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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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ROBERT MANN SR., VERN MURPHY-
MANN, DEBORAH MANN, ZACHARY
MANN, and WILLIAM MANN,

Plaintiffs,

v.

CITY OF SACRAMENTO,
SACRAMENTO POLICE DEPARTMENT,
SAMUEL D. SOMERS JR., JOHN C.
TENNIS, and RANDY R. LOZOYA,

Defendants.

CIV. NO. 2:17-01201 WBS DB

ORDER RE: MOTION TO DISMISS

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Joseph Mann ("decedent") was shot and killed by
Sacramento Police officers John C. Tennis and Rand R. Lozoya on
July 11, 2016. Decedent's siblings have brought this action
under 42 U.S.C. § 1983 to recover damages for deprivation of
their First Amendment right of association with decedent.
Presently before the court is defendants Tennis and Lozoya's
Motion to Dismiss Plaintiffs' Complaint under Rule 12(b)(6) of

1 the Federal Rules of Civil Procedure.

2 Plaintiffs concede that § 1983 claims for loss of
3 companionship under the Fourteenth Amendment Due Process Clause
4 are limited to parents and children. See Ward v. City of San
5 Jose, 967 F.2d 280, 283-84 (9th Cir. 1991). The question before
6 the court on this motion is whether § 1983 actions for loss of
7 association under the First Amendment are subject to the same
8 limitation. For the following reasons, the court concludes they
9 are not.

10 The only case to this court's knowledge dealing
11 directly with this question is Judge Pregerson's decision in
12 Graham v. County of Los Angeles, No.10-05059, 2011 WL 3754749, at
13 *2 (C.D. Cal. Aug. 25, 2017) (holding that the fiancé of decedent
14 had standing to bring a § 1983 claim under the Free Association
15 Clause of the First Amendment).

16 This conclusion finds support in the language of both
17 Supreme Court and the Ninth Circuit caselaw. In Board of
18 Directors of Rotary International v. Rotary Club of Duarte, 481
19 U.S. 537, 545 (1987), the Supreme Court said, "[T]he First
20 Amendment protects those relationships, including family
21 relationships, that presuppose 'deep attachments and commitments
22 to the necessarily few other individuals with whom one shares not
23 only a special community of thoughts, experiences, and beliefs
24 but also distinctively personal aspects of one's life.'" Id.
25 (quoting Roberts v. United States Jaycees, 468 U.S. 609, 622
26 (1984)).

27 In IDK, Inc. v. Clark County, 836 F.2d 1185, 1194 (9th
28 Cir. 1988), the Ninth Circuit noted that, "[d]ating and other

1 social associations to the extent that they are expressive are
2 not excluded from the safeguards of the first amendment."
3 Nothing in the language of either the Supreme Court or the Ninth
4 Circuit suggests that these first amendment protections are
5 limited to the relationship between parents and children.

6 This result does raise some perplexing questions. Why,
7 for example, would the Supreme Court go to all the trouble in
8 Ward to limit the right of recovery under the Fourteenth
9 Amendment to parents or children if others can simply recover
10 under the First Amendment? How are the courts to determine who
11 has the requisite degree of intimacy with the decedent to assert
12 a First Amendment claim? These questions, however, are not
13 before this court today. It is sometimes said that tough cases
14 make bad law. Here it might more appropriately be said that bad
15 law makes tough cases.

16 For the foregoing reasons, the court cannot conclude at
17 this stage of the proceedings as a matter of law that plaintiffs
18 do not have standing to bring their § 1983 claim for deprivation
19 of their First Amendment right of association with decedent.

20 IT IS THEREFORE ORDERED that defendants' motion to
21 dismiss plaintiffs' Complaint under Rule 12(b)(6) of the Federal
22 Rules of Civil Procedure be, and the same hereby is, DENIED.

23 Dated: September 19, 2017



24 **WILLIAM B. SHUBB**
25 **UNITED STATES DISTRICT JUDGE**
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