

APPENDIX C

FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of March, two thousand nineteen.

Seth Mitchell,

Plaintiff - Appellant,

v.

American Arbitration Association (AAA), Ann Lesser, Esq., Heather Santo, Lazare Potter Giacovas & Moyle LLP, The Travelers Companies, Linda Nielsen, Tiffany Chamberlin, Michael Rashbaum, Harvey Aloni, Wayne Rogers, Jeannine Cavallaro, Yale H. Glazer,

Defendants,

Macy's Inc., Bloomingdale's, Prudential Financial, Inc., Cigna, Local 3 RWDSU/UFCW United Store workers Union, Karen Hoguet, Jeffrey Kantor, Tony Spring, Esq. Elisa Garcia, Esq. Nicole Jones, Stephen Von Wahlde, Esq., Michelle Ronquillo, Susan Wright, Richard Law, Santiago Fernandez, Esq., Sarah Dubuc, Susan Schiller, Ariana Starace, Brittany Pressner, Robin Goodell, Susan Shekerchi, Cynthia Clemons, Shareen Freeling, Brenda Moses, Paula Sabatelli, John & Jane Does 1-1000, Bank of America, Terrance Laughlin, Elyse Vogel, Aahren DePalma, Esq., Bernard Manning, Tony Spring, New York University, Thomas K. Montag, Andrew D. Hamilton, Terrance J. Nolan, Martin S. Dorph, Anal Shah, U.S. Trust Bank of America Private Wealth Management, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Dorothy S. Oertel-Albright, Cassandra Berrocal, Shaun Kavanagh, Dennis Di Lorenzo, Clare Coughlin,

Defendants - Appellees.

ORDER

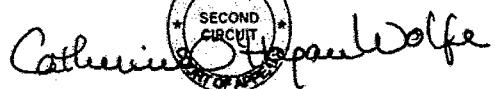
Docket Nos: 18-1504 (Lead),
18-1743 (Con),
18-1861 (Con),
18-2861 (Con)

Appellant, Sean Mitchell, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe



APPENDIX D

S.D.N.Y.-N.Y.C.
17-cv-1845
Torres, J.
Netburn, M.J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of February, two thousand nineteen.

Present:

Barrington D. Parker,
Denny Chin,
Richard J. Sullivan,
Circuit Judges.

Seth Mitchell,

Plaintiff-Appellant,

v.

American Arbitration Association (AAA), et al.,

18-1504 (L),
18-1743 (Con),
18-1861 (Con),
18-2861 (Con)

Defendants,

Macy's, Inc., et al.,

Defendants-Appellees.

Appellant, pro se, moves for partial summary judgment, to disqualify judges, for a new trial, for an expedited appeal, for default judgment, and to substitute a party. Upon due consideration, it is hereby ORDERED that the motions for partial summary judgment and for a default judgment are DENIED, the appeals are DISMISSED because they "lack[] an arguable basis either in law or in fact," and the motions are otherwise denied as moot. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

APPENDIX A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 SETH MITCHELL,

4 Plaintiff,

5 v.

17 CV 1845 (AT) (SN)

6 MACY'S, INC., et al.,

7 Defendants.

8 -----x
9 New York, N.Y.
10 January 26, 2018
11 4:30 p.m.

12 Before:

13 HON. SARAH NETBURN,

14 Magistrate Judge

15 APPEARANCES

16 SETH MITCHELL (PRO SE)

17 SCHOEMAN UPDIKE & KAUFMAN & GERBER LLP
18 Attorneys for Macy's, Inc. and Bloomingdale's, Inc.

19 Defendants

20 BY: CHRISTOPHER M. MCAFADDEN

21 MORGAN, LEWIS & BOCKIUS LLP

22 Attorneys for CIGNA Corporation Defendants
23 BY: GINA FARINELLA MCGUIRE

24 EISNER & ASSOCIATES, P.C.

25 Attorneys for Local 3 Defendants
BY: BY: THOMAS JOHN LaMADRID

McGUIRE WOODS LLP (NYC)

Attorneys for Bank of America Defendants
BY: PHILIP GOLDSTEIN

1 (Case called)

2 THE DEPUTY CLERK: Please state your name for the
3 record.

4 MR. MITCHELL: I'm Seth Mitchell, the plaintiff.

5 THE COURT: Thank you.

6 MR. LaMADRID: Thomas LaMadrid for Defendant Local 3,
7 your Honor.

8 MR. McFADDEN: Chris McFadden for the Macy's
9 defendants, your Honor.

10 MR. GOLDSTEIN: Good afternoon, your Honor. Philip
11 Goldstein for Bank of America and Terrance Laughlin.

12 MS. McGUIRE: And Gina McGuire for Defendant Cigna
13 Corporation and Nicole Jones.

14 THE COURT: Thank you.

15 We are here for a conference to address a couple of
16 pending motions and to make sure that we're all on the same
17 page regarding the litigation.

18 At this point, I believe all of the named defendants
19 have filed a motion to dismiss. That motion is going to be
20 decided by Judge Torres. I recently granted you, Mr. Mitchell,
21 until March 5 to file your opposition. It should be a single
22 brief.

23 I did flip through the motions that were filed, the
24 memoranda of law, and recognized that there are a lot of pages
25 for you to respond to. I will give you some free legal advice

1 which is that short, concise briefs tend to be more successful.

2 I am not going to set a page limit for you. I
3 recognize Judge Torres does not have any page limitations. So
4 the parties are free to do what they want. The shorter the
5 brief, the more likely it is they are read more than once,
6 which is probably in the author's interests.

7 So I encourage you to do your best to respond to those
8 briefs. Again, it should be in a single brief, and I would do
9 your best to respond as concisely as possible. That brief, as
10 we said, is going to be filed on March 5.

11 I'll give the defendants two weeks to file any reply.
12 So we'll put that reply brief due on March 19.

13 MR. MITCHELL: Judge Netburn, I believe that Local 3
14 hasn't filed their responsive paperwork yet.

15 THE COURT: Let's hear from Local 3.

16 MR. LaMADRID: Yes, your Honor. We had previously
17 asked for an extension, and our motion to dismiss or answer
18 would be due Friday. So a week from today.

19 THE COURT: So we'll get that in on Friday. So it
20 will be due on the 2nd.

21 MR. LaMADRID: Yes, your Honor.

22 THE COURT: I think you'll have a month to review
23 their briefs, and you've got plenty of work cut out for you.
24 So I think you should still be able to get your opposition in
25 by March 5. Okay?

1 MR. MITCHELL: Yes, your Honor.

2 THE COURT: Mr. Mitchell, I know that there are a few
3 other motions that you have filed. One of them I believe is a
4 motion at docket number 67 seeking Local 3 to sort of provide
5 its proper name; that there is some concern that it's operating
6 on a fictitious name.

7 Is that still a concern of yours?

8 MR. MITCHELL: It is less so because of the status
9 update that brought it to court regarding the parent union and
10 the interest of the parent union to meet with me in good faith
11 next week. That's going to be Wednesday. So this is the RWDSU
12 union, and that sort of sits above Local 3. So I'm meeting
13 with the secretary/treasurer next Wednesday.

14 I think it's very, very important for the Court to
15 understand that as far as I have seen the legal documents of
16 how the union operates, the union acts as an intermediary
17 between Macy's, Inc., Bloomingdale's, Inc., and the employee.
18 A lot of conversations went on that I was not privy to as an
19 employee between the union and Macy's, Inc.

20 So, when I had asked repeatedly prior to litigation
21 and even after litigation commenced for the legal
22 documentation, I was refused that documentation by Local 3. So
23 it's very important for me to ensure that I have as much
24 information as I can get as we move forward with the
25 litigation.

1 If there is any claim that I've asserted that does not
2 prove 100 percent meritorious after discovery, then I will be
3 the first person to say, I made a mistake. I do believe every
4 single claim I've made is factually substantiated in the
5 paperwork I've submitted.

6 However, Local 3 has a lot more information that I
7 need because of the way that the union contract had been
8 structured. That being said, next Wednesday I am hopeful that
9 perhaps there is an agreement with the union and myself, and
10 then the union would drop away from the litigation in its
11 entirety.

12 THE COURT: Good. So a few points: One, obviously I
13 hope that the parties engage in good-faith negotiations next
14 Wednesday in the hopes that at least the claims against Local 3
15 could be resolved.

16 Two, I take it from what you've told me that the
17 motion that you filed to compel Local 3 to explain its precise
18 legal name can be denied as moot; that you're satisfied at this
19 point that you have that information.

20 MR. MITCHELL: Well, thank you.

21 So my only concern -- and this is my first federal
22 prosecution, your Honor -- is that service was effected
23 appropriately as per law, and I would hope that as the
24 litigation moves on, that there is no way that any of the
25 defendants' counsel can say, oops. You spelled the defendant's

1 name wrong. We're going to dismiss that defendant from the
2 case because the Ts weren't crossed and the Is weren't dotted.
3 So that's my concern.

4 THE COURT: Fair enough.

5 Mr. LaMadrid, are you planning on making any service
6 defenses at this time?

7 MR. LaMADRID: No, your Honor. I believe we may have
8 waived those when we returned the marshals' service.

9 THE COURT: So I think we're all set on that issue.
10 So I'm going to go ahead and deny that motion as moot.

11 There was also an application made regarding a request
12 to add several other defendants -- I believe it was to add two
13 Local 3 defendants -- and then there was a request to add a
14 number of both individuals and corporations tied to Bank of
15 America and Merrill Lynch.

16 I'm not quite sure what this application is about. I
17 understand Bank of America is in the case, and I'm not sure
18 what claims you would be seeking to bring against these
19 individuals.

20 So let me give you an opportunity, Mr. Mitchell, to
21 tell me about this application.

22 MR. MITCHELL: Thank you, your Honor. I'll try to be
23 as concise and brief as I can.

24 So, when I filed the original complaint in this
25 matter, as I provided in my status update, I was in what only

1 can be deemed as an emergency medical situation as a result of
2 me being injured on the job.

3 I was trying to recover from these very serious
4 injuries that required emergency room treatment. At the same
5 time, I was trying to compile all my factual information to
6 file my complaint.

7 So, as Mr. Goldstein so correctly put in his reply
8 brief, I didn't elaborate as much as I should have about the
9 Bank of America Corporation wrongdoing as I should.

10 So, at the time I filed the original complaint, I
11 didn't have my paperwork, my records, with me. So the status
12 update that I provided to the Court recently substantiates
13 that, for instance, I received many, many denials of my
14 hardship withdrawal request with Merrill Lynch Bank of America,
15 and each and every time, they were denied illegally.

16 If you look at the letterhead from each one of the
17 denial letters, at the top right it says, Merrill Lynch Wealth
18 Management Bank of America. So the concern I bring now is
19 that, once again, I think it's going to be the defense's
20 strategy to say, you sued the wrong entity.

21 So the parent company is Bank of America Corporation.
22 Merrill Lynch, Pierce, Fenner & Smith is one of its companies.
23 I'm not going to do Mr. Goldstein's work and do a capital
24 analysis of Bank of America. However, if Merrill Lynch is the
25 right entity to sue, I don't know because it's not very, very

1 clear who the right fiduciary is in that particular situation.

2 THE COURT: Can you tell me a little bit about the
3 facts underlying the claim you would have against Bank of
4 America or Merrill Lynch.

5 MR. MITCHELL: Yes, your Honor. So there are two
6 different aspects here. One is the fact that Bank of America
7 Corporation, Merrill Lynch, was a fiduciary as the
8 administrator of the Macy's, Inc. 401-k plan.

9 As I included in my recent update status letter to the
10 Court, there was a significant amount of back-and-forth
11 dialogue from June of 2015 when I sought the hardship
12 withdrawal -- sorry. 2016 -- all the way until basically
13 February 2017 where I was denied, illegally, the hardship
14 withdrawal request. And that hurt me tangibly because I was
15 evicted from the residence where I was staying.

16 Had I received the money, my money out of that fund, I
17 would not have been evicted and my life would have been that
18 much better. I am more than alleging -- I can't state, but I'm
19 90 percent of the way there, your Honor -- that one of the
20 reasons why I was illegally separated from Macy's, Inc. was
21 because I got involved in a dispute with Bank of America
22 Merrill Lynch. And I am confident that discovery is going to
23 show that they had a hand in my separation from Macy's, Inc. in
24 February of 2017 at the height of my medical crisis, losing my
25 Cigna health insurance. I'm lucky to be alive today,

1 your Honor.

2 THE COURT: So it sounds like there is one claim that
3 you're bringing against Bank of America in its capacity as
4 fiduciary of the 401-k claim.

5 MR. MITCHELL: Yes, ma'am.

6 THE COURT: Are you suggesting that Bank of America is
7 also responsible for interfering with your contract with
8 Macy's, your employment contract with Macy's?

9 MR. MITCHELL: Yes.

10 THE COURT: Okay.

11 MR. MITCHELL: That's one side of the equation. The
12 story gets more interesting in that after I was illegally
13 separated from Macy's, Inc., I had applied to Bank of America
14 Merrill Lynch for a job. And I spent four months in employment
15 negotiations with Bank of America Merrill Lynch. I included in
16 my status update to the Court even the offer, a 20-page
17 detailed offer from Bank of America.

18 After four months of employment discussions with them,
19 I said to myself, okay. I got a job with Bank of America
20 Merrill Lynch. They've made good on what they did to me in
21 reference to failing to provide my hardship withdrawal. That's
22 the way I was thinking about this.

23 Three months into that four-month process, I get
24 information from Bank of America Merrill Lynch. Hold off.
25 We're not going to let you start working. We need to put a

1 brake on the employment discussions.

2 I had discontinued my other employment discussions
3 with other employers. Here I was unemployed, I was in and out
4 of the emergency room, I didn't have the funds to live on a
5 day-to-day basis, and I stopped discussions with other
6 employers because I had received a Bank of America offer which
7 they then rescinded in bad faith.

8 And I'm convinced there is pretext here, your Honor,
9 pretext. There was this aspect of real malevolence going on
10 underneath my employment discussions with Bank of America.

11 THE COURT: What's the claim that you're bringing with
12 respect to these facts?

13 MR. MITCHELL: It's fraud. They committed fraud
14 against me. They collected my Social Security number, my
15 fingerprints, a tremendous amount of material not public,
16 personal information, which I am convinced they would try to
17 use as part of their defense in the litigation of the 401-k
18 claim. That is my conclusion that I have drawn. That's the
19 pretext that I see here.

20 THE COURT: Thank you. That was all very helpful.

21 You have named several people in these applications
22 that were filed at docket number 113 and 119. I interpreted
23 your application seeking leave to add a number of individuals.
24 Most of them appear to be quite high-ranking officers for
25 either Bank of America or Merrill Lynch.

1 What is the theory under which these individuals are
2 appropriate defendants?

3 MR. MITCHELL: So, your Honor, the reason why I'm
4 adding the individuals is because they were directly involved,
5 for the most part, in these employment-related discussions.

6 THE COURT: I'm going to stop you for one second.
7 One, the reason why you're asking to add -- we haven't added
8 them yet -- and two, just because people are witnesses doesn't
9 mean they're appropriate defendants. I'll go back to my free
10 legal advice earlier about short, concise briefs.

11 If you don't need to sue people, there is no reason to
12 bring litigation against them. It only complicates matters.
13 So, if there is a defendant that you believe against whom you
14 have a viable legal claim, that's one thing.

15 But I'm not going to authorize you to bring additional
16 claims, particularly at this stage in the process, against a
17 dozen individuals who might be witnesses or who might have
18 somehow engaged in some component of the larger narrative, but
19 you need to identify the individuals with whom you have a
20 legitimate claim against.

21 To the extent it's true that Bank of America was the
22 fiduciary of a 401-k plan -- I'm taking your word for that --
23 then that fiduciary could be a defendant in this case. But
24 it's not obvious to me why, for instance, the chief operating
25 officer of Bank of America would be an appropriate defendant in

1 this case.

2 MR. MITCHELL: So the discussions with Bank of
3 America -- the defendants that are getting added outside of
4 Merrill Lynch, Pierce, Fenner & Smith -- I think Merrill Lynch,
5 Pierce, Fenner & Smith or Bank of America Corporation was the
6 fiduciary for the 401-k side of things.

7 So the other defendants, the lower-level defendants,
8 were the individuals who had written letters denying legally my
9 401-k withdrawals. So I believe that they should be defendants
10 because their written letters to me were illegal in the fact
11 that they denied my hardship withdrawals that were wholly in
12 line with the Macy's 401-k plan.

13 THE COURT: The law is very clear that that claim is
14 against the fiduciary and not sort of somebody who signed a
15 letter. So I think that those people probably are not
16 appropriate defendants.

17 Let me ask Mr. Goldstein. If you could just give me a
18 little bit of information with respect to Bank of America or
19 Merrill Lynch's role with respect to the Macy's 401-k plan.

20 MR. GOLDSTEIN: Yes. Bear with me one second,
21 your Honor.

22 Your Honor, in his complaint, which is devoid of
23 allegations regarding any of the defendants sufficient to
24 establish claims, he attaches to his -- I think it's docket
25 number 119 -- letters that he received from -- let me just get

1 the right entity that he named here -- Merrill Lynch Wealth
2 Management. Individuals that worked for that entity wrote him
3 with respect to the Macy's 401-k plan.

4 However, plaintiff does not state any reason why the
5 individuals --

6 THE COURT: Can you answer the question about whether
7 or not Bank of America or Merrill Lynch was the fiduciary.

8 If someone had an ERISA claim that they wanted to
9 bring, who would be the appropriate defendant?

10 MR. GOLDSTEIN: I do not know that based on the
11 documents that he has submitted or what he has alleged in the
12 complaint.

13 THE COURT: What about based on your own communication
14 with your client?

15 MR. GOLDSTEIN: I do not know, your Honor. Just by
16 looking at the documents, it would appear to be a Merrill Lynch
17 entity, but I do not know for certain who was the fiduciary. I
18 think Macy's may be in a better position to say which Bank of
19 America entity was the actual fiduciary of the plan.

20 THE COURT: That's not terribly helpful.

21 Do you have any sense of the role, if any, that your
22 client may have played in connection with the 401-k claims?

23 MR. GOLDSTEIN: Your Honor, he did submit
24 correspondence, and the reason why his claims were denied is
25 that he failed to submit the appropriate documentation which is

1 shown by the very documents he attached at 119. The docket
2 entry 119 therein sets forth the reasons why his claims were
3 denied. He failed to follow the procedures.

4 THE COURT: I'm sorry. I'm going to interrupt you for
5 a second. I'm not going to decide whether or not the claim is
6 valid or not at this point. All I want to do right now is
7 figure out whether we have all of the appropriate defendants in
8 the case.

9 The plaintiff has sought leave to add another nine
10 defendants. One of them is Merrill Lynch, one of whom --

11 MR. GOLDSTEIN: I do not believe U.S. Trust
12 Corporation has any role in this whatsoever, your Honor. Just
13 purely based on the documents submitted by plaintiff, it looks
14 like Merrill Lynch may have had some role in administering the
15 401-k plan, but I do not know for certain. That's just purely
16 based on what he submitted though.

17 THE COURT: Have you investigated the claims?

18 MR. GOLDSTEIN: Yes, your Honor. It's purely --
19 purely the legal basis right now. He fails to identify any
20 source for his ERISA claims based on what's set forth in the
21 complaint, purely legal arguments. Under ERISA itself, he
22 doesn't establish either the breach of a fiduciary duty or a
23 claim for a denial of benefits. That's the basis for the
24 dismissal.

25 THE COURT: Let me ask Mr. LaMadrid to speak with

1 respect to these two individuals that the plaintiff is seeking
2 to add for Local 3.

3 Do you know these individuals? Not personally. Do
4 you know who they are?

5 MR. LaMADRID: Yes, your Honor.

6 THE COURT: Do you have a sense of how they relate to
7 the plaintiff's claims?

8 MR. LaMADRID: Well, I would take the position that
9 they don't at all. To me, in my view, the complaint doesn't
10 even bring claims against Local 3. Local 3 did try to take his
11 grievance. As he states in his complaint, it was his decision
12 to withdraw that grievance.

13 Ms. Berrocal is the president, and Mr. Kavanaugh is
14 the secretary/treasurer, but aside from their involvement as
15 officers of the union, I'm not sure what other basis there
16 would be.

17 THE COURT: Thank you.

18 Mr. Mitchell, is there anything you want to add about
19 why these individuals need to be added into the complaint at
20 this time?

21 MR. MITCHELL: I believe very strongly that in the
22 case of Local 3, as I stated earlier, that the officers of
23 Local 3 and the union itself stepped into my shoes illegally
24 and conducted negotiations after I asserted my EEOC claim
25 against Local 3 and after I specifically told Local 3 and told

1 Mr. Kavanaugh directly that he had no right to conduct
2 conversations about my employment with Macy's, Inc --
3 Bloomingdale's, Inc. is the entity that I worked for under
4 Macy's, Inc -- and he continued to do so.

5 The grievance that Mr. LaMadrid discusses was one that
6 I could not attend, but Local 3 still went and had a grievance
7 meeting on my behalf illegally.

8 THE COURT: So your claims are brought under the
9 National Labor Relations Act?

10 MR. MITCHELL: All of the claims that one can assert
11 under EEOC law is what I asserted. The host of wrongdoing that
12 I experienced, your Honor, is unfathomable -- disability
13 accommodation, retaliation, ERISA, Cigna Corporation using my
14 private health information to get me fired from the job
15 illegally.

16 I mean, everything you can contemplate happening
17 negatively in an employment situation happened to me, all
18 within the framework of me being an outstanding, exemplary
19 employee, based upon my sales, my revenues, that I contributed
20 to the company.

21 THE COURT: Thank you. I think I understand things a
22 little bit better.

23 I'm going to deny your request for leave to add the
24 defendants that you've identified in ECF docket number 67, 113,
25 and 119. I'm going to do so without prejudice and with leave

1 to make another application after the motions to dismiss have
2 been decided.

3 Based on the information I have here, I don't believe
4 that adding these individuals will materially alter the claims
5 that you have brought and that the better course is to move
6 forward with the claims as pled, have Judge Torres evaluate
7 those claims and the parties' motions, and I will let her know
8 that I have denied this application with leave to amend so that
9 she knows that if she believes that there is something specific
10 to these people that comes out during the motion practice that
11 would alter her conclusion, she can grant leave to amend. But
12 I think in the first instance, I'm going to deny without
13 prejudice that application.

14 I think that addresses all of the matters that are
15 before me. So, Mr. Mitchell, you have a March 5 deadline to
16 respond to the what will then be four pending motions to
17 dismiss. The defendants can each file a reply brief on
18 March 19.

19 I will give you all the same legal advice that I gave
20 Mr. Mitchell, which is that shorter briefs are better. I know
21 Judge Torres does not have individual rules that limit briefs.
22 I don't know why, but I would encourage you to write your
23 briefs in as succinct a way as possible. To the extent that
24 the parties can even share arguments, I encourage you to do
25 that as well.

1 Mr. Mitchell, we have a free legal services clinic in
2 the courthouse. I don't know if you're familiar with that.
3 It's run by a separate nonprofit organization that is not
4 affiliated with the court. It is housed in the court, but it
5 is not at all an arm of the court. It's located in the lower
6 level of this courthouse.

7 I encourage you to speak with the lawyers that are
8 there. They're available to provide free legal assistance and
9 help in doing things such as responding to motions to dismiss.

10 You've done a more-than-adequate job representing
11 yourself already. So I'm not implying anything about the work
12 you've done thus far, but to the extent you want some
13 assistance in responding to the motions, I would recommend that
14 you visit the clinic.

15 You can also set up an appointment. Since you have a
16 complex case, it might be worth it to schedule some time with
17 the lawyers there to see if they can help you in crafting your
18 opposition. Okay?

19 MR. MITCHELL: Thank you, your Honor.

20 THE COURT: I'm not going to set a discovery schedule
21 at this point. Once Judge Torres has ruled on the pending
22 motions, we'll meet again and evaluate where things stand at
23 that time and decide whether or not discovery at that point
24 should be going forward and what it will look like.

25 Anything further from either side?

1 MR. GOLDSTEIN: Your Honor, I just wanted to clarify
2 one thing, that the denial without prejudice with respect to
3 67, 113, and 119 also applies to the corporate entities that
4 Mr. Mitchell sought to add as well?

5 THE COURT: Yes. My understanding is that Bank of
6 America is already here.

7 MR. GOLDSTEIN: Yes.

8 THE COURT: I think your argument, to me at least,
9 which I assume will be to Judge Torres, is regardless of who
10 the fiduciary is, that Mr. Mitchell hasn't set forth a claim
11 for ERISA.

12 MR. GOLDSTEIN: That's correct, your Honor.

13 THE COURT: If the problem in the complaint is that
14 he's named the wrong fiduciary, he will be granted leave to
15 amend. So that's why I was trying to preempt that to see if
16 you've done any due diligence to figure out whether or not
17 you've got the appropriate defendants in the case.

18 It sounds like you haven't done that. So we don't
19 know whether it should be Merrill Lynch or whether it should be
20 Bank of America. I'm quite confident that if the only flaw in
21 the claim is that he's named the wrong defendant in an ERISA
22 claim, he will be granted leave to amend. So at this point,
23 we're going to move forward with the defendants that have
24 currently been sued and appeared and are represented.

25 Okay?

1 MR. MITCHELL: One more thing, if I may, please,
2 your Honor. The reason why I made my request to bring
3 electronic devices into the court is so I can better work on my
4 case.

5 So I'm going to respectfully ask that you please
6 revisit the allowance to bring my laptop and phone in so I can
7 move forward with putting my case together.

8 THE COURT: Are you intending on working on your case
9 here in the courthouse on a regular basis?

10 MR. MITCHELL: Occasionally, yes, particularly because
11 of the fact that attorneys do have the ability to bring
12 electronic devices into court, and I don't.

13 THE COURT: It is true that attorneys can if they have
14 an ID card. But if they don't have an ID card, they can't. If
15 they do have an ID card, they can come in with electronic
16 devices.

17 If you would like permission to bring in electronic
18 devices when you have a hearing before me, I'm happy to grant
19 you that authorization. The court, as a matter of court
20 policy, does not permit people routinely to bring in electronic
21 devices.

22 And your application which sought permission to bring
23 your electronics into the courthouse over many, many months is
24 one that I'm simply not authorized to sign.

25 So if you'd like to bring it in on occasion or if you

1 tell me, for instance, that you've got a meeting with the NYLAG
2 clinic, the New York Legal Action Group clinic, and you would
3 like to bring a laptop in for that meeting, send me an
4 application, and I will grant it. But I can't grant you just
5 sort of an open-ended, multi-month leave request. I speak to a
6 higher authority. I'll get closed down by that.

7 If you come to the clinic and you need your laptop for
8 that purpose, just send me a letter application, and I'll
9 authorize it for that day, but I'm not going to give you broad
10 relief on that front.

11 MR. MITCHELL: Understood. Thank you, your Honor.

12 THE COURT: Thank you, everybody.

13 (Adjourned)

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