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15 *Pro Bono Attorneys for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION (LOS ANGELES)**

20 ANDREW MASON DVASH-)
21 BANKS AND E.J. D.-B.,)
22 Plaintiffs,)
23 v.)
24 THE UNITED STATES)
DEPARTMENT OF STATE,)
25 and THE HONORABLE)
MICHAEL R. POMPEO,)
26 Secretary of State,)
27 Defendants.)
28)

Case No. 2:18-cv-00523-JFW-JCx
**PLAINTIFFS' NOTICE OF
ERRATA RE: DECLARATION OF
ALEXA LAWSON-REMER IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**
Judge: Hon. John F. Walter
Hearing Date: Feb. 4, 2019
Hearing Time: 1:30 pm
Courtroom: 7A

1 Plaintiffs respectfully advise the Court that Plaintiffs' Declaration of
2 Alexa Lawson-Remer in Support of their Motion for Partial Summary Judgment
3 ((“Declaration”) DKT 83-3) contained the following errors, which have been
4 remedied in the Amended Declaration of Alexa Lawson-Remer in Support of their
5 Motion for Partial Summary Judgment (“Amended AL-R Declaration”) submitted
6 in conjunction with this Notice of Errata:¹

7 1. The Declaration referenced the *Administrative Record*, Exhibit
8 G, but incorrectly stated that Plaintiffs rely on only eight documents included in
9 the *Administrative Record*, when in fact Plaintiffs rely on ten documents included
10 in the *Administrative Record*. This error appears on page 3, lines 9-10 of the
11 Declaration, and is remedied on page 3, lines 9-10 of the Amended AL-R
12 Declaration, which revise the reference to “eight” documents to read “ten”
13 documents.

14 2. Exhibit G to the Declaration was inadvertently missing 3 pages,
15 AR 001, AR 003 and AR 073. The version of Exhibit G appended to the attached
16 Declaration includes those pages and the pages of Exhibit G have been renumbered
17 to include those pages in sequence in the exhibit.²

18 3. The Declaration inadvertently omitted a reference to and
19 inadvertently did not attach Sub-Exhibit G-9, an excerpt from the *Administrative*
20 *Record* containing “ACS Activity Log” at the United States Consulate in Toronto,
21 Canada relating to the January 24, 2017 interview of the Dvash-Banks family, as
22 that log appeared in the State Department’s records on November 2, 2018. This

23 _____
24 ¹ Plaintiffs have included with this Notice the Amended AL-R Declaration, the
25 Amended Exhibit G, and Sub-Exhibits G-9 and G-10. All other exhibits remain
26 properly filed in their original forms as attachments to ECF 83 and Plaintiffs
27 respectfully refer the Court and Defendants to those attachments.

28 ² To prevent duplicating page numbers in Plaintiffs’ initial and amended filings,
the pages in Amended Exhibit G and Sub-Exhibits G-9 and G-10 are numbered
sequentially beginning with the page number immediately following the last page
number of the last exhibit of Plaintiffs’ Motion for Partial Summary
Judgment. Exhibit G therefore begins on page number 331.

1 error is corrected on page 4 of the Amended AL-R Declaration, which includes a
2 reference to sub-exhibit G-9 on lines 3-6. Exhibit G-9 is attached to this Notice.

3 4. The Declaration inadvertently omitted a reference to and
4 inadvertently did not attach Sub-Exhibit G-10, an excerpt from the *Administrative*
5 *Record* containing an email from Margaret Ramsay to Frances Terri Day dated
6 January 24, 2017. This inadvertent error is corrected on page 4 of the Amended
7 AL-R Declaration, which includes a reference to sub-exhibit G-10 on lines 7-8.
8 Exhibit G-10 is attached to this Notice.

9 5. Plaintiffs have also altered page 2, line 6 in the Amended AL-R
10 Declaration to reflect the filing of Plaintiffs' Motion for Partial Summary
11 Judgment as ECF 83, not (as was the case for the Declaration) concurrently with
12 the filing of the Amended AL-R Declaration.

13 Plaintiffs regret these errors and have taken expeditious steps to
14 remedy them as quickly as possible after Plaintiffs discovered them. Plaintiffs
15 submit that Defendants were not prejudiced by these errors because the missing
16 sub-exhibits were already in Defendants' possession, were filed by Defendants on
17 the public docket (DKT 80-2, 80-3, 80-5), and were properly cited by Plaintiffs in
18 Plaintiffs' Statement of Uncontroverted Facts (*see* Supporting Evidence for Facts
19 63 and 67).³

20
21 Dated: January 16, 2019

Respectfully submitted,

22 By: /s/ Alexa M. Lawson-Remer

23 Alexa M. Lawson-Remer (SBN 268855)
24 lawsonr@sullcrom.com
25 SULLIVAN & CROMWELL LLP
26 1888 Century Park East, Suite 2100
27 Los Angeles, California 90067-1725
28 Telephone: (310) 712-6600
Facsimile: (310) 712-8800

³ For the Court's reference, Plaintiffs attach to this Notice a redline comparing the original Declaration to the Amended AL-R Declaration.

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15 *Attorneys for Plaintiffs*

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17 **UNITED STATES DISTRICT COURT**
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20 ANDREW MASON DVASH-
21 BANKS AND E.J. D.-B.,
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23 v.

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25 DEPARTMENT OF STATE,
and THE HONORABLE
26 MICHAEL R. POMPEO,
Secretary of State,

27 Defendants.
28

Case No. 2:18-cv-00523-JFW-JCx

**AMENDED DECLARATION OF
ALEXA LAWSON-REMER IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Judge: Hon. John F. Walter
Hearing Date: February 4, 2019
Courtroom: 7A

1 I, ALEXA LAWSON-REMER, declare as follows:

2 1. I am an attorney duly licensed by the State of California and am
3 admitted to practice before this Court. I am an associate at Sullivan & Cromwell
4 LLP, and am one of the attorneys representing Plaintiffs *pro bono* in the above-
5 captioned action (“Action”). I submit this declaration in support of Plaintiffs’
6 Motion for Partial Summary Judgment, filed as ECF 83. I have personal
7 knowledge of the facts set forth in this declaration and, if called upon, could and
8 would testify to those facts.

9 2. Attached to this declaration as Exhibit A is a true and correct
10 copy of excerpts of the *Transcript of the Deposition of Paul Peek*, Defendant the
11 United States Department of State’s designee under Federal Rule of Civil
12 Procedure 30(b)(6), conducted on December 20, 2018, in Washington, D.C. as part
13 of discovery in this Action.

14 3. Attached to this declaration as Exhibit B is a true and correct
15 copy of excerpts of the *Transcript of the Deposition of Frances Terri Day*,
16 conducted on December 20, 2018, in Charlotte, North Carolina as part of discovery
17 in this Action.

18 4. Attached to this declaration as Exhibit C is a true and correct
19 copy of excerpts of the *Transcript of the Deposition of Andrew Dvash-Banks*,
20 conducted on December 12, 2018, in Los Angeles, California as part of discovery
21 in this Action.

22 5. Attached to this declaration as Exhibit D is a true and correct
23 copy of excerpts of the *Transcript of the Deposition of Margaret Ramsay*,
24 conducted on December 7, 2018, at the United States Consulate in Toronto,
25 Canada as part of discovery in this Action.

26 6. Attached to this declaration as Exhibit E is a true and correct
27 copy of excerpts of the *Transcript of the Deposition of Larilyn Reffett*, conducted
28

1 on December 6, 2018, at the United States Consulate in Toronto, Canada as part of
2 discovery in this Action.

3 7. Attached to this declaration as Exhibit F is a true and correct
4 copy of excerpts of *Plaintiffs' Responses to Defendants' First Set of Discovery*
5 *Responses*, served on November 19, 2018.

6 8. Attached to this declaration as Exhibit G is a true and correct
7 copy of excerpts of the *Administrative Record*, filed by Defendants on January 4,
8 2019 as Docket No. 80 and authenticated by Defendants therein. That
9 *Administrative Record* contains ten documents on which Plaintiffs rely. For ease
10 of reference, Plaintiffs have segregated each of those ten documents contained
11 within the *Administrative Record* as follows:

- 12 a. Exhibit G-1: Application for a Consular Report of Birth Abroad
13 of a Citizen of the United States of America, without exhibits,
14 submitted on behalf of plaintiff E.J.D.-B. ("E.J.");
- 15 b. Exhibit G-2: Application for a U.S. Passport, without exhibits,
16 submitted on behalf of E.J.;
- 17 c. Exhibit G-3: Marriage License for Andrew Dvash-Banks and
18 Elad Dvash-Banks;
- 19 d. Exhibit G-4: Surrogacy Agreement between Andrew Dvash-
20 Banks, Elad Dvash-Banks and the surrogate who carried E.J.
21 and his twin brother, A.J.D.-B.;
- 22 e. Exhibit G-5: Statement of Live Birth of E.J. from the Ontario
23 Office of the Registrar General;
- 24 f. Exhibit G-6: Ontario Superior Court of Justice Order dated
25 September 28, 2016;
- 26 g. Exhibit G-7: Letter from Viaguard Accu-Metrics dated
27 January 30, 2017;
- 28

EXHIBIT G

Part 1 of 2



U.S. DEPARTMENT OF STATE
U.S. CONSULATE GENERAL, TORONTO
360 University Avenue, Toronto, ON M5G 1S4 Canada
Email: torontopassport@state.gov
Website: toronto.usconsulate.gov

March 2, 2017

Mr. Andrew Mason Dvash-Banks
██████████ Ave, Apt# ██████████
Toronto, Ontario
M6B 4C6

Dear Mr. Dvash-Banks

I am writing in reference to your recent application for a Consular Report of Birth Abroad and passport for E████ J████ D████ B████ who was born on September 16, 2016 in Toronto, Canada.

I regret to inform you that after careful review of the evidence you submitted with your child's application, it has been determined that his claim to U.S. citizenship has not been satisfactorily established, as you are not his biological father.

The Immigration and Nationality Act (INA) of 1952, as amended, requires, among other things, a blood relationship between a child and the U.S. citizen parent in order for the parent to transmit U.S. citizenship.

In view of the above, it does not appear that E████ J████ D████ B████ acquired U.S. citizenship through you. Therefore, your child is not entitled to U.S. Consular Report of Birth Abroad and passport, therefore the applications are denied.

We suggest that you contact the nearest office of U.S. Citizenship and Immigration Services regarding your citizenship status. All documents submitted as part of the application are enclosed. By law, application fees are non-refundable.

Sincerely,

Terri N. Day,
Vice Consul

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: Name check executed 01/24/17 09:15 AM (UTC-05:00)

Description: Name Check batch 2 executed 1/24/2017 9:15:45 AM (UTC-05:00) by FAZIL, ANEELA: Results for Subject 'D■■■■■-B■■■■■, E■■■■■', received 1/24/2017 9:15 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for FatherAlias 'BANKS, ANDREW', received 1/24/2017 9:15 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 1 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 2 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for Father 'DVASH-BANKS, ANDREW', received 1/24/2017 9:16 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Total CLASS-E Hits: 0 Total CLASP Hits: 1 Total IPDB Hits: 0 Total MIV Hits: 2 Total SSA Hits: 0

Log Type: Case Note **Source:** User **Assigned To:** Processing, Automated **Date Completed:** 25-JAN-2017

Name: CCD CRBA Service Note

Description: Subject attempting to acquire citizenship through U.S. citizen father under section 301(g) INA. Submitted the following: Ontario birth cert; father's U.S. ppt, second parent foreign passport, parent's marriage cer; father's work and school records

Log Type: Case Note **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Name: CCD CRBA Service Note

Description: DNA results received. Child does not have claim to U.S. citizenship through U.S. citizen father. Case recommended for denial.

Log Type: Case Note **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Name: CON OFF CRBA NOTES

Description: CRBA for child born in wedlock to US citizen father Applicant submitted a timely filed Ontario birth certificate Parents submitted an Ontario marriage certificate, married 08/19/2010. Amcit Father presented a valid US passport. ISRL Father presented valid ISRL passport. App is the son of a male same sex couple. Because of the process of concieving the child, the fathers did not know who was the biological parent of A■■■■■ (Applicant). They were advised to get a DNA test and given a list of testing sites to get the test done. Once the determination of biological parentage is done, it will be clear if A■■■■■ has a direct genetic link to Amcit father, and if he automatically qualifies for US citizenship.

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Service status update

U.S. Department of State
**APPLICATION FOR CONSULAR REPORT OF BIRTH ABROAD
OF A CITIZEN OF THE UNITED STATES OF AMERICA**

OMB NO. 1405-0011
EXPIRES: 03/31/2019
Estimated Burden: 20 minutes

Registration Number

DENIAL

A. THIS SECTION TO BE COMPLETED BY THE CHILD'S PARENT(S) OR GUARDIAN(S) OR THE CHILD. (USE SECTION D CONTINUATION SHEET)

INFORMATION ABOUT THE CHILD			
1. Name of Child in Full <u>D [REDACTED] - A [REDACTED] E [REDACTED] J [REDACTED]</u> (Last/Surname) (First) (Middle)			
2. Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	3. Date of Birth <u>09/16/2016</u> (month) (day) (year)	4. Place of Birth <u>MISSISSAUGA, CANADA</u> (City) (Country)	
<i>NOTE: (If the U.S. citizen parent transmitting citizenship to the child is not present, he or she may complete State Department Form DS 5507 Affidavit of Parentage Physical Presence and Support and submit it separately. The parent completing this application should provide as much information on the parent completing the Form DS 5507 as he or she has.)</i>			
INFORMATION ON MOTHER/FATHER/PARENT		INFORMATION ON MOTHER/FATHER/PARENT	
5. Full Name <u>DVASH-BANKS ANDREW MASON</u> (Last/Surname) (First) (Middle)		11. Full Name <u>DVASH-BANKS ELAD AUSTIN</u> (Last/Surname) (First) (Middle)	
6. All Previous Legal Names Used <u>BANKS ANDREW MASON</u> (Last/Surname) (First) (Middle)		12. All Previous Legal Names Used <u>DVASH ELAD</u> (Last/Surname) (First) (Middle)	
7. Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	8. Date of Birth <u>[REDACTED] / 1981</u> (month) (day) (year)	13. Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F	14. Date of Birth <u>[REDACTED] / 1985</u> (month) (day) (year)
9. Place of Birth <u>Santa Monica CA USA</u> (City) (State/Province) (Country)		15. Place of Birth <u>Ramat Gan ISRAEL</u> (City) (State/Province) (Country)	
10. Current Physical Address (Do not list P.O. Box) (A.P.O. Address Permitted) <u>[REDACTED] AVE. # [REDACTED]</u> (Address Line 1) <u>TORONTO, ON, CANADA M6B4C6</u> (City, State/Province, Country, Postal Code) <u>047-706-9556</u> (Phone Number(s)) <u>[REDACTED]@gmail.com</u> (Email Address)		16. Current Physical Address (Do not list P.O. Box) (A.P.O. Address Permitted) <u>[REDACTED] AVE. # [REDACTED]</u> (Address Line 1) <u>TORONTO, ON, CANADA M6B4C6</u> (City, State/Province, Country, Postal Code) <u>647-289-4389</u> (Phone Number(s)) <u>[REDACTED]@gmail.com</u> (Email Address)	
Use this address if Consular Report of Birth will be mailed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Use this address if Consular Report of Birth will be mailed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
17. Mailing Address (if different from Current Physical Address) (Do not list a P.O. Box.) (You may list an A.P.O. address.) (Address Line 1) (City, State/Province, Country and Postal Code)			

DS-2029
04-2016

CLASS CLEARED

Page 1 of 7

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 009

<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>																																																																																	
<p>MARITAL STATUS OF THE PARENTS</p>																																																																																		
<p>20. Were you married to the child's other biological parent when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>																																																																																		
<p>21. Date and Place of Marriage to the child's other biological parent and current status</p> <p>08/19/2010 Toronto ON Canada (month) (day) (year) (City) (State/Province) (Country)</p> <p><input checked="" type="checkbox"/> Still Married <input type="checkbox"/> Divorced ___/___/___ <input type="checkbox"/> Death ___/___/___ (month) (day) (year) (month) (day) (year)</p>																																																																																		
<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>22. Please list any other marriages (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (If additional space is needed, please use the Section D Continuation Sheet)</p> <p>None</p>	<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>23. Please list any other marriages (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (If additional space is needed, please use the Section D Continuation Sheet)</p> <p>None</p>																																																																																	
<p>24. Precise Periods of Time in United States (if additional space is needed, please use the Section D Continuation Sheet)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Place (City, State)</th> <th>Date (month-day-year)</th> <th>Date (month-day-year)</th> </tr> </thead> <tbody> <tr><td>Port Saint Lucie, FL</td><td>12-18-2016</td><td>01-21-2017</td></tr> <tr><td>Los Angeles, CA</td><td>10-21-16</td><td>10-23-16</td></tr> <tr><td>Los Angeles, CA</td><td>6-10-16</td><td>6-19-16</td></tr> <tr><td>Port St. Lucie, FL</td><td>2-19-16</td><td>2-22-16</td></tr> <tr><td>Los Angeles, CA</td><td>11-20-15</td><td>11-29-15</td></tr> <tr><td>Detroit, MI</td><td>9-4-15</td><td>9-8-15</td></tr> <tr><td>New Orleans, LA</td><td>5-21-15</td><td>5-24-15</td></tr> <tr><td>Los Angeles, CA</td><td>4-16-15</td><td>4-23-15</td></tr> <tr><td>Port St. Lucie, FL</td><td>1-17-15</td><td>1-21-15</td></tr> <tr><td>Los Angeles, CA</td><td>11-5-14</td><td>11-9-14</td></tr> <tr><td>Los Angeles, CA</td><td>1-18-92</td><td>6-1-92</td></tr> <tr><td>Los Angeles, CA</td><td>9-1-92</td><td>12-1-00</td></tr> <tr><td>Santa Barbara, CA</td><td>6-1-01</td><td>12-15-05</td></tr> <tr><td>Los Angeles, CA</td><td>6-1-06</td><td>1-1-07</td></tr> <tr><td>Los Angeles, CA</td><td>4-1-07</td><td>7-1-07</td></tr> </tbody> </table>	Place (City, State)	Date (month-day-year)	Date (month-day-year)	Port Saint Lucie, FL	12-18-2016	01-21-2017	Los Angeles, CA	10-21-16	10-23-16	Los Angeles, CA	6-10-16	6-19-16	Port St. Lucie, FL	2-19-16	2-22-16	Los Angeles, CA	11-20-15	11-29-15	Detroit, MI	9-4-15	9-8-15	New Orleans, LA	5-21-15	5-24-15	Los Angeles, CA	4-16-15	4-23-15	Port St. Lucie, FL	1-17-15	1-21-15	Los Angeles, CA	11-5-14	11-9-14	Los Angeles, CA	1-18-92	6-1-92	Los Angeles, CA	9-1-92	12-1-00	Santa Barbara, CA	6-1-01	12-15-05	Los Angeles, CA	6-1-06	1-1-07	Los Angeles, CA	4-1-07	7-1-07	<p>25. Precise Periods of Time in United States (if additional space is needed, please use the Section D Continuation Sheet)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Place (City, State)</th> <th>Date (month-day-year)</th> <th>Date (month-day-year)</th> </tr> </thead> <tbody> <tr><td>Port Saint Lucie, FL</td><td>12-18-2016</td><td>01-21-2017</td></tr> <tr><td>Los Angeles, CA</td><td>6-10-16</td><td>6-19-16</td></tr> <tr><td>Port St. Lucie, FL</td><td>2-19-16</td><td>2-22-16</td></tr> <tr><td>Los Angeles, CA</td><td>11-20-15</td><td>11-29-15</td></tr> <tr><td>Detroit, MI</td><td>9-4-15</td><td>9-8-15</td></tr> <tr><td>Los Angeles, CA</td><td>4-16-15</td><td>4-21-15</td></tr> <tr><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td></tr> </tbody> </table>	Place (City, State)	Date (month-day-year)	Date (month-day-year)	Port Saint Lucie, FL	12-18-2016	01-21-2017	Los Angeles, CA	6-10-16	6-19-16	Port St. Lucie, FL	2-19-16	2-22-16	Los Angeles, CA	11-20-15	11-29-15	Detroit, MI	9-4-15	9-8-15	Los Angeles, CA	4-16-15	4-21-15												
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New Orleans, LA	5-21-15	5-24-15																																																																																
Los Angeles, CA	4-16-15	4-23-15																																																																																
Port St. Lucie, FL	1-17-15	1-21-15																																																																																
Los Angeles, CA	11-5-14	11-9-14																																																																																
Los Angeles, CA	1-18-92	6-1-92																																																																																
Los Angeles, CA	9-1-92	12-1-00																																																																																
Santa Barbara, CA	6-1-01	12-15-05																																																																																
Los Angeles, CA	6-1-06	1-1-07																																																																																
Los Angeles, CA	4-1-07	7-1-07																																																																																
Place (City, State)	Date (month-day-year)	Date (month-day-year)																																																																																
Port Saint Lucie, FL	12-18-2016	01-21-2017																																																																																
Los Angeles, CA	6-10-16	6-19-16																																																																																
Port St. Lucie, FL	2-19-16	2-22-16																																																																																
Los Angeles, CA	11-20-15	11-29-15																																																																																
Detroit, MI	9-4-15	9-8-15																																																																																
Los Angeles, CA	4-16-15	4-21-15																																																																																

DS-2029
04-2016

Page 2 of 7

(Continued)

THIS SECTION TO BE COMPLETED BEFORE/BY CONSULAR OFFICER, NOTARY PUBLIC, OR OTHER PERSON QUALIFIED TO ADMINISTER OATHS

29. Affirmation: I SOLEMNLY SWEAR (OR AFFIRM) THAT THE STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

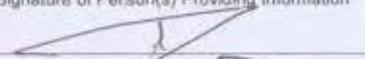
Name of Person(s) Providing Information

Relationship to the Child
(Parent, Legal Guardian, Other (Specify))

Signature of Person(s) Providing Information

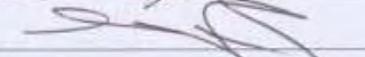
ELAN DVASH-BANKS

Father



Andrew Dvash-Banks

Father



Type Name and Title of Official

Signature of Official

City

Date

TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA



TORONTO

JAN 24 2017
(month) (day) (year)

Subscribed to: (SEAL)

30. Approval of Consular Report of Birth

(Printed Name of Consular Officer)

(Signature of Consular Officer)

(Approving Post)

1 / 1 /
(month) (day) (year)
(Date of Approval)

DENIAL
(Registration Number)

FOR OFFICIAL USE

31. Documents Presented - Please mark accordingly and provide date of document. (If more space is required, list on separate page)

Child's Birth Certificate 11/09/2016 MISSISSAUGA ONTARIO CANADA
 (month)(day)(year) (City) (Province) (Country)

Marriage Certificate 10/05/2010 1/1/ Toronto _____
 (month)(day)(year) (month)(day)(year) (City) (State)
 (File Date) (Date of Issuance)

 (Province) (Country)

Divorce Decree(s) (a) _____
 (month)(day)(year) (month)(day)(year) (City) (State)
 (File Date) (Date of Issuance)

 (Province) (Country)

(b) _____
 (month)(day)(year) (month)(day)(year) (City) (State)
 (File Date) (Date of Issuance)

 (Province) (Country)

(c) _____
 (month)(day)(year) (month)(day)(year) (City) (State)
 (File Date) (Date of Issuance)

 (Province) (Country)

Death Certificate(s) (a) _____
 (month)(day)(year) (City) (State)

(b) _____
 (month)(day)(year) (City) (State)

Mother/Father/Parent's Passport [REDACTED] 04/21/2010 Israeli citizen
 (Passport Number) (month)(day)(year) (Nationality)
 (Date of Issuance)

Mother/Father/Parent's Passport [REDACTED] 03/23/2010 US citizen
 (Passport Number) (month)(day)(year) (Nationality)
 (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) _____
 (Name of the Citizenship Document) (Document Number) (month)(day)(year)
 (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) _____
 (Name of the Citizenship Document) (Document Number) (month)(day)(year)
 (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) _____
 (Name of the Identity Document) (Document Number) (month)(day)(year)
 (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) _____
 (Name of the Identity Document) (Document Number) (month)(day)(year)
 (Date of Issuance)

Other (Legal Guardianship, Power of Attorney, etc.) custody documents FS-16-21123 _____
 (Name of the Document) (Document Number) (month)(day)(year)
 (Date of Issuance)

DS-2029
04-2016

D.

CONTINUATION SHEET (USE THIS SPACE FOR ADDITIONAL INFORMATION)

DS-2029
04-2016

Page 6 of 7

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 014



Certified A True Photostatic Print of a Record

on file at the Office of the Registrar General Ontario, Canada

Registration Number: Numéro d'enregistrement: P3319402

Certificate number: Numéro de certificat: P3319402

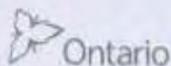
Date issued: Date de délivrance: Nov 09 2010

File number: Numéro de dossier: 01599220-01

Office of the Registrar General / Bureau du registraire général

Photocopie certifiée conforme d'un document

déposée aux dossiers du Bureau du registraire général (Ontario) Canada



ServiceOntario

Office of the Registrar General 189 Red River Road PO Box 4900 Thunder Bay ON P7B 5L3

Statement of Live Birth Form 2

Vital Statistics Act

This is a permanent legal record. Please read all instructions before completing this form. Type or print clearly in blue or black ink and complete all items.

Section A - Child's Information (see instruction #1)

Form section A containing child's name (Last: [redacted], First: E, Middle: [redacted]), Date of Birth: 2016/09/16, Name of Hospital: Credit Valley Hospital, Place of Birth: Mississauga, PEEL.

Section B - Father's Information - (see instruction #2)

Form section B containing father's name (Current: Dvash-Banks, Legal: Banks, First and Middle: Andrew Mason), Place of Birth: Santa Monica, California, USA, Date of Birth: 1981, Age: 35.

Section C - Father's Information - (see instruction #3)

Form section C containing father's name (Current: Dvash-Banks, Legal: Dvash, First and Middle: Elad), Place of Birth: Ramat Gan, Israel, Date of Birth: 1985, Age: 31.

Section D - Birth Information

Form section D containing residence of parent (Avenue, Toronto, M6B4C6), duration of pregnancy (32 weeks), total number of children (2), and marital status (Married).

Section E - Certification of Informant (Please read instruction #1 before signing)

Form section E containing certification of informant (Dr. Myckan Kerry), signature of father, signature of informant, and dates (2016/10/08).

Section F - Office Use Only

Form section F containing signature of manager, date (2016/11/03), and updated GEO code.

A True Copy of the Signed Original.

TERRI N. DAY VICE CONSUL OF THE UNITED STATES OF AMERICA

Alexandra Schmidt

Alexandra Schmidt
Deputy Registrar General
Registraire générale adjointe

---CERTIFIED COPY---
NOT VALID WITHOUT ALL PAGES



A True Copy of the Signed Original.


TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA



Ontario

Office of the Registrar General
Bureau du registraire général

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Photostatic
Print of a Record

Photocopie certifiée
conforme d'un document

on file at the
Office of the Registrar General
Ontario, Canada

se trouvant dans les dossiers du
Bureau du registraire général
(Ontario) Canada

Registration Number:
Numéro d'enregistrement :

Certificate number:
Numéro du certificat :

Date issued:
Date de délivrance :

File number:
Numéro de dossier :

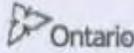
00070270-12610 029232

PAGE 1 of 1

P 1338811

Oct 05 2010

01076584-01-3



Ministry of
Government Services
Office of the
Registrar General

Marriage Licence

Licence number: **E 0689966**

This form is a permanent legal document and can only be used to register a marriage that takes place in Ontario. Please PRINT clearly in blue or black ink.

Part 1 - To be completed by the office issuing this licence

1. Date this licence was issued (day)
19 Aug 2010

2. Municipality where licence was issued
City of Toronto

3. Name of licence issuer or deputy issuer
Catherine Masters

4. Signature of deputy issuer or deputy issuer

5. Proposed place of marriage (township)
Toronto

6. Proposed date of marriage (day) must be within 3 months of date of issue
19 Aug 2010

Part 2 - Marriage Applicant (Form 4)

Information about the applicant

7. Last legal name before this marriage
Banks

8. First and middle names
Andrew Maxine

9. Marital status: never married widowed divorced

10. If divorced in Canada, please provide the court file number. City divorce granted in must be number.

11. Religious denomination
Jewish

12. Age
29

13. Date of birth (day)
08/1981

14. Father's name (last, first)
Banks, James Howard

15. Mother's name (last name before marriage, first name)
Maxon, Ann

16. Province where the applicant's father was born (if outside Canada, state the country)
Ontario

17. Province where the applicant's mother was born (if outside Canada, state the country)
Ontario

18. Name in full of applicant
Andrew Maxine Banks

Information about the joint applicant

24. Last legal name before this marriage
Dresh

25. First and middle names
Elad

26. Marital status: never married widowed divorced

27. If divorced in Canada, please provide the court file number. City divorce granted in must be number.

28. Religious denomination
Jewish

29. Age
25

30. Date of birth (day)
08/25

31. Father's name (last, first)
Dresh, Mordelaj

32. Mother's name (last name before marriage, first name)
Abadi, Tom

33. Province where the joint applicant's father was born (if outside Canada, state the country)
Israel

34. Province where the joint applicant's mother was born (if outside Canada, state the country)
Israel

35. Name in full of joint applicant
Elad Dresh

I make oath and say affirm as follows: That I believe there is no affinity, consanguinity, prior marriage or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage, and that the contents set forth herein are to the best of my knowledge, information and belief, true in every particular.

Witnessed before me at City of Toronto in the Province (city or town) of Ontario

this 19th day of August, 2010

Signature of license/issuer *[Signature]* (signature of applicant) *[Signature]* (signature of joint applicant)

19. Present address of applicant (street name and name)
Avenue

20. City or town
Toronto

21. Province
ON

22. Postal code
M4S 2S4

23. Telephone number
1-310-600-3668

24. Present address of joint applicant (street name and name)
Street

25. City or town
Givatayim, Israel

26. Province
Givatayim, Israel

27. Postal code
53482

28. Telephone number
1-723-973-2339

Part 3 - Statement of Registrar - to be completed following the marriage ceremony (Form 2)

40. Place of marriage (name the city or town and the county, regional municipality or district)
TORONTO DISTRICT

41. Date of marriage (day)
19 AUGUST 2010

42. Signature of applicant
[Signature]

43. Signature of joint applicant
[Signature]

44. Signature of witness
[Signature]

45. Signature of officiant
[Signature]

By signing below, I certify that the marriage of the parties named in this marriage licence was performed on the date and at the place indicated above.

46. Signature of person who performed marriage
[Signature]

47. Date (day)
19 AUGUST 2010

48. Name of person who performed marriage (last, first, middle)
BONKALO, ANIMIRIE KRINA

49. Your status: Clergy Judge Justice of the peace Other

50. Address of person who performed marriage
450 QUEEN ST. EAST STE 2300, BOX 91, TORONTO ON

51. Telephone number
416 597-6824

52. Your registration number
J2492

53. Your denomination (deny only)

For use of the Registrar General only:
I am satisfied to the contents of this statement and register this marriage
Signature *[Signature]* Date (day)
AUG 25 2010

A True Copy of the
Signed Original.

TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

Judith M Hartman

Judith M. Hartman
Deputy Registrar General
Registraire générale adjointe
de l'état civil

11106(10/00)

---CERTIFIED COPY---
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Superior Court of Justice
(Name of Court)

Court File Number
FS-16-21123

at 393 University Avenue, Toronto, Ontario M5G 1E6
(Court office address)

Form 25: Order (General)
 Temporary
 Final

Applicant(s)

(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).

Elad Dvash-Banks and Andrew Dvash-Banks
[REDACTED] Avenue, Unit [REDACTED]
Toronto, Ontario
M6B 4C6

Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).

Michelle Flowerday
Flowerday Law | Fertility & Family
158 McRae Drive
Toronto, Ontario M4G 1S7
T: 416.428.5511
F: 647.341.5111
E: michelle@flowerdaylaw.ca

The Honourable

Terrisa Young J.
Judge (Print or type name)

September 28, 2016
Date of order

Respondent(s)

(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).

Amanda Marie Anne Adams
[REDACTED] Avenue, Unit [REDACTED]
Mississauga, Ontario
L5A 2K7

Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).

Deputy Registrar General for the Province of Ontario
Ministry of the Attorney General
Legal Services Branch
77 Wellesley Street West
Ferguson Block, 6th Floor
Toronto, Ontario M7A 1N3

The court read an application/motion made by (name of person or persons)

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks.

The following persons were in court (names of parties and lawyers in court)

Michelle Flowerday, Counsel for the Applicants

The court received evidence and heard submissions on behalf of (name or names)

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

Under the *Children's Law Reform Act*, Section 4(1), (2) and (3), and the *Courts of Justice Act*, Section 97,

1. It is declared that the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, are the parents of the child, E [REDACTED] J [REDACTED] D [REDACTED] B [REDACTED], born September 16, 2016 ("the child"), and that the Applicants are recognized for all purposes in law to be the parents of the child.
2. It is declared that the Respondent, Amanda Marie Anne Adams, is not the mother of the child.

A True Copy of the
Signed Original.

TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

Under the *Vital Statistics Act*,

- 3. The Deputy Registrar General for the Province of Ontario is directed to register the birth of the child so as to show the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, as the parents of the child.

~~Under the *Consolidated Provincial Practice Direction of the Ontario Superior Court of Justice*, Section F, Paragraphs 106 and 107,~~

- ~~4. Service and filing of a notice of motion or application with respect to the relief granted under paragraphs 6, 7 and 8 of this Order are dispensed with.~~
- ~~5. Notice to the media with respect to the relief granted under paragraphs 6, 7 and 8 of this Order is dispensed with.~~

Under the *Courts of Justice Act*, Section 137(2),

- 6. The Registrar of the Ontario Superior Court of Justice is directed to seal and treat as confidential all documents filed in this proceeding.
- 7. No person shall publish or make public information that has the effect of identifying either Applicant or the other persons identified in the materials filed in this proceeding.
- 8. The name of this proceeding shall be amended to show only the initials of the parties and the Registrar of the Ontario Superior Court of Justice is directed to amend the records accordingly.
- 9. The Deputy Registrar General for the Province of Ontario is directed to seal and treat as confidential the Notice of Live Birth and all other records in its possession in connection with this case, including this Order, save and except for Form 2 (Statement of Live Birth) and the Birth Certificate.

Put a line through any blank space left on this page.

Sept 28, 2016
Date of signature

Hareem Yousif
Signature of judge or clerk of the court


TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
ENTERED / ENTRÉ
SEP 28 2016
per/per Justin DiGirolamo
LOCAL REGISTRAR / GREFFIER LOCAL

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 022

CONFIDENTIAL AGREEMENT

THIS IS AN AGREEMENT made on this 21ST day of December, 2015

AMONG:

ANDREW DVASH-BANKS

(herein called "Andrew")

-and-

ELAD DVASH-BANKS

(herein called "Elad")

-and-

AMANDA MARIE ANNE ADAMS

(herein called the "Gestational Carrier")

PART I
BACKGROUND

1.1 Andrew and Elad (collectively called the "Intended Parents") are a same-sex married couple who require assisted reproductive technology to have a child.

1.2 The Intended Parents intend to conceive a Child by Transferring Ova supplied by a third party anonymous donor fertilized by Sperm supplied by Andrew and/or Elad to the Gestational Carrier.

1.3 The Gestational Carrier intends to act as the gestational carrier for the Child and to carry the Child until it is born. The Gestational Carrier has offered to carry the Child on an altruistic basis, and only those out of pocket expenses related to the surrogacy shall be reimbursed to her. The Gestational Carrier has ONE (1) child of her own and is not currently in a relationship of permanence.

1.4 Ova retrieved from the third party anonymous donor and Sperm supplied by Andrew and/or Elad will be incubated externally. Fertilization may occur during this incubation period when a Sperm penetrates the cell wall of an ovum and their nuclei join together creating a single cell fertilized ovum which develops into an embryo.

1.5 Unless in her sole discretion the Gestational Carrier agrees at the time to the insertion of a greater number of Embryos, a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier during each in vitro fertilization cycle.

A True Copy of the
Signed Original.


TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

P.C.

1.6 The Intended Parents and the Gestational Carrier know that more than one child may result from this procedure and, if more than one child is born, "Child" in this Agreement, will mean "Children".

1.7 The Gestational Carrier believes that it would be in the best interests of the Child for the Child to be in the custody of the Intended Parents immediately upon Birth, and the Gestational Carrier hereby expresses her intention to waive all parental rights which she may have to any Child.

1.8 The Intended Parents will be recognized as the Child's parents immediately upon the Child's Birth.

1.9 The Intended Parents intend to assume full care of, and all parental responsibility for the Child, and the Gestational Carrier intends to allow the Intended Parents to assume this care and responsibility without reserving any care or responsibility to herself.

1.10 Immediately upon the Birth of the Child, the Gestational Carrier will give the Child into the permanent custody of the Intended Parents and as soon as reasonably possible thereafter the Intended Parents will make an application in the Ontario Superior Court of Justice seeking a declaration of parentage on their part, and a declaration of non-parentage on the part of the Gestational Carrier.

1.11 All Parties to this Agreement wish to maintain confidentiality between themselves, one to another, and between themselves and the public.

1.12 It is expressly understood that this Agreement is not intended in any way to represent a contract regarding payment in exchange for a child, or for the relinquishment of a child, and that the Parties acknowledge that no consideration has been offered to or accepted by the Gestational Carrier which would induce her to act as a surrogate.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and promises contained in this Agreement and with the intention of being fully bound by its terms, the Parties do hereby covenant and agree as follows.

**PART II
DEFINITIONS**

Where used in this, unless the context otherwise requires, the following terms will have the following meanings:

- (a) "Attending Physician" means the physician or licensed midwife attending to the maternal care of the Gestational Carrier and attending at the Birth of the Child, as may be agreed to in writing by the Parties;
- (b) "Birth" means "birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario, and includes a "Full Term Still-Birth" unless otherwise stated;

Dvash-Banks and Adams Surrogacy Agreement | Final Version

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VICE CONSUL OF THE
UNITED STATES OF AMERICA

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 024

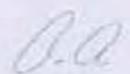
Handwritten initials: ADB, EPB

- (c) "Child" means the child conceived by I.V.F. (defined below) as described in this Agreement and if there are multiple births means the children conceived by the procedure contemplated in this Agreement;
- (d) "Clinic" means The Toronto Institute for Reproductive Medicine, 56 Aberfoyle Crescent, Unit 300, Toronto, Ontario M8X 2W4;
- (e) "Early Miscarriage" means the complete expulsion or extraction from the Gestational Carrier of a product of conception before the beginning of the twelfth (12th) week of gestation;
- (f) "Embryo" or "Fertilized Ova" or "Fertilized Ovum" means the product of I.V.F. (hereinafter defined). For clarification, Fertilized Ova may result from Sperm supplied by Andrew and Elad with the potential of the Gestational Carrier becoming Pregnant with Fetuses that are genetically connected to each of Andrew and Elad;
- (g) "Fetus" means the Embryo from the moment of the completion of the Transfer until the moment of Birth;
- (h) "Full Term Still-Birth" means a still-birth which occurs during or after the 36th week of gestation;
- (i) "Guardians" means Tova and Mordehay Dvash;
- (j) "Hospital" means Trillium Health Partners;
- (k) "Intended Parents" means ANDREW DVASH-BANKS and ELAD DVASH-BANKS;
- (l) "Gestational Carrier" means AMANDA MARIE ANNE ADAMS;
- (m) "I.V.F." means in vitro fertilization and embryo transfer which is a medical procedure whereby ova are inseminated with sperm and allowed to incubate so that fertilization occurs by a sperm penetrating the cell wall of an ovum and their nuclei joining together to create a single cell fertilized ovum. Several fertilized ova usually result from a single in vitro fertilization and after the single cell fertilized ova have started to divide to form an embryo, some will be Transferred into the uterus of the Gestational Carrier and some may be frozen for Transfer at a later date. The Embryo or Embryos that are Transferred pursuant to this may be from an Embryo or Embryos that have been incubated previously and frozen;
- (n) "Miscarriage" means the complete expulsion or extraction from the Gestational Carrier of a product of conception between the twelfth (12th) and twentieth (20th) week of gestation. Miscarriage in this Agreement does not include an Early Miscarriage;

Dvash-Banks and Adams Surrogacy Agreement | Final Version


TERRI N. DAY
 VICE CONSUL OF THE
 UNITED STATES OF AMERICA

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 025


 MS EDB

- (o) "Ova" means the sex cells of a third party donor;
- (p) "Parties" means the parties to this Agreement, being ANDREW DVASH-BANKS, ELAD DVASH-BANKS, and AMANDA MARIE ANNE ADAMS, and "Party" means any one of the Parties individually;
- (q) "Pregnancy" means the medical condition that occurs when the Fertilized Ovum or Embryo, resulting from the third party anonymous Ova and the Sperm of Andrew and/or Elad, has been transferred to the Gestational Carrier and successfully implants, resulting in a pregnancy being diagnosed based on blood test results and does not include a chemical pregnancy;
- (r) "Requested Termination" means: (i) a termination of the Pregnancy with the consent of or at the request of the Intended Parents; or (ii) a termination of the Pregnancy performed in accordance with the recommendation of the Transfer Physician and/or the Attending Physician because the Pregnancy poses a serious risk to the health or life of the Gestational Carrier;
- (s) "Special Expense Amount" means the amount reimbursable under the section called SPECIAL EXPENSE AMOUNT, below;
- (t) "Sperm" means the sex cells of Andrew and/or Elad;
- (u) "Still-Birth" means "still-birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario and does not include a Full Term Still-Birth unless otherwise stated;
- (v) "Term of this Agreement" means, subject to Section 25.1, the period commencing on the date of execution of this Agreement by the last Party to do so, and ending on the day which is the earlier of: (i) the date of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child;
- (w) "Transfer" and "Transferred" mean the manual deposit of one or more Fertilized Ovum or Embryo into the uterus of the Gestational Carrier; and
- (x) "Transfer Physician" means Dr. Alfonso Del Valle or, in the event that Dr. Del Valle is not available, another physician in the Clinic, as may be agreed to by the Parties.

**PART III
PSYCHOLOGICAL ASSESSMENTS**

3.1 The Gestational Carrier acknowledges that prior to the execution of this Agreement, she was assessed by a counsellor at the Clinic (the "Counsellor"), who determined that she is fit to undertake the obligation to carry the Child during a Pregnancy, and that she is willing to relinquish the Child on Birth to the Intended Parents and is competent to enter into this

Dvash-Banks and Adams Surrogacy Agreement | Final Version

TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 026

[Handwritten Signature]
ADB EDB

Agreement. The Gestational Carrier further acknowledges that for the purposes of this Agreement only, she has made an exception to the privilege of confidentiality to allow the Counsellor to advise the Intended Parents whether or not she is psychologically fit to fulfill the obligations she has assumed under this Agreement, and has consented, and does hereby confirm the consent to the release to the Intended Parents of such information only.

3.2 The Intended Parents acknowledge receipt of the advice of the Counsellor about the assessment of the Gestational Carrier, and acknowledge that they are satisfied with the assessment and that they accept the findings and conclusions.

PART IV ACKNOWLEDGEMENTS AND UNDERTAKINGS

4.1 Each Party acknowledges that the recitals are accurate, binding and form part of this Agreement.

4.2 Each Party acknowledges that he or she is fully informed about the I.V.F., egg retrieval and Transfer procedure and each understands the medical and legal issues involved.

4.3 In particular, the Gestational Carrier acknowledges that she has been informed by a physician specializing in fertility procedures of the risks to the Gestational Carrier involved in preparing her to receive the Transfer, the Transfer procedure itself, the Pregnancy and the Birth which may result, including the possibility of multiple births (or, alternatively, any termination or reduction of the Pregnancy) and further acknowledges that she understands these risks and releases the Intended Parents with respect to all such risks including, without limitation, the health of the Ova and any Embryos created with the Ova, which are transferred to the Gestational Carrier.

4.4 During the Term of this Agreement, each of the Parties agrees to inform each other forthwith, in writing, of any material change in their circumstances which may reasonably affect their performance of this Agreement in accordance with its terms. These changes include, but are not limited to, change in marital status, change of mailing address or email address, illness or death of a Party, loss of employment, changes in insurance coverage and exposure to communicable illness or any risk to health.

PART V MEDICAL EXAMINATIONS

5.1 Within a reasonable period prior to undertaking any medical procedure contemplated by this Agreement, the Gestational Carrier and the Intended Parents will undergo a thorough consultation and evaluation by the Transfer Physician, to determine whether the Gestational Carrier is physically healthy and capable of conceiving and carrying a Child to Birth and to determine whether the Intended Parents are fit to proceed with the procedures contemplated by this Agreement. The evaluation of all Parties will include testing for transmittable diseases, including, but not limited to, Hepatitis B and C and HIV in order to

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protect the health of the Gestational Carrier and the Child.

5.2 The Gestational Carrier warrants and represents that she has disclosed her full medical history to the Transfer Physician and has advised the Transfer Physician of any medications which she is currently taking.

5.3 The Gestational Carrier and the Intended Parents will undergo any medical testing that the Transfer Physician and/or the Attending Physician deem necessary, within the time frame specified by the referring physician, acting reasonably, during the Term of this Agreement, at the expense of the Intended Parents.

5.4 Each Party, for the purposes of this Agreement only, has made or hereby makes an exception to the privilege of confidentiality to allow information to be given to the other Parties and their solicitors, and has consented or hereby consents, to the release of the reports, test results, and all relevant information obtained in the examination or examinations and tests to each of the other Parties, or any one or more of them.

**PART VI
COUNSELLING PROGRAM AND MEDIATION**

6.1 The Gestational Carrier acknowledges that she may choose to participate in a counselling program, or, she may choose to meet with a counsellor as required at any time during the Term of the Agreement. Any costs of this program will be included in the Special Expense Amount. Each Party for the purposes of this Agreement has made or hereby makes an exception to the privilege of confidentiality to allow information derived in counselling sessions to be given to the other Parties and their solicitors, and has consented or hereby consents to the release of relevant information pertaining to the wellbeing of the Pregnancy and obtained in the counselling sessions.

**PART VII
SEXUAL ABSTINENCE**

7.1 During the time period set out in this Agreement, the Gestational Carrier will not engage in any sexual activity whereby semen could cause her to conceive a child, or risk the health of the unborn Child. To this end, she will abstain from sexual intercourse completely for a continuous period commencing TWO (2) weeks before each Transfer and ending on the earlier of: (i) confirmation by the Transfer Physician that a Pregnancy has not been initiated; or (ii) the date on which the first ultrasound examination after each Transfer has been performed, unless the Transfer Physician recommends a longer period of abstinence.

7.2 The Intended Parents acknowledge that the Gestational Carrier is single. The Gestational Carrier agrees that she will provide notice to the Intended Parents if that status changes, and further agrees as follows:

- (a) Prior to commencing a sexual relationship with a new partner, the Gestational Carrier covenants and agrees that she will ensure that such

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individual undergoes testing for transmittable diseases, and further agrees not to engage in a sexual relationship with such new partner until the testing confirms that he does not have any transmittable diseases;

- (b) At all times during the Term of this Agreement, the Gestational Carrier shall engage only in safe sexual practices in order to protect herself and the Fetus from infection by the HIV virus or any venereal or other transmittable disease and agrees not to engage in sexual intercourse unless her partner uses a condom; and
- (c) If, during the Term of this Agreement, the Gestational Carrier becomes involved in a common law relationship, or becomes married, the Gestational Carrier agrees that she will ensure that her spouse signs an amending agreement pursuant to which he acknowledges that: (i) he is not the Child's father; (ii) he will release the Intended Parents from any claims he may have; (iii) he will co-operate with respect to any post-birth process confirming the parentage of the Intended Parents; and (iv) he will abide by the provisions of this Agreement including the requirement to refrain from sexual activity with a third party outside of his monogamous relationship with the Gestational Carrier.

7.3 At all times during the Term of this Agreement, the Intended Parents will not engage in any sexual activity with a third party outside of their marital relationship to protect themselves, the Gestational Carrier and the Child from infection by the HIV virus or any venereal or other transmittable disease.

**PART VIII
TRANSFERS**

8.1 The Gestational Carrier will hold herself available to receive Transfers under this Agreement to be scheduled at mutually convenient times for up to TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so, and will not perform any act or any thing which would interfere with the proper performance of her obligations under this Agreement.

8.2 The Gestational Carrier will accept a Transfer implanted by the Transfer Physician at the Clinic on as many as FOUR (4) separate occasions, including Transfers of frozen Embryos, if any, at times recommended by the Transfer Physician and approved by the Parties in order to achieve a Pregnancy subject to all Transfers being completed within TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so and thereafter the Gestational Carrier will have no obligation to accept any Transfer.

8.3 Unless the Parties mutually agree to a greater number of Embryos, on each Transfer a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier.

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8.4 The Gestational Carrier will follow all medical instructions prescribed by the Transfer Physician prior to a Pregnancy and during the first trimester of a Pregnancy. The Gestational Carrier will continue to follow the protocol prescribed by the Transfer Physician, which will include stimulating the Gestational Carrier so that her uterine lining is prepared for the Transfer of Embryos. The Gestational Carrier will undergo all necessary testing (including blood testing and ultrasound testing) to determine the readiness of the Gestational Carrier's uterus for the Transfer of Embryos.

8.5 If a Pregnancy does not result after FOUR (4) Transfers (including Transfers of frozen Embryos) then this Agreement may be terminated by any Party giving notice in the manner prescribed by the section called NOTICE, below, to all other Parties at any time before a Pregnancy has occurred and, upon delivery of such notice, this Agreement will terminate and the Intended Parents and the Gestational Carrier will be released from all obligations under it, except the obligation to reimburse the Gestational Carrier's allowable expenses pursuant to the section called SPECIAL EXPENSES, below, which have been incurred to the time of the termination. If no such notice of termination is given, this Agreement will remain in full force and effect until a notice of termination is given.

8.6 Notwithstanding anything contained in this Agreement, the Intended Parents or the Gestational Carrier may terminate this Agreement at any time after the first Transfer upon giving notice to the other Party, if a Pregnancy has not resulted from the Transfer. Upon such a termination the Intended Parents and the Gestational Carrier will be released from all obligations under this Agreement, except for the obligation to reimburse the Gestational Carrier for any expense incurred to the time of termination and payable under the section called SPECIAL EXPENSES, below.

8.7 If a Transfer results in a Pregnancy, the Gestational Carrier will use her best efforts to carry the Fetus to term. The Gestational Carrier will give Birth to the Child at the Hospital or such other hospital as may be agreed to in writing by the Parties.

8.8 The Gestational Carrier agrees to provide the Intended Parents with a weekly update with respect to the Pregnancy, and such update may be by email, Skype or telephone as agreed to by the Parties.

8.9 The Gestational Carrier agrees that either or both of the Intended Parents may accompany her to any obstetrical appointment, or pre-natal test or procedure. The Gestational Carrier further consents to the presence of the Intended Parents in the delivery room at the time of the Birth of the Child. In the event that the Hospital limits the number of visitors that may be present at the Birth of the Child, the Intended Parents acknowledge and agree that the Gestational Carrier shall be entitled to select one such visitor. The Gestational Carrier agrees to contact the Intended Parents at the first indication that labour has begun.

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**PART IX
PRENATAL OBLIGATIONS**

9.1 The Gestational Carrier warrants and represents that:

- (a) she has never abused alcohol or drugs;
- (b) she has never taken any drugs, whether legal or illegal, which may impact upon the success of a Pregnancy contemplated by this Agreement and the Birth of a healthy Child;
- (c) she is not now using, and has not in the TWELVE (12) months previous to the date of this Agreement, used an illegal drug;
- (d) she will not, during the Term of the Agreement, use any illegal drugs; and
- (e) she has never been charged with a criminal offence.

9.2 The Gestational Carrier warrants and represents that she will strictly comply with all of her obligations set out in the following paragraphs:

9.3 The Gestational Carrier will follow all medical advice given by the Transfer Physician and the Attending Physician, and will undergo all medical procedures that either of them require to ensure that her obligations under this Agreement are safely and successfully performed for both the Gestational Carrier and the Child. Without limiting the generality of the foregoing, if the Attending Physician determines that a Caesarean Birth is advisable for the health and safety of either the Gestational Carrier or the Child, then the Gestational Carrier hereby consents to such procedure. The Gestational Carrier further consents to submit to amniocentesis and all other tests recommended by the Transfer Physician and the Attending Physician and those tests requested by the Intended Parents on the advice of the Transfer Physician, should she become Pregnant pursuant to the terms of this Agreement.

9.4 The Gestational Carrier will follow a prenatal medical examination schedule and prenatal procedures prescribed by the Transfer Physician and/or the Attending Physician who will be responsible for the Gestational Carrier's medical care during the prenatal period. If a medical illness or condition is suspected or diagnosed during the Pregnancy, the Gestational Carrier agrees that she will seek medical attention, and will follow all medical instructions and course of treatment as prescribed.

9.5 The Gestational Carrier covenants and agrees to have the integrated pre-natal screen (IPS), parts one and two:

- (a) at approximately 12 weeks, Part 1 of the IPS, which consists of a nuchal translucency ultrasound and associated maternal bloodwork; and
- (b) at approximately 16 weeks, Part 2 of the IPS, which consists of the appropriate

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maternal blood tests.

The results of the IPS will be forwarded to the Attending Physician.

9.6

- (a) The Gestational Carrier warrants that she does not smoke and will not smoke, or expose herself or allow herself to be exposed to second-hand smoke, for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (b) The Gestational Carrier warrants that she will not drink alcoholic beverages for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (c) The Gestational Carrier further warrants that she will maintain a proper diet and exercise regime as recommended by the Transfer Physician and/or the Attending Physician. All costs incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 9.6(c) shall, subject to the cap on the Special Expense Amount, be included in the Special Expenses.

9.7 The Gestational Carrier will obtain adequate prenatal medical care including, without limitation, the care contemplated by this Part IX in order to enhance the success of the Pregnancy and the Birth of a healthy Child.

9.8 The Gestational Carrier covenants and agrees that during the Term of this Agreement she will not:

- (b) not ingest, inhale, inject or absorb any drugs, pharmaceutical or herbal substances including, without limitation, over the counter medication, not prescribed or approved, in writing, by the Transfer Physician or the Attending Physician (with the exception of Tylenol consumed at or below the recommended dosage for pregnant women). If the Transfer Physician approves any such medications, the Gestational Carrier agrees to follow the instructions of the Transfer Physician and/or Attending Physician with respect to dosage of substances or medication;
- (c) not have any part of her body pierced or tattooed;
- (d) use her best efforts to avoid all exposure to radiation or toxic chemicals; and
- (e) avoid any potentially hazardous situations or activities that a reasonable person would conclude are likely to result in harm to herself or the Fetus.

9.9 Failure to comply with this Part IX will constitute a material breach of the Gestational Carrier's obligations under this Agreement.

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- (a) After the Gestational Carrier becomes Pregnant with the Child, the Gestational Carrier and the Intended Parents will keep each other reasonably informed of their whereabouts.
- (b) From and after the first day of the 24th week of the Pregnancy, the Gestational Carrier may only travel outside of Canada: (i) in the event of a severe illness or death in her immediate family; (ii) if she has obtained the prior written consent of the Intended Parents, which shall not be unreasonably withheld; (ii) if she has the prior approval of the Attending Physician; and (iii) if she has a policy of travel health insurance covering her health care costs, the Birth of the Child and the Child's health care costs, which is in place prior to departure and for the duration of the travel.
- (c) From and after the first day of the 24th week of the Pregnancy, the Gestational Carrier shall not travel to or visit the Provinces of Quebec, Saskatchewan, New Brunswick and/or Prince Edward Island.
- (d) From and after the first day of the 28th week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel by airplane.
- (e) From and after the first day of the 34th week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel more than a FORTY (40) minute drive from a hospital.

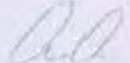
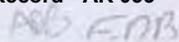
9.11 The Gestational Carrier will and hereby consents to the Transfer Physician and the Attending Physician keeping the Intended Parents informed at all material times of whether a Transfer has resulted in a Pregnancy, the progress of the Pregnancy, the results of all tests and any recommendations arising from test results, including all information relevant to the health of the Gestational Carrier and the Fetus, and the expected date of Birth. The Gestational Carrier will give the Attending Physician any further consent, authority or directions necessary to comply with this obligation to keep the Intended Parents so informed.

9.12 The Gestational Carrier hereby gives her consent, and will sign any medical consent forms to allow the Transfer Physician, the Attending Physician or any other doctor or hospital agreed to by the Parties to treat her as may be required in respect of the Pregnancy.

**PART X
CONDITION PRECEDENT**

10.1 The Parties each acknowledge that a finding by medical testing that either Andrew or Elad is a genetic parent of the Child is a condition precedent to the performance of the Intended Parents' obligations under this Agreement. For the purposes of determining the parentage of the Child, immediately after the Birth, the Intended Parents and the Gestational Carrier will submit to a DNA test and each Party consents to the immediate testing of the DNA

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10.2 A finding that neither Intended Parent is a genetic parent of the Child will constitute a material breach of this Agreement unless the parentage is due to a clinical or physician's error in the fertilization or Transfer procedure. If there is a finding that neither Intended Parent is a genetic parent of the Child, and the same degree of testing confirms that the Gestational Carrier is not the genetic mother of the Child, a clinical or physician's error in the fertilization or Transfer procedure shall be deemed to have occurred and the Intended Parents shall assume responsibility for the Child as if it were their own.

10.3 If the Gestational Carrier is the genetic mother of the Child, the Gestational Carrier will refund, within THIRTY (30) days of the request, any Special Expense Amount paid on her behalf, or reimbursed to her, and will forego the reimbursement of any further allowable Special Expense Amount that would otherwise be, or become, reimbursable to her and the Intended Parents shall not be obliged to accept any responsibilities, social, legal or custodial, toward the Child, without prejudice to any of the rights that the Intended Parents are entitled to claim under this Agreement.

**PART XI
WARRANTIES AND ACKNOWLEDGEMENTS**

11.1 The Gestational Carrier warrants that, to the best of her knowledge, she is physically capable of carrying the Fetus to term and is capable of carrying and bearing healthy, normal children.

11.2 The Gestational Carrier warrants that, to the best of her knowledge, she has no transmittable disease and will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.3 Andrew and Elad each warrant that, to the best of their knowledge, neither has a transmittable disease and each will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.4 The Gestational Carrier acknowledges that it will be in the best interests of the Child for the Child to be placed in the custody of the Intended Parents immediately upon the Birth of the Child and for the Gestational Carrier to forever waive all parental and other rights in and to the Child that she has or may acquire in the future immediately upon the Birth of the Child.

**PART XII
EARLY TERMINATION OF PREGNANCY**

12.1 The Parties acknowledge that the Gestational Carrier has the right to have the Pregnancy terminated at any time she and either the Transfer Physician or the Attending Physician, in their absolute discretion, determine the Pregnancy should be terminated. However, the Gestational Carrier has assured the Intended Parents that it is not her intention to have an

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abortion, unless the Intended Parents request that she does so in the circumstances set out below. The Gestational Carrier has further assured the Intended Parents that she will proceed with a Requested Termination at a time and place recommended by the Transfer Physician and/or Attending Physician if: (i) a test reveals that the Child is likely to have a serious genetic or congenital abnormality or defect; (ii) the Transfer Physician or the Attending Physician so recommends in writing; and (iii) the Intended Parents so request in writing. All costs incurred in connection with and directly related to the Requested Termination shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

12.2 In the interests of clarity, the Parties agree that any request to terminate the Pregnancy shall be in writing and signed by each of the Intended Parents.

12.3 The Gestational Carrier states that she does not intend to exercise her right to abortion:

- (a) except as set out in this Part XII, or
- (b) unless in the opinion of the Transfer Physician and/or the Attending Physician, terminating the Pregnancy is necessary to protect the Gestational Carrier's health or life, in which case the consent of the Intended Parents is not required.

12.4

- (a) The Gestational Carrier will undergo ultrasound, chorionic villus sampling, IPS, amniocentesis and similar tests and procedures to detect genetic and congenital abnormalities or defects in the Fetus, as recommended by the Transfer Physician and/or the Attending Physician.
- (b) The Intended Parents acknowledge the risks to the Pregnancy associated with any invasive testing and, provided that the Gestational Carrier is not otherwise in material breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from any invasive testing performed at the request of or with the consent of the Intended Parents.

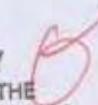
12.5 The tests will be performed or interpreted by the Transfer Physician, the Attending Physician, a physician or a technician recommended by either or both of them that is satisfactory to the Parties to this Agreement.

12.6

- (a) If the Gestational Carrier is carrying a single Fetus and tests indicate that the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or if the Gestational Carrier is carrying a multiple pregnancy and the tests indicate that each Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, then the Intended Parents may, in accordance with Section 12.1, inform the Gestational Carrier that it is their wish that the Pregnancy be

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terminated. The Gestational Carrier, in consultation with the Transfer Physician or Attending Physician, will follow the instructions of the Intended Parents to terminate the Pregnancy.

- (b) If the Gestational Carrier is carrying a multiple Pregnancy and the medical tests indicate that only one Fetus has or is likely to have, a serious genetic or congenital abnormality or defect, the Intended Parents may inform the Gestational Carrier that it is their wish that the Gestational Carrier undergo a selective reduction procedure and the provisions of Section 13.1 shall apply.

12.7 If the Gestational Carrier:

- (a) terminates the Pregnancy or undergoes a selective reduction procedure without the prior written approval of the Intended Parents where prior consent is required; or
- (b) refuses to terminate the Pregnancy, or to take all steps within her control to undergo a selective reduction procedure if requested to do so, within TWENTY (20) days of receiving notice of the Intended Parents' wish to have the Pregnancy terminated because the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or the multiple pregnancy poses a risk to the health or life of the remaining fetus(es) or the Gestational Carrier,

then the Gestational Carrier will be in material breach under this Agreement, and the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses incurred after the date of the termination or selective reduction in the event of Section 12.7(a), or the date of notice in the event of Section 12.7(b), and the Gestational Carrier will refund to the Intended Parents all amounts already reimbursed to her pursuant to the terms of this Agreement.

12.8 Subject to Section 12.1, if the Gestational Carrier refuses to terminate the Pregnancy or undergo a selective reduction procedure at the request of the Intended Parents and the Child is born with or without the serious genetic or congenital abnormality or defect detected or suspected from the tests referred to above, the Gestational Carrier will give the Child into the custody of the Intended Parents as provided in this Agreement and no expenses of the Gestational Carrier will be reimbursed after the date on which notice requesting termination or selective reduction was received, but all other terms of this Agreement will continue in full force and effect including, without limitation, the Intended Parents' obligation to take custody of and support the Child.

12.9 If the tests for congenital and genetic defects and abnormalities do not reveal any defects or abnormalities, but the Child is born with defects or abnormalities which do not result from the gross negligence of the Gestational Carrier, the Gestational Carrier will place the Child in the custody of the Intended Parents as provided in this Agreement and all other terms and obligations will remain in effect, including those in Section 26.

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**PART XIII
SELECTIVE REDUCTION**

- 13.1 If:
- (a) the Transfer of Embryos contemplated by this Agreement results in the Gestational Carrier becoming pregnant with THREE (3) or more Children; or
 - (b) the Gestational Carrier is carrying a multiple pregnancy and the test(s) indicate that one or more Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, but at least one Fetus does not have any genetic or congenital abnormality or defect; or
 - (c) in the opinion of the Transfer Physician and/or the Attending Physician, the multiple Pregnancy poses a risk to the Gestational Carrier's health or to one or more Fetus;

then if the Intended Parents so request under Section 13.1(b) or upon recommendation of the Transfer Physician and/or the Attending Physician under Section 13.1(a) or (c), the Gestational Carrier will undergo a procedure in any location specified by the Attending Physician within Canada to selectively reduce the number of Fetuses to twins or a single Fetus, as the case may be. If requested by the Intended Parents, the procedure will take place at the time and in a manner determined to be medically appropriate by the Attending Physician. The Gestational Carrier acknowledges and agrees that she will not undergo a selective reduction procedure if she is carrying two Fetuses without the consent in writing of the Intended Parents, unless the Attending Physician is of the opinion that such procedure is necessary to avoid a serious risk to the health of the Gestational Carrier or to the remaining Fetus or Fetuses. All costs incurred in connection with and directly related to the selective reduction procedure shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

13.2 The Intended Parents acknowledge the risks to the Pregnancy associated with a selective reduction procedure and, provided that the Gestational Carrier is not otherwise in breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from a selective reduction procedure performed at the request of or with the consent of the Intended Parents.

13.3 In the interests of clarity, any request to selectively reduce the Pregnancy shall be in writing and signed by each of the Intended Parents.

**PART XIV
CUSTODY OF CHILD AND PARENTAL RIGHTS**

14.1 The Gestational Carrier has met or spoken with the Intended Parents and believes that the Intended Parents will be loving and caring parents to any Child born pursuant to this Agreement. She acknowledges that it is in the best interests of the Child that the Intended Parents have sole and exclusive custody and assume the legal and social parental responsibilities

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for the Child, immediately upon Birth. For the purposes of this Agreement, "immediately upon birth" means as soon as the umbilical cord is cut.

14.2 The Gestational Carrier acknowledges that the Intended Parents will show the surname and the given names of the Child to be the names chosen by the Intended Parents on any form required on the Birth of the Child.

14.3 The Gestational Carrier will, at the request of the Intended Parents, participate in any legal proceeding or application supporting the Intended Parents' custody and parentage of the Child and will facilitate proof by affidavit or by giving evidence in person of all material facts within their knowledge and will attend at any and all court hearings, as required either prior to or after the Birth of the Child, until the proceeding or application is finally disposed of. All expenses incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 14.3, shall be borne by the Intended Parents in addition to the Special Expense Amount.

14.4 The Gestational Carrier hereby expressly waives all parental, custodial and social rights that she has or may acquire to the Child.

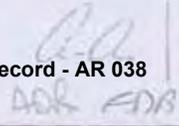
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- (a) The Gestational Carrier will, immediately upon the Birth of the Child, relinquish any and all custody rights she has or may have, and will make custody of the Child available to the Intended Parents forthwith upon the Birth of the Child. The Intended Parents will receive custody and assume the legal and social parental responsibilities for the Child;
- (b) The Gestational Carrier agrees that she will co-operate with the hospital staff and administration with respect to the agreement of the Parties as set out in Section 14.5(a) and, prior to the expected date of Birth, she will sign a joint letter of instruction and direction to the hospital staff and administration instructing the hospital to treat the Child as the Child of the Intended Parents immediately upon the Birth of the Child, to accept the instructions of the Intended Parents with respect to the Child's medical care, and to discharge the Child from the hospital to the custody of the Intended Parents; and
- (c) The Parties acknowledge that immediately upon Birth all medical decisions regarding the Child shall be made solely by the Intended Parents. The Gestational Carrier agrees that the Intended Parents shall be the persons authorized to care for and make treatment and any other decisions with respect to the Child from the moment of Birth and thereafter. Further, the Gestational Carrier agrees that if a health care provider recognizes her as a substitute decision-maker for the Child, she shall inform such person that she is not the parent of the Child and is therefore not willing to assume the responsibility of giving or refusing consent in accordance with Section 20(2)(e) of the *Health Care Consent Act*. The Gestational Carrier shall direct the health care staff to accept the instructions of

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the Intended Parents with respect to the health of the Child.

- (d) Notwithstanding the above, if the Intended Parents are not available to take physical custody of the Child, or make medical decisions with respect to the Child, immediately after Birth, the Gestational Carrier shall do so on a temporary basis until the Intended Parents are available and same shall not derogate from the Intended Parents' legal parental rights with respect to the Child.

14.6 The Intended Parents will receive the custody of the Child at Birth, or as soon thereafter as is practicable, and if not present at the same time either Andrew or Elad will be deemed to receive custody on behalf of both of them.

14.7 The Parties agree that the Gestational Carrier shall not under any circumstances breastfeed the Child without the permission of the Intended Parents obtained in advance. The Parties acknowledge that the Gestational Carrier has agreed to pump breastmilk for the Child, if feasible at the time, and that the Intended Parents shall cover the direct cost of doing so in addition to the Special Expense Amount.

14.8 Each Party to this Agreement will do what is reasonably necessary to facilitate and expedite the performance of this Agreement including all things such as completing consent forms, hospital and statistical records and obtaining birth certificates.

**PART XV
RELATIONSHIP WITH THE CHILD**

15.1 The Gestational Carrier will avoid developing a parental relationship with the Child. The only time she will see the Child is in the Hospital before the Child is discharged, and thereafter upon the consent of the Intended Parents. After the Birth, the Gestational Carrier will not contact, nor attempt to contact, nor allow herself to be in contact with the Child in any manner whatsoever at any time, except with the express permission of the Intended Parents. At no time will the Gestational Carrier reveal or cause to be revealed to the Child the fact that the Gestational Carrier gave Birth to the Child, on the understanding that the Intended Parents shall have sole discretion about providing such information to the Child.

15.2 Notwithstanding the above, the Intended Parents hereby consent to allow the Gestational Carrier and her dependent child to spend time with the Child after Birth but prior to discharge from the Hospital, in the presence of the Intended Parents

**PART XVI
WAIVER AND RELEASE**

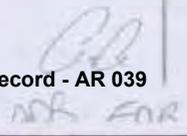
16.1 The Gestational Carrier waives all rights that she has or may in the future have to the custody of, access to, or information about the Child and releases the Intended Parents and each of them from all claims that she has, or may in the future have to the custody of, access to, or information about the Child.

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**PART XVII
FURTHER AGREEMENT AS TO CUSTODY**

17.1 After the Birth of the Child, the Gestational Carrier will, at the request of the Intended Parents, enter into a further agreement with the Intended Parents confirming the Intended Parents' custody of the Child.

17.2 On her part, the Gestational Carrier will confirm and covenant, among other things, that she waives all rights she may have in respect of the Child, and without restricting the generality of the foregoing, her right to custody of the Child and all rights incidental to custody, including the right of access to the Child.

17.3 On their part, the Intended Parents hereby agree, among other things, that:

- (a) they release the Gestational Carrier from all obligations that she has or may in the future have to provide for the support and education of the Child for such period of time as the Child is entitled to support pursuant to the laws of the jurisdiction in which he/she is habitually resident;
- (b) each of them will charge his estate with the obligation to provide for the adequate support and education of the Child; and
- (c) provided that the Gestational Carrier has made physical custody of the Child available to the Intended Parents, each of the Intended Parents will indemnify the Gestational Carrier with respect to any expense incurred by her to provide for the support or education of the Child, including without limitation any legal or other expenses the Gestational Carrier pays in connection with the defence thereof.

**PART XVIII
DEATH OF INTENDED PARENTS AND
GUARDIANSHIP OF CHILD**

18.1 The Intended Parents shall each maintain a valid Will in good standing, recognizing the Child as their issue, naming a testamentary guardian for the Child and making adequate provision for the support and education of the Child.

18.2 If either Andrew or Elad dies before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the survivor. If both Andrew and Elad die before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the Guardians named below.

18.3 Each of the Intended Parents hereby declare that, in the event of both of their deaths during the term of this Agreement, the Guardians of any Child born pursuant to this Agreement are: Tova and Mordehay Dvash, who reside in Israel and who can be reached at +972- [REDACTED] +972- [REDACTED] +972- [REDACTED] or [REDACTED]@gmail.com or

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██████████@bezeqint.net. The Guardians shall make any or all medical decisions with respect to the Child in the event that the Intended Parents are incapacitated and unable to do so.

18.4 The Gestational Carrier shall be entitled to rely on this Part XVIII without the requirement of any further evidence for the purpose of providing custody of the Child to the Guardians named herein in the event of the Intended Parents' death or for the purpose of the Guardians named herein making medical decisions for the Child in the event of the Intended Parents' inability to do so. The Intended Parents hereby warrant that they have not and will not enter into any conflicting document or agreement with respect to guardianship of the Child.

**PART XIX
SEPARATION OR DIVORCE OF INTENDED PARENTS**

19.1 If the Intended Parents separate or divorce before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the care of either Andrew or Elad who will undertake to determine custody and any incidents of custody of the Child as between themselves by mutual agreement or by the Court.

**PART XX
INCAPACITY OF GESTATIONAL CARRIER**

20.1 The Gestational Carrier agrees that, if she becomes incapable of making decisions for herself, or if she requires life support to sustain her life, then all decisions relating to her medical care shall be made by her Attorney for Personal Care ("Attorney") as appointed by her Power of Attorney for Personal Care or, if she does not have an Attorney, by her Substitute Decision-Maker. However, the Gestational Carrier hereby expresses her wish that if she is Pregnant at the time she is assessed as incapable, and the Attending Physician or another physician deems that the Child would benefit from prolonging her life by artificial means until it is deemed safe to deliver the Child, and that the Gestational Carrier is not enduring pain and suffering, then the Attorney, or the Substitute Decision-Maker, as the case may be, will consent to prolonging the life of the Gestational Carrier by artificial means until after the Birth of the Child.

20.2 The Intended Parents shall reimburse the Gestational Carrier for the legal expenses incurred in having a Will and a Power of Attorney for Personal Care prepared for the purpose of fulfilling Section 20.1 above, in addition to the Special Expense Amount to a maximum of Five Hundred Dollars (\$500.00).

**PART XXI
LIFE INSURANCE POLICY FOR
GESTATIONAL CARRIER**

21.1 The Gestational Carrier hereby acknowledges that she currently has a policy of Life Insurance in place with coverage in the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00 Cdn.) on her life which will be kept in place for the period commencing on the date which is not later than the date of the first Transfer and shall end

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no earlier than the first to occur of the following dates (the "Insurance Termination Date"): (i) the date of termination of this Agreement; and (ii) the day which is TWO (2) months after the date of Birth. The Gestational Carrier may renew the life insurance, but the Intended Parents will have no obligation to pay for the cost of any premiums charged after the Insurance Termination Date.

21.2 The Intended Parents shall be named as revocable beneficiaries of SEVENTEEN PERCENT (17%) under the Life Insurance policy, and shall be removed as beneficiaries immediately following the earlier of: (i) the Birth; or (ii) the termination of the Agreement. The Gestational Carrier shall name the beneficiary of the remainder under the Life Insurance policy who shall hold same in trust for her children.

21.3 The Intended Parents may put an additional policy of life insurance into place on the Gestational Carrier's life and she shall take all reasonable steps to facilitate same.

PART XXII ENFORCEMENT

22.1 The Parties have a right to enforce this Agreement in the Ontario Court of Justice including the right to seek an interlocutory and permanent injunction enjoining behaviour that is contrary to or in breach of the Agreement. The Parties acknowledge that a breach of this Agreement will result in irreparable harm to the aggrieved Party and to the Child.

PART XXIII VITAL STATISTICS

23.1 The Gestational Carrier shall refrain from completing and filing the Statement of Live Birth after the Birth of the Child.

23.2 Upon confirmation by DNA tests, the Gestational Carrier will sign all necessary documents to obtain a legal declaration that she is not the genetic or intended mother of the Child, and that the Child was conceived through I.V.F. by the Ova fertilized with the Sperm.

PART XXIV SUCCESSION

24.1 The Parties agree that for the purposes of succession law, and any Wills or estates, the Child will, at all times, be a child of the Intended Parents.

PART XXV EARLY TERMINATION

25.1 If, without the fault of the Gestational Carrier, the Pregnancy ends in Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, then:

- (a) the Intended Parents will be entitled to terminate this Agreement and will be

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EXHIBIT G-9

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:**

Name: SSA Check not transmitted

Description: SSA Check was not transmitted due to an invalid social security number.

Log Type: Name Check Results **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 24-JAN-2017

Name: Name check executed 01/24/17 09:15 AM (UTC-05:00)

Description: Name Check batch 2 executed 1/24/2017 9:15:45 AM (UTC-05:00) by FAZIL, ANEELA: Results for Subject 'D■■■■■-B■■■■■, E■■■■■', received 1/24/2017 9:15 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for FatherAlias 'BANKS, ANDREW', received 1/24/2017 9:15 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 1 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 2 hit(s) (Complete) SSA: 0 hit(s) (Complete) Results for Father 'DVASH-BANKS, ANDREW', received 1/24/2017 9:16 AM (UTC-05:00): CLASS-E: 0 hit(s) (Complete) CLASP: 0 hit(s) (Complete) IPDB: 0 hit(s) (Complete) MIV: 0 hit(s) (Complete) SSA: 0 hit(s) (Complete) Total CLASS-E Hits: 0 Total CLASP Hits: 1 Total IPDB Hits: 0 Total MIV Hits: 2 Total SSA Hits: 0

Log Type: Case Note **Source:** User **Assigned To:** Processing, Automated **Date Completed:** 25-JAN-2017

Name: CCD CRBA Service Note

Description: Subject attempting to acquire citizenship through U.S. citizen father under section 301(g) INA. Submitted the following: Ontario birth cert; father's U.S. ppt, second parent foreign passport, parent's marriage cer; father's work and school records

Log Type: Case Note **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Name: CCD CRBA Service Note

Description: DNA results received. Child does not have claim to U.S. citizenship through U.S. citizen father. Case recommended for denial.

Log Type: Case Note **Source:** User **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Name: CON OFF CRBA NOTES

Description: CRBA for child born in wedlock to US citizen father Applicant submitted a timely filed Ontario birth certificate Parents submitted an Ontario marriage certificate, married 08/19/2010. Amcit Father presented a valid US passport. ISRL Father presented valid ISRL passport. App is the son of a male same sex couple. Because of the process of conceiving the child, the fathers did not know who was the biological parent of A■■■■■ (Applicant). They were advised to get a DNA test and given a list of testing sites to get the test done. Once the determination of biological parentage is done, it will be clear if A■■■■■ has a direct genetic link to Amcit father, and if he automatically qualifies for US citizenship.

Log Type: Status Update **Source:** System **Assigned To:** Fazil, Aneela **Date Completed:** 02-MAR-2017

Description: Service status update

EXHIBIT G-10

To: Day, Frankie (Terri)[DayTN@state.gov]
From: Case 2:18-cv-00523-JFW-JC Document 89-5 Filed 01/04/19 Page 1 of 1 Page ID #:1301
Sent: Tue 1/24/2017 3:00:43 PM (UTC)
Subject: ART guidance

2014 Cable on ART cases

<http://repository.state.gov/archive/2014/01/31/19fc8100-1c46-4101-97ce-4a4286a6e39a/14-STATE-10952.eml.PDF>

7 FAM 1100 APPENDIX D

<http://fam.a.state.gov/fam/07fam/07fam1100apD.html#M1100>

Margaret S. Ramsay
Consul
U.S. Consulate General, Toronto
Tel: 416-595-1700 ext. 466

Official - Transitory
UNCLASSIFIED

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14

15 *Attorneys for Plaintiffs*

16
17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION (LOS ANGELES)**

20 ANDREW MASON)
21 DVASH-BANKS AND E.J.)
D.-B.,)
22)
Plaintiffs,)
23)
v.)
24)
THE UNITED STATES)
25 DEPARTMENT OF STATE, and)
THE HONORABLE MICHAEL)
26 R. POMPEO, Secretary of State,)
27)
Defendants.)
28)

Case No. 2:18-cv-00523-JFW-JCx

AMENDED DECLARATION OF
ALEXA LAWSON-REMER IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

Judge: Hon. John F. Walter
Hearing Date: February 4, 2019
Courtroom: 7A

1 I, ALEXA LAWSON-REMER, declare as follows:

2 1. I am an attorney duly licensed by the State of California and am
3 admitted to practice before this Court. I am an associate at Sullivan & Cromwell
4 LLP, and am one of the attorneys representing Plaintiffs *pro bono* in the
5 above-captioned action (“Action”). I submit this declaration in support of Plaintiffs’
6 Motion for Partial Summary Judgment, filed ~~concurrently herewith~~ [as ECF 83](#). I
7 have personal knowledge of the facts set forth in this declaration and, if called upon,
8 could and would testify to those facts.

9 2. Attached to this declaration as Exhibit A is a true and correct
10 copy of excerpts of the *Transcript of the Deposition of Paul Peek*, Defendant the
11 United States Department of State’s designee under Federal Rule of Civil Procedure
12 30(b)(6), conducted on December 20, 2018, in Washington, D.C. as part of
13 discovery in this Action.

14 3. Attached to this declaration as Exhibit B is a true and correct
15 copy of excerpts of the *Transcript of the Deposition of Frances Terri Day*,
16 conducted on December 20, 2018, in Charlotte, North Carolina as part of discovery
17 in this Action.

18 4. Attached to this declaration as Exhibit C is a true and correct
19 copy of excerpts of the *Transcript of the Deposition of Andrew Dvash-Banks*,
20 conducted on December 12, 2018, in Los Angeles, California as part of discovery in
21 this Action.

22 5. Attached to this declaration as Exhibit D is a true and correct
23 copy of excerpts of the *Transcript of the Deposition of Margaret Ramsay*, conducted
24 on December 7, 2018, at the United States Consulate in Toronto, Canada as part of
25 discovery in this Action.

26 6. Attached to this declaration as Exhibit E is a true and correct
27 copy of excerpts of the *Transcript of the Deposition of Larilyn Reffett*, conducted on
28

1 December 6, 2018, at the United States Consulate in Toronto, Canada as part of
2 discovery in this Action.

3 7. Attached to this declaration as Exhibit F is a true and correct
4 copy of excerpts of *Plaintiffs' Responses to Defendants' First Set of Discovery*
5 *Responses*, served on November 19, 2018.

6 8. Attached to this declaration as Exhibit G is a true and correct
7 copy of excerpts of the *Administrative Record*, filed by Defendants on January 4,
8 2019 as Docket No. 80 and authenticated by Defendants therein. That
9 *Administrative Record* contains ~~eight~~ten documents on which Plaintiffs rely. For
10 ease of reference, Plaintiffs have segregated each of those ~~eight~~ten documents
11 contained within the *Administrative Record* as follows:

- 12 a. Exhibit G-1: Application for a Consular Report of Birth Abroad
13 of a Citizen of the United States of America, without exhibits,
14 submitted on behalf of plaintiff E.J.D.-B. ("E.J.");
- 15 b. Exhibit G-2: Application for a U.S. Passport, without exhibits,
16 submitted on behalf of E.J.;
- 17 c. Exhibit G-3: Marriage License for Andrew Dvash-Banks and
18 Elad Dvash-Banks;
- 19 d. Exhibit G-4: Surrogacy Agreement between Andrew
20 Dvash-Banks, Elad Dvash-Banks and the surrogate who carried
21 E.J. and his twin brother, A.J.D.-B.;
- 22 e. Exhibit G-5: Statement of Live Birth of E.J. from the Ontario
23 Office of the Registrar General;
- 24 f. Exhibit G-6: Ontario Superior Court of Justice Order dated
25 September 28, 2016;
- 26 g. Exhibit G-7: Letter from Viaguard Accu-Metrics dated January
27 30, 2017; ~~and~~
- 28

