11-2215-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

MARY JO C.

Plaintiff-Appellant,

-against-

NEW YORK STATE AND LOCAL
RETIREMENT SYSTEM,
CENTRAL ISLIP PUBLIC LIBRARY,

Defendants-Appellees.

----------x

JOINT APPENDIX

ELECTRONIC VERSION PART I
PAGES A-1 - A-65

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TABLE OF CONTENTS

Page

Docket Entries.....A-1

Notice of Appeal.....A-7

Judgment of the District Court.....A-8

Opinion and Order of the District Court dated May 5, 2011.....A-9

Complaint.....A-35

Notice of Motion to Dismiss of New York State and Local Retirement System.....A-47

Memorandum of Law in Support of New York State and Local Retirement System in Support of Motion to Dismiss.....A-49

Notice of Motion to Dismiss of Central Islip Public Library.....A-66

Memorandum of Law in Support of Central Islip Public Library Motion To Dismiss.....A-68

Memorandum of Law of Mary Jo C. in Opposition to Motions to Dismiss.....A-85

Reply Memorandum of Law in Support of New York State and Local Retirement System in Support of Motion to Dismiss.....A-112

Reply Memorandum of Law in Support of Central Islip Public Library Motion To Dismiss.....A-126

APPEAL

U.S. District Court
Eastern District of New York (Central Islip)
CIVIL DOCKET FOR CASE #: 2:09-cv-05635-SJF-ARL

C. v. New York State and Local Retirement System et al
Assigned to: Judge Sandra J. Feuerstein
Referred to: Magistrate Judge Arlene R. Lindsay
Cause: 42:1201 Civil Rights (Disability)

Date Filed: 12/23/2009
Date Terminated: 05/06/2011
Jury Demand: Plaintiff
Nature of Suit: 446 Civil Rights: Americans with Disabilities - Other
Jurisdiction: Federal Question

Plaintiff

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A-1

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Date Filed	#	Docket Text
12/23/2009	1	COMPLAINT *(Receipt #2046)* against Central Islip Public Library, New York State and Local Retirement System Disclosure Statement on Civil Cover Sheet completed -No,, filed by Mary Jo C.. (Attachments: # 1 Civil Cover Sheet) (Ryan, Mary) (Entered: 12/28/2009)
12/23/2009		Summons Issued as to Central Islip Public Library, New York State and Local Retirement System. (Ryan, Mary) (Entered: 12/28/2009)
12/30/2009	2	DEMAND for Trial by Jury by Mary Jo C. (Brooks, William) (Entered: 12/30/2009)
01/04/2010		Case Ineligible for Arbitration (Bollbach, Jean) (Entered: 01/04/2010)
02/02/2010	3	SUMMONS Returned Executed by Mary Jo C.. New York State and Local Retirement System served on 1/20/2010, answer due 2/10/2010. (Brooks, William) (Entered: 02/02/2010)
02/02/2010	4	SUMMONS Returned Executed by Mary Jo C.. Central Islip Public Library served on 1/21/2010, answer due 2/11/2010. (Brooks, William) (Entered: 02/02/2010)
02/18/2010	5	NOTICE of Appearance by William M. Savino on behalf of Central Islip Public Library (aty to be noticed) (Savino, William) (Entered: 02/18/2010)
02/18/2010	6	NOTICE of Appearance by Laura L. Shockley on behalf of Central Islip Public Library (aty to be noticed) (Shockley, Laura) (Entered: 02/18/2010)
02/18/2010	7	STIPULATION re 1 Complaint *Extending Time to Answer or otherwise move until March 16, 2010* by Central Islip Public Library (Shockley, Laura) (Entered: 02/18/2010)
02/19/2010		STIPULATION AND ORDER re 7 : The time for defendant Central Islip Public Library to answer or otherwise move against the complaint is extended to 3/16/2010. Ordered by Magistrate Judge Arlene R. Lindsay on 2/19/2010. (c/ecf) (Warshaw, Aaron) (Entered: 02/19/2010)
03/02/2010	8	NOTICE of Appearance by Patricia M. Hingerton on behalf of New York State and Local Retirement System (aty to be noticed) (Hingerton, Patricia) (Entered: 03/02/2010)

A-2

03/02/2010	9	STIPULATION *to extend time to respond to complaint* by New York State and Local Retirement System (Hingerton, Patricia) (Entered: 03/02/2010)
03/03/2010		ORDER TO ANSWER re 9 : The time for defendant New York State and Local Retirement System to answer or otherwise move against the complaint is extended to 3/18/2010. Ordered by Magistrate Judge Arlene R. Lindsay on 3/3/2010. c/ecf (Miller, Dina) (Entered: 03/03/2010)
03/16/2010	10	Consent MOTION for Extension of Time to File Answer re 1 Complaint *(Stipulation Extending time to answer or otherwise move to March 31, 2010)* by Central Islip Public Library. (Shockley, Laura) (Entered: 03/16/2010)
03/17/2010		ORDER granting 10 : On consent, the time for defendants to answer or otherwise move against the complaint is extended to 3/31/2010. Ordered by Magistrate Judge Arlene R. Lindsay on 3/17/2010. (c/ecf) (Warshaw, Aaron) (Entered: 03/17/2010)
03/30/2010	11	MOTION to Dismiss *(request for pre-motion conference or for briefing schedule)* by New York State and Local Retirement System. (Hingerton, Patricia) (Entered: 03/30/2010)
03/30/2010	12	MOTION for Discovery *Stay* by New York State and Local Retirement System. (Hingerton, Patricia) (Entered: 03/30/2010)
04/01/2010	13	Consent MOTION for Extension of Time to File Answer re 1 Complaint *(Stipulation)* by Central Islip Public Library. (Shockley, Laura) (Entered: 04/01/2010)
04/01/2010	14	Letter *in response by plaintiff to defendant New York State and Local Retirement System's pre-motion letter* by Mary Jo C. (Brooks, William) (Entered: 04/01/2010)
04/02/2010		ORDER granting 13 : By stipulation, the time for defendant Central Islip Public Library to answer or otherwise move against the complaint is extended to 4/30/2010. Ordered by Magistrate Judge Arlene R. Lindsay on 4/2/2010. (c/ecf) (Warshaw, Aaron) (Entered: 04/02/2010)
04/02/2010		ORDER denying 12 motion to stay discovery pending resolution of the motion to dismiss. The undersigned will issue a proposed scheduling order after all defendants have answered or moved against the complaint. Ordered by Magistrate Judge Arlene R. Lindsay on 4/2/2010. (c/ecf) (Warshaw, Aaron) (Entered: 04/02/2010)
04/09/2010	15	ORDER REASSIGNING CASE. Case reassigned to Judge Sandra J. Feuerstein for all further proceedings. Senior Judge Leonard D. Wexler no longer assigned to case. Ordered by Chief Judge Raymond J. Dearie on 4/9/2010. (Bowens, Priscilla) (Entered: 04/13/2010)
04/21/2010	16	Letter *indicating service of motion to dismiss on plaintiff and co-defendant* by New York State and Local Retirement System (Hingerton, Patricia) (Entered: 04/21/2010)
04/30/2010	17	STIPULATION *Extending to May 28, 2010, the time for defendant, Central Islip Public Library, to serve a motion to dismiss the complaint and that*

A-3

		Plaintiff's time to oppose defendant, New York State & Local Retirement System's pending Motion to Dismiss and defendant, Central Islip Public Library's Motion to Dismiss is extended to and including July 6, 2010.. by Central Islip Public Library (Attachments: # 1 Letter to Hon. Sandra J. Feuerstein from Laura L. Shockley respectfully requesting that the attached Stipulation be 'so ordered') (Shockley, Laura) (Entered: 04/30/2010)
05/05/2010	18	STIPULATION AND ORDER extending deadlines for motion. Ordered by Judge Sandra J. Feuerstein on 5/5/2010. (Brienza, Lauren) (Entered: 05/06/2010)
05/07/2010		ORDER terminating as moot 11 Motion to Dismiss. Ordered by Judge Sandra J. Feuerstein on 5/7/2010. (Brienza, Lauren) (Entered: 05/10/2010)
05/28/2010	19	MOTION to Dismiss *Complaint* by Central Islip Public Library. (Attachments: # 1 Certificate of Service) (Shockley, Laura) (Entered: 05/28/2010)
05/28/2010	20	MEMORANDUM in Support re 19 MOTION to Dismiss *Complaint* filed by Central Islip Public Library. (Attachments: # 1 Certificate of Service) (Shockley, Laura) (Entered: 05/28/2010)
06/01/2010		ORDER denying 19 Motion to Dismiss WITHOUT PREJUDICE for failure to comply with Rule 4 of Judge Feuerstein's individual rules. Ordered by Judge Sandra J. Feuerstein on 6/1/2010. c/ecf (Morabito, Bryan) (Entered: 06/01/2010)
07/07/2010	21	Letter MOTION for Extension of Time to File *Memorandum of Law in Opposition to Defendants' Motions to Dismiss and Modify the Briefing Schedule* by Mary Jo C.. (Brooks, William) (Entered: 07/07/2010)
07/08/2010	22	Letter *detailing additional consent to previously filed letter motion seeking extension of time and modification of briefing schedule* by Mary Jo C. (Attachments: # 1 Attachment) (Brooks, William) (Entered: 07/08/2010)
07/12/2010	23	ORDER granting 21 Motion for Extension of Time to File. Ordered by Judge Sandra J. Feuerstein on 7/12/2010. (Brienza, Lauren) (Entered: 07/14/2010)
08/12/2010	24	MOTION to Dismiss by New York State and Local Retirement System. (Attachments: # 1 Memorandum in Support, # 2 Memorandum in Opposition, # 3 Memorandum in Support) (Hingerton, Patricia) (Entered: 08/12/2010)
08/13/2010	25	Letter MOTION for Extension of Time to File Response/Reply *in Connection With Pending Motion to Dismiss to August 23, 2010* by Central Islip Public Library. (Shockley, Laura) (Entered: 08/13/2010)
08/18/2010	26	ORDER granting 25 Motion for Extension of Time to File Response/Reply. The application is: granted. (Ordered by Judge Sandra J. Feuerstein on 8/16/2010.) (Fagan, Linda) (Entered: 08/18/2010)
08/23/2010	27	MOTION to Dismiss *Complaint* by Central Islip Public Library. (Shockley, Laura) (Entered: 08/23/2010)
08/23/2010	28	MEMORANDUM in Support re 27 MOTION to Dismiss *Complaint* filed by Central Islip Public Library. (Shockley, Laura) (Entered: 08/23/2010)

A-4

08/23/2010	29	MEMORANDUM in Opposition re 27 MOTION to Dismiss *Complaint (Part 1 of 4)* filed by Central Islip Public Library. (Attachments: # 1 Memorandum of Law in Opposition to Motion to Dismiss (Part 2 of 4), # 2 Memorandum of Law in Opposition to Motion to Dismiss (Part 3 of 4), # 3 Memorandum of Law in Opposition to Motion to Dismiss (Part 4 of 4)) (Shockley, Laura) (Entered: 08/23/2010)
08/23/2010	30	MEMORANDUM in Support re 27 MOTION to Dismiss *Complaint / Reply Memorandum of Law in Further Support* filed by Central Islip Public Library. (Shockley, Laura) (Entered: 08/23/2010)
08/23/2010	31	CERTIFICATE OF SERVICE by Central Islip Public Library re 28 Memorandum in Support, 30 Memorandum in Support, 27 MOTION to Dismiss *Complaint*, 29 Memorandum in Opposition, (Shockley, Laura) (Entered: 08/23/2010)
09/02/2010	32	Letter from Laura L. Shockley to Judge Feuerstein dated 8/24/2010 enclosing courtesy copies of dockets which were all filed electronically. (Glueckert, Lisa) (Entered: 09/02/2010)
05/05/2011	33	OPINION AND ORDER granting to the extent set forth herein 24 Motion to Dismiss; For the reasons stated herein, defendants' respective motions to dismiss the complaint purs. to Rule 12(b) of the Fed. R. Civ. P. are granted to the extent set forth herein and the complaint is dismissed in its entirety. The Clerk of the Curt shall enter judgment in favor of defendants and close this case. (Ordered by Judge Sandra J. Feuerstein on 5/5/2011.) (Fagan, Linda) (Entered: 05/06/2011)
05/06/2011	34	CLERK'S JUDGMENT; That pltff take nothing of defts; that defts' respective motions to dismiss the complaint purs. to Rule 12(b) of the Fed. R. Civ. P. are granted to the extent set forth in the May 5, 2011 Opinion and Order; that the complaint is dismissed in its entirety; and that this case is hereby closed. (Signed by: Catherine Vukovich, Deputy Clerk, on 5/6/2011) c/m c/ecf (Fagan, Linda) (Entered: 05/09/2011)
05/31/2011	35	NOTICE OF APPEAL as to 34 Clerk's Judgment, by Mary Jo C.. (Brooks, William) (Entered: 05/31/2011)
05/31/2011		Electronic Index to Record on Appeal sent to US Court of Appeals. For docket entries without a hyperlink, contact the court and we'll arrange for the document(s) to be made available to you. 3 Summons Returned Executed, 14 Letter, 7 Stipulation, 20 Memorandum in Support, 17 Stipulation, 10 Motion for Extension of Time to File Answer, 32 Letter, 22 Letter, 8 Notice of Appearance, 18 Stipulation and Order, 23 Order on Motion for Extension of Time to File, 5 Notice of Appearance, 2 Jury Demand, 28 Memorandum in Support, 21 Motion for Extension of Time to File, 30 Memorandum in Support, 13 Motion for Extension of Time to File Answer, 33 Order on Motion to Dismiss, 26 Order on Motion for Extension of Time to File Response/Reply, 25 Motion for Extension of Time to File Response/Reply, 12 Motion for Discovery, 34 Clerk's Judgment, 6 Notice of Appearance, 16 Letter, 1 Complaint, 4 Summons Returned Executed, 35 Notice of Appeal, 24 Motion to Dismiss, 9 Stipulation, 19 Motion to Dismiss, 31 Certificate of Service, 27

A-5

		Motion to Dismiss, 29 Memorandum in Opposition, 11 Motion to Dismiss, 15 Order Reassigning Case. (Russo, Eric) (Entered: 05/31/2011)
06/17/2011		USCA Appeal Fees received $455.00 receipt number 6660 re 35 Notice of Appeal filed by Mary Jo C. (Russo, Eric) (Entered: 06/17/2011)

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08/02/2011 14:14:10

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Description:	Docket Report	**Search Criteria:**	2:09-cv-05635-SJF-ARL
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A-6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

MARY JO C.

Plaintiff,

-against-

NOTICE OF APPEAL

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM, CENTRAL ISLIP PUBLIC LIBRARY,

CV-09-5635 (SJF)(ARL)

Defendants.

----------x

Notice is hereby given that plaintiff Mary Jo C. appeals to the United States Court of Appeals for the Second Circuit from a final judgment entered in this action May 6, 2011.

Dated: Central Islip, New York
May 26, 2011

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

MARY JO C,

Plaintiff,

- against -

JUDGMENT
CV-09-5635 (SJF)(ARL)

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM and CENTRAL ISLIP PUBLIC LIBRARY,

Defendants.

----------X

An Opinion and Order of Honorable Sandra J. Feuerstein, having been filed on May 5, 2011, granting the defendants' respective motions to dismiss the complaint pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure to the extent set forth therein, dismissing the complaint in its entirety, and directing the Clerk of Court to enter judgment in favor of the defendants and to close this case, it is

ORDERED AND ADJUDGED that plaintiff take nothing of defendants; that defendants' respective motions to dismiss the complaint pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure are granted to the extent set forth in the May 5, 2011 Opinion and Order; that the complaint is dismissed in its entirety; and that this case is hereby closed.

Dated: Central Islip, New York
May 6, 2011

ROBERT C. HEINEMANN
CLERK OF THE COURT

By: /s/ Catherine Vukovich
Deputy Clerk

A-8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
MARY JO C.,

Plaintiff,

- against-

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM and CENTRAL ISLIP PUBLIC LIBRARY,

Defendants.
----------X

OPINION AND ORDER
09 CV 5635 (SJF)(ARL)

FEUERSTEIN, J.

On December 23, 2009, plaintiff Mary Jo C. ("plaintiff") commenced this action pursuant to Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131, *et seq.*, and New York Executive Law § 296 ("state law") against defendants New York State and Local Retirement System ("the State defendant") and the Central Islip Public Library ("the Library") (collectively, "defendants"), alleging: (1) that the State defendant denied her a reasonable accommodation for her mental disability in violation of Title II of the ADA by failing to waive the requirements for applying for disability retirement benefits under Section 605 of the New York State Retirement and Social Security Law ("NYRSSL"); and (2) that the Library denied her a reasonable accommodation for her mental disability in violation of both Title II of the ADA and state law by failing (a) to file an application for disability retirement benefits on her behalf as permitted by Section 605(a)(2) of the NYRSSL and (b) to reclassify the termination of her employment as a leave of absence. The State defendant moves pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure to dismiss the complaint against it for lack of subject matter jurisdiction and failure to state a claim, respectively; and the Library moves pursuant to

A-9

Rule 12(b)(6) of the Federal Rules of Procedure to dismiss the complaint against it for failure to state a claim. For the reasons discussed herein, defendants' motions are granted in part and denied in part.

I. BACKGROUND

A. Factual Allegations[1]

Plaintiff is a fifty-eight (58) year old woman who has suffered from an unidentified mental illness since adolescence. (Complaint [Compl.], ¶¶ 1, 12). Between 1986 and November 2006, plaintiff intermittently worked as a librarian for various libraries on Long Island, including the Library. (Compl., ¶ 13). In 1988, plaintiff became a member of the State defendant. (Compl., ¶ 14). Plaintiff alleges that in or about November 12, 2006, the Library terminated her employment "as a result of behaviors that were symptomatic of her mental illness." (Compl., ¶¶ 16-17). According to plaintiff, "[a]s a result of behviors manifested by [her] that were symptomatic of her mental illness, libraries in Suffolk County communicated among themselves and agreed that [she] should not be hired as a librarian. In vernacular, [plaintiff] has been blackballed from working in the public library system in Suffolk County." (Compl., ¶ 40).

Plaintiff alleges that she would have been eligible for disability retirement benefits from the State defendant under Section 605 of the NYRSSL as a result of her mental illness if she had made a timely application for such benefits, i.e., within three (3) months from her last day of work. (Compl., ¶¶ 18, 19). According to plaintiff, her mental illness prevented her from

[1] The factual allegations are taken from the complaint and, although disputed by defendants, are presumed to be true for purposes of this motion only. They do not constitute findings of fact by the court.

"recogniz[ing] that state law required her to file her retirement benefits application within three (3) months of her last day of employment." (Compl., ¶ 20). Nonetheless, plaintiff alleges that during the intervening three (3) month period, her brother "attempted to take steps to assist [her] in obtaining benefits to which she was entitled," including speaking to the State defendant's disability retirement director, Theresa Shumway ("Shumway"). (Compl., ¶¶ 21, 22). According to plaintiff, Shumway informed her brother that the Library could file an application for disability retirement benefits on her behalf. (Compl., ¶ 23).

Plaintiff alleges that on or about February 11, 2007, her brother requested that the Library file for retirement benefits on her behalf. (Compl., ¶ 25). According to plaintiff, the Library denied her brother's request on or about February 12, 2007. (Compl., ¶ 26).

Plaintiff alleges that on or about February 13, 2007, her brother requested that the Library reclassify her termination as an unpaid leave of absence, but the Library also denied that request. (Compl., ¶¶ 27, 29).

Plaintiff alleges that she applied for disability retirement benefits in November 2007, when her clinical condition had improved. (Compl., ¶ 30). According to plaintiff, the State defendant denied her application based upon her failure to comply with the three (3) month filing deadline prescribed by Section 605(b)(2) of the NYRSSL. (Compl., ¶ 31).

Plaintiff alleges that on or about July 23, 2008, she "requested an accommodation under the [ADA] from [the State defendant] in the form of a waiver of the filing deadline." (Compl., ¶ 32). According to plaintiff, the State defendant "never formally responded" to that request. (Compl., ¶ 33). Meanwhile, plaintiff appealed the State defendant's denial of her application for disability retirement benefits, which was affirmed by the hearing officer. (Compl., ¶¶ 35, 37).

B. Procedural History

On December 23, 2009, plaintiff commenced this action against defendants alleging: (1) that by failing to waive the requirements for filing of disability retirement benefits under Section 605 of the NYRSSL, the State defendant denied her a reasonable accommodation for her mental disability in violation of Title II of the ADA (first cause of action), (Compl., ¶ 44); and (2) that by failing (a) to file a disability retirement application on her behalf as permitted by Section 605(a)(2) of the NYRSSL and (b) to reclassify her termination as a leave of absence, the Library denied her a reasonable accommodation for her mental disability in violation of both Title II of the ADA and state law (second through fifth causes of action), (Compl., ¶¶ 46-52). Plaintiff seeks: (a) judgment declaring that defendants violated Title II of the ADA and that the Library also violated state law; (b) (i) an injunction directing the State defendant to waive the three (3) month filing period under Section 605(b)(2) of the NYRSSL or, (ii) in the alternative, compensatory damages against the Library; and (c) attorney's fees and costs pursuant to 42 U.S.C. § 12205. (Compl., "Wherefore" Clause).

The State defendant moves pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure to dismiss the complaint against it for lack of subject matter jurisdiction and failure to state a claim, respectively; and the Library moves pursuant to Rule 12(b)(6) of the Federal Rules of Procedure to dismiss the complaint against it for failure to state a claim.

II. ANALYSIS

A. Rule 12(b)(1)[2]

[2] Since a federal court generally may not rule on the merits of a case without first determining that it has jurisdiction, see Sinochem International Co. Ltd. v. Malaysia International Shipping

1. Standard of Review

Federal courts are courts of limited jurisdiction, see Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 552, 125 S.Ct. 2611, 162 L.Ed.2d 502 (2005); Frontera Resources Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic, 582 F.3d 393, 397 (2d Cir. 2009), and may not preside over cases absent subject matter jurisdiction. See Exxon Mobil, 545 U.S. at 552, 125 S.Ct. 2611 (holding that federal courts may not exercise jurisdiction absent a statutory basis); County of Nassau, N.Y. v. Hotels.com, LP, 577 F.3d 89, 91 (2d Cir. 2009) (holding that federal courts lack power to disregard the limits on their jurisdiction imposed by the Constitution or Congress). Lack of subject matter jurisdiction cannot be waived and may be raised at any time by a party or by the court *sua sponte*. See Oscar Gruss & Son, Inc. v. Hollander, 337 F.3d 186, 193 (2d Cir. 2003); Lyndonville Sav. Bank & Trust Co. v. Lussier, 211 F.3d 697, 700 (2d Cir. 2000); see also Henderson ex rel. Henderson v. Shinseki, 131 S.Ct. 1197, 1202 (Mar. 1, 2011) ("[F]ederal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press. * * * Objections to subject matter jurisdiction * * * may be raised at any time."); Union Pacific R. Co. v. Brotherhood of Locomotive Engineers and Trainmen General Committee of Adjustment, Cent. Region, 130 S.Ct. 584, 596, 175 L.Ed.2d 428 (2009) ("[s]ubject-matter jurisdiction, * * * refers to a tribunal's power to hear a case, a matter that can never be forfeited or waived." (internal quotations and citations omitted)). If a court lacks subject matter jurisdiction, it must dismiss the action. Fed. R. Civ. P. 12(h)(3); Arbaugh v.

Corp., 549 U.S. 422, 431, 127 S.Ct. 1184, 167 L.Ed.2d 15 (2007), I must necessarily decide the branch of the State defendant's motion seeking dismissal pursuant to Rule 12(b)(1) prior to rendering any determination on the branch of its motion seeking dismissal pursuant to Rule 12(b)(6), which requires a decision on the merits of the case.

Y & H Corp., 546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006); Durant, Nichols, Houston, Hodgson & Cortese-Costa, P.C. v. Dupont, 565 F.3d 56, 62-3 (2d Cir. 2009). The plaintiff has the burden of establishing by a preponderance of the evidence that subject matter jurisdiction exists. Hamm v. U.S., 483 F.3d 135, 137 (2d Cir. 2007); Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000).

2. Standing

The State defendant contends that plaintiff lacks constitutional standing to assert her ADA claim against it.

"Standing is a federal jurisdictional question 'determining the power of the court to entertain the suit.'" Carver v. City of New York, 621 F.3d 221, 225 (2d Cir. 2010) (citing Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 [1975]). Constitutional standing determines "'whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Article III,' and is therefore 'entitled to have the court decide the merits of the dispute or of particular issues.'" Amnesty Intern. USA v. Clapper, ___ F.3d ___, 2011 WL 941524, at * 9 (2d Cir. Mar. 21, 2011) (quoting Warth, 422 U.S. at 498, 95 S.Ct. 2197). "[A] plaintiff must demonstrate standing for each claim and form of relief sought." Cacchillo v. Insmed, Inc., ___ F.3d ___, 2011 WL 1005427, at * 2 (2d Cir. Mar. 23, 2011) (quoting Baur v. Veneman, 352 F.3d 625, 642 n. 15 (2d Cir. 2003)). To meet the constitutional requirement of standing, a plaintiff must allege (1) an injury-in-fact, i.e., "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical," Carver, 621 F.3d at 225; (2) a "causal connection between the injury

and the conduct complained of," Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); and (3) a likelihood that the injury alleged "will be redressed by a favorable decision," Id.; see also Arizona Christian School Tuition Organization v. Winn, 131 S.Ct. 1436, 1442 (Apr. 4, 2011); Monsanto Co. v. Geertson Seed Farms, 130 S.Ct. 2743, 2752, 177 L.Ed.2d 461 (2010) (holding that in order to establish Article III standing, a plaintiff must allege an "injury [that is] concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.") If a plaintiff lacks constitutional standing, the court has no subject matter jurisdiction to hear the claim. Central States Southeast and Southwest Areas Health and Welfare Fund v. Merck-Medco Managed Care, L.L.C., 433 F.3d 181, 198 (2d Cir. 2005). "The party invoking federal jurisdiction bears the burden of establishing the[] elements [of standing]." Lujan, 504 U.S. at 561, 112 S.Ct. 2130; see also Summers v. Earth Island Inst., 555 U.S. 488, 129 S.Ct. 1142, 1149, 173 L.Ed.2d 1 (2009) (holding that the plaintiff "bears the burden of showing that he has standing for each type of relief sought.")

a. Injury-in-Fact

The State defendant contends that plaintiff has no "legally protected interest" in receiving disability retirement benefits under state law because she failed to comply with a condition precedent for receiving such benefits, i.e., filing her application within the statutory time period.

The "critical question" in determining whether the plaintiff has alleged an "injury-in-fact" "is whether 'the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal-court jurisdiction." Amnesty Intern., ___ F.3d ___, 2011 WL

941524, at * 9 (emphasis in original) (quoting Summers, 555 U.S. 488, 129 S.Ct. 1142, 1149). A "legally protected interest 'may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.'" Fulton v. Goord, 591 F.3d 37, 41 (2d Cir. 2009) (quoting Warth, 422 U.S. at 500, 95 S.Ct. 2197). "Accordingly, 'standing is gauged by the specific common-law, statutory or constitutional claims that a party presents.'" Id. (quoting International Primate Protection League v. Administrators of Tulane Educational Fund, 500 U.S. 72, 77, 111 S.Ct. 1700, 114 L.Ed.2d 134 (1991)).

Plaintiff's claim against the State defendant alleges a violation of Title II of the ADA, which provides, in relevant part, that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The ADA "provides 'remedies, procedures, and rights . . . to any person alleging discrimination on the basis of disability in violation of section 12132'* * *," Fulton, 592 F.3d at 42 (quoting 42 U.S.C. § 12133), and confers standing upon individuals to enforce the right to be free from disability-based discrimination by public entities. Id. Accordingly, plaintiff's allegation that she was "discriminatorily denied a reasonable accommodation for her disability in violation of her rights under [Title II of the ADA]," is sufficient to allege an "injury-in-fact" for Article III standing purposes. See, e.g. id.

The State defendant misconstrues plaintiff's claim against it. Although the State defendant may be correct that plaintiff has no legally protected interest in receiving disability retirement benefits under Section 605 of the NYRSSL, the legally protected interest implicated by plaintiff's claim against the State defendant is her right to be free from disability-based

discrimination with respect to her participation in, or receipt of benefits from, the State defendant's disability retirement program. The State defendant does not explain why a violation of that right, i.e., by failing to provide plaintiff with her requested accommodation of a waiver of the statutory filing deadline, as distinct from any right to receive disability retirement benefits under state law, does not create an injury-in-fact. See, e.g. Fulton, 591 F.3d at 42 (finding that whatever the merit of the defendants' argument that the plaintiff had no "legally cognizable interest in having her incarcerated spouse transferred" to a different prison facility, the plaintiff had standing to pursue her ADA claim that the defendants' refusal to accommodate her disability by transferring her spouse in order to allow her to participate in the visiting program deprived her of her right to be free from disability-based discrimination). Accordingly, contrary to the State defendant's contention, plaintiff meets the "injury-in-fact" requirement of constitutional standing.

b. Causation

The State defendant contends that plaintiff has not demonstrated a causal connection between her inability to obtain disability retirement benefits and its conduct because: (1) her inability to obtain benefits was caused solely by her own nonperformance, i.e., her failure to timely file an application for such benefits; and (2) its denial of her application was not discretionary.

Generally, "causation is shown if the defendants' actions had a 'determinative or coercive effect' on the action that produced the injury." Carver, 621 F.3d at 226 (quoting Bennett v. Spear, 520 U.S. 154, 169, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997)). Although "[t]he causal

chain can be broken where a plaintiff's self-inflicted injury results from his unreasonable decision to bring about a harm that he knew to be avoidable, * * * standing is not defeated merely because the plaintiff has in some sense contributed to his own injury. Standing is defeated only if it is concluded that the injury is so completely due to the plaintiff's own fault as to break the causal chain." Amnesty International, ___ F.3d ___, 2011 WL 941524, at * 11 (internal quotations, alterations and citations omitted).

Again, the State defendant's contention misconstrues plaintiff's claim against it. Plaintiff's claim is that the State defendant refused to provide her with a reasonable accommodation in the form of a waiver of the statutory filing requirements for disability retirement benefits, thereby depriving her of her right to be free from disability-based discrimination. Thus, plaintiff has alleged a causal connection between the State defendant's conduct, i.e., its refusal to waive the statutory filing requirements, and her injury, i.e., her right to be free from disability-based discrimination with respect to her participation in, or receipt of benefits from, the State defendant's disability retirement program.

c. Redressability

The State defendant contends that plaintiff's alleged injury cannot be redressed by a favorable decision from this Court because this Court is without authority to grant the injunctive relief requested by plaintiff requiring it to waive a filing requirement mandated by state law.

"To demonstrate redressability, a plaintiff must show the substantial likelihood that the requested relief will remedy the alleged injury in fact." Amnesty International, ___ F.3d ___, 2011 WL 941524, at * 16 n. 24 (internal quotations and citations omitted). However, "where

legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." Barnes v. Gorman, 536 U.S. 181, 189, 122 S.Ct. 2097, 153 L.Ed.2d 230 (2002) (quoting Bell v. Hood, 327 U.S. 678, 684-85, 66 S.Ct. 773, 90 L.Ed. 939 (1946)); see also Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 70-1, 112 S.Ct. 1028, 117 L.Ed.2d 208 (1992) (holding that generally, "federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute.") The question of whether judicial relief is available for a particular cause of action is a merits determination. See Davis v. Passman, 442 U.S. 228, 245, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979).

Since Title II of the ADA provides for a general right to sue for, *inter alia*, a failure to make reasonable accommodation, for which this Court may fashion any appropriate remedy, the issue of whether judicial relief is available to remedy the alleged discrimination by the State defendant is not appropriately addressed on a Rule 12(b)(1) motion on the pleadings. Accordingly, the branch of the State defendant's motion seeking dismissal of plaintiff's claim against it for lack of constitutional standing is denied.

3. Sovereign Immunity

The Eleventh Amendment to the United States Constitution bars suits in federal court by private parties against a state or one of its agencies, absent consent to suit or an express statutory waiver of immunity. Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 362, 121 S. Ct. 955, 148 L. Ed. 2d 866 (2001); Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). Although the Eleventh Amendment generally does not bar suits against

state officials seeking prospective relief, see Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed.2d 714 (1908); Conyers v. Rossides, 558 F.3d 137, 150 (2d Cir. 2009), that exception to Eleventh Amendment immunity is inapplicable to suits against the States and their agencies, which are barred regardless of the relief sought. Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc., 506 U.S. 139, 146, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993); see also Wang v. Office of Professional Medical Conduct, New York, 354 Fed. Appx. 459, 461 (2d Cir. Nov. 13, 2009) (holding that under the doctrine of Ex Parte Young, the plaintiff may only seek prospective relief from the state by naming a state official, rather than the State or state agency directly); In re Deposit Ins. Agency, 482 F.3d 612, 618 (2d Cir. 2007) (accord).

Although a State may choose to waive its Eleventh Amendment sovereign immunity, its consent to suit "must be 'unequivocally expressed' in the text of the relevant statute" and may not be implied. Sossamon v. Texas 131 S.Ct. 1651, 1658 (Apr. 20, 2011). Moreover, Section Five of the Fourteenth Amendment to the United States Constitution authorizes Congress to abrogate states' sovereign immunity in order "to enforce the substantive rights guaranteed by the Fourteenth Amendment." Bolmer v. Oliveira, 594 F.3d 134, 146 (2d Cir. 2010) (citation omitted); see also United States v. Georgia, 546 U.S. 151, 154, 158-59, 126 S.Ct. 877, 163 L.Ed.2d 650 (2006). Pursuant to such authority, "Congress has unambiguously purported to abrogate states' immunity from Title II [ADA] claims." Bolmer, 594 F.3d at 146 (citing 42 U.S.C. § 12202); see also Georgia, 546 U.S. at 154, 158-59, 126 S.Ct. 877. Accordingly, the Supreme Court has held that "insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity." Georgia, 546 U.S. at 159, 126 S.Ct. 877 (emphasis in

original). The Supreme Court, thus, established the following three (3)-step analysis for courts to use "in the first instance, on a claim-by-claim basis" to determine whether there has been a valid abrogation of sovereign immunity, thereby allowing a Title II ADA claim against a state defendant to proceed: (1) the court must first identify "which aspects of the State's alleged conduct violated Title II" of the ADA; (2) if a violation of Title II of the ADA is found, the court must next determine "to what extent such misconduct also violated the Fourteenth Amendment;" and (3) finally, if the alleged misconduct violated Title II of the ADA but not the Fourteenth Amendment, the court must then determine "whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid."[3] Georgia, 546 U.S. at 158-59, 126 S.Ct. 877.

a. Title II Violation

To state a claim under Title II of the ADA, a plaintiff must allege: (1) that he or she is a "qualified individual with a disability" and (2) that he or she was excluded from participation in, or benefitting from, a public entity's services, programs or activities, or was otherwise discriminated against by that entity, (3) by reason of his or her disability. See Natarelli v. VESID Office, No. 10-77-CV, 2011 WL 1486085, at * 1 (2d Cir. Apr. 20, 2011); Henrietta D. v. Bloomberg, 331 F.3d 261, 272 (2d Cir. 2003).

i. Qualified Individual with a Disability

[3] Plaintiff concedes that the State defendant's failure to provide her with her requested accommodation does not violate the Fourteenth Amendment. (Plaintiff's Memorandum of Law in Opposition to Defendants' Motions to Dismiss [Plf. Mem.], p. 10).

A. "Disability"

The ADA defines "disability" as "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment * * *." 42 U.S.C. § 12102(1).[4] The ADA further defines "major life activities" to include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2).

The complaint does not sufficiently allege that plaintiff has a "disability" within the meaning of the ADA. Although plaintiff alleges that she has suffered from an unidentified mental illness since adolescence, she does not allege any additional facts plausibly suggesting that such mental illness substantially limited one or more of her major life activities. Accordingly, plaintiff's complaint does not state a cognizable claim under Title II of the ADA. See, e.g. Tylicki v. St. Onge, 297 Fed. Appx. 65, 67 (2d Cir. Oct. 28, 2008) (finding that the plaintiff's complaint did not adequately plead a disability under Title II of the ADA where it contained no allegations describing how his supposed mental condition substantially limited a major life activity). Since the complaint does not state a plausible Title II ADA claim against the State defendant, there was no abrogation of the State defendant's sovereign immunity with respect to plaintiff's claim against the State defendant. See, e.g. Natarelli, 2011 WL 1486085, at * 2 (finding that the district court correctly determined at the first step of the Georgia analysis that the state conduct at issue did not violate Title II).

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[4] Only the first definition is relevant in this case.

B. "Qualified Individual"

Title II of the ADA defines "qualified individual with a disability" to mean "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, * * *, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). The ADA's "use of the term 'qualified' suggests that [courts] must look not to the administration of the program for which the plaintiff is qualified, but rather its formal legal eligibility requirements." Henrietta D., 331 F.3d at 277 (citing 42 U.S.C. §§ 12131-32); see also Powell v. National Board of Medical Examiners, 364 F.3d 79, 87 (2d Cir. 2004) (finding that the plaintiff failed to demonstrate that she was a "qualified individual" within the meaning of the ADA where the facts suggested that she did not meet the essential eligibility requirements for participation in the defendant's program). "When reviewing a challenge to the eligibility requirements of a program, a court must first review each eligibility requirement to determine whether or not the requirement is essential- which entails determining whether an accommodation is reasonable- and then must determine whether the individual has met those requirements that are essential." Castellano v. City of New York, 946 F.Supp. 249, 254 (S.D.N.Y. 1996), aff'd on other grounds, 142 F.3d 58 (2d Cir. 1998).

"An eligibility requirement will be essential- or an accommodation of it will be unreasonable- if its alteration either imposes undue financial and administrative burdens on the public entity or requires a fundamental alteration in the nature of the program." Castellano, 946 F.Supp. at 254 (internal quotations, alterations and citations omitted); see also 28 C.F.R. § 35.130(b)(7) ("A public entity shall make reasonable modifications in policies, practices, or

procedures when * * * necessary to avoid discrimination on the basis of disability, unless [it] can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity."); 28 C.F.R. § 41.53 ("A [public entity] shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless [it] can demonstrate that the accommodation would impose an undue hardship on the operation of its program.")

Section 605 of the NYRSSL, pursuant to which plaintiff filed her application for disability retirement benefits, provides, in relevant part, that "[a]t the time of the filing of an application * * *, the member must: 1. Have at least ten years of total service credit, and 2. The application must be filed * * * (b) within three months from the last date the member was being paid on the payroll * * *." N.Y. Ret. and Soc. Sec. Law § 605(b). New York courts have interpreted a similar requirement in Section 62 of the NYRSSL to constitute "a condition precedent to the ripening of any rights" or entitlement to disability benefits, see Banks v. New York State and Local Employees' Retirement System, 294 A.D.2d 164, 165, 741 N.Y.S.2d 413 (1st Dept. 2002) (quoting Matter of Grossman v. McCall, 262 A.D.2d 923, 924, 692 N.Y.S.2d 775 (3d Dept. 1999)); Matter of Callace v. New York State Employees' Retirement System, 140 A.D.2d 756, 757, 528 N.Y.S.2d 175 (3d Dept. 1988) (holding that the statutory ninety (90)-day requirement "is a condition precedent to the existence of a substantive right to ordinary disability retirement"), and have specifically rejected the contention that the statutory filing period may be extended or waived by the State agency, even where the applicant claims that the disability giving rise to his or her claim for disability benefits also rendered him incapable of asserting his or her claim in a timely manner, see Grossman, 262 A.D.2d at 924; Callace, 140 A.D.2d at 757-

58. According to those New York courts, the State Legislature added the statutory filing requirement "to alleviate hardships created when members of the [State] Retirement System mistakenly terminate their service prior to filing for benefits," Grossman, 262 A.D.2d at 924, and, thus, any remedy of the burden imposed by the statutory time period "must lie with the Legislature." Id.; see also Callace, 140 A.D.2d at 758.

The cases upon which plaintiff relies for the proposition that "the duty to provide a reasonable accommodation under the ADA sometimes entails an obligation to act in contravention of a state statute," (Plf. Mem., p. 13), are inapposite. None of those cases involved a determination of whether the plaintiff met the essential eligibility requirements for participation in a particular program or service or whether waiver of an essential eligibility requirement for the receipt of services or benefits constituted a "reasonable accommodation" under the ADA, and all of those cases involved some exercise of discretion by the defendant. See McGary v. City of Portland, 386 F.3d 1259 (9th Cir. 2004) (involving the defendants' enforcement of a local nuisance ordinance against the plaintiff); Regional Economic Community Action Program, Inc. v. City of Middletown ("RECAP"), 294 F.3d 35, 53 (2d Cir. 2002) (involving a refusal by the defendants to grant the plaintiffs a special use permit); Oxford House, Inc. v. Town of Babylon, 819 F.Supp. 1179, 1185 (E.D.N.Y. 1993) (involving the application of a local zoning ordinance to evict the plaintiffs); Tsombanidis v. City of West Haven, 180 F.Supp.2d 262, 292-93 (D. Conn. 2001), aff'd in part and rev'd in part, 352 F.3d 565 (2d Cir. 2003) (involving enforcement of local zoning and land use ordinances against the plaintiffs); Oxford House, Inc. v. Township of Cherry Hill, 799 F.Supp. 450, 463 (D. N.J. 1992) (same). To the contrary, this case does not involve the exercise of any discretion on the part of the State defendant. Rather, state law, as

interpreted by the state courts, specifically precludes the State defendant from exercising any discretion to extend or waive the statutory filing period for the application of disability retirement benefits.

Thus, plaintiff's requested accommodation from the State defendant does not merely seek a reasonable modification of the State defendant's own rules, policies or practices over which it has discretion. Rather, plaintiff seeks a waiver of an essential eligibility requirement for receipt of disability benefits under NYRSSL § 605, which the State courts have determined the State defendant is without authority to grant. Requiring the State defendant to violate state law is not a reasonable accommodation as a matter of law. See, e.g. Herschaft v. New York Board of Elections, No. 00 CV 2748, 2001 WL 940923, at * 6 (E.D.N.Y. Aug. 13, 2001), aff'd on other grounds, 37 Fed. Appx. 17 (2d Cir. 2002) (finding that the plaintiff's requested accommodation of a two to three week extension of the six (6)-week time period within which to gather signatures for an independent nominating petition pursuant to New York Election Law § 6-138(4), which the Board of Elections had no statutory authority to waive, was "unreasonable simply because it would require the Board of Elections to violate a state statute * * *."); Aughe v. Shalala, 885 F.Supp. 1428, 1431-33 (W.D. Wash. 1995) (distinguishing cases requesting modification of a defendant's internal eligibility rules or policies from cases seeking waiver of a statutory requirement of which the defendant did not have authority to waive and finding that since the plaintiff's requested accommodation of a statutory age requirement "would essentially rewrite the statute, it must be seen as a fundamental alteration in the nature of the program * * * [and] could impose an undue financial burden on the program."). As held by Judge Amon in Herschaft, "an accommodation that would require a defendant to violate an otherwise

constitutional state law is inherently unreasonable."[5] 2001 WL 940923, at * 6.

Since plaintiff did not file her application for disability retirement benefits within three (3) months from the last date she "was being paid on the payroll," N.Y. Ret. Soc. Sec. Law § 605(b)(2)(b), she did not meet "the essential eligibility requirements for the receipt of" disability retirement benefits under NYRSSL § 605. Accordingly, plaintiff is not a "qualified individual with a disability" within the meaning of Title II of the ADA. Since plaintiff cannot state a cognizable Title II ADA claim against the State defendant, there was no valid abrogation of the State defendant's sovereign immunity from this suit. Therefore, pursuant to Rule 12(b)(1), the complaint is dismissed with prejudice as against the State defendant as barred by the doctrine of sovereign immunity.[6]

B. Rule 12(b)(6)

1. Standard of Review

The standard of review on a motion made pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is that a plaintiff plead sufficient facts "to state a claim for relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007). The pleading of specific facts is not required; rather a complaint need only give the defendant "fair notice of what the * * * claim is and the grounds upon which it rests."

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[5] Plaintiff does not challenge the constitutionality of NYRSSL § 605.

[6] To the extent that plaintiff seeks leave to amend her complaint to assert a claim seeking prospective injunctive relief against the Comptroller, in his official capacity as head of the State defendant, in order to avoid the Eleventh Amendment's bar to suit under the doctrine set forth in Ex Parte Young, her request is denied because any such amendment would be futile. Since, as a matter of law, plaintiff is not a "qualified individual with a disability," she cannot state a valid Title II ADA claim against the State defendant or its officials, including the Comptroller.

Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); see also Arista Records, LLC v. Doe 3, 604 F.3d 110, 119-20 (2d Cir. 2010)(accord). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting Twombly, 550 U.S. at 555, 127 S.Ct. 1955). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" Id. (quoting Twombly, 550 U.S. at 557, 127 S.Ct. 1955). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Twombly, 550 U.S. 544, 127 S.Ct. at 1959. The plausibility standard requires "more than a sheer possibility that defendant has acted unlawfully." Iqbal, 129 S.Ct. at 1949.

In deciding a motion pursuant to Rule 12(b)(6), the Court must liberally construe the claims, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Matson v. Board of Education of City School District of New York, 631 F.3d 57, 63 (2d Cir. 2011); Goldstein v. Pataki, 516 F.3d 50, 56 (2d Cir. 2008); see also Ruston v. Town Board for Town of Skaneateles, 610 F.3d 55, 59 (2d Cir. 2010), cert. denied, 131 S.Ct. 824, 178 L.Ed.2d 556 (2010) ("When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.") However, this tenet "is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 129 S.Ct. at 1949. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." Id. at 1950; see also Ruston, 610 F.3d at 59 ("A court can choose to begin by identifying pleadings that, because they are no more than conclusions, are

not entitled to the assumption of truth." (quotations and citations omitted)). Nonetheless, a plaintiff is not required to plead "specific evidence or extra facts beyond what is needed to make the claim plausible." Arista Records, 604 F.3d at 120-1; see also Matson, 631 F.3d at 63 ("While a complaint need not contain detailed factual allegations, it requires more than an unadorned, the defendant-unlawfully-harmed-me accusation." (internal quotations and citation omitted)).

The Court must limit itself to the facts alleged in the complaint, which are accepted as true; to any documents attached to the complaint as exhibits or incorporated by reference therein; to matters of which judicial notice may be taken; or to documents upon the terms and effect of which the complaint "relies heavily" and which are, thus, rendered "integral" to the complaint. Chambers v. Time Warner, Inc., 282 F.3d 147, 152-153 (2d Cir. 2002) (citing International Audiotext Network, Inc. v. American Tel. and Tel. Co., 62 F.3d 69, 72 (2d Cir. 1995)); see also DiFolco v. MSNBC Cable LLC, 622 F.3d 104, 111 (2d Cir. 2010).

2. Article II of the ADA[7]

The Library contends that since plaintiff seeks benefits to which she would only be entitled by virtue of her employment relationship with it, her exclusive remedy is under Title I, not Title II, of the ADA.

Plaintiff's claims against the Library are: (1) that it did not timely file an application for

[7] For the reasons set forth above, plaintiff fails to satisfy the first element of a Title II ADA claim, insofar as she has not pled sufficient facts in her complaint plausibly suggesting that she is a "qualified individual with a disability." However, since the Library assumes this element for purposes of its motion, and since it would be possible for plaintiff to amend her Title II claims to sufficiently plead this element as against the Library unless those claims would otherwise be futile, I will address the Library's contention seeking dismissal of this claim on alternative grounds to determine whether any such amendment would be futile.

disability retirement benefits under NYRSSL § 605(a)(2), which allows "[t]he head of the department in which [the applicant] is employed" to file an application on behalf of its employee; and (2) that it did not reclassify its termination of plaintiff's employment as a leave of absence, which would have allowed her additional time to file her application for disability retirement benefits under Section 605(b)(2)(c) of the NYRSSL. Thus, plaintiff's claims against the Library clearly relate to her employment with that entity, as opposed to the programs and services the Library offers to the public at large.

As noted above, one of the elements required to state a claim under Title II of the ADA is that the plaintiff was excluded from participation in, or was denied the benefits of, a public entity's services, programs or activities, or was otherwise discriminated against by the public entity. See 42 U.S.C. § 12132; Henrietta D., 331 F.3d at 272. There is no dispute that the Library is a "public entity" within the meaning of Title II. See 42 U.S.C. § 12131(1) (defining "public entity" to include "(A) any State or local government; [and] (B) any department, agency, special purpose district or other instrumentality of a State or States of local government * * *.") However, courts are split over whether Title II of the ADA, entitled "Public Services," may give rise to claims of employment discrimination by a public employer, or whether the exclusive remedy for such claims lies within Title I of the ADA.[8] Compare Zimmerman v. Oregon Department of Justice, 170 F.3d 1169 (9th Cir. 1999) (holding that Title II does not cover employment discrimination); Emmons v. City University of New York, 715 F.Supp.2d 394, 408

[8] Title I of the ADA, entitled "Employment," provides, in relevant part, that "[n]o covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

(E.D.N.Y. 2010) (holding that Title I of the ADA "is the exclusive remedy for employment discrimination claims, even if the employer is a public entity"); Fleming v. State University of New York, 502 F.Supp.2d 324, 333-34 (E.D.N.Y. 2007) (finding that the language of the ADA clearly and unambiguously devoted Title I exclusively to employment discrimination claims); Ayantola v. Community Technical Colleges of State of Connecticut Board of Trustees, No. 3:05CV957, 2007 WL 963178, at * 2 (D. Conn. Mar. 30, 2007) (holding that Title II of the ADA does not apply to employment actions, which must be brought under Title I of that Act); with Bledsoe v. Palm Beach County Soil and Water Conservation District, 133 F.3d 816 (11th Cir. 1998) (holding that Title II does cover employment discrimination); Transport Workers Union of America, Local 100, AFL-CIO v. New York City Transit Authority, 342 F.Supp.2d 160 (S.D.N.Y. 2004) (accord); and Winokur v. Office of Court Administration, 190 F.Supp.2d 444, 449 (E.D.N.Y. 2002) (citing cases in this Circuit concluding that claims of employment discrimination are permitted under Title II).

To date, the Second Circuit has not expressly considered this issue, see Perry v. State Ins. Fund, 83 Fed. Appx. 351, 354 n. 1 (2d Cir. Dec. 3, 2003) (declining to reach the issue of whether Title II of the ADA covers employment discrimination); Mullen v. Rieckhoff, 189 F.3d 461 (1999) (unpublished opinion) (accord), although it has applied Title II of the ADA in employment discrimination actions where this issue was not raised, see, e.g. Olson v. New York, 315 Fed. Appx. 361 (2d Cir. Mar. 17, 2009); Castellano, 142 F.3d 58 (2d Cir. 1998), and it has interpreted Title II's anti-discrimination provisions to be "a catch-all phrase that prohibits all discrimination by a public entity, regardless of the context * * *," Innovative Health System, Inc. v. City of White Plains, 117 F.3d 37, 44-45 (2d Cir. 1997), overruled on other grounds by Zervos

v. Verizon New York, Inc., 252 F.3d 163, 171 n. 7 (2d Cir. 2001).

The Supreme Court also has not resolved this issue, although it has fairly recently used language implying that it would resolve the issue in favor of a finding that Title II does not cover employment discrimination. See Tennessee v. Lane, 541 U.S. 509, 516-7, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) (The ADA "forbids discrimination against persons with disabilities in three major areas of public life: employment, which is covered by Title I * * *; public services, programs, and activities, which are the subject of Title II; and public accommodations, which are covered by Title III.")[9]; PGA Tour, Inc. v. Martin, 532 U.S. 661, 675, 121 S.Ct. 1879, 149 L.Ed.2d 904 (2001) (accord); Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 360 n. 1 (2001) ("[N]o party has briefed the question of whether Title II of the ADA . . . is available for claims of employment discrimination when Title I of the ADA expressly deals with that subject." (citing Russello v. United States, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983))).[10]

Based upon the well-reasoned decisions of the most recent district court cases in this Circuit, as well as the aforementioned language in the Supreme Court cases, I find that Title I of the ADA is the exclusive remedy for plaintiff's claims of discrimination against the Library, all of which relate to the "terms, conditions, and privileges of [her] employment" with that entity.

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[9] The Second Circuit has recognized this same distinction between the first three (3) titles of the ADA. See Henrietta D., 331 F.3d at 272.

[10] In Russello, the Supreme Court held that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." 464 U.S. at 23, 104 S.Ct. 296. Thus, it may be inferred by the Supreme Court's citation to Russello that it would deem Title II's omission of any employment language, when such language is expressly included in Title I of the ADA, to have been a purposeful exclusion and not a "simple mistake in draftmanship." Id.

42 U.S.C. § 12112(a). Accordingly, plaintiff's Title II ADA claims against the Library (second and third causes of action) are dismissed with prejudice pursuant to Rule 12(b)(6) for failure to state a claim.[11]

3. State Law Claims

Although the dismissal of state law claims is not required when the federal claims in an action are dismissed, see Wisconsin Dept. of Corrections v. Schacht, 524 U.S. 381, 391-92, 118 S.Ct. 2047, 141 L.Ed.2d 364 (1998); Mauro v. Southern New England Telecommunications, Inc., 208 F.3d 384, 388 (2d Cir. 2000), a federal court may decline to exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(c)(3). See Carlsbad Technology, Inc. v. HIF Bio, Inc., 129 S.Ct. 1862, 1866-1867, 173 L.Ed.2d 843 (2009) (holding that a district court's decision whether to exercise supplemental jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary). The court must "consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction" over the pendent state law claims. Carnegie-Mellon University v. Cohill, 484 U.S. 343, 350, n. 7, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988); see also Kolari v. New York-Presbyterian Hospital, 455 F.3d 118, 122 (2d Cir. 2006). Generally, where all of the federal claims in an action are dismissed before trial, the balance of factors will favor declining to exercise supplemental jurisdiction over the remaining state law claims. See Cohill, 484 U.S. at 350 n. 7, 108 S.Ct. 614;

[11] Plaintiff does not seek leave to amend her complaint to assert a Title I ADA claim, nor refute the Library's contention that she cannot state a valid Title I ADA claim because she failed to exhaust her administrative remedies with respect to any such claim as required by 42 U.S.C. § 12117(a).

New York Mercantile Exchange, Inc. v. IntercontinentalExchange, Inc., 497 F.3d 109, 118-119 (2d Cir. 2007); Kolari, 455 F.3d at 122.

In light of the dismissal of all federal claims in this action at the pleadings stage, and upon consideration of all relevant factors , i.e., judicial economy, convenience, fairness and comity, I decline to exercise supplemental jurisdiction over plaintiff's remaining pendant state law claims. Accordingly, plaintiff's state law claims against the Library (fourth and fifth causes of action) are dismissed pursuant to 28 U.S.C. § 1367(c)(3). Plaintiff is advised that pursuant to 28 U.S.C. § 1367(d), the statute of limitations for her state law claims, to the extent those claims were timely filed in this Court, is tolled for a period of **thirty (30) days after the date of this order**, unless a longer tolling period is otherwise provided under state law.

III. Conclusion

For the reasons stated herein, defendants' respective motions to dismiss the complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure are granted to the extent set forth herein and the complaint is dismissed in its entirety. The Clerk of the Court shall enter judgment in favor of defendants and close this case.

SO ORDERED.

SANDRA J. FEUERSTEIN
United States District Judge

Dated: May 5, 2011
Central Islip, N.Y.

CV-09 5663

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

MARY JO C.

Plaintiff,

-against-

COMPLAINT

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM, CENTRAL ISLIP PUBLIC LIBRARY,

Defendants.

WEXLER, J.

LINDSAY, M. 2009

----------x

PRELIMINARY STATEMENT

This lawsuit under the Americans with Disabilities Act ("ADA") challenges the failure of the defendants New York State Local Retirement System and the Central Islip Public Library to provide the plaintiff with reasonable accommodations. Plaintiff Mary Jo C. is an individual who suffers from mental illness. As a result of behaviors that were symptomatic of the plaintiff's mental illness, defendant Central Islip Public Library fired the plaintiff. At this time, the plaintiff was eligible for disability retirement benefits but because of her mental illness, lacked the ability to recognize that state law required her to file for benefits within three months of her termination.

The plaintiff asserts that under the ADA, she is entitled to a reasonable accommodation from the New York State and Local Retirement System in the form of a waiver of the filing deadlines. The plaintiff further asserts that the Central Islip Public Library violated the ADA by failing to provide two requested accommodations. First, the Library

rejected a request to file for disability retirement benefits on behalf of Mary Jo C., action that the Library was authorized to take. The Library also failed to classify the plaintiff's termination as a leave of absence. This action would have extended the period during which the plaintiff could have applied for disability retirement benefits. The plaintiff seeks damages from the Central Islip Public Library if, and only if, this Court determines that waiving the filing deadline at this time would constitute an undue burden for the New York State and Local Retirement System.

PARTIES

1. Plaintiff Mary Jo C. is an individual who suffers from mental illness.

2. Defendant New York State and Local Retirement System is an entity that pays out retirement benefits to New York State employees who are eligible for retirement benefits and makes determinations about the eligibility for retirement benefits.

3. Defendant Central Islip Public Library is a local governmental entity is and hence, is subject to the provisions of Title II of the Americans with Disabilities Act.

JURISDICTION AND VENUE

4. Jurisdiction is conferred on this court pursuant to (a) 28 U.S.C. §1331, which authorizes original jurisdiction of the district court over all civil actions

arising under the Constitution, laws, or treaties of the United States; and, 28 U.S.C. § 1367(a) which authorizes jurisdiction over state law claims that are so related to the other claims in this lawsuit that they form part of the same case and controversy.

5. Venue is conferred on this court pursuant to 28 U.S.C. § 1391(b) which provides that a civil action may be brought in the judicial district in which occurred a substantial part of the events or omissions giving rise to the claim.

RELEVANT STATUTORY AND ADMINISTRATIVE SCHEMES

6. Under Title II of the Americans with Disabilities Act ("ADA"), a public entity includes any state and local government, and any department, instrumentality and agency of a local government. 42 U.S.C. § 12131(1).

7. Under Title II of the ADA, a "qualified individual with a disability" includes an individual with a disability who, with reasonable modifications to rules, policies or practices, meets the essential eligibility requirements for the receipt of services, or participation in the programs provided or operated by the public entity. 42 U.S.C. § 12131(2).

8. A public entity shall not exclude from participation, or deny benefits of the services, programs or activities operated by the entity, to a qualified individual with a disability by reason of such disability. 42 U.S.C. § 12132.

9. A public entity shall make reasonable modifications in policies, practices and procedures when the modifications are necessary to avoid discrimination, unless the public entity can demonstrate that the modifications will fundamentally alter the nature of the activity or program. 28 C.F.R. § 35.130(b)(7).

10. Under New York law, an application for disability retirement benefits can be made by an employee who is eligible for retirement benefits or the head of the department at which the employee is employed. N.Y.Ret. & S.S. Law § 605(a).

11. Any application for disability retirement benefits must be made within three months from the last date of employment. N.Y.Ret. & S.S. Law § 605(b)(2).

STATEMENT OF FACTS

12. Mary Jo C. is a 57 year-old individual who has suffered from mental illness since adolescence.

13. Notwithstanding her illness, Mary Jo C. worked intermittently as a librarian for various libraries on Long Island between 1986 and November 2006.

14. Mary Jo C. became a member of the New York State and Local Retirement System ("NYSLRS") in January, 1988.

15. She last worked for the defendant Central Islip Public Library.

16. As a result of behaviors that were symptomatic of her mental illness, the Central Islip Public Library fired Mary Jo C. in November 2006.

17. Her last day of work was on or about November 12, 2006.

18. As a result of her disability, Mary Jo C. would have been eligible for disability retirement benefits if she made a timely application.

19. Under New York law, Mary Jo C. had three months days to file an application for retirement benefits from her last day of work.

20. However, because of her mental illness, Mary Jo C. failed to recognize that state law required her to file her retirement benefits application within three months of her last day of employment.

21. During this three-month period in which an application could be filed for disability benefits, Mary Jo's brother, Harry C. attempted to take steps to assist Mary Jo C. in obtaining benefits to which she was entitled.

22. Harry C. spoke to NYSLRS Disability Retirement Director, Theresa Shumway.

23. Ms. Shumway, notified Harry C. that the Central Islip Public Library could file an application for disability retirement benefits on behalf of Mary Jo C.

24. Hence, NYSLRS has interpreted New York Retirement and Social Security Law § 605(a) to permit an employer to file for retirement benefits for an individual no longer working for it but who was last employed by the employer within the three month period in which an application for disability retirement benefits could be made.

25. As a result of his conversation with Ms. Shumway, on or about February 11, 2007, Harry C. asked the Central Islip Public Library to file for retirement benefits on behalf of Mary Jo C.

26. On or about February 12, 1007, the Central Islip Public Library denied the request to file disability benefits on behalf of Mary Jo C.

27. On or about February 13, 2007, Harry C. requested in the alternative that the Central Islip Public Library reclassify her termination as an unpaid leave of absence.

28. If the Central Islip Public Library reclassified her termination as an unpaid leave of absence, Mary Jo C. would have been able to file for disability retirement benefits once her clinical condition improved and she recognized the necessity of applying for the disability benefits.

29. The Central Islip Public Library also denied the request by Harry C. to reclassify her termination to an unpaid leave of absence.

30. In November, 2007 when Mary Jo C.'s clinical condition improved, she applied for disability retirement benefits.

31. NYSLRS denied the application on the ground that Mary Jo C. failed to comply with the requirement under New York State Law that she file her application within three months of her last day of employment.

32. On or about July 23, 2008, Mary Jo C. requested an accommodation under the Americans with Disabilities Act from NYSLRS in the form of a waiver of the filing deadline.

33. NYSLRS never formally responded to this request for an accommodation.

34. However, in the interim, MYCERS notified Harry C. that Mary Jo C. could request an appeal of the denial or her disability retirement claim.

35. Mary Jo C. appealed the denial of her disability retirement claim.

36. In opposing the appeal by Mary Jo C. of the denial of her disability retirement claim, NYSLRS argued that state law prohibited NYSLRS from waiving the filing requirements for any reason, including the existence of federal law that would authorize the waiver of the filing requirements.

37. The hearing officer affirmed the decision of NYSLRS and hence, rejected the appeal by Mary Jo C. of the denial of her application for disability retirement benefits.

38. The hearing officer concluded that "[there] is no provision for an extension of the filing deadline under the Retirement and Social Security law or under the regulations."

39. The hearing officer never addressed whether NYSLRS was required to comply with the Americans with Disabilities Act by providing an accommodation in the form of a waiver of the filing deadlines.

40. As a result of behaviors manifested by Mary Jo C. that were symptomatic of her mental illness, libraries in Suffolk County communicated among themselves and agreed that Mary Jo C. should not be hired as a librarian. In vernacular, Mary Jo C. has been blackballed from working in the public library system in Suffolk County.

41. As a result of the action detailed in paragraph 40, it is a virtual certainty that Mary Jo C. will never work again.

42. Hence, as a result of the failure of NYSLRS and the Central Islip Public Library to provide the requested accommodations, Mary Jo C. will lose a substantial amount of retirement benefits to which she would have been entitled if a timely application for the benefits had been filed or if NYSLRS processed her application at the time Mary Jo C. filed it.

LEGAL ALLEGATIONS

First Cause of Action

43. The plaintiff realleges paragraphs one through forty-two.

44. By failing to waive the filing requirements for filing of disability retirement benefits, defendant NYSLRS failed to provide a requested reasonable accommodation to Mary Jo C. and hence, violated 42 U.S.C. § 12132.

Second Cause of Action

45. The plaintiff realleges paragraphs one through forty-two.

46. By failing to file a disability retirement application on behalf of Mary Jo C. when it was clear that she lacked the ability to file the application on her own behalf, defendant Central Islip Public Library failed to provide a requested reasonable accommodation to Mary Jo C. and hence, violated 42 U.S.C. § 12132.

Third Cause of Action

47. The plaintiff realleges paragraphs one through forty-two.

48. By failing to reclassify the plaintiff's termination as a leave of absence, defendant Central Islip Public Library failed to provide a requested reasonable accommodation to Mary Jo C. and hence, violated 42 U.S.C. § 12132.

Pendent State Claim

Fourth Cause of Action

49. The plaintiff realleges paragraphs one through forty-two.

50. By failing to file a disability retirement application on behalf of Mary Jo C. when it was clear that she lacked the ability to file the application on her own behalf, defendant Central Islip Public Library failed to provide a requested reasonable accommodation to Mary Jo C. and hence, violated New York Executive Law § 296.

Fifth Cause of Action

51. The plaintiff realleges paragraphs one through forty-two.

52. By failing to reclassify the plaintiff's termination as a leave of absence, defendant Central Islip Public Library failed to provide a requested reasonable accommodation to Mary Jo C. and hence, violated New York Executive Law § 296.

WHEREFORE, the plaintiff requests the following relief:

(A) A declaration pursuant to Fed.R.Civ.P. 57 and 28 U.S.C. § 2201 declaring that by failing to waive the filing requirements for filing of disability retirement benefits, defendant NYSLRS failed to provide a requested reasonable accommodation and hence, violated 42 U.S.C. § 12132;

(B) A declaration pursuant to Fed.R.Civ.P. 57 and 28 U.S.C. § 2201 declaring that by failing to file a disability retirement application on behalf of Mary Jo C. when it was clear that she lacked the ability to file the application on her own behalf, defendant Central Islip Public Library failed to provide a requested reasonable accommodation and hence, violated 42 U.S.C. § 12132;

(C) A declaration pursuant to Fed.R.Civ.P. 57 and 28 U.S.C. § 2201 declaring that by failing to reclassify the plaintiff's termination as a leave of absence, defendant Central Islip Public Library failed to provide a requested reasonable accommodation and hence, violated 42 U.S.C. § 12132.

(D) A declaration pursuant to Fed.R.Civ.P. 57 and 28 U.S.C. § 2201 declaring that by failing to file a disability retirement application on behalf of Mary Jo C. when it was

clear that she lacked the ability to file the application on her own behalf, defendant Central Islip Public Library failed to provide a requested reasonable accommodation to Mary Jo C. and hence, violated New York Executive Law § 296;

(E) A declaration pursuant to Fed.R.Civ.P. 57 and 28 U.S.C. § 2201 declaring that by failing to reclassify the plaintiff's termination as a leave of absence, defendant Central Islip Public Library failed to provide a requested reasonable accommodation to Mary Jo C. and hence, violated 42 U.S.C. § 12132.

(F) An injunction pursuant to 28 U.S.C. § 2202 directing defendant NYSLRS to provide a reasonable accommodation to Mary Jo C. in the form of a waiver of the three month period for filing for disability retirement benefits;

(G) If this Court determines that providing to Mary Jo C. at this time the requested accommodation of a waiver of the filing requirements will create an undue burden for NYSLRS, or otherwise fundamentally alter the nature of the program operated by NYSLRS, damages in an amount to be determined at trial to be paid by the Central Islip Public Library;

(H) Attorney's fees pursuant to 42 U.S.C. § 12205;

(I) Costs and disbursements; and,

(J) Such other and further relief as this Court should

deem just and proper.

Dated: Central Islip, New York
December 23, 2009

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

MARY JO C.,

Plaintiff,

-against-

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM, CENTRAL ISLIP PUBLIC LIBRARY,

Defendants.

----------X

NOTICE OF MOTION TO DISMISS

CV-09-5635 (SJF/ARL)

PLEASE TAKE NOTICE that upon the Complaint of plaintiff, dated December 23, 2009, and the accompanying memorandum of law, the New York State and Local Retirement System shall move this Court before the Honorable Sandra J. Feuerstein, United States District Court Judge, United States District Court, Eastern District of New York, 100 Federal Plaza, Central Islip, New York, on the ___ day of ___, 2010, for an order pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint based on a lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted and for such further relief as may be proper.

DATED: Hauppauge, New York
April 20, 2010

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

MARY JO C.,

Plaintiff,

-against-

DOCKET NO.:
CV-09-5635
(SJF/ARL)

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM, CENTRAL ISLIP PUBLIC LIBRARY,

Defendants.

----------X

STATE DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES i

Preliminary Statement 1

Factual Statement Based on the Complaint 2

Argument

POINT I

THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THIS ACTION 3

A. Plaintiff Lacks Standing to Sue 4

B. The Eleventh Amendment Bars Plaintiff's Claims 7

POINT II

PLAINTIFF'S ADA TITLE II CLAIM FAILS TO STATE A CAUSE OF ACTION 8

Conclusion 12

TABLE OF AUTHORITIES

Cases

Allen v. Wright, 468 U.S. 737 (1984) 4
Aughe v. Shalala, 885 F. Supp. 1428 (W.D. Wash. 1995) 11
Banks v. New York State and Local Employees' Retirement System, 294 A.D.2d 164 (1st Dep't 2002) 5
Callace v. New York State Employees' Retirement System, 140 A.D.2d 756 (3d Dep't 1988) 5,6
Doe v. Pfrommer, 148 F.3d 73 (2d Cir. 1998) 9
Felix v. New York City Transit Auth., 324 F.3d 102 (2d Cir. 2003) 12
Frank v. Hadesman and Frank, Inc., 83 F.3d 158 (7th Cir. 1996) 7
Grossman v. McCall, 262 A.D.2d 923 (3d Dep't 1999) 5
Harris v. Mills, 572 F.3d 66 (2d Cir. 2009) 9,10
Hayden v. Hevesi, 32 A.D.3d 1125 (3d Dep't 2006) 6
Herschaft v. New York Board of Elections, 2001 WL 940923 (E.D.N.Y. 2001), aff'd on other grounds, 37 Fed. Appx. 17 (2d Cir.), cert. denied, 537 U.S. 825 (2002). 10,11
Jarek v. McCall, 268 A.D.2d 654 (3d Dep't 2000) 6
Kennedy v. New York State and Local Retirement System, 269 A.D.2d 669 (3d Dep't 2000) 6
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 5,6
Morrison v. Nat'l Austl. Bank Ltd., 547 F.3d 167 (2d Cir. 2008), cert. granted, 130 S.Ct. 783 (2009) 3
Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984) 7
Port Wash. Teachers' Ass'n v. Bd. of Educ., 478 F.3d 494 (2d Cir. 2007) 5
Pottgen v. Missouri High School Activities Ass'n, 40 F.3d 926 (8th Cir. 1994) 11
Southeastern Comm. College v. Davis, 442 U.S. 397 (1979) 9
Tennessee v. Lane, 541 U.S. 509 (2004) 8
United States v. Georgia, 546 U.S. 151 (2006) 8
Woods v. Rondout Valley Cent. Sch. Dist. Bd. of Educ., 466 F.3d 232 (2d Cir. 2006) 7
Wright v. Giuliani, 230 F.3d 543 (2d Cir. 2000) 12

United States Constitution

U.S. Constitution art. III, §2, cl. 1 4
U.S. Const. amend. XI 7

Statutes

Federal Rule of Civil Procedure 12(b)(1).....3
New York State Court of Claims Act §8.....8
New York State Retirement and Social Security Law ("RSSL") §605(b)(2).....2,5
RSSL §62 (aa)(2).....5
42 U.S.C. §§12131 et seq.....1
42 U.S.C. §12131(2).....9
42 U.S.C. §12132.....9
42 U.S.C. §12201(e).....9,10
42 U.S.C. §12202.....8

Regulations

28 C.F.R. §35.130(b)(7).....10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
MARY JO C.,

Plaintiff,

-against-

DOCKET NO.:
CV-09-5635
(SJF/ARL)

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM, CENTRAL ISLIP PUBLIC LIBRARY,

Defendants.
----------X

STATE DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT

Preliminary Statement

Mary Jo. C. ("Plaintiff"), an alleged disabled person, brings the instant action pursuant to Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12131 et seq., against the New York State and Local Retirement System (the "State Defendant") and her former employer, the Central Islip Public Library (the "CI Library"). The State Defendant denied Plaintiff's application for disability retirement benefits because, as Plaintiff concedes, she failed to file her application within the statutory time period prescribed by New York State law. Plaintiff contends that the State Defendant should have waived the statutory deadline as a "reasonable accommodation" under Title II of the ADA, and she seeks a declaration to this effect. In addition, Plaintiff seeks an injunction directing the State Defendant to waive the statutory deadline.

This memorandum of law is submitted on behalf of the State Defendant. As discussed below, a dismissal of the Complaint is warranted because this Court lacks

subject matter jurisdiction over this action and because Plaintiff's cause of action under the ADA fails as a matter of law.

Factual Statement Based on the Complaint [1]

Plaintiff, who has suffered from mental illness since adolescence, has worked intermittently as a librarian from1986 through 2006, and most recently was employed by the CI Library until her termination on or about November 12, 2006. Complaint, ¶¶12-13, 15-17. One year later, Plaintiff, a member of the State Defendant, filed an application for disability retirement benefits. Id. at ¶¶14, 30. The State Defendant denied Plaintiff's application based upon her failure to comply with Retirement and Social Security Law ("RSSL") §605(b)(2). Complaint, ¶31. Under that statutory provision, an application for disability retirement benefits must be filed "within three months from the last date the member was being paid on the payroll...." RSSL §605(b)(2). Plaintiff concedes that she did not file her application within the statutory three month period. Complaint, ¶30.

Plaintiff alleges that because of her mental illness, she "failed to recognize that state law required her to file her retirement benefits application within three months of her last day of employment." Id. at ¶20. Nevertheless, during this three month period, Plaintiff's brother, Harry C., attempted to assist her in obtaining benefits. Id. at 21. After speaking with the State Defendant's Disability Retirement Director, Harry C. contacted the CI Library and asked it to file for disability retirement benefits on behalf of Plaintiff, or alternatively, to reclassify her termination to an unpaid leave of absence, Id. at ¶¶21-23, 25, 27-28. The CI Library denied both of these requests. Id. at ¶¶26, 29.

[1] For purposes of this motion to dismiss, all of facts alleged in the Complaint are assumed true.

Plaintiff administratively appealed the State Defendant's decision to deny her application. Id. at ¶35. Following a hearing, the hearing officer affirmed the State Defendant's decision, stating that there is no provision under the RSSL or under the regulations for extending the statutory filing deadline. Id. at ¶¶37-38.

The instant action was then commenced. With respect to the State Defendant, Plaintiff seeks a declaration that the agency violated Title II of the ADA by failing to provide a "reasonable accommodation" in the form of a waiver of the statutory filing deadline. Id. at ¶44; Wherefore Clause, (A). Plaintiff also seeks injunctive relief directing the State Defendant to waive State law. Id. at Wherefore Clause, (F).

Argument

POINT I

THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THIS ACTION

A claim is properly dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) when a district court lacks the statutory or constitutional power to adjudicate it. Morrison v. Nat'l Austl. Bank Ltd., 547 F.3d 167, 170 (2d Cir. 2008), cert. granted, 130 S.Ct. 783 (2009). "A plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists." Id. (internal citation omitted). While on a motion to dismiss the court takes all facts alleged in the complaint as true and draws all reasonable inferences in favor of a plaintiff, "jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." Id. (internal citation omitted). Here, Plaintiff has not shown that this Court has subject matter jurisdiction

over the instant action. She cannot make this showing because she lacks standing to sue and because the relief she seeks from a State agency is barred by the Eleventh Amendment to the U.S. Constitution.

A. Plaintiff Lacks Standing to Sue

Article III of the Unites States Constitution limits the jurisdiction of federal courts to "cases" or "controversies". See U.S. Const. art. III, §2, cl.1. "The case or controversy requirement defines with respect to the Judicial Branch the idea of separation of powers on which the Federal Government is founded." Allen v. Wright, 468 U.S. 737, 750 (1984) (internal quotations omitted). The requirement that a litigant have standing to invoke the power of the federal court is "perhaps the most important" of the doctrines that relate to Article III. Id. The standing doctrine embraces several judicially imposed limits on the exercise of federal jurisdiction, including, pertinent to this case, the "rule barring adjudication of generalized grievances more appropriately addressed in the representative branches...." Id. at 751.

Every plaintiff seeking to establish standing must prove, as an irreducible constitutional minimum, the following three elements:

> "(1) there must be an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical;
>
> (2) there must be a causal connection between the injury and the conduct complained of; and
>
> (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

Port Wash. Teachers' Ass'n v. Bd. of Educ., 478 F.3d 494, 498 (2d Cir. 2007) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)) (citations and internal quotation marks omitted).

The Plaintiff in this case fails to meet any of the standing requirements, mandating a dismissal of the Complaint based on a lack of subject matter jurisdiction.

First of all, Plaintiff has not alleged the invasion of a legally protected interest that is particular to her. What Plaintiff has alleged is that her application for disability retirement benefits was denied because she did not file her application within the statutory time period prescribed by RSSL §605(b)(2). Complaint, ¶31. New York State courts have interpreted the statutory filing deadlines under the RSSL as being "condition precedent[s] to the existence of a substantive right to...[ ]disability retirement." Callace v. New York State Employees' Retirement System, 140 A.D.2d 756, 757 (3d Dep't 1988); see also Banks v. New York State and Local Employees' Retirement System, 294 A.D.2d 164, 165 (1st Dep't 2002) (requirement set forth in RSSL §62 (aa)(2) that ordinary disability benefits be applied for within 90 days of discontinuance of service was a condition precedent to the ripening of any rights to benefits); Grossman v. McCall, 262 A.D.2d 923, 924 (3d Dep't 1999) (referring to the time period within which to file a benefits application as a "statutory precondition," and noting that the State Comptroller had no authority to waive this precondition). Since Plaintiff did not comply with this condition precedent, she had no "legally protected interest" in receiving benefits and suffered no injury in fact.

Secondly, Plaintiff has not demonstrated a causal connection between the injury and the conduct complained of. Plaintiff's injury – the inability to obtain disability

retirement benefits -- was caused solely by her own nonperformance, namely, her failure to timely file her application. She suffered the same consequences as other applicants who do not comply with the filing deadline, i.e., their claims are denied. See, e.g., Hayden v. Hevesi, 32 A.D.3d 1125, 1126 (3d Dep't 2006) (confirming agency's decision to deny application for disability benefits because petitioner failed to timely file application); Kennedy v. New York State and Local Retirement System, 269 A.D.2d 669, 669-70 (3d Dep't 2000) (same); see also Jarek v. McCall, 268 A.D.2d 654, 655 (3d Dep't 2000) (strictly construing statutory deadline by which member was required to file application for disability retirement benefits and holding that act of mailing application within deadline was not the equivalent of filing it). The State Defendant's denial of Plaintiff's application was not a discretionary one; rather, it was mandated by Plaintiff's failure to satisfy a statutory "condition precedent" to obtaining the benefits. See Callace, 140 A.D.2d at 757.

Thirdly, Plaintiff's injury cannot be redressed by a favorable decision because this Court cannot provide the requested relief. Plaintiff is asking this Court to order the State Defendant to waive the statutory filing deadline, claiming that this would constitute a reasonable accommodation to Plaintiff. Complaint, Wherefore Clause (A), (F). As discussed in Point II, however, an accommodation that requires an agency to waive a State law is unreasonable as a matter of law. Even more significantly, what Plaintiff is asking this Court to do is to carve out an exception to a State statute for her benefit. In order to effectuate the relief requested, this Court would have to judicially amend the RSSL, thereby impermissibly encroaching on the province of the State legislative branch and violating the separation of powers doctrine. See Lujan, 504 U.S. at 574 (Court

reiterating that it lacks jurisdiction "to assume a position of authority over the governmental acts of another and co-equal department, an authority which we plainly do not possess"); see also Frank v. Hadesman and Frank, Inc., 83 F.3d 158, 162 (7th Cir. 1996) ("Only state legislatures and state courts have the authority to change state law").

As a result, this lawsuit should be dismissed for a lack of standing in that Plaintiff has failed to show the invasion of a legally protected interest that was caused by the State Defendant and that can be redressed by this Court.

B. The Eleventh Amendment Bars Plaintiff's Claims

Plaintiff's claims for equitable relief against the State Defendant, an agency of the State of New York, are barred by the Eleventh Amendment to the United States Constitution.

The Eleventh Amendment states that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. Although the Amendment bars only federal suits against state governments by citizens of another state or foreign country, it has been interpreted to also bar federal suits against state governments by a state's own citizens. See Woods v. Rondout Valley Cent. Sch. Dist. Bd. of Educ., 466 F.3d 232, 236 (2d Cir. 2006). Moreover, Eleventh Amendment immunity extends beyond states to "state agents and state instrumentalities" that are in effect arms of a state, id., and it applies "regardless of the nature of the relief sought." Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100 (1984).

This immunity is not immutable, and can be waived by a state (which New York has not done, N.Y. Court of Claims Act §8) or abrogated by Congress. Congress has purported to abrogate states' immunity from ADA Title II claims. See 42 U.S.C. §12202. The validity of this abrogation was addressed by the Supreme Court in Tennessee v. Lane, 541 U.S. 509 (2004) and in United States v. Georgia, 546 U.S. 151 (2006). In Lane, the Court upheld Congress's abrogation in the context of courtroom accessibility, 541 U.S. at 531, and in Georgia, the Court held that "insofar as Title II creates a private cause of action for damages against the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity," 546 U.S. at 159. The Georgia Court remanded in order for the lower court to determine: which aspects of the defendant's alleged conduct violated Title II; to what extent such misconduct also violated the Fourteenth Amendment; and insofar as such misconduct violated Title II but not the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct was nevertheless valid. Id.

Here, there has been no valid abrogation of Eleventh Amendment immunity because, as discussed in Point II, infra, Plaintiff's ADA Title II claim fails as a matter of law. Moreover, Plaintiff has not alleged a violation of the Fourteenth Amendment.

POINT II

PLAINTIFF'S ADA TITLE II CLAIM FAILS TO STATE A CAUSE OF ACTION

Even if this Court finds that it does have subject matter jurisdiction over this matter, a dismissal is still warranted because Plaintiff has failed to establish a prima facie violation of ADA Title II.

Title II of the ADA proscribes discrimination against the disabled in access to public services. Harris v. Mills, 572 F.3d 66, 73 (2d Cir. 2009). The purpose of ADA Title II "is to eliminate discrimination on the basis of disability and to ensure evenhanded treatment between the disabled and the able-bodied." Doe v. Pfrommer, 148 F.3d 73, 82 (2d Cir. 1998) (citing Southeastern Comm. College v. Davis, 442 U.S. 397, 410 (1979)).

In order to establish a prima facie violation of ADA Title II, Plaintiff must demonstrate the following three elements: "(1) that she is a qualified individual with a disability; (2) that the defendants are subject to...the Act[]; and (3) that she was denied the opportunity to participate in or benefit from defendants' services, programs, or activities, or was otherwise discriminated against by defendants, by reason of her disability." Harris, 572 F.3d at 73-74; 42 U.S.C. §12132. Here, this Court need go no further than the first prong of this three prong test to conclude that Plaintiff has failed to establish a prima facie ADA Title II claim.

Under Title II of the ADA, a "qualified individual with a disability" is defined, in pertinent part, as "an individual who, with or without reasonable modifications to rules, policies, or practices,....meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. §12131 (2). As discussed in Point I A, supra, the statutory filing deadlines under the RSSL are "condition precedents" to the substantive right to obtain disability retirement benefits. Plaintiff concedes that she did not comply with the three-month statutory filing requirement, Complaint, ¶¶19, 20, 30, and therefore, she has not met an "essential eligibility requirement" for the receipt of retirement benefits. See 42 U.S.C. §12201(e) ("Nothing in this chapter alters the standards for determining eligibility for

benefits under State worker's compensation laws or **under State** and Federal **disability benefit programs**.") (emphasis added).

Plaintiff asserts that the State Defendant should have waived the three month filing deadline as a "reasonable accommodation". Complaint, ¶44. This claim fails. Although the ADA and regulations thereunder require a defendant to make "reasonable modifications in policies, practices, or procedures" to accommodate an aggrieved plaintiff, see 28 C.F.R. §35.130(b)(7), there is nothing in the Act or the regulations which requires an agency to modify a State statute. Here, Plaintiff would only be entitled to benefits if the State Defendant relaxed a statutory requirement, which it has no authority to do and which is not mandated by the ADA. Indeed, the ADA specifically states that the Act does not alter the eligibility requirements for the receipt of State disability benefits. 42 U.S.C. §12201(e)

In the Harris case, the Second Circuit rejected an argument similar to the one being made by Plaintiff herein. The Harris plaintiff, whose medical license was revoked, contended that the State should relax its license requirements to reasonably accommodate his learning disabilities. 572 F.3d at 74. In affirming the district court's grant of the State defendants' motion to dismiss, the Second Circuit stated that plaintiff had not raised a reasonable accommodation claim, holding that "Title II of the ADA requires no such diminishment of otherwise applicable standards." Id.

In another case analogous to the instant one, the Eastern District rejected a "reasonable accommodation" claim which sought a waiver of a statutory time period due to plaintiff's mental illness. In Herschaft v. New York Board of Elections, 2001 WL 940923 (E.D.N.Y. 2001), aff'd on other grounds, 37 Fed. Appx. 17 (2d Cir.), cert. denied,

537 U.S. 825 (2002), the plaintiff, who suffered from paranoid schizophrenia, wanted to run as an independent candidate in an election. 2001 WL at *1-*2. As a "reasonable accommodation," he sought to have the Board of Elections grant him a two to three week extension of the six week time period provided by New York State Election Law in order to gather signatures for his nominating petition. Id. at *6. The court granted judgment in favor of defendant, stating that plaintiff's requested accommodation was unreasonable simply because it would require the Board of Elections to violate a State statute requiring that signatures be gathered and submitted within a certain time frame. Id.

Noting that the defendant had no statutory authority to waive the requirement, the Herschaft court found that "an accommodation that would require a defendant to violate an otherwise constitutional state law is inherently unreasonable." Id. See also Pottgen v. Missouri High School Activities Ass'n, 40 F.3d 926, 930 (8th Cir. 1994) (denying plaintiff's request to waive defendants' age requirement for participation in sports program; court noted that "[o]ther than waiving the age limit, no manner, method, or means is available which would permit [plaintiff] to satisfy the age limit. Consequently, no reasonable accommodation exists."); Aughe v. Shalala, 885 F. Supp. 1428, 1432-33 (W.D. Wash. 1995) (plaintiff's request to waive eligibility requirement of federal statute could not be granted; since such relief would "essentially rewrite the statute, it must be seen as a fundamental alteration in the nature of the program."). The principles of these cases apply with equal force to the instant case.

Finally, by asking the State Defendant to waive the statutory time frame for herself, Plaintiff is basically seeking to be treated more favorably than all other applicants. Such an approach is inconsistent with the purpose of the Act, which is to "put

[the disabled] on an even playing filed with the non-disabled; it does not authorize a preference for disabled people generally." Felix v. New York City Transit Auth., 324 F.3d 102, 107 (2d Cir. 2003); see also Wright v. Giuliani, 230 F.3d 543, 548 (2d Cir. 2000) (ADA requires reasonable accommodation to assure access to a program, but not additional substantive benefits for disabled people.

Conclusion

For all of the foregoing reasons, the State Defendant's motion to dismiss should be granted.

Dated: April 20, 2010
Hauppauge, New York

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STATE OF NEW YORK)
)SS.:
COUNTY OF SUFFOLK)

LINDA MILLER, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and is employed in the office of ANDREW M. CUOMO, Attorney General of the State of New York, Attorney for State Defendant. On April 21, 2010 she served a copy of the enclosed Memorandum of law in Support of Motion upon the following named person(s):

William M. Brooks, Esq.
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the addresses designated by said persons for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

LINDA MILLER

Sworn to before me this
21st day of April, 2010

PATRICIA M. HINGERTON
Assistant Attorney General

A-65