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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JANE DOE 1, and JANE DOE 2, individually and on behalf of others similarly situated, *Plaintiffs*, v. **BLOOMBERG L.P.,** *Defendant*.	**Case No. 3:19-cv-09471-FLW-TJB**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT BLOOMBERG L.P.'S MOTION TO COMPEL COMPLIANCE WITH FEDERAL RULES 10(A) AND 17(A)

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Bloomberg L.P. ("Bloomberg" or "Defendant") respectfully submits this memorandum of law in support of its motion to compel compliance with Federal Rules of Civil Procedure 10(a) and 17(a). The named Plaintiffs – Jane Doe 1 and Jane Doe 2 – have offered no sufficient justification for withholding their real names. As such, Bloomberg respectfully requests that the Court order Plaintiffs to file an amended complaint using their own full legal names.

INTRODUCTION

Plaintiffs "Jane Doe 1" (a purportedly current Bloomberg employee) and "Jane Doe 2" (a purportedly former Bloomberg employee) seek to represent a Fair Labor Standards Act ("FLSA") collective action comprising current and former employees over the past three years, and a state-law class comprising current and former employees over the past two years, whom they claim were incorrectly classified as exempt from overtime rules. Plaintiffs, however, have omitted their real names from the Complaint in violation of Rules 10(a) and 17(a) of the Federal Rules of Civil Procedure. In so doing, Plaintiffs' Complaint does not articulate any basis for proceeding anonymously sufficient to overcome the universal principle in favor of open and public court proceedings, and Plaintiffs have not filed a motion seeking permission to litigate using pseudonyms. At the same time, Bloomberg is prejudiced by Plaintiffs' use of pseudonyms (which are stymieing its efforts to investigate their claims). The putative class is also prejudiced because they are

unable to evaluate the two individuals who purport to represent their interests. Fundamental fairness and the strong presumption in favor of open and public court proceedings necessitate that this Court require Plaintiffs to proceed using their real names.

FACTUAL BACKGROUND

Plaintiffs filed their Complaint on April 10, 2019 alleging that Bloomberg violated the FLSA and New Jersey Wage and Hour Laws. (Dkt. 1.) (hereinafter, "Compl.") The Complaint did not include Plaintiffs' names, referring to them only as "Jane Doe 1" and "Jane Doe 2." Plaintiffs served the Complaint via a process server at Bloomberg's Princeton, New Jersey offices on July 9, 2019. (*See* Dkt. 15.) Bloomberg moved to dismiss Plaintiffs' Complaint, based on a defective summons, for lack of personal jurisdiction, insufficient process, and insufficient service of process on July 30, 2019. (*See* Dkt. 16.) Thereafter, Plaintiffs requested and obtained a new summons, purportedly to fix the deficiencies in their initial summons. (Dkts. 18 and 19.) Plaintiffs served the amended summons – with the same anonymous Complaint – on August 1, 2019.

The Complaint makes only the barest of allegations related to Plaintiffs. Regarding Jane Doe 1, the Complaint simply alleges that she is a "current employee of Defendant" and a "resident of New Jersey." (Compl. ¶¶ 7-8.) The Complaint alleges that Jane Doe 1 is employed in Princeton, New Jersey, that she "has worked

for the same team in the Global Data Division in Princeton, New Jersey since 2015," and that she is "employed by Defendant to work with data so that it can be used in Bloomberg's BLAW platform." (*Id.* ¶¶ 27-28, 32.)

Regarding Jane Doe 2, the Complaint alleges that she is a "former employee of Defendant" and "was a resident of New Jersey." (*Id.* at ¶¶ 9-10.) According to the Complaint, Jane Doe 2 worked in Princeton, New Jersey in Bloomberg's Global Data Division from "approximately June 2015 through May 2017." (*Id.* ¶¶ 29-30.) Like Jane Doe 1, the Complaint alleges that Jane Doe 2 was employed to work with data used in Bloomberg's BLAW platform. (*Id.* ¶ 32.)

Neither Jane Doe 1 nor Jane Doe 2 make any allegations that this case involves any highly sensitive or personal information, any risk of physical harm or violence, or any other risk that would permit them to litigate using pseudonyms. Indeed, Plaintiffs only acknowledge their use of pseudonyms in their declarations in support of their motion for conditional certification, in which they merely aver that they are using pseudonyms "to avoid having any public posting of the complaint in this suit interfere with my career prospects." (Dkt. 20-7, ¶ 1; Dkt. 20-8, ¶ 1.)

LEGAL STANDARD

"A plaintiff's use of a pseudonym 'runs afoul of the public's common law right of access to judicial proceedings.'" *Doe v. Megless,* 654 F.3d 404, 408 (3d Cir. 2011), *cert denied* 565 U.S. 1197 (2012) (quoting *Does I Thru XXIII v. Advanced*

Textile Corp., 214 F.3d 1058, 1067 (9th Cir. 2000)). Federal Rule of Civil Procedure 10(a) illustrates "the principle that judicial proceedings, civil as well as criminal, are to be conducted in public" by "requir[ing] parties to a lawsuit to identify themselves in their respective pleadings." *Id.* (citing Fed. R. Civ. P. 10(a) (requiring that "[t]he title of the Complaint must name all the parties.")) This universal principle of open access to judicial proceedings also illuminates Federal Rule of Civil Procedure 17(a), which requires that "[a]n action must be prosecuted in the name of the real party in interest."

Identifying parties by name "is an important dimension of publicness," as "[t]he people have a right to know who is using their courts." *Megless,* 654 F.3d at 408 (citing *Doe v. Blue Cross & Blue Shield United,* 112 F.3d 869. 872 (7th Cir. 1997)). Furthermore, "defendants have a right to confront their accusers." *Id.* (citing *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe,* 599 F.2d 707, 713 (5th Cir. 1979). And because defendants cannot avoid public identification – "which may cause damage to their good names and reputation" – requiring plaintiffs to mutually identify themselves is "dictate[d]" by "[b]asic fairness." *S. Methodist Univ.,* 599 F.2d at 713.

Courts only permit a party to proceed anonymously in "exceptional cases." *Megless,* 654 F.3d at 408. It is "not enough" that "a plaintiff may suffer embarrassment or economic harm." *Id.* Rather, a plaintiff must show "both (1) a

fear of severe harm, and (2) that the fear of severe harm is reasonable." *Id.* (quoting *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate,* 596 F.3d 1036, 1403 (9th Cir. 2010)).

The Third Circuit has adopted a multi-factor balancing analysis to determine "whether a litigant has a reasonable fear of severe harm that outweighs the public's interest in open litigation." *Megless,* 654 F.3d at 409-410.[1] Courts within the Third Circuit weigh factors favoring anonymity against factors disfavoring anonymity (*id.* at 409), always acknowledging, however, that "the thumb on the scale is the universal interest in favor of open judicial proceedings." *Id.* at 411.

In the Third Circuit's analysis, factors favoring anonymity include:

> "(1) the extent to which the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity; (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities; (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; and (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives."

Id. at 409. On the other side of the scale, courts in the Third Circuit consider:

[1] The Third Circuit's analysis, however, "does not conflict with the tests that have been adopted by [its] sister circuits," each of which have adopted similar balancing tests designed to resolve the same issue. *Id.*

> "(1) the universal level of public interest in access to the identities of litigants; (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identities, beyond the public's interest which is normally obtained; and (3) whether the opposition to the pseudonym by counsel, the public, or the process is illegitimately motivated."

Id. This list of factors "is not comprehensive" and "trial courts 'will always be required to consider those [other] factors which the facts of the particular case implicate." *Id.* (quoting *Doe v. Provident Life and Acc. Ins. Co.,* 176 F.R.D. 464, 468 (E.D. Pa. 1997)).

Applying this standard, courts in this district have authorized anonymous litigation where a victim of sexual assault and harassment had a "particularized" and "well-founded" concern that she would "experience severe emotional distress and mental anguish" if her name were revealed publicly," *Doe v. Rutgers,* No. 2:19-cv-12952-KM-CLW, 2019 WL 1967021 at *3 (D.N.J. Apr. 30, 2019); where a prison inmate "reasonably fear[ed] violence if he [was] identified as a sex offender by other prisoners" in the facility "[b]ased on common knowledge that sex offenders are targets for violence in prison," *Doe v. Ortiz,* No. 18-2958, 2019 WL 287305, at *2 (D.N.J. Jan. 22, 2019); and where a victim of child pornography asserted that his identity, if revealed, would be "spread among pedophiles and child molesters" who may attempt to locate, stalk, or re-victimize the plaintiff, *Doe v. Orshin,* 299 F.R.D. 100, 102 (D.N.J. 2014).

Conversely, the Third Circuit "is clear that neither embarrassment nor economic harm is sufficient to outweigh the presumption that this Court's proceedings are to be public" and justify proceeding using a pseudonym. *Doe v. Law Offices of Robert A. Shuerger Co.,* No. 17-13105, 2018 WL 4258155, at *2 (D.N.J. Sept. 6, 2018) (denying plaintiff's motion to proceed anonymously where plaintiff contended that he would face embarrassment, humiliation, and potential loss of professional reputation). Routine concerns about professional standing and diminished employment prospects are insufficient to establish the need to use a pseudonym. *See, e.g., Rutgers*, 2019 WL 1967021, at *2 ("[o]n the other end of the spectrum, routine fears of professional and social embarrassment are insufficiently compelling"); *K.W. v. Holtzapple,* 299 F.R.D. 438, 442 (M.D. Pa. 2014) (plaintiffs' concerns that campus reputations and employment prospects would suffer did not justify use of pseudonyms).

Accordingly, other district courts across the country – applying standards that "do not conflict" with the Third Circuit standard[2] – have held that "typical" fears in FLSA cases like "being fired or having work reduced" or "reporting to the IRS, potential resulting immigration status consequences, and blacklisting" do not merit anonymous litigation. *Li v. A Perfect Day Franchise, Inc.,* 270 F.R.D. 509, 515 (N.D. Cal. 2010) (denying plaintiffs' request to proceed anonymously in action

[2] *See* FN 1, *supra* at 5.

challenging their categorization as independent contractors and seeking minimum wages and overtime); *see also Doe. 1 v. Four Bros. Pizza, Inc.,* No. 13-cv-1505 (VB), 2013 WL 6083414, at *9-10 (S.D.N.Y. Nov. 19, 2013) (setting aside order granting anonymity where public's interest in disclosure and prejudice to defendant outweighed plaintiffs' stated retaliation concerns); *4 Exotic Dancers v. Spearmint Rhino,* No. 08-cv-4038, 2009 WL 250054, at *1-2 (C.D. Cal. Jan. 29, 2009) (fears of "blacklisting" and "economic retaliation" in FLSA action were not "extraordinary" and did not justify anonymity).

Moreover, Plaintiffs' attorneys should already be aware that pseudonymous litigation is not warranted here. In *Roseman v. Bloomberg,* Dkt. No. 15-cv-2657 (TPG) (S.D.N.Y.), the same Plaintiffs' attorneys sought to litigate pseudonymously, claiming that the litigation "could negatively impact plaintiff's future employment prospects." *Michael v. Bloomberg L.P.,* No. 14-cv-2657 (TPG), 2015 WL 585592, at *2 (S.D.N.Y. Feb. 11, 2015). The court, however, found this justification insufficient and declined to permit the plaintiff to litigate pseudonymously, holding that "[t]o depart in this case from the general requirement of disclosure would be to hold that nearly any plaintiff bringing a lawsuit against an employer would have a basis to proceed pseudonymously." *Id.* at *3.

At any rate, Plaintiffs bear a heavy burden of overcoming the "strong presumption" in favor of open and public litigation. *Holtzapple,* 229 F.R.D. at 440;

cf. John Doe Co. No. 1 v. Consumer Financial Protection Bureau, 195 F.Supp.3d 9, 13 (D.C. Cir. 2016) (noting that those who seek to proceed using pseudonyms bear a "heavy burden"). To do so, plaintiffs must provide particularized and well-founded details or evidence to establish that their fear is "anything but speculative." *U.S., ex. rel. Luciano v. Pollack Health & Wellness, Inc.,* No. 13-6815, 2015 WL 2168655, at *4 (D.N.J. Apr. 30, 2015) (denying request to proceed pseudonymously where plaintiff "provided no details or evidence to establish that this fear is anything but speculative"). In short, "[f]undamental fairness generally requires plaintiffs to make their accusations publicly, as it is unfair to allow a plaintiff to 'hurl accusations at [a defendant] from behind a cloak of anonymity.'" *Doe v. Rider University,* No. 16-4882, 2018 WL 3756950, at *8 (D.N.J. Aug. 7, 2018).

ARGUMENT

Plaintiffs have made no attempt to present particularized facts or evidence that would justify their use of pseudonyms. Their Complaint contains no allegations that they have fear of any harm – much less severe harm – that would permit them to litigate anonymously. Their only statements in support of their attempt to litigate using pseudonyms appear in their declarations in support of their motion for conditional certification, in which both Plaintiffs state that they wish to "avoid having any public posting of the complaint in this suit interfere with my future career prospects." (Dkt. 20-7, ¶ 1; Dkt. 20-8, ¶ 1.) Courts within the Third Circuit and

around the country, however, have roundly held that fears of diminished employment prospects do not justify litigating pseudonymously. *See, e.g., Law Offices of Robert A. Shuerger Co.,* 2018 WL 4258155, at *2 (potential loss of professional reputation insufficient to justify use of pseudonym); *Holtzapple,* 299 F.R.D. at 438 (concerns that employment prospects would suffer did not justify use of pseudonym); *Michael,* 2015 WL 585592, at *2 (plaintiff's concern that litigation "could negatively impact plaintiff's future employment prospects" did not justify use of pseudonym).

Further, it is unclear how Plaintiffs can even begin to distinguish themselves from myriad other wage and hour plaintiffs who comply with Rules 10(a) and 17(a) in FLSA cases, from opt-ins who have already joined the current action under their real names,[3] or from those who have sought – and failed – to litigate using pseudonyms due to routine concerns. *See, e.g., Four Bros. Pizza, Inc.,* 2013 WL 6083414, at *9-10 (fears of retaliation and threats to call police or immigration authorities insufficient to justify pseudonyms); *Li,* 270 F.R.D. at 514-15 (fears of work reduction and termination were "typical" fears of FLSA plaintiffs, not "extraordinary" fears justifying pseudonyms); *4 Exotic Dancers,* 2009 WL 250054, at *1-2 (fears of "blacklisting" and "economic retaliation" in FLSA action were not "extraordinary" and did not justify anonymity). As a result, Plaintiffs do not even

[3] (*See* Dkts. 4-10, 23.)

begin to shoulder the "heavy burden" they face in justifying concealing their identities. *John Doe Co. No. 1,* 195 F.Supp.3d at 13.

Bloomberg, the putative class, and the public all have interests in the disclosure of Plaintiffs' identities – Bloomberg, because Plaintiffs' anonymity is impairing its internal investigation into their allegations and will impede its arguments on other issues in this action; the putative class because they have a right to know who is purporting to act on their behalf; and the public because of Plaintiffs' infringement upon its right to know who is using its courtrooms. The Court should therefore require Jane Doe 1 and Jane Doe 2 to disclose their identities in accordance with Federal Rules of Civil Procedure 10(a) and 17(a).

I. PLAINTIFFS HAVE NOT GIVEN A SUFFICIENT REASON FOR HIDING THEIR IDENTITIES

To justify their use of pseudonyms, Plaintiffs must show "both (1) fear of severe harm, and (2) that the fear of severe harm is reasonable." *Megless,* 654 F.3d at 408 (citation omitted). Fears of embarrassment and economic harm are "not enough" to justify pseudonymous litigation. *Id.*

Plaintiffs' have made no attempt to articulate a fear of "severe harm," and their perfunctory statements that they do not want this suit to "interfere" with their "future career prospects" (Dkts. 20-7, ¶ 1; 20-8, ¶ 1) are typical fears of FLSA plaintiffs that are insufficient to justify pseudonymous litigation. *See, e.g., Law Offices of Robert A. Shuerger Co.,* 2018 WL 4258155, at *2 (concern about

professional reputation was insufficient); *Holtzapple,* 299 F.R.D. at 438 (concerns that employment prospects would suffer was insufficient); *Michael,* 2015 WL 585592, at *2 (plaintiff's concern about "future employment prospects" was insufficient).

Where plaintiffs have failed to adequately identify a reasonable fear or severe harm at the threshold, courts within the Third Circuit have found it unnecessary to consider the other *Megless* factors favoring anonymity. *See Law Offices of Robert A. Shuerger Co.,* 2018 WL 4258155, at *2 (where plaintiff only identified fear of embarrassment, humiliation, and the potential loss of professional standing, court held plaintiff could not proceed pseudonymously and did not consider whether any other factor favored anonymity); *K.W. Holtzapple,* 299 F.R.D. at 442 (where plaintiffs "only advanced arguments of embarrassment in front of peers and professors along with the possibility of denial of future employment benefits" the court rejected their request to proceed pseudonymously because there was no potential for severe harm); *U.S., ex rel. Luciano,* 2015 WL 2168655, at *3-4 (where plaintiff did not provide information that would allow the court to conclude she would suffer substantial harm, the court swiftly rejected her request).

Given that Plaintiffs have offered no sufficient justification, and no facts or evidence in support of their attempt to litigate using pseudonyms, this Court should require them to amend their Complaint to reflect their full, legal names.

II. STRONG PUBLIC AND PRIVATE INTERESTS FAVOR TRANSPARENCY

"There is a universal public interest in access to the identities of litigants" and this proverbial "thumb on the scale" weighs in favor of disclosing Jane Doe 1 and Jane Doe 2's identity. *Megless,* 654 F.3d at 411. Plaintiffs – by failing to articulate a reasonable fear of severe harm that would permit them to proceed pseudonymously – have done nothing to overcome this "strong presumption" in favor of open proceedings. *Holtzapple,* 229 F.R.D. at 440.

Moreover, alongside the "not comprehensive" list of factors adopted by the Third Circuit in *Megless,* trial courts "will always be required to consider those [other] factors which the facts of the particular case implicate." *Megless,* 654 F.3d at 409. Here, the prejudice to both Bloomberg and the putative class further warrants requiring the Plaintiffs to comply with Federal Rules 10(a) and 17(a). Indeed, "[f]undamental fairness generally requires plaintiffs to make their accusations publicly, as it is unfair to allow a plaintiff to 'hurl accusations at [a defendant] from behind a cloak of anonymity.'" *Rider Univ.,* 2018 WL 3756950, at *8 (citation omitted).

A. Secrecy is Prejudicial to Bloomberg

Plaintiffs' use of pseudonyms has prevented, and will continue to prevent, Bloomberg from investigating the merits of their fact-intensive claims that they were not exempt from overtime laws and that they actually worked compensable overtime.

To do so, Bloomberg will need to depose the Plaintiffs and interview or depose other employees and witnesses regarding the specific allegations in the Complaint. In addition, Plaintiffs' use of pseudonyms prevents Bloomberg from determining whether they are adequate representatives for the class and adequate lead plaintiffs for the current and potential opt-ins. Bloomberg would be obstructed in these efforts if the Court allows Plaintiffs' identities to be kept secret.

B. Secrecy is Prejudicial to the Putative Class

Courts throughout the country have held that in collective and representative actions (like this one) the putative class members and opt-ins are entitled to know who purports to represent their interests so that they can determine whether these individuals are adequate representatives. *See, e.g., Michael v. Charter Communications, Inc.,* No. 4:17-cv-1242 (JMB), 2017 WL 2833404, at *4 (E.D. Mo. June 30, 2017) (requiring plaintiff to amend pleading with real name and noting that "the general presumption in favor of public disclosure of a plaintiff's identity is even stronger in a case which is pled as a putative class action, because the named plaintiff is purporting to represent other members of the public"); *In re Ashley Madison Customer Data Security Breach Litigation,* MDL No. 2669, 2016 WL 1366616, at *4 (E.D. Mo. Apr. 6, 2016) ("Given the importance of the role of class representative, the Court will require Plaintiffs to disclose their identities so that the public, including the putative class members they seek to represent, know who is guiding

and directing the litigation"); *Michael v. Bloomberg,* 2015 WL 585592, at *4 (noting that proceeding pseudonymously "may also preclude potential class members from properly evaluating the qualifications of the class representative").

With Plaintiffs' identities hidden, potential opt-ins and putative class members have no way to assess whether Plaintiffs are their adequate representatives. For this reason alone, Plaintiffs should be required to amend their pleading with their real names.

CONCLUSION

For the foregoing reasons, Defendant Bloomberg L.P. respectfully requests that the Court compel the Plaintiffs to amend their Complaint to disclose their identities as required by Federal Rule of Civil Procedure 10(a).

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Respectfully submitted,

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