

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7310**

6 DATE COMPLAINT FILED: January 19, 2018

7 DATE OF NOTIFICATION: January 24, 2018

8 LAST RESPONSE RECEIVED: March 16, 2018

9 DATE OF ACTIVATION: April 10, 2018

10
11 ELECTION CYCLES: 2016-2018

12 EXPIRATION OF SOL:

13 Earliest: July 20, 2021

14 Latest: March 31, 2023

15
16 **COMPLAINANT:**

Campaign Legal Center

17 **RESPONDENTS:**

18 Mark Takai for Congress and Dylan Beesley in his
19 official capacity as treasurer

20 Dylan Beesley in his personal capacity¹

21 Lanakila Strategies LLC

22 **RELEVANT STATUTES AND**
23 **REGULATIONS:**

24 52 U.S.C. § 30114(b)

25 11 C.F.R. § 113.1(g)

26 11 C.F.R. § 113.2

27 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

28
29 **FEDERAL AGENCIES CHECKED:**

None

30 **I. INTRODUCTION**

31 The Complaint in this matter alleges violations of the personal use provisions of the
32 Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with
33 disbursements made by Mark Takai for Congress and Dylan Beesley in his official capacity as
34 treasurer (the "Committee") to Beesley's consulting firm, Lanakila Strategies LLC ("Lanakila"),

¹ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005) (explaining that treasurers may, in certain matters, be notified in both their official and personal capacities and that, in such matters, the Commission will make findings as to the committee and the treasurer in both their official and personal capacities).

1 for at least eighteen months after Takai announced in May 2016 that he was no longer a
2 candidate for federal office.² Specifically, the Complaint alleges that the Committee converted
3 funds to personal use by continuing to pay Beesley's firm \$5,759.16 per month for consulting
4 services through December 2017 even though Takai died in July 2016 and the Committee
5 conducted no apparent winding down activities after February 2017.³ The Committee, Lanakila,
6 and Beesley contend that all payments to Lanakila were authorized and that Lanakila contracted
7 with the Committee to provide a variety of services including, but not limited to, winding down
8 activities and developing ideas for a charitable foundation.⁴

9 For the reasons set forth below, we recommend that the Commission find reason to
10 believe that the Committee and Beesley in his official capacity as treasurer, Lanakila, and
11 Beesley in his personal capacity violated 52 U.S.C. § 30114(b) by converting campaign funds to
12 personal use. Additionally, we recommend that the Commission authorize compulsory process.

13 **II. FACTUAL BACKGROUND**

14 Mark Takai represented the First Congressional District of Hawaii from January 3, 2015,
15 until his death on July 20, 2016.⁵ Mark Takai for Congress is his principal campaign

² Compl. at 8-11 (Jan. 19, 2018).

³ *Id.*

⁴ Mark Takai for Congress Resp. at 5 (Mar. 16, 2018) ("Committee Resp."); Dylan Beesley/Lanakila Strategies LLC Resp. at 2, Ex. 1 (Mar. 16, 2018) ("Beesley/Lanakila Resp.").

⁵ Compl. at 2; Committee Resp. at 2.

1 committee.⁶ Lanakila Strategies LLC is registered in Hawaii as a domestic limited liability
 2 company, and Beesley is its sole member.⁷

3 Takai and the Committee entered into a consulting agreement (“Agreement”) with
 4 Lanakila on February 10, 2016, for the period February 1 through June 30, 2016.⁸ At the time,
 5 Takai’s re-election campaign was underway.⁹ The Agreement listed the “consulting services”
 6 that Lanakila would provide: (1) strategic and political consulting; (2) branding,
 7 communications, and media affairs consulting; and (3) design and execution of campaign
 8 launch.¹⁰ For these services, Lanakila would be paid \$4,000 plus tax per month for the first two
 9 months and \$5,500 plus tax per month for the following three months.¹¹

10 On May 19, 2016, Takai announced that he would not run for re-election because he
 11 learned that his pancreatic cancer had spread.¹² The Committee and Lanakila executed an
 12 Amendment to the Agreement in June 2016; Takai signed the Amendment on behalf of the

⁶ Compl. at 2; Amended Statement of Organization, Mark Takai for Congress (June 15, 2015).

⁷ See State of Hawaii, Dept. of Commerce and Consumer Affairs, Business Registration Division, Lanakila Strategies LLC, File No. 134933C5, <https://hbe.ehawaii.gov/documents/business.html?fileNumber=134933C5&view=info>.

⁸ Committee Resp. at 1, Ex. A at 1, 5. Then-treasurer Edward Dion Kaimihana executed the Agreement on behalf of Takai and the Committee; Beesley signed for Lanakila. *Id.*, Ex. A at 5. Beesley also served as a consultant to the Committee in 2015; the Committee paid Beesley — directly, not through Lanakila — \$26,600 for fundraising consulting services between July 1, 2015, and December 31, 2015. See Compl. at 2; see generally Disbursements to Lanakila Strategies and Dylan Beesley, 2015-2016, Mark Takai for Congress, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&cycle=2016&data_type=processed&committee_id=C00548131&recipient_name=beesley&recipient_name=lanakila&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁹ Committee Resp. at 1.

¹⁰ *Id.* at 1-2, Ex. A at 1.

¹¹ *Id.*

¹² Committee Resp. at 2; see Frances Kai-Hwa Wang, *Hawaii Congressman Mark Takai to Retire to Focus on Cancer Battle*, NBC NEWS (May 20, 2016), <https://www.nbcnews.com/news/asian-america/hawaii-congressman-mark-takai-retire-focus-cancer-battle-n577451>; see also Form 99, Mark Takai for Congress (June 2, 2016) (Takai informed the Commission that he was no longer a candidate and would cease campaign activities); Compl. at 3.

1 Committee, and Beesley signed for Lanakila.¹³ The Amendment modified certain sections of the
2 Agreement, including its duration and the specific services Lanakila would provide.¹⁴ The
3 Amendment removed the third type of consulting services — design and execution of campaign
4 launch — and replaced it with “[o]versee the wind down of Clients [sic] campaign committee.”¹⁵
5 Under the terms of the Amendment, Lanakila would be paid \$5,500 plus tax each month, in
6 addition to reimbursement of pre-approved expenses.¹⁶ The Amendment also provided that it
7 would continue until terminated by mutual agreement or by either party, with 30 days’ notice.¹⁷
8 Beesley became the Committee’s treasurer on September 8, 2016, which, according to the
9 Committee, occurred at the request of Takai’s wife.¹⁸

10 As set forth in the chart below, the Committee continued to make disbursements to
11 Lanakila through March 31, 2018.¹⁹

¹³ Committee Resp. at 2, Ex. B.

¹⁴ *Id.*, Ex. B.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* The original contract stated that the agreement could be terminated by mutual agreement or by either party with 15 days’ notice. Committee Resp., Ex. A at 1.

¹⁸ Committee Resp. at 2; Amended Statement of Organization, Mark Takai for Congress (Sept. 8, 2016). At the time of Takai’s death, Kaimihana served as the treasurer of the Committee; according to the Committee, he did not want to continue in that role after Takai’s death. Committee Resp. at 2.

¹⁹ See 2017 Year-End Report, Mark Takai for Congress (Jan. 14, 2018); 2017 October Quarterly Report, Mark Takai for Congress (Oct. 13, 2017); 2017 July Quarterly Report, Mark Takai for Congress (July 14, 2017); 2017 April Quarterly Report, Mark Takai for Congress (Apr. 14, 2017).

1 COMMITTEE PAYMENTS TO LANAKILA UNDER THE AMENDED AGREEMENT²⁰

Date	Purpose	Amount
7/3/2016	Strategic Consulting Services	\$9,830.30
8/1/2016	Strategic Consulting Services	\$5,879.68
10/1/2016	Strategic Consulting Services	\$11,518.32
12/19/2016	Strategic Consulting Services	\$11,518.32
2016 Subtotal:		\$38,746.62
1/10/2017	Consulting Services	\$5,759.16
1/23/2017	Consulting Services	\$5,759.16
2/28/2017	Consulting Services	\$5,759.16
3/20/2017	Consulting Services	\$5,759.16
4/24/2017	Consulting Services	\$5,759.16
5/19/2017	Consulting Services	\$5,759.16
6/20/2017	Consulting Services	\$5,759.16
7/20/2017	Consulting Services	\$5,759.16
8/21/2017	Consulting Services	\$5,759.16
9/14/2017	Consulting Services	\$5,759.16
10/14/2017	Consulting Services	\$5,759.16
11/14/2017	Consulting Services	\$5,759.16
12/13/2017	Consulting Services	\$5,759.16
2017 Subtotal:		\$74,869.08
3/31/2018	Consulting Services	\$1,500.00
2018 Subtotal:		\$1,500.00
Grand Total:		\$115,115.70

2

3

At the time of Takai's death, the Committee had cash-on-hand of approximately

4

\$634,045.²¹ Between July 1 and September 30, 2016, the Committee refunded contributions

5

totaling \$142,160.89.²² In the last quarter of 2016, the Committee reported making one new

6

\$500 contribution refund and re-issuing three contribution refunds.²³ The Committee also

²⁰ These figures reflect the disbursements disclosed by the Committee.

²¹ See 2016 July Quarterly Report, Mark Takai for Congress (July 15, 2016); Compl. at 9.

²² See 2016 October Quarterly Report, Mark Takai for Congress (Oct. 15, 2016); Compl. at 9.

²³ See 2016 Year-End Report, Mark Takai for Congress (Jan. 31, 2017) (covering October 1 through December 31, 2016).

1 reported other disbursements such as storage, compliance, and legal expenses from July through
2 December 2016.²⁴

3 In 2017, the Committee paid \$500 per month to a compliance vendor and approximately
4 \$35 per month for web services, in addition to the \$5,759.16 per month to Lanakila.²⁵ In the first
5 two months of 2017, the Committee made one payment for a storage unit,²⁶ re-issued two refund
6 checks to political committees,²⁷ and made four contributions to other campaign committees.²⁸

7 The Complaint observes that after the Committee refunded contributions, almost all its
8 disbursements have gone toward paying its treasurer, Beesley, and questions “how Beesley’s
9 \$5,759.16 monthly fees are commensurate with the fair market value of any services
10 provided.”²⁹ The Complaint also notes that Lanakila and Beesley do not appear to be performing
11 compliance or legal services, since the Committee’s reports show payments to other vendors for
12 those services.³⁰

²⁴ See 2016 October Quarterly Report, Mark Takai for Congress (Oct. 15, 2016); 2016 Year-End Report, Mark Takai for Congress (Jan. 31, 2017).

²⁵ See 2017 Year-End Report, Mark Takai for Congress (Jan. 14, 2018); 2017 October Quarterly Report, Mark Takai for Congress (Oct. 13, 2017); 2017 July Quarterly Report, Mark Takai for Congress (July 14, 2017); 2017 April Quarterly Report, Mark Takai for Congress (Apr. 14, 2017).

²⁶ See 2017 April Quarterly Report at 10, Mark Takai for Congress (Apr. 14, 2017).

²⁷ See *id.* at 13-14.

²⁸ See *id.* at 15-16. The Committee also made a payment of \$1,650 to NGP Van, Inc. on February 2, 2017, for a database fee and a \$10 payment to the National Democratic Club on January 19, 2017, for a capital assessment fee. See *id.* at 11-12.

²⁹ Compl. at 9.

³⁰ *Id.* at 9-10.

1 Within five days of the Complaint's filing, the Committee named Gary Kai as deputy
2 treasurer and designated agent.³¹ The Committee filed a response, and Beesley and Lanakila
3 filed a joint response; however, Beesley and Lanakila's Response adopts the Committee's
4 arguments.³² The Committee contends that, after Takai's death, Lanakila and Beesley oversaw
5 various administrative activities including, but not limited to, the winding down of Takai's
6 campaign and Congressional office, responding to press inquiries, thanking past supporters,
7 filing disclosure reports, and "dispos[ing] of its surplus funds."³³ The Committee further
8 contends that Lanakila continued to perform the services outlined in the Agreement while
9 Takai's wife considered whether to use the remaining cash-on-hand to establish a charitable
10 foundation.³⁴ The Committee asserts that Beesley developed ideas for a charitable foundation as
11 part of the services Lanakila provided.³⁵ State business records show that "K. Mark Takai
12 Foundation" was registered as a non-profit corporation in Hawaii on January 11, 2018, the day
13 after a Hawaii newspaper reporter contacted Beesley about the payments to Lanakila.³⁶ In

³¹ See Amended Statement of Organization, Mark Takai for Congress (Jan. 24, 2018). Kai is the father of Sami Takai, the wife of Mark Takai. Committee Resp. at 1 n.1.

³² Kai executed the Committee's Designation of Counsel and the Committee stated that Beesley would be represented by separate counsel to avoid the appearance of a conflict of interest. Committee Resp. at 1 n.1; Beesley/Lanakila Resp. at 1. The Committee also appears to be paying the legal expenses of Beesley and Lanakila. It reported making a disbursement of \$4,741.65 to KaiserDillon PLLC, the law firm representing Beesley and Lanakila in this matter, for legal services on March 29, 2018. See 2018 April Quarterly Report, Mark Takai for Congress at 6 (Apr. 14, 2018).

³³ Committee Resp. at 2.

³⁴ *Id.*

³⁵ *Id.* at 5.

³⁶ See State of Hawaii, Dept. of Commerce and Consumer Affairs, Business Registration Division, K. Mark Takai Foundation, File No. 287547D2, <https://hbe.ehawaii.gov/documents/business.html?fileNumber=287547D2&view=info>; Nanea Kalani, *Payments by Takai's Campaign Questioned*, HONOLULU STAR ADVERTISER (Jan. 12, 2018), <http://www.staradvertiser.com/2018/01/12/hawaii-news/payments-by-takais-campaign->

1 addition, Lanakila and Beesley provide a “Statement Regarding the Mark Takai Foundation
2 Attributable to Gary Kai on behalf of the Takai Family” noting that Beesley stayed on as
3 campaign treasurer after Rep. Takai’s death “to help manage the campaign[’]s affairs,” that
4 Beesley “worked to help us focus on the next steps so that we could close the campaign down
5 and create a foundation” and that “[p]ayments to him during this period were authorized.”³⁷
6 Lanakila and Beesley do not provide further detail about any work performed related to the
7 development of a charitable foundation.

8 The Committee disclosed making one payment to Lanakila during the first three months
9 of 2018, \$1,500 on March 31, 2018.³⁸ The Committee reported cash-on-hand of \$295,782.96 as
10 of that date.³⁹

11 **III. LEGAL ANALYSIS**

12 **A. Personal Use**

13 The Act affords federal candidates and their campaign committees wide discretion in the
14 disposition of their campaign funds and provides that contributions accepted by a candidate may
15 be used in several categories of permissible non-campaign uses of funds, including the “ordinary
16 and necessary expenses incurred in connection with duties of the individual as a holder of
17 Federal office,” as well as “charitable donations,” and “any other lawful purpose” but not

questioned/?HSA=fb85ecef2b3e2007cf7beb6d65870a735433a8b (noting that the reporter contacted Beesley regarding the allegations in the article on January 10, 2018).

³⁷ Beesley/Lanakila Resp. at 2, Ex. 1. The statement, dated January 18, 2018, does not specify who authorized the payments.

³⁸ See 2018 April Quarterly Report at 7, Mark Takai for Congress (Apr. 14, 2018).

³⁹ See *id.* at 2.

1 conversion to “personal use.”⁴⁰ Conversion to personal use occurs when funds in a campaign
2 account are used “to fulfill any commitment, obligation, or expense of a person that would exist
3 irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal
4 office.”⁴¹

5 The Commission’s regulations provide that the costs of winding down the office of a
6 former federal officeholder for a period of six months after he or she leaves office are ordinary
7 and necessary expenses.⁴² The Commission has explained that the six-month winding down
8 period “acts as a safe harbor” and “does not preclude a former officeholder who can demonstrate
9 that he or she has incurred ordinary and necessary winding down expenses more than six months
10 after leaving office from using campaign funds to pay those expenses.”⁴³ Such winding down
11 costs include the necessary administrative costs of terminating a campaign or congressional
12 office, such as office space and storage rental, staff salaries, and office supplies.⁴⁴

13 Certain other uses of campaign funds constitute *per se* conversion to personal use,
14 including home mortgage and tuition payments.⁴⁵ For disbursements neither *per se* permissible

⁴⁰ 52 U.S.C. § 30114(a)(2)-(3), (b)(1); 11 C.F.R. § 113.2; *see* Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,866-67 (Feb. 9, 1995) (“Personal Use E&J”) (explaining that the personal use prohibition is “not so broad as to limit legitimate campaign related or officeholder related activity,” and that “candidates have wide discretion over the use of campaign funds”).

⁴¹ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

⁴² 11 C.F.R. § 113.2(a)(2).

⁴³ *See* Personal Use E&J, 60 Fed. Reg. at 7,873.

⁴⁴ *See* Advisory Op. 2013-05 (Gallegly) at 3. Although the Committee contends that the Commission regulation regarding the six-month winding down period only applies to winding down the official office of the federal officeholder, and not the campaign, *see* Committee Resp. at 3, in Advisory Opinion 2013-05 the Commission applied it to the requestor’s “officeholder and campaign materials” and “campaign or congressional office.” Thus, contrary to the Committee’s argument, the Commission has not sanctioned an open-ended winding down period for campaign committees.

⁴⁵ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g)(1)(i).

1 or impermissible, the Commission determines on a case-by-case basis whether a given campaign
2 fund disbursement is personal use by applying the “irrespective test,” that is, whether the
3 payment fulfills a commitment, obligation, or expense that would exist irrespective of the
4 candidate’s campaign or duties as a federal officeholder.⁴⁶ The Commission has stated,
5 however, that “[i]f the candidate can reasonably show that the expenses at issue resulted from
6 campaign or officeholder activities, the Commission will not consider the use to be personal
7 use.”⁴⁷

8 During the six-month winding down period from July 2016 through February 2017, the
9 Committee issued contribution refunds, paid storage expenses, paid a compliance vendor, made
10 contributions to other campaign committees, and paid Lanakila a total of \$46,193.80.⁴⁸ The
11 Committee asserts that Lanakila has provided *bona fide* services to the Committee and lists the
12 services, nearly all of which occurred in 2016 and early 2017.⁴⁹

13 As stated above, the six-month winding down period acts as a safe harbor for
14 committees.⁵⁰ After this period ended in February 2017, however, Lanakila continued to receive
15 monthly payments of \$5,759.16 from the Committee through December 2017 — an additional
16 ten months. Yet Respondents have not offered an explanation why they needed additional time

⁴⁶ Personal Use E&J, 60 Fed. Reg. at 7,867; 11 C.F.R. § 113.1(g)(1)(ii).

⁴⁷ See Personal Use E&J, 60 Fed. Reg. at 7,863-64; *see also* Rulemaking Petition: Former Candidates’ Personal Use, 83 Fed. Reg. 12,283, 12,283 (Mar. 21, 2018) (seeking comment on Petition for Rulemaking regarding personal use and former candidates and federal officeholders).

⁴⁸ This total paid to Lanakila includes payments after Representative Takai’s death on July 20, 2017.

⁴⁹ See Committee Resp. at 5.

⁵⁰ See 11 C.F.R. § 113.2(a)(2); Advisory Op. 2013-05 (Gallegly).

1 to wind down. The Committee appears to have been largely dormant during this time, disclosing
2 no receipts other than bank interest and disbursements only to Lanakila (\$5,759.16 per month), a
3 compliance vendor (\$500 per month), a database vendor (\$1,350 in April and \$150 in
4 December), and Google Apps (\$34.90 per month for web services).

5 When the safe harbor no longer applies,⁵¹ the Commission's "irrespective test" applies:
6 the candidate — or in this case, the Committee — needs to show that the expenses reasonably
7 resulted from campaign or officeholder activities.⁵² Here, Respondents have not demonstrated
8 how continued substantial monthly payments to Lanakila relate to campaign or officeholder
9 activities. The Committee contends that Lanakila assisted with the planning of charitable uses
10 for the remaining cash-on-hand but fails to provide details or documentation supporting this
11 assertion.⁵³ The Beesley/Lanakila Response similarly lacks details about services Lanakila
12 provided after 2016.⁵⁴

13 The Committee contends that when Beesley assumed the role of treasurer, his
14 compensation had already been determined by the Amendment to the Agreement, which Takai
15 himself signed.⁵⁵ It is unclear, however, what work Beesley and Lanakila were performing for
16 the Committee after February 2017, as the Committee continued to pay a compliance vendor,

⁵¹ In Advisory Opinion 2013-05 (Gallegly), the Commission concluded that a Representative who was retiring after 26 years in office could permissibly spend \$300 per month in campaign funds for up to a year to archive and store his congressional materials. By contrast, Representative Takai was in office only 18 months. *See also* Advisory Op. 2010-26 (Baird) (four months of storage costs for personal items acceptable where storage was a consequence of officeholder's retirement and move home).

⁵² *See* 11 C.F.R. § 113.1(g)(1)(ii).

⁵³ *See* Committee Resp. at 5. The K. Mark Takai Foundation registered with the State of Hawaii on January 11, 2018, but Respondents do not explain the relationship between that filing and the \$57,591.60 the Committee paid to Lanakila between February and December 2017.

⁵⁴ Beesley/Lanakila Resp. at 2, Ex. 1.

⁵⁵ Committee Resp. at 5.

1 CFO Compliance Group, \$500 per month, apparently for filing disclosure reports.⁵⁶ A review of
2 the payments made to Lanakila before and after the Amendment raises further questions as to
3 what Committee-related work Lanakila and Beesley performed after Takai was no longer in
4 office. The \$5,759.16 monthly payment to Lanakila exceeded the \$4,000 plus tax monthly
5 payments to Lanakila in February and March 2016 when Takai was a candidate and officeholder,
6 and equaled the \$5,500 plus tax monthly payments starting in April 2016 when Takai's
7 reelection campaign was ramping up.⁵⁷ In addition, as the Complaint notes, Hanabusa for
8 Hawaii, the principal campaign committee of Takai's successor in Congress, made four monthly
9 payments of \$5,759.16 — the same amount paid to Lanakila post-February 2017 — to another
10 vendor for fundraising consulting services in 2017.⁵⁸

11 In sum, the Committee, through its treasurer Beesley, continued to pay Lanakila, whose
12 sole member is Beesley, a monthly retainer of \$5,759.16 for sixteen months after the death of
13 Takai — the other signatory to the Amendment — including the ten months after the winding
14 down safe harbor period.⁵⁹ The available record does not indicate that the expenses at issue

⁵⁶ The vendor lists a variety of services for campaign committees on its website, of which only one — filing reports — could apply after a candidate's death. *See* <http://www.cfo-compliance.com/services/federal-committee-compliance-candidates-pacs-parties/>.

⁵⁷ *See* Committee Resp., Ex. A.

⁵⁸ *See* Compl. at 10 n.39; *see* 2017 October Quarterly Report at 19, 21, Hanabusa for Hawaii (Oct. 13, 2017); 2017 July Quarterly Report at 28, 33, Hanabusa for Hawaii (July 12, 2017). In January 2018, Hanabusa announced that she would not run for reelection; the monthly payments to the fundraising consultant ceased in September 2017. *See* HNN Staff, *Hanabusa Is Officially Running for Governor and She Isn't Pulling Any Punches*, HAWAII NEWS NOW (Jan. 8, 2018), <http://www.hawaiinewsnow.com/story/37218145/hanabusa-to-formally-launch-campaign-for-governor>. The Complaint also notes that the campaign committee of deceased former Representative Steve LaTourette has been paying its treasurer \$500 per quarter after LaTourette passed away in August 2016, shortly after Takai. *See* Compl. at 9; *see, e.g.*, 2017 Year-End Report at 5, LaTourette for Congress (Jan. 10, 2018); 2017 October Quarterly Report at 9, LaTourette for Congress (Oct. 10, 2017).

⁵⁹ *See* First Gen. Counsel's Rpt., MUR 7292 (Clifford "Cliff" B. Stearns, et al.) (recommending reason to believe where, among other factors, the committee paid \$1,000 per month to the former officeholder's spouse who served as treasurer)

1 resulted from campaign or officeholder activities, and, with the exception of one \$1,500 payment
2 in March 2018, the \$5,759.16 monthly payments stopped immediately after the Complaint was
3 filed.

4 Under these circumstances, we believe an investigation is warranted to determine
5 whether Respondents engaged in personal use of campaign funds in connection with at least
6 some portion of the Committee's payments to Lanakila from mid-2016 through
7 December 2017.⁶⁰ Accordingly, we recommend that the Commission find reason to believe that
8 the Committee and Beesley in his official capacity and Lanakila violated 52 U.S.C. § 30114(b)
9 by converting funds to personal use.

10 **B. Personal Capacity of the Treasurer**

11 According to Commission policy, a treasurer may be named as a respondent in his or her
12 personal capacity when it appears that, while serving as a treasurer, he or she may have violated
13 obligations imposed by the Act or Commission regulations personally as a treasurer and where,
14 for example, the violations were knowing and willful or "the treasurer recklessly failed to fulfill

⁶⁰ Respondents cite past cases involving allegations of personal use that the Commission did not pursue, but those cases are distinguishable. Factual and Legal Analysis at 5-6, MUR 6864 (Ruiz III for Congress, *et al.*) (spouse/treasurer was paid, at most, \$500 per month for *bona fide* services that were provided, less than 10% of the amount paid by the Committee in the instant matter); MUR 5701 (Bob Filner for Congress, *et al.*) (payments at issue were made to firm owned by candidate's spouse during an active campaign and respondents provided a bid from a similar firm indicating that payments to spouse's firm were for fair market value; there is no indication that the Committee in the instant matter engaged in any comparative pricing); MUR 6275 (Massa for Congress, *et al.*) (Commission found reason to believe respondents violated the Act's personal use provision, and took no further action after investigation showed that \$40,000 payment to former chief of staff likely was related, at least in part, to campaign work). Like Massa, an investigation is needed to determine the actual work Lanakila and Beesley performed.

1 the duties imposed by law.”⁶² Thus, the Commission may make findings as to Beesley in his
2 personal capacity in connection with violations of the Act while performing the duties of the
3 treasurer. Although most of the “personal capacity” cases pursued by the Commission have
4 involved embezzlement of campaign funds, the circumstances here warrant a finding of reason to
5 believe that Beesley violated the Act in his personal capacity because, at a minimum, his actions
6 appear to show a reckless failure to fulfill his duties as treasurer. Beesley became treasurer of
7 the Committee in September 2016, and from that point forward, he served both as the Committee
8 payor and the recipient payee as the sole member of Lanakila. As such, he was the only person
9 who could end Lanakila’s contract with the Committee under the terms of the Agreement.
10 Beesley chose to continue paying his own firm throughout 2017, while it appears that it
11 performed little to no work for the Committee during that time. Only after the Complaint was
12 filed in January 2018 did the Committee appoint a deputy treasurer and reduce the payments to
13 Lanakila. Therefore, we recommend that the Commission find reason to believe that Beesley in
14 his personal capacity violated 52 U.S.C. § 30114(b) by converting funds to personal use.

15 **IV. PROPOSED INVESTIGATION**

16 The proposed investigation would examine the circumstances of the payments to
17 Lanakila to date. We would seek information regarding the work performed by Lanakila and
18 Beesley and the justification for the payments received from the Committee. We would also
19 investigate the funds disbursed to Lanakila and seek information regarding services performed
20 by Lanakila and Beesley from 2015 through mid-2016 and compare that to the work performed
21 by Lanakila and Beesley from mid-2016 through the present. We also would request

⁶² See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3-6 (Jan. 3, 2005); *see, e.g.*, Factual and Legal Analysis at 7, MUR 5971 (Mary Jennifer Adams); MUR 5610 (Earl Allen Haywood); MUR 5721 (Lockheed Martin Employees’ PAC).

1 communications Beesley sent or received regarding the Committee from mid-2016 through the
 2 present to determine whether he was communicating with anyone regarding a charitable
 3 foundation. We will seek to conduct our investigation through voluntary means but recommend
 4 that the Commission authorize the use of compulsory process, including the issuance of
 5 appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

6 **V. RECOMMENDATIONS**


- 7 1. Find reason to believe that Mark Takai for Congress and Dylan Beesley in his
 8 official capacity as treasurer violated 52 U.S.C. § 30114(b);
- 9 2. Find reason to believe that Lanakila Strategies LLC violated 52 U.S.C.
 10 § 30114(b);
- 11 3. Find reason to believe that Dylan Beesley in his personal capacity violated
 12 52 U.S.C. § 30114(b);
- 13 4. Approve the attached Factual and Legal Analyses;
- 14 5. Authorize compulsory process; and
- 15 6. Approve the appropriate letters.


16 Lisa J. Stevenson
 17 Acting General Counsel

18
 19
 20 Kathleen M. Guith
 21 Associate General Counsel for Enforcement

22
 23
 24
 25 6.28.18

26 DATE

27 
 28 _____
 29 Stephen Gura
 30 Deputy Associate General Counsel for
 31 Enforcement

32 
 33 _____
 34 Mark Allen
 35 Assistant General Counsel

1
2
3
4
5
6
7
8

Anne B. Robinson

Anne B. Robinson
Attorney