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. Case No.: 3:19-CV-09471

BLOOMBERG L.P.,

Defendant.

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO COMPEL

Respectfully Submitted,

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PRELIMINARY STATEMENT

In evaluating Bloomberg's motion to compel, the Court must balance the public interest in furthering the remedial purpose of the wage and hour laws and the Jane Doe Plaintiffs' reasonable fear of harm, against the public's interest in knowing who the Named Plaintiffs are.

Protecting the identities of plaintiffs who have a reasonable fear of retaliation helps further the remedial purpose of the wage and hour laws. By filing this action under pseudonyms, the Jane Doe Plaintiffs are seeking the same protection afforded to workers in actions brought by the Secretary of Labor or by private litigants where the "informant's privilege" may be used to conceal the names of the workers who precipitated the suit or investigation. Plaintiffs have a reasonable fear that having their names published in an action against a highly public Defendant will result in severe economic harm. The public's interest in open judicial proceedings is not harmed by permitting these Plaintiffs to use pseudonyms while describing in detail the group of workers to whom this case pertains. These proceedings will remain public and any general public interest in the subject matter of this litigation will be preserved.

And Plaintiffs have offered to disclose to Bloomberg the identity of the Plaintiffs, but Bloomberg rejects Plaintiffs' offer. Bloomberg has not identified any compelling reason why the public needs the names of the Jane Doe Plaintiffs to be

published in the caption to properly defend this case. Plaintiffs should be allowed to proceed under pseudonyms at least until the Court rules on Plaintiffs' motion for court-ordered notice to potential class members, and potential class members have been given an opportunity to join the suit. Bloomberg's motion to compel should be denied.

BACKGROUND

Plaintiffs are current and former Global Data Analysts employed by Bloomberg as data entry technicians to supply properly formatted data to Bloomberg's platforms. Prior to January 1, 2019, Bloomberg failed to pay overtime wages to the data entry technicians who bring this case. *See,* Def. Br. in Op'n to Conditional Certification, Dkt. 34 at p. 14 n. 2.[1] It reclassified most or all of the positions as overtime eligible on January 1, 2019 but failed to pay back pay or liquidated damages to the affected workers. Since this action was filed, eleven Global Data Analysts have filed consents to sue. And such filings were done without listing the opt-in class members' names in the docket entries. *See,* Dkt. 4-1, 5-1, 6-1, 6-2, 7-1, 7-2, 8-1, 9-1, 10-1, 10-2, 23-1. On August 1, 2019, Plaintiffs filed their Motion for Conditional Certification seeking to send notice to all

[1] Unless otherwise noted, when citing to docketed court documents, Plaintiffs cite to the docket page numbers rather than the page numbers in the original documents.

similarly situated employees. Dkt. 20. Plaintiffs' motion for conditional certification is fully briefed.

From its inception in the 1970s until very recently, Bloomberg failed to pay overtime premium pay to any of its many thousands of employees.[2] In 2013, after a worker filed an anonymous complaint with the United States Department of Labor (USDOL), Bloomberg voluntarily agreed to reclassify 30 different job positions in many of its various departments. All in all, Bloomberg reclassified thousands of workers including the workers sorting mail in the mailroom, the receptionists fielding calls at the front desk, clerical workers, and many others. *See*, Dkt. 20-4.

Since the USDOL investigation, however, workers around the country have brought several class action lawsuits against Bloomberg for positions that it did not voluntarily reclassify within the USDOL audit. Those actions have resulted in Bloomberg's reclassification of a variety of tech support positions as non-exempt from overtime and class action settlements involving more than 2,000 workers.[3]

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[2] *See*, Plaintiffs' Brief in Support of Motion to Compel Answers to Deposition Questions and Documents, *Enea v Bloomberg L.P.*, 12 Civ. 4656-GBD-FM, (S.D.N.Y.) Dkt. 102 at pp. 3-8 in the original document. The document is filed in this docket as an exhibit to Plaintiffs' Motion for Conditional Certification at Dkt. 20-4.

[3] *See, Enea v. Bloomberg L.P.*, No. 12 Civ. 4656 (S.D.N.Y. 2016) (approving class action settlement on behalf of a class of Global Technical Support Reps); *Jackson v. Bloomberg L.P.*, No. 13 Civ. 2001 (S.D.N.Y. 2016) (approving $3.2M class action settlement on behalf of a class of Global Customer Support Reps); *Roseman*

The decision to step forward to litigate employment claims against a highly public Defendant has resulted in unique reputational and employment risks for plaintiffs in prior overtime pay litigation against Bloomberg.[4] For example, the names of past named-Plaintiffs remain publicly identified as having brought cases against their employer (Bloomberg) years ago through google searches of their names and through online news sources such as the NY Post, Fortune, Yahoo Finance, Law360, and Leagle.com. Declaration of Artemio Guerra (Guerra Dec.) at ¶ 3. And in at least two past overtime cases brought against it, Bloomberg went out of its way to tarnish the reputation of the lead plaintiffs in such a way that these references continue to appear in public internet filings, calling them "disgruntled" workers who were "fired for poor job performance." *See,* Plaintiffs' Motion for Final Approval of Class Settlement, *Jackson v. Bloomberg,* 1:13-cv-02001-JPO-GWG, (S.D.N.Y.), Dkt. 117 at p. 25; *also see,* Plaintiffs' Motion for Preliminary Approval of Class Settlement, *Enea v. Bloomberg,* 12 Civ. 4656-GBD-FM, (S.D.N.Y.), Dkt. 131 at p. 15.

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v. Bloomberg, No. 14 Civ. 2657 (S.D.N.Y. 2018) at Dkt. 5440 (approving $54.5M class action settlement on behalf of a class of Analytics Representatives).

[4] While news articles and websites reporting the names of people that have stepped forward to sue Bloomberg are still accessible online, since this memorandum will be publicly filed, Plaintiffs prefer not to republish that information here in order to avoid further harm. The Guerra Declaration identifies such information in further detail.

Bloomberg's counsel filed its motion to compel the disclosure of Plaintiffs' identities without discussing their concerns with Plaintiffs. In a meet and confer initiated by Plaintiffs on September 17, 2019, Plaintiffs offered to disclose the full identities of the Named Plaintiffs if Bloomberg's counsel would agree to keep the information confidential. Guerra Dec. at ¶¶ 5, 6. Plaintiffs also asked if Bloomberg would consent to shield from public disclosure the Jane Does' names at least during the early stages of the litigation. Guerra Dec. at ¶ 7. Plaintiffs also offered to amend the complaint to identify the Jane Doe Plaintiffs by their first and middle name in the caption. Guerra Dec. at ¶ 8. Bloomberg has rejected all of Plaintiffs' proposals to offer a modicum of privacy. Guerra Dec. at ¶ 9. Plaintiffs cannot fathom any legitimate reason why Bloomberg needs to have the Plaintiffs' names publicly identified. It is possible that the public disclosure of names will, in itself, cause other workers to fear joining insofar as they may assume that their names will become public too or that it would cause future workers concern about bringing litigation against other divisions of the company. Regardless, Bloomberg failed to identify any interest it has in the public disclosure of the Plaintiffs' names. And it failed to identify any reason why Plaintiffs' offer to disclose the Plaintiffs' names to Bloomberg privately would cause it prejudice or would otherwise fail to meet Bloomberg's needs in this litigation.

ARGUMENT

I. The remedial purpose of the wage and hour laws is furthered by protecting the identities of plaintiffs that have demonstrated a reasonable fear of retaliation.

A. Standard

In this case, the Court must balance the public interest in furthering the remedial purpose of the wage and hour laws and the Jane Doe Plaintiffs' reasonable fear of harm, against the public's interest in open judicial proceedings. *Doe v. Megless*, 654 F.3d 404, 408 (3d Cir. 2011). The Third Circuit has acknowledged that there is no single comprehensive set of factors to evaluate a plaintiff's need for anonymity in the public filing. *Id.* at 409. As the Third Circuit has noted "trial courts will always be required to consider those factors which the facts of the particular case implicate." *Id.* (citing: *Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464, 468 (E.D. Pa. 1997)). All relevant factors here warrant denial of Bloomberg's motion to compel.

In the balancing of interests the Third Circuit has considered:

> (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; (6) whether

> the party seeking to sue pseudonymously has illegitimate ulterior motives" ; [(7)] the universal level of public interest in access to the identities of litigants; [(8)] 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 [(9)] whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated.

Doe v. Megless, 654 F.3d at 409. Factors one through six, eight and nine weigh in Plaintiffs' favor here. The first factor – that "the identity of the litigant has been kept confidential" is clearly true. The second factor whether "the substantiality of" Plaintiffs' fears is clear because they have good reason to fear economic harm if they are forced to reveal their identities. The third factor, "the magnitude of the public interest in maintaining the confidentiality of the litigant's identity" is also in Plaintiffs' favor here because the public has a significant interest in encouraging FLSA litigation and also in protecting from retaliation workers that come forward with complaints. The fourth factor, whether "there is an atypically weak public interest in knowing the litigant's identities," also militates in favor of Plaintiffs' position because the names of two workers, out a workforce of hundreds, are irrelevant here since Plaintiffs assert that the violations were widespread and impacted close to one thousand employees in New Jersey. The fifth factor, "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" also favors protecting the identity of Plaintiffs because if Plaintiffs are forced to withdraw

from this case to forego the harm they fear, the wage and hour violations affecting close to one thousand New Jersey employees will simply go unchecked. And the sixth factor "whether the party seeking to sue pseudonymously has illegitimate ulterior motives" also weighs in favor of confidentiality because Plaintiffs here are seeking this protection for clearly legitimate reasons and have no illegitimate ulterior motives (they have offered to disclose their names to Bloomberg). The eighth factor, "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" clearly does not apply to this case – the workers do their work anonymously within a large multinational company. Bloomberg's customers are unlikely to know or care which employee entered which data into which database. The ninth factor, "whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated" is hard to discern. While Plaintiffs do not wish to ascribe motives to Bloomberg, it is clear that it suffers no prejudice by this pseudonymous complaint and it stands to benefit, in this case, or by avoiding future cases, if its workforce is chilled from pursuing claims out of the fear that they must go public to do so. As the seventh lawsuit after six other settled overtime cases in addition to the USDOL audit covering 30 positions, Bloomberg has a clear financial reason to try to chill participation here and to chill further suits against it. Only the seventh factor – the general public

interest in knowing a litigant's identity – weighs in favor of disclosure and then only mildly. That factor has no special importance in this case and is clearly outweighed by the eight others.

As further explained below, the Jane Doe Plaintiffs brought this case to remedy Bloomberg's continuing recalcitrance in complying with the wage and hour laws. Their names have been kept confidential to date. By filing this action under pseudonyms, the Jane Doe Plaintiffs are seeking to avoid the economic and reputational harm that flows from being publicly identified as having sued one's employer, while making sure that they and other affected workers are made whole. They seek the same protection afforded to workers in Fair Labor Standards Act's actions brought by the Secretary of Labor or in private litigation where the "informant's privilege" [5] may be used to conceal the names of the workers who precipitated the suit or the investigation. The "informant's privilege" should be applied here too to protect the identities of private litigants that, if forced to publish their names, will stand to suffer a lifetime of economic harm. *Does I thru XXIII v. Adv. Textile Corp.*, 214 F.3d 1058, 1072–73 (9th Cir. 2000).

[5] *See, Mitchell v. Roma*, 265 F.2d 633 (3d Cir.1959) (In an action by the Secretary of Labor against employer for violations of the Fair Labor Standards Act, the identities of who workers who gave statements to investigators were protected by the "informant's privilege.").

The public's interest in open judicial proceedings will remain intact because, even if the Jane Doe Plaintiffs proceed under pseudonyms, these proceedings will remain public, and any general public interest in the subject matter of this litigation will be preserved. *See, Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464, 468 (E.D. Pa. 1997) ("use of a pseudonym will not interfere with the public's right or ability to follow the proceedings"). Bloomberg has not articulated that it will suffer any prejudice and Plaintiffs here have already offered to disclose to Bloomberg's counsel the names of the Jane Doe Plaintiffs. All relevant factors here warrant denial of Bloomberg's motion to compel. The Court should exercise its discretion and permit the Jane Doe Plaintiffs to use pseudonyms at this early stage of the litigation.

B. The wage and hour laws are remedial legislation.

The FLSA is remedial legislation designed to remedy not only the problem of underpayment of wages but also "the evil of overwork."[6] *Barrentine v.*

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[6] According to a recent survey, more than half of Americans (53%) are burned out and overworked. *See,* Fottrell, Quentin. *Overworked Americans are stuck in a financial groundhog day.* Market Watch, Feb 2., 2018. https://www.marketwatch.com/story/americans-are-stuck-in-a-financial-groundhog-day-2016-02-02. (Accessed Sep. 13, 2019). For workers in the tech and financial industries, like the Plaintiffs in this case, the expectation to work long hours is embedded in the work culture. *See,* Moodie, Alison. The Guardian, Jun. 30, 2016. *Why are Americans spending too much time at work?* https://www.theguardian.com/sustainable-business/2016/jun/30/america-working-hours-minimum-wage-overworked (Accessed Sep. 13, 2019).

Arkansas-Best Freight System, Inc., 450 U.S. 728, 739 (1981); *see also*, *State v. Comfort Cab, Inc.*, 286 A.2d 742, 749 (N.J. Co. 1972) (explaining that the New Jersey wage and hour laws are humanitarian and remedial legislation). In order to protect working people against excessive hours of work, the Act sets forth specific wage, hour, and overtime standards requiring that employers pay employees for hours in excess of 40 in a week "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1).

C. The enforcement scheme of the wage and hour laws relies primarily upon information and complaints brought forth by workers. Protecting workers from retaliation is an important component of this scheme.

The Act relies for enforcement of its standards primarily upon information and complaints brought forth by workers seeking to vindicate their rights. *Kasten v. St.-Gobain Performance Plastics Corp.*, 563 U.S. 1, 11–12 (2011); 29 U.S.C. § 216 (b), (c); *see also*, N.J. Stat. Ann. § 34:11-56a25; *also see*, *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 263, 95 S. Ct. 1612, 1624, 44 L. Ed. 2d 141 (1975) (explaining that in fee shifting statutes "Congress has opted to rely heavily on private enforcement to implement public policy and to allow counsel fees so as to encourage private litigation."). The Act's antiretaliation provisions

help make this enforcement scheme effective by preventing the fear of economic retaliation from inducing workers quietly to accept substandard conditions. *Kasten*, 563 U.S. at 11–12*; see also, Ruccolo v. BDP, Intl., Inc.*, CIV.A. 95-2300 JBS, 1996 WL 735575, at *3 (D.N.J. Mar. 25, 1996) ("The broad remedial purposes of FLSA, among them the right to receive overtime pay when provided by law, compel this court to conclude that FLSA protects an employee against the employer's retaliation for demanding recognized FLSA rights."); *Mitchell v. Robert De Mario Jewelry, Inc.*, 361 U.S. 288, 292 (1960) ("[I]t needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions."). Despite these legal protections, employees fear suing their employers – who have the power to affect their satisfaction at work, their career advancement within the company, and their advancement to positions outside it. Workers well know that anti-retaliation protections difficult to enforce.

The public here has a clear interest in protecting the identities of those workers who decide to come forward. The benefits that flow from workers making complaints redound to the benefit of other workers in the same company, the same industry, and indeed, the benefits ripple throughout the economy as companies compete to obtain workers. Permitting to come forward without adverse effects, enables other victims of FLSA violations to feel more comfortable suing to

vindicate their rights. *Chao v. Raceway Petroleum, Inc.*, CIV.A. 06-3363JLL, 2008 WL 2064354, at *1 (D.N.J. May 14, 2008) (protecting the identities of workers that assist with enforcement of the wage and hour laws furthers an "important public policy of protecting current and former employees from retaliation."); *see also, Doe v. Evans*, 202 F.R.D. 173, 176 (E.D. Pa. 2001)(protecting the identity of plaintiffs in civil rights lawsuit against police department was in the public interest).

Yet, without persons like the Jane Doe Plaintiffs in this case, wage and hour violations would remain under the table unchecked. Without workers coming forward the evils of overwork and underpayment of wages would not be remedied and the purpose of the Act would not be accomplished.

D. The Jane Doe Plaintiffs must be afforded the same protection guaranteed to workers who precipitate a lawsuit by lodging complaints with the Department of Labor.

Since the primary way the wage and hours are enforced is when workers come forward to initiate actions, protecting the identities of vulnerable workers furthers the important public policy of protecting workers from the harm of retaliation. *Chao v. Raceway Petroleum, Inc.*, CIV.A. 06-3363JLL, 2008 WL 2064354, at *1 (D.N.J. May 14, 2008). Indeed, in New Jersey and across the nation workers are allowed to lodge anonymous complaints against their employers to

report violations of the wage and hour laws.[7] Bloomberg itself was prompted to comply with the law and pay overtime to thousands of employees after a worker lodged an anonymous complaint with the United States Department of Labor.[8] Bloomberg's in-house counsel, Matthew Asman, testified that Bloomberg was never able to determine who lodged the complaint that uncovered the company's rampant wage and hour violations:

> Q. Did Bloomberg take any steps to cause the Department of Labor investigation?
> A. To cause it?
> Q. Yes.
> A. We don't know what the cause of the investigation was other than that they inquired specifically about the payroll analyst role.
> Q. Was Bloomberg able to determine if a specific payroll analyst had made the complaint?
> A. No.

Deposition of Matthew Asman at 75:15-76:2, *Enea v Bloomberg L.P.*, 12 Civ. 4656-GBD-FM, (S.D.N.Y.) Dkt. 102-1.

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[7] *See, Zalinskie v. Rosner L. Offices, P.C.*, CIV.A. 12-289, 2014 WL 956022, at *4 (D.N.J. Mar. 12, 2014) (acknowledging that employer was subject to investigation pursuant to anonymous complaints); *see also, New Jersey Department of Labor 's Wage and Hour Compliance FAQs.* Retrieved from: https://www.nj.gov/labor/wagehour/content/wage_and_hour_compliance_faqs.html#q13 (providing instructions about filing complaints anonymously).

[8] Plaintiffs' Brief in Support of Motion to Compel Answers to Deposition Questions and Documents, *Enea v Bloomberg L.P.*, 12 Civ. 4656-GBD-FM, (S.D.N.Y.) Dkt. 102 at pp. 3-8 in the original document. The document is filed in this docket as an exhibit to Plaintiffs' Motion for Conditional Certification at Dkt. 20-4

By filing this action under pseudonyms, the Jane Doe Plaintiffs are seeking the same protection afforded to workers like the payroll analyst that lodged a complaint against Bloomberg as well as many other workers in Fair Labor Standards Act actions brought by the Secretary of Labor where the "informant's privilege" may be used to conceal their names.

It is well settled in the Third Circuit that the "informant's privilege" protects the identities of persons that step forward to assist with the investigation of violations of the law. *Mitchell v. Roma*, 265 F.2d 633 (3d Cir.1959); *Chao v. Raceway Petroleum, Inc.*, CIV.A. 06-3363JLL, 2008 WL 2064354, at *1 (D.N.J. May 14, 2008)*; Fermaintt v. McWane, Inc*., CV 06-5983 (JAP), 2008 WL 11383665, at *9 (D.N.J. Dec. 17, 2008)*; Perez v. Am. Future Sys., Inc.*, CIV.A. 12-6171, 2013 WL 5728674, at *2–3 (E.D. Pa. Oct. 21, 2013).

One of the most common applications of "informant's privilege" in civil actions is in cases arising under the FLSA and in those cases courts have generally refused disclosure of the identities of workers. *Perez v. Am. Future Sys., Inc.*, CIV.A. 12-6171, 2013 WL 5728674, at *2–3 (E.D. Pa. Oct. 21, 2013) (citing cases). While the "informant's privilege" is generally invoked by the government and law enforcement agencies, there are compelling reasons to apply the privilege to the Jane Doe Plaintiffs in this case. The Ninth Circuit's holding in *Does I thru XXIII v. Adv. Textile Corp.* is instructive here.

> The district court aptly characterized this case as one with "widespread implications ... of interest to the public at large," but concluded, without analysis, that the public interest would be served by requiring plaintiffs to reveal their identities. The district court did not explain, and we fail to see, how disguising plaintiffs' identities will obstruct public scrutiny of the important issues in this case. **In FLSA actions brought by the Secretary of Labor, the "informant's privilege" may be used to conceal names of employees who precipitated the suit by filing complaints with the Department of Labor... Plaintiffs simply attempt to accomplish the same result in a suit brought under FLSA's private cause of action. The public also has an interest in seeing this case decided on the merits. Employee suits to enforce their statutory rights benefit the general public**... Moreover, as the Supreme Court has recognized, fear of employer reprisals will frequently chill employees' willingness to challenge employers' violations of their rights... Thus, permitting plaintiffs to use pseudonyms will serve the public's interest in this lawsuit by enabling it to go forward.

Does I thru XXIII v. Adv. Textile Corp., 214 F.3d 1058, 1072–73 (9th Cir. 2000) (emphasis added) (citations omitted).[9]

This case has widespread implications because Plaintiffs are seeking to compel a highly public Defendant to remedy decades of wage and hour violations affecting approximately one thousand Global Data workers in New Jersey during the last three years alone. As further explained below, if forced to publish their identities in the caption of this action the Jane Doe Plaintiffs stand to suffer irreparable and permanent harm. Protecting the Plaintiffs' identities will not

[9] *See also,* Ethan D. Wohl, Confidential Informants in Private Litigation: Balancing Interests in Anonymity and Disclosure, 12 Fordham J. Corp. & Fin. L. 551, 572 (2007)("The clear and well-defined nature of the government informant's privilege invites extension to those who assist private plaintiffs, and at a minimum to plaintiffs acting as 'private attorneys general.'").

obstruct public scrutiny of the important issues in this case. And not publishing the Plaintiffs' names in the caption at this juncture will not prejudice Bloomberg in any way. All of these reasons militate in favor of protecting the identities of the Jane Doe Plaintiffs at this early stage of the litigation. Permitting plaintiffs to use pseudonyms at this stage will serve the public's interest in this lawsuit by enabling it to go forward and be resolved on the merits. *Does I thru XXIII,* 214 F.3d at 1072–73; *Chao v. Raceway Petroleum, Inc.,* CIV.A. 06-3363JLL, 2008 WL 2064354, at *1 (D.N.J. May 14, 2008).

E. Plaintiffs' fear of severe harm is reasonable.

Plaintiffs here fear that being publicly identified as suing their employer will result in a perpetual internet record, available to all future employers, that they are troublemakers who have sued their employer in the past. That fear is not merely reasonable, it is documented. Every single prior litigation involving Bloomberg has been the subject of a great many news reports. Those news reports, and even the legal filings in which their names were mentioned, remain publicly available through routine google searches. Plaintiffs have clear reason to fear the public disclosure of their names to others, including future employers, if their names are stated in the caption of this case.

This fear is heightened by the fact that Bloomberg is a company *frequently in the news*. Overtime pay cases against Bloomberg in the past have generated significant media coverage. This case is no exception.[10]

Here there are special circumstances that differentiate this case from the run of the mill FLSA cases. First, Bloomberg L.P. is a media giant that operates Bloomberg News, the world's leading financial news platform. Bloomberg news and information are disseminated around the globe through Bloomberg Terminals, Bloomberg Television, Bloomberg Radio, Bloomberg Businessweek, Bloomberg Markets, Bloomberg.com, and Bloomberg's mobile platforms.[11] Plaintiffs here can also demonstrate that their fear of severe harm is reasonable because their identification in litigation against a highly public Defendant, and the media giant Bloomberg L.P., will undoubtedly result in the publication of their names by legal news sources and aggregator websites. And Michael Bloomberg, the man behind the company, is the former mayor of New York City, he is frequently touted as a presidential candidate, he spoke at the 2016 Democratic Convention, and he is someone frequently consulted on the important political issues of the day. Indeed,

[10] *See* https://www.law.com/newyorklawjournal/2019/04/03/new-wage-and-hour-lawsuit-seeks-back-pay-for-bloomberg-data-analysts/?slreturn=20190823130254 *and see* https://www.law360.com/articles/1184745 (both last visited Sep. 23, 2019).

[11] *See*, https://en.wikipedia.org/wiki/Bloomberg_News

Judge Denise L. Cote of the Southern District of New York has recognized that employees that decide to step forward to litigate employment claims against the global tech and media giant Bloomberg face unique reputational and employment risks:

> This is a class in which the named plaintiffs and those who actively participated with plaintiffs' counsel in pursuit of the trial, either by testifying or being ready to testify, faced both employment and reputational risk, which doesn't always appear in a case.

Final Approval Hearing Tr., pp. 7:24- 8:3, Oct. 15, 2018. Attached as Exhibit 1.

The potential for harm to an employee who will be deemed a "troublemaker" because their name will be forever associated with litigation against a powerful employer is palpable in this age when conducting online background checks of prospective employees is part and parcel of any hiring process.[12] If the Jane Doe Plaintiffs are forced to provide their full names in the caption they will stand to suffer real harm by numbers of future prospective employers who may take adverse action against them.[13]

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[12] *See, 7 Ways to Screen Potential Candidates Online*. Retrieved from: https://theundercoverrecruiter.com/screen-online/ ("Google can supply a wealth of information if you can target your search properly. Opening a Google Alert on each of your candidates' names can provide ongoing monitoring throughout the application and interview process.") (Accessed Sep. 13, 2019).

[13] *See, Job Applicant, Beware: You're Being Googled* (reporting that seven out of ten employers researched employment applicants online and one in three employers decided to eliminate employment candidates based on information

While screening out potential employees for their participation in wage hour litigation might be illegal retaliation, such screening occurs invisibly, and likely would never be discovered (as prospective employers would not be expected to share with applicants why their applications failed to yield an interview). Even if they somehow learned of it, a failure to hire would be practically impossible for Plaintiffs to remedy.[14] Plaintiffs will never know how many jobs they were never interviewed for or never hired for because of the listing of their names in internet news reports or websites reporting filings in this case. The cascading losses suffered by a worker who cannot obtain but one higher paying job due to that worker's reputation for having sued a prior employer, can be astounding. As a worker's pay underperforms what would otherwise have been earned early in that worker's career, the financial penalty (graphed as diverging salary lines) measured over an entire career can be monumental.[15]

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discovered online). (available at: https://www.monster.com/career-advice/article/hr-googling-job-applicants) (Accessed Sep. 13, 2019).

[14] Title 29 U.S.C. 215(a) makes retaliation "by any person" unlawful and actionable. A future employer who fails to hire because an individual brought a suit would seem to be covered.

[15] For example, a worker who makes $40,000 instead of $45,000 (a modest $5,000 less) as a result of not getting a better paying job at the outset, will lose $238,000 over a 30 year career (assuming a 3% annual increase) and $377,006 over a 40 year career.

II. Plaintiffs' need for anonymity in the public filing to prevent severe economic harm outweighs any harm to the public or Bloomberg.

The public interest in publishing the Jane Doe Plaintiffs' identities is minimal. The public's interest in learning of the allegations in the suit is far more important. In this case, protecting the identity of the Jane Doe Plaintiffs does not interfere with the public's view of the issues at stake in this litigation. The public interest in open access to public proceedings does not operate as an absolute and unreviewable license to deny anonymity. *See e.g., James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993). The Court has discretion to determine whether litigants should be allowed to proceed under a pseudonym. *Doe v. Hartford Life and Acc. Ins. Co.*, 237 F.R.D. 545, 548 (D.N.J. 2006) (reversing order from Magistrate Judge that denied plaintiff's request to proceed under a pseudonym). The Court should exercise its discretion and deny Bloomberg's motion to compel because the public does not have any significant interest in knowing the names of the Jane Doe Plaintiffs above.

The Plaintiffs in this case are private citizens and "not a public official for whom the public possesses a heightened interest." *Doe v. Oshrin*, 299 F.R.D. 100, 104 (D.N.J. 2014). They are unnamed employees working anonymously to create a product deep inside a large department of a massive conglomerate.

Furthermore, even if the Jane Doe Plaintiffs proceed under pseudonyms, these proceedings will remain public, "thereby preserving any general public interest in the subject matter of this litigation." *Id.; see also, Doe v. Provident Life and Acc. Ins. Co.*, 176 F.R.D. 464, 468 (E.D. Pa. 1997) ("use of a pseudonym will not interfere with the public's right or ability to follow the proceedings"); *also see, Doe v. Evans, 202 F.R.D. 173*, 176 (E.D. Pa. 2001) ("although the public certainly has an interest in the issues Mary Doe's complaint raises, protecting her identity will not impede the public's ability to follow the proceedings").

Denying Bloomberg's motion to compel now and permitting Plaintiffs to use pseudonyms at this early stage of the litigation, does not prejudice Bloomberg either. Bloomberg has not identified a single harm it would suffer by not knowing the Plaintiffs' identities. And Plaintiffs have offered to reveal their identities to Bloomberg if Bloomberg will agree to keep their identities confidential. Plaintiffs' complaint and the affidavits in support of their motion for conditional certification provide all the substantive facts that Bloomberg needs to evaluate the claims of Plaintiffs and the class of Global Data Analysts. *See,* Compl. Dkt. 1 at ¶¶ 7-12, 26-54; Opt-In Plaintiff Declarations at Dkt. 20-5, 20-6; Jane Doe Declarations and Dkt. 20-7, 20-8. And the identities of at least ten other individuals who have filed consents are available to Bloomberg. *See,* Dkt. 4-1, 5-1, 6-1, 6-2, 7-1, 7-2, 8-1, 9-1, 10-1, 10-2, 23-1. As this Court held in *Raceway Petroleum, Inc.*, the disclosure of

identities of workers in wage and hour litigation is not essential to an employer that already possess all information about current and former employees, the way they were compensated, and whether or not they were paid overtime. *Chao v. Raceway Petroleum, Inc.*, CIV.A. 06-3363JLL, 2008 WL 2064354, at *4 (D.N.J. May 14, 2008). Bloomberg has not identified a single reason why it needs the names of the Jane Doe Plaintiffs to be published in the caption to properly defend this case.

III. The Court should permit Plaintiffs to use pseudonyms at this early stage of the litigation.

Plaintiffs' vulnerability at this early stage of the litigation is enhanced because, out of a workforce of close to a thousand data entry techs, they are but two workers that together with a few opt-ins are standing alone against a media and technology giant. Plaintiffs have moved for collective action notice – which is an opt-in notice –and their vulnerability may lessen as notice to the class goes out and many more of their co-workers join the suit and as others may agree to become named-Plaintiffs in the case. *Does I thru XXIII v. Adv. Textile Corp.*, 214 F.3d 1058, 1072 (9th Cir. 2000) ("[P]laintiffs' vulnerability to retaliation is enhanced at this stage of the litigation because they are twenty-three individuals among an estimated workforce of 25,000. We acknowledge that plaintiffs' vulnerability may lessen as their co-workers join the suit, providing them with safety in numbers."). Once many other workers join the suit, the Jane Doe Plaintiffs can no longer be

characterized as lone troublemakers, and the danger of retaliation to each of them will be greatly lessened. *Engineered Bldg. Products, Inc.*, 162 NLRB 649, 652 (N.L.R.B. 1967) ("It has been said that there is safety in numbers, and it can no less correctly be said that when virtually every employee is wearing a union button the danger to each of them is greatly lessened.").

It should be noted that since this action was filed, eleven Global Data Analysts have filed consents to sue, and none of the opt-ins has expressed any concern about not knowing the identities of the Named Plaintiffs. And on the pending opt-in collective action application, individuals who believe they must know the identity of the named Plaintiffs before joining this case, will simply wait. That decision does not harm Bloomberg – indeed, it may lessen its exposure. And Plaintiffs have not yet moved for Rule 23 (opt-out) class certification. An application for Rule 23 class certification will not be made for many months. Bloomberg's argument about prejudice to the putative class is premature and irrelevant at this stage of the proceedings. Plaintiffs' need for anonymity in the public filing at this stage of the litigation outweighs any harm to the public or Bloomberg. Bloomberg's motion to compel should be denied.

CONCLUSION

Bloomberg has failed to demonstrate any genuine public interest that compels the Jane Doe Plaintiffs to disclose their full names in the caption of this action. Plaintiffs have demonstrated a reasonable fear of reputational and economic harm. Protecting the Jane Doe Plaintiffs from retaliation furthers the remedial purpose of the federal and state wage and hour laws. Bloomberg's motion to compel should be denied. And if the Court is inclined to grant Bloomberg's motion to compel, Plaintiffs respectfully request permission to use their first and middle names in the caption, rather than their full names, to mitigate the potential harm associated with litigating this case against Bloomberg L.P.

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Respectfully submitted,

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