THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CINDY CODONI, MICHELLE GEER, HORACE CATHCART, AMY FRANCE, and TAMARA CHAKOS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

PORT OF SEATTLE, ALASKA AIR GROUP, and DELTA AIR LINES, INC.,

Defendants.

Case No. 2:23-cv-00795-JNW

THE PORT OF SEATTLE'S REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

NOTE ON MOTION CALENDAR:
To be determined per Dkt. 45

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

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TABLE OF AUTHORITIES

Page

Cases

STOEL RIVES LLP
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Statutes

STOEL RIVES LLP
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Regulations

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I. INTRODUCTION

Through their novel claims, Plaintiffs assert that the Port of Seattle ("Port") and two major carriers ("the Airlines") should "bear the cost of the externalities created by the commercial activity of taking off and landing at Sea-Tac Airport" by paying for medical monitoring and damages they attribute to emissions from federally regulated aircraft traffic. Second Amended Complaint ("SAC"), Dkt. 43 ¶ 8. Plaintiffs are attempting to single out the Seattle-Tacoma International Airport ("SEA") for flight activity that is wholly consistent with and governed by a set of comprehensive federal standards. While Plaintiffs do not claim that either the Port or the Airlines are violating the federal law that governs flight activity and the resulting aircraft emissions that ensue therefrom, they seek compensation for so-called "excess contamination" they claim results from that activity. If successful, Plaintiffs' suit would pave the way for a patchwork of local emission standards at airports around the country. This is precisely why Plaintiffs' novel theory fails. To ensure uniformity in the laws that govern aviation, Congress vested the federal government with exclusive and plenary authority to regulate the concerns animating Plaintiffs' claims, including aircraft emissions, fuselage manufacture, and the frequency and paths of flights at SEA and at commercial airports nationwide.

The Court should reject Plaintiffs' attempt to plead around preemption by phrasing their claims in terms of "local issues of property rights and personal injury." Pltfs' Opp. Br. ("Opp"), Dkt. 57 at 1. It makes no difference in the preemption analysis that the SAC artfully avoids directly seeking to impose local aircraft emission standards or to enjoin flight traffic at SEA. An obligation to pay compensation is as "'potent [a] method of governing conduct and controlling policy'" as an injunction. *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 521 (1992) (citation omitted); *see also Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 857 (9th Cir. 2012) (where plaintiff "does not seek abatement of emissions" and only seeks "damages for harm caused by past emissions . . . the type of remedy asserted is not relevant" because "if a cause of action is displaced, displacement is extended to all remedies").

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Plaintiffs' state-law claims are subservient to and preempted by the overriding federal interest in creating and maintaining uniformity in the regulation of aviation and aircraft emissions. For these reasons and those established in the Port's opening brief (Dkt. 50, the "Motion"), Plaintiffs' claims against the Port must be dismissed.[1]

II. ARGUMENT

A. The CAA's Express Preemption Clause Forecloses Plaintiffs' Suit

In section 233 of the CAA, Congress categorically preempted states from enforcing airplane emissions standards different from those adopted by the EPA:

> No State or political subdivision thereof may adopt or attempt to enforce ***any standard respecting emissions of any air pollutant from any aircraft or engine*** thereof unless such standard is ***identical*** to a standard applicable to such aircraft under this part.

42 U.S.C. § 7573 (emphases added); *see also Washington v. Gen. Motors Corp.*, 406 U.S. 109, 114-15 (1972) ("Congress has . . . pre-empted the field so far as emissions from airplanes are concerned."); *People of State of Cal. ex rel. State Air Res. Bd. v. Dep't of Navy*, 431 F. Supp. 1271, 1275 (N.D. Cal. 1977) (the EPA has "exclusive authority . . . to set emission limitations for aircraft"), *aff'd sub nom. People of State of Cal. v. Dep't of Navy*, 624 F.2d 885 (9th Cir. 1980).

Plaintiffs seek monetary damages for the alleged harms caused by the "emission[s] of . . . pollutants" from aircraft taking off and landing at SEA. SAC at 1. Because they have alleged no violations of any federal emission standards "from any aircraft or engine," their claims are necessarily premised on imposing non-identical local emission standards that are expressly preempted by CAA section 233. None of their arguments or "artful pleading" changes this result.[2]

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[1] The Port adopts the Airline Defendants' subject matter jurisdictional argument (Dkt. 49 at 9-13) establishing an alternative ground for dismissal.

[2] Plaintiffs' argument that their Complaint does not literally seek to impose more stringent emissions controls (or different flight paths or frequencies) ignores the Supreme Court precedent that Plaintiffs' "artful pleading" cannot overcome preemption. *Supra* at 2; Motion at 11-13.

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In efforts to overcome the preemptive force of section 233, Plaintiffs try to rewrite their own Complaint to avoid dismissal. But having pleaded that aircraft "***emissions*** . . . rain down" upon their properties during takeoffs and landings and that contamination is "***emit[ted]***" by "commercial jets" (SAC ¶¶ 8, 50, 51, 53, 54-57, 59, 131), Plaintiffs cannot now pretend that they are simply seeking to remedy "excess pollution and contamination of their properties" and that the contamination they complain about is "not 'emissions' at all." Opp. at 13, 16, 20. Nor can they amend their Complaint through subsequent briefing. *See, e.g., LaComba v. Eagle Home Loans & Inv., LLC*, No. 2:23-CV-00370-KJM-DB, 2023 WL 4239070, at *2 (E.D. Cal. June 28, 2023).

Plaintiffs next try to read the CAA's broad preemption provision out of the statute by distorting the holding in *Navy*. Because the CAA allows states to regulate "stationary [immobile] sources" while vesting the federal government with the exclusive authority to regulate emissions from aircraft in flight, *Navy* held that while CAA section 233 preempts state and local attempts to regulate emissions from aircraft in flight (moving sources), it did not preempt state regulation of immobile structures that house aircraft engines *detached from the aircraft* while being tested. *Navy,* 431 F. Supp. at 1275. Emissions from the test cells were non-preempted emissions from stationary sources as opposed to the preempted emissions from flying aircraft. *Id*. at 1282; *People of State of Cal*., 624 F.2d at 886-87. Because here Plaintiffs challenge only emissions from flying aircraft, their claims are "clearly" preempted.[3] *Navy*, 431 F. Supp. at 1281 ("the states are clearly preempted from adopting or enforcing regulations 'respecting emissions of any air pollutant from any aircraft or engine thereof,' and this regulatory

[3] Plaintiffs' insistence that there may be unspecified ways to mitigate their aircraft contamination concerns short of modifying an aircraft engine (Opp. at 13) focuses on the remedy instead of the conduct that is being preempted and is therefore irrelevant. CAA section 233 bars all local attempts to regulate emissions originating "from aircraft or engines thereof" *regardless of the remedy*. The unspecified mitigation and damages remedies Plaintiffs artfully seek cannot revive a claim that is clearly barred.

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power is vested exclusively in the federal government under Sections 231-234" (citation omitted)).

Moreover, nothing in *Navy* supports Plaintiffs' absurd theory that the CAA forbids only "state regulation *of the* [aircraft] *engine*" but allows for "state regulation of emissions *once they have left the engine*." Opp. at 10-11. *Navy* established that the "focus of concern" is on pollutant entry into the ambient (outside) air. 431 F. Supp. at 1283; *see also* 42 U.S.C. § 7602(g) ("The term 'air pollutant' means any air pollution agent or combination of such agents, including any physical, chemical, biological . . . substance or matter ***which is emitted into or otherwise enters the ambient air***." (emphasis added)). And Congress has expressly preempted local emissions standards "***from any aircraft or engine***" – not "inside aircraft engines" – as Plaintiffs would have it. 42 U.S.C. § 7573 (emphasis added); 87 Fed. Reg. 72,312, 72,318-20 (Nov. 23, 2022) (EPA's most recent aircraft emissions regulations describing EPA's actions to reduce harmful air pollution ***from*** (not within) aircraft engines to protect human health and the environment).

Finally, in addition to being barred by the express wording of CAA section 233, Plaintiffs' claims conflict with Congress's goal to maintain uniform regulation of aircraft engine performance, design, manufacture, and operation and to avoid a "chaos" of multiple standards for aircraft that "readily traverse state lines." *Navy*, 431 F. Supp. at 1287 (the preemptive scope "touches upon (directly or indirectly) the engine[s], their design, manufacture, operation, etc."). 87 Fed. Reg. at 72,313-14 (EPA's goal is to achieve "the highest practicable degree of uniformity in . . . aviation regulations" due to the international nature of the aviation industry and "the importance of . . . international harmonization of aviation requirements"; "passengers and the public . . . expect similar level[s] of protection for safety and human health and the environment regardless of manufacturer, airline, or point of origin of a flight"). To this end, EPA evaluated emissions experienced by those living closest to airports and the studies referenced in the SAC involving SEA and promulgated aircraft standards covering the ultra-fine

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particulate matter that Plaintiffs complain of. *Id*. at 72,312, 72,319, 72,320-24. By seeking damages related to these emissions, Plaintiffs necessarily seek to *locally* regulate aircraft engine performance, design, and operation at SEA. This undermines these federal interests in uniformity and sows the very chaos that Congress explicitly sought to prevent in section 233. [4]

B. Plaintiffs Misstate the Standard of ADA Preemption

The ADA promotes the "efficiency, innovation, and low prices" in the airline industry through maximum reliance on competitive market forces and on actual and potential competition. 49 U.S.C. § 40101(a)(12)(A). To ensure that states do not interfere with these goals, the ADA expressly preempts "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to [an air carrier's] price, route, or service." *Id*. § 41713(b)(1). A law is "related" to price, routes, or service when it has either a "'***connection with***'" ***or*** "'***reference to***'" any of them. *Air Transp. Ass'n of Am. v. City & County of San Francisco*, 266 F.3d 1064, 1070 (9th Cir. 2001) (emphases added; citation omitted). "Preemption resulting from 'reference to' price, route or service occurs '[w]here a State's law acts immediately and exclusively upon [price, route or service] . . . or where the existence of [a price, route or service] is essential to the law's operation.'" *Id.* at 1071 (alterations in original; citation omitted). To "determine whether a local law has a prohibited 'connection with' a price, route or service" courts more broadly "'look both to the objectives of the [ADA] statute as a guide to the scope of the state law that Congress understood would survive, as well as to the

[4] Plaintiffs' "proprietary control" argument cannot be squared with CAA section 233's categorical prohibition on local governments (like the Port) from attempting to impose or enforce ***any*** emission standards ***not identical*** to those set by EPA (Opp. at 21-22). Congress reserved a limited role for airport proprietors in regulating local noise levels, while explicitly prohibiting all state and local regulation of emissions from flying aircraft. *See City & County of San Francisco v. FAA*, 942 F.2d 1391, 1398 (9th Cir. 1991); *W. Air Lines, Inc. v. Port Auth. of N.Y. & New Jersey*, 658 F. Supp. 952, 958 (S.D.N.Y. 1986) (proprietary authority is limited to "rules that are compatible with the overall scheme of federal regulation"), *aff'd,* 817 F.2d 222 (2d Cir. 1987); Noise Control Act of 1972, 42 U.S.C. § 4901, *et seq*. Notably, not one of the proprietary control cases cited by Plaintiffs (Opp. at 21-22) involved an attempt to impose local aircraft emission standards. Nor has the Port found any caselaw allowing such an attempt-- which is not surprising given the categorical preemptive bar in CAA section 233.

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nature of the effect of the state law on [price, route or service].'" *Id.* (alterations in original; citations omitted).

Thus, there are two separate tests through which courts determine if a law is "related to" price, routes, or service – (1) the "reference to" test and (2) the broader "connection with" test. Plaintiffs only grapple with the former and ignore the latter. Opp. at 8. Liability for damages for every resident and property owner within a five-mile radius of SEA will obviously "impose a significant economic burden" on flights in and out of SEA that is not imposed at other airports. *See* Motion at 20-21. This is far more than the "connection with" airline rates, routes, or services required for the ADA's "broad pre-emptive purpose" to apply. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992).

Plaintiffs argue that "the Ninth Circuit has rejected arguments that state law can be preempted simply because its application might indirectly prompt a carrier to increase its prices." Opp. at 9. But the cases they cite are distinguishable and most involve employee wages, which concern "rates, routes, or services in only tenuous ways." *Cal. Trucking Ass'n v. Su*, 903 F.3d 953, 961 (9th Cir. 2018); *Californians For Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998) (California Prevailing Wage Law tenuously related to Dump Truck's prices, routes, and services).[5] In contrast, here, the "service" of flying to and from SEA ***itself*** is the basis for Plaintiffs' claims. The ADA preempts such claims.

C. Plaintiffs' Suit Is Preempted by the FAAct

1. This Action Thwarts the FAAct's Objectives

In passing the Federal Aviation Act ("FAAct") Congress imposed "'intensive and exclusive'" federal control over air commerce. *City of Burbank v. Lockheed Air Terminal Inc.*,

[5] *Duncan v. Northwest Airlines, Inc.*, 208 F.3d 1112, 1115 (9th Cir. 2000), concluded that smoking is not a "service" under the ADA but did not hold that a class-action tort suit has "too tenuous" a connection to be preempted under the ADA, as Plaintiffs suggest. Opp. at 10. Nor could it given the Ninth Circuit's prior holding that private tort claims are preempted under the ADA ***if they*** "***frustrate the goal of economic deregulation by interfering with the forces of competition***." *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1263 (9th Cir. 1998) (emphasis added). Nothing in *Duncan* puts *Charas* in doubt.

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411 U.S. 624, 633 (1973) (citation omitted). Congress centralized in a single authority – the FAA – "the power to frame rules for the safe and efficient use of the nation's airspace." The FAA Administrator assumed the exclusive authority to regulate air traffic, air commerce, and aircraft safety to avoid the chaos that would result from a patchwork of conflicting local requirements. *See, e.g., Air Line Pilots Ass'n, Int'l v. Quesada,* 276 F.2d 892, 894 (2d Cir. 1960); *British Airways Bd. v. Port Auth. of N.Y.*, 558 F.2d 75, 83 (2d Cir. 1977) ("The likelihood of multiple, inconsistent rules would be a dagger pointed at the heart of commerce and the rule applied might come literally to depend on which way the wind was blowing.").

Plaintiffs' tort claims would impose local requirements at SEA that exist nowhere else in the country, a result contrary to the FAAct's objectives. In response, Plaintiffs offer more, yet still unavailing, artful repleading. Opp. at 13 (insisting their claims do not attempt to regulate aircraft emissions and concern only "excessive build-up of concentrated contamination"). Also unavailing is Plaintiffs' attempt to reframe the stated intent of the FAAct to "protect individuals and property on the ground," 49 U.S.C. § 40103(B)(2)(B), as the prevention of "air transportation accidents. *Id*. at 14-16. This argument is contrary to the FAAct's plain language and case law that construe "protecting individuals and property on the ground" more broadly than limiting aviation accidents. *See Burbank,* 411 U.S. at 638-39 (in the context of takeoff and landing restrictions meant to reduce noise the FAAct "requires a delicate ***balance*** between safety and efficiency . . . and the protection of persons on the ground" (emphasis added)); *Helicopter Ass'n Int'l, Inc. v. FAA*, 722 F.3d 430, 433-34 (D.C. Cir. 2013) (the FAA has authority to prescribe air traffic regulations to protect individuals and property on the ground in response to noise complaints).

Plaintiffs also argue that the FAAct refers to "minimum standards of safety," which they interpret as allowing states to prescribe their own aviation safety standards that exceed those prescribed by the Administrator. Opp. at 15-16. This reading runs contrary to Congress's intent to create a "single, uniform system for regulating aviation safety" by "invest[ing] the

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Administrator of the [FAA] with the authority to enact exclusive air safety standards." *Montalvo v. Spirit Airlines*, 508 F.3d 464, 471-72 (9th Cir. 2007). Federal standards are so "pervasive" that the Ninth Circuit has "infer[red] a preemptive intent to displace ***all state law*** on the subject of air safety." *Id.* at 472 (emphasis added). "Congress could not reasonably have intended an airline on a Providence–to–Baltimore–to–Miami run to be subject to certain requirements in, for example Maryland, but not in Rhode Island or in Florida. . . . [S]uch a result would be an anathema to the FAA[ct]." *Id.* at 473; *In re Sept. 11 Litig.*, 811 F. Supp. 2d 883, 892 (S.D.N.Y. 2011) ("[E]ven if the 'minimum standards' approach were to apply, that would be a direction to the FAA Administrator, not an open door to litigants and courts to second-guess the Administrator.").[6]

2. Field Preemption Requires Dismissal

Field preemption "reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards." *Arizona v. United States*, 567 U.S. 387, 401 (2012). Plaintiffs concede that federal law controls flight paths and frequencies but insist their claims are outside this preempted field because they merely seek to remedy the "amount of pollution that may accumulate on a family's front lawn or in the air of a child's bedroom." Opp. at 20, 18-19. This is simply more "artful repleading." Even if credited, it cannot overcome the holding in *Kivalina* that what matters for field preemption is the nature of the claims, not the remedy. *See supra* at 2. Because Plaintiffs attribute their injuries ***to the flight frequency and flight paths*** of takeoffs and landings at SEA and the emissions therefrom (SAC ¶¶ 8, 41, 50, 55, 59, 131), the FAAct field preemption applies and compels dismissal. [7]

Plaintiffs cite *Gilstrap v. United Air Lines, Inc.*, 709 F.3d 995 (9th Cir. 2013), which addressed preemption under the Air Carrier Access Act ("ACAA") prohibiting air carriers from

[6] *See* Dkt. 49 at 23-24 (demonstrating pervasiveness of the FAA safety regulations).

[7] Nor can Plaintiffs escape field preemption by asserting that "heavy metals" flake off "fuselages" because the FAA regulates fuselage paint coatings (40 C.F.R. § 63.745(c)(6)) in addition to all aspects of aircraft design, composition, and manufacture. *See* Dkt. 49 at 6-7.

discriminating against handicapped passengers. Not only is the ACAA not at issue here, but *Gilstrap* does not support Plaintiffs' argument that their claims survive preemption. Opp. at 19. Plaintiffs are simply wrong in asserting that *Gilstrap* somehow immunizes state tort suits against airlines from federal preemption. Opp. at 19. Instead, *Gilstrap* emphasized that when plaintiffs seek "to impose a *higher* standard of care than the federal standard . . . their suit [is] preempted altogether." 709 F.3d at 1005 (citing *Montalvo*, 508 F.3d at 472) (emphasis original). That is exactly the case here. Plaintiffs have not identified any federal standard of care that the Port has violated and therefore their claims are based on a higher standard and their claims fail for that reason.

D. The Subsequent Purchaser Rule Demonstrates That Plaintiffs Lack Standing to Bring Inverse Condemnation Claims

Under the "subsequent purchaser rule" Plaintiffs had the obligation to affirmatively plead that each putative class representative has standing to bring an inverse condemnation claim against the Port. Dkt. 50 at 21-23. Under *Maslonka v. Public Utility District No. 1 of Pend Oreille County*, 533 P.3d 400, 406 (Wash. 2023), each Plaintiff was required to plead facts showing that after Plaintiffs acquired their property, the Port committed a ***new*** (and different in kind) governmental action that caused the alleged "taking" of their properties. Unable to show how the SAC meets this test, Plaintiffs rely on generic statements that for the last decade aircraft have emitted increased levels of pollutants that have contaminated their properties. *See, e.g.*, SAC ¶¶ 17, 41, 53.

What Plaintiffs pleaded is a far cry from the bare minimum required by *Maslonka*. *See* SAC ¶¶13-18 (Codoni has owned a home for the past 54 years contaminated by airport activity in amounts that have recently increased), ¶¶ 19-24 (Geer owns a home in the contamination zone, purchased an apartment complex in 2004, and has lived in a number of other homes within the five-mile airport radius), ¶¶ 25-28 (Cathcart purchased a home in 1995 and since the third runway was constructed in 2008 has noticed a significant increase in soot-like material which

"he attributes to pollution caused by airplanes flying in and out of Sea-Tac"), ¶¶ 29-32 (France purchased a home in 1997 and complains of "soot-like substance settling over her property which she attributes to airplanes flying in and out of Sea-Tac"), ¶¶ 33-39 (Chakos purchased a home in 2021, previously lived in a rental unit in the contamination zone, and attributes the sediment on her roof to accumulated pollution caused by airplanes flying in and out of SEA). Because the SAC fails to plead any new affirmative action the Port took after any of *the* Plaintiffs purchased their properties that caused their "taking," the inverse condemnation claim must be dismissed for lack of standing.

Plaintiffs cannot overcome this fatal deficiency by equating continuing "action" with "inaction." Opp. at 33 (insisting the Port "failed to take action to mitigate the additional pollution caused by Sea-Tac's expansion and development"); *cf.* SAC ¶ 6 ("defendants have carried on as usual"), ¶ 126 (defendants continued acting in ways that caused pollutants to rain down on Plaintiffs), ¶ 131 (attributing trespass to the ongoing aircraft activity over Plaintiffs' properties). But if "inaction" were sufficient to show standing, *Maslonka*'s holding that requires a new government ***action*** undertaken after they purchased their properties would be meaningless for it could always be alleged that the government failed to remedy its prior action.

Maslonka also underscores that the government action must be "new" and where, as here, "'[t]here is no difference of kind, but only of degree'" there is no "new" taking. 533 P.3d at 407-08 (citation omitted) ("when a governmental action causes known flooding prior to a plaintiff's acquisition, a new cause of action does not arise with each flood absent additional governmental action"); *Wolfe v. State of Wash. Dep't of Transp.*, 293 P.3d 1244, 1247 (Wash. Ct. App. 2013) (ongoing dam operations in place for decades prior to purchase do not establish standing); *cf. Petersen v. Port of Seattle*, 618 P.2d 67, 71 (Wash 1980) (change in type of aircraft activity from propeller driven aircraft to modern-day jet aircraft); *Highline Sch. Dist. No. 401, King Cnty. v. Port of Seattle*, 548 P.2d 1085, 1091 (Wash. 1976) (involving "qualitative changes in [airport] operations"). Here, Plaintiffs complain about a quantitative increase in flight activity over the

past decade that they have not attributed to any new affirmative action by the Port as to each Plaintiff. This does not meet standing under *Maslonka*.

Plaintiffs insist that *Maslonka* does not apply because the fact of their injury could not have been known until the studies they rely on were published in 2019. Again, the lack of knowledge has not been pled. But even if the case law recognized such a "knowledge" exception to the *Maslonka* rule (and it does not), the studies Plaintiffs rely on do not identify a new and additional action by the Port after they purchased their property. Nor could they because all local regulation of aircraft emissions, aircraft traffic, and flight paths is exclusively controlled by the federal government.[8]

III. CONCLUSION

The Court should reject Plaintiffs' attempt to single out SEA by imposing local controls over emissions from aircraft taking off and landing required at no other airport. The Port cannot be made to pay damages for any alleged "externalities" (SAC ¶ 8) resulting from aviation activity exclusively controlled by the federal government. Any other result would invite the chaos that Congress sought to prevent by imposing uniformity in aviation regulation at airports and in the airspace across the country. Plaintiffs' claims against the Port should be dismissed in their entirety.

I certify that this reply contains 4,119 words, in compliance with the Local Civil Rules.

[8] The "anticommandeering doctrine" is a "basic" expression of a "fundamental structural decision incorporated into the Constitution . . . to withhold from Congress the power to issue orders directly to the States." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 470-71 (2018). What Plaintiffs misconstrue as "commandeering" (Opp. at 23) is the effect of the Supremacy Clause. *Id.* at 471 ("[F]ederal law is the 'supreme Law of the Land'. . . . This means that when federal and state law conflict, federal law prevails and state law is preempted." (citation omitted)). "The anti-commandeering principle does not 'suspend the operation of the Supremacy Clause on otherwise valid laws.'" *Delaware Cnty., Pa. v. Fed. Hous. Fin. Agency*, 747 F.3d 217, 228 (3d Cir. 2014) (citation and alteration omitted). Similarly, "active compliance with federal law" is not federal commandeering. *United States v. California*, 921 F.3d 865, 889 (9th Cir. 2019).

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