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February 10, 2020

Via ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *City of Oakland, et al. v. BP P.L.C., et al.*, No. 18-16663
Plaintiffs-Appellants' **Post-Argument** Citation of Supplemental Authorities
Oral Argument Conducted in Pasadena, Feb. 5, 2020 (Ikuta, Christen, Lee, JJ.)

Dear Ms. Dwyer,

At oral argument, the panel asked whether under *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422 (2007), it may reach the dispute over personal jurisdiction if it either (1) concludes there was no subject-matter jurisdiction, or (2) remands for the district court to further adjudicate subject-matter jurisdiction. Under *Special Investments, Inc. v. Aero Air, Inc.*, 360 F.3d 989 (9th Cir. 2004), the answer is no.

This Court in *Special Investments* concluded that federal courts have discretion to address personal jurisdiction before subject matter jurisdiction only if the court's personal-jurisdiction ruling could result in dismissal or remand of the entire case. 360 F.3d at 994 (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574 (1999)). In *Special Investments*, though, as here, a decision on personal jurisdiction could not potentially resolve the entire case because not all defendants challenged personal jurisdiction.

In that situation, *Special Investments* holds that it would be improper for a federal court to decide whether it may exercise personal jurisdiction over *some* defendants until it has been finally determined that the court has federal subject matter jurisdiction. In *Special Investments*, a removal case, the district court dismissed one defendant for lack of personal jurisdiction, but later remanded for lack of subject-matter jurisdiction. *Id.* at 994. This Court held that the district court should

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have vacated its personal-jurisdiction dismissal order upon concluding it lacked subject-matter jurisdiction. *Id.* at 994–95. The same result is required here: the district court’s personal-jurisdiction ruling must be vacated if the panel, or Judge Alsup on remand, concludes that these cases were improperly removed. *See also Cerner Middle E. Ltd. v. Belbadi Enterprises LLC*, 939 F.3d 1009, 1014 (9th Cir. 2019) (reversing denial of remand and declining to address dismissal for lack of personal jurisdiction, “leav[ing] that issue for the state court following remand”); *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1088 (9th Cir. 2009) (reversing denial of remand and vacating *forum non conveniens* dismissal).

Respectfully submitted,

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cc: All Counsel of Record (via ECF)