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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 EDMUND HOY, an individual  
12 person, on behalf of himself and all  
13 others similarly situated,

Plaintiff,

14 v.

15 JOHN CLINNIN, et. al.,

16 Defendant.  
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Case No.: 17-cv-788-BTM-KSC

**ORDER GRANTING  
PLAINTIFF'S MOTION TO  
REMAND AND DENYING AS  
MOOT DEFENDANTS' MOTION  
TO TRANSFER VENUE**

18 On April 19, 2017, Defendants removed this action from the Superior Court  
19 of California, County of San Diego. (ECF No. 1.) Pending before the Court are  
20 Plaintiff's motion to remand and Defendants' motion to transfer venue. (ECF  
21 Nos. 5, 7.) For the reasons discussed below, Plaintiff's motion to remand is  
22 granted and Defendants' motion to transfer venue is denied as moot.  
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24 **I. BACKGROUND**

25 Plaintiff brought a putative class action for alleged violations of the  
26 California Business & Professions Code § 17200 ("UCL") against Defendant  
27 Linebarger Goggan Blair & Sampson, LLP ("Linebarger") and its employees.  
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1 Linebarger is a foreign limited law partnership that represents California  
2 government agencies in connection with their debt collections. According to the  
3 Complaint (“Compl.”), as a foreign LLP, Linebarger may only render its services  
4 in California through active members of the California State Bar who are  
5 employed by the foreign limited liability law partnership for that purpose. (Compl.  
6 ¶ 12.) Plaintiff alleges that Defendants have violated the California Rules of  
7 Professional Conduct and California Corporations Code because the designated  
8 California attorneys—Defendants John Clinnin and Timothy O’Reily—have failed  
9 to supervise Linebarger’s employees in sending out demand letters under the  
10 Linebarger letterhead to California debtors. (Compl. ¶¶ 14–16.) The Complaint  
11 seeks both injunctive and restitutionary relief from all Defendants. (Compl. ¶ 43.)

12 Defendants removed this action under the Class Action Fairness Act  
13 (“CAFA”), 28 U.S.C. § 1332(d).

### 14 15 **III. DISCUSSION**

#### 16 **A. Motion to Remand**

17 Plaintiff moves to remand, arguing that the Court should decline jurisdiction  
18 under the local controversy exception under the CAFA. See 28 U.S.C. §  
19 1332(d)(4).

20 CAFA grants federal courts with original diversity jurisdiction over class  
21 actions comprised of 100 or more persons if the matter in controversy exceeds  
22 the sum or value of \$5,000,000 and any member of a class of plaintiffs is a  
23 citizen of a state different from any defendant. § 1332(d)(2). Under CAFA, only  
24 “minimal diversity” is required. *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018,  
25 1020–21 (9th Cir. 2007). Although CAFA grants federal courts with subject  
26 matter jurisdiction over qualified class actions, it also provides express  
27 exceptions, including the local controversy exception, to the exercise of that  
28 jurisdiction. *Id.* at 1024. The local controversy exception applies if: (1) greater

1 than two-thirds of the members of all proposed plaintiff classes are citizens of the  
2 State in which the action was originally filed; (2) at least 1 defendant is a  
3 defendant whose alleged conduct forms a “significant basis” for the claims  
4 asserted, from whom “significant relief” is sought by members of the proposed  
5 class, and who is a citizen of the State in which the action was originally filed; (3)  
6 the principal injuries resulting from the alleged conduct or any related conduct of  
7 each defendant were incurred in the State in which the action was originally filed;  
8 and (4) no similar class action has been filed against any of the defendants in the  
9 last three years. § 1332(d)(4). The Ninth Circuit has held that although the  
10 removing party bears the initial burden of establishing jurisdiction under CAFA,  
11 the party seeking remand bears the burden of proof as to the applicability of the  
12 local controversy exception. *Serrano*, 478 F.3d at 1024.

13 Defendants argue that the local controversy exception does not apply in  
14 this case because Defendant Clinnin, a citizen of California, is not a defendant  
15 from whom significant relief is sought or whose alleged conduct forms a  
16 significant basis for the claims asserted by the proposed class. In determining  
17 whether Plaintiff seeks significant relief from Defendant Clinnin and whether his  
18 conduct forms a significant basis for the claims, the Court may look only to the  
19 Complaint. *See, Coleman v. Estes Exp. Lines, Inc.*, 631 F.3d, 1010, 1015 (9th  
20 Cir. 2011).

### 21 **1. Significant Defendant**

22 Whether the “significant basis” condition is met requires a “substantive  
23 analysis comparing the local defendant’s alleged conduct to the alleged conduct  
24 of all the other, non-local defendants.” *Benko v. Quality Loan Serv. Corp.*, 789  
25 F.3d 1111, 1118 (9th Cir. 2015) (quoting *Kaufman v. Allstate New Jersey Ins.*  
26 *Co.*, 561 F.3d 144, 156 (3d Cir. 2009)).

27 Defendants argue that Defendant Clinnin’s conduct does not form a  
28 significant basis of the proposed class’ UCL claims because Defendant Clinnin

1 cannot as a matter of law be liable under the UCL. Defendant contends that the  
2 California Rule of Professional Conduct 1–120 cannot serve as the basis for a §  
3 17200 claim because it is not intended to create a private cause of action.

4 However, as Plaintiff notes, in *People ex. rel. Herrera v. Stender*, 212 Cal. App.  
5 4th 614, 632 (2012), a California court held that an unlawful UCL claim could be  
6 based on a violation of the California Rules of Professional Conduct. See also  
7 *Estakhrian v. Obenstine*, No. CV 11-3480, 2017 WL 2191622, at \* 20 (C.D. Cal.  
8 Feb. 4, 2017) (granting class certification and finding commonality of issues  
9 where the plaintiffs’ allegations of California’s professional and ethical rules of  
10 conduct would establish liability under the UCL). Defendants argue that Plaintiff  
11 is attempting to circumvent the “bar on asserting claims for violation of the Rules  
12 of Professional Conduct by recasting the claim as a 17200 violation.” (Opp’n to  
13 Mtn to Remand, ECF No. 12, 7.) However, as the *Herrera* Court stated:

14       The gravamen of the complaint is not to regulate the practice of law but  
15       rather is to prevent a fraud upon the public. There is a distinction for our  
16       purposes between trying to regulate professional conduct, which plaintiff is  
17       not trying to do, and trying to prevent fraud on the public, which plaintiff *is*  
18       trying to do.

18 *Herrera*, 212 Cal. App. 4th at 640 (internal citation omitted).

19       Moreover, even assuming that Defendant Clinnin could not be held liable  
20       under the proposed class’ unlawful UCL claim, the proposed class still sets forth  
21       an unfair UCL claim—a separate basis for a UCL violation. See *Cel-Tech*  
22       *Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 180 (1999)  
23       (“The statutory language referring to ‘any unlawful, unfair or fraudulent’ practice  
24       makes clear that a practice may be deemed unfair even if not specifically  
25       proscribed by some other law.”).

26       A review of the Complaint reveals that Defendant Clinnin’s conduct does  
27       form a significant basis for the proposed class’ claims. Plaintiff alleges that  
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1 Defendants violated the UCL by engaging in the unlawful practice of law in  
2 California. It is Linebarger’s California attorneys’, including Defendant Clinnin,  
3 alleged failure to supervise its debt collectors that forms the basis of the  
4 unauthorized practice of law. (Compl. ¶¶ 19–21.) Therefore, Plaintiff carries his  
5 burden with respect to the “significant basis” requirement. See §  
6 1332(d)(4)(A)(II)(bb).

7 Defendants also argue that Defendant Clinnin is not a defendant from  
8 whom significant relief is sought. To determine whether Plaintiff seeks significant  
9 relief from Defendant Clinnin, the Court looks to remedies requested by Plaintiff  
10 in the Complaint. See *Benko*, 789 F.3d at 1119. Plaintiff seeks both economic  
11 and injunctive relief from all Defendants. (Compl. ¶¶43.) Defendants argue that  
12 the relief sought is really aimed at Linebarger because it is the party that would  
13 need to alter or somehow modify its business practices. However, as Plaintiff  
14 notes, Defendant Clinnin is one of Linebarger’s two practicing attorneys in  
15 California. The injunction would require Defendant Clinnin to begin supervising  
16 Linebarger’s debt collectors in sending out demand letters. Therefore, there is  
17 no indication that an injunction would not affect Defendant Clinnin or that he  
18 would be incapable of complying with an injunction. See *Coleman*, 631 F.3d at  
19 1020 (“There is nothing in the complaint to suggest either that the injunctive relief  
20 sought is itself insignificant, or that [the plaintiff] would be incapable of complying  
21 with an injunction.”).

22 As to the restitutionary relief, Defendant argues the relief Plaintiff seeks can  
23 only be obtained from Linebarger because it is the entity which allegedly  
24 obtained the funds as part of the purportedly unlawful and unfair business  
25 practices. However, as the Ninth Circuit has noted, “a defendant from whom  
26 significant relief is sought” does not mean a “defendant from whom significant  
27 relief may be obtained.” *Coleman*, 631 F.3d at 1015. On the allegations in the  
28 Complaint, Defendant Clinnin can be liable for restitution. See *Meister v.*

1 *Mensing*, 230 Cal. App. 4th 381, 398 (2014). There is nothing in the CAFA to  
2 indicate “a congressional intent to turn a jurisdictional determination concerning  
3 the local defendant’s ‘alleged conduct’ into a mini-trial on the merits of the  
4 plaintiff’s claims.” *Coleman*, 631 F.3d at 1017. Thus, Plaintiff also carries his  
5 burden with respect to the “significant relief” requirement of the local controversy  
6 exception. See § 1332(d)(4)(A)(II)(aa).

7 In *Benko*, the Ninth Circuit supported its finding that the local controversy  
8 exception applied by turning to the Senate Judiciary Committee’s findings  
9 pertaining to the local controversy exception<sup>1</sup>. 789 F.3d at 1119. The Court here  
10 follows the same approach. It is undisputed that all of the proposed class  
11 members are California citizens and that the underlying alleged misconduct are  
12 violations of the California Rules of Professional Conduct and the California  
13 Corporations Code. Defendant Clinnin is one of two Defendants that allegedly  
14 failed to supervise Linebarger’s debt collectors which resulted in the  
15 unauthorized practice of law. Plaintiff has, therefore, met his burden to show that  
16 this case qualifies for the local controversy exception.

## 17 **B. Request for Sanctions**

18 Plaintiffs also moves to recover attorneys’ fees and costs related to the  
19 removal.

20 Under 28 U.S.C. §1447(c), a district court remanding a removed case to  
21 state court “may require payment of just costs and any actual expenses,  
22 including attorney fees, incurred as a result of the removal.” The standard for  
23 awarding attorneys’ fees should turn on the reasonableness of the removal and  
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26 <sup>1</sup> “The Committee Report stated that ‘[t]his provision is intended to respond to concerns that class actions with a  
27 truly local focus should not be moved to federal court under this legislation because state courts have a strong  
28 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.’ *Benko*, 789 F.3d at 1119 (quoting S.Rep. No. 109–14, 39, 2005 U.S. Code Cong. &  
Admin. News 3, 38.).

