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

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
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,

Victor M. Sher
*Sher Edling LLP*

Michael Rubin
*Altshuler Berzon LLP*

/s/Michael Rubin

Michael Rubin

*Counsel for Plaintiffs-Appellants*

cc: All Counsel of Record (via ECF)