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

20
21 ANDREW MASON DVASH-
BANKS and E.J. D.-B.,
22
23 **Plaintiffs,**

24 v.

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

Case No. 2:18-cv-00523-JFW-(JCx)
**DECLARATION OF JESSICA M.
KLEIN**

Judge: Hon. John F. Walter
Courtroom: 7A
Hearing date:
Time:

DECLARATION OF JESSICA M. KLEIN

I, Jessica M. Klein, declare as follows under penalty of perjury:

1. I am a member of the Bar of the State of New York, admitted *pro hac vice* to practice before this Court, and a special counsel with Sullivan & Cromwell LLP (“S&C”). I submit this declaration pursuant to the Court’s March 21, 2019 Order (“Order”) (ECF No. 127) and Paragraph 5(b) of the Court’s Standing Order (ECF No. 27), concerning Local Rule 7-3, and in connection with the *Motion for Attorneys’ Fees and Costs* (the “Motion”) (ECF No. 126) of Andrew Mason Dvash-Banks and E.J. D.-B. (together, “Plaintiffs”). I have personal knowledge of the facts set forth herein, and, if called to testify, could and would testify competently thereto.

2. On April 1, 2019, pursuant to the Order, counsel for Plaintiffs met in person with counsel for Defendants to meet and confer regarding the Motion. Present for Plaintiffs were Theodore Edelman, Elizabeth Cassady and I from S&C, and our co-counsel, Aaron Morris from Immigration Equality. Vinita B. Andrapalliyal and Kiviette Gray from the United States Department of Justice and a representative of the United States Department of State (“State Department”), were present on behalf of Defendants the State Department and the Honorable Michael R. Pompeo, Secretary of State (together, “Defendants,” and together with Plaintiffs, the “Parties”). The Parties met-and-conferred at S&C’s offices in Washington, D.C., from 3:00 p.m. until approximately 5:45 p.m.

3. At the outset, Ms. Andrapalliyal stated that she did not have final authority to enter into any settlement of attorneys’ fees or costs. She also stated that if Defendants subsequently made any offer of settlement it would be made in the spirit of compromise and would not reflect any agreement or concession that Defendants’ position in this action was not substantially justified.

4. The Parties discussed Plaintiffs’ application for fees and costs pursuant to subsection (d) of the Equal Access to Justice Act, 28 U.S.C. § 2412,

1 and had a productive session, but did not reach final agreement on any component
2 of the Motion.

3 5. On Thursday, April 4, Ms. Andrapalliyal telephoned me to
4 convey that Defendants were prepared to make an offer of compromise to resolve
5 the Motion and provided a specific amount that Defendants would be willing to
6 pay to resolve all requests for fees and costs covered by the Motion (“Offer”).
7 During that call, Ms. Andrapalliyal indicated that Defendants had not yet decided
8 whether to appeal the Court’s March 6, 2019 judgment (“Judgment”), which they
9 have 60 days from the date of the Judgment to do. Plaintiffs understand that the
10 deadline for filing a notice of appeal would be May 6, 2019. Ms. Andrapalliyal
11 stated that Defendants’ Offer is contingent upon Defendants’ deciding not to
12 appeal, and that if Defendants choose to appeal, the Offer would not apply.

13 6. I spoke with Ms. Andrapalliyal by telephone later on April 4
14 and accepted the terms of Defendants’ Offer. As a result, the Parties have reached
15 an agreement in principle, subject to any required approval of the Court, on the
16 amount to be paid by Defendants for attorneys’ fees and costs if Defendants do not
17 file an appeal in this action. Because Defendants have made their Offer contingent
18 upon whether they appeal, an issue on which they have informed Plaintiffs they
19 have not yet reached a decision, it is as yet unclear whether the matters raised by
20 the Motion can be resolved by agreement and, therefore, whether there will be any
21 need for the Court to adjudicate the Motion following full briefing. In order to
22 avoid asking the Court to resolve an issue that may be hypothetical, I suggested to
23 Ms. Andrapalliyal during our follow-up telephone conversation that the Parties
24 should ask the Court to continue any deadlines for pursuing a motion for attorneys’
25 fees and costs until after the deadline for any appeal by Defendants of the
26 Judgment. Ms. Andrapalliyal accepted that suggestion. As a result, the Parties
27 respectfully request that the Court adjourn until May 10, 2019 the deadline for any
28 further submissions in connection with the Motion and propose that on that date

1 they submit a joint status report concerning the status of the Motion and, if
2 necessary, a proposed schedule for re-filing and briefing the Motion.

3 7. Plaintiffs reserve all rights to pursue a motion for attorneys'
4 fees and costs if Defendants' Offer becomes inapplicable.

5 8. I declare under penalty of perjury that the foregoing is true and
6 correct to the best of my knowledge.

7 Executed this 4th day of April, 2019 in New York, New York.

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