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

Case No. 06 Civ. 2860 (DLC)(GWG)

Plaintiff,

v.

WESTCHESTER COUNTY, NEW YORK,

Defendant.
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WESTCHESTER COUNTY'S RESPONSE TO THE MONITOR'S REPORT REGARDING WESTCHESTER COUNTY'S COMPLIANCE WITH PARAGRAPH 33(c) OF THE STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

BACKGROUND 3

I. The Terms Of Paragraph 33(c) Of The Settlement And The Monitor's Oversight Role 3

II. The Monitor's Requests For Information And Motion To Compel Depositions 4

ARGUMENT 6

I. The County Has Complied With Paragraph 33(c) Of The Settlement 6

A. The County Has Made A Continuous Effort To Comply With Paragraph 33(c) 7

1. The County Has Conducted Extensive Outreach to Broaden Support for Fair Housing 7

a. Outreach to the Public 7

b. Outreach To and Through Local Organizations 8

c. Outreach to Local Municipalities 10

2. The County has Promoted the Fair and Equitable Distribution of Affordable Housing Across the County 12

3. The County Has Specifically Addressed the Benefits of Mixed-Income Housing and Diverse Communities 13

B. The County Has Pursued Specific Initiatives To Further Compliance With Paragraph 33(c) 14

II. The Statements The Monitor Attacks Do Not Relate To Paragraph 33(c) 17

III. The Statements The Monitor Attacks Are Accurate And Reasonable 19

A. The Introduction of the 10,768 Unit Figure 20

1. The County Executive Responds to the April 20, 2012 and March 13, 2013 HUD Letters 21

2. The County Executive Responds to the Monitor's Report Cards 23

B. HUD's Attempts to Influence Local Zoning 29

1. The County Executive Responds to HUD's Letters 29

2. The Monitor's Effort to Disprove the County Executive's Statements Fails 33

C. The Existence of Discrimination 35

IV. The Remedies The Monitor Seeks Are Inappropriate 36

V. There Is No Conflict Of Interest 41

CONCLUSION 43

TABLE OF AUTHORITIES

CASES

Barcia v. Sitkin, 367 F.3d 87 (2d Cir. 2004) 17, 37

Bobal v. Rensselaer Polytechnic Inst., 916 F.2d 759 (2d Cir. 1990) 42

Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010) 40

County of Westchester v. Dep't of Housing & Urban Dev.,
116 F. Supp. 3d 251 (S.D.N.Y. 2015) ("*Westchester V*") 3

County of Westchester v. Dep't of Housing & Urban Dev.,
778 F.3d 412 (2d Cir. 2015) ("*Westchester IV*") 3

County of Westchester v. Dep't of Housing & Urban Dev.,
802 F.3d 413 (2d Cir. 2015) ("*Westchester VI*") 3, 35

Davis v. N.Y. City Housing Auth., 278 F.3d 64 (2d. Cir. 2002) 37

First Nat. Bank of Boston v. Bellotti, 435 U.S. 765 (1978) 39, 40

Frew ex rel. Frew v. Hawkins, 540 U.S. 431 (2004) 41

Garrison v. Louisiana, 379 U.S. 64 (1964) 40

Horne v. Flores, 557 U.S. 433 (2009) 41

LaSalle Bank Nat'l Ass'n v. Nomura Asset Capital Corp.,
424 F.3d 195 (2d Cir. 2004) 17

Milliken v. Bradley, 433 U.S. 267 (1977) 41

Mills v. Alabama, 384 U.S. 214 (1966) 40

Murray v. Metropolitan Life Ins. Co., 583 F.3d 173 (2d Cir. 2009) 42

NCUA Bd. v. RBS Sec., No. 13-CV-6726 (DLC),
2014 U.S. Dist. LEXIS 41355 (S.D.N.Y. Mar. 27, 2014) 42

Perez v. Danbury Hospital, 347 F.3d 419 (2d. Cir. 2003) 17, 18, 37, 39

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969) 39

St. Laurie Ltd. v. Yves St. Laurent Am., Inc., No. 13-CV-6857 (DAB), 2015 U.S. Dist. LEXIS 42621 (S.D.N.Y. Mar. 25, 2015) 17

Tourangeau v. Uniroyal, Inc., 101 F.3d 300 (2d Cir.1996) 37

United States ex rel. ADC v. Westchester County, 668 F. Supp. 2d 548 (S.D.N.Y. 2009) ("*Westchester II*") 3

United States ex rel. ADC v. Westchester County, 712 F.3d 761 (2d Cir. 2013) ("*Westchester III*") 3, 6, 17

United States ex rel. Anti-Discrimination Center of Metro New York, Inc. ("ADC") v. Westchester County, 495 F. Supp. 2d 375 (S.D.N.Y. 2007) ("*Westchester I*") 3

United States v. Alvarez, 132 S. Ct. 2537 (2012) 40

United States v. Armour & Co., 402 U.S. 673 (1971) 18

United States v. Awan, 607 F.3d 306 (2d Cir. 2010) 6

United States v. Curcio, 680 F.2d 881 (2d Cir. 1982) 41

OTHER AUTHORITIES

Oxford English Reference Dictionary (2d ed. 1996) 8

Rule 1.13 of the Rules of Professional Conduct 44

PRELIMINARY STATEMENT

The Monitor's Report regarding Westchester County's compliance with Paragraph 33(c) of the Settlement, with respect, represents a remarkable overreach. Essentially, the Monitor relies on a provision of the Settlement with which the County has complied to fault the County for reasonable public statements that have nothing to do with that provision, or the Settlement in general, in order to request remedies that are both unnecessary and improper. The Monitor's request should be rejected, and the County should be permitted to focus on what really matters: completing its compliance with the actual terms of the Settlement.

Paragraph 33(c) directs the County to create and fund certain public outreach campaigns to "broaden support for fair housing and to promote the fair and equitable distribution of affordable housing in all communities." The County has done that and is doing that. Although one would not know it from reading the Monitor's Report, over the course of almost seven years the County has communicated constantly with the public, worked with local organizations, and reached out to the various municipalities in Westchester in a vigorous effort to promote fair and affordable housing and broaden the public's support for it. The County has also launched multiple public information campaigns to explain the benefits of fair and affordable housing and make those benefits available throughout the community. The County has complied with its public outreach obligation.

Although investigating compliance with Paragraph 33(c) is nominally the subject of the Report, the Monitor glosses over the meaning and scope of that provision. Instead, the Monitor focuses on a series of public statements made in press releases and public appearances of the County Executive. He claims that these statements are false and have undermined the Settlement or the County's compliance with Paragraph 33(c). Not so. The statements arose in the context of a dispute between the County and the Monitor and the Department of Housing and Urban Development ("HUD") over whether HUD had properly denied the County funding on the ground that the

County's Analyses of Impediments were inadequate. The County argued that HUD had done so improperly and that, in fact, HUD sought to impose obligations *beyond* those contained in the Settlement; the County ultimately brought suit against HUD on that basis. The statements thus are not directed to the Settlement at all, let alone to the County's support for the benefits of fair and affordable housing. Indeed, the County Executive often prefaced his statements by noting his unequivocal support for fair and affordable housing—prefaces the Monitor ignores.

Not only are the public statements the Monitor cites unrelated to the County's obligations under Paragraph 33(c), they are entirely reasonable responses to documents issued by HUD and the Monitor. The back-and-forth of which the County's statements are a part preceded the filing of the County's lawsuit regarding the AI dispute, and statements made in such a context can be contentious. But, no matter how the lawsuit was ultimately resolved, the County should not be punished for public advocacy of its litigation position. Moreover, viewed in context, the County's statements are accurate, and certainly reasonable.

Finally, the relief the Monitor seeks goes well beyond the pale. The terms of the Settlement govern any relief to enforce it, yet the Monitor points to no provision that justifies the sweeping sanctions he asks the Court to impose. He requests that this Court (1) declare that the public statements he complains of are false; (2) order the County to distribute such a declaration within the County; (3) post the declaration prominently on the County's website and remove press releases inconsistent with it; and (4) hire a public communications consultant to craft a public information campaign to be approved by the Monitor. But nothing in the Settlement says the County cannot state its opinion about HUD or the Monitor or criticize their actions—which is all the County has done—or requires the County to obtain the Monitor's approval before speaking to its own citizens. Nor does the Monitor's irritation about the County's criticisms justify this effort to silence the County's voice and make the County a mouthpiece for his preferred opinions. On the contrary,

principles of federalism and the freedom of political speech preclude such micromanaging of a municipal government's communications. If the Monitor disagrees with the County or its Executive, he is free to articulate his opinion, but it would be improper and unwise for this Court to take sides in what is essentially a policy dispute.[1]

BACKGROUND

I. The Terms Of Paragraph 33(c) Of The Settlement And The Monitor's Oversight Role

On August 10, 2009, the parties entered into a Stipulation and Order of Settlement and Dismissal ("the Settlement"), setting forth specific requirements for the County to meet in order to resolve the underlying litigation. (Adin Dec. Ex. 1.) James E. Johnson was appointed Monitor pursuant to Paragraph 9 of the Settlement. (D.E. 321.)[2]

Paragraph 33 of the Settlement contains a number of tasks the County must undertake as part of its duty to affirmatively further fair housing ("AFFH") under the Settlement. Those include, in subparagraph (c), an obligation to:

> create and fund campaigns to broaden public 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.

(Adin Dec. Ex. 1 at ¶ 33(c).) The terms of this public outreach obligation are specific—it is not a requirement, as the Monitor states, to "promot[e] the goals of the Settlement" (Report at 2), but

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[1] The Monitor also asks that this Court unseal the videotapes of depositions he claims disprove the County's statements. But the deposition transcripts are already public; unsealing the videotapes serves no useful purpose. Furthermore, because the County's public statements are not contradicted by either the deposition testimony the Monitor cites, the conflict of interest the Monitor raises (D.E. 566) does not exist.

[2] The County respectfully presumes the Court's familiarity with the background facts of this litigation, as set forth in *United States ex rel. Anti-Discrimination Center of Metro New York, Inc. ("ADC") v. Westchester County*, 495 F. Supp. 2d 375 (S.D.N.Y. 2007) ("*Westchester I*"); *United States ex rel. ADC v. Westchester County*, 668 F. Supp. 2d 548 (S.D.N.Y. 2009) ("*Westchester II*"); *United States ex rel. ADC v. Westchester County*, 712 F.3d 761 (2d Cir. 2013) ("*Westchester III*"); *County of Westchester v. Dep't of Housing & Urban Dev.*, 778 F.3d 412 (2d Cir. 2015) ("*Westchester IV*"); *County of Westchester v. Dep't of Housing & Urban Dev.*, 116 F. Supp. 3d 251 (S.D.N.Y. 2015) ("*Westchester V*"); and *County of Westchester v. Dep't of Housing & Urban Dev.*, 802 F.3d 413 (2d Cir. 2015) ("*Westchester VI*").

rather to promote fair and affordable housing and the benefits of racially, ethnically, and socio-economically integrated communities. And, although the Monitor characterizes the obligation as one imposed on "County leadership" (Report at 2), Paragraph 33(c) is directed to the County itself, not any specific employee or officer. In a related provision, the Settlement instructs the County to "pay for consultants and public education, outreach, and advertising to AFFH" over a period of "five years" and "in an amount not less than four hundred thousand dollars ($400,000)." (Adin Dec. Ex. 1 ¶ 33(h).) Apart from Paragraph 33(h), there is no period within which the public outreach obligation of Paragraph 33(c) must be satisfied nor an amount of money that must be spent to satisfy it.

The Settlement also imposes a variety of obligations on the Monitor to review and assess the County's compliance with the Settlement, and to resolve disputes between the parties. The County reports its compliance to the Monitor quarterly. (*Id.* ¶ 28.) In addition to receiving the quarterly reports, the Monitor has the authority to request and review documents and records, and to request and conduct interviews of County personnel. (*Id.* at ¶ 13; D.E. 414 (establishing procedure to address Monitor's requests for information).)

II. The Monitor's Requests For Information And Motion To Compel Depositions

On March 17, 2014, the Monitor sent a request for information ("RFI") to the County, seeking, among other things, information regarding the County's compliance with Paragraph 33(c). (D.E. 495-7.) The County provided documents in response. (D.E. 495-7 to 495-12.)

The Monitor next filed, on June 26, 2014, a motion to compel depositions of numerous county officials. (D.E. 480.) The premise of the motion was the Monitor's belief that certain County officials had "mischaracterized (i) the County's obligations under the Settlement, (ii) the Settlement's objectives, (iii) the Monitor's role and responsibilities, and (iv) positions taken by" HUD and the United States Department of Justice regarding the Settlement. (D.E. 481 at ¶ 3.) According to the

Monitor, the communications and statements to which he referred "have served to undermine the Settlement" and "represent potential violations of some of the County's Settlement obligations." (*Id.*) The Monitor asserted that depositions were required in order to "assess" the County's compliance with Paragraph 33(c). (D.E. 482 at 7.)

The same day, the Monitor served a new RFI on the County. (Adin Dec. Ex 2.) This RFI was sought "for the reasons set forth in the Monitor's Motion" to compel depositions and was ostensibly directed at the County's compliance with Paragraph 33(c). Yet, although the RFI requested documents relating to various communications, it did not ask the County for information regarding the outreach activities required by Paragraph 33(c). Ultimately, the County produced "thousands of County emails and other documents from [April through September] 2013 relating to the County's public statements." (Report at 3; *see also* Adin Dec. Ex.3.)

Between November 2014 and the issuance of the Report, the Monitor issued at least nineteen additional RFIs. (Collected in Adin Dec. Ex. 4.) Only one related to Paragraph 33(c)—on September 18, 2015, the Monitor requested information related to the development of the County's One Community Campaign, which he had learned about the same day. (*Id.* at 29.) He did not inform the County, until the issuance of his Report, that he was dissatisfied with the campaign, nor did he provide feedback or advice to improve it. (McCormack Dec. ¶ 7.) Nor, despite the passage of exactly two years between the Monitor's original RFI on March 17, 2014 and the issuance of his Report, did the Monitor ask the County for an update on its activities undertaken to comply with Paragraph 33(c).

ARGUMENT

I. The County Has Complied With Paragraph 33(c) Of The Settlement

The critical issue before the Court is one the Monitor barely discusses—what the County has done to comply with Paragraph 33(c). A review of its actions demonstrates the County's vigorous compliance.

Paragraph 33(c) directs the County to "create and fund campaigns" to "broaden support for" and "promote" fair and affordable housing throughout Westchester. This mandate specifically "includ[es] addressing the benefits of mixed-income housing and racially and ethnically integrated communities." The Second Circuit has held, in the context of this Settlement, that "promote" means to "'to bring or help bring into being,' to 'contribute to the growth, enlargement, or prosperity of,' or to 'encourage' or 'further.'" *Westchester III*, 712 F.3d at 768 (quoting *United States v. Awan*, 607 F.3d 306, 314 (2d Cir. 2010)). To "broaden support for" similarly betokens "encouraging" or "furthering." *See* Oxford English Reference Dictionary 1450 (2d ed. 1996) (defining "support" as "give strength to", "encourage", and "further"). The duty to promote "does not require insurance," but it does "require affirmative action by the obligated party." *Westchester III* at 769.

The County has undertaken significant affirmative actions to "encourage," "further," and "contribute to the growth of" fair and affordable housing. Over the last six-and-a-half years, those actions have included extensive outreach to local municipalities, organizations, schools, and the public at large, in which the County has touted the benefits of cultural, ethnic, and racial diversity throughout the county as well as the benefits of mixed-income housing and diverse and inclusive communities. (*See, generally*, Drummond, Fang, and McCormack Decs.) The County has also partnered with, and paid for, advocacy groups and organizations to promote that message. (*See, generally*, Drummond Dec.) Indeed, while Paragraph 33(h) requires the County, in general, to spend up $400,000 to AFFH, in fact the County has spent more than $1 million on Paragraph 33 activities,

including public outreach efforts. (Drummond Dec. ¶ 113.) These many actions show that the County takes its obligation under Paragraph 33(c) seriously.

A. The County Has Made A Continuous Effort To Comply With Paragraph 33(c)

The County has conducted activities covering each of the areas identified in Paragraph 33(c): (1) broadening support for fair housing; (2) promoting the fair and equitable distribution of affordable housing across all municipalities; and (3) addressing the benefits of mixed income housing and racially and ethnically diverse communities. Much of this outreach has been undertaken by the County's Planning Department and its Human Rights Commission. The summary below relies upon the declarations from Norma Drummond, Deputy Commissioner of the Planning Department, Mark Fang, Executive Director the Human Rights Commission, and Edwin McCormack, the Director of Communications, which are submitted with this Response. While not exhaustive, the summary is representative of the County's various public outreach efforts.

1. <u>The County Has Conducted Extensive Outreach to Broaden Support for Fair Housing</u>

a. Outreach to the Public

Every year, the County sponsors and hosts the Affordable Housing Expo at the Westchester County Center. (Drummond Dec. ¶ 8.) This event, open to all, provides information on fair housing and includes booths and presentations by various non-profit agencies, housing consultants, and County entities. The County Executive has given opening remarks, expressing the County's support for fair and affordable housing, and taken time to speak with attendees.[3] Hundreds of people attend each year. (*Id.*)

The County also regularly participates in public forums which spread information regarding the benefits of fair and affordable housing. (*See, generally*, Drummond and Fang Decs.) For example,

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[3] The one year the County Executive was not able to attend, his Chief of Staff, George Oros, attended and gave remarks in the County Executive's stead. (Drummond Dec. ¶ 8.)

over the years the League of Women Voters has hosted numerous forums in which representatives of the County, often alongside the Monitor and representatives of HUD, participated. (Drummond Dec. ¶¶ 26, 41, 43, 55, 68, 88.) On several occasions, Norma Drummond, Deputy Commissioner of Planning, attended public forums relating to proposed AFFH developments and answered questions about the purposes and benefits of affordable housing. One such instance occurred on April 21, 2015, when Ms. Drummond appeared at a public forum in the Village of Buchanan to discuss affordable housing and to explain how it benefits the community. (Drummond Dec. ¶ 75.) Similarly, on May 1, 2013, Mary Mahon, then Director of Real Estate for the County, gave a presentation at the Bedford Town Hall regarding fair and affordable housing. (Drummond Dec. ¶ 49.)

In addition, the Human Rights Commission has conducted public outreach on fair housing and related issues. (*See, generally*, Fang Dec.) To give two examples, in March and April 2014, representatives of the Commission appeared at three separate African History classes at New Rochelle High School to discuss fair housing discrimination with students. (Fang Dec. ¶ 22.) And on May 28, 2015, Mark Fang, Executive Director of the Commission, addressed various fair housing issues at the Immaculeta Presentation Church in Yonkers. (Fang Dec. ¶ 27.) The Human Rights Commission's outreach on fair housing and related issues extended to sessions at public libraries, schools, town hall meetings, condominium/cooperative board meetings, and meetings with realtors and disability advocacy groups, among others. (*See, generally*, Fang Dec.)

b. Outreach To and Through Local Organizations

In addition to broadening support for affordable housing through direct outreach to the general public, the County also has conducted outreach to local organizations and contracted with local organizations to provide additional outreach to the public.

For example, since executing the Settlement, the County has worked with the Westchester Housing Opportunity Commission, an organization whose mission is to educate and advise

regarding, and to advocate for, fair and affordable housing. (Drummond Dec. ¶ 6.) At periodic meetings with members of the Commission, the County has provided information regarding public education events and partnerships and associations concerning fair and affordable housing issues. (*Id.*) The County also has offered technical assistance to the Commission, made itself available to answer questions or address the Commission's concerns, and gathered information that would better inform the County's own outreach efforts. (*Id.*)

Similarly, Ms. Drummond has met several times with the African American Advisory Board to educate the group about affordable housing, to advise its members of current and anticipated affordable housing opportunities, and to provide tools for them to conduct further outreach. (Drummond Dec. ¶¶ 52, 85.) Ms. Drummond also attended several meetings with the Westchester Institute for Human Development ("WIHD"), a local organization dedicated to helping individuals and families with special needs. (Drummond Dec. ¶¶ 61, 63, 64. 69.) Based on what she learned at these meetings, Ms. Drummond could then advise developers how to make affordable units more accommodating to families with special needs. Ms. Drummond also has met with representatives of various banks and financial institutions to discuss the purpose, role, and benefits of affordable housing, as well as to encourage those institutions to facilitate the provision of loans to developers and affordable housing applicants. (Drummond Dec. ¶¶ 22, 33, 42.) Such activities further fair and affordable housing development by tailoring it to the needs of families and making it more financially viable.

The Human Rights Commission, too, has conducted outreach to various local organizations. For example, the Commission met with staff from local housing authorities, including in White Plains, New Rochelle, Tarrytown, and Tuckahoe, to provide training on the fair housing law and common issues arising from those laws. (Fang Dec. ¶¶ 11-17.) The Commission also held fair housing training for realtor groups, agents, brokers, and tenant associations, to explain the

fundamentals of fair housing laws, including the County's Source of Income law. The Commission has worked with local organizations as well, including the Pace Women's Justice Center and WESTCOP Victim's Assistance Services, to provide training on relevant fair housing issues. Contrary to the characterization in the Report (Report at 11), these outreach activities did not focus solely on compliance with fair housing and human rights laws, but also addressed why fair housing laws are necessary to prevent discrimination. (Fang Dec. ¶¶ 29-30.)

The County has also contracted with multiple organizations and agencies to broaden support for fair housing throughout Westchester. These agencies include the Housing Action Council ("HAC"), WFN, Inc., and the Land Use Leadership Alliance through Pace Law School ("LULA"). On behalf of the County, these consulting organizations have regularly conducted outreach to broaden support for fair housing. For example, HAC attended heritage festivals organized and hosted by the County's Parks Department, where HAC provided information to citizens of diverse ethnic groups about affordable housing. (Drummond Dec. ¶¶ 34, 120.) Members of WFN, Inc. attended several public meetings in communities throughout Westchester to discuss fair and affordable housing, the need therefor, and the benefits that fair housing and integrated communities bring. (*Id.* ¶¶ 10-17.) For its part, LULA ran training programs and executive roundtable discussions to disseminate information regarding fair and affordable housing. (*Id.* ¶¶ 46, 115.) Numerous speakers appeared at these sessions, including the Monitor and representatives of the County and HUD. Additionally, HAC and LULA often jointly ran events that brought affordable housing advocates together with local officials. (*Id.* ¶¶ 115, 117.)

c. Outreach to Local Municipalities

Finally, the County has further broadened support for fair housing through outreach to the local municipalities. Encouraging local governments helps in broadening support among local

residents, advances the development of AFFH units, and activates local community planning resources to help integrate AFFH units into neighborhoods.

For example, for about the first four years after the Settlement was executed, representatives of the County regularly participated in the meetings of the Westchester Urban County Council, the organizational body that administered certain CPD funds. (*Id.* at ¶ 5.) At those meetings, the County provided training and technical assistance to the member municipalities on a variety of issues relating to fair and affordable housing. (*Id.*) Representatives of the County also met regularly with local municipal officials to advocate for affordable housing. For example, Norma Drummond held meetings with municipal officials from the Towns of Mamaroneck, Yorktown, Larchmont, and Harrison, at which she discussed potential AFFH development sites, and educated officials on the role and purposes of affordable housing, and how integration would benefit their communities. (*Id.* ¶¶ 12, 13, 18, 24, 70, 102.)

And when new local elected officials came into office, the County would contact them as part of its effort to broaden support for fair housing. For example, Ms. Drummond, along with other county officials, met with the new supervisor for the Town of Mamaroneck in March 2012 to discuss affordable housing and to advocate for the additional development of AFFH units in the town. (*Id.* ¶ 44.) Such meetings took multiple forms, including taking officials on tours of affordable housing developments and units in other municipalities in order to demonstrate how these housing units could blend into the community. (*Id.* ¶¶ 36, 47, 97.)

Similarly, the Human Rights Commission has helped broaden support for fair housing at the municipal level by assisting in the formation of the Larchmont-Mamaroneck and Town of Greenburgh Human Rights Committees. (Fang Dec. ¶¶ 23-24.) Since helping to form them, the Commission has helped these committees to develop outreach programming and advised them on fair housing issues. Once up and running, these committees have provided additional outreach

capacity and have encouraged the municipalities themselves to invest in furthering fair and affordable housing.

2. The County has Promoted the Fair and Equitable Distribution of Affordable Housing Across the County

Many of the activities discussed above not only broaden support for fair housing, but also promote the fair and equitable distribution of affordable housing across Westchester. Thus, in meeting with local municipalities, the County encourages the development of affordable housing in those communities. In conducting outreach to the public, the County generates support for affordable housing, which in turn makes it easier to propose affordable housing developments. And in working with developers and non-profit agencies, the County provides support for actual developments, thereby furthering the distribution of affordable housing across the county.

But the County also has engaged in additional outreach to encourage the development of affordable housing. For instance, since 2010 Ed Buroughs, Commissioner of the Department of Planning, Ms. Drummond, and other County officials, held meetings with municipal officials from the Towns of North Castle (2012) and New Castle (2010 and 2015), and the Villages of Tarrytown (2010), Ardsley (2014), and Briarcliff Manor (2012), to discuss fair and affordable housing and the development potential for AFFH units in these locales. (*See* Drummond Dec. ¶¶ 47, 67, 76, 80, 91, 94, 95) To give a specific example, at a meeting on October 31, 2013 with officials from the Town of Pound Ridge, the Planning Department presented a site plan to show potential development locations in order to further discussion. (*Id.* ¶ 103.) Ms. Drummond also organized and attended meetings of the "Westchester Housing Ladies Lunch Bunch," a networking group that fosters relationships between women in the housing industry. (*Id.* ¶ 100.) And County representatives attended meetings of the Community Design Institute, where they participated in small groups to

train attendees how existing buildings could be redesigned and repurposed while fitting into communities. (*Id.* ¶ 105.)

3. The County Has Specifically Addressed the Benefits of Mixed-Income Housing and Diverse Communities

Many of the outreach activities the County and its contractors have engaged in have addressed the benefits of mixed-income housing and racially and ethnically diverse communities. For example, as discussed above, WFN held meetings where it discussed the benefits of integration and diverse communities. The County, in meetings with local municipalities, discussed the benefits of integrated and diverse communities, and the benefits that affordable housing could bring to a community.

There are additional examples. On October 21, 2011, the County, through the County Executive, Chairman of the Board of Legislators, and others, participated in a symposium held by Westchester Residential Opportunities and Pace Law School entitled "Welcome to My Backyard," which discussed the benefits of diverse and inclusive communities. (*Id.* ¶ 37.) At forums held by the League of Women Voters, the County discussed the benefits and opportunities that affordable housing provides communities and their inhabitants. (*See, e.g.*, *id.* ¶¶ 68, 88.) Ms. Drummond, in a presentation given to the Westchester Municipal Planning Federation Land Use Training Institute on March 19, 2015, explained the benefits that accompanied increased diversity in communities. (*Id.* ¶ 73.) She also attended several public hearings for local municipalities considering amendments to zoning codes, at which she spoke about the benefits of the proposed zoning changes to permit mixed-use and mixed-income housing in areas where it had not been allowed before. (*Id.* ¶¶ 80, 82-83.)

The Human Rights Commission, too, has conducted outreach addressing the benefits of racially and ethnically diverse communities. For example, on December 5, 2012 Director Fang spoke

to La Fuente, a coalition of Hispanic organizations, about Westchester's growing multiracial and multiethnic community. (Fang. Dec. ¶ 32.) The Commission also sponsored an open community discussion regarding race relations in Westchester, and the United States generally, in the wake of the Trayvon Martin case. (*Id.* ¶ 33.) Director Fang further engaged students in discussions of racism, race relations, and the importance of diversity to our communities at school events in Yorktown, Scarsdale, and New Rochelle, among others. (*Id.* ¶¶ 22, 34-36, 40.) In Mount Vernon, Director Fang ran a monthly after-school series during 2014 to address race and discrimination. (*Id.* ¶ 37.) As part of that series, Director Fang asked students to consider the economic and demographic makeup of Mount Vernon, allowing him to emphasize the benefits of integrated communities with the students in a more personalized way. (*Id.*)

In sum, the County has conducted extensive outreach on the topics identified in Paragraph 33(c). It has engaged the public, private entities, local municipalities, and non-profits in an effort to broaden support for and promote fair and affordable housing and address the benefits of racially, ethnically, and socioeconomically diverse communities.

B. The County Has Pursued Specific Initiatives To Further Compliance With Paragraph 33(c)

The County has bolstered the activities described above by sponsoring two specific initiatives to conduct fair housing outreach: (1) the fair housing poster initiative; and (2) the One Community Campaign.

<u>The Fair Housing Poster Initiative</u>. In 2011, the County began developing fair housing posters to be distributed throughout the county. (Drummond Dec. ¶ 108.) After the posters were initially developed and reviewed internally, the Monitor reviewed them. He did not express any negative comments regarding the posters and they were subsequently submitted to a focus group, organized by WRO, for review. (*Id.*) Because the focus group had generally negative responses to the

posters, the County decided not to use them. (*Id.* ¶ 109.) The Monitor recounts this history, but gives short shrift to the County's efforts to improve its poster campaign in response.

Following the original focus group, in 2012, the County opted to use two posters (in both English and Spanish) prepared and distributed by HUD and the National Fair Housing Alliance. (*Id.*) The posters were distributed to local municipalities in the county for display in public locations, and to housing agencies and developers. (*Id.* ¶ 110.) The County provided as many copies as desired and regularly checked to ensure posters remained displayed in municipalities across Westchester.

The two posters contained different messages. The first addressed housing discrimination, identifying signs of discrimination and providing HUD's website and telephone for people to get more information or to report incidents of discrimination. The second discussed the benefits of diversity in neighborhoods, and provided HUD's website for people to get more information "about how fair housing promotes diversity." (Drummond Dec. Ex. CC.). Thus, the second poster belies the Monitor's conclusion that the "One Community Campaign is the first public education campaign undertaken by the County that specifically mentions the benefits of diversity." (Report at 13) Similarly, the Monitor's claim that "[n]one of the posters reviewed by the Monitor address 'the benefits of mixed-income housing and racially and ethnically integrated communities'" ignores this second poster. (Report at 52-53)

In April 2016, HUD and the National Fair Housing Alliance put out new fair housing posters. (Drummond Dec. ¶ 112.) The County has obtained the new posters, has prepared several hundred copies, and has already begun distributing them to municipalities. (*Id.*) These posters address the benefits of a "vibrant community," diversity, and the educational opportunities that fair housing provides. (Drummond Dec. Ex. EE.)

<u>The One Community Campaign</u>. In 2015, the County launched the One Community Campaign, an educational website with resources for the public, municipalities, and developers.

(McCormack Dec. ¶ 2.) The One Community website (located at http://www.westchesteronecommunity.com) contains robust resources for people seeking information on fair and affordable housing, including regarding the benefits of mixed-income housing and diverse communities, fair housing laws and discrimination, a gallery of affordable housing units to show how those units blend into neighborhoods, and additional resources for developers and local governments. The website includes a letter from the County Executive advocating for affordable housing and diverse communities, and denouncing discrimination. (McCormack Dec. ¶ 3.)

In addition to its web presence, the One Community Campaign is advertised through posters located in bus shelters, placards on county buses, and through two large posters in the Westchester County Airport.[4] While these posters can be placed at no cost to the County, the fair market value of this advertising space, which could otherwise be sold, is approximately $40,000. (McCormack Dec. ¶¶ 5, 6.)

Although the Monitor was informed of the One Community Campaign on September 18, 2015, and sent out an RFI regarding the campaign the same day, until he issued his Report the Monitor never told the County that the campaign "falls far short" of the requirements of Paragraph 33(c). (McCormack Dec. ¶ 7.) Nor did the Monitor ever provide feedback regarding the campaign or make recommendations to improve it. (*Id.*) The County stands prepared to work in good faith with the Monitor to improve the One Community Campaign and to bolster all of the many efforts described above to add to its compliance with the mandate of Paragraph 33(c).

[4] Notably, the Westchester SMART campaign, which the Monitor contrasts with the County's efforts to promote fair and affordable housing, only has a single poster at the airport.

II. The Statements The Monitor Attacks Do Not Relate To Paragraph 33(c)

Instead of reviewing the County's extensive efforts to comply with Paragraph 33(c), the Monitor's Report primarily addresses a series of public statements that the Monitor asserts undercut the County's compliance. Yet the statements relate neither to Paragraph 33(c) nor the subject of the public outreach it requires.

"Consent decrees," like the Settlement here, "reflect a contract between the parties (as well as a judicial pronouncement), and ordinary rules of contract interpretation are generally applicable." *U.S. ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester Cnty.*, N.Y., 712 F.3d 761, 767 (2d Cir. 2013) (quotation marks omitted). And in interpreting a contract, "words and phrases should be given their plain meaning." *LaSalle Bank Nat'l Ass'n v. Nomura Asset Capital Corp.*, 424 F.3d 195, 206 (2d Cir. 2004) (citations and quotations omitted). Thus, "the language of a consent decree must dictate what a party is required to do and what it must refrain from doing." *Perez v. Danbury Hospital*, 347 F.3d 419, 424 (2d. Cir. 2003). "A court may not replace the terms of a consent decree with its own, no matter how much of an improvement it would make in effectuating the decree's goals." *Barcia v. Sitkin*, 367 F.3d 87, 106 (2d Cir. 2004) (quoting *Perez*, 347 F.3d at 424).

Here, Paragraph 33(c) enumerates the specific subjects on which the County was to conduct public outreach. The County must "create and fund campaigns to broaden support for fair housing and to promote the fair and equitable distribution of affordable housing in all communities." Paragraph 33(c) does not, however, prohibit the County from criticizing HUD or the Monitor, nor does it require that the County sponsor public outreach campaigns to broaden support for or promote whatever HUD and the Monitor might do, or even to broaden support for or promote the Settlement itself. Such matters, therefore, are beyond the reach of the provision. *Cf. St. Laurie Ltd. v. Yves St. Laurent Am., Inc.*, No. 13-CV-6857 (DAB), 2015 U.S. Dist. LEXIS 42621, *28 (S.D.N.Y. Mar. 25, 2015) (discussing the use of *expressio unius est exclusio alterius* in contract interpretation).

Despite the targeted scope of Paragraph 33(c), the Monitor focuses on statements far afield of it. Specifically, the Monitor addresses:

> (*i*) broad assertions that HUD and the Monitor, collectively or separately, were attempting to destroy local zoning; (*ii*) claims that HUD was planning to build high-rise apartment buildings in single-family residential neighborhoods; (*iii*) claims that HUD or the Monitor had set a new affordable housing development target of more than 10,000 units; (*iv*) claims that the cost of compliance with the Settlement would be over $1 billion; and (*v*) denials that the County Executive knew of any housing discrimination in Westchester.

(Report at 4). None of these communications implicates Paragraph 33(c) because none of them refer to the merits of "fair housing," "the fair and equitable distribution of affordable housing," or "the benefits of mixed-income housing and racially and ethnically integrated communities."

The Monitor thus reads Paragraph 33(c) more broadly than its terms permit. He describes that provision as creating "an obligation to create and fund public outreach campaigns promoting the goals of the Settlement" (Report at 2), and explains that he "explored" the statements of the County and its officials to determine "whether the County withheld information from the public that would have helped it better understand the implementation of the Settlement." (Report at 4.) But, as explained above, Paragraph 33(c) does not speak of "the implementation" or "goals" of the Settlement, and therefore the Monitor's reading of that provision is incorrect. *Cf. Perez*, 347 F.3d at 424 ("[T]he scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it.") (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971)).

Even if there were some requirement that the County generically support the Settlement (which there is not), the statements the Monitor highlights are not criticisms of the Settlement itself. Instead, the critical context for the statements is the dispute between HUD and the County regarding whether it was proper for HUD to deprive the County of federal funding on the basis of the County's AIs. The Monitor describes that dispute as the "necessary backdrop to the County's

public statements about the Settlement." (Report at 5; *see also id.* at 14 (describing the statements as "made, in large part, against the background of the County's long-running dispute with HUD concerning the County's obligation to submit a satisfactory Analysis of Impediments").) The Report provides eighteen pages of background on the dispute and continually refers to the public statements as having been made about the "AI dispute."[5] And, in the section of the Report entitled "Evaluation of the County's Statements about the Settlement," the Monitor states:

> *With respect to Paragraph 32* [which directs the County to present an AI], the Second Circuit has affirmed HUD's authority to require that an AI contain a rigorous, as opposed to boilerplate, analysis of zoning. *Ultimately it was HUD's request for rigor that became the focus of the County's complaints against HUD and the Monitor.*

(Report at 33 (citation omitted)).

In short, the statements that motivate the Monitor's Report, and his request for relief, have nothing to do with the public outreach obligation of Paragraph 33(c). They consist of statements defending what would become the County's litigation position regarding the AI dispute. The County is fully capable of advocating that position and complying with Paragraph 33(c) at the same time—as shown above, the County has vigorously promoted fair and affordable housing and strongly supported its benefits both before and after the AI dispute.

III. The Statements The Monitor Attacks Are Accurate And Reasonable

As explained, the statements that occupy the Report have nothing to do with Paragraph 33(c), with which the County has complied. That is enough to deny the remedies the Monitor requests, and this Court need not parse statements made years ago. Nevertheless, the County's and County Executive's statements are accurate and, at a minimum, reasonable.

[5] (*See also* Report at 26 ("Mr. Astorino's op-ed defended statements he made about the Settlement and AI dispute."); *id.* ("Mr. Astorino appeared on television several times in May 2013 to address the AI dispute."); *id.* at 27 ("On May 31, 2013, in response to Mr. Astorino's public statements about the AI dispute and Settlement . . .").)

The statements, which primarily occurred during 2013 (Report at 32), fall into three categories: (1) the County's characterization of HUD's reference, in rejecting the County's AIs, to an academic study's contention that Westchester County needed to build 10,768 affordable housing units, and the County's estimate of the cost of building and subsidizing those units (*see* Report §§ II(B) and II(C)); (2) the County's reaction to HUD's attempts to influence local zoning, including the rules regarding the development of high-rise buildings (*see* Report §§ II(A) and II(D)); and (3) the County's position on whether housing discrimination exists in Westchester (*see generally* Report § II). Although the Monitor describes these statements as "Statements about the Settlement" and describes them broadly as mischaracterizations of the Settlement's requirements (*id.*), in fact the statements derive from the AI dispute. Moreover, the County Executive repeatedly made clear that he was objecting to HUD's attempt to impose mandates on the County *over and above* the Settlement.

A. The Introduction of the 10,768 Unit Figure

The first category of statements relates to the County Executive's reference to a 2004 study conducted by Rutgers University ("the Rutgers Study"), and specifically to the study's contention that 10,768 units would be needed to meet the regional needs for affordable housing in Westchester County by 2015. The County Executive contended that (1) HUD and the Monitor had set a new "target" for Westchester of 10,768 affordable housing units (Report at 38-41); and that (2) the Monitor "had assigned 'obligations' and 'benchmark allocations'" of the 10,768 units "to the 31 eligible communities 'that far exceed the terms of the Settlement'" (Report at 38) (quoting Ex. 38 to Report). The County Executive also estimated the cost of building 10,768 units at between $700 million and $1 billion. In attacking the County Executive's statements, the Monitor fails to consider that the County Executive was responding to the use of the 10,768 unit figure and the benchmark allocations *by HUD and the Monitor*. Considered in context, the statements were an understandable response to HUD's and the Monitor's positions.

1. The County Executive Responds to the April 20, 2012 and March 13, 2013 HUD Letters

The Monitor starts with the County Executive's 2013 State of the County address, in which the County Executive referred to HUD having a "target" of 10,768 units. (Report at 38.) But HUD began using the 10,768 unit figure more than a year before that address. In an April 20, 2012 letter to the County, HUD asserted that a zoning ordinance could be considered exclusionary if it failed to adequately consider regional needs for affordable housing. (Adin Dec. Ex. 5 at 3-4.) The letter then identified the Rutgers Study as a basis for the regional needs to be considered. (*Id.* at 4.) ("A 2004 report of a detailed study of Westchester County's affordable housing need for the years 2000 to 2015, commissioned by the County, determined the existence of an unmet need of 10,768 new affordable housing units by 2015.")

On March 13, 2013, HUD became more insistent on the Rutgers Study and the 10,768 unit figure. Rejecting the County's objection to the use of the Rutgers Study, HUD stated:

> This assessment identified the need for an additional 10,768 affordable housing units by 2015. In its July 6 letter, the County stated that it was not required to consider this evidence because the Allocation Plan was not enacted into law, and because it has not been specifically incorporated into the Settlement. *The Department disagrees.* Both the Needs Assessment and the Allocation Plan provide important evidence of the regional need. As such, the Department expects the County to consider such evidence in examining whether a zoning ordinance considers regional needs and requirements.

(Adin Dec. Ex. 6 at 4-5 (emphasis added).) Thus, eleven months after the April 20, 2012 letter, the use of the Rutgers Study in preparing the AI went from a suggestion to "important evidence of [Westchester County's] regional need." And, while technically HUD merely required the County to consider the need for 10,768 units to evaluating zoning ordinances, the two letters leave little doubt that HUD would consider any zoning ordinance that did not ensure a local municipality would meet its purported share of the 10,768 unit figure to be exclusionary. This implication soon became explicit.

Following these letters, the County Executive made clear his opposition to the use of the 10,768 figure in the 2013 State of the County address. He stated:

> HUD contends that the *settlement's requirement to build 750 units* of affordable housing was just a starting point. The county's target is really 10,768, based on an old 2004 Rutgers University study that was never even accepted by the county.
>
> Let me say the number again – **10,768** housing units.
>
> That's almost *15 times the settlement's requirement*. And that study allocates a number to each community:
>
> - Harrison – *756 units. That's more than the entire settlement.*
> - North Castle – 712 unit.
> - Bedford – 396 units.
> - Scarsdale – 160 units.

(D.E. 562-49 at 36 (italics added).) Three times in this quotation alone, the County Executive contrasted the 10,768 figure with the Settlement's actual requirement of 750 units of affordable housing. Thus, contrary to the Monitor's suggestion that the County Executive mischaracterized the Settlement itself as requiring 10,768 units, the County Executive's complaint is the opposite—the Settlement requires 750 units, but HUD was imposing the 10,768 number as a "target."

After the County Executive's address, the Journal News published an article critical of his claims, including his use of the 10,768 unit figure. (D.E. 562-56.) The County Executive responded to this criticism in an op-ed that was also published in the Journal News. (D.E. 562-57.) The County Executive's op-ed accurately recounted the provenance of the 10,768 number:

> And what about those 10,768 housing units? The number comes from a 2004 study by Rutgers University. Two years ago, the federal monitor assigned to the settlement began asking the county about the progress being made by all of Westchester's 43 municipalities in meeting their individual allocations of the 10,768 units. When we pointed out that the study was never adopted by the county or made part of the settlement, HUD wrote in its March 13 letter this year: "The Department disagrees."

(*Id.* at 3.) Nothing in this passage (most of which is quoted in the Report) is false—nor does the Monitor even claim any of it is. (*See* Report at 38-39.)

2. The County Executive Responds to the Monitor's Report Cards

About the same time HUD sent the March 13, 2013 letter, the Monitor sent report cards to each of the 31 eligible communities, without a copy to the County.[6] These report cards addressed the progress each municipality had made in developing its purported share of the 10,768 units prescribed in the Rutgers Study. (*See*, *e.g.*, Adin Dec. Ex. 25 at 4 ("The second criterion consists of the municipality's record regarding the County's unadopted Fair and Affordable Housing Allocation Plan of 2005. The plan assigned a benchmark allocation of affordable units to each municipality.") The controversy over their issuance belies the Monitor's characterization of the County Executive's statements.

Again, the essence of the Monitor's complaint is that the County Executive was supposedly saying the Settlement required Westchester to build 10,768 affordable housing units. Yet, in several of the report cards, it is *the Monitor himself* who referred to the allocation of the recipient municipality as an "obligation under the Settlement." For example, in the report card sent to the Town of Mount Pleasant, the Monitor stated that the town "has also made no progress in meeting its *affordable housing obligation under the Settlement*; none of the *almost 1,000 FAH units* [i.e., fair and affordable housing units] allocated to the Town in the County's unadopted 2005 plan have been built." (Adin Dec. Ex. 7 at 1 (emphasis added).) And to the Town of North Castle, the Monitor wrote:

> Since 2000, the Town of North Castle has completed fewer than 50 affordable housing units, although its *obligation* under the unadopted 2005 County plan [i.e., the Rutgers Study] was *more than 700 units*. Under current conditions, the Town has the capacity to produce 82 additional multifamily units, without demolition and redevelopment. Even if all of the units were affordable, the total would represent only 12 percent of the Town's outstanding *benchmark obligation of 666 FAH units*. Additional actions will be needed for the Town to make meaningful progress towards meeting its *affordable housing obligation under the Settlement*.

[6] The County only became aware of the distribution of the report cards when the local municipalities contacted it with concern.

(Adin Dec. Ex. 8 at 1 (emphases added)); (*accord* Adin Dec. Exs. 9 (Larchmont); 10 (Lewisboro); 11 (Mamaroneck); 12 (New Castle); 13 (North Salem); 14 (Ossining); 15 (Pelham); 16 (Pleasantville); 17 (Pound Ridge); 18 (Rye); 19 (Rye Brook); 20 (Scarsdale); 21 (Somers); 22 (Tarrytown); 23 (Tuckahoe); and 24 (Yorktown).) Although the Monitor's cover letter appending the report cards described them as "proposed factual findings," nothing in the report cards identifies them as drafts. (Adin Dec. Ex. 25.) More importantly, nothing in the letter or the report cards suggest that the legal conclusions—such as the local municipalities having obligations under the Settlement—were preliminary, proposed, or draft.

Unsurprisingly, many local officials objected to these report cards, particularly to the notion that the local municipalities had an "obligation under the Settlement." Many of the municipalities sent responses to the Monitor pointing out that, for example, the local municipalities were not parties in the underlying litigation, were not parties to the Settlement, and have no obligations under the Settlement. (*See* Adin Exs. 26 (Mount Pleasant); 27 (New Castle); 28 (North Castle); 29 (Pelham); 30 (Rye Brook); 31 (Scarsdale); 32 (Tarrytown); 33 (Tuckahoe).) Local officials also reached out to the County with concern. (McCormack 1st Dep. at 144-46.)

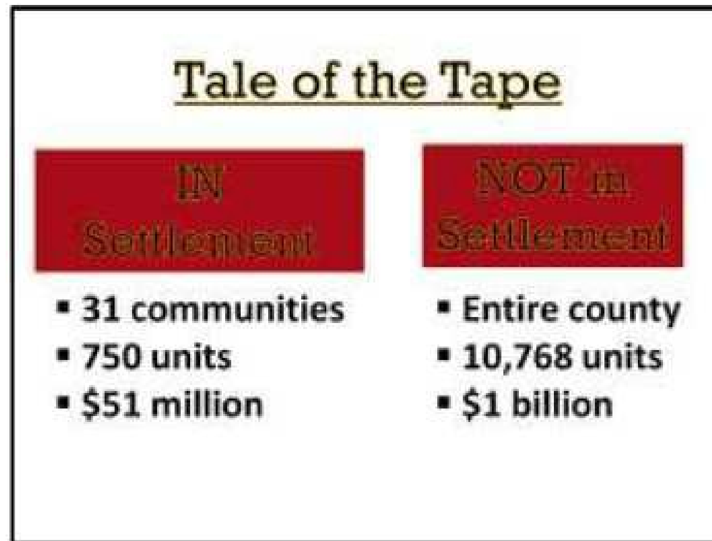
Many of the County's statements, which the Monitor objects to, were criticisms of these report cards. On June 11, 2013, the County issued a press release regarding the report cards (D.E. 562-63) and, two days later, the County Executive held a press conference with several local municipal officials (Astorino 1st Dep. at 257.) Noting that Maurice Jones, Deputy Secretary at HUD, had described the 750-unit requirement under the Settlement as "a floor, not a ceiling," the County Executive addressed the report cards. (D.E. 562-80 at 6-7.) He explained that the Monitor had assigned benchmark allocations of the 10,768 unit figure to each of the 31 eligible municipalities and allocated the remainder of the 10,768 units to non-eligible communities in Westchester. (*Id.* at 8.)

The County Executive pointed out that these numbers were derived from the Rutgers Study, which was never adopted by the County, and that the allocations were *not* part of the Settlement. (*Id.*)

In the days after the press conference, the County Executive addressed the report cards in similar terms at numerous town-hall-style meetings throughout Westchester. At one such meeting in North Castle, for example, he explained that the Monitor "now has started to look at a 2004 study by Rutgers University . . . . [w]hich . . . was not ever part of the settlement." (D.E. 562-75 at 2.) And that study says, the County Executive continued, "there is a need of 10,768 affordable housing units throughout the County" and "allocate[s] a number to each community." (D.E. 562-75 at 2.) "So," the County Executive concluded, "they take this settlement, start expanding it, take a study from 2004, there's no bearing whatsoever on this, and now start to write letters to the Town Board and say, hey, where are you, by the way, on that 666 units you're supposed to be building." That is a fair interpretation given the facts—indeed, the report card issued to North Castle, where the County Executive spoke these words, identified that town's "outstanding benchmark obligation of 666 FAH units." (Adin Dec. Ex. 8 at 1.) Later that summer, the Monitor would analyze whether exclusionary zoning existed in North Castle by analyzing whether, under the town's existing zoning code, it would be economically feasible to build the 666 FAH units. (D.E. 562-66 at 22-24.)

Indeed, others read the Monitor's report cards the same way. On June 5, 2013, *before* the County Executive's press conference, Newsday ran an article entitled "Rob Astorino-HUD dispute: Monitor gets an earful from Westchester mayors, supervisors." (Adin Dec. Ex. 34.) Referring to the report cards, the article asserted that the Monitor "writes that the town [of Cortlandt] needs to build 403 units of affordable housing by 2015, as outlined in the Rutgers study." (*Id.* at 2.)

Lest there be any doubt that the County Executive distinguished the 10,768 unit figure from the requirements of the settlement, it is dispelled by one of the statements the Monitor criticizes. The County Executive's PowerPoint presentations during the town halls include the following slide:



(Report at 39-40.) These slides make it abundantly clear that the Settlement *does not require* the construction of 10,768 units of housing. They contrast 750 units as "IN Settlement" with 10,768 units as "NOT in Settlement" and identify the Settlement as requiring 750 units across 31 municipalities, while the report cards require just three municipalities to build 1,143 units.

Thus, the County Executive's response to the report cards, and to the prior correspondence of HUD, was not to criticize the Settlement's requirements, but rather to fault HUD and the Monitor for demanding more than the Settlement does. Once that context is clear, the Monitor's

claims that the County Executive's statements are false ring hollow. For example, the Monitor points to the deposition testimony of various County officials, including the County Executive himself, stating that the Settlement's 750-unit requirement has not been increased and that they were aware of no request that the Court increase this unit requirement. (Report at 41-43.) But that was the County Executive's point exactly: his complaint was that, although the Settlement only requires 750 units, HUD and the Monitor sought to impose the 10,768 unit figure on the local municipalities through the report cards and other means. (*See*, *e.g.*, D.E. 562-49 at 36.)

Similarly beside the point are HUD's May 31, 2013 letter and the Monitor's June 12, 2013 letter. The Monitor emphasizes that these letters state that the Settlement does not require 10,768 units. (Report at 43.) But, again, that ignores the County Executive's complaint—the letters did not abandon the 10,768 unit target as a benchmark of the County's progress in constructing affordable housing. On the contrary, the Monitor later issued a report and revised report cards, in which he continued to refer to the Rutgers allocations as "obligations" and to the several municipalities' "obligation[s] under the Settlement." (D.E. 452-1 at 54 (Cortlandt), 107 (Irvington), 116 (Larchmont), 133 (Mamaroneck), 169 (North Salem).) And, in any event, the County Executive specifically addressed both HUD's letter and the Monitor's letter in public statements, belying any suggestion that he was hiding information. (*See* D.E. 562-80 at 6-7; D.E. 562-64 at 2.)

The Monitor's other claims of supposed misstatements similarly fall flat. For example, the Monitor asserts that the County Executive never told "the public of this material fact: the housing targets could not be changed without the County's consent and a court order." (Report at 41.) This assertion is disproved by an exchange, quoted by the Monitor, between the County Executive and a resident in the North Castle town hall, in which the County Executive declared, "[i]f for some reason the Federal Government or the Monitor starts issuing opinions that we are under an obligation to [develop 10,768 units] and more, and I as County Executive need to sue our

communities to overturn zoning, or those restrictions, we'll be back in court real quick." (Report at 42 (quoting D.E. 562-83 at 2).) Indeed, the Monitor concedes that in this exchange "Mr. Astorino accurately informed the public about the Settlement's 750-unit requirement." (Report at 42.)

The Monitor also takes issue with the County Executive's statements about the cost of developing 10,768 units of housing. (Report § II(C).) For example, at the 2013 State of the County address the County Executive said, "Put a dollar figure on building 10,768 units and the cost is between 700 million and $1 billion." (Report at 44 (quoting 2013 State of the County at 23).) The Monitor does not dispute the accuracy of the calculation.[7] His objection derives from his complaint about the County Executive's reference to the 10,768 figure in the first place. As explained above, however, the County Executive simply responded to the Monitor's use of the 10,768 unit figure to calculate "benchmark allocations" and "obligations under the Settlement" on the part of local municipalities. And the County Executive was adamant, just as he was regarding the unit figure, that the Settlement required only an expenditure of $51.6 million, not the much higher price tag that would correspond to 10,768 units.

The only statement the Monitor points to where the County Executive discussed the cost of the Settlement increasing occurred during a 2011 interview in which the County Executive stated that HUD was trying to "make the agreement go from $51 million to $100 million." (Report at 44.) However, the Monitor ignores the basis for this statement. In a May 13, 2011 letter, HUD had demanded that the County "commit that at least 50% of the affordable housing units developed by the County or with County support within the next five years, *including the units covered by the Settlement Decree*, will have three or more bedrooms." (Ex. D.E. 562-44 at 4 (emphasis added).) Thus, the

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[7] The Report does complain about the lack of documentation to support the calculation (Report at 44), but the County provided the Monitor with a spreadsheet which did just that. (Adin Dec. Ex. 35 (WC105311).) In any event, the number is derived from simple arithmetic. The $51.6 million called for in the Settlement works out to a subsidy of $68,800 per unit for 750 units, the County estimated a cost of between $65,000 and $93,000 per unit for 10,768 units.

County Executive was merely estimating how much the cost of the Settlement would increase if at least 375 of the required 750 units had to have three or more bedrooms.

B. HUD's Attempts to Influence Local Zoning

The Report next attacks various statements by the County Executive that relate to HUD's attempts to influence local zoning as part of its review of the County's AIs. (Report at 33-35.) The gravamen of the County Executive's statements is his judgment that, by identifying ordinary zoning regulations like height restrictions as exclusionary, HUD was effectively attempting to "dismantle" or "control" local zoning. (Report at 23-24.) According to the Monitor, however, as long as HUD has not expressly confessed such an intention, the County Executive's statements had no basis in fact. But the County Executive was expressing his opinion about the implication of HUD's explanations for why it rejected the County's AIs and denied funding to the County. The Monitor may have a different interpretation, but that does not render the County Executive's statements false. In any event, the County Executive repeatedly encouraged the public to read the statements from HUD to which he was responding, which were posted on the County's website. The public could reach its own judgment and was in no danger of being misled.

1. <u>The County Executive Responds to HUD's Letters</u>

As the Monitor recognizes, most of the County Executive's statements responded to letters from HUD to the County, in which HUD explained its rejection of the County's AIs. In those letters, HUD repeatedly insisted that the County adopt wide-ranging corrective actions outside the terms of the Settlement to change local zoning rules.

The first letter, dated May 13, 2011, purported to "provide[] specific reasons for HUD's disapproval . . . . [b]ased on HUD's review of the [County's AI]" of an annual action plan the County had submitted for fiscal year 2011. (D.E. 562-44 at 1.) HUD instructed the County that its "legal strategy" to combat exclusionary zoning must include . . . identification of the specific zoning

issues that the County will challenge" and the municipalities in which those issues exist. (*Id.* at 5.) HUD then listed "the specific zoning practices which must be addressed," specifically:

- "restrictions that limit multifamily housing development, including outright prohibition of such housing";
- "limitation by the size of a development";
- "limitations directed at section 8 or other affordable housing, and limitations on the number of 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";
- "limitations on townhouse development"; and
- "infrastructure barriers related to zoning such as the absence of sewer systems that are impediments to the development of rental housing or to affordable housing".

(*Id.*) HUD then unequivocally demanded that the County take several specific steps to address these zoning practices, including providing "[a] list of actions the County will take when a municipality does not make the zoning change or when [its] action is inadequate including funding suspension or termination and litigation." (*Id.* at 6.) HUD required that the County act "within 30 days of" when it "becomes aware of the failure of the municipality to take action." (*Id.*) HUD's letter also admitted, albeit in another context, that, in its view, the County had an "obligation to affirmatively further fair housing *beyond the four corners of the Settlement*." (*Id.* at 7 (emphasis added).)

The County Executive reasonably construed HUD's letter as evidence of its intent to require the County to eliminate garden-variety zoning restrictions on matters such as height, size, acreage, density, and number of bedrooms throughout Westchester County. Thus, on July 15, 2011, the County Executive held a press conference at which he stated, "HUD is calling for the County to challenge local zoning practices of local municipalities, and I'm quoting here: that "list the steps that the County will take if the municipalities do not enact the changes within three months of the County's notification." (D.E. 391-11 (quoting D.E. 562-44 at 5).) He added, "If a municipality fails

to make a change, HUD wants the County to take a number of actions, including, a suspension of funds and litigation. And this type of request by HUD is unprecedented and it certainly goes beyond what is in the settlement." Based on these observations, the County Executive concluded, "The federal government is demanding that . . . we dismantle local zoning, sue our municipalities, and bankrupt our taxpayers." (*Id.* at 2-4.) The County Executive reiterated his view in an op-ed published later that same year. (*See* D.E. 562-69 at 2-3 ("[T]he federal government . . . is trying to use the settlement as a hammer to dismantle local zoning . . . . The hit list includes limits on multifamily housing, townhouse development, bedrooms per unit, minimum lot size and even sewers.").) These statements simply tracked the language of HUD's May 13, 2011 letter.

In the following years, HUD made similar demands reflecting its intent to force changes to local zoning. For example, in March 13, 2013 letter to the County, HUD claimed that even "potential violations of the Fair Housing Act are impediments to fair housing choice" and statistical data "suggests that 10,000 sq. ft."—or quarter-acre—"zoning, regardless of municipality, *may* have an exclusionary effect." (D.E. 562-45 at 7) (emphasis added). Two months later, HUD sent another letter criticizing the County's proposed AI, asserting that, "[h]ad the County included even one additional data point for the Town of Bedford, it is difficult to imagine that the County could have argued that minimum lot size requirements have no disparate impact on minorities." (Adin Dec. Ex. 36 at 9.) And HUD followed up in an August 9, 2013 letter, directing the County to adopt a "strategy" to "seek removal or reduction of unjustifiable restrictions with potentially discriminatory exclusionary effects" including through litigation. (Adin Dec. Ex. 37 at 7; *see also* Adin Dec. Ex. 38 (April 23, 2014 letter advising that HUD would reallocate five million dollars in federal grants unless the County complied with the demands of the August 9, 2013 letter).)

Unsurprisingly, the County Executive reiterated his objection to HUD's repetition of its demands. For example, in his 2013 State of the County address, he directly addressed HUD's March

13th letter. Although the Monitor quotes only the most general portions of the speech, the County Executive specifically explained, "In a letter on March 13th this year, HUD goes so far as to attack even single-family, quarter-acre lots as—quote—'restrictive zoning practices' that, in their view, could be discriminatory." (D.E. 562-49 at 24-25.) As seen above, HUD's letter does exactly that. The County Executive continued, "The federal government is trying to force me as county executive to sue each municipality to abolish even basic zoning protections. What does that mean for you if that happens? It means the neighborhood you live in today could change over time . . . . A five story building—or higher—could be put on your street. Not only by HUD, but by any developer." The County Executive repeated his assessment at subsequent town hall meetings.

That assessment was justified. HUD had identified litigation against municipalities as an action it might require the County to take and, in the March 13th letter, had described "[l]imitations on the size of a development," among others, as a "restrictive" zoning practice. (D.E. 562-45 at 2.)

As shown, the County Executive identified the possibility of high-rise construction as one result of the removal of local zoning restrictions. The Monitor highlights statements to that effect as a separate supposed misrepresentation and contends, "The County Executive Should Have Informed the Public that the Settlement Does Not Require the Construction of High-Rises." (Report, §II.D.) But, as is the case with most of the statements at issue, the County Executive was not asserting that *the Settlement requires* the construction of high-rises; his complaint is about HUD's imposition of requirements *beyond* the Settlement. And, in this context, he argued that "if there are no restrictions in zoning codes in your neighborhood on . . . height and density, whatever, then what will go next to you is a question mark. It can be either a multi-family house, a development if they can squeeze it on the property, whatever it is." (Report at 46 (quoting Ex. 58).) That is a truism—without zoning restrictions, a high-rise or any other building could be built. And, as discussed above, HUD had attacked height restrictions in its letters. (*See also* April 20, 2012 Letter at 7 ("restrictions

on setback, coverage, height and floor area ratios may limit affordable housing development").) All the County Executive did was make an argument about the consequences of HUD's position.[8]

Not only did the County Executive merely voice his reasonable evaluation of HUD's letters, he made sure that those letters were available to the public. In his State of the County address, for example, he specifically told his constituents, "I urge you to go to westchestergov.com and read for yourself the letters I'm about to reference." And the County Executive provided copies of the letters to residents at a town hall in Rye on April 1, 2013. (Adin Dec. Ex. 39 at 4:4-9 ("[D]o they have the letters here or no? Please, when you go home, read these letters from HUD, or go online to westchestergov.com and read these letters.").). Therefore, the public could not have been misled; constituents could read the letters for themselves, and of course HUD and the Monitor were free to respond to the County Executive's interpretation of them.

2. <u>The Monitor's Effort to Disprove the County Executive's Statements Fails</u>

None of the sources the Monitor cites show that the County Executive's statements were false or misleading. For example, the Monitor points to deposition testimony confirming that HUD had not proposed specific high-rise projects (Report at 48), but that misses the point—the County Executive was arguing that elimination of local zoning controls *could* result in high-rise construction, not that HUD was currently sponsoring such construction. And the fact that the County Executive stated at his deposition that he did not believe the Model Zoning Ordinance requires the County to dismantle local zoning is simply a *non sequitur*. HUD's letters regarding the County's AIs—which, after all, are the communications that the statements at issue were addressing—are unrelated to the

[8] The Monitor also cites an op-ed by the County Executive in *The Wall Street Journal*. (D.E. 562-67.) Although the Monitor does not make it clear, the op-ed addressed a proposed regulation HUD had published for public comment. So the County Executive commented, voicing his opinion that the rule would grant HUD "the power to dismantle local zoning." (*Id.* at 2) Eighteen members of the U.S. House of Representatives wrote a joint letter to certain committee chairpersons making the same argument. (Adin Dec. Ex. 40 at 2 (asserting the proposed rule sought to "extort communities into giving up control of local zoning decisions and reengineer the makeup of our neighborhoods.").) The Monitor may contest that assertion, but arguable assertions are part of notice-and-comment rulemaking—as indeed they are part of policy debates generally.

Model Zoning Ordinance. Indeed, HUD sought new AIs regarding all the eligible communities in Westchester, including those that had adopted the Model Zoning Ordinance. *See, e.g.*, Adin Dec. Ex. 37 at 6 ("The County will submit a final Zoning Submission for all 31 eligible municipalities by October 15, 2013, that is consistent with the amendments required in HUD's August 9, 2013 letter, and is acceptable to HUD. The County will incorporate its final zoning analyses into the Updated AI."), Adin Dec. Ex. 38 at 3. And, although the Model Zoning Ordinance does not address quarter-acre zoning, HUD's letters do. (*Compare* Adin Dec. Exs. 41 and 6 at 7.)

The Monitor also claims the County Executive testified at his deposition that "he had never received any such request [to dismantle local zoning] from HUD." (Report at 36.) But the County Executive was merely asked whether he had ever received correspondence from HUD "telling [him] to sue each municipality," to which he responded, "That would have to be the Law Department that can answer that question." (D.E. 562-74 at 59; Deposition lines 228:18-24.) He was not asked about requests to dismantle local zoning. In any event, the County Executive obviously never asserted that HUD had sent him a request explicitly instructing him to dismantle local zoning, or even a request explicitly "telling [him] to sue each municipality." Moreover, when the County Executive attempted to add, "I have no knowledge of it, but the Law Department may, but it is clear in my—", the Monitor cut him off: "You answered the question." (D.E. 562-74 at 59; Deposition lines 228:21-229:3.) The County Executive then attempted to provide a full answer to clarify the record, but the Monitor refused to permit it:

> A. And I would like to continue the answer so you have a better understanding.
>
> MR. JOHNSON: Mr. Fashakin, note the filibuster.
>
> MR. CASTRO-BLANCO: Objection to the form, "filibuster."
>
> A. I would have like[d] you to have a better understanding of the meaning, because I don't want anything to be taken out of context, so I would like the opportunity to be

> able to explain my answers. It's not always very clearcut "yes" or "no" and I would like the opportunity to discuss exactly what I said.
>
> Q. Mr. Astorino, the question was about correspondence. The answer to that was "no" or "the Law Department has it." Isn't that correct?
>
> A. Yes. But I would like to continue with the answer.
>
> Q. You will not be permitted to.

(*Id.* at 59-60; Deposition lines 229:4-230:2.) The deposition testimony does not undermine the County Executive's public statements.

Nor does the Second Circuit's decision in *Westchester VI*, which the Monitor also cites. While the Second Circuit held that HUD did not withhold funds on the condition that a given municipality change its zoning laws (802 F.3d at 433), the Court recognized that HUD's letters would have required the County "(1) to adopt the monitor's conclusions that certain municipalities had exclusionary zoning ordinances, and (2) to seek removal of those ordinances, including through litigation." *Id.* at 435. The Court declined to opine on the legality of those requirements. *Id.*

C. The Existence of Discrimination

Finally, the Monitor attacks the County Executive's statements regarding the existence of housing discrimination in Westchester County, asserting that the County Executive "denied that housing discrimination existed." On this point, at least, let there be no mistake: The County and its Executive have repeatedly stated that discrimination exists and denounced it at every turn.

As the Monitor recognizes, in 2011 the County Executive held a press conference to announce the release of a WRO report that he stated found that "discrimination still exists." (Report at 49.) Yet the Monitor criticizes a few snippets of the County Executive's remarks at a subsequent public meeting that, at most, suggest that town governments in Westchester do not "perpetuate" discrimination. (*See* Report at 50 (quoting three words from a town hall in North Castle).) But that is

not a denial that housing discrimination exists or the slightest retreat from the County's firm stand against it. Indeed, at the same public meeting the County Executive stated:

> Is there discrimination? . . . Of course there is. . . . But is discrimination something that a—I tolerate, personally or as County Executive? No. Is it something that is perpetuated by communities? No. If there's a real estate agent who refuses to show a house or a neighborhood, or a school district and steers somebody in one direction, as opposed to anywhere, then that is a problem. . . . And that real estate agent, or agency, would suffer the consequences . . . [e]ither through the Human Rights Commission, or the laws that are on the books. That's wrong.

(D.E. 562-93 at 2.).

The County Executive has consistently taken this position. For example, in the 2013 State of the County—other portions of which the Monitor quotes—the County Executive declared: "Let me say this loud and clear: there is absolutely no place for discrimination in our county." (D.E. 562-49 at 24 (emphasis in original).) In introducing the One Community Campaign, he similarly emphasized: "[K]now that there is absolutely no place for discrimination in Westchester. Our Human Rights Commission stands ready to take on any incidents of alleged discrimination." (*See* http://westchesteronecommunity.com/ (last retrieved May 9, 2016).)

In sum, the County Executive has consistently stood against discrimination. He has repeatedly acknowledged its existence and has provided the resources to combat it. What the County Executive has not done, however, is agree that local zoning is discriminatory. And disagreeing about the validity of local zoning is not the same as denying the existence of housing discrimination. With respect, the Monitor simply conflates the two. To the extent instances of housing discrimination are identified, the County stands ready to enforce its Fair Housing Law.

IV. The Remedies The Monitor Seeks Are Inappropriate

The above suffices to show that the remedies the Monitor asks this Court to impose are unnecessary. But, even on their own terms, the remedies are inappropriate.

"[C]ourts must abide by the express terms of a consent decree and may not impose supplementary obligations on the parties even to fulfill the purposes of the decree more effectively." *Barcia*, 367 F.3d at 106 (quoting *Perez*, 347 F.3d at 424). Thus, although "courts may craft equitable remedies to enforce a consent decree," they may do so "only in accordance with the terms of the decree without altering the agreement as written." *Perez*, 347 F.3d at 425. The difference between relief that appropriately enforces a consent decree and relief that does not lies in whether the relief is directed to conduct regulated by the consent decree itself. *Compare, e.g.*, *id.* at 424 ("The Decree prohibits only 'limit[ing], preclud[ing] or obstruct[ing] the plaintiffs . . . from practicing neonatology,' but says nothing of taking steps to prevent other doctors from interfering with CNC physicians' practice or of changing the designation policy."); *Barcia*, 367 F.3d at 108 ("Because neither the Consent Judgment nor [succeeding] stipulations require more specific notice than has been provided thus far, and in light of the narrow construction we must accord to consent decrees, . . . we conclude that the District Court had no authority to" impose additional requirements.) *with Davis v. N.Y. City Housing Auth.*, 278 F.3d 64, 80 (2d. Cir. 2002) ("[T]he district court drew the 30% figure directly from the Consent Decree and the litigation surrounding it."). Ultimately, the terms of the Settlement itself must control. *See Tourangeau v. Uniroyal, Inc.*, 101 F.3d 300, 307 (2d Cir.1996) ("[A] district court may not impose obligations on a party that are not unambiguously mandated by the decree itself.").

Although the Monitor describes the remedies he seeks as "steps or activities to improve the County's performance of its duties under the Settlement" (Report at 55), in fact the remedies far exceed the dictates of the Settlement. The Monitor requests the following: (1) a declaration "reemphasizing" the essential terms of the Settlement, stating that those terms have not changed, and finding that the County Executive's statements are false; (2) an order requiring the County to distribute the declaration to the leadership of the 31 eligible communities; (3) an order requiring the County to post the declaration on the County's website and to remove press releases inconsistent

with the declaration; (4) the unsealing of the videotapes of the depositions of the County Executive, Director of Communications, and Commissioner of Planning; and (5) an order requiring the County to hire a consultant to create and implement a public education campaign, with the Monitor to approve that campaign. (Report at 56.) Regarding the last remedy, the Monitor adds that, if he is not satisfied with the County's consultant or the consultant's plan, he should be granted the authority to designate a consultant on the County's behalf. (*Id.* at 56-57.)

At the outset, these remedies are a solution in search of a problem. The County has complied with Paragraph 33(c), the provision the Monitor invokes, and the statements the Monitor addresses have nothing to do with the County's public outreach obligations under that provision. And the County's statements were not false but rather entirely reasonable expressions of the County's disagreements with HUD and the Monitor on matters unrelated to the Settlement. Thus, there is no need to "reemphasiz[e] the essential terms of the Settlement" because the County has never disputed those terms, nor is there any falsity to declare.

The Monitor's request to unseal the videotapes of certain depositions is also unnecessary. The public can already review the testimony to which the Monitor refers because the deposition transcripts are publicly available. (D.E. Nos. 562-14 (Transcript of Videotaped Deposition of Edwin McCormack, Sept. 18, 2015), 562-65 (Transcript of Videotaped Deposition of Robert P. Astorino, September 15, 2015), 562-74 (Transcript of Videotaped Deposition of Robert P. Astorino, June 24, 2015.) No additional benefit would be gained by unsealing the videotapes. Moreover, as this Court recognized in ordering the videotapes sealed in the first place, the deponents are public figures. Unsealing the videotapes would permit individuals to pluck video excerpts out of context to negatively portray the County and embarrass its employees.

More fundamentally, the Monitor's proposed remedies would have this Court order conduct the Settlement does not require. It might be appropriate, had the County failed to comply with

Paragraph 33(c) (which it has not), to direct the County to take particular steps to promote and broaden support for fair and affordable housing. But the Monitor's remedies are unmoored from the terms of Paragraph 33(c). This is especially true of the second, third and fifth remedies, which seek an instruction that the County distribute the requested judicial declaration, including by posting it on the County's own website, and remove press releases to which the Monitor objects and seek to give the Monitor power over the County's communications to the public. Nothing in the Settlement prohibits the County from expressing its opinion about the Settlement or about matters of federal housing policy or limits the County's right to speak with its own voice to its own constituents.

Were there any doubt that the Settlement does not support such relief, this Court should reject a construction of its authority to enforce the Settlement in the way the Monitor seeks. *Cf. Perez*, 347 F.3d at 424 (referring to the "narrow construction" afforded consent decrees). For the Monitor effectively asks this Court to wade into a contentious dispute between a local government and the federal government about appropriate housing policy, and to pick sides in that debate, not only silencing the County but requiring it to hire a consultant to speak as the Monitor directs. But a municipal political official's commentary on matters of public concern is quintessential political speech protected by the First Amendment.

As the Supreme Court has emphasized, where the "suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended." *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 785-86 (1978). The nature of the speech controls: "[T]he right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences is crucial here." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969). Thus, although here the speaker is an official of a municipal government, "[t]he inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or

individual." *Bellotti*, 435 U.S. at 477. Indeed, the vigorous debate between the County on one hand and HUD and the Monitor on the other is part of the robust deliberation on public matters that the First Amendment is designed to protect. *See, e.g.*, *Mills v. Alabama*, 384 U.S. 214, 218 (1966) ("[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs."); *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964) ("The First Amendment "embod[ies] our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open . . . .") (quotation marks omitted).

The Monitor appears to worry that the County Executive's statements do not tell the whole story. Yet even when it comes to speech that is false—which the speech challenged here is not—the Supreme Court has rejected the notion that "the interest in truthful discourse alone is sufficient to sustain a ban on speech." *United States v. Alvarez*, 132 S. Ct. 2537, 2547-48 (2012). The solution is more speech, not less. *See id.* at 2550 ("The remedy for speech that is false is speech that is true. This is the ordinary course in a free society."); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 355 (2010) ("Factions should be checked by permitting them all to speak . . . and by entrusting the people to judge what is true and what is false."); *Bellotti*, 435 U.S. at 792 ("[I]f there be any danger that the people cannot evaluate the information and arguments advanced by appellants, it is a danger contemplated by the Framers of the First Amendment."). In short, the remedies the Monitor seeks threaten core political speech; the Court should avoid construing the Settlement to permit such censorious sanctions.

Similarly, the Monitor's remedies violate principles of federalism because they aim to micromanage the internal and external communications of Westchester's county government, a creature of the State of New York. The Supreme Court has warned, "If not limited to reasonable and necessary implementations of federal law, remedies outlined in consent decrees involving state officeholders may improperly deprive future officials of their designated legislative and executive

powers" and "lead to federal-court oversight of state programs for long periods of time even absent an ongoing violation of federal law." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004). Thus, because "institutional reform injunctions often raise sensitive federalism concerns," "'federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate [federal law] or does not flow from such a violation.'" *Horne v. Flores*, 557 U.S. 433, 448, 450 (2009) (quoting *Milliken v. Bradley*, 433 U.S. 267, 282 (1977)). That is not to say that injunctions to comply with federal law are improper or to minimize the important federal interests at stake. Rather, advancing those interests does not require controlling how a local elected official communicates policy positions to his constituents. Nor should the Settlement be construed to require such interference.

At the end of the day, the invasive remedies the Monitor proposes are both unnecessary and unwise. They are also premature. The Monitor's Report is the first time he has asserted the County has not complied with Paragraph 33(c). Whatever disagreements the County has had with the Monitor and HUD, it remains willing to engage with both to ensure that the Settlement, including its public outreach obligation, is satisfied. If the Court is concerned in this regard, the County respectfully suggests that the Court order the County and the Monitor to recommend adjustments to the County's outreach activities, rather than enter the punitive sanctions proposed in the Report.

V. There Is No Conflict Of Interest

After filing his Report, the Monitor requested a conference with the Court to discuss "potential conflicts of interest" between the County personnel deposed by the Monitor and the County itself. (D.E. 566 (citing *United States v. Curcio*, 680 F.2d 881 (2d Cir. 1982))). According to the Monitor, because the deposition testimony disproves statements of the County and the County Executive, the County will have to "call[] into question the testimony of several, if not all four," of

the deponents. (*Id.* at 2) Moreover, some of the deponents, the Monitor speculates, "may actually want" the video to be disclosed. With respect, the Monitor's request should be disregarded.

"Motions to disqualify counsel are subject to strict scrutiny because of their potential to be used for tactical purposes." *NCUA Bd. v. RBS Sec.*, No. 13-CV-6726 (DLC), 2014 U.S. Dist. LEXIS 41355, *4 (S.D.N.Y. Mar. 27, 2014) (citing *Murray v. Metropolitan Life Ins. Co.*, 583 F.3d 173, 178 (2d Cir. 2009)). Disqualification is only appropriate "where an attorney's conflict of interests . . . undermines the court's confidence in the vigor of the attorney's representation of his client," or "where the attorney is at least potentially in a position to use privileged information concerning the other side through prior representation." *Bobal v. Rensselaer Polytechnic Inst.*, 916 F.2d 759, 764-65 (2d Cir. 1990) (quotation marks omitted).

Neither of those situations apply here. First, the County is the only defendant in this litigation and the only client of the County Attorney. *See* Rule 1.13 of the Rules of Professional Conduct. In any event, there is no conflict of interest between the County and the individuals whom the Monitor deposed. None is a party to this action, and the Monitor questioned them only in their official capacity as county employees. Nor does the Monitor give any reason why any deponent would want the videotapes unsealed. Most importantly, as discussed above, the testimony of the deponents is not inconsistent with the public statements made by the County Executive. Second, the County has no privileged information "concerning the other side"—i.e., the Monitor or HUD—from a prior representation. Anyway, the County's response to the Monitor's relies on publicly available documents. The Monitor's attempt to engineer a *Curcio* hearing to embarrass the County is baseless.

CONCLUSION

For the foregoing reasons, the Monitor's Report regarding Westchester County's compliance with Paragraph 33(c) of the Settlement should be rejected in its entirety.

Dated: May 9, 2016
White Plains, New York

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