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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiffs,

v.

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

Defendants.

Case No.: CV 2013-052753

MOTION TO UNSEAL COURT RECORDS AND VACATE PROTECTIVE ORDER BY THE CENTER FOR AUTO SAFETY

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

INTRODUCTION

The Center for Auto Safety respectfully moves to unseal all sealed court records in this case and to vacate the blanket protective order, issued on November 24, 2015.

It is difficult to imagine a situation in which the public interest in access to court records and discovery documents would be stronger than it is here, where the plaintiffs' allegations suggest that the vehicles people are driving are unsafe. Nevertheless, numerous court records in this case have been sealed without any showing that there are compelling reasons for secrecy. And Goodyear has marked countless discovery documents confidential—shielding these documents from public view, without ever demonstrating good cause.

But the law is clear: Court records may not be sealed without compelling reasons. And discovery documents may not be kept secret without good cause. This Court, therefore, should unseal the court records in this case and vacate the protective order that allows Goodyear to prevent disclosure of discovery documents, simply by marking them confidential.

ARGUMENT

I. The Court Records in this Case Should Be Unsealed.

It is well-established—under the common law and the First Amendment—that the public has a right to access court records. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978); *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016).[1] To overcome the "strong presumption" that court records are open to the public, a party seeking to seal court records must demonstrate "compelling reasons" for secrecy—"supported by specific factual findings"—that "outweigh the general history of access and the public policies favoring disclosure." *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *see also* Local Rule 2.19 (requiring that a court enter "written findings that the specific sealing or redaction is justified by identified compelling interests that outweigh the public interest in access to the court record").

[1] Unless otherwise specified, all internal quotation marks, citations, and alterations are omitted.

This is a "stringent standard." *Ctr. for Auto Safety*, 809 F.3d at 1096. Court records may not be sealed on the basis of "hypothesis or conjecture." *Id.* at 1097. Conclusory assertions of harm are not enough. *Kamakana*, 447 F.3d at 1182. To seal court records, a party must—for each document it seeks to seal—provide "*specific* fact[s]" demonstrating the "*specific*" harm that will result if the document is not kept secret. *Id.* at 1178, 1184 (emphasis added); *see Allstate Ins. Co. v. Balle*, No. 2:10-CV-02205-APG-NJ, 2014 WL 1300924, at *2 (D. Nev. Mar. 27, 2014) (requiring "a specific factual showing that compelling reasons exist to seal each" document). And it must show that this harm outweighs the public interest in access. *See Kamakana*, 447 F.3d at 1178; Local Rule 2.19(c)(1). Even then, any sealing must be narrowly tailored. *See TVIIM, LLC v. McAfee, Inc*., No. 13-cv-04545, 2015 WL 3623656, at *3 (N.D. Cal. June 10, 2015); Local Rule 2.19(c)(4).

Although numerous court records have been sealed in this case, this standard has never been met. Indeed, it appears that until just this month, no party had even attempted to demonstrate compelling reasons for sealing. For the first time, in its opposition to Spartan's supplemental brief, Goodyear purports to show that the court records here must remain sealed because they contain trade secrets and similar confidential business information. But its showing falls far short of the specific demonstration of fact required to seal court records. The records, therefore, should be unsealed.

A. Goodyear Has Not Demonstrated That Any of the Sealed Court Records Contain Trade Secrets.

As the U.S. Supreme Court has emphasized, the "value of a trade secret" is that it "gives its owner" a "competitive advantage"—that is, the ability to make better or cheaper products than its competitors. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1012 n.15 (1984). Although court records may be sealed to protect this advantage, a company cannot prevent public access to court records merely by summarily asserting that they contain confidential business information. The mere invocation of trade secrets does not somehow absolve a party from meeting the compelling reasons standard. *See Allstate*, 2014 WL 1300924, at *1 (compelling reasons standard "is not met by general assertions that the information is confidential or a trade

secret" or "conclusory statements" that disclosure would cause competitive harm). As with any other justification for sealing, a party seeking to seal court records because they contain trade secrets must—for each of the documents it seeks to seal—"make a specific factual showing" demonstrating the specific harm that will result if the document is disclosed. *See id.* Goodyear has not done so.

Goodyear relies exclusively on an affidavit from Kevin Legge, a Chief Analysis Engineer at the company. But that affidavit doesn't specifically address *any* of the sealed court records (or, for that matter, any specific documents at all)—let alone provide a factual basis demonstrating that *each* of these records, if disclosed, would allow its competitors to make better or cheaper tires. Instead, the affidavit identifies broad categories of business information Goodyear purportedly keeps confidential and provides only conclusory, formulaic assertions that public access to *any* information within these broad categories would benefit Goodyear's competitors. This is not the specific demonstration of fact required to seal court records. *See Kamakana*, 447 F.3d at 1184 ("Simply mentioning a general category of privilege, without any further elaboration or any specific linkage with the" court records at issue, "does not satisfy" the compelling reasons standard.); *AmerGen Energy Co., LLC v. United States*, 115 Fed. Cl. 132, 147 (2014) (refusing to seal court records where, "[r]ather than articulate the specific prejudice or harm that will flow from disclosure of specific confidential or proprietary information, plaintiff . . . instead grouped hundreds of pages of exhibits and testimony into general categories and offered broad, vague, and conclusory generalizations with respect to these materials").

As an initial matter, Goodyear's affidavit isn't even sufficient to demonstrate that its purportedly confidential business information is, in fact, confidential. Although the affidavit describes Goodyear's confidentiality procedures in general terms, it provides no information about the specific documents produced in this case. *See* Legge Aff. ¶ 12. And, in fact, the sealed court records appear to contain lots of information that is not actually confidential. For example, many of the sealed documents are quoted in the public record. *See, e.g.*, Pls. Supp. Statement

Facts ¶¶ 28, 40, 48, 64, 73, 93, 208, 209, 230 (Jan. 9, 2017).[2] Others appear to actually *be* public records. *See id.* ¶¶ 1-2 (describing sealed exhibits as court opinions); *id.* ¶ 5 (describing sealed exhibit as district court standing orders).

Trade secrets, of course, must be secret. *See Ruckelshaus*, 467 U.S. at 1002. ("Information that is public knowledge or that is generally known in an industry cannot be a trade secret."). Goodyear has failed to show that the information it seeks to seal is actually secret. *Cf. Deford v. Schmid Products Co.*, 120 F.R.D. 648, 653 (D. Md. 1987) (declining to protect documents where the affidavit in support of sealing made only general assertions that the company's research was confidential, but failed to address any of the specific documents at issue in the case); *Parsons v. Gen. Motors Corp.*, 85 F.R.D. 724, 726 (N.D. Ga. 1980) (affidavits that stated that disclosure was "limited to the technical and engineering staffs" but did not specify "how many persons work on these staffs" or describe "specific controls" on the particular information at issue were insufficient). For that reason alone, the court records may not be sealed.

But even if the information Goodyear seeks to seal truly had been kept confidential, confidentiality—in and of itself—is not sufficient to seal court records. A party seeking to seal court records must show that disclosure will result in a specific harm. *See Ingram v. Pac. Gas & Elec. Co.*, No. 12-CV-02777-JST, 2013 WL 5340697, at *3 (N.D. Cal. Sept. 24, 2013) (explaining that assertion that documents constitute a trade secret just because they are "confidential and proprietary . . . conflates trade secrets with ordinary secrets. Information does not have value to a competitor merely because the competitor does not have access to it.").

Goodyear does not demonstrate specific harm. To the contrary, the vague, conclusory assertions of harm Goodyear offers are precisely the kinds of justifications courts have held cannot possibly constitute compelling reasons to seal court records.

[2] Although the exhibits to this document are sealed, the supplemental statement of facts itself is public.

For example, Goodyear insists that whole categories of information—its testing designs, information about its "adjustment system," any information about quality control, and all information about Goodyear's "internal operational procedures, including related documents and communications"—must be kept secret, simply on the company's bare assertion that the information gives it a competitive advantage. *See* Legge Aff. ¶¶ 18, 26, 28, 30. Goodyear does not explain, even in general terms, how exactly its competitors might benefit from information in these categories—let alone provide any specific showing that the particular information contained in the sealed court records, information that is likely more than a decade old, would provide such a benefit. This "kind of formulaic recitation" that documents must be kept secret to preserve a company's "purported competitive advantage" is a far cry from the showing of "specific facts" demonstrating a specific harm required to seal court records. *PCT Int'l Inc. v. Holland Elecs. LLC*, No. CV-12-01797-PHX-JAT, 2014 WL 4722326, at *3 (D. Ariz. Sept. 23, 2014); *see also Hodges v. Apple Inc.*, No. 13-CV-01128, 2013 WL 6070408, at *2 (N.D. Cal. Nov. 18, 2013) (holding that Apple's unsupported assertion that competitors would gain an "unfair advantage" if they obtained its "proprietary business, engineering, and design information" was insufficient to meet compelling reasons standard because it failed to explain "*how* a competitor would use the information to obtain an unfair advantage" (emphasis added)); *Ingram*, 2013 WL 5340697, at *3 (refusing to seal court records based on a conclusory assertion that information would give competitors "an unfair economic advantage").

For some categories of information, Goodyear offers a generalized rationale to support its broad assertion of competitive harm. For example, Goodyear states that disclosure of its tire specifications would "severely and unfairly reduce Goodyear's competitive advantage" because it would allow the company's competitors to copy the features of its tires. Legge Aff. ¶ 11. This truism—that tire specifications specify how to build a tire—does nothing to demonstrate how Goodyear's competitors would benefit from the specific tire specifications in this case. Not only is the tire at issue here over fifteen years old; it's allegedly defective. Goodyear doesn't explain what possible advantage its competitors could obtain from copying its long-outdated, possibly defective design—and it certainly doesn't provide any factual basis to support its assertions. *Cf.*

Louisiana Pac. Corp. v. James Hardie Bldg. Products, Inc., No. C-12-3433 SC, 2013 WL 3483618, at *2 (N.D. Cal. July 8, 2013) (holding that a failed marketing campaign is not a trade secret, in part because "it is highly unlikely that anyone else will intentionally attempt to imitate" it); *Waterkeeper All., Inc. v. Alan & Kristin Hudson Farm*, 278 F.R.D. 136, 143 (D. Md. 2011) (holding that a poultry company's assertion that its chick assessment form "represent[ed] the culmination of many years of experimentation, . . . and if made public, a competitor could simply adopt the form without having to spend the time and effort necessary to devise and perfect its own form or other data-tracking system" was insufficient to seal court records because it did not identify "exactly what identifiable, significant harm" the company would suffer if others adopted its form).

Similarly, Goodyear makes conclusory assertions that disclosure of its adjustment data and tire testing results would give its competitors "an unfair advantage" because it would allow them to compare their tires with Goodyear's, without performing tests or collecting data of their own. *See* Legge Aff. ¶¶ 19, 25. But again, Goodyear doesn't explain how its competitors would benefit from the specific test results and adjustment data that is sealed in this case. It's hard to imagine what Goodyear's competitors could possibly learn from comparing the performance of their current tires to that of a tire from fifteen years ago.

These "generalized rationales" are not an adequate substitute for a factual demonstration that the specific information in the sealed court records in this case would give Goodyear's competitors a specific advantage. *See Whitecryption Corp. v. Arxan Techs., Inc.*, No. 15-CV-00754-WHO, 2016 WL 7852471, at *2 (N.D. Cal. Mar. 9, 2016). To the contrary, "assertions about possible harm" that are "so general that there is no meaningful way to realistically gauge how"—or even whether—"disclosure would" actually cause "harm" do not satisfy the compelling reasons standard. *Polaris Innovations Ltd. v. Kingston Tech. Co., Inc.*, 2017 WL 2806897, at *6 (C.D. Cal. Mar. 30, 2017).

Courts have repeatedly rejected attempts to seal court records based on such assertions. *See, e.g.*, *Kamakana*, 447 F.3d at 1182 (refusing to seal court records based on "conclusory statements" that the documents "are confidential and that, in general, their production would . . .

hinder [a police department's] future operations with other agencies, endanger informants' lives, and cast [police] officers in a false light"); *Whitecryption*, 2016 WL 7852471, at *2 (refusing to seal court records based on a bare assertion that the records "could lead to competitors gaining an unfair advantage by employing [the information] to interfere with [the company's] existing and prospective business relationships"); *Ritchie v. National Football League*, No. 13-00525, 2014 WL 4956490 at *3 (D. Hawaii Oct. 2, 2014) (rejecting a conclusory assertion that disclosure of the NFL's contract with a security company, which contained information about required background checks for employees, "would raise security concerns," because the assertion was "founded on no facts and requir[ed] several inferential leaps").

The need for a specific demonstration of harm is especially important in this case because most—perhaps all—of the information at issue is over a decade old. "While staleness of the information sought to be protected is not an absolute bar to" sealing, "it is a factor which must be overcome by a specific showing of present harm." *AmerGen Energy*, 115 Fed. Cl. at 141 (holding, in 2014, that "the age of the information" at issue, "nearly all of which came into existence before the year 2000, weighs in favor of requiring disclosure"). Yet Goodyear fails to provide any specific explanation for why the information sealed here would still be valuable to the company's competitors despite its age. Instead, the company offers only broad generalizations about how, theoretically, even old tire information can sometimes be useful. *See, e.g.*, Legge Aff. ¶¶ 23, 29.

These broad generalizations about "years-old information are not sufficient to overcome the strong presumption favoring public access." *AmerGen Energy*, 115 Fed. Cl. at 141; *cf. id.* ("AmerGen claims that 'strategic planning that was relevant in the 1999–2000 era for these assets remains relevant today,' but it fails to demonstrate *how* the particular materials at issue reveal anything about its contemporary operations such that their disclosure would harm its competitive standing." (emphasis in original)); *Deford v. Schmid Prods. Co.*, 120 F.R.D. 648, 653 (D.Md.1987) ("Even assuming that the information Schmid seeks to protect generally falls within the category of confidential commercial information, only a speculative showing of potential harm has been made. The bulk of the documents sought are over ten years old.");

Koval v. Gen. Motors Corp., 62 Ohio Misc. 2d 694, 698 (Com. Pl. 1990) (refusing to protect outdated General Motors information without a specific demonstration that it is "representative of what is currently happening in the automotive industry" because "[a]nything made by General Motors twelve to twenty years ago has either been torn apart and had its secrets discovered at that time (assuming there were secrets back then), when the information might have been fresh, or its competitors determined, at that time, that the information was not worth obtaining").

B. The Public Interest in Access to the Court Records Outweighs Any Interest Goodyear Has in Secrecy.

In evaluating a request to seal court records, courts must "conscientiously balance the competing interests of the public and the party who seeks to keep" records secret. *Ctr. for Auto Safety*, 809 F.3d at 1097. The public's interest in access to court records is particularly strong here, because the documents contain evidence that could demonstrate an ongoing risk to public safety—and the efforts of a large tire corporation to conceal that risk from the public. *Cf. Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983) ("The public has a strong interest in obtaining the information contained in the court record," where the "litigation potentially involves the health of citizens."); *In re Air Crash at Lexington, Ky.*, No. CIV A 506-CV-316-KSF, 2009 WL 1683629, at *8 (E.D. Ky. June 16, 2009) ("[T]he public interest in a plane crash that resulted in the deaths of forty-nine people is quite strong, as is the public interest in air safety."); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litig.*, 101 F.R.D. 34, 38 (C.D. Cal. 1984) ("[T]he interest in access to court proceedings in general may be asserted more forcefully when the litigation involves matters of public concern.").

Publicly available information strongly suggests that the tire at issue here may be dangerous. The plaintiffs claim that the tire has caused several injuries and fatalities.[3] Pls. Supp.

[3] For this reason, Goodyear's conclusory assertion that old tire specifications should be kept secret because they could inform competitors about what "designs are not optimal" is particularly galling. Legge Aff. ¶ 16. The design feature that is allegedly "not optimal" in this

Statement Facts ¶ 24 (Jan. 9, 2017). And their expert stated that the tire's failure rate was one of the highest he'd ever seen. *Id.* ¶ 20. Goodyear admits these tires are still on the road. *See* Spartan Supp. Br., at 5 (June 21, 2017). The public has a strong interest in knowing whether vehicles they might be driving are defective.

Contrary to Goodyear's contention, the public interest in accessing these documents is not diminished, simply because they may be provided to the National Highway Traffic Safety Administration. That agency has repeatedly failed to properly identify and investigate safety defects that turned out to be widespread—and deadly. *See, e.g.*, Brooks Decl. Supp. Mot. Intervene ¶ 10; Staff of H. Comm. on Energy & Commerce, 113th Cong., *Report on the GM Ignition Switch Recall: Review of NHTSA* (Sept. 16, 2014) (finding that "numerous failures prevented" General Motors and the National Highway Traffic Safety Administration from "identifying" and "taking timely action" on a deadly ignition switch defect in GM cars and that the agency "lacked the focus and rigor expected of a federal safety regulator").[4]

These failures make clear that simply providing evidence of a defect to the National Highway Traffic Safety Administration is insufficient. To protect public safety, the evidence must be available directly to the public—and to public interest organizations like the Center for Auto Safety that can oversee the agency's investigation, conduct their own investigations, and inform the public.[5]

Furthermore, the public interest in this case isn't limited to the safety of the particular tire at issue. The public also has a strong interest in knowing whether Goodyear knowingly

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case is that the tire tread separates, causing accidents, injuries, and deaths. The public interest in safety vastly outweighs any interest Goodyear has in requiring other companies to discover this problem for themselves.

[4] This report is available online at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/Hearings/OI/20140915GMFootnotes/NHTSAreportfinal.pdf.

[5] If anything, the possibility of the agency's involvement heightens the public interest in the court records here. One of the primary justifications for the public right of access is "the interest of citizens in keeping a watchful eye on the workings of public agencies." *Kamakana*, 447 F.3d at 1178.

concealed a dangerous defect from the public and the government. The safety of a company's products depends, in part, on how the company handles defects. Brooks Decl. ¶ 11. If a company quickly recognizes and remedies defects, there will be less opportunity for drivers to be injured (or worse). *See id.* If, on the other hand, a company conceals a defect and allows a dangerous product to continue on the road, there are likely to be accidents, injuries, even fatalities that could have been prevented. *See id.* The plaintiffs in this case alleged that Goodyear knew of a deadly defect for years and, instead of fixing the problem, concealed it from the public, the government, and the court. The public has a strong interest in evidence that would allow it to evaluate these allegations.

Whatever minimal interest Goodyear may have in sealing documents about a tire it discontinued fifteen years ago is vastly outweighed by the public's interest in accessing the court records.

C. Goodyear's Request To Seal Entire Documents Is Not Narrowly Tailored.

Any sealing or redaction of court records must be "narrowly tailored." Local Rule 2.19(c)(4); *TVIIM*, WL 3623656, at *3 (denying motion to seal design document because proposed redactions were not "narrowly tailored"). Even if Goodyear had demonstrated a compelling interest in secrecy (which it hasn't), the wholesale sealing of large swaths of documents is not the least restrictive means of achieving that interest. *Cf.* Local Rule 2.19(c)(5) (requiring that before sealing court records, a court must enter a finding that "no less restrictive means exist to achieve the compelling interest"). Only any specific information that constitutes a legitimate trade secret should be redacted. *See Methodist Hospitals, Inc. v. Sullivan*, 91 F.3d 1026, 1032 (7th Cir.1996) ("To say that particular *information* is confidential is not to say that the entire document containing that information is confidential." (emphasis in original)); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003) (requiring redaction rather than the wholesale sealing of court records).

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Parties will always want to "shield" damaging information "contained in judicial records from competitors and the public." *Brown & Williamson*, 710 F.2d at 1180. But this desire "cannot be accommodated by courts without seriously undermining the tradition of an open judicial system." *Id.* "Indeed, common sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public's need to know." *Id.* "In such cases, a court should not seal records unless public access would reveal legitimate trade secrets." *Id.*

Goodyear has not come close to demonstrating that the court records in this case reveal legitimate trade secrets. The court records here should be unsealed.

II. The Blanket Protective Order Should Be Vacated.

Ordinarily, parties are free to share documents they receive in discovery with the public. *See San Jose Mercury News, Inc. v U.S. District Court-Northern District (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). A party that seeks a protective order requiring that discovery be kept secret must demonstrate "good cause." Ariz. R. Civ. P. 26(c)(1); *Foltz*, 331 F.3d at 1130.

To facilitate discovery, courts may enter blanket protective orders, like the one in this case, allowing the parties themselves to mark documents confidential. *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1122 (3d Cir. 1986). But a party's own confidentiality designations do not substitute for a judicial finding of good cause. *See id.* A blanket protective order, therefore, can only protect documents "*initially*." *Id.* (emphasis added).

Once a party challenges the confidentiality of the documents—or, as here, a third-party intervenor seeks access to them—the party seeking to keep them confidential must demonstrate good cause. *See Cipollone*, 785 F.2d at 1122 ("[T]he burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the protective order; any other conclusion would turn Rule 26(c) on its head."); Ariz. R. Civ. P. 26(c)(4)(A) ("The burden of showing good cause for an order remains with the party seeking confidentiality."). Now that the Center—and Spartan—have sought access to the

discovery documents in this case, Goodyear must demonstrate good cause for keeping them secret. It has not done so.[6]

"A party asserting good cause bears the burden, *for each particular document* it seeks to protect, of showing that *specific* prejudice or harm will result if" the document is disclosed. *Foltz*, 331 F.3d at 1130 (emphasis added). Although this burden is lower than that required to seal court records, vague generalizations and conclusory assertions still do not suffice. *See Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) ("Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the [good cause] test."). Even under the good cause standard, a party seeking secrecy must make "a particular and specific demonstration" that harm will result from disclosure. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n.16 (1981); *see Foltz*, 331 F.3d at 1130.

Goodyear has failed to meet this standard. As explained above, Goodyear does not offer *any* showing that *any* particular document it seeks to keep secret will cause the company *any* specific harm. To the contrary, the company relies entirely on conclusory assertions that broad categories of information must remain secret—without any attempt whatsoever to explain how disclosing the specific discovery documents in this case will cause harm. Courts have repeatedly held that, even under the good cause standard, such broad, conclusory assertions of harm are insufficient. *See, e.g., AmerGen Energy*, 115 Fed. Cl. at 143 (holding that company seeking to keep tax information secret did not show good cause because it "made no attempt to *specifically* identify how disclosure of *particular* tax information will harm its competitive interests" (emphasis in original)); *Ohio Valley Environmental Coalition v. Elk Run Coal Co., Inc.*, 291 F.R.D. 114, 121 (S.D.W. Va. 2013) ("A factually unsupported contention that research could

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[6] Although the burden always remains on the party seeking confidentiality—here, Goodyear—Arizona Rule 26 also requires that an intervenor challenging a protective order show why it should be vacated. As explained in this motion, the protective order here should be vacated because there is no good cause to keep the discovery documents secret, and any minimal interest Goodyear has in secrecy is vastly outweighed by the public's interest in the documents. *Cf. San Jose Mercury News*, 187 F.3d at 1103 ("[B]lanket orders are inherently subject to challenge and modification, as the party resisting disclosure generally has not made a particularized showing of good cause with respect to any individual document.").

potentially be used by a competitor, and the competitor would benefit by not having to incur the expense of conducting the research, is insufficient."); *Koval*, 62 Ohio Misc. 2d at 698 ("General Motors has not given specific examples of competitive harm. It simply argues that the information was costly to develop and that if the materials were to fall into the hands of its competitors, it might or could result in its competitors obtaining information concerning how they might improve the quality and performance of their products. Such vague conclusions regarding the value of these documents and their possible use by General Motors' competitors are insufficient grounds for a protective order, and fall short of the good cause requirement.").

In *Dunbar v. Google*, for example, Google sought to keep documents that "describe[] how Google scans for, uses, and stores data in connection with its Gmail system" secret. *Dunbar v. Google, Inc.*, No. 5:12-CV-003305-LHK, 2012 WL 6202719, at *3 (N.D. Cal. Dec. 12, 2012).[7] Google stated that these documents contained confidential "proprietary procedures that Google designed and implemented at substantial cost for its own business purposes." *Id.* The company asserted that disclosure of this information "would allow Google's competitors to examine the mechanisms that Google designed for its own proprietary use, thereby providing [them] with an unfair advantage in designing their own systems," and that "disclosure of the information could give hackers and spammers insight into how the Gmail system works." *Id.*

The court held that these conclusory assertions were insufficient to meet the good cause standard. *Dunbar*, 2012 WL 6202719, at *3. Google, the court explained, had "fail[ed] to explain *how* disclosure" of the *particular* information it sought to keep secret would give its "competitors an unfair advantage in designing their own system" or "hackers and spammers sufficient new insight into how the Google system works such that disclosure would create a

[7] Although this case was about sealing court records, it applied the good cause standard, because the records to be sealed were discovery documents attached to a non-dispositive motion, which, at the time the decision was issued, were subject only to a good cause standard. *See Dunbar*, 2012 WL 6202719, at *2. The Ninth Circuit has since clarified that compelling reasons must be shown to seal any court record—even if it is attached to a non-dispositive motion—unless it was originally a document produced in discovery *and* it is attached to a motion that is tangential (or entirely unrelated) to the merits of the case. *Ctr. for Auto Safety*, 809 F.3d at 1101.

security threat." *Id.* at *7 (emphasis added). And, therefore, the court held, Google had not satisfied the requirement that it make a "particularized showing with respect to each of the" documents it sought to keep secret that disclosure would cause a specific harm. *See id.* at *3.

Here, Goodyear not only fails to demonstrate how the specific documents it seeks to protect will benefit its competitors; it fails to even *identify* the documents it wants to keep secret. Goodyear's "[s]peculative allegations of injury from the disclosure of years-old information are not sufficient to warrant issuance of a protective order." *Minter v. Wells Fargo Bank, N.A.*, No. CIV WMN-07-3442, 2010 WL 5418910, at *12 (D. Md. Dec. 23, 2010).

This conclusion is further strengthened because the information Goodyear seeks to keep secret may contain evidence of a risk to public safety. *See* Ariz. R. Civ. P. 26(c)(4)(B) (requiring court issuing a protective order to make findings concerning "any possible risk to the public health, safety, or financial welfare to which such information or materials may relate or reveal"); *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424 (9th Cir. 2011) (courts deciding whether to maintain a protective order must "balance" private interest in secrecy with public interest in documents).[8]

Particularly given the public interest in this case, Goodyear's conclusory assertions of competitive harm—bereft of any explanation of how the specific documents it seeks to keep secret would cause such harm—are insufficient under any standard. Therefore, the blanket protective order should be vacated.

CONCLUSION

Because Goodyear has failed to demonstrate *any* reason to seal the court records in this case—let alone compelling reasons that outweigh the public's strong interest in access—this Court should order all court records in the case to be unsealed. And because Goodyear has failed

[8] Furthermore, any protective order "restricting release of information or materials to nonparties or intervenors must use the least restrictive means necessary to maintain any needed confidentiality." Ariz. R. Civ. P. 26(c)(4)(C). Blanket confidentiality is, of course, not the least restrictive means. Even if Goodyear had demonstrated some interest in confidentiality, that interest should be served by redacting the documents, not preventing their release entirely. *See In re Roman Catholic Archbishop*, 661 F.3d at 425.

to demonstrate good cause to keep any discovery documents secret, this Court should vacate the blanket protective order it issued on November 24, 2015.

RESPECTFULLY SUBMITTED this 16th day of July, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, 2017, I electronically transmitted the foregoing document to the Clerk of the Maricopa County Superior Court using Electronic Case Filing through AZTurboCourt for filing and electronic service to the assigned judge in this case, The Honorable John Hannah.

I further certify that a true and complete copy of the foregoing document was forwarded on the 16th day of August, 2017 via e-mail to:

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