No. 15-_____

In the United States Court of Appeals for the Ninth Circuit

JOCELYN ALLEN, ET AL.

Plaintiffs-Respondents,

v.

THE BOEING COMPANY;

Defendant-Petitioner.

(full caption on inside cover)

On Appeal from the United States District Court
for the Western District of Washington
Case No. 2:14-cv-596, Judge Ricardo S. Martinez

BOEING'S PETITION PURSUANT TO 28 U.S.C. § 1453(C)(1) FOR LEAVE TO APPEAL

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Plaintiffs-Respondents,

v.

THE BOEING COMPANY;

Defendant-Petitioner,

and

BOEING COMMERCIAL AIRPLANES; LANDAU ASSOCIATES, INC.; AND DOES 1–50, INCLUSIVE;

Defendants.

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CORPORATE DISCLOSURE STATEMENT

Petitioner The Boeing Company ("Boeing") has no parent corporation. As of December 31, 2014 according to a filing with the Securities and Exchange Commission, beneficial ownership of 10% or more of Boeing's stock was held by State Street Corporation, a publicly held corporation whose subsidiary, State Street Bank and Trust Company, acts as trustee of The Boeing Company Employee Savings Plan Master Trust.

Boeing Commercial Airplanes, which is also named as a defendant, is an internal business unit of Boeing and not a separate corporation.

INTRODUCTION

This is Boeing's second petition to this Court under 28 U.S.C. § 1453(c)(1) for review of a jurisdictional ruling by the district court. In its earlier ruling on Boeing's first petition, issued just four months ago, the Court reversed the district court's order remanding under the single-event exception to jurisdiction under the Class Action Fairness Act ("CAFA") and directed the district court to address whether CAFA's local-controversy exception applies. *Allen v. The Boeing Co.*, 784 F.3d 625, 636 (9th Cir. 2015). This Court's opinion noted that whether Plaintiffs' case satisfies the local-controversy exception presents issues that "are not simple" and "might even require that Plaintiffs amend their complaint." *Id.* It also specifically directed the district court to evaluate "the adequacy of Plaintiffs' complaint under Washington law" as part of its local-controversy analysis. *Id.*

On remand before the district court, Plaintiffs did not even seek to amend their complaint to flesh out their threadbare allegations. Yet the district court nonetheless ordered remand to state court under the local-controversy exception in a cursory opinion that, among other failings, never addressed the adequacy of Plaintiffs' complaint under

Washington law. Because the district court did not follow this Court's instructions on remand; because it got the law wrong; and because, as this Court noted in its prior ruling, this case presents important and difficult questions regarding the application of the local-controversy exception, this Court's review is warranted.

In addition to failing to heed this Court's instruction to address whether Plaintiffs had adequately stated a claim, the district court's order conflicted with this and other courts' holdings in two other important ways. First, the court, for the second time in this case, declined to hold Plaintiffs to their burden of showing that the local-controversy exception applies and resolved doubts and ambiguities in favor of remand, contrary to controlling authority. Most notably, the district court held that the exception applies even though Plaintiffs' complaint contains no allegations that distinguish Landau's conduct as Boeing's contractor from that of Boeing itself. Second, the district court ignored persuasive authority in and outside this Circuit finding the local-controversy exception inapplicable to environmental-contamination cases like this one where the in-state defendant is not alleged to have had any involvement in causing the contamination.

In its remand order, the district court expressly noted that "the relatively small body of case law pertaining to the 'local controversy' exception" made the analysis "difficult." Add. 7. This Court also recently acknowledged it has "rarely confronted" this exception, and its "sister circuits, likewise, have considered this issue on only a few occasions." *Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 1116 (9th Cir. 2015), *rehearing petition filed and response ordered*, Dkt. 92, No. 13-15185 (July 30, 2015). No Court of Appeals, including this one, has yet addressed whether the conduct and relief alleged against a local defendant can be "significant" if the operative complaint fails to state a claim against that defendant. This Court should grant review of the remand order to correct the district court's errors and provide additional guidance on how courts should interpret and apply this important exception to CAFA jurisdiction.

BACKGROUND

A. Boeing's Alleged Conduct

For decades beginning in the 1960s, Boeing manufactured airplane parts at a factory in Auburn, Washington, where it allegedly used then-common degreasing agents containing hazardous compounds.

First Am. Compl., Dkt. 1-1 ("FAC") ¶¶ 4.1-4.3, 4.7-4.8.[1] According to Plaintiffs, Boeing negligently and "knowingly allowed these dangerous solvents to be dumped, sprayed, spilled, discharged, or otherwise released onto and into the ground." *Id.* ¶¶ 4.4-4.5.

In 1987, Boeing received a Resource Conservation and Recovery Act permit that set requirements for handling hazardous materials. *Id.* ¶ 4.6. The State of Washington Department of Ecology ("Ecology") later "identified . . . areas of concern with potential releases of hazardous substances associated with the Boeing Auburn Plant," *id.* ¶¶ 4.6-4.7, and, in 2002, entered into an Agreed Order requiring Boeing "to complete a remedial investigation, feasibility study, draft a cleanup action plan, perform cleanup actions and clean up as necessary to remediate releases of hazardous substances," *id.* ¶¶ 4.8-4.9.

B. Landau's Alleged Conduct

Landau did not become involved with the Auburn Plant until 2002, when Boeing "hired, delegated, contracted with, partnered with, or otherwise shared the responsibilities with Landau Associates for the investigation and remediation of the Boeing Auburn Plant." FAC

[1] All docket references are to the district court's docket entries.

¶ 4.10. While Plaintiffs allege in conclusory terms that Boeing shared with Landau the responsibility to warn of, test for, and remediate the contamination Boeing caused, *id.*, Plaintiffs never allege what type of company Landau is, what (if any) expertise Landau possesses, or what specific action (if any) Landau (as opposed to Boeing) undertook to test for or remediate the contamination.

These omissions matter because by 2002, when Plaintiffs allege that Landau first became involved with this matter, the releases were long finished and contamination had already "move[d] off of" the Boeing property and was "continuing to move off the property in the shallow groundwater in a north and/or northwest direction" where some Plaintiffs live. *Id.* ¶ 4.11. Plaintiffs do not allege which of their properties were contaminated before Landau's involvement or which (if any) were contaminated after and as a consequence of Landau's alleged negligence. *Id.* ¶¶ 4.11-4.20. Similarly, Plaintiffs do not quantify in any way the relief they seek from Landau, or seek joint and several liability. *See generally id.* ¶¶ 4.10-4.24, 5.20.

C. This Lawsuit

In November 2013, more than 100 Algona residents sued Boeing,

Landau, and Does 1-50. Their complaint asserted (i) three state law claims against Boeing for negligence, nuisance, and trespass and (ii) a single negligence claim against Landau. FAC ¶¶ 5.2, 5.9, 5.13, 5.24. Plaintiffs allege that Boeing is liable for five decades of misconduct that includes releasing the solvents, allowing them to migrate onto Plaintiffs' properties, and failing to perform proper investigation and remediation. *Id.* ¶¶ 5.2-5.5, 5.9-5.10, 5.15-5.18. Landau, however, is allegedly liable solely for its unspecified failures to properly investigate and remediate the contamination as Boeing's contractor beginning in 2002. *Id.* ¶¶ 4.8, 4.10, 5.21-5.25.

Boeing removed the action to the district court on the ground (among others) that it was a mass action under CAFA, 28 U.S.C. §§ 1332(d), 1453, 1711-1715. *See* Boeing's Notice of Removal, Dkt. 1. The court granted Plaintiffs' initial motion to remand, applying the single-event exception to CAFA removal, First Remand Order, Dkt. 41, and Boeing sought this Court's review under 28 U.S.C. § 1453(c)(1).

Granting Boeing's petition, this Court vacated the district court's remand order and held that the single-event exception did not apply. *Allen*, 784 F.3d at 630-34. This Court declined to address in the first

instance Plaintiffs' separate argument based on CAFA's local-controversy exception because "whether Plaintiffs' case meets the[] criteria for the local controversy exception raises questions under Washington law that merit more briefing and consideration." *Id.* at 636-37. Specifically, this Court noted that the "adequacy of Plaintiffs' complaint under Washington law is not clear." *Id.* at 636.

On remand, the district court granted Plaintiffs' renewed motion for remand, holding that this case falls within CAFA's local-controversy exception and remanding the case to state court. Despite full briefing on the issue, the district court never addressed the legal sufficiency of Plaintiffs' negligence claim against Landau. *See* Add. 12. Instead, it held merely that it was enough for Landau to be "one of only two Defendants," that "negligence claims account for 50%" of Plaintiffs' claims, and that Plaintiffs "claim equal relief from both Defendants" (even though that appears nowhere in the complaint). Add. 9, 11. Boeing timely filed this petition seeking review of the remand order.

STANDARD OF REVIEW

This Court has discretion to "accept an appeal from an order of a district court granting or denying a motion to remand a class action."

28 U.S.C. § 1453(c)(1). The "key factor" justifying review is "the presence of an important CAFA-related question," especially one that is "unsettled," "rarely confronted," or "appears to be either incorrectly decided . . . or at least fairly debatable," *Coleman v. Estes Express Lines, Inc.*, 627 F.3d 1096, 1100 (9th Cir. 2010); *Benko*, 789 F.3d at 1116.

REASONS FOR GRANTING THE PETITION

The District Court Ignored This Court's Instructions And Incorrectly Resolved Important Questions About CAFA's Local-Controversy Exception.

The district court remanded based on the local-controversy exception without analyzing "the adequacy of Plaintiffs' complaint under Washington law," as this Court instructed. *Allen*, 784 F.3d at 637. Its ruling thus ignores this Court's clear directive and conflicts with other courts' decisions rejecting the local-controversy exception where, as here, the claims against the in-state defendant fail as a matter of law. The district court's ruling also improperly relieved Plaintiffs of their burden by resolving doubts in favor of remand (rather than in favor of removal) and conflicts with numerous decisions refusing to apply the local-controversy exception to mass-environmental torts where the in-state defendant had little or no involvement in causing the pollution.

A. The Local-Controversy Exception

The local-controversy exception to CAFA jurisdiction applies only where, among other things, the in-state defendant's "alleged conduct forms a significant basis for the claims" and the complaint seeks "significant relief" against an in-state defendant. 28 U.S.C. § 1332(d)(4)(A)(i)(II)(aa)-(bb). CAFA must be "read broadly" in favor of removal, and thus "no antiremoval presumption" applies in "cases invoking CAFA." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). The exception is "narrow" and must be "strictly construed." S. Rep. 109-14, at 38 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3; *Allen*, 784 F.3d at 632-33. Plaintiffs have "the burden of showing that the local controversy exception applies," *Coleman v. Estes Express Lines, Inc.*, 631 F.3d 1010, 1013 (9th Cir. 2011), and courts must "resolve *any* doubt about the applicability of CAFA's local-controversy exception against" remand. *Westerfield v. Indep. Processing, LLC*, 621 F.3d 819, 823 (8th Cir. 2010) (emphasis added); *Woods v. Standard Ins. Co.*, 771 F.3d 1257, 1265 (10th Cir. 2014). In evaluating this exception, this Court looks only to the allegations in Plaintiffs' complaint, which it must view with the eye of an "experienced

lawyer or judge." *Coleman*, 631 F.3d at 1019-20.

B. The District Court's "Significant Basis" Analysis Disregards This Court's Prior Decision And Conflicts With Decisions From Other Courts.

An in-state defendant's conduct is a significant basis for a plaintiff's claims only when it is "important or fairly large in amount or quantity" compared with "the overall claims asserted." *Benko*, 789 F.3d at 1118. A substantial line of district court cases has reached the common-sense conclusion that allegations against an in-state defendant that are conclusory or otherwise fail to state a claim cannot be a basis—let alone a *significant* basis—for Plaintiffs' claims.[2] Likewise, in its earlier decision in this case, this Court indicated that a complaint cannot satisfy the significant-basis test if it fails to state a claim against

[2] *See, e.g.*, *Marconi v. Ind. Mun. Power Agency*, No. 14 C 7291, 2015 WL 4778528, at *5 (N.D. Ill. Aug. 13, 2015) ("Plaintiffs have failed to state a claim for relief against any Defendant . . . and therefore, as a matter of logic, [the local defendant] cannot be considered a significant defendant."); *Dutcher v. Matheson*, 16 F. Supp. 3d 1327, 1335-36 (D. Utah 2014) (rejecting plaintiffs' "hyperbolic characterization of the importance of the [in-state] Defendants to their claims" because that characterization was "not supported by" their "conclusory" allegations); *Magnum Minerals LLC v. Homeland Ins. Co. of N.Y.*, No. 2:13-cv-103-J, 2013 WL 4766707, at *5-6 (N.D. Tex. Sept. 5, 2013) ("Logic [] dictates" that legally deficient allegations against an in-state defendant cannot amount to a "significant basis."); *Stephenson v. Standard Ins. Co.*, No. 12-cv-1081, 2013 WL 3146977, at *8 (W.D. Tex. June 18, 2013) (same).

the local defendant. The Court observed that "the adequacy of Plaintiffs' complaint under Washington law is not clear" and merits "more briefing and consideration," *Allen*, 784 F.3d at 636-37—consideration that would only be necessary if the adequacy of the complaint mattered for the local-controversy analysis.

On remand, the district court ignored this Court's directive and Boeing's arguments concerning the adequacy of Plaintiffs' claim against Landau under Washington law. Instead, the district court simply observed that it had previously determined, and this Court affirmed, that Landau was not fraudulently joined. Add. 12; *see also Allen*, 784 F.3d at 635 (holding that Boeing did not meet "its heavy burden of showing that there is no possibility that Washington law might impose liability on Landau"). But that is not the same as analyzing the adequacy of the claim, and Plaintiffs do not carry their burden of stating a claim simply by defeating fraudulent joinder.[3] Rather,

[3] *See, e.g.*, *IDS Prop. Cas. Ins. Co. v. Gambrell*, 913 F. Supp. 2d 748, 752 (D. Ariz. 2012) ("[T]he standard for proving fraudulent joinder is more exacting than that for dismissing a claim for failure to state a claim—a merely possible claim against a defendant is not enough to survive a 12(b)(6) motion, but it is sufficient to defeat an assertion of fraudulent joinder . . . ."); *see also, e.g.*, *Mayes v. Rapoport*, 198 F.3d 457, 464 (4th

Plaintiffs must allege facts that would raise their right to relief against Landau "above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).[4] In fact, this Court implicitly rejected the district court's reasoning by directing it to evaluate "the adequacy of Plaintiffs' complaint under Washington law" despite affirming the district court's ruling that Landau was not fraudulently joined. *Allen*, 784 F.3d at 637.

Performing the analysis that the district court did not makes clear that Plaintiffs have failed to state a claim against Landau—and thus failed to carry their burden of establishing that it is a significant defendant—for two reasons.

First, Plaintiffs failed to allege any facts to establish an essential element of their negligence claim under Washington law: a legal duty from Landau to Plaintiffs.[5] In responding to this point in their remand briefing, Plaintiffs argued that they were third-party beneficiaries of

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Cir. 1999) (fraudulent joinder is "even more favorable to the plaintiff than the standard for ruling on a motion to dismiss").

[4] *See, e.g.*, *Dutcher*, 16 F. Supp. 3d at 1335-36 (ignoring "conclusory" allegations and looking only at "factual allegation[s]" for local-controversy exception).

[5] *See, e.g.*, *Burg v. Shannon & Wilson, Inc.*, 110 Wn. App. 798, 805 (2002) ("[The] existence of a duty is a threshold question. If there is no duty, [plaintiffs] have no claim.").

the Boeing-Landau contract. *See* Renewed Remand Reply, Dkt. 67 at 6. But Plaintiffs do not allege such a status in the FAC. *Cf.* FAC ¶ 4.10. Even if they had, black-letter Washington law holds that a third-party beneficiary relationship exists only when "the terms of the contract" show that "the parties intend that the promisor assume a direct obligation" to Plaintiffs. *Rajagopalan v. NoteWorld, LLC*, 718 F.3d 844, 847 (9th Cir. 2013); *see also Burg*, 110 Wn. App. at 808. Far from showing such intent, as the district court previously recognized, "there is no indication in the terms of the [Boeing-Landau] contract that the parties intended to benefit residents near and around the Auburn plant," and indeed "the Boeing-Landau contract *expressly disclaim[s]* any third party beneficiaries," First Remand Order, Dkt. 41 at 9 (emphasis added). Under Washington law, express contractual disclaimers of this type defeat third-party claims as a matter of law.[6]

Second, the complaint relies on precisely the type of group

[6] *See, e.g.*, *Haselwood v. Bremerton Ice Arena, Inc.*, 137 Wn. App. 872, 890 (2007) (holding that plaintiff "cannot recover as a third party beneficiary to the [] agreement because that agreement expressly disclaimed any third party rights"); *Donald B. Murphy Contractors, Inc. v. King Cnty.*, 112 Wn. App. 192, 196 (2002) (no third-party beneficiary status because "[t]he plain language of the project contract disclaims any intent to have [the] subcontractors be third-party beneficiaries").

pleading and conclusory allegations that fail to satisfy basic federal pleading standards and thus fail to satisfy the significant-basis test. *See Opelousas Gen. Hosp. Auth. v. FairPay Solutions, Inc.*, 655 F.3d 358, 361-62 (5th Cir. 2011) (per curiam) (no significant basis where the "complaint contains no information about the conduct of [the in-state defendant] relative to the conduct of the other defendants" and "nothing in the complaint distinguishes the conduct of [the in-state defendant] from the conduct of the other defendants").[7] Plaintiffs vaguely allege that beginning in 2002, Boeing shared with Landau responsibility for investigating and remediating the contamination. FAC ¶ 4.10. But for the post-2002 period, they lump Boeing and Landau together and attribute all post-2002 conduct to the companies together, *id.* ¶¶ 4.11-4.18, making it impossible to tell whether Landau took any action at all (as opposed to simply "shar[ing] responsibilities" for Boeing's conduct).

Instead of applying the local-controversy exception narrowly and holding Plaintiffs to their burden, the district court simply assumed—

[7] *See, e.g.*, *In re Sagent Tech., Inc. Derivative Litig.*, 278 F. Supp. 2d 1079, 1094 (N.D. Cal. 2003) (complaint that "do[es] not indicate which individual . . . defendants were responsible for which alleged wrongful act" fails to state a claim); *Aaron v. Aguirre*, No. 06-CV-1451-H(POR), 2007 WL 959083, at *16 n.6 (S.D. Cal. Mar. 8, 2007) (similar).

based on the affirmance of its fraudulent joinder ruling—that the claim against Landau was valid, and then decided that Landau was a significant local defendant by analogy to this Court's decision in *Benko*.[8] But invoking *Benko* only highlights the deficiencies in Plaintiffs' allegations. In *Benko*, the plaintiffs expressly alleged that the in-state defendant was directly liable for "15-20% of the wrongs alleged by the entire class," and in fact amended their complaint to "elaborate" on those estimates and the dollar value of their claims. *Benko*, 789 F.3d at 1117-19. Here, however, Plaintiffs allege that Landau was derivatively liable for harm to some (unspecified) fraction of their properties because Boeing shared some (unspecified) portion of its testing and remediation

[8] *Benko* did not address the question of whether failure to state a claim against a local defendant precludes remand under the local-controversy exception. Although the district court in that case had previously dismissed the plaintiffs' First Amended Complaint for failure to state a claim against any defendant, this Court ruled the district court should have considered the plaintiffs' Second Amended Complaint (filed after removal). 789 F.3d at 1117. The parties did not argue, and this Court did not address, whether the SAC's failure to state a claim against the in-state defendant meant that its conduct was not a significant basis under the local-controversy exception. *See id.* at 1118-19; Opening Br., Dkt. 40-1 at 14-30, *Benko*, No. 13-15185 (9th Cir. Dec. 27, 2013); Resp. Br., Dkt. 52-1 at 25-38, *id.*; Reply Br., Dkt. 73 at 7-10, *id.*

obligations with Landau.[9] To the extent that Plaintiffs make specific allegations, they are clear in attributing conduct to Boeing, not Landau.[10] And of course Plaintiffs here declined this Court's invitation for them to amend their complaint to buttress their allegations. Simply put, neither Plaintiffs nor the district court identified *any* alleged conduct or *any* responsibility of Landau's that was independent of or different than that of Boeing. That is not sufficient to carry Plaintiffs' burden, and *Benko*'s reasoning fully supports that conclusion.

The district court's holding also conflicts with rulings from inside and outside this Circuit about what conduct constitutes a significant basis for allegations of environmental contamination. In *Aana v.*

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[9] *See* FAC ¶¶ 4.11-4.20 (alleging that when Landau first became involved with the Auburn Plant in 2002, contamination had already "move[d] off of" the Boeing property and was "continuing to move off the property in the shallow groundwater" near Plaintiffs' homes, and failing to allege which of their properties were contaminated before Landau's involvement and which were contaminated after (if any)).

[10] Boeing (not Landau) used hazardous solvents at its Auburn plant for decades. FAC ¶ 4.2. Boeing (not Landau) negligently released the solvents into the ground. *Id.* ¶ 4.4. Boeing (not Landau) received a RCRA permit imposing requirements for handling of hazardous materials and identifying potential contamination. *Id.* ¶¶ 4.6-4.7. Boeing (not Landau) entered the Agreed Order with Ecology in 2002, which required Boeing (not Landau) to investigate and remediate contamination on and near the Auburn site. *Id.* ¶¶ 4.8-4.9.

Pioneer Hi-Bred Int'l, Inc., No. CV 12-00231-JMS-BMK, 2012 WL 3542503, at *3 (D. Haw. July 24, 2012), *recommendation adopted by* 2012 WL 3542500 (D. Haw. Aug. 16, 2012), the District of Hawaii held that the significant-basis requirement was not met where pollution claims were alleged against an out-of-state farming company that allegedly caused the pollution and its in-state landlord that was not involved in causing the pollution. Similarly, in *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1168 (11th Cir. 2006), the Eleventh Circuit held the in-state defendant's small role in causing pollution was not significant relative to the out-of-state defendant's decades of pollution. *See Benko*, 789 F.3d at 1119 (favorably citing the significant-basis analysis in *Evans*). The court reasoned that the in-state defendant was involved for only a short period of time in the pollution-causing activity, whereas the out-of-state defendants' operations were the closest to the plaintiffs and most likely to directly injure them.[11] The district court did not

[11] *Id.*; *see also, e.g.*, *Kurth v. Arcelormittal USA, Inc.*, No. 2:09-CV-108-RM, 2009 WL 3346588, at *12 (N.D. Ind. Oct. 14, 2009) (no significant basis where in-state defendant's conduct occurred over a limited period and it did not "play[] a significant role in emitting toxic chemicals resulting in the pollution"); *Casey v. Int'l Paper Co.*, No. 3:07-cv-421-RV-MD, 2008 WL 8854569, at *7 & n.2 (N.D. Fla. Jan. 7, 2008) (no

mention, let alone address, these decisions.[12]

In previously remanding this case, this Court tentatively observed that Plaintiffs' allegations appear to fall between the funeral home and car dealership examples offered in the Senate Report on CAFA. *Allen*, 784 F.3d at 637. But in making this general observation, this Court did not reckon with the caselaw cited above holding that legally insufficient, conclusory allegations like those against Landau cannot support remand under the local-controversy exception. This Court should grant review to correct the district court's errors and provide guidance for district courts in this Circuit on these important issues.

C. The District Court's "Significant Relief" Analysis Contains The Same Errors As Its "Significant Basis" Analysis.

The district court found the significant-relief requirement

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significant basis where in-state defendant did not cause the contamination and had only "derivative and indirect [liability] at best").

[12] The district court's order is also at odds with cases holding that allegations against an in-state defendant like Landau that is an "isolated role player" in a broader alleged scheme cannot satisfy the local-controversy exception. *See Woods*, 771 F.3d at 1266-67 (no significant basis where in-state agent had no involvement in underlying scheme); *Ava Acupuncture P.C. v. State Farm Mut. Auto Ins. Co.*, 592 F. Supp. 2d 522, 531-32 (S.D.N.Y. 2008) (no significant basis where the local defendant's "alleged misconduct . . . appears to be less significant than or no different from" that of the out-of-state defendant).

satisfied based on its belief that "Plaintiffs claim equal relief from both Defendants." Add. 11. But that ruling repeated the same errors that infected its significant-basis analysis: it failed to hold Plaintiffs to their burden and assumed facts favoring remand that were not alleged.

Plaintiffs must show that the relief they seek from Landau is significant compared to the relief they seek from Boeing.[13] Plaintiffs cannot meet their burden here because, contrary to the district court's order, the complaint does not seek "equal relief" from Boeing and Landau. Plaintiffs allege only that they seek from Landau damages caused by Landau's own conduct,[14] and as discussed above, the court can only guess at the extent of Landau's own conduct (as opposed to Boeing's conduct) or which Plaintiffs were harmed by it, and thus can only guess at the significance of the relief Plaintiffs seek from Landau.

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[13] *Coleman*, 631 F.3d at 1018 (analyzing whether "the great bulk of any damage award is sought from [the out-of-state defendant] rather than from the local [defendants]"); *see also, e.g.*, *Woods*, 771 F.3d at 1269 ("As compared to [the out-of-state defendants], Plaintiffs simply do not seek significant relief from [local defendant]."); *Evans*, 449 F.3d at 1167 (analyzing whether relief sought from local defendant has "comparative significant relative to the relief sought from" out-of-state defendants).

[14] *See* FAC ¶ 5.28. The district court here acknowledged that Plaintiffs "seek to hold *each* Defendant responsible for its *own* negligence and for any monetary amounts *resulting therefrom*." Add. 12 (emphasis added).

The fact that Plaintiffs seek the same *types* of damages from Landau and Boeing—such as the "costs of repair or restoration," and "medical monitoring," FAC ¶ 5.28—does nothing to help quantify or gauge the damages caused by Landau's alleged, unspecified conduct.

The district court's assumption that the complaint seeks "equal relief" from both Boeing and Landau again improperly relieved Plaintiffs of their burden and resolved doubt in favor of remand.[15] The district court purported to base its "significant relief" holding on *Benko*, but that case is readily distinguishable because there the complaint expressly "estimat[ed] that the total damages recoverable from [the in-state defendant] are between $5,000,0000 and $8,000,0000," 789 F.3d at 1119. Here, the complaint offers no allegations from which a court could even hazard a guess about the damages sought from Landau.

CONCLUSION

For the foregoing reasons, the Court should grant this petition.

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[15] *See* Add. 11; *Ava Acupuncture P.C.*, 592 F. Supp. 2d at 531-32 (no significant relief where plaintiffs offer no "evidence from which this court can compare the significance of the relief").

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this petition is not subject to the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this petition complies with the page limitation established by Fed. R. App. P. 5(c).

/s/ Kevin T. Van Wart
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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2015, I caused true and correct copies of the foregoing Petition, with attachments, to be served by hand on the following counsel:

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In addition, I hereby certify that on August 24, 2015, a courtesy copy of the foregoing Petition, with attachments, was emailed to the following counsel:

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ADDENDUM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOCELYN ALLEN, *et al.*, Plaintiffs, v. THE BOEING COMPANY, *et al.*, Defendants.	CASE NO. C14-0596RSM ORDER GRANTING PLAINTIFFS' MOTION TO REMAND

I. INTRODUCTION

This matter comes before the Court after remand from the Ninth Circuit Court of Appeals and on Plaintiffs' Motion to Remand Class Action to State Court. Dkts. #46 and #58. Plaintiffs argue that this Court lacks jurisdiction because this action is not a removable mass action under the Class Action Fairness Act ("CAFA"), specifically because it is subject to the "local controversy" exception to the Act. *Id.* Defendant The Boeing Company ("Boeing")[1] argues that Plaintiffs cannot satisfy all of the elements of the "local controversy" exception, particularly because they fail to demonstrate that Defendant Landau Associates' ("Landau") conduct is a significant basis for their claims and that they seek significant relief from Landau as compared to Boeing. Dkt. #65. Landau joins in Boeing's opposition. Dkt. #66. For the

[1] Boeing previously noted that Boeing Commercial Airplanes ("BCA") was also named as a separate Defendant but argues that, as a division of the Boeing Company, it is not a separate entity subject to suit. The Court refers to both Defendants collectively as "Boeing."

Add. 1

reasons set forth below, the Court disagrees with Defendants and GRANTS Plaintiffs' Motion to Remand.

II. BACKGROUND

On November 22, 2013, 108 Plaintiffs filed an action in King County Superior Court against Boeing, Landau, and 50 John Does. The Complaint was not served on the Defendants at that time. *See* Dkt. #1 at ¶ 1. On March 21, 2014, prior to service on any Defendants, Plaintiffs amended the complaint to add eight additional Plaintiffs. *Id.* at 2. Boeing was served with the Amended Complaint on April 3, 2014. *Id.* Landau was not served until after the case was removed to this Court.[2] Dkts. #36 and #37.

In their Amended Complaint, Plaintiffs allege that they incurred property damage as a result of groundwater contamination by hazardous chemicals at and around a Boeing fabrication plant in Auburn, Washington, from the 1960s to the present. Dkt. #1, Ex. A at ¶ ¶ 4.1–4.2, 4.7–4.8 and 4.11. They further allege that Boeing and its environmental-remediation contractor, Landau, are liable for negligently investigating, remediating, and cleaning up the contamination and for failing to warn Plaintiffs of the contamination. *Id.* at ¶ ¶ 4.4, 4.15 and 4.17. Based on these allegations, Plaintiffs assert state law claims of negligence, nuisance, and trespass against Boeing and Does 1–25, and negligence against Landau and Does 26-50. *Id.* at ¶ ¶ 5.2, 5.9, 5.13 and 5.24.

On April 22, 2014, Boeing removed the action to this Court. Dkt. #1. Boeing asserted federal jurisdiction on two independent bases: diversity jurisdiction and jurisdiction over mass actions under CAFA. Dkt. #1 at 4-5. With respect to diversity jurisdiction, Boeing alleged that

[2] After this Court granted Plaintiffs' prior motion to remand, Plaintiffs moved in state court for leave to file a Second Amended Complaint to add an additional 82 plaintiffs. Dkt. #58 at 2. The state court granted the motion on February 27, 2015. *Id.* However, according to Boeing, Plaintiffs never filed or served a Second Amended Complaint. Dkt. #65 at 2 fn. 2. The Court also notes that no Second Amended Complaint has been filed in this Court.

Landau had been fraudulently joined, and therefore its domicile (Washington State) could be ignored for jurisdictional purposes. *Id.* Plaintiffs then moved to remand to state court. Dkt. #26. Plaintiffs argued that Landau had not been fraudulently joined, and therefore diversity jurisdiction did not exist, and that this Court lacked jurisdiction based on two exceptions to CAFA – the "local single event" exception and the "local controversy" exception. Dkt. #26.

On September 23, 2014, this Court granted Plaintiff's motion to remand, finding that the "local single event" exception applied and therefore there was no jurisdiction under CAFA, and that Landau had not been fraudulently joined so the Court had no diversity jurisdiction. Dkt. #41. This Court did not address Plaintiffs' argument about the "local controversy" exception. *Id.* Defendants then appealed to the Ninth Circuit Court of Appeals. Dkt. #44.

On March 2, 2015, in a 2-1 Opinion, the Ninth Circuit Court of Appeals affirmed in part and vacated in part the Court's Order granting remand to state court, and remanded the matter back to this Court. Dkt. #46. The Court of Appeals affirmed this Court's determination that Boeing failed to show that Landau had been fraudulently joined. *Id.* at 4. However, the Court of Appeals also found that Plaintiffs' action does not come within the "local single event" exception to CAFA, and therefore the Court erred in remanding the case on that basis. *Id.* Finally, the Court determined that this Court should address Plaintiffs' "local controversy" arguments in the first instance, explaining:

> although *Coleman* directs our attention to the complaint in deciding whether Plaintiffs have satisfied the criteria for the local controversy exception to federal jurisdiction under CAFA, on the record and briefing before us, we decline to attempt to determine in the first instance whether Plaintiffs' case fits within the exception. Accordingly, we leave this issue for the district court to consider.

Dkt. #56 at 28.

III. DISCUSSION

A. Standard of Review

When a case is filed in state court, removal is proper if the complaint raises a federal question or where there is diversity of citizenship between the parties and the amount in controversy exceeds $75,000. 28 U.S.C. §§ 1331, 1332(a). Typically it is presumed "'that a cause lies outside [the] limited jurisdiction [of the federal courts] and the burden of establishing the contrary rests upon the party asserting jurisdiction.'" *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (quoting *Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006) (*per curiam*) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)) (alterations in original). However, the United States Supreme Court has recently made clear that "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, __ U.S. __, 135 S. Ct. 547, 554 (2014) (holding that the District Court erroneously applied a presumption against removal of a CAFA claim). Thus, there is no typical presumption against removal for CAFA cases.

B. Mass Actions Under CAFA

Under CAFA, a district court has original jurisdiction over a putative class action when the parties are minimally diverse, the putative class consists of at least 100 members, and the aggregate amount in controversy exceeds the threshold amount of $5,000,000. Title 28 U.S.C. § 1332(d)(2); 28 U.S.C. § 1332(d)(5)(B); *see Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1020 (9th Cir. 2007). However, certain exclusions in the Act, if applicable, require the Court to remand to state court. In this case, Plaintiffs assert that their case falls under the "local controversy" exclusion.

The Ninth Circuit Court of Appeals has noted that this issue is one "that our circuit has rarely confronted." *Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 2015 U.S. App. LEXIS 10253, *6 (9th Cir. Jun. 18, 2015) (citing *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 883 (9th Cir. 2013) and *Coleman v. Estes Exp. Lines, Inc.*, 631 F.3d 1010, 1020 (9th Cir. 2011)). The Ninth Circuit further noted that its "sister circuits, likewise, have considered this issue on only a few occasions." *Id.* (citations omitted).

As an initial matter, the Court notes that there is no dispute that the general criteria for CAFA suits are present in this case – the alleged class includes all Washington residents who were purportedly subject to property damage/injury by the Defendant companies, an aggregate number which is at present in the hundreds. The claims alleged by the Plaintiffs involve substantial monetary relief, which exceeds the $5,000,000 requirement. Finally, there is minimal diversity of citizenship between class members, who are Washington citizens, and the Defendants, one of which is domiciled in Washington and one of which is domiciled in Illinois.

However, under the "local controversy" exception in CAFA, federal courts are required to remand removed CAFA cases to the originating state court when the following three conditions are met:

(I) "greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed";

(II) at least 1 defendant is a defendant – (aa) from whom significant relief is sought by members of the plaintiff class; (bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and (cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed.

28 U.S.C. § 1332(d)(4)(A)(i). Plaintiff bears the burden of showing that this provision applies to the facts of this case. *Benko*, 797 F.3d 1111; *Mondragon*, 736 F.3d at 883; *Coleman*, 631 F.3d at 1013; *Serrano*, 478 F.3d at 1024.

The Ninth Circuit has recognized that:

> the "local controversy exception" is a narrow one, particularly in light of the purposes of CAFA. The Eleventh Circuit found, and we agree, that "CAFA's language favors federal jurisdiction over class actions, and CAFA's legislative history suggests that Congress intended the local controversy exception to be a narrow one." Moreover, the Report issued by the Senate Judiciary Committee in connection with the passage of CAFA recognized, "that abuses are undermining the rights of both plaintiffs and defendants. One key reason for these problems is that most class actions are currently adjudicated in state courts, where the governing rules are applied inconsistently (frequently in a manner that contravenes basic fairness and due process considerations) and where there is often inadequate supervision over litigation procedures and proposed settlements."

Benko, 789 F.3d at __ (citations omitted).

C. Local Controversy Exception in the Instant Action

Here, Plaintiffs argue that this case falls within the "local controversy" exception because: 1) greater than two-thirds of the Plaintiffs are Washington citizens; 2) the allegations show that Plaintiffs seek significant relief from Landau; 3) Landau's conduct forms a significant basis for Plaintiff's claims; 4) Landau is a citizen of Washington, the state in which the action was originally filed; 5) Plaintiffs' principal injuries were incurred in Washington; and 6) no factually identical or similar class action has been filed against Defendants during the last three years. Dkt. #58.

As an initial matter, the Court notes that Defendants do not dispute that 1) greater than two-thirds of the Plaintiffs are Washington citizens; 2) Landau is a citizen of Washington, the state in which the action was originally filed; 3) Plaintiffs' principal injuries were incurred in Washington; and 4) no factually identical or similar class action has been filed against Defendants during the last three years. *See* Dkt. #65. Rather, Defendants argue that Plaintiffs cannot demonstrate this case falls within the exception because they fail to show that Landau's conduct is a significant basis for their claims, and that they seek significant relief from Landau as compared to Boeing. *Id.* Thus, the Court addresses only those latter issues in this Order and deems the remaining criteria met. *See* Local Civil Rule 7(b)(2) ("Except for motions for summary judgment, if a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit.").

Because of the relatively small body of case law pertaining to the "local controversy" exception, the analysis in this Court is a difficult one. However, the Ninth Circuit Court of Appeals recently provided guidance with respect to the issues presented in this case. In *Benko*, *supra*, the Court of Appeals explained:

> **2. Significant Defendant Test**
>
> We next consider whether Meridian's conduct constitutes "a significant basis" for the Plaintiffs' claims and whether the Plaintiffs seek "significant relief" from Meridian. 28 U.S.C. § 1332(d)(4)(A)(i)(II). When construing the meaning of a statute, we begin with the language of that statute. The Supreme Court has stated that "a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992). If the statutory text is ambiguous, we employ other tools, such as legislative history, to construe the meaning of ambiguous terms. *See United States v. Gonzales*, 520 U.S. 1, 6, 117 S. Ct. 1032, 137 L. Ed. 2d 132 (1997).
>
> "When a word is not defined by statute, [the Supreme Court] normally construe[s] it in accord with its ordinary or natural meaning," which can often be discerned by reference to the dictionary definition of that word.

Smith v. United States, 508 U.S. 223, 228, 113 S. Ct. 2050, 124 L. Ed. 2d 138 (1993). Several dictionaries offer complementary definitions of "significant," with each suggesting that the word essentially means "important" or "characterized by a large amount or quantity." For example, Black's Law Dictionary states that "significant" means "[o]f special importance; momentous, as distinguished from insignificant." Black's Law Dictionary (10th ed. 2014). The American Heritage Dictionary defines the word as "having or expressing meaning; meaningful," "having or likely to have a major effect; important," and "fairly large in amount or quantity." American Heritage Dictionary 1619 (4th ed. 2000). We assume that, in CAFA, the word "significant" is used consistently and with the same meaning, as a modifier of "basis for the claims" and "relief." *See Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 433, 52 S. Ct. 607, 76 L. Ed. 1204 (1932) ("[T]here is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.").

To determine if the "basis for the claims" against Meridian is important or fairly large in amount or quantity, we compare the allegations against Meridian to the allegations made against the other Defendants. CAFA clarifies that we should look at a defendant's "basis" in the context of the overall "claims asserted." 28 U.S.C. § 1332(d)(4)(A)(i)(II)(bb). This comparative approach is consistent with the reasoning of the Third Circuit in *Kaufman*, 561 F.3d at 156 ("Whether [the significant basis] condition is met requires a substantive analysis comparing the local defendant's alleged conduct to the alleged conduct of all the Defendants."). *See also Opelousas*, 655 F.3d at 363 (requiring "more detailed allegations or extrinsic evidence detailing the local defendant's conduct in relation to the out-of-state defendants").

Meridian is one of just six Defendants referred to in the SAC. In terms of the overall class, the Plaintiffs allege that "Meridian conducted illegal debt collection agency activities with respect to thousands of files each year," and that Meridian's activities constituted between 15 to 20% of the total debt collection activities of all the Defendants. In *Evans*, the Eleventh Circuit reasoned that the "significant basis" provision was not satisfied because the plaintiffs had not shown that "a significant number or percentage of putative class members may have claims against [a local defendant]." *Evans*, 449 F.3d at 1167. By contrast, Meridian foreclosed between 15 to 20% of the homes of all Plaintiffs in the class. Several Plaintiffs then have colorable claims against Meridian.

To determine if the Plaintiffs claim "significant relief" from Meridian, we look to the remedies requested by the Plaintiffs in the SAC. *See Coleman*, 631 F.3d at 1020. The Plaintiffs claim general damages of $10,000 from Meridian, and punitive damages as a result of deceptive trade practices and

> fraud. The Plaintiffs estimate that the total damages recoverable from Meridian are between $5,000,000 and $8,000,000. Meridian also concedes that the Plaintiffs seek equitable relief, which would significantly increase the overall value of the judgment against Meridian. *Cf. id.* ("Further, the complaint seeks injunctive relief against [the local defendant]. There is nothing in the complaint to suggest either that the injunctive relief sought is itself insignificant, or that [the local defendant] would be incapable of complying with an injunction."). The amounts sought are sufficient to show that the Plaintiffs claim "significant relief" from a local defendant.
>
> Our analysis is further buttressed by the Senate Judiciary Committee's findings pertaining to the "local controversy exception." The Committee Report stated that "[t]his provision is intended to respond to concerns that class actions with a truly local focus should not be moved to federal court under this legislation because state courts have a strong interest in adjudicating such disputes. . . . [A] federal court should bear in mind that the purpose of each of these criteria is to identify a truly local controversy – a controversy that uniquely affects a particular locality to the exclusion of all others." S. Rep. No. 109-14, 39, 2005 U.S. Code Cong. & Admin. News 3, 38.
>
> In this case, a class of exclusively Nevada Plaintiffs has filed suit against six Defendants, one of which is Nevada domiciled. The alleged misconduct took place exclusively in the state of Nevada. The one Nevada domiciled Defendant was allegedly responsible for between 15-20% of the wrongs alleged by the entire class. The Plaintiffs have met their burden to show that this case qualifies for the "local controversy exception."

Benko, 789 F.3d 1111, at **12-16.

This Court finds the instant matter analogous to *Benko* for several reasons. First, a review of Plaintiffs' Amended Complaint demonstrates that Landau's conduct forms a significant basis for their claims. Landau is one of only two Defendants in this action.[3] Second, Plaintiffs allege that:

> 4.10 Defendants Boeing Company and Boeing Commercial Airplanes hired, delegated, contracted with, partnered with, or otherwise shared the responsibilities with Landau Associates for the investigation and remediation of the Boeing Auburn Plant.

[3] As noted above, the Court considers Boeing Company and Boeing Commercial Airplanes one Defendant. *See* Page 1, *supra*, at fn. 1.

4.11 In or about 2002, Defendant Boeing Company, Boeing Commercial Airplanes, and Landau Associates identified a plume of volatile organic chemicals ("VOCs"), including TCE and PCE and their degradation products including vinyl chloride ("VC") in the groundwater at the Boeing Auburn Plant. Defendants identified building 17-05 of the Boeing Auburn Plant as the likely source of the plume of hazardous substances. This plume was noted by Defendants Boeing Company, Boeing Commercial Airplanes, and Landau Associates to have moved off of the Boeing Auburn Plant property and to be continuing to move off the property in the shallow groundwater in a north and/or northwest direction.

4.12 Defendants Boeing Company, Boeing Commercial Airplanes, and Landau Associates knew at that time that the movement of these hazardous substances posed a threat to the health and rights of nearby property owners and residents and their properties.

4.13 Defendants Boeing Company, Boeing Commercial Airplanes, and Landau Associates knew at that time that the presence of these hazardous substances in groundwater would contaminate soil and escape through soil into the air on nearby properties and into the homes and buildings thereon.

4.14 With this knowledge, Defendants had a duty to further investigate, track and document, remediate, and/or otherwise clean up the hazardous substances and to investigate further potential migration of the hazardous substances. Defendants had a further duty to take responsible actions to contain and/or minimize the movement of the hazardous substances off the Boeing Auburn Plant property and onto nearby properties and/or to warn of the presence and movement of such hazardous substances.

4.15 Defendants Boeing Company, Boeing Commercial Airplanes, and Landau Associates failed to take reasonable actions in investigating, testing, tracking, documenting, remediating, cleaning up, containing, minimizing movement, and/or warning nearby property owners and residents of the presence of and movement of hazardous substances into their neighborhoods, properties and homes.

4.16. In or about 2009, Defendant Boeing Company, Boeing Commercial Airplanes, and Landau Associates identified an [sic] second plume of VOCs including TCE, PCE and their degradation products including VC. Defendants failed to identify the probable sources of the contamination or where on the Boeing Auburn Plant this plume originates.

4.17 This plume was noted by Defendants Boeing Company, Boeing Commercial Airplanes, and Landau Associates to have moved off of and to be continuing to move off of the Boeing Auburn Plant property in the

> groundwater. Again, Defendants failed to take reasonable actions in investigating, testing, tracking, documenting, remediating, cleaning up, containing, minimizing movement, and/or warning nearby property owners and residents of the presence of and movement of hazardous substances into their neighborhoods, properties and homes.

Dkt. #1-1 at ¶ ¶ 4.10-4.17. These allegations support the substance of Plaintiffs' legal allegations, are asserted against both Defendants equally, and apply to all of the current Plaintiffs.[4] Further, looking at the claims as a whole, negligence claims account for 50% of the claims asserted by Plaintiffs (albeit in the form of one claim of negligence against Boeing and one claim of negligence against Landau). As compared to the other two claims against Boeing, for Nuisance and Trespass, particularly in light of the above factual allegations, the Court finds that the negligence claim against Landau forms a significant basis for the relief sought by Plaintiffs.

Likewise, the Plaintiffs claim equal relief from both Defendants. Dkt. #1-1 at 61, *Request for Relief*. They seek judgment against each Defendant for general and special damages, and Boeing itself asserts in its Notice of Removal that each Plaintiff seeks eight categories of damages relating to alleged contamination, investigation, and clean-up: their property's lost value; remediation costs; repair or restoration costs; the value of the continuous trespass and interference with her use of her property; medical costs; the costs of future medical monitoring; attorneys' fees; and consequential damages, which totals more than $75,000 for each claim. Dkt. #1 at ¶ 17. The amounts sought are sufficient to show that the Plaintiffs claim "significant relief" from a local defendant, Landau. Defendants argue that Plaintiffs have failed to allege joint and several liability, and therefore cannot demonstrate that Plaintiffs seeks

[4] The remainder of the factual allegations set forth the history of the Boeing Auburn plant and its manufacturing processes and the way it historically handled chemicals used in those processes, and facts related to soil testing on the subject properties and homes and the chemicals allegedly discovered thereon. *See* Dkt. #1-1 at ¶ ¶ 4.1-4.9 and 4.18-4.24.

significant relief from Landau as opposed to Boeing. *See* Dkt. #65 at 17-20. However, this ignores that Plaintiffs have pleaded separate negligent claims against Boeing and Landau and seek to hold each Defendant responsible for its own negligence and for any monetary amounts resulting therefrom. Accordingly, the Court is not persuaded by Defendants' argument.

As the Court of Appeals found in *Benko*, so too does this Court find that its decision is "further buttressed by the Senate Judiciary Committee's findings pertaining to the 'local controversy exception.'" *Benko*, 789 F.3d 1111, at *16. It is clear from the facts and allegations made in this case that this involves a potential class action with a truly local focus that particularly affects a local area of the State of Washington to the exclusion of all others. *Id.*

Here, a class of exclusively Washington Plaintiffs has filed suit against two Defendants, one of which is Washington domiciled. The alleged misconduct took place exclusively in the State of Washington, and Plaintiffs allege that the Washington Defendant was equally responsible for the negligence alleged by the entire class and which constitutes 50% of the class claims. Plaintiffs also seek equal relief from Defendants for their alleged negligence. Under these circumstances, the Court finds that Plaintiffs have met their burden to show that this case qualifies for the "local controversy exception."

D. Landau Joinder

The Court previously determined, and the Ninth Circuit Court of Appeals affirmed, that Landau has not been fraudulently joined in this action and therefore this Court lacks diversity jurisdiction. Accordingly, there is no alternative basis for jurisdiction in this Court.

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IV. CONCLUSION

Having reviewed the relevant pleadings, the declarations and exhibits attached thereto, and the remainder of the record, the Court hereby ORDERS:

1) Plaintiffs' Motion to Remand (Dkt. #58) is GRANTED, and this case is again REMANDED to the King County Superior Court.

2) This matter is now CLOSED.

Dated this 13th day of August 2015.

RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE