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13 *Attorneys for Plaintiffs*

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 ANDREW MASON DVASH-
17 BANKS and ETHAN JACOB
18 DVASH-BANKS,
19 Plaintiffs,

20 v.

21 THE UNITED STATES
22 DEPARTMENT OF STATE,
and THE HONORABLE
23 MICHAEL R. POMPEO,
Secretary of State,
24 Defendants.

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

**EX PARTE APPLICATION FOR
ORDER APPOINTING GUARDIAN
AD LITEM**

Judge: Hon. Jacqueline Chooljian
Courtroom: 750

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to L.R. 17-1, and the Minute
3 Order dated November 27, 2018 by the Honorable John F. Walter (U.S.D.J.),
4 Plaintiffs Andrew Mason Dvash-Banks (“Andrew”) and Ethan Jacob Dvash-Banks
5 (“Ethan”) respectfully submit this *ex parte* application for the appointment of Elad
6 Dvash-Banks (“Elad”) as the guardian *ad litem* for Ethan. Andrew and Elad are
7 Ethan’s legal parents.

8 Ethan is a minor child of less than three years of age, who along with
9 his parent Andrew are plaintiffs in the above-captioned action. Plaintiffs assert
10 causes of action arising out of Defendants’ unlawful and unconstitutional denial of
11 Ethan’s applications for a Consular Report of Birth Abroad and U.S. passport.

12 In support of this application, Plaintiffs submit the accompanying
13 Declarations of Elad and of Alexa M. Lawson-Remer and Plaintiffs’ supporting
14 memorandum of points and authorities.

15
16 Dated: December 3, 2018

Respectfully submitted,

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

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22 DEPARTMENT OF STATE,
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23 MICHAEL R. POMPEO,
Secretary of State,
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Case No. 2:18-cv-00523-JFW-JCx

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
EX PARTE APPLICATION FOR
APPOINTMENT OF GUARDIAN
AD LITEM**

Judge: Hon. Jacqueline Chooljian
Courtroom: 750

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Plaintiffs, Andrew Mason Dvash-Banks (“Andrew”) and his son
3 Ethan Jacob Dvash-Banks (“Ethan”), respectfully submit the accompanying *ex*
4 *parte* application (“Application”) for the appointment of Elad Dvash-Banks
5 (“Elad”) as guardian *ad litem* for Ethan in connection with the above-captioned
6 action (“Action”). In support of the Application, Plaintiffs submit the declarations
7 of Elad and Alexa Lawson-Remer and this Memorandum of Points and
8 Authorities.

9 On November 27, 2018, the Honorable John F. Walter (U.S.D.J.)
10 entered a Minute Order instructing Plaintiffs on or before December 3, 2018 either
11 to: 1) show cause why the Action should not be dismissed without prejudice as to
12 plaintiff Ethan for failure to appoint a guardian *ad litem*; or 2) file with the
13 Magistrate Judge assigned to this Action an *ex parte* application to appoint a
14 guardian *ad litem* for Ethan.

15 In compliance with the Minute Order, Plaintiffs file this Application
16 with Magistrate Judge Chooljian to appoint Elad as a guardian *ad litem* for Ethan.
17 Ethan is a minor child of less than three years of age, and, together with his parent
18 Andrew are Plaintiffs in the Action. Elad is Ethan’s other parent, and is legally
19 married to Andrew.

20 Plaintiffs seek to have the Court appoint Elad as Ethan’s guardian *ad*
21 *litem* “to represent [Ethan’s] interests in the litigation” of this Action. *Guerrero v.*
22 *Brentwood Union Sch. Dist.*, 2014 WL 1028862, at *2 (N.D. Cal. Mar. 17, 2014).
23 “In making the determination concerning the appointment of a particular guardian
24 *ad litem*, the court shall consider whether the minor and the guardian have
25 divergent interests.” *Id.* Here, Plaintiffs have submitted a declaration of Elad
26 attesting that he is able and willing to protect Ethan’s best interests in this Action.

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1 *See Phelan v. Brentwood Union Sch. Dist.*, 2012 WL 909294, at *2 (N.D. Cal.
2 Mar. 16, 2012).¹

3 Defendants in this Action are represented by Lisa Zeidner Marcus and
4 Vinita B. Andrapalliyal of the United States Department of Justice, mailing address
5 P.O. Box 883, Washington DC 20044. Their e-mail addresses are
6 lisa.marcus@usdoj.gov and Vinita.B.Andrapalliyal@usdoj.gov, respectively.
7 Defense counsel’s contact telephone number is (202) 305-0845. As is indicated in
8 the accompanying Declaration of Alexa Lawson-Remer, Plaintiffs notified
9 Defendants’ counsel on November 30, 2018 of Plaintiffs’ intent to file this
10 Application. Plaintiffs further provided notice that Defendants would be required
11 to file any opposition not later than twenty-four hours after the filing of the *ex*
12 *parte* application. Defendants indicated that they did not intend to oppose the
13 appointment of Elad as guardian *ad litem* for Ethan.

14 **CONCLUSION**

15 For the foregoing reasons, Plaintiffs respectfully request that the Court
16 grant the Application, appoint Elad as guardian *ad litem* for Ethan for purposes of
17 this Action and award to Plaintiffs such other and further relief as the Court deems
18 just and proper.

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20
21 Dated: December 3, 2018

Respectfully submitted,

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

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27 ¹ As decisions in this Circuit make clear, “[a] parent may serve as guardian so long
28 as the parent does not have an adverse interest.” *See, e.g., id.; J.M. v. Liberty*
Union High School Dist., 2016 WL 4942999, at *2 (N.D. Cal. Sept. 16, 2016).

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18 DVASH-BANKS,)
19 Plaintiffs,)

20 v.)

21 THE UNITED STATES)
22 DEPARTMENT OF STATE,)
and THE HONORABLE)
23 MICHAEL R. POMPEO,)
Secretary of State,)
24 Defendants.)

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

**DECLARATION OF ALEXA M.
LAWSON-REMER IN SUPPORT
OF *EX PARTE* APPLICATION TO
APPOINT ELAD DVASH-BANKS
AS GUARDIAN *AD LITEM* TO
ETHAN DVASH-BANKS**

Judge: Hon. Jacqueline Chooljian
Courtroom: 750

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I, ALEXA M. 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 an associate at Sullivan & Cromwell LLP, and am one of the attorneys representing Plaintiffs *pro bono* in the above-captioned action. I submit this Declaration in support of Plaintiffs' *ex parte* Application to Appoint Elad Dvash-Banks as guardian *ad litem* for Ethan Jacob Dvash-Banks, filed concurrently herewith. I have personal knowledge of the facts set forth in this Declaration and, if called upon, could testify to those facts.

2. On November 30, 2018, I notified Defendants' counsel, Lisa Marcus, of Plaintiffs' intent to file an *ex parte* Application for Appointment of Elad Dvash-Banks as guardian *ad litem* for Ethan Jacob Dvash-Banks in the above referenced Action. Plaintiffs further provided notice that Defendants would be required to file any opposition not later than twenty-four hours after the filing of the *ex parte* application. Defendants' counsel informed me that Defendants did not intend to oppose the *ex parte* application.

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 3rd day of December, 2018 in Los Angeles, California.

/s/ Alexa Lawson-Remer

Alexa Lawson-Remer

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MICHAEL R. POMPEO,
23 Secretary of State,
24 Defendants.

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

**DECLARATION OF ELAD
DVASH-BANKS IN SUPPORT OF
EX PARTE APPLICATION FOR
APPOINTMENT AS GUARDIAN
AD LITEM**

Judge: Hon. Jacqueline Chooljian
Courtroom: 750

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

2 1. I submit this declaration in support of the application for my
3 appointment as guardian *ad litem* for my son Plaintiff Ethan Jacob Dvash-Banks
4 (“Ethan”), a minor, in order to prosecute a claim in the above-captioned action
5 (“Action”). If called to testify, I would and could testify competently as to the
6 facts described within this declaration.

7 2. I am one of Ethan’s parents. Ethan is a minor under the age of
8 three years.

9 3. Ethan and I are both residents of the State of California. Ethan
10 resides with me in Los Angeles, California, together with my husband and Ethan’s
11 parent, Andrew Dvash-Banks (“Andrew”), and Aiden James Dvash-Banks, Ethan’s
12 twin brother. Andrew is the other plaintiff in the Action. Ethan and I may be
13 contacted by and through our counsel Alexa M. Lawson-Remer, Esq., Sullivan &
14 Cromwell LLP, 1888 Century Park East, Suite 2100, Los Angeles, California
15 90067-1725.

16 4. Ethan has no appointed representative for purposes of the
17 Action.

18 5. Ethan seeks to enforce certain causes of action resulting from
19 the State Department’s denial of his applications for a Consular Report of Birth
20 Abroad and U.S. passport. In this Action, Ethan and Andrew assert that the State
21 Department denied these applications pursuant to an unlawful and unconstitutional
22 interpretation of the Immigration and Nationality Act.

23 6. I have no interests adverse to the rights of Ethan, am not
24 connected in business with the Defendants, and am fully competent and
25 responsible to prosecute the action on Ethan’s behalf. I understand that if the
26 Court grants the application to appoint me as Ethan’s guardian *ad litem* in this
27 Action, my responsibility in that capacity is to protect Ethan’s interests in the
28 Action. I believe that I can do so fairly and responsibly.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-
BANKS and ETHAN JACOB
DVASH-BANKS,

Plaintiffs,

v.

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

Defendants.

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

Honorable Jacqueline Chooljian

**[PROPOSED] ORDER GRANTING
EX PARTE APPLICATION TO
APPOINT GUARDIAN AD LITEM**

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Presently before the Court is Plaintiffs’ *ex parte* Application to Appoint Guardian *Ad Litem* for Minor Plaintiff Ethan Jacob Dvash-Banks. The Court finds that it is reasonable and necessary to appoint a guardian *ad litem*, as requested.

Good cause appearing, the Court GRANTS Plaintiffs’ motion and Elad Dvash-Banks is hereby appointed as the guardian *ad litem* for Ethan Jacob Dvash-Banks in the above-captioned Action. The Court further finds that Plaintiffs have satisfied and complied with the November 27, 2018 Minute Order of The Honorable John F. Walter (U.S.D.J.).

IT IS SO ORDERED.

Dated: _____
The Honorable Jacqueline Chooljian