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February 9, 2021

Hon. Denise Cote
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 18B
New York, NY 10007
Via ECF

Re: United States *ex rel.* Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York (No. 06 Civ. 2860 (DLC))

Dear Judge Cote:

This letter is respectfully submitted on behalf of Westchester County in response to Your Honor's January 27, 2021 Order (Doc. 733), and the Monitor's Assessment of Westchester County's Compliance, dated January 26, 2021 (Doc. 731-32) ("Monitor's Assessment").

Having reviewed the Monitor's Assessment, the County concurs with its findings and conclusions regarding the County's compliance with the terms of the Settlement. As the Monitor notes, the County has fully completed 723 of the 750 units, and anticipates the completion of 28 additional units this quarter, which will put the County over the 750 unit threshold. (Monitor's Assessment at 10). Upon completion of these additional units, the County will inform the Court, the Monitor, and the Government of the completion of this final milestone.

The County also appreciates the Monitor's recognition of the change in administration at the County, and the commitment of this administration to advancing fair and affordable housing throughout the County. As the Monitor recognizes throughout the Assessment, the County has taken steps above and beyond what is required by the Settlement, including funding and supporting over 900 units of fair and affordable housing (Monitor's Assessment at 10-11), commissioning, publicly releasing, and promoting a Housing Needs Assessment (*id.* at 9), and reestablishing the Urban County Consortium to bring CDBG funds back into Westchester (*id.* at 26).

In addition the County would like to take this opportunity to provide a brief response to the letter filed by the Anti-Discrimination Center, Inc. ("ADC"), in response to the Monitor's Assessment. (Doc 734). This is not the first time that ADC has sought to interject itself into the question of how the Settlement should be interpreted. In 2011, ADC filed a motion to intervene (Doc. 348) and simultaneously filed a motion to enforce the Settlement (Doc. 343). ADC's motion to intervene was denied, the Court

concluding that "ADC has no greater status than any other stranger to this litigation." (Doc. 389 at 15 ["*Intervention Decision*"]). The Court concomitantly denied the motion to enforce for lack of standing. (*Id.* at 16). In 2016, ADC again attempted to assert itself into this matter, by filing a lengthy letter with exhibits and requesting it be accepted as an *amicus* submission. (Doc. 592). After Your Honor ordered briefing[1] by the Monitor and the parties on whether or not the submission should be considered, ADC's request to make an *amicus* submission was denied. (Doc. 654 ["*Amicus Decision*"]).

The current submission by ADC to the Court is essentially a rehash of arguments raised in their prior papers; arguments which the Court declined to consider on two separate occasions. ADC's arguments fall into several categories: (1) its displeasure with the units that the County has developed (*see* Doc. 734 at 3); (2) its insistence that the County is required to sue local municipalities to change zoning ordinances under Paragraph 7(j) (*see id.* at 5); (3) allegations that the Monitor and the Government have failed in their duties to oversee and enforce the Settlement (*see generally*, *id.*); and (4) its desire to extend and expand the requirements of the Settlement and impose new obligations on the County that cannot be found within the Settlement itself (*see id.* at 10-11). Each of these arguments has been raised and rejected before, and should be again.

ADC's arguments regarding the County's units were raised in both 2011 motions (Doc. 345 at Point VI; Doc. 349 at Point II) and the 2016 letter (Doc. 592 at 14).[2] ADC's arguments regarding Paragraph 7(j) of the Settlement were similarly brought up in all three of these documents (Doc. 345 at 13; Doc. 349 at 12; Doc. 592 at 6-9). Moreover, ADC's arguments regarding Paragraph 7(j) have already been foreclosed by a prior decision of this Court, which has specifically held that the requirements of Paragraph 7(j) are tied to the development of the 750 units, not amorphous municipal opposition to affordable housing. (Doc. 609 at 50 ["a municipality may express general opposition to affordable housing without triggering the duties in ¶ 7(j)."]). ADC's objections to the efforts of the Monitor and the Government formed the fundamental underpinning of its prior submissions, and have also been rejected by this Court. (*See Amicus Decision* at 4 ["The Monitor and the Government have litigated issues surrounding the Consent Decree for many years, and they continue to do so now."]). Further, just as with its prior submissions, ADC's most recent letter "significantly expands the issues before the Court and proposes extensive remedies." (*Id.*). Much like in 2016, "a just resolution of this action, including the appropriate enforcement of the Consent Decree, [does] not require exploration of new issues presented by ADC." (*Id.* at 5).

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[1] Should Your Honor feel that substantive briefing is warranted with respect to this current submission by ADC, the County will gladly provide a more fulsome discussion of the problems with ADC's submission.

[2] In those submissions, ADC attacked the parties and the Monitor for not utilizing the 2010 Census data to determine unit siting. Now, ADC not only attacks reliance on the 2000 Census data (which the Settlement expressly provided for), but asks for relief utilizing the *2020* Census data (Doc. 734 at 10-11), which is not even available. As discussed at length in prior submissions, there was no need to switch from the 2000 to 2010 Census data (*see* Doc. 630 at 25 ["The Monitor elected not to take into account the 2010 data because he determined there was no evidence of significant demographic shifts among the 31 municipalities that would materially affect the" purpose of the Settlement.]). There is certainly no reason to now utilize the 2020 Census data, which is not mentioned *at all* in the Settlement, just because the Monitor made the well-reasoned decision not to utilize the 2010 data.

The reality is that the Settlement—entered into between the County and the Government—contained express terms covering the County's obligations. Throughout the term of the Settlement, the Monitor has reviewed and reported on the County's compliance, requested relief when believed to be necessary, and where there were disputes, the County and the Government followed the dispute resolution process contained in the Settlement. The Monitor, the Magistrate Judge, this Court, and the Second Circuit have devoted hundreds of pages of analysis to resolving disputes between the parties on the meaning and requirements of provisions of the Settlement. ADC, just like "any other stranger," should not be able to interject its own views on what the County should or should not have done. Moreover, as has been discussed by the Monitor, the Government, and the County at length in response to prior submissions by ADC, the arguments advanced again by ADC do not actually track the language of the Settlement, do not add meaningful perspective to this matter, and do not satisfy the standards which generally govern the acceptance of *amici* submissions. (*See* Docs. 626, 628, 630).

Thus, permitting ADC to submit an *amicus* submission would serve only to distract from "a just resolution of this action" (*Amicus Decision* at 5) and would not provide "a unique perspective that can assist the Court beyond the help that the lawyers for the parties are able to provide" (*id.* at 4). Instead, the County respectfully requests that this Court reject ADC's submission, and accept the Monitor's Assessment in full.

Respectfully submitted,

/s/John M. Nonna
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