

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Investigation on the Commission's Own Motion into the California's One Million New Internet Users Coalition's Misuse of California Advanced Services Fund Grant Funds; and Order to Show Cause Why the Commission Should Not Impose Penalties and/or Other Remedies for Violating Terms of Their Grant and for Refusing to Return Funds Previously Demanded by the Commission's Division.

Investigation 18-07-009

**CONSUMER PROTECTION AND ENFORCEMENT DIVISION'S
CASE MANAGEMENT STATEMENT**

Pursuant to the March 10, 2020 Ruling of Administrative Law Judge (ALJ) Zhen Zhang, the California Public Utilities Commission's Consumer Protection and Enforcement Division (CPED) files this Case Management Statement (Statement) in the above-captioned Application proceeding responding to ALJ Zhang's five questions.

The parties respond to the questions posed by the ALJ as follows:

1. Identify the parties remaining in the proceeding post alternative dispute resolution.

CPED and the following parties intend to file motions requesting their dismissal for good cause: Asian Pacific Community Fund, Black Business Association, and Soledad Enrichment Action – Charter Schools. Additionally, CPED and Korean Churches for Community Development (KCCD) have entered into a settlement in principle and intend to file a settlement motion by the end of this month. CPED was unable to reach an agreement with Mr. Larry Ortega and Community Union Inc. (hereafter altogether Respondents).

2. Discuss discovery issues.

CPED seeks to ascertain information and documents from Mr. Larry Ortega, founder of the NIU Coalition and President and CEO of Community Union, Inc. to examine pertinent issues in this proceeding including, but not limited to, the NIU Coalition's actual expenses incurred related to CASF program expenses and any additional income (e.g. grants) received by Respondents during the same time period as the CASF grant period. Additionally, in light of Respondents claim for the first time that it is "experiencing extreme financial hardship,"¹ the financial documents requested for in CPED's first data request issued in July 2017 are relevant.

Respondents have had ample opportunity to provide responsive information to the data request. CPED issued the first data request in July 2017. Then, shortly after the conclusion of mediation, CPED issued a second data request to Respondents on February 21, 2020 containing nearly identical requests as its July 2017 data request. However, to date, Respondents have refused to provide responsive information and documents, instead raising claims that it is "premature" given that the schedule for this proceeding has not yet been established. Respondents additionally question the basis for CPED's authority to propound data requests on Respondents.

Mr. Ortega made similar objections to the first data request issued by CPED in 2017. For instance, Mr. Ortega challenged CPED's authority "on the grounds that KCCD . . . nor our organization are utility companies" and that "there is [no] formal Proceeding."² CPED responded issuing a Notice of Violation and the basis for its authority.³

Once again, Respondents continue to delay CPED's discovery efforts. While Mr. Ortega claims that "[t]his in no way should be interpreted as an unwillingness to

¹ Email from Larry Ortega to CPED's attorney (and the service list) dated March 7, 2020.

² OII, Exh. 22, *Notice of Violation to California's One Million New Internet Users Coalition (NIU) for Failing to Provide Information and Responses Pursuant to Data Request 1.0*, p. 1.

³ OII, Exh. 22, *Notice of Violation to California's One Million New Internet Users Coalition (NIU) for Failing to Provide Information and Responses Pursuant to Data Request 1.0*, p. 1 (citing Commission Resolution T-17233, p. 5.)

clear this matter-up, or to cooperate in getting to the facts as to what actually transpired in this matter,” his failure to provide any responsive information or documents is to the contrary.⁴

3. Identify the principal factual disputes to be litigated at the evidentiary hearing.

The following are disputed issues of fact known at this time:

- a. Did Respondents record all of their revenues and expenses in a general ledger under generally acceptable accounting procedures?
- b. Have Respondents produced the general ledger above?
- c. What other revenues or funds did Respondents collect and/or receive from sources other than the CASF grant/program?
- d. Did Respondents collect or seek to collect duplicate funding from other sources using the same expenses charged to the CASF grant/program?
- e. Did Respondents meet their performance metric of 40 hours of technology training consistent with the Work Plan they proposed in their grant application?
- f. Did Respondents meet their performance metric for the first two years of the CASF grant period of 790 attendees per year in accordance with the Work Plan they proposed in their grant application?
- g. Did Respondents meet their performance metric for the first two years of the CASF grant period of graduating 65% or 514 graduates to enter the post-NIU workshops?
- h. Did Respondents notify the Communications Division Director at least 30 days before reducing their technology training to less than 40 hours?
- i. Should Respondents return \$197,764 in CASF funds?
 - a) Were the invoices submitted to the Communications Division sufficiently detailed to support the reimbursements sought?
 - b) Are the time cards produced by Mr. Ortega to the State Controller’s Office reliable sources of information to indicate that such activities took place?

⁴ Email from Larry Ortega to CPED’s attorney (and the service list) dated March 7, 2020.

- j. Did Respondents violate Rule 1.1 when it reported 40 hours of technology training in its Work Plan but had actually reduced its training to less than 40 hours.
- k. Should Respondents be subject to penalties for violations of Commission orders and requirements?
- l. Should Respondents be barred from receiving funds from future Commission public purpose programs?

The following facts are unknown at this time but have been requested for in CPED's data requests and may be in dispute upon further review and examination:

- a. Respondents' current financial position;
- b. Respondents' total actual revenues including all of its other grant sources; and
- c. Respondents' total actual expenses.

4. Identify witnesses from whom testimony will be served, and who will be available for cross examination at the evidentiary hearing.

Mr. Brian Hom from CPED intends to serve testimony.

The following witnesses will be available for cross examination at evidentiary hearings:

- a. Brian Hom, Regulatory Analyst for CPED.
- b. Chris Prasad, former Audit Manager, State Agency Audits Bureau with the Office of State Controller Division of Audits. Chris' current title is, CPA, CFE Director Office of Program Oversight & Accountability, California Department of Justice.
- c. Andy Finlayson, Bureau Chief of the Office of State Controller Division of Audits.
- d. Rob Osborn, Director of Communications Division. CPED, is in the process of confirming the person(s) from the Communications Division who are most knowledgeable on the CASF grant award to the NIU Coalition and Respondents performance during the grant period. CPED will identify additional witnesses from CD within the next two weeks.

5. Comment on the schedule for the proceeding as set forth below.

CPED generally agrees with the ALJ's proposed schedule, assuming CPED receives from Respondents full and complete responses to its data requests and so long as Respondents do not proffer new evidence in their Opening Testimony or at

a later time in this proceeding. CPED reserves the opportunity to request an extension to the date for the conclusion of discovery or its reply testimony, if it deems necessary.

CPED requests a slight extension of time for the submission of its reply testimony, concurrent opening briefs, and concurrent reply briefs. As indicated in bolded and strikethrough text, below are the changes CPED requests.

Event	Date
Conclude Discovery	April 17, 2020
Joint Stipulated Facts Filed	April 29, 2020
Defendants' Opening Testimony Served	April 29, 2020
Consumer Protection and Enforcement Division Reply Testimony Served	May 8, 2020 May 13, 2020
Defendants' Rebuttal Testimony Served	May 20, 2020
Evidentiary Hearing	June 1 and 2, 2020
Concurrent Opening Briefs	June 10, 2020 June 17, 2020
Concurrent Reply Briefs	June 17, 2020 June 26, 2020

Respectfully submitted,

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