



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA CERTIFIED MAIL

June 7, 2022

Sandhya Bathija
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, DC 20005

RE: MUR 7310 (Mark Takai for
Congress, *et al.*)

Dear Ms. Bathija:

This letter is in reference to the complaint Campaign Legal Center filed with the Federal Election Commission on January 18, 2018, against Mark Takai for Congress and Dylan Beesley in his official capacity as treasurer (the “Committee”), Dylan Beesley, and Lanakila Strategies, LLC (“Lanakila”) (collectively “Respondents”), alleging violations of the Federal Election Campaign Act of 1971, as amended.

On June 4, 2019, the Commission found that there was reason to believe that Respondents violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use. The Commission then commenced an investigation. Subsequently, on May 26, 2022, the Commission considered the General Counsel’s briefs and Respondents’ brief and found no probable cause to believe that Respondents violated 52 U.S.C. § 30114(b). Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analyses, which more fully explain the Commission’s reason to believe finding are enclosed for your information. A Statement of Reasons explaining the Commission’s probable cause decision will follow.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission’s dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If

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Ms. Bathija

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

Sincerely,

Mark Allen

Mark Allen
Assistant General Counsel

Enclosures:

Factual and Legal Analysis for Mark Takai for Congress

Factual and Legal Analysis for Dylan Beesley and Lanakila Strategies

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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

I. INTRODUCTION

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

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

¹ Compl. at 8-11 (Jan. 19, 2018).

² *Id.*

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

1 **II. FACTUAL BACKGROUND**

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

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

⁴ Compl. at 2; Committee Resp. at 2.

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

⁶ See State of Hawaii, Dept. of Commerce and Consumer Affairs, Business Registration Division, Lanakila Strategies LLC, File No. 134933C5, <https://hbe.ehawaii.gov/documents/business.html?fileNumber=134933C5&view=info>.

⁷ Committee Resp. at 1, Ex. A at 1, 5. Then-treasurer Edward Dion Kaimihana executed the Agreement on behalf of Takai and the Committee; Beesley signed for Lanakila. *Id.*, Ex. A at 5. Beesley also served as a consultant to the Committee in 2015; the Committee paid Beesley — directly, not through Lanakila — \$26,600 for fundraising consulting services between July 1, 2015, and December 31, 2015. See Compl. at 2; see generally Disbursements to Lanakila Strategies and Dylan Beesley, 2015-2016, Mark Takai for Congress, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&cycle=2016&data_type=processed&committee_id=C00548131&recipient_name=beesley&recipient_name=lanakila&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

⁸ Committee Resp. at 1.

⁹ *Id.* at 1-2, Ex. A at 1.

¹⁰ *Id.*

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

¹¹ Committee Resp. at 2; see Compl. at 3 (citing Frances Kai-Hwa Wang, *Hawaii Congressman Mark Takai to Retire to Focus on Cancer Battle*, NBC NEWS (May 20, 2016), <https://www.nbcnews.com/news/asian-america/hawaii-congressman-mark-takai-retire-focus-cancer-battle-n577451>); see also Form 99, Mark Takai for Congress (June 2, 2016) (Takai informed the Commission that he was no longer a candidate and would cease campaign activities).

¹² Committee Resp. at 2, Ex. B.

¹³ *Id.*, Ex. B.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* The original contract stated that the agreement could be terminated by mutual agreement or by either party with 15 days’ notice. Committee Resp., Ex. A at 1.

¹⁷ Committee Resp. at 2; Amended Statement of Organization, Mark Takai for Congress (Sept. 8, 2016). At the time of Takai’s death, Kaimihana served as the treasurer of the Committee; according to the Committee, he did not want to continue in that role after Takai’s death. Committee Resp. at 2.

1 As set forth in the chart below, the Committee continued to make disbursements to
 2 Lanakila through March 31, 2018.¹⁸

3 COMMITTEE PAYMENTS TO LANAKILA UNDER THE AMENDED AGREEMENT¹⁹

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

4
 5 At the time of Takai's death, the Committee had cash-on-hand of approximately
 6 \$634,045.²⁰ Between July 1 and September 30, 2016, the Committee refunded contributions
 7 totaling \$142,160.89.²¹ In the last quarter of 2016, the Committee reported making one new

¹⁸ See 2017 Year-End Report, Mark Takai for Congress (Jan. 14, 2018); 2017 October Quarterly Report, Mark Takai for Congress (Oct. 13, 2017); 2017 July Quarterly Report, Mark Takai for Congress (July 14, 2017); 2017 April Quarterly Report, Mark Takai for Congress (Apr. 14, 2017).

¹⁹ These figures reflect the disbursements disclosed by the Committee.

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

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

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

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

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

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

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

²⁴ See 2017 Year-End Report, Mark Takai for Congress (Jan. 14, 2018); 2017 October Quarterly Report, Mark Takai for Congress (Oct. 13, 2017); 2017 July Quarterly Report, Mark Takai for Congress (July 14, 2017); 2017 April Quarterly Report, Mark Takai for Congress (Apr. 14, 2017).

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

²⁶ See *id.* at 13-14.

²⁷ See *id.* at 15-16. The Committee also made a payment of \$1,650 to NGP Van, Inc. on February 2, 2017, for a database fee and a \$10 payment to the National Democratic Club on January 19, 2017, for a capital assessment fee. See *id.* at 11-12.

²⁸ Compl. at 9.

²⁹ *Id.* at 9-10.

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

³⁰ See Amended Statement of Organization, Mark Takai for Congress (Jan. 24, 2018). Kai is the father of Sami Takai, the wife of Mark Takai. Committee Resp. at 1 n.1. Kai executed the Committee’s Designation of Counsel and the Committee stated that Beesley would be represented by separate counsel to avoid the appearance of a conflict of interest. *Id.*

³¹ Committee Resp. at 2.

³² *Id.*

³³ *Id.* at 5.

³⁴ See State of Hawaii, Dept. of Commerce and Consumer Affairs, Business Registration Division, K. Mark Takai Foundation, File No. 287547D2, <https://hbe.ehawaii.gov/documents/business.html?fileNumber=287547D2&view=info>; Committee Resp. at 3 (citing Nanea Kalani, *Payments by Takai’s Campaign Questioned*, HONOLULU STAR ADVERTISER (Jan. 12, 2018), <http://www.staradvertiser.com/2018/01/12/hawaii-news/payments-by-takais-campaign-questioned/?HSA=fb85ecef2b3e2007cf7beb6d65870a735433a8b>) (noting that the reporter contacted Beesley regarding the allegations in the article on January 10, 2018).

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

4 **III. LEGAL ANALYSIS**

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

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

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

³⁶ See *id.* at 2.

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

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

³⁹ 11 C.F.R. § 113.2(a)(2).

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

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

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

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

⁴¹ See Advisory Op. 2013-05 (Gallegly) at 3. Although the Committee contends that the Commission regulation regarding the six-month winding down period only applies to winding down the official office of the federal officeholder, and not the campaign, see Committee Resp. at 3, in Advisory Opinion 2013-05 the Commission applied it to the requestor’s “officeholder and campaign materials” and “campaign or congressional office.” Thus, contrary to the Committee’s argument, the Commission has not sanctioned an open-ended winding down period for campaign committees.

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

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

⁴⁴ See Personal Use E&J, 60 Fed. Reg. at 7,863-64; see also Rulemaking Petition: Former Candidates’ Personal Use, 83 Fed. Reg. 12,283, 12,283 (Mar. 21, 2018) (seeking comment on Petition for Rulemaking regarding personal use and former candidates and federal officeholders).

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

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

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

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

⁴⁶ See Committee Resp. at 5.

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

⁴⁸ See 11 C.F.R. § 113.1(g)(1)(ii).

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

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

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

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

⁵⁰ Committee Resp. at 5.

⁵¹ The vendor lists a variety of services for campaign committees on its website, of which only one — filing reports — could apply after a candidate's death. See <http://www.cfo-compliance.com/services/federal-committee-compliance-candidates-pacs-parties/>.

⁵² See Committee Resp., Ex. A.

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

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

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Lanakila Strategies LLC MUR 7310
Dylan Beesley in his personal capacity¹

I. INTRODUCTION

The Complaint in this matter alleges violations of the personal use provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), in connection with disbursements made by Mark Takai for Congress (the “Committee”) to Lanakila Strategies LLC (“Lanakila”), the consulting firm of Committee treasurer Dylan Beesley, for at least eighteen months after Takai announced in May 2016 that he was no longer a candidate for federal office.² Specifically, the Complaint alleges that the Committee converted funds to personal use by continuing to pay Beesley’s firm \$5,759.16 per month for consulting services through December 2017 even though Takai died in July 2016 and the Committee conducted no apparent winding down activities after February 2017.³ Lanakila and Beesley contend that all payments to Lanakila were authorized and that Lanakila contracted with the Committee to provide a variety of services including, but not limited to, winding down activities and developing ideas for a charitable foundation.⁴

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

² Compl. at 8-11 (Jan. 19, 2018).

³ *Id.*

⁴ Dylan Beesley/Lanakila Strategies LLC Resp. at 2, Ex. 1 (Mar. 16, 2018) (“Beesley/Lanakila Resp.”).

1 For the reasons set forth below, the Commission finds reason to believe that Lanakila and
2 Beesley in his personal capacity violated 52 U.S.C. § 30114(b) by converting campaign funds to
3 personal use.

4 **II. FACTUAL BACKGROUND**

5 Mark Takai represented the First Congressional District of Hawaii from January 3, 2015,
6 until his death on July 20, 2016.⁵ Mark Takai for Congress is his principal campaign
7 committee.⁶ Lanakila Strategies LLC is registered in Hawaii as a domestic limited liability
8 company, and Beesley is its sole member.⁷

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

⁵ Compl. at 2.

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

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

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

1 On May 19, 2016, Takai announced that he would not run for re-election because he
2 learned that his pancreatic cancer had spread.⁹ The Commission possesses information
3 indicating that the Committee and Lanakila executed an Amendment to the Agreement in
4 June 2016; Takai signed the Amendment on behalf of the Committee, and Beesley signed for
5 Lanakila. The Amendment modified certain sections of the Agreement, including its duration
6 and the specific services Lanakila would provide. The Amendment removed the third type of
7 consulting services — design and execution of campaign launch — and replaced it with
8 “[o]versee the wind down of Clients [sic] campaign committee.” Under the terms of the
9 Amendment, Lanakila would be paid \$5,500 plus tax each month, in addition to reimbursement
10 of pre-approved expenses. The Amendment also provided that it would continue until
11 terminated by mutual agreement or by either party, with 30 days’ notice.¹⁰ Beesley became the
12 Committee’s treasurer on September 8, 2016.¹¹

13 As set forth in the chart below, the Committee continued to make disbursements to
14 Lanakila through March 31, 2018.¹²

⁹ See Compl. at 3 (citing Frances Kai-Hwa Wang, *Hawaii Congressman Mark Takai to Retire to Focus on Cancer Battle*, NBC NEWS (May 20, 2016), <https://www.nbcnews.com/news/asian-america/hawaii-congressman-mark-takai-retire-focus-cancer-battle-n577451>); see also Form 99, Mark Takai for Congress (June 2, 2016) (Takai informed the Commission that he was no longer a candidate and would cease campaign activities).

¹⁰ The original contract stated that the agreement could be terminated by mutual agreement or by either party with 15 days’ notice.

¹¹ Amended Statement of Organization, Mark Takai for Congress (Sept. 8, 2016). At the time of Takai’s death, Kaimihana served as the treasurer of the Committee.

¹² See 2017 Year-End Report, Mark Takai for Congress (Jan. 14, 2018); 2017 October Quarterly Report, Mark Takai for Congress (Oct. 13, 2017); 2017 July Quarterly Report, Mark Takai for Congress (July 14, 2017); 2017 April Quarterly Report, Mark Takai for Congress (Apr. 14, 2017).

1 COMMITTEE PAYMENTS TO LANAKILA UNDER THE AMENDED AGREEMENT¹³

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

2

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

4 \$634,045.¹⁴ Between July 1 and September 30, 2016, the Committee refunded contributions

5 totaling \$142,160.89.¹⁵ In the last quarter of 2016, the Committee reported making one new

6 \$500 contribution refund and re-issuing three contribution refunds.¹⁶ The Committee also

¹³ These figures reflect the disbursements disclosed by the Committee.

¹⁴ See 2016 July Quarterly Report, Mark Takai for Congress (July 15, 2016); Compl. at 9.

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

¹⁶ See 2016 Year-End Report, Mark Takai for Congress (Jan. 31, 2017) (covering October 1 through December 31, 2016).

1 reported other disbursements such as storage, compliance, and legal expenses from July through
2 December 2016.¹⁷

3 In 2017, the Committee paid \$500 per month to a compliance vendor and approximately
4 \$35 per month for web services, in addition to the \$5,759.16 per month to Lanakila.¹⁸ In the first
5 two months of 2017, the Committee made one payment for a storage unit,¹⁹ re-issued two refund
6 checks to political committees,²⁰ and made four contributions to other campaign committees.²¹

7 The Complaint observes that after the Committee refunded contributions, almost all its
8 disbursements have gone toward paying its treasurer, Beesley, and questions “how Beesley’s
9 \$5,759.16 monthly fees are commensurate with the fair market value of any services provided.”²²
10 The Complaint also notes that Lanakila and Beesley do not appear to be performing compliance
11 or legal services, since the Committee’s reports show payments to other vendors for those
12 services.²³

¹⁷ See 2016 October Quarterly Report, Mark Takai for Congress (Oct. 15, 2016); 2016 Year-End Report, Mark Takai for Congress (Jan. 31, 2017).

¹⁸ See 2017 Year-End Report, Mark Takai for Congress (Jan. 14, 2018); 2017 October Quarterly Report, Mark Takai for Congress (Oct. 13, 2017); 2017 July Quarterly Report, Mark Takai for Congress (July 14, 2017); 2017 April Quarterly Report, Mark Takai for Congress (Apr. 14, 2017).

¹⁹ See 2017 April Quarterly Report at 10, Mark Takai for Congress (Apr. 14, 2017).

²⁰ See *id.* at 13-14.

²¹ See *id.* at 15-16. The Committee also made a payment of \$1,650 to NGP Van, Inc. on February 2, 2017, for a database fee and a \$10 payment to the National Democratic Club on January 19, 2017, for a capital assessment fee. See *id.* at 11-12.

²² Compl. at 9.

²³ *Id.* at 9-10.

1 Within five days of the Complaint’s filing, the Committee named Gary Kai as deputy
2 treasurer and designated agent.²⁴ Beesley and Lanakila filed a joint response.²⁵ State business
3 records show that “K. Mark Takai Foundation” was registered as a non-profit corporation in
4 Hawaii on January 11, 2018, the day after a Hawaii newspaper reporter contacted Beesley about
5 the payments to Lanakila.²⁶ Lanakila and Beesley provide a “Statement Regarding the Mark
6 Takai Foundation Attributable to Gary Kai on behalf of the Takai Family” noting that Beesley
7 stayed on as campaign treasurer after Rep. Takai’s death “to help manage the campaign[’]s
8 affairs,” that Beesley “worked to help us focus on the next steps so that we could close the
9 campaign down and create a foundation” and that “[p]ayments to him during this period were

²⁴ See Amended Statement of Organization, Mark Takai for Congress (Jan. 24, 2018). Kai is the father of Sami Takai, the wife of Mark Takai.

²⁵ The Committee also appears to be paying the legal expenses of Beesley and Lanakila. It reported making a disbursement of \$4,741.65 to KaiserDillon PLLC, the law firm representing Beesley and Lanakila in this matter, for legal services on March 29, 2018. See 2018 April Quarterly Report, Mark Takai for Congress at 6 (Apr. 14, 2018).

²⁶ See State of Hawaii, Dept. of Commerce and Consumer Affairs, Business Registration Division, K. Mark Takai Foundation, File No. 287547D2, <https://hbe.ehawaii.gov/documents/business.html?fileNumber=287547D2&view=info>; Committee Resp. at 3 (citing Nanea Kalani, *Payments by Takai’s Campaign Questioned*, HONOLULU STAR ADVERTISER (Jan. 12, 2018), <http://www.staradvertiser.com/2018/01/12/hawaii-news/payments-by-takais-campaign-questioned/?HSA=fb85ecef2b3e2007cf7beb6d65870a735433a8b>) (noting that the reporter contacted Beesley regarding the allegations in the article on January 10, 2018).

1 authorized.”²⁷ Lanakila and Beesley do not provide further detail about any work performed
2 related to the development of a charitable foundation.

3 The Committee disclosed making one payment to Lanakila during the first three months
4 of 2018, \$1,500 on March 31, 2018.²⁸ The Committee reported cash-on-hand of \$295,782.96 as
5 of that date.²⁹

6 **III. LEGAL ANALYSIS**

7 **A. Personal Use**

8 The Act affords federal candidates and their campaign committees wide discretion in the
9 disposition of their campaign funds and provides that contributions accepted by a candidate may
10 be used in several categories of permissible non-campaign uses of funds, including the “ordinary
11 and necessary expenses incurred in connection with duties of the individual as a holder of
12 Federal office,” as well as “charitable donations,” and “any other lawful purpose” but not
13 conversion to “personal use.”³⁰ Conversion to personal use occurs when funds in a campaign
14 account are used “to fulfill any commitment, obligation, or expense of a person that would exist
15 irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal
16 office.”³¹

²⁷ Beesley/Lanakila Resp. at 2, Ex. 1. The statement, dated January 18, 2018, does not specify who authorized the payments.

²⁸ See 2018 April Quarterly Report at 7, Mark Takai for Congress (Apr. 14, 2018).

²⁹ See *id.* at 2.

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

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

1 The Commission’s regulations provide that the costs of winding down the office of a
2 former federal officeholder for a period of six months after he or she leaves office are ordinary
3 and necessary expenses.³² The Commission has explained that the six-month winding down
4 period “acts as a safe harbor” and “does not preclude a former officeholder who can demonstrate
5 that he or she has incurred ordinary and necessary winding down expenses more than six months
6 after leaving office from using campaign funds to pay those expenses.”³³ Such winding down
7 costs include the necessary administrative costs of terminating a campaign or congressional
8 office, such as office space and storage rental, staff salaries, and office supplies.³⁴

9 Certain other uses of campaign funds constitute *per se* conversion to personal use,
10 including home mortgage and tuition payments.³⁵ For disbursements neither *per se* permissible
11 or impermissible, the Commission determines on a case-by-case basis whether a given campaign
12 fund disbursement is personal use by applying the “irrespective test,” that is, whether the
13 payment fulfills a commitment, obligation, or expense that would exist irrespective of the
14 candidate’s campaign or duties as a federal officeholder.³⁶ The Commission has stated, however,
15 that “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or
16 officeholder activities, the Commission will not consider the use to be personal use.”³⁷

³² 11 C.F.R. § 113.2(a)(2).

³³ *See* Personal Use E&J, 60 Fed. Reg. at 7,873.

³⁴ *See* Advisory Op. 2013-05 (Gallegly) at 3.

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

³⁶ Personal Use E&J, 60 Fed. Reg. at 7,867; 11 C.F.R. § 113.1(g)(1)(ii).

³⁷ *See* Personal Use E&J, 60 Fed. Reg. at 7,863-64; *see also* Rulemaking Petition: Former Candidates’ Personal Use, 83 Fed. Reg. 12,283, 12,283 (Mar. 21, 2018) (seeking comment on Petition for Rulemaking regarding personal use and former candidates and federal officeholders).

1 During the six-month winding down period from July 2016 through February 2017, the
2 Committee issued contribution refunds, paid storage expenses, paid a compliance vendor, made
3 contributions to other campaign committees, and paid Lanakila a total of \$46,193.80.³⁸

4 As stated above, the six-month winding down period acts as a safe harbor for
5 committees.³⁹ After this period ended in February 2017, however, Lanakila continued to receive
6 monthly payments of \$5,759.16 from the Committee through December 2017 — an additional
7 ten months. Yet Lanakila has not offered an explanation why it needed additional time to wind
8 down the Committee. The Committee appears to have been largely dormant during this time,
9 disclosing no receipts other than bank interest and disbursements only to Lanakila (\$5,759.16 per
10 month), a compliance vendor (\$500 per month), a database vendor (\$1,350 in April and \$150 in
11 December), and Google Apps (\$34.90 per month for web services).

12 When the safe harbor no longer applies, the Commission’s “irrespective test” applies: the
13 candidate — or in this case, the Committee — needs to show that the expenses reasonably
14 resulted from campaign or officeholder activities.⁴⁰ Here, Lanakila and Beesley have not
15 demonstrated how continued substantial Committee monthly payments to Lanakila relate to
16 campaign or officeholder activities. A review of the payments made to Lanakila before and after
17 the Amendment raises further questions as to what Committee-related work Lanakila and
18 Beesley performed after Takai was no longer in office, while the Committee continued to pay a
19 compliance vendor, CFO Compliance Group, \$500 per month, apparently for filing disclosure

³⁸ This total paid to Lanakila includes payments after Representative Takai’s death on July 20, 2017.

³⁹ See 11 C.F.R. § 113.2(a)(2); Advisory Op. 2013-05 (Gallegly).

⁴⁰ See 11 C.F.R. § 113.1(g)(1)(ii).

1 reports.⁴¹ The \$5,759.16 monthly payment to Lanakila exceeded the \$4,000 plus tax monthly
2 payments to Lanakila in February and March 2016 when Takai was a candidate and officeholder,
3 and equaled the \$5,500 plus tax monthly payments starting in April 2016 when Takai's
4 reelection campaign was ramping up.

5 In sum, the Committee, through its treasurer Beesley, continued to pay Lanakila, whose
6 sole member is Beesley, a monthly retainer of \$5,759.16 for sixteen months after the death of
7 Takai — the other signatory to the Amendment — including the ten months after the winding
8 down safe harbor period. The available record does not indicate that the expenses at issue
9 resulted from campaign or officeholder activities, and, with the exception of one \$1,500 payment
10 in March 2018, the \$5,759.16 monthly payments stopped immediately after the Complaint was
11 filed.

12 Accordingly, under these circumstances the Commission finds reason to believe that
13 Lanakila violated 52 U.S.C. § 30114(b) by converting some portion of the payments it received
14 from the Committee from mid-2016 through December 2017 to personal use.

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

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

⁴¹ The vendor lists a variety of services for campaign committees on its website, of which only one — filing reports — could apply after a candidate's death. See <http://www.cfo-compliance.com/services/federal-committee-compliance-candidates-pacs-parties/>.

1 the duties imposed by law.”⁴² Thus, the Commission may make findings as to Beesley in his
2 personal capacity in connection with violations of the Act while performing the duties of the
3 treasurer. Although most of the “personal capacity” cases pursued by the Commission have
4 involved embezzlement of campaign funds, the circumstances here warrant a finding of reason to
5 believe that Beesley violated the Act in his personal capacity because, at a minimum, his actions
6 appear to show a reckless failure to fulfill his duties as treasurer. Beesley became treasurer of
7 the Committee in September 2016, and from that point forward, he served both as the Committee
8 payor and the recipient payee as the sole member of Lanakila. As such, he was the only person
9 who could end Lanakila’s contract with the Committee under the terms of the Agreement.
10 Beesley chose to continue paying his own firm throughout 2017, while it appears that it
11 performed little to no work for the Committee during that time. Only after the Complaint was
12 filed in January 2018 did the Committee appoint a deputy treasurer and reduce the payments to
13 Lanakila.

14 Therefore, the Commission finds reason to believe that Beesley in his personal capacity
15 violated 52 U.S.C. § 30114(b) by converting funds to personal use.

⁴² See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3-6 (Jan. 3, 2005); *see, e.g.*, Factual and Legal Analysis at 7, MUR 5971 (Mary Jennifer Adams); MUR 5610 (Earl Allen Haywood); MUR 5721 (Lockheed Martin Employees’ PAC).