

BEFORE THE FEDERAL ELECTION COMMISSION

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SANDHYA BATHIJA
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v.

MUR No. _____

MARK TAKAI FOR CONGRESS
Dylan Beesley, Treasurer
P.O. Box 2267
Pearl City, HI 96782

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that the treasurer of former Representative Mark Takai’s campaign committee, Mark Takai for Congress (ID: C00548131) has expended campaign funds for personal use, in violation of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. Takai passed away in July of 2016. Since his death, his campaign committee has been used to pay its treasurer, Dylan Beesley, more than \$100,000 through his consulting firm—in violation of the prohibition against converting campaign funds to personal use at 52 U.S.C. § 30114(b)(1).
3. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission *shall* make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

4. Mark Takai represented Hawaii's 1st District in the U.S. House of Representatives from 2015 until his death on July 20, 2016.¹ Mark Takai for Congress ("MTC") was his principal campaign committee.² As of December 31, 2017, MTC reported having \$308,977.30 in cash-on-hand.³
5. On August 6, 2013, MTC filed its first Statement of Organization, which listed Edward Dion Kaimihana as its treasurer.⁴ The three subsequent amendments of the Statement of Organization on April 8, 2014,⁵ December 1, 2014,⁶ and June 15, 2015⁷ similarly listed Kaimihana as the committee's treasurer.
6. Between July 1, 2015 and March 3, 2016, MTC directly paid Dylan Beesley a total of \$34,600 for "Fundraising Consulting Services" and "Consultant- Fundraising."⁸ Between February 16, 2016 and July 3, 2016, MTC paid Lanakila Strategies LLC a total of \$47,843

¹ The Associated Press, *Mark Takai, First-Term Congressman From Hawaii, Dies at 49*, N.Y. Times (July 20, 2016), https://www.nytimes.com/2016/07/21/us/politics/mark-takai-dead.html?_r=0.

² Mark Takai for Congress, Statement of Organization, FEC Form 1, at 2 (amended Sept. 8, 2016), <http://docquery.fec.gov/pdf/784/201609089030751784/201609089030751784.pdf>.

³ Mark Takai for Congress, Year-End 2017, FEC Form 3, at 2 (filed Jan. 14, 2018), <http://docquery.fec.gov/pdf/711/201801149090407711/201801149090407711.pdf>.

⁴ Mark Takai for Congress, Statement of Organization, FEC Form 1, at 1 (filed Aug. 6, 2013), <http://docquery.fec.gov/pdf/808/13031110808/13031110808.pdf>.

⁵ Mark Takai for Congress, Statement of Organization, FEC Form 1, at 1 (amended Apr. 8, 2014), <http://docquery.fec.gov/pdf/223/14960620223/14960620223.pdf>.

⁶ Mark Takai for Congress, Statement of Organization, FEC Form 1, at 1 (amended Dec. 1, 2014), <http://docquery.fec.gov/pdf/630/14952646630/14952646630.pdf>.

⁷ Mark Takai for Congress, Statement of Organization, FEC Form 1, at 1 (amended June 15, 2015), <http://docquery.fec.gov/pdf/854/15951472854/15951472854.pdf>.

⁸ Mark Takai for Congress, Disbursements to Dylan Beesley, 2015-16, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00548131&recipient_name=beesley&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016 (last visited Jan. 17, 2018). MTC did not pay Beesley before July 2015.

for “Strategic Consulting Services” and “Strategic and Fundraising Consulting Services.”⁹

Lanakila Strategies LLC is Beesley’s consulting firm.¹⁰

7. On May 19, 2016, Takai announced that he would not be seeking re-election in November 2016.¹¹
8. On June 2, 2016, MTC sent a letter to the FEC stating that “Representative Mark Takai is no longer a candidate in the 2016 election for the United States House of Representatives in Hawaii[’s] First District” and that Takai “will no longer seek nomination or election and has ceased to conduct campaign activities with respect to the aforementioned election.”¹²
9. On July 20, 2016, Takai passed away.¹³
10. On September 8, 2016, MTC filed an amended Statement of Organization listing, for the first time, Dylan Beesley as MTC’s treasurer.¹⁴ The amended Statement of Organization was signed by Beesley.¹⁵
11. According to MTC’s 2016 October Quarterly report, for the period from July 1, 2016 to September 30, 2016, the committee reported no new contributions, refunded \$142,160 to

⁹ Mark Takai for Congress, Disbursements to Lanakila Strategies LLC, 2015-16, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00548131&recipient_name=lanakila&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016 (last visited Jan. 17, 2018). MTC did not pay Lanakila Strategies LLC before February 2016.

¹⁰ The mailing addresses for individual Dylan Beesley and Lanakila Strategies LLC are identical. Compare Mark Takai for Congress, April 15 Quarterly Report, FEC Form 3, at 142 (filed Apr. 15, 2016), <http://docquery.fec.gov/pdf/025/201604159012464025/201604159012464025.pdf>, with *id.* at 147. Beesley’s LinkedIn profile lists Beesley as “Founder at Lanakila Strategies.” Dylan Beesley Profile, LinkedIn, <https://www.linkedin.com/in/dylanbeesley> (last visited Jan. 17, 2018).

¹¹ 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>.

¹² Mark Takai for Congress, Miscellaneous Text, FEC Form 99 (filed June 2, 2016), <http://docquery.fec.gov/pdf/431/201606029017461431/201606029017461431.pdf>.

¹³ The Associated Press, *supra* note 1.

¹⁴ Mark Takai for Congress, Statement of Organization, FEC Form 1, at 1 (amended Sept. 8, 2016), <http://docquery.fec.gov/pdf/784/201609089030751784/201609089030751784.pdf>.

¹⁵ *Id.*

contributors, and reported \$58,508 in operating expenditures, including \$15,710 to Lanakila Strategies LLC.¹⁶

12. According to MTC's 2016 Year-End report, for the period from October 1, 2016 to December 31, 2016, the committee reported no new contributions, refunded \$500 to contributors, and reported \$35,135 in operating expenditures, \$23,036 of which constituted payments to Lanakila Strategies LLC (\$11,518.32 on October 1, 2016 and \$11,518.32 on December 19, 2016).¹⁷
13. MTC's 2017 April Quarterly showed \$26,486 in operating expenditures over the January 1, 2017 to March 31, 2017 reporting period, \$23,036 of which constituted payments to Lanakila Strategies LLC (\$5,759.16 each on January 10, January 23, February 28, and March 20, 2017).¹⁸ The committee reported no new contributions, one \$5,000 contribution refund, and \$5,000 in contributions to other committees.¹⁹
14. MTC's 2017 July Quarterly showed \$20,232 in operating expenditures, \$17,277 of which constituted payments to Lanakila Strategies LLC (\$5,759.16 each on April 24, May 19, and June 20, 2017).²⁰ The committee reported no new contributions or contribution refunds.²¹
15. MTC's October 2017 Quarterly reflected \$18,912 in operating expenditures, \$17,277 of which constituted payments to Lanakila Strategies LLC (\$5,759.16 each on July 20, August

¹⁶ Mark Takai for Congress, October Quarterly 2016, FEC Form 3 (filed Oct. 15, 2016), <http://docquery.fec.gov/pdf/855/201610159032636855/201610159032636855.pdf>. MTC paid Lanakila Strategies LLC \$9,830.30 on July 3, 2016 and \$5,880 on August 1, 2016. *Id.* at 12, 13.

¹⁷ Mark Takai for Congress, Year End 2016, FEC Form 3 (filed Jan. 31, 2017), <http://docquery.fec.gov/pdf/183/201701319042137183/201701319042137183.pdf>.

¹⁸ Mark Takai for Congress, April Quarterly 2017, FEC Form 3 (filed Apr. 5, 2017), <http://docquery.fec.gov/pdf/937/201704149052162937/201704149052162937.pdf>.

¹⁹ *Id.*

²⁰ Mark Takai for Congress, July Quarterly 2017, FEC Form 3 (filed Jul. 15, 2017), <http://docquery.fec.gov/pdf/741/201707149066628741/201707149066628741.pdf>.

²¹ *Id.*

21, and September 14, 2017).²² The committee reported no new contributions or contribution refunds.²³

16. MTC’s 2017 Year End report reflected \$19,032 in operating expenditures, \$17,277 of which constituted payments to Lanakila Strategies LLC (\$5,759.16 each on October 14, November 14, and December 13, 2017).²⁴ The committee reported no new contributions or contribution refunds.²⁵

17. Thus, in 2017, MTC paid Lanakila Strategies LLC a total of \$74,869.08,²⁶ approximately 88.4 percent of the \$84,662 the committee spent on operating expenditures over the calendar year—and 83.5 percent of the committee’s \$89,617 in total spending—where its only apparent activities involved one \$5,000 contribution refund and four contributions to other committees totaling \$5,000.²⁷

18. Beesley is currently campaign manager for Hawaii Attorney General Doug Chin’s congressional run.²⁸ In response to news reports about MTC’s payments to Beesley, Chin said in a statement that Beesley “needs to immediately get his house in order and that I would

²² Mark Takai for Congress, October Quarterly 2017, FEC Form 3 (filed Oct. 13, 2017), <http://docquery.fec.gov/pdf/229/201710139075645229/201710139075645229.pdf>.

²³ *Id.*

²⁴ Mark Takai for Congress, Year End 2017, FEC Form 3 (filed Jan. 14, 2017), <http://docquery.fec.gov/pdf/711/201801149090407711/201801149090407711.pdf>.

²⁵ *Id.*

²⁶ Mark Takai for Congress, Disbursements to Lanakila Strategies LLC, 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00548131&recipient_name=lanakila&min_date=01%2F01%2F2017&max_date=01%2F17%2F2018. These payments were made in thirteen approximately monthly installments of \$5,759.16 each. *Id.*

²⁷ Mark Takai for Congress, Disbursements, 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00548131&min_date=01%2F01%2F2017&max_date=01%2F17%2F2018. MTC has continued designating disbursements it has made since Takai’s death as disbursements for the 2016 primary. *See, e.g.*, Mark Takai for Congress, Year-End 2017, FEC Form 3, at 7 (filed Jan. 14, 2018), <http://docquery.fec.gov/pdf/711/201801149090407711/201801149090407711.pdf>.

²⁸ Chad Blair, *Chin Tells Campaign Manager to ‘Get House in Order,’* Honolulu Civil Beat (Jan. 12, 2018), <http://www.civilbeat.org/2018/01/chin-tells-campaign-manager-to-get-house-in-order/>.

expect someone who served two federal congressional campaigns, the Hillary Clinton campaign and other state and national Democratic causes to know better.”²⁹ The same day,

Beesley defended his payments from MTC, insisting in a statement that:

After Congressman Takai passed away, the campaign continues to have surplus funds and filing obligations with the Federal Election Commission.

It needs some personnel to continue to manage its affairs and meet these and other obligations until it finally disposes of its funds and terminates its registration. The campaign also relies on an outside compliance firm and legal counsel to ensure that we are following the letter of the law.

Understandably, the Congressman’s family has had other, more pressing matters to deal with as a result of his passing, before they finally decide how to dispose of the campaign’s assets and conclude its activities.³⁰

19. On January 16, 2018, Beesley told *Hawaii News Now* that he “became treasurer [of MTC] at the request of the late Congressman Takai’s family, and I have done my job with their support.”³¹
20. On January 17, 2018, *Roll Call* reported that the intended purposes for the remaining campaign funds after Takai’s death were reimbursements to donors and donations to charity: “Takai died with about \$1 million still in his campaign fund, and half of that was returned to donors. His family planned to give the rest to charity.”³²

SUMMARY OF THE LAW

21. FECA provides that contributions accepted by a candidate may be used by the candidate for, *inter alia*, “otherwise authorized expenditures in connection with the campaign for Federal

²⁹ *Id.*

³⁰ *Id.*

³¹ HNN Staff, *Staffer still getting thousands monthly from late Hawaii Congressman’s campaign coffers*, *Hawaii News Now* (Jan. 16, 2018), <http://www.hawaiinewsnow.com/story/37280603/staffer-still-getting-thousands-monthly-from-late-hawaii-congressmans-campaign>.

³² Eric Garcia, *Former Takai Staffer Still Getting Paid From Campaign Cash*, *Roll Call* (Jan. 17, 2018), <https://www.rollcall.com/news/politics/former-takai-staffer-still-getting-paid-from-campaign-cash>.

office of the candidate,” 52 U.S.C. § 30114(a)(1), *see also* 11 C.F.R. § 113.2(a)-(e), and that such contributions shall not be converted to the personal use of the candidate or *any other person*, *id.* § 30114(b); *see also* 11 C.F.R. §§ 113.1(g), 113.2(e) (emphasis added).

22. Campaign funds are considered to have been converted to “personal use” if the funds are used “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.” 52 U.S.C. § 30114(b)(2). Commission regulations similarly define “personal use” as the use of funds in a campaign account “to fulfill any commitment, obligation, or expense of any person that would exist irrespective of the candidate’s election campaign or duties as a Federal officeholder.” 11 C.F.R. § 113.1(g) (emphasis added).

23. The Commission has explained the “irrespective” test as follows:

If campaign funds are used for a financial obligation that is caused by campaign activity or the activities of an officeholder, that use is not personal use. However, if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for that obligation generally would be personal use.

Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7863–64 (Feb. 9, 1995). If a current officeholder or candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.” *Id.* at 7867.

24. FECA and Commission regulations provide a non-exhaustive list of uses of campaign funds that are *per se* personal use. 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i). For uses of campaign funds not on this list, the Commission determines, on a case-by-case basis, whether they constitute personal use. 11 C.F.R. § 113.1(g)(1)(ii). Salary payments in excess of the fair market value of the services provided may constitute personal use.

25. Former officeholders or their campaign committees may permissibly use campaign funds to pay certain expenses related to winding down their office, *see* 11 C.F.R. § 113.2(a)(2) (recognizing as “ordinary and necessary” costs of winding down former officeholder’s office and permitting use of campaign funds to pay for such expenses for six months after officeholder leaves office). The Commission has similarly allowed the use of campaign funds for other expenses clearly incurred in connection with a former member’s duties as a federal officeholder, such as paying expenses related to winding down campaign activity. *See, e.g.*, Advisory Opinion 2013-05 (Gallegly for Congress). The Commission has also permitted former officeholders’ campaign committees to expend campaign funds for uses expressly permitted under FECA and Commission regulations, such as donating leftover campaign funds to charity as authorized by 52 U.S.C. § 30114(a)(3) and 11 C.F.R. § 113.2(b), *see* Advisory Opinion 2012-05 (Lantis), or donating to state and local candidates as authorized by 52 U.S.C. § 30114(a)(5) and 11 C.F.R. § 113.2(f), *see* Advisory Opinion 2012-06 (Perry); Advisory Opinion 1993-10 (Colorado).

CAUSES OF ACTION

I. Dylan Beesley Converted Campaign Funds to Personal Use

26. A campaign committee may not convert campaign funds to the personal use of the candidate or *any other person*. 52 U.S.C. § 30114(b)(1) (emphasis added). “Personal use” is defined as any expense that would exist “irrespective of the candidate’s campaign or duties as a Federal officeholder,” 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g). Salary payments in excess of the fair market value of the services provided may constitute personal use.
27. In May 2016, Takai announced he would not be seeking reelection; in June 2016, his campaign committee informed the FEC that it had “ceased to conduct campaign activities”;

and, in July 2016, Takai passed, after which Beesley became MTC’s treasurer. After this point, because Takai was no longer a candidate or officeholder, the estimated \$634,045³³ remaining in Takai’s campaign account—and controlled by Beesley, MTC’s treasurer—could only permissibly be used to refund contributors, for permissible uses such as donations to charities or contributions to other political committees, or to wind down Takai’s campaign and congressional office. Commission regulations anticipate a six-month winding-down period. *See* 11 C.F.R. § 113.2(a)(2).³⁴

28. On MTC’s October 2016 Quarterly report, the first after Takai’s passing, MTC refunded \$142,160 to contributors.³⁵ However, MTC’s subsequent reports to date—over approximately five quarters, or fifteen months—show little indication the committee has been winding down, and no evidence of donations to charity or contributions to other political committees; instead, almost all of the disbursements have gone towards paying Beesley, MTC’s treasurer, a \$5,759.16 monthly stipend.
29. It is difficult to see how Beesley’s \$5,759.16 in monthly fees are commensurate with the fair market value of any services provided.³⁶ It does not appear that he is providing compliance

³³ According to MTC’s October 2016 Quarterly Report, the committee had \$634,045 cash-on-hand at the beginning of the reporting period, July 1, 2016. October Quarterly 2016 at 4.

³⁴ Section 113.2 recognizes that “costs of winding down the office of a former Federal officeholder for a period of 6 months after he or she leaves office” are part of the “ordinary and necessary” expenses incurred in connection with one’s duties as a holder of Federal office. *Id. See also* Advisory Opinion 1993-06 (Panetta) at 6 (permitting a candidate to pay storage costs for six months, after which the Commission “would review the facts and circumstances . . . in order to consider whether further disbursements for similar purposes are permitted”); Advisory Opinion 2010-26 (Baird) (four months of storage costs); Advisory Opinion 2013-05 (Gallegly) (permitting approximately six months of storage costs to prepare materials for archiving).

³⁵ Mark Takai for Congress, October Quarterly 2016, FEC Form 3 (filed Oct. 15, 2016), <http://docquery.fec.gov/pdf/855/201610159032636855/201610159032636855.pdf>. MTC paid Lanakila Strategies LLC \$9,830.30 on July 3, 2016 and \$5,880 on August 1, 2016. *Id.*

³⁶ As a point of comparison, the campaign committee for former Rep. Steve LaTourette, who died in August 2016, has been paying its treasurer, Scott Coleman, just \$500 *per quarter* over the 2017 calendar year. *See* LaTourette for Congress Committee, Disbursements to Scott Coleman, 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&co

services; MTC's reports describe disbursements to CFO Compliance Group.³⁷ Nor does it appear he is providing legal services; the committee's reports through 2016 show payments to Perkins Coie for legal fees.³⁸ MTC's five most recent quarterly reports show that the committee has not been refunding contributors, nor has it been making substantial contributions to charities or other political committees. And despite the fact that Commission regulations anticipate a six-month winding-down period, almost eighteen months after Takai's passing, there are few disbursements that would suggest the committee is winding-down. Taken together, these facts suggest that Beesley is not doing much of anything to justify earning \$5,759.16 per month.³⁹

30. It has been almost eighteen months since Takai had any duties as a candidate or officeholder. As a result, MTC's excessive payments to Beesley's consulting firm, over the course of a

[mmittee_id=C00284174&recipient_name=coleman&min_date=01%2F01%2F2017&max_date=01%2F18%2F2018](#). In other words, the campaign committee for a candidate who died shortly after Takai paid its treasurer less in one year than Beesley was paid in one month.

³⁷ Since Takai died, MTC has paid CFO Compliance Group \$12,250 for "Compliance Services." See Mark Takai for Congress, Disbursements for "Compliance," 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00548131&min_date=01%2F01%2F2017&max_date=01%2F18%2F2018&disbursement_description=compliance (last visited Jan. 18, 2018); Mark Takai for Congress, Disbursements for "Compliance," Jul. 1, 2016 to Dec. 31, 2016, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00548131&min_date=07%2F01%2F2016&max_date=12%2F31%2F2016&disbursement_description=compliance (last visited Jan. 18, 2018).

³⁸ Mark Takai for Congress, Disbursements for "Legal," Jul. 1, 2016 to Dec. 31, 2016, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00548131&min_date=07%2F01%2F2016&max_date=12%2F31%2F2016&disbursement_description=legal (last visited Jan. 18, 2018).

³⁹ Notably, Hanabusa for Hawaii, the campaign committee for Takai's successor in Hawaii's 1st Congressional seat, has reported periodic payments in the exact same amount *to the penny*, \$5,759.16, to Brittany E. Ross for consulting and fundraising services. Hanabusa for Hawaii, Disbursements to Brittany E. Ross, 2017-18, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00468413&recipient_name=ross&min_date=01%2F01%2F2017&max_date=01%2F17%2F2018 (last visited Jan. 17, 2018). Presumably, a consultant for a sitting member of Congress's campaign committee will have greater responsibilities, or at least *different* responsibilities, than a consultant for a campaign committee for a Member who passed eighteen months prior.

year where MTC does not appear to be winding down or using leftover campaign funds for permissible uses such as charitable donations, are for expenses that existed irrespective of Takai's campaign or Takai's former duties of a Member of Congress, and therefore constitute illegal conversion of campaign funds to personal use, in violation of 52 U.S.C. § 30114(b)(1).

PRAYER FOR RELIEF

31. Wherefore, the Commission should find reason to believe that Mark Takai for Congress, through its treasurer Dylan Beesley, has violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
32. Further, the Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

Respectfully submitted,



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Counsel to the Campaign Legal Center,
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January 18, 2018

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.


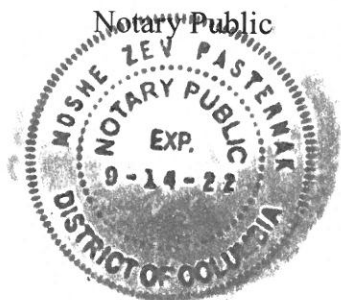
Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Sandhya Bathija

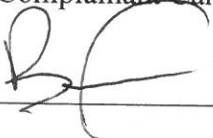


Sandhya Bathija

Sworn to and subscribed before me this ___ day of January 2018.



_____

For Complainant Campaign Legal Center



Brendan M. Fischer

Sworn to and subscribed before me this 18 day of January 2018.


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