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11 IN THE UNITED STATES DISTRICT COURT

12 FOR THE DISTRICT OF ARIZONA

13 Karen Cosgrove, a single person,

No. CV-14-02229-PHX-HRH

14 Plaintiff,

15 **MEMORANDUM IN SUPPORT OF**
16 **UNITED POLICYHOLDERS’**
17 **MOTION TO INTERVENE**

18 v.

19 National Fire & Marine Insurance
20 Company, a foreign insurer,

ORAL ARGUMENT REQUESTED

21 Defendant.

22 Pursuant to Federal Rule of Civil Procedure 24, United Policyholders respectfully
23 moves the Court to intervene in this action for the limited purposes of unsealing and
24 reinstating the Court’s partial summary judgment opinion (Docket No. 171) and related
25 minute entry (Docket No. 170).

26 **INTRODUCTION**

27 United Policyholders seeks leave to intervene on behalf of the public interest to
28 prevent the unlawful suppression of the Court’s partial summary judgment order in this

1 case. This Court granted Plaintiff partial summary judgment against Defendant National
2 Fire & Marine Insurance Company (the “Insurance Company”) on April 10, 2017. More
3 than three weeks later, the Insurance Company, after settling with Plaintiff, sought to
4 vacate and seal the Court’s decision. *See* Docket No. 173. That tactic, which is commonly
5 employed by insurers in an attempt to reshape case law in their favor after an adverse
6 decision, is impermissible. United Policyholders moves to intervene solely for the
7 purpose of advocating for the unsealing and reinstatement of the Court’s decision and
8
9 minute entry.
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11 United Policyholders is a nonprofit founded in 1991 as an information resource
12 and a voice for insurance consumers. *See* Declaration of Daniel Wade in Support of
13 United Policyholders’ Motion to Intervene ¶¶ 2–5 (“Wade Decl.”). Through its *Roadmap*
14 *to Recovery* program, United Policyholders helps individuals and businesses navigate the
15 insurance claims process and recover fair and timely settlements. *Id.* ¶ 3. Its *Roadmap to*
16 *Preparedness* program guides consumers on buying insurance and preparing
17 economically for adverse events. *Id.* ¶ 4. Finally, its *Advocacy and Action* program works
18 with public officials, insurance trade associations, and others—including filing briefs in
19 court—to solve problems related to claims and coverage and to represent the interests of
20 policyholders. *Id.* ¶ 5. United Policyholders has been active in Arizona since the 2003
21 Aspen Fire and has appeared in Arizona cases as *amicus curiae*. *Id.* ¶¶ 3, 6.
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25 For more than 25 years, United Policyholders has assisted courts by filing *amicus*
26 *curiae* briefs in more than 450 cases, which have been cited by numerous courts,
27 including the U.S. Supreme Court. *See, e.g., Humana Inc. v. Forsyth*, 525 U.S. 299, 314
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1 (1999); *Excess Underwriters at Lloyd’s, London v. Frank’s Casing Crew & Rental Tools,*
2 *Inc.*, 246 S.W.3d 42, 47 & n.1 (Tex. 2008); Wade Decl. ¶¶ 2, 5–6. United Policyholders
3 also has intervened in cases like this one to unseal court documents on behalf of the
4 public interest. *See, e.g.*, Wade Decl. ¶ 7 & Ex. 1 (Order, *McKendry v. Gen. Am. Life Ins.*
5 *Co.*, No. 96-CV-754 (D. Ariz. Jan. 24, 2002)).
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7 Representation of the public interest is particularly important where, as here, an
8 insurance company faced with an adverse decision seeks to hide the court’s opinion. *See*
9 *generally* Eugene R. Anderson et al., *Out of the Frying Pan and Into the Fire: The*
10 *Emergence of Depublication in the Wake of Vacatur*, 4 J. App. Prac. & Process 475
11 (2002).
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13 ARGUMENT

14 United Policyholders should be permitted to intervene pursuant to Rule 24 to
15 challenge the sealing and vacatur of the Court’s partial summary judgment decision of
16 April 10, 2017. *See* Fed. R. Civ. P. 24. Under well-established Ninth Circuit law, United
17 Policyholders may intervene in this action in order to move this Court to unseal and
18 reinstate the Court’s partial summary judgment decision and related minute entry. Courts
19 routinely permit intervention where the movant seeks to intervene for the limited purpose
20 of challenging a confidentiality order. The same logic also applies where the movant
21 seeks to reinstate an order that was vacated without good cause.
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24 Nonparties such as United Policyholders who seek public access to documents
25 may intervene under Rule 24(b) for that purpose. *See, e.g.*, *San Jose Mercury News, Inc.*
26 *v. U.S. District Court—Northern District (San Jose)*, 187 F.3d 1096, 1100 (9th Cir. 1999)
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1 (“Nonparties seeking access to a judicial record in a civil case may do so by seeking
2 permissive intervention under Rule 24(b)[(1)(B)].”¹). Indeed, “every circuit court that has
3 considered the question has come to the conclusion that nonparties may permissively
4 intervene [under Rule 24(b)] for the purpose of challenging confidentiality orders.”
5 *EEOC v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042, 1045 (D.C. Cir. 1998).

7 It is well-established that an “independent jurisdictional basis and strong nexus of
8 fact or law are not required where [the] intervenor merely seeks to challenge a protective
9 order.” *San Jose Mercury News*, 187 F.3d at 1100 (citing *Beckman Indus., Inc. v. Int’l*
10 *Ins. Co.*, 966 F.2d 470, 473–74 (9th Cir. 1992)); *Skydive Ariz., Inc. v. Quattrocchi*, No.
11 05-CV-2656, 2009 WL 6597892, at *8 (D. Ariz. 2009).² Moreover, “intervention to
12 challenge confidentiality orders may take place long after a case has been terminated.”
13 *Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013)

17 ¹ Rule 24 was restyled in 2007 such that Rule 24(b)(2) became Rule 24(b)(1)(B). *See*,
18 *e.g.*, *United States ex rel. Little v. Triumph Gear Sys., Inc.*, 870 F.3d 1242, 1247 n.5 (10th
19 Cir. 2017).

20 ² In other contexts, three requirements generally must be met to intervene under Rule
21 24(b)(1)(B): (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a
22 common question of law or fact with the main action. *Freedom from Religion Found.,*
23 *Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). Here, however, no independent
24 jurisdictional basis is required because such intervenors “do not ask the district [court] to
25 rule on additional claims or seek to become parties to the action,” but rather “ask the
26 court only to exercise that power which it already has, *i.e.*, the power to modify the
27 protective order.” *Beckman*, 966 F.2d at 473. And no strong nexus of law or fact is
28 required because such an intervenor’s purpose is “not to pursue [a party]’s claim,” but
rather “to seek out” information “in which the public has a strong interest.” *Meyer*
Goldberg, Inc. v. Fisher Foods, Inc., 823 F.2d 159, 164 (6th Cir. 1987) (cited in
Beckman, 966 F.2d at 474).

1 (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 779 (3d Cir. 1994)). In this case,
2 United Policyholders had no specific interest in this action and no reason to intervene
3 until after the parties filed a request on May 4, 2017, to vacate and seal the Court’s partial
4 summary judgment decision. United Policyholders did not learn of that request or the
5 Court’s sealing and vacatur order of May 5, 2017 until after the case was closed. Wade
6 Decl. ¶ 8. Less than six months have passed since the Court’s order to seal and vacate
7 Docket Nos. 170 and 171, which is well within the time that courts have permitted
8 intervention for purposes of challenging a confidentiality order.³ Intervention to seek
9 reinstatement of these court actions is appropriate for the same reasons: United
10 Policyholders will not litigate any substantive claim or defense, and United Policyholders
11 will ask only that the Court exercise its power under Federal Rule of Civil Procedure
12 60(b) to reinstate a court order. *See Beckman*, 966 F.2d at 473–74.

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16 In exercising its discretion to permit intervention, this Court “must consider
17 whether the intervention will unduly delay or prejudice the adjudication of the original
18 parties’ rights.” Fed. R. Civ. P. 24(b)(3). United Policyholders’ intervention for the
19 limited purpose of unsealing and reinstating the summary judgment record clearly will
20 not prejudice the parties because it has no effect on the outcome of the litigation, which
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23 ³ “Indeed, delays measured in years have been tolerated where an intervenor is pressing
24 the public’s right of access to judicial records.” *San Jose Mercury News*, 187 F.3d at
25 1101; *see also, e.g., NML Capital, Ltd. v. Republic of Arg.*, Nos. 14-CV-492, 14-CV-
26 1573, 2014 WL 7012488, at *4 (D. Nev. Dec. 12, 2014) (Ferenbach, U.S.M.J.) (“When a
27 member of the public moves to intervene to unseal judicial records, the motion to
28 intervene is timely as long as the documents remain under seal . . .”).

1 has already been settled. *See, e.g., San Jose Mercury News*, 187 F.3d at 1101; *Beckman*,
2 966 F.2d at 473; *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th
3 Cir. 1990) (finding that any concerns about “prejudice in the adjudication of the rights of
4 the existing parties” is “not present when the existing parties have settled their dispute
5 and intervention is for a collateral purpose”); *Public Citizen v. Liggett Group, Inc.*, 858
6 F.2d 775, 786 (1st Cir. 1988) (“The fact that a suit has gone to judgment does not in any
7 sense militate against the public’s right to prosecute a substantiated right to see the
8 records of a particular case.”).

11 CONCLUSION

12 For the foregoing reasons, the Court should grant United Policyholders’ motion to
13 intervene under Rule 24 of the Federal Rules of Civil Procedure for the limited purposes
14 of unsealing and reinstating the partial summary judgment opinion and related minute
15 entry in this case.

16 November 3, 2017

Respectfully Submitted,

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20 /s/ Dustin Cho

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