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VIA FEDERAL EXPRESS AND ELECTRONIC FILING

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

Re: *City of Oakland, et al. v. BP p.l.c., et al.*, No. 18-16663
(argued Feb. 5, 2020)

Dear Ms. Dwyer:

Pursuant to Federal Rule of Appellate Procedure 28(j), the nonresident appellees file this letter in response to appellants' letter regarding *Special Investments, Inc. v. Aero Air, Inc.*, 360 F.3d 989 (9th Cir. 2004).

As the Supreme Court has explained, "[j]urisdiction is vital only if [a] court proposes to issue a judgment on the merits." *Sinochem International Co. v. Malaysia International Shipping Corp.*, 549 U.S. 422, 431 (2007) (citation omitted). Accordingly, federal courts have discretion to determine the order in which to address threshold jurisdictional issues. *See id.* In *Special Investments*, this Court established a narrow limitation on that discretion: if a district court dismisses one defendant for lack of personal jurisdiction and later remands the remainder of the case for lack of subject-matter jurisdiction, it should vacate the ruling on personal jurisdiction. *See* 360 F.3d at 993-995.

That limitation self-evidently does not apply here. In *Special Investments*, the district court's failure to vacate its ruling on personal jurisdiction "prejudice[d]" the plaintiff because, after remand, the ruling was insulated from normal appellate review. *See* 360 F.3d at 994-995. Not so here. What is more, if this Court disagrees

with the district court's ruling on subject-matter jurisdiction, the appropriate remedy is to vacate and remand for consideration of the other bases for removal. Appellants cite no case that precludes an appellate court from ordering that relief while affirming a separate jurisdictional dismissal.

Even if this Court addressed and rejected all of appellees' bases for removal, it would still be appropriate for the Court to address the obvious lack of personal jurisdiction here. Parties not subject to personal jurisdiction "should not have to participate at all in the litigation," and "[a] court sensitive to that concern is not abusing its discretion" by relieving them of that "burden." *Estate of Cummings v. Community Health Systems, Inc.*, 881 F.3d 793, 800 (10th Cir. 2018).

We would appreciate it if you would circulate this letter to the panel at your earliest convenience.

Yours sincerely,

/s/ Kannon K. Shanmugam
Kannon K. Shanmugam

cc: All counsel of record (via electronic filing)