OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
REAL ESTATE FINANCE BUREAU

In the Matter of the

Investigation by LETITIA JAMES,
Attorney General of the State of New York, of

AOD No. 26-045

425 MARCY AVENUE LLC and EZRA UNGER,

Respondents,

and

33 WALTON HOLDINGS LLC,

Relief Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation pursuant to Executive Law § 63(12), New York General Business Law ("GBL" or "Martin Act") § 352 *et seq*., and GBL § 777 in connection with the offer of real estate securities in the proposed 427 Marcy Avenue Condominium ("Condominium") by Respondents. This Assurance of Discontinuance ("Assurance") contains the findings of OAG's investigation and the relief agreed to by OAG, Respondents 425 Marcy Avenue LLC ("Marcy Avenue LLC") and Ezra Unger ("Unger") (each a "Respondent," collectively, "Respondents"), and Relief Respondent 33 Walton Holdings LLC ("33 Walton LLC" or "Relief Respondent")(Respondents and Relief Respondent, together with OAG, the "Parties").

OAG's FINDINGS

I. Respondents and Relief Respondent

1. Marcy Avenue LLC is a New York limited liability company having an office at 4013 13th Avenue, Brooklyn, New York, and was the proposed original sponsor ("Original

Sponsor") of the Condominium.

2. Unger is a New York State resident and has a business address at 4013 13th Avenue, Brooklyn, New York and was the principal of Original Sponsor at all relevant times.

3. Relief Respondent 33 Walton LLC is a New York limited liability company having an office at 92 Emerson Place, Brooklyn, New York 11205. 33 Walton LLC is the proposed new sponsor of the Condominium ("New Sponsor"). Abraham Brach is the principal of New Sponsor and was also a Purported Purchaser (as defined below), but at no time had any beneficial or ownership interest in Original Sponsor while owned and controlled by Unger.

4. Respondent Marcy Avenue LLC and Relief Respondent have represented to OAG that (i) there is no common ownership between them, (ii) Respondents have no financial interest in, and have never had a financial interest in, Relief Respondent, and (iii) Respondents have no financial interest in the Condominium.

II. Legal Standard

5. The Martin Act protects the public from fraudulent practices in the public offer and sale of securities, including the sale of condominium units. GBL § 352 *et seq.*

6. The Martin Act makes illegal and prohibits any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to use or employ several acts or practices in the offering of real estate securities, such as condominium units, to the public. Prohibited acts or practices include making "[a]ny representation or statement which is false, where the person who made such representation or statement: (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representation or statement made ... ." GBL § 352-c(1).

7. Before a sponsor of a condominium may offer or sell units in the condominium,

the sponsor must submit an offering plan to OAG, and OAG must accept it for filing. The offering plan must describe in detail the offering of condominium units to the public and be provided to purchasers prior to the sale of any unit. GBL § 352-e(2).

8. A sponsor may make sales of such condominium units based only on the information, statements, literature, or representations in the offering plan. GBL § 352-e(5).

9. A sponsor cannot omit any material fact from the offering plan or include any untrue statement. GBL § 352-e(1)(b).

10. If the sponsor is offering units in a vacant building, the sponsor must file an offering plan pursuant to Title 13, Part 20 ("Part 20") of the New York Code of Rules and Regulations of the State of New York ("NYCRR").

11. Part 20 mandates that a sponsor incorporate detailed terms of the transaction that are "complete, current and accurate" in the offering plan, and further mandates that a sponsor and its principals certify the truthfulness of the representations made in the offering plan. 13 NYCRR § 20.1(b)(1); 13 NYCRR § 20.4(b).

12. The Martin Act requires that "any person, partnership, corporation, company, trust or association" that "offers or sells [real estate securities] . . . to the public in or from the state of New York" shall ensure that "all moneys received . . . including deposits or advances" shall "be held in trust" "and shall not be commingled with the personal moneys or become an asset of the [seller or offeror]" until "the consummation of the transaction." N.Y. GBL § 352-h. *See also* N.Y. GBL § 352-e(2-b) ("all deposits, down-payments or advances made by purchasers of residential units [condominiums] shall be held in a special escrow account pending delivery of the completed apartment or unit and a deed or [proprietary] lease whichever is applicable . . .").

13. Governing regulations also detail the requirements of escrow accounts and the relevant disclosures required to be made to consumers. 13 NYCRR §§ 20.3(o)(2) - (7)

(implementing regulations pertaining to the "Escrow, trust fund," "escrow agent," and sponsor disclosure requirements pertaining to down payments and consumer notifications). The regulations expressly provide that all "deposits, down payments, or advances made by purchasers . . . must be placed within five business days . . . in an attorney's segregated special escrow account."

14. Executive Law § 63(12) defends the public against repeated acts of fraud or illegality in the carrying on, conducting, or transaction of business. The Executive Law defines fraud as, *inter alia*, any "misrepresentation, concealment, suppression, [or] false pretense ... ." Executive Law § 63(12).

III. RESPONDENTS' VIOLATIONS

15. On January 4, 2021, Original Sponsor submitted to OAG an offering plan ("Offering Plan") for the property located at 427 Marcy Avenue, Brooklyn New York ("427 Marcy" or "Building") pursuant to Part 20 for the offer and sale of real estate securities in a condominium.

16. The Offering Plan was never accepted for filing and therefore Original Sponsor should not have marketed, sold, or attempted to sell, any purported units in the Building.

17. OAG investigated a complaint alleging that Original Sponsor and Unger purportedly entered into contracts for units in the Building even though OAG never accepted the Offering Plan for filing.

18. OAG's investigation revealed that Original Sponsor and Unger did in fact market and enter into contracts for units in the Building and received down payments from the purported purchasers (each a "Purported Purchaser" and collectively, "Purported Purchasers").

19. OAG's investigation also revealed that Original Sponsor and Unger did not place any of the down payments from Purported Purchasers in a segregated escrow account and instead

illegally used these funds for construction of the Building and for other purposes.

20. Respondents marketed and entered into purported contracts for the sale of seventeen (17) to-be-built residential units in the Building, three (3) to be built commercial units in the Building, and three (3) to be built residential parking spaces in the Building.

21. Respondents received down payments from the Purported Purchasers of to-be-built residential units in the Building in the total sum of $6,715,000.00. Respondents also received additional down payments from the Purported Purchasers of the to-be-built commercial units in the Building in the total sum of $4,200,000.00. The names, purported unit or parking space that was the subject of the purported sale, and the amounts provided by each Purported Purchaser as a down payment, are detailed in Exhibit A hereto.

22. Respondents did not place any of the funds identified in Exhibit A that they received as down payments in a segregated escrow account as required by law.

23. Respondents' failures to place the down payments for the purported units in a segregated escrow account are violations of the Martin Act and Executive Law § 63(12).

24. Respondents' marketing and entering into contracts for the sales of units or parking spaces in the Building even though OAG never accepted the Offering Plan for filing are violations of the Martin Act and Executive Law § 63(12).

25. Respondents were subsequently named as Defendants in several actions in Supreme Court, Kings County New York, alleging, among other things, that Respondents did not own the Building and defrauded the true owners of the Building, which included the Purported Purchasers of the three commercial units, 415 Group LLC. These matters were subsequently resolved by the parties.

26. Specifically, 415 Group LLC and Respondents participated in an arbitration before a Beth Din, which directed the parties to discontinue the actions before the Supreme

Court, Kings County New York. Thereafter, Respondent Unger satisfied the Judgment of Confession filed by 415 Group LLC on March 27, 2022, which was for the amount of $4,200,000 plus 9% interest, 415 Group LLC provided Respondent Unger with a signed Satisfaction of Judgment on July 23, 2024, and 415 Group LLC and Respondent Unger also discontinued the actions before the Supreme Court, Kings County of New York. Respondents therefore represent to OAG that 415 Group LLC has been provided full and fair restitution, and no additional relief is being provided for under this Assurance to 415 Group LLC.

27. While these actions were pending, on or about January 16, 2023, a Petition pursuant to Chapter 11 of the United States Bankruptcy Code was filed against Marcy Avenue LLC in the Bankruptcy Court for the Eastern District of New York, Docket No. 1:23-bk-40118.

28. Pursuant to the Plan of Organization, Respondent Unger was not permitted to retain any equity interest in Original Sponsor, and 100% of the equity interests of Original Sponsor were transferred to its lender, and through additional transactions, the Building was ultimately sold to New Sponsor, who currently holds title thereto as of the date of this Assurance.

29. The Plan was confirmed on October 9, 2024, and the Bankruptcy case was terminated on April 7, 2025.

30. OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, OAG is willing to accept this Assurance pursuant to New York Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of The Martin Act and Executive Law § 63(12) based on the conduct described above.

RELIEF

General Injunction:

31. Respondents shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to the Martin Act and Executive Law, expressly agree

and acknowledge that any such conduct is a violation of the Assurance, and that OAG thereafter may commence the civil action or proceeding contemplated in paragraph 42, *supra*, in addition to any other appropriate investigation, action, or proceeding.

Monetary Relief:

32. Respondents and Relief Respondent shall offer the Purported Purchasers of residential units restitution by providing each Purported Purchaser the following options:

A. **Option A – Credit to Purchase:** The Purported Purchaser may elect to have the amount of his/her/their down payment plus interest thereon calculated as if the funds had been held in escrow as required by law (the "Purchaser Credit"), applied as a credit towards the purchase price ("New Purchase Price") of the to-be-built residential unit that was the subject of his/her/their original contract of sale (the "Original Purchase Agreement"), pursuant to a new purchase agreement (the "New Purchase Agreement") to be entered into after a new offering plan submitted to the OAG by the New Sponsor is accepted for filing (the "New Offering Plan"); or

B. **Option B – Credit to Purchase with Confession of Judgment:** The Purported Purchaser may elect to have the Purchaser Credit applied as a credit towards the New Purchase Price of the to-be-built residential unit that was the subject of his/her/their Original Purchase Agreement, pursuant to the New Purchase Agreement to be entered into after the New Offering Plan is accepted for filing, and may also elect to cause Unger to provide a Confession of Judgment for the difference between the purchase price in the New Purchase Agreement, minus the Purchaser Credit, and the purchase price in the Original Purchase Agreement; or

C. **Option C – Rescission and Refund:** The Purported Purchaser may elect to have the Purchaser Credit returned to him/her/them and not purchase a Unit under the New Offering Plan; or

D. **Option D – Rescission and Refund with Confession of Judgment:** The Purported Purchaser may elect to have the Purchaser Credit returned to him/her/them and may also elect to cause Unger to provide a Confession of Judgment for the difference between the purchase price in the New Purchase Agreement, minus the Purchaser Credit, and the purchase price in the Original Purchase Agreement.

33. A Purported Purchaser of a residential unit only shall be free to select one of the options provided in paragraph 32 above.

34. Any Confession of Judgment provided pursuant to Paragraph 32 above shall be perfected within ninety (90) days of closing of title to the unit (in the case of Options B) or within ninety (90) days of funding of the Purchaser Credit (in the case of Option D). If the Confession of Judgment is not filed by the Purported Purchaser within such 90-day period, it shall be null and void, and of no further force or effect, and the terms of the Confession of Judgment shall conspicuously reflect this time limit.

35. Any Confession of Judgment provided pursuant to Paragraph 34 above and filed within 90 days of the date it is provided to a Purported Purchaser shall be valid and enforceable for a period of ten (10) years from the date it is filed, and the terms of the Confession of Judgement shall conspicuously reflect this time limit.

36. Respondents shall pay the following penalties: $324,000 for the purported sales of units and parking spaces even though OAG never accepted the Offering Plan for filing; and $500,000 for the failure to place any down payments in segregated escrow accounts. Based upon

Respondents' representations contained in the affidavit annexed hereto as Exhibit B demonstrating an inability to pay the full amount of the penalty, OAG has agreed to suspend the entirety of the $324,000 penalty and $450,000 of the $500,000 penalty. The remaining $50,000 of the penalty amount shall be paid upon execution of this Assurance by Respondents. OAG shall hold all funds from the Monetary Relief Amount in reserve to be distributed, in its sole discretion, to the Affordable Housing-AG Settlement Fund established by New York City Department of Housing Preservation and Development.

37. If a court of competent jurisdiction determines that one or both of the two Respondents have violated the terms of this Assurance, the suspension of any penalty or portion of any penalty shall be of no force or effect and Respondents shall owe the entire $324,000 and $500,000 penalties, minus any amounts paid prior to the time of such determination.

38. Respondents shall be barred from marketing, offering for sale, or selling any security in or from the State of New York for a period of six (6) years from the effective date of this Assurance.

Role of Relief Respondent:

39. Relief Respondent is a party to this Assurance solely in its capacity as providing financial assistance to Respondents in meeting the financial obligations set forth in this Assurance, including but not limited to the obligations to Purported Purchasers set forth in Paragraph 32 and the obligations set forth in Paragraph 36 of this Assurance (collectively, the "Financial Obligations").

40. Relief Respondent acknowledges and agrees that Respondents shall offer the Purported Purchasers the financial assistance set forth in Paragraph 32 within seven business days of the New Offering Plan being accepted for filing by OAG, and Relief Respondent shall

take all reasonable steps to comply with all comments of OAG to cause the New Offering Plan to be accepted for filing no later than September 17, 2026.

41. Relief Respondent's obligations under this Assurance shall be limited solely to the Financial Obligations provided for under this Assurance.

Miscellaneous:

42. Respondents expressly agree and acknowledge that OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 50, and agrees and acknowledges that in such event:

a. that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. OAG may use statements, documents, or other materials produced or provided by Respondents prior to or after the effective date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue; and

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

43. If a court of competent jurisdiction determines that Respondents or Relief Respondent, or any of them, violated this Assurance, Respondents shall pay to OAG the additional reasonable costs, if any, of obtaining such determination and of enforcing this Assurance including, without limitation, legal fees, expenses, and court costs.

44. This Assurance is not intended for use by any third party in any other proceeding.

45. Respondents agree to waive and shall not raise any statutes of limitation or other time-related defenses pertaining to the facts and circumstances involved in OAG's investigation of the Respondents including, but not limited to, any violations of GBL § 352-e and Executive Law § 63(12).

46. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondents or Relief Respondent. Respondents and Relief Respondent shall cause this Assurance to be adopted in any such transfer agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

47. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

48. Any failure by OAG to insist upon the strict performance by Respondents or Relief Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and OAG, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondents or Relief Respondent.

49. All notices, reports, requests, and other communications pursuant to this Assurance must be in writing, via electronic mail, reference Assurance No. 26-045, and be addressed as follows:

If to Respondents to:
Erica F. Buckley, Esq.
Nixon Peabody LLP
Tower 46, 55 West 46th Street
New York, New York 10036
(212) 940-3733
EBuckley@nixonpeabody.com

If to Relief Respondent to:

If to OAG, to:
Louis M. Solomon, Esq.
Enforcement Section Chief
Office of the Attorney General
of the State of New York
Real Estate Finance Bureau
28 Liberty Street, 21st Floor
New York, New York 10005
louis.solomon@ag.ny.gov

Jay Lichtman, Esq.
The Law Office of Jay Lichtman, P.C.
99 West Hawthorne Avenue
Suite 520
Valley Stream, NY 11580
Jay@jaylichtman.com

or, in his absence to the Bureau Chief of the Real Estate Finance Bureau

50. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by Respondents and OAG's own factual investigation as set forth above. Respondents represent and warrant that they have not made any material representations to OAG that are inaccurate or misleading, to the best of their knowledge. If any material representations by Respondents are later found to be inaccurate or misleading, this Assurance is voidable by OAG at its sole discretion.

51. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents or Relief Respondent in agreeing to this Assurance.

52. Respondents and Relief Respondent represent and warrant, through the authorized signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles:

53. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' or the Relief Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents or Relief Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

54. Respondents agree not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

55. Nothing contained herein shall be construed to limit the remedies available to OAG if Respondents violate or Relief Respondent violates the Assurance after its effective date.

56. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

57. If any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

58. Respondents and Relief Respondent acknowledge that they have entered this Assurance freely and voluntarily, and upon due deliberation with the advice of counsel or had the opportunity to review and duly deliberate with counsel, if they so chose.

59. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

60. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

61. This Assurance may be executed in multiple counterparts by the Parties. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance copies of signature shall be treated the same as originals. Documents executed, scanned, and transmitted

electronically, and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

62. Respondents and Relief Respondent agree to execute such other and further documents as may be necessary to effectuate the terms and purposes of this Assurance.

63. The effective date of this Assurance shall be the date indicated below when counter-signed by OAG.

Dated: New York, New York
~~August~~ , 2026
September 3,

LETITIA JAMES
Attorney General of the
State of New York

By: ______________________
Louis M. Solomon
Enforcement Section Chief
Real Estate Finance Bureau

425 MARCY AVENUE LLC

____

Ezra Unger
Authorized Signatory

STATE OF New York)
) ss.:
COUNTY OF Rockland)

On the 10 day of August in the year 2026, before me personally came Ezra Unger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

Sworn to before me this
10 day of August, 2026

NOTARY PUBLIC

this notarial act involved a remote online appearance through use of communication technology

Notarized online using audio-video communication technology

HIRSCH ROSENZWEIG
Online Notary Public
State of New York
Rockland County
Commission #: 01RO0002288
Commission Expires: 03/06/2027

EZRA UNGER

Ezra Unger

STATE OF New York)
) ss.:
COUNTY OF Rockland)

On the 10 day of August in the year 2026, before me personally came Ezra Unger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

Sworn to before me this
10 day of August, 2026

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HIRSCH ROSENZWEIG
Online Notary Public
State of New York
Rockland County
Commission #: 01RO0002288
Commission Expires: 03/06/2027

33 WALTON HOLDINGS LLC

____
Abraham Brach, Member

STATE OF NEW YORK)
) ss.:
COUNTY OF Kings)

On the 6 day of Aug in the year 2026, before me personally came Abraham Brach, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, appeared before the undersigned and acknowledged to me that he/she executed the within instrument by his/her signature on the instrument.

____
NOTARY PUBLIC

CHAYA ABELESZ
NOTARY PUBLIC, State of New York
No. 01AB6139487
Qualified in Kings County
Commission Expires January 09, 2030

EXHIBIT A

Exhibit A

"Purchaser Credit Chart"

Unit No.	Purchaser Last Name	Downpayment ($)	Interest Payment ($)	Total ($)
101	Jakobowitz	825,000	10,931.25	835,931.25
201	Baradi	400,000	5,300.00	405,300.00
202	Brach	450,000	5,962.50	455,962.50
203	Jakobowitz	400,000	5,300.00	405,300.00
204	Baradi	200,000	2,650.00	202,650.00
301	Kahan	450,000	5,962.50	455,962.50
302	Landa	450,000	5,962.50	455,962.50
303	Teitelbaum	450,000	5,962.50	455,962.50
304	Kohn	100,000	1,325.00	101,325.00
401	Rabinowitz	100,000	1,325.00	101,325.00
402	Schlesinger	420,000	5,565.00	425,565.00
403	Heimann	450,000	5,962.50	455,962.50
404	Rabinowitz	100,000	1,325.00	101,325.00
501	Friedmann	450,000	5,962.50	455,962.50
503	Friedman	450,000	5,962.50	455,962.50
504	Schweimar	250,000	3,312.50	253,312.50
601	Meisels	140,000	1,855.00	141,855.00
602	Schwimer	290,000	3,842.50	293,842.50
603	Herschkowitz	325,000	4,306.25	329,306.25
	TOTALS	**6,700,000**	**88,775.00**	**6,788,775.00**

EXHIBIT B

AFFIRMATION

State of New York }
County of ~~Kings~~ Rockland

Ezra Unger affirms, as of the date hereof, the following is true and correct:

1. I submit this affirmation, in conjunction with an Assurance of Discontinuance, AOD No.26-0081 (the "AOD"), related to the proposed Offering Plan for 427 Marcy Avenue Condominium, CD210004, located at 427 Marcy Avenue, Brooklyn, New York 11206, which I was the principal of the Sponsor.

2. I understand the allegations set forth in the AOD, I have personally executed the AOD, and that pursuant to the AOD I am personally responsible for a $500,000 penalty thereunder (the "Debt").

3. I do not have assets to satisfy the Debt.

4. I do not own, control, or have an interest in any entity that owns or controls any real estate.

5. I do not have any ownership interest in any entity that has assets where the value of such assets exceeds the value of such entity's liabilities.

6. I do not have assets in cash or securities that can satisfy the Debt.

7. I do not have access to credit that would enable me to satisfy the Debt.

[SIGNATURE PAGE FOLLOWS]

By: ______________________
Name: Ezra Unger

Sworn to before me this
10 day of August __, 2026

____

Notary Public

this notarial act involved a remote online appearance through use of communication technology
Notarized online using audio-video communication technology

HIRSCH ROSENZWEIG
Online Notary Public
State of New York
Rockland County
Commission #: 01RO0002288
Commission Expires: 03/06/2027