

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**UNITED STATES OF AMERICA, ex rel.**

**[REDACTED], et al.,**

**Plaintiffs,**

**v.**

**NOUR USA, INC., et al.,**

**Defendants.**

**Civil Action No. 12-1308 (JDB)**

**ORDER**

Before the Court is [22] relators' motion to redact all identifying information from the parts of the record to be unsealed in this case. Upon consideration of relators' motion, [23] the government's response, applicable law, the hearing held on July 11, 2014, and the entire record herein, and for the reasons explained below, the Court will grant the motion.

**BACKGROUND**

Back in December 2013, the government declined to intervene in this False Claims Act ("FCA") case. Notice of Election to Decline Intervention [ECF No. 10]. Relators then filed a motion to keep the case under seal while they considered whether to proceed without the government. See 31 U.S.C. 31 § 3730(b)(4)(B). This Court granted that motion and extended the seal for a limited period of time. See Jan. 3 Mem. Op. [ECF No. 13]. Now, relators have decided against proceeding with the case, mainly because the government has declined to intervene. Relators therefore filed a motion to dismiss, to which the government consented. [ECF Nos. 20, 21]. Normally, after the United States declines to intervene in a case brought under the FCA, the case is largely unsealed. Relators do not object generally to the case being unsealed, but they filed this motion seeking to redact any information—from documents to be unsealed—that

would reveal their identities. The government takes no position on the redaction of relators' identity, although it does object to some specific redactions as overbroad.

### DISCUSSION

This Court has the discretion to decide whether parts of the record in this case should remain under seal. United States v. Hubbard, 650 F.2d 293, 316 (D.C. Cir. 1980) (quoting Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 599 (1978)). The D.C. Circuit has set out six factors for courts to consider when determining whether to seal court records: (1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property or privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceeding. Hubbard, 650 F.2d at 316-17.

To begin with, relators must overcome a strong presumption in favor of public access to judicial records. Id. at 315 & n.79 (public access to judicial records is “fundamental to a democratic state” and “serves the important function[ ] of ensuring the integrity of judicial proceedings”). That presumption is particularly strong in FCA cases, which are natural candidates to be the subject of public interest. United States ex rel. Durham v. Prospect Waterproofing, Inc., 818 F. Supp. 2d 64, 67 (D.D.C. 2011) (“Cases brought under the False Claims Act receive special consideration by the courts because they ‘inherently implicate the public interest.’”) (citations omitted). The alleged wrongdoing, however, is the principal subject in which the public is interested; that a company is defrauding the government is more important to preventing future mischief than who blew the whistle. And here, unsealing the complaint (even with relators' identities redacted) will only add to the information already available about

defendants' alleged wrongdoing. See, e.g., Special Inspector General for Iraq Reconstruction, Poor Government Oversight of ANHAM and its Subcontracting Procedures Allowed Questionable Costs to Go Undetected (July 30, 2011), available at <http://www.sigir.mil/files/audits/11-022-F.pdf>. So whether this factor weighs in favor of redaction depends on the interest in public access to relators' identities, not to the case as a whole.

The best argument in favor of public access to relators' identities is that the FCA does not contemplate a right to remain anonymous when bringing qui tam cases. And in many cases, that might be enough to defeat any argument against disclosure. Courts have rejected similar redaction motions for that reason. But those cases involved vague, speculative, or generalized assertions of possible harm. See, e.g., United States ex rel. Grover v. Related Cos., No. 11-1861, 2013 WL 6037213, at \*3 (D.D.C. Nov. 14, 2013) (possibility of harm to reputation and career insufficient); Durham, 818 F. Supp. 2d at 68 (concerns about general privacy and potential employment retaliation insufficient); United States v. Bon Secours Cottage Health Servs., 665 F. Supp. 2d 782, 785-86 (E.D. Mich. 2008) (general fear about being outed as whistleblower after relator left employment insufficient); United States ex rel. Permison v. Superlative Technologies, Inc., 492 F. Supp. 2d 561, 565 (E.D. Va. 2007) (general apprehension about career prospects insufficient). Here, relators have identified specific, serious, and compelling safety concerns. They fear that their personal safety will be in jeopardy if the defendants discover that they filed this suit, and they have supported that fear with specific declarations. Relators do not argue for redaction based on fears of employment retaliation or harm to their reputation within the industry; those risks are generally thought to be assumed by whistleblowers under the FCA—which provides specific remedies for employment retaliation. See Grover, 2013 WL 6037213, at

\*4; Durham, 818 F. Supp. 2d at 68-69. And they do not argue for redaction based on some generalized fear that harm will come to them because they filed a whistleblower suit. Instead, they argue for redaction based on demonstrably serious safety concerns that they have presented to the Court. This case, then, is very different from the run-of-the-mill FCA case. “[T]he purposes of public access are only modestly served” by revealing relators’ identities here, and their property and privacy interests are compelling. Hubbard, 650 F.2d at 318.

The rest of the Hubbard factors support protecting their identities as well. The public has not previously had any access to relators’ identities here, and relators have objected to disclosure. See id. at 319-20. The objecting relators would be prejudiced by disclosure because of the safety risks. See id. at 320-21. And “the purposes for which the documents were introduced” factor does not affect the balance of interests in this case. See id. at 321. Hence, after careful consideration of the Hubbard factors, the Court concludes that this is the rare case in which redaction of relators’ identities is merited and that the public’s interest in access to relators’ identities is outweighed by specific and serious safety concerns.

That leaves the propriety of the specific redactions themselves. The government agrees that, for the most part, the redactions are narrowly tailored to protect only relators’ identities. Response by United States [ECF No. 23] at 2. The government does, however, take issue with a few specific redactions. Upon careful review of those specific redactions, the Court agrees with relators that without the objected-to redactions, defendants would be likely to discern relators’ identities. And each redaction is carefully tailored to withhold only that information which would allow defendants to identify relators—for example, specific facts that only relators were in a position to know, or descriptions of specific incidents between relators and employees of defendants.

Upon consideration of [22] relators' motion to redact identifying information, [23] the government's response, and the entire record herein, it is hereby

**ORDERED** that [22] relators' motion is **GRANTED**; it is further

**ORDERED** that [1] relators' complaint be unsealed, **with the redactions in [22-2] relators' proposed order**; it is further

**ORDERED** that the following filings be unsealed, **with the redactions in [22-2] relators' proposed order**: [10] the United States' notice of election to decline intervention; [20] relators' motion to voluntarily dismiss; and [21] the United States' consent to voluntary dismissal; it is further

**ORDERED** that this redacted Order shall be unsealed; and it is further

**ORDERED** that all other matters filed in this action shall remain under seal.

**SO ORDERED.**

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/s/  
JOHN D. BATES  
United States District Judge

Dated: July 24, 2014