



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

April 8, 2022

William Pittard, Esq.
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RE: MUR 7310
Lanakila Strategies, LLC
Dylan Beesley in his personal
capacity

Dear Mr. Pittard:

Based on a complaint filed with the Federal Election Commission on January 18, 2018, the Commission, on June 4, 2019, found that there is reason to believe that your clients, Lanakila Strategies, LLC, and Dylan Beesley in his personal capacity, violated 52 U.S.C. § 30114(b) of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the information available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file a brief stating your position on the issues and replying to the General Counsel's Brief.¹ The General Counsel's Brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time in exchange for a tolling agreement. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be

¹ You may submit the brief electronically to cela@fec.gov, or to the staff attorney assigned to the matter, as applicable. Enforcement-related materials submitted only by mail will be deemed received when actually received by OGC staff, subject to delays due to the intermittent processing of mail.

MUR 7310 (Dylan Beesley and Lanakila Strategies, LLC)

Mr. Pittard

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demonstrated. In addition, the Office of General Counsel ordinarily will not give extensions beyond 20 days. The Office of General Counsel will not give extensions absent an agreement to toll the applicable statute of limitations.

You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process*, 76 Fed. Reg. 34,986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See Procedural Rules for Probable Cause Hearings*, 72 Fed. Reg. 64,919 (Nov. 19, 2007); *Amendment of Agency Procedures for Probable Cause Hearings*, 74 Fed. Reg. 55,443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. Where necessary, the Commission reserves the right to request from a respondent an agreement tolling any upcoming deadline, including any statutory deadline or other deadline found in 11 C.F.R. part 111. *See Procedural Rules for Probable Cause Hearings*, 72 Fed. Reg. at 64,920. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Laura Conley, the attorney assigned to this matter, at (202) 694-1475 or lconley@fec.gov.

Sincerely,

Lisa Stevenson ^{CP}

Lisa J. Stevenson
Acting General Counsel

Enclosure

General Counsel's Brief

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
 3 In the Matter of)
 4)
 5 Dylan Beesley) MUR 7310
 6 Lanakila Strategies, LLC)
 7

8 **GENERAL COUNSEL’S BRIEF**

9
 10 **I. STATEMENT OF THE CASE**

11 This matter arose from a complaint alleging that Dylan Beesley and his company,
 12 Lanakila Strategies, LLC (“Lanakila”) (collectively, “Respondents”), converted campaign funds
 13 to personal use after the death of Congressman Mark Takai in July 2016, when Takai’s principal
 14 campaign committee, Mark Takai for Congress and Dylan Beesley in his official capacity (the
 15 “Committee”), continued to pay Beesley and Lanakila a monthly consulting fee of \$5,759
 16 through December 2017, well after the six-month winding-down period established as a safe
 17 harbor by the Commission’s personal use regulations and despite the Committee conducting no
 18 apparent winding-down activities for much of 2017.¹

19 In response to the Complaint, Beesley and Lanakila contended that they contracted with
 20 the Committee to oversee the Committee’s wind-down, with no fixed end date, and pursuant to
 21 that agreement they managed activities such as issuing contribution refunds, overseeing
 22 compliance services, making contributions, and “developing and discussing options for the
 23 Committee’s ultimate support of a new charitable foundation.”² Further, they argued that the
 24 Commission’s regulations do not place a deadline on winding down campaign operations and

¹ Compl. ¶¶ 27-30 (Jan. 18, 2018).

² Committee Resp. (“Resp.”) at 2, 5 (Mar. 14, 2018); Beesley and Lanakila Resp. at 2 (Mar. 14, 2018) (adopting and incorporating all arguments presented in Committee’s Response). Because Beesley and Lanakila have adopted and incorporated all arguments made by the Committee in its Response in this matter, we cite to the Committee’s filing throughout this Brief.

1 that the Commission has “avoided questioning campaigns’ market-based decisions” so long as
2 there “existed a genuine commercially reasonable relationship between the parties.”³

3 On June 4, 2019, the Commission found reason to believe that Beesley, in his personal
4 capacity, and Lanakila violated 52 U.S.C. § 30114(b).⁴ The Commission found that they offered
5 no explanation for why the Committee needed more than six months to wind down operations
6 and had not “demonstrated how continued substantial Committee monthly payments to Lanakila
7 [following the wind-down period] relate to campaign or officeholder activities.”⁵

8 The Office of General Counsel (“OGC”) conducted an investigation to gather
9 information about the payments the Committee made to Beesley and Lanakila and the services
10 they performed. The information obtained during the investigation affirms the Commission’s
11 reason-to-believe finding in that it shows that the Committee’s winding-down activities were
12 largely complete by mid-March 2017, just after the six-month safe harbor period expired, and
13 that the majority of the Committee’s payments to Beesley and Lanakila after that point
14 constituted personal use because they did not reasonably result from campaign or officeholder-
15 related activities. The Committee was largely dormant, Beesley and Lanakila had few remaining
16 responsibilities, and the only significant task that remained — establishing a charitable
17 foundation to receive most of the Committee’s remaining funds — was handled by the
18 candidate’s widow, Sami Takai, and her father, Gary Kai.

³ Resp. at 3.

⁴ Factual & Legal Analysis (“F&LA”) at 10-11, MUR 7310 (Lanakila Strategies, LLC, *et al.*) (“Lanakila F&LA”).

⁵ *Id.* at 9.

1 Accordingly, this Office is prepared to recommend that the Commission find probable
2 cause to believe that Lanakila and Beesley violated 52 U.S.C. § 30114(b) by converting
3 campaign funds to personal use.

4 **II. FACTS**

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

6 Congressman Takai was elected to the U.S. House of Representatives in 2014 and
7 initially stood for re-election in the 2016 cycle.⁶ Mark Takai for Congress, his principal
8 campaign committee, hired Beesley as a fundraising consultant in 2015 under a contract that was
9 later assigned to his company, Lanakila.⁷ The contract covered responsibilities such as preparing
10 call sheets on fundraising targets; tracking calls, pledges, and contributions in the Committee's
11 database; analyzing call time data; reviewing and maintaining the Committee's fundraising
12 database; and coordinating and participating in meetings of the Finance Committee.⁸ The fee for
13 this fundraising work was initially \$2,500 per month, later amended to \$4,000 per month through
14 March 31, 2016.⁹

15 In February 2016, the Committee and Lanakila signed a new contract (the "Strategic
16 Consulting Contract") for an additional set of tasks: Lanakila was now also responsible for
17 providing strategic and political consulting; branding, communications, and media affairs

⁶ *See id.* at 2.

⁷ 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).
Lanakila Strategies LLC is registered in Hawaii as a domestic limited liability company, and Beesley is its sole
member. State of Hawaii, Dept. of Commerce and Consumer Affairs, Business Registration Division, Lanakila
Strategies LLC, File No. 134933C5, [https://hbe.hawaii.gov/documents/business.html?fileNumber=134933C5
&view=info](https://hbe.hawaii.gov/documents/business.html?fileNumber=134933C5&view=info).

⁸ Joint Production at 00001; *id.* at 04022. All documents produced to the Commission in this matter were
provided collectively by Beesley, Lanakila, and the Committee.

⁹ *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).

1 consulting; and designing and executing Takai's 2016 campaign launch.¹⁰ Lanakila's additional
2 fee for the Strategic Consulting Contract was \$4,000 per month, plus tax, for February and
3 March 2016, and then \$5,500 per month, plus tax, until the agreement's termination on June 30,
4 2016.¹¹

5 Documents produced by Respondents indicate that Beesley engaged in a variety of
6 activities for the Committee during this period, including holding calls with vendors and
7 Committee staff;¹² attending meetings;¹³ organizing a fundraiser;¹⁴ meeting with the candidate;¹⁵
8 and preparing him for campaign events.¹⁶ For example, an April 11, 2016, invitation for an "all
9 consultants call" suggests that Beesley dealt with a wide range of Committee vendors, including
10 consultants for fundraising;¹⁷ advertising;¹⁸ direct mail;¹⁹ digital fundraising and

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

¹¹ *Id.* at 00019-20, 00024.

¹² *E.g., id.* at 00072 (showing April 1, 2016, call with NewBlue Digital); *id.* at 00073 (showing April 3, 2016, call regarding "press help"); *id.* at 00176 (showing April 11, 2016, appointment for "Y Call Time [sic]" and indicating that "3pm to 6pm is Dylan"); *id.* at 00184 (showing April 11, 2016, appointment for Team Takai: Hawaii Finance Call); *id.* at 00421 (showing May 6, 2016, appointment for "KMT: NewBlue Digital Call").

¹³ *E.g., id.* at 00122 (showing calendar invitation for April 6, 2016, lunch with Gary Kai).

¹⁴ *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/> (last visited Apr. 7, 2022).

¹⁵ *E.g.,* Joint Production at 00261 (April 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).

¹⁶ *Id.* at 00388-89 (April 30, 2016, memo from Beesley to Takai preparing him for an interview).

¹⁷ *Id.* at 00180; Eckert & Associates, *About Us*, <https://eckertassoc.com/about> (last visited Apr. 7, 2022).

¹⁸ Joint Production at 00180; Snyder Pickerill SP, *Services*, <https://spmediagroup.com/services/> (last visited Apr. 7, 2022).

¹⁹ Joint Production at 00180; The Strategy Group, *The Difference is Strategy*, <https://strategygroup.com/work/> (last visited Apr. 7, 2022).

1 communications;²⁰ compliance;²¹ and polling and campaign strategy.²² A detailed memo from
2 Beesley to “Team Takai” dated April 11, 2016, also indicates some involvement in areas such as
3 campaign staffing, office space, finances, events, and assessing primary and general election
4 challengers.²³

5 **B. The Committee's Activities During the Period Between Takai's Withdrawal**
6 **from the Election and March 15, 2017**

7 On May 19, 2016, Congressman Takai announced that he was no longer seeking
8 re-election due to a serious illness.²⁴ He withdrew from the race on June 1, 2016.²⁵ Shortly
9 thereafter, he and Beesley amended the Strategic Consulting Contract. The updated agreement
10 retained Lanakila's obligations to provide strategic and political consulting, and branding,
11 communications, and media affairs consulting, but it removed the responsibility for designing
12 and executing the campaign launch and replaced it with a directive to “[o]versee the wind down”
13 of the Committee.²⁶ There was no change to Lanakila's monthly fee of \$5,500 plus tax,²⁷ but the

²⁰ Joint Production at 00180; New Blue Interactive, *Our Work*, <https://www.newblueinteractive.com/our-work/> (last visited Apr. 7, 2022).

²¹ 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 it is referred to as CFO Compliance in this Brief.

²² Joint Production at 00180; Normington, Petts & Associates, *Home*, <https://www.normingtonpetts.com/> (last visited Apr. 7, 2022).

²³ Joint Production at 00178-79.

²⁴ Lanakila F&LA at 3.

²⁵ Joint Production at 00565 (signed and dated Candidate Withdrawal Form).

²⁶ *Compare id.* at 00019 (Consulting Agreement dated February 10, 2016), *with id.* at 00026 (First Amendment to Consulting Agreement dated June 14, 2016).

²⁷ *See id.* at 00027 (describing fees).

1 updated contract removed the set term of the agreement and instead provided that it would
2 continue until terminated by the Committee or Lanakila.²⁸

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,²⁹
6 and that the Committee hired a new employee, Paula MacCutcheon, who was "handling the day-
7 to-day operations with oversight from [Beesley]."³⁰ The memo also identifies outstanding items,
8 such as terminating an insurance policy, seeking a refund of a security deposit, and refunding
9 contributions.³¹ The Committee was also considering sending out a mailer and undertaking
10 some digital and social media work.³²

11 Beesley updated the Takais on the wind down a week later, in a June 18, 2016, memo.
12 He reported that he was, among other tasks, working with MacCutcheon to prepare and send
13 refunds; coordinating replacement of Takai's yard signs; considering a data sale or swap; and
14 had taken over as treasurer of Takai's leadership PAC, Mahalo PAC.³³

²⁸ Compare *id.* at 00019, with *id.* at 00026. Beesley described this change in a memo to the Congressman and Sami Takai as allowing him to "help you through the end of your term, or until you decide it's time to end the contract." See *id.* at 00590 (memo from Beesley to Congressman and Sami Takai dated June 18, 2016).

²⁹ *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).

³⁰ *Id.* at 00570 (stating that MacCutcheon "has hit the ground running").

³¹ *Id.* at 00570-71.

³² *Id.* at 00571-72.

³³ *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 committee of the candidate or individual, except that [a] leadership PAC does not include a political committee of a political party." 11 C.F.R. § 100.5(e)(6).

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.”³⁴ He also advised the Takais
4 that they could donate remaining funds to a charity, so long as it did not compensate Takai’s
5 family or his official or campaign staffs.³⁵

6 In mid-July 2016, Beesley provided Congressman Takai with a further status update. It
7 shows that all remaining letters on contribution refunds had been prepared, and that there was
8 some work remaining to dispose of signage, oversee a website redesign, and conduct a data clean
9 up.³⁶ It also indicates that Beesley expected to have a “[c]atch-up meeting” with Takai, although
10 it is unclear whether the meeting took place.³⁷ Congressman Takai passed away on July 20,
11 2016.³⁸

12 Calendar invitations for the rest of 2016 show Beesley engaged in calls and meetings that
13 appear to be Committee business.³⁹ Beesley became the Committee’s treasurer on September 8,
14 2016, at the request of Sami Takai, with no adjustment in compensation.⁴⁰ Documents in the
15 record also show that Beesley was working with the Committee’s vendors to complete tax

³⁴ Joint Production at 00592.

³⁵ *Id.* at 00593.

³⁶ *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).

³⁷ *Id.* at 02309.

³⁸ Associated Press, *Mark Takai, First-Term Congressman from Hawaii, Dies at 49*, N.Y. TIMES, July 20, 2016.

³⁹ *E.g.*, Joint Production at 02361 (showing September 9, 2016, meeting “re KMT Bank Account”).

⁴⁰ Resp. at 2; Joint Production at 02399 (Letter to Bank of Hawai’i describing Beesley’s appointment); Mark Takai for Congress, Amended Statement of Organization at 1 (Sept. 8, 2016), <https://docquery.fec.gov/pdf/784/201609089030751784/201609089030751784.pdf>.

1 documents and close out invoices,⁴¹ issuing additional refunds,⁴² disposing of Committee
2 assets,⁴³ and reviewing draft disclosure forms to be filed with the Commission.⁴⁴ Between
3 November 2016 and February 2017, Beesley worked with NGP Van, a platform the Committee
4 used to track some financial and compliance data, to cancel email and online contribution
5 services the Committee was receiving, with the result that the Committee's quarterly bill from
6 NGP Van dropped from \$3,000 to \$750.⁴⁵

7 The Committee's disclosure forms show that the last payroll payment to MacCutcheon
8 was disbursed on October 14, 2016,⁴⁶ but Beesley was not conducting the Committee's business
9 alone after that point. CFO Compliance, a vendor, was responsible for preparing the
10 Committee's disclosure reports, which Beesley reviewed, and it also assisted Beesley with using
11 NGP Van.⁴⁷ Emails around the end of 2016 and early 2017 also indicate that Sami Takai was

⁴¹ Joint Production at 02400 (November 2016 emails between Beesley and Allison Murray of CFO Compliance regarding Form 1099s); *id.* at 02422-25 (November 2016 – February 2017 emails between Beesley and NGP Van regarding amended contract and invoice); *id.* at 02488 (December 2016 email from Beesley to Perkins Coie asking about balance due).

⁴² *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.* 02438 (December 16, 2016, letter from Beesley to contributor regarding uncashed refund check).

⁴³ *E.g., id.* at 03878 (September 12, 2016, letter from Beesley to another campaign regarding in-kind donation of wood and PVC pipes to hold campaign signs).

⁴⁴ *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).

⁴⁵ *Id.* at 03955 (August 1, 2016, invoice to Committee showing quarterly fee of \$3,000) *id.* at 03999 (February 1, 2017, invoice to Committee showing new rate of \$250 per month); *id.* at 02422-25 (emails among Edie Zornes of NGP Van, Beesley, and others discussing new pricing of \$250 per month).

⁴⁶ Mark Takai for Congress, 2016 Year-End Report at 11 (Jan. 31, 2017), <https://docquery.fec.gov/pdf/183/201701319042137183/201701319042137183.pdf#navpanes=0>.

⁴⁷ *E.g.,* Joint Production at 03233 (January 2017 emails showing Murray sending Committee's 2016 Year-End Report for Beesley's review); *id.* at 02463 (CFO Compliance providing instructions on entering re-issued refund checks in NGP Van).

1 responsible for issuing some of the Committee's checks and authorizing payment on invoices
2 from vendors, including Lanakila.⁴⁸

3 By the end of 2016, approximately five months into the safe harbor period, documents
4 produced by Respondents and the Committee's disclosure reports both suggest that there was
5 little wind-down work remaining. For example, the Committee had reported issuing 71
6 contribution refunds in July 2016,⁴⁹ but by the end of that year refunds had slowed to a trickle —
7 the Committee issued only three in December 2016.⁵⁰

8 On December 23, 2016, Beesley met with Sami Takai about the "campaign wind-
9 down."⁵¹ Notes indicate that the meeting covered an idea for a student leader development
10 institute and plans for "file/paper retention."⁵² It also covered contribution refunds, of which the
11 notes say there were a "[h]andful remaining," a suggestion to terminate Mahalo PAC, and the
12 question of whether Sami Takai would like to transfer most of the Committee's remaining
13 \$400,000 "to [the] charitable vehicle you settled on?"⁵³ Respondents also produced what appear

⁴⁸ *Id.* at 02434 (December 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 (December 21, 2016, email from Sami Takai to Beesley giving authorization for payment of a Lanakila invoice).

⁴⁹ 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>.

⁵⁰ 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>.

⁵¹ Joint Production at 02474 (showing handwritten notes of meeting topics); *id.* at 02485 (calendar invitation for "Mtg w Sami Takai" on December 23, 2016).

⁵² *Id.* at 02474.

⁵³ *Id.*; *see id.* at 03459-60 (showing apparent script and notes for Beesley making calls about uncashed refund checks in December 2016); *id.* at 03513 (showing apparent call list for December 2016 regarding outstanding refund checks). The statement regarding funds to be directed to charity almost certainly refers to the Committee, as Mahalo PAC's 2016 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>.

1 to be 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 charity.⁵⁴

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.”⁵⁵ That same
5 month, Sami Takai decided to terminate the PAC.⁵⁶ Documents indicate that there was also
6 discussion around this time of shutting down the Committee. Beesley informed Murray that
7 “[w]e are thinking shutdown of the main committee by March 31” and noted that when he met
8 with Sami Takai the previous month “the nonprofit hadn’t been set up yet and there are still a
9 few small outstanding things I need to finish on refunds and the recordkeeping.”⁵⁷ He asked
10 CFO Compliance to extend its contract through March 31st or the Committee’s termination and
11 negotiated to reduce CFO Compliance’s monthly fee from \$1,250 to \$500.⁵⁸

12 Beesley contacted Sami Takai in January 2017 to follow up on their December meeting.
13 He posed several questions about checks and invoices, including asking for approval of
14 Lanakila’s February bill.⁵⁹ He also informed Sami Takai of the change in CFO Compliance’s
15 rates “until we close out the committee,”⁶⁰ and noted they could “initiate a partial transfer of the
16 majority of the excess funds whenever the nonprofit vehicle has been established and you are

⁵⁴ Joint Production at 03953; Resp. at 1 n.1 (explaining relationship between Sami Takai and Gary Kai).

⁵⁵ Joint Production at 03209.

⁵⁶ *Id.* at 03230.

⁵⁷ *Id.* at 03258 (January 2017 emails between Beesley and Murray).

⁵⁸ *Id.* at 03259-60; *see id.* at 02479 (showing CFO’s November and December 2016 invoices were each \$1,250).

⁵⁹ *Id.* at 03225 (attaching invoice for \$5,759.16 for “Strategic Consulting Services” to be provided February 1-28, 2017).

⁶⁰ *Id.* Beesley apparently misstated the new rate as \$750 per month, rather than \$500 per month as he had agreed with Murray. *Id.*; *id.* at 03259.

1 ready to move. No rush, just wanted you to know that this is still an option.”⁶¹ Other documents
2 produced by Respondents appear to show that, by this point in late January 2017, there were only
3 10 refund checks outstanding,⁶² and Beesley made calls and prepared letters to re-issue some of
4 those checks.⁶³ CFO Compliance continued to prepare the Committee’s disclosure reports, with
5 Beesley reviewing them.⁶⁴

6 In February 2017, seven months after Congressman Takai’s death, Beesley informed
7 Sami Takai that “as promised” he had worked with CFO Compliance “to close out Mahalo PAC”
8 and asked for a meeting “to talk final steps.”⁶⁵ The meeting apparently took place on March 15,
9 2017.⁶⁶ At the end of March, Murray emailed Beesley “to check in about the campaign
10 account.”⁶⁷ She wrote that she recalled him “mentioning that the goal was to close out by the
11 end of March” and asked whether they were “still on track for that.”⁶⁸ Beesley replied that
12 “Sami hasn’t set up the foundation yet. Honestly, I think it could be a few more months because
13 she doesn’t seem to be in a hurry.”⁶⁹

⁶¹ *Id.* at 03225.

⁶² *Id.* at 03231-32.

⁶³ *E.g., id.* at 03262 (unsigned letter dated January 27, 2017); *id.* at 03514-15 (showing what appear to be notes of calls made on January 26, 2017, regarding refunds); *id.* at 03523-25 (showing checks for reissued refunds, dated January 27, 2017).

⁶⁴ *Id.* at 03233 (January 2017 emails between Beesley and Murray regarding Committee’s year-end report).

⁶⁵ *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).

⁶⁶ 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, Beesley’s calendar shows it was scheduled for March 15, 2017. *Id.* at 03333.

⁶⁷ *Id.* at 03332.

⁶⁸ *Id.*

⁶⁹ *Id.*

1 **C. The Committee's Activities after March 15, 2017**

2 Beesley's duties for the Committee appear to have been minimal after his March 15,
3 2017, meeting with Sami Takai. He exchanged occasional emails with CFO Compliance about
4 Committee payments,⁷⁰ wrote checks to a small number of vendors, including Lanakila,⁷¹ and
5 reviewed quarterly disclosure reports that CFO Compliance had prepared (all of which contained
6 minimal or no receipts and limited disbursements, mostly to Lanakila).⁷² He occasionally
7 corresponded with Sami Takai about Committee business, largely payments to Lanakila, CFO
8 Compliance, and NGP Van.⁷³ Finally, he appears to have handled some one-time tasks, such as
9 looking for someone to take leftover disposable phones,⁷⁴ filing a notice with the State of
10 Hawaii,⁷⁵ and reopening the Committee's NGP Van account after it was cut off, a situation he
11 explained to CFO Compliance as "my fault because I left the negotiations with our former
12 account rep unresolved."⁷⁶ He requested to reopen the account only one week per month, so that
13 CFO Compliance could enter expenses and prepare reports, which would apparently reduce the

⁷⁰ *E.g., id.* at 03335 (April 2017 emails between Beesley and Murray).

⁷¹ *Id.* 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).

⁷² *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"); *see* 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).

⁷³ Joint Production 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).

⁷⁴ *Id.* at 03363 (May 2017 emails with Sami Takai).

⁷⁵ *Id.* at 03451 (form dated June 1, 2017, indicating that the Committee continued in operation but no longer had employees).

⁷⁶ *Id.* at 03392.

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1 Committee's payments to NGP Van from \$250 to \$150 per month.⁷⁷ Throughout this period, he
2 continued to bill the Committee and be paid Lanakila's full monthly fee of \$5,759.16.⁷⁸

3 All told, between March 15, 2017, and the end of that year the Committee reported
4 making 31 disbursements totaling \$64,405.70.⁷⁹ Ten of those disbursements were made to
5 Lanakila, for a total of \$57,591.60, or approximately 89% of the Committee's total
6 disbursements during that time.⁸⁰ The remaining disbursements were payments to CFO
7 Compliance, NGP Van, and a recurring \$35 charge to Google Apps for "web expenses."⁸¹ By
8 comparison, during the winding-down period from July 20, 2016, to March 15, 2017, the
9 Committee made 78 disbursements, including a number of reissued contribution refunds, totaling
10 \$103,733.14; of this amount, payments to Lanakila totaled \$46,193.80, or approximately 45% of
11 the total.⁸²

12 The charity intended to receive the Committee's remaining funds was not established in
13 2017, and documents produced by Respondents support the notes from Beesley and Sami
14 Takai's December 2016 meeting stating that Gary Kai was setting up the organization.
15 Specifically, in May 2017, Kai contacted Beesley and Sami Takai to ask whether campaign

⁷⁷ *Id.* at 03394-95 (December 2017 emails between 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).

⁷⁸ *Supra* note 71 (listing checks and invoices to Lanakila between April and December 2017); Lanakila F&LA at 4.

⁷⁹ *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00548131&min_date=03%2F15%2F2017&max_date=12%2F31%2F2017 (Committee disbursements filtered for date range 03/15/2017 – 12/31/2017).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *FEC Disbursements: Filtered Results*, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00548131&min_date=07%2F20%2F2016&max_date=03%2F15%2F2017 (Committee disbursements 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 funds could be “deposited in an account for an entity that will be seeking approval as a
2 501c3?”⁸³ Beesley responded “long time no talk,” indicated that he would check on
3 requirements for transferring the funds, and asked Kai which entity the contribution would go
4 to.⁸⁴ In response, Kai stated “[w]e are in the process of creating one which could be done in a
5 few days. The lengthy process is getting the IRS 501c3 designation.”⁸⁵ Beesley then informed
6 him that “[t]his much is clear to me — we can make a contribution to a 501c3” and also wrote
7 that the Committee could make charitable contributions under certain circumstances.⁸⁶ He asked
8 Sami Takai if he should contact counsel to approve the arrangement.⁸⁷ It is unclear whether she
9 responded, and documents produced by Respondents do not show any further involvement by
10 Beesley or Lanakila in establishing the 501(c)(3) organization.

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

12 On January 10, 2018, the *Honolulu Star Advertiser* reportedly contacted Beesley to
13 comment on the Committee's continued payments to Lanakila 18 months after Congressman
14 Takai's death.⁸⁸ He is quoted as stating that, following the Congressman's death, “the campaign
15 continues to have surplus funds and filing obligations with the Federal Election Commission”
16 and that it “needs some personnel to continue to manage its affairs and meet these and other
17 obligations until it finally disposes of its funds and terminates its registration.”⁸⁹

⁸³ Joint Production at 03359.

⁸⁴ *Id.*

⁸⁵ *Id.* at 03360.

⁸⁶ *Id.* at 03361.

⁸⁷ *Id.*

⁸⁸ 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).

⁸⁹ *Id.*

1 The next day, January 11, 2018, the K. Mark Takai Foundation registered as a nonprofit
2 corporation with the State of Hawaii.⁹⁰ The foundation was later granted federal tax-exempt
3 status under Internal Revenue Code Section 501(c)(3), with an effective date of January 11,
4 2018.⁹¹ On January 24, 2018, the Committee amended its Statement of Organization to
5 designate Gary Kai as its Deputy Treasurer.⁹²

6 Lanakila received its usual fee of \$5,759.16 for January 2018, due to an invoice Beesley
7 had submitted and paid the prior month.⁹³ Aside from a calendar invitation reflecting that
8 Beesley had a call about “Next Steps on Complaint,” which potentially refers to this matter, his
9 activities for the Committee that month continued to be limited.⁹⁴ He prepared a letter and check
10 for a single outstanding refund from the Committee’s account⁹⁵ and paid the CFO Compliance
11 bill.⁹⁶ He did not, however, appear to invoice the Committee for Lanakila’s full fee in February,
12 nor did he send an invoice for Lanakila’s full fee the following month.

13 In March 2018, Beesley and Gary Kai exchanged emails in which they renegotiated
14 Lanakila’s monthly fee from \$5,759.16 to \$750. Kai asked, “What would you consider a
15 reasonable amount of compensation-the lower the better for obvious reasons,” to which Beesley

⁹⁰ Hawaii Business Express, *K. Mark Takai Foundation*, <https://hbe.hawaii.gov/documents/business.html?fileNumber=287547D2&view=info> (last visited Apr. 7, 2022).

⁹¹ 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> (last visited Apr. 7, 2022).

⁹² Mark Takai for Congress, Amended Statement of Organization at 4 (Jan. 24, 2018), <https://docquery.fec.gov/pdf/176/201801249090602176/201801249090602176.pdf>.

⁹³ Joint Production at 03435.

⁹⁴ *Id.* at 03401.

⁹⁵ *Id.* at 03461.

⁹⁶ *Id.* at 03437.

1 initially responded, “I thought a little less than half of my current \$5759.”⁹⁷ Beesley indicated
2 that he had prepared a document setting the fee at \$2,500 per month, which appears to refer to a
3 draft contract extension that amends the fee but does not adjust Lanakila’s duties to the
4 Committee or the unlimited term of the contract.⁹⁸ Kai responded, however, that “I am not sure
5 that I could recommend that to Sami [Takai]” and asked how many hours per week Beesley was
6 working for the Committee.⁹⁹ Beesley did not answer the question and instead stated that while
7 he preferred “not to take anything” the “FEC says the campaign has to pay me at fair market
8 value.”¹⁰⁰ He then proposed \$750 a month, which he said “puts me just a little ahead of the
9 accountants at \$500 per month.”¹⁰¹ Kai agreed,¹⁰² and it appears that another amended
10 agreement was prepared that, again, changed only the fee and left Lanakila’s duties and the
11 unlimited term of the contract unchanged.¹⁰³ The Committee paid Lanakila \$750 per month for
12 February, March, and April 2018 before ceasing payments to it.¹⁰⁴ The Committee reported
13 disbursing \$250,000 to the K. Mark Takai Foundation on April 27, 2018, leaving it with
14 approximately \$36,000 cash on hand.¹⁰⁵

⁹⁷ Supp. Production at 004086.

⁹⁸ *Id.*; *see id.* at 004088-89 (proposed Second Amendment to Consulting Agreement).

⁹⁹ *See id.* at 004085-86.

¹⁰⁰ *Id.* at 004085.

¹⁰¹ *Id.*

¹⁰² *Id.* at 004105.

¹⁰³ Joint Production at 00029-30 (signed only by Beesley).

¹⁰⁴ *Id.* at 03440 (February and March 2018); *id.* at 03781 (April 2018).

¹⁰⁵ Mark Takai for Congress, July 2018 Quarterly Report at 2, 8 (July 15, 2018), <https://docquery.fec.gov/pdf/694/201807159115687694/201807159115687694.pdf>.

1 **III. LEGAL ANALYSIS**

2 **A. Personal Use**

3 The Federal Election Campaign Act of 1971, as amended (the “Act”), provides that a
4 contribution accepted by a candidate may not be converted to personal use.¹⁰⁶ The Act and the
5 Commission’s regulations set out certain expenses that are per se personal use, while others are
6 evaluated on a case-by-case basis to determine if funds have been used “to fulfill any
7 commitment, obligation, or expense of a person that would exist irrespective of the candidate’s
8 election campaign or individual’s duties as a holder of Federal office.”¹⁰⁷ Under this analysis,
9 the Commission may determine that all or only a portion of the relevant payments were
10 converted to personal use.¹⁰⁸ The Commission has stated 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.”¹⁰⁹

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

¹⁰⁶ 52 U.S.C. § 30114(b).

¹⁰⁷ *Id.*; 11 C.F.R § 113.1(g).

¹⁰⁸ 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)(1)(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* 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”).

¹⁰⁹ Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995) (“Personal Use E&J”).

1 he or she leaves office,” as well as “any other lawful purpose, unless such use is personal use.”¹¹⁰
2 The Commission has also applied the six-month safe harbor period to winding down costs
3 associated with a former officeholder’s campaign office.¹¹¹ Specifically, the Commission has
4 advised that winding-down costs include “the ‘necessary administrative costs’ of terminating a
5 campaign or congressional office, such as office space rental, staff salaries and office
6 supplies.”¹¹² Although the Commission’s regulations provide for a six-month safe harbor after
7 leaving office, the Commission has explained that this “does not preclude a former officeholder
8 who can demonstrate that he or she has incurred ordinary and necessary winding down expenses
9 more than six months after leaving office from using campaign funds to pay those expenses.”¹¹³

10 **B. The Committee Appears to Have Engaged in Ordinary and Necessary**
11 **Winding-Down Activities from July 2016 through March 15, 2017**

12 Congressman Takai passed away while in office on July 20, 2016. Accordingly, the six-
13 month winding-down period would have begun at that time and expired in late January 2017,
14 unless the Committee continued to incur “ordinary and necessary” winding-down expenses.¹¹⁴

15 The record in this matter shows that Beesley and Lanakila were engaged in winding-
16 down activities for the Committee following Takai’s withdrawal from the race and potentially as
17 late as Beesley’s March 15, 2017, meeting with Sami Takai “to talk final steps,” as thoroughly

¹¹⁰ 11 C.F.R. § 113.2(a)(2), (e).

¹¹¹ Lanakila F&LA at 8; Advisory Opinion 2013-05 at 3 (Gallegly).

¹¹² Advisory Opinion 2013-05 at 3 (Gallegly); *see* Advisory Opinion 1993-06 at 1, 5-6 (Panetta) (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.

¹¹³ Personal Use E&J at 7,873.

¹¹⁴ *Id.*

1 detailed above.¹¹⁵ For example, they terminated Committee vendor agreements,¹¹⁶ refunded
2 contributions,¹¹⁷ and disposed of Committee assets.¹¹⁸ However, as discussed below, after the
3 March 15, 2017, meeting Beesley and Lanakila engaged in only minimal winding-down
4 activities, and the campaign was virtually ready to terminate except for the simple matter of
5 waiting to donate remaining funds to a foundation that was to be set up by Sami Takai and Gary
6 Kai. Following that meeting, when Committee vendor CFO Compliance asked Beesley about
7 the “campaign account” and whether they were on track with the “goal . . . to close out by the
8 end of March,” the only remaining winding-down issue he raised was that “Sami hasn’t set up
9 the foundation yet.”¹¹⁹

10 **C. Beesley and Lanakila Had Little Involvement in the Committee’s Wind**
11 **Down after March 15, 2017**

12 After March 15, 2017, Beesley and Lanakila appear to have had only minimal duties and
13 responsibilities with respect to the Committee.¹²⁰ Respondents argue generally that Lanakila
14 was responsible for “developing and discussing options for the Committee’s ultimate support of
15 a new charitable foundation” that “Representative Takai’s spouse had considered using the
16 Committee’s remaining cash-on-hand to finance.”¹²¹ But when asked to provide the
17 Commission with documents and accounts of conversations related to the eventual K. Mark
18 Takai Foundation, Respondents only referred the Commission generally to the Committee’s

¹¹⁵ See *supra* Part II.B.

¹¹⁶ E.g., *supra* note 29 and accompanying text.

¹¹⁷ E.g., *supra* note 31 and accompanying text.

¹¹⁸ E.g., *supra* note 36 and accompanying text.

¹¹⁹ Joint Production at 03332.

¹²⁰ See *supra* Part III.C.

¹²¹ Resp. at 2, 5.

1 Response to the Complaint, which Respondents adopted in full, and their document production
2 in this matter.¹²² And in the thousands of pages of documents they produced to the Commission,
3 there is no indication that Beesley and Lanakila were responsible for this final element of the
4 wind-down effort.

5 Instead, the documents show that responsibility for the foundation rested with Sami Takai
6 and Gary Kai. This is substantiated by the notes related to Beesley's December 2016 meeting
7 with Sami Takai, which state "501(c)(3) – GK setting up,"¹²³ Beesley's email informing CFO
8 Compliance that "Sami hasn't set up the foundation yet,"¹²⁴ and the May 2017 emails in which
9 Kai asked Beesley and Sami Takai if campaign funds could be transferred to "an entity that will
10 be seeking approval as a 501c3" and indicated that "[w]e are in the process of creating one."¹²⁵
11 Indeed, those May 2017 emails are the only instance in which Beesley seems to have been drawn
12 into discussion about the foundation, and then only apparently to check with an attorney on
13 requirements for transferring campaign funds.¹²⁶ It is unclear from the email exchange whether
14 Beesley ever requested such an opinion.

15 The evidence collected during the Commission's investigation therefore indicates that
16 Lanakila and Beesley had largely completed their responsibilities to the Committee on the
17 timeline Beesley had suggested to CFO Compliance, and that after mid-March 2017, the only

¹²² 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; Beesley and Lanakila Resp. at 2 (adopting and incorporating all arguments presented in Committee's Response).

¹²³ Joint Production at 03953.

¹²⁴ *Id.* at 03332.

¹²⁵ *Id.* at 03359-60 (emphasis added).

¹²⁶ *Id.* at 03359-61.

1 winding-down task remaining was not one for which Beesley and Lanakila were responsible.
2 The Committee was effectively dormant waiting for Kai and Sami Takai to act, except for
3 limited administrative tasks, such as approving the brief disclosure reports that CFO Compliance
4 prepared and issuing checks to a small number of vendors. In fact, Beesley had personally
5 overseen reductions in fees for two of those vendors as the Committee had less need of the
6 services they provided — CFO Compliance's fee went from \$1,250 to \$500 per month,¹²⁷ and
7 NGP Van's fee initially dropped from \$3,000 to \$750 quarterly, with a further reduction to \$150
8 per month in late 2017 after the Committee's access was cut off and Beesley had to request it be
9 restored on a limited basis.¹²⁸ A third vendor, Google Apps, received a nominal payment of
10 \$34.90 per month. The Committee's only other vendor was Lanakila, and it continued to collect
11 its full monthly fee of \$5,759.16 until January 2018.

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

14 Respondents argue that the Committee was not bound to a set winding-down period,
15 because the regulation establishing that period covers only the official office, not the campaign,
16 of a former officeholder.¹²⁹ However, the Commission has previously applied the winding-down
17 period to a candidate's campaign materials and office and has not sanctioned an open-ended
18 winding down period for campaign committees.¹³⁰ Additionally, the six-month period is a safe
19 harbor, not an absolute bar to spending campaign funds beyond that point. As noted above, a
20 candidate or committee can continue to spend campaign funds past six months so long as they

¹²⁷ *Supra* note 58 and accompanying text.

¹²⁸ *Supra* notes 45 and 77 and accompanying text.

¹²⁹ Resp. at 3.

¹³⁰ *See* Advisory Opinion 2013-05 at 3 (Gallegly).

1 are used for ordinary and necessary winding-down expenses. Here, however, Beesley and
2 Lanakila's winding-down responsibilities appear to have been largely complete after mid-March
3 2017, leaving only the few administrative tasks Beesley handled while waiting for the foundation
4 to be established.

5 Moreover, even if the expiration of the winding-down period did not apply, the
6 Commission would still consider whether the expenditures to Beesley and Lanakila constitute
7 personal use under the irrespective analysis — that is, whether the payments fulfill a
8 commitment, obligation, or expense that would exist irrespective of the candidate's campaign or
9 duties as a federal officeholder.¹³¹ The available evidence suggests that following the March 15,
10 2017, meeting, Beesley's obligations to the Committee were largely complete, as the only
11 remaining winding-down project was handled by Sami Takai and Gary Kai. Additionally,
12 because the candidate was deceased and Beesley, on the Committee's behalf, had accordingly
13 terminated or significantly reduced its relationships with all of its vendors except Lanakila, there
14 was no reasonable expectation that new responsibilities would arise over time as might be the
15 case, for example, with a consultant kept on retainer between cycles in expectation of a future
16 campaign.

17 That Lanakila and Beesley were being paid for work they were largely no longer
18 performing for the Committee after mid-March 2017 is underscored by Beesley's email
19 exchanges with Gary Kai about the reduction in Lanakila's monthly fee.¹³² The record in this
20 matter does not indicate that Beesley and Lanakila's responsibilities to the Committee underwent

¹³¹ 52 U.S.C. § 30114(b); 11 C.F.R. § 113.1(g)(1)(ii).

¹³² See Supp. Production at 004085-86 (Beesley first proposing a monthly fee of \$2,500, which Kai rejected, and then proposing \$750 per month and advising Kai "the campaign has to pay me at fair market value").

1 any significant changes between mid-to-late 2017, when Beesley was invoicing the Committee
2 for \$5,759.16 a month, and March 2018, when he and Kai renegotiated Lanakila's fee. And in
3 March 2018, Kai determined that he could not recommend paying Lanakila at even half of its
4 previous rate. Rather, the Committee agreed to pay Lanakila \$750 per month, which Beesley
5 offered after informing Kai that he had to receive the fair market value of his services.¹³³

6 Respondents contend that the fee reduction resulted from “news articles wrongly
7 disparaging Mr. Beesley, Lanakila, and the campaign by suggesting the personal use of
8 campaign funds.”¹³⁴ But that rationale only suggests that the Committee was aware that the
9 continued \$5,759.16 payments to Lanakila did not appear appropriate more than 18 months after
10 Congressman Takai's death. Additionally, they argue that the fee reduction was a response to
11 “the establishment of the K. Mark Takai Foundation . . . which diminished the need for the
12 services Lanakila was providing to the Committee.”¹³⁵ They offer no details, however, on what
13 “services” this refers to, whereas the documents they produced in this matter offer a clear picture
14 — Beesley and Lanakila were performing only limited administrative duties for the Committee,
15 such as paying the few remaining vendors and signing brief disclosure reports, until such time as
16 Sami Takai and Gary Kai established the foundation.

17 Finally, Respondents argue that the Commission “has consistently declined to second-
18 guess candidate and campaign decision-making about whether they have overpaid their
19 consultants and staff” and should not do so here.¹³⁶ Certainly, the Commission has recognized

¹³³ *Id.*

¹³⁴ 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).

¹³⁵ *Id.*

¹³⁶ Resp. at 3.

1 that candidates and committees have “latitude to retain services and compensate staff within
2 commercially reasonable bounds,”¹³⁷ but that latitude does not extend to personal use.
3 Additionally, the personal use allegation in this matter is not a question of whether the
4 Committee was mistaken in its valuation of the work that Beesley and Lanakila would do under
5 the amended Strategic Consulting Contract. Rather, the issue is whether it was permissible for
6 Beesley and Lanakila to continue collecting a substantial monthly fee from the Committee for a
7 significant period of time past the point at which their work was all but complete, when there
8 was no reasonable prospect of increased work in the future, and when Beesley himself would
9 later assess the fair market value of that level of work at \$750 per month.

10 Moreover, the precedent Respondents rely on to support the permissibility of the
11 continued payments to Beesley and Lanakila is inapt or unpersuasive. They point to MUR 6275
12 (Massa for Congress, *et al.*), in which the Commission dismissed an allegation that a \$40,000
13 payment made by a committee to the candidate’s congressional chief of staff was personal use,
14 either because it was obtained through deceit or because the recipient did not perform sufficient
15 work to justify the amount.¹³⁸ The Commission assessed that whether the “value of [the chief of
16 staff’s work] to the Committee reasonably supports the \$40,000 amount of the payment . . . is
17 sharply disputed and not readily ascertainable from the available evidence.”¹³⁹ And while it
18 determined that some portion of the payment was likely legitimate compensation, it also
19 concluded that “[a]dditional Commission action relating to the value of [the chief of staff’s]
20 services would be wasteful and unwarranted . . . particularly because the issue is currently being

¹³⁷ F&LA at 3, MUR 6275 (Massa for Congress, *et al.*) (“Massa F&LA”).

¹³⁸ Resp. at 4; Massa F&LA at 1, 3 (providing Commission’s rationale for dismissal following submission of Second General Counsel’s Report).

¹³⁹ Massa F&LA at 2.

1 litigated by the parties.”¹⁴⁰ Here, by contrast, there is no parallel proceeding and there is clear,
2 significant documentary evidence indicating that Beesley and Lanakila were performing only
3 minimal work in return for substantial monthly payments after the winding-down period.

4 Respondents also point to two matters involving allegations of personal use in payments
5 made to family members of candidates, MUR 6864 (Nicholas Ruiz III for Congress, *et al.*) and
6 MUR 5701 (Bob Filner for Congress, *et al.*), contending that they show that in personal use
7 analyses “the Commission has looked simply to see whether there was some evidence to support
8 the level of payments.”¹⁴¹ In MUR 6864, the candidate’s spouse received monthly payments for
9 providing accounting, management and compliance services to what the complaint contended
10 was a “virtually nonexistent campaign,”¹⁴² and in MUR 5701, a candidate’s spouse was paid to
11 provide consulting and fundraising services through what the complaint argued was a “sham”
12 company.¹⁴³ In both matters, however, the Commission found no reason to believe that funds
13 were converted to personal use in part by evaluating whether the payments exceeded fair market
14 value for the services rendered.¹⁴⁴ Here, Beesley’s March 2018 emails with Gary Kai directly
15 state that he believed \$750 per month would provide Lanakila with the fair market value of its
16 services, even though prior to the *Honolulu Star Advertiser* article he had been invoicing the
17 Committee at \$5,759.16 a month, and in any case the available evidence shows that Beesley and

¹⁴⁰ *Id.* at 3.

¹⁴¹ Resp. at 4.

¹⁴² F&LA at 2, MUR 6864 (Nicholas Ruiz III for Congress, *et al.*) (“Ruiz F&LA”).

¹⁴³ 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”).

¹⁴⁴ Ruiz F&LA at 5-6; Filner FGCR at 5.

1 Lanakila were continuing to collect their full payment even as they performed minimal work for
2 the Committee.¹⁴⁵

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

4 The Act provides that contributions “shall not be converted by any person to personal
5 use.”¹⁴⁶ Additionally, according to Commission policy, a treasurer may be named as a
6 respondent in his or her personal capacity when he or she “violates a prohibition that applies
7 generally to individuals,” or when it appears that, while serving as treasurer, he or she may have
8 violated obligations imposed by the Act or Commission regulations personally as a treasurer and
9 where, for example, the violations were knowing and willful or “the treasurer recklessly failed to
10 fulfill the duties imposed by law.”¹⁴⁷ At the reason-to-believe stage in this matter, the
11 Commission found that the circumstances warranted a finding as to Beesley in his personal
12 capacity because “at a minimum, his actions appear to show a reckless failure to fulfill his duties
13 as treasurer.”¹⁴⁸ Specifically, the Commission pointed to Beesley’s dual role serving “both as
14 the Committee payor and the recipient payee as the sole member of Lanakila” and the fact that
15 “[a]s such, he was the only person who could end Lanakila’s contract with the Committee” but

¹⁴⁵ 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*.” 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”).

¹⁴⁶ 52 U.S.C. § 30114(b).

¹⁴⁷ See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3-6 & n.7 (Jan. 3, 2005); see, e.g., F&LA at 2-4, MUR 5652 (Susan Arceneaux) (finding reason to believe that assistant treasurer violated the Act in her personal capacity when she recklessly failed to fulfill the duties of a treasurer by, among other things, preparing reports containing illegal corporate and excessive contributions); F&LA at 7, MUR 5971 (Mary Jennifer Adams); F&LA at 1-5, MUR 5610 (Earl Allen Haywood).

¹⁴⁸ Lanakila F&LA at 11.

1 instead chose to continue making payments to Lanakila while performing little to no work for the
2 Committee.¹⁴⁹

3 Evidence collected by OGC during the investigation in this matter shows that Beesley did
4 not have sole responsibility for issuing checks to Lanakila. He appears to have sought and
5 received Sami Takai's authorization before paying Lanakila's invoices.¹⁵⁰ However, the
6 evidence also indicates that, while serving as treasurer, he continued to invoice the Committee
7 and issue checks for Lanakila's services at the full rate for the months of April 2017 through
8 January 2018, on an open-ended contract that could be terminated only by Lanakila or the
9 Committee, and that he did so even though he was no longer doing any significant work for the
10 Committee and had been personally involved in either ending or renegotiating the Committee's
11 other vendor contracts to reflect the amount of work the Committee required. Additionally, as
12 explained above, the record in this matter reflects that a portion of those payments to Beesley
13 and Lanakila were converted to personal use. Accordingly, we recommend that the Commission
14 continue to pursue Beesley for violating the Act in his personal capacity.

15 **IV. CONCLUSION**

16 Based on all of the available evidence collected during the investigation and information
17 submitted by the Respondents, it appears that after March 15, 2017, the Committee was largely
18 dormant awaiting the establishment of the charitable foundation by Kai and Sami Takai, and that
19 Beesley and Lanakila continued to collect monthly payments of \$5,759.16 for ten months despite
20 performing very limited work for the Committee. The record in this matter further indicates that

¹⁴⁹ *Id.*

¹⁵⁰ *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.").

1 although Beesley was involved in terminating or reducing payments to other Committee vendors,
2 he took no such steps with regard to Lanakila, even though he would later assess that \$750 per
3 month would provide fair market value for performing limited services for the Committee.
4 Under these circumstances, this Office is prepared to recommend that the Commission find
5 probable cause to believe that Lanakila and Dylan Beesley converted a portion of the continued
6 payments to personal use in violation of 52 U.S.C. § 30114(b).

7
8 April 8, 2022

9 Date

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