

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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.

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Investigation 18-07-009

**COMMUNITY UNION, INC. AND CONSUMER PROTECTION ENFORCEMENT DIVISION NONDISCLOSURE  
AND PROTECTIVE AGREEMENT**

This filing is pursuant to ALJ Zhang's June 22, 2020 Email Ruling Granting CPED's Motion to Compel Responses to Data Requests.

This Nondisclosure and Protective Agreement ("Agreement") is effective this 23rd day of July, 2020, by and between Community Union, Inc. and its President, pro se representative of record, and Consumer Protection Enforcement Division and its counsel of record.

WHEREAS, certain information or work-papers that may be and has been requested and provided to be produced or disclosed in the above-referenced proceedings (the "Proceedings") may constitute trade secrets, proprietary and confidential information, or competitively sensitive documents (the "PROTECTED MATERIALS"); and

WHEREAS, the parties hereto wish to streamline discovery and facilitate preparation of testimony in the Proceedings and avoid unnecessary law and motion practice; and

WHEREAS, the parties hereto believe that this Agreement will facilitate the evaluation of Community Union's testimony, facilitate discovery, protect legitimate proprietary or confidentiality concerns, and preserve the rights of the parties and those third-parties that possess rights in the

PROTECTED MATERIALS;

ACCORDINGLY, the parties hereto agree that the following terms and conditions shall govern the use of such workpapers or information provided by Community Union, Inc. (the "Designating Party") to Consumer Protection Enforcement Division (the "Receiving Party") in the context of the Proceedings:

1. This Agreement shall govern all PROTECTED MATERIALS produced by the Designating Party and shall remain effective until the requirements of paragraph 5 below are satisfied.

2. The Designating Party may designate as PROTECTED MATERIALS those items provided through discovery, upon request, or otherwise which are treated by the Designating Community Union, Inc.s confidential or proprietary, which are not available to the public, and which, if disclosed freely, would, in the Designating Party's judgment, subject it to risk of competitive disadvantage or other business injury, including liability under a license or subscription agreement with third-parties.

3. For purposes of this Agreement:

a. The term "PROTECTED MATERIALS" includes (a) material provided by Community Union, Inc. in response to discovery requests or in compliance with Rule 74.1, et seq. of the Commission's Rules of Practice and Procedure, and designated by Community Union, Inc. as protected, including, but not limited to client personal information, e.g. addresses, phone numbers, demographic information, birth dates, number of children, schools attended/attending, etc., consultant personal information e.g. invoices, addresses, phone numbers, social security numbers, rates paid , etc., Memorandums of Understanding with Other Funding sources; General Ledger entries specific to amounts paid to Larry Ortega; (b) any copy or reproduction of such designated materials; (c) any information contained in or obtained from such designated materials; (d) any other materials which are made subject to this Agreement by the Administrative Law Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the parties hereto; and (e) notes of PROTECTED MATERIALS. Notwithstanding the above, Receiving Party shall not have breached any obligation under this Agreement if Protected Material is disclosed to a third party when the Protected Material: (1) was in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; (2) had been received by the Receiving Party at the time of disclosure through other means without restriction on its use, or had been independently developed by the Receiving Party as shown through documentation; or (3) is subsequently disclosed to the Receiving Party by a third party without restriction on use and without breach of any agreement or legal duty.

b. The term "notes of PROTECTED MATERIALS" means memoranda, handwritten notes, or any other form of information which copies or discloses materials described in the foregoing paragraph.

c. The term "Reviewing Representative" is a person described in paragraphs 8 and 9.

d. The term "Commission" means the California Public Utilities Commission.

4. PROTECTED MATERIALS shall be made available under the terms of this Agreement only to the Reviewing Representatives as provided in paragraphs 8 and 9.

5. PROTECTED MATERIALS shall remain available until the date that this Proceeding is concluded or otherwise terminated by an order(s) of the Commission, which order(s) is no longer subject to judicial review. Within 30 days after such date, all Reviewing Representatives of the Receiving Party shall return the PROTECTED MATERIALS, including all copies thereof, and notes of PROTECTED MATERIALS to the Designating Party or shall destroy said materials. Within such time period the Receiving Party shall also submit to the Designating Party an affidavit stating that all PROTECTED MATERIALS, copies thereof, and notes of PROTECTED MATERIALS are being returned or have been destroyed by all Reviewing Representatives of the Receiving Party.

6. To the extent possible, each page of PROTECTED MATERIALS and each disk, electronic file containing PROTECTED MATERIALS shall be physically marked "PROTECTED MATERIAL" or "Contains Privileged Information - DO NOT RELEASE" by the Designating Party. All PROTECTED MATERIALS shall be maintained by the Receiving Party in a secure manner. Access shall be limited to those Reviewing Representatives specifically authorized pursuant to paragraphs 8 and 9.

7. PROTECTED MATERIALS covered by this Agreement shall be treated as confidential by the Receiving Party and by the Reviewing Representative in accordance with the certificate executed pursuant to paragraph 9. PROTECTED MATERIALS shall not be intentionally used except as necessary for the conduct of the Proceedings; nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this Proceeding and who needs to know the information in order to carry out that person's responsibilities in this Proceeding. Reviewing Representatives may make notes of PROTECTED MATERIALS which notes must be maintained in a secure manner pursuant to paragraph 6.

8. A Reviewing Representative is an individual who is:

- (i) An attorney who has made an appearance in this Proceeding for Receiving Party;
- (ii) Attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (i);

(iii) An expert or an employee of an expert retained by Receiving Party for the purpose of advising, preparing for, or testifying in this Proceeding; and

(iv) An employee of a Receiving Party who has a role in advising, preparing for, or testifying in this Proceeding.

9. a. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to the PROTECTED MATERIALS pursuant to this Agreement unless that Reviewing Representative has first executed, and there has been delivered to the Designating Party, a non-disclosure certificate in the form set forth in Appendix 1.

b. Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their employment, instruction, supervision or control comply with this Agreement.

10. Any Reviewing Representative may disclose PROTECTED MATERIALS to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative have both executed and delivered a non-disclosure certificate to the Designating Party. In the event that any Reviewing Representative to whom the PROTECTED MATERIALS are disclosed ceases to be engaged in these Proceedings, or is employed or retained for a position whereby that person is no longer qualified to be a Reviewing Representative under paragraph 8, access to PROTECTED MATERIALS by that person shall be terminated and that person must comply with the return/destruction requirements in paragraph 5. However, even if no longer engaged in this Proceeding, every person who has agreed to a nondisclosure certification shall continue to be bound by the provisions of this Agreement and the certification.

11. If the Receiving Party intends to submit or use in the Proceedings any PROTECTED MATERIALS in any written submission, including, without limitation, testimony, briefs, motions, comments, or protests, the Receiving Party shall submit two versions of such document: a full version under seal to the extent filed with the Commission or served on REVIEWING REPRESENTATIVES, labeled "CONTAINS PROTECTED MATERIALS – FOR REVIEWING REPRESENTATIVES ONLY" and a public version served on all other parties with PROTECTED MATERIALS redacted. If the Receiving Party intends to use in the Proceedings and/or in one or more of the dockets forming the Proceedings any PROTECTED MATERIALS such that the use would result in a public disclosure of those PROTECTED MATERIALS, including, without limitation, through cross-examination or other oral presentations before the Commission, the attorney for the Receiving Party shall contact the attorney/representative for the Designating Party as soon as possible prior to such use, and counsel shall constructively explore means of identifying the PROTECTED

MATERIAL so that the confidentiality thereof may be reasonably protected (including, but not limited to, clearing the hearing room during examination, discussion, or argument concerning the PROTECTED MATERIAL), while at the same time enabling an effective presentation. If the Designating Party and the Receiving Party are unable to agree upon a procedure to protect the confidentiality of the PROTECTED MATERIAL or if the Receiving Party asserts the PROTECTED MATERIALS should not be filed under seal, the Receiving Party shall request a ruling from the presiding Administrative Law Judge; the Designating Party reserves the right to oppose the Receiving Party's request. Except as expressly provided for herein, no use can be made of the PROTECTED MATERIAL that would fail to protect its confidentiality without such a ruling from the presiding Administrative Law Judge.

12. The presiding Administrative Law Judge retains the discretion to review and evaluate the facts and circumstances involved in any proposed use of PROTECTED MATERIAL in Commission hearings, and the flexibility to respond in whatever manner is most appropriate under the circumstances, including the holding of in camera hearings.

13. Nothing in this Agreement shall be construed as precluding any party from objecting to the use of PROTECTED MATERIALS on any legal grounds.

14. Nothing in this Agreement shall preclude any party from requesting the presiding Administrative Law Judge, the Commission or any other body having appropriate authority to find that this Agreement should not apply to all or any part of any materials previously designated as PROTECTED MATERIALS pursuant to this Agreement.

15. The presiding Administrative Law Judge shall resolve any disputes arising under this Agreement or refer such dispute to the Administrative Law Judge designated by the Commission to resolve law and motion matters. Prior to presenting any dispute under this Agreement to the presiding Administrative Law Judge or law and motion Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any objection to the designation of PROTECTED MATERIALS or motion to compel, and any response to the objection or motion to compel shall be filed in writing with the presiding Administrative Law Judge or law and motion Administrative Law Judge, and shall be delivered to the opposing party's counsel(s) of record within 24 hours of filing unless otherwise ordered by the presiding Administrative Law Judge or law and motion Administrative Law Judge. In any challenge to the designation of materials as PROTECTED MATERIALS, the burden of proof shall be on the Designating Party.

16. To the extent that PROTECTED MATERIALS are discussed, analyzed or otherwise the subject of consideration during any conference or other session held in connection with the Proceeding, only

Reviewing Representatives of any party may be present for such sessions.

17. The Receiving Party agrees that any release or attempted release of the PROTECTED MATERIALS or use of such materials other than as contemplated by this Agreement by a Receiving Party may cause Designating Party irreparable injury which could not be adequately compensated through pecuniary damages. Accordingly, the parties agree that any breach or threatened breach of this Agreement may be enjoined.

18. This Agreement shall be governed and construed according to the laws of the State of California.

19. This Agreement sets forth the complete understanding of the parties hereto with respect to the subject matter hereof as of the date above set forth and supersedes any prior understandings, discussions, or course of conduct (oral and written). Any modification or waiver of the provisions hereof must be written, executed by both parties, and shall not be implied by any usage of trade or course of conduct.

20. Nothing in this Agreement shall be deemed to preclude any party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in the Proceedings under this Agreement.

21. This Agreement may be executed in separate counterparts by each party, each of which shall be fully effective as to the party executing it

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date entered below.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Attorney for:

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Attorney for: