MONACO SOLICITORS

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Dear Sir or Madam

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Many thanks for visiting Monaco Solicitors’ website. We attach copy of the document that you asked for and hope you will find it useful.

If we can be of any further help, please do get in touch by ‘phone or via our website.

Yours faithfully

Monaco Solicitors

**MONACO SOLICITORS - Without prejudice letter:**

**Requesting release from restrictive covenants after whistleblowing**

[Name]
[Company name]
[Employer]
[Address]
[Email]
[Date]

Dear [Name]

[Employee name]
WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

We have been instructed by [Employee name] in relation to current issues with his employment and to write to you on a without prejudice basis regarding the draft Settlement Agreement offered to him.

As we understand it, our client has been employed with [Company name] since [Date] and up until now, there have been no issues with his work, as far as he is concerned. On 24th June this year, our client was forced to bring to the attention of the appropriate people in the business the occurrence of some wrongdoing, in particular fraud, and, as a result of his notification, we are instructed that an internal investigation is currently being carried out for which our client is co-operating.

Having regard to the nature of the matters brought to the attention of the business by our client, we believe our client has made a protected disclosure pursuant to the provisions of s. 43 of the Employment Rights Act.

In addition, on 24 May, we are instructed that our client notified the business through his line manager of his concern at the amount of work he was required to undertake and the requirement to work extended hours. We are instructed that our client has a heart condition, which is known to the business and so it is understandable that he was concerned by the increase in his work and the effect it had been having on his health.

We are instructed that no action was taken by the business to alleviate the stress our client had complained of and so it became necessary for him to again notify the business, through HR, that he had to take some time off, which he did on or about the 15th July.

Thereafter, and to our client’s surprise, he was invited to attend a meeting on 21st July when he was told that the business was intending to put him under a performance improvement plan (PIP) because he had been behind target. Hardly a surprise considering the pressure he had been under. Alternatively, the business was prepared to offer him a Settlement Agreement to bring about the termination of his employment. As we have said, our client was very surprised that the business were requiring him to undertake a PIP. It is notable that both of the major projects he had been working on during the period when he first raised the issue of workload and stress were of potential major value to the business, and in your own email to our client on 21st July you stated ‘that we know you are capable of delivering.’

It is our client’s view that both the timing and decision to start our client on a PIP has come about not through genuine concerns about his work, but because he has made a protected disclosure and that it was necessary to be signed off sick through stress

We are instructed that the business has made an offer of settlement to our client of his contractual payments of notice and accrued but untaken holiday on termination and an additional ex gratia payment representing two months’ salary. We are instructed that, having regard to our client’s potential claim for whistleblowing, that offer of settlement is not acceptable.

Our client has had a successful career at [Company name] and would not, but for the matters set out in this letter, be contemplating the termination of his employment. However, [Employee name] is of the view that remaining in employment at this time is not realistic due to the potential outcome of the misconduct matters he has raised on the management above and around him and the breakdown in trust, and he is prepared to agree to the termination of his employment and to enter into terms of an appropriately worded Settlement Agreement.

We are instructed to suggest to the business that an appropriate ex gratia figure for settlement would be 8 months’ salary plus our client’s contractual entitlements upon termination as to notice and holiday pay.

We understand that our client is subject to a non-solicitation clause in his contract of employment and the company has identified a list of businesses in a block list in relation to which our client could not solicit under the provisions of clause 18 in his contract. Our client does not accept that this list represents a reasonable means of defining his post-termination obligations in relation to the relevant businesses and we set out his objections as follows:

1. [Company name 2]
2. [Company name 3]
3. [Company name 4]
4. [Company name 5]
5. [Company name 6]
6. [Company name 7]
7. [Company name 8]
8. [Company name 9]
9. [Company name 10]
10. [Company name 11]
11. [Company name 12]

Clearly where there has been no previous dealings with the companies listed, our client cannot be restricted under the provisions of his contract.

We are also instructed that the restrictions should only apply to [Company name] areas of business – [areas of business].  Specifically they should not apply to consultancy services or training simulators for operational equipment, or for general sales consultancy or sales agency services. This would mean, for example, our client would not be precluded from acting as a sales consultant for [Company name] to sell into NW Asia, and neither could he be precluded from working for a company (not on the block list) and selling navigation and radar simulators into the [business sector].

We hope that our client’s interpretation of the provisions of his restrictive covenants are accepted by the business and matters can progress to an amicable settlement

We await hearing from you in due course.

Yours faithfully
[Lawyer name]

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