



1 a bean bag round by a Fresno Sheriff's Deputy.

2  
3 A. Standard of Review.

4 Federal Rule of Civil Procedure 12(f) authorizes the Court  
5 to strike from any pleading "an insufficient defense or any  
6 redundant, immaterial, impertinent, or scandalous matter from any  
7 complaint or defense." For the purposes of a motion to strike,  
8 any material matter is "that which has no essential or important  
9 relationship to the claim for relief or the defense being  
10 pleaded." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1528 (9th  
11 Cir. 1993), rev. on other grounds, 510 U.S. 517 (1994). Rule  
12(f) is designed to eliminate from consideration issues that  
13 "can have no possible bearing on the subject matter of the  
14 litigation." *Naton v. Bank of California*, 72 F.R.D. 550, 552,  
15 n.4 (N.D. Cal. 1976). In addition to Rule 12, a District Court's  
16 inherent authority to manage its docket authorizes the court to  
17 strike matters from the docket.

18  
19 B. Essential Allegations of the Complaint.

20 Plaintiff, Blanca Estela Castro, claims an intimate  
21 relationship with decedent Mendoza-Saravia arising from her  
22 status as the mother of the decedent's child, Angie Melissa  
23 Castro. Complaint ¶ 17. She resided with the decedent as his  
24 domestic partner, and with the decedent's children in a "family  
25 unit." Ms. Castro depended on decedent for necessities of life.  
26 Plaintiff Angie Melissa Castro was born approximately three  
27 months after the death of her father, Mendoza-Saravia. Plaintiff  
28 Castro's second claim is for deprivation of her Fourteenth

1 Amendment rights of intimate association with the decedent.  
2 Their daughter, Angie's claim for loss of familial relationship  
3 with her deceased father is not challenged.  
4

5 LAW AND ANALYSIS

6 A. Fourteenth Amendment Familial Association Right.

7 The Supreme Court has recognized that "certain kinds of  
8 personal bonds," *Roberts v. United States Jaycees*, 468 U.S. 609,  
9 618 (1984) and "certain [kinds of] intimate conduct," *Lawrence v.*  
10 *Texas*, 539 U.S. 558, 562 (2003) are protected by the substantive  
11 component of the Due Process Clause. Whether subsumed under the  
12 Fourteenth Amendment right to intimate association, or First  
13 Amendment right to privacy, the Supreme Court consistently has  
14 recognized that "choices to enter into and maintain certain  
15 intimate human relationships must be secured against undue  
16 intrusion by the State because of the role of such relationships  
17 in safeguarding the individual freedom that is central to our  
18 Constitutional scheme." *Roberts*, 468 U.S. at 617-18; see also,  
19 *Lawrence*, 539 U.S. at 567. Protected rights of intimate  
20 association have been recognized in unmarried, long-term  
21 relationships. *Christensen v. County of Boone, Illinois*, 483  
22 F.3d 454, 463 (7th Cir. 2007) (*reh'g and reh'g en banc denied*  
23 2007).

24 In *Christensen*, the Plaintiffs, an unmarried couple, brought  
25 a civil rights action against the County and a Deputy Sheriff  
26 alleging the Deputy Sheriff interfered with the couple's  
27 Constitutional right to be free from unreasonable searches and  
28 seizures, their right to intimate association, and intentional

1 infliction of emotional distress. The trial court sustained a  
2 motion to dismiss the complaint for failure to state a claim  
3 based on lack of standing. The Seventh Circuit held an unmarried  
4 heterosexual couple in a long-term relationship was a form of  
5 "intimate association" protected by the Fourteenth Amendment.  
6 *Roberts* recognized that intimate associations protected by the  
7 Due Process Clause "have played a critical role in the culture  
8 and traditions of the nation by cultivating and transmitting  
9 shared ideals and beliefs; they thereby foster diversity and act  
10 as critical buffers between the individual and the power of the  
11 State." *Roberts, supra*, 468 U.S. at 618. These relationships  
12 bestow "the ability independently to define one's identity that  
13 is central to any concept of liberty." *Id.* at 619. In  
14 discussing *Lawrence v. Texas, supra, Christensen* held: "It is  
15 impossible to see how an unmarried heterosexual couple in a long-  
16 term relationship could receive less protection than a private  
17 homosexual relationship, whether or not the participants are  
18 married." *Christensen* at 463. The Seventh Circuit concluded on  
19 the authority of *Lawrence*, "that the plaintiffs' relationship  
20 (unmarried) is a form of 'intimate association' protected by the  
21 Constitution." *Id.* (citing *Montgomery v. Stefaniak*, 410 F.3d  
22 933, 937 (7th Cir. 2005)); see also, e.g., *Anderson v. City of*  
23 *LaVergne*, 371 F.3d 879, 882 (6th Cir. 2004) (an unmarried couple  
24 is engaged in a constitutionally-protected intimate association  
25 where they were living together, were romantically and sexually  
26 involved, and were monogamous). *Anderson* found: "Therefore, in  
27 addition to marriage, courts have recognized both personal  
28 friendships and non-marital relationships as types of 'highly

1 personal relationships' within the ambit of intimate associations  
2 contemplated by *Roberts*."

3 *Akers v. McGinnis*, 352 F.3d 1030, 1039-40 (6th Cir. 2003)  
4 further citing *Roberts*, 468 U.S. at 617-18, held: "Concerning  
5 intimate association the Supreme Court 'has concluded the choices  
6 to enter into and maintain certain intimate human relationships  
7 must be secured against undue intrusion by the State because of  
8 the role of such relationships in safeguarding the individual  
9 freedom that is central to our Constitutional scheme.'"

10 Although neither party has cited a Ninth Circuit case  
11 directly on point, the Complaint's allegations of an intimate  
12 domestic association, albeit unmarried, where decedent's family  
13 was combined with Plaintiff; they lived together; she was  
14 pregnant with decedent's child at the time of his death; they  
15 shared finances; and co-habited and shared the intimate details  
16 of each other's lives; all converge to satisfy the intimate  
17 association familial relationship requirement of the Fourteenth  
18 Amendment. If Defendants challenge the duration and quality of  
19 the relationship as an insufficient intimate association, this  
20 factual dispute is not resolvable as a matter of law on a Rule  
21 12(f) motion to strike.

22  
23 B. Intimate Association Analysis

24 The Ninth Circuit in *IDK, Inc. v. County of Clark*, 836 F.2d  
25 1185 recognizes that the relationships protected by the  
26 Fourteenth Amendment "are those that attend the creation and  
27 sustenance of a family" and similar "highly personal  
28 relationships." *Id.* at 1193 (citing, *Roberts*, 468 U.S. at 618-

1 19). Individuals who are deeply attached and committed to each  
2 other as a result of their having shared each other's thoughts,  
3 lives and experiences and who, by the very nature of such  
4 relationships, are involved in relatively few intimate  
5 associations during his or her lifetime, are all relevant factors  
6 to determine whether a particular association is eligible for  
7 protection by the Due Process Clause. These factors include the  
8 number of persons involved in the relationship; the congeniality  
9 of the relationship; its duration; the purposes for which it was  
10 formed; and the selectivity in choosing participants.

11 Involvement in procreation, here present; raising and educating  
12 children, here present; cohabitation with relatives, here  
13 present; or other activities of family life all typify the  
14 required intimate association. All the incidents of the *IDK*  
15 interpretation of *Roberts'* intimate association factors are here  
16 present. The Complaint alleges a sufficient intimate association  
17 between Plaintiff Castro and the decedent to support a Fourteenth  
18 Amendment Due Process claim for unlawful State interference in  
19 protected a family relationship.

20 There is no question that for Plaintiff Angie Melissa Castro  
21 the Ninth Circuit expressly recognizes a parent's due process  
22 right to associate with his or her child and the standing of a  
23 child to sue for the deprivation of the loss of the familial  
24 association right with her parent. See *Porter v. Osborn*, 546  
25 F.3d 1131, 1136 (9th Cir. 2008) (recognizing parent's Fourteenth  
26 Amendment Due Process right to associate with their deceased  
27 son). A "child's interest in her relationship with a parent is  
28 sufficiently weighty by itself to constitute a cognizable liberty

1 interest." *Smith v. City of Fontana*, 818 F.2d 1411, 1419 (9th  
2 Cir. 1987), cert. denied, 484 U.S. 935 (1987) overruled on other  
3 grounds by *Hodgers-Duran v. Lopez*, 199 F.3d 1037, 1040 n.1 (9th  
4 Cir. 1999).

5  
6 C. Interaction of Fourteenth and First Amendments.

7 The First Amendment guarantees the right to "[T]wo sometimes  
8 overlapping types of protective association." *Rode v.*  
9 *Dellarciprete*, 845 F.2d 1195, 1204 (3d Cir. 1998). The Third  
10 Circuit explained: "Associations founded on intimate human  
11 relationships in which freedom of association is protected as a  
12 fundamental element of liberty and associations formed for the  
13 purpose of engaging in activities protected by the First  
14 Amendment, such as the exercise of speech, assembly, and  
15 religion." *Id.* at 1204 (citing *Roberts*, 468 U.S. at 617-18).  
16 The claim in this case is more properly analyzed consistent with  
17 the Fourteenth Amendment's Due Process guarantees, association  
18 "founded on intimate human relationships in which freedom of  
19 association is protected as a fundamental element of liberty."  
20 *Rees v. Office of Children & Youth*, 2010 WL 3906311 (W.D. Pa.  
21 2010). An unpublished Ninth Circuit decision, *Bevelhymer v.*  
22 *Clark County*, 53 F.3d 337 (9th Cir. 1995) recognizes that "a  
23 state violates the Fourteenth Amendment when it seeks to  
24 interfere with the social relationship of two or more people."  
25 *Id.* at 3 (citing *IDK*, 836 F.2d at 1193). For qualified immunity  
26 purposes: "At least by 1988, it was clearly established that the  
27 Fourteenth Amendment protects relationships between "individuals  
28 [who] are deeply attached and committed to each other as a result

1 of their having shared each other's thoughts, beliefs, and  
2 experiences." *Citing, Wilson v. Taylor*, 733 F.2d 1539, 1544.  
3 The Circuit Court rejected the Defendant's claim in *Bevelhymmer*  
4 "that a reasonable public official could not have known that the  
5 Fourteenth Amendment protects intimate associations between  
6 unmarried couples."

7 *Bevelhymmer*, a pleading case, held that "despite the clarity  
8 of the law protecting intimate associations," it is necessary  
9 that sufficient facts be alleged to identify the nature and  
10 extent of the intimate association and that action was taken  
11 against the decedent as a result of his association with  
12 Plaintiff. *Id.* at 4 (Reinhardt, J., dissenting) (recommending  
13 that the case be remanded for opportunity to amend complaint:  
14 "intrusion into Plaintiff's intimate association causing  
15 termination of the relationship is an important and necessary  
16 part of the Fourteenth Amendment claim."). Here, Defendants have  
17 not moved to dismiss the claim, rather, they move to strike the  
18 claim as unauthorized by law, invoking state law, an apparent  
19 misapprehension that federal law also governs intimate  
20 association.

21  
22 D. State Law.

23 Defendants argue that the interface between State law and  
24 Civil Rights Act § 1983 is governed by 42 U.S.C. § 1988. Section  
25 1988 requires a three-step analysis in considering whether to  
26 apply State law in a Civil Rights action. First, the Court must  
27 look for a Federal rule. Here, the inquiry ends, as Plaintiffs'  
28 counsel correctly argued at the hearing on this motion, a

1 cognizable Federal right to intimate association exists under the  
2 Fourteenth Amendment to the United States Constitution. Federal  
3 law, the Fourteenth Amendment governs this deprivation of  
4 intimate association claim. Recourse to State law is  
5 unnecessary.

6 Even, *arguendo*, if the next stage of the inquiry were  
7 reached, the Court looks for a State law and, applies it "only if  
8 it is not inconsistent with the Constitution and laws of the  
9 United States." *Wilson v. Garcia*, 471 U.S. 261, 267 (1985).

10 Defendant contends that the State wrongful death statutes,  
11 borrowed to supplement § 1983 in the general area of wrongful  
12 death actions (*citing Dell v. City of Milwaukee*, 746 F.2d 1205,  
13 1235-41 (7th Cir. 1984), a red flagged case), prevent standing in  
14 this case based on California Code of Civil Procedure §§ 377.60  
15 and (f) (1), requiring a registered domestic partnership to have  
16 been perfected to authorize a survivorship action for wrongful  
17 death. Accepting that no state right exists under the  
18 survivorship law of California, the inquiry then turns to whether  
19 the claimed right is consistent with the Constitution and laws of  
20 the United States. *Wilson v. Garcia, supra*, 471 U.S. at 267.

21 The policies underlying § 1983 include compensation of  
22 persons injured by deprivation of Federal rights and prevention  
23 of abuses of power by those acting under color of State law.  
24 *Robertson v. Wegmann*, 436 U.S. 584, 590-91 (1978). Because  
25 Plaintiff cannot bring suit under C.C.P. § 377 as recognized in  
26 *Reynolds v. County of San Diego*, 858 F.Supp. 1064, 1069 (S.D.  
27 Cal. 1994), denying Plaintiff a claim for loss of decedent's  
28 intimate association and domestic relationship, resulting from

1 his allegedly wrongful death under color of state law, is  
2 inconsistent with the § 1983 goals of compensation and deterrence  
3 when applied to Blanca's own loss. Barring both State and  
4 Federal claims denies Plaintiff any compensation for her own  
5 constitutionally protected interest in decedent's companionship.  
6 It also limits the deterrent effect of § 1983 by allowing state  
7 actors to avoid compensating for the full extent of the injuries  
8 they cause. California law should not be applied to prohibit  
9 Plaintiff from bringing a claim under § 1983 for violation of her  
10 own constitutionally protected Fourteenth Amendment intimate  
11 association interests.

12  
13 CONCLUSION

14 Under the United States Constitution and Federal law, 42  
15 U.S.C. §§ 1983 and 1988, both Plaintiffs, Blanca Estela Castro  
16 and Angie Melissa Castro, the former unmarried domestic partner  
17 and child of the decedent, Angel Mendoza-Saravia, have standing  
18 under the United States Constitution and Federal law to assert a  
19 Civil Rights claim for deprivation of their intimate familial  
20 association with the decedent allegedly in violation of their due  
21 process right protected by the Fourteenth Amendment to the United  
22 States Constitution. For all the reasons discussed above,  
23 Defendants' Motion to Strike the allegations of the Second Claim  
24 of the Second Amended Complaint as to Blanca Castro is DENIED.

25  
26 IT IS SO ORDERED.

27 Dated: February 16, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE