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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 THE PEOPLE OF THE STATE OF
16 CALIFORNIA, acting by and through Oakland
17 City Attorney BARBARA J. PARKER,

18 Plaintiff and Real Party in Interest,

19 v.

20 BP P.L.C., a public limited company of England
21 and Wales, CHEVRON CORPORATION, a
22 Delaware corporation, CONOCOPHILLIPS
23 COMPANY, a Delaware corporation,
24 EXXONMOBIL CORPORATION, a New
25 Jersey corporation, ROYAL DUTCH SHELL
26 PLC, a public limited company of England and
27 Wales, and DOES 1 through 10,

28 Defendants.

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

**PLAINTIFF'S RESPONSE TO
COURT'S REQUEST FOR
COMMENT REGARDING SERVICE
OF PROCESS ON ROYAL DUTCH
SHELL PLC**

CHEVRON CORP.,
Third Party Plaintiff,

v.

STATOIL ASA,
Third Party Defendant.

THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through the San
Francisco City Attorney DENNIS J. HERRERA,
Plaintiff and Real Party in Interest,

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.

CHEVRON CORP.,
Third Party Plaintiff,

v.

STATOIL ASA,
Third Party Defendant.

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

**PLAINTIFF'S RESPONSE TO
COURT'S REQUEST FOR
COMMENT REGARDING SERVICE
OF PROCESS ON ROYAL DUTCH
SHELL PLC**

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1 Plaintiffs the People of the State of California, acting by and through Oakland City Attorney
2 Barbara J. Parker in Case No. 3:17-cv-06011-WHA and San Francisco City Attorney Dennis J.
3 Herrera in Case No. 3:17-cv-06012-WHA (“the People”), respectfully submit this response to the
4 Court’s March 23, 2018 Request for Comment. *See* ECF No. 182.¹

5 Royal Dutch Shell plc’s (“Shell”) challenge regarding service of process under Federal Rule
6 of Civil Procedure 12(b)(5), ECF No. 169, does not warrant any change in the Court’s handling of
7 the motions to dismiss. Shell’s challenge regarding service of process is not simply the result of a
8 technical “snafu” – to the contrary, the People intentionally and correctly served Shell’s domestic
9 subsidiary in the State of California because that subsidiary is Shell’s “general manager” for
10 purposes of legal process under California law.

11 ***First***, under Federal Rule of Civil Procedure 12 it would simply be customary to decide
12 Shell’s challenge to service of process at the same time as the Court decides the other grounds in
13 Shell’s motion to dismiss, including this Court’s purported lack of personal jurisdiction over Shell.
14 Rule 12 generally requires defendants to consolidate defenses into a single motion to dismiss. Fed.
15 R. Civ. P. 12(g)-(h). Indeed, many defenses – including insufficient service of process and lack of
16 personal jurisdiction – are waived if not made in an initial consolidated motion. *Id.* Through these
17 mechanisms, Rule 12 “contemplates the presentation of an omnibus pre-answer motion in which the
18 defendant advances every available Rule 12 defense and objection he may have that is assertable by
19 motion,” and a defendant must present defenses “simultaneously” and not in “piecemeal fashion” –
20 “[s]imply stated, the objective of the consolidation rule is to eliminate unnecessary delay at the
21 pleading stage.” Charles Alan Wright & Arthur R. Miller, 5C Fed. Prac. & Proc. Civ. § 1384 (3d ed.
22 2014); *see also Remley v. Lockheed Martin Corp.*, No. C00-2495CRB, 2001 WL 681257, at *2
23 (N.D. Cal. June 4, 2001) (Rule 12 requires consolidation of defenses to avoid delay of successive
24 motions).

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¹ ECF docket numbers referenced in this filing correspond to the docket in Case No. 3:17-cv-
28 06011-WHA.

1 **Second**, there is no need to have the Shell service issue determine the schedule because
2 Shell’s objection to service of process is without merit. The California Code of Civil Procedure
3 authorizes service on a corporation by delivery of a summons and complaint to “a general manager”
4 of the corporation. Cal. Code Civ. P. § 416.10(b). A similar procedure is separately authorized by
5 California Corporations Code section 2110, which is in turn incorporated into the Code of Civil
6 Procedure through section 416.10(d).

7 California courts have “adopted a very broad definition of the term ‘general manager’ for
8 purposes of service of process, finding it to include the domestic sales representative(s) and local
9 distributor(s) of a foreign corporation.” *Hatami v. Kia Motors Am., Inc.*, No. SACV 08-226 DOC
10 (MLGx), 2008 WL 4748233, at *2 (C.D. Cal. Oct. 29, 2008). The rationale for this broad definition
11 is that “every object of the service is obtained when the agent served is of sufficient character and
12 rank to make it reasonably certain that the defendant will be apprised of the service made.” *Id.*
13 (quoting *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77, 83 (1959)); *Yamaha Motor Co., Ltd. v.*
14 *Superior Court*, 174 Cal. App. 4th 264, 273 n.9 (2009).

15 In general, service may be made on the domestic subsidiary of a foreign corporation if (1) the
16 foreign parent is not otherwise “readily available for service in California,” and (2) the parent and
17 subsidiary have a “sufficiently close connection” such that the parent derives benefits from the
18 subsidiary’s California operations and it is likely that the subsidiary will notify the parent of having
19 received service of process. *See U.S. ex rel. Miller v. Pub. Warehousing Co. KSC*, 636 F. App’x
20 947, 949 (9th Cir. 2016) (remanding for further factual development concerning the relationship
21 between parent and subsidiary). Service on a domestic subsidiary as the general manager of a
22 foreign parent is appropriate where the parent, through its subsidiary, receives business advantages it
23 would otherwise receive if it conducted its own business in the state. *Id.*; *see also Khachatryan v.*
24 *Toyota Motor Sales, U.S.A., Inc.*, 578 F. Supp. 2d 1224, 1227 (C.D. Cal. 2008) (service on domestic
25 subsidiary as general manager of foreign parent was sufficient); *Gray v. Mazda Motor of Am., Inc.*,
26 560 F. Supp. 2d 928, 931 (C.D. Cal. 2008) (same).

27 Here, the People properly served Shell under this framework by delivering copies of their
28 respective summonses and complaints to the registered statutory agent of Shell’s “general manager”

1 in California – specifically, Shell’s domestic subsidiary, Shell Oil Company. *See* ECF Nos. 150-3,
2 150-4, 150-5. Again, for purposes of California’s service of process rules, a foreign corporation’s
3 domestic subsidiary qualifies as the foreign corporation’s general manager. *See, e.g., Yamaha*, 174
4 Cal. App. 4th at 267. Indeed, where a foreign corporation’s general manager is served in California,
5 there is no need to resort to service under the Hague Convention. *Id.*

6 Nonetheless, Shell incorrectly asserts that it cannot be served through a general manager
7 because Shell itself “does not ‘transact’ business in the State of California and is therefore not
8 subject to service under [California Corporations Code] section 2110.” ECF No. 150, 18. Shell says
9 this is because California Corporations Code section 2100 limits the application of section 2110 to
10 “foreign corporations transacting intrastate business,” and because, according to Shell, it does not
11 conduct business in California. *Id.* at 18-19. Shell’s assertion is irrelevant, however, because
12 California Code of Civil Procedure section 416.10 independently allows a corporation to be served
13 through its general manager, and that provision is not limited by California Corporations Code
14 section 2100.² *Compare* Cal. Code Civ. P. 416.10(b) (independently authorizing service on “a
15 corporation” through “a general manager”) *with* Cal. Code Civ. P. 416.10(d) (authorizing service on
16 corporations under provisions separately established in California Corporations Code). California
17 Code of Civil Procedure section 416.10 authorizes service on a corporation “by any of” four
18 enumerated methods, only some of which involve service according to the procedures established
19 separately in the California Corporations Code. Cal. Code Civ. P. § 416.10; *Ault v. Dinner for Two,*
20 *Inc.*, 27 Cal. App. 3d 145, 150 (1972).

21 In this regard, Shell’s reliance on *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77 (1959),
22 and *Empire Steel Corp. of Texas, Inc. v. Superior Court*, 56 Cal. 2d 823 (1961), is misplaced. Those
23 cases involved a since-repealed subsection of the California Code of Civil Procedure that made
24 specific reference to corporations “doing business in this State”; such language is not found in the
25 current version of section 416.10. *See Empire Steel Corp.*, 56 Cal. 2d at 828; *Cosper*, 53 Cal. 2d at

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27 ² Shell glosses over the distinction between the procedural service mechanisms authorized by
28 California Code of Civil Procedure 416.10(b) and (d), focusing its argument exclusively on the latter
29 and inaccurately implying in a footnote that the standards are the same.

1 82; *see also Ault*, 27 Cal. App. 3d at 150 (discussing differences between old and new versions of
2 statute). Moreover, *Cosper* and *Empire Steel* focused not on whether “doing business in” California
3 was a procedural requirement for service on a general manager, but instead on whether foreign
4 corporations had sufficient contacts with California to authorize the exercise of personal jurisdiction
5 and comport with due process. *Empire Steel Corp.*, 56 Cal. 2d at 829; *Cosper*, 53 Cal. 2d at 82. The
6 new version of this statute, however, “separates service of process from bases of jurisdiction, thereby
7 limiting service of process to its true function of giving a defendant notice of the pending action and
8 directing his appearance.” *Ault*, 27 Cal. App. 3d at 149. Shell has separately moved to dismiss the
9 People’s complaints on the basis of personal jurisdiction, and, as such, the sufficiency of its contacts
10 with California can be addressed in the context of that separate argument for dismissal. The possible
11 overlap between those inquiries highlights the utility and efficiency, as discussed above, of the Court
12 considering all motions to dismiss at the same time. But with respect to service of process,
13 California Code of Civil Procedure section 416.10(b) clearly authorizes service on a foreign
14 corporation, through a domestic general manager, regardless of whether the foreign corporation is
15 currently doing business in the state.

16 Shell also argues that Shell Oil Company cannot be its general manager because Shell Oil
17 Company “has never held express or implied authority to act as [] Shell’s agent, including with
18 respect to the production, refining, transport, marketing or sale of fossil fuels . . . in California.”
19 ECF No. 150, 19 (quoting ECF No. 150-2 ¶¶ 7, 9). But Shell’s argument regarding the scope of
20 Shell Oil Company’s authority to act for its parent as a matter of agency law is a straw man that
21 distracts from the underlying rationale of California’s rule allowing service on the domestic
22 subsidiary of a foreign parent company – namely, California’s interest in ensuring only that the
23 subsidiary served is reasonably likely to apprise the corporate parent of the lawsuit. *Public*
24 *Warehousing*, 636 Fed. App’x at 949; *Cosper*, 53 Cal. 2d at 83; *Yamaha*, 174 Cal. App. 4th at 273
25 n.9. “General managers may be domestic distributors, salesmen or advertisers, or customer service
26 liaisons of foreign manufacturers even if the foreign-domestic relationship is ‘casual’ or ‘non-
27 exclusive’ as long as the domestic entity provides the foreign entity an open channel for the regular
28 flow of business from the foreign entity into California.” *Brighton Collectibles, Inc. v. Winston*

1 *Brands, Inc.*, No. 11CV2191-GPC (WMC), 2013 WL 394060, at *6 (S.D. Cal. Jan. 30, 2013). Here,
2 Shell does not dispute that its domestic subsidiary, Shell Oil Company, is registered to do business in
3 California or that the People delivered copies of their summonses and complaints to the registered
4 statutory agent of that domestic subsidiary. *See* ECF No. 150-2 ¶¶ 8-9; ECF No. 150-3. Nor does
5 Shell dispute the People’s factual allegations regarding Shell subsidiaries’ extensive oil industry
6 operations in California, including the production and promotion of fossil fuel products. ECF No.
7 150-2 ¶¶ 17-18; ECF No. 150-3.

8 Shell admits, moreover, that it “sets the overall strategy and business principles” for all of its
9 subsidiaries, including Shell Oil Company. *See* ECF No. 150-2 ¶ 13. That is consistent with the
10 People’s complaints, which correctly allege, among other things, that “Shell controls company-wide
11 climate change policies and fossil fuel production.” Compl. ¶ 28. And regardless of whether Shell
12 and its major subsidiaries share or do not share employees or management, formally speaking, a
13 close relationship between the parent and its major subsidiaries like Shell Oil Company is
14 nonetheless evident. For example, Shell declarant Linda Szymanski, currently General Corporate
15 Counsel and Company Secretary for Shell, joined the Shell family in 1995 and has served, among
16 other things, as “General Counsel of the Upstream Americas business and Head of Legal U.S. based
17 in the U.S.A. from 2014 to 2016.”³ Ms. Szymanski has held “a variety of legal positions within Shell
18 Oil Company in the U.S.A., including Chemicals Legal Managing Counsel and other senior roles in
19 employment, litigation, and commercial practice.”⁴ Thus while Ms. Szymanski’s declaration may be
20 correct in stating that “[n]one of the officers or employees of Shell Oil Company is on the Board of
21 Directors of Royal Dutch Shell,” ECF No. 150-2 ¶ 9, it is also true that Ms. Szymanski herself is a
22 former longtime senior employee of Shell Oil Company and just recently joined the board of Royal
23 Dutch Shell.⁵ Shell’s 2017 Annual Report, moreover, refers those interested in “investor relations”
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25 ³ Royal Dutch Shell plc, 2017 Annual Report, 71, [http://reports.shell.com/annual-](http://reports.shell.com/annual-report/2017/servicepages/downloads/files/download2.php?file=shell_annual_report_2017.pdf)
26 [report/2017/servicepages/downloads/files/download2.php?file=shell_annual_report_2017.pdf](http://reports.shell.com/annual-report/2017/servicepages/downloads/files/download2.php?file=shell_annual_report_2017.pdf)
(emphasis added).

27 ⁴ *Id.* (emphasis added).

28 ⁵ *See* Royal Dutch Shell, Board of Directors, [https://www.shell.com/about-us/leadership/board-](https://www.shell.com/about-us/leadership/board-of-directors.html)
[of-directors.html](https://www.shell.com/about-us/leadership/board-of-directors.html).

1 both to Royal Dutch Shell plc and Shell Oil Company.⁶ Indeed, “it appears there would be ample
2 regular contact between” Shell and Shell Oil Company, and that the “contact would be of sufficient
3 rank and character to make it reasonably certain that [Shell] would be appraised of the service of
4 process” on Shell Oil Company. *Halo Elecs., Inc. v. Bel Fuse Inc.*, No. CIV. C-07-06222 RMW,
5 2010 WL 2605195, at *2 (N.D. Cal. June 28, 2010) (service on general manager sufficient). This is
6 not a case like *General Motors Corp. v. Superior Court*, 15 Cal. App. 3d 81 (1971) or *U.S. ex rel.*
7 *Miller v. Public Warehousing Co. KSC*, 636 F. App’x 947 (9th Cir. 2016), where the plaintiffs did
8 not offer sufficient factual allegations regarding the role of the person served as a general manager
9 within the foreign corporation’s overall business.⁷

10 Fundamentally, Shell does not seriously dispute that Shell Oil Company is a sufficiently
11 important and sophisticated subsidiary to make it likely to inform its ultimate corporate parent of a
12 pending lawsuit for which it received service of process. Such an argument would be untenable, of
13 course, because Shell Oil Company clearly did apprise its corporate parent of the People’s cases and,
14 as a result, Shell has long since appeared to defend itself. And, while service of process rules must
15 of course be followed, such rules “should be liberally construed to effectuate service and uphold the
16 jurisdiction of the court if actual notice has been received by the defendant.” *Gibble v. Car-Lene*
17 *Research, Inc.*, 67 Cal. App. 4th 295, 313 (1998) (citing *Pasadena Medi-Ctr. Assocs. v. Superior*
18 *Court*, 9 Cal. 3d 773, 778 (1973)); *Dill v. Berquist Construction Co.*, 24 Cal. App. 4th 1426, 1436-37
19 (1994); *Hatami*, 2008 WL 4748233, at *1; *see also Crowley v. Bannister*, 734 F.3d 967, 975 (9th Cir.
20 2013) (service of process rules “should be liberally construed so long as a party receives sufficient
21 notice of the complaint”); *Armco, Inc. v. Penrod-Stauffer Bldg. Sys., Inc.*, 733 F.2d 1087, 1089 (4th
22 Cir. 1984) (“When the process gives the defendant actual notice of the pendency of the action, the
23 rules, in general, are entitled to a liberal construction.”). Because there is no question that Shell
24 received actual notice of the People’s complaints, the applicable service of process rules should be

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26 ⁶ Royal Dutch Shell plc, 2017 Annual Report at 259.

27 ⁷ “The court may consider evidence outside the pleadings in resolving a Rule 12(b)(5) motion.”
28 *Fairbank v. Underwood*, 986 F. Supp. 2d 1222, 1228 (D. Or. 2013), *quoted in Life360, Inc. v.*
Advanced Ground Info. Sys., Inc., No. 15-CV-00151-BLF, 2015 WL 5612008, at *8 (N.D. Cal. Sept.
21, 2015).

1 construed liberally in favor of upholding jurisdiction of the Court. *See Khachatryan*, 578 F. Supp. 2d
2 at 1227 (service on general manager sufficient, in part, because foreign parent company was in fact
3 put on notice by service on general manager); *Gray*, 560 F. Supp. 2d at 931 (same).

4 Given that Shell’s domestic subsidiary qualifies as its general manager under California law,
5 and that the subsidiary in fact gave Shell notice of the lawsuit, service on Shell was clearly proper.
6 To be sure, the People served their summonses and complaints on defendant BP p.l.c. (“BP”) in
7 exactly the same manner used for service on Shell. BP is, like Shell, a foreign corporation. But,
8 unlike Shell, BP has not objected to service of process. Shell’s arguments in this regard are
9 unfounded, and they do not provide a justification for any delay in the Court’s consideration of the
10 other pending motions to dismiss in this case or the other grounds raised by Shell for dismissal.

11
12 Dated: March 28, 2018

Respectfully submitted,

13 ** /s/ Erin Bernstein

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2018, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

s/ Steve W. Berman
STEVE W. BERMAN

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