

**FILED**

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**BUREAU OF REAL ESTATE**

B: *[Signature]*

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8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation against  
12 BRENDAN ERNEST HEATH,  
13 Respondent.

DRE No. H-05124 SD

**ACCUSATION**

15 The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the  
16 Department of Real Estate<sup>1</sup> (“Department”) of the State of California, for cause of Accusation  
17 against BRENDAN ERNEST HEATH (“Respondent”), is informed and alleges as follows:

18 1. All references to the “Code” are to the California Business and Professions Code and  
19 all references to “Regulations” are to the Regulations of the Real Estate Commissioner, Title 10,  
20 Chapter 6, California Code of Regulations.

21 2. Respondent is presently licensed and/or has license rights under the Real Estate Law  
22 (Part 1 of Division 4 of the California Business and Professions Code).

23  
24 <sup>1</sup> Between July 1, 2013 and July 1, 2018, the Department of Real Estate operated as the Bureau of Real Estate under the Department of Consumer Affairs.

1           3. Whenever reference is made in an allegation in this Accusation to an act or omission  
2 of Respondent, such allegation shall be deemed to mean that the officers, directors, employees,  
3 agents and/or real estate licensees employed by or associated with Respondent committed such  
4 act or omission while engaged in the furtherance of the business or operations of such corporate  
5 respondent and while acting within the course and scope of their authority and employment.

6   Statement of Facts

7           4. On or about September 14, 2005, the Department issued a real estate broker license  
8 to Respondent, License ID 01702461. Respondent's license shall expire on July 17, 2022.

9           5. Respondent is not licensed by the Department to conduct business under any  
10 fictitious business names.

11           6. On or about November 14, 2005, the Department issued a real estate corporation  
12 license to Black Beans and Crackers, Inc. ("BBCI"), License ID 01519351.

13           7. BBCI was formerly licensed to do business as "Mission Beach Rentals and Real  
14 Estate" and "MissionBeachRentals.Net."

15           8. BBCI's real estate corporation license expired on November 23, 2017, and has not  
16 been renewed.

17           9. On or about October 14, 2003, the Department issued a real estate salesperson license  
18 to Lisa Marie Heath, formerly known as Lisa Marie Rotner, License ID 01400957.

19           10. Lisa Marie Heath's real estate salesperson license expired on November 11, 2011,  
20 and has not been renewed.

21           11. BBCI is a corporation formed in California on or about July 15, 2005. Respondent  
22 and Lisa Marie Heath are officers for BBCI. Lisa Marie Heath is a director for BBCI.

23           12. From the period following the expiration of BBCI's real estate license on November  
24 13, 2017, through the present, Respondent and Lisa Marie Heath, while doing business as

1 Mission Beach Rentals and Real Estate, MissionBeachRentals.Net, and/or Mission Beach  
2 Rentals, have continued to solicit, offer, and perform property management activities for others,  
3 including, but not limited to, leasing or renting or offering to lease or to rent or soliciting for  
4 prospective tenants for rentals exceeding 30 days, or collecting rents from real property or  
5 improvements thereon.

6 14. From November 13, 2017 through the present, Respondent has offered to perform  
7 property management services for long-term rentals exceeding 30 days on Respondent's  
8 website: missionbeachrentals.net.

9 15. The afore-mentioned acts fall within the purview of Code section 10131,  
10 subdivision (b).

11 16. Long term rentals exceeding 30 days are not "transient occupancies" and property  
12 management activities for long term rentals are not exempt from licensing requirements under  
13 Code section 10131.01.

14 Statutory Provisions

15 17. Code section 10130 provides:

16 It is unlawful for any person to engage in the business of, act in the  
17 capacity of, advertise as, or assume to act as a real estate broker or a real estate  
18 salesperson within this state without first obtaining a real estate license from the  
19 department, or to engage in the business of, act in the capacity of, advertise as, or  
assume to act as a mortgage loan originator within this state without having  
obtained a license endorsement.

20 The commissioner may prefer a complaint for violation of this section  
21 before any court of competent jurisdiction, and the commissioner and his or her  
counsel, deputies, or assistants may assist in presenting the law or facts at the  
trial.

22 It is the duty of the district attorney of each county in this state to  
23 prosecute all violations of this section in their respective counties in which the  
violations occur.

24 ///

1 18. Code section 10131, subdivision (b), provides:

2 A real estate broker within the meaning of this part is a person who, for a  
3 compensation or in expectation of a compensation, regardless of the form or time  
4 of payment, does or negotiates to do one or more of the following acts for another  
5 or others:

6 (b) Leases or rents or offers to lease or rent, or places for rent, or solicits  
7 listings of places for rent, or solicits for prospective tenants, or negotiates the sale,  
8 purchase, or exchanges of leases on real property, or on a business opportunity, or  
9 collects rents from real property, or improvements thereon, or from business  
10 opportunities.

11 19. Code section 10131.01 provides:

12 (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of  
13 a hotel, motel, auto and trailer park, to the resident manager of an apartment  
14 building, apartment complex, or court, or to the employees of that manager, or (2)  
15 any person or entity, including a person employed by a real estate broker, who, on  
16 behalf of another or others, solicits or arranges, or accepts reservations or money,  
17 or both, for transient occupancies described in paragraphs (1) and (2) of  
18 subdivision (b) of Section 1940 of the Civil Code, in a dwelling unit in a common  
19 interest development, as defined in Section 4100 of the Civil Code, in a dwelling  
20 unit in an apartment building or complex, or in a single-family home, or (3) any  
21 person other than the resident manager or employees of that manager, performing  
22 the following functions, who is the employee of the property management firm  
23 retained to manage a residential apartment building or complex or court and who  
24 is performing under the supervision and control of a broker of record who is an  
employee of that property management firm or a salesperson licensed to the  
broker who meets certain minimum requirements as specified in a regulation  
issued by the commissioner:

(A) Showing rental units and common areas to prospective tenants.

(B) Providing or accepting preprinted rental applications, or responding to  
inquiries from a prospective tenant concerning the completion of the application.

(C) Accepting deposits or fees for credit checks or administrative costs  
and accepting security deposits and rents.

(D) Providing information about rental rates and other terms and  
provisions of a lease or rental agreement, as set out in a schedule provided by an  
employer.

(E) Accepting signed leases and rental agreements from prospective  
tenants.

1 (b) A broker or salesperson shall exercise reasonable supervision and  
2 control over the activities of nonlicensed persons acting under paragraph (3) of  
subdivision (a).

3 (c) A broker employing nonlicensed persons to act under paragraph (3) of  
4 subdivision (a) shall comply with Section 10163 for each apartment building or  
complex or court where the nonlicensed persons are employed.

5 20. Civil Code section 1940 provides:

6 (a) Except as provided in subdivision (b), this chapter shall apply to all  
7 persons who hire dwelling units located within this state including tenants,  
lessees, boarders, lodgers, and others, however denominated.

8 (b) The term "persons who hire" shall not include a person who maintains  
9 either of the following:

10 (1) Transient occupancy in a hotel, motel, residence club, or other facility  
11 when the transient occupancy is or would be subject to tax under Section 7280 of  
12 the Revenue and Taxation Code. The term "persons who hire" shall not include a  
13 person to whom this paragraph pertains if the person has not made valid payment  
for all room and other related charges owing as of the last day on which his or her  
occupancy is or would be subject to tax under Section 7280 of the Revenue and  
Taxation Code.

14 (2) Occupancy at a hotel or motel where the innkeeper retains a right of  
15 access to and control of the dwelling unit and the hotel or motel provides or offers  
all of the following services to all of the residents:

16 (A) Facilities for the safeguarding of personal property pursuant to Section  
1860.

17 (B) Central telephone service subject to tariffs covering the same filed  
18 with the California Public Utilities Commission.

19 (C) Maid, mail, and room services.

20 (D) Occupancy for periods of less than seven days.

21 (E) Food service provided by a food establishment, as defined in Section  
22 113780 of the Health and Safety Code, located on or adjacent to the premises of  
the hotel or motel and owned or operated by the innkeeper or owned or operated  
23 by a person or entity pursuant to a lease or similar relationship with the innkeeper  
or person or entity affiliated with the innkeeper.

1 (c) "Dwelling unit" means a structure or the part of a structure that is used  
2 as a home, residence, or sleeping place by one person who maintains a household  
or by two or more persons who maintain a common household.

3 (d) Nothing in this section shall be construed to limit the application of  
4 any provision of this chapter to tenancy in a dwelling unit unless the provision is  
so limited by its specific terms.

5 21. Revenue and Taxation Code section 7280 provides:

6 (a) The legislative body of any city, county, or city and county may levy a  
7 tax on the privilege of occupying a room or rooms, or other living space, in a  
8 hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is  
for a period of more than 30 days. The tax, when levied by the legislative body of  
a county, applies only to the unincorporated areas of the county.

9 (b) For purposes of this section, the term "the privilege of occupying a  
10 room or rooms, or other living space, in a hotel, inn, tourist home or house, motel,  
11 or other lodging" does not include the right of an owner of a time-share estate in a  
12 room or rooms in a time-share project, or the owner of a membership camping  
contract in a camping site at a campground, or the guest of the owner, to occupy  
the room, rooms, camping site, or other real property in which the owner retains  
that interest.

13 For purposes of this subdivision:

14 (1) "Time-share estate" means a time-share estate, as defined by paragraph  
15 (1) of subdivision (x) of Section 11212 of the Business and Professions Code.

16 (2) "Membership camping contract" means a right or license as defined by  
subdivision (b) of Section 1812.300 of the Civil Code.

17 (3) "Guest of that owner" means a person who does either of the  
18 following:

19 (A) Occupies real property accompanied by the owner of either of the  
following:

20 (i) A time-share estate in that real property.

21 (ii) A camping site in a campground pursuant to a right or license under a  
22 membership camping contract.

23 (B) Exercises that owner's right of occupancy without payment of any  
24 compensation to the owner.

1 (C) "Guest of that owner" specifically includes a person occupying a time-  
2 share unit or a camping site in a campground pursuant to any form of exchange  
program.

3 (c) For purposes of this section, "other lodging" includes, but is not  
4 limited to, a camping site or a space at a campground or recreational vehicle park,  
but does not include any of the following:

5 (1) Any facilities operated by a local government entity.

6 (2) Any lodging excluded pursuant to subdivision (b).

7 (3) Any campsite excluded from taxation pursuant to Section 7282.

8 (d) Subdivision (b) does not affect or apply to the authority of any city,  
9 county, or city and county to collect a transient occupancy tax from time-share  
10 projects that were in existence as of May 1, 1985, and which time-share projects  
11 were then subject to a transient occupancy tax imposed by an ordinance duly  
enacted prior to May 1, 1985, pursuant to this section. Chapter 257 of the Statutes  
of 1985 may not be construed to affect any litigation pending on or prior to  
December 31, 1985.

12 (e) (1) (A) If the legislative body of a city, county, or city and county  
13 elects to exempt from a tax imposed pursuant to this section any of the following  
14 persons whose occupancy is for the official business of their employers, the  
legislative body shall create a standard form to claim this exemption and the  
15 officer or employee claiming the exemption shall sign the form under penalty of  
perjury:

16 (i) An employee or officer of a government outside the United States.

17 (ii) An employee or officer of the United States government.

18 (iii) An employee or officer of the state government or of the government  
of a political subdivision of the state.

19 (B) The standard form described in subparagraph (A) shall contain a  
20 requirement that the employee or officer claiming the exemption provide to the  
property owner one of the following, as determined by the legislative body of the  
21 city, county, or city and county imposing the tax, as conclusive evidence that his  
or her occupancy is for the official business of his or her employer:

22 (i) Travel orders from his or her government employer.

23 (ii) A government warrant issued by his or her employer to pay for the  
24 occupancy.

1 (iii) A government credit card issued by his or her employer to pay for the  
2 occupancy.

3 (C) The standard form described in subparagraph (A) shall contain a  
4 requirement that the officer or employee provide photo identification, proof of his  
5 or her governmental employment as an employee or officer as described in clause  
6 (i), (ii), or (iii) of subparagraph (A), and proof, consistent with the provisions of  
7 subparagraph (B), that his or her occupancy is for the official business of his or  
8 her governmental employer.

9 (2) There shall be a rebuttable presumption that a property owner is not  
10 liable for the tax imposed pursuant to this section with respect to any government  
11 employee or officer described in clause (i), (ii), or (iii) of subparagraph (A) of  
12 paragraph (1) for whom the property owner retains a signed and dated copy of a  
13 standard form that complies with the provisions of subparagraphs (B) and (C) of  
14 paragraph (1).

15 (f) The provisions of subdivision (e) are not intended to preclude a city,  
16 county, or city and county from electing to exempt any other class of persons  
17 from the tax imposed pursuant to this section.

18 22. Code section 10157 provides:

19 No real estate license gives authority to do any act specified in this chapter  
20 to any person, other than the person to whom the license is issued.

21 23. Code section 10159.5 provides:

22 (a) (1) Every person applying for a license under this chapter who desires  
23 to have the license issued under a fictitious business name shall file with his or  
24 her application a certified copy of his or her fictitious business name statement  
filed with the county clerk pursuant to Chapter 5 (commencing with Section  
17900) of Part 3 of Division 7.

(2) A responsible broker may, by contract, permit a salesperson to do all  
of the following:

(A) File an application on behalf of a responsible broker with a county  
clerk to obtain a fictitious business name.

(B) Deliver to the bureau an application, signed by the responsible  
broker, requesting the bureau's approval to use a county approved fictitious  
business name that shall be identified with the responsible broker's license  
number.

(C) Pay for any fees associated with filing an application with a county  
or the bureau to obtain or use a fictitious business name.



1 (D) Maintain ownership of a fictitious business name, as defined in  
2 paragraph (2) of subdivision (a) of Section 10159.7, that may be used  
subject to the control of the responsible broker.

3 (b) (1) A salesperson using a fictitious business name authorized by  
4 subdivision (a), shall use that name only as permitted by his or her responsible  
broker.

5 (2) This section does not change a real estate broker's duties under  
6 this division to supervise a salesperson.

7 (c) A person applying to a county for a fictitious business name pursuant  
8 to subdivision (a) may file his or her application in the county or counties where  
the fictitious business name will be used.

9 (d) Advertising and solicitation materials, including business cards, print  
10 or electronic media and "for sale" signage, using a fictitious business name  
11 obtained in accordance with paragraph (2) of subdivision (a) shall include the  
responsible broker's identity, as defined in paragraph (1) of subdivision (a) of  
Section 10159.7, in a manner equally as prominent as the fictitious business  
name.

12 (e) Notwithstanding subdivision (b) of Section 10140.6, advertising and  
13 solicitation materials, including print or electronic media and "for sale" signage,  
14 containing a fictitious business name obtained in accordance with paragraph (2)  
of subdivision (a) shall include the name and license number of the salesperson  
who is using the fictitious business name.

15 (f) Notwithstanding Section 10185, a violation of this section is not a  
16 misdemeanor.

17 24. Regulation 2731 provides:

18 (a) A licensee shall not use a fictitious name in the conduct of any activity  
19 for which a license is required under the Real Estate Law unless the licensee is the  
holder of a license bearing the fictitious name.

20 (b) The Bureau shall issue a license required under the Real Estate Law  
21 only in the legal name of the licensee or in the fictitious business name of a broker  
who presents evidence of having complied with the provisions of Sections 17910  
and 17917 of the Code.

22 (c) The commissioner may refuse to issue a license bearing a fictitious  
23 name to a broker if the fictitious name:

- 24 (1) Is misleading or would constitute false advertising.  
(2) Implies a partnership or corporation when a partnership or  
corporation does not exist in fact.

- 1 (3) Includes the name of a real estate salesperson.  
2 (4) Constitutes a violation of the provisions of Sections 17910,  
3 17910.5, 17913 or 17917 of the Code.  
4 (5) Is the name formerly used by a licensee whose license has since  
5 been revoked.

6 (d) A license may not be issued or renewed with a fictitious business name  
7 containing the term "escrow", or any name which implies that escrow services are  
8 provided, unless the fictitious business name includes the term, "a non-  
9 independent broker escrow" following the name. Licensees who have been or are  
10 issued a license with a fictitious business name with the term "escrow", or any  
11 term which implies that escrow services are provided, must include the term "a  
12 non-independent broker escrow" in any advertising, signs, or electronic  
13 promotional material.

14 (e) Where a licensee is a natural person, the use of a nickname in place of  
15 his or her legal given name (first name) shall not constitute a fictitious name for  
16 purposes of this section, provided that where the nickname is used, the licensee  
17 also uses as a surname (last name) his or her surname as it appears on his or her  
18 real estate license, and includes his or her Bureau-issued license identification  
19 number as required by Section 10140.6 of the Code.

#### 20 CAUSE OF ACCUSATION

21 25. Respondent, while doing business as Missionbeachrentals.net, Mission Beach  
22 Rentals and Real Estate, and/or Mission Beach Rentals, for or in expectation of compensation  
23 engaged in the following acts: offered to lease or rent, or place for rent, or solicit listings of  
24 places for rent, or solicit for prospective tenants for rentals exceeding 30 days, or collect rents  
from real property, or improvements thereon, all of which require a real estate license under  
Code section 10131, subdivision (b), during a period of time when Missionbeachrentals.net,  
Mission Beach Rentals and Real Estate, and/or Mission Beach Rentals were not licensed by the  
Department to conduct such activities, in violation of Section 10130 of the Code.

25 26. Respondent, used the unlicensed fictitious business names: Missionbeachrentals.net,  
26 Mission Beach Rentals and Real Estate, and/or Mission Beach Rentals, to perform or offer to  
27 perform activities which require a real estate license under Code section 10131, subdivision (b),  
28

1 when Respondent was not licensed by the Department to use the afore-mentioned unlicensed,  
2 fictitious business names, in violation of Code section 10159.5 and Regulation 2731.

3 27. The conduct, acts and/or omissions of Respondent as described above in Paragraphs  
4 4 through 16, 25 and 26, constitute cause to suspend or revoke the real estate license and license  
5 rights of Respondent pursuant to Code section 10177, subdivisions (d) and/or (g), for violation  
6 of Code sections 10130 and 10159.5 and Regulation 2731.

7 Investigation and Enforcement Costs

8 28. Code section 10106 provides, in pertinent part, that in any order issued in resolution  
9 of a disciplinary proceeding before the Department of Real Estate, the Commissioner may  
10 request the administrative law judge to direct a licensee found to have committed a violation of  
11 this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of  
12 the case.

13 WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this  
14 Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action  
15 against all licenses and/or license rights of Respondent under the Real Estate Law (Part 1 of  
16 Division 4 of the Business and Professions Code), for the cost of investigation and enforcement  
17 as permitted by law, and for such other and further relief as may be proper under other  
18 provisions of law.

19 Dated at San Diego, California this 23 day of January, 2020.

21   
22 VERONICA KILPATRICK  
23 Supervising Special Investigator

24 cc: Brendan Ernest Heath  
Veronica Kilpatrick  
Sacto.