



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

February 10, 2021

BY ECF

Honorable Denise L. Cote  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *United States ex rel. Anti-Discrimination Center v.*  
*Westchester County*, 06 Civ. 2860 (DLC) (GWG)

Dear Judge Cote:

This Office represents the United States (the “Government”), in the above-referenced case. We write in response to the Court’s Order of January 27, 2021, directing the parties to respond to the Monitor’s assessment of Westchester County’s compliance with the terms of the Consent Decree entered into this case on August 10, 2009 (the “Consent Decree”).

For the reasons stated below, the Government is in agreement with the Monitor that, with one exception, “the County has substantially met its obligations” under the Consent Decree. (Monitor’s Assessment of Westchester County’s Compliance, Jan. 26, 2021 (the “Assessment”), at 3.) The exception is that, as the Assessment notes, the County has not yet completed its obligation to create 750 Affordable AFFH Units, having completed 723. (Assessment at 10.) With the consent of the County, the Government proposes that, solely with regard to this one outstanding matter, the parties file an update with Court by April 30, 2021, to advise whether the County has met this obligation.

## **I. Background**

The background facts of this case are set forth in eight groups of opinions.<sup>1</sup>

- A. The False Claims Act Action and Settlement: *United States ex rel. ADC v. Westchester County*, 495 F. Supp. 2d 375 (S.D.N.Y. 2007); 668 F. Supp. 2d 548 (S.D.N.Y. 2009) (together, “*Westchester I*”).

From April 1, 2000, through April 1, 2006, the County applied for, and received, about \$52 million in funds from HUD, a condition of which was that the County “affirmatively further fair housing,” 42 U.S.C. §§ 5304(b)(2) and 12705(b)(15), and certify to HUD that it would do so. As this Court eventually held, these certifications were false. *Westchester I*, 495 F. Supp. 2d at 387-88; 668 F. Supp. 2d at 565. This Court reserved for trial whether the County’s false certifications were presented knowingly. 668 F. Supp. 2d at 567-68.

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<sup>1</sup> The Government sets forth a detailed statement of facts herein because the submission filed by the relator, the Anti-Discrimination Center (“ADC”) on January 29, 2021, omits necessary contextual information concerning the prior proceedings.

On August 10, 2009, the Government elected to proceed with the action, filing a complaint in intervention alleging violations by the County of the False Claims Act and the Housing and Community Development Act. Simultaneously, the parties agreed to, and this Court soon approved, the Consent Decree, in which the County agreed to extensive injunctive relief instead of paying over \$150 million in damages. (A copy of the Consent Decree is attached to this letter.) *See also* Assessment at 3-4. The Court appointed James E. Johnson as Monitor on August 10, 2009, and Mr. Johnson served in that capacity until August 10, 2016.

- B. The Government's Enforcement of the "Source of Income" Provision of the Consent Decree: *United States ex rel. ADC v. Westchester County*, 06 Civ. 2860 (DLC), 2012 WL 1574819 (S.D.N.Y. May 3, 2012), *aff'd*, 712 F.3d 761 (2d Cir. 2013) ("*Westchester II*").

The first major enforcement action by the Government following entry of the Consent Decree arose from the requirement that the County "promote, through the County Executive, legislation currently before the Board of Legislators to ban 'source-of-income' discrimination in housing." (Consent Decree ¶ 33(g)). On June 25, 2010, however, instead of "promoting" the source-of-income legislation passed by the Westchester County Board of Legislators, then-County Executive Robert Astorino vetoed the legislation. Ruling on the Government's application, the Monitor found on November 14, 2011, first, that the County breached its obligation to promote the "source of income" legislation; and second, that "the County should analyze zoning ordinances in connection with the AI." *Westchester II*, 2011 WL 7563042, at \*1 (Monitor's report). The County appealed the determination on "source of income" to the Magistrate Judge, which reversed the Monitor, but this Court reversed the Magistrate Judge and concluded that the County had indeed breached the Consent Decree by failing to promote the legislation. *See Westchester II*, 2012 WL 1574819, at \*11. On April 5, 2013, the Second Circuit affirmed. *See Westchester II*, 712 F.3d at 771. Because the County Executive continued to delay signing the legislation, the Government wrote to the County by letter dated April 19, 2013, demanding that the County take the necessary steps for the County Executive to sign the legislation, or the Government would seek to hold the County in contempt. The County Executive finally signed the legislation on June 26, 2013. *See also* Assessment at 5-6.

- C. The Government's Enforcement of the "Analysis of Impediments" Provisions of the Consent Decree: *County of Westchester v. Dep't of Housing & Urban Dev.*, 06 Civ. 2860 (DLC), 2013 WL 4400843 (S.D.N.Y. Aug. 14, 2013), *aff'd in part, vacated in part, and remanded*, *County of Westchester v. Dep't of Housing & Urban Dev.*, 778 F.3d 412 (2d Cir. 2015) ("*Westchester III*"); *County of Westchester v. Dep't of Housing & Urban Dev.*, 116 F. Supp. 3d 251 (S.D.N.Y. 2015), *aff'd*, 802 F.3d 413 (2d Cir. 2015) ("*Westchester IV*").

The second major enforcement action by the Government arose from the County's obligation to submit the required analysis of impediments to fair housing ("AI"), which must be "deemed acceptable by HUD." (Consent Decree ¶ 32.) Because this enforcement action originated with HUD, which the County then sued, these matters were litigated not in this case (06 Civ. 2860), but rather two district court actions filed by the County (13 Civ. 2741; 15 Civ. 1992) which in turn led to three appeals to the Second Circuit (13-3087; 15-979; 15-2294). *See also* Assessment at 5.

The AI was one of the essential requirements for the receipt of funds. *See Westchester I*, 495 F. Supp. 2d at 387-88. From 2000 through 2006, however, the County's AIs lacked analysis of race-based impediments to fair housing, which led this Court to conclude that the County's certifications had been false. *See* 668 F. Supp. 2d at 561-62. The Consent Decree sought to remedy these years of false filings by requiring the County to include an identification and analysis of "impediments based on race or municipal resistance to the development of affordable housing," and actions the County would take to address the effects of those impediments. *Id.* Although the Consent Decree required the County to submit an adequate AI within 120 days, by December 2009, the County failed to do so. The effect of the County's continued failure to produce an AI acceptable to HUD jeopardized the availability of funds for other jurisdictions, so HUD sought to reallocate the funds. The County nevertheless waited until April 2013 to bring suit regarding FY2011 funds (*Westchester III*), and waited until March 2015 to bring suit regarding the funds for FY2012, FY2013, and FY2014 (*Westchester IV*).

The County finally submitted a revised AI on April 24, 2013, the day it filed *Westchester III*. The County's exclusionary zoning analysis, however, remained deficient in HUD's view. The County filed an application for a preliminary injunction, which this Court denied. *See Westchester III*, 2013 WL 4400843, at \*2. The Government then moved to dismiss the complaint on the ground that the Court lacked subject matter jurisdiction, and the Court granted that motion on August 14, 2013. *See id.* at \*5. The County appealed, and sought a stay and a temporary restraining order from the Circuit on August 20, 2013. The Second Circuit eventually denied the County's application for a stay on September 25, 2013. *See Westchester III*, 531 F. App'x 178 (2d Cir. 2013). Following the Second Circuit's orders, HUD reallocated the bulk of the FY2011 funds before the appropriation expired on September 30, 2013. *See Westchester III*, 778 F.3d at 416-17. By Opinion dated February 18, 2015, however, the Second Circuit affirmed this Court in part, vacated its ruling in part, and remanded. *See id.* Between the time of the Circuit's 2013 and 2015 rulings, the FY2012 funds were completely reallocated and obligated as of September 30, 2014, without any legal action by the County.

On March 17, 2015, the County filed a second suit over the FY2013 and FY2014 funds. This Court immediately requested responsive briefing and heard argument on March 27, 2015. After this Court denied the application for a preliminary injunction and ordered an expedited briefing schedule, the County appealed and filed an application for emergency injunctive relief pending appeal. On April 10, 2015, the Second Circuit denied the County's application for an emergency stay, but on April 20, 2015, the Circuit granted the same application. The Circuit heard argument on April 28, 2015, and issued an order on May 1, 2015, enjoining HUD from obligating any of the FY2013 or FY2014 funds at issue, during the pendency of the County's appeal from the denial of the preliminary injunction.

In an 87-page opinion and order dated July 17, 2015, this Court considered and rejected all of the County's arguments, and granted the Government's motions to dismiss the complaints in both 13 Civ. 2741 (regarding the remaining FY2011 funds), and 15 Civ. 1992 (regarding the FY2013 and FY2014 funds). *See Westchester IV*, 116 F. Supp. 3d 251. The Second Circuit ordered expedited briefing, held expedited oral argument on September 22, 2015, and affirmed this Court again, in a 52-page opinion issued on September 25, 2015. *See Westchester IV*, 802 F.3d 413. The Circuit affirmed the efforts of the Government to insure that the County addressed exclusionary zoning, reasoning that, "[b]ecause exclusionary zoning can violate the [Fair Housing Act], and because HUD is required to further the policies of that statute, it was reasonable for HUD to require the County to include in its AI an analysis of its municipalities'

zoning laws.” *Id.* at 432. The consequence of the Government’s enforcement action was that the County lost approximately \$25 million in federal funds for FY2011 through FY2014 for its failure to adequately analyze or take action regarding exclusionary zoning.

- D. The Government’s Enforcement of the “All Available Means” Provisions of the Consent Decree: *United States ex rel. ADC v. Westchester County*, 06 Civ. 2860 (DLC), 2016 WL 3004662 (S.D.N.Y. May 24, 2016), *aff’d*, 689 F. App’x 71 (2d Cir. 2017) (“*Westchester V*”).

The third major enforcement action by the Government to vindicate the goals of the Consent Decree arose from the Monitor’s determination on May 8, 2015, that the County had failed to adequately address opposition to the Chappaqua Station project from the Town of New Castle. The County objected to the Monitor’s conclusions, and filed objections with the Magistrate Judge. Opposing the County, the Government argued in its brief filed on July 21, 2015, that the Chappaqua Station units did not meet the benchmarks of Consent Decree ¶ 7, which requires that the County “ensure the development of at least 750 new affordable housing units,” consistent with the timeline in Consent Decree ¶ 23. The Government also argued that the County failed in its duties to “use all available means” to meet the benchmarks (citing Consent Decree ¶ 7(i)) and to address municipal inaction or resistance to the development of AFFH units (citing Consent Decree ¶ 7(j)). Finally, the Government argued that the County should be penalized and held in contempt for its violations of paragraphs 23, 7(i), and 7(j), unless the County took remedial action. (ECF No. 529, at 28-35.)

The Magistrate Judge, however, disagreed with the Government’s arguments and, in a Report and Recommendation dated November 19, 2015, concluded that the County had not violated either the benchmark provisions of Consent Decree ¶ 23, nor the “all available means” provisions of Consent Decree ¶¶ 7(i) and 7(j), and rejected the Government’s applications for contempt. The Government appealed the Magistrate’s determination to this Court, renewing its application for penalties and contempt in a filing dated January 22, 2016 (ECF No. 552, at 18-19, 23-25.) In a thorough 61-page opinion on May 24, 2016, this Court affirmed the Magistrate Judge in rejecting the Government’s argument that the County had missed certain benchmarks under Consent Decree ¶ 23, *Westchester V*, 2016 WL 3004662, at \*14-15, but reversed the Magistrate Judge and agreed with the Monitor and the Government that the County had violated its obligations to, first, “use all available means” to promote the units under Consent Decree ¶ 7(i), and, second, “use all available means” to address municipal resistance or inaction under Consent Decree ¶ 7(j), *see id.* at \*16-18. The Court reserved decision on the Government’s contempt application. *See id.* at \*21.

The County appealed this Court’s decision and on April 28, 2017, in an opinion consolidating the County’s appeals in *Westchester V* and *Westchester VII*, the Second Circuit affirmed this Court’s orders, as discussed fully below. *See* 689 F. App’x 71 (2d Cir. 2017).

- E. The Government's Enforcement of the Public Education Provisions of the Consent Decree: *United States ex rel. ADC v. Westchester County*, 06 Civ. 2860 (DLC), 2016 WL 3566236 (S.D.N.Y. June 27, 2016), *aff'd*, 674 F. App'x 82 (2d Cir. 2017) ("*Westchester VI*").

The fourth major enforcement action by the Government to vindicate the goals of the Consent Decree arose from the Monitor's determination on March 17, 2016, that the County Executive had repeatedly made misleading statements concerning the Consent Decree, in breach of his public education obligations under Consent Decree ¶ 33(c). In support of the Monitor's determination, the Government, in its brief filed May 9, 2016, sought a variety of remedial relief from the Court. (ECF No. 585, at 22-25.)

By Order dated May 23, 2016, the Court directed the County to retain a public relations consultant to develop the One Community Campaign. In a decision dated June 27, 2016, the Court set forth the basis for its conclusion that the County had breached its obligation to conduct a public information campaign as required by paragraph 33(c), noting that not only were the County's efforts inadequate, but also that then-County Executive Robert Astorino had made multiple false statements about the Consent Decree that undermined the meager efforts that the County had made:

Astorino intentionally generated fear that increasing available affordable housing and modifying exclusionary zoning laws would change neighborhoods for the worse. These statements reveal a concerted effort to influence public opinion *against* the Settlement and its stated goal of improving communities by increasing racial and ethnic diversity. This coordinated effort both evinces bad faith and exposes the deficiencies of the delayed Campaign.

2016 WL 3566236, at \*8. This Court further held that it was appropriate to permit the public release of the videos and transcripts of depositions conducted by the Monitor because "the videotapes thus may be an important tool for public evaluation of the accuracy and reliability of Astorino's prior assertions concerning the Consent Decree. The public will have an opportunity to evaluate the witnesses' statements and credibility in a way that a cold transcript cannot provide to them." *Id.* at \*10.

The County appealed the Court's decision in *Westchester VI* to the extent that it found the County in breach and ordered the release of deposition video and transcripts, including of Astorino. The Second Circuit affirmed, concluding among other things that "the record supports the district court's finding that the County acted in bad faith." 674 F. App'x at 83.

Consistent with the Court's orders, the parties met and conferred regarding an initial survey to assess the potential audience's receptiveness to the messaging of the One Community Campaign, as well as the budget and duration for the campaign. On March 11, 2017, the County rolled out the One Community Campaign, which, based upon the evidence that the County has provided, consisted of dozens of print, radio, television, and digital ads. HUD had no objection to the content of the campaign.



- F. The Government's Enforcement of the AI Requirement of the Consent Decree: *United States ex rel. ADC v. Westchester County*, 06 Civ. 2860 (DLC), 2016 WL 3945679 (S.D.N.Y. July 18, 2016), *aff'd*, 689 F. App'x 71 (2d Cir. 2017) ("*Westchester VII*").

On April 28, 2016, the Monitor submitted his Third Biennial Assessment of compliance with the Consent Decree and described two notable failures of compliance. First, nearly seven years after entry of the Consent Decree, the County had still failed to submit an AI acceptable to HUD. Second, the Monitor concluded that the County had not provided economic incentives or brought necessary litigation to encourage eligible municipalities to adopt its model zoning ordinance. *See* 2016 WL 3945679, at \*1.

This Court held that with respect to the failure to complete an AI, "[t]his breach is clear and cannot credibly be questioned." 2016 WL 3945679, at \*7. The Court adopted the Monitor's suggestion that the County should be ordered to retain a consultant to prepare the AI, the County evidently being unwilling to do so on its own. *See* 2016 WL 3945679, at \*12. The Court reserved decision with respect to the model ordinance until completion of the AI. *See* 2016 WL 3945679, at \*13-14.

As noted above, the County appealed this Court's decision as to the AI and the appeal was consolidated with the appeal in *Westchester V*. Affirming this Court's rulings in all respects in both *Westchester V* and *Westchester VII*, the Second Circuit sternly warned the County against further lack of compliance:

We note that these consolidated appeals are the sixth and seventh appeals by the County from the district court's ongoing efforts to ensure the County's compliance with its obligations under the Consent Decree. All of these appeals have been rejected, and it is apparent that the County is engaging in total obstructionism. The County would be well-advised to stop making excuses, and to complete its obligations under the Consent Decree with diligence and dispatch.

*United States ex rel. Anti-Discrimination Ctr. of Metro New York, Inc. v. Westchester County, New York*, 689 F. App'x 71, 74-75 (2d Cir. 2017). The County has not appealed any of this Court's orders or decisions to the Circuit since.

- G. The Government's Enforcement of the Monitor Provisions of the Consent Decree: *United States ex rel. ADC v. Westchester County*, 06 Civ. 2860 (DLC), 2017 WL 728702 (S.D.N.Y. Feb. 23, 2017) ("*Westchester VIII*").

As noted above, James E. Johnson completed his term as Monitor on August 10, 2016. This Court noted, and the Government agrees, that Mr. Johnson "worked diligently and creatively with the County, local government officials, organizations within Westchester County, and experts to assist the County to fulfill its obligations under the Consent Decree." 2017 WL 728702, at \*2. To ensure that the County completed its obligations under the Consent Decree, the Government posted a notice for a replacement Monitor on July 22, 2016, and received applications from six applicants, three of whom were former judges who expressed a concern about the cap upon the Monitor's fees, a not unreasonable concern in light of the extensive and uncompensated work performed by Mr. Johnson. Accordingly, the Government moved on December 30, 2016, for the appointment of the Honorable Stephen C. Robinson, a former United

States District Judge for the Southern District of New York, and under Fed. R. Civ. P. 60(b) to modify the Consent Decree by lifting the fee cap. The County opposed both prongs of the application. By decision dated February 23, 2017, this Court modified the Consent Decree to eliminate the fee cap, and appointed Judge Robinson as Monitor. *See* 2017 WL 728702, at \*5.

On November 8, 2017, George Latimer defeated Robert Astorino to become the next County Executive. With Astorino's departure, the County's approach to compliance with the Consent Decree improved significantly, and this case entered a considerably more harmonious period. As the Assessment puts it, and the Government agrees, "[a]s a general matter, under the leadership of Mr. Latimer, the County has demonstrated a renewed commitment to satisfying its obligations under the Settlement." Assessment at 6.

## II. The Monitor's Assessment

The Assessment is careful and thorough, and the Government respectfully submits that the Court should accept it, with one proviso as described below. As the Assessment explains, there are five major subjects for evaluation.

First, a primary obligation under the Consent Decree is the creation of 750 Affordable AFFH Units in municipalities that meet specific demographic criteria. (Consent Decree ¶ 7; Assessment at 10-11.) Throughout the implementation of the Consent Decree, the Monitor and the County have consulted with HUD to ensure that units are appropriately counted and sited, and the County has created 723 units. Because additional units are in the pipeline such that the County is on track to eventually exceed the 750-unit goal, the Government agrees with the Monitor that "the County has substantially complied with Paragraph 7" (Assessment at 13), but due to the importance of this requirement, respectfully suggests that the Court continue to exercise jurisdiction over this matter to ensure that this requirement is met. The Government has proposed, and the County has agreed, that the parties be ordered to provide a status update as to whether the County has met this benchmark, no later than April 30, 2021.

Second, the Consent Decree required the County to develop and promote a model zoning ordinance. While the County has met its obligation to develop the ordinance, not all of the 31 designated municipalities have adopted it — 21 have adopted the ordinance in part, or similar provisions, leaving 10 municipalities with zoning that arguably fails to encourage integration or leaves segregated housing patterns in place. Assessment at 14-16. The failure to adopt the model zoning ordinance, moreover, is particularly problematic in municipalities whose zoning may fall afoul of *Berenson v. Town of New Castle*, 38 N.Y.2d 102 (1975), and *Huntington Branch NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir.), *aff'd sub nom. Town of Huntington v. Huntington Branch*, 109 S. Ct. 276 (1988). As the Assessment notes, however, the Government began preliminary inquiries into zoning in Harrison and Pelham Manor, among others, and may be better positioned to bring enforcement litigation should such litigation prove necessary and appropriate. *See* Assessment Exh. 21. Accordingly, the Government does not object to the Monitor's conclusion that the County has met its obligations with respect to the model zoning ordinance.

Third, the Consent Decree required the County to submit an analysis of impediments to fair housing, which must be "deemed acceptable by HUD." (Consent Decree ¶ 32.) As detailed above, this particular requirement was the subject of extensive litigation. *See also* Assessment at 27-31. After years of litigation, revisions to the AI, and retention of a consultant pursuant to an

Order of this Court, HUD accepted the AI on July 14, 2017. Assessment at 31. This obligation is therefore completed, as the Monitor concludes.

Fourth, the County has issued a lengthy Affordable Housing Needs Assessment, dated November 2019, even though it was not required by HUD to do so in connection with HUD's acceptance of the AI in July 2017. As the Monitor concludes, "[t]he Needs Assessment can fairly be seen as a sign of the County's renewed commitment to fulfilling both the letter and spirit of the Settlement and good faith effort to further affordable housing." Assessment at 41. The Government therefore has no objection to the Monitor's conclusions on this point.

Fifth, the Consent Decree required the County to conduct a public information campaign under paragraph 33(c). This provision was also the subject of litigation, as detailed above. *See also* Assessment 49-56. In the end, however, HUD advised the Court that it was satisfied with the County's One Community campaign, and the Monitor notes additional public information efforts that have supported the goals of the Consent Decree. The Government therefore has no objection to the Monitor's conclusions on this point.

Finally, the Assessment appropriately notes some areas of continuing concern, particularly with regard to municipalities whose zoning codes may conflict with *Berenson* or *Huntington*. Assessment, at 57-58. The Government shares these concerns and will continue to consider inquiries into these municipalities.

### III. ADC's Submission

Although ADC played no role in the litigation of *Westchester II*, *Westchester III*, *Westchester IV*, *Westchester V*, *Westchester VI*, *Westchester VII*, or *Westchester VIII*, it has from time to time sought to intervene in this matter or otherwise urge this Court to follow a particular course of action. This Court previously rejected ADC's application to intervene to "enforce" the Consent Decree, holding that "ADC has no greater status than any other stranger to this litigation." *U.S. ex rel. Anti-discrimination Ctr. of Metro New York, Inc. v. Westchester County, N.Y.*, 06 Civ. 2860 (DLC), 2012 WL 13777, at \*6 (S.D.N.Y. Jan. 4, 2012). Next, at a hearing on May 2, 2014, the Court permitted ADC to speak but cautioned:

But I want to make clear that letting [ADC] be heard does not change my analysis at all about their right to intervene and does not suggest at all — and I'll describe this in more detail later when I speak — that I believe that the government has failed to act responsibly here such that ADC must step up to the plate to bring to this Court's attention issues of importance with respect to contempt.

(Dkt. No. 472, at 3:17–24.) On May 11, 2016, ADC submitted a letter with numerous attachments (dkt. no. 592). The Court ordered the parties to address whether it should accept ADC's submission as an amicus brief (dkt. no. 597), and ultimately denied ADC's request to be heard as amicus on July 6, 2016 (dkt. no. 654). ADC's submission of January 29, 2021 is thus the fourth time it has sought to insert itself into this case.

Although the above recitation of the lengthy history of the Government's enforcement efforts ought by itself to dispel ADC's misconstruction of that history (particularly its unfounded assertion that there has been a "lack of enforcement," Letter at 1), the Government respectfully submits a brief response, to correct the record.



First, the bulk of ADC's Letter consists not of specific objections, but lengthy reiterations of points that the ADC made in 2012, 2014, and 2016 — none of which proved to be particularly relevant or helpful. On the first page of the Letter, ADC quotes from an amicus brief that this Court denied leave to file, *see* Letter at 1, and later quotes itself, at great length, from reports and submissions relating to its prior failed applications to intervene or file *amicus* briefs, *see* Letter at 3-4 & n.11, *id.* 6 n.18. As these arguments have been considered and rejected before, the Government will not address them again.

ADC's main specific contention is that the County has purposefully failed to place AFFH units in its most segregated areas. ADC notes that under paragraph 7(a) of the Consent Decree, 630 of the 750 units must be located in municipalities with a Black population of less than 3% and a Hispanic population of less than 7%. According to ADC, however, only 368 of the 750 units are located in such jurisdictions "per 2010 Census data." Letter at 2. ADC's use of 2010 Census data, however, does not track the terms of the Consent Decree, which instead calls for such calculations to be performed under 2000 Census data. Indeed, the Consent Decree was signed in 2009, and 2010 Census data became available over the course of 2011, while AFFH units entered the pipeline to completion. Instead, ADC attacks the Monitor and the Government for failing to "shift to the 2010 data." Letter at 2. But the Consent Decree strictly limits the ability to "shift to the 2010 data." Paragraph 15(a)(iii) provides that "no municipality included under the calculations set forth in paragraphs 7(a), 7(b), or 7(c) shall be excluded after modification or refinement to those subdivisions."<sup>2</sup> In other words, even if the Monitor were to exercise his authority under Paragraph 15 to "shift to the 2010 data," he could only add eligible municipalities, not "un-count" units in municipalities that were eligible at the time the Consent Decree was signed.<sup>3</sup>

Next, ADC attacks the Monitor and the Government for failing to adequately address exclusionary zoning. ADC avers that "[i]t is, of course, a shocking breach of its basic duty that the Government — charged with enforcing the decree — has never in 11 years provided *its own analysis* of which municipalities failed to take sufficient action to remove exclusionary-zoning barriers so as to promote the objectives of building AFFH units." (Letter at 5.) But under the Consent Decree, it was the County's (not the Government's) "basic duty" to conduct this analysis in its AI, *see* paragraph 32, such that the Government's "enforcing the decree" meant

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<sup>2</sup> Notably, the Letter quotes paragraph 15(a)(iii) in footnote 6, but cuts off the quote when it contradicts ADC's argument. As the County put it in its December 8, 2020 letter to the Monitor, "Paragraph 15(a)(iii) is meant to apply in a prospective manner, so as to not place the County in a situation where it has invested time and money into developments which count under the 2000 Census, only to have those units become excluded by a later calculation." (Dkt. no. 731-25, at 2-3.)

<sup>3</sup> In support of this point, ADC points to an analysis by Prof. Andrew Beveridge, dated May 11, 2016, and docketed as ECF No. 592-1. The Government previously had no objection to the Beveridge Report, and still has none. But the fact remains that even if the Monitor were to adopt the Report as his own, the Monitor cannot "un-count" the units that were located in eligible paragraph 7(a) municipalities under 2000 Census data, even if these municipalities are not eligible any longer.

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compelling the County to do so. And the Government spent years in litigation to compel the County to do exactly that, in *Westchester III*, *IV*, and *VII*. In any event, the Monitor's Assessment details the extensive and painstaking work of persuading 21 municipalities to change provisions of their zoning codes, *see* Assessment at 13-27,<sup>4</sup> and the Government has the ability to bring enforcement actions against municipalities independent of the Consent Decree.

ADC's Letter closes with a list of demands. Letter at 10-11. These demands should be rejected as substantively meritless for the reasons set forth above, procedurally deficient as proposals from a "stranger to the litigation," *Westchester County*, 2012 WL 13777, at \*6, and improper as an effort to render the Government's enforcement authority beholden to ADC's satisfaction.

#### IV. Conclusion

The Government greatly appreciates the consideration the Court has devoted to this matter. For the reasons stated above, the Government respectfully suggests that the Court accept the Assessment, and order the Government and the County to provide a status update relating to the AFFH Units no later than April 30, 2021.

Respectfully,

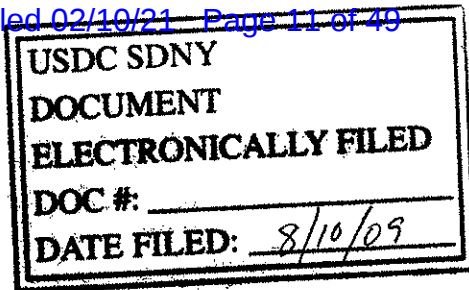
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Cc: Counsel of record (via ECF)  
Monitor Stephen C. Robinson (via email)

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<sup>4</sup> The Monitor notes that this Court's opinion in *Westchester V* on May 24, 2016 suggests that the County is not obliged to sue municipalities for failing to adopt the model ordinance, pointing out the prior Monitor's statement that "[t]he Court has made clear that Paragraph 7(j) is only triggered with the 750-units requirement." Assessment at 20.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.  
ANTI-DISCRIMINATION CENTER OF  
METRO NEW YORK, INC.,

Plaintiff,

v.

WESTCHESTER COUNTY, NEW YORK,

Defendant.

**STIPULATION AND ORDER OF  
SETTLEMENT AND DISMISSAL**

No. 06 Civ. 2860 (DLC)

WHEREAS, the development of affordable housing in a way that affirmatively furthers fair housing is a matter of significant public interest;

WHEREAS, the broad and equitable distribution of affordable housing promotes sustainable and integrated residential patterns, increases fair and equal access to economic, educational and other opportunities, and advances the health and welfare of the residents of the defendant County of Westchester, New York (the "County") and the municipalities therein;

WHEREAS, the County receives federal funding for housing and community development, including funds under the Community Development Block Grant ("CDBG") program, the Emergency Shelter Grant program, the HOME Investment Partnerships, and the Housing Opportunities for Persons with AIDS program;

WHEREAS, as a recipient of CDBG funds, the County must comply with, *inter alia*, the provisions of the Housing and Community Development Act, including the requirement that it affirmatively further fair housing ("AFFH") as set forth in 42 U.S.C. § 5304(b)(2);

WHEREAS, as an applicant for those funds, the County was required to certify – as a material condition of its eligibility to receive such funds – that it would AFFH;

WHEREAS, the United States and the County agree and acknowledge that: (i) pursuant to New York State law, municipal land use policies and actions shall take into consideration the housing needs of the surrounding region and may not impede the County in its performance of duties for the benefit of the health and welfare of the residents of the County; (ii) it is incumbent upon municipalities to abide by such law and for municipalities that are parties to the Urban County Cooperation Agreement to comply with that agreement, including the commitment to AFFH; and (iii) it is appropriate for the County to take legal action to compel compliance if municipalities hinder or impede the County in its performance of such duties, including the furtherance of the terms of this Stipulation and Order;

WHEREAS, the County was obligated to conduct an analysis of the impediments to fair housing choice within its jurisdiction (an “AI”), and obligated to take appropriate actions to overcome the effects of any impediments identified through that analysis;

WHEREAS, for the years 2000 to the present, the County has certified that it was in compliance with those requirements;

WHEREAS, the Anti-Discrimination Center of Metro New York, Inc. (the “Relator”) filed a civil action as a relator under the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729 et seq. (the “False Claims Act”), against the County to recover damages allegedly sustained by the United States of America (the “United States” or “Government”) as a result of the County’s alleged violations of the False Claims Act during the period April 1, 2000 to April 1, 2006 (the “Relator’s Complaint”);

WHEREAS, the Relator alleged in particular that the County had failed to conduct a meaningful AI and failed to take appropriate steps to overcome existing and known impediments to fair housing arising from racial discrimination and segregation;

WHEREAS, the Relator further alleged that, as a result of such failures and inaction, the County's certifications to the United States to receive CDBG and other federal funds were false;

WHEREAS, the United States subsequently filed a notice of intervention pursuant to 31 U.S.C. § 3730(b)(4), and filed a Complaint-in-Intervention (the "Government's Complaint") against the County (i) to recover, under the False Claims Act, damages sustained by, and penalties owed to, the United States as the result of the County having knowingly presented or caused to be presented to the United States false claims to obtain federal funding for housing and community development, and (ii) seeking, pursuant to 42 U.S.C. § 5311(b), appropriate remedies for the County's non-compliance with community development requirements, including mandatory or injunctive relief;

WHEREAS, the United States Department of Housing and Urban Development ("HUD") contends that it has administrative claims against the County to address some or all of the alleged conduct set forth in the Relator's Complaint and the Government's Complaint;

WHEREAS, the County denies all of the allegations in the Relator's Complaint and the Government's Complaint, denies that it has any liability relating to these allegations, and denies that the United States was damaged by its actions;

WHEREAS, the County contends that it reasonably believed that it was complying with the requirement to AFFH because, among other things, the County maintains that: (i) it actively supported and gave priority status to the construction, rehabilitation, and preservation of affordable housing; (ii) it undertook to analyze impediments to housing opportunities and submitted AIs to HUD in 2000 and 2004; (iii) prior to the filing of relator's complaint, it never had its submissions or certifications to HUD disapproved or rejected; and (iv) the HUD Office of



Policy Development and Research identified the County in 2005 as a community that demonstrated effective sub-recipient management practices with respect to CDBG grants;

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the “Stipulation and Order”) is neither an admission by the County of any liability or wrongful conduct nor a concession by the United States that its claims are not well-founded; and

WHEREAS, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation, pursuant to the terms set forth below, the United States and the County desire to reach a full and final compromise and resolution of the claims against the County in this action;

NOW, THEREFORE, in consideration of the mutual promises, undertakings, obligations and commitments set forth below, the parties hereto covenant and agree as follows:

**Subject Matter Jurisdiction**

1. The parties hereto consent to this Court’s exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.

**Administrative Payment to HUD**

2. The County shall pay twenty-one million, six hundred thousand (\$21,600,000) into the County’s account with HUD in accordance with HUD’s administrative procedures. Such payment is for settlement of the claims brought pursuant to this action and not for the financing of a capital improvement. The County shall make such payment by electronic funds transfer pursuant to written instructions that the United States Attorney’s Office for the Southern District of New York or HUD will provide to counsel for the County. HUD shall make those funds available to the County for the development of new affordable housing units that will AFFH in the County, provided that the County’s use and expenditure of the funds, and any program

income earned from the use of the funds, as defined by 24 C.F.R. § 570.500(a), shall be subject to the requirements of the CDBG program and the terms and conditions set forth in paragraph 7.

**Payment to the Federal Government  
to Settle False Claims Act Allegations**

3. The County shall pay to the United States the sum of thirty million dollars (\$30,000,000) (the "Settlement Amount"), in full compromise and satisfaction of the False Claims Act allegations in this action. This Settlement Amount shall constitute a debt due and owing upon entry of this Stipulation and Order by the Court, and shall be discharged upon payment to the United States, no later than ninety (90) calendar days after the Court's entry of this Stipulation and Order. With respect to such payment, the County shall receive a credit of twenty-one million, six hundred thousand (\$21,600,000) for the payment to HUD set forth in paragraph 2. The County shall pay the remaining eight million, four hundred thousand (\$8,400,000) to the United States by electronic funds transfer pursuant to written instructions that the United States Attorney's Office for the Southern District of New York will provide to counsel for the County.

**Relator's Attorneys' Fees Under the False Claims Act**

4. Pursuant to 31 U.S.C. § 3730(d)(1), no later than ninety (90) calendar days after the Court's entry of this Stipulation and Order, the County shall pay to Relator's Counsel the sum of two million, five hundred thousand dollars (\$2,500,000) as expenses, attorneys' fees, and costs in full settlement of Relator's claims against the County. The County shall make such payment pursuant to instructions that counsel for the Relator, no later than five (5) business days prior to the due date for payment, shall provide to counsel for the County. The United States has no liability or responsibility for the payment of the Relator's expenses, attorneys' fees, or costs.

**Mandatory and Injunctive Relief to Develop  
Affordable Housing to AFFH in Settlement of  
Housing and Community Development Act Claims**

5. The County shall, in full compromise and satisfaction of the Housing and Community Development Act claims in this action, undertake the mandatory and injunctive relief set forth below. To pursue such equitable relief, the County shall, in addition to the payment of the Settlement Amount described in paragraph 3, secure resources sufficient to ensure the equitable relief is funded by thirty million dollars (\$30,000,000) for County fiscal years 2009 through 2014 for land acquisition, infrastructure improvement, construction, acquisition, or other necessary direct costs of development of new affordable housing units that AFFH as set forth in paragraph 7.

6. The County shall meet the funding obligation set forth in paragraph 5 solely through County funds, and not from any Federal, State, or other funding sources.

**County's Development of Affordable AFFH Units**

7. Through the use of the funds set forth in paragraphs 2 and 5, the County shall, within seven (7) years of the entry of this Stipulation and Order, ensure the development of at least seven hundred fifty (750) new affordable housing units that meet the terms and conditions set forth in this paragraph ("Affordable AFFH Units"):

- (a) No less than six hundred thirty (630) of the Affordable AFFH Units shall meet the following locational criteria:
  - (i) the municipality in which the units are to be developed had, according to 2000 Census data, both a "single race African-American only" population less than three (3) percent and a Hispanic population less than seven (7) percent, as calculated after removing people living in group

- quarters as defined by the 2000 Census of Population and Housing (U.S. Census Bureau) (“group quarters”) from the relevant population; and
- (ii) the units shall not be developed in any census block which had, according to 2000 Census data, (A) a “single race African-American only” population of more than ten (10) percent and a total African-American population of twenty (20) or more, or (B) a Hispanic population of more than ten (10) percent and a total Hispanic population of twenty (20) or more, as calculated after removing people living in group quarters from the relevant population, except to the extent such requirement is waived pursuant to paragraph 15(a)(ii).
- (b) A maximum of sixty (60) of the Affordable AFFH Units may meet the following locational criteria:
- (i) the municipality in which the units are to be developed had, according to 2000 Census data, both a “single race African-American only” population less than seven (7) percent and a Hispanic population less than ten (10) percent, as calculated after removing people living in group quarters from the relevant population; and
- (ii) the units meet the terms and conditions set forth in paragraph 7(a)(ii).
- (c) A maximum of sixty (60) of the Affordable AFFH Units need not meet the locational criteria set forth in paragraphs 7(a) or 7(b), provided that:
- (i) the municipality in which the units are to be developed had, according to 2000 Census data, a “single race African-American only” population less than fourteen (14) percent and a Hispanic population less than sixteen

- (16) percent, as calculated after removing people living in group quarters from the relevant population;
- (ii) no funds governed by this Stipulation and Order shall be used for such units until one hundred seventy-five (175) units meeting the locational criteria set forth in paragraph 7(a) have received building permits; and
  - (iii) the County shall use no more than four million dollars (\$4,000,000) of the funds set forth in paragraph 5, and none of the funds described in paragraphs 2 and 3, on such units.
- (d) At least fifty (50) percent of the Affordable AFFH Units shall be rental units, of which rental units at least twenty (20) percent shall be affordable to and occupied by households with incomes at or below fifty (50) percent of Area Median Income (“AMI”), with the remainder of such rental units affordable to and occupied by households with incomes at or below sixty-five (65) percent of AMI. Affordable as used in this subparagraph shall be defined by the rent limitations for HOME-assisted units set forth in 24 C.F.R. § 92.252 (a) and (b). Such units shall be controlled by deed restrictions or other legal measures to ensure that they remain affordable to and occupied by eligible households for a period of no less than fifty (50) years. Such rental units may be converted to cooperative or condominium occupancy during the fifty (50) year period, provided that:
- (i) tenants shall be given the opportunity to purchase their units;
  - (ii) the affordability levels provided in this paragraph are preserved; and



- (iii) tenants who do not exercise such a purchase option shall not be displaced as a result of the conversion.
- (e) The remaining portion of Affordable AFFH Units shall be home-ownership units affordable to and occupied by households with incomes at or below eighty (80) percent of AMI and shall be controlled by deed restrictions or other legal measures to ensure that they remain affordable to and occupied by eligible households for a period of no less than fifty (50) years. Affordable as used in this subparagraph shall mean no more than thirty-three (33) percent of the adjusted income of a family whose annual income equals eighty (80) percent of the AMI for principal, interest, taxes, insurance, and condo fees where applicable, based on a no more than forty-year fixed-rate mortgage with a down payment of five (5) percent.
- (f) No more than twenty-five (25) percent of the Affordable AFFH Units shall be units intended for occupancy by senior citizens that are controlled by age restrictions ("senior units"). No funds governed by this Stipulation and Order shall be used for such senior units until at least one hundred seventy-five (175) non-senior units meeting all of the criteria specified in this paragraph have received building permits, and no funds governed by this Stipulation and Order shall be used for any senior unit above a total of ninety (90) senior units until three hundred fifty (350) non-senior units have received building permits.
- (g) In the County's facilitation of the development of the Affordable AFFH Units, priority shall be given to sites within qualifying municipalities and census tracts that are located in close proximity to public transportation. No sites,

however, shall be excluded from consideration because of lack of public transportation access.

- (h) No more than twenty-five (25) percent of the total number of Affordable AFFH Units described in this paragraph may be achieved through the acquisition of existing housing units, provided that:
  - (i) all such units shall meet all terms and conditions set forth in this paragraph;
  - (ii) no such units, before acquisition, may be controlled by a deed restriction or other legal measure to be affordable to households with incomes at or below eighty (80) percent of AMI; and
  - (iii) if any such units, before acquisition, are affordable to households with incomes at or below eighty (80) percent of AMI, they shall be made affordable, after acquisition, through deed restrictions or other legal measures that ensure they remain affordable to and occupied by households with incomes at or below sixty-five (65) percent of AMI for a period of no less than fifty (50) years.
- (i) The County shall use all available means as appropriate to achieve the objectives set forth in this paragraph, including, but not limited to, developing financial or other incentives for other entities to take steps to promote the objectives of this paragraph, and conditioning or withholding the provision of County funds on actions that promote the objectives of this paragraph. It is anticipated that the County will accomplish the objectives of this paragraph by leveraging the funds that it is expending pursuant to paragraphs 2, 3 and 5 with

supplemental funds, and nothing in this paragraph shall be construed to prevent the County from meeting the objectives of this paragraph by identifying and combining other affordable housing funding sources.

- (j) In the event that a municipality does not take actions needed to promote the objectives of this paragraph, or undertakes actions that hinder the objectives of this paragraph, the County shall use all available means as appropriate to address such action or inaction, including, but not limited to, pursuing legal action. The County shall initiate such legal action as appropriate to accomplish the purpose of this Stipulation and Order to AFFH.

8. Affordable units in housing developments that have received preliminary or final land use or financing approval at the time of the Court's entry of this Stipulation and Order shall be excluded from the Affordable AFFH Units described in paragraph 7. If a development with such units is no longer viable and the County believes it can resuscitate the development by providing financing or other specified means within the County's control, the County can seek inclusion of the units in such a development pursuant to paragraph 13(h). The County shall provide to HUD a list of housing units that are excluded pursuant to this paragraph contemporaneously with the execution of this Stipulation and Order.

**Implementation and Enforcement of  
the Settlement – Appointment of Monitor**

9. The Government, in its sole discretion but with input from the County, shall select a monitor to be appointed by the Court (the "Monitor"). The Government shall submit the name of the Monitor to the Court for approval within sixty (60) calendar days of the Court's entry of this Stipulation and Order.

10. The Monitor shall serve for so long as the County's obligations set forth in this Stipulation and Order remain unsatisfied. Upon the County's satisfaction of its obligations set forth in this Stipulation and Order, the Monitor shall inform the Court, the Government, and the County that the services of the Monitor are no longer needed.

11. If the Monitor is unable to complete the Monitor's term of office, the Government shall submit, after consultation with the County, another candidate to serve as Monitor for the Court's review and approval.

12. The Government, in its sole discretion, may remove and terminate the service of the Monitor. In such an event, the Government shall submit, after consultation with the County, another candidate to serve as Monitor for the Court's review and approval.

13. The Monitor shall have all powers, rights, and responsibilities necessary to achieve the AFFH purposes of this Stipulation and Order, including the authority to:

- (a) Review all County programs, policies, and procedures to ensure compliance with this Stipulation and Order.
- (b) Take reasonable and lawful steps to be fully informed about all aspects of the County's compliance with this Stipulation and Order. Specifically, the Monitor shall have access to all books, records, accounts, correspondence, files and other documents, and electronic records of the County and its officers, agents, and employees concerning the subject matter and implementation of this Stipulation and Order. It is recognized that the Monitor may have access to sensitive information; accordingly, the Monitor shall limit distribution of such information obtained hereby to representatives of the Department of Justice and HUD, and consultants and personnel retained by the Monitor. The

Monitor shall not have access to materials protected by the attorney-client privilege or the work-product doctrine.

- (c) Identify, recommend, and monitor implementation of additional actions by the County needed to ensure compliance with this Stipulation and Order.
- (d) Make recommendations, if needed, to the County and the Government of any remedies to foster compliance with applicable laws and regulations.
- (e) Seek outside expert technical assistance to review the County's actions, advise the County, and develop recommendations for County action. The County and HUD shall explore the availability of private funding to support such technical assistance.
- (f) Employ, in accordance with paragraph 17(b), personnel necessary to assist in the proper discharge of the Monitor's duties, including but not limited to a housing advisor.
- (g) Apply to the Court, upon reasonable notice to the County and the Government, for such assistance as may be necessary to the performance of the Monitor's duties. The Monitor shall provide the Government and the County with copies of the application and all accompanying materials.
- (h) Deem units otherwise excluded from the AFFH Affordable Units pursuant to paragraph 8 as AFFH Affordable Units based on compelling evidence provided by the County that, even though the units are in a development that previously received preliminary or final land use or financing approval, the development is no longer viable and the County can resuscitate the development in a manner that complies with the terms and conditions set forth



in paragraph 7 by providing financing or other specified means within the County's control.

14. The Monitor shall have the authority to resolve disputes between the County and the Government:

- (a) At all stages, the County and the Government pledge good faith to resolve their disputes with regard to the implementation of this Stipulation and Order.
- (b) In the event such efforts fail to resolve the dispute, the County and the Government shall, in writing and in accordance with such procedures as the Monitor may establish, notify the Monitor of the dispute.
- (c) The Monitor shall, within a reasonable time from receiving such notification, issue to the County and the Government a written report and recommendation addressing the matter(s) in dispute.
- (d) Within ten (10) business days of receipt of the Monitor's report and recommendation, the County or the Government may seek additional review from the magistrate judge assigned to this case; otherwise, the Monitor's resolution shall be final, binding and non-appealable. Should the County or the Government seek such additional review from the assigned magistrate judge, the relevant provisions of the Federal Rules of Civil Procedure, the Local Rules and the Court's Individual Rules governing reports and recommendations from a magistrate judge shall apply.

15. The Government and the County understand that the nature of real estate development, especially in the context of developing affordable housing, depends on a number of factors that cannot always be predicted or controlled. To address those uncertainties of real

estate development, the Monitor, consistent with the terms of paragraphs 28, 29, 39 and 40, shall conduct an assessment of the County's efforts and progress related to the obligations set forth in this Stipulation and Order, particularly those described in paragraph 7, to be completed on December 31, 2011 and every two years thereafter until the expiration of the Stipulation and Order. In making such an assessment, the Monitor may consider any information appropriate to determine whether the County has taken all possible actions to meet its obligations under this Stipulation and Order, including, but not limited to, exploring all opportunities to leverage funds for the development of the Affordable AFFH Units, promoting inclusionary and other appropriate zoning by municipalities by offering incentives, and, if necessary, taking legal action.

- (a) For one hundred eighty (180) calendar days following each such assessment, the Monitor shall have the authority, after having first secured the written consent of the Government and the County, to modify or refine:
  - (i) paragraph 5 to the sole extent of specifying an allocation of the resources specified therein among uses such as the purchase of land, infrastructure improvements, construction, or other necessary development activities;
  - (ii) the applicability of sub-paragraph 7(a)(ii) to the sole extent of authorizing development of Affordable AFFH Units in census blocks otherwise precluded by that sub-paragraph upon a written finding by the Monitor that to do so would not be inconsistent with the purpose of this Stipulation and Order to AFFH;
  - (iii) the locational criteria set forth in sub-paragraph 7(a), in the event that the Monitor determines that such locational criteria do not serve the purpose

of the Stipulation and Order to AFFH, to take into account 2010 Census data in the determination of eligible municipalities and census blocks set forth in paragraphs 7(a), 7(b), and 7(c), or to remedy a concentration or other issue related to the geographic distribution of the Affordable AFFH Units that does not serve the purpose of the Stipulation and Order to AFFH, except no municipality included under the calculations set forth in paragraphs 7(a), 7(b), or 7(c) shall be excluded after modification or refinement to those subdivisions;

- (iv) the terms, conditions and criteria set forth in sub-paragraphs 7(d) and 7(e) that govern the development of Affordable AFFH Units;
- (v) the benchmarks described in paragraph 23 and the interim or final time frames in which the Affordable AFFH Units must be developed, provided that the Monitor determines that the County has employed best efforts and has taken all appropriate actions within its control to meet its obligations, but, due to factors outside of the County's control, the County will not be able to meet those obligations;
- (vi) the number of Affordable AFFH Units described in paragraph 7, provided that: (A) such modification or refinement occurs no earlier than four years following the entry of the Stipulation and Order, and no earlier than two years after the Monitor has first modified or refined the final time frames in which the Affordable AFFH Units must be developed; and (B) the County has provided compelling evidence and the Monitor finds that the County has taken all appropriate actions to

meet the obligations set forth in paragraph 7, further extension of the time frames will not be sufficient to permit the possible satisfaction of the County's obligations, and specific factors beyond the County's influence or control exist that preclude the County's satisfaction of its obligations; and

- (vii) the AFFH obligations described in paragraph 33.
- (b) The Monitor, however, shall have no authority to modify or refine any other provisions of this Stipulation and Order.
- (c) The Monitor shall provide the Government and the County written notification of any proposed modifications or refinements, upon recommendation of either the Government or the County or in the Monitor's discretion, and all decisions concerning those proposed modifications or refinements.
- (d) In the event that the Government and the County provide the requisite consent, modifications or refinements approved by the Monitor shall be submitted to the Court to be so-ordered and incorporated into this Stipulation and Order.
- (e) The County, within ten (10) business days of receipt of notice pursuant to sub-paragraph 15(c), may seek review with the magistrate judge assigned to this case where the Government has refused to provide consent or the Monitor has refused to approve a proposal from the County. Should the County seek such review with the assigned magistrate judge, the relevant provisions of the Federal Rules of Civil Procedure, the Local Rules, and the Court's Individual Rules governing reports and recommendations from a magistrate judge shall apply.

- (f) The Government, within twenty (20) business days of receipt of notice pursuant to sub-paragraph 15(c), may seek review with the magistrate judge assigned to this case where the County has refused to provide consent or the Monitor has refused to approve a proposal from the Government. Should the Government seek such review with the assigned magistrate judge, the relevant provisions of the Federal Rules of Civil Procedure, the Local Rules, and the Court's Individual Rules governing reports and recommendations from a magistrate judge shall apply.

16. The County shall direct all County officers, employees, agents, and consultants to cooperate fully with the Monitor concerning any matter within the Monitor's jurisdiction as set forth in this Stipulation and Order, including providing any documents requested by the Monitor and submitting to interviews by the Monitor.

17. The County shall, out of funds exclusive of the amounts identified in paragraphs 2-5, 33(h) and 38, pay for the Monitor and all necessary personnel and consultants retained by the Monitor to assist in the proper discharge of the Monitor's duties. The Monitor and any persons retained by the Monitor shall receive reasonable compensation comparable to that received by personnel and consultants of similar skill and experience, as well as reimbursement for any reasonable expenses necessary to the performance of the Monitor's role.

- (a) On a monthly basis, the Monitor shall submit to the County an itemized invoice, with supporting material, for services and expenses. The Monitor shall also certify that the Monitor's expenses were reasonably incurred. The County shall have ten (10) business days from receipt in which to contest the invoice by filing a written objection with the Monitor. If the Monitor and the



County are unable to resolve any objections, the Monitor shall refer the matter to the assigned magistrate judge for decision. If no objection is submitted, the County shall pay all amounts due within fifteen (15) business days of receipt and, if a written objection is filed, all amounts not in dispute shall be paid as provided above.

- (b) During the first two years following the entry of this Stipulation and Order, the Monitor shall incur no more than \$250,000 in annual fees and expenses for which the County is responsible, and no more than \$175,000 in such fees and expenses annually thereafter, provided that the Monitor may make an application to the magistrate judge to incur fees and expenses for which the County shall be responsible beyond those amounts upon a showing by the Monitor that such fees are appropriate to fulfill the obligations set forth in this Stipulation and Order.

**The County's Implementation Plan, Benchmarks,  
Additional Obligations to AFFH, and AI**

18. The County shall, within one hundred twenty (120) calendar days of the Court's entry of this Stipulation and Order, provide to the Monitor and the Government a plan setting forth with specificity the manner in which the County plans to implement the provisions of this Stipulation and Order, set forth in paragraph 7, concerning the development of Affordable AFFH Units (the "implementation plan"). Provided that the Government, in its sole discretion, provides written consent, the Monitor may extend the deadline once for the submission of the implementation plan.

19. The implementation plan shall include, *inter alia*, proposed timetables and benchmarks for the first six-month and one-year periods and for each year thereafter.

20. Upon receipt of the County's proposed implementation plan, the Monitor shall review it and, in the Monitor's discretion and based upon such outside expertise and consultants as the Monitor deems necessary, accept or reject the proposed plan. In the event that the Monitor rejects the County's implementation plan:

- (a) The Monitor shall, within twenty (20) calendar days of rejecting the plan, meet with the County and the Government.
- (b) At that meeting, the Monitor shall identify with specificity the deficiencies that led to the rejection and potential cures that should be incorporated into the implementation plan.
- (c) The County shall have ten (10) business days after that meeting to submit to the Monitor a revised implementation plan for the Monitor's review and acceptance or rejection.
- (d) In the event that the Monitor deems the revised plan submitted by the County insufficient to accomplish the objectives and terms set forth in this Stipulation and Order, the Monitor shall specify revisions or additional items that the County shall incorporate into its implementation plan.

21. Following the Monitor's approval and acceptance of the implementation plan, the County shall incorporate the implementation plan into its AI.

22. In developing the implementation plan, the County shall, among other activities it deems appropriate and in consultation with the Monitor:

- (a) Assess the availability of vacant land suitable for development and adaptive reuse opportunities in the municipalities that meet the locational criteria described in paragraphs 7(a), 7(b), and 7(c), with consideration given to the way in which the available sites provide or have the potential to provide access to services and facilities that will promote sustainable, inclusive communities, such as employment and educational opportunities, medical and other family services, and public transportation.
- (b) Conduct meetings with developers (for-profit and non-profit) and property owners (including office park owners) to determine their interest in furthering developments that will AFFH.
- (c) Conduct meetings with key local officials in each of the municipalities that meet the locational criteria set forth in paragraph 7(a) to explore potential development opportunities.
- (d) Conduct meetings with the New York State Division of Housing and Community Renewal and the New York State Housing Finance Agency to explore opportunities for targeted state financing for projects that will implement the provisions of this Stipulation and Order Settlement, as well as other forms of state assistance.
- (e) Explore and implement mechanisms by which the monies made available pursuant to paragraphs 2, 3 and 5, and proceeds from the expenditure of those funds, can be placed in a revolving fund dedicated to the development of Affordable AFFH Units. To the extent there are obstacles to doing so, the

County shall identify the obstacles in writing to the Monitor and any steps that can be taken to overcome the obstacles.

- (f) Assess the means by which the County can maximize the development of Affordable AFFH Units in the eligible municipalities and census blocks with the lowest concentrations of African American and Hispanic residents.

23. To ensure the satisfaction of the goals set forth in paragraph 7, the County shall meet the following interim benchmarks:

By end of calendar year	Sites with financing in place (number of units)	Units with building permits
2010		
2011	100	50
2012	200	125
2013	300	225
2014	450	350
2015	600	525
2016	750	750

24. The County's implementation plan shall include the benchmarks set forth in paragraph 23 and specify steps and activities that will be needed to meet those benchmarks. The Monitor, upon acceptance of the County's implementation plan, may designate any elements of the plan as benchmarks that shall be incorporated into this Settlement and shall be enforceable in the same fashion as the other terms of this Stipulation and Order.

25. To facilitate the development of the Affordable AFFH Units, the County shall include in the implementation plan:

- (a) A "model ordinance" that the County will promote to municipalities to advance fair housing. The model ordinance shall include, *inter alia*:

- (i) a model inclusionary housing ordinance that requires new development projects to include a certain percentage of affordable units, including criteria and standards for the affordable housing units and definitions of who is eligible for affordable housing;
  - (ii) standards for affirmative marketing of new housing developments to ensure outreach to racially and ethnically diverse households;
  - (iii) standards for expedited review of proposals for affordable housing that AFFH including procedures for streamlining the approval process for the design, permitting, and development of these units; and
  - (iv) standards for legal mechanisms to ensure continued affordability of new affordable units.
- (b) A CDBG allocation process/plan designed to promote activities that AFFH, including such steps as providing priority to projects that further the development of AFFH affordable housing units as set forth in paragraph 7, and providing incentives and priority to municipalities throughout the County that take actions that further fair housing.
- (c) A commitment to amend County Law to eliminate a municipality's right of "first refusal" with respect to Fair Housing or Affordable Housing land purchases by the County.
- (d) A policy to condition, as appropriate, the use of public funds and resources, including, but not limited to, CDBG funds and the County Open Space funds, by municipalities on commitments included in the funding agreement between the County and the municipalities that the municipalities shall, *inter alia*:

- (i) ban local residency requirements and preferences and other selection preferences that do not AFFH;
- (ii) offer the County a “right of first refusal” to retain and/or purchase land acquired in rem to be used for affordable housing that AFFH; and
- (iii) actively further implementation of this Stipulation and Order through their land use regulations and other affirmative measures to assist development of affordable housing.

26. The County may propose amendments to the implementation plan, which shall be subject to the Monitor’s review and approval pursuant to paragraph 20.

27. The County shall, within one hundred twenty (120) calendar days of the entry of this Stipulation and Order, amend the Long Range Land Use Policies as contained in Westchester 2025 to embody the goals of this Stipulation and Order, as well as the substantive provisions of the model ordinance described in paragraph 25(a) and the policy statement adopted pursuant to paragraph 31.

28. The County shall, beginning March 31, 2010, prepare reports for the Monitor and the Government on a quarterly basis providing all information the County believes is relevant to its implementation efforts and all information deemed necessary by the Monitor. The Monitor shall, no later than February 1, 2010, prepare a template report for the County to follow. In addition to all items identified by the County and the Monitor, the quarterly reports shall include:

- (a) the location of the Affordable AFFH Units (i) for which there are sites with financing in place, (ii) which are under construction, and (iii) which are completed, and the racial and ethnic demographic information of the municipality and the census block in each location; and



- (b) racial and ethnic demographic information of the occupants of the Affordable AFFH Units.

29. If the County believes that market conditions or other circumstances outside of the County's influence or control will prevent it, or have prevented it, from meeting its obligations under this Stipulation and Order, the County shall, as soon as possible, but in no event later than the submission of its next quarterly report, notify the Monitor in writing. The County's submission shall provide sufficient information for the Monitor to assess the obstacles to compliance, the County's actions, and the results of those actions.

30. All reports prepared by the County pursuant to this Stipulation and Order shall be publicly available.

31. The County acknowledges the importance of AFFH, and shall adopt, within ninety (90) calendar days after the date of the Court's entry of this Stipulation and Order, a policy statement providing that:

- (a) the elimination of discrimination, including the present effects of past discrimination, and the elimination of de facto residential segregation are official goals of the County's housing policies and programs;
- (b) AFFH significantly advances the public interest of the County and the municipalities therein; and
- (c) the location of affordable housing is central to fulfilling the commitment to AFFH because it determines whether such housing will reduce or perpetuate residential segregation.

32. The County shall complete, within one hundred twenty (120) calendar days of the entry of this Stipulation and Order, an AI within its jurisdiction that complies with the guidance

in HUD's Fair Housing Planning Guide, *see* U.S. Dept. of HUD, Fair Housing Planning Guide (1996). The AI must be deemed acceptable by HUD. The County shall take all actions identified in the AI. In the AI, the County shall:

- (a) commit to collecting data and undertaking other actions necessary to facilitate the implementation of this Stipulation and Order; and
- (b) identify and analyze, *inter alia*:
  - (i) the impediments to fair housing within its jurisdiction, including impediments based on race or municipal resistance to the development of affordable housing;
  - (ii) the appropriate actions the County will take to address and overcome the effects of those impediments; and
  - (iii) the potential need for mobility counseling, and the steps the County will take to provide such counseling as needed.

33. As part of its additional obligations to AFFH, the County also shall:

- (a) solicit CDBG proposals that would AFFH from community leaders, public interest groups, and others;
- (b) advertise the rights of all persons to fair housing and avenues to redress allegations of housing discrimination, including informing the public that complaints may be filed with the Westchester County Human Rights Commission ("HRC") and requiring County agents to refer housing discrimination complaints and any information about possible violations of fair housing laws to the HRC and to HUD;

- (c) create and fund campaigns to broaden support for fair housing and to promote the fair and equitable distribution of affordable housing in all communities, including public outreach specifically addressing the benefits of mixed-income housing and racially and ethnically integrated communities;
- (d) educate realtors, condominium and cooperative boards, and landlords with respect to fair and affordable housing activities;
- (e) affirmatively market affordable housing within the County and in geographic areas with large non-white populations outside, but contiguous or within close proximity to, the County, and include in all agreements between the County and a developer requirements that the developer meet these same affirmative marketing requirements and hire consultant(s) to carry out outreach activities, where appropriate;
- (f) centralize the intake of potential home buyers for affordable housing that AFFH, working in conjunction with local not-for-profit organizations and community organizations, and through that centralized service provide, *inter alia*, information concerning home-buyer counseling, community resources, job data by municipality, affordable housing developments under construction and in development;
- (g) promote, through the County Executive, legislation currently before the Board of Legislators to ban “source-of-income” discrimination in housing;
- (h) pay for consultants and public education, outreach, and advertising to AFFH, as described in this paragraph, out of County resources and CDBG funds over

five years, exclusive of the amounts set forth in paragraphs 2, 3 and 5, in an amount not less than four hundred thousand dollars (\$400,000); and

- (i) incorporate each undertaking set forth in this paragraph in the County's AI.

**Penalties for Non-Payment and Non-Compliance**

34. The County shall be in default of this Stipulation and Order if it fails to make the payment set forth in Paragraph 3 on or before its due date. The United States shall provide written notice of the default, and the County shall have an opportunity to cure such default within five (5) business days from the date of its receipt of the notice. Notice of default shall be sent by e-mail and overnight mail to the undersigned attorneys for the County. If the County fails to cure the default within five (5) business days, the Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of twelve (12) percent per annum compounded daily from the date of default on the remaining unpaid principal balance. The County shall consent to a Consent Judgment in the amount of the unpaid balance, and the United States, at its option, may:

- (a) rescind this Stipulation and Order and reinstate the Government's Complaint-in-Intervention filed in this action;
- (b) seek specific performance of the Stipulation and Order;
- (c) offset the remaining unpaid balance from any amounts due and owing the County by any department, agency or agent of the United States at the time of default; or
- (d) exercise any other rights granted by law, or under the terms of this Stipulation and Order, or recognizable at common law or in equity.

35. The County shall not contest any offset imposed nor any collection action undertaken by the United States pursuant to paragraph 34, either administratively or in any state or federal court.

36. The County shall pay the United States all reasonable costs of collection and enforcement under paragraph 34, including attorneys' fees and expenses.

37. In the event that the United States opts to rescind this Stipulation and Order, the County expressly agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the allegations in the Government's Complaint, except to the extent those defenses were available on the date of entry of this Stipulation and Order.

38. In the event that the County fails to comply with its obligations set forth in paragraph 7 or with the interim benchmarks for the development of the Affordable AFFH Units set forth in paragraph 23, the County shall, as further mandatory and injunctive relief, make available additional resources funded by thirty thousand dollars (\$30,000), exclusive of the amounts funded pursuant to paragraph 5, on the first day of the failure, for the development of affordable housing to AFFH in addition to the Affordable AFFH Units required pursuant to paragraph 7 ("Additional Affordable AFFH Units"). If, after thirty (30) calendar days, the failure to comply has not been remedied, the County shall, for each and every month the non-compliance persists, make available additional resources funded by sixty thousand dollars (\$60,000) for the development of Additional Affordable AFFH Units. The Monitor shall determine the formula for calculating the number of Additional Affordable AFFH Units required each time a specified amount in imposed penalties is accumulated. In the Monitor's discretion, the Monitor may waive or alter the imposition of penalties or the number of additional

Affordable AFFH Units required pursuant to this paragraph. In the event the County has failed to comply with the obligations set forth in paragraph 7 or with the interim benchmarks set forth in paragraph 23 by more than 50 percent, the penalties provided for in this paragraph shall be doubled.

**Reports to Court Concerning Implementation  
and Enforcement of Settlement**

39. The Monitor shall report to the Court in writing, with copies to the Government and the County, as often as the Monitor believes appropriate, but no less than every six months for the first two years after the Monitor's appointment and annually thereafter. Such report shall incorporate, when available, assessments undertaken pursuant to paragraph 15. The report to the Court shall address, *inter alia*:

- (a) the Monitor's activities;
- (b) observed or substantiated lapses in the County's compliance with the Stipulation and Order;
- (c) the adequacy of the County's implementation plan and efforts; and
- (d) recommended steps or activities to improve the County's performance.

40. Prior to the submission of such reports to the Court, the Monitor shall meet with representatives of the County and the Government to discuss compliance issues, recommendations for corrective action, and other matters included in the Monitor's reports to the Court.

**Releases**

41. Subject to the exceptions in paragraph 46, in consideration of the obligations of the County set forth in this Stipulation and Order, and conditioned upon the County's payment in



full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release the County from any civil or administrative monetary or injunctive claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, the Housing and Community Development Act, 42 U.S.C. § 5311, or under the common law or equitable theories of payment by mistake, unjust enrichment, constructive trust, misrepresentation, breach of contract, and fraud for the conduct alleged in the Relator's Complaint or the Government's Complaint.

42. Subject to the exceptions in paragraph 46, in consideration of the obligations of the County set forth in this Stipulation and Order, and conditioned upon the County's payment in full of the Settlement Amount, HUD releases the County, its officials, and employees from administrative liability pursuant to 2 C.F.R. Part 2424 and 24 C.F.R. Part 28 with respect to any and all allegations concerning the County's failure to comply with its certification to AFFH in connection with its participation in the CDBG and HOME programs through the date of execution of this agreement by HUD. This release does not extend to any conduct that occurs after such date.

43. Subject to the exceptions in paragraph 46, in consideration of the obligations of the County set forth in this Stipulation and Order, and conditioned upon the County's payment in full of the Settlement Amount, HUD agrees to refrain from instituting, directing, or maintaining any suspension or debarment action under 24 C.F.R. Part 2 against the County based on the conduct alleged in the Relator's Complaint or the Government's Complaint. Nothing in this Stipulation and Order precludes HUD from:

- (a) taking enforcement actions pursuant to the Fair Housing Act (42 U.S.C. § 3601-18), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. § 5309), their implementing regulations, or any other appropriate non-discrimination or equal opportunity law or regulation, including, but not limited to, limiting future grant awards; or
- (b) taking action against entities or persons, or for conduct and practices, for which claims have been reserved in paragraph 46.

44. The County agrees to the following:

- (a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of the County, and its present or former officers, directors, employees, shareholders, and agents in connection with:
  - (i) the matters covered by this Stipulation and Order;
  - (ii) the United States' audit(s) and civil investigation(s) of the matters covered by this Stipulation and Order;
  - (iii) the County's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Stipulation and Order (including attorneys' fees);
  - (iv) the negotiation and performance of this Stipulation and Order;

- (v) the payment that the County makes to the United States pursuant to this Stipulation and Order and any payments that the County may make to Relator, including costs and attorneys' fees, are unallowable costs for government contracting purposes (hereinafter referred to collectively as "Unallowable Costs").
- (b) Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by the County, and the County shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.
- (c) Treatment of Unallowable Costs Previously Submitted for Payment: The County further agrees that within 90 calendar days of the entry of this Stipulation and Order it shall identify any Unallowable Costs included in payments previously sought by the County from the United States. The County agrees that the United States, at a minimum, shall be entitled to recoup from the County any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs in any such payments. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the County regarding any Unallowable Costs included in payments previously sought by the County, or the effect of any such Unallowable Costs on the amount of such payments.
- (d) Nothing in this Stipulation and Order shall constitute a waiver of the rights of the United States to audit, examine, or re-examine the County's books and

records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

45. The County agrees to release the United States, its agencies, departments, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated), that the County has asserted, could have asserted, or may assert in the future against the United States or its agencies, departments, employees, servants, and agents related to the matters covered by the Government's Complaint, and the United States' investigation and prosecution thereof and this Stipulation and Order.

46. Notwithstanding the releases given in paragraphs 41 and 43, or any other term of this Stipulation and Order, the United States does not release or discharge the County, including the County's employees, agents, representatives, subdivisions, and agencies, from:

- (a) any liability arising under the Internal Revenue Code, Title 26 of the United States Code, and the regulations promulgated thereunder;
- (b) except as explicitly stated in this Stipulation and Order, any administrative liability, including the suspension and debarment rights of any federal agency;
- (c) any liability to the United States (or its agencies) for any conduct other than the conduct alleged in the Government's Complaint; or
- (d) any obligations created by this Stipulation and Order.

#### **Miscellaneous Provisions**

47. This Stipulation and Order is intended to be for the benefit of the parties to this Stipulation and Order only, and by this instrument the parties to this Stipulation and Order do not release any claims against any other person or entity, except as expressly provided by this Stipulation and Order.

48. None of the amounts that the County must pay pursuant to paragraphs 2, 3, 4, 5, 33(h), or 38, except to the extent specified in those paragraphs, shall come from funds received by the County from any federal programs, grants or contracts, and the County certifies and warrants that such payment is not being and shall not be made from any such federal funds.

49. The County will retain all material records relating to the conduct alleged in the Government's Complaint in their original form for no less than six (6) years after the Court's entry of this Stipulation and Order. Before the expiration of the six-year period and before disposing of any records covered by this paragraph, the County will consult with the United States Attorney's Office for the Southern District of New York concerning the continuing need for preserving such records. The County shall make such records, subject to redactions of privileged material, available to the United States upon written request.

50. Each party to this Stipulation and Order shall bear its own legal and other costs incurred in connection with this matter, including costs incurred in connection with the preparation and performance of this Stipulation and Order, except as provided in paragraph 4.

51. This Stipulation and Order is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute arising between and among the parties under this Stipulation and Order as it relates to this action will be the United States District Court for the Southern District of New York.

52. This Stipulation and Order sets forth the entire agreement and understanding among the parties, and fully supersedes any and all prior agreements or understandings among the parties pertaining to the subject matter hereof.

53. With the exception of modifications made by the Monitor pursuant to paragraph 15, this Stipulation and Order may not be supplemented, modified, canceled, or waived or otherwise altered in any way, in whole or in part, except in writing, by the United States and the County.

54. The undersigned representatives of the parties certify that they are authorized by the parties to enter into and consent to the terms and conditions of the Stipulation and Order, and to execute and bind the parties to it. In particular, the individuals signing this Stipulation and Order on behalf of the County represent and warrant that they are authorized by the County Executive to execute this Stipulation and Order, subject to final approval of the Stipulation and Order by the County Legislature as set forth in paragraph 55. The United States and HUD signatories represent and warrant that they are signing this Stipulation and Order in their official capacities.

55. This Stipulation and Order is subject to and conditioned upon:

- (a) approval by a simple majority of the County's Board of Legislators; and
- (b) approval of a Bond Act in the amount of \$32.9 million by a two-thirds majority of the County's Board of Legislators.

56. In the event that the County's Board of Legislators fails to provide the necessary approvals within forty-five (45) calendar days of the Court's entry of this Stipulation and Order, the Stipulation and Order shall be null and void. In such an event, trial of this action shall proceed at the Court's earliest convenience.

57. Subject to and upon receipt of the Settlement Amount, the Relator's Complaint and the Government's Complaint shall be dismissed with prejudice, with each party to bear its own attorneys' fees and costs, except as provided in paragraph 4. The dismissal of this action shall be subject to paragraph 46.

58. Notwithstanding any other provisions of this Stipulation and Order, this Court shall retain exclusive jurisdiction over this Stipulation and Order, including, but not limited to, any application to enforce or interpret its provisions, and over each party to the extent its obligations herein remain unsatisfied.

59. Each party and signatory to this Stipulation and Order represents that it freely and voluntarily enters in to this Stipulation and Order without any degree of duress or compulsion.

60. This Stipulation and Order may be executed in one or more original, facsimile or PDF counterparts, each of which constitutes an original and all of which constitute one and the same agreement. For purposes of this Stipulation and Order, signatures transmitted by facsimile or PDF shall constitute acceptable, binding signatures.

61. The effective date of this Stipulation and Order is the date on which this Stipulation and Order is entered by this Court.

SO ORDERED:

  
\_\_\_\_\_  
DENISE L. COTE  
UNITED STATES DISTRICT JUDGE

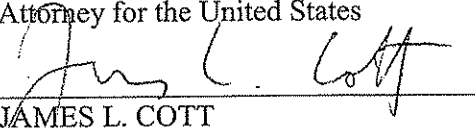
*August 10, 2009*



Dated: New York, New York  
August 7, 2009

LEV L. DASSIN  
Acting United States Attorney for the  
Southern District of New York  
Attorney for the United States

By:

  
JAMES L. COTT  
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Dated: Washington, D.C.  
August       , 2009

UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT

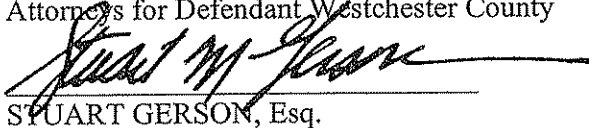
By:

\_\_\_\_\_  
RON SIMS  
Deputy Secretary for the U.S. Department of  
Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410

Dated: Washington, D.C.  
August 7, 2009

EPSTEIN BECKER & GREEN  
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Dated: White Plains, New York  
August 7, 2009

WESTCHESTER COUNTY

By:


  
ANDREW SPANO  
Westchester County Executive  
148 Martine Avenue  
White Plains, New York 10601  
Telephone: 914-995-2900  
Fax: 914-995-3372

Dated: New York, New York  
August \_\_\_\_\_, 2009

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By: \_\_\_\_\_  
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Dated: Washington, D.C.  
August 6, 2009

UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
By:   
RON SIMS  
Deputy Secretary for the U.S. Department of  
Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410

Dated: Washington, D.C.  
August \_\_\_\_\_, 2009

EPSTEIN BECKER & GREEN  
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Dated: White Plains, New York  
August \_\_\_\_\_, 2009

WESTCHESTER COUNTY  
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