

1 Theodore J. Boutrous, Jr., SBN 132099
 2 tboutrous@gibsondunn.com
 3 Andrea E. Neuman, SBN 149733
 4 aneuman@gibsondunn.com
 5 William E. Thomson, SBN 187912
 6 wthomson@gibsondunn.com
 7 Ethan D. Dettmer, SBN 196046
 8 edettmer@gibsondunn.com
 9 GIBSON, DUNN & CRUTCHER LLP
 10 333 South Grand Avenue
 11 Los Angeles, CA 90071
 12 Telephone: 213.229.7000
 13 Facsimile: 213.229.7520
 14 *Attorneys for Defendant Chevron Corporation*

15 CITY OF OAKLAND
 16 BARBARA J. PARKER, State Bar #069722
 17 City Attorney
 18 MARIA BEE, State Bar #167716
 19 Special Counsel
 20 ERIN BERNSTEIN, State Bar #231539
 21 Senior Deputy City Attorney
 22 MALIA MCPHERSON, State Bar #313918
 23 Attorney
 24 One Frank H. Ogawa Plaza, 6th Floor
 25 Oakland, California
 26 Tel.: (510) 238-3601
 27 Fax: (510) 238-6500
 28 Email: ebernstein@oaklandcityattorney.org
Attorneys for The People of the State of California

[Additional Counsel Listed on Signature Page]

CITY AND COUNTY OF SAN FRANCISCO
 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 RONALD P. FLYNN, State Bar #184186
 Chief Deputy City Attorney
 YVONNE R. MERÉ, State Bar #173594
 Chief of Complex and Affirmative Litigation
 ROBB W. KAPLA, State Bar #238896
 Deputy City Attorney
 MATTHEW D. GOLDBERG, State Bar #240776
 Deputy City Attorney
 City Hall, Room 234
 1 Dr. Carlton B. Goodlett Place
 San Francisco, California 94102-4602
 Telephone: (415) 554-4748
 Facsimile: (415) 554-4715
 Email: matthew.goldberg@sfcityatty.org
Attorneys for The People of the State of California

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CITY OF OAKLAND, et al.,
 Plaintiffs,

v.

BP P.L.C., a public limited company of England and Wales, CHEVRON CORPORATION, a Delaware Corporation, CONOCOPHILLIPS, a Delaware corporation, EXXON MOBIL CORPORATION, a New Jersey corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and Wales, and DOES 1 through 10,

Case No.: 3:17-cv-06011-WHA

PARTIES' JOINT STATEMENT RE PENDING FRCP 12(b)(2) MOTIONS

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Defendants.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Plaintiffs,

v.

BP P.L.C., a public limited company of England
and Wales, CHEVRON CORPORATION, a
Delaware Corporation, CONOCOPHILLIPS, a
Delaware corporation, EXXON MOBIL
CORPORATION, a New Jersey corporation,
ROYAL DUTCH SHELL PLC, a public limited
company of England and Wales, and DOES 1
through 10

Defendants.

Case No.: 3:17-cv-06012-WHA

**PARTIES' JOINT STATEMENT RE
PENDING FRCP 12(b)(2) MOTIONS**

1 Pursuant to this Court's June 25, 2018 Order, the parties respectfully submit this "joint
2 statement regarding whether it remains necessary to reach the narrowed FRCP 12(b)(2) motions" in
3 "light of" this Court's "order granting defendants' motions to dismiss pursuant to FRCP 12(b)(6)."

4 **Position of the Defendants who filed 12(b)(2) motions.** In these actions, because Chevron
5 did not contest this Court's personal jurisdiction, the Court had unquestioned authority to decide the
6 FRCP 12(b)(6) issues, and the Court's Order held that Plaintiffs had failed to state a claim. Having
7 decided the 12(b)(6) issues, the Court now has discretion, in the exercise of its case management
8 authority, to determine how to apply that ruling to the defendants that contest personal jurisdiction in
9 this Court. *See Chevron Corp. v. Naranjo*, 667 F.3d 232, 246 n.17 (2d Cir. 2012) (when the court
10 "indisputably has personal jurisdiction" over one or more defendants the court "may address first the
11 facial challenge to the underlying cause of action and, if we dismiss the claim in its entirety, decline
12 to address the personal jurisdictional claims made by some defendants").

13 With respect to the question as to *how* the Court should exercise the discretion it now has, the
14 parties' positions are as follows:

15 Solely to avoid any claim that they have waived their personal jurisdiction defenses,
16 Defendants ConocoPhillips, Inc.; Exxon Corporation; BP p.l.c.; and Royal Dutch Shell plc request
17 that the Court proceed to decide the 12(b)(2) motions. In whatever manner the Court chooses to
18 exercise its discretion, the Court should then enter the appropriate judgment with respect to all
19 parties.

20 **Position of Chevron Corporation.** Chevron Corporation believes it would serve judicial
21 economy if the Court in its discretion did not decide the Rule 12(b)(2) motions now as their
22 resolution may be unnecessary. Rather, the Court should issue a final judgment in Chevron's favor.
23 Fed. R. Civ. P. 54(b). In addition, Chevron Corporation objects to Plaintiffs' request to certify
24 certain issues for interlocutory review, as stated below by Plaintiffs. Any appeal from the judgment
25 must be taken under 28 U.S.C. § 1291. There is no legal basis for certifying the issue of whether this
26 Court has subject matter jurisdiction. The Court previously certified its order denying Plaintiffs'
27 motion to remand, and Plaintiffs declined to seek interlocutory review of that order within ten days,
28 as required by 28 U.S.C. § 1292(b). The Court's order granting Defendants' motion to dismiss did

1 not revisit the jurisdictional issue, and thus the question whether this Court had jurisdiction is not
2 subject to interlocutory review under section 1292(b). Moreover, after this Court denied Plaintiffs'
3 motion to remand, Plaintiffs voluntarily filed an Amended Complaint that added a new federal
4 common law claim. *See, e.g.*, No. 17-cv-06011, ECF No. 199 ¶¶ 137–142. In light of Plaintiffs'
5 new federal claim, this Court unquestionably had jurisdiction to decide Defendants' motion to
6 dismiss under 28 U.S.C. § 1331. Accordingly, the Court should not certify any issues for
7 interlocutory review but should issue a final judgment in favor of Chevron.

8 **Position of Plaintiffs.** Plaintiffs agree with defendants that the court has authority to enter
9 judgment in this matter without addressing the pending personal jurisdictional motions. In addition
10 to the *Naranjo* case cited above by the defendants, other cases have held that this authority exists,
11 particularly where, as here, there is at least one defendant not challenging personal jurisdiction. *See,*
12 *e.g., ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490, 498 n.6 (2d Cir. 2013); *Chevron*
13 *Corp. v. Naranjo*, 667 F.3d 232, 246 n.17 (2d Cir. 2012); *Tech. Patents LLC v. T-Mobile (UK) Ltd.*,
14 700 F.3d 482, 503 n.1 (Fed. Cir. 2012) (“In a case such as this one, however, where the court plainly
15 has subject matter jurisdiction and has personal jurisdiction over the domestic carriers, and where the
16 merits issues are the same for both the domestic and foreign carriers, it is permissible for the court to
17 address the merits of the claims against the foreign carriers before addressing the issue of personal
18 jurisdiction as to those defendants.”); *Strong Coll. Students Moving Inc. v. Coll. Hunks Hauling Junk*
19 *Franchising LLC*, No. CV-12-01156-PHX-DJH, 2015 WL 12602438, at *5 (D. Ariz. May 15, 2015)
20 (“Given the procedural posture of this case, and the tangled personal jurisdiction issues as to
21 defendant FSE, the Court deems it appropriate, for purposes of this motion, to assume the existence
22 of personal jurisdiction over defendant FSE.”); *Koninklijke Philips N.V. v. Elec-Tech Int’l Co.*, No.
23 14-cv-002737-BLF, 2015 WL 1289984, at *2 (N.D. Cal. Mar. 20, 2015) (“the Court may assume the
24 existence of personal jurisdiction and adjudicate the merits in favor of the defendant without making
25 a definitive ruling on jurisdiction.”) (quotation omitted).

26 Plaintiffs note, however that the issue is not entirely free of doubt. *See Sinochem Int’l Co. v.*
27 *Malay. Int’l Shipping Corp.*, 549 U.S. 422, 430-31 (2007) (A “federal court generally may not rule
28 on the merits of a case without first determining that it has jurisdiction over the category of claim in

1 suit (subject-matter jurisdiction) and the parties (personal jurisdiction).”); *Miami Valley Fair Hous.*
 2 *Ctr., Inc. v. Steiner & Assocs.*, 483 F. App’x 67, 70 (6th Cir. 2012) (“Given the paramount
 3 importance of the court's jurisdiction over Third–Party Defendants, and the fact that the Third–Party
 4 Defendants properly asserted their objection to personal jurisdiction, the district court should have
 5 decided that question before determining whether Third–Party Plaintiffs failed to state a claim.”).
 6 Thus, to the extent that the Court may disagree that it has authority to enter judgment without
 7 addressing the personal jurisdiction motions or harbors significant concerns on this point, the
 8 Plaintiffs respectfully submit the Court should exercise its discretion to certify questions for
 9 interlocutory appeal as to both the issue of subject matter jurisdiction that it previously certified and
 10 the 12(b)(6) issue it has now ruled upon. *See* 28 U.S.C. § 1292(b); *Nat’l Credit Union Admin. Bd. v.*
 11 *Goldman Sachs & Co.*, No. CV 11-6521-GW (JEMx), 2013 WL 12306438, at *5 (C.D. Cal. July 11,
 12 2013) (district court “has ultimate discretion over whether to certify [prior orders] for interlocutory
 13 appeal”). In this manner the Court could postpone entry of final judgment while its “no remand” and
 14 12(b)(6) orders are appealed without any question as to its authority to enter a final judgment under
 15 the current procedural posture.

16 Dated: July 2, 2018

17
 18 By: **/s/ Erin Bernstein

19 Barbara J. Parker (SBN 069722)
 20 Marie Bee (SBN 167716)
 21 Erin Bernstein (SBN 231539)
 22 Malia McPherson (SBN 313918)
 23 OAKLAND CITY ATTORNEY’S OFFICE
 24 One Frank H. Ogawa Plaza, 6th Floor
 25 Oakland, California
 26 Telephone: (510) 238-3601
 27 Facsimile: (510) 238-6500
 28 E-mail: ebernstein@oaklandcityattorney.org

Attorneys for Plaintiff
 THE PEOPLE OF THE STATE OF
 CALIFORNIA, acting by and through the
 Oakland City Attorney BARBARA J. PARKER

By: **/s/ Matthew D. Goldberg

Dennis J. Herrera (SBN 139669)

By: /s/ Theodore J. Boutrous

GIBSON, DUNN & CRUTCHER LLP
 Attorneys for Defendant
 CHEVRON CORPORATION

By: **/s/ Dawn Sestito

M. Randall Oppenheimer (SBN 77649)
 Dawn Sestito (SBN 214011)
 O’MELVENY & MYERS LLP
 400 South Hope Street
 Los Angeles, California 90071-2899
 Telephone: (213) 430-6000
 Facsimile: (213) 430-6407
 E-Mail: roppenheimer@omm.com
 E-Mail: dsestito@omm.com

Theodore V. Wells, Jr. (*pro hac vice*
 forthcoming)

1 Ronald P. Flynn (SBN 184186)
Yvonne R. Meré (SBN 173594)
2 Robb W. Kapla (SBN 238896)
Matthew D. Goldberg (SBN 240776)
3 SAN FRANCISCO CITY ATTORNEY'S
OFFICE
4 City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
5 San Francisco, California 94102-4602
Telephone: (415) 554-4748
6 Facsimile: (415) 554-4715
E-mail: matthew.goldberg@sfcityatty.org

7
8 *Attorneys for Plaintiff*
THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through the San
9 Francisco City Attorney DENNIS J.
HERRERA

10 ** Pursuant to Civ. L.R. 5-1(i)(3), the
11 electronic signatory has obtained approval
12 from this signatory

13 By: **/s/ Steve W. Berman

14 Steve W. Berman (admitted *pro hac vice*)
steve@hbsslw.com
15 HAGENS BERMAN SOBOL SHAPIRO
LLP
16 1918 Eighth Ave. Suite 3300
Seattle, Washington 98101
17 Telephone: (206) 623-7292
Facsimile: (206) 623-0594

18 Shana E. Scarlett (SBN 217895)
19 HAGENS BERMAN SOBOL SHAPIRO
LLP
20 715 Hearst Avenue, Suite 202
Berkeley, California 94710
21 Telephone: (510) 725-3000
Facsimile: (510) 725-3001

22 Matthew F. Pawa (admitted *pro hac vice*)
23 mattp@hbsslw.com
Benjamin A. Krass (admitted *pro hac vice*)
24 benk@hbsslw.com
25 HAGENS BERMAN SOBOL SHAPIRO
LLP
1280 Centre Street, Suite 230
26 Newton Centre, Massachusetts 02459
Telephone: (617) 641-9550
27 Facsimile: (617) 641-9551

28 *Of Counsel Attorneys for The People*

Daniel J. Toal (*pro hac vice* forthcoming)
Jaren E. Janghorbani (*pro hac vice*
forthcoming)
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
E-Mail: twells@paulweiss.com
E-Mail: dtoal@paulweiss.com
E-Mail: jjanghorbani@paulweiss.com

Attorneys for Defendant
EXXON MOBIL CORPORATION

** Pursuant to Civ. L.R. 5-1(i)(3), the
electronic signatory has obtained approval
from this signatory

By: **/s/ Megan R. Nishikawa

Megan R. Nishikawa (SBN 271670)
KING & SPALDING LLP
101 Second Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 318-1200
Facsimile: (415) 318-1300
Email: mnishikawa@kslaw.com

Tracie J. Renfroe (*pro hac vice* forthcoming)
Carol M. Wood (*pro hac vice* forthcoming)
KING & SPALDING LLP
1100 Louisiana Street, Suite 4000
Houston, Texas 77002
Telephone: (713) 751-3200
Facsimile: (713) 751-3290
Email: cwood@kslaw.com

Justin A. Torres (*pro hac vice* forthcoming)
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4707
Telephone: (202) 737 0500
Facsimile: (202) 626 3737
Email: jtorres@kslaw.com

Attorneys for Defendant
CONOCOPHILLIPS COMPANY

1 ** Pursuant to Civ. L.R. 5-1(i)(3), the
2 electronic signatory has obtained approval
3 from this signatory

4 By: **/s/ Jonathan W. Hughes

5 Jonathan W. Hughes (SBN 186829)
6 ARNOLD & PORTER KAYE SCHOLER
7 LLP
8 Three Embarcadero Center, 10th Floor
9 San Francisco, California 94111-4024
10 Telephone: (415) 471-3100
11 Facsimile: (415) 471-3400
12 E-mail: jonathan.hughes@apks.com

13 Matthew T. Heartney (SBN 123516)
14 John D. Lombardo (SBN 187142)
15 ARNOLD & PORTER KAYE SCHOLER
16 LLP
17 777 South Figueroa Street, 44th Floor
18 Los Angeles, California 90017-5844
19 Telephone: (213) 243-4000
20 Facsimile: (213) 243-4199
21 E-mail: matthew.heartney@apks.com
22 E-mail: john.lombardo@apks.com

23 Attorneys for Defendant
24 BP P.L.C.

25 ** Pursuant to Civ. L.R. 5-1(i)(3), the
26 electronic signatory has obtained approval
27 from this signatory

28 ** Pursuant to Civ. L.R. 5-1(i)(3), the
 electronic signatory has obtained approval
 from this signatory

 By: **/s/ Elizabeth Kim

 Jerome C. Roth (SBN 159483)
 Elizabeth A. Kim (SBN 295277)
 MUNGER, TOLLES & OLSON LLP
 560 Mission Street
 Twenty-Seventh Floor
 San Francisco, California 94105-2907
 Telephone: (415) 512-4000
 Facsimile: (415) 512-4077
 E-mail: jerome.roth@mto.com
 E-mail: elizabeth.kim@mto.com

 Daniel P. Collins (SBN 139164)
 MUNGER, TOLLES & OLSON LLP
 350 South Grand Avenue
 Fiftieth Floor
 Los Angeles, California 90071-3426
 Telephone: (213) 683-9100
 Facsimile: (213) 687-3702
 E-mail: daniel.collins@mto.com

 Attorneys for Defendant
 ROYAL DUTCH SHELL PLC

 ** Pursuant to Civ. L.R. 5-1(i)(3), the
 electronic signatory has obtained approval
 from this signatory