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

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

22 Plaintiffs,

23 v.

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

27 Defendants.
28

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

**EXCERPTS FROM THE
DEPOSITION OF ANDREW
MASON DVASH-BANKS IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Judge: Hon. John F. Walter
Hearing Date: February 4, 2019
Courtroom: 16

1 Pursuant to Part 4(b) of the Court's Scheduling and Case Management
2 Order (DKT 52), entered on August 21, 2018, attached hereto are excerpts from
3 the deposition of Andrew Mason Dvash-Banks submitted in support of Plaintiffs'
4 Motion for Partial Summary Judgment.

5 Dated: January 7, 2019

Respectfully submitted,

6
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Attorneys for Plaintiffs

Pages 13-14

24 Q And where were you born?

25 A I was born in Santa Monica, California.

1 Q What year were you born?

2 A 1981.

Page 14

9 Q You lived with your parents when you were
10 a child?

11 A Yes.

12 Q And in what locations did you guys live?

13 A We lived in a few different locations.

14 Primarily in Beverly Hills, California.

Page 15

20 Q Where did you obtain your high school
21 degree?

22 A At Beverly Hills High School.

23 Q Where did you obtain your bachelor's
24 degree?

25 A UC Santa Barbara.

Page 18

1 Q Okay. And how long did your -- what year
2 did you enroll in graduate -- in your graduate
3 studies?

4 A 2007.

Pages 19-20

6 Q When did you meet this man?

7 A I met him in March of 2008.

8 Q What is his name?

9 A Elad Dvash-Banks.

10 Q And you're now married to Mr. Elad
11 Dvash-Banks; is that correct?

12 A Yes.

13 Q Congratulations.

14 A Thank you.

15 Q In March 2008, where did you meet?

16 A At a Purim party. Purim is a Jewish

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17 Halloween.

18 Q I won't ask about your costume.

19 A Please don't.

20 Q Where -- in what country or --

21 A In Tel Aviv. At the University of Tel

22 Aviv.

23 Q Were you -- this is during the time that

24 you were a student --

25 A Correct.

1 Q -- working on your master's?

2 A Correct.

Pages 21-22

8 Q When I asked you why you moved to Toronto,

9 I recalled that -- what you said then. Do you

10 recall what your testimony was as to why you moved

11 to Toronto?

12 A Yeah. Yes.

13 Q Do you recall that you said because you

14 couldn't sponsor Elad as an immigrant to the United

15 States at that time?

16 MS. LAWSON-REMER: Objection to the extent

17 it mischaracterizes the testimony.

18 BY MS. ZEIDNER MARCUS:

19 Q Do you recall saying that? You can answer

20 the question.

21 A I recall saying that, yeah.

22 Q Is that an accurate reason why you moved

23 to Toronto?

24 A Yes.

25 Q And I was trying to understand if you

1 had -- I was trying to understand how Canada

2 compared to the United States in 2010 such that you

3 made this choice.

4 MS. LAWSON-REMER: Is there a question?

5 BY MS. ZEIDNER MARCUS:

6 Q Can you explain that further?

7 MS. LAWSON-REMER: Objection. Vague.

8 BY MS. ZEIDNER MARCUS:

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9 Q You can answer.

10 A In 2010, Canada had gay -- legalized gay

11 marriage. And in 2010, the United States did not.

Page 22

23 Q In what month and year did you move to

24 Toronto?

25 A August of 2010.

Page 29

5 Q When did you get married?

6 A In August of 2010.

7 Q Where did you get married?

8 A In Toronto, Canada.

Pages 29-30

21 And you -- do you currently live with your

22 husband and your children?

23 A I do, yes.

24 Q Do you live with anybody else?

25 A No.

1 Q Since the four of you have become a family

2 unit, have you lived with anybody else?

3 A Since the four of us have become a family

4 unit, have we lived with anyone else? And by "live"

5 you mean -- I just want to make sure I'm going to

6 answer the question correctly -- like, under the

7 same roof for any period of time?

8 Q For a month or longer.

9 A For a month or longer. Yes, we have.

10 Q Was it one of your parents?

11 A Yes.

12 Q Other than that, was there anybody else

13 that you've lived with as a family?

14 A No.

Page 34

13 Q And currently you live in Los Angeles?

14 A I do, yes.

Pages 67-68

25 Q At some point prior to the birth of your

1 children, you and your husband, did you and your

2 husband decide to have children?

3 A At some point prior to the birth of my

4 children? Yeah.

Page 79

12 Q And I will represent for the record that

13 the complaint refers to use of an anonymous egg

14 donor. Was your -- do you understand that you used

15 anonymous egg donor?

16 A Yes.

Pages 83-84

17 Q And the -- could you describe in broad

18 strokes how you used the fertility clinic in the

19 process of having your children?

20 A Yes. We used the fertility -- in broad

21 strokes --

22 Q Yes.

23 A -- we used the fertility clinic to collect

24 our semen or sperm, to test it, to test us

25 medically, and to create embryos and to test those

1 embryos and to implant the embryos in our surrogate.

2 Totally broad strokes there.

3 Q Sure.

4 Were the embryos created after you

5 selected the surrogate and you selected each other?

6 A No.

7 Q At what point in time were the embryos

8 created, approximately?

9 A In July -- the end of July 2015, beginning

10 August 2015.

Pages 84-85

17 Q And the -- could you describe in broad

18 strokes how you used the fertility clinic in the

19 process of having your children?

20 A Yes. We used the fertility -- in broad

21 strokes --

22 Q Yes.

23 A -- we used the fertility clinic to collect

24 our semen or sperm, to test it, to test us

25 medically, and to create embryos and to test those

1 embryos and to implant the embryos in our surrogate.

2 Totally broad strokes there.

3 Q And what was your understanding at the

4 time?

5 A From the information that was provided to

6 me from the fertility clinic, I understood that one

7 of the embryos had my genetic material.

8 Q And what was your understanding with

9 respect to the other embryo?

10 A It did not have my genetic material.

11 Q Did it have your husband's genetic

12 material?

13 A Yes.

Pages 95-97

4 Q And I would like to identify for the

5 record, if you can, the page spans that are -- that

6 were submitted with the materials in -- with the

7 initial application to be distinguished from

8 anything that appears in Plaintiff's Exhibit 5 that

9 is not either the application that we just

10 identified or the initial application materials.

11 So my question for you is: Can you

12 quickly go through and identify the page spans for

13 the materials that you submitted with the initial

14 application, please.

15 MS. LAWSON-REMER: To the extent he knows

16 or remembers?

17 MS. ZEIDNER MARCUS: Correct.

18 MS. LAWSON-REMER: Okay.

19 THE WITNESS: Yeah. Are you asking me to,

20 like --

21 BY MS. LAWSON-REMER:

22 Q Yes.

23 A -- say --

24 Q Please state for the record.

25 A Like, the -- the four-digit number at the

1 top; right?

2 Q Yes, please.

3 A From, like, the beginning of the

4 application to where the end of the supporting

5 documentation is?

6 Q I'm now -- we --

7 A Basically, I just -- I don't want to have

8 to say every single number is what I'm asking you.

9 Q No, no. Right, right. Yes. Exactly. I

10 want the span, so --

11 A Okay. You want the span. Got it. Okay.

12 Q I'm looking for supporting materials.

13 We've covered the application itself.

14 A Yeah, yeah, yeah.

15 Q The supporting materials --

16 A Got it.

17 Q -- where do they start, where do they end?

18 A So supporting materials look like they

19 begin on 1764.

20 Q Okay.

21 MS. LAWSON-REMER: And just -- I'll just

22 make sure that I instruct you to look at every page

23 as you do this.

24 THE WITNESS: As I do this? Okay. I'll

25 look at every page as I do this.

1 So I believe -- this is just to the best

2 of my knowledge -- the supporting documentation

3 finishes on page 1808.

4 BY MS. ZEIDNER MARCUS:

5 Q Okay. And just to be clear, the materials

6 between 1764 and 1808 are materials that you

7 submitted with the initial application?

8 MS. LAWSON-REMER: Inclusive of 1808?

9 MS. ZEIDNER MARCUS: Yes.

10 MS. LAWSON-REMER: Okay.

11 THE WITNESS: Yes. To the best of my

12 knowledge, yes.

Page 112

19 Q Do you have any under- -- do you know the
20 result of this court order?

21 A Yes.

22 Q What was the result?

23 A The result was affirming Elad and myself's
24 parentage to our twin boys.

Page 117

3 Q Did you make one or more applications
4 during that visit?

5 A Yes.

6 Q How many total applications did you make
7 during that visit?

8 A Four.

9 Q And of those four, you made two for each
10 of your children?

11 A Yes.

Pages 125-126

7 Q Yes. I will say at another time after
8 this deposition, I'll share a story I'm recalling
9 now of a first adventure I had taking my two
10 children out and about with all those things that
11 you were just talking about.

12 And what was the next thing to happen
13 during the appointment?

14 A You mean after that prolonged period of
15 waiting?

16 Q Yes.

17 A We were called up to the window.

18 Q And was it a different window from the
19 first window that you were called up to?

20 A Yes.

21 Q And there was an individual on the other
22 side of the window?

23 A Yes.

24 Q Do you know the position that that
25 individual held?

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1 A Do I know now? I know -- I know now what
2 that person's position was at the time.

3 Q Okay. And what was that person's
4 position?

5 A From my understanding, the person's
6 position was vice counsel.

7 Q And generally speaking, you understood it
8 -- this person to be a consular officer of the
9 Department of State?

10 A That's what I understood.

11 Q And were you interviewed by that person?

12 A Yes.

Page 129

15 Q What other questions do you remember?

16 A There were several. Obviously one really
17 sticks out to me just because it was a really
18 emotionally charged question. When she asked are
19 your children genetically connected -- she asked me,
20 Andrew, are your children both genetically connected
21 to you?

Pages 143-144

23 Q And can you describe how you would display
24 those emotions to the consular officer, please.

25 A It's not every day that you walk into your

1 home country's consulate to be told that you're
2 essentially not the parent of your child even though
3 you've produced a birth certificate showing that,
4 even though you've cut his umbilical cord, even
5 though you have, you know, fed him and stayed up all
6 night for -- what was that? Like, four months at
7 that point for him even though that you spent seven
8 months -- unfortunately, it was seven months. I
9 wish it was longer -- but seven months in utero --
10 at every single appointment to have a representative
11 of your country tell you that you're not his parent
12 or question that parentage.

13 So I guess to answer your question, like,
14 my emotions and my husband's emotions were derived

15 from that.

Page 161

5 Q From your perspective, generally speaking,
6 what are your claims against the Department of
7 State?

8 A From my perspective, my claim against the
9 Department of State is that my son EJ was refused
10 United States citizenship by the U.S. state
11 department. And my claim is that -- that we were
12 wrong and treated unfairly, and that's an unfair --
13 how do I say this? And -- and that he was refused
14 American citizenship because he's considered a child
15 born out of wedlock. And his twin brother born four
16 minutes before him was granted American citizenship.

Pages 165-166

4 Q Okay. Can you look at Plaintiff's Exhibit
5 5, please. I will represent to you that this was --
6 this packet that's Plaintiff's Exhibit 5 was
7 attached to defendant's initial disclosures in this
8 action and was identified by defendants as the
9 passport file for EJ. Okay?

10 If you could just turn to the page that
11 ends with the number 1767.

12 A All right. I'm here.

13 Q Okay. Do you recognize this to be a true
14 and correct copy of your marriage license?

15 A It appears to be, yes.

16 Q All right. Do you have any reason to
17 doubt its authenticity?

18 A I do not, no.

19 Q Does it look any different from the last
20 time you saw it?

21 A No. I don't think so.

22 Q Okay. And it's a copy of the document
23 that you submitted in connection with EJ's
24 applications for CRBA and passport; is that correct?

25 A Yes, that's correct.

1 Q Okay. If we could back up a little bit.

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2 In the same packet, Plaintiff's Exhibit 5, go to
3 1764.

4 A Okay. I'm here.

5 Q And do you recognize this to be a true and
6 correct copy of the statement of live birth for EJ?

7 A It appears to be, yes.

8 Q And does it list you as one of his
9 fathers?

10 A It does, yes.

11 Q And who does it list as the other father?

12 A My husband.

Page 169

13 Q And then about halfway down the page,
14 starting on line 17 of page 17 of Plaintiff's
15 Exhibit 9, there are -- there's a statement that
16 says "Andrew resided in the United States from
17 January 18, 1981, day of his birth, to
18 October 2008." Is that statement true and correct?
19 A It is, yes.

Page 171

3 Q Okay. Are you a U.S. citizen?

4 A Yes.

5 Q Were you a U.S. citizen at birth?

6 A Yes.

7 Q Is it correct that you and Elad

8 Dvash-Banks were married on the day E [REDACTED] and A [REDACTED]

9 -- excuse me. I'll strike that.

10 Is it correct that you and Elad were
11 married on the day EJ and AJ were born?

12 A We were married on the day EJ and AJ were
13 born.

14 Q And what day was that?

15 A They were born on September 16th, 2016.

16 Q Okay. Does EJ live with you?

17 A Yes.

18 Q And -- and Elad?

19 A Yes.

20 Q Has he lived with you from the time he

21 left the hospital when he was born into -- to the

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22 present?

23 A Yes.