



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 2 4 2019

Via Email and First Class Mail

Brian G. Svoboda, Esq.
Perkins Coie LLP
700 13th Street NW, Suite 600
Washington, DC 20005
BSvoboda@perkinscoie.com

RE: MUR 7310
Mark Takai for Congress and
Dylan Beesley in his official
capacity as treasurer

Dear Mr. Svoboda:

On January 24, 2018, the Federal Election Commission notified your client, Mark Takai for Congress and Dylan Beesley in his official capacity as treasurer ("Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon review of the allegations contained in the complaint, and information provided by the Committee, the Commission, on June 4, 2018, found that there is reason to believe that the Committee violated 52 U.S.C. § 30114(b), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. We request that all responses to the enclosed Request for Written Answers and Production of Documents be submitted to the Office of the General Counsel within 30 days of your receipt of this notification. Any additional materials or statements you wish to submit should accompany the response to the Request for Written Answers and Production of Documents. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt

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of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne B. Robinson, the attorney assigned to this matter, at (202) 694-1356 or arobinson@fec.gov.

On behalf of the Commission,



Ellen L. Weintraub
 Chair

Enclosures
 Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Mark Takai for Congress and Dylan
Beesley in his official capacity as treasurer MUR 7310

I. INTRODUCTION

8 The Complaint in this matter alleges violations of the personal use provisions of the
9 Federal Election Campaign Act of 1971, as amended (the “Act”), in connection with
10 disbursements made by Mark Takai for Congress and Dylan Beesley in his official capacity as
11 treasurer (the “Committee”) to Beesley’s consulting firm, Lanakila Strategies LLC (“Lanakila”),
12 for at least eighteen months after Takai announced in May 2016 that he was no longer a
13 candidate for federal office.¹ Specifically, the Complaint alleges that the Committee converted
14 funds to personal use by continuing to pay Beesley’s firm \$5,759.16 per month for consulting
15 services through December 2017 even though Takai died in July 2016 and the Committee
16 conducted no apparent winding down activities after February 2017.² The Committee contends
17 that all payments to Lanakila were authorized and that Lanakila contracted with the Committee
18 to provide a variety of services including, but not limited to, winding down activities and
19 developing ideas for a charitable foundation.³

20 For the reasons set forth below, the Commission finds reason to believe that the
21 Committee and Beesley in his official capacity as treasurer violated 52 U.S.C. § 30114(b) by
22 converting campaign funds to personal use.

¹ Compl. at 8-11 (Jan. 19, 2018).

2 *Id.*

³ Mark Takai for Congress Resp. at 5 (Mar. 16, 2018) (“Committee Resp.”).

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1 **II. FACTUAL BACKGROUND**

2 Mark Takai represented the First Congressional District of Hawaii from January 3, 2015,
 3 until his death on July 20, 2016.⁴ Mark Takai for Congress is his principal campaign
 4 committee.⁵ Lanakila Strategies LLC is registered in Hawaii as a domestic limited liability
 5 company, and Beesley is its sole member.⁶

6 Takai and the Committee entered into a consulting agreement (“Agreement”) with
 7 Lanakila on February 10, 2016, for the period February 1 through June 30, 2016.⁷ At the time,
 8 Takai’s re-election campaign was underway.⁸ The Agreement listed the “consulting services”
 9 that Lanakila would provide: (1) strategic and political consulting; (2) branding,
 10 communications, and media affairs consulting; and (3) design and execution of campaign
 11 launch.⁹ For these services, Lanakila would be paid \$4,000 plus tax per month for the first two
 12 months and \$5,500 plus tax per month for the following three months.¹⁰

⁴ Compl. at 2; Committee Resp. at 2.

⁵ Compl. at 2; Amended Statement of Organization, Mark Takai for Congress (June 15, 2015).

⁶ 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>.

⁷ 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.

⁸ Committee Resp. at 1.

⁹ *Id.* at 1-2, Ex. A at 1.

¹⁰ *Id.*

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1 On May 19, 2016, Takai announced that he would not run for re-election because he
 2 learned that his pancreatic cancer had spread.¹¹ The Committee and Lanakila executed an
 3 Amendment to the Agreement in June 2016; Takai signed the Amendment on behalf of the
 4 Committee, and Beesley signed for Lanakila.¹² The Amendment modified certain sections of the
 5 Agreement, including its duration and the specific services Lanakila would provide.¹³ The
 6 Amendment removed the third type of consulting services — design and execution of campaign
 7 launch — and replaced it with “[o]versee the wind down of Clients [sic] campaign committee.”¹⁴
 8 Under the terms of the Amendment, Lanakila would be paid \$5,500 plus tax each month, in
 9 addition to reimbursement of pre-approved expenses.¹⁵ The Amendment also provided that it
 10 would continue until terminated by mutual agreement or by either party, with 30 days’ notice.¹⁶
 11 Beesley became the Committee’s treasurer on September 8, 2016, which, according to the
 12 Committee, occurred at the request of Takai’s wife.¹⁷

¹¹ Committee Resp. at 2; *see* Compl. at 3 (citing 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).

¹² Committee Resp. at 2, Ex. B.

¹³ *Id.*, Ex. B.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *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.

¹⁷ 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.

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1 As set forth in the chart below, the Committee continued to make disbursements to

2 Lanakila through March 31, 2018.¹⁸

3 COMMITTEE PAYMENTS TO LANAKILA UNDER THE AMENDED AGREEMENT¹⁹

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

4

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

6 \$634,045.²⁰ Between July 1 and September 30, 2016, the Committee refunded contributions

7 totaling \$142,160.89.²¹ In the last quarter of 2016, the Committee reported making one new

¹⁸ 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).

¹⁹ These figures reflect the disbursements disclosed by the Committee.

²⁰ See 2016 July Quarterly Report, Mark Takai for Congress (July 15, 2016); Compl. at 9.

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

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1 \$500 contribution refund and re-issuing three contribution refunds.²² The Committee also
2 reported other disbursements such as storage, compliance, and legal expenses from July through
3 December 2016.²³

4 In 2017, the Committee paid \$500 per month to a compliance vendor and approximately
5 \$35 per month for web services, in addition to the \$5,759.16 per month to Lanakila.²⁴ In the first
6 two months of 2017, the Committee made one payment for a storage unit,²⁵ re-issued two refund
7 checks to political committees,²⁶ and made four contributions to other campaign committees.²⁷

8 The Complaint observes that after the Committee refunded contributions, almost all its
9 disbursements have gone toward paying its treasurer, Beesley, and questions “how Beesley’s
10 \$5,759.16 monthly fees are commensurate with the fair market value of any services provided.”²⁸
11 The Complaint also notes that Lanakila and Beesley do not appear to be performing compliance
12 or legal services, since the Committee’s reports show payments to other vendors for those
13 services.²⁹

²² See 2016 Year-End Report, Mark Takai for Congress (Jan. 31, 2017) (covering October 1 through December 31, 2016).

²³ See 2016 October Quarterly Report, Mark Takai for Congress (Oct. 15, 2016); 2016 Year-End Report, Mark Takai for Congress (Jan. 31, 2017).

²⁴ 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).

²⁵ See 2017 April Quarterly Report at 10, Mark Takai for Congress (Apr. 14, 2017).

²⁶ See *id.* at 13-14.

²⁷ 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.

²⁸ Compl. at 9.

²⁹ *Id.* at 9-10.

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1 Within five days of the Complaint's filing, the Committee named Gary Kai as deputy
 2 treasurer and designated agent.³⁰ The Committee contends that, after Takai's death, Lanakila
 3 and Beesley oversaw various administrative activities including, but not limited to, the winding
 4 down of Takai's campaign and Congressional office, responding to press inquiries, thanking past
 5 supporters, filing disclosure reports, and "dispos[ing] of its surplus funds."³¹ The Committee
 6 further contends that Lanakila continued to perform the services outlined in the Agreement while
 7 Takai's wife considered whether to use the remaining cash-on-hand to establish a charitable
 8 foundation.³² The Committee asserts that Beesley developed ideas for a charitable foundation as
 9 part of the services Lanakila provided.³³ State business records show that "K. Mark Takai
 10 Foundation" was registered as a non-profit corporation in Hawaii on January 11, 2018, the day
 11 after a Hawaii newspaper reporter contacted Beesley about the payments to Lanakila.³⁴

³⁰ 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. 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. *Id.*

³¹ Committee Resp. at 2.

³² *Id.*

³³ *Id.* at 5.

³⁴ 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>; Committee Resp. at 3 (citing 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-questioned/?HSA=fb85ecef2b3e2007cf7beb6d65870a735433a8b>) (noting that the reporter contacted Beesley regarding the allegations in the article on January 10, 2018).

1 The Committee disclosed making one payment to Lanakila during the first three months
 2 of 2018, \$1,500 on March 31, 2018.³⁵ The Committee reported cash-on-hand of \$295,782.96 as
 3 of that date.³⁶

4 **III. LEGAL ANALYSIS**

5 The Act affords federal candidates and their campaign committees wide discretion in the
 6 disposition of their campaign funds and provides that contributions accepted by a candidate may
 7 be used in several categories of permissible non-campaign uses of funds, including the “ordinary
 8 and necessary expenses incurred in connection with duties of the individual as a holder of
 9 Federal office,” as well as “charitable donations,” and “any other lawful purpose” but not
 10 conversion to “personal use.”³⁷ Conversion to personal use occurs when funds in a campaign
 11 account are used “to fulfill any commitment, obligation, or expense of a person that would exist
 12 irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal
 13 office.”³⁸

14 The Commission’s regulations provide that the costs of winding down the office of a
 15 former federal officeholder for a period of six months after he or she leaves office are ordinary
 16 and necessary expenses.³⁹ The Commission has explained that the six-month winding down
 17 period “acts as a safe harbor” and “does not preclude a former officeholder who can demonstrate

³⁵ See 2018 April Quarterly Report at 7, Mark Takai for Congress (Apr. 14, 2018).

³⁶ See *id.* at 2.

³⁷ 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”).

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

³⁹ 11 C.F.R. § 113.2(a)(2).

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1 that he or she has incurred ordinary and necessary winding down expenses more than six months
 2 after leaving office from using campaign funds to pay those expenses.”⁴⁰ Such winding down
 3 costs include the necessary administrative costs of terminating a campaign or congressional
 4 office, such as office space and storage rental, staff salaries, and office supplies.⁴¹

5 Certain other uses of campaign funds constitute *per se* conversion to personal use,
 6 including home mortgage and tuition payments.⁴² For disbursements neither *per se* permissible
 7 or impermissible, the Commission determines on a case-by-case basis whether a given campaign
 8 fund disbursement is personal use by applying the “irrespective test,” that is, whether the
 9 payment fulfills a commitment, obligation, or expense that would exist irrespective of the
 10 candidate’s campaign or duties as a federal officeholder.⁴³ The Commission has stated, however,
 11 that “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or
 12 officeholder activities, the Commission will not consider the use to be personal use.”⁴⁴

13 During the six-month winding down period from July 2016 through February 2017, the
 14 Committee issued contribution refunds, paid storage expenses, paid a compliance vendor, made

⁴⁰ See Personal Use E&J, 60 Fed. Reg. at 7,873.

⁴¹ 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.

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

⁴³ Personal Use E&J, 60 Fed. Reg. at 7,867; 11 C.F.R. § 113.1(g)(1)(ii).

⁴⁴ 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).

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1 contributions to other campaign committees, and paid Lanakila a total of \$46,193.80.⁴⁵ The
2 Committee asserts that Lanakila has provided *bona fide* services to the Committee and lists the
3 services, nearly all of which occurred in 2016 and early 2017.⁴⁶

4 As stated above, the six-month winding down period acts as a safe harbor for
5 committees.⁴⁷ After this period ended in February 2017, however, Lanakila continued to receive
6 monthly payments of \$5,759.16 from the Committee through December 2017 — an additional
7 ten months. Yet the Committee has not offered an explanation why it needed additional time to
8 wind down. The Committee appears to have been largely dormant during this time, disclosing
9 no receipts other than bank interest and disbursements only to Lanakila (\$5,759.16 per month), a
10 compliance vendor (\$500 per month), a database vendor (\$1,350 in April and \$150 in
11 December), and Google Apps (\$34.90 per month for web services).

12 When the safe harbor no longer applies, the Commission’s “irrespective test” applies: the
13 candidate — or in this case, the Committee — needs to show that the expenses reasonably
14 resulted from campaign or officeholder activities.⁴⁸ Here, the Committee has not demonstrated
15 how continued substantial monthly payments to Lanakila relate to campaign or officeholder
16 activities. The Committee contends that Lanakila assisted with the planning of charitable uses

⁴⁵ This total paid to Lanakila includes payments after Representative Takai’s death on July 20, 2017.

⁴⁶ See Committee Resp. at 5.

⁴⁷ See 11 C.F.R. § 113.2(a)(2); Advisory Op. 2013-05 (Gallegly).

⁴⁸ See 11 C.F.R. § 113.1(g)(1)(ii).

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1 for the remaining cash-on-hand but fails to provide details or documentation supporting this
2 assertion.⁴⁹

3 The Committee contends that when Beesley assumed the role of treasurer, his
4 compensation had already been determined by the Amendment to the Agreement, which Takai
5 himself signed.⁵⁰ It is unclear, however, what work Beesley and Lanakila were performing for
6 the Committee after February 2017, as the Committee continued to pay a compliance vendor,
7 CFO Compliance Group, \$500 per month, apparently for filing disclosure reports.⁵¹ A review of
8 the payments made to Lanakila before and after the Amendment raises further questions as to
9 what Committee-related work Lanakila and Beesley performed after Takai was no longer in
10 office. The \$5,759.16 monthly payment to Lanakila exceeded the \$4,000 plus tax monthly
11 payments to Lanakila in February and March 2016 when Takai was a candidate and officeholder,
12 and equaled the \$5,500 plus tax monthly payments starting in April 2016 when Takai's
13 reelection campaign was ramping up.⁵²

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

⁴⁹ See Committee Resp. at 5. The K. Mark Takai Foundation registered with the State of Hawaii on January 11, 2018, but the Committee does not explain the relationship between that filing and the \$57,591.60 the Committee paid to Lanakila between February and December 2017.

⁵⁰ Committee Resp. at 5.

⁵¹ 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/>.

⁵² See Committee Resp., Ex. A.

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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 Accordingly, under these circumstances, the Commission finds reason to believe that the
5 Committee and Beesley in his official capacity violated 52 U.S.C. § 30114(b) by converting
6 some portion of Committee payments to Lanakila from mid-2016 through December 2017 to
7 personal use.