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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 & ANDRESS, a legal professional association; GRAEME HANCOCK; BASIL MUSNUFF; DEBORAH OKEY,

Defendants.

CASE NO. CV2013-052753

DEFENDANT THE GOODYEAR TIRE & RUBBER COMPANY'S OPPOSITION TO THE CENTER FOR AUTO SAFETY'S MOTION TO UNSEAL COURT RECORDS AND VACATE PROTECTIVE ORDER

[Assigned to the Honorable John R. Hannah, Jr.]

[ORAL ARGUMENT REQUESTED]

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The public right to inspect and copy court records is not unfettered. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Nevertheless, the Center for Auto Safety ("CAS") asks the Court to "unseal all sealed court records in this case and to vacate" the protective order entered on November 24, 2015, as modified on February 24, 2016 ("Protective Order"). The breadth of that request is startling. CAS's motion affects thousands of pages of trade secrets and other Goodyear documents ordered sealed and protected by other courts. Many of those documents bear no rational relation to the so-called "public interest" concerns expressed by CAS. The documents should thus remain sealed and the Protective Order left in place.

Goodyear previously opposed such relief when sought by Spartan Chassis, Inc. The evidence and argument submitted in opposition to Spartan's motion was sufficient to meet Goodyear's burden, as it categorically described the documents at issue and the harm that would result if they were publicly disclosed, with specific examples. Nevertheless, Goodyear since has conducted a document-by-document review of each of the documents at issue ("Documents"), broken down into three groups: (1) documents produced during discovery under the Protective Order ("Discovery Documents"); (2) documents filed under seal in conjunction with plaintiffs' and Goodyear's summary judgment motions ("Summary Judgment Documents"); and (3) other sealed documents ("Miscellaneous Sealed Documents"). Goodyear's document-by-document analysis is set forth in Exhibits A-C hereto (the "Charts") and, by reference, in the accompanying declaration of Kevin C. Legge.

It should not be overlooked that Goodyear (as reflected in the Charts) is releasing its assertion of confidentiality over Documents that do not contain information requiring protection.[1] For the Documents that remain at issue, Goodyear explains the types of information at issue; explains how and why disclosure of such information would

[1] Those documents can be identified in the Charts by blue highlighting.

adversely affect its interests; and identifies the specific documents containing each such type of information. The detail Goodyear offers is extensive. It moots the bulk of CAS's arguments, which are premised on the notion that Goodyear has not made a particularized showing of the need for confidentiality and the harm that would result from public disclosure. It is also sufficient to meet both the "good cause" and "compelling interest" standards for keeping documents under seal and leaving in place the Protective Order. Accordingly, the Court should deny CAS's motion.[2]

ARGUMENT

I. CAS'S CLAIMED INTERESTS AND NEED FOR DOCUMENTS ARE SUSPECT.

A. CAS's claims of importance and need must be objectively evaluated.

CAS would have the Court believe it is an objective, "nonprofit organization devoted to vehicle and highway safety" that simply "serves as a national clearinghouse for the public and the media for information on automotive safety." (CAS Br. at 1.) But it is a private advocacy group "whose work includes ***assisting products liability attorneys*** in lawsuits related to automotive safety." *Grace v. Ctr. for Auto Safety*, 155 F.R.D. 591, 593 (E.D. Mich. 1994) (emphasis added), *rev'd on other grounds* 72 F.3d 1236 (6th Cir. 1996). It is undisputed that "the Center of Auto Safety has professional relationships with products liability attorneys nationwide," and that "part of the Center for Auto Safety's budget comes from fees generated by the Center's research for product liability lawyers." *Id.* at 599. And, as demonstrated by former National Highway Traffic Safety Administration ("NHTSA") Associate Director for Safety Assurance William Boehly, CAS's tactics actually hinder efforts to investigate safety issues and initiate product recalls. (Boehly Decl., ¶¶ 9-12.) Those efforts have, in fact, "***negatively affected*** motor vehicle safety." (*Id.* at ¶ 11.)

[2] Goodyear will separately respond to plaintiffs' attempt to add post-dismissal evidence to the record.

CAS argues its interest here aligns with the "public interest in access to court records" because "the plaintiffs' allegations suggest that the vehicles people drive are unsafe." (CAS Br. at 1.) Courts are neutral arbiters, but CAS in effect demands that the Court accept plaintiffs' allegations as gospel and—in a case offering no finding of a product defect or manufacturer liability—ignore Goodyear's legitimate interest in and established need for the ongoing confidentiality of its Documents.

Given CAS's relationship with the plaintiffs' bar (and the fees generated from that relationship), its interests in this matter can hardly be deemed neutral or objective, and they thus are entitled to little or no weight. As the Ninth Circuit has explained "the public's interest in disclosure" is outweighed by the need for ongoing confidentiality when judicial release of "such court files might . . . become a vehicle for improper purposes, such as the use of records to . . . release trade secrets." *Velasco v. Chrysler Grp. LLC*, No. 13-8080, 2017 WL 445241, at *2 (C.D. Cal. Jan. 30, 2017) (refusing to unseal documents for CAS publication).

Moreover, CAS has articulated ***no need*** to see many of the Documents. Ariz. R. Civ. P. 26(c)(4)(B)(ii). By way of non-exhaustive illustration:

- the terms and value of the settlement between plaintiffs and Goodyear, or between plaintiffs and the other defendants (*e.g.*, Ex. 3, "PMEnfSetl");
- Board Minutes unrelated to specific litigation issues, design specifications, testing protocols, bogies, or test results (Ex. 1, Bates Nos. 006438-006451);
- Goodyear's insurance policies (Ex. 1, Bates Nos. 006530-006594; Ex. 1, Bates Nos. 006598-006614); and
- privileged correspondence concerning tires other than the G159 (*e.g.*, Ex. 1, Bates No. 012671-012673).

None of those Documents, or others like them, could possibly further a petition to the NHTSA, as they do not reveal facts bearing on whether it is necessary for the NHTSA to issue an order related to proceedings upon the G159 tire. *See* 49 C.F.R. § 552.4(c).

Finally, CAS's claimed need to provide Goodyear's documents to NHTSA is illusory. Plaintiffs' counsel—upon consideration of the entire record—litigated for the right to select and transmit documents to the NHTSA. He was granted that right, and he sent the NHTSA a detailed letter including 71 documents for its consideration. CAS's request to fully vacate the Protective Order so that it may take the exact same action is unnecessary and a step too far.

B. There is no evidence of a public safety risk justifying termination of Goodyear's rights.

This Court recognized in 2015 that Goodyear had disclosed 41 lawsuits and over 600 claims for personal injury and property damage from G159 tire failures. (Protective Order at 2.) But neither those lawsuits nor those claims prove a public safety risk sufficient to trammel protective and sealing orders, and neither warrants publication of Goodyear's trade secrets on plaintiffs' bar websites. None of the lawsuits for personal injury or property damage from G159 tires have resulted in a finding of a public safety risk. Indeed, in the only lawsuit resolved at trial (*i.e.*, *Schalmo*), the court expressly found no public safety risk justifying unsealing trial transcripts and exhibits, or eliminating protective order restrictions.

CAS has not shown a public safety risk related to G159 tires, and it cannot do so based solely on plaintiffs' allegations and arguments, which were never tested at trial. No finding of a public safety risk has even been made, in this or any other court. NHTSA already has the documents it needs to make that determination, and further public disclosure would not further its efforts. Thus, the evidence does not support disregard of Goodyear's rights, and CAS should not be permitted to put Goodyear's trade secrets and confidential, proprietary information on its website (or in any other public fora).

II. THE DOCUMENTS SHOULD REMAIN SEALED AND PROTECTED.

A. The "compelling reasons" standard is inapplicable; only a showing of "good cause" is required here.

CAS asserts that Goodyear must show "compelling reasons" to "overcome the strong presumption that court records are open to the public . . . ." (CAS Br. at 1 (citations and internal quotation marks omitted).) This sweeping assertion is incorrect. There is no public right of access to the Discovery Documents. *See Lewis R. Pyle Memorial Hosp. v. Super. Ct.*, 149 Ariz. 193, 197 (1986); *see also Bond v. Uteras*, 585 F.3d 1061, 1073 (7th Cir. 2009).[3]

The "compelling reasons" standard would ordinarily apply to documents filed in conjunction with dispositive motions. *See Kamakana*, 447 F.3d at 1176. But where, as here, sealed Documents were attached to dispositive motions that were never decided, that standard is inapplicable. *Bennett v. Smith Bundy Berman Britton, PS*, 291 P.3d 886, 887-88 (Wash. 2013) (*en banc*). CAS's cited authorities are inapposite because they concern documents that were part of the court's decision-making process, *i.e.*, documents filed in conjunction with motions that were actually decided. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 594 (1978); *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1176.[4]

B. Good cause exists to maintain the Documents' confidentiality because public disclosure would harm Goodyear's competitive standing.

The United States Supreme Court has recognized that the "common law right of inspection" is subordinate to the court's duty "to insure that its records" are not used as "sources of business information that might harm a litigant's competitive standing."

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[3] CAS and Goodyear agree that the "good cause" standard applies to both the Discovery Documents, which were produced between the Parties, outside of the public record, and the continued application of the Protective Order. (*See* CAS's Br. at 11.)

[4] In any event, for the reasons set forth in the Legge Declaration, the Charts, and this brief, Goodyear also meets the "compelling reasons" standard.

Nixon, 435 U.S. at 597. This Court should reach the same conclusion. Insofar as the Documents contain trade secrets, or proprietary and confidential information, any interest CAS might have in obtaining those Documents is outweighed by Goodyear's interest in avoiding the harm that would result from public disclosure. The nature and scope of that harm is set forth at length in the Legge Declaration. (Legge Decl., ¶¶ 43-52.)

Of course, the potential release of "trade secrets" and other proprietary business information constitutes "good cause" and a "compelling reason" for keeping the Protective Order in place. *See* ARIZ. R. CIV. P. 26(c)(1)(G) (court assessing need for confidentiality must consider whether documents contain a "trade secret or other confidential research, development, or commercial information"); *Cornet Stores v. Super. Ct. in & for Yavapai Cnty.*, 108 Ariz. 84, 88 (1972) (party forced to disclose trade secrets could maintain confidentiality by moving for and relying upon a protective order); *see also In re Elec. Arts, Inc.*, 298 F. App'x 568, 570 (9th Cir. 2008) (potential disclosure of trade secrets constitutes "compelling reason" for sealing evidence in support of dispositive motion); *Stoba v. Saveology.com, LLC*, No. 13-2925, 2016 WL 1257501 at *2-3 (S.D. Cal. Mar. 31, 2016) (sealing dispositive motion documents containing "highly sensitive and confidential business information" and documents filed in connection with a class certification motion under "good cause" standard).

Courts regularly recognize that information created and held as confidential by tire manufacturers—*e.g.*, manufacturing specifications, mold drawings, plant specifications, testing data, and aggregate adjustment data—are trade secrets deserving of protection. *See Uniroyal Goodrich Tire Co. v. Hudson*, 873 F. Supp. 1037, 1044-45 (E.D. Mich. 1994); *In re Continental Gen. Tire, Inc.*, 979 S.W.2d 609 (Tex. 1998). The General Counsel of the NHTSA has similarly concluded that adjustment data is entitled to confidential treatment. *See* 72 Fed. Reg. 59454, *available at* https://www.federalregister.gov/d/E7-20368/page-59454. Those findings make good sense. The tire industry is "highly competitive" and "technology driven." *Uniroyal*, 873 F. Supp. at 1044-45. (*See also* Legge Decl., ¶ 9.) Tire

design and adjustment data are useful years after tires are discontinued, as the design process is "iterative" and "evolutionary." (*Id.* at ¶ 11.) *See also Uniroyal*, 873 F. Supp. at 1046 (indicating that such information may be valuable in the global marketplace "even after such information is outdated in the United States"). "[I]f such information were released to the public, it would shed light on (if not disclose outright) sensitive and proprietary business information, including (but by no means limited to) the tolerances upon which Goodyear focuses, the method by which Goodyear places materials and components within tires to distribute stress and improve performance, specifications for 'green' tires (*i.e.*, the name given to tires that have not yet been "cured," or vulcanized), and more." (Legge Decl., ¶ 12.)

Courts also routinely protect sensitive business information when disclosure would harm the producing party's competitive standing. *Aviva USA Corp. v. Vazirani*, 902 F. Supp. 2d 1246, 1274 (D. Ariz. 2012), *aff'd* 632 F. App'x 885 (9th Cir. 2015); *see also Philips v. Ford Motor Co*., No. 14-2989, 2016 WL 7374214, at *3 (N.D. Cal. Dec. 20, 2016) (recognizing that (1) details of product testing are valuable, as manufacturer could suffer competitive harm if they were publicly disclosed; and (2) the need to avoid competitive disadvantage in contract negotiations and undercutting by competitors is a compelling reason that justifies sealing specific pricing and cost information); *U.S. v. Celgene Corp.*, No. 10-3165, 2016 WL 6609375, at *4 (C.D. Cal. Aug. 23, 2016) (finding defendant has shown good cause for keeping the information confidential where "disclosure of [d]efendant's analyses of prescription data, business and marketing plans, and business relationships with Envision would, at this juncture, enable [d]efendant's competitors to profit from Defendant's private commercial information and possibly put Defendant at a competitive disadvantage"). That is so because it is well-recognized that courts must help parties protect "sources of business information that might harm a litigant's competitive standing," *Nixon*, 435 U.S. at 597, such as any "'formula, pattern, device or compilation of information which is used in one's business, and which gives

him an opportunity to obtain an advantage over competitors who do not know or use it,'" *DRK Photo v. McGraw-Hill Cos.*, No. 12-8093, 2014 WL 2584816, at *2 (D. Ariz. June 10, 2014) (quoting *Elec. Arts*, 298 F. App'x at 569).

Goodyear has produced unrefuted proof of such harm and has linked it to each of the confidential Documents. In his Declaration, Legge explains the manner in which Goodyear keeps categories of technical information confidential and the reasons for doing so (*i.e.*, because of the harm that would result from public disclosure). And in the Charts, he specifically identifies the Documents falling into each of those categories.

Several of the Documents CAS seeks to unseal are paradigmatic trade secrets: *i.e.*, proprietary and confidential design and development documents, such as Global Master Specifications and prior testimony regarding G159 tires (taken pursuant to other courts' protective orders) disclosing Goodyear's design processes and specification developments, quality processes, testing protocols, bogies, and data, and adjustment and warranty return data for all adjustment codes. These and other confidential documents are the result of Goodyear's efforts over several decades, and they reflect tremendous investments of time and money devoted to maintaining Goodyear's competitive advantages over other tire manufacturers. Because of those advantages, Goodyear can "control costs, improve efficiency, and improve product quality." (Legge Decl., ¶ 21.) These documents constitute key "sources of business information" that deserve protection, *Nixon*, 435 U.S. at 597, because they give Goodyear an opportunity to "obtain an advantage over competitors who do not know or use [such information]," *DRK Photo v. McGraw-Hill Cos.*, No. 12-8093, 2014 WL 2584816, at *2 (D. Ariz. June 10, 2014) (quoting *Elec. Arts*, 298 F. App'x at 569). Indeed, Legge specifically identifies some of the Documents as being "among Goodyear's most valuable assets." (Legge Decl., ¶ 19).

In addition to design and development documents, Goodyear's test procedures, bogies, and results are just as deserving of protection. Documents revealing such information reveal proprietary methods for testing tire components and completed tires,

and for troubleshooting problems that arise. Legge further explains that Goodyear's testing data constitutes a "significant part of [Goodyear's] assets" because it results from Goodyear's significant and repeated expenditures of time and expense developing testing methods. (*Id.* at ¶ 54). Disclosure "would allow competitors to test their tires in the same manner, raise the quality of their tires to Goodyear's standards, and, generally, improve the quality of their product line relative to Goodyear—all without the attendant costs of research and development, testing, and product evolution." (*Id.* at ¶ 55). Giving a competitor access to this data would offer significant unfair advantages and market share. (*Id.*) *See also Philips*, 2016 WL 7374214, at *3 (recognizing a compelling reason to seal documents related to vehicle manufacturer's "research, development, testing, evaluation, investigations, and root cause analyses," to prevent its competitors from using "this information to free ride off of [its] advanced diagnostic systems and research methods").

The same is true of adjustment data. Legge has explained that adjustment data "offers valuable insight into consumer feedback, whether positive or negative, and it assists Goodyear's ongoing effort to offer consumers what they want." (*Id.* at ¶ 31.) Accordingly, testing and adjustment data are used by Goodyear to develop new products, and public disclosure would unfairly give its competitors a significant competitive advantage. (*Id.* at ¶¶ 32-35.) *See In re Cooper Tire & Rubber Co.*, 313 S.W.3d 910, 917 (Tex. App. 2010) (concluding that adjustment data is highly deserving of protection from public disclosure because it constitutes trade secret information).[5]

Further, several of Goodyear's internal policies and procedures, including those related to quality assurance systems and analyses of legal claims, are confidential. Legge explains that these policies and procedures "have been developed at great expense, are not published, and are maintained as confidential under Goodyear's security systems. . . .

[5] It is also doubtful that adjustment data, which can be used "as a 'marketing tool' to determine customer satisfaction," has any true bearing on public safety concerns. *See Gen. Tire, Inc. v. Kepple*, 970 S.W.2d 520, 528 (Tex. 1998).

They allow Goodyear to advance the development of its products and to produce higher-quality tires and achieve greater efficiency than its competitors." (*Id.* at ¶¶ 27, 43.)

When read together, the Legge Declaration and the Charts are sufficient proof of the need to maintain confidentiality of the Documents discussed therein, whether produced under the Protective Order or filed under seal. Indeed, if Goodyear were required to be any more specific, it would face a "Hobson's choice" of disclosing the very information it seeks to protect, or failing to protect that information. *See Standard & Poor's Corp. Inc. v. Commodity Exch., Inc.*, 541 F. Supp. 1273, 1278 (S.D.N.Y. 1982) (trade secret owner should not be forced to make such a choice).

For all of the foregoing reasons, and as established by the Legge Declaration and the Charts, CAS's claim that Goodyear's trade secrets and other confidential, proprietary information do not deserve protection is wrong. Goodyear has an interest in protecting its confidential information and a recognized right to do so. Accordingly, each of the confidential Documents should be protected from public disclosure.

C. Moreover, this Court should not vitiate other courts' protective orders and sealing orders.

Many of the Documents were produced under protective orders or filed under sealing orders entered by other state and federal courts,[6] which found the Documents contained or revealed trade secret or other confidential, commercially sensitive proprietary information. The Full Faith and Credit Clause of the United States Constitution compels this Court to give full effect to each of those orders. *See Oyakawa v. Gillett*, 175 Ariz. 226, 288 (App. 1993) (emphasis added) (internal quotation marks omitted) (Full Faith and Credit Clause requires that "not some, but ***full*** faith and credit be given judgments of a state court"); *see also Pitt. Corning Corp. v. Caldwell*, 861 S.W.2d 423, 426 (Tex. App. 1993) (giving full faith and credit to protective order entered by federal court); *Keene*

[6] The protective orders and sealing orders at issue are attached as Exhibits D-S to this brief and cited (where applicable) in the Charts.

Corp. v. Caldwell, 840 S.W.2d 715, 720 (Tex. App. 1992) (same). The principle of comity likewise obliges courts to "give effect to the laws and judicial decisions of another state or jurisdiction . . . out of deference and mutual respect." *Gnatkiv v. Machkur*, 239 Ariz. 486, 491 ¶¶12-13 (App. 2016).

Some courts have authorized production of documents subject to other courts' protective orders, but the standard for doing so does not justify wholesale public disclosure of documents by unsealing and/or publicly disclosing all documents that other courts had sealed, and vacating all protections. *Tucker v. Ohtsu Tire & Rubber Col, Ltd.*, 191 F.R.D. 495 (D. Md. 2000). Terminating the protections imposed by others courts' orders flatly ignores the effect of those orders and eviscerates their protections.

Notably, *Tucker* considered whether the case in which the original protective order was issued is still pending, and the burden and expense to the plaintiffs of seeking relief in that court. *Id.* Most of the sealed filings at issue are *Haeger I* documents (*i.e.*, documents sealed and protected by the United States District Court for the District of Arizona (the "District Court")), and the *Haeger I* sanctions proceedings are ongoing. The District Court, not this Court, should decide whether to unseal its own records.

This Court should not simply ignore protective orders and sealing orders issued in terminated proceedings—*e.g.*, the appellate sealing orders entered in *Haeger I* by the Ninth Circuit and by various other trial courts in G159 tire cases such as *Schalmo*, *Bogaert*, and *Martin*. Instead, this Court should both (1) recognize that the Documents contain confidential information deserving of protection, and (2) at least, incorporate the protections ordered by those other courts. *Id.* at 501-02. In so doing, it should recognize that it, like the issuing courts, should not take any action to "impose new and affirmative obligations on the parties." *Id.* at 499 (quoting *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1428 (10th Cir. 1990)).

D. Some of the Documents are privileged or protected by federal law, and thus, they should not be publicly disclosed.

Many of the Discovery Documents and Summary Judgment documents are entitled to privilege, as they reveal either attorney work product or attorney-client communications. Those documents, and others entitled to protection under federal law, are highlighted in red in the Legge Declaration. Under settled Arizona law, a party seeking such materials "must show that there is a substantial need and that their substantial equivalent cannot be obtained without undue hardship." *Klaiber v. Ortiz*, 148 Ariz. 320, 323 (1986). *See also* ARIZ. R. CIV. P. 26(b)(3)(A)(ii). And even where some disclosure is deemed appropriate, "the court . . . must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation." ARIZ. R. CIV. P. 26(b)(3)(B). Of course, CAS has made no showing, let alone a showing of "substantial need" coupled with a showing that substantial, equivalent materials cannot be obtained elsewhere without undue hardship. And CAS has not shown and cannot show that the privileged documents are "central to [its] claim or defense." *Brown v. Super. Ct. in & for Maricopa Cnty.*, 137 Ariz. 327, 338 (1983) (*en banc*). CAS is not a party here and has no claims or defenses.

Other Documents should be protected because they constitute peer review information disclosed to the NHTSA, which were designated confidential pursuant to 49 C.F.R. Part 512. Those same Documents also constitute confidential commercial information within the meaning of 5 U.S.C. § 552(b)(4), and they are thus protected from disclosure pursuant to 18 U.S.C. § 1905.

And other Documents reveal protected settlement communications CAS does not need. *See Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976 (6th Cir. 2003) (recognizing settlement privilege); *see also Cook v. Yellow Freight Sys., Inc.*, 132 F.R.D. 548 (E.D. Cal. 1990) (denying a third party access to settlement negotiation materials); *see also* Ariz .R. Evid. 408.

E. No other, less restrictive means would meaningfully protect Goodyear's interests.

CAS correctly notes that Maricopa County Local Rule 2.19(c)(5) requires the Court to find, before sealing documents, that "no less restrictive means exist to achieve the compelling interest." (CAS Br. at 10.) However, the Legge Declaration and the Charts provide the evidentiary basis for that finding. As reflected in the Charts, Goodyear has released its claim of confidentiality over many of the Documents.

Of course, if ordered to do so, Goodyear will redact and attempt a meaningful production of Documents. However, redacting the Documents is unlikely to satisfy CAS. The very information CAS seeks in the name of "public safety" goes to the heart of Goodyear's business: specifications, testing protocols, bogies, testing data, internal operations, and communications related to all of the above. Ordering Goodyear to produce redacted copies of those documents would likely result in another round of briefing, and additional expenditures of time and resources from all involved, with CAS arguing that it still does not have what it wants.

F. In any event, CAS's motion should be denied because it is seeking access to Documents in the wrong forum.

Even if CAS had a valid interest in these proceedings or need for the Documents—which has not been proven, and has been seriously called into question (if not refuted outright) by the Declaration of former NTHSA Associate Administrator for Enforcement, William A. Boehly—CAS should not be seeking Documents to further a NHTSA petition here. It should instead properly file a request under the Freedom of Information Act ("FOIA"). No good reason exists for CAS, or the Court, to "circumvent existing FOIA procedures." *United States v. Ebersole*, No. 03-cr-112, 2007 WL 219969, at *3 (E.D. Va. Jan. 25, 2007), *aff'd* 234 F. App'x 63 (4th Cir. 2007).

III. IF THE COURT REQUIRES GREATER DOCUMENT-BY-DOCUMENT DETAIL, IT SHOULD APPOINT A SPECIAL MASTER TO EITHER CONDUCT *IN CAMERA* REVIEW OR HOLD AN EVIDENTIARY HEARING.

An *in camera* review or hearing is appropriate if the Court believes each document must be examined. *See Catrone v. Miles*, 215 Ariz. 446, 456 (App. 2007); *In re Esther Caplan Trust*, 228 Ariz. 182, 187 (App. 2001). If so, Goodyear respectfully suggests appointment of a Special Master pursuant to Rule of Civil Procedure 53. The Special Master can conduct proceedings and make findings, as warranted by the "exceptional condition" of the time required to complete a review of all the Documents and balancing of CAS's claim of need for them against Goodyear's trade secret interests and the public interest. Ariz. R. Civ. P. 53(a)(1)(B).

IV. IN ANY EVENT, LIMITED DISCOVERY IS WARRANTED.

For the reasons stated in Section I, above, CAS's stated interests in unsealing Summary Judgment and Miscellaneous Sealed Documents, and in vacating the Protective Order, are suspect. CAS is a private advocacy group, and its aggregate efforts before the NHTSA have "***negatively affected*** motor vehicle safety." (Boehly Decl., ¶¶ 9-12.)

Moreover, Goodyear doubts CAS has expertise in evaluating technical tire manufacturing and testing methods and analysis. Although CAS wants to publish all of Goodyear's documents on CAS's website to "educate the public," it is quite possible CAS will mislead the public to draw unwarranted conclusions by misunderstanding or misrepresenting tests and codes. Goodyear is entitled to probe why CAS contends the public needs Goodyear's technical specifications and testing protocols, even if CAS could accurately explain them. It is more likely that only Goodyear's competitors will benefit by obtaining the Documents. Goodyear's contemporaneously filed motion for limited discovery, an ancillary part of deciding CAS's motion, should be granted.

CONCLUSION

For all of the reasons set forth above, CAS's motion should be denied. Unless Goodyear has otherwise released its claims of confidentiality, the Summary Judgment Documents and Miscellaneous Sealed Documents should remain under seal, and the Protective Order should be left in place. If the Court is unconvinced that such protection and sealing should remain in place, further proceedings and discovery are required.

RESPECTFULLY SUBMITTED this 12th day of September, 2017.

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CERTIFICATE OF SERVICE

The foregoing was electronically filed with the Clerk of the Court this 12th day of September, 2017 through AZTurboCourt.gov, and a copy provided via the E-filing System to:

The Honorable John R. Hannah, Jr.
Maricopa County Superior Court
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COPY of the foregoing was emailed this same date to:

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