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FILED

MAR 27 2024

DEPT. OF REAL ESTATE

By-

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation against  
  
RUSSELL PAUL BATES,  
  
Respondent.

DRE No. H-42823 LA

ACCUSATION

The Complainant, Veronica Kilpatrick, a Supervising Special Investigator for the Department of Real Estate<sup>1</sup> ("Department") of the State of California, for cause of Accusation against RUSSELL PAUL BATES, aka Rusty Bates ("Respondent"), is informed and alleges as follows:

1. All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to the Regulations of the Real Estate Commissioner, Title 10, Chapter 6, California Code of Regulations.

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<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.

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

### STATEMENT OF FACTS

#### Licenses

3. On February 1, 2005, the Department issued a real estate broker license to Respondent, License ID 01319888. Unless renewed, Respondent's license is scheduled to expire on June 30, 2025. Respondent has renewal rights pursuant to Code section 10201. The Department retains jurisdiction pursuant to Code section 10103. Respondent was formerly licensed as a real estate salesperson from on or about November 20, 2001, through January 31, 2005.

4. Respondent is not licensed to conduct business under any fictitious business names.

5. Rancho Vacation Properties, Inc., ("RVPI") is not currently licensed in any capacity by the Department. RVPI was formerly licensed as a real estate corporation from July 16, 2012, through July 15, 2016, License ID 01918022. RVPI's license expired on July 15, 2016.

6. Respondent was the designated officer for RVPI July 16, 2012, through July 15, 2016.

#### Facts Discovered

7. RVPI is a corporation formed in the State of California. The corporation's status is currently suspended with the California Secretary of State. Respondent is listed as an officer, director, and the Agent for Service of Process for RVPI.

8. Whenever reference is made in an allegation in this Accusation to an act or omission of RVPI, such allegation shall be deemed to mean that the officers, directors,

1 employees, agents and/or real estate licensees employed by or associated with RVPI committed  
2 such act or omission while engaged in the furtherance of the business or operations of such  
3 entity and while acting within the course and scope of their authority and employment.

4 9. At all times relevant herein, Respondent, while doing business as RVPI, engaged  
5 in the business of real property management including soliciting listings of places for rent,  
6 soliciting prospective tenants, or negotiating the lease or rental of real property on behalf of  
7 another or others, for compensation or in the expectation of compensation, within the meaning  
8 of Code section 10131, subdivision (b).

9 10. On or about May 14, 2022, Respondent, while doing business as RVPI,  
10 negotiated, and entered into a Seasonal Rental Agreement ("lease agreement") with tenants D.L.  
11 and B.L.<sup>2</sup> ("tenants") for real property located at 10401 Sunningdale Dr., Rancho Mirage,  
12 California ("Sunningdale property"). The occupancy period was to be from January 7, 2023,  
13 through April 7, 2023. Respondent acted as the agent, broker, or owner's representative on  
14 behalf of the owner of the Sunningdale. property.

15 11. On or about May 16, 2022, Respondent charged and received a refundable  
16 security deposit of \$2,500.00, in the form of a credit card payment, from the tenants for the  
17 rental of the Sunningdale property.

18 12. On or about October 6, 2022, Respondent charged and received a wired payment  
19 of \$23,700.00 from the tenants for the rental/lease cost of the Sunningdale property.

20 13. Pursuant to the lease agreement, the tenants timely vacated the Sunningdale  
21 property in April of 2023. Thereafter, the tenants made several written and verbal requests to  
22 Respondent for the return of their \$2,500.00 security deposit.

23  
24 <sup>2</sup> Initials are used in place of individuals' full names to protect their privacy. Documents containing individuals' full names will be provided during the discovery phase of this case to Respondent(s) and/or their attorneys, after service of a timely and proper request for discovery on Complainant's counsel.

1           14.     Respondent has failed to refund or return the \$2,500.00 security deposit owed to  
2 the tenants, despite repeated requests for reimbursement, in violation of Code section 10145,  
3 subdivision (a), and Code section 10176, subdivision (i).

4           15.     The tenants filed a complaint with the Department and the Department instigated  
5 an investigation into Respondent's property management activities.

6           16.     At all times relevant herein, Respondent listed with the Department,  
7 Respondent's mailing address, and main office address, where Respondent conducted business,  
8 as: 60164 Devils Ladder, Mountain Center, California 92561. The Department served inquiries  
9 and requests for records via email, regular, and certified mail to Respondent's known addresses  
10 of record, including the main office address and mailing address listed above. The post office  
11 returned some of the Department's mailings to Respondent as undeliverable.

12           17.     Respondent's failure to maintain a valid, current main office address and mailing  
13 address with the Department is in violation of Code section 10162 and Regulation 2715.

14           18.     Respondent failed to respond to the Department's inquiries and requests for  
15 records related to the rental of the Sunningdale property, in violation of Code section 10148.

16           19.     For an unknown period of time including the previous three years, Respondent,  
17 while doing business as RVPI, an unlicensed entity, performed or offered to perform one or  
18 more of the following acts for another or others, for or in expectation of compensation: lease or  
19 rent or offer to lease or rent, or place for rent, or solicit listings of places for rent, or solicit for  
20 prospective tenants, or collect rents from real property, or improvements thereon. Said property  
21 management activities require a license pursuant to Code section 10131, subdivision (b). Said  
22 acts include, but are not limited to, posting online advertisements for several rental properties in  
23 Rancho Mirage, California, for periods longer than 30 days.

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20. Further, on or about July 19, 2022, Respondent, while doing business as RVPI, negotiated and entered into an Exclusive Authorization for Vacation Rental for the period of July 19, 2022, through July 18, 2023, with T.P., the owner of a rental property located at 26 Hilton Head, Rancho Mirage, California. Respondent was to receive compensation of twenty percent (20%) of the total rent payments collected for the property owner.

### CAUSES OF ACCUSATION

### First Cause of Accusation

### Unlicensed Activity/Compensation

21. As described above in Paragraphs 3 through 20, RVPI, an unlicensed entity, conducted property management activities which require a real estate broker license. Said activities constitute cause for the suspension or revocation of all licenses and license rights of Respondent pursuant to Code section 10177, subdivisions (d) and/or (g), for violation of Code sections 10130, 10137, and 10157.

### Second Cause of Accusation

### Use of Unlicensed Fictitious Business Name

22. There is hereby incorporated in this Second, separate and distinct Cause of Accusation, all of the allegations contained in Paragraphs 1 through 21, with the same force and effect as if herein fully set forth.

23. As described above in Paragraphs 3 through 20, Respondent conducted property management activities which require a real estate broker license, while doing business as RVPI, an unlicensed fictitious name, which constitutes cause for the suspension or revocation of all licenses and license rights of Respondent pursuant to Code section 10177, subdivisions (d) and/or (g), for violation of Code section 10159.5 and Regulation 2731.

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1 Fifth Cause of Accusation

2 Trust Fund Handling / Fraud or Dishonest Dealing

3 28. There is hereby incorporated in this Fifth, separate and distinct Cause of  
4 Accusation, all of the allegations contained in Paragraphs 3 through 27, with the same force and  
5 effect as if herein fully set forth.

6 29. The conduct, acts and/or omissions of Respondent, in mishandling trust funds  
7 and failing to return or refund the \$2,500.00 security deposit owed to the tenants of the  
8 Sunningdale property, as described above in Paragraphs 3 through 20, constitutes cause for the  
9 suspension or revocation of all licenses and license rights of Respondent pursuant to Code  
10 section 10176, subdivision (i), or Code section 10177, subdivision (j), and Code section 10177,  
11 subdivisions (d) and/or (g), for violation of Code section 10145, subdivision (a).

12 INVESTIGATION AND ENFORCEMENT COSTS

13 30. Code section 10106 provides, in pertinent part, that in any order issued in  
14 resolution of a disciplinary proceeding before the Department of Real Estate, the Commissioner  
15 may request the administrative law judge to direct a licensee found to have committed a  
16 violation of this part to pay a sum not to exceed the reasonable costs of the investigation and  
17 enforcement of the case.

18 STATUTORY PROVISIONS

19 License requirement

20 31. Code section 10130, provides:

21 It is unlawful for any person to engage in the business of, act in the capacity of,  
22 advertise as, or assume to act as a real estate broker or a real estate salesperson within this state  
23 without first obtaining a real estate license from the department, or to engage in the business of,  
24

1 act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this  
2 state without having obtained a license endorsement.

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

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

8 32. Code section 10131, subdivision (b), provides:

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

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

16 33. Code section 10137 provides:

17 It is unlawful for any licensed real estate broker to retain, compensate, directly or  
18 indirectly, any person for performing any of the acts within the scope of this chapter who is not  
19 a licensed real estate broker, or a real estate salesperson licensed under the responsible broker  
20 retaining or compensating him or her, or to retain or compensate, directly or indirectly, any  
21 licensee for engaging in any activity for which a mortgage loan originator license endorsement  
22 is required, if that licensee does not hold a mortgage loan originator license endorsement;  
23 provided, however, that a licensed real estate broker may pay a commission to a broker of  
24 another state.

1 No real estate salesperson shall accept compensation for activity requiring a real estate  
2 license from any person other than the broker under whom he or she is at the time licensed.

3 It is unlawful for any licensed real estate salesperson to pay any compensation for  
4 performing any of the acts within the scope of this chapter to any real estate licensee except  
5 through the broker under whom he or she is at the time licensed. A licensee may enter into an  
6 agreement with another licensee to share that compensation provided that any compensation is  
7 paid through the responsible broker.

8 For a violation of any of the provisions of this section, the commissioner may  
9 temporarily suspend or permanently revoke the license of the real estate licensee, in accordance  
10 with the provisions of this part relating to hearings.

11 34. Code section 10157 provides:

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

14 Fictitious Names

15 35. Code section 10159.5 provides:

16 (a)(1) Every person applying for a license under this chapter who desires to have the  
17 license issued under a fictitious business name shall file with the application a certified copy of  
18 their fictitious business name statement filed with the county clerk pursuant to Chapter 5  
19 (commencing with Section 17900) of Part 3 of Division 7.

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

22 (A) File an application on behalf of a responsible broker with a county clerk to obtain a  
23 fictitious business name.  
24

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

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

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

9 (b) (1) A salesperson using a fictitious business name authorized by subdivision (a),  
10 shall use that name only as permitted by the responsible broker.

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

13 (c) A person applying to a county for a fictitious business name pursuant to subdivision  
14 (a) may file the application in the county or counties where the fictitious business name will be  
15 used.

16 (d) Advertising and solicitation materials, including business cards, print or electronic  
17 media and "for sale" signage, using a fictitious business name obtained in accordance with  
18 paragraph (2) of subdivision (a) shall include the responsible broker's identity, as defined in  
19 Section 10015.4, in a manner equally as prominent as the fictitious business name.

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

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

1           36.   Regulation 2731 provides:

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

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

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

10                   (1) Is misleading or would constitute false advertising.

11                   (2) Implies a partnership or corporation when a partnership or corporation does  
12 not exist in fact.

13                   (3) Includes the name of a real estate salesperson.

14                   (4) Constitutes a violation of the provisions of Sections 17910, 17910.5, 17913  
15 or 17917 of the Code.

16                   (5) Is the name formerly used by a licensee whose license has since been  
17 revoked.

18           (d) A license may not be issued or renewed with a fictitious business name containing  
19 the term “escrow”, or any name which implies that escrow services are provided, unless the  
20 fictitious business name includes the term, “a non-independent broker escrow” following the  
21 name. Licensees who have been or are issued a license with a fictitious business name with the  
22 term “escrow”, or any term which implies that escrow services are provided, must include the  
23 term “a non-independent broker escrow” in any advertising, signs, or electronic promotional  
24 material.

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

6 Place of Business

7 37. Code section 10162 provides:

8 (a) Every licensed real estate broker shall have and maintain a definite place of business  
9 in the State of California that serves as the broker's office for the transaction of business. This  
10 office shall be the place where the broker's license is displayed and where personal  
11 consultations with clients are held.

12 (b) A real estate license does not authorize the licensee to do business except from the  
13 location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

14 (c)(1) Every real estate broker and salesperson licensee shall provide to the  
15 commissioner their current office or mailing address, a current telephone number, and a current  
16 electronic mail address that they maintain or use to perform any activity that requires a real  
17 estate license, at which the department may contact the licensee.

18 (2) Every real estate broker and salesperson licensee shall inform the commissioner of  
19 any change to their office or mailing address, telephone number, or electronic mail address no  
20 later than 30 days after making the change.

21 (d) Notwithstanding Section 10185, a violation of this section is not a misdemeanor.

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1           38.    Code section 10165 provides:

2           For a violation of Section 10161.8, 10162, 10163, or subdivision (b) of Section 10164,  
3 the commissioner may temporarily suspend or permanently revoke the license of the real estate  
4 licensee in accordance with this part relating to hearings.

5           39.    Regulation 2715 provides:

6           Every real estate broker, except a broker acting in the capacity of a salesperson to  
7 another broker under written agreement, shall maintain on file with the commissioner the  
8 address of his or her principal place of business for brokerage activities, the address of each  
9 branch business office and his or her current mailing address, if different from the business  
10 address.

11           Every broker who is acting in the capacity of a salesperson to another broker under  
12 written agreement shall maintain on file with the Commissioner the address of the business  
13 location where he or she expects to conduct most of the activities for which a license is required  
14 and his or her current mailing address.

15           A real estate salesperson shall maintain on file with the Commissioner his or her current  
16 mailing address, and when applicable, the address of the principal business office of the  
17 responsible broker to whom the salesperson is at the time licensed.

18           Whenever there is a change in the location or address of the principal place of business  
19 or of a branch office of a broker, that broker shall notify the Commissioner thereof not later than  
20 the next business day following the change.

21           This section shall apply to those who are licensed and to those who have license rights  
22 under Section 10201 of the Code.

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1 Retention of Records

2 40. Code section 10148 provides:

3 (a) A licensed real estate broker shall retain for three years copies of all listings, deposit  
4 receipts, canceled checks, trust records, and other documents executed by the broker or obtained  
5 by the broker in connection with any transactions for which a real estate broker license is  
6 required. The retention period shall run from the date of the closing of the transaction or from  
7 the date of the listing if the transaction is not consummated. After notice, the books, accounts,  
8 and records shall be made available for examination, inspection, and copying by the  
9 commissioner or the commissioner's designated representative during regular business hours;  
10 and shall, upon the appearance of sufficient cause, be subject to audit without further notice,  
11 except that the audit shall not be harassing in nature. This subdivision shall not be construed to  
12 require a licensed real estate broker to retain electronic messages of an ephemeral nature, as  
13 described in subdivision (d) of Section 1624 of the Civil Code.

14 (b) The commissioner shall charge a real estate broker for the cost of any audit, if the  
15 commissioner has found, in a final desist and refrain order issued under Section 10086 or in a  
16 final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing  
17 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker  
18 has violated Section 10145 or a regulation or rule of the commissioner interpreting Section  
19 10145.

20 (c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within  
21 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's  
22 license or deny renewal of the broker's license. The suspension or denial shall remain in effect  
23 until the cost is paid or until the broker's right to renew a license has expired.  
24

1 (d) The commissioner may maintain an action for the recovery of the cost of an audit in  
2 any court of competent jurisdiction. In determining the cost incurred by the commissioner for an  
3 audit, the commissioner may use the estimated average hourly cost for all persons performing  
4 audits of real estate brokers.

5 (e) The department may suspend or revoke the license of any real estate broker, real  
6 estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real  
7 estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a  
8 real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books,  
9 papers, writings, documents, or tangible objects that are required to be maintained by this  
10 section or that have been sought in connection with an investigation, audit, or examination of a  
11 real estate licensee by the commissioner.

#### 12 Trust Fund Handling

13 41. Code section 10145, subdivision(a), provides:

14 (a)(1) A real estate broker who accepts funds belonging to others in connection with a  
15 transaction subject to this part shall deposit all those funds that are not immediately placed into  
16 a neutral escrow depository or into the hands of the broker's principal, into a trust fund account  
17 maintained by the broker in a bank or recognized depository in this state. All funds deposited by  
18 the broker in a trust fund account shall be maintained there until disbursed by the broker in  
19 accordance with instructions from the person entitled to the funds.

#### 20 Grounds for Suspension or Revocation

21 42. 10176, subdivision (a), provides:

22 The commissioner may, upon his or her own motion, and shall, upon the verified  
23 complaint in writing of any person, investigate the actions of any person engaged in the  
24 business or acting in the capacity of a real estate licensee within this state, and he or she may

1 temporarily suspend or permanently revoke a real estate license at any time where the licensee,  
2 while a real estate licensee, in performing or attempting to perform any of the acts within the  
3 scope of this chapter has been guilty of any of the following:

4 (i) Any other conduct, whether of the same or of a different character than specified  
5 in this section, which constitutes fraud or dishonest dealing.

6 43. Code section 10177 provides, in pertinent part:

7 The commissioner may suspend or revoke the license of a real estate licensee, delay the  
8 renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant,  
9 who has done any of the following, or may suspend or revoke the license of a corporation, delay  
10 the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an  
11 officer, director, or person owning or controlling 10 percent or more of the corporation's stock  
12 has done any of the following:

13 (d) Willfully disregarded or violated this part or Chapter 1 (commencing with Section  
14 11000) of Part 2 or the rules and regulations of the commissioner for the administration and  
15 enforcement of this part and Chapter 1 (commencing with Section 11000) of Part 2.

16 (g) Demonstrated negligence or incompetence in performing an act for which the officer,  
17 director, or person is required to hold a license.

18 (j) Engaged in any other conduct, whether of the same or of a different character than  
19 specified in this section, that constitutes fraud or dishonest dealing.

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

Dated Mar 26, 2024 at San Diego, California.

VERONICA KILPATRICK  
Supervising Special Investigator

cc: Russell Paul Bates  
Veronica Kilpatrick  
Sacto.