reasonable and justified in believing defendant Associated Business Co.’s (“ABC”) fired Comptroller, Mr. Johnson, was ABC’s agent. Here, ABC fired Mr. Johnson on Tuesday, but at Mr. Johnson’s request, delayed announcement of the termination and allowed him to continue to use his office until the end of the week. On Friday of that week, Mr. Johnson, stating he was acting as ABC’s CFO, placed an e-mail order to purchase 3,000 shares of common stock for the company with Bear Stearns – similar to transactions he had entered into previously with Bear Stearns when he was the CFO. The court held that ABC had to pay Bear Stearns for the stock, even though Mr. Johnson had no actual authority to bind ABC because of his termination, since it reasonably appeared from all the circumstances Johnson had the apparent authority to bind ABC to the purchase.

Here, it does not seem reasonable to require Office Supply to otherwise verify that Mr. Jones was really the Physical Plant Manager and could bind the company, especially when he negotiated the price with Ms. Smith when she called. As such, while the facts may not be quite as strong as those in *Bear Stearns* for finding apparent agency, because this was the first transaction between Office Supply and Jones, it would seem that under the totality of the circumstances Mr. Jones would reasonably be judged an agent of the company and Microhard will have to pay up.
The issue is whether Mr. Jones was an agent of Microhard when he accepted plaintiff Office Supply’s offer to furnish 10,000 desk chairs to Microhard at $50 per chair. Agency in the workplace is established in two situations: (1) where the employer “has validly given the agent the actual authority to bind the company” to the relevant action; or (2) when the purported agent “does not have the actual authority to bind the company, but has the apparent authority to do so because the company presented a situation where, under the totality of the circumstances, a third party would reasonably believe in the employee’s authority to bind it.” Bear Stearns v. Associated Business Co., 28 Cal. 4th 256, 278 (2004). This principle was established in Bear Stearns where defendant Associated Business Co. (“ABC”) fired its Chief Financial Officer, Mr. Johnson, on Tuesday, but at Mr. Johnson’s request, delayed announcement of the termination and allowed him to continue to use his office until the end of the week. On Friday of that week, Mr. Johnson, stating he was acting as ABC’s CFO, placed an e-mail order to purchase 3,000 shares of common stock for the company with Bear Stearns. When the Bear Stearns broker called ABC to verify, and asked the switchboard operator for the “Chief Financial Officer,” she was routed to Mr. Johnson, and when she checked ABC’s web site, Mr. Johnson was still listed as the company’s CFO. The court held, even though Mr. Johnson had no actual authority to bind ABC because of his termination, under the totality of the circumstances Bear Stearns was both reasonable and justified in believing that Mr. Johnson had the apparent authority to bind ABC to the purchase, and thus ABC was liable for the purchase price of the stock.

The situation is similar here. Mr. Jones was a newly hired, probationary employee of Microhard who did not have any actual authority to enter into a contract on Microhard’s behalf. However, when Ms. Smith of Office Supply called Microhard and asked to be connected to the individual in charge of purchasing office furniture, she was routed to Mr. Jones by the switchboard operator, similar to what occurred during the phone conversation in Bear Stearns. In the ensuing conversation Mr. Jones identified himself as the “Physical Plant Manager” of Microhard, much like Mr. Johnson’s self-identification as ABC’s CFO in Bear Stearns, and led Ms. Smith to believe he had the authority to make the office chair purchase. The one difference was that when Ms. Smith checked Microhard’s website, she could not confirm Mr. Jones was the Physical Plant Manager because, as it turns out, no one had that title at Microhard. However, not all employees of Microhard were listed on the website, and it does not seem reasonable to require Office Supply to contact Microhard and inquire why the Physical Plant Manager was not listed on the website or who held that title. As such, while the facts are not quite as strong as those in Bear Stearns, it would seem that under the totality of the circumstances, Office Supply was reasonable and justified in believing Mr. Jones to have the apparent authority to bind Microhard, and thus Mr. Jones would be judged an agent of the company, making ABC liable for the purchase of the chairs.