No. 16-1092

IN THE

Supreme Court of the United States

LOCKWOOD, ANDREWS & NEWNAM, P.C., ET AL.,

Petitioners,

v.

JENNIFER MASON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

As explained below (at 7-15), this Court should deny review, among other reasons because the petition's principal question presented is not actually posed by this case. Even assuming that this case is an appropriate vehicle for review, the petition's questions presented are more properly stated as follows:

Whether the district court clearly erred in finding—on the particular facts of this state-law professional-negligence case arising out of the Flint water crisis—that this putative class action met the local-controversy exception of the Class Action Fairness Act.

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INTRODUCTION

This Court should deny review. This case is a quintessential local dispute between citizens of one community—Flint, Michigan—and the engineers allegedly responsible for the contamination of that community's public drinking water, and it meets none of this Court's traditional criteria for review.

The case is a poor vehicle to address the requirements of the Class Action Fairness Act's local-controversy exception. Petitioners' argument is predicated on a purported pleading defect in a state-court complaint that is no longer operative. Moreover, resolution of the questions presented is unlikely to change the forum in which the case is litigated.

Nor is there a division of authority worthy of this Court's review on either question presented. The circuits apply similar legal rules regarding the local-controversy exception's citizenship and local-defendant requirements and simply come to different results on clear-error review of different facts. In any event, the Sixth Circuit correctly held that this case falls squarely within the exception.

STATEMENT OF THE CASE

In 2005, Congress passed the Class Action Fairness Act (CAFA) to ensure that large, interstate class actions could be heard in federal court. Pet. App. 44a (citing *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013)). Consistent with that purpose, Congress included an exception requiring a federal district court to decline to exercise jurisdiction over "a truly local controversy that uniquely affects a particular locality to the exclusion

of all others." *Id.* (quoting S. Rep. 109-14, 39 (2005)). This case stems from such a controversy: the water crisis in Flint, Michigan. *Id.* 41a.

Although this municipal public-health disaster captured national attention, it uniquely affected a particular locality to the exclusion of all others. Pet. App. 3a. Respondents live in Flint, suffered injuries in Flint, and continue to suffer injuries in Flint. *Id.* 41a. Flint is not close to a state border, but "lies near the crook of the thumb in the figurative 'Michigan hand.'" *Id.* 24a. Nor is it home to "temporary residents" such as "a large number of college students, military personnel, [or] owners of second homes." *Id.* 24a, 46a. And with 41.6 percent of the city's population living at or below the poverty line, many Flint residents have limited mobility. *Mason v. Lockwood, Andrews & Newnam P.C.*, Second Amended Class Action Complaint, No. 16-106150-NM, Dkt. No. 62, at ¶ 35 (Mich. Cir. Ct. Genesee Cty. July 26, 2016) (Second Amended Complaint). Census data show that Flint's population changed only 4 percent between 2010 and 2015. CA6 ECF 15, at 164.

Respondents allege a single professional-negligence claim against petitioners—Lockwood, Andrews & Newnam, P.C. (LAN P.C.), a Michigan-based engineering firm, and Lockwood, Andrews & Newnam, Inc. (LAN Inc.), LAN P.C.'s Texas-based parent—and a third defendant, Leo A. Daly Company (which is not a petitioner here). Despite this case's overwhelmingly local character, petitioners insist that it must be litigated in federal court. Pet. 13-14. That assertion is wrong, and review should be denied.

A. Legal background

1. CAFA expanded original and removal federal diversity jurisdiction to cover class actions with minimal diversity and more than $5 million in controversy. 28 U.S.C. §§ 1332(d)(2), 1453. The Act includes a local-controversy exception that requires district courts to decline to exercise jurisdiction over "truly local" cases, S. Rep. No. 109-14, 39 (2005), that meet several conditions, 28 U.S.C. § 1332(d)(4)(A)(i). Relevant here, the exception applies to cases where more than two-thirds of the proposed class members are forum-state citizens and at least one defendant is a forum-state citizen "from whom significant relief is sought" and "whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class." 28 U.S.C. § 1332(d)(4)(A)(i)(I)-(II).

2. Every circuit to consider the local-controversy exception agrees that the removing party bears the initial burden of establishing CAFA jurisdiction, and that the party seeking remand to state court under a CAFA exception must establish the exception's elements by a preponderance of the evidence. Pet. App. 10a. The courts of appeals also agree that the exception is not jurisdictional. *Id.* 17a-18a.

B. Factual and procedural background

1. The city of Flint decided to switch its primary drinking water source in April 2013. Pet. App. 6a. It began drawing water from an interim source, the Flint River. *Id.* Flint then tapped petitioners to design and implement a water treatment system to safely provide water to the community. *Id.* Petitioners agreed to "make the necessary

improvements," with petitioner LAN, P.C. (the Michigan-based subsidiary) taking responsibility for "quality control" services. *Id.* 6a, 28a.

The river was known to be highly corrosive, meaning that without proper treatment it would cause heavy metals from pipes to leach into the city's drinking water. Pet. App. 6a-7a. The river was not properly treated with anti-corrosive chemicals, and the city's drinking water became contaminated. *Id.* 41a. City residents soon suffered serious adverse health effects and property damage. *Id.* 46a.

2. Flint water-crisis victims began to seek court remedies. On January 25, 2016, respondents filed in Michigan state court the first putative class action that named petitioners as defendants. Pet. App. 7a. Petitioners removed respondents' first amended complaint to federal court under CAFA, alleging minimal diversity and noting that respondents "were citizens of the State of Michigan." *Id.* 8a, 23a. Respondents filed a motion to remand based on the local-controversy exception. *Id.* The district court granted remand on that basis. *Id.* 9a. Relevant here, the district court held that more likely than not two-thirds of the proposed class are Michigan citizens. *Id.* 45a-47a. It relied on the proposed class's definition, limited to "residents of Flint" who from April 25, 2014 to the present had "been and continue to be exposed to highly dangerous conditions created and caused by Defendants' negligen[ce]." *Id.* 41a. The district court also found the exception's "significant local defendant" requirement satisfied because the named plaintiffs sought "direct, significant relief on behalf of all class members" against a Michigan corporation and domiciliary. *Id.* 48a.

3. The Sixth Circuit affirmed. It held that the district court did not clearly err "in finding that, more likely than not, more than two-thirds of the proposed Flint residents were Michigan citizens." Pet. App. 25a. The court explained that the party invoking the local-controversy exception "is effectively tasked with establishing the domicile of the proposed class members." *Id.* 12a. The court reasoned that the district court's finding on the two-thirds citizenship requirement was correct "[i]n light of the long-standing presumption of domicile based on residency, the additional domicile factors apparent from the class definition, and the complete absence of any evidence tending to rebut the presumption of domicile based on residency." *Id.* 25a.

The court recognized that residency is not always synonymous with citizenship when establishing diversity jurisdiction in the first instance. Pet. App. 14a-15a. But relying on the residency-domicile presumption to determine whether CAFA's local-controversy exception has been satisfied is different because, in that situation, diversity jurisdiction in the first instance is undisputed. *Id.* 17a-20a. In addition to the residency-domicile presumption—which petitioners did not rebut—the court of appeals reasoned that (1) respondents' continuous residence in Flint for several years, (2) Flint's lack of temporary residents such as college students or military personnel, (3) the allegation of property ownership by proposed class members, and (4) Flint's location far from a state line, together "bolster[ed] the inference that the putative class members, as residents of Flint, intended to remain there indefinitely." *Id.* 24a.

The court then affirmed the district court's finding that the Michigan-based LAN, P.C.'s conduct formed a significant basis for the alleged claims. Pet. App. 28a. It first ruled that because the complaint did not allege that defendant Leo A. Daly Company provided any engineering services but rather was liable only as the alter ego of the other two defendants, Daly's role was "minimal at best." *Id.* 26a. But as between the other two defendants, the court explained that the complaint alleged that all engineering work was conducted "through LAN, P.C." and that LAN, P.C. was formed to conduct Texas-based LAN, Inc.'s work in Michigan as the entity relied on "to perform 'quality control.'" *Id.* 26a-27a (quoting first amended complaint). The court of appeals thus agreed with the district court that, because the "very core" of the sole claim for relief was failure to provide quality control, LAN, P.C.'s conduct formed a significant basis for the claims asserted. *Id.* 27a.

Judge Kethledge dissented on both grounds. He maintained, first, that respondents were required to produce more evidence from which the district court could make findings regarding citizenship, and that, because of federal courts' "virtually unflagging obligation" to exercise their jurisdiction, courts could not apply the residency-domicile presumption when considering whether to decline CAFA jurisdiction. Pet. App. 34a. He also disagreed with the majority's factual determination that LAN, P.C.'s conduct formed a significant basis for the claims because the first amended complaint often referred to LAN, P.C. and LAN, Inc. collectively, and the allegation that

LAN, Inc. conducted its work in Michigan "through" LAN, P.C. was ambiguous. *Id.* 35a-36a.

Petitioners did not seek panel rehearing or rehearing en banc.

4. Meanwhile, on remand, the parties continued to litigate this case in state court. As this case comes to the Court, the state-court judge continues coordinating the hundreds of individual and class-action Flint water-crisis cases pending in the county. So far, no proposed class has been certified.

Two months after the district court's remand order, the state court granted respondents' motion to file a Second Amended Complaint, which clarified that each of the named plaintiffs and the class they sought to represent are both "residents" and "citizens" of Flint. Second Amended Complaint ¶¶ 2-10, 26, 70, 194. Petitioners never removed this complaint to federal court.

REASONS FOR DENYING THE WRIT

I. This case is a poor vehicle for addressing the first question presented.

The petition's first question is not actually posed by this case. First, the question describes a purely hypothetical situation because the operative post-remand complaint expressly limits the class to Michigan citizens, confirmation that this case belongs in state court. Second, the question is not presented because, in fact, respondents presented evidence showing that greater than two-thirds of the proposed class are Michigan citizens. Finally, even if the first question were actually presented, this case would not be worthy of review because a decision of this Court is unlikely to be outcome-determinative.

A. The first question is purely hypothetical.

1. Petitioners' first question asks only about the narrow circumstance where a plaintiff seeks remand of a class action "in which class membership is *not limited to forum-state citizens*." Pet. i (emphasis added). But as the case stands, the class it involves *is* expressly limited to forum-state citizens. As noted (at 7), after the district court's remand, the state court granted leave to file a new complaint clarifying that the proposed class is limited to Michigan citizens. Second Amended Complaint ¶¶ 2-10, 26, 70, 194. This clarification guarantees that the suit should remain in state court. *E.g.*, *Hargett v. RevClaims, LLC*, ___ F.3d ___, 2017 WL 1405034, *3 (8th Cir. April 14, 2017); *In re Sprint Nextel Corp.*, 593 F.3d 669, 676 (7th Cir. 2010); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 564 F.3d 75, 78, 81 (1st Cir. 2009).

In *In re Sprint Nextel Corp.*, the court explained that had the plaintiffs simply limited their class to forum-state citizens, they would "have guaranteed" that their suit would remain in state court under CAFA. 593 F.3d at 676. By defining the class this way, "[t]here would have been no concern that out-of-state businesses, college students, soldiers, and the like comprised greater than one-third of the class, and it doesn't take any evidence to establish that [forum-state] citizens make up at least two-thirds of the members of a class that is open only to [forum-state] citizens." *Id.*

Here, as "masters of their complaint," respondents did just as the *Sprint* court suggested:

they clarified in the Second Amended Complaint that this case was brought on behalf of Michigan *citizens* only. *Johnson v. Advance Am.*, 549 F.3d 932, 937 (4th Cir. 2008) (collecting cases) (applying in the CAFA context the settled principle that plaintiffs are "masters of their complaint"). Petitioners never removed this complaint, making the petition—involving a now-superseded pleading—particularly ill-suited for review.

An example illustrates why petitioners' failure to remove makes this case a poor vehicle. Assume that instead of what occurred here, back safely in state court post-remand, respondents had amended their complaint to allege a federal claim. Still seeking a federal forum, petitioners certainly could have filed a new notice of removal asking the district court to exercise jurisdiction. This is the same in principle to what happened about six weeks ago in another Flint water-crisis case involving petitioners, where, after an initial remand, a defendant re-removed an amended complaint under CAFA. *See Mays v. Synder et al.*, Defendants' Notice of Removal, No. 5:17-cv-10996, ECF 1 (Mich. Mar. 29, 2017). But a failure to remove within thirty days would have required petitioners to defend in state court. *See* 28 U.S.C. § 1446(b)(3). So too here. Petitioners' failure to timely remove the now-operative complaint means this wholly state-law suit concerning entirely local events must proceed in state court. More to the point, that failure renders the petition hypothetical.

2. In any case, in light of information in the notice of removal, motion for remand, and Second Amended Complaint, this Court should not grant review because a decision on the merits would likely

not alter the ultimate result that remand to state court is required here.

Courts determine citizenship for purposes of diversity jurisdiction by looking to "the state of things at the time of the action brought." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570 (2004) (quoting *Mollan v. Torrance,* 22 U.S. 537, 539 (1824)). When courts make these findings, they regularly look to post-removal filings including notices of removal, *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1213-14 (11th Cir. 2007), and motions to remand, *Romano v. Kazacos*, 609 F.3d 512, 520 (2d Cir. 2010) (citing *Land v. Dollar*, 330 U.S. 731, 735 n. 4 (1947)). Thus, if this Court were to remand the case for further proceedings, the district court could consider petitioners' notice of removal in which they acknowledged that at the time the suit was filed "[p]laintiffs were *citizens* of the State of Michigan." Pet. App. 23a (emphasis added). Likewise, the court could consider the respondents' remand papers, which clarified that plaintiffs were "over 100,000 *citizens* of Flint." *Mason v. Lockwood, Andrews & Newnam, P.C.*, Plaintiffs' Motion to Remand, No. 2:16-cv-10663, ECF 10, at 7 (E.D. Mich. Mar. 24, 2016) (emphasis added).

Further, although the Sixth Circuit's decision considered respondents' first amended complaint—which made sense because it was the only complaint that petitioners removed—were this Court to reverse and remand for further proceedings, the court of appeals could choose to analyze the Second Amended Complaint. *See* 28 U.S.C. § 1332(d)(7) (instructing that "[c]itizenship of the members of the proposed plaintiff classes shall be determined . . . as of the date

of filing of the complaint *or amended complaint*") (emphasis added).

To analyze the local-controversy exception—an issue reached only after diversity jurisdiction has been established—courts may analyze post-removal amendments to pleadings. *Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 1117 (9th Cir. 2015). Indeed, a district court may abuse its discretion if it denies plaintiffs leave to amend their complaint with clarifying information germane to the local-controversy exception. *Id.* After all, allowing respondents to "amend a complaint after removal to clarify issues pertaining to federal jurisdiction under CAFA is necessary" because respondents' first amended complaint was originally drafted for a state court and therefore would not have "address[ed] CAFA-specific issues, such as the local controversy exception." *Id.*

Because diversity jurisdiction is established before a question about the local-controversy exception arises, post-removal amendments can provide plaintiffs an opportunity to provide clarifying information without engaging in jurisdictional gamesmanship. *Id.* Thus, for example, in *Benko*, the plaintiffs amended their complaint "to elaborate on estimates of the percentage of total claims asserted against" an in-state defendant, not "to eliminate a federal question so as to avoid federal jurisdiction." *Id.* The plaintiffs added information "directly related to CAFA's local controversy exception," which served only to clarify the court's analysis of the exception's applicability. *Id.*

This reasoning applies with even more force to the peculiar facts here. No decision of which we are

aware suggests that once a federal court declines to exercise jurisdiction under a CAFA exception, plaintiffs may not update their complaint in a *state forum* with information consistent with the federal court's remand order. And that is precisely what happened here. By expressly limiting the class to Michigan citizens, the citizenship allegations in the Second Amended Complaint simply clarified what the courts had already found—"that, more likely than not, more than two-thirds of the proposed class of Flint residents were Michigan citizens," Pet. App. 25a. This clarification "is directly related to CAFA's local controversy exception," *Benko*, 789 F.3d at 1117, and the litigation timeline undermines any suggestion of gamesmanship. The clarification post-dated the district court's remand by two months. At that point, respondents had already been afforded a state-court forum, and there was no need to plead around a concern—or extant finding—of federal jurisdiction.

Compare this situation to *Cedar Lodge Plantation, L.L.C. v. CSHV Fairway View I, L.L.C.*, where, seeing indicia of gamesmanship, the Fifth Circuit declined to analyze a post-removal complaint. 768 F.3d 425, 426 (5th Cir. 2014). Unlike here, the *Cedar Lodge* plaintiffs filed an amended complaint in federal, not state, court. *Id.* And the plaintiffs there sought to file their new federal-court pleading before they even moved for remand, not, as here, well after the remand to state court for lack of federal jurisdiction. *Id.* Further, the *Cedar Lodge* plaintiffs amended their complaint not to elaborate on a point of potential confusion, but to add an entirely new local defendant, where none previously existed, in an

attempt to satisfy the local-controversy exception's "significant local defendant" requirement. *Id.*

* * *

In sum, because the putative class is expressly limited to Michigan citizens, this case does not present the petition's first question, and the operative class definition obviates any need for this Court's involvement.

B. The first question—whether some evidence of citizenship is required—is not actually presented because there *was* evidence of the class's citizenship.

The local-controversy exception does not require plaintiffs to present a particular type of evidence to show citizenship. It only requires plaintiffs to satisfy their burden and demonstrate that two-thirds of class members are, more likely than not, citizens. Given the geographic and demographic idiosyncrasies of the Flint water crisis, the district court exercised its discretion not to insist on statistical studies or expert affidavits. Instead, it took judicial notice of generally known facts, in combination with the class definition and the uniquely local circumstances of this case, and found that respondents satisfied their evidentiary burden. This case was not decided solely on a presumption and thus does not pose petitioners' first question presented.

Federal courts may take judicial notice of certain facts that are "not subject to reasonable dispute" because they are "generally known" within the court's jurisdiction or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A

court may take judicial notice on its own at "any stage of the proceeding." Fed. R. Evid. 201(c)-(d). Although the "usual method of establishing adjudicative facts" is through standard means such as testimony, "if particular facts are outside of reasonable controversy, this process is dispensed with as unnecessary." Fed. R. Evid. 201 Advisory Committee Notes.

The district court found it unnecessary to hold an evidentiary hearing or demand statistical studies. Instead, it noted that "[t]here are no circumstances—such as a large number of college students, military personnel, owners of second homes, or other temporary residents—suggesting that these Flint residents are anything other than citizens of Michigan." Pet. App. 46a. The district court relied on these facts, undisputed by petitioners and beyond reasonable controversy, to find that "[p]laintiffs have sustained their burden of demonstrating that more than two-thirds of the proposed class are citizens of Michigan." *Id.* 47a. And the Sixth Circuit merely held that the "district court did not clearly err" in its factual finding. *Id.* 25a.

Further, on appeal, respondents pointed to U.S. census data to show that the relocation rate out of Flint between April 1, 2010 and July 1, 2015 was about 4 percent and that only 1.1 percent of the population was foreign born. CA6 Appellees' Br. 15. "United States census data is an appropriate and frequent subject of judicial notice," including for determining two-thirds citizenship under CAFA. *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571-72 (5th Cir. 2011) (citing cases); *cf. South Carolina v. Katzenbach*, 383 U.S. 301, 333 (1966)

(abrogated on other grounds) (Census Director's findings are "objective statistical determinations" that are "unlikely to arouse any plausible dispute.").

The Sixth Circuit reviewed the facts and affirmed the district court's finding of two-thirds citizenship. Its decision did not rest only on the residency-domicile presumption, but also on "other attributes of plaintiffs' proposed class that bolster the inference that the putative class members, as residents of Flint, intend to remain there indefinitely." Pet. App. 24a.

This case is thus not the proper vehicle to test whether a plaintiff "need not present any evidence" of class citizenship, Pet. i., because, as just explained, *there was evidence* consistent with the unusual attributes of this litigation. The decisions below are about case-specific factual inferences—not simply legal presumptions. Put differently, this case does not present the isolated legal question of the residency-domicile presumption because the district court's domicile presumption did not rely on an allegation of residency alone, but also on a narrowly tailored class definition and generally known facts.

C. A decision of this Court likely would not change the forum.

Whether this Court grants review or not, the case likely will end with the same bottom line: a CAFA exception applies, and so this case belongs in state court.

First, as discussed above (at 10), the district court, on remand from this Court, would likely accept the Second Amended Complaint, which pleads citizenship and thus satisfies the two-thirds

citizenship requirement. *See Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 1117 (9th Cir. 2015).

Second, if petitioners prevail in this Court, this case likely would go back to district court for formal jurisdictional discovery regarding respondents' citizenship.[1] The district court would hold an evidentiary hearing and, given the unusual and highly Flint-centric facts here, respondents likely would satisfy any different articulation of their burden.

Finally, on remand, the district court could in turn remand to state court under a separate but related CAFA exception, which gives district courts discretion to decline to exercise jurisdiction "in the interests of justice and looking at the totality of the circumstances" so long as just more than one third of the plaintiffs are forum-state citizens. 28 U.S.C. § 1332(d)(3). The district court, which has "remanded dozens of similar individual cases against Lockwood to state court," Pet. App. 49a, could apply this exception *sua sponte*. *See Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 804, 813 (5th Cir. 2007).

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[1] Remand for jurisdictional discovery is a common occurrence including in cases involving CAFA exceptions. *See, e.g.*, *In re Sprint Nextel Corp.*, 593 F.3d 669, 676 (7th Cir. 2010); *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 885 (9th Cir. 2013).

II. There is no division among the circuit courts worthy of this Court's review.

A. First question

Petitioners assert that the Sixth Circuit created a split when it held, in purported conflict with all other circuits to consider the question, "that a plaintiff seeking the remand of a class action, in which class membership is not limited to forum-state citizens, need not present any evidence that greater than two thirds of proposed class members are such citizens." Pet. i. Despite the Sixth Circuit's supposed outlier status, petitioners did not seek panel rehearing or en banc review. *See* Fed. R. App. P. 35(b)(1)(B). In fact, the Sixth Circuit never announced that rule of law.

The Sixth Circuit did not hold that plaintiffs seeking remand under CAFA can satisfy the two-thirds citizenship requirement without presenting any citizenship evidence, but rather simply found that respondents met their burden here. Although the district court "relied primarily on the rebuttable presumption of domicile based on residency and the absence of any contrary evidence," Pet. App. 9a, the Sixth Circuit explained that "other attributes of plaintiffs' proposed class bolster the inference that the class members, as residents of Flint, intend to remain there indefinitely." *Id.* 24a.

In doing so, the Sixth Circuit applied the universal rule that plaintiffs seeking remand under the local-controversy exception bear the burden of showing by a preponderance of the evidence that

greater than two-thirds of the class are forum-state citizens.[2] Circuit courts review applications of that rule—that is, factual findings about citizenship—for clear error based on the unique facts and evidence of each case.

None of the decisions cited in the petition forbade eligibility for the two-thirds requirement when the complaint confines a class to state residents at the time of filing suit, and other indicia demonstrate that, more likely than not, two-thirds of the class are citizens. The Fifth and Ninth circuits explicitly stated that citizenship *can* be inferred from residency in certain circumstances. And the Seventh, Tenth, and Eleventh circuits merely declined to make an inference of citizenship based on flaws in the particular residency evidence presented. As explained below, only the Eighth Circuit, in a sparsely reasoned decision post-dating the petition, has rejected the residency-domicile presumption outright. Thus, in virtually all the circuit court rulings, varying facts and a deferential standard of review for issues of evidentiary sufficiency account for the different outcomes in petitioners' cited cases.

We now address each circuit court decision in turn.

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[2] See Pet. App. 10a; *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1164, 1166 (11th Cir. 2006); *Preston v. Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 797 (5th Cir. 2007); *In re Sprint Nextel Corp.*, 593 F.3d 669, 673; *Mondragon v. Capitol One Auto Fin.*, 736 F.3d 880, 881 (9th Cir. 2013); *Hood v. Gilster-Mary Lee Corp.*, 785 F.3d 263, 265 (8th Cir. 2015); *Reece v. AES Corp.*, 638 F. App'x 755, 772 (10th Cir. 2016).

Eleventh Circuit. In *Evans v. Walter Industries, Inc.*, 449 F.3d 1159 (11th Cir. 2006), the court made no legal holding about the residency-domicile presumption. Rather, it held that the plaintiffs' wholly unexplained, potentially cherry-picked sample of the class possibly skewed toward state residents over those who had left and was thus insufficient to determine that two-thirds of the class were Alabama citizens. *See id.* at 1166. The Eleventh Circuit explained that the class definition was "extremely broad, extending over an 85-year period" and thus might have included many people who no longer lived in Alabama. *Id.* That observation is inapt here, where, by definition, all class members are Flint residents, and the class period did not begin until 2014.

Fifth Circuit. In *Preston v. Healthsystem Memorial Medical Center, Inc.*, arising from Hurricane Katrina, the court explained that sufficiency of citizenship is determined on a "case-by-case basis" and found that the district court erred in finding that two-thirds of the class members were Louisiana citizens. 485 F.3d 793, 801 (5th Cir. 2007).

Petitioners say that *Preston* demonstrates the Fifth Circuit's rejection of the residency-domicile presumption. Pet. 15. That is wrong. First of all, the Fifth Circuit has subsequently made clear, in a decision fully cognizant of *Preston*, that "[e]vidence of a person's place of residence" constitutes "prima facie proof of his domicile" for purposes of the local-controversy exception. *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011).

What is more, *Preston* itself merely concluded, "[b]ased on the record," that the plaintiffs "fail[ed] to

establish the *type* of residency information reviewed in other circuits employing the presumption that a person's residency forms an adequate basis for inferring citizenship unless contested with sufficient evidence." 485 F.3d at 800 (emphasis added). In a highly fact-specific context—the "forced mass relocation of Orleans Parish citizens after Hurricane Katrina"—the court rejected the presumption that "the patients' primary billing addresses listed in the medical records accurately reflected their domicile at the time of the filing of this action . . . nearly a year after the hurricane." *Id.* at 799. The court further explained that the "medical records alone show mere presence in the state," and plaintiffs did not provide additional evidence demonstrating that the hurricane victims, "currently dispersed throughout the nation," intended "to return home." *Id.* at 800-01. The court concluded that "[e]ven in light of the presumption of continuing domicile," plaintiffs "must present some modicum of evidence in the record that is directly aimed at the statutory required time frame, i.e. the date of the filing of the suit." *Id.* at 803.

By contrast, respondents, who alleged residency as of the filing of the suit—and since then have alleged citizenship, *see supra* at 7—would have easily met the Fifth Circuit's standard.

Seventh Circuit. In *In re Sprint Nextel Corp.*, 593 F.3d 669, 674-75 (7th Cir. 2010), a case involving CAFA's home-state exception, 28 U.S.C. § 1332(d)(4)(B), the court found that the class definition, limited to people with Kansas cell-phone numbers and billing addresses, was insufficient to determine that two-thirds of the class were Kansas citizens. Although the plaintiffs declared that the

class consisted of Kansas residents who purchased text-messaging from Sprint, *id.* at 671, the court's analysis was necessarily premised on an understanding that non-residents were included in the proposed class. The court noted that commuters who resided in nearby Kansas City, Missouri could have a Kansas cell phone, *id.* at 673, and rejected the assumption that "at least two-thirds of those who have Kansas cell phone numbers and use Kansas mailing addresses for their cell phone bills" were citizens, *id.* at 674. That reasoning does not conflict with the holding below, premised on a class definition limited to current residents of an isolated city who "continue to experience personal injury and property damage" from municipal drinking water, and whose circumstances provide other indicia of citizenship. Pet. App. 24a-25a, 45a.

Ninth Circuit. In *Mondragon v. Capitol One Auto Finance*, the court expressly "decline[d] to reach [the] issue" whether "a person's current residence is also his domicile." 736 F.3d 880, 886 (9th Cir. 2013). The court merely observed that, "ordinarily," the facts must support a finding that two-thirds of a class are state citizens. *Id.* at 881. But it affirmed that "a court should consider 'the entire record' to determine whether evidence of residency can properly establish citizenship." *Id.* at 886.

Mondragon took issue with evidence reaching back "as long as four years before the filing of the complaint." *Id.* at 884. As noted, that problem did not occur here, where the class is limited to current residents at the time of the filing of the complaint.

Eighth Circuit. In *Hood v. Gilster-Mary Lee Corp.*, 785 F.3d 263, 266 (8th Cir. 2015), the court

held that evidence based on an unexplained sample of class members' last-known addresses was insufficient to meet the local-controversy exception. Noting the fallacy that "[t]hose still at the last-known address were more likely to respond, and those not at the last-known address were less likely to respond (and more likely not to be Missouri citizens[])," the court held that plaintiffs' evidence "did not meet their burden of proof." *Id.* The court did not face the situation here, where, under the class definition, every class member is a resident.

We acknowledge, however, that the Eighth Circuit recently issued the only court of appeals' decision that definitively diverges from the decision below regarding the residency-domicile presumption. *Hargett v. RevClaims, LLC*, ___ F.3d ___, 2017 WL 1405034, at *3 n.2 (8th Cir. April 14, 2017) (also noting that limiting the class to citizens would suffice). The court's footnoted rejection of the presumption is devoid of any independent reasoning, *id.*, and so if this Court is interested in the issue it should await further ventilation and more in-depth consideration in the courts of appeals.

In any case, though it is now clear that the Eighth Circuit requires a class limited to residents to prove citizenship through formal evidence, the narrow ground on which the Eighth Circuit diverged from the court below is not worthy of this Court's review. The question left is merely whether the plaintiffs themselves must produce formal evidence, or whether district courts may look to additional indicia of citizenship in the class definition and the specific context of the surrounding population and location to satisfy this burden.

Tenth Circuit. That leaves petitioners' citation to a non-precedential decision, *Reece v. AES Corp.*, 638 F. App'x 755, 772 (10th Cir. 2016). There, the court held that "[a] demonstration that the proposed class members are property owners *or* residents of that state will not suffice in the absence of further evidence demonstrating citizenship." *Id.* (emphasis added).

Whatever the meaning of the unreported decision in *Reece*, it could not have overturned *Siloam Springs Hotel, LLC v. Century Surety Co.*, 781 F.3d 1233 (10th Cir. 2015), which affirmed that "proof that a person is a resident of a state may prima facie indicate that he is a citizen of that state," so long as the allegation of residence is "backed up by a district court finding, at some point later in the proceeding, as to the existence of diversity at the time of the filing of the complaint." *Id.* at 1238 (citing *Whitelock v. Leatherman*, 460 F.2d 507, 514 n.14 (10th Cir. 1972)). Here, the district court made such a finding.

In any event, *Reece* rejected allegations of mere residence or property ownership as allegations of citizenship without additional "persuasive substantive evidence (extrinsic to the amended petition) to establish the Oklahoma citizenship of the class members." 638 F. App'x at 769. Specifically, "the absence of limitations on the temporal period that encompassed the proposed class complicated the citizenship calculus and interjected an additional element of uncertainty into it." *Id.* at 760. For that reason, the court found that "the district court . . . did not err in insisting that [p]laintiffs demonstrate, through more than their broad pleading averments, that over two-thirds of the proposed class were

Oklahoma citizens." *Id.* at 770. Unlike in *Reece*, respondents here pleaded that *each* class member was a resident and properly specified the relevant (and limited) time period.

B. Second question

Petitioners assert that the Sixth Circuit joined the minority of a circuit split in holding that "a plaintiff seeking remand has adequately pled that a particular defendant's conduct forms a 'significant basis' of the class's claims when it has made only undifferentiated and conclusory allegations regarding the conduct of multiple defendants." Pet. i. No circuit, least of all the Sixth, has held any such thing.

The decision below reflects the "general agreement" in the circuits that a court must compare the local defendant's conduct to the alleged conduct of all the defendants. Pet. App. 25a. Petitioners claim that the Sixth Circuit split from the Eleventh, Fifth, and Tenth circuits by not requiring individualized allegations about what each defendant itself did. Pet. 3. But in comparing defendant Leo A. Daly Company's role to that of the other defendants, the Sixth Circuit *did* reject as insufficient allegations resting solely on vicarious liability rather than individualized conduct. *See* Pet. App. 26a.

The Sixth Circuit also observed that respondents alleged that the local defendant, LAN, P.C., was formed to conduct LAN, Inc.'s work in Michigan, that all engineering work was conducted "through LAN, P.C.," and that LAN, P.C. was responsible "to perform quality control" in the water systems, which was "the very core of plaintiffs' professional negligence claim." Pet. App. 26a-27a. Thus, "LAN, P.C.'s conduct

form[ed] an 'important' and integral part of plaintiffs' professional negligence claim" as required by 28 U.S.C. § 1332(d)(4)(A)(i)(II)(bb). *Id.* 27a.

We now review each of the decisions in petitioners' purported circuit split.

Ninth Circuit. Petitioners assert that *Coleman v. Estes Express Lines, Inc.*, 631 F.3d 1010 (9th Cir. 2011), joined the Sixth Circuit in holding that "undifferentiated and conclusory allegations regarding the conduct of multiple defendants" satisfy the requirement that "a particular defendant's conduct forms a 'significant basis' of the class's claims." Pet. App. i. *Coleman* does not stand for that proposition.

"[T]he question" in *Coleman* was "whether a federal district court is limited to the complaint in deciding whether two of the criteria for the local controversy exception are satisfied." 631 F.3d at 1012. The court of appeals went on to hold, in a lengthy analysis, that the district court was so limited, *id.* at 1015, and then spent two paragraphs determining that the complaint sufficiently alleged conduct of a local defendant that formed a significant basis for the claims, *id.* at 1020. The allegations against the local and nonlocal defendant may have been largely the same, *see* Pet. 29, except for a crucial fact alleged in the complaint: that, in a wage-and-hour action, the local defendant, not its out-of-state parent corporation, actually employed the putative class members. *Coleman*, 631 F.3d at 1020. The court explained that allegations that the local defendant "employed the putative class members during the relevant period" and "violated California law in a number of ways with respect to those

employees" were sufficiently "significant" compared to the other defendants. *Id.* Though the complaint also alleged the same violations of law against a nonlocal defendant, the court reasoned that those allegations "in no way ma[de] the allegations against the local defendant, the actual employer, insignificant." *Id.*

Eleventh Circuit. In *Evans v. Walter Industries, Inc.*, 449 F.3d 1159, 1167 (11th Cir. 2006), the court held that plaintiffs alleging injuries from manufacturing facilities that released various waste substances failed to prove that the local defendant was a significant defendant under CAFA. Like the Sixth Circuit here, the court explained that "the mere fact that relief might be sought against [the local defendant] for the conduct of others (via joint liability) does not convert the conduct of others into the conduct of [the local defendant] so as to also satisfy the 'significant basis' requirement." *Id.* at 1167 n.7; *see* Pet. App. 26a. The Eleventh Circuit faulted the plaintiffs for (1) failing to allege that *any* plaintiff had a claim against that defendant, and (2) for relying on conduct by the local defendants out of facilities that had either been closed for decades or were much more distant from the plaintiffs than the facilities owned by other defendants.

Fifth Circuit. In *Opelousas General Hospital Authority v. Fairpay Solutions, Inc.*, 655 F.3d 358 (5th Cir. 2011), the court held that where "nothing in the complaint distinguish[ed] the conduct of [the local defendant] from the conduct of the other defendants," *id.* at 362, "significance" could not be determined based on a claim that the local defendant was "equally liable" as other defendants as part of a racketeering enterprise or other basis for joint

liability, *id.* at 363. The Sixth Circuit applied the same rule when analyzing the claims against Leo A. Daly Company, *see* Pet. App. 26a, but, as noted, the court focused on company-specific allegations when analyzing the alleged conduct of the Michigan corporation.

Tenth Circuit. In *Woods v. Standard Insurance Co.*, 771 F.3d 1257, 1268 (10th Cir. 2014), the court held that the conduct alleged against the local defendant, whom the plaintiffs mentioned "only briefly throughout the ninety-one paragraph complaint," did not form a significant basis of the plaintiffs' claims. The plaintiffs did not allege that the local defendant participated in any discussions, had any knowledge, or even had any obligation relating to the alleged illegal insurance scheme. *Id.* The local defendant's "failure to discover and disclose" the alleged illegal scheme was not significant when compared to the complaint's "primary focus [on the nonlocal defendants'] creation and implementation of a scheme to accept and retain premiums without providing the paid-for coverage." *Id.* The court thus found that the sparse mentions of the local defendant's conduct were not significant when compared to the nonlocal defendants. Here, the Sixth Circuit conducted the same inquiry, but came to a different conclusion because the facts demonstrated that the conduct of the local defendant, the entity incorporated to perform work in Michigan and responsible for quality control, formed a significant basis of the professional-negligence claim regarding contaminated water.

III. Petitioners exaggerate the importance of the questions presented.

1. The first question presented—whether plaintiffs meet the local-controversy exception's two-thirds requirement when they plead residency as opposed to citizenship—lacks practical significance. To be sure, a resident does not always intend to remain, and so, in individual circumstances, a claim of residency (as opposed to citizenship) may occasionally matter. But in class actions such as those involving isolated, in-land communities like Flint, Pet. App. 24a-25a, or impoverished in-state Medicaid recipients only, *Hargett v. RevClaims, LLC*, ___ F.3d ___, 2017 WL 1405034 (8th Cir. April 14, 2017), it is fanciful to suggest that the numbers of citizens and residents meaningfully differ. And because CAFA requires only *two-thirds* in-state class citizenship, in these kinds of class actions, the difference between an allegation of citizenship and an allegation of residency will virtually never be determinative. In many class actions, then, the issue may come down simply to an unimportant pleading glitch. For this reason, the issue is not worthy of a spot on this Court's limited docket.

In any case, the first question presented is unlikely to become a significant issue because plaintiffs intending to file a class action on behalf of forum-state citizens now know, out of an abundance of caution, to plead citizenship rather than residency. As discussed earlier (at 8), the courts of appeals recognize that plaintiffs satisfy the local-controversy exception's two-thirds requirement when they limit their class definition to forum-state citizens. Thus, diligent attorneys generally will plead citizenship

rather than take the chance of failing to satisfy the two-thirds requirement.

2. Petitioners' statistics regarding the asserted importance of the questions presented, Pet. 33, are misleading. Petitioners boldly claim that, from 2009 to 2016, district courts "applied" the local-controversy exception in 153 cases. *Id.* Although the cited cases involved *analysis* of the exception, only some involved findings that the exception actually *applied*. Further, over half of the listed cases did not involve disputes related to the local-controversy exception's *two-thirds requirement*—the prong relevant to the first question presented. And a considerably smaller subset involved the narrow question presented here (whether a class can rely on the residency-domicile presumption to meet the local-controversy exception's two-thirds requirement). In sum, the paucity of decisions actually germane to the questions presented undermines, not enhances, petitioners' claim for review.

3. Petitioners' argument that the Court must intervene to prevent a circuit split from ossifying is misguided. First, as discussed (at 17-27), petitioners have greatly exaggerated one circuit split and created another out of whole cloth—and so the Sixth Circuit's decision did not ossify a circuit-specific legal rule, but followed the same general fact-specific, pleading-dependent standards followed by other circuits. Pet. App. 10a. And precisely because the standards for applying the local-controversy exception are fact-specific, issues about its meaning will recur and be accepted on appeal by the Sixth Circuit (and by other circuits).

Finally, petitioners' argument that ossification of a legal rule provides a basis for this Court's intervention proves far too much. Legal rules naturally solidify in our system. Even accepting petitioners' (flatly incorrect) claims about divisions among the circuits, many circuits have yet to weigh in, and so the situation has hardly ossified.

IV. The Sixth Circuit's judgment is correct.

The Sixth Circuit correctly held that respondents satisfied both disputed prongs of the local-controversy exception.

A. The Sixth Circuit correctly found that respondents satisfied the two-thirds citizenship requirement.

1. As the Sixth Circuit explained, the putative plaintiff class met the two-thirds citizenship requirement because residence creates a rebuttable presumption of domicile (and thus citizenship), as follows: Under federal law, a person is a citizen of the state in which she has established her domicile. *Williamson* v. *Osenton*, 232 U.S. 619, 624 (1914). To establish a domicile, a person must be physically present in a place and have an intention to remain there. *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989). And, in general, the law affords a rebuttable presumption that a person's residence is her domicile. *See Mitchell v. United States*, 88 U.S. 350, 352 (1874); 28 C.J.S. Domicile § 45 (2008); 39 Am. Jur. Proof of Facts 2d 587, § 8 (1984).

Petitioners lay claim to century-old case law establishing that "naked averment" of residency is insufficient to establish citizenship. Pet. 3 (citing

Steigleder v. McQuesten, 198 U.S. 141, 143 (1905) and *Robertson v. Cease*, 97 U.S. 646, 648 (1878)). But in those cases, the presumption was invoked to establish federal subject-matter jurisdiction. The Court's holding in *Robertson*—that citizenship cannot be presumed from residency—is expressly limited to "where the jurisdiction of the Federal courts depends upon the citizenship of the parties." 97 U.S. at 648. Because federal courts are courts of limited jurisdiction, federal jurisdiction may not be presumed in the first instance. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Thus, when a party is trying to *establish* federal jurisdiction, the presumption *against* federal jurisdiction offsets the otherwise applicable residency-domicile presumption.

But here, the parties agree that the local-controversy exception is not jurisdictional. *See* Pet. 6. "[W]hether a court has subject-matter jurisdiction over a claim is distinct from whether a court chooses to exercise that jurisdiction." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009). The local-controversy exception simply requires district courts to "decline to exercise jurisdiction" that it already has. *Graphic Commc'ns Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 636 F.3d 971, 973 (8th Cir. 2011). Thus, the exception to the traditional residency-domicile presumption does not control here. *See* Pet. App. 15a.

Yet petitioners ask this Court to go much further than it has gone before and hold that courts should reject the longstanding residency-domicile presumption outside the context of establishing subject-matter jurisdiction. Petitioners rely on Chief

Justice Marshall's statement in *Cohens v. Virginia*, that "[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given," 19 U.S. 264, 404 (1821). Thus, they contend that there is also a "countervailing presumption" that a court *will* exercise its jurisdiction, which "neutralizes" whatever presumptive force residency has in establishing domicile. Pet. 24.

That argument is mistaken. First, even if federal courts generally should exercise the jurisdiction they are given, that does not negate all countervailing presumptions. For example, this Court still adopts the "presumption" that state procedures will afford an adequate remedy when applying the *Younger* abstention doctrine under which federal courts can decline to exercise jurisdiction. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987). Petitioners assume the presumption in favor of exercising jurisdiction is akin to the presumption that a claim does not fall within federal jurisdiction, but these two presumptions do not have the same legal status. A federal court may never exercise jurisdiction it does not have, but it may, in many instances, choose not to exercise jurisdiction that it does have. *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). Because the two presumptions operate differently, they do not have the same nullifying effect on the longstanding residency-domicile presumption.

Second, underlying Chief Justice Marshall's statement in *Cohens* and subsequent case law is "the constitutional principle that Congress, and not the Judiciary, defines the scope of federal jurisdiction."

New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 359 (1989). Chief Justice Marshall was concerned with judicially created doctrines disrupting the separation of powers. *See Cohens*, 19 U.S. at 404. Federal courts may have a "virtually unflagging obligation" to exercise jurisdiction absent an applicable abstention doctrine, *Colo. River*, 424 U.S. at 817, because abstention doctrines are *judge-made* exceptions to the default rule that Congress alone has the constitutional authority to define federal jurisdiction, *see* Pet. App. 22a.

But this case does not involve a judge-made exception to federal jurisdiction, only a congressional statute ordering the court to decline to exercise its already-existing jurisdiction. *See* Pet. App. 22a. In that circumstance, federal courts need not be concerned with overstepping their bounds and eschewing their own authority because Congress itself has defined the boundaries of federal jurisdiction.

Finally, if (1) federal courts presumptively should exercise jurisdiction that they are given, and (2) that presumption counteracts all other competing presumptions and (3) applies equally to both judge-made and statutory exemptions to exercising federal jurisdiction, then petitioners are asking this Court for much more than simply to do away with the residency-domicile presumption. According to petitioners' logic, all well-established legal presumptions that operate to provide federal courts with discretion to exercise their jurisdiction could be "nullified." *See generally* David L. Shapiro, *Jurisdiction and Discretion*, 60 N.Y.U. L. Rev. 543,

550-59 (1985) (describing practices of judicial abstention in the context of mootness, ripeness, standing, comity, *forum non conveniens*, and exhaustion of remedies). Petitioners thus would overturn, or at least draw into serious question, a well-established, time-honored body of presumptions and, as a result, dramatically curtail federal courts' authority to decline jurisdiction—an authority that does not endanger, but rather protects, the separation of powers and federalism. *See id.* at 574-88.

2. Even if a "naked averment" of residence is insufficient to presume citizenship, Pet. 3, respondents here have shown much more.

As explained (at 8), plaintiffs can define their class as "citizens" of the state-forum to ensure the CAFA exception applies. But there is no requirement to use the magic word "citizens" in the class definition so long as two-thirds citizenship properly can be inferred from that definition. "[W]here a proposed class is discrete in nature, a common sense presumption should be utilized in determining whether citizenship requirements have been met." *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 573 (5th Cir. 2011). As noted (at 18), the cases petitioners cite do not hold that the residency-domicile presumption *never* applies, but, rather, that its proper application depends on the scope of the proposed class. The courts assess the parameters of a class—as pleaded in the complaint—to determine

whether citizenship can be presumed.[3] Thus, the residency-domicile presumption does not depend on whether the class definition includes the word "citizen" but on whether it is tailored enough for the court to infer—or "presume"—that two-thirds of class members are forum-state citizens.

Here, respondents' class definition was sufficiently tailored to infer two-thirds citizenship. The first amended complaint defined the class as those similarly situated to respondents who "at all relevant times, were residents of Flint who, as individuals, parents of minors and as property owners, have been and *continue to be* exposed to highly dangerous conditions." Pet. App. 75a (emphasis added). The intent to remain is effectively built into this narrow class definition.

The Sixth Circuit correctly held that (1) the longstanding residency-domicile presumption, (2) the additional domicile factors apparent from the class definition, and (3) the absence of evidence to the contrary together were enough to conclude that the district court did not clearly err in finding that more than two-thirds of the proposed class of Flint residents were Michigan citizens.

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[3] *See Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1166 (11th Cir. 2006); *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 800 (5th Cir. 2007); *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 886 (9th Cir. 2013); *Reece v. AES Corp.*, 638 F. App'x 755, 760 (10th Cir. 2016).

B. The Sixth Circuit correctly held that the district court did not clearly err in finding that the local defendant's conduct formed a significant basis for respondents' claims.

LAN, P.C., the local defendant, formed "a significant basis" for the single claim "asserted by the proposed plaintiff class." 28 U.S.C. §§ 1332(d)(4)(A)(i)(II)(bb), (cc). As explained above (at 24), a finding that the local defendant's alleged conduct forms a significant basis for the claims requires comparing its conduct to that of all other defendants. The Sixth Circuit did just that.

Respondents' claim against three defendants centered on the defendants' duty to properly administer the Flint water-treatment plan. Pet. App. 26a. Reasoning first that Leo A. Daly Company's role was "minimal at best," as it had no part in the engineering activities on which the claims centered, that left a comparison between only the local defendant, LAN, P.C., and LAN, Inc. *Id.*

Respondents alleged that all of the engineering work on which their claims are premised was conducted through the local defendant, LAN, P.C., which was formed for the very purpose of performing LAN, Inc.'s work in Michigan, where the claims are focused. Respondents also alleged that LAN, P.C. was the entity that worked with water systems around the state to "perform quality control." Pet. App. 27a. As the Sixth Circuit noted, "the failure to provide that quality control is the very core of plaintiffs' professional negligence claim." *Id.* Thus, the local defendant's conduct formed a significant basis of respondents' sole negligence claim. *Id.*

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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