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

14 THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through
15 Oakland City Attorney BARBARA J.
PARKER,
16
Plaintiff,
17
vs.
18
BP P.L.C., et al.,
19
Defendants.

Case No. 17-06011 WHA
**RESPONSIVE STATEMENT OF
DEFENDANT ROYAL DUTCH SHELL
PLC TO COURT'S MARCH 21, 2018
ORDER**
Judge: Hon. William Alsup

21 THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through acting
22 by and through San Francisco City Attorney
DENNIS J. HERRERA,
23
Plaintiff,
24
vs.
25
BP P.L.C., et al.,
26
Defendants.

Case No. 17-06012 WHA

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1 On February 27, 2018, this Court “invite[d] counsel to conduct a two-part tutorial on the
2 subject of global warming and climate change,” to be held on March 21, 2018. (Dkt. #135, 17-cv-
3 6011; Dkt. #117, 17-cv-6012.) On March 20, all defendants moved to dismiss the complaints in
4 this action under FRCP 12(b)(6) for failure to state a claim. Royal Dutch Shell plc (“RDS”) is a
5 foreign corporation with no operations in the United States. As such, RDS also moved to dismiss
6 the complaints under FRCP 12(b)(2) for lack of personal jurisdiction (as did three other
7 defendants) and under 12(b)(5) for insufficient service of process. Those motions are currently
8 pending.

9 In light of its pending jurisdiction and service-related motions, RDS did not participate in
10 the March 21 tutorial; the tutorial was conducted by Chevron. The Court stated that it would treat
11 statements in connection with the tutorial as a “special appearance” that would not waive personal
12 jurisdiction defenses. (March 21, 2018 Transcript of Proceedings at 6:9-13). At the conclusion of
13 the tutorial, the Court ordered the non-participating defendants to submit a statement within two
14 weeks “explaining any disagreements with the statements made by counsel for” Chevron during
15 the tutorial. (Dkt.# 178). RDS submits the following statement in response to that Order:

- 16 1. This statement is not intended to waive and is made subject to RDS’s objections to
17 personal jurisdiction and service. It is submitted pursuant to the Court’s March 21, 2018
18 Order and subject to the Court’s statements at the hearing regarding non-waiver; this
19 statement is also informed by the Court’s indication that the purpose of the tutorial was so
20 the Court could learn more about the applicable science.¹
- 21 2. In conducting the tutorial, Chevron relied upon the reports issued by the Intergovernmental
22 Panel on Climate Change (“IPCC”), primarily the AR5, as the basis for its presentation to
23 the Court. The IPCC reports collect and assess information from a wide variety of sources
24 including thousands of scientists around the globe and present a broad-based consensus
25

26 ¹ This is consistent with the view of other courts in this district concerning the purpose of tutorials,
27 which is “to allow each party to inform the Court about the background of the technical
28 information which is involved in the case and the nature of the dispute.” *U.S. Ethernet
Innovations, LLC v. Acer, Inc.*, No. C 10-03724 JW, 2010 WL 9934741, at *4 (N.D. Cal. Dec. 21,
2010). Statements concerning a tutorial, such as this statement, are not judicial admissions. *Id.*

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view regarding climate change science as it has evolved since the IPCC issued its first assessment in 1990 until the time of the most recent AR5 report. Although RDS does not necessarily adopt each statement contained in the various IPCC reports, RDS agrees that those reports are an appropriate source of information for the Court to consider to further its understanding of the timeline and science surrounding climate change, and RDS does not disagree with Chevron’s presentation of that material.

Respectfully submitted,

DATED: April 4, 2018

By: /s/ Jerome C. Roth

Attorneys for Defendant ROYAL DUTCH SHELL PLC