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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HAROLD J. PHILLIPS and GEORG-ANNE PHILLIPS,)	Civil No.02cv1642-B (NLS)
)	
Plaintiffs,)	ORDER DENYING AS MOOT
v.)	INTERVENORS' MOTION TO
)	MODIFY THE COURT'S
THE GOODYEAR TIRE & RUBBER COMPANY, et al.,)	PROTECTIVE ORDER ENTERED
)	JUNE 13, 2003
Defendants.)	[Doc. No. 27]
)	
)	
)	

Having been granted permission by the District Court to intervene in the above-captioned action, Leroy Haeger, Kori D. Haley, Margaret Rose Bogaert, Billy Wayne Woods, and John H. Schalmo (collectively "Intervenors") move this Court to modify its June 13, 2003 Protective Order in the interests of justice and for public policy reasons. Defendant Goodyear Tire & Rubber Company ("Goodyear") opposes the motion. Having considered the parties' briefs and accompanying submissions, as well as the oral argument of counsel, the Court **DENIES AS MOOT** Intervenors' motion [Doc. No. 27].

PROCEDURAL BACKGROUND

This case originated as a product liability action, filed on June 19, 2002 in San Diego County Superior Court by Plaintiffs Harold and Georg-Anne Phillips against Goodyear. Plaintiffs alleged that Goodyear's G159 275/70R/22.5 tire (the "G159 tire") was defective in design and/or manufacturing and unsafe when used for its intended purpose after a tire on their motor home experienced tread/belt separation, causing them to lose control of their vehicle, collide with an adjacent embankment and

1 sustain serious bodily injury and property damage. (*Complaint* ¶¶ 10-15.) On August 15, 2002,
2 Goodyear removed the case to this Court [Doc. No. 1]. Subsequent to the commencement of discovery
3 and the entry by this Court of a Protective Order stipulated to and requested by the parties [Doc. No.
4 22], the case settled. A stipulation for dismissal of the action with prejudice was entered on October 7,
5 2003, and the case was closed [Doc. No. 24].

6 On June 28, 2007, Intervenors filed a motion seeking to intervene in this action for the limited
7 purpose of petitioning the Court to modify its Protective Order and allow Intervenors access to
8 deposition testimony of a Goodyear employee taken pre-settlement in this case for purposes of
9 discovery in ongoing collateral litigation involving the G159 tire in federal and state courts throughout
10 the country [Doc. No. 27]. Over Goodyear's opposition, this Court recommended that presiding District
11 Judge Rudi M. Brewster grant the motion to intervene so that the Court could determine whether its
12 Protective Order should be modified [Doc. No. 35]. On October 31, 2007, Judge Brewster adopted the
13 recommendation and allowed the intervention [Doc. No. 39].¹ Intervenors now request that the Court
14 modify the June 13, 2003 Protective Order to allow them the opportunity to discover the June 20, 2003
15 deposition testimony of former Goodyear employee Kim Cox. (*Intervenors' Motion*, 14.)

16 FACTUAL BACKGROUND

17 In June 2003, Plaintiffs' counsel Guy Ricciardulli noticed the deposition of the Goodyear
18 employee most knowledgeable with respect to the processing of property damage claims, particularly
19 the Phillips' prior claims.² (*See Declaration of Guy Ricciardulli in Support of His Response in*

21 ¹ In his October 31, 2007 order, Judge Brewster adopted the undersigned magistrate judge's report and
22 recommendation and granted Intervenors' motion to intervene, which was filed contemporaneously with Intervenors' motion
23 to modify the Court's June 13, 2003 Protective Order. Upon granting the intervention, Judge Brewster requested that the
24 undersigned prepare a further report and recommendation on the motion to modify, as well as Defendant's request for a
25 contempt finding against Plaintiffs' counsel. (*See October 31, 2007 Order Adopting Report and Recommendation*, Doc. No.
26 39, 3-4.) Under 28 U.S.C. § 636(e), the undersigned shall prepare a separate report and recommendation for the District
27 Judge regarding Defendant's contempt motion. Pursuant to Paragraphs 13 and 15 of the Protective Order [Doc. No. 22], the
28 undersigned retained jurisdiction to enforce the terms of the order, and may "modify this stipulated protective order in the
interests of justice or for public policy reasons." Accordingly, Intervenors' motion to modify may be ruled upon directly by
the undersigned, and the preparation of a report and recommendation is not necessary.

² In June 2000 Plaintiffs purchased a Windsor motor home, equipped with G159 tires, at a motor home retailer in
San Diego. (*Complaint* ¶ 6.) In August 2000, Plaintiffs made an initial claim to Goodyear after two of the tires on the left
rear side of the motor home failed, damaging the rear of the vehicle. (*Id.*, Ex. "1," at 3.) After inspection of the failed tires,
Goodyear reimbursed Plaintiffs for the cost of both replacement tires and for the repair of the transmissions lines and power
steering lines. (*Id.*) In February 2002, Plaintiffs once again experienced trouble with the tires on their motor home. While

1 *Opposition to Goodyear's Application for Order to Show Cause ("Ricciardulli Declaration")* ¶ 4.) On
2 or about June 19, 2003, counsel for the parties traveled to Akron, Ohio, where Goodyear tendered
3 claims administrator Kim Cox for deposition. (*Id.*) Ricciardulli recalls that in response to his
4 questioning, Cox stated that Goodyear "was aware of the fact" that the G159 tire "did not perform
5 properly" when used on Class A motor homes. (*Id.* ¶ 5.) Ricciardulli also recalls having interpreted this
6 statement as an admission of liability by Goodyear, which resulted in Goodyear's counsel present at the
7 deposition, John McCormick, requesting a recess in the deposition. (*Id.* ¶ 6.) Subsequent to the break,
8 McCormick approached Ricciardulli regarding termination of the deposition and potential mediation.
9 (*Id.* ¶ 7.) The case settled shortly thereafter.

10 In their role as plaintiffs involved in discovery in collateral litigation around the country,
11 Intervenors have alleged that the G159 tire is defective when used on Class A motor homes and that they
12 have suffered property damage and, in some cases, extensive personal injury and death of family
13 members, as a result of accidents caused by the tires. (*See Intervenors' Motion*, Exhibits 2-7.) During
14 the course of gathering information and evidence for potential use in one of these collateral cases,
15 Intervenors' counsel Tim Casey contacted Guy Ricciardulli. (*Intervenors' Motion*, Ex "8," *Affidavit of*
16 *Timothy J. Casey, Esq. ("Casey Affidavit")* ¶¶ 3-5.) On May 24, 2007 and several dates soon thereafter,
17 Casey and Ricciardulli spoke telephonically regarding the 2003 deposition of Kim Cox. (*Id.* ¶ 5.)
18 According to Casey, Ricciardulli informed him that the Phillips' case involved the same tire and alleged
19 defect at issue in his clients' litigation. (*Id.* ¶ 6(a).) Ricciardulli recalled that on June 20, 2003 in Akron,
20 Ohio, he was present at the deposition of a Goodyear employee from the in-house liability claims team,
21 who admitted under oath that "there was a defect in the G159 when used on a motor home," and "that
22 they [i.e., Goodyear] had a problem and paid the claim." (*Id.* ¶¶ 6(c)-(f).) Ricciardulli also recalled that
23 as part of the settlement of the case which occurred subsequent to the termination of the deposition, he
24 stipulated to having the court reporters' notes/recordings of the deposition returned to Goodyear's
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27 traveling on Interstate 10 in Arizona, the tread separated from the motor home's left front tire, causing Plaintiffs to lose
28 control of the vehicle and crash into a roadside embankment. (*Complaint* ¶ 10.) Approximately one month later, in March
2002, Plaintiffs initiated the claims process by contacting Goodyear's Liability Claims Team regarding the incident, alleging
breach of the tire's warranty. (*Id.* ¶ 19.)

1 counsel. (*Id.* ¶ 6(h).) Casey then confirmed with the court reporting service in Ohio that Cox was
2 deposed on June 20, 2003, that the deposition was never transcribed, that all other noticed depositions in
3 the case had been cancelled, and that the notes of the Cox deposition had been forwarded to Goodyear's
4 counsel on October 1, 2003 for "destruction." (*Id.* ¶¶ 7-9.)

5 According to Intervenors, Goodyear denies the G159 tire is defective, including when used on a
6 Class A motor home. (*Intervenors' Motion*, 3; *Casey Affidavit* ¶ 10.) Because the testimony of
7 Goodyear employee Kim Cox appears to directly contradict Goodyear's denial of a tire defect,
8 Intervenors seek to discover the information revealed during the course of Cox's deposition in their
9 collateral lawsuits. (*Id.*) After being informed by the court reporting service in Ohio that no transcript or
10 notes presently exist documenting the deposition testimony, Intervenors issued deposition notices and
11 subpoenas in the pending litigation for the deposition of Goodyear's counsel who defended the Cox
12 deposition, John McCormick, the court reporters who handled the Cox deposition, and Goodyear
13 employee, Mr. Cox. (*Intervenors' Motion*, 12-14.) In at least one of these collateral cases, currently
14 pending in the District of Arizona, Goodyear moved to quash the deposition notices and subpoenas,
15 arguing that Cox's deposition testimony is confidential, protected by this Court's June 13, 2003
16 Protective Order, and therefore not discoverable in the collateral cases. The presiding District Judge in
17 the Arizona case ruled that the depositions may go forward, but also found that this Court's June 13,
18 2003 Protective Order currently limits what can be discussed during these depositions. Specifically, the
19 Arizona District Judge ordered that

20 "[n]o individuals may be asked questions or testify regarding what was said in the
21 Phillips depositions. . .if Plaintiffs wish to refresh the individuals' recollection or
22 impeach them with prior deposition testimony, they will need to seek relief from the
Protective Order in the United States Court for the Southern District of California."

23 (*See July 2, 2007 Order of the District Court of Arizona, Hon. Roslyn O. Silver presiding, Doc.*
24 *No. 266, Civil No. 05-2046-PHX-ROS.*)

25 Intervenors argue that Goodyear is using this Court's Protective Order to prevent the truth about
26 Cox's June 20, 2003 deposition testimony from being revealed and potentially relied upon as evidence in
27 their collateral litigation. For public policy reasons and in the interest of avoiding duplicative discovery,
28 Intervenors seek modification of the Court's Protective Order so that any remaining discovery materials

1 from the 2003 Cox deposition can be accessed in their collateral litigation, and so that percipient
2 witnesses to the 2003 Cox deposition can be deposed on the substance of Cox’s testimony. Goodyear
3 opposes the modification, arguing that the potential prejudice to Goodyear’s substantive rights balanced
4 against public interest and judicial economy weighs against the modification.

5 DISCUSSION

6 The public is permitted “access to litigation documents and information produced during
7 discovery unless the party opposing disclosure shows ‘good cause’ why a Protective Order is necessary.”
8 *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002) (“It is well-established that the
9 fruits of pre-trial discovery are, in the absence of a court order to the contrary, presumptively public.
10 Rule 26(c) authorizes a district court to override this presumption where ‘good cause’ is shown.”
11 (*quoting San Jose Mercury News, Inc. v. United States Dist. Ct.*, 187 F.3d 1096, 1103 (9th Cir.1999))).
12 “A party who has never made a ‘good cause’ showing under Rule 26(c) justifying initial protection of
13 disputed documents may not rely solely on the Protective Order to justify refusal when there is a
14 reasonable request for disclosure.” *Contratto v. Ethicon, Inc.*, 227 F.R.D. 304, 308 (N.D.Cal. 2005)
15 (*quoting Verizon California, Inc. v. Ronald A. Katz Tech. Licensing, L.P.*, 214 F.R.D. 583, 586 (C.D.Cal.
16 2003) (citations omitted)).³ Courts have broad discretion in determining what constitutes good cause,
17 whether good cause exists, and, if it does exist, what protection is appropriate. *Seattle Times v.*
18 *Rhinehart*, 467 U.S. 20, 36 (1984) (“broad discretion [is conferred] on the trial court to decide when a
19 Protective Order is appropriate and what degree of protection is required”); *Flatow v. Islamic Republic*
20 *of Iran*, 308 F.3d 1065, 1074 (9th Cir. 2002) (noting court has “extensive control” over discovery
21 process); *Phillips*, 307 F.3d at 1211. As the party opposing modification of the Protective Order,

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24 ³ Blanket protective orders such as the one in effect in this case are generally entered upon an “some threshold
25 showing of good cause to believe that discovery will involve confidential or protected information. This may be done on a
26 generalized as opposed to a document-by-document basis.” *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House*
27 *Group*, 121 F.R.D. 264, 268 (M.D.N.C. 1988). However, “blanket orders are inherently subject to challenge and
28 modification, as the party resisting disclosure generally has not made a particularized showing of good cause with respect to
any individual document” or thing. *San Jose Mercury News v. U.S. Dist. Court*, 187 F.3d 1096, 1103 (9th Cir. 1999).
Essentially, a blanket protective order defers litigation of the need for protection on a document-by-document basis, and
postpones the need for a party to make a particularized showing of “good cause” until a challenge is made to the designation
of a particular document or thing as confidential.

1 Goodyear bears the burden of showing “good cause” for protecting the Cox deposition testimony from
2 discovery in Intervenor’s collateral litigation. *Phillips*, 307 F.3d at 1211, n. 1 (citing *Beckman Industries*
3 *Inc. v. International Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992)).

4 The Ninth Circuit has determined that, where access to unfiled discovery documents is at issue,
5 the “party asserting good cause bears the burden, for each particular document it seeks to protect, of
6 showing that specific prejudice or harm will result if no Protective Order is granted. *Phillips*, 307 F.3d at
7 1210-11 (citing *San Jose Mercury News*, 187 F.3d at 1102); see also *Beckman*, 966 F.2d at 476 (“[B]road
8 allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule
9 26(c) test.”) (quoting *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986) (internal
10 quotation marks omitted)); *Deford v. Schmid Prods. Co.*, 120 F.R.D. 648, 653 (D.Md. 1987) (requiring
11 party requesting a Protective Order to provide “specific demonstrations of fact, supported where possible
12 by affidavits and concrete examples, rather than broad, conclusory allegations of potential harm”).”
13 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130-31 (9th Cir. 2003). The mere fact that the
14 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further
15 litigation will not, without more, compel the court to seal its records. *Id.* at 1136.

16 Intervenor’s maintain that the Court’s Protective Order should be modified so that it does not bar
17 the discovery of Cox’s deposition testimony in their collateral cases. In *Foltz*, *supra*, the Ninth Circuit
18 considered third-party collateral litigants’ motion to modify a Protective Order to gain access to
19 discovery materials that had been protected as confidential. The collateral litigation in state court
20 involved issues similar to the federal action which had been settled and in which certain documents were
21 obtained in discovery under a Protective Order keeping them confidential. The third-party litigants
22 sought access to these documents and other sealed court records. In order to obtain the confidential
23 discovery documents for the state court collateral litigation, the Protective Order first had to be modified
24 by the issuing federal court. The *Foltz* court recognized the policy of strongly favoring “access to
25 discovery materials to meet the needs of parties engaged in collateral litigation,” and held that in
26 determining whether to modify a Protective Order so that it does not stand in the way of a collateral
27 court’s control of discovery, the issuing court must evaluate the request to modify on a case by case
28 basis, examining, for instance, the complaints in both actions to make a rough determination of

1 relevancy,⁴ and the intensity of the reliance interest of the party opposing the modification. *Id.* at
2 1132-33.

3 *Foltz* also held that the issuing court must in the first instance determine whether a Protective
4 Order should apply to specific documents or information under Rule 26(c). *Id.* at 1133. If a court
5 determines that its order does not protect the sought-after information, the court need not engage in the
6 *Foltz* analysis, as modification of its Protective Order is simply not necessary. The Court notes that both
7 Goodyear and Intervenors tacitly assume that Cox's deposition testimony is presently protected as
8 "confidential information" under the June 13, 2003 Protective Order. Accordingly, Intervenors have not
9 challenged whether Goodyear actually designated the Cox deposition testimony as confidential.
10 Intervenors only challenge whether the deposition testimony is entitled to remain confidential. However,
11 under *Foltz*, the Court must decide as a threshold question whether its Protective Order in fact protects
12 the Cox deposition testimony. In order to resolve this question, the Court first looks to the applicable
13 terms of its Protective Order. Section One, Paragraph A of the Protective Order defines the term
14 "confidential," and states:

15 The words "confidential," "confidential information," and "confidential material"
16 describe information which is or contains trade secrets, research, development
17 and other proprietary matters including, but not limited to, methodology,
18 technique, process, control, and evaluation which any party believes in good faith
19 pertains to its trade or business and has independent value from not being
20 generally known and not being readily ascertainable by other persons who may
obtain economic value from its disclosure or use. In addition, such information is
not normally revealed to others except in confidence and is not revealed to others
in the party's trade or business and is of a type that the party has made efforts to
maintain as secret.

21 (See June 13, 2003 Protective Order, Doc. No. 22, 2.) Paragraph B contemplates the consequence of a
22 confidential designation, and states:

23 Information designated as "confidential" or "confidential information" or
24 "confidential material" shall be considered trade secret and fully protected by this
25 order. All portions of transcripts, depositions, exhibits, or other pleadings or
26 filings in this action which contain or otherwise set forth documents, information,
or other materials, or contents thereof, which have been previously designated as
confidential, shall likewise be subject to the terms of this protective order.

27 ⁴ The Court previously determined that Intervenors have satisfied the relevancy requirement, holding that "the
28 underlying commonality between Applicants' claims and the claims in this case lies with the allegation that Goodyear's G159
275/70R/22.5 tire is defective when used on Class A motor homes." (See Court's July 13, 2007 Report and
Recommendation, Doc. No. 35, 5.)

1 (*Id.*) Section Two, Paragraph Three, specifically refers to the treatment of deposition testimony relating
2 to or discussing information designated as confidential, and states that:

3 Deposition testimony relating to or discussing Goodyear's confidential
4 information shall be protected under this ORDER and the transcript of such
5 testimony shall be marked with the Confidential legend of Paragraph 1. The
6 transcripts of such deposition testimony shall be treated the same under this
7 ORDER as other documents Goodyear marks as confidential. The parties
8 stipulate that the court reporter or videographer for any such deposition will be
9 given a copy of this Protective Order, will execute an acknowledgment thereof
10 and shall not disclose to anyone other than those specified in Paragraph 2 any
11 deposition testimony or exhibit in this case.

12 (*Id.* at 4.) Pursuant to these terms, in order for any portion of Cox's deposition testimony to be subject
13 to protection, that testimony must have been designated by Goodyear as "confidential information."
14 This constitutes a threshold matter, because if Goodyear did not designate the deposition testimony as
15 relating to or discussing confidential information, the testimony is not protected and the motion
16 requesting modification of the Protective Order is moot.

17 Goodyear asserts that it designated the entire deposition testimony of Cox as confidential and
18 protected under the terms of the Court's Protective Order. Goodyear has not produced any document
19 that demonstrates the deposition was so designated. Rather, Goodyear relies on the hearsay declaration
20 of counsel John McCormick, who attended the Cox deposition, submitted in support of Goodyear's
21 opposition to Intervenor's motion. In his declaration, McCormick states:

22 Because Mr. Cox was being deposed regarding Goodyear's confidential
23 information relating to its handling and evaluation of a property damage claim,
24 the deposition was declared to fall within the protections of the protective order,
25 and Plaintiffs' counsel, Mr. Ricciardulli, agreed to this designation and did not
26 challenge it.

27 (*McCormick Declaration* ¶ 4.) In direct contradiction to this statement, Ricciardulli submitted his own
28 hearsay declaration, in which he explains his understanding of the applicability of the stipulated
Protective Order to deposition testimony:

When I reviewed and signed the proposed Protective Order in the instant matter in
2003, it was my understanding that the Protective Order would treat as
confidential, only 'trade secrets, research, development and other proprietary
matters . . . ' - as the language of the Protective Order itself provides. I understood
however, that deposition testimony of Goodyear employees could be entitled to
confidentiality, *if* that testimony related to such 'trade secrets, research,
development or other proprietary matters.' I did not believe, nor consider, that an
admission of liability . . . by a Goodyear representative (designated by Goodyear

1 as a Rule 30(b)(6) witness) could be properly treated as a proprietary or
2 confidential business secret, such that it was entitled to protection from disclosure
under the Protective Order.

3 (*Ricciardulli Declaration* ¶ 3.) Ricciardulli goes on to state:

4 I don't recall ever having any discussion with Mr. McCormick regarding the
5 applicability of the provisions of the Protective Order to the transcript of the Cox
6 deposition. I have reviewed Mr. McCormick's declaration wherein he states
7 and/or implies that I stipulated that the transcript, in its entirety, would be treated
8 as confidential. I have to believe that if I had entered into such an extraordinary
9 stipulation, I would remember having done so. I can state unequivocally that it
was never my intent to so stipulate, and treat as confidential, the above-referenced
testimony by Mr. Cox. I did not then believe, nor do I now believe, that such an
admission falls within the category of 'trade secret or other proprietary
information' entitled to confidentiality under the Protective Order.

10 (*Id.* ¶ 9.)

11 Goodyear also brings to the Court's attention several letters exchanged in May 2003 between
12 McCormick and Ricciardulli, and letters exchanged in August and October 2003 between McCormick
13 and the court reporting service in Ohio hired to transcribe the Cox deposition. A May 7, 2003 letter from
14 McCormick's law firm to Ricciardulli discusses Plaintiffs' demand for production of documents at
15 upcoming Rule 30(b)(6) depositions. In pertinent part, the letter states:

16 We are waiting on your and Mr. Regan's signatures on the protective order. If we
17 receive those signatures soon, you should have the documents prior to the
18 depositions. Having a protective order in place will also expedite the production at
deposition of any additional documents which Goodyear considers trade secret,
proprietary, or otherwise confidential.

19 (*McCormick Declaration*, Ex. "B.") A May 27, 2003 letter from McCormick to Ricciardulli once again
20 refers to pre-deposition document production requests, and the fact that Goodyear would not produce
21 documents until the Court had approved and entered the proposed Protective Order. (*Id.*, Ex. "C.")
22 Additionally, that letter states:

23 In connection with the documents to be produced at deposition, to the extent they
24 are not included in the previously requested documents, they will be, subject to
appropriate objection and the protective order, produced at deposition.

25 (*Id.*) An August 19, 2003 letter written by McCormick, co-signed by Ricciardulli, to the court reporting
26 service in Ohio instructed the court reporter who transcribed the Cox deposition to return "the original
27 and all copies of your notes and the transcription of that deposition" for "destruction." (*Casey Affidavit*,
28 Ex. "A.") Finally, an October 1, 2003 letter from the court reporting service to McCormick confirmed

1 that the notes and exhibits from the deposition had been returned to Goodyear, and that the deposition
2 was never transcribed. (*Id.*, Ex. “B.”)

3 Goodyear argues that these letters when considered in tandem with John McCormick’s
4 declaration conclusively establish that the entire Cox deposition was designated confidential and subject
5 to the Court’s Protective Order. The Court disagrees. At most this evidence indicates that Goodyear
6 contemplated there would be documents used at the deposition that it considered confidential pursuant to
7 the terms of the Protective Order. This evidence does not, however, support Goodyear’s assertion that
8 the entire Cox deposition was designated confidential. To begin with, the terms of the Protective Order
9 drafted by Goodyear make no provision for pre-designating or post-designating an entire deposition as
10 confidential. Section 2, paragraph 3 of the Protective Order clearly states that *portions* of depositions
11 which refer to documents or information “previously designated” as confidential would likewise be
12 protected under the order. (*See June 13, 2003 Protective Order*, Doc. No. 22, 4.) (emphasis added)
13 Moreover, in his declaration, Ricciardulli says he does not recall making any agreement with McCormick
14 to treat the entire Cox deposition as confidential, and if he had entered into such “an extraordinary
15 stipulation,” he would remember it. (*Ricciardulli Declaration* ¶ 10.)

16 Goodyear was the last party to have custody and control of the returned deposition exhibits, as
17 well as the court reporter’s notes. Because Goodyear destroyed these documents, they also destroyed any
18 evidence that confidential documents were in fact used or relied upon by Cox while testifying, as well as
19 any evidence that the entire deposition was designated confidential before or after the deposition was
20 terminated. This destruction of the exhibits and notes, although purportedly done in light of the
21 Protective Order’s terms and pursuant to the parties’ settlement of the case, was done at Goodyear’s own
22 peril, as Goodyear now stands before this Court unable to prove that Cox’s deposition testimony was
23 designated confidential and subject to the protection of the Court’s June 13, 2003 Protective Order.⁵

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26 ⁵ This destruction was particularly risky given the fact that at the time there were other pending lawsuits alleging a
27 defect in the G159 tire. Intervenors bring to the Court’s attention six lawsuits filed in other jurisdictions prior to the Phillips’
28 suit, including *England v. Goodyear* in the District of South Carolina (Case No. 5:01cv05026-AWB); *Wright v. Goodyear* in
the 249th Judicial District of Texas (Case No. C 2000 0090); *Cooner v. Goodyear* in Alabama state court (Case No. CV-01-
667); *Dutilly v. Goodyear* in Arizona state court (Case No. C20030834); *Price v. Goodyear* in Alabama state court (Case No.
CV-02-2782-GWN); and *Cluff v. Goodyear* in the Southern District of Mississippi (Case No. 1:04cv51GURO).
(*Intervenors’ Motion*, 7-8.)

1 Goodyear asserted during oral argument that because it presented Cox for deposition as the
 2 employee most knowledgeable on claims procedures, and because Goodyear has always considered its
 3 in-house claims procedure to involve proprietary matters and information otherwise held confidential by
 4 the corporation, his testimony was impliedly protected by the terms of the Protective Order.⁶ Goodyear
 5 argued that any statements made by Cox during his deposition concerning the G159 tire's performance
 6 would have included proprietary information because of his high level position within the company and
 7 his base of knowledge concerning Goodyear's products. However, Goodyear presents no documentary
 8 evidence to support this assertion. As noted above, Goodyear destroyed the allegedly confidential
 9 documents upon which Cox relied during the deposition, as well as the court reporter's notes of his
 10 testimony. Therefore, Goodyear cannot establish that Cox relied upon proprietary matters or trade secret
 11 information when testifying, nor that Cox actually testified regarding proprietary matters or trade secret
 12 information. In fact, in its written submissions to the Court, Goodyear contradicts the assertion that Cox
 13 testified to, or was expected to testify to, confidential information, as the Protective Order defined that
 14 term, by stating that it tendered Cox as a fact witness - not a Rule 30(b)(6) witness, a designation to
 15 which Goodyear specifically objected.⁷ According to McCormick:

16 In the course of discovery, Plaintiffs' counsel requested depositions of Goodyear
 17 designees on several topics pursuant to Rule 30(b)(6). Although I timely objected
 18 to his designation as a Rule 30(b)(6) witness, I agreed to arrange for the June 19,
 19 2003 deposition of Mr. Kim Cox, a Goodyear employee, to testify regarding the
 resolution of a property damage claim that the Plaintiffs had submitted to
 Goodyear prior to the accident involved in this litigation.

20 (*McCormick Declaration* ¶ 3.) Thus, Goodyear presents the Court with contradictory statements
 21 regarding Cox's witness designation, which significantly undermines the Court's ability to make any
 22 inference as to the applicability of the Protective Order to his testimony.

23 In the Ninth Circuit, in the absence of a court order to the contrary, fruits of pre-trial discovery

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 25 ⁶ The Protective Order defines "confidential" information as information which "is or contains trade secrets,
 research, development, and other proprietary matters regarding methodology, technique, process, control, and evaluation."
 26 (*See June 13, 2003 Protective Order*, Doc. No. 22, 2.)

27 ⁷ Based on counsels' own recollections of events, the Cox deposition specifically involved resolution of Phillips'
 28 prior property damage claim with Goodyear, and it is questionable whether testimony on that topic would be considered
 proprietary or trade secret material. Ricciardulli asserts that he "never considered that the subject testimony by Mr. Cox fell
 within the category of 'trade secret or proprietary information.' In fact, in the course of resolving his prior claim with
 Goodyear, that similar information about the G159 tire had been communicated directly to my client [the Phillips]" and was
 not treated in a confidential manner by Goodyear. (*Ricciardulli Declaration* ¶ 8.)

1 are presumptively public. *San Jose Mercury News, Inc. v. United States Dist. Ct.*, 187 F.3d 1096, 1103
2 (9th Cir. 1999). The plain language of the Protective Order in this case created an affirmative obligation
3 of the parties to designate information, documents, and deposition testimony as “confidential.” Without
4 evidence of such a designation, where the definition of “confidential” was aimed at protecting trade
5 secrets and proprietary matters from Goodyear’s potential competitors, and considering the unreliable
6 and contradictory memories of counsel, the Court cannot conclude that Cox’s deposition testimony is
7 subject to the terms of its Protective Order. Accordingly, the Court finds that Cox’s June 20, 2003
8 deposition testimony is not confidential, and modification of the Court’s Protective Order is not
9 necessary in order for this information to be potentially discoverable in Intervenors’ collateral litigation.

10 Based on the Court’s findings above, further analysis under *Foltz* is not necessary. *Foltz v. State*
11 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003). However, even if Goodyear had
12 established the confidentiality of Cox’s deposition testimony, Goodyear fails to demonstrate good cause
13 for continued protection of the testimony. *Id.* at 1131 (*citing Beckman*, 966 F.2d at 476). As the party
14 opposing modification, Goodyear must establish that specific harm or prejudice will result from
15 disclosure of the information. *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004). A
16 “particularized showing,” *Foltz*, 331 F.3d at 1138, under the “good cause” standard of Rule 26(c) will
17 “suffice[] to warrant preserving the secrecy of sealed discovery material attached to non-dispositive
18 motions.” *Id.* at 1135. The court that issued the protective order must weigh the “countervailing reliance
19 interest of the party opposing modification against the policy of avoiding duplicative discovery.” *Id.* at
20 1133.

21 Goodyear first argues that modification of the Protective Order will harm the interests of judicial
22 economy. (*Defendant’s Opposition*, 9.) In support, Goodyear highlights the fact that because it
23 destroyed the Cox deposition notes and exhibits, modification of the Protective Order will result in the
24 “creation of new discovery” in the form of multiple depositions being taken in order to try and recreate a
25 record of Cox’s 2003 testimony. Goodyear asserts that the potential proliferation of discovery directly
26 implicates the Ninth Circuit’s admonition against wasteful and duplicative discovery. (*Id.*, *citing Foltz* at
27 1132.) Intervenors note in reply that “the fatal problem with this argument is that it rewards Goodyear
28 for destroying evidence.” (*Intervenors’ Reply*, 4.) The Court agrees that Goodyear should not be able to

1 turn its handling of the evidence in this case in 2003 into good cause five years later for barring access to
2 the information. The Court disagrees with Goodyear's suggestion that modification of the Protective
3 Order will result in wasteful or duplicative discovery. Allowing collateral litigants to access Cox's
4 deposition testimony will at most result in the depositions of a handful of people who were present at the
5 Cox deposition on June 20, 2003 in an effort to determine whether he admitted a defect in the G159 tire.⁸

6 Goodyear also argues that its reliance interest on the Protective Order weighs heavily against
7 modification. (*Id.* at 10.) Goodyear contends that it relied on the Protective Order as well as its
8 settlement with the Phillips family, to protect Cox's testimony. (*Defendant's Opposition*, 10.) Goodyear
9 states that modification of the Protective Order will undermine Goodyear's own proper compliance with
10 the order, as well as its handling of the deposition notes and exhibits. (*Id.*) However, as the *Foltz* court
11 noted, "[r]eliance will be less with a blanket [protective] order, because it is by nature over-inclusive."
12 *Foltz*, 331 F.3d at 1138 (*citing Beckman*, 966 F.2d at 476). Because Goodyear drafted and then obtained
13 the blanket protective order without making a particularized showing of good cause with respect to any
14 particular documents or any specifically anticipated depositions or portions of testimony, and because
15 this case settled so quickly into the discovery process, Goodyear's reliance on the Protective Order was
16 minimal. *See id.* (citations omitted). Thus, even if Cox's testimony was confidential and subject to
17 protection, Goodyear fails to establish good cause for why the testimony should continue to be protected.

18 Finally, Intervenor's argue that Goodyear's attempt to withhold access to Cox's 2003 testimony
19 violates a strong public policy compelling the disclosure of information related to the health and safety of
20 motorists.⁹ (*Intervenors' Motion*, 17.) Paragraph 15 of the Protective Order states in pertinent part that

22 ⁸ As Goodyear points out, Cox has been and will continue to be deposed in product liability cases involving the
23 G159 tire. Therefore, the court's ruling on the present motion affects the question of whether he can be asked if he admitted a
tire defect when deposed in this case.

24 ⁹ Intervenor's cite to applicable federal laws that place an affirmative obligation on companies like Goodyear to
25 report to the government, public, and consumers when a tire's use on a particular type of vehicle renders it a defective
26 product, and to maintain a record of product malfunctions. *See Intervenor's Motion*, 17, *citing* 49 U.S.C. § 3118(c)(1) and
49 C.F.R. § 576.6, "Regulations Relating to Transportation: Record Retention," which states in pertinent part:

27 Records to be maintained by manufacturers under this part include all documentary materials, films, tapes,
28 and other information-storing media that contain information concerning malfunctions that may be related
to motor vehicle safety. Such records include, but are not limited to, reports and other documents, including
material generated or communicated by computer, telefax or other electronic means, that are related to work
performed under warranties; and any lists, compilations, analyses, or discussions of such malfunctions

1 “[t]he Court may modify this stipulated protective order in the interests of justice or for public policy
2 reasons.” The important public interest in safety implicated by this case and Intervenor’s collateral
3 litigation demands the disclosure of information related to a potential product defect in the G159 tire.
4 Therefore, even if Cox’s testimony were protected under the terms of the Protective Order, the Court
5 would modify its order to allow Intervenor to discover what he stated during that deposition.

6 **CONCLUSION**

7 Based on the foregoing reasons, the Court **DENIES AS MOOT** Intervenor’s Motion to Modify
8 the Court’s Protective Order Entered June 13, 2003 [Doc. No. 27]. The Court further **ORDERS** that the
9 Clerk of this Court **UNSEAL** Document Numbers 27, 37, 45, 48, 51, and 53 in light of the Court’s
10 ruling.

11 **IT IS SO ORDERED.**

12 DATED: January 28, 2008

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14 Hon. Nita L. Stormes
U.S. Magistrate Judge

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contained in internal or external correspondence of the manufacturer, including communications transmitted
25 electronically.

26 *See also U. S. v. Firestone Tire & Rubber Co.*, 455 F.Supp. 1072, 1082 (D.D.C.,1978)(holding that “15 U.S.C. § 1397[a]
27 empowers the Secretary of Transportation, and by delegation NHTSA, to prohibit the manufacture and sale in interstate
28 commerce any substandard motor vehicle or piece of motor vehicle equipment. 15 U.S.C. § 1401(c) allows for the
Secretary, and by delegation NHTSA, to conduct investigations and issue special orders such as the one at issue here, for
the accomplishment of any of the purposes outlined in the Act. It is clear that automobile tires are motor vehicle
equipment.”)