

*Trudy Hanson Fouser*

July 21, 2023

Raúl Labrador  
Office of the Attorney General for the State of Idaho  
700 W. Jefferson St. #210  
Boise, Idaho 83720

**Re:    *Labrador v. Idaho State Board of Education***  
**Case No: CV01-23-09996**  
**GF File No.: 11270.001**

Dear Mr. Labrador:

We write on behalf of the Regents of the University of Idaho and the Idaho State Board of Education.

In your Complaint dated June 20, 2023, you allege “[o]n information and belief” that “no governing body was in competition with the University of Idaho to acquire the University of Phoenix at the time of the executive session on May 15, 2023.” *Complaint*, ¶ 68. Similarly, you allege that “at the time of the May 15, 2023, executive session, the University of Arkansas had already removed itself from competition over the University of Phoenix.” *Id.*, ¶ 67.

It is unclear what “information” you based such allegations upon. However, we write to draw your attention to the two attached letters, which demonstrate that whatever information you possessed, if any, was false. The attached letters confirm that both the University of Arkansas as well as other state university systems remained in competition for the acquisition of the University of Phoenix as of May 15, 2023. Specifically, the letter from Tyton Partners<sup>1</sup> states that a representative of “Party A” (the University of Arkansas) “informed us after the state university system’s April 26<sup>th</sup> Board of Trustee meeting that Party A still wanted to pursue a potential acquisition.” Indeed, “Party A representatives remained active in the process and accessed the virtual data room that we were maintaining on UoP’s behalf multiple times, including in the second half of May.”

The letter goes on to confirm that Party A was not the only interested state buyer, and that while Tyson Partners “had UoP primarily focused on the transaction with UI and Party B . . . we

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<sup>1</sup> Tyton Partners “were engaged as financial advisors to UoP in connection with a potential sale transaction.”

continued to support an expanded suite of parties including both state university buyers and private, non-state buyers.”

Tyson Partners’ letter further confirms that “Party C,” who is described as being “another highly reputable state university system who had expressed interest in an acquisition of the University of Phoenix,” was in competition with the University of Idaho as of the date of the executive session:

While they could not meet the expedited timing commitments of UI and Party B, Party C, similar to Party A, was a credible potential buyer who had prior experience in acquiring other online education focused universities. We continued to view Party C as another viable alternative if UI or Party B could not satisfy the aforementioned timing expectations. Our discussions with senior leadership of Party C remained current during the month of May in an effort to maintain their interest while they organized their efforts. **UI was aware of our ongoing discussions with other potential buyers including state universities and private entities and understood that those parties remained viable alternatives.**

Accordingly, your allegations about the lack of competition over the University of Phoenix are false. To the degree that you or your office previously possessed “knowledge, information, and belief, formed after an inquiry reasonable under the circumstances” to assert such allegations, that can no longer be the case.

Because there is no question as to whether the University of Idaho was in “competition with governing bodies in other states or nations,” and because there can be no serious question as to whether the Regents of the University of Idaho entered into executive session to “consider preliminary negotiations,” your allegations that the Regents of the University of Idaho violated Idaho law by entering into executive session are meritless.

In light of the above, it is clear that the Regents of the University of Idaho complied with Idaho law. You have previously expressed concern about “wasting taxpayer funds and resources by prolonging litigation.” Our client strongly agrees. Taxpayers of the State of Idaho should not be paying for this unnecessary litigation. Therefore, we ask that you withdraw your Complaint immediately. Should you decline to do so, we will be forced to seek appropriate remedies.

Raul Labrador  
July 21, 2023  
Pg. 3

Sincerely,

GJORDING FOUSER PLLC

*Trudy Hanson Fouser*

Trudy Hanson Fouser

THF/EWS:em

Enclosures

cc: Timothy Longfield  
Theo Wold



CONFIDENTIAL

June 27, 2023

**Via Email Only**

The University of Idaho  
875 Perimeter Drive MS 3158  
Moscow, ID 83844  
Attention: C. Scott Green, President

Dear President Green,

As you have requested, we are writing to confirm the background leading up to our transaction and our signing of an asset purchase agreement with Four Three Education, Inc. in May 2023. The University of Phoenix (“we”, “our”, “us” or “UoP”) has, from time to time over the last several years, explored the possibility of different strategic transactions involving UoP since our current ownership group, while committed to our long-term growth and success, are ultimately financial investors that will not continue their ownership in perpetuity.

In April 2021, the Board of Trustees of the University of Phoenix appointed Tyton Partners as financial advisors in connection with a potential sale transaction. Tyton’s responsibilities included outreach to parties who may be interested in acquiring UoP, as well as managing subsequent steps in the sale process such as entry into non-disclosure agreements, provision of non-public and proprietary information for due diligence purposes and assisting with negotiation of key commercial terms.

After several rounds of discussions with interested parties and receiving multiple offers, by 2022, we, based on advice from Tyton and other advisors, decided to engage primarily with a non-profit buyer who had an affiliation with a highly reputable state university system (“Party A”) towards an outright acquisition of the assets and liabilities of UoP.

However, after months of continued negotiations with Party A, by January 2023, we decided to re-establish conversations with other potential buyers in order to best position the University of Phoenix to finalize a strategic transaction by no later than May 2023. While continuing to engage with Party A, Tyton reconnected with (a) parties who had been previously contacted, (b) new state university buyers who were interested in a strategic transaction with us, including the University of Idaho (“UI”), and (c) non-state and non-university buyers. The renewed outreach resulted in other interested parties, with the most viable offers, in addition to the existing proposal from Party A, coming from (i) UI and (ii) a non-state / non-governmental buyer (“Party B”).

At the same time, on April 26<sup>th</sup>, the likelihood of completing a transaction with Party A significantly diminished after it failed to garner the support from the system's Board of Trustees, some of which was reported by the media. By the time of the final discussions and negotiations in May 2023, the sole competition to UI proposal was from the offer from Party B, a non-state / non-governmental buyer.

Owing in large part to the cultural alignment and leadership strength of UI, we decided to move forward with them and were honored to be unanimously supported by the Idaho State Board of Education. In weeks following, we were very pleased to be able to enter into a transaction with Four Three Education, Inc. and are excited about our future affiliation with you.

Sincerely,

A handwritten signature in black ink that reads "Chris Lynne". The signature is written in a cursive, flowing style.

Chris Lynne  
President  
The University of Phoenix, Inc.



CONFIDENTIAL

July 18, 2023

**Via Email Only**

The University of Idaho  
875 Perimeter Drive MS 3158  
Moscow, ID 83844  
Attention: C. Scott Green, President

Dear President Green,

I make reference to the letter dated June 27, 2023 (the “June Letter”) from Chris Lynne, President of the University of Phoenix (“UoP”), describing certain background information regarding the sale process leading up to the University of Phoenix’s (“UoP”) signing of an asset purchase agreement with Four Three Education, Inc. (“Four Three”) in May 2023.

As noted in the June Letter, Tyton Partners (“we” or “our”) were engaged as financial advisors to UoP in connection with a potential sale transaction. The June Letter focused on the competition between the University of Idaho (“UI”) and a non-state / non-governmental buyer (“Party B”) at the time of final discussions and negotiations in May 2023, and we wish to supplement the June Letter with additional information regarding the competitive dynamics of the sale process.

In May 2023, we felt the proposals from UI and Party B were most comparable to each other since they were written proposals for an acquisition of UoP and both buyers represented their abilities to finalize due diligence, negotiations and signing of transaction agreements in an expedited timeframe. However, in addition to UI and Party B, we, on a parallel track, continued to engage with other parties who remained interested in a potential acquisition of the University of Phoenix but required additional time for varying reasons. Hence, we had UoP primarily focused on the transaction with UI and Party B while we continued to support an expanded suite of parties including both state university buyers and private, non-state buyers.

UoP dedicated less time and resources to those additional parties in May 2023, compared to the efforts dedicated to UI and Party B, since those parties would have had a difficult time matching the commitment of UI and Party B to finalize a transaction in the next few weeks, among other factors. However, we and UoP continued to view those parties as viable potential buyers that would compete with UI and Party B, should neither UI nor Party B deliver on their commitment to finalize a transaction on the timelines put forward by such parties.



This group of other potential buyers included the non-profit buyer affiliated with a highly reputable state university system (“Party A”), whose engagement with UoP was described in the June Letter. A representative of Party A had informed us after the state university system’s April 26<sup>th</sup> Board of Trustee meeting that Party A still wanted to pursue a potential acquisition. However, while still very interested, given the recent Trustee board vote, Party A needed additional time to either (i) build internal support from their Trustees for the same contemplated transaction and/or (ii) bring in broader external partners to support the acquisition of UoP. We gave Party A the approval needed on UoP’s side to continue to garner the support they needed for a potential transaction. In concert with that intent, Party A representatives remained active in the process, and accessed the virtual data room that we were maintaining on UoP’s behalf multiple times, including in the second half of May.

We also had ongoing discussions with a separate potential buyer affiliated with another highly reputable state university system who had expressed interest in an acquisition of the University of Phoenix (“Party C”). While they could not meet the expedited timing commitments of UI and Party B, Party C, similar to Party A, was a credible potential buyer who had prior experience in acquiring other online education focused universities. We continued to view Party C as another viable alternative if UI or Party B could not satisfy the aforementioned timing expectations. Our discussions with senior leadership of Party C remained current during the month of May in an effort to maintain their interest while they organized their efforts. UI was aware of our ongoing discussions with other potential buyers including state universities and private entities and understood that those parties remained viable alternatives.

We hope that these additional details assist you in any further questions that have arisen regarding UoP’s sale process. Please do not hesitate to reach out if further background is needed by you or others on the Four Three team. We look forward to continuing to work with you and UoP as you move towards completion of your transaction.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory K. Finkelstein", with a long horizontal flourish extending to the right.

Gregory K. Finkelstein  
Managing Director  
Tyton Partners