

1 Jennifer D. Bennett (*pro hac vice*)
2 Public Justice, P.C.
3 555 12th Street, Suite 1230
4 Oakland, CA 94607
5 Phone: (510) 622-8150
6 Fax: (510) 622-8155
7 jbenett@publicjustice.net

8 Richard P. Traulsen (Bar No. 16050)
9 Begam, Marks, & Traulsen, P.A.
10 11201 North Tatum Blvd., Suite 110
11 Phoenix, AZ 85028
12 Phone: (602) 254-6071
13 Fax: (602) 254-0042
14 rtraulsen@bmt-law.com

15 *Attorneys for Intervenor Center for Auto Safety*

16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

17 **IN AND FOR THE COUNTY OF MARICOPA**

18 ESTATE OF LEROY HAEGER; DONNA
19 HAEGER, individually and as personal
20 representative of the Estate of Leroy Haeger;
21 BARRY HAEGER; and SUSAN HAEGER,

22 Plaintiffs,

23 v.

24 GOODYEAR TIRE & RUBBER COMPANY, an
25 Ohio corporation; FENNEMORE CRAIG, P.C.,
26 an Arizona professional corporation; ROETZEL &
27 ADDRESS, a legal professional association;
28 GRAEME HANCOCK; BASIL MUSNUFF; and
29 DEBORAH OKEY,

30 Defendants.

31) **Case No.: CV 2013-052753**

32) **REPLY IN SUPPORT OF MOTION**
33) **TO UNSEAL COURT RECORDS AND**
34) **VACATE PROTECTIVE ORDER BY**
35) **THE CENTER FOR AUTO SAFETY**

36) (Assigned to the Honorable John R.
37) Hannah, Jr.)

1 **INTRODUCTION**

2 Goodyear seeks to keep secret every word of thousands of pages of documents about a twenty-
3 year-old, discontinued tire. But it has now had two opportunities—and more than six months—to
4 support its claims that these documents would harm the company if disclosed. And both times, it has
5 failed. Instead of the particularized demonstration of fact the law requires, Goodyear has instead
6 provided nothing more than conclusory assertions. These unsupported assertions are insufficient even to
7 demonstrate good cause to keep discovery documents secret, let alone compelling reasons to seal court
8 records. And, all the while, a possibly-defective tire remains on the road.

9 Because Goodyear has failed to meet its burden to demonstrate a need for secrecy that outweighs
10 the public interest in access to the documents, this Court should vacate its protective and sealing orders.

11 **ARGUMENT**

12 **I. Goodyear Has Failed to Meet Its Burden to Demonstrate that Secrecy is Warranted.**

13 **A. The Compelling Reasons Standard Applies to the Court Records.**

14 The law is clear that to force others to keep discovery secret, a party must demonstrate good
15 cause. *See* Ariz. R. Civ. P. 26(c)(1). And once documents are filed with a court, the public has a right of
16 access that cannot be overcome without compelling reasons. Local R. 2.19(c)(1). Nevertheless,
17 Goodyear asserts that it need not demonstrate compelling reasons to seal the court records here, because
18 the Court did not rule on the motions with which the records were submitted. Goodyear is wrong.

19 This Court’s local rules provide that court records may not be sealed absent a “compelling
20 interest” in secrecy. Local R. 2.19(c)(1).¹ They make no exception for motions that do not ultimately
21 result in a decision. And these rules are not unique. Most courts require a compelling interest to seal
22 court records, even when a motion has not been decided. *See, e.g., In re Midland Nat. Life Ins. Co.*
23 *Annuity Sales Practices Litig.*, 686 F.3d 1115, 1120 (9th Cir. 2012); *In re Oracle Sec. Litig.*, No.
24 01-0988, 2005 WL 6768164, at *16 (N.D. Cal. Aug. 5, 2005).

25 And with good reason. Court records not only form the basis for judicial decisionmaking; they
26 allow the public to understand court proceedings more generally. And, if the case settles before a motion
27

28 ¹ All internal quotation marks, citations, and alterations omitted.

1 is decided, they allow the public to understand the basis for that settlement. Parties cannot simply use
2 the public court system to build their case to settlement and then withdraw any information they'd prefer
3 remain secret from public view. *See Pugliano v. Grace Holmes, Inc.*, No. 2:11-CV-01562, 2012 WL
4 1866380, at *3 (W.D. Pa. May 22, 2012) (“That there was not a final judicial determination . . . does not
5 diminish the public interest in the visibility of the processes by which the important principles
6 underlying [the statute at issue] are asserted and then resolved.”).

7 **B. Goodyear Has Not Demonstrated Good Cause, Let Alone Compelling Reasons, to**
8 **Seal Any of the Information.**

9 Goodyear has not met its burden to demonstrate the need for secrecy under any standard. Even
10 under the good cause standard, Goodyear must—for each document it wants to keep secret—make “a
11 particular and specific demonstration of fact” showing that a specific harm will result from disclosure.
12 *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981); *see* Mot. Unseal 11-12. It has not done so.

13 **1.** Goodyear argues that thousands of pages of documents must be kept entirely from public
14 view, because if any portion of them is released, the company will suffer competitive harm. As before,
15 the only factual support the company offers for this assertion is a declaration from Kevin Legge, a
16 Goodyear engineer. But Mr. Legge’s declaration doesn’t specifically discuss *a single one* of the sealed
17 court records or discovery documents—let alone provide a factual basis for believing that the *specific*
18 information in *each* of these records would allow Goodyear’s competitors to make better or cheaper
19 tires. Instead, the declaration identifies broad, vague categories of information Goodyear wants to keep
20 secret and provides similarly broad, conclusory assertions that public access to *any* information within
21 these categories would benefit Goodyear’s competitors. This is not a sufficient basis even to issue a
22 protective order, let alone seal court records. *See, e.g., Carnegie Mellon Univ. v. Marvell Tech. Grp.,*
23 *Ltd.*, No. 09-290, 2013 WL 1336204, at *9 (W.D. Pa. Mar. 29, 2013) (“An affidavit that is essentially
24 conclusory and lacking in specific facts is inadequate to satisfy the movant’s burden.”).

25 Even where Mr. Legge purports to offer an explanation for his assertions of harm, the
26 explanations he offers are nothing more than broad generalizations—untethered to any specific
27 information Goodyear seeks to keep secret, devoid of any details about why those broad generalizations
28 apply to any of the specific documents at issue here, and lacking in any particularized demonstration of

1 fact to support his claims. For example, Mr. Legge states that all information related to the design and
2 manufacturing of the G159 tire must be kept secret because if any of this information is disclosed,
3 competitors could use it to “place their own tires in the market with features and performance
4 approaching Goodyear’s, with far less up-front costs.” Legge Decl. ¶ 46. This “explanation” is nothing
5 more than the definition of competitive harm: that a competitor could make a better product at less cost
6 if it had access to confidential information. It is not a particularized demonstration of fact showing that a
7 *specific* harm will result from disclosure of any of the *specific* information Goodyear seeks to keep
8 secret in this case. Courts have repeatedly refused to order secrecy based on similar assertions. *See, e.g.*
9 *King Pharm., Inc. v. Eon Labs, Inc.*, No. 04-CV-5540, 2010 WL 3924689, at *12 (E.D.N.Y. Sept. 28,
10 2010) (assertion that company’s “internal strategies . . . could potentially be copied” is “precisely the
11 kind of broad allegation[] of harm unsubstantiated by specific examples or articulated reasoning” that
12 does not constitute “good cause”); *In re Parmalat Sec. Litig.*, 258 F.R.D. 236, 255 (S.D.N.Y. 2009)
13 (assertion that documents “could clearly enable competitors to copy these transactions for their own use”
14 does not constitute good cause because it “fails to explain why the specific types of transactions in issue
15 would potentially be copied by any competitor today”).

16 The G159 tire is almost two decades old, discontinued, and quite possibly defective. Goodyear
17 does not explain what benefit its competitors could possibly gain from copying it. *Cf. Mann ex rel. Akst*
18 *v. Cooper Tire Co.*, 33 A.D.3d 24, 31 (N.Y. App. Div. 2006) (rejecting conclusory assertion that “11-
19 year-old tire” specifications were trade secret, where there was “there is nothing in the record to suggest
20 Cooper Tire continues to use the same formula or ingredients that it used more than a decade ago in the
21 manufacture of the subject tire”); *Koch v. Greenberg*, No. 07-9600, 2012 WL 1449186, at *4 (S.D.N.Y.
22 Apr. 13, 2012) (“Generally . . . a court will not protect several-year-old information without a specific
23 explanation of the harm that would be caused by disclosure.”); *In re Parmalat Sec. Litig.*, 258 F.R.D. at
24 254 (explaining competitor “has no reason to copy” defective practices).

25 Similarly, Mr. Legge states that any information about the protocols Goodyear used to test the
26 G159 tire—and the results of that testing—must be kept secret because the information “would allow
27 competitors to test their tires in the same manner” as Goodyear, without spending the money to develop
28 the tests. Legge Decl. ¶ 51. But, again, this is just another way of paraphrasing the definition of

1 competitive harm and stating—without evidence or explanation—that it applies to Goodyear’s testing.
2 Mr. Legge doesn’t even attempt to specifically explain how Goodyear’s competitors could benefit from
3 implementing Goodyear’s testing protocols. How, if at all, are they unique? How are they better than
4 what’s commonly practiced in the industry? Mr. Legge doesn’t say. And he gives no explanation for his
5 assertion that Goodyear’s testing *results* could somehow help its competitors copy its testing *practices*.
6 Nor does he explain any other way in which access to Goodyear’s test results would benefit the
7 company’s competitors. This is not good cause, let alone compelling reason, to keep court documents
8 secret. *Cf. Waterkeeper All., Inc. v. Alan & Kristin Hudson Farm*, 278 F.R.D. 136, 143 (D. Md. 2011)
9 (assertion that “if made public, a competitor could simply adopt” a company’s assessment form was
10 insufficient because it did not specify “exactly what identifiable, significant harm” the company would
11 suffer if others adopted its form); *Saks Inc. v. Attachmate Corp.*, No. 14-4902, 2015 WL 1841136, at
12 *18 (S.D.N.Y. Apr. 17, 2015) (no good cause for a protective order where company did “not explain
13 what is so secret, special or unique about its strategies”).

14 Mr. Legge asserts generally that access to competitors’ adjustment data would allow tire
15 manufacturers to “benchmark the success of their own products against the adjustment data of their
16 competitors, direct their product manufacturing to focus on concerns raised in complaints against their
17 competitors, and possibly market their tires as better than their competitors’ in those specified ways.”
18 Legge Decl. ¶ 32. This statement is nothing more than speculation about how a hypothetical tire
19 manufacturer could use hypothetical adjustment data. It is not a particular and specific demonstration of
20 fact showing that Goodyear’s competitors could use the adjustment data produced in this case to harm
21 Goodyear. *Cf. Deford v. Schmid Prods. Co.*, 120 F.R.D. 648, 653 (D. Md.1987) (“Even assuming that
22 the information . . . generally falls within the category of confidential commercial information,” there is
23 no good cause where “only a speculative showing of potential harm has been made.”).

24 Mr. Legge does not explain, for example, why Goodyear’s competitors would possibly want to
25 benchmark their current products against an allegedly-defective tire that was discontinued fifteen years
26 ago, how complaints about a twenty-year-old tire could possibly be relevant today, how Goodyear’s
27 competitors could benefit from marketing their tires as better than a tire that has already been
28 discontinued for over a decade, or how—if Goodyear’s competitors wanted to do that—the adjustment

1 data would allow them to do so in a way they couldn't already, simply by pointing to the long history of
2 G159 defect litigation.

3 And these are the most specific assertions of harm. Most of Mr. Legge's declaration is even more
4 conclusory. For example, Goodyear asks this Court to order that the "[d]ata and information contained
5 in" such broad categories of documents as "e-mail and other forms of correspondence, memoranda,
6 board minutes, and other records" be kept secret, based solely on Mr. Legge's vague assertion that "their
7 disclosure would harm Goodyear in much the same manner as direct disclosure of specifications or
8 tolerances." Legge Decl. ¶ 34. But Mr. Legge does not specify what "manner" this is. He fails to identify
9 any specific harm that will result if Goodyear's specifications or tolerances are disclosed, let alone
10 explain how the same harm could possibly result from disclosure of everything from emails to board
11 minutes to design specifications.

12 Goodyear's explanations are so general that it is impossible to evaluate them. The company
13 could submit the same declaration about a tire for a horse and buggy, and it would be impossible to tell
14 that it had done so. Rather than meet its burden to *demonstrate* the need for secrecy, Goodyear instead
15 asks this Court to take the company's word for it. Indeed, Goodyear hasn't even provided the documents
16 it wishes to keep secret for the court to review.

17 But discovery documents and court records may not be kept secret based simply on a company's
18 word—even where the company hasn't been sanctioned for lying to the court in related litigation. Courts
19 must be able to make factual findings demonstrating the need for secrecy. *See* Ariz. R. Civ. P. 26(c)(4);
20 Local R. 2.19(c). Assertions of harm so broad and vague that it's impossible to "realistically gauge"
21 what harm might arise from disclosure are insufficient. *Polaris Innovations Ltd. v. Kingston Tech. Co.,*
22 *Inc.*, 2017 WL 2806897, at *6 (C.D. Cal. Mar. 30, 2017).

23 Goodyear suggests that, despite its conclusory declaration, its burden to demonstrate the need for
24 secrecy with particularity is satisfied simply because it submitted charts identifying which documents
25 fall within which categories of information. *See* Opp'n 8. But Goodyear's charts add almost nothing to
26 the company's showing. The charts merely list the documents Goodyear wishes to keep secret, label
27 them as containing broad categories of purportedly confidential information, and then cite the
28 insufficient, conclusory assertions of harm in the Legge declaration as the justification for sealing those

1 broad categories of information. They don't even specifically identify which information in which
2 document falls within which category. Documents may not be kept secret on this basis. The mere
3 "mention[]" of a "general category" of information and a conclusory assertion that harm will result
4 from disclosing any information in that category falls far short of the burden required to keep court
5 documents secret, under any standard. *See Kamakana v. Honolulu*, 447 F.3d 1172, 1184 (9th Cir. 2006);
6 *Martin v. Wells Fargo Bank N.A.*, No. 12-6030, 2013 WL 5441973, at *2 (N.D. Cal. Sept. 30, 2013).²

7 **2.** While Goodyear failed to provide any evidence to support its assertions of competitive harm,
8 there is substantial evidence demonstrating that Goodyear will *not* be harmed if the documents are
9 disclosed. For one thing, the documents Goodyear claims are entirely confidential appear to contain lots
10 of information that's actually public. For example, Goodyear maintains patents on some elements of its
11 tire design and manufacturing. *See Legge Decl.* ¶ 23. At least some of Goodyear's testing is described in
12 public court records. *See, e.g., Haeger v. Goodyear Tire & Rubber Co.*, 906 F. Supp. 2d 938, 961 (D.
13 Ariz. 2012). So, too, are at least some of its adjustment codes. *See, e.g., Goodyear Depo., McCloud v.*
14 *Goodyear Dunlop Tires N. America LTD*, 2006 WL 1288473 (C.D. Ill. May 1, 2006) (describing
15 multiple adjustment codes). And a company called Smithers reverse-engineers tires—including
16 Goodyear tires—to determine their composition and sells that information to tire companies. *See*
17 *Smithers Rapra*, [http://www.smithersrapra.com/testing-services/by-sector/automotive/tire-](http://www.smithersrapra.com/testing-services/by-sector/automotive/tire-testing/competitive-benchmarking)
18 [testing/competitive-benchmarking](http://www.smithersrapra.com/testing-services/by-sector/automotive/tire-testing/competitive-benchmarking) (last visited Sept. 29, 2017) (describing "competitive benchmarking"
19 services); *Zekoski Depo., Hebert v. Goodyear*, No. 06-155, Dkt. 60-6, at 2 (D. Utah Jan. 28, 2008),
20 attached as Exhibit 1 (deposition testimony of Goodyear engineer that tire manufacturers get "tire
21 analysis" and "material evaluations" of competitors' tires, including Goodyear's, from Smithers).

22 Goodyear makes no effort to specifically identify which of the information it seeks to conceal is,
23 in fact, secret. And, of course, if the information is not secret, Goodyear cannot be harmed by disclosure.

24 Furthermore, tire expert Dennis Carlson has explained (in the attached declaration) that none of
25 the information produced in this case could actually help Goodyear's competitors make better or cheaper

26 ² Goodyear contends that it can't possibly provide more than conclusory assertions of harm without
27 making public the information it contends must remain secret. But that's simply not true. If Goodyear
28 actually believed it had to refer to confidential information to make its showing, it could have moved to
do so under seal, with information limited to attorneys' eyes only. It did not do so.

1 tires. Carlson Decl. ¶ 5, attached as Exhibit 2. As Mr. Carlson states, “[t]ire technology has advanced
2 significantly over the past twenty years.” *Id.* ¶ 7. Even for new entrants to the tire market, design and
3 manufacturing information about a tire introduced more than fifteen years ago is too outdated to be
4 useful. *Id.* ¶ 8; *see also Uniroyal Goodrich Tire Co. v. Hudson*, 873 F. Supp. 1037, 1046 (E.D. Mich.
5 1994) (case cited in Goodyear’s brief, in which expert states that tire information only has value for “up
6 to ten years after being introduced in the United States”). Goodyear’s competitors could build a better
7 tire simply by using publicly available information. Carlson Decl. ¶ 9.

8 Mr. Carlson also explained that Goodyear’s testing protocols would have no use to competitors,
9 because “tire testing is standard across the industry.” Carlson Decl. ¶ 11. Goodyear does not identify
10 even a single feature of its test protocols that cannot be derived from information commonly known to
11 tire manufacturers. Nor does Goodyear identify any aspect of its adjustment system—a standard feature
12 of tire companies—that is better than its competitors. *See id.* ¶ 16 (stating disclosure of Goodyear’s
13 adjustment system would not cause competitive harm); *cf. In re Parmalat Sec. Litig.*, 258 F.R.D. at 251
14 (no good cause for secrecy where company made “no showing concerning whether any of the[]
15 techniques allegedly disclosed by the documents are not otherwise commonly known in the trade”).

16 In addition, as Mr. Carlson explained, there is no reason Goodyear’s competitors would benefit
17 from access to the results of testing performed on the G159 tire or its adjustment data. Carlson Decl.
18 ¶¶ 13, 15. It’s dubious that the disclosure of tire testing results or adjustment data, in and of themselves,
19 could ever cause competitive harm. *Cf. Mann*, 33 A.D.3d at 36 (“[C]ustomer complaints” and “records
20 of returns involving tire tread separation” are “not proper subjects of a protective order.”); *Fed. Trade*
21 *Comm’n v. DIRECTV, Inc.*, No. 15-01129, 2017 WL 840379, at *2 (N.D. Cal. Mar. 3, 2017)
22 (“DIRECTV also has not convincingly explained why disclosure of . . . customer care metrics and
23 strategy would cause significant competitive harm to the company.”); *PCT Int’l Inc. v. Holland Elecs.*
24 *LLC*, No. 12-01797, 2014 WL 6471419, at *4 (D. Ariz. Nov. 18, 2014) (“Metrics of how well Holland’s
25 connectors perform in various environments are not trade secrets.”). But even if disclosure of testing
26 and adjustment data could cause harm in some circumstances, given the advance in tire technology in
27 the twenty years since the G159 was first produced, there is no basis for believing that the testing results
28 and adjustment data *in this case* could do so.

1 It is Goodyear’s burden to demonstrate that competitive harm will result if the information in this
2 case is released—not the Center’s burden to demonstrate otherwise. And yet the Center has produced
3 substantial evidence that Goodyear will *not* suffer competitive harm, while Goodyear has made no
4 showing to the contrary. This Court should reject Goodyear’s efforts to enforce secrecy based solely on
5 vague, conclusory assertions of competitive harm, entirely untethered to the specific information
6 Goodyear seeks to conceal.

7 **3.** Perhaps recognizing that it cannot demonstrate that any competitive harm will result from the
8 release of information about a twenty-year-old discontinued tire, Goodyear briefly argues that some
9 documents must be kept secret because they are purportedly privileged or protected by federal law.
10 Goodyear’s sole support for this argument is a list of which documents it believes should be kept secret
11 and the argument of counsel. Goodyear doesn’t even provide a declaration to support its assertions. This
12 is far from sufficient. Again, “[s]imply mentioning a general category of privilege, without any further
13 elaboration or any specific linkage with the documents, does not satisfy [Goodyear’s] burden.”
14 *Kamakana*, 447 F.3d at 1184. And “the determination of whether” documents should be kept secret
15 “must be based upon appropriate testimony and other factual data, not the unsupported contentions and
16 conclusions of counsel.” *Davis v. Romney*, 55 F.R.D. 337, 340 (E.D. Pa. 1972).

17 Goodyear contends that numerous documents are subject to attorney-client or work-product
18 privilege. But it fails to identify specifically what information in these documents is privileged and why;
19 it does not provide any factual basis for its contentions; it doesn’t demonstrate that any privilege that
20 may have once existed has not been broken; and it doesn’t show any harm that will result from
21 disclosure. The mere invocation of attorney-client privilege is not enough to justify shielding documents
22 from public view. *See Steiger v. Superior Court for Maricopa County*, 536 P.2d 689, 691 (Ariz. 1975)
23 (“The burden of establishing that a matter is privileged is upon the party claiming the privilege.”);
24 *Younes v. 7-Eleven, Inc.*, No. 13-3500, 2014 WL 1959246, at *3 (D.N.J. May 15, 2014) (“[b]road
25 boilerplate assertions” of privilege do not constitute good cause).

26 Goodyear’s invocation of a settlement privilege is equally unavailing. Again, Goodyear merely
27 asserts that the privilege applies. It provides no supporting facts, no explanation, no information about
28 what specific harm it believes will befall it if the information is disclosed. The privilege Goodyear

1 asserts isn't even relevant here: Some (but not nearly all) courts apply a settlement privilege to prevent
2 parties, in some circumstances, from obtaining evidence about settlement talks in discovery. *See, e.g.,*
3 *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 977 (6th Cir. 2003). But
4 Goodyear cites no case in which a court has applied the privilege to prevent *public* access to discovery
5 documents or court records that have *already* been produced. To the contrary, courts have repeatedly
6 required public access to settlement information. *See, e.g., Fair Lab. Practices Assocs. v. Riedel*, 666 F.
7 App'x 209, 212 (3d Cir. 2016) (settlement information could not be sealed absent showing that
8 "disclosure will work a clearly defined and serious injury"); *Colony Ins. Co. v. Burke*, 698 F.3d 1222,
9 1241 (10th Cir. 2012) (bare assertion that documents "involve the terms of confidential settlement
10 agreements" insufficient to support sealing).

11 Oddly, Goodyear contends that the discovery documents and court records here should be kept
12 secret by this Court because of federal law that governs *NHTSA's* treatment of confidential information.
13 But, by its terms, the law Goodyear cites applies to federal executive agencies—not state courts. *See* 5
14 U.S.C. § 552(a); 49 C.F.R. § 512.1 (implementing 5 U.S.C. § 552 with respect to NHTSA specifically);
15 *Kamakana*, 447 F.3d at 1185 (documents exempt from FOIA are not automatically exempt from public
16 disclosure as court records or discovery documents). And, moreover, Goodyear has not even
17 demonstrated that the documents would, in fact, be entitled to confidentiality under federal law.³

18 **C. The Public Interest in Access to the Court Records Outweighs Any Interest**
19 **Goodyear Has in Secrecy.**

20 Goodyear states that "[t]here is no evidence of a public safety risk" posed by the G159 tire.
21 Opp'n 4. But that's plainly false. Goodyear has been repeatedly sued because of accidents, injuries, and
22 even fatalities alleged to be caused by a defect in this tire. The plaintiffs' expert stated that the tire's
23 failure rate was one of the highest he'd ever seen. Pls.' Supp. Statement Facts ¶ 24 (Jan. 9, 2017). And
24 Mr. Carlson, a tire expert for over forty years, has determined that the tire is unsafe. Carlson Decl. ¶ 19.
25 Courts need not wait until the risk to public safety is absolutely certain to recognize the public interest in

26 ³ Nor is there any support for Goodyear's argument that the Center seeks these documents in "the wrong
27 forum," *see* Opp'n 13. The Center seeks to vindicate the public right to access the court records in this
28 case and to vacate a protective order this Court entered. Contrary to Goodyear's contention, this relief is
obviously not available through FOIA.

1 access to information that will shed light on that risk.

2 Goodyear contends that any interest in public safety is protected by NHTSA. But, as Congress,
3 the Department of Transportation, and NHTSA itself have acknowledged, NHTSA has repeatedly failed
4 to recognize and remedy serious auto safety defects. *See* Brooks Supp. Decl. ¶ 5, attached as Exhibit 3.
5 To protect public safety, the public, independent auto experts, and organizations like the Center for Auto
6 Safety must also have access to the information—to analyze it themselves, to advocate before NHTSA,
7 and to oversee NHTSA’s regulatory process.

8 Goodyear has not come close to demonstrating even the good cause necessary to keep discovery
9 documents secret, let alone compelling reasons to seal court records. But even if it had, any minimal
10 interest Goodyear has in the secrecy of a twenty-year-old tire is outweighed by the public safety interest
11 in knowing whether that tire is defective (and, potentially, deadly).

12 **D. Goodyear’s Request for Secrecy is Not Narrowly Tailored.**

13 Based solely on broad, conclusory assertions of harm, Goodyear seeks to shield from public view
14 thousands of pages in their entirety. Not only does Goodyear seek to conceal all design, testing, and
15 adjustment information for a tire that was discontinued fifteen years ago, it seeks to keep secret reams of
16 documents simply because they contain “references” to or “discussion of” this information. *See, e.g.,*
17 *Opp’n Ex. B*, at 20, 24-28, 35, 37, 45-50. The company does not even attempt to explain how these mere
18 “references” could possibly allow competitors to design better or cheaper tires, let alone why they justify
19 keeping entire documents secret. This is not the narrow-tailoring the law requires.⁴

20 **II. Goodyear Cannot Avoid Its Burden By Attacking the Center for Auto Safety.**

21 Goodyear attempts to avoid its burden to demonstrate the need for secrecy by casting aspersions
22 on the Center for Auto Safety. But its attacks on the Center are both false and irrelevant.

23 The Center is a non-profit auto safety organization. Its General Counsel has sworn under penalty
24 of perjury that the reason it seeks the information in this case is because it is concerned about public
25

26 ⁴ Goodyear emphasizes that it has now admitted that some of the documents it previously sought to keep
27 secret are not actually confidential. *See, e.g., Opp’n 1, 13*. But this admission demonstrates only that the
28 company has a history of making false assertions of confidentiality. If anything, these previous false
assertions support increased skepticism of Goodyear’s unsupported claims here.

1 safety. *See* Brooks Decl. Supp. Mot. Intervene ¶ 9. Goodyear provides no evidence that this declaration
2 is false. Instead, Goodyear relies on the statement of William Boehly, who retired from NHTSA twenty
3 years ago and now works as a paid consultant for the auto industry. *See* Boehly Decl. ¶ 2. Mr. Boehly
4 states that in his opinion the Center’s “efforts have negatively affected motor vehicle safety.” *Id.* ¶ 11.
5 The only explanation he gives for this opinion is another opinion—that, in his view, the Center’s
6 petitions to NHTSA to investigate safety defects are a “waste” of resources. *Id.* ¶ 9. But the only
7 petition Mr. Boehly cites is a petition NHTSA *granted*, which resulted in the recall of millions of
8 defective vehicles. *Id.* ¶ 10. He does not provide a single example of a petition by the Center that did not
9 involve an actual safety defect—nor does he cite any other example of the Center negatively affecting
10 auto safety.

11 Contrary to Mr. Boehly’s unsupported assertions, the Center’s petitions generally reveal
12 dangerous safety defects—defects that typically result in a recall, a change to the product, or a
13 settlement with NHTSA. Brooks Supp. Decl. ¶ 4. In at least two instances, the Center filed petitions that
14 were granted by Mr. Boehly himself. *Id.* ¶¶ 4.1, 4.2. Mr. Boehly doesn’t mention these petitions—or any
15 of the Center’s other work on behalf of auto safety. He merely asserts, without any evidence, his “belief”
16 that the Center “negatively affect[s] motor vehicle safety.” Boehly Decl. ¶ 11. This assertion is baseless.

17 It’s also irrelevant. The public has a right to access court records, unless Goodyear shows
18 compelling reasons to keep them secret. And the plaintiffs have a right to share discovery, unless
19 Goodyear shows good cause to keep it secret. Contrary to Goodyear’s contention, it doesn’t matter
20 whether the Center has a “need” for the documents. It is not the Center’s burden to demonstrate a need
21 for the information. It is Goodyear’s burden to demonstrate a need to keep the information secret. *See*
22 *Standard Inv. Chartered, Inc. v. Nat’l Ass’n of Sec. Dealers, Inc.*, No. 07 CIV. 2014, 2008 WL 199537,
23 at *15 (S.D.N.Y. Jan. 22, 2008) (“The lack of a demonstrated need for the documents . . . is irrelevant,
24 for the burden of establishing good cause rests with [the proponent of secrecy].”); *California ex rel.*
25 *Lockyer v. Safeway, Inc.*, 355 F. Supp. 2d 1111, 1124 (C.D. Cal. 2005) (same). It has not done so.⁵

26 ⁵ For this reason, as explained in more detail in the Center’s forthcoming opposition to Goodyear’s
27 motion for discovery, there is no basis for Goodyear’s contention that it is entitled to seek discovery of
28 the Center. It is Goodyear’s burden to prove the documents must be kept secret. The Center’s expertise
or need for the documents is irrelevant.

1 **III. No Other Court’s Order Governs the Public’s Right to Access the Court Records and**
2 **Discovery Documents in this Case.**

3 Contrary to Goodyear’s contention, there is no Full Faith and Credit—or comity—issue here.
4 Under the Full Faith and Credit Clause, each state must give to other states’ judgments the same effect
5 they would be accorded in the state that rendered them. *See Cho v. Am. Bonding Co.*, 951 P.2d 468, 471
6 (Ariz. Ct. App. 1997). But here, no other state’s judgment is at issue. The Center asks this Court to
7 vacate its *own* protective order governing the discovery produced in this case, as well as its *own* sealing
8 orders, governing the court records. No other court’s order governs—or could possibly govern—whether
9 the discovery *in this case* remains secret or the court records remain sealed. There is simply no other
10 court’s order to which Full Faith and Credit could be given.

11 Goodyear seems to confuse the Center’s motion to vacate this Court’s confidentiality orders with
12 the plaintiffs’ earlier motion to take discovery from other plaintiffs in other cases. The plaintiffs’
13 discovery motion required this court to amend the protective orders in other cases because the plaintiffs
14 sought documents from people who were bound by those orders. But now that these documents have
15 been produced to the plaintiffs, they are part of the discovery and court records *in this case*.

16 The Center does not seek discovery from parties to any other lawsuit. It does not ask this Court
17 to vacate any other court’s confidentiality order. It merely asks this Court to vacate its *own* orders, so
18 that the court records may be public and the plaintiffs here, should they choose to do so, may share their
19 discovery. The Full Faith and Credit Clause has no bearing on this request. *See In re Oracle*, 2005 WL
20 6768164, at *19 (Full Faith and Credit irrelevant when court “not ordering any relief with respect to the
21 files” of another court).

22 Furthermore, even if vacating its own orders did somehow require this Court to also amend the
23 orders of other courts, as Goodyear perplexingly contends, the Full Faith and Credit Clause still would
24 not bar the relief the Center seeks. “A judgment has no constitutional claim to a more conclusive or final
25 effect in the State of the forum than it has in the State where rendered.” *New York ex rel. Halvey v.*
26 *Halvey*, 330 U.S. 610, 614 (1947). “So far as the Full Faith and Credit Clause is concerned,” whatever
27 the state that rendered the order “could do,” Arizona “may do” as well. *Id.*

28 As this Court has already recognized, confidentiality orders are “non-final” and “ancillary.”
Order (Nov. 25, 2015), at 4-5. They are inherently subject to modification. *See Rosado v. Bridgeport*

1 *Roman Catholic Diocesan Corp.*, 884 A.2d 981, 1008 (Conn. 2005) (collecting cases demonstrating
2 courts are “unanimous” on this point). Because they may be modified in the issuing state, they may be
3 modified by Arizona as well. *See Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998) (Full Faith and
4 Credit applies to “*final* judgment[s]” (emphasis added)); *ACandS, Inc. v. Askew*, 597 So. 2d 895, 898
5 (Fla. Dist. Ct. App. 1992) (“[A]n order such as this which is nonfinal and modifiable is not entitled to
6 full faith and credit.”).

7 Furthermore, the “effect of the full faith and credit clause is to nationalize the doctrines of res
8 *judicata* and collateral estoppel.” *Application of Macartney*, 786 P.2d 967, 969 (Ariz. 1990). But neither
9 of these doctrines can possibly apply to the Center for Auto Safety, because the Center was not a party
10 to any of the previous proceedings against Goodyear. And these doctrines “may not be invoked” against
11 someone who was not a party to the previous litigation. *Id.* at 970.

12 The United States Supreme Court came to a similar conclusion in *Baker*. There, as part of a
13 settlement between General Motors and a former employee, a Michigan court entered an injunction
14 prohibiting the employee from testifying against the company in the future. *Baker*, 522 U.S. at 226.
15 Later, plaintiffs in a Missouri case against General Motors—strangers to the Michigan case—
16 subpoenaed the employee to testify. *Id.* The Supreme Court held that the Full Faith and Credit Clause
17 did not bar his testimony. *Id.* “Michigan’s judgment” in entering the injunction between GM and its
18 employee, the Court explained, “cannot reach beyond the” dispute it decided “to control proceedings
19 against GM brought in other States, by other parties, asserting claims the merits of which Michigan has
20 not considered.” *Id.* at 238. So too here. No other state’s court can reach beyond its power to control the
21 confidentiality of its own proceedings to assert control over other proceedings against Goodyear in a
22 different forum, brought by a different party, asserting claims that no other state has considered.

23 Goodyear cites no case that says otherwise. Instead, Goodyear relies on two Texas cases that are
24 not about modifying a court’s own orders, but instead about seeking discovery from a party in another
25 case, governed by another court’s protective order. *See Pitt. Corning Corp. v. Caldwell*, 861 S.W.2d
26 423, 426 (Tex. App. 1993); *Keene Corp. v. Caldwell*, 840 S.W.2d 715, 720 (Tex. App. 1992). Moreover,
27 even if the Texas cases were relevant, they should not be followed. They ignore the fact that protective
28 orders are modifiable; they ignore that collateral estoppel can’t bind someone who was not previously a

1 party; and both cases were decided before the U.S. Supreme Court’s decision in *Baker*. Indeed, these
2 cases cite only one other case on this issue (besides each other)—*ACandS*. And that case held that a
3 court *can* modify another court’s protective order to allow discovery. *See ACandS*, 597 So. 2d at 898.

4 The only other case Goodyear cites—*Tucker v. Ohtsu*—also holds that a court *can* modify
5 another court’s protective order to allow discovery. *Tucker v. Ohtsu Tire & Rubber Co., Ltd.*, 191
6 F.R.D. 495, 500 (D. Md. 2000). Indeed, most courts have—like this court—held that a protective or
7 sealing order from one state does not affect discovery obligations in another.⁶

8 But, again, the question here is not whether this court can modify other courts’ confidentiality
9 orders. The question here is even easier: May this Court modify its *own* confidentiality orders, so that
10 discovery and court records *in this case* may be made public? Goodyear has not identified—and we have
11 not found—a single case that states it cannot.

12 Nor is comity relevant here. “Under the principle of ‘comity,’ courts of one jurisdiction will give
13 effect to the laws and judicial decisions of another jurisdiction, not as a matter of obligation, but out of
14 deference and mutual respect.” *Leon v. Numkena*, 689 P.2d 566, 570 (Ariz. Ct. App. 1984). But, again,
15 there is no judicial decision to give effect to here: No court has held—or could hold—that the discovery
16 documents produced *in this case* or the court records filed *in this case* must remain secret.

17 Indeed, no court in any case has ever seriously considered whether Goodyear has met its burden
18 to justify keeping any information secret. The secrecy orders in the other cases are blanket protective
19 orders, along with a handful of perfunctory sealing orders from *Haeger I* and a sealing order from the
20 Florida *Schalmo* case, drafted by Goodyear as a condition of settlement and entered the same day. *See*
21 *Pls.’ Mot. Require Goodyear Seek Relief* (July 2, 2015), at 12. There is no evidence that any court
22 required Goodyear to demonstrate, document-by-document, compelling reasons for sealing court records
23 or good cause for keeping discovery secret. Courts have repeatedly refused to defer to such perfunctory
24 orders. *See, e.g., Am. Online, Inc. v. Anonymous Publicly Traded Co.*, 542 S.E.2d 377, 383 (Va. 2001)

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26 ⁶ *See, e.g., In re Oracle*, 2005 WL 6768164, at *19; *Metro. Life Ins. Co. v. Aetna Cas. & Sur. Co.*, 249
27 Conn. 36, 49 (1999); *Carter-Wallace, Inc. v. Hartz Mountain Indus., Inc.*, 92 F.R.D. 67, 69 (S.D.N.Y.
28 1981); *Matter of Frigitemp Corp.*, 27 B.R. 264, 269 (Bankr. S.D.N.Y. 1983); *U.S. ex rel. Goeggel v.*
Barnes-Jewish Hosp., No. 96-2208, 2006 WL 2990496, at *3 (E.D. Mo. Oct. 19, 2006); *Morton Int’l,*
Inc. v. Atochem N. Am., Inc., No. 87-60, 1990 WL 299920, at *2 (D. Del. Sept. 18, 1990).

1 (refusing to defer to order where “no hearing was held concerning the question, no evidence was
2 received by the court,” and “no reasons for the decision were given”); *ACandS*, 597 So. 2d at 898
3 (refusing to defer to protective order that was silent as to whether it was supported by good cause).

4 Moreover, any order requiring this court to seal court records from public view without
5 compelling reasons or mandating that this court keep discovery secret without good cause would violate
6 the public policy of Arizona. And comity may not be accorded to orders that violate the “fundamental
7 public policy” of the state. *Duwyenie v. Moran*, 207 P.3d 754, 756 n.3 (Ariz. Ct. App. 2009); *cf. In re*
8 *Oracle*, 2005 WL 6768164, at *19 (“To the extent the Delaware Court’s order may prohibit access to
9 documents . . . which this Court holds are subject to the federal common law right of public access, the
10 Court concludes that deference is neither required nor appropriate.”).

11 Rather than this Court examining its own confidentiality orders, Goodyear wants to require the
12 Center for Auto Safety to travel around the country asking every court that has ever had a G159 case to
13 determine, for the first time, whether Goodyear has met its burden to demonstrate a need for secrecy.
14 That’s not deferring to decisions other courts have already entered—that’s asking them to undertake
15 entirely new proceedings. Asking courts to re-open long closed cases, so they can render decisions on
16 issues they never previously considered is not comity. *See also* Order (Nov. 25, 2015), at 4 (holding that
17 comity did not require plaintiffs to undertake the “onerous task” of seeking relief in each case “scattered
18 among multiple jurisdictions around the country”).

19 **IV. There Is No Need for a Special Master.**

20 Goodyear has had two chances to meet its burden to demonstrate the need for secrecy. And it has
21 failed both times. Still, the company seeks to give itself yet another chance—proceedings before a
22 special master. This Court should not give the company a third bite at the apple. There is no basis for
23 Goodyear to impose more expense and delay, just so it can try again in front of a different
24 decisionmaker.

25 **CONCLUSION**

26 Goodyear has not demonstrated good cause, let alone compelling reasons, for secrecy here. This
27 Court should therefore vacate its sealing and protective orders.

1 RESPECTFULLY SUBMITTED this 29th day of September, 2017.

2
3 /s/ Jennifer D. Bennett

Jennifer D. Bennett (*pro hac vice*)

Public Justice, P.C.

555 12th Street, Suite 1230

Oakland, CA 94607

Phone: (510) 622-8150

6 Fax: (510) 622-8155

7 Richard P. Traulsen (Bar No. 16050)

8 Begam, Marks, & Traulsen, P.A.

11201 North Tatum Blvd., Suite 110

9 Phoenix, AZ 85028

Phone: (602) 254-6071

10 Fax: (602) 254-0042

11 *Attorneys for Intervenor Center for Auto Safety*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 29th day of September, 2017, I electronically transmitted the
3 foregoing document to the Clerk of the Maricopa County Superior Court using Electronic Case Filing
4 through AZTurboCourt for filing and electronic service to the assigned judge in this case, The
5 Honorable John Hannah.

6 I further certify that a true and complete copy of the foregoing document was forwarded on the
7 29th day of September, 2017 via e-mail to:

8
9 Kerry L. Holman
10 SQUIRE PATTON BOGGS (US) LLP
11 1 East Washington Street, Suite 2700
12 Phoenix, Arizona 85004
13 kerryn.holman@squirepb.com

14 Jill G. Okun
15 PORTER WRIGHT MORRIS & ARTHUR LLP
16 950 Main Avenue, Suite 500
17 Cleveland, Ohio 44113-7206
18 jokun@porterwright.com

19 James M. Brogan
20 DLA Piper LLP (US)
21 One Liberty Place
22 1650 Market Street, Suite 4900
23 Philadelphia, Pennsylvania 19103
24 James.Brogan@dlapiper.com

25 *Attorneys for Defendants The Goodyear Tire
& Rubber Company*

26 David L. Kurtz
27 THE KURTZ LAW FIRM
28 7420 East Pinnacle Peak Road, Suite 127
Scottsdale, AZ 85255
dkurtz@kurtzlaw.com

Attorney for Plaintiffs

Lisa Lewallen
LISA G. LEWALLEN, P.L.L.C.
P.O. Box 85067
Phoenix, AZ 85067
lewallenlaw@gmail.com

1 *Attorney for Spartan Chassis, Inc.*

2 By /s/ Jennifer D. Bennett

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