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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHI CHEN, et al.,  
  
                    Plaintiffs,  
  
                    v.  
  
U.S. BANK NATIONAL ASSOCIATION, et  
al.,  
  
                    Defendants.

Case No. 16-1109RSM  
  
ORDER RE: THE PARTIES’  
BELLWETHER TRIAL PROPOSALS

On April 9, 2020, the Court granted Plaintiffs’ Motion for Bellwether Trials and ordered the parties to “meet and confer telephonically to propose a single joint plan for proceeding with a bellwether trial involving at least two Plaintiffs.” Dkt. #269. The Court provided the following guidance: “[i]n order to maximize representativeness, the Court directs the parties to work together to put forward a plan for a single bellwether trial that includes a small number of Plaintiffs selected by both sides who are ready to proceed. There may be appropriate Plaintiffs who are not represented by Corr Cronin.”<sup>1</sup> *Id.* at 4. The Corr Cronin Plaintiffs who moved for bellwether trials have now settled out of this case. *See* Dkts. #281, #287, #288. The Court notes that the remaining Plaintiffs, represented by different counsel, did not oppose the bellwether trial Motion and are, in any event, bound by the Court’s Order.

<sup>1</sup> At the time, 81 Plaintiffs were represented by the law firm Harris Brickman and 10 were represented by Corr Cronin.

1 The parties were unable to agree on a joint proposal. On May 11, the Court received  
2 separate filings. Dkts. #290 and #292. Many pages are spent questioning whether a bellwether  
3 trial is required in this case and quibbling about attorney communication problems. Setting  
4 aside those issues, it appears that U.S. Bank now proposes two bellwether plaintiffs who reside  
5 in China, do not speak English, and who have not completed discovery. U.S. Bank seeks to  
6 depose these plaintiffs prior to trial. Plaintiffs propose a single bellwether plaintiff who has  
7 been deposed, resides in the United States, and is more proficient in English.  
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9 The creation of a trial plan in a complex case, like the decision to sever claims or  
10 bifurcate trial, is well within the trial court's discretion. *Jinro Am., Inc. v. Secure Invs., Inc.*,  
11 266 F.3d 993, 998 (9th Cir. 2001). It is clear that further guidance is needed from the Court.  
12 Counsel's inability to work together on this issue is disappointing. U.S. Bank's proposal seems  
13 designed to sabotage a timely bellwether trial, while Plaintiffs have been unable to name more  
14 than one individual and appear to have failed to adequately communicate with U.S. Bank prior  
15 to the deadline.  
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18 Given all of the above, the Court will set the following procedure: 1) Plaintiffs' counsel  
19 is to send to U.S. Bank's counsel the names of four plaintiffs who will be ready for trial without  
20 further discovery; 2) U.S. Bank will select two from that group it believes to be satisfactorily  
21 representative for the first bellwether trial and send these names back to Plaintiffs' counsel.  
22 This selection process will be reversed if a second bellwether trial is necessary.  
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24 The Court fully expects counsel to execute this procedure in a professional, respectful  
25 manner without further hand-holding from the Court. The Court notes that English proficiency  
26 is not a requirement for trial. The inability of a bellwether plaintiff to travel to the United  
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1 States due to circumstances outside their control, such as the current COVID-19 pandemic, will  
2 be a valid basis to request a continuance of trial.

3 Having considered the applicable briefing submitted by the parties and the entire record,  
4 the Court hereby finds and ORDERS that the parties are to follow the above procedure for  
5 selecting two bellwether trial plaintiffs. This is to be accomplished no later than seven (7) days  
6 from the date of this Order. The parties are to subsequently meet-and-confer telephonically and  
7 file a joint status report within fourteen (14) days of this Order setting forth their expectations  
8 for the bellwether trial procedure.  
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11 DATED this 12<sup>th</sup> day of May, 2020.  
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16 RICARDO S. MARTINEZ  
17 CHIEF UNITED STATES DISTRICT JUDGE  
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