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

31 Defendants.

32 **Case No.: CV 2013-052753**

33 **MOTION TO INTERVENE BY**
34 **THE CENTER FOR AUTO**
35 **SAFETY**

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

1 **INTRODUCTION**

2 Pursuant to Rule 24(b) of the Arizona Rules of Civil Procedure, the Center for Auto
3 Safety moves for permissive intervention for the limited purpose of seeking public access to the
4 discovery documents and sealed court records in this case.¹ It is difficult to imagine a situation
5 in which the public interest in challenging secrecy would be stronger than it is here, where the
6 plaintiffs allege that the vehicles people are driving are unsafe.

7 The Center for Auto Safety has spent decades fighting for automotive safety. The
8 Center—and the public—have a strong interest in knowing whether there are RVs on the road
9 driving on dangerously defective tires—and whether a major tire company knowingly
10 concealed that defect from the public. The documents in this case are likely to shed light on
11 these questions. The Center seeks access to them to evaluate any safety risk, and, if necessary,
12 inform the government, monitor the resulting government investigation, and educate the public.

13 No existing party to this litigation represents the public’s interest in accessing these
14 documents—documents that could prove vital to public safety. The Center for Auto Safety
15 should be permitted to intervene to represent that interest.

16 **INTERESTS OF MOVANT**

17 The Center for Auto Safety is a national nonprofit organization devoted to vehicle and
18 highway safety. It has a long history of working to get unsafe vehicles—and vehicle
19 equipment—off the road. Brooks. Decl. ¶ 4.² In fact, the Center played a substantial role in
20 bringing about four of the largest automobile-related recalls in American history—including, of
21 particular relevance here, the recall of millions of Firestone tires because of tread separation. *Id.*
22 ¶¶ 4, 6.

23 The Center also serves as a national clearinghouse for the public and the media for
24 information on automotive safety. Brooks Decl. ¶ 3. It has repeatedly petitioned the National
25

26 ¹ The Center’s proposed pleading in intervention—its motion to unseal court records and vacate
27 the protective order—is attached as Exhibit B to this motion.

28 ² The Declaration of Michael Brooks in support of the Center’s motion to intervene is attached
as Exhibit A.

1 Highway Traffic Safety Administration to investigate defective vehicles, car parts, and
2 equipment. *Id.* ¶ 2, 5. And its staff members regularly testify before Congress. *Id.* ¶ 2.

3 The Center is seeking access to the documents in this case because it believes they will
4 shed light on whether there is a dangerous defect in Goodyear’s G159 tires, Brooks Decl. ¶ 9—
5 tires that Goodyear has admitted remain on the road today, *see* Spartan Supp. Br., at 5 (June 21,
6 2017). The Center believes there is a strong public interest in knowing whether these tires pose
7 a risk to public safety. Brooks Decl. ¶¶ 10-12. If the documents contain evidence of a serious
8 safety defect, the Center will work to educate the public about the risk of continuing to use
9 these tires. *Id.* ¶ 9. It will rely on the documents as evidence to support a petition to the
10 National Highway Traffic Safety Administration, requesting that the agency investigate the
11 tires. *Id.* And it will use the documents to oversee the agency’s investigation. *Id.* ¶ 10.

12 In addition to any risk posed by the tires themselves, the Center also believes that there
13 is a strong public interest in knowing whether Goodyear—a major tire company—knowingly
14 concealed a dangerous defect from the public and the government. Brooks Decl. ¶ 11. In the
15 Center’s view, one of the main factors in determining the safety of an automotive company’s
16 products is how the company handles defects. *Id.* Unsurprisingly, the public is less likely to be
17 injured by products made by a company that quickly recognizes and remedies defects than one
18 that allows defective products to continue on the road. *Id.* The documents in this case are likely
19 to shed light not only on whether the G159 tire is defective, but also how Goodyear handled the
20 possibility of that defect. *Id.*

21 ARGUMENT

22 It is well-established that nonparties may seek permissive intervention to challenge
23 orders requiring that court records or discovery documents be kept secret. *See Zenith Elecs.*
24 *Corp. v. Ballinger*, 220 Ariz. 257, 262 (Ct. App. 2009) (citing cases).³

25 In general, under Arizona law, a prospective intervenor must show (1) that it raises “a
26 common question of law or fact” with “the main action” and (2) that its motion to intervene is
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28 ³ Unless otherwise specified, all internal quotation marks, citations, and alterations are omitted.

1 timely. *See* Ariz. R. Civ. P. 24(b); *Zenith*, 220 Ariz. at 262-63. An intervenor challenging a
2 secrecy order *always* raises a question of law in common with the main action—the propriety
3 of that order. *See Zenith*, 220 Ariz. at 264; *see also Pansy v. Borough of Stroudsburg*, 23 F.3d
4 772, 778 (3d Cir. 1994) (“By virtue of the fact that the Newspapers challenge the validity of the
5 Order of Confidentiality entered in the main action, they meet the requirement . . . that their
6 claim must have a question of law or fact in common with the main action.”). Thus, the only
7 question in evaluating a motion to intervene for the purpose of challenging secrecy is whether it
8 is timely.

9 The Center’s motion here is timely. Courts routinely permit intervenors to challenge
10 secrecy orders, even long after a case is closed. *See, e.g., Blum v. Merrill Lynch Pierce Fenner*
11 *& Smith Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013) (“[M]otions to intervene for the purpose of
12 seeking modification of a protective order in long-concluded litigation are not untimely.”);
13 *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 785 (1st Cir. 1988) (“Numerous courts
14 have allowed third parties to intervene” for the purpose of challenging secrecy orders even after
15 “delays measured in years . . .”).

16 As one court has explained, “the public and third parties may often have no way of
17 knowing at the time a confidentiality order is granted what relevance the settling case has to
18 their interests”—or even that the case exists. *See Pansy*, 23 F.3d at 780. “Therefore, to preclude
19 third parties from challenging a confidentiality order once a case has been settled would often
20 make it impossible for third parties to have their day in court to contest the scope or need for
21 confidentiality.” *Id.*

22 Here, the Center moved to intervene as soon as it possibly could: within weeks of
23 learning of the case—and within days of learning that the plaintiffs had chosen not to challenge
24 the secrecy orders themselves for fear that Goodyear would sue them for doing so. *See Brooks*
25 *Decl.* ¶ 7; Pls.’ Notice re Omitted Resp. to Spartan Br. (June 28, 2017). Courts have repeatedly
26 permitted intervention under similar circumstances. *See, e.g., Zenith*, 220 Ariz. at 264; *Pub.*
27 *Citizen*, 858 F.2d at 785 (1st Cir. 1988) (collecting cases).

1 In *Zenith*, the only appellate decision in this state on this issue, the Arizona Court of
2 Appeals permitted intervention in circumstances nearly identical to the ones here. *Zenith* was a
3 wrongful death case, in which the plaintiffs alleged that a line of televisions had a dangerous
4 defect causing them to catch fire. *Zenith*, 220 Ariz. at 258. After the case settled, Public
5 Citizen, a non-profit organization, sought to intervene for the sole purpose of challenging a
6 protective order and seeking access to the discovery documents in the case. *Id.* Although Public
7 Citizen didn't move to intervene until over a month after the plaintiffs' claims had been
8 dismissed, the court held that its motion was timely. *Id.* at 263.

9 In reaching this conclusion, the court emphasized that “the mere fact that Public
10 Citizen’s motion was filed post-judgment is not determinative.” *Zenith*, 220 Ariz. at 263.
11 Instead, the court focused on prejudice. Public Citizen, the court explained, sought to intervene
12 for the “limited purpose” of challenging the protective order—“not to disrupt or interfere with
13 the settlement agreement.” *Id.* Therefore, prejudice to the existing parties’ rights “was
14 unlikely.” *Id.*

15 As several courts have explained, intervention solely to challenge a secrecy order does
16 not affect the underlying case at all; and because the case was closed, there were no
17 proceedings on the merits that could be delayed by having to adjudicate secrecy. *See, e.g.,*
18 *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990) (“[The]
19 timeliness requirement is to prevent prejudice in the adjudication of the rights of the existing
20 parties, a concern not present when the existing parties have settled their dispute and
21 intervention is for a collateral purpose.”); *Public Citizen*, 858 F.2d at 786 (“Because Public
22 Citizen sought to litigate only the issue of the protective order, and not to reopen the merits, we
23 find that its delayed intervention caused little prejudice to the existing parties in this case.”).

24 On the other hand, the court found that denying intervention could harm the interests of
25 Public Citizen—and the public. Public Citizen sought to intervene to represent “the public’s
26 interest in gaining access to the discovery materials . . . in order to understand the risks to the
27 public health and welfare associated with” the “possibly defective” televisions. *Zenith*, 220
28 Ariz. at 263. If Public Citizen were not permitted to intervene, the court observed, this interest

1 would go unrepresented, for the existing parties did not represent the public’s interest—they
2 represented their own interests. *See id.*

3 Because denying intervention would prejudice Public Citizen—and the public—but
4 granting intervention was unlikely to prejudice anyone, the court held that Public Citizen’s
5 motion to intervene should be granted. *See Zenith*, 220 Ariz. at 263.

6 The same analysis applies here. Here, as in *Zenith*, “the mere fact” that the Center’s
7 motion “was filed post-judgment” is not determinative.⁴ Like Public Citizen, the Center for
8 Auto Safety seeks to intervene for the sole purpose of challenging secrecy orders—not to re-
9 litigate the underlying dispute. The existing parties, therefore, will suffer no prejudice.

10 The Center, on the other hand, and the public will be prejudiced if the motion to
11 intervene is denied. Much like Public Citizen in *Zenith*, the Center here seeks public access to
12 the documents in this case to understand the risks to public safety of Goodyear’s tires—and the
13 way in which Goodyear handled those risks. None of the existing parties represent that interest.
14 In fact, throughout the case, the parties repeatedly agreed to secrecy. *See, e.g.*, Order (Jan.9,
15 2017) (granting stipulated motion to file exhibits to plaintiffs’ statement of facts under seal);
16 Defs.’ Opp’n Spartan Br., at 4 (June 28, 2017) (noting that the plaintiffs never objected to
17 Goodyear’s confidentiality designations).

18 To this day, Goodyear continues to fight for secrecy. *See* Defs.’ Opp’n Spartan Br., at 2
19 (June 28, 2017). And it has threatened the plaintiffs with litigation if they challenge the secrecy
20 orders in this case. *See* Pls.’ Notice re Omitted Resp. to Spartan Supp. Br. (June 28, 2017).
21 Although another third party, Spartan, has challenged the secrecy orders here, Spartan’s
22 primary interest is in accessing the documents for its own use—not for the public. *See* Spartan
23 Mot. Intervene, at 4 (Feb. 7, 2017) (explaining that Spartan seeks documents for its use in other
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25
26

27 ⁴ Like Public Citizen in *Zenith*, the Center for Auto Safety moves to intervene less than two
28 months after the plaintiffs’ claims against Goodyear were dismissed. *See* Order of Dismissal
(May 10, 2017).

1 litigation).⁵ As in *Zenith*, if the Center is prevented from intervening, there will be nobody to
2 represent the public interest in accessing these documents.

3 And, as in *Zenith*, the public interest here is extraordinarily strong. The documents the
4 Center seeks will likely shed light on whether there is a dangerous defect in tires that are still
5 on the road—and Goodyear’s alleged efforts to conceal that defect from the public. The public
6 has a strong interest in access to documents that could demonstrate or refute a possible risk to
7 public safety from the tires themselves, as well as, more generally, from the way in which
8 Goodyear handles defects. This interest strongly “militate[s] in favor of intervention.” *See*
9 *Zenith*, 220 Ariz. at 263.

10 This case is, essentially, no different from *Zenith*. And under *Zenith*, the Center for Auto
11 Safety should be permitted to intervene.

12 CONCLUSION

13 The Center and the public have a strong interest in accessing the discovery documents
14 and sealed court records in this case. The Center’s motion to intervene is timely, and the Center
15 raises a common question with the main action—whether the secrecy orders entered in this case
16 should remain in place. The Center’s motion, therefore, should be granted.

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22 ⁵ Although Spartan recently filed supplemental briefing arguing that the blanket protective
23 order in this case should be vacated, it appears the company did so only because this Court
24 requested briefing on the issue—not because the company has changed course and now seeks
25 to represent the public interest in access. When it intervened, Spartan requested access to the
26 documents in the case, *subject to the blanket protective order*, so it could use those documents
27 in collateral litigation. *See* Spartan Pleading in Intervention, at 4 (Mar. 31, 2017). As its
28 supplemental briefing makes clear, Spartan (understandably) continues to seek access to the
documents for its own interest—not the public’s. *See* Spartan Supp. Br. (June 21, 2017)
(explaining that Spartan needs the documents to supplement the record in other litigation
against Goodyear, to evaluate the evidence “for its own business reasons,” and to “fulfill any
public safety reporting obligation it may have”).

1 RESPECTFULLY SUBMITTED this 7th day of July, 2017.

2
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 7th day of July, 2017, I electronically transmitted the
3 foregoing document to the Clerk of the Maricopa County Superior Court using Electronic Case
4 Filing through AZTurboCourt for filing and electronic service to the assigned judge in this
5 case, The Honorable John Hannah.

6 I further certify that a true and complete paper copy of the foregoing document was
7 forwarded on the 7th day of July, 2017 via e-mail/first class US Mail to:

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