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12 *Attorneys for Plaintiffs JEFF MILANS and PETER*  
13 *COMSTOCK and the SETTLEMENT CLASS*

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN JOSE DIVISION**

17 *IN RE: NETFLIX PRIVACY LITIGATION*

Case No. 5:11-cv-00379-EJD

[Hon. Edward J. Davila]

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19 **PLAINTIFFS' ADMINISTRATIVE**  
20 **MOTION FOR LEAVE TO FILE**  
21 ***INSTANTER* A SURREPLY TO NATHAN**  
22 **KENNEDY'S REPLY BRIEF**

1 Plaintiffs Jeff Milans and Peter Comstock, through their undersigned counsel and on behalf  
2 of the Class, pursuant to Civil Local Rules 7-3(d) and 7-11, respectfully request that this  
3 Honorable Court enter an Order granting them leave to file *instanter* a Surreply to Class Member  
4 Nathan Kennedy's Reply to Plaintiff's Memorandum in Support of Motion For Final Approval of  
5 Class Action Settlement, Supplemental Submission on *Cy Pres* Recipients, and in support of  
6 Nikolaus Holley's submission. (Dkt. 242.) In support of this Motion, Plaintiffs state as follows:

7 1. On July 5, 2012, this Court granted Preliminary Approval of the instant Class  
8 Action Settlement. (Dkt. 80.) On July 30, 2012, months before the *cy pres* selection process was  
9 completed, Class Member Nathan Kennedy filed his Objection to the Settlement, expressing  
10 dissatisfaction with the *cy pres* selection process. (Dkt. 81.) On October 31, 2012, Plaintiffs  
11 submitted their Motion for Final Approval and Fee Award (Dkt. 191), as well as a list of proposed  
12 *cy pres* recipients for the Court's consideration. (Dkt. 193.) On November 28, 2012, Plaintiffs  
13 filed their Reply in Support of their Motion for Final Approval and Fee Award, therein responding  
14 to the objections filed in this litigation. (Dkt. 226.)

15 2. On December 5, 2012, the Court conducted a Final Fairness Hearing, giving the  
16 Parties and the objectors who chose to appear three hours to state and support their positions.  
17 During the hearing, Netflix's counsel requested, and the Court granted, leave to submit additional  
18 information regarding connections between Netflix's counsel and certain proposed *Cy Pres*  
19 recipients. On December 10, 2012, Netflix filed its Supplemental Submission on *Cy Pres*  
20 Recipients (Dkt. 237), elaborating on the disclosures already made in Class Counsel's Declaration  
21 in Support of the Final Approval Motion. (*See* Dkt. 191-3, ¶ 34.)

22 3. On December 16, 2012, Class Member Kennedy mailed his Reply to Plaintiffs'  
23 Reply Memorandum, and his Reply was filed with the Court on December 21, 2012. (*See* Dkt  
24 242.)

25 4. Plaintiffs believe that Kennedy's Reply misrepresents Netflix's Supplemental  
26 Submission, accuses Class Counsel of impropriety where none exists, and simply misses the mark  
27 in its analysis of the *Cy Pres* selection process.  
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**CERTIFICATE OF SERVICE**

I, Rafey S. Balabanian, an attorney, hereby certify that on January 2, 2013, I served the above and foregoing ***Plaintiffs' Administrative Motion for Leave to File Instantly a Surreply to Nathan Kennedy's Reply Brief***, by causing a true and accurate copy of such paper to be filed and served on all counsel of record via the Court's CM/ECF electronic filing system, and further by placing a copy of such paper in a postage prepaid envelope addressed to the person shown below and depositing such envelope in the U.S. Mailbox located at 350 North LaSalle Street, Chicago, Illinois 60654, on this the 2nd day of January, 2013.

Nathan Kennedy  
P.O. Box 424  
Ithaca, New York 14851

/s/ Rafey S. Balabanian