

BEFORE THE FEDERAL ELECTION COMMISSION

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2			
3	In the Matter of)	
4)	
5	Mark Takai for Congress and Dylan)	MUR 7310
6	Beesley in his official capacity as)	
7	treasurer)	
8	Dylan Beesley)	
9	Lanakila Strategies, LLC)	
10			

SECOND GENERAL COUNSEL’S REPORT

I. ACTIONS RECOMMENDED

Enter into pre-probable cause conciliation with Mark Takai for Congress and Dylan Beesley in his official capacity as treasurer (the “Committee”), Dylan Beesley, and Lanakila Strategies, LLC (“Lanakila”), to resolve violations of 52 U.S.C. § 30114(b), a provision of the Federal Election Campaign Act of 1971, as amended (the “Act”), and approve the attached proposed conciliation agreement.

II. INTRODUCTION

This matter arose from a complaint alleging that Respondents converted campaign funds to personal use after the death of Congressman Mark Takai in July 2016 when the Committee continued to pay Beesley’s company, Lanakila, a monthly consulting fee of \$5,759 through December 2017, well after the six-month winding-down period established as a safe harbor by the Commission’s personal use regulations and despite the Committee conducting no apparent winding-down activities for much of 2017.¹

In response to the Complaint, Respondents contended that Lanakila contracted to oversee the Committee’s wind-down, with no fixed end date, and pursuant to that agreement it managed activities such as issuing contribution refunds, overseeing compliance services, making

¹ Compl. ¶¶ 27-30 (Jan. 18, 2018).

1 contributions, and “developing and discussing options for the Committee’s ultimate support of a
2 new charitable foundation.”² Further, they argued that the Commission’s regulations do not
3 place a deadline on winding down campaign operations and that the Commission has “avoided
4 questioning campaigns’ market-based decisions” so long as there “existed a genuine
5 commercially reasonable relationship between the parties.”³

6 On June 4, 2019, the Commission found reason to believe that the Committee, Beesley,
7 and Lanakila violated 52 U.S.C. § 30114(b).⁴ The Commission found that Respondents offered
8 no explanation for why the Committee needed more than six months to wind down operations,
9 the services Lanakila apparently provided nearly all occurred in 2016 and early 2017, and
10 Respondents had not “demonstrated how continued substantial monthly payments to Lanakila
11 [following the wind-down period] relate to campaign or officeholder activities.”⁵

12 The Office of General Counsel (“OGC”) began an investigation to gather information
13 about the payments the Committee made to Beesley and Lanakila and the services they
14 performed. The information obtained during the investigation shows that the Committee’s
15 winding-down activities were largely complete by mid-March 2017, just after the six-month safe
16 harbor period expired, and that the majority of the Committee’s payments to Beesley and
17 Lanakila after that point constituted personal use because they did not reasonably result from

² Committee Resp. at 2, 5 (Mar. 14, 2018); Beesley and Lanakila Resp. at 2 (March 14, 2018) (adopting and incorporating all arguments presented in Committee’s Response).

³ Committee Resp. at 3; Beesley and Lanakila Resp. at 2 (adopting arguments in Committee’s Response).

⁴ Certification (“Cert.”) ¶¶ 1-3 (June 4, 2019); Factual & Legal Analysis (“F&LA”) at 11, MUR 7310 (Mark Takai for Congress) (“Committee F&LA”) (finding reason to believe that Committee “violated 52 U.S.C. § 30114(b) by converting some portion of Committee payments to Lanakila from mid-2016 through December 2017 to personal use”); F&LA at 10-11, MUR 7310 (Lanakila Strategics, LLC, *et al.*) (“Lanakila F&LA”) (same as to Beesley and Lanakila).

⁵ Committee F&LA at 8-9; *see* Lanakila F&LA at 9.

1 campaign or officeholder-related activities. The Committee was largely dormant, Beesley and
2 Lanakila had few remaining responsibilities, and the only significant task that remained —
3 establishing a charitable foundation to receive most of the Committee's remaining funds — was
4 handled by the candidate's widow, Sami Takai, and her father, Gary Kai.

5 Respondents contend that the Commission's reason-to-believe finding was "erroneous"
6 and that they have done nothing wrong, but they have expressed willingness to attempt to resolve
7 this matter through pre-probable cause conciliation ("PPCC").⁶ Accordingly, we recommend
8 that the Commission enter into PPCC with the Committee, Beesley, and Lanakila in order to
9 resolve violations of 52 U.S.C. § 30114(b).

10 **III. SUMMARY OF INVESTIGATION**

11 On June 24, 2019, OGC sent informal requests to Respondents for written answers and
12 production of documents (collectively the "Informal Requests").⁷ On August 15, 2019,
13 Respondents jointly produced approximately 4,000 pages of documents based on the Informal
14 Requests, as well as a Response to Requests for Written Answers and Production of Documents
15 (the "Written Responses").⁸

16 However, the production did not fully respond to the Informal Requests. Notably, it
17 appeared to consist only of Beesley's documents, even though the Informal Requests were issued

⁶ *E.g.*, Letter from Brian G. Svoboda, Counsel for Committee, and William Pittard, Counsel for Lanakila and Beesley, to Mark Allen and Laura Conley, FEC (Nov. 12, 2021) (stating that there is "no factual or legal basis for penalty, admission, or adverse finding") ("Respondents' November 2021 Letter").

⁷ RTB Notif. Letter to Committee, Attach. 2 (June 24, 2019) ("Committee Requests"); RTB Notif. Letter to Lanakila and Beesley, Attach. 2 (June 24, 2019) ("Lanakila Requests").

⁸ Respondents' Production of Documents to FEC (Aug. 15, 2019) ("Joint Production"); Respondents' Response to Requests for Written Answers and Production of Documents (Aug. 15, 2019) ("Written Responses").

1 to all Respondents.⁹ OGC contacted the Committee's counsel to request that it supplement the
2 production with documents from three additional custodians involved in the Committee's
3 winding down.¹⁰ The Committee refused, arguing that the initial production "should be
4 sufficient to demonstrate the absence of an adequate factual basis for further investigation or
5 adverse findings."¹¹ As a result, on June 30, 2020, OGC circulated to the Commission a
6 proposed order and subpoena to the Committee, but the Commission did not approve the
7 documents before losing a quorum.¹²

8 On July 13, 2021, to conclude the investigation and in consideration of the statute of
9 limitations in this matter, OGC obtained the Commission's approval for more limited Orders to
10 Submit Written Answers and Subpoenas to Produce Documents to the Committee, Beesley, and
11 Lanakila (the "Formal Requests").¹³ The Formal Requests sought information related to a key
12 email exchange in which Beesley and Gary Kai, then the Committee's Deputy Treasurer,
13 negotiated a new rate of compensation for Lanakila.¹⁴ Respondents produced an additional
14 24 pages of responsive documents pursuant to the Formal Requests.¹⁵

⁹ Letter from Anne Robinson, FEC, to Brian G. Svoboda and Shanna Reulbach, Counsel for the Committee (Dec. 18, 2019).

¹⁰ *Id.* (requesting documents from Sami Takai, Gary Kai, and Paula MacCutcheon, who appears to have been a Committee employee who worked closely with Beesley during the covered period of time).

¹¹ Letter from Brian G. Svoboda and Shanna Reulbach, Counsel for the Committee, to Mark Allen and Anne Robinson, FEC, at 2 (Feb. 11, 2020).

¹² *See* MUR 7310 Memorandum to the Commission, Circulation of Discovery Documents – Order and Subpoena to Mark Takai for Congress (June 30, 2020).

¹³ Cert. at 1 (July 13, 2021).

¹⁴ Order to Submit Written Answers and Subpoena to Produce Documents to Dylan Beesley and Lanakila Strategies, LLC (July 21, 2021); Order to Submit Written Answers and Subpoena to Produce Documents to Mark Takai for Congress and Dylan Beesley, in his official capacity as treasurer (July 21, 2021).

¹⁵ Respondents' Production of Documents to FEC (Aug. 20, 2021) ("Supp. Production").

1 The results of OGC's investigation, including review of Respondents' document
2 productions and the Written Responses, are summarized below.

3 **A. Takai's 2016 Re-Election Campaign**

4 Congressman Takai was elected to the U.S. House of Representatives in 2014 and
5 intended to stand for re-election in the 2016 cycle.¹⁶ Mark Takai for Congress, his principal
6 campaign committee, hired Beesley as a fundraising consultant in 2015 through an entity called
7 DB Advisors, and that contract was later assigned to Lanakila.¹⁷ The contract covered a range of
8 responsibilities, including: preparing call sheets on fundraising targets; tracking calls, pledges,
9 and contributions in the Committee's database; analyzing call time data; reviewing and
10 maintaining the Committee's fundraising database; and coordinating and participating in
11 meetings of the Finance Committee.¹⁸ The fee for this fundraising work was initially \$2,500 per
12 month, later amended to \$4,000 per month through March 31, 2016.¹⁹

13 In February 2016, the Committee and Lanakila signed a new contract (the "Strategic
14 Consulting Contract") for an additional set of tasks. Lanakila was now also responsible for
15 providing strategic and political consulting; branding, communications, and media affairs
16 consulting; and designing and executing Takai's 2016 campaign launch.²⁰ Lanakila's additional
17 fee for the Strategic Consulting Contract was \$4,000 plus tax for February and March 2016, and

¹⁶ *See* Committee F&LA at 2.

¹⁷ Joint Production at 00001 (DB Advisors consulting agreement covering June 1 – December 31, 2015); *id.*
at 04022 (DB advisors agreement covering July 1 – December 31, 2015); *id.* at 00009 (showing assignment).

¹⁸ *Id.* at 00001; *id.* at 04022.

¹⁹ *Id.* at 00001-02 (showing initial rate of payment); *id.* at 04023 (showing rate of \$4,000 per month
beginning July 1, 2015); *id.* at 00014 (showing extension of term to March 31, 2016).

²⁰ *Id.* at 00019 (Consulting Agreement dated Feb. 10, 2016).

1 \$5,500 plus tax for the following three months of the contract, with the agreement slated to
2 terminate on June 30, 2016.²¹

3 Documents produced by Respondents indicate that Beesley engaged in a variety of
4 activities for the Committee during this period, including holding calls with vendors and
5 Committee staff;²² attending meetings;²³ organizing a fundraiser;²⁴ meeting with the candidate;²⁵
6 and preparing him for campaign events.²⁶ A detailed memo from Beesley to “Team Takai”
7 dated April 11, 2016, also suggests his involvement in topics such as campaign staffing, office
8 space, finances, events, and assessing primary and general election challengers.²⁷ Additionally,
9 an April 11, 2016, invitation for an “all consultants call” suggests that Beesley dealt with a wide

²¹ *Id.* at 00019, 00024.

²² *E.g., id.* at 00072 (showing Apr. 1, 2016, call with NewBlue Digital); *id.* at 00073 (showing Apr. 3, 2016, call regarding “press help”); *id.* at 00176 (showing Apr. 11, 2016, appointment for “Y Call Time [sic]” and indicating that “3pm to 6pm is Dylan”); *id.* at 00184 (showing Apr. 11, 2016, appointment for Team Takai: Hawaii Finance Call); *id.* at 00421 (showing May 6, 2016, appointment for “KMT: NewBlue Digital Call”).

²³ *E.g., id.* at 00122 (showing calendar invitation for Apr. 6, 2016, lunch with Gary Kai).

²⁴ *E.g., id.* at 00172-73 (showing Beesley as point of contact for fundraiser information). This document shows a May 4 fundraiser without identifying the year. However, based on the stated individual contribution limit of \$2,700, it would have occurred during the 2016 election cycle. *Id.*; *see* FEC, Archive of Contribution Limits, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/archived-contribution-limits/>.

²⁵ *E.g.,* Joint Production at 00261 (Apr. 17, 2016, calendar invitation for “KMT/DB Catch-up Call”). It is unclear whether all calendar invitations produced by Respondents are for events Beesley personally attended. In some cases, it appears he had calendar invitations for events attended by Congressman Takai. *E.g., id.* at 00295 (calendar invitation for “DCCC’s Red to Blue Committee Meeting” including a note that “KMT attendance” had been confirmed).

²⁶ *Id.* at 00388-89 (April 30, 2016, memo from Beesley to Takai preparing him for an interview).

²⁷ *Id.* at 00178-79.

1 range of Committee vendors, including consultants for fundraising;²⁸ advertising;²⁹ direct mail;³⁰
 2 digital fundraising;³¹ compliance;³² and polling and campaign strategy.³³

3 **B. Takai's Withdrawal from the Election and the Committee's Activities**
 4 **During the Winding-Down Safe Harbor Period**

5 On May 19, 2016, Congressman Takai announced that he was no longer seeking
 6 re-election due to pancreatic cancer.³⁴ He officially withdrew from the race on June 1, 2016.³⁵
 7 Shortly thereafter, Congressman Takai and Beesley amended the Strategic Consulting Contract.
 8 The updated agreement retained Lanakila's obligations to provide strategic and political
 9 consulting, and branding, communications, and media affairs consulting, but it removed the
 10 responsibility for designing and executing the campaign launch and replaced it with a directive to
 11 "[o]versee the wind down" of the Committee.³⁶ There was no change to Lanakila's monthly fee
 12 of \$5,500 plus tax,³⁷ but the updated contract removed the set term of the agreement and instead
 13 provided that it would continue until terminated by the Committee or Lanakila.³⁸ Beesley

²⁸ *Id.* at 00180; Eckert & Associates, *About Us*, <https://eckertassoc.com/about>.

²⁹ Joint Production at 00180; Snyder Pickerill SP, *Services*, <https://spmediagroup.com/services/>.

³⁰ Joint Production at 00180; The Strategy Group, *The Difference is Strategy*, <https://strategygroup.com/work/>.

³¹ Joint Production at 00180; New Blue Interactive, *Our Services*, <https://www.newblueinteractive.com/our-services-2/>.

³² Joint Production at 00180; CFO Consultants, *Home*, <http://www.cfoconsults.com/> [<https://web.archive.org/web/20160215180245/http://www.cfoconsults.com/>]. Although it appears that the complete name for this vendor is CFO Consulting Group, throughout the Joint Production it is referred to as "CFO Compliance," so for consistency we refer to it as CFO Compliance in this report.

³³ Joint Production at 00180; Normington, Petts & Associates, *Home*, <https://www.normingtonpetts.com/>.

³⁴ Committee F&LA at 3.

³⁵ Joint Production at 00565 (Signed and dated Candidate Withdrawal Form).

³⁶ *Compare id.* at 00019 (Consulting Agreement dated Feb. 10, 2016), *with id.* at 00026 (First Amendment to Consulting Agreement dated June 14, 2016).

³⁷ *See id.* at 00027 (describing fees).

³⁸ *Compare id.* at 00019, *with id.* at 00026.

1 described this change in a memo to the Takais as allowing him to “help you through the end of
2 your term, or until you decide it’s time to end the contract.”³⁹

3 The Committee’s wind down initially progressed quickly. A June 9, 2016, memo from
4 Beesley to Congressman Takai and his wife, Sami Takai, indicates that Beesley had already
5 terminated or renegotiated some of the Committee’s vendor agreements, as well as its lease,⁴⁰
6 and that the Committee hired a new employee, Paula MacCutcheon, who was “handling the day-
7 to-day operations with oversight from [Beesley].”⁴¹ The memo walks through outstanding items,
8 such as terminating an insurance policy, seeking a refund of a security deposit, and refunding
9 contributions.⁴² The Committee was also considering sending out a mailer and undertaking
10 digital and social media work, such as simplifying its website and cleaning up data.⁴³

11 Beesley updated the Takais on the wind down a week later, in a June 18, 2016, memo.
12 He reported that he was arranging for them to attend a political convention; making dues
13 payments to the Democratic Congressional Campaign Committee; working with MacCutcheon
14 to prepare and send refunds; coordinating use and replacement of Takai’s yard signs; considering
15 a proposal for a data sale or swap; and had taken over as treasurer of Takai’s leadership PAC,
16 Mahalo PAC.⁴⁴

³⁹ *Id.* at 00590 (Memo from Beesley to Congressman and Sami Takai dated June 18, 2016).

⁴⁰ *Id.* at 00570 (stating that Beesley had negotiated a revised agreement with New Blue Interactive and terminated a contract with Eckert & Associates); *id.* at 03446 (May 31, 2016 letter from Beesley to New Blue Interactive memorializing change in agreement); *id.* at 03447 (June 1, 2016 letter from Beesley to Eckert & Associates memorializing contract termination).

⁴¹ *Id.* at 00570 (stating that MacCutcheon “has hit the ground running”).

⁴² *Id.* at 00570-71.

⁴³ *Id.* at 00571-72.

⁴⁴ *Id.* at 00590-92. A leadership PAC is “a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized

1 The June 18 memo also suggests that Beesley was aware that certain uses of campaign
2 funds were prohibited. For example, he stated that he had confirmed that a mailer the Committee
3 was contemplating was “an acceptable wind down expenditure.”⁴⁵ He also advised, in response
4 to a question from the Takais, that they could donate remaining funds to a charity, so long as it
5 did not compensate Takai’s family or his official or campaign staffs.⁴⁶

6 In mid-July 2016, Beesley provided Congressman Takai with a further status update. It
7 shows that all remaining letters related to contribution refunds had been prepared and would be
8 mailed shortly, and that there was some work remaining to be done with disposing of signage,
9 overseeing the website redesign, and conducting a data clean up.⁴⁷ It also indicates that Beesley
10 expected to have a “[c]atch-up meeting” with Takai, although it is unclear whether the meeting
11 took place.⁴⁸ Congressman Takai passed away on July 20, 2016.⁴⁹

12 Calendar invitations for the rest of 2016 show Beesley engaged in calls and meetings that
13 appear to be Committee business.⁵⁰ Beesley became the Committee’s treasurer on September 8,
14 2016, at the request of Sami Takai, with no adjustment in the compensation paid to Lanakila.⁵¹
15 Respondents also produced documents showing that Beesley was working with the Committee’s

committee of the candidate or individual, except that leadership PAC does not include a political committee of a political party.” 11 C.F.R. § 100.5(e)(6).

⁴⁵ Joint Production at 00592.

⁴⁶ *Id.* at 00593.

⁴⁷ *Id.* at 02308-09 (Memo from Beesley to Congressman Takai dated July 18, 2016); *see id.* at 03575 (email from Congressman Takai to Beesley containing directions on refunding contributions).

⁴⁸ *Id.* at 02309.

⁴⁹ Associated Press, *Mark Takai, First-Term Congressman from Hawaii, Dies at 49*, N.Y. TIMES, July 20, 2016.

⁵⁰ *E.g.*, Joint Production at 02361 (showing Sept. 9, 2016, meeting “re KMT Bank Account”).

⁵¹ Committee Resp. at 2; Joint Production at 02399 (Letter to Bank of Hawai’i describing Beesley’s appointment); Mark Takai for Congress, Amend. Statement of Org. at 1 (Sept. 8, 2016), <https://docquery.fec.gov/pdf/784/201609089030751784/201609089030751784.pdf>.

1 vendors to complete tax documents and close out invoices,⁵² issuing additional refunds,⁵³
2 disposing of Committee assets,⁵⁴ and reviewing draft disclosure forms to be filed with the
3 Commission.⁵⁵ Between November 2016 and February 2017, Beesley worked with NGP Van, a
4 platform the Committee apparently used to track some financial and compliance measures, to
5 cancel email and online contribution services the Committee was receiving, with the result that
6 the Committee's quarterly bill dropped from \$3,000 to \$750.⁵⁶

7 The Committee's disclosure forms show that the last payroll payment to Paula
8 MacCutcheon was disbursed on October 14, 2016,⁵⁷ but Beesley was not conducting the
9 Committee's business alone after that point. Notably, emails around the end of 2016 and early
10 2017 indicate that Sami Takai was also involved in Committee operations. For example, she
11 appears to have been responsible for issuing some of the Committee's checks and authorizing
12 payment on invoices from vendors, including Lanakila.⁵⁸ CFO Compliance, a Committee
13 vendor, was also assisting Beesley with certain tasks. For example, in December 2016, Beesley

⁵² Joint Production at 02400 (November 2016 emails between Beesley and Allison Murray of CFO Compliance regarding Form 1099s); *id.* at 02422-25 (Nov. 2016 – Feb. 2017 emails between Beesley and NGP Van regarding amended contract and invoice); *id.* at 02488 (Dec. 2016 email from Beesley to Perkins Coie asking about balance due).

⁵³ *Id.* at 02403 (November 26, 2016, letter from Beesley to donor showing refund of contribution); *id.* at 02434 (December 2016 email from Beesley to Sami Takai regarding follow up calls for uncashed refund checks); *id.* at 02438 (Dec. 16, 2016 letter from Beesley to contributor regarding uncashed refund check).

⁵⁴ *E.g., id.* at 03878 (Sept. 12, 2016 letter from Beesley to another campaign regarding in-kind donation of wood and PVC pipes to hold campaign signs).

⁵⁵ *Id.* at 02411 (showing emails in November and December 2016 between Beesley and Allison Murray of CFO Compliance regarding a report for Mahalo PAC, Takai's leadership PAC).

⁵⁶ *Id.* at 03955 (Aug. 1, 2016 invoice to Committee showing quarterly fee of \$3,000) *id.* at 03999 (Feb. 1, 2017 invoice to Committee showing new rate of \$250 per month); *id.* at 02425 (email among Edie Zornes of NGP Van, Beesley, and others discussing new pricing of \$250 per month).

⁵⁷ Mark Takai for Congress, 2016 Year-End Report at 11 (Jan. 31, 2017), <https://docquery.fec.gov/pdf/183/201701319042137183/201701319042137183.pdf#navpanes=0>.

⁵⁸ Joint Production at 02434 (Dec. 8, 2016 email from Sami Takai asking Beesley “[D]o I need to pay anything to NGP? And what about to you?”); *id.* at 02473 (Dec. 21, 2016 email from Sami Takai to Beesley giving authorization for payment of a Lanakila invoice).

1 asked Allison Murray, the Committee's contact at CFO Compliance, how to record some re-
2 issued refund checks in NGP Van, and Murray provided instructions.⁵⁹ CFO Compliance was
3 also responsible for preparing the Committee's disclosure reports, which Beesley reviewed
4 before they were filed.⁶⁰

5 By the end of 2016, approximately five months into the safe-harbor period, documents
6 produced by Respondents and the Committee's disclosure reports both suggest that there was
7 little work remaining to wind down the Committee. For example, in July 2016, the Committee
8 had reported issuing 71 contribution refunds,⁶¹ but by the end of that year refunds had slowed to
9 a trickle — the Committee issued only three in December 2016.⁶²

10 On December 23, 2016, Beesley met with Sami Takai about the “campaign wind-
11 down.”⁶³ Notes indicate that the meeting covered an idea for a student leader development
12 institute and plans for “file/paper retention.”⁶⁴ It also covered contribution refunds, of which the
13 notes say there were a “[h]andful remaining,” a suggestion to terminate Mahalo PAC, and the
14 question of whether Sami Takai would like to transfer most of the Committee's remaining
15 \$400,000 “to charitable vehicle you settled on?”⁶⁵ Respondents also produced what appear to be

⁵⁹ *Id.* at 02463.

⁶⁰ *E.g., id.* at 03233 (January 2017 emails showing Murray sending Committee's 2016 Year-End Report for Beesley's review).

⁶¹ Mark Takai for Congress, Oct. 2016 Quarterly Report at 19-43 (Oct. 15, 2016), <https://docquery.fec.gov/pdf/855/201610159032636855/201610159032636855.pdf#navpanes=0>.

⁶² Mark Takai for Congress, 2016 Year-End Report at 15-17 (Dec. 31, 2016), <https://docquery.fec.gov/pdf/183/201701319042137183/201701319042137183.pdf#navpanes=0>.

⁶³ Joint Production at 02474 (showing handwritten notes of meeting topics); *id.* at 02485 (calendar invitation for “Mtg w Sami Takai” on Dec. 23, 2016).

⁶⁴ *Id.* at 02474.

⁶⁵ *Id.* at 02474; *see id.* at 03459-60 (showing apparent script and notes for Beesley making calls about uncashed refund checks); *id.* at 03513 (showing apparent call list regarding outstanding refund checks). The statement regarding funds to be directed to charity almost certainly refers to the Committee, as Mahalo PAC's 2016

1 handwritten notes related to the meeting, which state “501(c)(3) – GK setting up,” likely
 2 referring to the role of Gary Kai, Sami Takai’s father, in establishing the charitable vehicle.⁶⁶

3 In January 2017, Beesley informed Murray of CFO Compliance that, even if Sami Takai
 4 opted to keep Mahalo PAC open, he did not “expect there will be much activity.”⁶⁷ That same
 5 month, Sami Takai decided to make a few final contributions through the PAC and shut it
 6 down.⁶⁸ Documents indicate that there was also discussion around this time of shutting down the
 7 Committee. Beesley informed Murray that “[w]e are thinking shutdown of the main committee
 8 by March 31” and noted that when he met with Sami Takai the previous month “the nonprofit
 9 hadn’t been set up yet and there are still a few small outstanding things I need to finish on
 10 refunds and the recordkeeping.”⁶⁹ He asked CFO to extend its contract through March 31st or
 11 the Committee’s termination and negotiated to reduce CFO’s monthly fee from \$1,250 to \$500.⁷⁰

12 Beesley also contacted Sami Takai in January 2017 to follow up on their December
 13 meeting. He posed several questions about checks and invoices, including asking for approval of
 14 Lanakila’s February bill.⁷¹ He also informed Sami Takai of the change in CFO Compliance’s
 15 rates “until we close out the committee,”⁷² and noted they could “initiate a partial transfer of the

Year-End Report shows its cash on hand was just over \$1,000. Mahalo PAC, 2016 Year-End Report at 2 (Jan. 13, 2017), <https://docquery.fec.gov/pdf/988/201701139041385988/201701139041385988.pdf>. The Committee’s reported cash-on-hand was approximately \$398,000. Mark Takai for Congress, 2016 Year-End Report at 2 (Jan. 31, 2017), <https://docquery.fec.gov/pdf/183/201701319042137183/201701319042137183.pdf>.

⁶⁶ Joint Production at 03953; Committee Resp. at 1 n.1 (explaining relationship between Sami Takai and Gary Kai).

⁶⁷ Joint Production at 03209.

⁶⁸ *Id.* at 03230.

⁶⁹ *Id.* at 03258 (January 2017 emails between Beesley and Murray).

⁷⁰ *Id.* at 03259-60; *see id.* at 02479 (showing CFO’s November and December 2016 invoices were each \$1,250).

⁷¹ *Id.* at 03225.

⁷² *Id.*

1 majority of the excess funds whenever the nonprofit vehicle has been established and you are
2 ready to move. No rush, just wanted you to know that this is still an option.”⁷³ Other documents
3 produced by Respondents appear to show that, by this point in late January 2017, there were only
4 10 refund checks that had not yet been deposited,⁷⁴ and Beesley made calls and prepared letters
5 to re-issue some of those checks.⁷⁵ CFO Compliance continued to prepare the Committee’s
6 disclosure reports, with Beesley reviewing and signing off on them.⁷⁶

7 February 2017 marked six months since Congressman Takai’s death, and that month
8 Beesley informed Sami Takai that “as promised” he had worked with CFO Compliance “to close
9 out Mahalo PAC” and asked for a meeting “to talk final steps.”⁷⁷ A calendar invitation produced
10 by Respondents indicates that the meeting took place on March 15, 2017.⁷⁸ At the end of March,
11 Murray emailed Beesley “to check in about the campaign account.”⁷⁹ She wrote that she
12 recalled him “mentioning that the goal was to close out by the end of March” and asked whether

⁷³ *Id.*

⁷⁴ *Id.* at 03231-32.

⁷⁵ *E.g., id.* at 03262 (unsigned letter dated Jan. 27, 2017); *id.* at 03514-15 (showing what appear to be notes of calls regarding refunds made on January 26); *id.* at 03523-25 (showing checks for reissued refunds, dated Jan. 27, 2017).

⁷⁶ *Id.* at 03233 (January 2017 emails between Beesley and Murray regarding Committee’s year-end report).

⁷⁷ *Id.* at 03283-85. Mahalo PAC terminated on April 15, 2017. Mahalo PAC, Termination Report (Apr. 15, 2017), <https://docquery.fec.gov/pdf/660/201704159052252660/201704159052252660.pdf>; Letter from Joshua Rebollozo, FEC, to Dylan Beesley, Mahalo PAC (Apr. 25, 2017), <https://docquery.fec.gov/pdf/106/201704250300085106/201704250300085106.pdf> (stating that the Commission has accepted the Committee’s termination).

⁷⁸ Joint Production at 03333. Emails between Beesley and Sami Takai show that the meeting was at one point planned for March 13, 2017. *Id.* at 03284. However, a calendar invitation produced by Beesley shows it was scheduled for March 15, 2017. *Id.* at 03333. It is not clear from Respondents’ production what led to the change.

⁷⁹ *Id.* at 03332.

1 they were “still on track for that.”⁸⁰ Beesley replied that “Sami hasn’t set up the foundation yet.
 2 Honestly, I think it could be a few more months because she doesn’t seem to be in a hurry.”⁸¹

3 C. Committee Operations After the Winding-Down Safe Harbor Period

4 Beesley’s duties for the Committee appear to have been minimal after his March 15,
 5 2017, meeting with Sami Takai. He exchanged occasional emails with CFO Compliance about
 6 Committee payments,⁸² reviewed quarterly disclosure reports that CFO had prepared (all of
 7 which contained minimal or no receipts and limited disbursements, mostly to Lanakila itself),⁸³
 8 and wrote checks to a small number of vendors, including Lanakila.⁸⁴ He occasionally
 9 corresponded with Sami Takai about Committee business, largely payments to Lanakila, CFO
 10 Compliance, and NGP Van.⁸⁵ Finally, he appears to have handled some one-time tasks, such as
 11 looking for someone to take leftover disposable phones,⁸⁶ filing a notice with the State of
 12 Hawaii,⁸⁷ and reopening the Committee’s NGP Van account after it was cut off, a situation he

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *E.g., id.* at 03335 (April 2017 emails between Beesley and Murray).

⁸³ *Id.* at 03337 (April 2017 emails regarding “Q1 FEC report”); *id.* at 03365 (July 2017 emails regarding “Q2 FEC report”); *id.* at 03383 (October 2017 emails regarding “Q3 FEC report”); Mark Takai for Congress, April 2017 Quarterly Report (Apr. 5, 2017); Mark Takai for Congress, July 2017 Quarterly Report (July 15, 2017); Mark Takai for Congress, October 2017 Quarterly Report (Oct. 13, 2017).

⁸⁴ Joint Production at 03424-26 (April 2017 checks to NGP Van, CFO Compliance, and Lanakila); *id.* at 03427-28 (May 2017 checks to CFO Compliance and Lanakila); *id.* at 03429-30 (June 2017 checks to CFO Compliance and Lanakila); *id.* at 03374-75 (July 2017 check to CFO Compliance); *id.* at 03376 (July 2017 check to Lanakila); *id.* at 03377-79 (August 2017 checks to CFO Compliance and Lanakila); *id.* at 03380-82 (September 2017 checks to CFO Compliance and Lanakila); *id.* at 03445 (October 2017 checks to CFO Compliance and Lanakila); *id.* at 03433-34 (November 2017 checks to CFO Compliance and Lanakila); *id.* at 03435-36 (December 2017 checks to CFO Compliance and Lanakila).

⁸⁵ *Id.* at 03354-55 (April 20, 2017 email between Beesley and Sami Takai regarding invoice from NGP Van); *id.* at 03357 (April 22, 2017, email from Beesley to Sami Takai regarding checks).

⁸⁶ *Id.* at 03363 (May 2017 emails with Sami Takai).

⁸⁷ *Id.* at 03451 (Form dated June 1, 2017 indicating that the Committee continued in operation but no longer had employees).

1 explained to CFO Compliance as “my fault because I left the negotiations with our former
 2 account rep unresolved.”⁸⁸ He requested to reopen the account only one week per month, so that
 3 CFO Compliance could enter expenses and prepare reports, which would apparently reduce the
 4 Committee’s payments to NGP Van from \$250 to \$150 per month.⁸⁹ Throughout this period, he
 5 continued to bill the Committee and be paid Lanakila’s fully monthly fee of \$5,759.16.⁹⁰

6 All told, between March 15, 2017, and the end of that year the Committee reported
 7 making 31 disbursements totaling \$64,405.70.⁹¹ Ten of those disbursements were made to
 8 Lanakila, for a total of \$57,591.60, or approximately 89% of the Committee’s total.⁹² The
 9 remaining disbursements were payments to CFO Compliance, NGP Van, and a recurring \$35
 10 charge to Google Apps for “web expenses.”⁹³ In comparison, during the winding-down period
 11 from July 20, 2016, to March 15, 2017, the Committee made 78 disbursements, including a
 12 number of reissued contribution refunds, totaling \$103,733.14; of this amount, payments to
 13 Lanakila totaled \$46,193.80, or approximately 45% of the total.⁹⁴

⁸⁸ *Id.* at 03392.

⁸⁹ *Id.* at 03394-95 (December 2017 emails among Beesley and NGP Van showing request to reopen account one week per month); *id.* at 03784 (showing NGP Van billed Committee \$250 per month for May – October 2017); *id.* at 03785 (showing NGP Van billed Committee \$150 for a “1 week temporary reopen” in December 2017).

⁹⁰ *Supra* note 84 (listing checks and invoices to Lanakila between April and December 2017); Committee F&LA at 4; Lanakila F&LA at 4.

⁹¹ Mark Takai for Congress, *Disbursements*, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00548131&min_date=03%2F15%2F2017&max_date=12%2F31%2F2017 (filtered for date range 03/15/2017 – 12/31/2017).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Mark Takai for Congress, *Disbursements*, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00548131&min_date=07%2F20%2F2016&max_date=03%2F15%2F2017 (filtered for date range 07/20/2016 – 03/15/2017). Of the \$103,733.14 total, \$13,200 is attributable to contribution refunds that the Committee voided and reissued during the winding-down period. *Id.*

1 The charitable vehicle intended to receive the Committee's remaining funds was not
2 established in 2017, and documents produced by Respondents support the notes from Beesley
3 and Sami Takai's December 2016 meeting stating that Gary Kai was setting up the organization.
4 Specifically, in May 2017, Kai contacted Beesley and Sami Takai to ask whether campaign
5 funds could be "deposited in an account for an entity that will be seeking approval as a
6 501c3?"⁹⁵ Beesley responded "long time no talk," indicated that he would check on
7 requirements for transferring the funds, and asked Kai which entity the contribution would go
8 to.⁹⁶ In response, Kai stated "[w]e are in the process of creating one which could be done in a
9 few days. The lengthy process is getting the IRS 501c3 designation."⁹⁷ Beesley then informed
10 him that "[t]his much is clear to me – we can make a contribution to a 501c3" and also wrote that
11 the committee could make charitable contributions under certain circumstances.⁹⁸ He informed
12 Sami Takai that he could "get our attorney to give us a final go-ahead if you'd like?"⁹⁹ It is
13 unclear whether she responded, and documents produced by Respondents do not show any
14 further involvement by Beesley or Lanakila in establishing the 501(c)(3) organization.

15 **D. Press Coverage and Renegotiation of Lanakila's Contract**

16 On January 10, 2018, the *Honolulu Star Advertiser* reportedly contacted Beesley to
17 comment on the Committee's continued payments to Lanakila 18 months after Congressman
18 Takai's death.¹⁰⁰ He is quoted as stating that, following the Congressman's death, "the

⁹⁵ Joint Production at 03359.

⁹⁶ *Id.*

⁹⁷ *Id.* at 03360.

⁹⁸ *Id.* at 03361.

⁹⁹ *Id.* at 03361.

¹⁰⁰ Nanea Kalani, *Payments by Takai's Campaign Questioned*, HONOLULU STAR ADVERTISER, Jan. 12, 2018 (stating that Beesley was "[r]eached for comment by phone Wednesday," which would have been January 10, 2018).

1 campaign continues to have surplus funds and filing obligations with the Federal Election
2 Commission” and that it “needs some personnel to continue to manage its affairs and meet these
3 and other obligations until it finally disposes of its funds and terminates its registration.”¹⁰¹

4 The next day, January 11, 2018, the K. Mark Takai Foundation registered as a nonprofit
5 corporation with the State of Hawaii.¹⁰² The foundation was later granted federal tax-exempt
6 status under Internal Revenue Code Section 501(c)(3), with an effective date of January 11,
7 2018.¹⁰³ On January 24, 2018, the Committee amended its Statement of Organization to
8 designate Gary Kai as its Deputy Treasurer.¹⁰⁴

9 Lanakila received its usual fee of \$5,759.16 for January 2018, due to an invoice Beesley
10 had submitted and paid the prior month.¹⁰⁵ Aside from a calendar invitation reflecting that
11 Beesley had a call about “Next Steps on Complaint,” which potentially refers to this matter, his
12 activities for the Committee that month continued to be limited.¹⁰⁶ He prepared a letter and
13 check for a single outstanding refund from the Committee’s account¹⁰⁷ and paid the CFO
14 Compliance bill.¹⁰⁸ He did not, however, appear to invoice the Committee for Lanakila’s
15 February fee, nor did he send an invoice for Lanakila’s March fee the following month.

¹⁰¹ *Id.*

¹⁰² Hawaii Business Express, *K. Mark Takai Foundation*, <https://hbe.chawaii.gov/documents/business.html?fileNumber=287547D2&view=info>.

¹⁰³ Determination Letter from Internal Revenue Service to K. Mark Takai Foundation (Mar. 27, 2018), <https://apps.irs.gov/app/eos/detailsPage?ein=824524922&name=K%20Mark%20Takai%20Foundation&city=Honolulu&state=HI&countryAbbr=US&dba=&type=CHARITIES.%20DETERMINATIONLETTERS.%20COPYOFRETURNS&orgTags=CHARITIES&orgTags=DETERMINATIONLETTERS&orgTags=COPYOFRETURNS>.

¹⁰⁴ Mark Takai for Congress, Amend. Statement of Org. at 4 (Jan. 24, 2018), <https://docquery.fec.gov/pdf/176/201801249090602176/201801249090602176.pdf>.

¹⁰⁵ Joint Production at 03435.

¹⁰⁶ *Id.* at 03401.

¹⁰⁷ *Id.* at 03461.

¹⁰⁸ *Id.* at 03437.

1 In March 2018, Beesley and Gary Kai exchanged emails in which they renegotiated
2 Lanakila's monthly fee from \$5,759.16 to \$750. Kai asked, "What would you consider a
3 reasonable amount of compensation-the lower the better for obvious reasons," to which Beesley
4 initially responded, "I thought a little less than half of my current \$5759."¹⁰⁹ Beesley indicated
5 that he had prepared a document setting the fee at \$2,500 per month, which appears to refer to a
6 draft contract extension that amends the fee but does not adjust Lanakila's duties to the
7 Committee or the unlimited term of the contract.¹¹⁰ Kai responded, however, that "I am not sure
8 that I could recommend that to Sami [Takai]" and asked how many hours per week Beesley was
9 working for the Committee.¹¹¹ Beesley did not answer the question and instead stated that while
10 he preferred "not to take anything" the "FEC says the campaign has to pay me at fair market
11 value."¹¹² He then proposed \$750 a month, which he said "puts me just a little ahead of the
12 accountants at \$500 per month."¹¹³ Kai agreed,¹¹⁴ and it appears that another amended
13 agreement was prepared that, again, changed only the fee and left Lanakila's duties and the
14 unlimited term of the contract unchanged.¹¹⁵ The Committee paid Lanakila \$750 per month for
15 February, March, and April 2018 before ceasing payments to it.¹¹⁶ The Committee reported

¹⁰⁹ Supp. Production at 004086.

¹¹⁰ *Id.*; *id.* at 004088-89 (proposed Second Amendment to Consulting Agreement).

¹¹¹ *See id.* at 004085-86.

¹¹² *Id.* at 004085.

¹¹³ *Id.*

¹¹⁴ *Id.* at 004105.

¹¹⁵ Joint Production at 00029-30 (signed only by Beesley).

¹¹⁶ *Id.* at 03440 (February and March 2018); *id.* at 03781 (April 2018).

1 disbursing \$250,000 to the K. Mark Takai Foundation on April 27, 2018, leaving it with
2 approximately \$36,000 cash on hand.¹¹⁷

3 **IV. LEGAL ANALYSIS**

4 **A. Personal Use**

5 The Act provides that contributions and donations may not be converted to personal use,
6 which occurs when funds are used “to fulfill any commitment, obligation, or expense of a person
7 that would exist irrespective of the candidate’s election campaign or individual’s duties as a
8 holder of Federal office.”¹¹⁸ The Act and the Commission’s regulations set out certain expenses
9 that are per se personal use, while others are evaluated on a case-by-case basis using the
10 irrespective test.¹¹⁹ The Commission has stated, however, that “[i]f the candidate can reasonably
11 show that the expenses at issue resulted from campaign or officeholder activities, the
12 Commission will not consider the use to be personal use.”¹²⁰

13 The Commission’s regulations further provide that funds in a campaign account may be
14 used for certain non-campaign purposes, including the “ordinary and necessary expenses
15 incurred in connection with the recipient’s duties as a holder of Federal office,” such as “[t]he
16 costs of winding down the office of a former Federal officeholder for a period of 6 months after
17 he or she leaves office,” as well as “any other lawful purpose, unless such use is personal use.”¹²¹
18 The Commission has advised that winding-down costs include “the ‘necessary administrative

¹¹⁷ Mark Takai for Congress, July 2018 Quarterly Report at 2, 8 (July 15, 2018), <https://docquery.fec.gov/pdf/694/201807159115687694/201807159115687694.pdf>.

¹¹⁸ 52 U.S.C. § 30114(b).

¹¹⁹ *Id.*; 11 C.F.R. § 113.1(g).

¹²⁰ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,863-64 (Feb. 9, 1995) (“Personal Use E&J”).

¹²¹ 11 C.F.R. § 113.2(a)(2), (e).

1 costs' of terminating a campaign or congressional office, such as office space rental, staff
2 salaries and office supplies."¹²² Although the Commission's regulations provide for a six-month
3 safe harbor after leaving office, the Commission has explained that this "does not preclude a
4 former officeholder who can demonstrate that he or she has incurred ordinary and necessary
5 winding down expenses more than six months after leaving office from using campaign funds to
6 pay those expenses."¹²³

7 **B. The Committee's Safe-Harbor Period Lasted Through March 15, 2017**

8 Congressman Takai passed away while in office on July 20, 2016. Accordingly, the six-
9 month winding-down period would have begun at that time and expired in late January 2017,
10 unless the Committee continued to incur ordinary and necessary winding-down expenses after
11 that time.

12 Documents produced by Respondents show that Beesley and Lanakila had significant
13 responsibilities for winding down the Committee's operations even before Congressman Takai's
14 death,¹²⁴ and that they may have still been engaged in ordinary and necessary winding-down
15 activities past the six-month period, perhaps as late as March 2017, when Beesley held his
16 meeting with Sami Takai "to talk final steps."¹²⁵ This timeline is supported by Beesley's email
17 to CFO Compliance stating that "[w]e are thinking shutdown of the main committee by
18 March 31,"¹²⁶ as well as his request that CFO Compliance extend its contract through March

¹²² Advisory Op. 2013-05 (Gallegly) at 3; *see* Advisory Op. 1993-06 (Panetta) at 1, 5-6 (advising that committee could use campaign funds for expenses such as "telephone and clerical costs of winding down previous campaign activity" up to six months after officeholder resigned); Lanakila F&LA at 8.

¹²³ Personal Use E&J at 7,873.

¹²⁴ *Supra* notes 40-48 and accompanying text.

¹²⁵ Joint Production at 03283-85.

¹²⁶ *Id.* at 03258.

1 31st or the Committee's termination.¹²⁷ Following the meeting with Sami Takai on March 15,
2 2017, when CFO Compliance asked Beesley about the "campaign account" and whether they
3 were on track with the "goal ... to close out by the end of March," the only remaining winding-
4 down issue he raised was that "Sami hasn't set up the foundation yet."¹²⁸

5 **C. Beesley and Lanakila Had Little Involvement in the Committee's Wind-**
6 **Down after March 15, 2017**

7 The Committee argues generally in its Response that Lanakila was responsible for
8 "developing and discussing options for the Committee's ultimate support of a new charitable
9 foundation" that "Representative Takai's spouse had considered using the Committee's
10 remaining cash-on-hand to finance."¹²⁹ But when asked to provide the Commission with
11 documents and accounts of conversations related to the eventual K. Mark Takai Foundation,
12 Respondents only referred the Commission generally to the Committee's Response and their
13 document production in this matter.¹³⁰ And in the thousands of pages of documents they
14 produced, there is no indication that Beesley and Lanakila were responsible for this final element
15 of the wind-down effort.

16 Instead, the documents show that responsibility for the foundation rested with Sami Takai
17 and Gary Kai. This is substantiated by the notes related to Beesley's December 2016 meeting
18 with Sami Takai, which state "501(c)(3) – GK setting up,"¹³¹ Beesley's email informing CFO

¹²⁷ *Id.*

¹²⁸ *Id.* at 03332.

¹²⁹ Committee Resp. at 2, 5.

¹³⁰ Respondents were asked to, for the relevant time period, "describe in detail any oral communications had by any officer, employee, consultant, representative, or agent of Mark Takai for Congress regarding the K. Mark Takai Foundation" and provide "copies of all documents and communications regarding the K. Mark Takai Foundation." Written Responses ¶¶ 10-11.

¹³¹ Joint Production at 03953.

1 Compliance that “Sami hasn’t set up the foundation yet,”¹³² and the May 2017 emails in which
2 Kai asked Beesley and Sami Takai if campaign funds could be transferred to “an entity that will
3 be seeking approval as a 501c3” and indicated that “[w]e are in the process of creating one.”¹³³
4 Indeed, those May 2017 emails are the only instance in which Beesley seems to have been drawn
5 into discussion about the foundation, and then only apparently to check with an attorney on
6 requirements for transferring campaign funds.¹³⁴ It is unclear from the email exchange whether
7 Beesley ever requested or received such an opinion.

8 The evidence collected during the Commission’s investigation therefore indicates that
9 Lanakila and Beesley had largely completed their responsibilities to the Committee on the
10 timeline Beesley had suggested to CFO Compliance, and that after mid-March 2017, the only
11 winding-down task remaining was not one for which Beesley and Lanakila were responsible.
12 The Committee was effectively dormant waiting for Kai and Sami Takai to act, except for
13 limited administrative tasks, such as approving disclosure reports that CFO Compliance prepared
14 and issuing checks to a small number of vendors. In fact, Beesley had negotiated reductions in
15 fees for two of those vendors — CFO Compliance’s fee went from \$1,250 to \$500 per month,¹³⁵
16 and NGP Van’s fee initially dropped from \$3,000 to \$750 quarterly, with a further reduction to
17 \$150 per month in late 2017 after the Committee’s access was cut off and Beesley had to request
18 it be restored on a limited basis.¹³⁶ A third vendor, Google Apps, received a nominal payment of

¹³² *Id.* at 03332.

¹³³ *Id.* at 03359-60 (emphasis added).

¹³⁴ *Id.* at 03359-61.

¹³⁵ *Supra* note 70 and accompanying text.

¹³⁶ *Supra* notes 56 and 89 and accompanying text.

1 \$34.90 per month. The Committee's only other vendor was Lanakila, and it continued to collect
2 its full monthly fee of \$5,759.16 until January 2018.

3 **D. The Committee's Payments to Beesley and Lanakila After March 15, 2017**
4 **Were Partially Converted to Personal Use**

5 Respondents argue that they were not bound to a set winding-down period, because the
6 regulation establishing that period covers only the official office, not the campaign, of a former
7 officeholder.¹³⁷ At the reason-to-believe stage in this matter, however, the Commission stated
8 that it has previously applied the winding-down period to a candidate's campaign materials and
9 office and "has not sanctioned an open-ended winding down period for campaign
10 committees."¹³⁸ Additionally, the six-month period is a safe harbor, not an absolute bar to
11 spending campaign funds beyond that point. As noted above, a candidate or committee can
12 continue to spend campaign funds past six months so long as they are used for ordinary and
13 necessary winding-down expenses. Here, however, Beesley and Lanakila's winding-down
14 responsibilities appear to have been complete after March 2017, leaving only the few
15 administrative tasks Beesley handled while waiting for the foundation to be established.

16 Moreover, even if the winding-down period did not apply, the Commission would still
17 consider whether the expenditures to Beesley and Lanakila constitute personal use under the
18 irrespective test — that is, whether the payments fulfill a commitment, obligation, or expense
19 that would exist irrespective of the candidate's campaign or duties as a federal officeholder.¹³⁹
20 The available evidence suggests that following the March 15, 2017, meeting, Beesley's
21 obligations to the Committee were largely complete, as the only remaining winding-down

¹³⁷ Committee Resp. at 3.

¹³⁸ Committee F&LA at 8 n.41.

¹³⁹ *Id.* at 8; 11 C.F.R. § 113.1(g)(1)(ii).

1 project was handled by Sami Takai and Gary Kai. Additionally, because the candidate was
2 deceased, there could be no expectation that the Committee would be revived in future election
3 cycles as might be the case, for example, with a consultant kept on retainer in expectation of a
4 future campaign.

5 That Lanakila and Beesley were being paid for work they were largely no longer
6 performing for the Committee after mid-March 2017 is underscored by Beesley's email
7 exchanges with Gary Kai about the reduction in Lanakila's monthly fee. The information
8 submitted by Respondents does not indicate that Beesley and Lanakila's responsibilities to the
9 Committee underwent any significant changes between mid-to-late 2017, when Beesley was
10 invoicing the Committee for \$5,759.16 a month, and March 2018, when he and Kai renegotiated
11 Lanakila's fee. And in March 2018, Kai determined that he could not recommend paying
12 Lanakila at even half of its previous rate. Rather, the Committee agreed to pay Lanakila \$750
13 per month, which Beesley offered after informing Kai that he had to receive the fair market value
14 of his services.

15 Respondents contend that the salary reduction resulted from two factors. First, they
16 represent that it was the result of "news articles wrongly disparaging Mr. Beesley, Lanakila, and
17 the campaign by suggesting the personal use of campaign funds."¹⁴⁰ But that rationale only
18 suggests that the Committee was aware that the continued \$5,759.16 payments to Lanakila did
19 not appear appropriate more than 18 months after Congressman Takai's death. Second, they
20 argue that the reduction in salary was a response to "the establishment of the K. Mark Takai
21 Foundation ... which diminished the need for the services Lanakila was providing to the

¹⁴⁰ Letter from Brian G. Svoboda and Shanna M. Reulbach, Counsel for the Committee, and William Pittard, Counsel for Lanakila and Beesley, to Laura Conley, FEC, at 1 (Aug. 20, 2021).

1 Committee.”¹⁴¹ They offer no details, however, on what “services” Lanakila was providing,
2 whereas the documents they produced in this matter offer a clear picture — Beesley and
3 Lanakila were performing only limited administrative duties for the Committee, such as paying
4 the remaining vendors and signing disclosure reports, until such time as Sami Takai and Gary
5 Kai established the foundation.

6 Finally, Respondents argue that the Commission “has consistently declined to second-
7 guess candidate and campaign decision-making about whether they have overpaid their
8 consultants and staff” and should not do so here.¹⁴² Certainly, the Commission has recognized
9 that candidates and committees have “wide latitude to use campaign funds for lawful purposes,
10 including employing staff, compensating individuals for their services, and paying incidental
11 expenses,”¹⁴³ but that latitude does not extend to personal use.

12 Moreover, the precedent Respondents rely on is inapt or unpersuasive. They point to
13 MUR 6275 (Massa for Congress, *et al.*), in which the Commission dismissed an allegation that a
14 \$40,000 payment made by a committee to the candidate’s congressional chief of staff was
15 personal use.¹⁴⁴ The Commission assessed that whether the “value of [the chief of staff’s work]
16 to the Committee reasonably supports the \$40,000 amount of the payment . . . is sharply disputed
17 and not readily ascertainable from the available evidence.”¹⁴⁵ And while it determined that some
18 portion of the payment was likely legitimate compensation, it also concluded that “[a]dditional

¹⁴¹ *Id.*

¹⁴² Committee Resp. at 3; Beesley and Lanakila Resp. at 2 (March 14, 2018) (adopting and incorporating the arguments in the Committee’s Response).

¹⁴³ Second Gen. Counsel’s Report at 18, MUR 6275 (Massa for Congress).

¹⁴⁴ Committee Resp. at 4; Second Gen. Counsel’s Report at 1, MUR 6275 (Massa for Congress, *et al.*); F&LA at 3, MUR 6275 (Eric Massa, *et al.*) (providing Commission’s rationale for dismissal following submission of Second General Counsel’s Report) (“Massa F&LA”).

¹⁴⁵ Massa F&LA at 2.

1 Commission action relating to the value of [the chief of staff's] services would be wasteful and
2 unwarranted ... particularly because the issue is currently being litigated by the parties.”¹⁴⁶
3 Here, in contrast, there is no parallel proceeding and no need to conduct a detailed assessment of
4 the market value of the work performed, as there is clear, significant documentary evidence
5 indicating that Beesley and Lanakila were performing minimal work for the Committee after the
6 winding-down period.

7 Respondents also point to two matters involving allegations of personal use in payments
8 made to family members of candidates, MUR 6864 (Nicholas Ruiz III for Congress, *et al.*) and
9 MUR 5701 (Bob Filner for Congress, *et al.*), contending that they show that in personal use
10 analyses “the Commission has looked simply to see whether there was some evidence to support
11 the level of payments.”¹⁴⁷ In MUR 6864, the candidate’s wife received monthly payments for
12 providing accounting, management and compliance services to what the complaint contended
13 was a “virtually non-existent campaign,”¹⁴⁸ and in MUR 5701, a candidate’s wife was paid to
14 provide consulting and fundraising services through what the complaint argued was a “sham”
15 company.¹⁴⁹ In both matters, however, the Commission found no reason to believe that funds
16 were converted to personal use in part by evaluating whether the payments exceeded fair market
17 value for the services rendered.¹⁵⁰ Here, Beesley’s March 2018 emails with Gary Kai directly
18 state that he believed \$750 per month would provide Lanakila with the fair market value of its

¹⁴⁶ Massa F&LA at 3.

¹⁴⁷ Committee Resp. at 4.

¹⁴⁸ F&LA at 2, MUR 6864 (Nicholas Ruiz III for Congress, *et al.*) (“Ruiz F&LA”).

¹⁴⁹ First Gen. Counsel’s Report at 1-2, MUR 5701 (Bob Filner for Congress, *et al.*) (“Filner FGCR”); Letter from Lawrence L. Calvert, Jr., FEC, to Juan Vargas, Complainant, MUR 5701 (Aug. 24, 2006) (indicating First General Counsel’s Report was “dispositive”).

¹⁵⁰ Ruiz F&LA at 5-6; Filner FGCR at 5.

1 services, even though prior to the *Honolulu Star Advertiser* article he had been invoicing the
2 Committee at \$5,759.16 a month, and in any case the available evidence shows that Beesley and
3 Lanakila were continuing to collect their full payment even as they performed minimal work for
4 the Committee.¹⁵¹

5 Accordingly, based on all of the available evidence collected during the investigation, it
6 appears that after March 15, 2017, the Committee was no longer within the winding-down safe-
7 harbor period, and that Beesley and Lanakila were paid at their full rate of \$5,759.16 a month for
8 the remainder of that year despite performing very limited work for the Committee. Under these
9 circumstances, the continued payments from the Committee to Beesley and Lanakila were at
10 least partially converted to personal use, in violation of 52 U.S.C. § 30114(b).¹⁵²

11 **E. Beesley Violated the Act in his Personal Capacity**

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

¹⁵¹ Respondents also cite to MUR 7044 (Jodey Cook Arrington, *et al.*), which they contend shows that “even when someone else was employing the candidate, and questions of prohibited contributions and prohibited personal use were at stake . . . the Commission has looked simply to see whether the employment was *bona fide*.” Committee Resp. at 4. The *bona fide* standard plainly does not apply here, however, because Beesley and Lanakila were employed by the Committee, not a third party. See 11 C.F.R. § 113.1(g)(6)(iii) (stating that third party payments to a candidate that are compensation “shall be considered contributions unless . . . the compensation results from *bona fide* employment that is genuinely independent of the candidacy”).

¹⁵² The Commission’s regulations anticipate that a disbursement may be only partially converted to personal use. See, e.g., 11 C.F.R. § 113.1(g)(ii)(C) (“If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or officeholder-related activities, the incremental expenses that result from the personal activities are personal use” unless timely reimbursed.); see also Second Gen. Counsel’s Report at 8, 21, MUR 6498 (Lynch for Congress) (stating that, due to lack of records, OGC could not determine the precise portion converted to personal use for a number of “mixed use” expenses); F&LA at 10, MUR 7292 (Clifford “Cliff” B. Stearns, *et al.*) (finding reason to believe “that at least certain disbursements may constitute impermissible personal use of campaign funds in whole or in part”).

1 the duties imposed by law.”¹⁵³ At the reason-to-believe stage in this matter, the Commission
2 found that the circumstances warranted a finding as to Beesley in his personal capacity because
3 “at a minimum, his actions appear to show a reckless failure to fulfill his duties as treasurer.”¹⁵⁴
4 Specifically, the Commission pointed to Beesley’s dual role serving “both as the Committee
5 payor and the recipient payee as the sole member of Lanakila” and the fact that “[a]s such, he
6 was the only person who could end Lanakila’s contract with the Committee” but instead chose to
7 continue making payments to Lanakila while performing little to no work for the Committee.¹⁵⁵

8 Evidence collected by OGC during the investigation in this matter shows that Beesley did
9 not have sole responsibility for issuing checks to Lanakila. He appears to have sought and
10 received Sami Takai’s authorization before paying Lanakila’s invoices.¹⁵⁶ However, the
11 evidence also indicates that, as treasurer, he continued to invoice the Committee and issue checks
12 at the full rate of Lanakila’s services for the months of April 2017 through January 2018, on an
13 open-ended contract that could be terminated only by Lanakila or the Committee, and that he did
14 so even though he was no longer doing any significant work for the Committee and had been
15 personally involved in either ending or renegotiating the Committee’s other vendor contracts to
16 reflect the amount of work the Committee required. Accordingly, we recommend that the
17 Commission continue to pursue Beesley in his personal capacity for converting funds to personal
18 use in violation of 52 U.S.C. § 30114(b).

¹⁵³ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3-6 (Jan. 3, 2005); *see, e.g.*, F&LA at 7, MUR 5971 (Mary Jennifer Adams); F&LA at 1-3, MUR 5610 (Earl Allen Haywood).

¹⁵⁴ Lanakila F&LA at 11.

¹⁵⁵ *Id.*

¹⁵⁶ *E.g.*, Joint Production at 03225 (January 21, 2017 email from Sami Takai to Beesley stating “Please go ahead and write a check for the Lanakila invoice.”).

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Second General Counsel's Report

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7 **VI. RECOMMENDATIONS**

- 8 1. Authorize pre-probable cause conciliation for a period not to exceed 30 days from
9 the date the Commission's conciliation offers are served, unless Respondents
10 agree to tolling, and approve the attached conciliation agreement with Mark Takai
11 for Congress and Dylan Beesley in his official capacity as treasurer, Dylan
12 Beesley, and Lanakila Strategies, LLC; and

1 2. Approve the appropriate letters.

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Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel for Enforcement



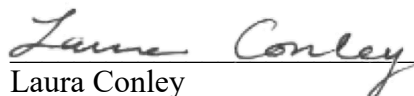
12/03/21

Date

Claudio J. Pavia
Acting Deputy Associate General Counsel for
Enforcement



Mark Allen
Assistant General Counsel



Laura Conley
Attorney