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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CITY OF OAKLAND, a Municipal
Corporation, and THE PEOPLE OF THE
STATE OF CALIFORNIA, acting by and
through Oakland City Attorney BARBARA J.
PARKER,

Plaintiffs,

v.

BP P.L.C., a public limited company of
England and Wales, CHEVRON
CORPORATION, a Delaware corporation,
CONOCOPHILLIPS COMPANY, 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.

First-Filed Case No. 3:17-cv-6011-WHA
Related to Case No. 3:17-cv-6012-WHA

**THE PEOPLE'S OPPOSITION TO
MOTION FOR ENTRY OF PARTIAL
FINAL JUDGMENT PURSUANT TO
FED. R. CIV. P. 54(B)**

Date: September 22, 2022
Time: 8:00 a.m. (PT)
Place: Courtroom 12

CITY AND COUNTY OF SAN
FRANCISCO, a Municipal Corporation, and
THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through the San
Francisco City Attorney DAVID CHIU,

Plaintiffs,

v.

BP P.L.C., a public limited company of
England and Wales, CHEVRON
CORPORATION, a Delaware corporation,
CONOCOPHILLIPS COMPANY, 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-6012-WHA

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I. INTRODUCTION

More than two years have passed since the Ninth Circuit vacated this Court’s July 2018 removal-jurisdiction ruling and wrote that “if, on remand, the district court determines that the cases must proceed in state court, the Cities are free to move the district court to vacate its personal-jurisdiction ruling [Dkt. 287].” *City of Oakland v. BP PLC*, 969 F.3d 895, 911 n.13 (9th Cir. 2020), *cert. denied sub nom. Chevron Corp. v. City of Oakland*, 141 S. Ct. 2776 (2021). Now, on the cusp of the Court’s ruling on the People’s renewed motions to remand, Defendants BP P.L.C., ConocoPhillips Co., Exxon Mobil Corp., and Royal Dutch Shell PLC (calling themselves the “Non-Resident Defendants”)¹ seek to avoid vacatur of the Court’s personal jurisdiction ruling by moving for entry of a Rule 54(b) judgment in their *own* favor—a result that would be completely contrary to the goals of judicial efficiency that Rule 54(b) is designed to serve.

Rule 54(b) is a special procedural tool that enables courts to enter partial final judgment upon a determination that there is “no just reason for delay,” to accomplish just results, avoid procedural complexities, and *eliminate* wasteful litigation. The rule provides an “unusual” form of discretionary relief, which is “proper only where necessary to avoid a harsh and unjust result.” *Morrison-Knudsen Co. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981) (Kennedy, J.). The burden is on the Non-Resident Defendants to establish that Rule 54(b) relief is appropriate, but for several reasons they have completely failed to meet this heavy burden.

First, the Ninth Circuit’s instructions upon reversing this Court’s order denying the People’s motion to remand were clear: “we remand these cases to the district court to determine whether there was an alternative basis for [subject-matter] jurisdiction. If there was not, the cases should be remanded to state court.” *Oakland*, 969 F.3d 911 (footnotes omitted). Upon a determination that the Court lacked subject-matter jurisdiction, the Ninth Circuit expressly authorized the People to request vacatur of the Court’s Rule 12(b)(2) ruling. The Non-Resident Defendants’ motion for entry of final judgment *before* the Court rules on the People’s renewed

¹ The People adopt Defendants’ terminology for the Court’s convenience while emphasizing that these Defendants’ misrepresentations reaching California are at the core of this lawsuit. These Defendants may believe they are not resident, but the effects of their actions are here.

1 remand motion, more than four years after the Court’s personal jurisdiction ruling, is transparently
2 an attempted end run around the Ninth Circuit’s mandate.

3 *Second*, controlling case law holds that a district court that lacks subject-matter jurisdiction
4 must vacate any prior order dismissing a defendant on personal-jurisdiction grounds. Once a court
5 concludes that remand is required, it is no longer permitted to maintain in effect a prior Rule
6 12(b)(2) dismissal. That much is clear under *Special Investments, Inc. v. Aero Air, Inc.*, 360 F.3d
7 989 (9th Cir. 2004), in which the Ninth Circuit held there was “no conceivable basis, once it was
8 determined that the case should be remanded for lack of subject matter jurisdiction, for leaving in
9 place the earlier dismissal” on personal-jurisdiction grounds, and in which it further concluded that
10 the district court “should have vacated its prior order dismissing” one of the defendants on personal
11 jurisdiction grounds after concluding that it lacked subject-matter jurisdiction. *Id.* at 994 (finding
12 the district court’s failure to vacate its prior personal-jurisdiction ruling to be “clear[] error[]”).

13 *Third*, entry of final judgment will create unnecessary, wasteful delay in resolving these
14 cases in federal court and thus a *loss* of judicial efficiency—a consideration central to the equitable
15 inquiry under Rule 54(b). If granted, the Non-Resident Defendants’ motion would create needless
16 procedural complications, splintering these cases between state and federal courts and forcing
17 extended, wasteful litigation in the Ninth Circuit. Defendants seem to envision having the claims
18 against defendant Chevron Corp. adjudicated in state court at the same time the People’s appeal
19 from the Non-Resident Defendants’ proposed Rule 54(b) judgment is adjudicated in the Ninth
20 Circuit. The obvious procedural complexity resulting from such two-track adjudication would be
21 particularly troublesome in the unique circumstances of these cases. The requested Rule 54(b)
22 judgment would freeze in place a four-year-old personal-jurisdiction ruling made without the
23 benefit of *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021), or
24 other recent decisions from the Ninth Circuit and California Courts of Appeal. And if this Court
25 concludes that it lacks subject-matter jurisdiction and remands these cases, the Ninth Circuit will
26 likely issue a second appellate remand directing this Court to reassess personal jurisdiction in light
27 of these new authorities and the Ninth Circuit’s stated understanding of the underlying basis for
28 the People’s public nuisance theory of liability.

1 There is no justification for fragmenting these cases between state and federal courts
 2 through entry of a Rule 54(b) judgment, with the People’s claims against Chevron proceeding in
 3 state court, while the nearly identical claims against the four Non-Resident Defendants remain in
 4 Ninth Circuit limbo. As a matter of comity, if these cases are going to be remanded to state court,
 5 it should be those state courts, rather than this Court, that determine whether due process permits
 6 them to exercise jurisdiction over the Non-Resident Defendants based on the complaints before
 7 them and the state of the law as it then exists.

8 **II. LEGAL STANDARD**

9 Under Rule 54(b), a district court “may direct entry of a final judgment as to one or more,
 10 but fewer than all, claims or parties only if the court expressly determines that there is no just
 11 reason for delay.” “[I]n deciding whether there are no just reasons to delay the appeal of individual
 12 final judgments . . . a district court must take into account judicial administrative interests as well
 13 as the equities involved.” *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). “[S]ound
 14 judicial administration does not require that Rule 54(b) requests be granted routinely.” *Id.* at 10.
 15 To the contrary, “[j]udgments under Rule 54(b) must be reserved for the unusual case in which the
 16 costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket
 17 are outbalanced by pressing needs of the litigants for an early and separate judgment as to some
 18 claims or parties,” *Morrison-Knudsen Co.*, 655 F.2d at 965, thus “assur[ing] that application of the
 19 Rule effectively ‘preserves the historic federal policy against piecemeal appeals.’” *Wood v. GCC*
 20 *Bend, LLC*, 422 F.3d 873, 878 (9th Cir. 2005) (quoting *Curtiss-Wright Corp.*, 446 U.S. at 8).

21 The principal consideration for courts exercising their discretion under Rule 54(b) is
 22 whether entry of an interlocutory judgment provides “justice to the litigants.” *Curtiss-Wright*
 23 *Corp.*, 446 U.S. at 5. Here, equitable and judicial economy considerations uniformly weigh against
 24 entry of a partial judgment. *See Wood*, 422 F.3d at 882.

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28 ///

1 III. ARGUMENT

2 A. Entering Final Judgment Before Resolving Subject-Matter Jurisdiction 3 Would Violate the Ninth Circuit's Mandate.

4 The first reason this Court should deny the Non-Resident Defendants' motion is because
5 the Ninth Circuit instructed the Court to decide the remaining removal-jurisdiction issues as its
6 first order of business. "The rule of mandate is similar to, but broader than, the law of the case
7 doctrine." *United States v. Garcia-Beltran*, 443 F.3d 1126, 1130 (9th Cir. 2006) (quoting *United*
8 *States v. Cote*, 51 F.3d 178, 181–82 (9th Cir. 1995)). The rule "requires a lower court to act on the
9 mandate of an appellate court, without variance or examination, only execution." *Id.* (citing *In re*
10 *Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895)). The Ninth Circuit has "repeatedly held, in
11 both civil and criminal cases, that a district court is limited by [the] court's remand in situations
12 where the scope of the remand is clear." *Mendez-Gutierrez v. Gonzales*, 444 F.3d 1168, 1172–73
13 (9th Cir. 2006). "Violation of the rule of mandate is a jurisdictional error." *Hall v. City of Los*
14 *Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012).

15 The Ninth Circuit's instructions were unambiguous: "we remand these cases to the district
16 court to determine whether there was an alternative basis for jurisdiction. If there was not, the cases
17 should be remanded to state court." *Oakland*, 969 F.3d at 911 n.13. This is not a case where, for
18 example, the court of appeals vacated a decision and remanded "for further proceedings not
19 inconsistent with this disposition," e.g., *Monster Energy Co. v. Integrated Supply Network, LLC*,
20 821 F. App'x 730, 734 (9th Cir. 2020), or where the court was otherwise silent on the steps to take
21 following return to the district court.

22 To comply with the Ninth Circuit's mandate, the Court must first rule on the People's
23 renewed motion to remand. Only after that may the Court consider other issues. If the Court agrees
24 with the People that these cases must be remanded, there will be no other issues, other than the
25 Court's exercise of the ministerial act of vacating its July 2018 order as to the four Non-Resident
26 Defendants, as the Ninth Circuit expressly authorized it to do. To "dismiss the Non-Resident
27 Defendants for lack of personal jurisdiction before deciding whether the Court has subject matter
28 jurisdiction" as the Non-Resident Defendants urge, Mot. at 8, would violate the Ninth Circuit's

1 mandate and be an improper exercise of the Court discretion under Rule 54(b).

2 **B. *Special Investments* Forecloses Entry of a Rule 54(b) Final Judgment in Favor of**
 3 **Non-Resident Defendants.**

4 The Ninth Circuit’s mandate is fully consistent with the *Special Investments* case it cited,
 5 which requires federal courts, except in unusual circumstances not present at this stage of the
 6 litigation, to require the Court to consider its subject matter jurisdiction before making any other
 7 determinations (including whether to enter a Rule 54(b) judgment dismissing the four Non-
 8 Resident Defendants over which the Court may lack subject-matter jurisdiction). That same order
 9 of operations is also dictated by the general removal procedure statute, which provides: “[i]f at any
 10 time before final judgment it appears that the district court lacks subject matter jurisdiction, the
 11 case *shall* be remanded.” 28 U.S.C. § 1447(c) (emphasis added); *cf.* Fed. R. Civ. P. 12(h)(3) (“If
 12 the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
 13 action.”). Once this Court concludes that it lacked subject-matter jurisdiction at the time of
 14 removal—as it will if it grants the People’s renewed motion to remand—it will have no jurisdiction
 15 to enter judgment (under Rule 54(b) or otherwise) in favor of any of the Non-Resident Defendants.

16 In *Special Investments*, the district court dismissed one defendant from a multi-defendant
 17 case on personal jurisdiction grounds post-removal, but later determined that it lacked subject-
 18 matter jurisdiction and remanded the case to state court. 360 F.3d at 992. The district court’s
 19 personal-jurisdiction dismissal order was held not appealable under 28 U.S.C. § 1291, and its order
 20 granting remand was held non-appealable under 28 U.S.C. § 1447(d). As a result, the Ninth Circuit
 21 could only review the dismissal by treating the plaintiff’s appeal as a petition for a writ of
 22 mandamus. *Special Invs.*, 360 F.3d at 993.

23 The Ninth Circuit appropriately considered each of the five traditional mandamus review
 24 factors, including whether in the absence of such review “[t]he petitioner will be damaged or
 25 prejudiced in a way not correctable on appeal” and whether “[t]he district court’s order is clearly
 26 erroneous as a matter of law.” *Id.* at 994. As to that first factor, the Ninth Circuit found the requisite
 27 prejudice based on “Supreme Court precedent suggesting that an order of a court that lacked
 28 subject matter jurisdiction over a case to begin with could, nonetheless, have an issue preclusive

effect” which meant that the plaintiff would be unable to appeal the merits of that federal court ruling if the state court on remand applied the doctrine of issue preclusion to the district court’s personal-jurisdiction ruling. *Id.*² As to the “clearly erroneous” factor, the Ninth Circuit explained—in an analysis that is critical to the outcome here—that the district court, upon remanding for lack of subject-matter jurisdiction, was *required* to vacate its prior order dismissing one of the defendants (“Twin Commander”) for lack of personal jurisdiction:

In the district court’s order that remanded the suit to state court, the district court declined to rule on a motion to dismiss for lack of personal jurisdiction by another defendant “because th[e] Court lacked jurisdiction to so rule.” Neither the dismissal of Twin Commander itself nor any other occurrence between that dismissal and the remand divested the court of its jurisdiction. Rather, the court, on its own view of the case, did not have jurisdiction at all in the first place. *There is no conceivable basis, once it was determined that the case should be remanded for lack of subject matter jurisdiction, for leaving in place the earlier dismissal while declining to rule on the pending motion to dismiss for lack of personal jurisdiction.* In short, the district court should have vacated its prior order dismissing Twin Commander.

Id. at 995 (emphasis added). Under *Special Investments*, then, if the Court concludes that case was improperly removed, it must vacate its previous personal-jurisdiction ruling, because to do otherwise would be “clearly erroneous.”

The Non-Resident Defendants contend that *Special Investments* does not actually “require” the Court to vacate its personal-jurisdiction order even if it concludes that removal was improper and that it lacks subject-matter jurisdiction. That contention rests upon a misreading of *Special Investments*.

The Non-Resident Defendants assert that “the Ninth Circuit in *Special Investments* was motivated by its concern that there would be no available avenue for the plaintiffs to appeal the personal jurisdiction dismissal following remand, which led it to require the district court in that case to vacate an earlier personal jurisdiction ruling.” Mot. at 8. But that threshold inquiry into appealability in *Special Investments* was tied to the Ninth Circuit’s consideration of its appellate

² The procedural circumstances of that case distinguished it from *Ruhrigas AG v. Marathon Oil Co.*, 526 U.S. 574 (1999), where “the determination that the court did not have personal jurisdiction over the defendant resulted directly in dismissal of the case,” making the personal jurisdiction dismissal a final appealable order. *Special Invs.*, 360 F.3d at 994.

jurisdiction (*i.e.*, whether the case was appropriate for mandamus review). In granting mandamus relief in *Special Investments*, the court had to (and did) conclude that the plaintiff’s inability to appeal the personal jurisdiction ruling in state court meant “[t]he petitioner will be damaged or prejudiced in a way not correctable on appeal.” *Id.* at 994. That was an entirely separate inquiry from the court’s independent consideration of the merits factor, which asked whether “[t]he district court’s [personal-jurisdiction dismissal] order [wa]s clearly erroneous as a matter of law.” *Id.* As to that separate factor, the Ninth Circuit concluded that “the district court should have vacated its prior order dismissing” one of the defendants on personal jurisdiction grounds upon determining that there was no subject-matter jurisdiction at the time of removal and that its failure to do so was “clearly erroneous as a matter of law.” *Id.* at 994, 995. Properly read, *Special Investments* thus requires the Court to vacate its prior personal jurisdiction order and permit the state courts to decide that issue themselves if it concludes that removal was improper. To do otherwise would be “clearly erroneous.” *Id.* at 994.

The Non-Resident Defendants’ reliance on *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574 (1999), as supposedly authorizing the Court to enter a Rule 54(b) judgment *before* deciding whether to remand for lack of subject-matter jurisdiction, is likewise misplaced (and would violate the Ninth Circuit’s mandate in any event). In *Ruhrgas*, the Supreme Court held that a district court may dismiss a case “on non-merits grounds such as lack of personal jurisdiction, *before* finding subject-matter jurisdiction” where “a district court has before it a straightforward personal jurisdiction issue presenting no complex question of state law, and the alleged defect in subject-matter jurisdiction raises a difficult and novel question. *Id.* at 588. That is plainly not this case—at least not at this juncture. At this point in the litigation, the personal jurisdiction issues are far from straightforward, especially in light of the spate of recent judicial authorities. By contrast, the remaining subject-matter jurisdiction issues, as difficult as they may have been initially, are now controlled by intervening decisions from the Ninth Circuit (and other courts).³

³ None of the cases cited by the Non-Resident Defendants that rely on *Ruhrgas* addressed personal jurisdiction *after* a court concluded that subject-matter jurisdiction was absent. In *Lolavar v. de Santibanes*, the court simply held, again consistent with *Ruhrgas*, that because “the issues of subject matter jurisdiction raised in this case would be substantial and perhaps difficult to resolve,”

Other cases cited by the Non-Resident Defendants are easily distinguishable. In each, the district court unquestionably had subject-matter jurisdiction and thus clear authority to issue its personal jurisdiction rulings. In *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1483 (9th Cir. 1993), the plaintiff brought suit in federal district court against a Swedish corporation and several Swedish citizens, and subject-matter jurisdiction clearly existed on diversity grounds. In *Bush v. Adams*, 629 F. Supp. 2d 468, 470 (E.D. Pa. 2009), subject-matter jurisdiction was never in doubt because the plaintiff brought civil rights claims against police officers under 28 U.S.C. § 1983 (in addition to pendent state law claims). *See also Bush v. Adams*, No. CIV.A. 07-4936, 2008 WL 4791647, at *1 (E.D. Pa. Nov. 3, 2008) (order granting motion to dismiss). In *Lewis v. Travertine, Inc.*, No. 17-cv-00016, 2017 WL 2989176 (C.D. Cal. July 12, 2017), subject-matter jurisdiction was never challenged, either before or after the court entered judgment under Rule 54(b), and the case had been properly removed on federal question grounds because the plaintiff expressly alleged a claim for “retaliatory termination in violation of the Family Medical Leave Act,” 29 U.S.C. § 2601 *et seq.* *See Lewis v. Travertine, Inc.*, No. 17-cv-00016, 2017 WL 810276, at *1 (C.D. Cal. Feb. 27, 2017) (order granting motion to dismiss).

For all of these reasons, the Court must determine, as its first order of business, whether it has subject matter jurisdiction. If it concludes that removal was improper, as it should, it must remand the cases to state court and vacate its previous personal-jurisdiction order, which the Ninth Circuit expressly authorized it to do. *See Oakland*, 969 F.3d at 911 n.13.

C. Entry of Judgment Under Rule 54(b) Would Result in Unnecessary Delay.

The Non-Resident Defendants’ motion should also be denied for the independent reason that it would be inequitable and improper for the Court to enter partial interlocutory judgment at this stage of the litigation. The Non-Resident Defendants have not met their burden of proving

the district court did not abuse its discretion by “address[ing] the straightforward and simple personal jurisdiction question *without* first addressing subject-matter jurisdiction.” 430 F.3d 221, 227 (4th Cir. 2005) (emphasis added). And in *Estate of Cummings v. Community Health Systems, Inc.*, 881 F.3d 793, 800 (10th Cir. 2018), the Tenth Circuit held, even where a straightforward determination that the court lacks personal jurisdiction over a party may be appropriate,” the court “may revisit its ruling after determining that it also lacked subject-matter jurisdiction and then decide to vacate the personal-jurisdiction ruling.” *Id.*

1 otherwise. More than *four years* have passed since the Non-Resident Defendants prevailed on the
 2 question of personal jurisdiction. Even assuming the Court had authority to enter the requested
 3 judgment under *Special Investments* and the Ninth Circuit’s mandate, the Non-Resident
 4 Defendants have no equitable justification for waiting until now to seek that relief, on the eve of
 5 the Court’s ruling on whether these cases were improperly removed to federal court.

6 *First*, although the Non-Resident Defendants recognize that the law governing personal
 7 jurisdiction has evolved considerably since 2018, they contend that “[t]o the extent that it is
 8 necessary for the parties to address the Supreme Court’s decision in *Ford Motor Co.*[], which was
 9 decided after this Court issued its personal jurisdiction ruling, such briefing can occur before the
 10 Ninth Circuit on appeal.” Mot. at 6. The Ninth Circuit reiterated in these very cases, however, that
 11 it “generally do[es] not consider issues not passed upon below.” *Oakland*, 969 F.3d at 911.
 12 Consequently, if this Court were to let its July 2018 order stand without considering the impact of
 13 new case law, the Ninth Circuit would likely vacate that decision for this Court to reconsider its
 14 ruling in light of *Ford Motor Co.* and other authorities.⁴ At that point, however, this Court would
 15 no longer have subject-matter jurisdiction and thus could not engage in that analysis.

16 ⁴ This Court stated in its 2018 ruling that the relevant personal jurisdiction inquiry requires a
 17 “causal analysis” that “is met if ‘but for’ the contacts between the defendant and the forum state,
 18 the plaintiff’s injury would not have occurred.” *City of Oakland v. BP p.l.c.*, No. C 17-06011
 19 WHA, 2018 WL 3609055, at *3 (N.D. Cal. July 27, 2018). It further held that the “worldwide
 20 chain of events” leading to climate change “does not depend on a particular defendant’s contacts
 21 with California” because “whatever sales or events occurred in California were causally
 22 insignificant in the context of the worldwide conduct leading to the international problem of global
 23 warming” and therefore the People “failed to show that defendants’ conduct [in California] is a
 24 ‘but for’ cause of their harm, as required by the second prong of the jurisdictional analysis.” *Id.*
 25 The Supreme Court in *Ford Motor Co.*, however, explained that its “most common formulation”
 26 of the personal jurisdiction test “demands that the suit ‘arise out of *or relate to* the defendant’s
 27 contacts with the forum,” and that “[the term ‘relate to’] contemplates that some relationships will
 28 support jurisdiction without a causal showing.” 141 S. Ct. at 1026. Subsequent to that Supreme
 Court ruling, district courts and circuit courts across the country, including throughout the Ninth
 Circuit, have issued decisions interpreting and applying *Ford Motor Co.* See, e.g., *Ayla, LLC v.*
Alya Skin Pty. Ltd., 11 F.4th 972, 983 (9th Cir. 2021) (“We clarify that our precedents permit but
 do not require a showing of but-for causation to satisfy the nexus requirement. . . . A narrower test
 is foreclosed by the Supreme Court’s recent decision in *Ford Motor*.”); *Baton v. Ledger SAS*, No.
 21-CV-02470-EMC, 2021 WL 5226315, at *10–11 (N.D. Cal. Nov. 9, 2021) (distinguishing
Ford’s nexus analysis); *DocuSign, Inc. v. Clark*, No. 21-CV-04785-WHO, 2022 WL 225623, at
 *3–4 (N.D. Cal. Jan. 25, 2022) (distinguishing *Ford*’s nexus analysis); see also *LG Chem, Ltd. v.*

1 *Second*, the Non-Resident Defendants argue that it would be unduly burdensome to brief
 2 personal jurisdiction in state court because the prior proceedings in this Court required “more than
 3 300 pages of briefing” and the prior oral argument “lasted nearly four hours and resulted in a
 4 transcript of more than 110 pages.” *See* Mot. at 6 n.3. But that briefing and argument would need
 5 to be revisited in light of new authorities anyway, including the Supreme Court’s recent opinion
 6 in *Ford Motor Co.*, 141 S. Ct. 1017, and the Ninth Circuit’s controlling interpretation of the claims
 7 in these cases as centering on Defendants’ alleged campaign of deception, *Cty. of San Mateo v.*
 8 *Chevron Corp.*, 32 F.4th 733, 747 (9th Cir. 2022). By contrast, the remaining subject-matter
 9 jurisdiction issues are controlled by recent appellate case law in the Ninth Circuit and elsewhere.

10 *Third*, it would be far more logical and efficient—and would further crucial comity
 11 considerations—to allow the California state courts on remand to consider the Non-Resident
 12 Defendants’ personal-jurisdiction defenses rather than adjudicating the validity of this Court’s
 13 2018 personal jurisdiction ruling in federal court, on a schedule that the state courts have no ability
 14 to control, in a judicial system that lacks subject-matter jurisdiction over the People’s claims for
 15 relief. The Supreme Court in *Ruhrgas* emphasized that considerations of “expedition and
 16 sensitivity to state courts’ coequal stature should impel the federal court to dispose of [subject-
 17 matter jurisdiction] first,” before reaching any other issue. 526 U.S. at 587–88. Those same
 18 considerations have led the Ninth Circuit to conclude that where a case “was not properly removed
 19 to federal court and the federal courts lack federal subject matter jurisdiction over th[e] case,”
 20 appellate courts should “not reach the issue of personal jurisdiction [but should] leave that issue
 21 for the state court following remand.” *Cerner Middle E. Ltd. v. Belbadi Enters. LLC*, 939 F.3d
 22 1009, 1014 (9th Cir. 2019). The California state courts—whose jurisdiction, the People contend,
 23 is exclusive, but at a minimum have concurrent jurisdiction—are fully competent to address the
 24 issues of personal jurisdiction on remand, based on briefing that takes *all* relevant authorities into

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Superior Ct. of San Diego Cty., 80 Cal. App. 5th 348, 364–69 (2022) (analyzing nexus requirement
 at length in light of *Ford*). Whatever the proper result may be, it is far from “straightforward” that
 this Court’s 2018 order remains unchanged following *Ford Motor Co.*, either with respect to the
 final result or the analytical approach leading up to that result.

1 consideration.⁵

2 *Finally*, the equities strongly weigh against entry of a partial Rule 54(b) judgment at this
 3 stage of the litigation. If (as the Non-Resident Defendants apparently believe) the Ninth Circuit
 4 mandate does *not* require this Court to decide the remand issue first, the Non-Resident Defendants
 5 *could* have asked this Court to enter a Rule 54(b) partial judgment at any time in the past two
 6 years—including after the People informed the Court they would be asking it to vacate the July
 7 2018 dismissal order to enable the state courts on remand to decide whether to assert personal
 8 jurisdiction over the four Non-Resident Defendants, *see, e.g.*, Dkt. 314 at 5; Dec. 16, 2020 Tr. at
 9 6:21–24.

10 The Non-Resident Defendants have offered no justification for their lengthy delay. Their
 11 efforts to obtain a partial interlocutory judgment now, on the eve of the Court’s remand ruling,
 12 smacks of a last-ditch procedural ploy—not only to avoid having to litigate these issues in state
 13 court, but also to further delay this litigation through procedural maneuvering. That ploy should
 14 not be countenanced. *See Croyle v. Theatine Fathers, Inc.*, No. CV 19-00421 JAO-WRP, 2020
 15 WL 1452068, at *2 (D. Haw. Mar. 25, 2020) (“In light of [the moving party’s] own delay . . . the
 16 Court cannot conclude at this time that there is no just reason for delay and that the interests of
 17 sound judicial administration would be served by entering judgment under Rule 54(b).”); *see also*
 18 *Butler v. Daimler Trucks N. Am., LLC*, No. 2:19-CV-2377-JAR-JPO, 2021 WL 492427, at *3
 19 (D. Kan. Feb. 10, 2021) (denying entry of final judgment where the moving party “wait[ed] five
 20 months beyond the Court’s [personal jurisdiction] Order to bring its motion under Rule 54(b)”).

21 **IV. CONCLUSION**

22 For all these reasons, the Court should deny the Non-Resident Defendants’ motion. They
 23 have failed to meet their heavy burden of establishing the need for entry of a Rule 54(b) judgment
 24 *now*. The Court must follow the mandate of the Ninth Circuit and the uniform appellate case law
 25 by first determining whether removal was proper. If removal was not appropriate, the Court should
 26 remand these cases to state court *and* vacate its previous orders dismissing the Non-Resident

27 ⁵ The People in no way concede that a personal jurisdiction ruling by federal courts has any
 28 preclusive effect on California courts, and reserve all arguments to the contrary.

1 Defendants on personal jurisdiction grounds. Doing so would avoid introducing the unnecessary
 2 and burdensome delays that a federal appeal would inevitably trigger. Because the state courts are
 3 fully competent to decide the personal-jurisdiction issues and can do so based on the allegations
 4 in the People's complaints measured against the current state of the law, this Court should remand
 5 the cases, vacate its 2018 personal-jurisdiction order, and let the state courts decide how best to
 6 proceed in adjudicating the People's exclusively state law claims.

7 Dated: August 16, 2022

Respectfully submitted,

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