

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE NETFLIX PRIVACY LITIGATION)	Case No. 5:11-CV-00379-EJD
)	ORDER GRANTING PLAINTIFFS’
)	MOTION FOR CONTEMPT
)	AGAINST OBJECTORS GARY
)	WILENS AND MATTHEW TANNER
)	
)	[Re: Docket Item No. 322]
)	
)	

Presently before the Court is Plaintiffs Jeff Milans, Peter Comstock, and the Class’ (collectively “Plaintiffs”) Motion for Contempt Against Objectors Gary Wilens and Matthew Tanner (“Objectors”). See Docket Item No. 322. On March 18, 2013, the Court approved a final settlement agreement between Plaintiffs and Defendant Netflix. See Docket Item No. 256. Objectors appealed the Final Approval Order. See Docket Item Nos. 258, 259. On November 25, 2013, the Court granted Plaintiffs’ Motion for Appeal Bonds and ordered that on or before December 20, 2013, each Objector shall either post a \$21,519 bond or file a notice of dismissal of his appeal. See Docket Item No. 307. As of this date, neither Objector has paid the bond amount or dismissed his appeal.

A district court “has the inherent authority to enforce compliance with its orders through a civil contempt proceeding.” Armstrong v. Brown, 939 F. Supp. 2d 1012, 1018 (N.D. Cal. 2013) (citing Int’l Union, UMWA v. Bagwell, 512 U.S. 821, 827-28 (1994)). A court may grant a motion

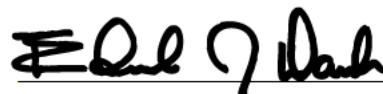
1 for contempt if the moving party proves by clear and convincing evidence that the non-moving
 2 party violated a specific and definite court order beyond substantial compliance and the party's
 3 actions were not based on a good faith and reasonable interpretation of the order. Id. (citing In re
 4 Dual-Deck Video Cassette Recorder Antitrust Litig., 10 F.3d 693 (9th Cir. 1993)). If the moving
 5 party satisfies its burden, "the burden then shifts to the contemnors to demonstrate why they were
 6 able to comply." Stone v. City & Cnty. of San Francisco, 968 F.2d 850, 856 n.9 (9th Cir. 1992)
 7 (internal citation omitted). Contemnors must show that they took every reasonable measure within
 8 their power to comply with the court's order. Sekaquaptewa v. MacDonald, 544 F.2d 396, 406
 9 (9th Cir. 1976).

10 Here, Plaintiffs have met their burden of proof because to date Objectors have not paid any
 11 portion of the appeal bond, have not dismissed their appeals, and have not requested a stay of the
 12 order. Objectors did not attend the scheduled hearing to present their arguments. Thus, having
 13 fully reviewed the parties' papers and after hearing oral argument from Plaintiffs and Defendant,
 14 the Court finds Objectors Wilens and Tanner in willful disregard of the Court's order will therefore
 15 GRANT Plaintiffs' motion.

16 IT IS HEREBY ORDERED that Objectors must cure their defect within fifteen (15)
 17 calendar days from the date of this order. If within fifteen days each Objector fails to cure his
 18 defect, the Court will impose a daily fine of \$100 against each Objector, until such time as the
 19 Objector posts the previously ordered \$21,519 bond or files a notice of dismissal of appeal.
 20

21 **IT IS SO ORDERED.**

22 Dated: May 30, 2014

23 

24 EDWARD J. DAVILA
 25 United States District Judge