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15 *Attorneys for Plaintiffs*

16
17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION (LOS ANGELES)**
20

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

Case No. 2:18-cv-00523-JFW-(JCx)
**JOINT DECLARATIONS BINDER
FILED IN CONNECTION WITH
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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

1 Pursuant to Part 4(b) of the Court's Scheduling and Case Management
2 Order (DKT 52), entered on August 21, 2018, attached hereto is the *Joint*
3 *Declarations Binder* filed in connection with *Plaintiffs' Motion for Partial*
4 *Summary Judgment* (DKT 83).

5 Dated: January 22, 2019

Respectfully submitted,

6
7 By: /s/ Alexa M. Lawson-Remer
Alexa M. Lawson-Remer (SBN 268855)
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Dvash-Banks v. U.S. Department of State
Case No. 2:18-cv-00523

Joint Set of Declarations
Relating to Plaintiffs' Motion for Partial Summary Judgment

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¹ The exhibits attached to the listed declarations have been omitted from this table of contents and binder, given that they are being included in the separate Joint Set of Exhibits binder.

In addition, the parties are cognizant of this Court's Scheduling and Case Management Order, which directs them to include in the table of contents "a citation to each paragraph number in the Combined Statement of Facts that refers to the . . . declaration;" however, there are no such citations in the Combined Statement of Facts, thus none has been noted here.

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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
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

[Exhibits A-G10 omitted.]

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21 ANDREW MASON DVASH-
BANKS AND E.J. D.-B.,

22 Plaintiffs,
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24 v.

25 THE UNITED STATES
DEPARTMENT OF STATE,
and THE HONORABLE
26 MICHAEL R. POMPEO,
Secretary of State,
27

28 Defendants.

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

**DECLARATION OF ANDREW
DVASH-BANKS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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

1 I, ANDREW DVASH-BANKS, declare as follows:

2 1. I am one of the Plaintiffs in the above-captioned action
3 (“Action”) and submit this declaration in support of Plaintiffs’ Motion for Partial
4 Summary Judgment in the above-captioned action. I have personal knowledge of
5 the facts set forth within this declaration. If called to testify, I would and could
6 testify competently as to the facts described herein.

7 2. Attached to this declaration as Exhibit H is a true and correct
8 copy of the Consular Report of Birth Abroad I received on or about March 2, 2017
9 from the United States Consulate in Toronto for my son A.J.D.-B. I understand
10 that my counsel has produced this document to Defendants during the course of
11 this Action with production number DVASH-BANKS00000017.

12 3. Attached to this declaration as Exhibit I is a true and correct
13 copy of the Statement of Live Birth for A.J.D.-B., which I received on or about
14 November 3, 2016 from the Ontario Office of the Registrar General. I understand
15 that my counsel has produced this document to Defendants during the course of
16 this Action with production number DVASH-BANKS00000034.

17 4. Attached to this declaration as Exhibit J is a true and correct
18 copy of a letter dated January 24, 2017 that I received in January or February of
19 2017. The letter is written on the letterhead of the United States Department of
20 State, United States Consulate General, Toronto, and is signed by Frankie Day. I
21 understand that my counsel has produced this document to Defendants during the
22 course of this Action with production number DVASH-BANKS00000031.

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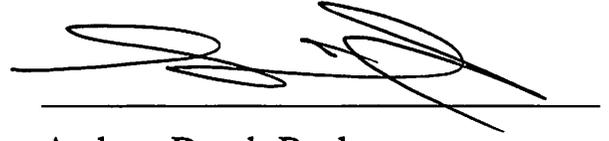
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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on the 7th day of January, 2019, at Los Angeles, California.



Andrew Dvash-Banks

[Exhibits H-J omitted.]

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12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 ANDREW MASON DVASH-
15 BANKS, et al.,

16 Plaintiffs,

17 v.

18 MICHAEL R. POMPEO, in his
19 official capacity as U.S. Secretary of
State, et al.,

20 Defendants.

Case No. CV 18-523-JFW(JCx)

Declaration of Lisa Zeidner Marcus

in Support of: Defendants' Opposition to
Plaintiffs' Motion for
Partial Summary Judgment

Hearing Date: Feb. 4, 2019

Hearing Time: 1:30 pm

Honorable John F. Walter

21
22 **DECLARATION OF LISA ZEIDNER MARCUS**

23 I, Lisa Zeidner Marcus, hereby declare:

24 1. I serve as trial attorney for the U.S. Department of Justice, Civil Division,
25 Federal Programs Branch, a position I have held since October 2007. My colleague
26 Vinita Andrapalliyal and I serve as co-counsel representing Defendants in the above-
27 captioned case. The statements set forth in this Declaration are based on my personal
28

1 knowledge as well as information provided to me in my official capacity.

2 2. I submit this declaration in support of Defendants' opposition to Plaintiffs'
3 motion for partial summary judgment, and specifically to authenticate evidence cited by
4 Defendants in their Statement of Genuine Disputes of Material Fact ("Defs.' Opp. Stmt.
5 of Facts"), including deposition transcripts, written discovery responses, and the receipt
6 of certain documents.

7 3. Attached hereto are true and correct copies of the following documents:

8 Ex. H Excerpts of Plaintiffs' Responses to Defendants' Requests for Admission,
9 including all such responses—specifically Plaintiffs' Responses to
10 Defendants' Request for Admission Nos. 1 and 3—cited in Defendants'
11 Statement of Genuine Disputes of Material Fact.

12 Ex. I Excerpts of Defendants' Responses to Plaintiffs' Requests for Admission,
13 including all such responses—specifically Defendants' Responses to
14 Plaintiffs' Request for Admission Nos. 10 and 11—cited Defendants'
15 Statement of Genuine Disputes of Material Fact.

16 Ex. J Excerpts of Defendants' Responses to Plaintiffs' Interrogatories, including
17 all such responses—specifically Defendants' Second Resp. to Pls.' First Set
18 of Interrogatories at 22— cited in Defendants' Statement of Genuine
19 Disputes of Material Fact.

20 Ex. K Excerpts of the transcript of Terri Nathine Francis "Frankie" Day, including
21 all such portions Defendants rely on in their Defendants' Statement of
22 Genuine Disputes of Material Fact.

23 Ex. L Excerpts of the transcript of Andrew Dvash-Banks, including all such
24 portions Defendants rely on in their Statement of Genuine Disputes of
25 Material Fact.

26 Ex. M Excerpts of the transcript of Margaret Ramsay, including all such portions
27 Defendants rely on in their Statement of Uncontroverted Facts.

28 Ex. N Excerpts of the transcript of Larilyn Reffett, including all such portions
Defendants rely on in their Statement of Uncontroverted Facts.

Ex. O Excerpts of the transcript of Paul Peek, including all such portions
Defendants rely on in their Statement of Uncontroverted Facts.

Ex. P DEFS001648-49 (Aug. 29, 2014 letter from Consul General, U.S. Embassy
Bangkok, describing rationale behind asking for DNA testing at Embassies
and Consulates worldwide)

4. In support of their motion for partial summary judgment, Defendants also
rely on the Certified Administrative Record that I filed on the docket for this case, at
ECF No. 80. The documents I filed at ECF No. 80 (including ECF Nos. 80-1, 80-2, 80-3,

1 80-4, 80-5, 80-6, 80-7, and 80-8) comprise a true and correct copy of the Certified
2 Administrative Record that was provided to me by the Department of State, except that
3 before filing the record I ran OCR'ing (optical character recognition) on it to make the
4 scanned pages text-searchable in accordance with the Local Rules of this Court, and I
5 added Bates-stamping to identify the page numbers of the AR.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed on January 14, 2019 at Pittsburgh, Pennsylvania.

8 /s/ Lisa Zeidner Marcus

9 Lisa Zeidner Marcus

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[Exhibits H-P omitted.]

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Counsel for Defendants

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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14 ANDREW MASON DVASH-
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17 v.

18 MICHAEL R. POMPEO, in his
official capacity as U.S. Secretary of
19 State, et al.,

20 Defendants.

Case No. CV 18-523-JFW(JCx)

**Second Declaration of Lisa Zeidner
Marcus**

In Support of: Defendants' Opposition to
Plaintiffs' Motion for
Partial Summary Judgment

Hearing Date: Feb. 4, 2019

Hearing Time: 1:30 pm

Honorable John F. Walter

21
22
23 **SECOND DECLARATION OF LISA ZEIDNER MARCUS**

24 I, Lisa Zeidner Marcus, hereby declare:

25 1. I serve as trial attorney for the U.S. Department of Justice, Civil Division,
26 Federal Programs Branch, a position I have held since October 2007. My colleague
27 Vinita Andrapalliyal and I serve as co-counsel representing Defendants in the above-
28

1 captioned case. The statements set forth in this Declaration are based on my personal
2 knowledge.

3 2. This is my second declaration in support of Defendants' opposition to
4 Plaintiffs' motion for partial summary judgment. I submit this declaration to authenticate
5 additional evidence not listed in my first declaration but cited by Defendants in their
6 Statement of Genuine Disputes of Material Fact ("Defs.' Opp. Stmt. of Facts").

7 3. Attached hereto are true and correct copies of the following documents:

8 Ex. Q DEFS001382–84 (February 13, 2012, Information Memo to the Secretary on
9 Assisted Reproductive Technology (ART), Citizenship and Visa Law)

10 This document bears the seal of the United States Department of State, and
11 an initialed signature of (then) Assistant Secretary of State for Consular
Affairs Janice L. Jacobs who executed the memoranda; as such, the
document is self-authenticating pursuant to Fed. R. E. 902(1).

12 Ex. R Copy of news article published September 6, 2017, by CBS Los Angeles,
13 titled "DNA Dilemma: Baby Can't Get US Citizenship," containing
14 statements by Plaintiffs Andrew Dvash-Banks. The news story is available
15 on the website <https://losangeles.cbslocal.com/2017/09/06/baby-cant-get-us-citizenship/>
(last visited January 14, 2017), and online it includes a 2 minute,
39 second news video clip also published September 6, 2017, by CBS Los
Angeles.

16 I printed Ex. R into PDF (portable document format) format from the
17 website <https://losangeles.cbslocal.com/2017/09/06/baby-cant-get-us-citizenship/>. In the course of my work as a trial attorney, I regularly locate
18 news stories and news video clips online. Ex. R contains an opposing party's
19 statements. Defendants do not offer Ex. R to prove the truth of the matter
asserted therein, but rather to show that the Dvash-Banks family agreed to be
interviewed for a public news story in September 2017.

20 Ex. S PDF (portable document format) copy of Immigration Equality webpage
21 titled "Meet the Dvash-Banks Family,"
22 <https://www.immigrationequality.org/dvashbanks/> (last visited January 14,
2017). The webpage itself includes a 3 minute, 7 second video published by
23 Immigration Equality, an organization that—along with Sullivan &
Cromwell, LLP—represents Plaintiffs in this litigation.

24 I printed Ex. S into PDF (portable document format) format from the
25 website <https://www.immigrationequality.org/dvashbanks/>. In the course of
26 my work as a trial attorney, I regularly visit the webpages of organizations
27 and law firms that represent opposing parties. Ex. S contains an opposing
28 party's statements. Defendants do not offer Ex. S to prove the truth of the
matter asserted therein, but rather to show that the Dvash-Banks family
voluntarily publicized details about their lives and images of their children.

Ex. T Complaint filed January 22, 2018.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 14, 2019 at Pittsburgh, Pennsylvania.

 /s/ Lisa Zeidner Marcus
Lisa Zeidner Marcus

[Exhibits Q-T omitted.]

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21 ANDREW MASON DVASH-
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28 Defendants.

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

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

Judge: Hon. John F. Walter
Hearing Date: February 4, 2019
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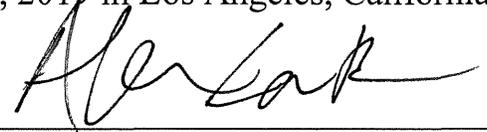
I, ALEXA LAWSON-REMER, declare as follows:

1. I am an attorney duly licensed by the State of California and am admitted to practice before this Court. I am Special Counsel at Sullivan & Cromwell LLP, and am one of the attorneys representing Plaintiffs *pro bono* in the above-captioned action (“Action”). I submit this declaration in support of *Plaintiffs’ Reply in Further Support of Their Motion for Partial Summary Judgment* (“Partial MSJ”), filed concurrently herewith. I have personal knowledge of the facts set forth in this declaration and, if called upon, could and would testify to those facts.

2. Attached to this declaration as Exhibit U is a true and correct copy of excerpts of the *Transcript of the Deposition of Paul Peek*, the designee under Federal Rule of Civil Procedure 30(b)(6) of Defendant the United States Department of State, conducted on December 20, 2018, in Washington, D.C. as part of discovery in this Action. These excerpts are being offered to rebut certain facts asserted by Defendants in their Opposition to Plaintiffs’ Partial MSJ.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 22nd day of January, 2019 in Los Angeles, California.



Alexa Lawson-Remer

[Exhibit U omitted.]