MONACO SOLICITORS

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Dear Sir or Madam

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Yours faithfully

Monaco Solicitors

**MONACO SOLICITORS - Without prejudice letter:**

**TUPE, redundancy and corporate takeover**

Without prejudice and subject to contract

FAO: **[Employer]**

**[Date]**

Dear Sirs

**Private and Confidential: [Your name]**

I have been instructed by my Client, [Your name], in respect of your recent without prejudice discussions. I would be grateful if you would note our interest and ensure that future correspondence is directed to this office. Your offer of £20,000 to terminate his employment is rejected.

My Client was employed by [Employer] for eight years, during which he performed his role impeccably – his historical appraisals demonstrate an employee who is performing at a high level and his annual bonus payments and pay rises highlight the esteem that he was held in within the business. During the course of his employment, he was offered a package previously reserved for the Executive team, by both the local business (Company name) and the Board (Company name). During his eight years of service, there were no reported concerns about his performance. He builds and develops very strong teams, promotes from within, implements innovative and effective financial and non-financial systems. These skills ensure that the business was supported from all financial aspects; from the paying of supplier invoices, the handling of the payroll through to planning and forecasting. His external fiduciary reporting was exemplary, with all returns to HMRC being submitted on time and accurately, and the last five years of external financial audit resulted in no audit adjustments or recommendations – a testament of the quality and effectiveness of the controls put in place.

[Name] was key to the success of the acquisition of the business by [Company name] and he worked tirelessly to ensure that the process was completed in line with the parties’ expectations. The [Employer]  directors, [Company name] and [Company name], commented on his excellent model used to show the history and the future of the business, as well as the expertise he has built up over time when dealing with due diligence and face-to-face meetings. Indeed, both parties deemed it appropriate to award him a bonus for his endeavours upon the successful completion of the transfer in January 2016. His leadership ensured that there was a smooth transition of all financial functions of the business. It was widely recognised that [Name]  has sufficiently broad shoulders to carry the project when others, who have since left the business, were floundering.

Exactly two months post acquisition, he finds himself being told that he is failing to perform and offered a settlement agreement without prejudice, or face a personal improvement plan, which he shocked him – both the allegation and ultimatum. He is sure that the true motive is that he is deemed too expensive. He was told not to take it personally. [Name] had to tease out the alleged performance failures from [Name]  in the course of the first meeting. It is apparent that the reported areas of concern have been cobbled together post hoc once it was clear that [Name] was not prepared to let slights on his professionalism pass without thorough investigation. Indeed, only a single on-to-one was held in the two months, were it was discussed John was maxed-out ([Name]’s words). During the course of this discussion, [Name] agreed he was over-worked with multiple tasks – integration work and his day job. Furthermore, additional work had fallen on him following the loss of the Managing Director, Finance Director (FD) and Director of Human Resources. Despite this, [Name] still carried on and actually discussed development into a bigger role, possibly covering a wider remit. At no point was it suggested that he was failing to perform.

The basis for the purported failures are flimsy at best and can clearly be disregarded when context is given to the allegations faced.

1. Failure to complete insurance documents

[Name] made it clear that he did not have the requisite authority to confirm certain information in the insurance documents and chased the information from [Employer], who, for certain questions, were not willing to comply. The insurance document request was initially a task for the former FD who did not complete it and so was passed onto John upon his departure.[Name] explained to [Name] that he would not answer questions that he was not qualified to answer especially for such an important document.

2. Delays in the completion of the month-end

The Finance department at [Employer] had a month-end of six days. Following [Company name]’s acquisition, this had been reduced to 1.5 days. The initial month-end post-acquisition was delivered on time, albeit not all [Company name] reporting was required. The second month-end, MOB pack was sent to the management team four minutes late. All of the tables to produce the MOB pack were complete and [Name] was sent the Word file for these to be entered into only half an hour before the management meeting. He reported there were issues with the MS Word document that he had been sent. This was the cause of the delay. It was then mentioned by [Name] days after that the MS Word document was corrupt and that the Bristol Finance team had had the same issue. These extraneous factors would not lead to any accountability on the part of the finance department and, in particular, my Client.

3. Delays in completion of the business plan

This was a two month job which he was asked to complete in a matter of days. This was confirmed by [Name] (Divisional FD). The root cause of the issues was the fact that assumptions were made by [Company name] with regards to the future performance of the business. [Name] had to unravel and reconcile these assumptions in the preparation of the business plan. The outcome was not positive, as incorrect assumptions had been made by [Company name]. The completion of a business plan is a task that [Name] has always relished. Previously, he would have produced the model, discussed it with the [Employer] management team before holding sessions to deliver, agree and communicate to the business. However, meetings were held behind closed doors and [Your name] was shut out of the planning process. During the production of the initial plan [Name] worked very long days, including at month-end – typically until 9-10pm.

There is no doubt that the performance management process is without basis and the core reason that [Company name] do not wish to honour their contractual obligations required under the TUPE Regulations 2006. It is notable that the Company has not suggested that there is an Economic, Technical, Organisational (ETO) reason entailing changes to the workforce. Of course, it will appreciate that in the absence of an ETO reason a dismissal relating to a TUPE transfer will be deemed by an employment tribunal to be automatically unfair.

My Client is deeply saddened by the way that he has been treated during this process. At the point of being informed about the purported performance issues he was left in no doubt that he would be dismissed. This was confirmed when he was later informed by [Name] that he was required to hand over his role to [Name]. Clearly, his replacement had already been appointed. This demonstrates, if it were not already clear enough, that the performance improvement process is a sham exercise. Over the course of the last week, he has seen his responsibilities hived off with no explanation given and his team have been left questioning [Your name]’s status.

My Client was excited by the challenges offered by [Company name]’s acquisition of [Employer] and he firmly believed that this offered him a considerable opportunity to develop his career in a larger Company. Of course, it would have been open to the Company to investigate other opportunities, instead you have done no such thing. Rather, for reasons clearly related to the TUPE transfer, he finds himself facing an uncertain future as he takes stock to reconsider his future career path. Recent events have come as a considerable shock to him but yet he is sanguine and realises that his departure from the Company is inevitable.

In the circumstances, he has instructed me to put forward the following proposal. This is not intended to be a springboard for further negotiation but a genuine attempt to find a compromise to leave employment:

1. Termination date of end of April 2016 with no further requirement to work following an agreed handover of duties;
2. Gardening leave of three months or, in the event that my client is successful in finding work during his gardening leave period, the Company will pay him in lieu of notice for the balance of his notice period;
3. Holiday pay, car allowance and pension to accrue during notice period;
4. An ex gratia payment of £34,224.09, first £30k tax free, tax payable on balance;
5. Release from all post-termination restrictions, save for confidentiality; and Agreed reference (including confirmation that integrity and no concerns about accountability) and internal announcement.

In return for the above, [Name] will sign a settlement agreement once the terms are agreed and again upon termination and our fee for advising on the terms of each agreement will be £500.

I look forward to hearing from you once you have considered the counter-proposal.

Yours sincerely  
[Lawyer name]

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