|  |  |
| --- | --- |
| **C A N A D A** |  |
|  | **S U P E R I O R C O U R T** |
| PROVINCE OF QUÉBEC | (Civil Division) |
| DISTRICT OF **MONTRÉAL** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| **NO:** | **NAME \_\_\_\_\_\_\_\_\_**, domiciled and residing at Address, district of Montreal, province of Quebec, HXX YYY; |
|  |  |
|  | Plaintiff |
|  |  |
|  | Vs. |
|  |  |
|  | **NAME Inc.** a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Street, \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (city), province of Quebec, district of Montreal HXX YYY;  Defendant  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |

**APPLICATION TO INSTITUTE PROCEEDINGS**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN**

**PRACTICE DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL, PLAINTIFF**

**RESPECTFULLY SUBMITS AS FOLLOWS:**

1. That Defendant is a corporation duly constituted under the laws of \_\_\_\_\_\_\_\_, as confirmed by the CIDREQ report emanating from *Le Registraire des Entreprises du Québec*, **EXHIBIT P-1**, copy of which is communicated with the service of the present proceedings;
2. That Defendant’s main activities consist of \_\_\_\_\_\_\_\_\_\_\_\_\_ (*description of activities*) as more fully appears from the CIDREQ report, EXHIBIT P-1;
3. That during the month of \_\_\_\_\_\_ (*month*) \_\_\_\_\_\_\_(*year*), Plaintiff was solicited through the intermediary of Defendant’s recruitment agency at the time, namely \_\_\_\_\_\_\_\_\_ (*recruitment agent*) of \_\_\_\_\_\_\_\_\_\_\_\_(*Agency name*) (hereinafter “**Agency**”), who coordinated interviews between the parties for the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*position held*);
4. That as at the time of solicitation from the Agency, Plaintiff was employed with \_\_\_\_\_\_\_\_\_\_\_\_ (*previous employer name*) ("**Previous employer**");
5. That Plaintiff was retained as \_\_\_\_\_\_\_\_\_\_(*Plaintiff's position at Defendant*) for Defendant in Montreal, Quebec, effective \_\_\_\_\_\_\_\_\_\_\_\_\_(*commencement date*);
6. Moreover, Plaintiff’s annualized compensation amounted to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DOLLARS ($\_\_\_\_\_\_\_\_.00), calculated as follows:
   1. $\_\_\_\_\_\_\_.00 in base salary;
   2. $\_\_\_\_\_\_\_.00 in benefits owing in virtue of the cost-plus program;
   3. $\_\_\_\_\_\_\_.00 in car allowance;
   4. $\_\_\_\_\_\_\_.00 in a performance based bonus equal to FIFTEEN PERCENT (15%) of annual base salary; and
   5. $\_\_\_\_\_\_\_.00 in RRSP match.

(Collectively the “**Effective Compensation**”)

1. That Plaintiff always resolved to perform his duties with courtesy and professionalism and utmost diligence;
2. At a meeting held \_\_\_\_\_\_\_\_\_\_\_\_\_ *(date of termination meeting*), Defendant notified Plaintiff that his employment was terminated effective immediately;
3. That also at that meeting, Plaintiff was remitted a confidential document that confirmed said termination as well as containing an offer for an additional payment in contemplation thereof and a full and final release document, the whole as more fully appears from a copy of said notice of termination of employment and full and final release bundle; **EXHIBIT P-2**, copy of which is communicated to Defendant with the service of the present proceedings;
4. That the additional payment contemplated in the notice of termination of employment, EXHIBIT P-2, offered an additional compensatory payment equivalent to \_\_\_\_\_\_\_\_ months of Plaintiff’s base salary in exchange for a general release of claims in the amount of $\_\_\_\_\_\_\_\_.00 plus one week notice pursuant to Quebec Labour Standards (hereinafter the “**Offer**”);
5. That Plaintiff was entirely surprised for the reason of the Meeting as no representative of Defendant had ever negatively commented on the quality of Plaintiff’s work and had never given him notice in this regard at any time whatsoever;
6. On the contrary, throughout his employment as V-P Finance, Plaintiff was consistently lauded by Defendant and received positive feedback of his performance therefrom and, as such, Plaintiff had no reason to believe Defendant was anything but satisfied with his work;
7. That Plaintiff refused to sign the document tendered at the time of the Meeting, which remain unsigned at the time of the present proceedings;

**DAMAGES IN SUPPORT OF PLAINTIFF’S CLAIM**

1. That Defendant’s unjustified dismissal of Plaintiff from his position as V-P Finance is exacerbated in the following ways:

*Plaintiff’s active solicitation from another job*

1. That Defendant actively solicited Plaintiff for the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has effectively altered the course of Plaintiff’s professional career causing irreparable harm thereto;
2. In fact, Defendant abandoned the security of his employment with \_\_\_\_\_\_\_\_ (*previous employer*) and the opportunities provided to him thereby, in reliance of the terms of employment offered by Defendant;
3. That with over \_\_\_\_\_ years of experience in the field of \_\_\_\_\_\_\_, including his holding the position of \_\_\_\_\_\_\_\_\_\_\_ with \_\_\_\_\_\_\_\_ (*previous employer*) immediately prior to his employment at Defendant, Plaintiff’s experience speaks for itself;

*Plaintiff’s current age*

1. Plaintiff is currently \_\_\_\_\_ years of age, placing him in the final stage of his career;

*Reasons/consequences of dismissal*

1. In fact Plaintiff has been unable to find employment since Defendant’s dismissal thereof and for which his dismissal from Defendant is often cited or being of concern to potential employers;
2. That Plaintiff’s inability to find employment since Defendant’s dismissal thereof is attributable to the fact that Defendant cannot explain to potential employers his

reasons for having been dismissed from Defendant, who never offered any concrete facts or justification therefor;

*Nature of the position*

1. That Plaintiff’s experience is professional and executive in status and senior management in nature as confirmed by his being solicited and hired as \_\_\_\_\_\_\_\_\_\_\_\_\_ for Defendant;
2. That positions of this nature are limited and competitively sought by a relatively small community of qualified applicants in the Montreal area;
3. That despite relentless pursuits therefor in Montreal, Plaintiff has been unable to find employment in a similar position, over the last \_\_\_\_\_\_ years;

*State of the economy*

1. That Plaintiff’s employment with Defendant was terminated during a recession in the general economy limited his chances of finding similar employment within a reasonable timeframe;
2. The confounding effects of the headings mentioned immediately hereinabove (*Plaintiff’s active solicitation from another job, Plaintiff’s current age, Reasons/consequences of dismissal, Nature of the position and State of the economy,* collectively the “**Compounding Factors**”*),* have led to Plaintiff’s continued inability to secure employment, either on a contract basis or otherwise, since his dismissal from Defendant;
3. Notwithstanding Plaintiff’s \_\_\_\_ (\_\_\_\_) months spent with Defendant as \_\_\_\_\_\_\_\_\_\_, Plaintiff is justified in claiming \_\_\_\_\_\_\_\_\_\_\_\_\_ (*amount sought*) of Effective Salary from Defendant who showed bad faith, in that:
   1. Defendant failed to give Plaintiff any form of warning of their dissatisfaction with his performance and given that, showed a calculated disregard for Plaintiff’s rights and indifference to the damages which Defendant should have known would result to Plaintiff from such an abrupt and wholly unexpected and unjustified dismissal;
   2. The Compounding Factors, were never taken into account in their Offer;
   3. That Defendant’s dismissal was unjustified and devoid of any factual basis, as confirmed by the letter of termination of employment, EXHIBIT P-2;
4. That Plaintiff’s claim for \_\_\_\_\_\_\_\_\_\_\_ of Effective Salary is reasonable given Defendant’s bad faith, the Compounding Factors and the spontaneous and unjustified nature of Plaintiff’s termination of employment by Defendant;
5. That the present right of action arose in the judicial district of Montréal;
6. That the present introductory motion is well founded in fact and in law.

**WHEREFORE, PLAINTIFF PRAYS THAT BY JUDGMENT TO INTERVENE HEREIN, THIS HONOURABLE COURT:**

**GRANT** the present Application;

**CONDEMN** Defendant, to pay the amount of **$\_\_\_\_\_\_\_\_\_\_**.00 with interest from the date of termination of employment since \_\_\_\_\_\_\_\_\_\_\_\_, at the legal rate, plus the additional indemnity provided at article 1619 of the *Civil Code of Québec*;

**THE WHOLE** with costs against Defendant.

|  |  |
| --- | --- |
|  |  |