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:**

**Whistleblowing and disability discrimination**

For the attention of
[Name]
[Employer address]

[Date]

Dear Sir/Madam

[Claimant 1] AND [Claimant 2]
WITHOUT PREJUDICE AND SUBJECT TO CONTRACT

As you are aware, we have been instructed by [Claimant 1] and [Claimant 2]  who have been in the employ of [Employer] as Adjudications from February [Year date] and March [Same Year Date] respectively.

It is their case that following their involvement in the investigation of [Name]’s Protected Disclosure regarding the independence of the adjudication process at [Employer](the [XYZ] Investigation) and the subsequent detriments that they have suffered as a consequence of this primary and their own subsequent protected disclosures. For the avoidance of doubt, my Clients assert that since their involvement in the [XYZ] Investigation they have made qualifying disclosures as defined in section 43B of Employment Rights Act 1996 (the Employment Rights Act’) by reporting the following matters whilst in the employ of (the Company) and as a consequence they have suffered a series of detriments contrary to section 47B of the ERA. They are in daily fear that they will be dismissed from employment and will face the significant financial consequences of unemployment. They are currently preparing their claims to the Employment Tribunal and in the event that a reasonable settlement is not achieved they will seek redress in the Tribunal.

There have been a series of grievances and appeals and it appears that the treatment that they have been subjected to is unlikely to abate. It is their position that they have been subjected to a concerted campaign of victimisation since their involvement in the [XYZ] Investigation. It is clear that the Company see these two employees as troublemakers and believe that that they have avoided any liability for any of the clear detriments that they are suffered with a multi-layered campaign of disciplinary and absence management processes. Following the grievance process, it appears that the Company recognised that there was a need to mediate and improve my Clients’standing within the Company yet no steps have been taken in this respect. It seems now matters have now gone beyond the point at which mediation could achieve an improved working relationship: the Parties have now reached the point of no return.

The timeline of events that is attached (Appendix 1) puts each and every detrimental act that my Clients have faced into clear context. By way of illustration, it is notable that following keys events –the submission of appeals, the outcome of various internal processes – there has been a new strike of further action, in temporal close proximity, for example, the removal of Company Sick Pay from both individuals for disability-related absences from work and, most recently, the decision to investigate [Claimant 1]  for alleged misconduct.

My Clients had very much hoped that this conduct would desist but over the last months and from the outcome of their Appeals it has become increasingly apparent that there is no further prospect of them having future careers at Akita IT Services.

[Claimant 1] and [Claimant 2] in context

[Claimant 1] started employment with [Employer] as an Adjudicator in [Date]. She was very excited by the new challenges the job would offer and it was a means of progressing her legal career and a logical step from the building block of the skills learnt whilst in the employ of [Company name]. [Claimant 1] has extensive experience advising on matters arising in the Housing sector and is acutely aware of the importance of effective and early dispute resolution having advised on many situations when ADR fails and parties enter lengthy and costly litigation.

[Claimant 1] was keen to learn and took a diligent and earnest approach to her responsibilities as an adjudicator. During the early period of her employment her hard work and positive approach seemed to be appreciated.

[Claimant 2] is at an earlier stage of her legal career background. She completed her law degree and legal practice course as a mature student and took active steps to progress at the [Company name] and [more information about career history]. [Claimant 2] started with [Employer] with similar zeal and enthusiasm. What is clear from the first months of employment is that they impressed management with the fast way that they had picked up the various components of their roles and their future at the organisation seemed to be assured. They passed their probationary period without difficulty and were asked to take on greater responsibilities and higher value claims.

Detriments from [Date] onwards

I do not intend to rehearse the history that is well known and clearly laid out in Appendix 1. Of course, it has already been the subject matter of [Name]’s own investigation under the Company’s Whistleblowing procedure and my clients’ various grievances and appeals that my clients have needed to make.

Since July [Year date], the treatment that [Claimant 1] and [Claimant 2] have been subjected to has pervaded virtually every moment of their working lives. Each holiday taken has been believed to be a sign that they must be up to no good, indeed sitting in her car at lunchtime was a clear piece of evidence used of the nefarious activity and a sure sign of misdeed.

It would, of course, be troubling for any employee to face this face level of scrutiny and it must be remembered that [Claimant 1]  and [Claimant 2] have not in fact done anything wrong: they gave evidence during a whistleblowing investigation and raised their own concerns about impartiality of the adjudication process. They have sought to protect the Company from external scrutiny and potential exposure for illegal activity. They have always acted in good faith and put their trust into the management who were to be investigate their concerns, ensure that confidentiality and protect them from unlawful detriments. Sadly, quite the opposite appears to have occurred.

As you will be aware, my clients have made a number of Subject Access Requests and the documents received have been sent in a heavily redacted form. A number of assumptions have been made about the senders and recipients of various emails and, if borne out, demonstrate the extent of the antipathy toward my Clients. It certainly shows causation to the various detriments that they have suffered and how there is very unlikely to be a means for their employment relationship with [Employer] to be reconciled.

In particular, I draw your attention to the email assumed written to you by [Name] written in early August [Year date]. The content of which is set out in Appendix 1 attached. Further, the email assumed from [Name] to [Name] when [Name] attempts to question medical advice as to whether [Claimant 1] absence from work can be attributed to her disability. No Employment Tribunal would accept in the circumstances that the action that both individuals and in particular, [Claimant 1] has faced can be anything other than malign.

There are manifold difficulties with these emails, but foremost it demonstrates with the utmost candour the opinion of a senior member of staff and their attempt to influence [Name] as investigator under the Company’s Whistleblowing Procedure. If there were any truth in the content of [Name]’s email, then there would be have been grounds to bring disciplinary action against my clients and they would have presumably long since left employment.

Clearly, my Clients have been labelled as troublemakers and that they have an agenda that departs from the Company’s interests. My clients are two ambitious and self-motivated women who have come to the law through considerable hard work and determination. In the case of [Claimant 1], she has worked her way up taking every opportunity to learn more about the law and push herself to achieve her potential. In [Claimant 2]’s case: a significant step following her recovery from an aneurysm in [Date]. From the start of their employment they strove to meet the challenges of their new roles and took on their responsibilities as adjudicators earnestly and meticulously. They have the values that are good to all practitioners but are yet of greater importance to protect the rule of law and preserve the impartiality of a judicial or quasi-judicial process.

This would not seem at odds with the means that [Employer] publically present this scheme and how it benefits the parties to a tenancy in the event of a dispute:

The decision about who should receive the deposit is made by an impartial qualified adjudicator. The adjudicator will make their decision in an unbiased way, based on the evidence each party provides.

If you’re involved in a dispute with your landlord you’ll be required to submit evidence, which can include photographs, inventories, invoices and/or other relevant information. You’ll need to supply this within a specified timescale. Our adjudicator will consider all of the evidence submitted and decide how the deposit should be distributed. The more evidence you can collect the stronger your case will be.

The deposit remains as your property until your landlord has successfully claimed all or part of it.1

It seems pertinent to remind you of the following salient points:

1. [Claimant 1] and[Claimant 2] were asked if they would be interviewed as part of the [XYZ] Investigation. They were only participants at the Company’s behest and only disclosed details of the issues relating to the [ABC] file following a direct question from [Name]; 2

2. [Claimant 1] raised her significant concerns about [Name]’s tampering with the file of [ABC];

3. Following your report, [Name] sent an email dated 10 September [Year date] to all adjudicator’s making it clear that there were systemic concerns about the impartiality of the adjudicator’s process which clearly gives considerable credence to the concerns that both [Claimant 1] and [Claimant 2] have highlighted in the course of the [XYZ] Investigation. In particular, the changes implemented included:

* Adjudicators should have no communication with Account Managers about any disputes for managed agents. All communication will be issued through the ADR administrators in the Special Operations team.
* All adjudication decisions will continue to be submitted to the central bucket, but will be converted by the Adjudicator into a PDF version prior to submission.
* Automatic extensions for evidence submission for managed agents will cease immediately. Extensions may be allowed on a case by case basis, but to all stakeholders on an equal basis (i.e. un-managed agents, managed agents, landlords or tenants).3

4. It is notable that since

Both of my clients feel deeply aggrieved that they have been subjected to this campaign of scrutiny, and heavy-handed, vindictive conduct and cannot see how they can continue in employment.

In the circumstances, they are looking for compensation and, given the extent of the antipathy towards them both, they are prepared to exit the business on agreed terms. This is not a decision that they have taken lightly – their careers are likely to stall as a consequence of their departure and it will take some time to earn an equivalent salary.

1 https://www.depositprotection.com/tenant-info

2 In the course of a question from [Name] in the course of the telephone call on [Date] it was specifically asked if [Claimant 1] had ever witnessed decisions being taken out of the decisions bucket and amended in favour of the Agent/Managed

3 Email from [Name] to all Adjudicators, 10 September [Year date]

[Claimant 1]

1. Termination date to be mutually agreed;

2. Three months pay in lieu of notice including payment in respect of accrued holiday pay and pension contributions;

3. Agreement to repay all unpaid wages since [Date] ;

4. An ex gratia payment equivalent to 6 months pay to compensate [Claimant 1] for her losses going forward and as compensation for her injury to feelings over the course of the last 8 months of detrimental treatment. During this period, she has suffered a deterioration in her health which has lead to a series of disability-related absences from work, severe anxiety, loss of sleep [more detail as appropriate]. Foremost, the aggravating nature of this case is that this situation came about because of [Claimant 1]’s involvement in the [XYZ] Investigation and the coincidence that she happened to witness changes being made to the [ABC] file;

5. Agreed factual reference;

Agent in the absence of the adjudicators knowledge. Naturally,[Claimant 1]  answered this question honestly and it seems from this response the chain of events laid out below unfolded.

[Claimant 2]

1. Termination date to be mutually agreed;

2. Three months pay in lieu of notice including payment in respect of accrued holiday pay and pension contributions;

3. Agreement to repay all unpaid wages since [ ] ;

4. An ex gratia payment equivalent to 6 months pay to compensate [Claimant 2] for her losses going forward and as compensation for her injury to feelings over the course of the last 8 months of detrimental treatment.

5. Agreed factual reference;

My Clients are prepared to sign Settlement Agreement to settle all matters between the Parties.

We look forward to hearing from you soon and hope that the Parties can work together to reach a sensible and constructive outcome.

Yours faithfully
[Lawyer name]

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