

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

CITY OF BIRMINGHAM RELIEF AND  
RETIREMENT SYSTEM,

Plaintiff,

v.

REED HASTINGS, et al.,

Defendants.

Case No. 18-cv-02107-BLF

**ORDER GRANTING PLAINTIFF’S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL, AS MODIFIED BY  
NOMINAL DEFENDANT NETFLIX’S  
NARROWED REDACTIONS**

[Re: ECF 3, 12]

Plaintiff City of Birmingham Relief and Retirement System (“Plaintiff”) has filed a redacted Verified Shareholder Derivative Complaint (“Complaint”) against Defendants along with an administrative motion to seal portions of the Complaint because it references content designated by Nominal Defendant Netflix, Inc. (“Netflix”) as confidential pursuant to a Confidentiality Agreement. *See* ECF 3. Plaintiff explains that it takes no position as to whether the information referenced in the Complaint is confidential, and Netflix’s designation is Plaintiff’s only basis for the requested redactions. *Id.* Netflix has properly filed supporting declarations as the designating party, conceding that some of the redactions are unnecessary but arguing that compelling reasons exist to seal certain internal non-public financial information. *See* ECF 12. For the reasons that follow, Plaintiff’s administrative motion to file under seal at ECF 3 is **GRANTED** as modified by Netflix’s narrowed redactions.

**I. LEGAL STANDARD**

There is a “strong presumption in favor of access” to judicial records. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). A party seeking to seal judicial records bears the

1 burden of overcoming this presumption by articulating “compelling reasons supported by specific  
2 factual findings that outweigh the general history of access and the public policies favoring  
3 disclosure.” *Id.* at 1178-79. Compelling reasons for sealing court files generally exist when such  
4 “‘court files might have become a vehicle for improper purposes,’ such as the use of records to  
5 gratify private spite, promote public scandal, circulate libelous statements, or release trade  
6 secrets.” *Id.* (quoting *Nixon v. Warner Commc ’ns, Inc.*, 435 U.S. 589, 598 (1978)). However,  
7 “[t]he mere fact that the production of records may lead to a litigant’s embarrassment,  
8 incrimination, or exposure to further litigation will not, without more, compel the court to seal its  
9 records.” *Kamakana*, 447 F.3d at 1179. Ultimately, “[w]hat constitutes a ‘compelling reason’ is  
10 ‘best left to the sound discretion of the trial court.’” *Ctr. for Auto Safety v. Chrslyer Grp., LLC*,  
11 809 F.3d 1092, 1097 (9th Cir. 2016).

12 “Despite this strong preference for public access, [the Ninth Circuit has] carved out an  
13 exception,” *id.* at 1097, for judicial records attached to motions that are “tangentially related to the  
14 merits of a case,” *id.* at 1101. Parties moving to seal such records need only make a  
15 “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure  
16 26(c). *Kamakana*, 447 F.3d at 1180 (quoting *Foltz*, 331 F.3d at 1138).

17 In this District, parties seeking to seal judicial records must also follow Civil Local Rule  
18 79-5, which requires, *inter alia*, that a sealing request be “narrowly tailored to seek sealing only of  
19 sealable material.” Civil L.R. 79-5(b). Pursuant to Civil Local Rule 79-5(d)(1)(A), “[r]eference to  
20 a stipulation or protective order that allows a party to designate certain documents as confidential  
21 is not sufficient to establish that a document, or portions thereof, are sealable.” Rather, if the sole  
22 basis of a party’s request to seal is that the document at issue was previously designated as  
23 confidential or subject to a protective order, then the procedures detailed in Civil L.R. 79-5(e)  
24 apply. Civ. L. R. 79-5(d)(1)(A). Those procedures require that within 4 days of the filing of the  
25 motion to seal, the designating party must file a declaration establishing that all of the designated  
26 material is sealable. Civ. L. R. 79-5(e)(1). In other words, where the submitting party seeks to  
27 file under seal a document designated confidential by another party, the burden of articulating  
28 compelling reasons for sealing is placed on the party designating that material as confidential. *Id.*

1           **II.     DISCUSSION**

2           The parties have complied with Civil Local Rules 7-11 and 79-5(d) and (e). Netflix, as the  
3     designating party, timely filed declarations in support of Plaintiff’s administrative motion to seal  
4     portions of the Complaint pursuant to the Confidentiality Agreement. *See* Declaration of Rodney  
5     G. Strickland (“Strickland Decl.”), ECF 12. According to the Strickland Declaration, Netflix  
6     reviewed Plaintiff’s proposed redactions and determined that the majority of them are  
7     unnecessary. *Id.* ¶ 3. However, Netflix asserts that a compelling reason exists to seal certain  
8     limited information in the Complaint consisting of internal non-public financial information. *Id.*  
9     Netflix attaches a proposed public version of the Complaint as Exhibit A to the Strickland  
10    Declaration. *See* ECF 12-1.

11           Because the motion to seal relates to the filing of the Complaint, which is the operative  
12    pleading and more than tangentially related to the merits of the case, the instant motion is resolved  
13    under the compelling reasons standard. The Court has reviewed Netflix’s proposed redactions and  
14    the declarations of Rodney G. Strickland and Mark Yurechko in support thereof. *See* Strickland  
15    Decl., *see also* Declaration of Mark Yurechko (“Yurechko Decl.”), ECF 12-2. The Court also  
16    notes that Plaintiff has not opposed Netflix’s narrowed redactions and takes no position as to  
17    whether the designated material is confidential. *See* ECF 3.

18           According to the Yurechko declaration, although most of the information originally  
19    redacted by Plaintiff can be made public, certain information should remain sealed because it  
20    contains Netflix’s non-public projected financial results and actual financial data shared with  
21    Netflix’s board of directors each quarter. Yurechko Decl. ¶¶ 3-4. Yurechko, Netflix’s Vice  
22    President of Financial Planning & Analysis, declares that this financial information is confidential  
23    and commercially sensitive because it would provide Netflix’s competitors with an unfair  
24    advantage if disclosed. *Id.* ¶ 4. Netflix’s proposed redactions also substantially narrow the  
25    original redactions proposed by Plaintiff pursuant to the Confidentiality Agreement. ECF 12-1.

26           The Court finds that Netflix has articulated compelling reasons to seal the requested  
27    portions of the Complaint. The information that Netflix requests to seal includes confidential,  
28    non-public financial information, the disclosure of which would cause competitive and business

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

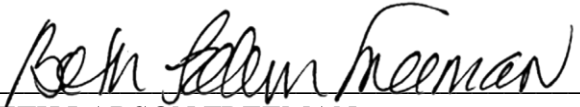
harm to Netflix. The proposed redactions are also narrowly tailored to exclude only sealable material as required by Civil L.R. 79-5(b). See ECF 12-1. Accordingly, Plaintiff’s Administrative Motion to Seal is GRANTED with respect to the following portions of the Complaint:

Page	Line
21	28
22	14-15, 22-24
23	9, 13-14, 20, 26
24	11, 17
25	2, 8, 15, 17, 21, 27
26	1-2, 5, 13, 18-19, 25
27	1, 8, 22

Plaintiff is hereby ORDERED to file Netflix’s version of the Complaint (ECF 12-1) with the narrow redactions approved by this Order in the docket in this case **on or before April 20, 2018.**

**IT IS SO ORDERED.**

Dated: April 17, 2018

  
BETH LABSON FREEMAN  
United States District Judge