

EXHIBIT 15

In the Matter Of:

Andrew Mason Dvash-Banks, et al v.
The United States Department of State, et al

LARILYN REFFETT

December 06, 2018

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Andrew Mason Dvash-Banks, et al v. The United States Department of State, et al
LARILYN REFFETT on December 06, 2018

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDREW MASON DVASH-BANKS and)
E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED],) COMPLAINT FOR
Plaintiffs,) DECLARATION AND
) INJUNCTIVE RELIEF
v.)
THE UNITED STATES DEPARTMENT) Docket No. Case
OF STATE, and THE HONORABLE) 2:18-cv-00523-JFW-JCx
MICHAEL R. POMPEO, Secretary) JFW
of State,)
Defendants.)
-----)

--- This is the Transcript of the Audio-Recorded
Deposition of LARILYN REFFETT, taken at the U.S.
Consulate, 360 University Avenue, Toronto, Ontario,
MSG 1S4, on the 6th day of December, 2018.

Reported By: Deana Santedicola, CSR (Ont.), RPR,
CRR

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1 A P P E A R A N C E S:

2 FOR THE PLAINTIFFS, ANDREW MASON DVASH-BANKS

3 and E [REDACTED] J [REDACTED] D [REDACTED]-B [REDACTED]:

4 SULLIVAN & CROMWELL LLP

5 PER: Jessica Klein, Esq.

6 Lauren M. Goldsmith, Esq.

7 125 Broad Street

8 New York, New York 10004-2498

9 Tel. 1-212-558-4000

10 Email: goldsmithl@sullcrom.com

11 kleinj@sullcrom.com

12

13 FOR THE DEFENDANTS, THE UNITED STATES DEPARTMENT

14 OF STATE, AND THE HONOURABLE MICHAEL R. POMPEO,

15 SECRETARY OF STATE:

16 UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

17 FEDERAL PROGRAMS BRANCH

18 PER: Lisa Zeidner Marcus, Esq.

19 1100 L Street NW, 11th Floor,

20 Washington, DC, 20530

21 Email: lisa.marcus@usdoj.gov

22

23 Also Present: Jeremy Weinberg, U.S. Department of

24 State, Office of the Legal Advisor

25

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I N D E X

WITNESS: LARILYN REFFETT

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REDIRECT EXAMINATION BY MS. ZEIDNER

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1 Goldsmith of Sullivan & Cromwell. I'm also
2 representing Andrew and E [REDACTED] D [REDACTED] -B [REDACTED].

3 MS. ZEIDNER MARCUS: I am Lisa Zeidner
4 Marcus, trial attorney, U.S. Department of Justice.
5 I represent the Defendants in this matter, the U.S.
6 Department of State and the Secretary of State who
7 was sued in his official capacity.

8 MR. WEINBERG: Jeremy Weinberg,
9 Department of State, Office of the Legal Advisor,
10 also representing the U.S. government in this
11 matter, Department of State.

12 AUDIO-RECORDER: Would the reporter
13 please swear or affirm the witness.

14 LARILYN REFFETT; AFFIRMED.

15 EXAMINATION BY MS. KLEIN:

16 Q. Good morning, Ms. Reffett.

17 A. Good morning.

18 Q. As you heard, I am Jessica Klein
19 and I am representing the Plaintiffs in this
20 matter. Have you ever been deposed before?

21 A. No.

22 Q. And have you ever testified in
23 Court?

24 A. No.

25 Q. Have you ever given testimony

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1 Q. Did your training that you have
2 received in your career include training you in the
3 policies of the Toronto Consulate in adjudicating
4 applications for U.S. passports?

5 A. There is nothing Toronto-specific
6 in training.

7 Q. So is it correct then that the
8 policies of the United States State Department are
9 one and the same with the policies of the Toronto
10 Consulate in the adjudication of applications for
11 U.S. passports?

12 A. The adjudications here in Toronto
13 are done solely based on the guidance and the
14 references that we are provided by the Department
15 of State.

16 Q. Is there any Toronto
17 Consulate-specific guidance concerning
18 adjudications of U.S. passports?

19 A. No.

20 Q. What about Canada-specific?

21 A. No.

22 Q. So is it correct then that the
23 training you have received on the adjudication of
24 passport applications has been training that, to
25 your understanding, would apply in any consular

1 a U.S. passport and Consular Report of Birth
2 Abroad?

3 A. Making the determination? What do
4 you mean by that? The case was adjudicated by
5 Frankie Day -- Terri Day in this case.

6 Q. Am I correct that it is your
7 understanding that Ms. Day interviewed E [REDACTED] and
8 the Dvash-Bankses concerning these applications?

9 A. My understanding is that Terri Day
10 did in fact interview the Dvash-Banks family, and
11 based on her interview and based on the follow-up
12 information that she requested, she denied these
13 applications.

14 Q. And from the period of when the
15 applications were initiated through March 2nd,
16 2017, when this letter was dated, were you
17 personally involved at all in these applications or
18 their adjudication?

19 A. The day of the interview, Frankie
20 asked me about -- she told me that she was going to
21 request DNA testing. She asked me how she went
22 about doing that. I explained to her that she just
23 needs to ask a local staff to draft the letter.
24 There is standard language that explains how to
25 obtain a DNA test that is -- that meets the

1 requirements of the Department of State.

2 She asked for that letter and then
3 presented it to the family, so I was aware at that
4 point that she was requesting the DNA evidence. At
5 that point, a case will go into pending status.
6 Cases generally are allowed to remain in that
7 status for up to 90 days without any further
8 action. At the 90-day mark, we will review again
9 to see whether or not we have received the
10 information we have requested and try and proceed
11 with the case.

12 Q. Ms. Day spoke to you on the date
13 when the Dvash-Banks family came in about
14 requesting DNA testing; is that correct?

15 A. Yes, she asked me to verify how
16 the procedure works, what documentation needs to
17 happen, because we aren't in charge of the DNA
18 program as the adjudicating officers, so she wanted
19 to verify that she was getting the right letter,
20 giving them the right information about how to
21 proceed with that testing.

22 Q. Did Ms. Day share with you the
23 facts surrounding these applications for E [REDACTED] ?

24 A. She told me that she had a case
25 that involved artificial reproductive technology.

1 She said that it was not clear from the
2 documentation who was biologically related to who
3 in the case and she was requesting the DNA in order
4 to establish that.

5 Q. Did you ever meet any members of
6 the Dvash-Banks family?

7 A. No.

8 Q. Did you ever see any members of
9 the Dvash-Banks family?

10 A. I might have seen them through the
11 interview windows. I generally walk up and down my
12 section to check on how things are going and, you
13 know, what is moving and what is not moving.

14 If they need additional assistance, for
15 example, if there are too many cases and we need
16 more interviews, I might be sort of checking on
17 that, but nothing that would have stood out to me
18 or that I realized, I mean, that I had seen this
19 particular family, no.

20 Q. Did Ms. Day inform you that the
21 Dvash-Banks family includes a same-sex couple?

22 A. She did.

23 Q. What did Ms. Day tell you?

24 A. She told me that she, as I
25 mentioned, she had a case involving artificial

1 Oftentimes in those situations, the
2 officers will make sure that all of the other
3 officers know that this is pending because if, for
4 example, the documentation came in while, for
5 example, Frankie was on leave, we would need to be
6 sure that we understood what we were waiting for.

7 Q. I would like to focus on your
8 conversations with Ms. Day about these applications
9 for the next several questions.

10 When Ms. Day first spoke with you about
11 E [REDACTED]'s applications, had she already decided to
12 give them pending status?

13 A. When she came to me, she explained
14 to me that the documentation did not establish the
15 biological relationship, so she was going to
16 request the DNA testing and she asked me about the
17 proper procedure for doing that.

18 Q. And did she ask you only what the
19 procedure was or also whether to seek DNA testing?

20 A. I don't recall the specific
21 details of the conversation, but what the result
22 was, and what -- I mean, what I recall was that I
23 explained to her how to do this and this is -- you
24 know, she told me I don't have in front of me in
25 this interview or this application the information

1 Q. And are you referring to being
2 notified of an inquiry that was made with
3 congressional staff?

4 A. Generally speaking, if
5 congressional staff have received an inquiry from a
6 member of the public about a case or a consular
7 service that is taking place at your post, that
8 staff will email you and ask you either for comment
9 or will just give you the just FYI this is what we
10 have received.

11 I know we did have correspondence from
12 a congressional office, but I don't remember the
13 date of it.

14 Q. Is it your understanding that when
15 Ms. Day signed this letter on March 2nd, 2017, the
16 adjudication was final?

17 A. Yes, that is my understanding.

18 Q. And sitting here today, do you
19 remember any involvement you had in the
20 adjudication or processing of E [REDACTED]'s applications
21 for a passport or Consular Report of Birth Abroad
22 other than the three brief conversations with Ms.
23 Day that you described?

24 A. No.

25 Q. Okay. Have you read E [REDACTED]'s

1 application materials?

2 A. No.

3 Q. So you don't have any view as to
4 the authenticity or completeness of the application
5 that was filed?

6 A. I have not seen the application.
7 I have only heard what Frankie told me about the
8 facts that she was presented.

9 Q. So sitting here today, what is
10 your understanding of why Frankie Terri Day denied
11 E [REDACTED]'s applications for a U.S. passport and
12 Consular Report of Birth Abroad?

13 A. My understanding is that the
14 applicants did not establish the biological
15 relationship between the American citizen parent
16 and the child, which is required by the Immigration
17 and Nationality Act.

18 Q. And are you aware of any other
19 reason why E [REDACTED]'s applications were denied?

20 A. No.

21 Q. And as you read the document
22 marked DVASH-BANKS30, Plaintiffs Deposition Exhibit
23 1, do you read it to state that there was no other
24 reason for the denial of the applications?

25 A. That is correct. I read it to

1 adjudicating that case would then have reference
2 material. They would be able to reference the
3 previous application so that they could see what
4 happened and where that case was -- how it
5 terminated.

6 Q. Does Ms. Day's letter dated March
7 2nd, 2017, reflect a final adjudication of E [REDACTED]'s
8 applications for a U.S. passport and Consular
9 Report of Birth Abroad?

10 A. As far as the applications that
11 were submitted here in Toronto, that letter
12 absolutely is a final determination. In the
13 second-to-last paragraph:

14 "[...] therefore the
15 applications are denied."

16 That is the termination of that case
17 from that point forward.

18 Q. So how would you describe the
19 status of that case for the Toronto Consulate
20 today?

21 A. The case was denied and it is
22 closed.

23 Q. And does your office prepare
24 additional paperwork concerning the adjudication of
25 a U.S. passport application beyond this letter?

1 about something that you are specifically looking
2 at that might have changed, because there have been
3 substantial changes.

4 Q. Are you aware of any changes to
5 the biological relationship to a U.S. citizen
6 parent requirement that have changed during your
7 tenure at the Toronto Consulate?

8 A. I don't know the exact dates of
9 changes as they have come and gone. I do -- we
10 have touched on this issue earlier, but we have
11 talked about the fact that the biological
12 relationship does now include a gestational mother
13 role, for example.

14 Being a gestational mother does in fact
15 meet the biological -- does in fact qualify as a
16 biological relationship. That has been a change,
17 but when it happened, I honestly don't know. It is
18 not something I keep track of.

19 Q. And other than the treatment of
20 gestational mothers who are not genetically related
21 to their children, are you aware of any other
22 changes that have been made at the State Department
23 in the requirements of a biological tie between a
24 U.S. citizen and his child?

25 A. I am not specific -- I don't know

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,
CSR, Certified Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 12th day of December, 2018



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PER: DEANA SANTEDICOLA, RPR, CRR, CSR
CERTIFIED REAL-TIME REPORTER

EXHIBIT 16



United States Department of State

Washington, D.C. 20520

I, Regina Ballard, Division Chief, Law Enforcement Liaison Division, Office of Legal Affairs, Passport Services Directorate, Bureau of Consular Affairs, United States Department of State, certify under penalty of perjury that the enclosed documents are originals, or copies thereof, from the records of the U.S. Department of State. These documents relate to the subject matter in *Andrew Mason Dvash-Banks and E.J. D.-B. v. Michael R. Pompeo, et al.*, case number 2:18-cv-00523-JFW-JCx.

The record produced reflects all application documents and written guidance before the adjudicator as a part of Plaintiff E.J. D-B's passport and Consular Report of Birth Abroad applications. It also includes sections of the Foreign Affairs Manual which agency counsel have advised were relevant to and were in effect at the time of the adjudication at issue in the aforementioned case, and thus would have been considered directly or indirectly by the adjudicator.

Sincerely,

Regina Ballard, Division Chief
Law Enforcement Liaison Division
Office of Legal Affairs
Passport Services

Date: January 3, 2019

INDEX TO ADMINISTRATIVE RECORD
Andrew Mason Dvash-Banks and E.J. D-B v. U.S. Dep’t of State, et al.
 18-cv-00523-JFW-JCx, Central District of California

Date	Document type	Description	AR page number(s)
March 2, 2017	Denial Letter	Letter issued by Vice Consul Terri N. Day denying passport and Consular Report of Birth Abroad applications submitted on behalf of E.J. D-B.	001
Various	Case Notes	Case notes and related entries associated with the U.S. passport and Consular Report of Birth Abroad applications submitted on behalf of E.J. D-B.	002 – 008
January 24, 2017- March 2, 2017	Application materials	Passport and Consular Report of Birth Abroad applications submitted on behalf of E.J. D-B.	009 – 072
January 24, 2017	Email and attachments	Correspondence from Consul Margaret Ramsay to Vice Consul Terri “Frankie” Day, providing “ART guidance” for adjudication of Plaintiffs’ applications.	073
January 24, 2017	Email link content	As noted in email text, “2014 Cable on ART Cases” in the original.	074 – 076
January 24, 2017	Email link content	As noted in email text, “7 FAM 1100 APPENDIX D” in the original.	077 – 080
Various	Foreign Affairs Manual Provisions	Relevant provisions in effect during the adjudication timeframe (January 24, 2017- March 2, 2017).	081 – 106



U.S. DEPARTMENT OF STATE
U.S. CONSULATE GENERAL, TORONTO
360 University Avenue, Toronto, ON M5G 1S4 Canada
Email: torontopassport@state.gov
Website: toronto.usconsulate.gov

March 2, 2017

Mr. Andrew Mason Dvash-Banks
[redacted] Ave, Apt# [redacted]
Toronto, Ontario
M6B 4C6

Dear Mr. Dvash-Banks

I am writing in reference to your recent application for a Consular Report of Birth Abroad and passport for E [redacted] J [redacted] D [redacted] -B [redacted], who was born on September 16, 2016 in Toronto, Canada.

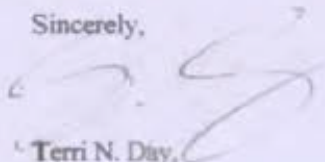
I regret to inform you that after careful review of the evidence you submitted with your child's application, it has been determined that his claim to U.S. citizenship has not been satisfactorily established, as you are not his biological father.

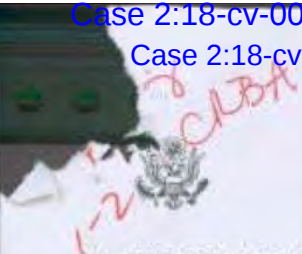
The Immigration and Nationality Act (INA) of 1952, as amended, requires, among other things, a blood relationship between a child and the U.S. citizen parent in order for the parent to transmit U.S. citizenship.

In view of the above, it does not appear that E [redacted] J [redacted] D [redacted] -B [redacted] acquired U.S. citizenship through you. Therefore, your child is not entitled to U.S. Consular Report of Birth Abroad and passport, therefore the applications are denied.

We suggest that you contact the nearest office of U.S. Citizenship and Immigration Services regarding your citizenship status. All documents submitted as part of the application are enclosed. By law, application fees are non-refundable.

Sincerely,


Terri N. Day,
Vice Consul



U.S. Department of State
APPLICATION FOR CONSULAR REPORT OF BIRTH ABROAD
OF A CITIZEN OF THE UNITED STATES OF AMERICA

OMB NO. 1405-0011
EXPIRES: 03/31/2019
Estimated Burden: 20 minutes

Registration Number DENIAL

A. THIS SECTION TO BE COMPLETED BY THE CHILD'S PARENT(S) OR GUARDIAN(S) OR THE CHILD. (USE SECTION D CONTINUATION SHEET)

INFORMATION ABOUT THE CHILD

1. Name of Child in Full
D [REDACTED] - A [REDACTED] E [REDACTED] J [REDACTED]
 (Last/Surname) (First) (Middle)

2. Sex M F
 3. Date of Birth 09/16/2016
 (month) (day) (year)
 4. Place of Birth MISSISSAUGA, CANADA
 (City) (Country)

NOTE: (If the U.S. citizen parent transmitting citizenship to the child is not present, he or she may complete State Department Form DS 5507 Affidavit of Parentage Physical Presence and Support and submit it separately. The parent completing this application should provide as much information on the parent completing the Form DS 5507 as he or she has.)

INFORMATION ON MOTHER/FATHER/PARENT

5. Full Name
DVASH-BANKS ANDREW MASON
 (Last/Surname) (First) (Middle)

6. All Previous Legal Names Used
BANKS ANDREW MASON
 (Last/Surname) (First) (Middle)

7. Sex M F
 8. Date of Birth [REDACTED] 1981
 (month) (day) (year)

9. Place of Birth
Santa Monica CA USA
 (City) (State/Province) (Country)

INFORMATION ON MOTHER/FATHER/PARENT

11. Full Name
DVASH-BANKS ELAD AUSTIN
 (Last/Surname) (First) (Middle)

12. All Previous Legal Names Used
DVASH ELAD
 (Last/Surname) (First) (Middle)

13. Sex M F
 14. Date of Birth [REDACTED] 1985
 (month) (day) (year)

15. Place of Birth
Ramat Gan ISRAEL
 (City) (State/Province) (Country)

10. Current Physical Address (Do not list P.O. Box)
 (A.P.O. Address Permitted)
[REDACTED] AVE. # [REDACTED]
 (Address Line 1)
TORONTO, ON, CANADA M6B4C6
 (City, State/Province, Country, Postal Code)
647-706-9556
 (Phone Number(s))
[REDACTED]@gmail.com
 (Email Address)

Use this address if Consular Report of Birth will be mailed? Yes No

16. Current Physical Address (Do not list P.O. Box)
 (A.P.O. Address Permitted)
[REDACTED] AVE. # [REDACTED]
 (Address Line 1)
TORONTO, ON, CANADA M6B4C6
 (City, State/Province, Country, Postal Code)
647-289-4389
 (Phone Number(s))
[REDACTED]@gmail.com
 (Email Address)

Use this address if Consular Report of Birth will be mailed? Yes No

17. Mailing Address (if different from Current Physical Address) (Do not list a P.O. Box.)
 (You may list an A.P.O. address.)

 (Address Line 1) (City, State/Province, Country and Postal Code)

DS-2029
04-2016

CLASSIFIED

<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>18. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>19. Citizenship Were you a U.S. citizen or U.S. Non-Citizen National when the child was born? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>																																																																																	
<p>MARITAL STATUS OF THE PARENTS</p>																																																																																		
<p>20. Were you married to the child's other biological parent when the child was born? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>																																																																																		
<p>21. Date and Place of Marriage to the child's other biological parent and current status</p> <p><u>08/19/2010</u> <u>Toronto</u> <u>ON</u> <u>Canada</u> (month) (day) (year) (City) (State/Province) (Country)</p> <p><input checked="" type="checkbox"/> Still Married <input type="checkbox"/> Divorced <u> </u>/<u> </u>/<u> </u> <input type="checkbox"/> Death <u> </u>/<u> </u>/<u> </u> (month) (day) (year) (month) (day) (year)</p>																																																																																		
<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>22. Please list any other marriages (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (if additional space is needed, please use the Section D Continuation Sheet)</p> <p><u>None</u></p>	<p><i>(Continued)</i></p> <p>INFORMATION ON MOTHER/FATHER/PARENT</p> <p>23. Please list any other marriages (Show Name(s) of Spouse(s), Dates and Current Status) if applicable (Death, Divorce, Still Married). If you have never been married, enter "None." (if additional space is needed, please use the Section D Continuation Sheet)</p> <p><u>None</u></p>																																																																																	
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DS-2029
04-2016

(Continued)

THIS SECTION TO BE COMPLETED BEFORE/BY CONSULAR OFFICER, NOTARY PUBLIC, OR OTHER PERSON QUALIFIED TO ADMINISTER OATHS

29. Affirmation: I SOLEMNLY SWEAR (OR AFFIRM) THAT THE STATEMENTS MADE ON THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Name of Person(s) Providing Information Relationship to the Child (Parent, Legal Guardian, Other (Specify)) Signature of Person(s) Providing Information

ELAD DVASH-BANKS Father

Andrew Dvash-Banks Father

Type Name and Title of Official Signature of Official City Date

TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

TORONTO

JAN 2/4 2017
(month) (day) (year)

Subscribed to: (SEAL)

30. Approval of Consular Report of Birth

(Printed Name of Consular Officer)

(Signature of Consular Officer)

(Approving Post)

1/4/17
(month) (day) (year)
(Date of Approval)

DENIAL
(Registration Number)

C. FOR OFFICIAL USE

31. Documents Presented - Please mark accordingly and provide date of document. (If more space is required, list on separate page)

Child's Birth Certificate 11 / 09 / 2016 MISSISSAUGA ONTARIO CANADA
 (month)(day) (year) (City) (Province) (Country)

Marriage Certificate 10 / 05 / 2010 Toronto _____
 (month)(day) (year) (month)(day) (year) (City) (State)
 (File Date) (Date of Issuance)

 (Province) (Country)

Divorce Decree(s) (a) _____
 (month)(day) (year) (month)(day) (year) (City) (State)
 (File Date) (Date of Issuance)

 (Province) (Country)

(b) _____
 (month)(day) (year) (month)(day) (year) (City) (State)
 (File Date) (Date of Issuance)

 (Province) (Country)

(c) _____
 (month)(day) (year) (month)(day) (year) (City) (State)
 (File Date) (Date of Issuance)

 (Province) (Country)

Death Certificate(s) (a) _____
 (month)(day) (year) (City) (State)

(b) _____
 (month)(day) (year) (City) (State)

Mother/Father/Parent's Passport [REDACTED] 04/21/2010 Israeli citizen
 (Passport Number) (month)(day) (year) (Nationality)
 (Date of Issuance)

Mother/Father/Parent's Passport [REDACTED] 03/23/2010 U.S. citizen
 (Passport Number) (month)(day) (year) (Nationality)
 (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) _____
 (Name of the Citizenship Document) (Document Number) (month)(day) (year)
 (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Naturalization Certificate) _____
 (Name of the Citizenship Document) (Document Number) (month)(day) (year)
 (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) _____
 (Name of the Identity Document) (Document Number) (month)(day) (year)
 (Date of Issuance)

Other Identity Document of Mother/Father/Parent (e.g. Driver's License) _____
 (Name of the Identity Document) (Document Number) (month)(day) (year)
 (Date of Issuance)

Other (Legal Guardianship, Power of Attorney, etc.) custody documents FS-16-21123 _____
 (Name of the Document) (Document Number) (month)(day) (year)
 (Date of Issuance)

DS-2029
04-2016

Page 5 of 7

Case No. 2:18-cv-00523-JFW-JC (C.D. Cal.) - Administrative Record - AR 013

0007001762

D.

CONTINUATION SHEET (USE THIS SPACE FOR ADDITIONAL INFORMATION)

DS-2029
04-2016

Page 6 of 7

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 014



Certified A True
Photostatic
Print of a Record

on file at the
Office of the Registrar General
Ontario, Canada

Registration Number:
Numéro d'enregistrement :

P3319402

PAGE 1

Certificate number:
Numéro de certificat

Date issued:
Date de délivrance

File number:
Numéro de dossier

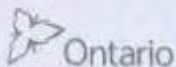
Nov 09 2016

01599220-01-

Office of the Registrar General
Bureau du registraire général

Photocopie certifiée
conforme d'un document

déposée aux dossiers du
Bureau du registraire général
(Ontario) Canada



ServiceOntario

Office of the
Registrar General
180 Red River Road
PO Box 4900
Thunder Bay ON P7B 5L8

Statement of Live Birth
Form 2

Vital Statistics Act

This is a permanent legal record.
Please read all instructions before completing this form.
Type or print clearly in blue or black ink and complete all items.

Section A - Child's Information (see instruction #1)

Last Name D. [redacted]	Sex of Child Male
First Name E. [redacted]	Middle Name(s) [redacted]
Date of Birth (yyyy/mm/dd) 2016/09/16	Name of hospital (if not hospital give exact location where birth occurred) Credit Valley Hospital
Place of Birth (City/Town/Village/Township) Mississauga	Regional municipality, county or session PEEL

Section B - Father's Information - (see instruction #2)

Current Legal Last Name Dvash-Banks
Legal Last Name at Birth Banks
First and Middle Name(s) Andrew Mason
Any Other Legal Last Name(s)

Section C - Father's Information - (see instruction #3)

Current Legal Last Name Dvash-Banks
Legal Last Name at Birth Dvash
First and Middle Name(s) Elad
Any Other Legal Last Name(s)

Place of Birth (City/Town/Village/Township) Santa Monica	Place of Birth (City/Town/Village/Township) Ramat Gan
Place of Birth (Province/State/Country) California, USA	Place of Birth (Province/State/Country) Israel
Date of Birth (yyyy/mm/dd) 1981 [redacted]	Date of Birth (yyyy/mm/dd) 1985 [redacted]
Age 35	Age 31

Section D - Birth Information

Residence of Parent in Section B - Complete street address (City, town, village, township - if rural give Post Office or Rural Route address) [redacted] Avenue, Toronto	Postal Code M6B4C6
Mailing Address of Parent in Section B - If different from above - Complete street address (if rural give Post Office or Rural Route address)	Postal Code
Duration of pregnancy (in weeks) 32	Total number of children ever born to this parent including this birth 2
Weight of child at birth (grams) 3350	Kind of Birth <input type="checkbox"/> Single <input checked="" type="checkbox"/> Twin <input type="checkbox"/> Other
Name of Adolescent at Birth Dr Myckan, Kerry	<input checked="" type="checkbox"/> Breech <input type="checkbox"/> Midget <input type="checkbox"/> Other, specify

Section E - Certification of Informant (Please read instruction #1 before signing)

If you are choosing a last name that is not one of the parent's last names or combinations of those names, but is in accordance with the child's cultural, ethnic, or religious heritage, check one of the following boxes:

Cultural Heritage Religious Heritage Ethnic Heritage

I (We) certify the statements made on this form are true and correct. I am (We are) aware that it is an offence to willfully make a false statement on this form.

I (We) have agreed that the child's last name will be as shown in section A.

Yes No

Signature of Father [Signature]	Date (yyyy/mm/dd) 2016/10/08
Signature of Mother [Signature]	Date (yyyy/mm/dd) 2016/10/08
Signature of Informant (see instruction #1)	Date (yyyy/mm/dd)

Section F - Office Use Only

I register this statement and register this birth by signing this statement.

Signature of Manager
[Signature]
 Date (yyyy/mm/dd) 2016/11/03 |

UPDATED GEO CODE

113226 (2016/06) © Queen's Printer for Ontario, 2016

A True Copy of the Signed Original.

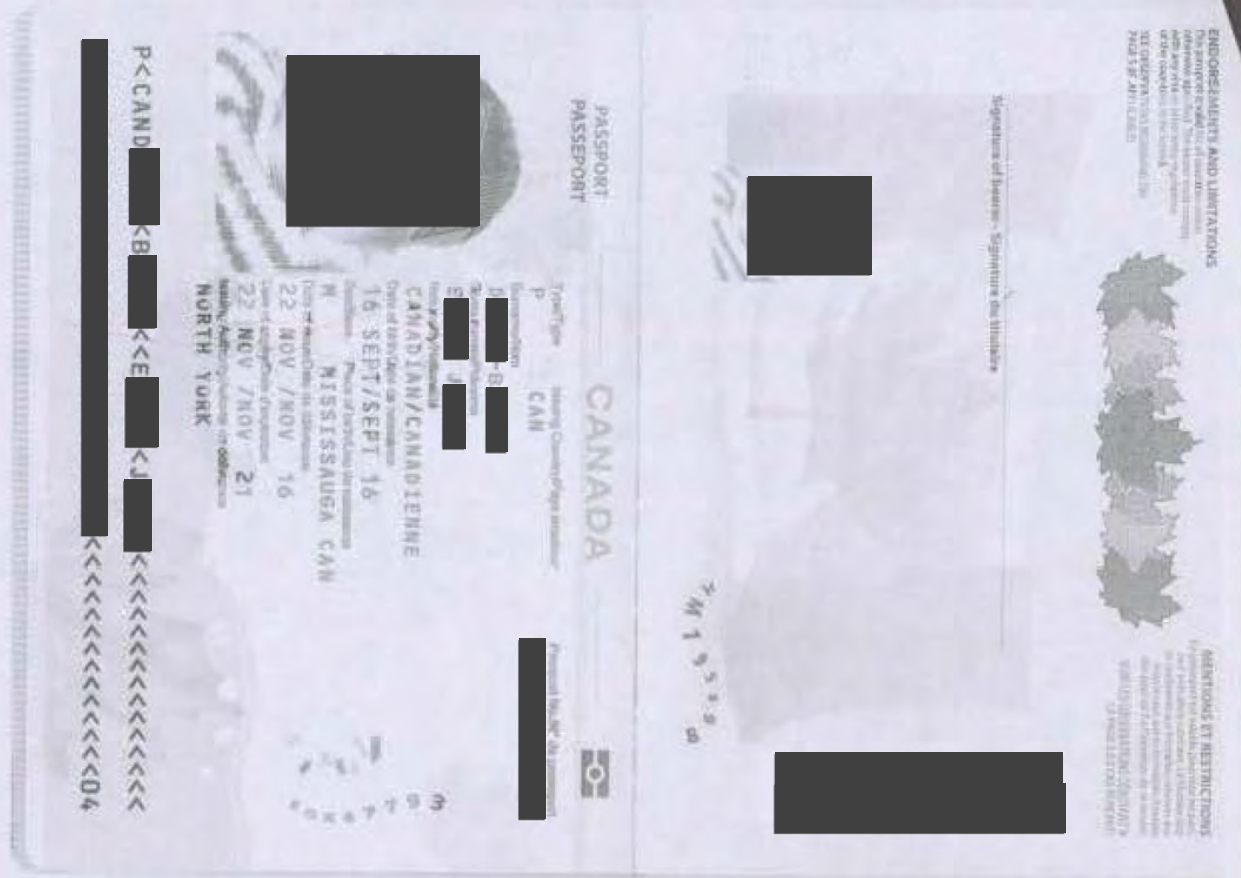
TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

Alexandra Schmidt


Alexandra Schmidt
Deputy Registrar General
Registraire générale adjointe

---CERTIFIED COPY---
NOT VALID WITHOUT ALL PAGES

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 016



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Signed Original.


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UNITED STATES OF AMERICA



Ontario

Office of the Registrar General
Bureau du registraire général

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Photostatic
Print of a Record

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conforme d'un document

on file at the
Office of the Registrar General
Ontario, Canada

se trouvant dans les dossiers du
Bureau du registraire général
(Ontario) Canada

Registration Number:
Numéro d'enregistrement :

PAGE 1 of 1

Certificate number:
Numéro du certificat :

P 1338811

Date issued:
Date de délivrance :

Oct 05 2010

File number:
Numéro de dossier :

01076584-01-3

Ontario Ministry of Government Services Office of the Registrar General **Marriage Licence**

Licence number: **E 0689966**

This form is a permanent legal document and can only be used to register a marriage that takes place in Ontario. Please PRINT clearly in blue or black ink.

Part 1 - To be completed by the officiant issuing this licence

1. Date this licence was issued (day)
19 Aug 2010

2. Municipality where licence was issued
City of Toronto

3. Name of licence issuer or deputy issuer
Catherine Matesco

4. Signature of licence issuer or deputy issuer

5. Proposed place of marriage (township)
Toronto

6. Proposed date of marriage (day) must be within 3 months of date of issue
19 Aug 2010

Part 2 - Marriage Applicant (Form 4)

Information about the applicant

7. Last legal name before this marriage
Banks

8. First and middle names
Andrew Mason

9. Marital status: never married widowed divorced

10. If divorced in Canada, please provide the court file number.

11. Religious denomination
Jewish

12. Age
29

13. Date of birth (day)
[redacted] 1981

14. Province where applicant was born (if outside Canada, state the country)
USA

15. Father's name (last, first)
Banks, James Howard

16. Province where the applicant's father was born (if outside Canada, state the country)
Ontario

17. Province where the applicant's mother was born (if outside Canada, state the country)
Ontario

18. Name in full of applicant
Andrew Mason Banks

Information about the joint applicant

24. Last legal name before this marriage
Dresh

25. First and middle names
Elad

26. Marital status: never married widowed divorced

27. If divorced in Canada, please provide the court file number.

28. Religious denomination
Jewish

29. Age
25

30. Date of birth (day)
[redacted] 1985

31. Province where joint applicant was born (if outside Canada, state the country)
Israel

32. Father's name (last, first)
Dresh, Mordelav

33. Province where the joint applicant's father was born (if outside Canada, state the country)
Israel

34. Province where the joint applicant's mother was born (if outside Canada, state the country)
Israel

35. Name in full of joint applicant
Elad Dresh

I make oath and any affirm as follows: That I believe there is no affinity, consanguinity, prior marriage (or other lawful cause or legal impediment to her or him) or the solemnization of the marriage, and that the contents set forth herein are to the best of my knowledge, information and belief, true in every particular.

Witnessed before me at City of Toronto in the Province (city or town) of Ontario this 19th day of August 2010.

Signature of officiant issuer: [Signature]

Signature of applicant: [Signature]

Signature of joint applicant: [Signature]

19. Present address of applicant (street number and name)
[redacted] Avenue

20. City or town
Toronto

21. Province
ON

22. Postal code
M4S 2B4

23. Telephone number
1-510-400-3668

36. Present address of joint applicant (street number and name)
[redacted] Street

37. City or town
Givatayim, Israel

38. Province
Israel

39. Postal code
53482

40. Telephone number
1-723-573-2339

Part 3 - Statement of witnesses - to be completed following the marriage ceremony (Form 2)

42. Place of marriage (name the city or town and the county, regional municipality or district)
TORONTO DISTRICT

43. Date of marriage (day)
19 AUGUST 2010

44. Signature of applicant
[Signature]

45. Signature of joint applicant
[Signature]

46. Signature of witness
[Signature]

47. Signature of witness
[Signature]

By signing below, I certify that the marriage of the parties named in this marriage licence was performed on the date and at the place indicated above.

48. Signature of person who performed marriage
X BONKALO, ANDREW KAIKA

49. Date (day)
19 AUGUST 2010

48. Name of person who performed marriage (last, first, middle)
BONKALO, ANDREW KAIKA

49. Your status: Clergy Judge Justice of the peace Other

50. Address of person who performed marriage
ONE QUEEN ST. EAST STE 2300, BOX 91, TORONTO ON

51. Telephone number
416-597-5824

52. Your registration number
J 2492

53. Your denomination (if any)

A True Copy of the Signed Original.

For use of the Registrar General only:
I am satisfied to the content of this statement and register this marriage
Signature: A. J. Leonard Date (day): **AUG 25 2010**

Personal information contained in this form is collected under the authority of the Marriage Act, R.S.O. 1990, c.363 and will be used to determine whether to issue the marriage licence, to register the marriage, provide certified copies, extracts, certificates, search notices, photocopies and for statistical, research, medical, law enforcement, coronial and education disclosure purposes. Questions about this collection should be directed to the Deputy Registrar General at PO Box 4600, 156 West Beaver Road, Thornhill, Ont. M7B 6L4. Telephone: 1-800-461-0138 or 416-529-9000.

TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

Judith M Hartman

Judith M. Hartman
Deputy Registrar General
Registraire générale adjointe
de l'état civil

11105(10/00)

---CERTIFIED COPY---
NOT VALID WITHOUT ALL PAGES





ONTARIO
Superior Court of Justice
(Name of Court)
at 393 University Avenue, Toronto, Ontario M5G 1E6
(Court office address)

Court File Number
FS-16-21123
Form 25: Order (General)
 Temporary
 Final

Applicant(s)

(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).)

Elad Dvash-Banks and
Andrew Dvash-Banks
[REDACTED] Avenue, Unit [REDACTED]
Toronto, Ontario
M6B 4C6

Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).

Michelle Flowerday
Flowerday Law | Fertility & Family
158 McRae Drive
Toronto, Ontario M4G 1S7
T: 416.428.5511
F: 647.341.5111
E: michelle@flowerdaylaw.ca

The Honourable
Harrison Young J.
Judge *(Print or type name)*
September 28, 2016
Date of order

Respondent(s)

(Full legal name & address for service: street, number, municipality, postal code telephone & fax numbers & e-mail address (if any).)

Amanda Marie Anne Adams
[REDACTED] Avenue, Unit [REDACTED]
Mississauga, Ontario
L5A 2K7

Lawyer's name & address: street, number, municipality, postal code, telephone & fax numbers & e-mail address (if any).

Deputy Registrar General for the
Province of Ontario
Ministry of the Attorney General
Legal Services Branch
77 Wellesley Street West
Ferguson Block, 6th Floor
Toronto, Ontario M7A 1N3

The court read an application/motion made by *(name of person or persons)*

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

The following persons were in court *(names of parties and lawyers in court)*

Michelle Flowerday, Counsel for the Applicants

The court received evidence and heard submissions on behalf of *(name or names)*

The Applicants, Elad Dvash-Banks and Andrew Dvash-Banks

Under the *Children's Law Reform Act*, Section 4(1), (2) and (3), and the *Courts of Justice Act*, Section 97,

1. It is declared that the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, are the parents of the child, E [REDACTED] J [REDACTED] D [REDACTED] -B [REDACTED] born September 16, 2016 ("the child"), and that the Applicants are recognized for all purposes in law to be the parents of the child.
2. It is declared that the Respondent, Amanda Marie Anne Adams, is not the mother of the child.

A True Copy of the
Signed Original.

TERRI N. DAY
VICE CONSUL OF THE
UNITED STATES OF AMERICA

Under the *Vital Statistics Act*,

- 3. The Deputy Registrar General for the Province of Ontario is directed to register the birth of the child so as to show the Applicants, Elad Dvash-Banks and Andrew Dvash-Banks, as the parents of the child.

~~Under the *Consolidated Provincial Practice Direction of the Ontario Superior Court of Justice*, Section F, Paragraphs 106 and 107,~~

- ~~4. Service and filing of a notice of motion or application with respect to the relief granted under paragraphs 6, 7 and 8 of this Order are dispensed with.~~
- ~~5. Notice to the media with respect to the relief granted under paragraphs 6, 7 and 8 of this Order is dispensed with.~~


Under the *Courts of Justice Act*, Section 137(2),

- 6. The Registrar of the Ontario Superior Court of Justice is directed to seal and treat as confidential all documents filed in this proceeding.
- 7. No person shall publish or make public information that has the effect of identifying either Applicant or the other persons identified in the materials filed in this proceeding.
- 8. The name of this proceeding shall be amended to show only the initials of the parties and the Registrar of the Ontario Superior Court of Justice is directed to amend the records accordingly.
- 9. The Deputy Registrar General for the Province of Ontario is directed to seal and treat as confidential the Notice of Live Birth and all other records in its possession in connection with this case, including this Order, save and except for Form 2 (Statement of Live Birth) and the Birth Certificate.

Put a line through any blank space left on this page.

Sept 28, 2016
Date of signature

Harrison Young J
Signature of judge or clerk of the court


TERRI N. DAY
 VICE CONSUL OF THE
 UNITED STATES OF AMERICA

SUPERIOR COURT OF JUSTICE
 COUR SUPERIEURE DE JUSTICE
 ENTERED / ENTRE
 SEP 28 2016
 per/par *Justin DiGirolamo*
 LOCAL REGISTRAR / GREFFIER LOCAL

Case No. 2:18-cv-00523-JFW-JCx (C.D. Cal.) - Administrative Record - AR 022

CONFIDENTIAL AGREEMENT

THIS IS AN AGREEMENT made on this 21ST day of December, 2015

AMONG:

ANDREW DVASH-BANKS

(herein called "Andrew")

-and-

ELAD DVASH-BANKS

(herein called "Elad")

-and-

AMANDA MARIE ANNE ADAMS

(herein called the "Gestational Carrier")

PART I
BACKGROUND

1.1 Andrew and Elad (collectively called the "Intended Parents") are a same-sex married couple who require assisted reproductive technology to have a child.

1.2 The Intended Parents intend to conceive a Child by Transferring Ova supplied by a third party anonymous donor fertilized by Sperm supplied by Andrew and/or Elad to the Gestational Carrier.


1.3 The Gestational Carrier intends to act as the gestational carrier for the Child and to carry the Child until it is born. The Gestational Carrier has offered to carry the Child on an altruistic basis, and only those out of pocket expenses related to the surrogacy shall be reimbursed to her. The Gestational Carrier has ONE (1) child of her own and is not currently in a relationship of permanence.

1.4 Ova retrieved from the third party anonymous donor and Sperm supplied by Andrew and/or Elad will be incubated externally. Fertilization may occur during this incubation period when a Sperm penetrates the cell wall of an ovum and their nuclei join together creating a single cell fertilized ovum which develops into an embryo.

1.5 Unless in her sole discretion the Gestational Carrier agrees at the time to the insertion of a greater number of Embryos, a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier during each in vitro fertilization cycle.

A True Copy of the
Signed Original.


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1.6 The Intended Parents and the Gestational Carrier know that more than one child may result from this procedure and, if more than one child is born, "Child" in this Agreement, will mean "Children".

1.7 The Gestational Carrier believes that it would be in the best interests of the Child for the Child to be in the custody of the Intended Parents immediately upon Birth, and the Gestational Carrier hereby expresses her intention to waive all parental rights which she may have to any Child.

1.8 The Intended Parents will be recognized as the Child's parents immediately upon the Child's Birth.

1.9 The Intended Parents intend to assume full care of, and all parental responsibility for the Child, and the Gestational Carrier intends to allow the Intended Parents to assume this care and responsibility without reserving any care or responsibility to herself.

1.10 Immediately upon the Birth of the Child, the Gestational Carrier will give the Child into the permanent custody of the Intended Parents and as soon as reasonably possible thereafter the Intended Parents will make an application in the Ontario Superior Court of Justice seeking a declaration of parentage on their part, and a declaration of non-parentage on the part of the Gestational Carrier.

1.11 All Parties to this Agreement wish to maintain confidentiality between themselves, one to another, and between themselves and the public.

1.12 It is expressly understood that this Agreement is not intended in any way to represent a contract regarding payment in exchange for a child, or for the relinquishment of a child, and that the Parties acknowledge that no consideration has been offered to or accepted by the Gestational Carrier which would induce her to act as a surrogate.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and promises contained in this Agreement and with the intention of being fully bound by its terms, the Parties do hereby covenant and agree as follows.

PART II DEFINITIONS

Where used in this, unless the context otherwise requires, the following terms will have the following meanings:

- (a) **"Attending Physician"** means the physician or licensed midwife attending to the maternal care of the Gestational Carrier and attending at the Birth of the Child, as may be agreed to in writing by the Parties;
- (b) **"Birth"** means "birth" as defined in s. 1 of the *Vital Statistics Act* of Ontario, and includes a "Full Term Still-Birth" unless otherwise stated;


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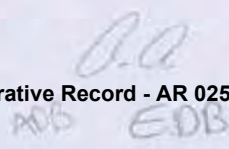
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- (c) **"Child"** means the child conceived by I.V.F. (defined below) as described in this Agreement and if there are multiple births means the children conceived by the procedure contemplated in this Agreement;
- (d) **"Clinic"** means The Toronto Institute for Reproductive Medicine, 56 Aberfoyle Crescent, Unit 300, Toronto, Ontario M8X 2W4;
- (e) **"Early Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception before the beginning of the twelfth (12th) week of gestation;
- (f) **"Embryo" or "Fertilized Ova" or "Fertilized Ovum"** means the product of I.V.F. (hereinafter defined). For clarification, Fertilized Ova may result from Sperm supplied by Andrew and Elad with the potential of the Gestational Carrier becoming Pregnant with Fetuses that are genetically connected to each of Andrew and Elad;
- (g) **"Fetus"** means the Embryo from the moment of the completion of the Transfer until the moment of Birth;
- (h) **"Full Term Still-Birth"** means a still-birth which occurs during or after the 36th week of gestation;
- (i) **"Guardians"** means Tova and Mordehay Dvash;
- (j) **"Hospital"** means Trillium Health Partners;
- (k) **"Intended Parents"** means ANDREW DVASH-BANKS and ELAD DVASH-BANKS;
- (l) **"Gestational Carrier"** means AMANDA MARIE ANNE ADAMS;
- (m) **"I.V.F."** means in vitro fertilization and embryo transfer which is a medical procedure whereby ova are inseminated with sperm and allowed to incubate so that fertilization occurs by a sperm penetrating the cell wall of an ovum and their nuclei joining together to create a single cell fertilized ovum. Several fertilized ova usually result from a single in vitro fertilization and after the single cell fertilized ova have started to divide to form an embryo, some will be Transferred into the uterus of the Gestational Carrier and some may be frozen for Transfer at a later date. The Embryo or Embryos that are Transferred pursuant to this may be from an Embryo or Embryos that have been incubated previously and frozen;
- (n) **"Miscarriage"** means the complete expulsion or extraction from the Gestational Carrier of a product of conception between the twelfth (12th) and twentieth (20th) week of gestation. Miscarriage in this Agreement does not include an Early Miscarriage;

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- (o) "Ova" means the sex cells of a third party donor;
- (p) "Parties" means the parties to this Agreement, being ANDREW DVASH-BANKS, ELAD DVASH-BANKS, and AMANDA MARIE ANNE ADAMS, and "Party" means any one of the Parties individually;
- (q) "Pregnancy" means the medical condition that occurs when the Fertilized Ovum or Embryo, resulting from the third party anonymous Ova and the Sperm of Andrew and/or Elad, has been transferred to the Gestational Carrier and successfully implants, resulting in a pregnancy being diagnosed based on blood test results and does not include a chemical pregnancy;
- (r) "Requested Termination" means: (i) a termination of the Pregnancy with the consent of or at the request of the Intended Parents; or (ii) a termination of the Pregnancy performed in accordance with the recommendation of the Transfer Physician and/or the Attending Physician because the Pregnancy poses a serious risk to the health or life of the Gestational Carrier;
- (s) "Special Expense Amount" means the amount reimbursable under the section called SPECIAL EXPENSE AMOUNT, below;
- (t) "Sperm" means the sex cells of Andrew and/or Elad;
- (u) "Still-Birth" means "still-birth" as defined in s. 1 of the *Vital Statistics Act of Ontario* and does not include a Full Term Still-Birth unless otherwise stated;
- (v) "Term of this Agreement" means, subject to Section 25.1, the period commencing on the date of execution of this Agreement by the last Party to do so, and ending on the day which is the earlier of: (i) the date of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child;
- (w) "Transfer" and "Transferred" mean the manual deposit of one or more Fertilized Ovum or Embryo into the uterus of the Gestational Carrier; and
- (x) "Transfer Physician" means Dr. Alfonso Del Valle or, in the event that Dr. Del Valle is not available, another physician in the Clinic, as may be agreed to by the Parties.

PART III PSYCHOLOGICAL ASSESSMENTS

3.1 The Gestational Carrier acknowledges that prior to the execution of this Agreement, she was assessed by a counsellor at the Clinic (the "Counsellor"), who determined that she is fit to undertake the obligation to carry the Child during a Pregnancy, and that she is willing to relinquish the Child on Birth to the Intended Parents and is competent to enter into this

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Agreement. The Gestational Carrier further acknowledges that for the purposes of this Agreement only, she has made an exception to the privilege of confidentiality to allow the Counsellor to advise the Intended Parents whether or not she is psychologically fit to fulfill the obligations she has assumed under this Agreement, and has consented, and does hereby confirm the consent to the release to the Intended Parents of such information only.

3.2 The Intended Parents acknowledge receipt of the advice of the Counsellor about the assessment of the Gestational Carrier, and acknowledge that they are satisfied with the assessment and that they accept the findings and conclusions.

PART IV ACKNOWLEDGEMENTS AND UNDERTAKINGS

4.1 Each Party acknowledges that the recitals are accurate, binding and form part of this Agreement.

4.2 Each Party acknowledges that he or she is fully informed about the I.V.F., egg retrieval and Transfer procedure and each understands the medical and legal issues involved.

4.3 In particular, the Gestational Carrier acknowledges that she has been informed by a physician specializing in fertility procedures of the risks to the Gestational Carrier involved in preparing her to receive the Transfer, the Transfer procedure itself, the Pregnancy and the Birth which may result, including the possibility of multiple births (or, alternatively, any termination or reduction of the Pregnancy) and further acknowledges that she understands these risks and releases the Intended Parents with respect to all such risks including, without limitation, the health of the Ova and any Embryos created with the Ova, which are transferred to the Gestational Carrier.

4.4 During the Term of this Agreement, each of the Parties agrees to inform each other forthwith, in writing, of any material change in their circumstances which may reasonably affect their performance of this Agreement in accordance with its terms. These changes include, but are not limited to, change in marital status, change of mailing address or email address, illness or death of a Party, loss of employment, changes in insurance coverage and exposure to communicable illness or any risk to health.

PART V MEDICAL EXAMINATIONS

5.1 Within a reasonable period prior to undertaking any medical procedure contemplated by this Agreement, the Gestational Carrier and the Intended Parents will undergo a thorough consultation and evaluation by the Transfer Physician, to determine whether the Gestational Carrier is physically healthy and capable of conceiving and carrying a Child to Birth and to determine whether the Intended Parents are fit to proceed with the procedures contemplated by this Agreement. The evaluation of all Parties will include testing for transmittable diseases, including, but not limited to, Hepatitis B and C and HIV in order to

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protect the health of the Gestational Carrier and the Child.

5.2 The Gestational Carrier warrants and represents that she has disclosed her full medical history to the Transfer Physician and has advised the Transfer Physician of any medications which she is currently taking.

5.3 The Gestational Carrier and the Intended Parents will undergo any medical testing that the Transfer Physician and/or the Attending Physician deem necessary, within the time frame specified by the referring physician, acting reasonably, during the Term of this Agreement, at the expense of the Intended Parents.

5.4 Each Party, for the purposes of this Agreement only, has made or hereby makes an exception to the privilege of confidentiality to allow information to be given to the other Parties and their solicitors, and has consented or hereby consents, to the release of the reports, test results, and all relevant information obtained in the examination or examinations and tests to each of the other Parties, or any one or more of them.

PART VI COUNSELLING PROGRAM AND MEDIATION

6.1 The Gestational Carrier acknowledges that she may choose to participate in a counselling program, or, she may choose to meet with a counsellor as required at any time during the Term of the Agreement. Any costs of this program will be included in the Special Expense Amount. Each Party for the purposes of this Agreement has made or hereby makes an exception to the privilege of confidentiality to allow information derived in counselling sessions to be given to the other Parties and their solicitors, and has consented or hereby consents to the release of relevant information pertaining to the wellbeing of the Pregnancy and obtained in the counselling sessions.

PART VII SEXUAL ABSTINENCE

7.1 During the time period set out in this Agreement, the Gestational Carrier will not engage in any sexual activity whereby semen could cause her to conceive a child, or risk the health of the unborn Child. To this end, she will abstain from sexual intercourse completely for a continuous period commencing TWO (2) weeks before each Transfer and ending on the earlier of: (i) confirmation by the Transfer Physician that a Pregnancy has not been initiated; or (ii) the date on which the first ultrasound examination after each Transfer has been performed, unless the Transfer Physician recommends a longer period of abstinence.

7.2 The Intended Parents acknowledge that the Gestational Carrier is single. The Gestational Carrier agrees that she will provide notice to the Intended Parents if that status changes, and further agrees as follows:

- (a) Prior to commencing a sexual relationship with a new partner, the Gestational Carrier covenants and agrees that she will ensure that such

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individual undergoes testing for transmittable diseases, and further agrees not to engage in a sexual relationship with such new partner until the testing confirms that he does not have any transmittable diseases;

- (b) At all times during the Term of this Agreement, the Gestational Carrier shall engage only in safe sexual practices in order to protect herself and the Fetus from infection by the HIV virus or any venereal or other transmittable disease and agrees not to engage in sexual intercourse unless her partner uses a condom; and
- (c) If, during the Term of this Agreement, the Gestational Carrier becomes involved in a common law relationship, or becomes married, the Gestational Carrier agrees that she will ensure that her spouse signs an amending agreement pursuant to which he acknowledges that: (i) he is not the Child's father; (ii) he will release the Intended Parents from any claims he may have; (iii) he will co-operate with respect to any post-birth process confirming the parentage of the Intended Parents; and (iv) he will abide by the provisions of this Agreement including the requirement to refrain from sexual activity with a third party outside of his monogamous relationship with the Gestational Carrier.

7.3 At all times during the Term of this Agreement, the Intended Parents will not engage in any sexual activity with a third party outside of their marital relationship to protect themselves, the Gestational Carrier and the Child from infection by the HIV virus or any venereal or other transmittable disease.

PART VIII TRANSFERS

8.1 The Gestational Carrier will hold herself available to receive Transfers under this Agreement to be scheduled at mutually convenient times for up to TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so, and will not perform any act or any thing which would interfere with the proper performance of her obligations under this Agreement.

8.2 The Gestational Carrier will accept a Transfer implanted by the Transfer Physician at the Clinic on as many as FOUR (4) separate occasions, including Transfers of frozen Embryos, if any, at times recommended by the Transfer Physician and approved by the Parties in order to achieve a Pregnancy subject to all Transfers being completed within TWELVE (12) months from the date of the execution of this Agreement by the last Party to do so and thereafter the Gestational Carrier will have no obligation to accept any Transfer.

8.3 Unless the Parties mutually agree to a greater number of Embryos, on each Transfer a maximum of TWO (2) Embryos will be medically inserted in the uterus of the Gestational Carrier.

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8.4 The Gestational Carrier will follow all medical instructions prescribed by the Transfer Physician prior to a Pregnancy and during the first trimester of a Pregnancy. The Gestational Carrier will continue to follow the protocol prescribed by the Transfer Physician, which will include stimulating the Gestational Carrier so that her uterine lining is prepared for the Transfer of Embryos. The Gestational Carrier will undergo all necessary testing (including blood testing and ultrasound testing) to determine the readiness of the Gestational Carrier's uterus for the Transfer of Embryos.

8.5 If a Pregnancy does not result after FOUR (4) Transfers (including Transfers of frozen Embryos) then this Agreement may be terminated by any Party giving notice in the manner prescribed by the section called NOTICE, below, to all other Parties at any time before a Pregnancy has occurred and, upon delivery of such notice, this Agreement will terminate and the Intended Parents and the Gestational Carrier will be released from all obligations under it, except the obligation to reimburse the Gestational Carrier's allowable expenses pursuant to the section called SPECIAL EXPENSES, below, which have been incurred to the time of the termination. If no such notice of termination is given, this Agreement will remain in full force and effect until a notice of termination is given.

8.6 Notwithstanding anything contained in this Agreement, the Intended Parents or the Gestational Carrier may terminate this Agreement at any time after the first Transfer upon giving notice to the other Party, if a Pregnancy has not resulted from the Transfer. Upon such a termination the Intended Parents and the Gestational Carrier will be released from all obligations under this Agreement, except for the obligation to reimburse the Gestational Carrier for any expense incurred to the time of termination and payable under the section called SPECIAL EXPENSES, below.

8.7 If a Transfer results in a Pregnancy, the Gestational Carrier will use her best efforts to carry the Fetus to term. The Gestational Carrier will give Birth to the Child at the Hospital or such other hospital as may be agreed to in writing by the Parties.

8.8 The Gestational Carrier agrees to provide the Intended Parents with a weekly update with respect to the Pregnancy, and such update may be by email, Skype or telephone as agreed to by the Parties.

8.9 The Gestational Carrier agrees that either or both of the Intended Parents may accompany her to any obstetrical appointment, or pre-natal test or procedure. The Gestational Carrier further consents to the presence of the Intended Parents in the delivery room at the time of the Birth of the Child. In the event that the Hospital limits the number of visitors that may be present at the Birth of the Child, the Intended Parents acknowledge and agree that the Gestational Carrier shall be entitled to select one such visitor. The Gestational Carrier agrees to contact the Intended Parents at the first indication that labour has begun.

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**PART IX
PRENATAL OBLIGATIONS**

- 9.1 The Gestational Carrier warrants and represents that:
- (a) she has never abused alcohol or drugs;
 - (b) she has never taken any drugs, whether legal or illegal, which may impact upon the success of a Pregnancy contemplated by this Agreement and the Birth of a healthy Child;
 - (c) she is not now using, and has not in the TWELVE (12) months previous to the date of this Agreement, used an illegal drug;
 - (d) she will not, during the Term of the Agreement, use any illegal drugs; and
 - (e) she has never been charged with a criminal offence.
- 9.2 The Gestational Carrier warrants and represents that she will strictly comply with all of her obligations set out in the following paragraphs:
- 9.3 The Gestational Carrier will follow all medical advice given by the Transfer Physician and the Attending Physician, and will undergo all medical procedures that either of them require to ensure that her obligations under this Agreement are safely and successfully performed for both the Gestational Carrier and the Child. Without limiting the generality of the foregoing, if the Attending Physician determines that a Caesarean Birth is advisable for the health and safety of either the Gestational Carrier or the Child, then the Gestational Carrier hereby consents to such procedure. The Gestational Carrier further consents to submit to amniocentesis and all other tests recommended by the Transfer Physician and the Attending Physician and those tests requested by the Intended Parents on the advice of the Transfer Physician, should she become Pregnant pursuant to the terms of this Agreement.
- 9.4 The Gestational Carrier will follow a prenatal medical examination schedule and prenatal procedures prescribed by the Transfer Physician and/or the Attending Physician who will be responsible for the Gestational Carrier's medical care during the prenatal period. If a medical illness or condition is suspected or diagnosed during the Pregnancy, the Gestational Carrier agrees that she will seek medical attention, and will follow all medical instructions and course of treatment as prescribed.
- 9.5 The Gestational Carrier covenants and agrees to have the integrated pre-natal screen (IPS), parts one and two:
- (a) at approximately 12 weeks, Part 1 of the IPS, which consists of a nuchal translucency ultrasound and associated maternal bloodwork; and
 - (b) at approximately 16 weeks, Part 2 of the IPS, which consists of the appropriate

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maternal blood tests.

The results of the IPS will be forwarded to the Attending Physician.

9.6

- (a) The Gestational Carrier warrants that she does not smoke and will not smoke, or expose herself or allow herself to be exposed to second-hand smoke, for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (b) The Gestational Carrier warrants that she will not drink alcoholic beverages for the length of time commencing THIRTY (30) days prior to each Transfer and throughout any ensuing Pregnancy.
- (c) The Gestational Carrier further warrants that she will maintain a proper diet and exercise regime as recommended by the Transfer Physician and/or the Attending Physician. All costs incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 9.6(c) shall, subject to the cap on the Special Expense Amount, be included in the Special Expenses.

9.7 The Gestational Carrier will obtain adequate prenatal medical care including, without limitation, the care contemplated by this Part IX in order to enhance the success of the Pregnancy and the Birth of a healthy Child.

9.8 The Gestational Carrier covenants and agrees that during the Term of this Agreement she will not:

- (b) not ingest, inhale, inject or absorb any drugs, pharmaceutical or herbal substances including, without limitation, over the counter medication, not prescribed or approved, in writing, by the Transfer Physician or the Attending Physician (with the exception of Tylenol consumed at or below the recommended dosage for pregnant women). If the Transfer Physician approves any such medications, the Gestational Carrier agrees to follow the instructions of the Transfer Physician and/or Attending Physician with respect to dosage of substances or medication;
- (c) not have any part of her body pierced or tattooed;
- (d) use her best efforts to avoid all exposure to radiation or toxic chemicals; and
- (e) avoid any potentially hazardous situations or activities that a reasonable person would conclude are likely to result in harm to herself or the Fetus.

9.9 Failure to comply with this Part IX will constitute a material breach of the Gestational Carrier's obligations under this Agreement.

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9.10

- (a) After the Gestational Carrier becomes Pregnant with the Child, the Gestational Carrier and the Intended Parents will keep each other reasonably informed of their whereabouts.
- (b) From and after the first day of the 24th week of the Pregnancy, the Gestational Carrier may only travel outside of Canada: (i) in the event of a severe illness or death in her immediate family; (ii) if she has obtained the prior written consent of the Intended Parents, which shall not be unreasonably withheld; (iii) if she has the prior approval of the Attending Physician; and (iii) if she has a policy of travel health insurance covering her health care costs, the Birth of the Child and the Child's health care costs, which is in place prior to departure and for the duration of the travel.
- (c) From and after the first day of the 24th week of the Pregnancy, the Gestational Carrier shall not travel to or visit the Provinces of Quebec, Saskatchewan, New Brunswick and/or Prince Edward Island.
- (d) From and after the first day of the 28th week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel by airplane.
- (e) From and after the first day of the 34th week of the Pregnancy, the Gestational Carrier warrants and represents that she shall not travel more than a FORTY (40) minute drive from a hospital.

9.11 The Gestational Carrier will and hereby consents to the Transfer Physician and the Attending Physician keeping the Intended Parents informed at all material times of whether a Transfer has resulted in a Pregnancy, the progress of the Pregnancy, the results of all tests and any recommendations arising from test results, including all information relevant to the health of the Gestational Carrier and the Fetus, and the expected date of Birth. The Gestational Carrier will give the Attending Physician any further consent, authority or directions necessary to comply with this obligation to keep the Intended Parents so informed.

9.12 The Gestational Carrier hereby gives her consent, and will sign any medical consent forms to allow the Transfer Physician, the Attending Physician or any other doctor or hospital agreed to by the Parties to treat her as may be required in respect of the Pregnancy.

**PART X
CONDITION PRECEDENT**

10.1 The Parties each acknowledge that a finding by medical testing that either Andrew or Elad is a genetic parent of the Child is a condition precedent to the performance of the Intended Parents' obligations under this Agreement. For the purposes of determining the parentage of the Child, immediately after the Birth, the Intended Parents and the Gestational Carrier will submit to a DNA test and each Party consents to the immediate testing of the DNA

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of the Child.

10.2 A finding that neither Intended Parent is a genetic parent of the Child will constitute a material breach of this Agreement unless the parentage is due to a clinical or physician's error in the fertilization or Transfer procedure. If there is a finding that neither Intended Parent is a genetic parent of the Child, and the same degree of testing confirms that the Gestational Carrier is not the genetic mother of the Child, a clinical or physician's error in the fertilization or Transfer procedure shall be deemed to have occurred and the Intended Parents shall assume responsibility for the Child as if it were their own.

10.3 If the Gestational Carrier is the genetic mother of the Child, the Gestational Carrier will refund, within THIRTY (30) days of the request, any Special Expense Amount paid on her behalf, or reimbursed to her, and will forego the reimbursement of any further allowable Special Expense Amount that would otherwise be, or become, reimbursable to her and the Intended Parents shall not be obliged to accept any responsibilities, social, legal or custodial, toward the Child, without prejudice to any of the rights that the Intended Parents are entitled to claim under this Agreement.

PART XI WARRANTIES AND ACKNOWLEDGEMENTS

11.1 The Gestational Carrier warrants that, to the best of her knowledge, she is physically capable of carrying the Fetus to term and is capable of carrying and bearing healthy, normal children.

11.2 The Gestational Carrier warrants that, to the best of her knowledge, she has no transmittable disease and will submit to tests, including tests for the presence of HIV and Hepatitis B and C.


11.3 Andrew and Elad each warrant that, to the best of their knowledge, neither has a transmittable disease and each will submit to tests, including tests for the presence of HIV and Hepatitis B and C.

11.4 The Gestational Carrier acknowledges that it will be in the best interests of the Child for the Child to be placed in the custody of the Intended Parents immediately upon the Birth of the Child and for the Gestational Carrier to forever waive all parental and other rights in and to the Child that she has or may acquire in the future immediately upon the Birth of the Child.

PART XII EARLY TERMINATION OF PREGNANCY

12.1 The Parties acknowledge that the Gestational Carrier has the right to have the Pregnancy terminated at any time she and either the Transfer Physician or the Attending Physician, in their absolute discretion, determine the Pregnancy should be terminated. However, the Gestational Carrier has assured the Intended Parents that it is not her intention to have an

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abortion, unless the Intended Parents request that she does so in the circumstances set out below. The Gestational Carrier has further assured the Intended Parents that she will proceed with a Requested Termination at a time and place recommended by the Transfer Physician and/or Attending Physician if: (i) a test reveals that the Child is likely to have a serious genetic or congenital abnormality or defect; (ii) the Transfer Physician or the Attending Physician so recommends in writing; and (iii) the Intended Parents so request in writing. All costs incurred in connection with and directly related to the Requested Termination shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

12.2 In the interests of clarity, the Parties agree that any request to terminate the Pregnancy shall be in writing and signed by each of the Intended Parents.

12.3 The Gestational Carrier states that she does not intend to exercise her right to abortion:

- (a) except as set out in this Part XII, or
- (b) unless in the opinion of the Transfer Physician and/or the Attending Physician, terminating the Pregnancy is necessary to protect the Gestational Carrier's health or life, in which case the consent of the Intended Parents is not required.

12.4

- (a) The Gestational Carrier will undergo ultrasound, chorionic villus sampling, IPS, amniocentesis and similar tests and procedures to detect genetic and congenital abnormalities or defects in the Fetus, as recommended by the Transfer Physician and/or the Attending Physician.
- (b) The Intended Parents acknowledge the risks to the Pregnancy associated with any invasive testing and, provided that the Gestational Carrier is not otherwise in material breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from any invasive testing performed at the request of or with the consent of the Intended Parents.

12.5 The tests will be performed or interpreted by the Transfer Physician, the Attending Physician, a physician or a technician recommended by either or both of them that is satisfactory to the Parties to this Agreement.

12.6

- (a) If the Gestational Carrier is carrying a single Fetus and tests indicate that the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or if the Gestational Carrier is carrying a multiple pregnancy and the tests indicate that each Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, then the Intended Parents may, in accordance with Section 12.1, inform the Gestational Carrier that it is their wish that the Pregnancy be

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terminated. The Gestational Carrier, in consultation with the Transfer Physician or Attending Physician, will follow the instructions of the Intended Parents to terminate the Pregnancy.

- (b) If the Gestational Carrier is carrying a multiple Pregnancy and the medical tests indicate that only one Fetus has or is likely to have, a serious genetic or congenital abnormality or defect, the Intended Parents may inform the Gestational Carrier that it is their wish that the Gestational Carrier undergo a selective reduction procedure and the provisions of Section 13.1 shall apply.

12.7 If the Gestational Carrier:

- (a) terminates the Pregnancy or undergoes a selective reduction procedure without the prior written approval of the Intended Parents where prior consent is required; or
- (b) refuses to terminate the Pregnancy, or to take all steps within her control to undergo a selective reduction procedure if requested to do so, within TWENTY (20) days of receiving notice of the Intended Parents' wish to have the Pregnancy terminated because the Fetus has, or is likely to have, a serious genetic or congenital abnormality or defect, or the multiple pregnancy poses a risk to the health or life of the remaining fetus(es) or the Gestational Carrier,

then the Gestational Carrier will be in material breach under this Agreement, and the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses incurred after the date of the termination or selective reduction in the event of Section 12.7(a), or the date of notice in the event of Section 12.7(b), and the Gestational Carrier will refund to the Intended Parents all amounts already reimbursed to her pursuant to the terms of this Agreement.

12.8 Subject to Section 12.1, if the Gestational Carrier refuses to terminate the Pregnancy or undergo a selective reduction procedure at the request of the Intended Parents and the Child is born with or without the serious genetic or congenital abnormality or defect detected or suspected from the tests referred to above, the Gestational Carrier will give the Child into the custody of the Intended Parents as provided in this Agreement and no expenses of the Gestational Carrier will be reimbursed after the date on which notice requesting termination or selective reduction was received, but all other terms of this Agreement will continue in full force and effect including, without limitation, the Intended Parents' obligation to take custody of and support the Child.

12.9 If the tests for congenital and genetic defects and abnormalities do not reveal any defects or abnormalities, but the Child is born with defects or abnormalities which do not result from the gross negligence of the Gestational Carrier, the Gestational Carrier will place the Child in the custody of the Intended Parents as provided in this Agreement and all other terms and obligations will remain in effect, including those in Section 26.

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**PART XIII
SELECTIVE REDUCTION**

13.1 If:

- (a) the Transfer of Embryos contemplated by this Agreement results in the Gestational Carrier becoming pregnant with THREE (3) or more Children; or
- (b) the Gestational Carrier is carrying a multiple pregnancy and the test(s) indicate that one or more Fetus has, or is likely to have a serious genetic or congenital abnormality or defect, but at least one Fetus does not have any genetic or congenital abnormality or defect; or
- (c) in the opinion of the Transfer Physician and/or the Attending Physician, the multiple Pregnancy poses a risk to the Gestational Carrier's health or to one or more Fetus;

then if the Intended Parents so request under Section 13.1(b) or upon recommendation of the Transfer Physician and/or the Attending Physician under Section 13.1(a) or (c), the Gestational Carrier will undergo a procedure in any location specified by the Attending Physician within Canada to selectively reduce the number of Fetuses to twins or a single Fetus, as the case may be. If requested by the Intended Parents, the procedure will take place at the time and in a manner determined to be medically appropriate by the Attending Physician. The Gestational Carrier acknowledges and agrees that she will not undergo a selective reduction procedure if she is carrying two Fetuses without the consent in writing of the Intended Parents, unless the Attending Physician is of the opinion that such procedure is necessary to avoid a serious risk to the health of the Gestational Carrier or to the remaining Fetus or Fetuses. All costs incurred in connection with and directly related to the selective reduction procedure shall be borne by the Intended Parents and shall not form part of the Special Expense Amount.

13.2 The Intended Parents acknowledge the risks to the Pregnancy associated with a selective reduction procedure and, provided that the Gestational Carrier is not otherwise in breach of her obligations hereunder, hereby release the Gestational Carrier from all liability, losses, costs and expenses arising from a selective reduction procedure performed at the request of or with the consent of the Intended Parents.

13.3 In the interests of clarity, any request to selectively reduce the Pregnancy shall be in writing and signed by each of the Intended Parents.

**PART XIV
CUSTODY OF CHILD AND PARENTAL RIGHTS**

14.1 The Gestational Carrier has met or spoken with the Intended Parents and believes that the Intended Parents will be loving and caring parents to any Child born pursuant to this Agreement. She acknowledges that it is in the best interests of the Child that the Intended Parents have sole and exclusive custody and assume the legal and social parental responsibilities

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for the Child, immediately upon Birth. For the purposes of this Agreement, "immediately upon birth" means as soon as the umbilical cord is cut.

14.2 The Gestational Carrier acknowledges that the Intended Parents will show the surname and the given names of the Child to be the names chosen by the Intended Parents on any form required on the Birth of the Child.

14.3 The Gestational Carrier will, at the request of the Intended Parents, participate in any legal proceeding or application supporting the Intended Parents' custody and parentage of the Child and will facilitate proof by affidavit or by giving evidence in person of all material facts within their knowledge and will attend at any and all court hearings, as required either prior to or after the Birth of the Child, until the proceeding or application is finally disposed of. All expenses incurred by the Gestational Carrier in fulfilling her obligations pursuant to this Section 14.3, shall be borne by the Intended Parents in addition to the Special Expense Amount.

14.4 The Gestational Carrier hereby expressly waives all parental, custodial and social rights that she has or may acquire to the Child.

14.5

- (a) The Gestational Carrier will, immediately upon the Birth of the Child, relinquish any and all custody rights she has or may have, and will make custody of the Child available to the Intended Parents forthwith upon the Birth of the Child. The Intended Parents will receive custody and assume the legal and social parental responsibilities for the Child;
- (b) The Gestational Carrier agrees that she will co-operate with the hospital staff and administration with respect to the agreement of the Parties as set out in Section 14.5(a) and, prior to the expected date of Birth, she will sign a joint letter of instruction and direction to the hospital staff and administration instructing the hospital to treat the Child as the Child of the Intended Parents immediately upon the Birth of the Child, to accept the instructions of the Intended Parents with respect to the Child's medical care, and to discharge the Child from the hospital to the custody of the Intended Parents; and
- (c) The Parties acknowledge that immediately upon Birth all medical decisions regarding the Child shall be made solely by the Intended Parents. The Gestational Carrier agrees that the Intended Parents shall be the persons authorized to care for and make treatment and any other decisions with respect to the Child from the moment of Birth and thereafter. Further, the Gestational Carrier agrees that if a health care provider recognizes her as a substitute decision-maker for the Child, she shall inform such person that she is not the parent of the Child and is therefore not willing to assume the responsibility of giving or refusing consent in accordance with Section 20(2)(e) of the *Health Care Consent Act*. The Gestational Carrier shall direct the health care staff to accept the instructions of

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the Intended Parents with respect to the health of the Child.

- (d) Notwithstanding the above, if the Intended Parents are not available to take physical custody of the Child, or make medical decisions with respect to the Child, immediately after Birth, the Gestational Carrier shall do so on a temporary basis until the Intended Parents are available and same shall not derogate from the Intended Parents' legal parental rights with respect to the Child.

14.6 The Intended Parents will receive the custody of the Child at Birth, or as soon thereafter as is practicable, and if not present at the same time either Andrew or Elad will be deemed to receive custody on behalf of both of them.

14.7 The Parties agree that the Gestational Carrier shall not under any circumstances breastfeed the Child without the permission of the Intended Parents obtained in advance. The Parties acknowledge that the Gestational Carrier has agreed to pump breastmilk for the Child, if feasible at the time, and that the Intended Parents shall cover the direct cost of doing so in addition to the Special Expense Amount.

14.8 Each Party to this Agreement will do what is reasonably necessary to facilitate and expedite the performance of this Agreement including all things such as completing consent forms, hospital and statistical records and obtaining birth certificates.

PART XV RELATIONSHIP WITH THE CHILD

15.1 The Gestational Carrier will avoid developing a parental relationship with the Child. The only time she will see the Child is in the Hospital before the Child is discharged, and thereafter upon the consent of the Intended Parents. After the Birth, the Gestational Carrier will not contact, nor attempt to contact, nor allow herself to be in contact with the Child in any manner whatsoever at any time, except with the express permission of the Intended Parents. At no time will the Gestational Carrier reveal or cause to be revealed to the Child the fact that the Gestational Carrier gave Birth to the Child, on the understanding that the Intended Parents shall have sole discretion about providing such information to the Child.

15.2 Notwithstanding the above, the Intended Parents hereby consent to allow the Gestational Carrier and her dependent child to spend time with the Child after Birth but prior to discharge from the Hospital, in the presence of the Intended Parents

PART XVI WAIVER AND RELEASE

16.1 The Gestational Carrier waives all rights that she has or may in the future have to the custody of, access to, or information about the Child and releases the Intended Parents and each of them from all claims that she has, or may in the future have to the custody of, access to, or information about the Child.

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**PART XVII
FURTHER AGREEMENT AS TO CUSTODY**

17.1 After the Birth of the Child, the Gestational Carrier will, at the request of the Intended Parents, enter into a further agreement with the Intended Parents confirming the Intended Parents' custody of the Child.

17.2 On her part, the Gestational Carrier will confirm and covenant, among other things, that she waives all rights she may have in respect of the Child, and without restricting the generality of the foregoing, her right to custody of the Child and all rights incidental to custody, including the right of access to the Child.

17.3 On their part, the Intended Parents hereby agree, among other things, that:

- (a) they release the Gestational Carrier from all obligations that she has or may in the future have to provide for the support and education of the Child for such period of time as the Child is entitled to support pursuant to the laws of the jurisdiction in which he/she is habitually resident;
- (b) each of them will charge his estate with the obligation to provide for the adequate support and education of the Child; and
- (c) provided that the Gestational Carrier has made physical custody of the Child available to the Intended Parents, each of the Intended Parents will indemnify the Gestational Carrier with respect to any expense incurred by her to provide for the support or education of the Child, including without limitation any legal or other expenses the Gestational Carrier pays in connection with the defence thereof.

**PART XVIII
DEATH OF INTENDED PARENTS AND
GUARDIANSHIP OF CHILD**

18.1 The Intended Parents shall each maintain a valid Will in good standing, recognizing the Child as their issue, naming a testamentary guardian for the Child and making adequate provision for the support and education of the Child.

18.2 If either Andrew or Elad dies before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the survivor. If both Andrew and Elad die before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the custody of the Guardians named below.

18.3 Each of the Intended Parents hereby declare that, in the event of both of their deaths during the term of this Agreement, the Guardians of any Child born pursuant to this Agreement are: Tova and Mordehay Dvash, who reside in Israel and who can be reached at +972- [REDACTED] +972- [REDACTED] +972- [REDACTED] or [REDACTED]@gmail.com or

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██████████@bezeqint.net. The Guardians shall make any or all medical decisions with respect to the Child in the event that the Intended Parents are incapacitated and unable to do so.

18.4 The Gestational Carrier shall be entitled to rely on this Part XVIII without the requirement of any further evidence for the purpose of providing custody of the Child to the Guardians named herein in the event of the Intended Parents' death or for the purpose of the Guardians named herein making medical decisions for the Child in the event of the Intended Parents' inability to do so. The Intended Parents hereby warrant that they have not and will not enter into any conflicting document or agreement with respect to guardianship of the Child.

**PART XIX
SEPARATION OR DIVORCE OF INTENDED PARENTS**

19.1 If the Intended Parents separate or divorce before the Birth of the Child, or after the Birth, but before the Child is placed in their custody, the Gestational Carrier will place the Child in the care of either Andrew or Elad who will undertake to determine custody and any incidents of custody of the Child as between themselves by mutual agreement or by the Court.

**PART XX
INCAPACITY OF GESTATIONAL CARRIER**


20.1 The Gestational Carrier agrees that, if she becomes incapable of making decisions for herself, or if she requires life support to sustain her life, then all decisions relating to her medical care shall be made by her Attorney for Personal Care ("Attorney") as appointed by her Power of Attorney for Personal Care or, if she does not have an Attorney, by her Substitute Decision-Maker. However, the Gestational Carrier hereby expresses her wish that if she is Pregnant at the time she is assessed as incapable, and the Attending Physician or another physician deems that the Child would benefit from prolonging her life by artificial means until it is deemed safe to deliver the Child, and that the Gestational Carrier is not enduring pain and suffering, then the Attorney, or the Substitute Decision-Maker, as the case may be, will consent to prolonging the life of the Gestational Carrier by artificial means until after the Birth of the Child.

20.2 The Intended Parents shall reimburse the Gestational Carrier for the legal expenses incurred in having a Will and a Power of Attorney for Personal Care prepared for the purpose of fulfilling Section 20.1 above, in addition to the Special Expense Amount to a maximum of Five Hundred Dollars (\$500.00).

**PART XXI
LIFE INSURANCE POLICY FOR
GESTATIONAL CARRIER**

21.1 The Gestational Carrier hereby acknowledges that she currently has a policy of Life Insurance in place with coverage in the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00 Cdn.) on her life which will be kept in place for the period commencing on the date which is not later than the date of the first Transfer and shall end

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no earlier than the first to occur of the following dates (the "Insurance Termination Date"): (i) the date of termination of this Agreement; and (ii) the day which is TWO (2) months after the date of Birth. The Gestational Carrier may renew the life insurance, but the Intended Parents will have no obligation to pay for the cost of any premiums charged after the Insurance Termination Date.

21.2 The Intended Parents shall be named as revocable beneficiaries of SEVENTEEN PERCENT (17%) under the Life Insurance policy, and shall be removed as beneficiaries immediately following the earlier of: (i) the Birth; or (ii) the termination of the Agreement. The Gestational Carrier shall name the beneficiary of the remainder under the Life Insurance policy who shall hold same in trust for her children.

21.3 The Intended Parents may put an additional policy of life insurance into place on the Gestational Carrier's life and she shall take all reasonable steps to facilitate same.

PART XXII ENFORCEMENT

22.1 The Parties have a right to enforce this Agreement in the Ontario Court of Justice including the right to seek an interlocutory and permanent injunction enjoining behaviour that is contrary to or in breach of the Agreement. The Parties acknowledge that a breach of this Agreement will result in irreparable harm to the aggrieved Party and to the Child.

PART XXIII VITAL STATISTICS

23.1 The Gestational Carrier shall refrain from completing and filing the Statement of Live Birth after the Birth of the Child.

23.2 Upon confirmation by DNA tests, the Gestational Carrier will sign all necessary documents to obtain a legal declaration that she is not the genetic or intended mother of the Child, and that the Child was conceived through I.V.F. by the Ova fertilized with the Sperm.

PART XXIV SUCCESSION

24.1 The Parties agree that for the purposes of succession law, and any Wills or estates, the Child will, at all times, be a child of the Intended Parents.

PART XXV EARLY TERMINATION

25.1 If, without the fault of the Gestational Carrier, the Pregnancy ends in Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, then:

- (a) the Intended Parents will be entitled to terminate this Agreement and will be

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released from all obligations under this Agreement;

- (b) the Gestational Carrier will be entitled to terminate this Agreement and retain any reimbursement of any Special Expense Amounts paid or payable up to and including the date of Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; and
- (c) the Gestational Carrier shall be entitled to reimbursement of the Special Expenses for TWO (2) weeks after the date of an Early Miscarriage or FOUR (4) weeks after the date of a Miscarriage, Requested Termination or Still-Birth.

25.2 If the Intended Parents choose not to terminate this Agreement after an Early Miscarriage, Miscarriage, Requested Termination or Still-Birth, the Term of the Agreement shall continue and not be at an end, but the period for reimbursement of the Special Expense Amount shall be as set out above and shall be reset to the maximum Special Expense reimbursement of Twenty Thousand Dollars (\$20,000) and shall resume TWO (2) weeks prior to the next Transfer. If the Pregnancy ends in a Full Term Still-Birth without the fault of the Gestational Carrier, the Agreement shall terminate on the day which is SIX (6) weeks after the date of the Full Term Still-Birth.

25.3 Notwithstanding anything set out in this Agreement, if the Pregnancy is terminated, results in a Still-Birth, results in a Full-Term Still Birth, or produces a Child that has a congenital abnormality or defect as a result of the negligent action or omission of the Gestational Carrier, or if the Gestational Carrier materially breaches this Agreement, the Gestational Carrier shall return to the Intended Parents an amount equal to the Special Expenses reimbursed to the Gestational Carrier within FIVE (5) days of a demand therefor, without prejudice to the Intended Parents' rights at law and pursuant to this Agreement to seek damages from the Gestational Carrier.

PART XXVI SPECIAL EXPENSES

26.1 The Intended Parents will reimburse the Gestational Carrier for the following out of pocket expenses incurred by the Gestational Carrier in connection with the surrogacy to a maximum of Twenty Thousand Dollars (\$20,000.00 CDN) inclusive of all taxes (the "Special Expense Amount") for all such expenses:

- (a) medical, pharmaceutical and laboratory expenses incurred by the Gestational Carrier as a result of the Transfer, Pregnancy or Birth not otherwise covered by the Ontario Health Insurance Plan ("OHIP") or any private health care insurance plan under which she is covered. However, it is understood and agreed that the Intended Parents will pay all expenses for the I.V.F. treatment directly to the Clinic and this cost will not be included in the Special Expense Amount;
- (b) the amount actually expended by the Gestational Carrier for groceries, prepared food and meals for her own consumption commencing two weeks prior to the date

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of the first Transfer and ending on the expiration or earlier termination of the Agreement;


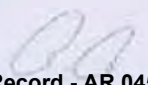
- (c) a reasonable amount for automobile expenses incurred for local travel at the request of the Intended Parents or made necessary for the performance of her obligations under this Agreement calculated at a rate of \$0.54 per kilometre travelled and all related parking costs;
- (d) communication costs including, without limitation, the costs of an internet account, cellular telephone charges, and the costs of acquiring a cellular telephone, and long distance telephone charges, all incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (e) vitamins and supplements required to maintain a healthy Pregnancy;
- (f) child care costs for the Gestational Carrier's ONE (1) dependent child incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (g) housekeeping, snow shovelling and lawn care costs incurred by the Gestational Carrier in order to reduce the physical strain and incurred by the Gestational Carrier in connection with the performance of her obligations under this Agreement;
- (h) counselling for the Gestational Carrier and her ONE (1) dependent child, if so required;
- (i) all expenses incurred by the Gestational Carrier for suitable maternity clothing to be worn throughout the Pregnancy and following the Birth, up to a maximum amount of Seven Hundred and Fifty Dollars (\$750.00);
- (j) a reasonable amount for the Gestational Carrier's wellness expenses including, without limitation, costs incurred for acupuncture, massage, physiotherapy, naturopath, reflexology, chiropractic care, foot care, yoga membership and fitness membership, provided that participation in any of such activities is approved by the Transfer Physician and/or the Attending Physician;
- (k) the cost of a private Hospital room for the Gestational Carrier at the time of Birth, if one is available and which expense is not otherwise covered by OHIP or any private health care insurance plan under which the Gestational Carrier is covered; and
- (l) such other expenses as may be incurred by the Gestational Carrier as a result of the Pregnancy and as may be approved by the Intended Parents. The Parties agree that if the Gestational Carrier has already incurred expenses to the maximum limit

set out in this Section 26.1, the Intended Parents may, in their sole discretion, agree to pay the cost of any such other allowable expenses in addition to the Special Expense Amount.

26.2

- (a) The Parties acknowledge that for the purposes of Section 26, the Gestational Carrier's expenses incurred during the Reimbursable Period (as hereinafter defined) shall be reimbursed to her in accordance with Schedule "A" attached hereto and Part XXVI.
- (b) For the purposes of Section 26.2(c), the "Reimbursable Period" shall commence on the date of confirmation of the Pregnancy by blood test results and shall end on the earlier of: (i) the day of termination of the Agreement; (ii) TWO (2) weeks after a Pregnancy ends in Early Miscarriage; (iii) FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth; or (iv) SIX (6) weeks after the Birth of a Child.
- (c) The Reimbursable Period shall be divided into TEN (10) stages (individually referred to as a "Stage"):
 - (i) the first month after the Second Beta (the "First Month");
 - (ii) the second month after the Second Beta (the "Second Month");
 - (iii) the third month after the Second Beta (the "Third Month");
 - (iv) the fourth month after the Second Beta (the "Fourth Month");
 - (v) the fifth month after the Second Beta (the "Fifth Month");
 - (vi) the sixth month after the Second Beta (the "Sixth Month");
 - (vii) the seventh month after the Second Beta (the "Seventh Month");
 - (viii) the eighth month after the Second Beta (the "Eighth Month");
 - (ix) the ninth month after the Second Beta (the "Ninth Month"); and
 - (x) the period commencing on the day after Birth and ending SIX (6) weeks thereafter (the "Post-Pregnancy").
- (d) Notwithstanding anything contained herein to the contrary, the amount of the Special Expenses incurred by the Gestational Carrier and which are eligible for reimbursement by the Intended Parents shall be subject to the maximum amounts set out in the schedule attached hereto as Schedule "A", and subject to Section 25.1, if this Agreement is terminated, the current Stage shall end on the day of

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- (e) If the Special Expenses incurred by the Gestational Carrier in any Stage are less than the maximum set for that Stage, the difference between the maximum allowable and the amount claimed shall be added to the maximum available for the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Fourth Month is Three Thousand Dollars and the Gestational Carrier claims expenses of One Thousand Dollars, the unused balance of Two Thousand Dollars will be added to the maximum available to be claimed in the Fifth Month.
- (f) If the Special Expenses incurred by the Gestational Carrier in any Stage exceed the maximum set for that Stage, and if there is no unused balance to be carried forward pursuant to Section 26.2(e) or if there is insufficient unused balance to cover the excess, the amount of the excess can be claimed in the next Stage. By way of an example, the Parties agree that if the maximum Special Expense Amount for the Sixth Month is Three Thousand Dollars, and if there is no unused balance to be added to the Sixth Month maximum, and the Gestational Carrier claims expenses of Four Thousand Dollars, the excess of One Thousand Dollars may be claimed in the Seventh Month.
- (g) If, without fault of the Gestational Carrier, the Child is born: (i) prior to the beginning of the Eighth Month, the current stage shall end on the date of Birth and the post-Birth period shall commence on the day after the Child's Birth. The balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall not be available to be claimed and shall be deducted from the cap on the Special Expense Amount on the understanding that the Gestational Carrier's total out of pocket expenses related to the Pregnancy will be available only during the Pregnancy and the recovery period after Birth; or (ii) during the Eighth or Ninth Months of the Pregnancy, the current Stage shall end on the date of Birth and the balance of the Special Expense Amount available for reimbursement for the period commencing on the date of Birth and ending on the last day of the Ninth Month, shall be added to the Post-Pregnancy Stage.

26.3 Subject to the cap set out in Section 26.1, the Gestational Carrier may be reimbursed for all Special Expenses incurred by her for the period commencing on the date of execution of this Agreement by the Gestational Carrier, and ending on the earlier of the date of termination of this Agreement, TWO (2) weeks after a Pregnancy ends in Early Miscarriage, FOUR (4) weeks after a Pregnancy ends in Miscarriage, Requested Termination or Still-Birth or SIX (6) weeks after the Birth of a Child, as the case may be. No receipts may be submitted to the Intended Parents after the end of the Term of the Agreement, and notwithstanding anything contained herein to the contrary, the Intended Parents will have no obligation to reimburse the Gestational Carrier for any Special Expenses which are submitted to the Intended Parents for reimbursement after the expiration of the Term of the Agreement, regardless of when such

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expenses were incurred.

26.4 In addition to the amounts set out in Section 26.1 (the "Additional Expense Amount"), the Intended Parents shall directly cover, or shall reimburse the Gestational Carrier for, all expenses related to the Pregnancy or in the event of the circumstances described below, or so that the Gestational Carrier can fulfill her obligations under this Agreement as follows:

- (a) legal fees and disbursements incurred for obtaining independent legal advice relating to this Agreement to the date of execution of the Agreement, up to a maximum of One Thousand Three Hundred Dollars (\$1,300.00) plus HST;
- (b) life insurance premiums as set out in Section 21;
- (c) travel medical insurance premiums as set out in Section 9.10(c);
- (d) all travel costs incurred by the Gestational Carrier in order to attend at the Clinic at the request of the Intended Parents before the Pregnancy and for each Transfer, including the cost of mileage, parking, meals and child care;
- (e) all expenses incurred and related to the Gestational Carrier's participation in any Transfer which she undergoes at the request of the Intended Parents to a maximum of Five Hundred Dollars (\$500.00) for general reimbursable expenses, including prenatal vitamins and wellness expenses;
- (f) if the Child is delivered by way of Caesarean delivery, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the Post-Pregnancy Stage;
- (g) if a Pregnancy results in a multiple Birth of two or more Children, the sum of Three Thousand Five Hundred Dollars (\$3,500.00) shall be added to the maximum available for reimbursement in the period commencing on the first day of the Seventh Month and ending on the last day of the Post-Pregnancy Stage. (Such Additional Expense Amounts shall increase the maximum amount of Special Expenses which may be incurred by the Gestational Carrier in recognition of the additional physical toll which a multiple Pregnancy or Caesarean delivery will exert on the Gestational Carrier and the increased need for assistance which will increase the Gestational Carrier's out of pocket expenses. In the interests of clarity, if two or more Children are born by Caesarean delivery, an additional total of Seven Thousand Dollars (\$7,000.00) shall be available for maximum reimbursement under Section 26.4(f) and (g)); and
- (h) if, in the written opinion of the Transfer Physician or the Attending Physician and, at the option of the Intended Parents, in the written opinion of a second physician of their choice, complete bed rest is required in order to protect the health of the Gestational Carrier or the Fetus (the "Disability"), the Gestational Carrier will be entitled to reimbursements for the period commencing on the date of the

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physician's order and ending on the earlier of: (i) the date on which the physician lifts the order for bed rest; (ii) the date of Birth, Early Miscarriage, Miscarriage, Requested Termination or Still-Birth; or (iii) the date of termination of this Agreement, for housekeeping and child care expenses for the Gestational Carrier's ONE (1) dependent child to a maximum of Four Hundred Dollars (\$400.00) per week under this Section 26.4(h).

26.5 Notwithstanding anything to the contrary, the Parties acknowledge that regulations to Section 12 of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, which govern the reimbursements to the Gestational Carrier under this Agreement, may come into full force and effect during the Term of the Agreement. If so, then all Parties agree to abide by these regulations even where they are not in accordance with this Agreement, so as not to contravene the law. The Gestational Carrier acknowledges and agrees that, as a result, she may not be entitled to reimbursement of all of the categories of expenses set out above.

PART XXVII ADMINISTRATION AND PAYMENT OF SPECIAL EXPENSES


27.1 The Gestational Carrier will obtain receipts for all expenditures and will deliver these receipts to the Intended Parents or to an agent on their behalf on a monthly basis and in any event within FIVE (5) days of a request therefor. If required by law, the Intended Parents will instruct the Clinic, or their agent, to reimburse the Gestational Carrier for all Special Expenses in accordance with the terms of this Agreement. The Parties acknowledge and agree that no Special Expenses will be reimbursed to the Gestational Carrier unless a receipt is provided to the Intended Parents or to their agent for the expenditure.

PART XXVIII REMEDIES FOR BREACH

28.1 If the Gestational Carrier materially fails to perform any of her obligations under this Agreement, or if any of the warranties made by the Gestational Carrier in this Agreement are not true then, without limiting the Intended Parents' remedies in equity or at law, and in addition to such remedies, the Gestational Carrier will, within THIRTY (30) days of request, refund to the Intended Parents all allowable expenses pursuant to the section called SPECIAL EXPENSES, above, which have been reimbursed to the Gestational Carrier by the Intended Parents, to the time of such failure.

28.2 If any Party materially violates any provision contained in this Agreement without legal excuse, such violation will constitute a material breach of this Agreement and, in addition to all other remedies available at law or equity, this Agreement may be terminated forthwith at the option of the aggrieved Party, without further liability on the part of the aggrieved non-breaching Party. If the Intended Parents terminate this Agreement pursuant to this provision, then not only will the Gestational Carrier refund all Special Expenses reimbursed to that date, the Intended Parents will be under no obligation to reimburse the Gestational Carrier for any expenses incurred after the date of the breach.

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28.3 If the Intended Parents materially breach this Agreement without legal excuse, but the Gestational Carrier has performed her obligations under this Agreement then she will be entitled to have all Special Expenses reimbursed in accordance with this Agreement and the Intended Parents will be responsible for the support of the Child and all of the Child's needs until the Child is no longer entitled to support pursuant to the laws in which the Child is habitually resident. Further, if the Gestational Carrier has made physical custody of the Child available to the Intended Parents, the Intended Parents shall indemnify the Gestational Carrier for any and all amounts she pays in connection with the support of the Child, including without limitation, any legal or other fees and disbursements incurred in connection with the defence thereof.

28.4 A breach will not be considered to be a material breach of contract if it is capable of being cured. If so, the Party committing the breach will be given written notice of the alleged breach and will be given a reasonable period of time to cure it, if possible.

28.5 A breach by either of the Intended Parents will constitute a breach by both of them.

28.6 Without limiting the generality of the foregoing, any breach of warranty contained in this Agreement will constitute a material breach of this Agreement.

28.7 Any breach of this Agreement by the Intended Parents on their part, or the Gestational Carrier on her part, will cause the other of them significant damages, including emotional suffering and trauma and shall provide a cause of action for damages to the wronged Party. Each of the Parties acknowledges that because of the nature of this Agreement, monetary damages may not suffice to remedy a breach of this Agreement and that an injunction and/or any other interim judicial relief may properly be obtained to enjoin and/or address a breach of this Agreement in addition to damages.

PART XXIX ASSUMPTION OF RISK

29.1 The Gestational Carrier assumes and accepts all risks related to the Transfer, Pregnancy and Birth, including but not limited to, the possibility of contracting AIDS, or other transmittable diseases, as a result of the exchange of body fluids and substances and all medical treatments, examinations and procedures involved, and any postpartum complications, and she hereby releases, indemnifies and saves harmless the Intended Parents (and each of them) from all liability, losses, costs and expenses arising, directly or indirectly, from the fulfilment of their obligations under this Agreement including, without limitation, any claim for illness, disfigurement, disability, death, funeral expenses, loss of the Gestational Carrier's future earnings or support for the Gestational Carrier's dependants, damages for loss of enjoyment of life and any other general damages, and for any legal expenses resulting from any dispute of this Agreement by the Gestational Carrier. The Gestational Carrier warrants and represents that she has independently consulted with a physician specializing in fertility procedures and has been made aware of all medical risks (including death), which may result from the procedures contemplated by this Agreement and further acknowledges that she understands these risks. The Gestational Carrier has undergone a thorough medical examination before undergoing any

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procedure contemplated by this Agreement.

PART XXX CONFIDENTIALITY

30.1

- (a) The Gestational Carrier warrants and represents that she will keep strictly confidential all information respecting the identity of the Intended Parents and the Child, the terms of this Agreement, and information respecting the activities contemplated or carried out under this Agreement (the "Confidential Information") forever. The Parties shall be entitled to discuss the terms of this Agreement with their legal advisors and with their counsellor, each of whom shall be advised of and requested to abide by the confidentiality provision in this Agreement. However, the Gestational Carrier shall be entitled to disclose that the Gestational Carrier intends to carry (or is carrying, if she is already Pregnant) a Child for a same-sex couple who require third party reproduction to have a Child, provided that no Confidential Information is disclosed. The Intended Parents also warrant and represent that they will keep strictly confidential all Confidential Information. However, the Gestational Carrier acknowledges and agrees that the Intended Parents shall disclose the existence and nature of this Agreement to the individual(s) whom they have named as Guardian(s) under their respective Wills.
- (b) Except as required by law and except as set out in this Agreement, none of the Parties will disclose the Confidential Information to any person or distribute it in any public forum whatsoever including, without limitation, newspapers, magazines, Internet, television or radio at any time. This covenant will survive the Birth of any Child conceived pursuant to this Agreement and the Parties acknowledge that a claim for damages, as well as injunctive relief may be sought if there is a breach of the warranties contained herein.

30.2 In order to maintain the confidentiality contemplated by this Agreement, if litigation arises out of this Agreement including, but not limited to, court applications for a custody proceeding, each of the Parties to this Agreement and their legal counsel, their heirs and representatives, agree to make all efforts to maintain such confidentiality as is intended by this Agreement including, but not limited to, requesting that the court records be sealed, requesting the court to invoke non-publication orders, requesting the court in its procedures and in the conduct of hearings to maintain confidential the identity of all of the Parties.

PART XXXI ENTIRE AGREEMENT

31.1 This Agreement sets forth the entire Agreement between the Parties pertaining to the subject matter of the Agreement and supersedes all prior agreements, understandings, negotiations and communications, whether written or oral of the Parties.

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**PART XXXII
SEVERABILITY**

32.1 If any provision of this Agreement is held by the Court to be invalid or unenforceable, the remainder of the provisions of this Agreement will continue in full force and effect and will not be affected, impaired or invalidated thereby.

32.2 If a provision of this Agreement is held by the Court to be invalid or unenforceable due to its scope or breadth then it will be deemed to be valid to the extent permitted by the Court.

**PART XXXIII
SURVIVAL**

33.1 Notwithstanding any termination of this Agreement pursuant to the terms herein, or the expiration of the Term of the Agreement, the Parties agree that the provisions of the sections called REMEDIES FOR BREACH, ASSUMPTION OF RISK and CONFIDENTIALITY, above, will remain in full force and effect after the termination or expiration of the Term of the Agreement, as the case may be.

**PART XXXIV
WAIVER**

34.1 No supplement or modification of this Agreement will be binding unless executed in writing by the Party to be bound. No provision of this Agreement will be deemed waived and no breach excused, unless such waiver or consent excusing the breach is executed in writing by the Party to be charged with such waiver or consent. No waiver by a Party of any provision of this Agreement will be construed as a waiver of a further breach of the same provision and no waiver will be construed as a waiver of any other provision of this Agreement.

**PART XXXV
GOVERNING LAW**

35.1 This Agreement will be governed by, subject to and construed in accordance with the laws of the Province of Ontario.

35.2 The Parties to this Agreement acknowledge and agree that it is their express intention and desire to comply with the laws of the Province of Ontario and the Federal Laws of Canada. If during the Term of this Agreement any obligation of any Party becomes prohibited, the Parties agree that such obligation shall be severed from the Agreement (including, but not limited to, the financial obligations set out in this Agreement) and, so long as all Parties are agreeable, this Agreement shall remain in full force and effect.

35.3 The Parties to this Agreement acknowledge and agree that the procedure contemplated by this Agreement are novel and new and that the law applicable to such procedures and relationships is developing and unsettled. Although the possibility exists that this

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Agreement may be declared void as against public policy, in whole or in part, and may be held unenforceable, in whole or in part, by an Ontario Court, all Parties nonetheless agree that they are entering into this Agreement with the intention of being fully bound by its terms. It is the intention of all Parties to comply with the provisions of the *Assisted Human Reproduction Act*, S.C. 2004, c.2, to the extent such Act has been proclaimed into force.

PART XXXVI INDEPENDENT LEGAL ADVICE

36.1 The Gestational Carrier acknowledges that she has received independent legal advice in respect of this Agreement and acknowledges that she fully understands the intent and the purpose of this Agreement and her obligations under it.

36.2 The Gestational Carrier acknowledges that no coercion, force, pressure or undue influence has been used by any Party against her in making this Agreement.

36.3 The Gestational Carrier believes this Agreement to be fair, just and reasonable, that it will not result in circumstances that are unconscionable to any Party, and that it is in the best interests of the Child.

36.4 Each Party to this Agreement fully understands the Agreement and the legal consequences of this Agreement, and is signing the same freely and voluntarily. No Party to this Agreement has any reason to believe that the other Parties did not freely and voluntarily execute this Agreement.

PART XXXVII INTERPRETATION OF AGREEMENT

37.1 No provision of this Agreement is to be interpreted for or against any Party to this Agreement merely because that Party, or that Party's solicitor drafted the provision.

PART XXXVIII FACSIMILE TRANSMISSION AND EXECUTION IN COUNTERPART

38.1 The Parties hereby acknowledge that this Agreement may be executed through facsimile transmission and agree to treat these documents in the same manner and with the same legal effect as if they were original documents.

38.2 This Agreement may be executed in any number of counterparts and each such counterpart shall, for all purposes, constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart, provided that each Party has signed at least one counterpart.

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**PART XXXIX
NOTICE**

39.1 All communications which may be or are required to be given by any Party to the other herein will be in writing and delivered or sent by prepaid registered mail, by personal delivery, by facsimile transmission (where possible), or by electronic mail, to the Parties at the following respective addresses:

Gestational Carrier: [REDACTED] Avenue, Apartment [REDACTED]
Mississauga, Ontario L5A 2K7

Cell: 647 [REDACTED]
Email: [REDACTED]@gmail.com

Intended Parents: [REDACTED] Avenue, Apartment [REDACTED]
Toronto, Ontario M6B 4C6

Elad Cell: 647 [REDACTED]
Andrew Cell: 647 [REDACTED]
Email: [REDACTED]@gmail.com
Email: [REDACTED]@gmail.com


39.2 If any communication is sent by prepaid registered mail, it will, subject to the following sentence, be conclusively deemed to have been received on the TENTH (10th) business day following the mailing thereof and if delivered, sent by facsimile transmission, or sent by electronic mail, it will conclusively be deemed to have been received at the time of delivery or transmission.

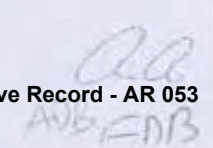
39.3 Notwithstanding the foregoing provisions with respect to mailing, if it may be reasonably anticipated that, due to any strike, lock-out or similar event involving an interruption in postal service, communication will not be received by the addressee by no later than the TENTH (10th) business day following the mailing thereof, then the mailing of any such communication as aforesaid will not have been an effective means of sending the notice, but rather any communication must then be sent by an alternative method which it may reasonably be anticipated will cause the payment or communication to be received reasonably expeditiously by the addressee. Any Party may from time to time change its address or facsimile number hereinbefore set forth by notice to the other of them in accordance with this Section.

**PART XL
ARBITRATION**

40.1 In the interests of the confidential nature of this Agreement and except as otherwise set out in this provision, if any dispute arises between the Parties in connection with any amounts referred to in Sections 26 or 27 of this Agreement and all matters related thereto, including, without limitation, enforcement of such provisions, the Parties agree that it shall be

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resolved by binding arbitration in accordance with the *Arbitrations Act* (Ontario).

**PART XLI
ENUREMENT**

41.1 The rights and obligations under this Agreement shall enure to and bind each of the Parties and their respective heirs, executors, administrators and assigns.

[The remainder of this page is intentionally blank.]

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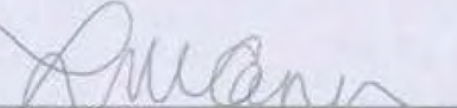

ADSFDR

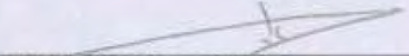
TO EVIDENCE THEIR AGREEMENT, each of the Parties has signed this Agreement under seal before a witness.

SIGNED, SEALED AND DELIVERED in the presence of


Witness Signature


ANDREW DVASH-BANKS
Date of Execution: 12/21/15



Witness Signature


ELAD DVASH-BANKS
Date of Execution: Dec. 21, 2015


Witness Signature


AMANDA MARIE ANNE ADAMS
Date of Execution: Dec 21 2015

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SCHEDULE "A"

Attached to and forming part of
an Agreement dated the 21st day of December, 2015 between
Andrew Dvash-Banks, Elad Dvash-Banks and Amanda Marie Anne Adams

<u>Maximum Reimbursements – Special Expenses</u>	
Stage 1: First Month Following Second Beta Test	\$1,000.00
Stage 2: Second Month Following Second Beta Test	\$1,000.00
Stage 3: Third Month Following Second Beta Test	\$1,000.00
Stage 4: Fourth Month Following Second Beta Test	\$2,000.00
Stage 5: Fifth Month Following Second Beta Test	\$2,000.00
Stage 6: Sixth Month Following Second Beta Test	\$2,500.00
Stage 7: Seventh Month Following Second Beta Test	\$2,500.00
Stage 8: Eighth Month Following Second Beta Test	\$3,000.00
Stage 9: Ninth Month Following Second Beta Test	\$3,000.00
Stage 10: Post-Pregnancy	\$2,000.00
TOTAL MAXIMUM REIMBURSEMENT:	<u>\$20,000.00</u>

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00070270-1804

Form **8879**

IRS e-file Signature Authorization

OMB No. 1545-0074

Do not send to the IRS. This is not a tax return.
Keep this form for your records.

2015

Department of the Treasury
Internal Revenue Service

Information about Form 8879 and its instructions is at www.irs.gov/form8879.

Submission Identification Number (SID) ▶

Taxpayer's name

ANDREW BANKS

Social security number

██████████-4354

Spouse's name

ELAD DVASH-BANKS

Spouse's social security number

██████████-6984

Part I Tax Return Information – Tax Year Ending December 31, 2015 (Whole Dollars Only)

1	Adjusted gross income (Form 1040, line 38; Form 1040A, line 22; Form 1040EZ, line 4)	1	5
2	Total tax (Form 1040, line 63; Form 1040A, line 39; Form 1040EZ, line 12)	2	
3	Federal income tax withheld (Form 1040, line 64; Form 1040A, line 40; Form 1040EZ, line 7)	3	
4	Refund (Form 1040, line 76a; Form 1040A, line 48a; Form 1040EZ, line 13a; Form 1040-SS, Part I, line 13a)	4	
5	Amount you owe (Form 1040, line 78; Form 1040A, line 50; Form 1040EZ, line 14)	5	

Part II Taxpayer Declaration and Signature Authorization (Be sure you get and keep a copy of your return)

Under penalties of perjury, I declare that I have examined a copy of my electronic individual income tax return and accompanying schedules and statements for the tax year ending December 31, 2015, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that the amounts in Part I above are the amounts from my electronic income tax return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send my return to the IRS and to receive from the IRS (a) an acknowledgement of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund, if applicable. I authorize the U.S. Treasury and its designated Financial Agent to initiate an ACH electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of my federal taxes owed on this return and/or a payment of estimated tax, and the financial institution to debit the entry to this account. This authorization is to remain in full force and effect until I notify the U.S. Treasury Financial Agent to terminate the authorization. To revoke (cancel) a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537. Payment cancellation requests must be received no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I further acknowledge that the personal identification number (PIN) below is my signature for my electronic income tax return and, if applicable, my Electronic Funds Withdrawal Consent.

Taxpayer's PIN: check one box only

I authorize DEBORAH SCHWARTZ INC to enter or generate my PIN ██████████
ERO firm name Enter five digits, but do not enter all zeros

as my signature on my tax year 2015 electronically filed income tax return.

I will enter my PIN as my signature on my tax year 2015 electronically filed income tax return. Check this box **only** if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Your signature _____ Date ▶ 9/23/2016

Spouse's PIN: check one box only

I authorize DEBORAH SCHWARTZ INC to enter or generate my PIN ██████████
ERO firm name Enter five digits, but do not enter all zeros

as my signature on my tax year 2015 electronically filed income tax return.

I will enter my PIN as my signature on my tax year 2015 electronically filed income tax return. Check this box **only** if you are entering your own PIN and your return is filed using the Practitioner PIN method. The ERO must complete Part III below.

Spouse's signature _____ Date ▶ 9/23/2016

Practitioner PIN Method Returns Only – continue below

Part III Certification and Authentication – Practitioner PIN Method Only

ERO's EFIN/PIN. Enter your six-digit EFIN followed by your five-digit self-selected PIN. ██████████
Do not enter all zeros.

I certify that the above numeric entry is my PIN, which is my signature for the tax year 2015 electronically filed income tax return for the taxpayer(s) indicated above. I confirm that I am submitting this return in accordance with the requirements of the Practitioner PIN method and Publication 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns.

ERO's signature ▶ Deborah Schwartz, E.A. Date ▶ 9/23/2016

ERO Must Retain This Form – See Instructions
Do Not Submit This Form to the IRS Unless Requested To Do So

TERRI N. DAY

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

VICE CONSUL OF THE UNITED STATES OF AMERICA Form 8879 (2015)

FD-81701L 11/15/15

Citibank Client Services 000
 PO Box 6201
 Sioux Falls, SD 57117-6201

410R104F000

000
 CITIBANK, N. A.
 Account

Statement Period
 Nov 3 - Dec 4, 2016

ANDREW MASON BANKS
 STREET APT 90035-2947
 LOS ANGELES CA

Page 1 of 4

CITIBANK ACCOUNT AS OF DECEMBER 4, 2016

Relationship Summary:

Checking	\$5,412.12
Savings	\$0.00
Investments (not FDIC Insured)	-----
Loans	-----
Credit Cards	\$0.00

Checking	Balance
Regular Checking	\$5,412.12
Savings	Balance
Preferred Money Market	\$0.00
Total Checking and Savings at Citibank	\$5,412.12

Credit Cards	As of date	Credit Line	Amount Available	Amount You Owe
Citi®/AAAdvantage® Account XXXXXXXXXXXX8393	11/10/16	\$4,500.00	\$4,500.00	\$0.00

SUGGESTIONS AND RECOMMENDATIONS

Effective February 1, 2017, Citibank will no longer issue counter checks. We will continue to offer pre-printed checks and bill payment services.

CITIBANK ACCOUNT RATES AND CHARGES

When determining your rates and charges for this statement period, Citibank considered your average balances during the month of November in all of your qualifying accounts that you asked us to combine. If you have a Citibank secured credit card, then Citibank will also include the balance in your Collateral Holding Account or your Certificate of Deposit that secures your Citibank credit card. These balances may be in accounts that are reported on other statements.

Rates and Charges	Your Combined Balance Range \$6,000-\$9,999
Rates	Standard
Monthly Service Fee	\$25.00(Waived)

Ask about accounts eligible for preferred rates.

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1/24/2017

Unofficial Transcript - Printable Version

0000270009

Print this window Close this window

University of California, Santa Barbara

1/24/2017 12:47:14 PM

Unofficial Transcript

Andrew Banks
 Perm Number [REDACTED]

College/Objective/Major	Degree Status	Conferral Date
L&S/ BA/ GLOBL	Awarded	6/13/2003
L&S/ BA/ ITAL S	Awarded	6/13/2003

Fall 1999

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
EEMB 25 -HUMAN ANATOMY	P	13805	4.0	4.0	0.0	0.00	
ITAL 1 -ELEMENTARY ITALIAN	A-	23069	4.0	4.0	4.0	14.80	
POL S 1 -POL IDEAS MOD WORLD	C+	51821	4.0	4.0	4.0	9.20	
Quarter Total (Undergrad)	GPA 3.00		12.0	12.0	8.0	24.00	
Cumulative Total (Undergrad)	GPA 3.00		12.0	12.0	8.0	24.00	

Winter 2000

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 8B -FRENCH CONVERSATION	A	17889	2.0	2.0	2.0	8.00	
GLOBL 1 -GLOBL HIS/CUL/IDEOL	A-	48306	4.0	4.0	4.0	14.80	
HIST 4B -WESTERN CIVILIZATIO	B-	21253	4.0	4.0	4.0	10.80	
MS 8 -20TH CENTURY WAR	A	31005	2.0	2.0	2.0	8.00	
POL S 7 -INTRO TO IR	B+	38695	4.0	4.0	4.0	13.20	
Quarter Total (Undergrad)	GPA 3.42		16.0	16.0	16.0	54.80	
Cumulative Total (Undergrad)	GPA 3.28		28.0	28.0	24.0	78.80	

Spring 2000

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 5 -INTERMEDIATE FRENCH	W	52027	4.0	0.0	0.0	0.00	
HIST 4C -WESTERN CIVILIZATIO	B-	21154	4.0	4.0	4.0	10.80	
ITAL 2 -ELEMENTARY ITALIAN	A-	23218	4.0	4.0	4.0	14.80	
POL S 6 -INTRO COMP POLITICS	B-	37697	4.0	4.0	4.0	10.80	
Quarter Total (Undergrad)	GPA 3.03		12.0	12.0	12.0	36.40	
Cumulative Total (Undergrad)	GPA 3.20		40.0	40.0	36.0	115.20	

Summer 2000

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ENV S 2 -INTRO ENV SCIENCE	P	09670	4.0	4.0	0.0	0.00	
HIST 132 -WAR AND SOCIETY	B-	04465	4.0	4.0	4.0	10.80	
ITAL 3 -ELEMENTARY ITALIAN	A+	04671	4.0	4.0	4.0	16.00	
Quarter Total (Undergrad)	GPA 3.35		12.0	12.0	8.0	26.80	
Cumulative Total (Undergrad)	GPA 3.22		52.0	52.0	44.0	142.00	

Fall 2000

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 5 -INTERMEDIATE FRENCH	B+	48793	4.0	4.0	4.0	13.20	
ITAL 8A -ITALIAN CONVERSATN	P	23291	2.0	2.0	0.0	0.00	
POL S 121 -INTERNATL POLITICS	A-	38596	4.0	4.0	4.0	14.80	
POL S 186A -INTRO INTL POL ECON	A	54163	4.0	4.0	4.0	16.00	

1/24/2017

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Quarter Total (Undergrad)	GPA 3.66	14.0	14.0	12.0	44.00
Cumulative Total (Undergrad)	GPA 3.32	66.0	66.0	56.0	186.00

Spring 2001

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ITAL PV 23 -INTERMED ITALIAN	B+		16.0	16.0	16.0	52.80	
ITAL PV 30 -ITALIAN CULTURE	B+		6.0	6.0	6.0	19.80	
Quarter Total (Undergrad)	GPA 3.30		22.0	22.0	22.0	72.60	
Cumulative Total (Undergrad)	GPA 3.31		88.0	88.0	78.0	258.60	

Fall 2001

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
FR 6 -INTERMEDIATE FRENCH	P	17764	4.0	4.0	0.0	0.00	
GLOBL 124 -GLOBAL CONFLICT	A-	20453	4.0	4.0	4.0	14.80	
GLOBL 197 -SPECIAL TOPICS	C+	54783	4.0	4.0	4.0	9.20	
ITAL 101 -ADV ITAL READ/COMP	B	22954	4.0	4.0	4.0	12.00	
Quarter Total (Undergrad)	GPA 3.00		16.0	16.0	12.0	36.00	
Cumulative Total (Undergrad)	GPA 3.27		104.0	104.0	90.0	294.60	

Winter 2002

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GLOBL 2 -GLOBL SOC/ECON/POL	A-	20446	4.0	4.0	4.0	14.80	
ITAL 119 -ART OF TRANSLATION	A-	45328	4.0	4.0	4.0	14.80	
ITAL 114X -DIVINE COMEDY	B-	23119	4.0	4.0	4.0	10.80	
ITAL 8B -ITALIAN CONVERSATN	A-	23077	2.0	2.0	2.0	7.40	
Quarter Total (Undergrad)	GPA 3.41		14.0	14.0	14.0	47.80	
Cumulative Total (Undergrad)	GPA 3.29		118.0	118.0	104.0	342.40	

Spring 2002

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ART HIS 185 -HIST OF MODERNISM	B+		4.0	4.0	4.0	13.20	
INT 192DC-WASH CTR INTERNSHIP	P	22038	8.0	8.0	0.0	0.00	
INT 199DC-WASH CTR INDEP RES	A-	22046	4.0	4.0	4.0	14.80	
Quarter Total (Undergrad)	GPA 3.50		16.0	16.0	8.0	28.00	
Cumulative Total (Undergrad)	GPA 3.30		134.0	134.0	112.0	370.40	

Summer 2002

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GEOL 4 -INTRO OCEANOGRAPHY	P	13771	4.0	4.0	0.0	0.00	
Quarter Total (Undergrad)	GPA 0.00		4.0	4.0	0.0	0.00	
Cumulative Total (Undergrad)	GPA 3.30		138.0	138.0	112.0	370.40	

Fall 2002

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GLOBL 194 -GROUP STUDIES	B	54619	4.0	4.0	4.0	12.00	
ITAL 144BB-GENDER & SEXUALITY	B+	53942	4.0	4.0	4.0	13.20	
ITAL 161AX-EUROPEAN UNION	B+	55384	4.0	4.0	4.0	13.20	
MS 12 -WMN/MIN IN THE ARMY	A	46201	3.0	3.0	3.0	12.00	
Quarter Total (Undergrad)	GPA 3.36		15.0	15.0	15.0	50.40	
Cumulative Total (Undergrad)	GPA 3.31		153.0	153.0	127.0	420.80	

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Winter 2003

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
GPS 196 -GPS SEMINAR	B	22103	4.0	4.0	4.0	12.00	
ITAL 109 -ADV. CONVERSATION	A	58438	4.0	4.0	4.0	16.00	
ITAL 142X -WOMEN IN ITALY	B+	52944	4.0	4.0	4.0	13.20	
WRIT 109SS-WRIT SOC SCIENCE	A	47076	4.0	4.0	4.0	16.00	
Quarter Total (Undergrad)	GPA 3.57		16.0	16.0	16.0	57.20	
Cumulative Total (Undergrad)	GPA 3.34		169.0	169.0	143.0	478.00	

Spring 2003

Course	Grade	EnrICd	Att Unit	Comp Unit	GPA Unit	Points	Additional Info
ITAL 112 -ITAL NARRATIVE FICT	B+	23523	4.0	4.0	4.0	13.20	
ITAL 121 -ITALIAN DRAMA	A+	23531	4.0	4.0	4.0	16.00	
ITAL 199 -INDEPENDENT STUDIES	A	66480	4.0	4.0	4.0	16.00	
SPAN 2 -ELEMENTARY SPANISH	A-	42705	4.0	4.0	4.0	14.80	
Quarter Total (Undergrad)	GPA 3.75		16.0	16.0	16.0	60.00	
Cumulative Total (Undergrad)	GPA 3.38		185.0	185.0	159.0	538.00	
Dean's Honors (L&S)							

Transfer Work Undergraduate Total: 28.0
 UC & Transfer Work Undergraduate Total: 213.0



Tel: 1877-842-4827 Fax: 1855-897-2528
E-mail: immigration@sponsorDNA.com Web: www.sabbimmigration.com

30 January 2017

Petitioner: BANKS, ANDREW MASON

Beneficiary: D [REDACTED] B [REDACTED] E [REDACTED] J [REDACTED]

Our reference: [REDACTED]

Collection Facility
VIAGUARD ACCU-METRICS
1232 Kingston Road
Toronto, ON
M1N 1P3
4166914167

A paternity test was performed to prove a parent / child relationship between alleged father: BANKS, ANDREW MASON and child: D [REDACTED] B [REDACTED], E [REDACTED] J [REDACTED]

This is to confirm that the probability of paternity percentage of 0% represents a negative result.

The client contacted us directly. No third party vendor was used. This account is paid in full.

Thank you, Harvey Tenenbaum, Director of Operations



Immigration and Citizenship Relationship Testing

immigration@sponsorDNA.com

Toll Free: 1-877-842-4827

Fax: 1-855-897-2528

1 Alexa M. Lawson-Remer (SBN 268855)
lawsonr@sullcrom.com
2 SULLIVAN & CROMWELL LLP
1888 Century Park East, Suite 2100
3 Los Angeles, California 90067-1725
Telephone: (310) 712-6600
4 Facsimile: (310) 712-8800

5 Theodore Edelman (*pro hac vice*)
edlemant@sullcrom.com
6 Jessica Klein (*pro hac vice*)
kleinj@sullcrom.com
7 Lauren M. Goldsmith (SBN 293269)
goldsmithl@sullcrom.com
8 SULLIVAN & CROMWELL LLP
125 Broad Street
9 New York, New York 10004-2498
Telephone: (212) 558-4000
10 Facsimile: (212) 558-3588

11 Aaron C. Morris (*pro hac vice*)
amorris@immigrationequality.org
12 IMMIGRATION EQUALITY
40 Exchange Place, Suite 1300
13 New York, New York 10005-2744
Telephone: (212) 714-2904
14

15 *Attorneys for Plaintiffs*

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

21 ANDREW MASON DVASH-)
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

**PLAINTIFFS' MEMORANDUM OF
EVIDENTIARY OBJECTIONS IN
OPPOSITION TO DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

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

1 Plaintiffs Andrew Mason Dvash-Banks (“Andrew”) and E.J. D.-B.
2 (“E.J.”; together, “Plaintiffs”) submit the following memorandum of points and
3 authorities in support of their evidentiary objections to the Statement of
4 Uncontroverted Facts submitted by Defendants the United States Department of
5 State (“State Department”) and the Honorable Michael R. Pompeo, Secretary of
6 State (together with the State Department, “Defendants”).

7 **PLAINTIFFS’ GENERAL OBJECTIONS**

8 ***Lacks Foundation.*** Plaintiffs object to the evidence proffered by
9 Defendants to the extent that the evidence lacks proper foundation. Evidence
10 lacking proper foundation is not admissible. Federal Rule of Evidence (“Fed. R.
11 Evid.”) 602; *see also, e.g., Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d 1179,
12 [1182 \(9th Cir. 1988\)](#) (“We have repeatedly held that documents which have not
13 had a proper foundation laid to authenticate them cannot support a motion for
14 summary judgment.”) (internal quotation marks and citation omitted); *Lincoln*
15 *Nat’l Life Ins. Co. v. McClendon*, 230 F. Supp. 3d 1180, 1184 (C.D. Cal. 2017)
16 (“A document which lacks a proper foundation to authenticate it cannot be used to
17 support a motion for summary judgment.”). As demonstrated below, certain of
18 Defendants’ proffered evidence lacks proper foundation and is, therefore,
19 inadmissible for purposes of their motion for partial summary judgment.

20 ***Mischaracterizes Evidence.*** Plaintiffs object to Defendants’
21 statements of fact to the extent that they mischaracterize testimony or other
22 evidence. Factual statements that mischaracterize evidence are not admissible
23 under Fed. R. Evid. 403 as they are misleading and result in “confus[ion] [of] the
24 issues.” Fed. R. Evid. 403. Courts do not rely on asserted facts that
25 mischaracterize the supporting evidence. *See, e.g., Negrete v. Allianz Life Ins. Co.*
26 *of N. Am.*, 926 F. Supp. 2d 1143, 1155 n. 8 (C.D. Cal. 2013) (“To the extent that
27 plaintiffs have mischaracterized various exhibits [], the Court disregards plaintiffs’
28 contentions of fact to the contrary.”); *Conroy v. Hewlett-Packard Co.*, 2016 WL

1 [1276552, at *3 \(D. Or. Mar. 31, 2016\)](#) (“To the extent the statements made in the
2 parties’ briefing differ from the facts established in the submitted depositions,
3 declarations, and exhibits, the court will ignore the statements made in the
4 briefing.”); [Bakhit v. Polar Air Cargo, 2011 WL 3443629, at *5 \(N.D. Cal. Aug. 5,](#)
5 [2011\)](#) (rejecting moving party’s “attempts to characterize defendant’s acts as
6 unlawful practices such as discrimination and retaliation [where] the [testimony]
7 show[ed] that defendant was focused on plaintiff’s, and other pilots’,
8 performance”). Therefore, Defendants’ proffered statements that mischaracterize
9 evidence are inadmissible.

10 ***Legal Conclusions.*** Plaintiffs object to Defendants’ statements of fact
11 to the extent that they are legal conclusions rather than facts. Fed. R. Evid. 403
12 makes clear that legal conclusions are not admissible because they are misleading
13 and result in “confus[ion] [of] the issues.” Fed. R. Evid. 403. Courts do not rely
14 on asserted facts that are legal conclusions. *See, e.g., Federal Ins. Co. v.*
15 [Burlington N. & Santa Fe Ry. Co., 270 F. Supp. 2d 1183, 1187 \(C.D. Cal. July 7,](#)
16 [2003\)](#) (declining to adopt “Fact 8” from the moving party’s statement of
17 uncontroverted facts, where it was “not a fact, but a legal conclusion.”); [Crane v.](#)
18 [AHC of Glendale, LLC, 2016 WL 5363748, at *5 \(D. Ariz. Sept. 26, 2016\)](#) (court
19 disregarded “counsel’s assertions of legal conclusions as fact . . . recogniz[ing] that
20 Plaintiff disagree[d] with those legal conclusions” and “made its own legal
21 conclusions”).

22 **PLAINTIFFS’ SPECIFIC EVIDENTIARY OBJECTIONS**

23 ***Defendants’ Statement of Fact No. 6:*** Defendants assert that “A.J. is
24 E.J.’s biological half-brother; they share the same anonymous egg donor,” citing
25 for this proposition Andrew’s deposition testimony. Plaintiffs do not dispute that
26 E.J.’s brother A.J. D.-B. (“A.J.”) and E.J. “share the same anonymous egg donor.”
27 Plaintiffs object, however, that Defendants’ Statement of Fact No. 6 misstates or
28 mischaracterizes the record, because it ignores or distorts the evidence that E.J. and

1 A.J. were conceived from eggs of the same donor and born at essentially the same
2 time—four minutes apart—during the marriage of, and with genetic material from,
3 their legal parents, Andrew and Elad, and were born during that marriage.
4 Contrary to the suggestion or insinuation created by the reference to “half-
5 brothers,” A.J. and E.J. were not born during other familial or marital relationships.
6 They were carried together during the same pregnancy and their birth was the
7 product of the efforts of their parents, Andrew and Elad, to create and raise a
8 family as a single unit.

9 ***Defendants’ Statement of Fact No. 7:*** Defendants assert that “A.J.
10 and E.J. were carried by the same surrogate; she carried them in tandem, and they
11 were born on the same day,” citing for this proposition Andrew’s deposition
12 testimony. Plaintiffs do not dispute that “A.J. and E.J. were carried by the same
13 surrogate” or that “they were born on the same day.” Plaintiffs object, however,
14 that Defendants’ Statement of Fact No. 7 misstates or mischaracterizes the record,
15 because it ignores or distorts the evidence that E.J. and A.J. were carried as twins
16 by the gestational surrogate during the same pregnancy. Contrary to the suggestion
17 or insinuation created by the language “carried in tandem,” A.J. and E.J. were not
18 carried concurrently by the gestational surrogate through some accident or
19 coincidence. Their birth was the product of the efforts of their parents, Andrew
20 and Elad, to create and raise a family as a single unit.

21 ***Defendants’ Statement of Fact No. 12:*** Defendants assert that “[t]he
22 [court] order [declaring Andrew and Elad to be the parents of E.J.] did not state
23 that it had retroactive effect.” Plaintiffs object that Defendants’ Statement of Fact
24 No. 12 mischaracterizes the evidence to the extent Defendants suggest that the lack
25 of the word “retroactive” in the court order proves that it did not have retroactive
26 effect. Plaintiffs further object to Statement of Fact No. 12 to the extent that it
27 mischaracterizes the parental relationship at issue as having started (in law) when
28 the court order was signed, as opposed to when E.J. was born. And to the extent

1 that Defendants seek to assert through this statement that the Canadian court order
2 did not have retroactive effect—whatever that would mean in this context—it
3 asserts a conclusion of law.

4 ***Defendants’ Statement of Fact No. 23:*** Defendants assert that “[t]he
5 ultimate decisions on E.J.’s and A.J.’s applications were made by Ms. Day on her
6 own.” Plaintiffs do not dispute that the “ultimate decisions on E.J.’s and A.J.’s
7 applications were made by Ms. Day.” Plaintiffs object, however, to Defendants’
8 characterization of Ms. Day’s testimony that she did so “on her own” as
9 mischaracterizing the evidence to the extent it suggests that Ms. Day acted
10 unilaterally and without referring to the State Department’s *Foreign Affairs*
11 *Manual* (“FAM”), or consulting with a colleague or her supervisor at the U.S.
12 Consulate in Toronto, Canada. *See e.g.*, Day Tr. 95:11-25; 217:09-24; 220:03-06;
13 235:17-23. Additionally, this characterization is at odds with Defendants’ other
14 assertions of fact, including Statement of Fact Nos. 21 and 22, which reflect that
15 Ms. Day consulted the FAM and consulted with her colleagues in the adjudication
16 of the Dvash-Banks family’s applications for CRBAs and U.S. Passports for A.J.
17 and E.J.

18 ***Defendants’ Statement of Fact No. 31:*** Defendants assert that
19 Ms. Day “suggested to the Dvash-Banks family other ways that they could
20 potentially have E.J. and A.J. documented as U.S. citizens.” Plaintiffs object to the
21 mischaracterization of the evidence. Dvash-Banks00000031, which Defendants
22 cite in support of Statement of Fact No. 31, contains no support for Statement of
23 Fact No. 31—nowhere does it suggest other ways that E.J. and A.J. could be
24 documented as U.S. citizens. Plaintiffs further object to Statement of Fact No. 31
25 to the extent that the words “documented as U.S. citizens” mischaracterize
26 recognition as a U.S. citizen through naturalization or other means as acquisition of
27 U.S. citizenship at birth.

28

1 ***Defendants’ Statement of Fact No. 42:*** Defendants assert that
2 “Ms. Reffett testified that a biological relationship is always required, regardless of
3 whether the child’s legal parents are married to each other.” Plaintiffs object to the
4 mischaracterization of the evidence to the extent Defendants are suggesting that
5 Ms. Reffett independently interpreted the Immigration and Nationality Act of
6 1952, as amended (the “INA”) always to require a biological relationship between
7 the child and the U.S. citizen parent. In the testimony Defendants cite for
8 Statement of Fact No. 42, Ms. Reffett was describing the FAM’s interpretation of
9 the INA. Indeed, she specifically noted that the definition of “in wedlock” as
10 requiring a biological tie to both married parents was “not [her] interpretation.”
11 Reffett Tr. 153:06-153:15. Similarly, Statement of Fact No. 42 mischaracterizes
12 the testimony by not indicating that the testimony referred, in addition to the FAM,
13 to the Quick Reference Citizenship Chart Ms. Reffett created listing requirements
14 from the FAM. Statement of Fact No. 42 thus risks confusing the issues as to the
15 requirements established by the INA for recognition of U.S. citizenship at birth and
16 of the extent to which Defendants adhered to those statutory requirements. Fed. R.
17 Evid. 403.

18 ***Defendants’ Statement of Fact No. 52:*** Defendants assert, “Andrew
19 asserts that the Department of State rejected E.J.’s citizenship status because the
20 Department views E.J. as a child born out of wedlock; he believes this has
21 something to do with his marriage.” Plaintiffs object to the mischaracterization of
22 the evidence to the extent Defendants are using the cited testimony to obscure the
23 fact that the fundamental right to marry, and the benefits flowing from it, are
24 central to the claims in this action. By characterizing Andrew’s testimony as
25 stating merely that the denial of E.J.’s CRBA and U.S. passport applications has
26 “something to do with his marriage,” Defendants downplay the significant
27 infringement of Andrew’s fundamental right to marry, and E.J.’s rights as the
28 product of that marriage, that the denial of E.J.’s CRBA and U.S. passport

1 applications has wrought. Statement of Fact No. 52 is not a fact established by the
2 record, but instead Defendants’ inadmissible characterization of, inference from, or
3 argument concerning, Andrew’s deposition testimony. *See* Federal Rule of Civil
4 Procedure (“Fed. R. Civ. P.”) 56(c)(1) (Parties “asserting that a fact cannot be . . .
5 genuinely disputed” must “cit[e] to particular parts or materials in the record” that
6 “support th[ose] assertion[s].”).

7 ***Defendants’ Statement of Fact No. 53:*** Defendants assert that
8 “Andrew testified that the Department’s decision to deny E.J.’s application did not
9 harm Andrew’s ability to be married to Elad.” Plaintiffs object to the
10 mischaracterization of the evidence to the extent Defendants are suggesting that the
11 State Department’s decision to deny E.J.’s CRBA and U.S. passport applications
12 did not harm Andrew and Elad’s marriage, when Andrew testified only that the
13 decision by the State Department did not impact his *ability* to be married to Elad.
14 The fact that Andrew and Elad *can* be—and are—married is not what is at issue in
15 this case; instead, the action focuses on how the denial of E.J.’s CRBA and U.S.
16 passport applications infringes on the constellation of benefits associated with
17 Andrew’s valid marriage to Elad, including his ability to convey U.S. citizenship to
18 children of that marriage. Statement of Fact No. 53 is not a fact established by the
19 record, but instead Defendants’ inadmissible characterization of, inference from, or
20 argument concerning, Andrew’s deposition testimony. *See* Fed. R. Civ. P. 56(c)(1)
21 (Parties “asserting that a fact cannot be . . . genuinely disputed” must “cit[e] to
22 particular parts or materials in the record” that “support th[ose] assertion[s].”).

23 ***Defendants’ Statement of Fact No. 58:*** Defendants assert that the
24 “Department treats the children of same-sex couples as “born of . . . parents” for
25 the purposes of Section 1401 when both parents have a biological connection to the
26 children.” Plaintiffs object to the mischaracterization of the evidence to the extent
27 that Statement of Fact No. 58 purports to quote the INA. *See* 8 U.S.C. §1401 (the
28 words “born” and “of” do not appear next to each other). Plaintiffs further object

1 to the mischaracterization of the evidence in Statement of Fact No. 58 because,
2 although Defendants deny in their Response to Pls.’ First Set of Requests for
3 Admission No. 9 that they “would never conclude that two men who are married to
4 each other may have a child in wedlock for purposes of” Section 301 of the INA,
5 they can identify *no* situation in which the State Department would treat the
6 children of a married same-sex male couple such as Andrew and Elad (*i.e.*, a same-
7 sex male couple in which neither spouse is a transgender male) as “born . . . of
8 parents” for the purposes of Section 1401. Plaintiffs also object to Statement of
9 Fact No. 58 as misleading to the extent that it suggests that both members of a
10 same-sex male married couple could be biologically related to a child.

11 ***Defendants’ Statement of Fact No. 61:*** Defendants assert that
12 “Ms. Day generally tried to ask all CRBA applicants about their use of Assisted
13 Reproductive Technology, regardless of whether the parents were in a same-sex or
14 opposite-sex marriage.” Plaintiffs object that the evidence is disputed; additional
15 testimony from Ms. Day indicates that she would inquire about the use of Assisted
16 Reproductive Technology only when applicants raised the issue with her. *See* Day
17 Tr. 80:18-81:11 (“So I would say that if the parent indicated to me that -- which is
18 normally, like I said, how that would go about. If the parent indicated to me that
19 they had used assisted reproductive technology, then we would go down that line
20 of questioning, if I thought that -- if I saw that this was something that had . . .
21 happened.”).

22 ***Defendants’ Statement of Fact No. 63:*** Defendants assert that
23 “Ms. Day did not ask every same-sex couple applying for a CRBA application for
24 a child to present DNA evidence.” Plaintiffs object to the mischaracterization of
25 the evidence to the extent that Statement of Fact No. 63 suggests either that there
26 was more than one same-sex family from which Ms. Day did not ask for DNA
27 evidence or that she had not been presented with medical evidence previously in
28 that case. In Defendants’ cited testimony, Ms. Day testified about only one same-

1 sex female couple from whom she did not request DNA evidence and, according
2 to Ms. Day, this couple presented medical documents about the conception of their
3 child during the interview with her. *See* Day Tr. 246:04-247:23. There is no
4 foundation to extend this testimony to the generalization asserted in Statement of
5 Fact No. 63.

6 ***Defendants' Statement of Fact No. 64:*** Defendants assert that the
7 “Dvash-Banks family may pursue another avenue for documenting E.J.’s
8 citizenship.” Plaintiffs object that Statement of Fact No. 64 is misleading to the
9 extent that it suggests any assertion of fact concerning the hypothetical outcome of
10 other efforts that have not been taken by the Dvash-Banks family for
11 “documenting E.J.’s citizenship.” Plaintiffs further object to Statement of Fact
12 No. 64 to the extent that the words “documenting E.J.’s citizenship”
13 mischaracterize recognition of U.S. citizen through naturalization or by other
14 means as the equivalent of acquisition of U.S. citizenship at birth.

15 ***Defendants' Statement of Fact No. 65:*** Defendants assert that the
16 “Dvash-Banks family could apply for a certificate of citizenship from USCIS.”
17 Plaintiffs object that Statement of Fact No. 65 is misleading to the extent that it
18 suggests any assertion of fact concerning the hypothetical outcome of an
19 application to USCIS.

20 ***Defendants' Statement of Fact No. 65:*** Defendants assert that, “[f]or
21 applications for certificates of citizenship that USCIS receives from applicants
22 living in the Ninth Circuit at the time of their application, USCIS applies the Ninth
23 Circuit caselaw of [Scales v. I.N.S., 232 F.3d 1159, 1165 \(9th Cir. 2000\)](#).” Plaintiffs
24 object to Statement of Fact No. 67 on the grounds that Defendants have conceded
25 that they lack information to predict how the USCIS would adjudicate an
26 application on E.J.’s behalf. *See* 30(b)(6) Tr. 318:4-318:15 (“I don’t know that it
27 would be accurate to say that [the State Department] had an expectation” that
28 USCIS would “grant [an] application [by the Dvash-Banks family for a certificate

1 of citizenship for E.J.). Accordingly, there is insufficient evidence to know how
2 USCIS would evaluate an application it has not received and therefore lack of
3 foundation for Statement of Fact No. 65.

4 ***Defendants’ Statement of Fact No. 69:*** Defendants assert that the
5 “INA was enacted in 1952, a time when it was commonly understood, that outside
6 the adoption context, ‘parent’ at birth referred to a biological parent.” Plaintiffs
7 object that Statement of Fact No. 69 calls for a legal conclusion that, when the INA
8 was enacted, the word “parent” (outside of the adoption context) referred to a
9 biological parent. Plaintiffs further object to Statement of Fact No. 69 on the
10 grounds of lack of foundation, because Defendants have provided no support
11 (other than their own conclusory statement) for the assertion that, in 1952, it was
12 commonly understood that “parent” referred to a biological parent.

13 ***Defendants’ Statement of Fact No. 70:*** Defendants assert that the
14 “Department’s interpretation has been set forth in the FAM for at least twenty
15 years.” Plaintiffs object that Statement of Fact No. 70 is vague to the extent that it
16 does not identify the interpretation referenced. Plaintiffs further object that
17 Statement of Fact No. 70 mischaracterizes the evidence because in 2014 the State
18 Department changed its interpretation of the INA Sections 301 and 309 with
19 respect to a gestational mother who is not the genetic parent of the child.

20 ***Defendants’ Statement of Fact No. 71:*** Defendants assert that the
21 “Department has expressed concerns that adopting a contrary interpretation of
22 Section 1401(g) would raise the frequency of fraudulent citizenship claims,
23 because it would be difficult to identify child smuggling or illegal adoption without
24 requiring a biological link between child applicant and the transmitting parent.”
25 Plaintiffs object to Statement of Fact No. 71 as mischaracterizing the testimony, in
26 that Ms. Reffett testified only about circumstances that would give rise to doubt of
27 putative parentage, not that the frequency of fraudulent citizenship claims would
28 increase if the State Department were to adopt a different interpretation of Section

1 301(g) of the INA. During the testimony Defendants cite, Ms. Reffett expressed
2 reluctance to catalogue the criteria the State Department considers for fear that
3 knowledge of that information could create a risk of fraud. To the extent
4 Defendants characterize this testimony as stating that the blood relationship
5 requirement was imposed by the State Department to avoid fraud, it is a distortion
6 of her testimony. *See* Reffett Tr. 167:18–168:19. Plaintiffs further object on the
7 grounds that Statement of Fact No. 71 is inconsistent with the evidence provided
8 by Defendants, which established that the State Department’s imposition of a
9 requirement to establish a blood relationship between a U.S. citizen parent and a
10 child born outside the United States is not tied to a concern about fraud. When
11 asked whether the “State Department’s interest in sustaining its interpretation of
12 section 301 is rooted in an effort to prevent fraud,” the State Department’s
13 30(b)(6) deponent said “no.” 30(b)(6) Tr. 317:2-317:8. Plaintiffs also object to
14 Statement of Fact No. 71 on the grounds of lack of foundation to the extent that it
15 relies on DEFS001382. Defendants have not established that the author of that
16 document had personal knowledge about the matters described therein, as required
17 under Fed. R. Evid. 602. Furthermore, Defendants have not even included this
18 document as an exhibit among the papers filed in support of Defendants’ motion
19 for partial summary judgment.

20 ***Defendants’ Statement of Fact No. 72:*** Defendants assert that it is
21 “common practice throughout the world for Department of State Embassies and
22 Consulates to ask for DNA testing in surrogacy cases; DNA testing is a means of
23 discouraging fraud and ensuring that U.S. citizenship transmission Requirements
24 are met.” Plaintiffs object to Statement of Fact No. 72 as lacking foundation.
25 Plaintiffs further object to Statement of Fact No. 72 on the grounds of insufficiency
26 of the evidence. The evidence cited is a communication from a consular employee
27 in Thailand who cites no support for this conclusory proposition, and Defendants
28 have not established that the employee has any personal knowledge of Department

1 of State practices worldwide. Fed. R. Evid. 602. Indeed, there is contradictory
2 evidence in the record that the State Department does not track how often CRBA
3 applicants are asked to undergo DNA testing. *See* Plaintiffs' Statement of Genuine
4 Disputes of Material Facts, at No.144.

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6 Dated: January 14, 2019

Respectfully submitted,

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8
9 By: /s/ Alexa M. Lawson-Remer
10 Alexa M. Lawson-Remer (SBN 268855)
11 lawsonr@sullcrom.com
12 SULLIVAN & CROMWELL LLP
13 1888 Century Park East, Suite 2100
14 Los Angeles, California 90067-1725
15 Telephone: (310) 712-6600
16 Facsimile: (310) 712-8800

17 Theodore Edelman (*pro hac vice*)
18 edlemant@sullcrom.com
19 Jessica Klein (*pro hac vice*)
20 kleinj@sullcrom.com
21 Lauren M. Goldsmith (SBN 293269)
22 goldsmithl@sullcrom.com
23 SULLIVAN & CROMWELL LLP
24 125 Broad Street
25 New York, New York 10004-2498
26 Telephone: (212) 558-4000
27 Facsimile: (212) 558-3588

28 Aaron C. Morris (*pro hac vice*)
amorris@immigrationequality.org
IMMIGRATION EQUALITY
40 Exchange Place, Suite 1300
New York, New York 10005-2744
Telephone: (212) 714-2904

Attorneys for Plaintiffs

1 The Court, having considered all relevant submissions, documents and
2 evidence, and having considered the arguments of counsel, and good cause
3 appearing therefore, hereby orders that the Motion is DENIED. The Court finds
4 that Defendants cannot prevail as a matter of law against Plaintiffs Andrew Mason
5 Dvash-Banks and E.J. D.-B. on Plaintiffs' claims under either the Administrative
6 Procedure Act, 5 U.S.C. § 706, or the Due Process Clause of the Fifth Amendment.

7 **IT IS THEREFORE ORDERED THAT** Defendants' Motion for
8 partial summary judgment is DENIED in its entirety.

9
10 Date: _____

The Honorable John F. Walter
United States District Judge

1 Respectfully submitted,

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

3 SULLIVAN & CROMWELL LLP
4 Alexa M. Lawson-Remer (268855)
5 lawsonr@sullcrom.com
6 1888 Century Park East, Suite 2100
7 Los Angeles, CA 90067-1725
8 Telephone: (310) 712-6600
9 Facsimile: (310) 712-8800

10 Theodore Edelman (pro hac vice)
11 edelmant@sullcrom.com
12 Jessica Klein (pro hac vice)
13 kleinj@sullcrom.com
14 Lauren M. Goldsmith (293269)
15 goldsmithl@sullcrom.com
16 125 Broad Street
17 New York, NY 10004-2498
18 Telephone: (212) 558-4000
19 Facsimile: (212) 558-3588

20 IMMIGRATION EQUALITY
21 Aaron C. Morris (pro hac vice)
22 amorris@immigrationequality.org
23 40 Exchange Place, Suite 1300
24 New York, NY 10005-2744
25 Telephone: (212) 714-2904

26 *Attorneys for Plaintiffs*

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28