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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10  
11

12 In the Matter of ) FPPC No. 10/1007  
13 )  
14 TATSUYA SUDA, ) STIPULATION, DECISION and  
15 ) ORDER  
16 Respondent. )  
17 )

18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,  
19 and Respondent Tatsuya Suda agree that this stipulation will be submitted for consideration by the Fair  
20 Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this stipulation to resolve all factual and legal issues raised in this  
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to  
23 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the  
27 right to personally appear at any administrative hearing held in this matter, to be represented by an  
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge  
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Tatsuya Suda violated the Political Reform  
4 Act by failing to disclose certain economic interests in Form 700Us filed in conjunction with research  
5 projects at the University of California, Irvine, in violation of Government Code Section 87300 (4  
6 counts). All counts are described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by  
7 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this  
8 matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.  
10 Respondents also agree to the Commission imposing upon him an administrative penalty in the amount  
11 of Fourteen Thousand Dollars (\$14,000). A cashier's check from Respondent in said amount, made  
12 payable to the "General Fund of the State of California," is submitted with this Stipulation as full  
13 payment of the administrative penalty, to be held by the State of California until the Commission issues  
14 its decision and order regarding this matter. The parties agree that in the event the Commission refuses  
15 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the  
16 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in  
17 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and  
18 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the  
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,  
20 shall be disqualified because of prior consideration of this Stipulation.

21  
22 Dated: \_\_\_\_\_  
23 Roman G. Porter, Executive Director  
24 Fair Political Practices Commission

25  
26 Dated: \_\_\_\_\_  
27 Tatsuya Suda, Respondent  
28

1 **DECISION AND ORDER**

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3 The foregoing Stipulation of the parties “In the Matter of Tatsuya Suda,” FPPC No. 10/1007,  
4 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political  
5 Practices Commission, effective upon execution below by the Chairman.

6  
7 IT IS SO ORDERED.

8  
9 Dated: \_\_\_\_\_

\_\_\_\_\_   
Dan Schnur, Chairman  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Suda is a professor of computer science and Principal Investigator at the University of California, Irvine (hereafter “UCI”) School of Information and Computer Science at all times relevant to this complaint. Principal Investigators are specifically covered under the University of California’s Conflict of Interest Code, and are required to file a special statement of economic interests, FPPC Form 700U (hereafter “Form 700U”).<sup>1</sup> The Form 700U, filed in conjunction with the Principal Investigator’s application for approval of non-governmental funding for research projects, requires disclosure of the Principal Investigator’s economic interests, if any, in the non-governmental funding source.

In this matter, Respondent Suda submitted application statements, as a Principal Investigator, for four research projects that would be funded by non-governmental entities. On the Form 700U filed with each of these applications, Respondent Suda declared that he did not have an economic interest in the non-governmental funding source. However, in each instance, the non-governmental funding source was a source of income to Respondent during the 12 months preceding the application date.

For the purposes of this Stipulation, Respondent’s violations of the Political Reform Act are stated as follows:

- COUNT 1:** On or about April 7, 2006, Respondent Tatsuya Suda failed to disclose his position as a consultant with KDDI on the Form 700U he filed in conjunction with an application for a research project for which \$150,000 in funding was to be provided by KDDI, in violation of Section 87300 of the Government Code.
- COUNT 2:** On or about July 23, 2009, Respondent Tatsuya Suda failed to disclose KDDI as a source of income on the Form 700U he filed in conjunction with an application for a research project for which \$80,000 in funding was to be provided by KDDI, in violation of Section 87300 of the Government Code.
- COUNT 3:** On or about December 11, 2007, Respondent Tatsuya Suda failed to disclose NEC as a source of income on the Form 700U he filed in conjunction with an application for a research project for which \$50,000 in funding was to be provided by NEC, in violation of Section 87300 of the Government Code.
- COUNT 4:** On or about March 24, 2008, Respondent Tatsuya Suda failed to disclose NEC as a source of income on the Form 700U he filed in conjunction with an application for a research project for which \$50,000 in funding was to be provided by NEC, in violation of Section 87300 of the Government Code.

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<sup>1</sup> A “Principal Investigator” is a faculty member who additionally conducts research for non-University entities, both governmental and private, under grants or other funding mechanisms that are subject to the control and approval of the University. All Principal Investigators are faculty members; however, not all faculty members are Principal Investigators.

## SUMMARY OF THE LAW

A finding on which the Political Reform Act (the “Act”)<sup>2</sup> is based is that public officials should perform their duties in an impartial manner, free from bias caused by their own financial interests or the interests of persons who have supported them. (Section 81001, subdivision (b).) Accordingly, one of the stated purposes of the Act is that the assets and income of public officials, which may be materially affected by their official actions, must be disclosed, and in appropriate circumstances, that public officials disqualify themselves from acting, so that conflicts of interest may be avoided. (Section 81002, subd. (c).)

### A. Disclosure of Economic Interests

In furtherance of the purpose of disclosure, the Act requires every agency to adopt and promulgate a Conflict of Interest Code. Section 87302 specifies that an agency’s Conflict of Interest Code must designate the employees who are required to disclose reportable investments, business positions, interests in real property, sources of income and gifts on a statement of economic interests.

The Act defines “income” to include “a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse.” (Section 82030.) In addition, instructions on the cover page of the Form 700-U have consistently included language outlining specific disclosure requirements consistent with this definition.

Regulation 18755 outlines requirements for the disclosure of financial interests and disqualification with respect to certain academic decisions. In Regulation 18755, the Commission mandated a specific procedure for universities to establish, through their respective conflict of interest codes, for persons receiving grants or other funding from outside sources to conduct research.

“Disclosure shall be required under Government Code Section 87302 or any Conflict of Interest Code in connection with a decision made by a person or persons at an institution of higher education with principal responsibility for a research project to undertake such research, if it is to be funded or supported, in whole or in part, by (1) A contract or grant from a non-governmental entity or sponsor, or (2) Other funds earmarked by the donor for a specific research project or for a specific researcher. (Regulation 18755, subdivision (a).)

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<sup>2</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Section 18109, *et seq.* All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

The agency's Conflict of Interest Code, including any procedures or policies it establishes in compliance with Regulation 18755, has the force and effect of law, and any violation of the code, or its policies or procedures, would be a violation of the Act. (Section 87300.)

### **SUMMARY OF THE FACTS**

During his employment with UCI, Respondent Suda prepared and submitted application statements to the UCI Conflict of Interest Oversight Committee, as a Principal Investigator, for approval to receive funding from non-governmental entities for research he conducted at UCI. In conjunction with these applications, Respondent Suda filed a Form 700U, under penalty of perjury, declaring whether he had a financial interest in the non-governmental funding sources.

In compliance with Regulation 18755, the University of California established a policy, as part of its conflict of interest code, regarding disclosure and disqualification related to academic decisions. The "University Policy on Disclosure of Financial Interests in Private Sponsors of Research" provides in part:

"A principal investigator must disclose whether or not he or she has a direct or indirect financial interest in the sponsor of research which is funded in whole or in part, (a) through a contract or grant with a non-governmental entity or (b) by a gift from a non-governmental entity which is earmarked by the donor for a specific research project or specific principal investigator.

Disclosure statements (Form 700U) must be filed (a) before final acceptance of such contract, grant, or gift; (b) when funding is renewed; and (c) within 90 days after expiration in the case of a contract or grant, or after funds have been completely expended in the case of a gift. The Statements will be open to public inspection. When disclosure indicates that a financial interest exists, an independent substantive review of the disclosure statement and the research project must take place prior to acceptance of the contract, grant or gift."

UCI established a Conflict of Interest Oversight Committee (COIOC) (hereafter "COIOC") to provide an independent substantive review of the Form 700U filed by a Principal Investigator, whenever there is a positive financial disclosure in the non-governmental funding source for the Principal Investigator's research. The COIOC considers a number of factors to determine the seriousness of the potential conflict, and whether and how the conflict can be managed. The committee can recommend approval of the disclosure, which means a non-governmental funding source can be accepted. The COIOC can also recommend a reduction or elimination of the financial interest, when one or more potential risks exist. Further, the COIOC can recommend that certain actions be taken to manage the conflict of interest, including requiring disclosure of the economic interest in any publications and presentations resulting from the study and limiting the amount of paid consulting activity conducted on behalf of the study sponsor while the study is in progress.

If a Principal Investigator fails to disclose a financial interest in a non-governmental

entity on his or her Form 700U in connection with a research project application, the above review by the COIOC would be circumvented.

In four separate instances, Respondent Suda failed to disclose his economic interests on the Form 700U he filed in conjunction with the applications for non-governmental funding of his research projects.

**Count 1:**      **KDDI**

On or about April 1, 2006, Respondent entered into a multi-year contract with KDDI to provide consulting services related to research into next-generation computing and networking. The contract contained a payment schedule as follows: 2006: \$100,000; 2007: \$125,000; 2008: \$150,000. An addendum, effective April 1, 2009, specified payment in 2009 in the amount of \$112,500. Bank records indicate Respondent in fact received the following payment amounts from KDDI: \$75,000 in 2006; \$118,750 in 2007; \$143,750 in 2008; and \$93,750 in 2009.

On or about April 7, 2006, Respondent Suda submitted an application statement to UCI's Conflict of Interest Oversight Committee for approval to receive \$150,000 in funding from KDDI, a non-governmental entity. The funding was for a research project in which Respondent was listed as the Principal Investigator. The research project was entitled "Next Generation Networks."

In conjunction with filing the above application statement, Respondent Suda prepared and signed, under penalty of perjury, a Form 700U on April 7, 2006, declaring that he did not have a consulting agreement with KDDI.

Respondent Suda violated Section 87300 by failing to disclose his economic interest, consisting of a consulting agreement with KDDI, on the Form 700U he signed on or about April 7, 2006.

**Count 2:**      **KDDI**

On or about April 1, 2006, Respondent entered into a multi-year contract with KDDI to provide consulting services related to research into next-generation computing and networking. The contract contained a payment schedule as follows: 2006: \$100,000; 2007: \$125,000; 2008: \$150,000. An addendum, effective April 1, 2009, specified payment in 2009 in the amount of \$112,500. Bank records indicate Respondent in fact received the following payment amounts from KDDI: \$75,000 in 2006; \$118,750 in 2007; \$143,750 in 2008; and \$93,750 in 2009.

On or about July 23, 2009, Respondent Suda submitted an application statement, which included a Form 700U, to UCI's Conflict of Interest Oversight Committee for approval to receive \$80,000 in funding from KDDI, a non-governmental entity. The funding was for a research project in which Respondent was listed as the Principal Investigator. The research project was entitled "Future Computing and Communication Architectures."

In conjunction with filing the above application, Respondent Suda prepared and signed, under penalty of perjury, a Form 700U on or about July 23, 2009, declaring that he did not have any interest in KDDI. At all times herein, KDDI was a source of income to Respondent Suda, clearly in excess of the minimum \$500.

Respondent Suda violated Section 87300 by failing to disclose Fizomed as a source of income on the Form 700U he signed under penalty of perjury on or about July 23, 2009.

**Count 3:      NEC**

On April 1, 2010, Respondent signed an addendum to the Form 700U in connection with a research grant from NEC, declaring that he had received \$3,420 in honoraria from NEC in 2003 and 2007, and that he had received \$8,100 in travel reimbursements from NEC in 2008. On or about December 11, 2007, Respondent Suda submitted an application statement, which included a Form 700U, to UCI's Conflict of Interest Oversight Committee for approval to receive \$50,000 in funding from NEC, a non-governmental entity. The funding was for a research project in which Respondent was listed as the Principal Investigator. The research project was entitled "Next Generation Internet Virtual Infrastructure."

In conjunction with filing the above application, Respondent Suda prepared and signed, under penalty of perjury, a Form 700U on December 11, 2007, declaring that he did not have any economic interest in NEC. At all times herein, NEC was a source of income to Respondent Suda, clearly in excess of the minimum \$500.

Respondent Suda violated Section 87300 by failing to disclose NEC as a source of income on the Form 700U he signed under penalty of perjury on December 11, 2007.

**Count 4:      NEC**

On April 1, 2010, Respondent signed an addendum to the Form 700U in connection with a research grant from NEC, declaring that he had received \$3,420 in honoraria from NEC in 2003 and 2007, and that he had received \$8,100 in travel reimbursements from NEC in 2008. On or about March 24, 2008, Respondent Suda submitted an application statement, which included a Form 700U, to UCI's Conflict of Interest Oversight Committee for approval to receive \$50,000 in funding from NEC, a non-governmental entity. The funding was for a research project in which Respondent was listed as the Principal Investigator. The research project was entitled "Next Generation Internet Virtual Infrastructure."

In conjunction with filing the above application, Respondent Suda prepared and signed, under penalty of perjury, a Form 700U on March 24, 2008, declaring that he did not have any economic interest in NEC. At all times herein, NEC was a source of income to Respondent Suda, clearly in excess of the minimum \$500.

Respondent Suda violated Section 87300 by failing to disclose NEC as a source of income on the Form 700U he signed under penalty of perjury on March 24, 2008.



## **CONCLUSION**

This matter consists of four counts of violating sections 87300 of the Act, which carries a maximum administrative penalty of Twenty Thousand Dollars (\$20,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Failures to file statements of economic interests which are not included in the Statement of Economic Interest Streamlined Program have historically received substantial penalties ranging up to the maximum penalty of \$5,000 per count.

## **AGGRAVATING FACTORS**

The non-governmental funding sources benefited by being able to utilize research conducted under the auspices of the University of California in the development and promotion of their own medical research projects and products.

Objectivity of researchers is an essential value in scientific research and the basis for public trust. Researchers should be led by their data, not by other interests that might undermine the scientific integrity of their work. Concerns are raised when financial considerations may compromise or have the appearance of compromising an investigator's professional judgment and independence in the design, conduct, or publication of research.

Respondent's failure to properly disclose his economic interests to the Conflict of Interest Oversight Committee was significant, and had the effect of avoiding any conflict of interest scrutiny by the COIOC, UCI's independent substantive review committee.

## **MITIGATING FACTORS**

No mitigating factors have been identified.

## **PENALTY**

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Fourteen Thousand Dollars (\$14,000).