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11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA
 13 WESTERN DIVISION

14 ANDREW MASON DVASH-
 BANKS, et al.,
 15
 16 Plaintiffs,
 17 v.

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

) Case No. **2:18-cv-00523-JFW (JCx)**
) **Joint Stipulation for Protective Order**
) **Discovery Matter**
)
) Honorable Jacqueline Chooljian
) United States Magistrate Judge

21
 22 The parties¹ in the above-captioned action stipulate and respectfully request
 23 that the Court enter the attached Protective Order, pursuant to Federal Rule of Civil
 24 Procedure 26(c); the Privacy Act, 5 U.S.C. § 552a(b)(11); and Federal Rule of
 25 Evidence 502(d). Good cause for entry of this order exists as set forth below.

26
 27 ¹ The parties include Defendants the United States Department of State and the
 28 Honorable Michael R. Pompeo, Secretary of State (“Defendants” or “the
 Department”) and Plaintiffs Andrew Mason Dvash-Banks and E.J.D.-B.
 (“Plaintiffs”).

1 1. In this action, Plaintiffs seek to enforce certain causes of action
2 resulting from the State Department’s denial of E.J.D.-B.’s applications for a
3 Consular Report of Birth Abroad (“CRBA”) and U.S. passport. Plaintiffs E.J.D.-
4 B. and Andrew Dvash-Banks assert that the State Department denied these
5 applications pursuant to an unlawful and unconstitutional interpretation of the
6 Immigration and Nationality Act. The applications and related documents contain
7 personal information of the Plaintiffs, including but not limited to Plaintiff Andrew
8 Dvash-Banks’s and his minor sons’ personally identifiable information and
9 medical records. *Tenney v. Aetna Life Ins. Co.*, 2017 WL 8186684, at *4 (C.D.
10 Cal. Dec. 29, 2017) (finding “good cause” for entry of a protective order regarding
11 individually identifiable information and medical records). Additionally, because
12 Plaintiffs have sought in discovery certain information regarding the general
13 process by which CRBA and U.S. Passport applications are adjudicated, some law-
14 enforcement-sensitive information pertaining to the Department’s fraud prevention
15 efforts, information sharing procedures, and foreign relations also may be the
16 subject of discovery.

17 2. For these reasons and others, information sought in discovery is
18 sensitive and merits confidential protection. The parties agree that a protective
19 order should be entered to restrict the dissemination and use of the following
20 categories of information: (a) Personally identifiable information, such as social
21 security numbers, birth dates, home addresses, email addresses, passport numbers,
22 passport photos, personal signatures, and non-public telephone numbers; (b)
23 Personal health, medical, tax, or financial information of the Plaintiffs or their
24 immediate family members; (c) Confidential surrogacy or other reproduction-
25 related agreements; (d) Documents Plaintiffs filed under seal in other court
26 proceedings; (e) Information relating to minor children; (f) Information that would
27 reveal sensitive, unclassified information of the Government, including for
28 example (i) operational details regarding the Government’s fraud prevention

1 efforts—such as how the Government identifies or prevents fraudulent attempts to
2 obtain a Consular Report of Birth Abroad or a U.S. Passport, or (ii) procedures for
3 collecting, sharing, or using sensitive governmental information; and (g)
4 Information relating to foreign governments or representatives of foreign
5 governments.

6 3. Additionally, the parties recognize that during the course of discovery
7 in this case, a party may inadvertently disclose information that is privileged or
8 otherwise protected from disclosure, including information that is subject to the
9 attorney-client privilege, work-product protections, as well as other protections
10 afforded by Federal Rule of Civil Procedure 26(b) and governmental privileges. A
11 court order, as contemplated under Federal Rule of Evidence 502(d) and (e), is
12 necessary to guard against the risk of inadvertent waiver of applicable privileges
13 and protections. The parties intend that—in addition to providing protection for
14 the above-outlined categories of confidential or sensitive information—the
15 proposed Protective Order shall displace the provisions of Fed. R. Evid. 502(b);
16 that is, the inadvertent disclosure of privileged or protected information in this
17 litigation shall not constitute a subject matter waiver of privilege or protection in
18 this or any other federal or state proceeding, regardless of the standard of care or
19 specific steps taken to prevent disclosure.

20 4. The parties hereby jointly request that the Court grant the attached
21 proposed joint Protective Order to facilitate document production and subsequent
22 discovery in this case. The proposed Protective Order facilitates discovery by
23 protecting the categories of information identified above and by providing terms
24 governing the inadvertent production of materials for which a privilege or
25 protection may later be asserted. The proposed Protective Order is not intended to
26 alter the requirements of Central District of California Local Rule 79-5, which
27 requires an order of the Court permitting documents to be filed under seal, and the
28 proposed Protective Order provides no such permission. Nor is the proposed

1 Protective Order intended to alter the requirements of Local Rule 79-7, regarding
2 disclosure procedures for confidential court records.

3 5. The parties have conferred and agreed upon a procedure to assert
4 claims of privilege and protection after the production of information. The parties
5 intend that the procedure cover and be available to protect Plaintiffs, Defendants,
6 and any third parties subpoenaed to produce documents or testimony in this
7 litigation.

8 For the above stated reasons, the parties respectfully request that the Court
9 enter the attached proposed Protective Order.

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14 Dated: December 18, 2018

Respectfully submitted,

15 Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Andrew Mason Dvash-Banks, et al.,
Plaintiffs,
v.
Michael R. Pompeo, et al.,
Defendants.

Case No. CV 18-523-JFW (JCx)
[PROPOSED]
PROTECTIVE ORDER

Upon the request of the parties in the above-captioned matter, in accordance with Federal Rule of Civil Procedure 26(c), Section 3(b)(11) of the Privacy Act of 1974 (5 U.S.C. § 552a(b)(11)), and Federal Rule of Evidence 502(d), and finding good cause, the Court hereby enters the following Protective Order.

1. INTRODUCTION

1.1. Purposes and Limitations. As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are (a) entitled to confidential treatment under the applicable legal principles, (b)

1 falls into one or more categories of “Protectable Information” specified in Section
2 1.2 below, and (c) designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”
3 in accordance with the procedures outlined in this Protective Order. Further, as set
4 forth in Section ~~12.3~~13.3, below, this Protective Order does not entitle the parties to
5 file confidential information under seal. Rather, when the parties seek permission
6 from the court to file material under seal, the parties must comply with Civil Local
7 Rule 79-5 and with any pertinent orders of the assigned District Judge and
8 Magistrate Judge. Section 11 of this Protective Order incorporates an agreement
9 reached by the Parties pursuant to Federal Rule of Evidence 502(e), and is intended
10 to constitute an order pursuant to Rule 502(d) and to displace the provisions of Rule
11 502(b).

12 1.2. Good Cause Statement. In light of the nature of the claims and
13 allegations in this case and the parties’ representations that discovery in this case
14 will involve the production of confidential records, and in order to expedite the flow
15 of information, to facilitate the prompt resolution of disputes over confidentiality of
16 discovery materials, to adequately protect information the parties are entitled to keep
17 confidential, to ensure that the parties are permitted reasonable necessary uses of
18 such material in connection with this action, to address their handling of such
19 material at the end of the litigation, and to serve the ends of justice, a protective
20 order for such information is justified in this matter. Specifically, the Court finds
21 good cause to protect information within or derived from the following categories of
22 information (“Protectable Information”):

23 (a) Personally identifiable information, such as social security
24 numbers, birth dates, home addresses, email addresses, passport numbers,
25 passport photos, personal signatures, and non-public telephone numbers;

26 (b) Personal health, medical, tax, or financial information of the
27 Plaintiffs or their immediate family members;

28 (c) Confidential surrogacy or other reproduction-related agreements;

1 (d) Documents Plaintiffs filed under seal in other court proceedings;

2 (e) Information relating to minor children;

3 (f) Information that would reveal sensitive, unclassified information
4 of the Government, including for example (i) operational details regarding the
5 Government’s fraud prevention efforts—such as how the Government
6 identifies or prevents fraudulent attempts to obtain a Consular Report of Birth
7 Abroad or a U.S. Passport, or (ii) procedures for collecting, sharing, or using
8 sensitive governmental information; and

9 (g) Information relating to foreign governments or representatives of
10 foreign governments;¹

11 The parties shall not designate any information/documents as “CONFIDENTIAL
12 ~~– SUBJECT TO PROTECTIVE ORDER~~” without a good faith belief that such
13 information/documents have been maintained in a confidential, non-public manner,
14 that it fits one or more of the categories of “Protectable Information” specified above,
15 and that there is good cause or a compelling reason why it should not be part of the
16 public record of this case.

17 **2. DEFINITIONS**

18 2.1. Action: The instant action: *Dvash-Banks v. Pompeo, Civil Case No.*
19 18-523-JFS (JCx) (C.D. Cal.).

20 2.2. Challenging Party: a Party or Non-Party that challenges the
21 designation of information or items under this Order.

22 2.3. “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” Information or
23 Items: information (regardless of how it is generated, stored or maintained) or
24 tangible things that qualify for protection under Federal Rule of Civil Procedure
25 26(c), and as specified above in the Good Cause Statement.

26
27
28 ¹ Nothing in this protective order waives the Parties’ rights to withhold information
under any applicable privileges or legal protections.

Commented [A1]: In other contexts, the Government generally uses the term “Confidential” standing alone to refer to a particular level of classified information, see E.O. 13526 § 1.2(a)(3). Therefore we suggest using here and throughout this Protective Order the fuller phrase “Confidential – Subject to Protective Order,” instead of just “Confidential,” to prevent confusion about the non-classified status of such information.

1 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as
2 their support staff).

3 2.5. Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL
5 – SUBJECT TO PROTECTIVE ORDER.”

6 2.6. Disclosure or Discovery Material: all items or information, regardless
7 of the medium or manner in which it is generated, stored, or maintained (including,
8 among other things, testimony, transcripts, and tangible things), that are produced or
9 generated in disclosures or responses to discovery in this matter.

10 2.7. Document: includes all items listed in Federal Rule Civil Procedure
11 34(a)(1)(A) and (B).

12 2.8. Expert: a person with specialized knowledge or experience in a matter
13 pertinent to the litigation who has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this Action.

15 2.9. House Counsel: attorneys who are employees of a party to this Action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.10. Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.11. Outside Counsel of Record: attorneys who are not employees of a
21 party to this Action but are retained to represent or advise a party to this Action and
22 have appeared in this Action on behalf of that party or are affiliated with a law
23 firm —or, in the case of federal officers or agencies, the Department of Justice—
24 which has appeared on behalf of that party, and includes support staff.

25 2.12. Party: any party to this Action, including all of its officers, directors,
26 employees, consultants, retained experts, and Outside Counsel of Record (and their
27 support staffs).
28

Commented [A2]: Term is used in the 502(d)(e) portion of this Order, below in section 11.

1 2.13. Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.14. Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.15. Protectable Information: information within or derived from the
8 categories of information specified above in the Good Cause Statement.

9 ~~2.15-2.16.~~ Protected Material: any Disclosure or Discovery Material that is
10 designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

11 2.17. Receiving Party: a Party that receives Disclosure or Discovery
12 Material from a Producing Party.

13 ~~2.16-2.18.~~ Qualified Recipient: as further specified in Section 7.2 below, a
14 Person to whom a Receiving Party may disclose Protected Information.

15 **3. SCOPE OF PROTECTIONS**

16 The protections conferred by this Order cover not only Protected Material (as
17 defined above), but also (1) any information copied or extracted from Protected
18 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
19 and (3) any deposition testimony, conversations, or presentations by Parties or their
20 Counsel that might reveal Protected Material, other than during a court hearing or at
21 trial.

22 Any use of Protected Material during a court hearing or at trial shall be
23 governed by the orders of the presiding judge. This Order does not govern the use of
24 Protected Material during a court hearing or at trial.

25 A Producing Party will not be restricted in its use or dissemination of the
26 Protected Information that it produces in this case. That said, the public disclosure of
27 information by a Producing Party may foreclose the party from properly designating
28

1 the information as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or may operate as a
2 waiver of such designation.

3 **4. DURATION OF PROTECTIONS**

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
8 or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
10 including the time limits for filing any motions or applications for extension of time
11 pursuant to applicable law.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 5.1. Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or Non-Party that designates information or items for protection under
15 this Order must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The Designating Party must designate for
17 protection only those parts of material, documents, items, or oral or written
18 communications that qualify so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations
22 that are shown to be clearly unjustified or that have been made for an improper
23 purpose (*e.g.*, to unnecessarily encumber the case development process or to impose
24 unnecessary expenses and burdens on other parties) may expose the Designating Party
25 to sanctions.

26 If it comes to a Designating Party’s attention that information or items that it
27 designated for protection do not qualify for protection, that Designating Party must
28 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2. Manner and Timing of Designations. Except as otherwise provided in
2 this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions), that the Producing Party
9 affix at a minimum, the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE
10 ORDER” (hereinafter “CONFIDENTIAL legend”), to each page that contains
11 protected material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the
13 protected portion(s) (*e.g.*, by making appropriate markings in the margins)
14 unless such portion(s) on its face obviously falls within one of the categories of
15 Protectable Information specified above in the Good Cause Statement (in which
16 case the “Confidential legend” on the page may suffice).

17 A Party or Non-Party that makes original documents available for
18 inspection need not designate them for protection until after the inspecting
19 Party has indicated which documents it would like copied and produced.
20 During the inspection and before the designation, all of the material made
21 available for inspection shall be deemed “CONFIDENTIAL – SUBJECT TO
22 PROTECTIVE ORDER.” After the inspecting Party has identified the documents
23 it wants copied and produced, the Producing Party must determine which
24 documents, or portions thereof, qualify for protection under this Order. Then,
25 before producing the specified documents, the Producing Party must affix the
26 “CONFIDENTIAL legend” to each page that contains Protected Material. If
27 only a portion or portions of the material on a page qualifies for protection, the
28 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by

1 making appropriate markings in the margins) unless such portion(s) on its face
2 obviously falls within one of the categories of Protectable Information defined
3 in above in the Good Cause Statement (in which case the “Confidential legend”
4 on the page will suffice).

5 (b) for testimony given in depositions, that the Designating Party
6 identifies on the record, before the close of the deposition as protected
7 testimony. After indicating on the record or promptly thereafter that a portion(s)
8 of the deposition contains information that is “CONFIDENTIAL – SUBJECT TO
9 PROTECTIVE ORDER,” and within the time period allowed under Fed. R. Civ. P.
10 30(e)(1) for “review by the witness,” the Designating Party shall: (i) review the
11 deposition transcript, and identify by page and line number the specific
12 portion(s) of the transcript containing Protected Information; (ii) notify the
13 officer before whom the deposition was conducted (i.e., the court reporter) of
14 the specific portion(s) of the transcript that are designated and should be
15 marked by the officer on the official copy as “CONFIDENTIAL – SUBJECT TO
16 PROTECTIVE ORDER,” requesting as needed that such pages be separately bound
17 and/or that the officer also prepare and make available to the parties a redacted
18 copy of the transcript, and (iii) provide notice about the designated portion(s)
19 of the transcript to all Parties and Non-Parties who attended the deposition.

20 (c) for information produced in some form other than documentary, and
21 for any other tangible items, that the Producing Party affix in a prominent place
22 on the exterior of the container or containers in which the information is stored
23 the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” If only a portion
24 or portions of the information warrants protection, the Producing Party, to the
25 extent practicable, shall identify the protected portion(s).

26 5.3. Inadvertent Failures to Designate. The failure to designate information
27 as “Protected Information” If timely corrected, an inadvertent failure to designate
28 qualified information or items does not, standing alone, waive the Designating

1 Party's right to secure protection under this Order for such material. Upon timely
2 correction of a designation, the Receiving Party must make reasonable efforts to
3 assure that the material is treated in accordance with the provisions of this Order.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37-1 *et seq.*

10 6.3. The burden of persuasion in any such challenge proceeding shall be on
11 the Designating Party. Frivolous challenges, and those made for an improper
12 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
13 parties) may expose the Challenging Party to sanctions. Unless the Designating
14 Party has waived or withdrawn the confidentiality designation, all parties shall
15 continue to afford the material in question the level of protection to which it is
16 entitled under the Producing Party's designation until the Court rules on the
17 challenge.

18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1. Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending, or attempting to settle this Action. Such
22 Protected Material may be disclosed by a Receiving Party only to the categories of
23 persons and under the conditions described in this Order. When the Action has been
24 terminated, a Receiving Party must comply with the provisions of Section ~~13~~14
25 below.

26 Protected Material must be stored and maintained by a Receiving Party at a
27 location and in a secure manner that ensures that access is limited to the persons
28 authorized under this Order.

1 7.2. Disclosure of “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”
2 Information or Items. Unless otherwise ordered by the court or permitted in writing
3 by the Designating Party, a Receiving Party may disclose any information or item
4 designated “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” only to “Qualified
5 Recipients,” who consist of:
6 (a) parties to this action, as well as current and former employees and
7 officers of the Department of State, who have a need to review the Protected
8 Information for purposes of this Action;
9 (b) the Receiving Party’s Outside Counsel of Record in this Action, as
10 as well as persons in the regular employees of said Outside Counsel of Record to
11 whom it is reasonably necessary to disclose the information for this Action;
12 (b) the officers, directors, and employees (including House Counsel) of
13 the Receiving Party to whom disclosure is reasonably necessary for this Action;
14 (c) outside contractors hired by the Receiving Party (or by the Receiving
15 Party’s Outside Counsel of Record) to copy, image, sort, or otherwise manage
16 the storage or retrieval of Protected Information, and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
18 (d) Experts (as defined in this Order) of the Receiving Party to whom
19 disclosure is reasonably necessary for this Action and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
21 (e) the court (including this Court and/or any appellate court or tribunal
22 responsible for adjudicating claims related to this Action) and its personnel;
23 (f) court reporters and their staff;
24 (g) professional jury or trial consultants, mock jurors, and Professional
25 Vendors to whom disclosure is reasonably necessary for this Action and who
26 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
27 (h) the author or recipient of a document containing the information or
28 a custodian or other person who otherwise possessed or knew the information;

1 (i) during their depositions, or in preparation for their depositions,
2 witnesses, and attorneys for witnesses, in the Action to whom disclosure is
3 reasonably necessary provided: (1) the deposing party (or, during a preparation
4 session, a Producing Party or a Receiving Party) requests that the witness sign
5 the “Acknowledgment and Agreement to Be Bound” form attached as Exhibit
6 A hereto; and (2) they will not be permitted to keep any confidential
7 information unless they sign the “Acknowledgment and Agreement to Be
8 Bound” attached as Exhibit A, unless otherwise agreed by the Designating
9 Party or ordered by the court. Pages of transcribed deposition testimony or
10 exhibits to depositions that reveal Protected Material may be separately bound
11 by the court reporter and may not be disclosed to anyone except as permitted
12 under this Protective Order; and

13 (j) any mediator or settlement officer, and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions.

15 7.3. Although only certain categories of Qualified Recipients specified
16 above in paragraph 7.2 are required to sign the “Acknowledgment and Agreement to
17 Be Bound” (Exhibit A) prior to receiving Protected Information, a Receiving Party
18 (and/or its Outside Counsel of Record) disclosing Protected Information to any
19 Qualified Recipient must provide the Qualified Recipient (except for those listed in
20 paragraph 7.2(d), above) with a copy of this Protective Order, and inform the
21 Qualified Recipient of its terms. A Receiving Party (and/or its Outside Counsel of
22 Record) bears responsibility for ensuring that the Qualified Recipient understands
23 the compliance requirements, including that the Qualified Recipient shall submit to
24 the jurisdiction of the United States District Court for the Central District of
25 California if needed for the purpose of enforcing the terms of this order, even if such
26 enforcement proceedings occur after termination of this action.

27 7.4. Each Receiving Party (and/or its Outside Counsel of Record) shall
28 maintain a list of any Qualified Recipients to whom the Receiving Party (and/or its

1 Outside Counsel of Record) discloses Protected Information. Upon request of
2 opposing counsel or the Court, counsel for a Party shall produce a copy of such list,
3 as well as any or all signed “Acknowledgment and Agreement to Be Bound”
4 (Exhibit A) Forms in their possession.

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
6 **PRODUCED IN OTHER LITIGATION**

7 If a Party is served with a subpoena or a court order issued in other litigation
8 that compels disclosure of any information or items designated in this Action as
9 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” that Party must:

10 (a) promptly notify in writing the Designating Party. Such notification
11 shall include a copy of the subpoena or court order unless prohibited by law;

12 (b) promptly notify in writing the party who caused the subpoena or
13 order to issue in the other litigation that some or all of the material covered by
14 the subpoena or order is subject to this Protective Order. Such notification shall
15 include a copy of this Protective Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be
17 pursued by the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party served with
19 the subpoena or court order shall not produce any information designated in this action
20 as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” before a determination by the
21 court from which the subpoena or order issued, unless the Party has obtained the
22 Designating Party’s permission, or unless otherwise required by the law or court
23 order. The Designating Party shall bear the burden and expense of seeking protection
24 in that court of its confidential material and nothing in these provisions should be
25 construed as authorizing or encouraging a Receiving Party in this Action to disobey a
26 lawful directive from another court.

1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL – SUBJECT TO
5 PROTECTIVE ORDER.” Such information produced by Non-Parties in
6 connection with this litigation is protected by the remedies and relief provided
7 by this Order. Nothing in these provisions should be construed as prohibiting
8 a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party’s confidential information in its possession, and the Party
11 is subject to an agreement with the Non-Party not to produce the Non-Party’s
12 confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-
14 Party that some or all of the information requested is subject to a
15 confidentiality agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the Protective
17 Order in this Action, the relevant discovery request(s), and a reasonably
18 specific description of the information requested; and

19 (3) make the information requested available for inspection by the
20 Non-Party, if requested.

21 (c) If a Non-Party represented by counsel fails to commence the process
22 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
23 notice and accompanying information or fails contemporaneously to notify the
24 Receiving Party that it has done so, the Receiving Party may produce the Non-
25 Party’s confidential information responsive to the discovery request. If an
26 unrepresented Non-Party fails to seek a protective order from this court within
27 14 days of receiving the notice and accompanying information, the Receiving
28 Party may produce the Non-Party’s confidential information responsive to the

1 discovery request. If the Non-Party timely seeks a protective order, the
2 Receiving Party shall not produce any information in its possession or control
3 that is subject to the confidentiality agreement with the Non-Party before a
4 determination by the court unless otherwise required by the law or court order.
5 Absent a court order to the contrary, the Non-Party shall bear the burden and
6 expense of seeking protection in this court of its Protected Material.

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
9 Protected Material to any person or in any circumstance not authorized under this
10 Protective Order, the Receiving Party must immediately (a) notify in writing the
11 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
12 all unauthorized copies of the Protected Material, (c) inform the person or persons to
13 whom unauthorized disclosures were made of all the terms of this Order, and (d)
14 request such person or persons to execute the “Acknowledgment and Agreement to
15 Be Bound” that is attached hereto as Exhibit A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 ~~When a Producing Party gives notice to Receiving Parties that certain inadvertently~~
19 ~~produced material is subject to a claim of privilege or other protection, the~~
20 ~~obligations of the Receiving Parties are those set forth in Federal Rule of Civil~~
21 ~~Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure~~
22 ~~may be established in an e-discovery order that provides for production without~~
23 ~~prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar~~
24 ~~as the parties reach an agreement on the effect of disclosure of a communication or~~
25 ~~information covered by the attorney-client privilege or work product protection, the~~
26 ~~parties may incorporate their agreement into this Protective Order.~~

27 11.1. The production of a Document, or part of a Document, shall not
28 constitute a waiver of any privilege or protection as to any portion of that

1 Document, or as to any undisclosed privileged or protected communications or
2 information concerning the same subject matter, in this or in any other proceeding.
3 This Section applies to attorney-client privilege, work-product protections, as well
4 as all other protection afforded by Federal Rule of Civil Procedure 26(b) and
5 governmental privileges. Nothing in this Section shall constitute an admission that
6 any Document disclosed in this litigation is subject to any of the foregoing
7 privileges or protections, or that any party is entitled to raise or assert such
8 privileges. Additionally, nothing in this Section shall prohibit parties covered by
9 this Section from withholding from production any Document covered by any
10 applicable privilege or protection.

11 11.2. This Section of the Protective Order is intended to constitute an order
12 pursuant to Federal Rule of Evidence 502(d) and to displace the provisions of Rule
13 502(b). That is, the disclosure of privileged or protected information in this litigation
14 shall not constitute a subject matter waiver of the privilege or protection in this or
15 any other federal or state proceeding, regardless of the standard of care or specific
16 steps taken to prevent disclosure. However, nothing in this Order shall limit a
17 Producing Party's right to conduct a pre-production review of Documents as it
18 deems appropriate.

19 11.3. The procedures applicable to a claim of privilege on a produced
20 Document and the resolution thereof shall be as follows:

21 (a) If a Receiving Party discovers a Document, or part thereof, produced
22 by another party that is privileged or otherwise protected, the Receiving Party
23 shall promptly notify the Producing Party, as well as any other party who also
24 received the Document in discovery. Each party who received the Document
25 must then return the Document or make reasonable efforts to destroy it and
26 certify to the Producing Party that reasonable efforts have been made to destroy
27 it. Nothing in this Order is intended to shift the burden to identify privileged
28 and protected Documents from the Producing Party to the Receiving Party(ies).

1 (b) If the Producing Party determines that a Document produced, or part
2 thereof, is subject to a privilege or privileges, the producing party shall
3 promptly give the Receiving Party(ies) notice of the claim of privilege
4 ("privilege notice").

5 (c) The privilege notice must contain information sufficient to identify
6 the Document including, if applicable, a Bates number as well as identification
7 of the privilege asserted and its basis.

8 (d) Upon receiving the privilege notice, if a Receiving Party agrees with
9 the privilege assertion made, that Receiving Party must promptly return the
10 specified Document(s) and any copies or make reasonable efforts to destroy the
11 Document(s) and copies and certify to the producing party that reasonable
12 efforts have been made to destroy the Document(s) and copies thereof. The
13 Receiving Party must sequester and destroy any notes taken about the
14 Document. If the Receiving Party disclosed the Document or information
15 specified in the notice before receiving the notice, it must take reasonable steps
16 to retrieve it, and so notify the Producing Party of the disclosure and its efforts
17 to retrieve the Document or information.

18 (e) Upon receiving the privilege notice, if a Receiving Party wishes to
19 dispute a Producing Party's privilege notice, that Receiving Party shall
20 promptly meet and confer with the Producing Party. The Document(s) shall be
21 sequestered and not be used by the Receiving Party in the litigation (e.g., filed
22 as an exhibit to a pleading; used in deposition) while the dispute is pending. If
23 the parties are unable to come to an agreement about the privilege assertions
24 made in the privilege notice, the Receiving Party may make a sealed motion
25 for a judicial determination of the privilege claim. Any motion challenging a
26 party's privilege assertion must comply with Local Rules 37-1 and 37-2,
27 including the Joint Stipulation requirement, and Local Rule 79-5, and may be
28

1 filed under seal only pursuant to a separate court order authorizing the sealing
2 of the specific Protected Material at issue.

3 (f) Pending resolution of the judicial determination, the parties shall all
4 preserve and refrain from using the challenged information for any purpose
5 other than the dispute concerning the privilege notice and shall not disclose it
6 to any person other than those required by law to be served with a copy of the
7 sealed motion. A Receiving Party's motion challenging the assertion must not
8 publicly disclose the information claimed to be privileged. Any further briefing
9 by any party shall also not publicly disclose the information claimed to be
10 privileged if the privilege claim remains unresolved or is resolved in the
11 Producing Party's favor.

12 (g) If a Document must be returned or destroyed as determined by the
13 process above, that Document, along with copies and notes about the
14 Document, that exist on back-up tapes, systems, or similar storage need not be
15 immediately deleted or destroyed, and, instead, reasonable efforts will be made
16 to overwrite or destroy such materials in the normal course of business. Until
17 they are overwritten in the normal course of business, the receiving party will
18 take reasonable steps to limit access, if any, to the persons necessary to conduct
19 routine IT and cybersecurity functions.

20 **12. AUTHORIZATION TO DISCLOSE INFORMATION SUBJECT TO**
21 **THE PRIVACY ACT.**

22 In response to discovery requests or obligations in this case without obtaining
23 the prior written consent of the individuals about whom such records or information
24 pertain, federal agencies and their counsel are authorized to disclose records and other
25 information covered by the Privacy Act, 5 U.S.C. § 552a, regarding the following four
26 individuals: Andrew Mason Dvash-Banks, Elad Dvash-Banks, A.J.D.-B., and E.J.D.-
27 B.

1 **13. MISCELLANEOUS**

2 13.1. Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 13.2. Right to Assert Other Objections. This Protective Order does not
5 require the production of information subject to any applicable privilege or legal
6 protection. No Party waives any right it otherwise would have to object to disclosing
7 or producing any information or item on any ground not addressed in this Protective
8 Order. Similarly, no Party waives any right to object on any ground to use in
9 evidence of any of the material covered by this Protective Order.

10 13.3. Filing Protected Material. This Protective Order does not alter the
11 requirements of Civil Local Rule 79-5, which requires an order of the Court
12 permitting documents to be filed under seal. This Protective Order provides no such
13 permission. A Party that seeks to file under seal any Protected Material must
14 comply with Civil Local Rule 79-5, and specifically with Local Rule 79-5.2.2
15 (Under-Seal Documents in Non-Sealed Civil Cases), and with any pertinent orders
16 of the assigned District Judge and Magistrate Judge.² If a Party's request to file
17 Protected Material under seal is denied by the court, then the Receiving Party may
18 file the information in the public record unless otherwise instructed by the court.

19 **14. FINAL DISPOSITION**

20 After the final disposition of this Action, as defined in Section 4, within 60 days
21 of a written request by the Designating Party, each Receiving Party—and each
22 Qualified Recipient (other than those listed in Section 7.2(e) above) to whom
23 Protected Information has been disclosed by a Receiving Party—must return all
24 Protected Material to the Producing Party or destroy such material. As used in this
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26 ² Among other things, Local Rule 79-5.2.2(b) specifies that a filing party must—at
27 least 3 days before seeking to file under seal a document containing information
28 previously designated by another as “CONFIDENTIAL – SUBJECT TO PROTECTIVE
ORDER”—confer with the Designating Party in an attempt to eliminate or minimize
the need for filing under seal by means of redaction.

1 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
2 summaries, and any other format reproducing or capturing any of the Protected
3 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
4 and/or Qualified Recipient must submit a written certification to the Producing Party
5 (and, if not the same person or entity, to the Designating Party) by the 60 day deadline
6 that (1) identifies (by category, where appropriate) all the Protected Material that was
7 returned or destroyed and (2) affirms that the Receiving Party has not retained any
8 copies, abstracts, compilations, summaries or any other format reproducing or
9 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
10 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
11 and hearing transcripts, legal memoranda, correspondence, deposition and trial
12 exhibits, expert reports, attorney work product, and consultant and expert work
13 product, even if such materials contain Protected Material. Any such archival copies
14 that contain or constitute Protected Material remain subject to this Protective Order
15 as set forth in Section 4.

16 **15. VIOLATIONS**

17 Any violation of this Order may be punished by any and all appropriate
18 measures including, without limitation, contempt proceedings and/or monetary
19 sanctions.

20 This Court has and retains jurisdiction to enforce the terms of this order, even
21 after the final disposition of this Action. Any Party or Qualified Recipient to whom
22 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” information or materials is
23 disclosed shall submit to the jurisdiction of the United States District Court for the
24 Central District of California for the purpose of enforcing the terms of this Protective
25 Order, even if such enforcement proceedings occur after termination of this action.

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28 IT IS SO ORDERED.

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DATED:

Honorable Jacqueline Chooljian
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full
address], declare under penalty of perjury that I have read in its entirety and
understand the Protective Order that was issued by the United States District Court
for the Central District of California on _____ in the case of
Dvash-Banks v. Pompeo, Civil Case No. 18-523-JFS (JCx) (C.D. Cal.). I agree to
comply with and to be bound by all the terms of this Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or
type full name] of _____

[print or type full address and telephone number] as my California agent for service
of process in connection with this action or any proceedings related to enforcement
of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Andrew Mason Dvash-Banks, et al.,
Plaintiffs,
v.
Michael R. Pompeo, et al.,
Defendants.

Case No. **CV 18-523-JFW (JCx)**
[PROPOSED]
PROTECTIVE ORDER

Upon the request of the parties in the above-captioned matter, in accordance with Federal Rule of Civil Procedure 26(c), Section 3(b)(11) of the Privacy Act of 1974 (5 U.S.C. § 552a(b)(11)), and Federal Rule of Evidence 502(d), and finding good cause, the Court hereby enters the following Protective Order.

1. INTRODUCTION

1.1. Purposes and Limitations. As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are (a) entitled to confidential treatment under the applicable legal principles, (b)

1 falls into one or more categories of “Protectable Information” specified in Section
2 1.2 below, and (c) designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”
3 in accordance with the procedures outlined in this Protective Order. Further, as set
4 forth in Section 13.3, below, this Protective Order does not entitle the parties to file
5 confidential information under seal. Rather, when the parties seek permission from
6 the court to file material under seal, the parties must comply with Civil Local Rule
7 79-5 and with any pertinent orders of the assigned District Judge and Magistrate
8 Judge. Section 11 of this Protective Order incorporates an agreement reached by the
9 Parties pursuant to Federal Rule of Evidence 502(e), and is intended to constitute an
10 order pursuant to Rule 502(d) and to displace the provisions of Rule 502(b).

11 1.2. Good Cause Statement. In light of the nature of the claims and
12 allegations in this case and the parties’ representations that discovery in this case
13 will involve the production of confidential records, and in order to expedite the flow
14 of information, to facilitate the prompt resolution of disputes over confidentiality of
15 discovery materials, to adequately protect information the parties are entitled to keep
16 confidential, to ensure that the parties are permitted reasonable necessary uses of
17 such material in connection with this action, to address their handling of such
18 material at the end of the litigation, and to serve the ends of justice, a protective
19 order for such information is justified in this matter. Specifically, the Court finds
20 good cause to protect information within or derived from the following categories of
21 information (“Protectable Information”):

22 (a) Personally identifiable information, such as social security
23 numbers, birth dates, home addresses, email addresses, passport numbers,
24 passport photos, personal signatures, and non-public telephone numbers;

25 (b) Personal health, medical, tax, or financial information of the
26 Plaintiffs or their immediate family members;

27 (c) Confidential surrogacy or other reproduction-related agreements;

28 (d) Documents Plaintiffs filed under seal in other court proceedings;

1 (e) Information relating to minor children;

2 (f) Information that would reveal sensitive, unclassified information
3 of the Government, including for example (i) operational details regarding the
4 Government's fraud prevention efforts—such as how the Government
5 identifies or prevents fraudulent attempts to obtain a Consular Report of Birth
6 Abroad or a U.S. Passport, or (ii) procedures for collecting, sharing, or using
7 sensitive governmental information; and

8 (g) Information relating to foreign governments or representatives of
9 foreign governments;¹

10 The parties shall not designate any information/documents as “CONFIDENTIAL
11 – SUBJECT TO PROTECTIVE ORDER” without a good faith belief that such
12 information/documents have been maintained in a confidential, non-public manner,
13 that it fits one or more of the categories of “Protectable Information” specified above,
14 and that there is good cause or a compelling reason why it should not be part of the
15 public record of this case.

16 **2. DEFINITIONS**

17 2.1. Action: The instant action: *Dvash-Banks v. Pompeo*, Civil Case No.
18 18-523-JFS (JCx) (C.D. Cal.).

19 2.2. Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.3. “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” Information or
22 Items: information (regardless of how it is generated, stored or maintained) or
23 tangible things that qualify for protection under Federal Rule of Civil Procedure
24 26(c), and as specified above in the Good Cause Statement.

25 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as
26 their support staff).

27
28 ¹ Nothing in this protective order waives the Parties' rights to withhold information under any applicable privileges or legal protections.

1 2.5. Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL
3 – SUBJECT TO PROTECTIVE ORDER.”

4 2.6. Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7. Document: includes all items listed in Federal Rule Civil Procedure
9 34(a)(1)(A) and (B).

10 2.8. Expert: a person with specialized knowledge or experience in a matter
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as
12 an expert witness or as a consultant in this Action.

13 2.9. House Counsel: attorneys who are employees of a party to this Action.
14 House Counsel does not include Outside Counsel of Record or any other outside
15 counsel.

16 2.10. Non-Party: any natural person, partnership, corporation, association, or
17 other legal entity not named as a Party to this action.

18 2.11. Outside Counsel of Record: attorneys who are not employees of a
19 party to this Action but are retained to represent or advise a party to this Action and
20 have appeared in this Action on behalf of that party or are affiliated with a law
21 firm—or, in the case of federal officers or agencies, the Department of Justice—
22 which has appeared on behalf of that party, and includes support staff.

23 2.12. Party: any party to this Action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.13. Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this Action.

28

1 2.14. Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.15. Protectable Information: information within or derived from the
6 categories of information specified above in the Good Cause Statement.

7 2.16. Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

9 2.17. Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 2.18. Qualified Recipient: as further specified in Section 7.2 below, a Person
12 to whom a Receiving Party may disclose Protected Information.

13 **3. SCOPE OF PROTECTIONS**

14 The protections conferred by this Order cover not only Protected Material (as
15 defined above), but also (1) any information copied or extracted from Protected
16 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
17 and (3) any deposition testimony, conversations, or presentations by Parties or their
18 Counsel that might reveal Protected Material, other than during a court hearing or at
19 trial.

20 Any use of Protected Material during a court hearing or at trial shall be
21 governed by the orders of the presiding judge. This Order does not govern the use of
22 Protected Material during a court hearing or at trial.

23 A Producing Party will not be restricted in its use or dissemination of the
24 Protected Information that it produces in this case. That said, the public disclosure of
25 information by a Producing Party may foreclose the party from properly designating
26 the information as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or may operate as a
27 waiver of such designation.

28

1 **4. DURATION OF PROTECTIONS**

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1. Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under
13 this Order must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. The Designating Party must designate for
15 protection only those parts of material, documents, items, or oral or written
16 communications that qualify so that other portions of the material, documents,
17 items, or communications for which protection is not warranted are not swept
18 unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (*e.g.*, to unnecessarily encumber the case development process or to impose
22 unnecessary expenses and burdens on other parties) may expose the Designating Party
23 to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

27 5.2. Manner and Timing of Designations. Except as otherwise provided in
28 this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions), that the Producing Party
7 affix at a minimum, the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE
8 ORDER” (hereinafter “CONFIDENTIAL legend”), to each page that contains
9 protected material. If only a portion or portions of the material on a page
10 qualifies for protection, the Producing Party also must clearly identify the
11 protected portion(s) (e.g., by making appropriate markings in the margins)
12 unless such portion(s) on its face obviously falls within one of the categories of
13 Protectable Information specified above in the Good Cause Statement (in which
14 case the “Confidential legend” on the page may suffice).

15 A Party or Non-Party that makes original documents available for
16 inspection need not designate them for protection until after the inspecting
17 Party has indicated which documents it would like copied and produced.
18 During the inspection and before the designation, all of the material made
19 available for inspection shall be deemed “CONFIDENTIAL – SUBJECT TO
20 PROTECTIVE ORDER.” After the inspecting Party has identified the documents
21 it wants copied and produced, the Producing Party must determine which
22 documents, or portions thereof, qualify for protection under this Order. Then,
23 before producing the specified documents, the Producing Party must affix the
24 “CONFIDENTIAL legend” to each page that contains Protected Material. If
25 only a portion or portions of the material on a page qualifies for protection, the
26 Producing Party also must clearly identify the protected portion(s) (e.g., by
27 making appropriate markings in the margins) unless such portion(s) on its face
28 obviously falls within one of the categories of Protectable Information defined

1 in above in the Good Cause Statement (in which case the “Confidential legend”
2 on the page will suffice).

3 (b) for testimony given in depositions, that the Designating Party
4 identifies on the record, before the close of the deposition as protected
5 testimony. After indicating on the record or promptly thereafter that a portion(s)
6 of the deposition contains information that is “CONFIDENTIAL – SUBJECT TO
7 PROTECTIVE ORDER,” and within the time period allowed under Fed. R. Civ. P.
8 30(e)(1) for “review by the witness,” the Designating Party shall: (i) review the
9 deposition transcript, and identify by page and line number the specific
10 portion(s) of the transcript containing Protected Information; (ii) notify the
11 officer before whom the deposition was conducted (*i.e.*, the court reporter) of
12 the specific portion(s) of the transcript that are designated and should be
13 marked by the officer on the official copy as “CONFIDENTIAL – SUBJECT TO
14 PROTECTIVE ORDER,” requesting as needed that such pages be separately bound
15 and/or that the officer also prepare and make available to the parties a redacted
16 copy of the transcript, and (iii) provide notice about the designated portion(s)
17 of the transcript to all Parties and Non-Parties who attended the deposition.

18 (c) for information produced in some form other than documentary, and
19 for any other tangible items, that the Producing Party affix in a prominent place
20 on the exterior of the container or containers in which the information is stored
21 the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” If only a portion
22 or portions of the information warrants protection, the Producing Party, to the
23 extent practicable, shall identify the protected portion(s).

24 5.3. Inadvertent Failures to Designate. The failure to designate information
25 as “Protected Information” does not, standing alone, waive the Designating Party’s
26 right to secure protection under this Order for such material. Upon timely correction
27 of a designation, the Receiving Party must make reasonable efforts to assure that the
28 material is treated in accordance with the provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s
4 Scheduling Order.

5 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 *et seq.*

7 6.3. The burden of persuasion in any such challenge proceeding shall be on
8 the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party’s designation until the Court rules on the
14 challenge.

15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1. Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed by a Receiving Party only to the categories of
20 persons and under the conditions described in this Order. When the Action has been
21 terminated, a Receiving Party must comply with the provisions of Section 14 below.

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons
24 authorized under this Order.

25 7.2. Disclosure of “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”
26 Information or Items. Unless otherwise ordered by the court or permitted in writing
27 by the Designating Party, a Receiving Party may disclose any information or item
28

1 designated “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” only to “Qualified
2 Recipients,” who consist of:

3 (a) parties to this action, as well as current and former employees and
4 officers of the Department of State, who have a need to review the Protected
5 Information for purposes of this Action;

6 (b) the Receiving Party’s Outside Counsel of Record in this Action, as
7 well as persons in the regular employ of said Outside Counsel of Record to
8 whom it is reasonably necessary to disclose the information for this Action;

9 (b) the officers, directors, and employees (including House Counsel) of
10 the Receiving Party to whom disclosure is reasonably necessary for this Action;

11 (c) outside contractors hired by the Receiving Party (or by the Receiving
12 Party’s Outside Counsel of Record) to copy, image, sort, or otherwise manage
13 the storage or retrieval of Protected Information, and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (e) the court (including this Court and/or any appellate court or tribunal
19 responsible for adjudicating claims related to this Action) and its personnel;

20 (f) court reporters and their staff;

21 (g) professional jury or trial consultants, mock jurors, and Professional
22 Vendors to whom disclosure is reasonably necessary for this Action and who
23 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (h) the author or recipient of a document containing the information or
25 a custodian or other person who otherwise possessed or knew the information;

26 (i) during their depositions, or in preparation for their depositions,
27 witnesses, and attorneys for witnesses, in the Action to whom disclosure is
28 reasonably necessary provided: (1) the deposing party (or, during a preparation

1 session, a Producing Party or a Receiving Party) requests that the witness sign
2 the “Acknowledgment and Agreement to Be Bound” form attached as Exhibit
3 A hereto; and (2) they will not be permitted to keep any confidential
4 information unless they sign the “Acknowledgment and Agreement to Be
5 Bound” attached as Exhibit A, unless otherwise agreed by the Designating
6 Party or ordered by the court. Pages of transcribed deposition testimony or
7 exhibits to depositions that reveal Protected Material may be separately bound
8 by the court reporter and may not be disclosed to anyone except as permitted
9 under this Protective Order; and

10 (j) any mediator or settlement officer, and their supporting personnel,
11 mutually agreed upon by any of the parties engaged in settlement discussions.

12 7.3. Although only certain categories of Qualified Recipients specified
13 above in paragraph 7.2 are required to sign the “Acknowledgment and Agreement to
14 Be Bound” (Exhibit A) prior to receiving Protected Information, a Receiving Party
15 (and/or its Outside Counsel of Record) disclosing Protected Information to any
16 Qualified Recipient must provide the Qualified Recipient (except for those listed in
17 paragraph 7.2(d), above) with a copy of this Protective Order, and inform the
18 Qualified Recipient of its terms. A Receiving Party (and/or its Outside Counsel of
19 Record) bears responsibility for ensuring that the Qualified Recipient understands
20 the compliance requirements, including that the Qualified Recipient shall submit to
21 the jurisdiction of the United States District Court for the Central District of
22 California if needed for the purpose of enforcing the terms of this order, even if such
23 enforcement proceedings occur after termination of this action.

24 7.4. Each Receiving Party (and/or its Outside Counsel of Record) shall
25 maintain a list of any Qualified Recipients to whom the Receiving Party (and/or its
26 Outside Counsel of Record) discloses Protected Information. Upon request of
27 opposing counsel or the Court, counsel for a Party shall produce a copy of such list,
28

1 as well as any or all signed “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A) Forms in their possession.

3 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
4 **PRODUCED IN OTHER LITIGATION**

5 If a Party is served with a subpoena or a court order issued in other litigation
6 that compels disclosure of any information or items designated in this Action as
7 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” that Party must:

8 (a) promptly notify in writing the Designating Party. Such notification
9 shall include a copy of the subpoena or court order unless prohibited by law;

10 (b) promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation that some or all of the material covered by
12 the subpoena or order is subject to this Protective Order. Such notification shall
13 include a copy of this Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by the Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with
17 the subpoena or court order shall not produce any information designated in this action
18 as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” before a determination by the
19 court from which the subpoena or order issued, unless the Party has obtained the
20 Designating Party’s permission, or unless otherwise required by the law or court
21 order. The Designating Party shall bear the burden and expense of seeking protection
22 in that court of its confidential material and nothing in these provisions should be
23 construed as authorizing or encouraging a Receiving Party in this Action to disobey a
24 lawful directive from another court.

25 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
26 **PRODUCED IN THIS LITIGATION**

27 (a) The terms of this Order are applicable to information produced by a
28 Non-Party in this Action and designated as “CONFIDENTIAL – SUBJECT TO

1 PROTECTIVE ORDER.” Such information produced by Non-Parties in
2 connection with this litigation is protected by the remedies and relief provided
3 by this Order. Nothing in these provisions should be construed as prohibiting
4 a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to
6 produce a Non-Party’s confidential information in its possession, and the Party
7 is subject to an agreement with the Non-Party not to produce the Non-Party’s
8 confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the Non-
10 Party that some or all of the information requested is subject to a
11 confidentiality agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the Protective
13 Order in this Action, the relevant discovery request(s), and a reasonably
14 specific description of the information requested; and

15 (3) make the information requested available for inspection by the
16 Non-Party, if requested.

17 (c) If a Non-Party represented by counsel fails to commence the process
18 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
19 notice and accompanying information or fails contemporaneously to notify the
20 Receiving Party that it has done so, the Receiving Party may produce the Non-
21 Party’s confidential information responsive to the discovery request. If an
22 unrepresented Non-Party fails to seek a protective order from this court within
23 14 days of receiving the notice and accompanying information, the Receiving
24 Party may produce the Non-Party’s confidential information responsive to the
25 discovery request. If the Non-Party timely seeks a protective order, the
26 Receiving Party shall not produce any information in its possession or control
27 that is subject to the confidentiality agreement with the Non-Party before a
28 determination by the court unless otherwise required by the law or court order.

1 Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
5 Protected Material to any person or in any circumstance not authorized under this
6 Protective Order, the Receiving Party must immediately (a) notify in writing the
7 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
8 all unauthorized copies of the Protected Material, (c) inform the person or persons to
9 whom unauthorized disclosures were made of all the terms of this Order, and (d)
10 request such person or persons to execute the “Acknowledgment and Agreement to
11 Be Bound” that is attached hereto as Exhibit A.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
13 **PROTECTED MATERIAL**

14
15 11.1. The production of a Document, or part of a Document, shall not
16 constitute a waiver of any privilege or protection as to any portion of that
17 Document, or as to any undisclosed privileged or protected communications or
18 information concerning the same subject matter, in this or in any other proceeding.
19 This Section applies to attorney-client privilege, work-product protections, as well
20 as all other protection afforded by Federal Rule of Civil Procedure 26(b) and
21 governmental privileges. Nothing in this Section shall constitute an admission that
22 any Document disclosed in this litigation is subject to any of the foregoing
23 privileges or protections, or that any party is entitled to raise or assert such
24 privileges. Additionally, nothing in this Section shall prohibit parties covered by
25 this Section from withholding from production any Document covered by any
26 applicable privilege or protection.

27 11.2. This Section of the Protective Order is intended to constitute an order
28 pursuant to Federal Rule of Evidence 502(d) and to displace the provisions of Rule

1 502(b). That is, the disclosure of privileged or protected information in this litigation
2 shall not constitute a subject matter waiver of the privilege or protection in this or
3 any other federal or state proceeding, regardless of the standard of care or specific
4 steps taken to prevent disclosure. However, nothing in this Order shall limit a
5 Producing Party's right to conduct a pre-production review of Documents as it
6 deems appropriate.

7 11.3. The procedures applicable to a claim of privilege on a produced
8 Document and the resolution thereof shall be as follows:

9 (a) If a Receiving Party discovers a Document, or part thereof, produced
10 by another party that is privileged or otherwise protected, the Receiving Party
11 shall promptly notify the Producing Party, as well as any other party who also
12 received the Document in discovery. Each party who received the Document
13 must then return the Document or make reasonable efforts to destroy it and
14 certify to the Producing Party that reasonable efforts have been made to destroy
15 it. Nothing in this Order is intended to shift the burden to identify privileged
16 and protected Documents from the Producing Party to the Receiving Party(ies).

17 (b) If the Producing Party determines that a Document produced, or part
18 thereof, is subject to a privilege or privileges, the producing party shall
19 promptly give the Receiving Party(ies) notice of the claim of privilege
20 ("privilege notice").

21 (c) The privilege notice must contain information sufficient to identify
22 the Document including, if applicable, a Bates number as well as identification
23 of the privilege asserted and its basis.

24 (d) Upon receiving the privilege notice, if a Receiving Party agrees with
25 the privilege assertion made, that Receiving Party must promptly return the
26 specified Document(s) and any copies or make reasonable efforts to destroy the
27 Document(s) and copies and certify to the producing party that reasonable
28 efforts have been made to destroy the Document(s) and copies thereof. The

1 Receiving Party must sequester and destroy any notes taken about the
2 Document. If the Receiving Party disclosed the Document or information
3 specified in the notice before receiving the notice, it must take reasonable steps
4 to retrieve it, and so notify the Producing Party of the disclosure and its efforts
5 to retrieve the Document or information.

6 (e) Upon receiving the privilege notice, if a Receiving Party wishes to
7 dispute a Producing Party's privilege notice, that Receiving Party shall
8 promptly meet and confer with the Producing Party. The Document(s) shall be
9 sequestered and not be used by the Receiving Party in the litigation (e.g., filed
10 as an exhibit to a pleading; used in deposition) while the dispute is pending. If
11 the parties are unable to come to an agreement about the privilege assertions
12 made in the privilege notice, the Receiving Party may make a sealed motion
13 for a judicial determination of the privilege claim. Any motion challenging a
14 party's privilege assertion must comply with Local Rules 37-1 and 37-2,
15 including the Joint Stipulation requirement, and Local Rule 79-5, and may be
16 filed under seal only pursuant to a separate court order authorizing the sealing
17 of the specific Protected Material at issue.

18 (f) Pending resolution of the judicial determination, the parties shall all
19 preserve and refrain from using the challenged information for any purpose
20 other than the dispute concerning the privilege notice and shall not disclose it
21 to any person other than those required by law to be served with a copy of the
22 sealed motion. A Receiving Party's motion challenging the assertion must not
23 publicly disclose the information claimed to be privileged. Any further briefing
24 by any party shall also not publicly disclose the information claimed to be
25 privileged if the privilege claim remains unresolved or is resolved in the
26 Producing Party's favor.

27 (g) If a Document must be returned or destroyed as determined by the
28 process above, that Document, along with copies and notes about the

1 Document, that exist on back-up tapes, systems, or similar storage need not be
2 immediately deleted or destroyed, and, instead, reasonable efforts will be made
3 to overwrite or destroy such materials in the normal course of business. Until
4 they are overwritten in the normal course of business, the receiving party will
5 take reasonable steps to limit access, if any, to the persons necessary to conduct
6 routine IT and cybersecurity functions.

7 **12. AUTHORIZATION TO DISCLOSE INFORMATION SUBJECT TO**
8 **THE PRIVACY ACT.**

9 In response to discovery requests or obligations in this case without obtaining
10 the prior written consent of the individuals about whom such records or information
11 pertain, federal agencies and their counsel are authorized to disclose records and other
12 information covered by the Privacy Act, 5 U.S.C. § 552a, regarding the following four
13 individuals: Andrew Mason Dvash-Banks, Elad Dvash-Banks, A.J.D.-B., and E.J.D.-
14 B.

15 **13. MISCELLANEOUS**

16 13.1. Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

18 13.2. Right to Assert Other Objections. This Protective Order does not
19 require the production of information subject to any applicable privilege or legal
20 protection. No Party waives any right it otherwise would have to object to disclosing
21 or producing any information or item on any ground not addressed in this Protective
22 Order. Similarly, no Party waives any right to object on any ground to use in
23 evidence of any of the material covered by this Protective Order.

24 13.3. Filing Protected Material. This Protective Order does not alter the
25 requirements of Civil Local Rule 79-5, which requires an order of the Court
26 permitting documents to be filed under seal. This Protective Order provides no such
27 permission. A Party that seeks to file under seal any Protected Material must
28 comply with Civil Local Rule 79-5, and specifically with Local Rule 79-5.2.2

1 (Under-Seal Documents in Non-Sealed Civil Cases), and with any pertinent orders
2 of the assigned District Judge and Magistrate Judge.² If a Party's request to file
3 Protected Material under seal is denied by the court, then the Receiving Party may
4 file the information in the public record unless otherwise instructed by the court.

5 **14. FINAL DISPOSITION**

6 After the final disposition of this Action, as defined in Section 4, within 60 days
7 of a written request by the Designating Party, each Receiving Party—and each
8 Qualified Recipient (other than those listed in Section 7.2(e) above) to whom
9 Protected Information has been disclosed by a Receiving Party—must return all
10 Protected Material to the Producing Party or destroy such material. As used in this
11 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected
13 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
14 and/or Qualified Recipient must submit a written certification to the Producing Party
15 (and, if not the same person or entity, to the Designating Party) by the 60 day deadline
16 that (1) identifies (by category, where appropriate) all the Protected Material that was
17 returned or destroyed and (2) affirms that the Receiving Party has not retained any
18 copies, abstracts, compilations, summaries or any other format reproducing or
19 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
20 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
21 and hearing transcripts, legal memoranda, correspondence, deposition and trial
22 exhibits, expert reports, attorney work product, and consultant and expert work
23 product, even if such materials contain Protected Material. Any such archival copies
24 that contain or constitute Protected Material remain subject to this Protective Order

25
26 _____
27 ² Among other things, Local Rule 79-5.2.2(b) specifies that a filing party must—at
28 least 3 days before seeking to file under seal a document containing information
previously designated by another as “CONFIDENTIAL – SUBJECT TO PROTECTIVE
ORDER”—confer with the Designating Party in an attempt to eliminate or minimize
the need for filing under seal by means of redaction.

1 as set forth in Section 4.

2 **15. VIOLATIONS**

3 Any violation of this Order may be punished by any and all appropriate
4 measures including, without limitation, contempt proceedings and/or monetary
5 sanctions.

6 This Court has and retains jurisdiction to enforce the terms of this order, even
7 after the final disposition of this Action. Any Party or Qualified Recipient to whom
8 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” information or materials is
9 disclosed shall submit to the jurisdiction of the United States District Court for the
10 Central District of California for the purpose of enforcing the terms of this Protective
11 Order, even if such enforcement proceedings occur after termination of this action.

12

13

14 IT IS SO ORDERED.

15

16 DATED:

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18

19

Honorable Jacqueline Chooljian
United States Magistrate Judge

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28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full
6 address], declare under penalty of perjury that I have read in its entirety and
7 understand the Protective Order that was issued by the United States District Court
8 for the Central District of California on _____ in the case of
9 *Dvash-Banks v. Pompeo*, Civil Case No. 18-523-JFS (JCx) (C.D. Cal.). I agree to
10 comply with and to be bound by all the terms of this Protective Order and I understand
11 and acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in
13 any manner any information or item that is subject to this Protective Order to any
14 person or entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing the terms of this
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action. I hereby appoint _____ [print or
19 type full name] of _____
20 _____
21 [print or type full address and telephone number] as my California agent for service
22 of process in connection with this action or any proceedings related to enforcement
23 of this Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27
28 Signature: _____