UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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MARY JO C.

Plaintiff-Appellant,

-against-

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

Defendants-Appellees.

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REPLY DECLARATION

Docket No. 11-2215

WILLIAM M. BROOKS, certifies the truth of the following pursuant to 28 U.S.C. § 1746:

1. I am the attorney for plaintiff-appellant Mary Jo C. and submit this reply declaration in response to the declaration in opposition by Harris Zakarin ("Zakarin Decl."), the attorney for the Central Islip Public Library ("Library"), and in further support the appellant's motion for leave to file a supplemental appendix consisting of the minutes of a state administrative proceeding relevant to this lawsuit.

2. The Library argues that while a court may take judicial notice regarding proceedings that took place before a state administrative tribunal, it may not do so to establish the truth of the matter. Zakarin Decl., ¶ 19 (citing *Network Communications, Inc. v. City of New York,* 458 F.3d 150,

157 (2d Cir. 2006). In *Network Communications*, this Court held that it may not take judicial notice of the truth of the matter set forth in the other legal proceeding, but may for the purpose of determining what was stated in the other proceeding. *See id.*

3. The appellant seeks to provide material from the administrative proceeding in question to permit this Court to take judicial notice of statements made in that proceeding, a purpose that the Library acknowledges is proper. The proceeding below was a motion to dismiss at the pleading stage. At this stage, the district court was not concerned with the truth of any allegations; only that allegations were made. Hence, what are relevant are allegations about the extent of the disability from which appellant Mary Jo C. suffered. Thus, statements made in the administrative proceeding about the extent of the disability from which Mary Jo C. suffered are matters of which this Court may take judicial notice, as they are allegations only.

4. Furthermore, the Library first opposes the inclusion of the minutes of the state administrative proceeding on the ground that Fed.R.App.P. 30 does not authorize the inclusion of the minutes from the joint appendix. However, the Library is apparently aware that the joint appendix may include matters not expressly authorized by the Rules of Appellate Procedure. This is so because Fed.R.App.P. 30(a)(2) specifically

excludes from the joint appendix memoranda of law unless they have independent relevance. However, the Library asked to have the memoranda of law submitted below included as part of the joint appendix. The appellant acceded to this request.

5. Finally, the Library argues that no precedent exists for filing a supplemental appendix for judicially noticed material. However, it is well-settled that a party may file a supplemental appendix. *See, e.g., Salama v. Our Lady of Victory Hosp.*, 514 F.3d 217, 222 (2d Cir. 2008); *Lucaj v. Gonzalez*, 425 F.3d 203, 206 (2d Cir. 2005); *McCann v. Royal Group,* 77 Fed. Appx. 552, 554 (2d Cir. 2003); *City of New York v. Minetta*, 262 F.3d 169, 175 (2d Cir. 2001). No one will seriously dispute that an appendix contains matters arguably pertinent for resolution of any appeal that is before this Court. If these are matters of which this Court may take judicial notice, no reason exists for excluding them.

WHEREFORE, I respectfully request that this Court grant leave to the appellant to file a supplemental appendix that consists of the minutes of an administrative proceeding of which this Court can, and may choose to, take judicial notice.

Dated: Central Islip, New York
September 14, 2011

WILLIAM M. BROOKS