UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* ANTI-DISCRIMINATION CENTER OF METRO NEW YORK, INC.,	:	No. 06 Civ. 2860 (DLC)
Plaintiff,	:	ECF Case
v.	:	
WESTCHESTER COUNTY, NEW YORK,	:	
Defendant.	:	

MONITOR'S REPORT AND RECOMMENDATION REGARDING DISPUTE RESOLUTION (AMENDED)

In accordance with paragraph 14(c) of the August 10, 2009 Stipulation and Order of Settlement and Dismissal in this matter ("Settlement"), the Monitor hereby submits this report regarding the disputes referred for resolution by Westchester County ("County") and the United States ("Government").

The Settlement sets forth a list of required actions the County must take. Emphasized throughout the Settlement is the County's obligation to affirmatively further fair housing. The County is also required to submit an Analysis of Impediments to Fair Housing Choice ("AI") that is deemed acceptable by the U.S. Department of Housing and Urban Development ("HUD"). *See* paragraph 32.[1]

In the course of working toward an acceptable AI,[2] the parties have both requested, pursuant to paragraph 14(b) of the Settlement, that the Monitor resolve their disputes concerning two issues: (1) "Source of Income" legislation; and (2) local zoning practices. *See* July 20, 2011 letter from Kevin J. Plunkett on behalf of the County, attached hereto as Exhibit 1; August 18, 2011 letter from Benjamin H. Torrance on behalf of the Government, attached hereto as Exhibit 2. These are the only issues before the Monitor.

The County has requested findings on other issues largely related to the propriety of the rejection of the AI by HUD. This issue is not properly joined for resolution. Accordingly, neither the question of whether the County's July 2011 AI submission was

[1] Unless indicated otherwise, all paragraph citations refer to the Settlement.

[2] To date, HUD has rejected five iterations of the County's draft AI.

improperly rejected by HUD nor the question of the adequacy of the County's certification that it is affirmatively furthering fair housing is before the Monitor.

The parties have set forth their positions in both initial and reply submissions, which are attached hereto as Exhibit 3 (County's Statement of Position); Exhibit 4 (Government's Statement of Position); Exhibit 5 (County's Response); and Exhibit 6 (Government's Response). Upon review of these submissions and familiarity with the record, the Monitor issues this report and recommendation in connection with both disputed issues. For the reasons stated below, the Monitor finds that the County is in breach of its obligation to promote certain "Source of Income" legislation. The Monitor further finds that, under the terms of the Settlement, the County should analyze zoning ordinances in connection with the AI and it is appropriate that such analyses be completed by February 29, 2012.

I. "Source of Income" Legislation

Paragraph 33(g) of the Settlement requires that the County "promote, through the County Executive, legislation currently before the Board of Legislators to ban 'source-of-income' discrimination in housing." Paragraph 33(i) requires that this undertaking be incorporated in the County's AI.[3]

The relevant facts are not in dispute. At the time the County entered into the Settlement, the Board of Legislators ("BOL") had begun consideration of Source of

[3] In characterizing the content of the AI, the County states that the AI is to comply "with the guidance in HUD's Fair Housing Guide." This statement is incomplete. Both paragraphs 32 and 33 require additional elements in the AI.

Income legislation in a bill styled, "A Local Law amending the Laws of Westchester County, in relation to prohibiting housing discrimination based on source of income" ("Source of Income legislation"). After the Settlement was approved by the BOL in September 2009, then-County Executive Andrew J. Spano took two steps in support of the legislation then before the BOL. First, in October 2009, he wrote to the BOL leadership urging passage of the Source of Income legislation pending at the time. Second, a month later, Mr. Spano wrote letters to five housing advocacy organizations urging them to support and advocate for the pending legislation.[4] The parties have identified no other action by Mr. Spano to support the legislation.

The BOL did not vote on the measure before the legislative session expired on December 31, 2009, but the legislation was reintroduced shortly thereafter in the new session, on January 19, 2010. Over the next several months, the BOL considered the legislation in at least eight meetings, including four meetings of the full BOL and four committee meetings. The BOL also conducted hearings at which 39 speakers commented on the legislation. The County has offered no evidence that current County Executive Robert P. Astorino (who took office on January 1, 2010) participated in any of the BOL meetings or hearings in connection with the legislation. To the contrary,

[4] Mr. Spano wrote to Legal Services of the Hudson Valley/Westchester Residents Against Income Discrimination; Westchester Residential Opportunities, Inc.; Mount Vernon United Tenants; Human Development Services of Westchester; and Housing Action Council. *See* County's Statement of Position at 13.

Mr. Astorino's letter of July 28, 2010 demonstrates that the County Executive was absent from the public process by which the legislation was considered.[5]

The BOL passed Local Law 3-2010, an amended version of the Source of Income legislation, on June 14, 2010. County Executive Astorino vetoed that legislation on June 25, 2010.

The County submits that it is in compliance with paragraph 33(g) because the previous County Executive's actions in October 2009 sufficiently "promoted" the legislation. *See* County's Statement of Position at 12-16. The County proffers four principal arguments to support its position.

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[5] By letter dated June 28, 2010, the Monitor directed County Executive Astorino to provide additional information concerning his veto. Mr. Astorino's July 28, 2010 response is attached to the County's initial submission as Exhibit E. Excerpts from the letter follow, including the Monitor's prompts:

> 1. Identify all steps taken since January 1, 2010, to promote any Source of Income Legislation, including, but not limited to, Local Law 3-2010.
>
> None by the undersigned for several reasons, including among other things, that I considered that requirement of the Settlement to have been fulfilled by the actions of the former County Executive Andrew Spano and that a prior County Executive and prior County Board of Legislators cannot bind the thought process and discretion of a newly elected County Executive in this circumstance.
>
> 2. Identify all meetings, telephone calls or any other communication the County Executive had with any and all members of the BOL concerning Local Law 3-2010 and to provide the date, time, and participants in all such communications.
>
> There were no meetings that I recall. I had a few casual conversations individually with Legislators Thomas Abinanti, John Nonna and Martin Rogowsky at various events that we mutually attended.
>
> 3. Identify all alternatives to Local Law 3-2010 developed by, or at the direction of, the County Executive.
>
> None by County Executive Robert P. Astorino.

First, the County asserts that the Settlement does not require the adoption of Source of Income legislation, but "merely that the legislation currently pending in 2009 be promoted." *See* County's Statement of Position at 12. Second, the County argues that "the County Executive's obligation to 'promote' the legislation 'currently before' the Board of Legislators when the Settlement was signed in August 2009, ended when the County Board of Legislators' session expired December 31, 2009." *See* County's Response at 5. Third, the County argues that County Executive Astorino had legitimate grounds to exercise his right to veto the Source of Income legislation because the legislation would not "advance the cause of providing affordable housing in the County and through potential unintended consequences may even hinder that cause." *See* County's Response at 6 (quoting County Executive's veto message). Finally, the County contends that the introduction of new Source of Income legislation would be futile because the County has not identified Source of Income discrimination as an impediment to fair housing. *See* County's Statement of Position at 16.

The Government argues that the County has not met its obligations under paragraphs 33(g) and 33(i). *See* Government's Statement of Position at 2. The Government contends that the County's obligation to promote Source of Income legislation is a continuing one, because the Settlement directly links the promotion of a source-of-income ban to the County's obligation to affirmatively further fair housing. *See* Government's Statement of Position at 3; Settlement paragraph 33. Additionally, the Government argues that the County Executive's purported grounds for vetoing the

legislation are inconsistent and implausible. *See* Government's Statement of Position at 3.

The key questions for resolution of this issue are: (a) what does it mean to "promote" the Source of Income legislation through the County Executive; (b) over what period of time did that duty exist; and (c) did the County Executives discharge that duty.

Consent decrees, such as the Settlement, are court ordered agreements subject to general rules of contract interpretation. *Doe v. Pataki*, 481 F.3d 69, 75 (2d Cir. 2007) ("The basic principles governing interpretation of consent decrees and their underlying stipulations are well known. Such decrees reflect a contract between the parties (as well as a judicial pronouncement), and ordinary rules of contract interpretation are generally applicable.") (citations omitted); *see also Mastrovincenzo v. City of New York*, 435 F.3d 78, 103 (2d Cir. 2006). As contracts, consent decrees must be interpreted according to the plain meaning of the language and the normal usage of the terms selected. *See Travelers Cas. & Sur. Co. v. Dormitory Auth.-State of New York,* 735 F. Supp. 2d 42, 56 (S.D.N.Y. 2010) (Cote, J.) ("In interpreting a contract under New York law, words and phrases should be given their plain meaning, and the contract should be construed so as to give full meaning and effect to all of its provisions.") (citations omitted); *see also Mastrovincenzo*, 435 F.3d at 103; *Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985). A dictionary can supply the meaning for a word used in a contract. *See Anthracite Capital, Inc. v. MP–555 W. Fifth Mezzanine, LLC*, No. 03 Civ.5219, 2004 WL 27722, at *2 (S.D.N.Y. Jan. 6, 2004) (Cote, J.) (using Black's Law Dictionary to define the word "sale"); *see also Succo v. First Reliance Standard Life Ins. Co.*, 16 F. App'x 53, 55 (2d

Cir. 2001); *R/S Assocs. v. New York Job Dev. Auth.*, 98 N.Y.2d 29, 33 (2002). As with any other contract, the Settlement should be interpreted in light of its purpose. *Thompson v. Gjivoje*, 896 F.2d 716, 721 (2d Cir. 1990).

Under this standard, the County's arguments must be rejected. While it is true that the Settlement does not mandate the ultimate adoption of Source of Income legislation, the County's interpretation of its obligation to "promote" such legislation is far too limited as to both the nature of true "promotion" and the length of time over which promotion is to occur.

The American Heritage Dictionary defines "promote", in relevant part, as follows:

> 1. To help or encourage to exist or flourish; further . . .
> 2. To advance in rank, dignity, position, etc. (opposed to demote) . . .
> 4. To aid in organizing (business undertakings).
> 5. To encourage the sales, acceptance, etc., of (a product), especially through advertising or other publicity.[6]

In a different context, the Second Circuit recently stated that "[t]he ordinary meaning of 'promote' includes 'to bring or help bring into being,' to 'contribute to the growth, enlargement, or prosperity of,' or to 'encourage' or 'further.'" *United States v. Awan*, 607 F.3d 306, 314 (2d Cir. 2010) (citations omitted). This meaning, equally applicable here, simply cannot be squared with either County Executive's steps in connection with Local Law 3-2010 or its predecessor.

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[6] Am. Heritage Dictionary of the Eng. Lang. (4th ed.). In a similar vein, "promoter" is defined in Black's Law Dictionary (9th ed. 2009) as "a person who encourages or incites, or a founder or organizer of a corporation or business venture; one who takes the entrepreneurial initiative in founding or organizing a business or enterprise."

The County's position rests on the very thin reed of Mr. Spano's acts in support of the legislation. Neither the single letter to the BOL, nor the five letters to advocacy organizations, taken separately or together, can be credibly considered as acts sufficient "to help or encourage to exist or flourish", "to encourage the sales, acceptance, etc., of (a product), especially through advertising or other publicity", "to bring or help bring into being,' to 'contribute to the growth, enlargement, or prosperity of,' or to 'encourage' or 'further.'" Mr. Astorino stepped back from even Mr. Spano's limited effort at compliance and did nothing until the time of the veto, which vitiated any prior act of promotion and placed the County in breach of the Settlement.

The County argues that the duty to promote the Source of Income legislation was time limited and that the duty expired at the end of 2009 with close of the legislative session. That contention must also be rejected. First, the parties were meticulous throughout the agreement in setting time limits and deadlines, from the time periods within which the County was to complete the AI to the dates by which the financing and permits for housing units were to be provided.[7] Accordingly, the absence of any time limitation in paragraph 33(g) speaks volumes.

Moreover, the County's construction of this provision would lead to an unreasonable result in light of the structure of the obligations taken as a whole. The

[7] *See, e.g.*, paragraph 18 (providing that the County shall complete an implementation plan within 120 days of the entry of the Settlement); paragraph 23 (providing benchmarks for financing and building and permits for housing units); paragraph 27 (providing that the County shall, within 120 days, "amend the Long Range Land Use Policies as contained in Westchester 2025"); paragraph 31 (providing that the County shall adopt a policy statement within 90 days); paragraph 32 (providing that the County will submit an AI within 120 days); paragraph 44(c) (providing that the County shall, within 90 days, "identify any Unallowable Costs included in payments previously sought by the County from the United States").

Settlement calls upon the County to include in its AI the duty to promote the Source of Income legislation. Paragraph 33(i). The Settlement provides that the AI would be due 120 days after the Settlement was entered by the Court. Paragraph 32. Had the County not requested an extension, the earliest deadline for AI submission would have been December 9, 2009. The parties contemplated HUD review of the AI thereafter, leaving less than three weeks in which to promote the legislation before the legislative session ended. This is an unreasonable interpretation of the County's obligation. In the absence of an express limitation and in light of the provisions and purposes of the Settlement as a whole, the only reasonable interpretation of paragraph 33(g) would require promotion activity through the time either that the legislation was voted down or, if passed, signed by the County Executive.

The County's further arguments amount to either policy assertions, unsupported by analysis or, even less relevant, political claims based on the actions of, among others, former Governor David A. Paterson. *See* County's Statement of Position at 15. Citing *Horne v. Flores,* 129 S. Ct. 2579, 2594 (2009), the County argues that the County Executive properly rejected the Source of Income legislation because a requirement "that future County elected officials continue to promote 2009 proposed source of income legislation improperly deprives and interferes with their ability to respond to the priorities and concerns of their constituents and fulfill their duties as democratically elected officials." County's Statement of Position at 13. *Horne*, however, does not apply. It is distinguishable both on its facts and its procedural posture.

Here, the County Executive unilaterally interpreted a contractual provision and acted on that interpretation over the objection of the other party to the Settlement less than a year after the Settlement had been "so ordered" by the Court. *Horne*, by contrast, involved a declaratory judgment order, the objective of which had arguably been achieved in the years following its entry, and a subsequent contempt order. *Id.* at 2595, 2605-06. As a procedural matter, the party challenging the orders in *Horne* asked the district court to grant relief pursuant to Federal Rule of Civil Procedure 60(b)(5), based on changed circumstances. *Id.* at 2589, 2591. *Horne* does not stand for the proposition that a party may unilaterally abrogate its obligations under a court order. Nothing in *Horne* suggests that any party has the right to undertake an extra-judicial change of a consent decree's terms. Quite to the contrary, the course of "self-help" taken here raises the possibility of a contempt citation and the imposition of fines.

In sum, the Settlement requires the County Executive to continue to promote the Source of Income legislation. This duty went unfulfilled because the County Executive viewed the legislation as unwarranted. The County could have moved the Court for reconsideration of the consent decree. It did not. Nor is such reconsideration warranted. There is no legal support for the notion that self-help is an option. The County is in breach.

Pursuant to paragraph 13(c), the Monitor recommends that a reasonable interpretation of "promotion" of legislation could encompass, at a minimum, requesting that the legislature reintroduce the prior legislation, providing information to assist in analyzing the impact of the legislation, and signing the legislation passed. Should the

Government decide that it would like direction enforceable by contempt citation of the County's ongoing obligations, paragraph 58 provides that the Government has the right to seek specific performance of the Settlement by court order.

II. Zoning

Among other things, the Settlement requires the County to develop at least 750 AFFH Units (as that term is defined in the Settlement), to provide incentives to entities to assist the development of such units, to identify municipal resistance to such units and take steps, including litigation, to overcome such resistance. *See* paragraphs 7(i); 7(j); 15. The duty to identify municipal resistance is of sufficient import to be found in two sections of the Settlement. The parties have reached an impasse regarding the nature and scope of the County's duty to address local zoning ordinances that may hinder efforts to affirmatively further fair housing, particularly as that duty is to be memorialized in the AI.

Based on the parties' submissions, the Monitor has identified three specific issues in dispute relating to local zoning that are appropriate for decision here: (1) the timeframe in which the County is required to identify specific local zoning practices that have exclusionary impacts; (2) whether the County is required to specify a strategy to overcome exclusionary zoning practices; and (3) whether the County is required to identify the types of zoning practices that would, if not remedied by the municipality, require the County to pursue legal action.

A. Period in Which the County Must Identify Exclusionary Zoning Practices

Paragraph 32 is broad in scope; in addition to incorporating HUD guidelines, the County agreed to:

(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.

Importantly, paragraph 32 sets a floor, not a ceiling, for what action must be taken, data collected and issues analyzed. For example, the parties explicitly noted that analysis would include issues other than those identified in the document. The County has committed to identifying specific zoning practices that may have exclusionary impacts. County's Statement of Position at 8. The parties disagree about the date by which that must be accomplished. The County seeks approval to complete the analysis by December 31, 2012. *See* County's Statement of Position at 8. The Government, in response, requests that the County fulfill its obligations within a reasonable time, and, at

the latest, by February 29, 2012. *See* Government's Response at 3-4. The Government states that the County's proposed date is unreasonable because December 31, 2012 is nearly a year and a half after the submission of the County's latest AI and more than three years after the entry of the Settlement. Government's Response at 3 n.5.

The Monitor notes that both the Government and the County propose deadlines that are more than two years after the AI was originally due. In that time, the County has not delivered an AI acceptable to HUD. Although it is and was foreseeable that identifying specific local zoning practices would be a vital part of the AI as provided by the Settlement and precedent, *see, e.g.*, *LeBlanc-Sternberg v. Fletcher,* 67 F.3d 412, 424 (2d Cir. 1995) (zoning restrictions may constitute discriminatory housing practice); *Huntington Branch NAACP v. Town of Huntington,* 844 F.2d 926, 936-38 (2d Cir. 1988) (zoning that restricted multi-family housing to certain geographical areas adversely affected minorities and perpetuated segregation), *aff'd.* 488 U.S. 15 (1988) (per curiam), the Monitor is left to conclude either that the County did not begin to undertake the enterprise during the two years since the Settlement was first entered, or is proceeding with the task at a rate that would amount to analyzing fewer than three sets of municipal zoning ordinances every two months. Whether the County has begun the work or not, it has a maximum of 31 sets of zoning ordinances to analyze. Analyzing the ordinances at a rate of ten per month during the three months and three weeks between now and the end of February 2012 should be sufficient time to complete the task.

The County should, at a minimum, assess the impact of each of the following zoning practices or explain why the analysis of the listed practices ("Restrictive

Practices") would not be helpful to understanding the impact of the zoning ordinances taken as a whole:

- Restrictions that limit or prohibit multifamily housing development;
- Limitations on the size of a development;
- Limitations directed at Section 8 or other affordable housing, including limitations on such developments in a municipality;
- Restrictions that directly or indirectly limit the number of bedrooms in a unit;
- Restrictions on lot size or other density requirements that encourage single-family housing or restrict multifamily housing; and
- Limitations on townhouse development.

All of these items were requested by the Government. None is unreasonable.

B. A Clear Strategy

The County states that it has provided a "strategy in connection with local zoning ordinances." County's Response at 9. The County's strategy would consist of the following: "(1) identify[ing] specific zoning issues that may have exclusionary impacts by December 31, 2012; (2) review[ing] specific zoning ordinances that promote, permit or restrict the development and preservation of affordable housing that limit multi-family housing development; and (3) communicat[ing] to municipalities the County's recommendations on changes that could be made to local regulations so as to enable the local officials to take the necessary corrective action." *See* County's Statement of Position at 8.

The Government counters that the County has not yet developed a clear strategy to overcome exclusionary zoning practices. *See* Government's Response at 3-4. The

Government further states that the County's current discussion of this issue in its AI is insufficient because it "fails to specify actions (beyond recommendations) the County will take to overcome . . . impediments to fair housing." Government's Response at 3; *see also* Government's Statement of Position 5-6.

The Monitor has previously directed the County to develop a clear strategy that encourages compliance by municipal governments. For example, the Monitor's February 2010 report advised that the County should develop a strategy for using carrots and sticks to encourage compliance by municipal governments, including the County's plan for monitoring local approval processes and municipalities' cooperation with County's efforts to implement the Settlement. To date, the County's efforts appear to have been limited to the development of the model zoning ordinance and the discretionary funding allocation policy, which has yet to be completed. The County has not provided such a strategy to address action—or lack thereof—by municipal governments regarding specific zoning practices. Although the County has said it will make recommendations to municipal governments, the County should explain how it intends to persuade municipalities to follow those recommendations and what additional steps, if any, it will take if those recommendations are not followed.

In developing its strategy, the County should first identify specific exclusionary zoning practices, as noted above. The County should also, at a minimum:

- Develop a process for notifying municipalities of zoning issues that hinder the County's obligations under the Settlement and changes that must be made, and if not made, the consequences of municipalities' failure to make them;

- Develop a process to involve municipal decision-makers in consultation regarding changes in zoning and land use restrictions; and
- Provide a description of how these requirements will be included in future contracts or other written agreements between the County and municipalities.

Pursuant to Paragraph 28 of the Settlement, the County is directed to report on these efforts and include the status of the analysis of the zoning ordinances in its quarterly reports to the Monitor. The analysis shall include the Restrictive Practices listed above, and the required data should be reported by municipality.

C. Compliance Enforcement

The County states that "in the event legal action becomes appropriate or necessary, the County's actions would include, among other things, preparing legal action to combat exclusionary zoning." *See* County's Statement of Position at 6. The County, however, states that nothing in the Settlement "requires the County to target or proactively challenge specific zoning practices through litigation." County's Response at 12. Furthermore, the County contends that legal action, although a possibility, is considered a last resort and will be pursued on a case-by-case basis only when a particular project is blocked or hindered by a local zoning ordinance. *See* County's Statement of Position at 6; County's Response at 9.

The Government, in response, states that the County should, in developing its strategy, identify the "types of situations that would lead to litigation" because an "exclusionary zoning practice standing alone may be an impediment to the development of Affordable AFFH Units." *See* Government's Response at 3. This strategy, the Government contends, would "fairly and clearly communicate to municipalities what

actions are needed, and the consequences of not taking such actions." *Id.* Additionally, the Government states that the County's current strategy—pursuing legal action "where an individual project is blocked or hindered by a local ordinance"—improperly shifts the burden to developers to challenge local zoning practices. Further, the Government argues such an approach is unlikely to yield results, as developers are not likely to incur the risk and expense of pursuing projects in municipalities with such hostile zoning in place. *See id.*

The Settlement explicitly states that the County "shall use all available means as appropriate," including "pursuing legal action," to address a municipality's failure to act to promote the objectives of paragraph 7 of the Settlement (which lays out the general requirements for the 750 AFFH Units), or actions that hinder those objectives. *See* paragraph 7(j). In the Monitor's July 2010 report, the Monitor asked the County to meaningfully explore what shape such legal action might take. Although the County acknowledges in its submissions that pursuing legal action is an option to combat exclusionary zoning, the County Executive has publicly stated on several occasions that the County will not sue municipal governments over zoning practices. *See, e.g.*, Friends of Rob Astorino, http://www.robastorino.com/ (last accessed Nov. 14, 2011) ("HUD is trying to force me and Westchester County to dismantle local zoning, sue our municipalities and bankrupt our taxpayers. I will not allow that to happen."); *Hannity: Feds Accusing NYC Suburb of Segregation?* (Fox News television broadcast Sept. 7, 2011) (transcript available at http://www.foxnews.com/on-air/hannity/2011/09/08/feds-

accusing-nyc-suburb-segregation?page=2) (last accessed Nov. 14, 2011) ("They want us to sue our municipalities to rip up local zoning. We are not going to stand for that.").

It is the Monitor's view that litigation is a powerful lever the County may exercise to bring municipal governments into compliance, and that the County must identify the types of zoning practices that would, if not remedied by the municipality, lead the County to pursue legal action. Otherwise, merely restating paragraph 7(j)'s reference to "legal action"—especially in light of the County Executive's repeated public statements to the contrary—renders the tool much less useful and meaningful.

More importantly, it is fair and appropriate for the municipalities to know the circumstances under which the County may employ litigation. Fair notice is vital to any an enforcement regime, particularly one that would use, as contemplated here, sticks as well as carrots. The County's vague assertion that litigation will be used as a last resort provides no such notice. The County should clarify the circumstances that may warrant using that tool.

Dated: November 17, 2011
New York, New York

Respectfully submitted,

/s/ James E. Johnson

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