

1 R. Brian Dixon, Bar No. 076247
bdixon@littler.com
2 Kurt R. Bockes, Bar No. 171647
kbockes@littler.com
3 LITTLER MENDELSON P.C.
333 Bush Street
4 34th Floor
San Francisco, California 94104
5 Telephone: 415.433.1940
Fax No.: 415.399.8490
6

7 Attorneys for Defendant
THE UNIVERSITY OF PHOENIX, INC.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 GERALD WHILTON OLIVAS, an individual,
12 on behalf of the State of California, as a private
attorney general,

13 Plaintiff,

14 v.

15 THE UNIVERSITY OF PHOENIX, INC.; and
16 DOES 1 thru 50, inclusive,

17 Defendants.
18
19

Case No. RG21091953

**DECLARATION OF R. BRIAN DIXON
IN SUPPORT OF MOTION FOR
REPRESENTATIVE ACTION**

ASSIGNED FOR ALL PURPOSES TO
JUDGE Hon. Frank Roesch

Date: May 9, 2024
Time: 3:30 P.M.
Dept: 17
Resv. No: 713827794848

Complaint Filed: February 19, 2021

20 I, R. Brian Dixon, hereby depose and state:

21 I am an attorney admitted to practice before this court and am counsel for Defendant,
22 University of Phoenix, Inc., in this matter. If called to testify as a witness in the instant matter, I
23 can and would testify to the following. The following is based on my personal knowledge except
24 as to such matters as are stated to be based upon information and belief and as to such matters,
25 I believe them to be true. Defendant was prepared to support through witness testimony and
26 documentary evidence the assertions below which are stated to be based on information and
27 belief. This declaration is submitted in support of Plaintiff's Motion for Representative Action.
28

1 1. Plaintiff worked from his home to teach courses to students of Defendant.
2 Plaintiff used his personal computer and internet service to teach the courses. Plaintiff contended
3 that he had to use additional personal facilities to perform his work, such as a cell phone and
4 personal memory storage device. Defendant denies that any other personal facilities were needed
5 because it provided a comprehensive suite of teaching software and other applications such as a
6 web-based telephone application and web-based cloud storage for documents.

7 2. I am informed and believe that Plaintiff's claims regarding other employees during
8 the period prior to the COVID pandemic cover multiple groups of employees and essentially two
9 time periods. Prior to the COVID pandemic, "remote" associate faculty – who were part-time
10 employees - taught on line and had access to the resources of campus Faculty Resource Centers.
11 "Ground" associate faculty taught on campuses and had immediate access to Resource Centers.
12 Full-time staff who worked on campuses had no expenses as they were provided offices,
13 computers, phones and anything else needed to do their jobs. Full-time staff who also taught an
14 occasional additional course could do so with the offices, computers, phones and anything else
15 needed to do their jobs provided by the University. Some full-time staff were required to work on
16 campus several days a week and could elect to work at home other days. The few full-time staff
17 who worked remotely could also use the Resource Centers if they were faculty.

18 3. I am informed and believe that the Defendant temporarily closed its campuses due
19 to COVID on March 16, 2020. The effect of the closure varied by groups of employees. For
20 "remote" associate faculty, the closure of the campuses had relatively little impact. For "ground"
21 associate faculty there was a cost and convenience savings in that they no longer had to commute
22 to Defendant's campuses while the campuses were closed. For staff who worked on campuses,
23 there was a cost and convenience savings as they did not have to commute to campuses while the
24 campuses were closed and they were allowed to take their computers and related technical
25 equipment and even chairs to their homes. For staff who worked part-time on campus and
26 worked by choice part-time at home, the staff would be able to expand their work from home
27 preference to full-time work from home.

1 4. I am informed and believe that the Defendant began to reimburse employees for
2 their expenses when the campuses closed. The Defendant began to reimburse full-time staff
3 \$11.50 per bi-weekly pay period for expenses effective March 15, 2020. The Defendant began to
4 reimburse associate faculty \$10.50 per bi-weekly pay period per course effective April 5, 2020.
5 If an associate faculty member taught two courses, the reimbursement rate would be \$21.00 per
6 bi-weekly pay period. The reimbursements were different because staff were given computers to
7 use, had dedicated phone numbers to use to make calls and could order supplies through the
8 Defendant.

9 5. Defendant's principal contention in regard to defraying expenses prior to the
10 implementation of a formal expense reimbursement policy was that adjunct faculty could use
11 Faculty Resource Centers to perform their work. I am informed and believe that Faculty
12 Resource Centers were located on Defendant's 21 campuses throughout the state. Faculty
13 Resource Centers provided multiple computers, printers, telephones and other facilities.
14 Resource Centers also provided casual chairs and tables for informal meetings. Defendant's
15 statistician showed that most all faculty lived within commute distance of Resource Centers:

	Faculty Distance from Campuses						
Distance	01 - 05 miles	6 - 10 miles	11 - 15 miles	16 - 20 miles	21 - 25 miles	26 - 30 miles	Over 30 miles
Percent of Faculty	15.58	26.64	22.01	14.56	6.88	4.4	7.79

21 Defendant was also prepared to show that many employees had offices or workstations on
22 campuses which they could use to perform all their work and voluntarily chose to work at home
23 some days of the week.

24 6. I am informed and believe that Defendant implemented a formal monthly expense
25 reimbursement policy when it closed its campuses due to the COVID pandemic. Plaintiff
26 contended that the reimbursement was insufficient. Defendant conducted a survey of computer
27 and telephone use by out-of-state employees and surveyed local market costs before determining
28 the reimbursement rate. Defendant further rejoined that the obligation to reimburse any expenses

1 for employees who worked at home was offset by the employees' savings regarding commuting
2 time, commuting cost, savings in regard to not having to dress for work and the convenience and
3 cost of not having to eat meals away from home.

4 I hereby declare under penalty of perjury that the foregoing is true and correct. Executed
5 in San Rafael, California, on March 26, 2024.

6
7 By:


8 R. Brian Dixon

9 4887-0383-9920.1 / 073540-1177
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On April 12, 2024, I served all interested parties in this action the following documents described as: **DECLARATION OF R. BRIAN DIXON IN SUPPORT OF MOTION FOR REPRESENTATIVE ACTION** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

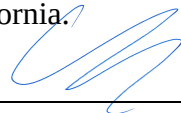
R. Brian Dixon
bdixon@littler.com
Kurt R. Bockes
kbockes@littler.com
Littler Mendelson, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 12, 2024, at Woodland Hills, California.



Michelle Tanzer