

APPENDIX

APPENDIX

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App. 1

APPENDIX A

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 19-15483

D.C. No. 2:17-cv-01201-WBS-DB

[Filed April 30, 2020]

| | |
|-------------------------------|---|
| ROBERT MANN, Sr.; et al., |) |
| |) |
| Plaintiffs-Appellants, |) |
| |) |
| and |) |
| |) |
| ZACHARY MANN; WILLIAM MANN, |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| SACRAMENTO POLICE |) |
| DEPARTMENT; SAMUEL D. SOMERS, |) |
| Jr., |) |
| |) |
| Defendants, |) |
| |) |
| and |) |

App. 2

JOHN C. TENNIS; et al.,)
)
 Defendants-Appellees.)
)
_____)

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Argued and Submitted April 14, 2020
San Francisco, California

Before: GOULD and CHRISTEN, Circuit Judges, and
LASNIK,** District Judge.

Plaintiffs-Appellants Robert Mann, Sr., Vern Murphy-Mann, and Deborah Mann appeal from the district court's order granting Defendants-Appellees' motion to dismiss in a § 1983 action alleging deprivation of their First Amendment right to familial association with their adult brother. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we reverse and remand.¹

A prior panel reviewed an interlocutory appeal in this case and concluded that Plaintiffs' initial

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

¹ Because the parties are familiar with the facts and procedural history of this case, we do not recite them here.

complaint failed to adequately allege facts showing that they had a constitutionally protected relationship with the decedent. *See Mann v. City of Sacramento*, 748 F. App'x 112 (9th Cir. 2018) (“*Mann II*”). In accordance with General Order 4.3.a, the memorandum disposition provided a concise explanation of its decision, but we recognize that the explanation may have caused confusion on remand.

As relevant here, *Mann II* concluded that Plaintiffs’ complaint did not allege facts establishing a First Amendment right of familial or intimate association, as recognized in *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 545 (1987), and its progeny. 748 F. App'x at 114. We stated that even if Plaintiffs’ complaint met *Rotary Club*’s standard, their intimate-association claims would be foreclosed by *Ward v. City of San Jose*, 967 F.2d 280, 283–84 (9th Cir. 1991). *Ward* held that a decedent’s adult siblings lacked “a cognizable liberty interest in their brother’s companionship” under the substantive Due Process Clause of the Fourteenth Amendment. *Id.* *Ward* did not discuss cohabitation. Nevertheless, because *Mann II* stated that *Ward* barred intimate-association claims by “adult, non-cohabitating siblings,” 748 F. App'x at 115, the *Mann II* decision was interpreted on remand as requiring that Plaintiffs plead facts demonstrating their cohabitation with the decedent to sustain their First Amendment intimate-association claim.

We conclude that *Mann II*’s statement that *Ward* “would” foreclose Plaintiffs’ First Amendment claim “even if” they had pleaded sufficient facts, *see id.*, is dicta. *See Trent v. Valley Elec. Ass’n, Inc.*, 195 F.3d 534,

537 (9th Cir. 1999). First, *Ward* did not create a cohabitation requirement or purport to govern First Amendment claims; *Ward* addressed only Fourteenth Amendment intimate-association claims brought by adult siblings. *See Ward*, 967 F.2d at 284.

Second, *Mann II* cited the *Rotary Club* line of cases in addressing the sufficiency of Plaintiffs' First Amendment allegations, and it recognized that cohabitation was one of several objective indicia that courts *may* consider when assessing whether Plaintiffs were deprived of their intimate-association right. 748 F. App'x at 114; *see also Rotary Club of Duarte*, 481 U.S. at 545; *Keates v. Koile*, 883 F.3d 1228, 1236 (9th Cir. 2018); *Lee v. City of Los Angeles*, 250 F.3d 668, 685-86 (9th Cir. 2001); *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1188 (9th Cir. 1995).

Finally, *Mann II* could not have held that *Ward* forecloses Plaintiffs' First Amendment claim because it expressly decided that the district court could allow Plaintiffs to amend on remand. *See* 748 F. App'x at 115. If *Ward* controlled the First Amendment analysis, amendment would have been futile because no amendment could change the fact that Plaintiffs are the decedent's adult siblings. We therefore remand for consideration of Plaintiffs' First Amendment claim under the standard set forth in *Rotary Club* and its progeny. 481 U.S. at 545; *Keates*, 883 F.3d at 1236; *Lee*, 250 F.3d at 685-86.

REVERSED and REMANDED.

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

No. 2:17-cv-01201 WBS DB

[Filed March 13, 2019]

| | |
|-----------------------------|---|
| ROBERT MANN SR., et al., |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| CITY OF SACRAMENTO, et al., |) |
| |) |
| Defendants. |) |

**MEMORANDUM AND ORDER RE: MOTION
TO DISMISS**

Following the Ninth Circuit’s remand of this matter (Mann v. City of Sacramento, 748 F. App’x 112 (9th Cir. 2018)), this court gave plaintiffs leave to amend their complaint. (See Docket No. 57.) In order to overcome the Ninth Circuit’s holding that adult, non-cohabitating siblings do not enjoy a constitutional right to intimate association, plaintiffs have now amended their complaint to set forth the facts in support of their contention that they were “cohabitating” with decedent. (Docket No. 59)

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The First Amended Complaint makes several allegations about decedent's housing situation in the months preceding his death. First, it alleges that decedent's California identification card, valid until 2019, listed decedent's residence as plaintiff Robert Mann Sr.'s home address (FAC ¶ 31). Second, it alleges that in the period "right up until" decedent's death, the plaintiffs provided decedent housing "either with plaintiffs Robert Mann Sr. or with plaintiffs Vern Murphy-Mann or Deborah Mann." (Id. ¶ 33.) Third, it alleges that decedent "kept his clothes and personal belongings at Plaintiffs Robert Mann Sr., Vern Murphy-Mann, and Deborah Mann's homes and received mail and listed their residences as his own addresses." (Id. ¶ 34.) Fourth, it alleges that during the last six months of decedent's life, decedent would "stay out, at times for several days," and that plaintiffs would "search for him at places he habitually frequented, and would bring him back home to bathe, rest, and eat." (Id. 35.) Finally, it alleges that despite decedent's absences, the plaintiffs were "in constant contact with [him] and made sure that he knew he was welcome in their homes." (Id.) At the hearing on March 11, 2019, plaintiff's counsel clarified that in the period immediately preceding his death, decedent was spending "the majority" of his time staying at the home of one or another of the three plaintiffs, without further detail.

Defendants have moved to dismiss the First Amended Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure, arguing that these allegations are insufficient to establish cohabitation and that

App. 7

plaintiffs thus may not bring this action for deprivation of their right of intimate association with the decedent.

As plaintiffs correctly note, “there is no controlling definition of ‘cohabitation’ in the context of the constitutional claims at issue in this case.” (Pls.’ Mem. in Opp. to Defs.’ Mot. to Dismiss at 5 (Docket No. 66).) Further complicating the court’s effort to define “cohabitation” is the fact that many treatments of the term are concerned with “cohabitation” as a term of art referring, specifically, to cohabitation “like a spouse.” See e.g., United States v. Costigan, 2000 WL 898455 (D. Me. 2000), aff’d, 18 F. App’x 2 (1st Cir. 2001) (observing that in light of the dictionary definition of “cohabit” as “to live together in a sexual relationship when not legally married,” the term “cohabit as a spouse” is somewhat redundant and then proceeding to discuss the meaning and definition of “cohabit as a spouse.”). Those authorities are of no assistance when considering whether parties are cohabitating siblings.

Accordingly, in the absence of controlling case law defining “cohabitation,” in the context of this case, the court will turn to the popular definition of the word, which the California Supreme Court correctly noted is “living with or together, from the Latin ‘co-’ (co[-] signifies in general with, together, in conjunction, jointly) and habitare, to dwell, to have possession of (a place).” See Kusior v. Silver, 54 Cal. 2d 603, 611–12 (1960) (citations and quotations omitted). In evaluating whether decedent cohabitated with plaintiffs in the period immediately preceding his death, the court assumes it should consider such factors as (1) whether decedent spent all or most of his time residing in the

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same dwelling as any given plaintiff; (2) whether he shared living expenses associated with a plaintiff's dwelling; (3) whether he had keys to a dwelling and could come and go as he pleased; and (4) whether he kept clothes and personal affairs in the dwelling.¹

The allegations of the First Amended Complaint do not establish any of the first three factors. Rather, the First Amended Complaint paints decedent not as a cohabitant but more a transient who was a frequent, and welcome, invitee in plaintiffs' respective homes. Decedent would "stay out, at times for several days" and then plaintiffs would "search for him at places he habitually frequented and would bring him back home to bathe, rest, and eat." (FAC ¶ 35.)

The only other relevant factual allegation is that decedent "kept his clothes and personal belongings at [p]laintiffs Robert Mann Sr., Vern Murphy-Mann, and Deborah Mann's homes and received mail and listed

¹ These factors are informed by case law applying or interpreting the term "cohabitation." See, e.g., Marcum v. McWhorter, 308 F.3d 635, 637 (6th Cir. 2002) (describing, offhandedly, cohabitation as beginning on the date when two parties "rented a townhouse and began living together" with each party "paying their share of the costs"); United States v. Ladouceur, 578 F. App'x 430, 434 (5th Cir. 2014) (considering the definition of "cohabitation" in the context of a federal statute that proscribed the possession of a firearm by those subject to a domestic violence protective order, and finding "cohabitation" where "over the span of several months, [defendant] stayed over at [applicant]'s apartment most or often all days out of the week; he kept clothing and personal effects there to go directly to work in the mornings; he had a key to her apartment and was able to come and go as he pleased; and he rarely visited an apartment leased under his own name").

their residences as his own addresses.” (*Id.* ¶ 34.) If accompanied by allegations that Joseph Mann spent all or most of his time residing in one or more of plaintiffs’ homes, had a key and independent access to one or more of plaintiffs’ homes, contributed to the maintenance of one or more of plaintiffs’ homes, and rarely slept outside one or more of plaintiffs’ homes, this allegation might support a plausible inference that decedent cohabitated with one or more of the plaintiffs. Absent that type of accompanying allegation, however, the mere facts that decedent stored belongings in plaintiffs’ homes, used their addresses for mail, and periodically bathed and rested in their homes, do not make him plaintiffs’ “cohabitant.”

The court assumes that plaintiffs have set forth all the available facts to support their claim of cohabitation, and that granting further leave to amend would be futile.

IT IS THEREFORE ORDERED that the individual defendants’ Motion to Dismiss (Docket No. 59) be, and the same hereby is, GRANTED. The First Amend Complaint and action herein are hereby DISMISSED.

Dated: March 12, 2019

/s/William B. Shubb
WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

APPENDIX C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CASE NO: 2:17-CV-01201-WBS-DB

[Filed March 13, 2019]

ROBERT MANN SR., ET AL.,)
)
 v.)
)
CITY OF SACRAMENTO, ET. AL)
)

JUDGMENT IN A CIVIL CASE

XX -- Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED
IN ACCORDANCE WITH THE COURT'S
ORDER FILED ON 3/13/19**

Marianne Matherly
Clerk of Court

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ENTERED: March 13, 2019

by: /s/ A. Coll
Deputy Clerk

APPENDIX D

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 17-17048

D.C. No. 2:17-cv-01201-WBS-DB

[Filed September 7, 2018]

| | |
|----------------------------------|---|
| ROBERT MANN, Sr.; et al., |) |
| |) |
| Plaintiffs-Appellees, |) |
| |) |
| v. |) |
| |) |
| CITY OF SACRAMENTO; et al., |) |
| |) |
| Defendants, |) |
| |) |
| and |) |
| |) |
| JOHN C. TENNIS; RANDY R. LOZOYA, |) |
| |) |
| Defendants-Appellants. |) |

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

App. 13

Appeal from the United States District Court
for the District of Arizona
William B. Shubb, District Judge, Presiding

Argued and submitted August 15, 2018
San Francisco, California

Before: O'SCANNLAIN and BEA, Circuit Judges, and
STEARNS,^{**} District Judge.

Defendants-Appellants John Tennis and Randy Lozoya (“Defendants”), police officers for the city of Sacramento, California, appeal from the district court’s denial of their motion to dismiss Plaintiffs’ action under 42 U.S.C. § 1983. We have jurisdiction over this interlocutory appeal of the district court’s denial of qualified immunity,¹ *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985), as well as such issues as are “inextricably intertwined” with the qualified immunity issue, *Lum v. City of San Joaquin*, 584 F. App’x 449, 450–51 (9th Cir. 2014). We review *de novo* the district court’s denial of qualified immunity and the district court’s denial of Defendants’ motion to dismiss, *Dunn v. Castro*, 621 F.3d 1196, 1198 (9th Cir. 2010), and we reverse.

Defendants are entitled to immunity unless (1) “the facts that a plaintiff has alleged . . . make out a violation of a constitutional right” and (2) “the right at

^{**} The Honorable Richard G. Stearns, United States District Judge for the District of Massachusetts, sitting by designation.

¹ It is immaterial, for purposes of establishing jurisdiction over this interlocutory appeal, that the district court did not explicitly address qualified immunity. *Giebel v. Sylvester*, 244 F.3d 1182, 1186 n.6 (9th Cir. 2001).

issue was ‘clearly established’ at the time of defendant’s alleged misconduct.”² *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Here, Plaintiffs alleged that Defendants deprived them of their constitutional rights to association with their adult brother, Joseph Mann (“Joseph”), by unlawfully shooting and killing him in 2016. In general, a relationship may be protected under either the First Amendment or the Due Process Clause of the Fourteenth Amendment. *Erotic Service Provider Legal Education & Research Project v. Gascon*, 880 F.3d 450, 458 (9th Cir. 2018) (“There are two distinct forms of freedom of association: (1) freedom of intimate association, protected under the Substantive Due Process Clause of the Fourteenth Amendment; and (2) freedom of expressive association, protected under the Freedom of Speech Clause of the First Amendment.”), *as amended*, 881 F.3d 792 (9th Cir. 2018); *see also Keates v. Koile*, 883 F.3d 1228, 1236 (9th Cir. 2018) (9th Cir. 2018) (“[W]e have held that claims under both the First and Fourteenth Amendment for unwarranted interference with the right to familial association could survive a motion to dismiss.” (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001))).

Plaintiffs failed to allege a violation of their constitutional rights to freedom of association under any theory recognized by this court. First, Plaintiffs have not pleaded sufficient facts to show that they and

² Plaintiffs argue that Defendants waived any qualified immunity defense because their argument on that issue “encompassed merely 12[] lines of text.” Defendants’ argument, though concise, was sufficient to raise and preserve the argument.

Joseph shared an “expressive association” right protected by the First Amendment. Their complaint alleged only that they “shared a close relationship and special bond” with Joseph, and that “[t]heir relationships with their brother . . . presupposed deep attachments, commitments, and distinctively personal aspects of their lives.” See *IDK, Inc. v. Clark Cty.*, 836 F.2d 1185, 1195 (9th Cir. 1988) (dismissing First Amendment freedom-of-association claim where the plaintiffs “ma[d]e no claim that expression is a significant or necessary component of their activities”).

Nor have Plaintiffs pleaded sufficient facts to show that any of them shared an “intimate association” right protected under the First or Fourteenth Amendments. Plaintiffs have not alleged specific facts sufficient to show that any of them shared with Joseph a relationship of a type discussed in *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 545 (1987), and its progeny, see, e.g., *Lee*, 250 F.3d at 685–86 (holding a mother adequately alleged a protected First Amendment association with her son under *Rotary Club*); *Keates*, 883 F.3d at 1228 (holding parents have a First Amendment right of association with their children under *Lee* and *Rotary Club*). In *Rotary Club*, the Supreme Court stated as follows:

The intimate relationships to which we have accorded constitutional protection include marriage; the begetting and bearing of children; child rearing and education; and cohabitation with relatives. Of course, we have not held that constitutional protection is restricted to relationships among family members. We have

emphasized that the First Amendment protects those relationships, including family relationships, that presuppose “deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one’s life.” But in *Roberts* we observed that “[d]etermining the limits of state authority over an individual’s freedom to enter into a particular association . . . unavoidably entails a careful assessment of where that relationship’s objective characteristics locate it on a spectrum from the most intimate to the most attenuated of personal attachments.” In determining whether a particular association is sufficiently personal or private to warrant constitutional protection, we consider factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship.

Rotary Club, 481 U.S. at 545–46 (citations omitted). In other words, relationships involving marriage, child-rearing, or cohabitation are protected by the First Amendment, and other relationships, “including family relationships,” may also be protected to the extent that the “objective characteristics” of the relationship (*i.e.* “factors such as size, purpose, selectivity, and . . . exclu[sivity]”) demonstrate that it is “sufficiently personal or private to warrant constitutional protection.” *Id.* Plaintiffs did not allege that their relationships with Joseph involved marriage, child rearing, or cohabitation, as in *Lee* or *Keates*. Nor did

they allege specific facts about the “objective characteristics” of their relationships with Joseph to show that they were nonetheless the sort of relationships that “warrant constitutional protection.” Therefore, the complaint’s conclusory and formulaic recitation of language from *Rotary Club* was not sufficient to plead a right of intimate association protected by the First Amendment. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”) (second alteration in original); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (“[P]leadings that . . . are no more than conclusions[] are not entitled to the assumption of truth.”).

Moreover, even if plaintiffs could plead sufficient facts to satisfy the standards for intimate association set forth in *Rotary Club*, relief would be foreclosed under *Ward v. City of San Jose*, 967 F.2d 280 (9th Cir. 1991) (dismissing siblings’ excessive-force claim under § 1983). In *Ward*, this court held that adult, non-cohabitating siblings do not “possess a cognizable liberty interest in their brother’s companionship.” *Id.* at 283–84. Because we analyze the right of intimate association in the same manner regardless whether we characterize it under the First or Fourteenth Amendments, *Ward* necessarily rejected any argument that adult, non-cohabitating siblings enjoy a right to intimate association.

Because the facts alleged by Plaintiffs failed to “make out a violation of a constitutional right,” the

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district court erred in denying Defendants' motion to dismiss on the basis of qualified immunity. *Pearson*, 555 U.S. at 232. Accordingly, we reverse the district court's order and remand. On remand, the district court may consider whether to grant Plaintiffs leave to amend their complaint.

REVERSED and REMANDED.

APPENDIX E

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CIV. NO. 2:17-01201 WBS DB

[Filed September 19, 2017]

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.)

ORDER RE: MOTION TO DISMISS

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 the Federal Rules of Civil Procedure.

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

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

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

In IDK, Inc. v. Clark County, 836 F.2d 1185, 1194 (9th Cir. 1988), the Ninth Circuit noted that, “[d]ating and other social associations to the extent that they are expressive are not excluded from the safeguards of the first amendment.” Nothing in the language of either the Supreme Court or the Ninth Circuit suggests that these first amendment protections are limited to the relationship between parents and children.

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

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

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

App. 22

Dated: September 19, 2017

/s/William B. Shubb
WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

APPENDIX F

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 19-15483

**D.C. No. 2:17-cv-01201-WBS-DB
Eastern District of California, Sacramento**

[Filed June 10, 2020]

| | |
|-----------------------------|---|
| ROBERT MANN, Sr.; et al., |) |
| |) |
| Plaintiffs-Appellants, |) |
| |) |
| and |) |
| |) |
| ZACHARY MANN; WILLIAM MANN, |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| SACRAMENTO POLICE |) |
| DEPARTMENT; SAMUEL D. |) |
| SOMERS, Jr., |) |
| |) |
| Defendants, |) |
| |) |
| and |) |

App. 24

JOHN C. TENNIS; et al.,)
)
 Defendants-Appellees.)
_____)

ORDER

Before: GOULD and CHRISTEN, Circuit Judges, and LASNIK,* District Judge.

Judges Gould and Christen have voted to deny the petition for rehearing en banc, and Judge Lasnik has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is DENIED.

* The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

APPENDIX G

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DEBORAH MANN, ZACHARY MANN,
and WILLIAM MANN

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

Case No. 2:17-cv-01201-WBS-DB

[Filed June 8, 2017]

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

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

**COMPLAINT FOR VIOLATION OF CIVIL AND
CONSTITUTIONAL RIGHTS**

DEMAND FOR JURY TRIAL

INTRODUCTION

Nearly a year ago, Joseph Mann, a 51 year old mentally ill man, was shot dead by two CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT police officers who poured 14 rounds into his body after twice unsuccessfully attempting to run him over with their police car. A community outcry demanded prosecution of the responsible officers, accountability for the blatant violation of Joseph Mann's civil and constitutional rights, and a transparent investigation. None of that has occurred making resort to the filing of this federal complaint necessary finally to obtain justice for Joseph Mann and his family.

This action is brought by ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN, each of whom are siblings of Joseph Mann, who was unlawfully killed by CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT police

officers JOHN C. TENNIS and RANDY R. LOZOYA on July 11, 2016.

JURISDICTION & VENUE

1. This Court has jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1331 (in that they arise under the United States Constitution); 28 U.S.C. § 1343(a)(3) (in that the action is brought to address deprivations, under color of state authority, of rights, privileges, and immunities secured by the United States Constitution).

2. Venue is proper in the United State District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391(b) because the Defendants are located in the Eastern District of California and because many of the acts and/or omissions described herein occurred in the Eastern District of California.

3. Intradistrict venue is proper in the Sacramento Division of the Eastern District of California pursuant to E.D. Cal. L.R. 120(d) because the claims asserted herein arise from acts and/or omissions which occurred in the County of Sacramento, California.

PARTIES

4. Plaintiff ROBERT MANN SR. is a resident of the State of California, County of Sacramento. Plaintiff ROBERT MANN SR. is an older brother of Joseph Mann.

5. Plaintiff VERN MURPHY-MANN is a resident of the State of California, County of

Sacramento. Plaintiff VERN MURPHY-MANN is an older sister of Joseph Mann.

6. Plaintiff DEBORAH MANN is a resident of the State of California, County of Sacramento. Plaintiff DEBORAH MANN is an older sister of Joseph Mann.

7. Plaintiff ZACHARY MANN is a resident of the State of California, County of Sacramento. Plaintiff ZACHARY MANN is a younger brother of Joseph Mann.

8. Plaintiff WILLIAM MANN is a resident of the State of Florida, County of Palm Beach. Plaintiff WILLIAM MANN is an older brother of Joseph Mann.

9. Defendant CITY OF SACRAMENTO is a “public entity” within the definition of Cal. Gov. Code § 811.2.

10. Defendant SACRAMENTO POLICE DEPARTMENT is a “public entity” within the definition of Cal. Gov. Code § 811.2.

11. Defendant SAMUEL D. SOMERS JR. was, at all material times herein, the Chief of Police of Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT, acting within the scope of that agency or employment and under color of state law. Defendant SAMUEL D. SOMERS JR. is sued in his individual capacity.

12. Defendant JOHN C. TENNIS is, and at all material times herein was, a law enforcement officer employed by Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT, acting

within the scope of that agency or employment and under color of state law. Defendant JOHN C. TENNIS is sued in his individual capacity.

13. Defendant RANDY R. LOZOYA is, and at all material times herein was, a law enforcement officer employed by Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT, acting within the scope of that agency or employment and under color of state law. Defendant RANDY R. LOZOYA is sued in his individual capacity.

GENERAL ALLEGATIONS

14. At all times relevant herein, all wrongful acts described were performed under color of state law and/or in concert with or on behalf of those acting under the color of state law.

15. Joseph Mann was a 51 year old black man residing in Sacramento, California, in July 2016.

16. Joseph Mann developed and began exhibiting mental illness-related issues in or around 2011, following the death of his mother.

17. Joseph Mann was never a violent man, even when experiencing the effects of his mental illness. Joseph Mann never exhibited any violent tendencies or threatened violence to himself or others.

18. Joseph Mann shared a close relationship and special bond with his siblings, including Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN. Their relationships with their brother, Joseph

Mann, presupposed deep attachments, commitments, and distinctively personal aspects of their lives.

The Killing of Joseph Mann

19. On July 11, 2016, Joseph Mann was experiencing the effects of his mental health illness.

20. Joseph Mann was near 1125 Lochbrae Road, Sacramento, California, around 9:20 a.m.

21. Nearby residents observed Joseph Mann acting erratically, performing karate-style moves. Joseph Mann's actions were consistent with that of a person suffering from mental illness.

22. Two persons called 9-1-1 to report sightings of Joseph Mann.

23. The first caller reported that a man was carrying a knife, which he was throwing up into the air, and had a black gun in his waistband. The caller later reported that the man "pulled the gun out" of his waistband.

24. The second caller reported that there was a mentally ill man with a gun and a knife outside her apartment and that there were children around. The caller stated that the man was throwing and flipping the knife in the air and catching it. The caller later stated that she did not actually see a gun—rather, another of her neighbors had told her that the man had a gun.

25. Joseph Mann did not have a gun and the reports that he did were false.

26. Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT's police officers, including Defendants JOHN C. TENNIS, RANDY R. LOZOYA, were dispatched to respond to the reports of a suspicious subject with weapons.

27. Dispatched officers were informed that the subject was walking towards Southgate Road.

28. Officers Frank Reyes and Bryan Gomez responded together in a patrol vehicle. Upon observing Joseph Mann, officer Gomez, using the vehicle's loudspeaker system, commanded Joseph Mann to get on the ground and drop the knife.

29. Joseph Mann questioned why the officers were confronting him. Officers Reyes and Gomez responded that they had received reports that he was carrying a gun. Joseph Mann denied that he had a gun. The officers observed that Joseph Mann was not carrying a gun in his hands and could not see a gun on his person. The officers commanded Joseph Mann to drop his knife.

30. Joseph Mann walked away from the officers' vehicle and proceeded west on Southgate Road, towards Del Paso Boulevard.

31. Officers Reyes and Gomez radioed that Joseph Mann was heading towards Del Paso Boulevard, a knife was in his right hand, that he was not complying, and that he was very hostile.

32. Joseph Mann reached Del Paso Boulevard. Officer Gomez again used the loudspeaker and commanded Joseph Mann to put his hands in the air

and drop the knife. On information and belief, Joseph Mann threw a metallic coffee mug near the front of Officers Reyes and Gomez's patrol vehicle. The officers radioed that Joseph Mann was being extremely hostile, was throwing stuff at them, and he still had the knife in his hand.

33. Joseph Mann continued walking northbound on Del Paso Boulevard while crossing the street.

34. Officers Benjamin Spencer and Michael Mantsch and Sergeant Michael Poroli arrived in other patrol vehicles.

35. Defendants JOHN C. TENNIS and RANDY R. LOZOYA arrived in a patrol vehicle. Defendant TENNIS was driving and Defendant LOZOYA was in the front passenger seat.

36. A dash-camera recorded conversations between Defendants TENNIS and LOZOYA inside of their vehicle.

37. Defendant LOZOYA said, "Fuck. Fuck this guy."

38. Defendant TENNIS said, "I'm gonna hit him."

39. Defendant LOZOYA responds, "Okay. Go for it. Go for it."

40. The dash-camera recorded Defendants TENNIS and LOZOYA's vehicle as it attempted to hit Joseph Mann.

41. Joseph Mann narrowly escaped being hit by the vehicle between the crosswalk at Del Paso Boulevard and Dale Avenue.

42. After failing to strike Joseph Mann, Defendants TENNIS and LOZOYA's vehicle came to an abrupt stop facing a gate along Dale Avenue.

43. Defendant TENNIS said, "Watch out, Randy."

44. Defendants TENNIS and LOZOYA's vehicle then backed up in reverse, and was again facing Joseph Mann.

45. Joseph Mann was standing on the sidewalk.

46. Defendants TENNIS and LOZOYA's vehicle again accelerated towards Joseph Mann, attempting to hit him.

47. Joseph Mann sprinted across Del Paso Boulevard to again avoid getting hit by the vehicle.

48. Defendants TENNIS and LOZOYA's vehicle again came to a stop.

49. Defendant TENNIS said, "We'll get him. We'll get him."

50. Defendants TENNIS and LOZOYA exited their vehicle and pursued Joseph Mann on foot, each with their service pistols drawn down on Joseph Mann.

51. A surveillance video recording from the Stoney Inn captured events occurring thereafter.

52. Joseph Mann crossed back towards the sidewalk, jogging along a string of closed storefronts on Del Paso Boulevard.

53. Defendants TENNIS and LOZOYA crossed the street toward Joseph Mann, closing the distance between them.

54. Joseph Mann stopped jogging and pointed with his left arm.

55. Defendants TENNIS and LOZOYA, who were chasing behind Joseph Mann, continued to advance towards him.

56. After Joseph Mann stopped and pointed with his left arm, Defendants TENNIS and LOZOYA immediately started shooting Joseph Mann.

57. Defendants TENNIS and LOZOYA were approximately 25 to 30 feet away from Joseph Mann when they first began shooting him.

58. Joseph Mann doubled over suddenly and lurched back, crumpling to the ground as Defendants TENNIS and LOZOYA continued to shoot him.

59. Even after Joseph Mann was falling to the ground, Defendants TENNIS and LOZOYA continued to advance on Joseph Mann, closing the distance, and continuing to shoot Joseph Mann.

60. In total, Defendants TENNIS and LOZOYA fired 18 shots at Joseph Mann, hitting him 14 times. Defendant TENNIS fired eight times, and Defendant LOZOYA fired 10 times.

61. Defendants TENNIS and LOZOYA's decision to shoot and kill Joseph Mann occurred less than 35 seconds after they attempted to run him over in their vehicle.

62. Joseph Mann died at the scene of the shooting.

The City of Sacramento & Sacramento Police Department's Response

63. On July 11, 2016, the same day as and immediately following the Joseph Mann shooting, and before any sufficient investigation could be conducted or completed in connection with the shooting, Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT issued a "Media Advisory/News Release" describing the Joseph Mann shooting, in relevant part, as follows:

Officers continued to pursue the man who appeared to pose a significant risk to the community. Two additional officers arrived and chased after the subject near the 1300 block of Del Paso Road. The subject turned back towards them, armed with a knife. Fearing for their lives and the safety of the community, two officers discharged their firearms striking the man multiple times.

<<https://www.sacpd.org/newsroom/releases/liveview.aspx?release id=2-160711-088>>.

64. The press release's statements were later confirmed as false when video recordings of the shooting confirmed that Joseph Mann never moved

towards Defendants TENNIS and LOZOYA in a manner that endangered anyone prior to their shooting him to death.

65. Defendants TENNIS and LOZOYA were put on a three-day paid leave following the shooting, and permitted to return to work on “modified duty” for some unknown duration thereafter.

66. Initially, Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT refused to release any recorded footage of the Joseph Mann shooting, despite public outcry and demand.

67. Later, Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT did release three dash-cam recordings and two 9-1-1 audio recordings related to the Joseph Mann shooting, but only after being substantial pressured was applied by members of the Sacramento City Council, civil rights activists, and media outlets, including The Sacramento Bee, which obtained from a citizen surveillance footage showing the shooting of Joseph Mann. Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT’s release of information related to the shooting of Joseph Mann was only accomplished as a means of “damage control” and in a manner that attempted to maintain control over the narrative of the shooting.

68. The fallout and public backlash based on Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT’s response to the Joseph Mann shooting, including efforts to

withhold recordings and information related to the shooting from the public, was followed by Defendant SAMUEL D. SOMERS JR.'s decision to "retire" from his position as Chief of Police in December 2016.

The Federal Litigation

69. On August 4, 2016, William Mann Sr., as Joseph Mann's father on behalf of Joseph Mann and on behalf of himself, initiated litigation against Defendants CITY OF SACRAMENTO, JOHN C. TENNIS, and RANDY R. LOZOYA. *See Mann v. City of Sacramento*, United States District Court, Eastern District of California, Case No. 2:16-cv-01847-WBS-DB.

70. On February 17, 2017, the William Mann Sr. litigation was disposed of by a Fed. R. Civ. P. 41(a)(1)(A)(ii) stipulated of dismissal, following a settlement payment by Defendant CITY OF SACRAMENTO in the amount of \$719,000.00 to William Mann Sr.

The Sacramento County District Attorney's Office's Response

71. Pursuant to "protocol," the Sacramento County District Attorney's Office is obligated to "conduct an independent review of all officer-involved shooting incidents that result in injury or death, and other uses of force by law enforcement officers resulting in death within Sacramento County."

72. On January 25, 2017, the Sacramento County District Attorney's Office issued a memorandum containing factual findings and conclusions in connection with the shooting and killing of Joseph

Mann. See <[http://www.sacda.org/files/1414/8553/8646/OIS -- Mann.pdf](http://www.sacda.org/files/1414/8553/8646/OIS--Mann.pdf)>.

73. In a false and blatantly biased memo, the Sacramento County District Attorney's Office reported that Defendants TENNIS and LOZOYA were "only approximately 15 feet away from [Joseph Mann]" when they were "forced" to make a "rapid decision" to shoot and kill Joseph Mann due to safety threats. The memo failed to acknowledge or to attribute any blame to Defendants TENNIS and LOZOYA for failing to employ de-escalation techniques, for failing to employ less than lethal force, and provoking the encounter that led to their decision to kill Joseph Mann.

74. Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT accepted and adopted the Sacramento County District Attorney's Office's memo's factual findings and conclusions in connection with the Joseph Mann shooting.

MUNICIPAL & SUPERVISORY ALLEGATIONS

75. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s failure to adequately train, supervise, and discipline their police force has created a cesspool of police misconduct and abuse.

76. Defendant SAMUEL D. SOMERS JR., acting as Police of Chief, was a policy-making authority for Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT as it relates to the training, supervision, and discipline of police officers under his command, including use of excessive force.

77. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. knew or should have known that employees under their command, including Defendants JOHN C. TENNIS and RANDY R. LOZOYA, were inadequately trained, supervised, or disciplined resulting from their inadequate policies, customs, or practices.

78. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. maintained policies, customs, or practices deliberately indifferent or acquiescing to, or failed to maintain policies, customs, or practices when it was obvious that they were needed to prevent the use of unreasonable force against persons, particularly mentally ill persons, with whom their employees would necessarily have contact.

79. The presence of these policies, customs, or practices is confirmed by the killing of Joseph Mann and, specifically, the actions and inactions of Defendants JOHN C. TENNIS and RANDY R. LOZOYA. On information and belief, no re-training or discipline has resulted or occurred where:

- a) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to comply with mandatory policies of the Commission on Peace Officer Standards and Training, Learning Domain 37, as it pertains to approaching and engaging with mentally ill individuals;
- b) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to understand, appreciate,

assess, and respond to irrational and non-compliant behavior commonly exhibited by mentally ill persons in interactions with law enforcement, without resorting to lethal force;

- c) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to appreciate the level of threat posed by mentally ill persons who are irrational and non-compliant, and to recognize that there was no real threat to themselves or others which could be used to justify the resort to lethal force;
- d) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to employ specialized techniques, such as maintaining physical distance (“comfort zones” or “boundaries”), non-threatening communications, de-escalation or “pulling-back,” which modify the irrational and non-compliant behavior of mentally ill persons, instead of resorting to lethal force;
- e) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to call for backup, including calling and consulting for advice and/or bringing to the scene persons trained in crisis intervention or others trained in how appropriately to deal with mentally ill persons without the use of legal force, when faced with the irrational and non-compliant conduct of mentally ill persons; and

- f) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to utilize less than lethal force available to them.

80. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. were or should have been on notice of these policies, customs, or practices, or the inadequacy of the policies, customs, or practices, through multiple sources, including:

- i) Past and subsequent incidents of excessive force utilized by Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s police force resulting in the filing of lawsuits, government claims, and citizens' complaints and the payment of settlements. For example, in *Halcomb v. City of Sacramento*, Eastern District of California, Case No. 2:14-cv-02796-MCE-DB, three police officers broke into the wrong residence seeking the subject of an arrest warrant and proceeded to use excessive force on a protesting occupant. The case was settled for \$220,000 after it was discovered that a police officer lied about the existence of a warrant. See <http://www.sacbee.com/news/local/crime/article147296244.html>. In *Cain v. City of Sacramento*, Eastern District of California, Case No. 2:17-cv-00848-JAM-DB, a police officer grabbed, tackled, and punched a man without justification, and without realizing that he was being recorded. See

<<http://www.kcra.com/article/sacramento-pd-officer-beat-pedestrian-after-confrontation/9260550>>.

- ii) The multiple instances of misconduct involving Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s police force, as described.
- iii) The instances of misconduct that occurred in the open and in public by Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s police force, suggesting action with impunity.
- iv) The involvement of Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s police force in multiple instances of misconduct, as described above and reported elsewhere.

81. On information and belief, Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. were or should have been on notice, in particular, of Defendants JOHN C. TENNIS's unfitness for duty and frequent resort to unreasonable force through multiple sources, including:

- a) Defendant JOHN C. TENNIS's involved in a 1998 fatal incident where a suspect, Albert Glenn Thiel, was killed after fleeing from police. A coroner listed "mechanical asphyxia

due to blunt-force trauma of the neck” as the cause of death, after reviewing the evidence which included Defendant JOHN C. TENNIS’s attempt to place a chokehold on the decedent. In subsequent litigation by the decedent family against Defendant JOHN C. TENNIS, the matter was settled prior to trial.

- b) Divorce proceedings wherein Defendant JOHN C. TENNIS’s former spouse accused him of domestic violence and child abuse.
- c) Multiple investigations of child abuse by the Child Protective Services against Defendant JOHN C. TENNIS.
- d) A temporary restraining order issued against Defendant JOHN C. TENNIS by the El Dorado County Superior Court on May 23, 2012, based on a complaint by his former spouse. The order forbid Defendant JOHN C. TENNIS from carrying a firearm or ammunition. However, less than two weeks after the order issued, Defendant SAMUEL D. SOMERS JR., then-deputy chief of operations, wrote a letter to a El Dorado County Superior Court Judge, Kenneth Melikian, informing him that possession of a firearm was “a condition of continued employment” for Defendant JOHN C. TENNIS. As a result, the judge modified the order to allow Defendant JOHN C. TENNIS to carry a gun on the job but at no other time.

- e) A 2014 internal affairs investigation by Defendant SACRAMENTO POLICE DEPARTMENT against Defendant JOHN C. TENNIS which was resolved with a written agreement and Defendant JOHN C. TENNIS admitting that he was plagued by “a long-term abuse of alcohol, which interfered with his ability to perform his duties” and required participation in an “educational based discipline” plan related to substance abuse, in lieu of a 40-hour suspension without pay for violations of department policy. Defendant JOHN C. TENNIS was subsequently checked into a residential alcohol addiction treatment facility to address his addiction to alcohol. However, Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT not only continued to employ Defendant JOHN C. TENNIS as a patrol officer, but also assigned him to a beat in Del Paso Heights, a high-crime area where officers often find themselves in stressful confrontations.

82. On information and belief, additional evidence and information related to Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.’s policies, customs, or practices will be sought and obtained during the course of this litigation. Although access to the existence or absence of internal policies, customs, or practices, prior to discovery, is necessarily limited, on information and belief, Defendants CITY

OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. have access to and/or knowledge of past events and to statements of internal policies, customs, or practices at issue and, in some respects, may be in sole possession of evidence and facts needed to support or refute these claims.

FIRST CLAIM

Deprivation of Association

(First & Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)

83. The First Claim is asserted by Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN against Defendants JOHN C. TENNIS and RANDY R. LOZOYA.

84. Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN reallege and incorporate the allegations of the preceding paragraphs 1 to 82, to the extent relevant, as if fully set forth in this Claim.

85. Defendants JOHN C. TENNIS and RANDY R. LOZOYA, acting or purporting to act in the performance of their official duties as law enforcement officers, utilized unreasonable and excessive force in seizing and killing Joseph Mann, in violation of his Fourth and Fourteenth Amendment rights protected by the U.S. Constitution.

86. Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN shared intimate human relationships with their brother, Joseph Mann, that presupposed deep attachments and commitments to the necessarily few other individuals with whom they shared not only a special community of thoughts, experiences, and beliefs, but also distinctively personal aspects of their lives.

87. Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN's First and Fourteenth Amendment rights secured by the U.S. Constitution, or were wantonly or oppressively done.

88. Defendants JOHN C. TENNIS and RANDY R. LOZOYA should be immediately terminated and their killing of Joseph Mann referred to the U.S. Department of Justice for criminal prosecution for violating Joseph Mann's civil and constitutional rights.

89. As a direct and proximate result of Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions and inactions, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN suffered injuries entitling them to receive compensatory and punitive damages against Defendants JOHN C. TENNIS and RANDY R. LOZOYA.

WHEREFORE, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN pray for relief as hereunder appears.

SECOND CLAIM

Municipal & Supervisory Liability

**(First & Fourteenth Amendments to the
U.S. Constitution; 42 U.S.C. § 1983)**

90. The Second Claim is asserted by Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN against Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.

91. Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN reallege and incorporate the allegations of the preceding paragraphs 1 to 89, to the extent relevant, as if fully set forth in this Claim.

92. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR., acting under color of state law and as policy-makers, maintained policies, customs, or practices permitting or deliberately indifferent to, or failed to maintain policies, customs, or practices when it was obvious that they were needed to prevent, the use of excessive force, and were the moving force behind Defendants JOHN C. TENNIS and RANDY R. LOZOYA's violation of Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN,

DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN's First and Fourteenth Amendment rights secured by the U.S. Constitution.

93. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. ratified and approved of Defendants JOHN C. TENNIS and RANDY R. LOZOYA decision and the basis for utilizing unreasonable lethal force against Joseph Mann, without justification, where they:

- a) issued a public statement the same day and immediately after the shooting occurred that stated that Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were justified, before sufficient investigation into the incident had occurred;
- b) failed to disseminate and actually obstructed public access to recordings and information concerning Joseph Mann's shooting;
- c) accepted and adopted, and found no reason to disagree with, the Sacramento County District Attorney's Office's findings and conclusions that Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were lawful and appropriate;
- d) failed to find that Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were inconsistent, uncompliant, or not conforming with Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT policies;

- e) failed to find that Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were inconsistent, uncompliant, or not conforming with mandatory training provided by the Commission on Peace Officer Standards and Training;
- f) failed to terminate or even to reprimand, discipline, or admonish Defendants JOHN C. TENNIS and RANDY R. LOZOYA in connection with Joseph Mann's killing; and/or
- g) failed to enact new or different policies, or to amend existing policies, that would prevent use of unreasonable force, specifically against persons suffering from mental illness, in the future.

94. Defendant SAMUEL D. SOMERS JR.'s actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN's First and Fourteenth Amendment rights secured by the U.S. Constitution, or were wantonly or oppressively done.

95. As a direct and proximate result of Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s actions and inactions, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN suffered injuries entitling them to receive compensatory

damages against Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR., and punitive damages against Defendant SAMUEL D. SOMERS JR.

WHEREFORE, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN pray for relief as hereunder appears.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN seek Judgment as follows:

1. For an award of compensatory, general, and special damages against Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, SAMUEL D. SOMERS JR., JOHN C. TENNIS, and RANDY R. LOZOYA, according to proof at trial;

2. For an award of exemplary/punitive damages against Defendants SAMUEL D. SOMERS JR., JOHN C. TENNIS, and RANDY R. LOZOYA, in an amount sufficient to deter and to make an example of them, because their actions and/or inactions, as alleged, were motivated by evil motive or intent, involved reckless or callous indifference to federally protected rights, or were wantonly or oppressively done;

3. For an award of reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, and any other statute as may be applicable; and

4. For an award of any other further relief, as the Court deems fair, just, and equitable, including an order directing Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT to terminate the employment of Defendants JOHN C. TENNIS and RANDY R. LOZOYA and referring the killing of Joseph Mann to the U.S. Department of Justice for prosecution of Defendants JOHN C. TENNIS and RANDY R. LOZOYA for violation of Joseph Mann's civil and constitutional rights.

Dated: June 8, 2017

Respectfully Submitted,

By: /s/Mark E. Merin

Mark E. Merin

Paul H. Masuhara

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MURPHY-MANN, DEBORAH
MANN, ZACHARY MANN, and
WILLIAM MANN

JURY TRIAL DEMAND

A JURY TRIAL IS DEMANDED on behalf of Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, DEBORAH MANN, ZACHARY MANN, and WILLIAM MANN.

Dated: June 8, 2017

Respectfully Submitted,

By: /s/Mark E. Merin _____

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APPENDIX H

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

Case No. 2:17-cv-01201-WBS-DB

[Filed December 10, 2018]

| | |
|--------------------------|---|
| ROBERT MANN SR., VERN |) |
| MURPHY-MANN, and DEBORAH |) |
| MANN, |) |
| |) |
| Plaintiffs, |) |
| |) |
| vs. |) |
| |) |
| CITY OF SACRAMENTO, |) |
| SACRAMENTO POLICE |) |

DEPARTMENT, SAMUEL D.)
SOMERS JR., JOHN C. TENNIS,)
and RANDY R. LOZOYA,)
)
Defendants.)
_____)

**FIRST AMENDED COMPLAINT
FOR VIOLATION OF CIVIL AND
CONSTITUTIONAL RIGHTS**

DEMAND FOR JURY TRIAL

INTRODUCTION

On July 11, 2016, Joseph Mann, a 51 year old mentally ill man, was shot dead by two CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT police officers, JOHN C. TENNIS and RANDY R. LOZOYA , who poured 14 rounds into his body after twice unsuccessfully attempting to run him over with their police car. A community outcry demanded prosecution of the responsible officers, accountability for the blatant violation of Joseph Mann’s civil and constitutional rights, and a transparent investigation. None of that has occurred making resort to the filing of this federal complaint necessary finally to obtain justice for Joseph Mann and his family.

This action is brought by ROBERT MANN SR., VERNMURPHY-MANN, and DEBORAH MANN, each of whom is a sibling of Joseph Mann, who was unlawfully killed by CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT police officers on July 11, 2016.

JURISDICTION & VENUE

1. This Court has jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1331 (in that they arise under the United States Constitution) and § 1343(a)(3) (in that the action is brought to address deprivations, under color of state authority, of rights, privileges, and immunities secured by the United States Constitution).

2. Venue is proper in the United State District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391(b) because the Defendants are located in the Eastern District of California and because many of the acts and/or omissions described herein occurred in the Eastern District of California.

3. Intradistrict venue is proper in the Sacramento Division of the Eastern District of California pursuant to E.D. Cal. L.R. 120(d) because the claims asserted herein arise from acts and/or omissions which occurred in the County of Sacramento, California.

PARTIES

4. Plaintiff ROBERT MANN SR. is a resident of the State of California, County of Sacramento.

5. Plaintiff VERN MURPHY-MANN is a resident of the State of California, County of Sacramento.

6. Plaintiff DEBORAH MANN is a resident of the State of California, County of Sacramento.

7. Defendant CITY OF SACRAMENTO is a “public entity” within the definition of Cal. Gov. Code § 811.2.

8. Defendant SACRAMENTO POLICE DEPARTMENT is a “public entity” within the definition of Cal. Gov. Code § 811.2.

9. Defendant SAMUEL D. SOMERS JR. was, at all material times herein, the Chief of Police of Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT, acting within the scope of that agency or employment and under color of state law. Defendant SAMUEL D. SOMERS JR. is sued in his individual capacity.

10. Defendant JOHN C. TENNIS is, and at all material times herein was, a law enforcement officer employed by Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT, acting within the scope of that agency or employment and under color of state law. Defendant JOHN C. TENNIS is sued in his individual capacity.

11. Defendant RANDY R. LOZOYA is, and at all material times herein was, a law enforcement officer employed by Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT, acting within the scope of that agency or employment and under color of state law. Defendant RANDY R. LOZOYA is sued in his individual capacity.

GENERAL ALLEGATIONS

12. At all times relevant herein, all wrongful acts described were performed under color of state law and/or in concert with or on behalf of those acting under the color of state law.

Joseph Mann's Relationships With His Siblings

13. Joseph Mann was born in Newburgh, New York, on July 23, 1965.

14. Plaintiff ROBERT MANN SR. is an older brother of Joseph Mann.

15. Plaintiff VERN MURPHY-MANN is an older sister of Joseph Mann.

16. Plaintiff DEBORAH MANN is an older sister of Joseph Mann.

17. The Mann family siblings, consisting of three boys and two girls, grew up as a tightknit family unit that lived, ate, played and prayed together. The children all went to public school in Newburgh.

18. The Mann family were Jehovah's Witnesses and were very religious. The family attended church regularly and had dinner together during which they routinely discussed personal and religious matters.

19. The Mann family moved from Newburgh, New York to Sacramento, California in 1979 when William Mann Sr.'s insurance company employer opened an office in Sacramento and transferred him here to staff the office.

20. The Mann family siblings lived together in the same home until their parents separated around 1980.

21. Plaintiff DEBORAH MANN then moved to Stockton in 1980 and was joined by Joseph Mann and his mother so that they could be close to her.

22. Plaintiff ROBERT MANN SR. remained in Sacramento but he and Joseph Mann visited with each other in Stockton and in Sacramento on a weekly basis.

23. Plaintiff ROBERT MANN SR. moved to Stockton in 1983 and remained there until 1985. During that time Robert lived with and saw Joseph Mann every day.

24. Plaintiff ROBERT MANN SR. and Joseph Mann both moved back to Sacramento in 1985 and Joseph Mann split his time living with Plaintiffs ROBERT MANN SR. and VERN MURPHY-MANN in their separate homes.

25. In 1986, when Joseph Mann was 21, he moved out to live on his own for the first time, but remained in Sacramento. He frequently and regularly visited with his siblings, including Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN.

26. Shortly after moving into his own place, Joseph Mann obtained employment with Raley's where he worked for over 18 years. Since he was unmarried and had no children, he continued, regularly, to visit with Plaintiffs Robert Mann, Vern Murphy-Mann and

Deborah Mann, played with his nieces and nephews, and regularly participated in family get-togethers.

27. Around 1999 Joseph Mann bought his own home and Plaintiff VERN MURPHY-MANN moved in and lived with Joseph Mann. They cooked and ate together. They lived together for two years until 2001.

28. Throughout the years Joseph Mann worked for Raley's, he and his siblings, including Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN, remained in frequent and regular contact, meeting at least once a week to visit or enjoy watching T.V, playing with the children, and having meals and barbecues together.

29. In 2009, shortly after his mother moved back to the ancestral community in Georgia, Joseph Mann moved to Georgia to be close to his mom and grandmother. He remained in Georgia until 2011, when his mother died. Plaintiff ROBERT MANN SR. visited Joseph Mann in Georgia at least four times.

30. Joseph Mann developed and began exhibiting symptoms related to mental illness in or around 2011, following the death of his mother. Joseph Mann was never a violent man, even when experiencing the effects of his mental illness. Joseph Mann never exhibited any violent tendencies or threatened violence to himself or others.

31. In 2012, Joseph Mann moved back to Sacramento to be closer to his family. Joseph Mann split his living arrangement between Plaintiffs ROBERT MANN SR. and VERN MURPHY-MANN's homes and the home of his niece, Plaintiff VERN

MURPHY-MANN's daughter. This living arrangement continued until 2014 at which time Plaintiff ROBERT MANN SR. moved to Rancho Cordova and allowed Joseph Mann to move into the home he vacated. That house was lost to bank foreclosure in 2015, and Joseph Mann moved back in with Plaintiff ROBERT MANN SR. as he struggled with his mental illness and drug addiction. Plaintiff ROBERT MANN SR. offered his encouragement to Joseph Mann, and assisted Joseph Mann in enrolling in NA and AA programs and even accompanied him to the programs. As evidence of Joseph Mann's residence, see his California identification card valid until 2019, whereon he showed Plaintiff ROBERT MANN SR.'s residential address as his own residential address, 6801 83rd Ave., Sacramento, CA 95828. (A copy of which is attached hereto as "Exhibit A," together with Plaintiff ROBERT MANN SR.'s California driver's license, showing the same residential address.)

32. Joseph Mann was occasionally hospitalized in connection with his mental illness. His siblings would visit him during these hospitalizations.

33. Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN supported Joseph Mann financially, and, right up until his death, they fed him, and provided him housing, either with Plaintiffs ROBERT MANN SR. or with Plaintiffs VERN MURPHY-MANN or DEBORAH MANN.

34. Joseph Mann kept his clothes and personal belongings at Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN's homes and

received mail and listed their residences as his own addresses.

35. In the last six months of his life, Joseph Mann was deteriorating and suffering from both mental illness and addiction. Often, he would stay out, at times for several days, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN would search for him at places he habitually frequented, and would bring him back home to bathe, rest, and eat. Despite his absences, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN were in constant contact with Joseph Mann and made sure that he knew he was welcome in their homes.

The Killing Of Joseph Mann

36. At the time of his death, Joseph Mann was a 51 year old black man residing in Sacramento, California.

37. On July 11, 2016, Joseph Mann was experiencing the effects of his mental health illness.

38. Joseph Mann was near 1125 Lochbrae Road, Sacramento, California, around 9:20 a.m.

39. Nearby residents observed Joseph Mann acting erratically, performing karate-style moves. Joseph Mann's actions were consistent with that of a person suffering from mental illness.

40. Two persons called 9-1-1 to report sightings of Joseph Mann.

41. The first caller reported that a man was carrying a knife, which he was throwing up into the air, and had a black gun in his waistband. The caller later reported that the man “pulled the gun out” of his waistband.

42. The second caller reported that there was a mentally ill man with a gun and a knife outside her apartment and that there were children around. The caller stated that the man was throwing and flipping the knife in the air and catching it. The caller later stated that she did not actually see a gun—rather, another of her neighbors had told her that the man had a gun.

43. Joseph Mann did not have a gun and the reports that he did were false.

44. Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT’s police officers, including Defendants JOHN C. TENNIS, RANDY R. LOZOYA, were dispatched to respond to the reports of a suspicious subject with weapons.

45. Dispatched officers were informed that the subject was walking towards Southgate Road.

46. Officers Frank Reyes and Bryan Gomez responded together in a patrol vehicle. Upon observing Joseph Mann, officer Gomez, using the vehicle’s loudspeaker system, commanded Joseph Mann to get on the ground and drop the knife.

47. Joseph Mann questioned why the officers were confronting him. Officers Reyes and Gomez responded that they had received reports that he was

carrying a gun. Joseph Mann denied that he had a gun. The officers observed that Joseph Mann was not carrying a gun in his hands and could not see a gun on his person. The officers commanded Joseph Mann to drop his knife.

48. Joseph Mann walked away from the officers' vehicle and proceeded west on Southgate Road, towards Del Paso Boulevard.

49. Officers Reyes and Gomez radioed that Joseph Mann was heading towards Del Paso Boulevard, a knife was in his right hand, that he was not complying, and that he was very hostile.

50. Joseph Mann reached Del Paso Boulevard. Officer Gomez again used the loudspeaker and commanded Joseph Mann to put his hands in the air and drop the knife. On information and belief, Joseph Mann threw a metallic coffee mug near the front of Officers Reyes and Gomez's patrol vehicle. The officers radioed that Joseph Mann was being extremely hostile, was throwing stuff at them, and he still had the knife in his hand.

51. Joseph Mann continued walking northbound on Del Paso Boulevard while crossing the street.

52. Officers Benjamin Spencer and Michael Mantsch and Sergeant Michael Poroli arrived in other patrol vehicles.

53. Defendants JOHN C. TENNIS and RANDY R. LOZOYA arrived in a patrol vehicle. Defendant TENNIS was driving and Defendant LOZOYA was in the front passenger seat.

54. A dash-camera recorded conversations between Defendants TENNIS and LOZOYA inside of their vehicle.

55. Defendant LOZOYA said, “Fuck. Fuck this guy.”

56. Defendant TENNIS said, “I’m gonna hit him.”

57. Defendant LOZOYA responds, “Okay. Go for it. Go for it.”

58. The dash-camera recorded Defendants TENNIS and LOZOYA’s vehicle as it attempted to hit Joseph Mann. See <<https://www.youtube.com/watch?v=8kNYtQTxAsk>>.

59. Joseph Mann narrowly escaped being hit by the vehicle between the crosswalk at Del Paso Boulevard and Dale Avenue.

60. After failing to strike Joseph Mann, Defendants TENNIS and LOZOYA’s vehicle came to an abrupt stop facing a gate along Dale Avenue.

61. Defendant TENNIS said, “Watch out, Randy.”

62. Defendants TENNIS and LOZOYA’s vehicle then backed up in reverse, and was again facing Joseph Mann.

63. Joseph Mann was standing on the sidewalk.

64. Defendants TENNIS and LOZOYA’s vehicle again accelerated towards Joseph Mann, attempting to hit him.

65. Joseph Mann sprinted across Del Paso Boulevard to again avoid getting hit by the vehicle.

66. Defendants TENNIS and LOZOYA's vehicle again came to a stop.

67. Defendant TENNIS said, "We'll get him. We'll get him."

68. Defendants TENNIS and LOZOYA exited their vehicle and pursued Joseph Mann on foot, each with their service pistols drawn down on Joseph Mann.

69. A surveillance video recording from the Stoney Inn captured events occurring thereafter. *See* <<https://www.youtube.com/watch?v=CGTb4ikWYtI>>.

70. Joseph Mann crossed back towards the sidewalk, jogging along a string of closed storefronts on Del Paso Boulevard.

71. Defendants TENNIS and LOZOYA crossed the street toward Joseph Mann, closing the distance between them.

72. Joseph Mann stopped jogging and pointed with his left arm.

73. Defendants TENNIS and LOZOYA, who were chasing behind Joseph Mann, continued to advance towards him.

74. After Joseph Mann stopped and pointed with his left arm, Defendants TENNIS and LOZOYA immediately started shooting Joseph Mann.

75. Defendants TENNIS and LOZOYA were approximately 25 to 30 feet away from Joseph Mann when they first began shooting him.

76. Joseph Mann doubled over suddenly and lurched back, crumpling to the ground as Defendants TENNIS and LOZOYA continued to shoot him.

77. Even after Joseph Mann was falling to the ground, Defendants TENNIS and LOZOYA continued to advance on Joseph Mann, closing the distance, and continuing to shoot Joseph Mann.

78. In total, Defendants TENNIS and LOZOYA fired 18 shots at Joseph Mann, hitting him 14 times. Defendant TENNIS fired eight times, and Defendant LOZOYA fired 10 times.

79. Defendants TENNIS and LOZOYA's decision to shoot and kill Joseph Mann occurred less than 35 seconds after they attempted to run him over in their vehicle.

80. Joseph Mann died at the scene of the shooting.

**The City Of Sacramento & Sacramento Police
Department's Response To The Killing**

81. On July 11, 2016, the same day as and immediately following the Joseph Mann shooting, and before any sufficient investigation could be conducted or completed in connection with the shooting, Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT issued a

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“Media Advisory/News Release” describing the Joseph Mann shooting, in relevant part, as follows:

Officers continued to pursue the man who appeared to pose a significant risk to the community. Two additional officers arrived and chased after the subject near the 1300 block of Del Paso Road. The subject turned back towards them, armed with a knife. Fearing for their lives and the safety of the community, two officers discharged their firearms striking the man multiple times.

https://www.sacpd.org/newsroom/releases/liveview.aspx?release_id=20160711-088.

82. The press release’s statements were later confirmed as false when video recordings of the shooting confirmed that Joseph Mann never moved towards Defendants TENNIS and LOZOYA in a manner that endangered anyone prior to their shooting him to death.

83. Defendants TENNIS and LOZOYA were put on a three-day paid leave following the shooting, and permitted to return to work on “modified duty” for some unknown duration thereafter.

84. Initially, Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT refused to release any recorded footage of the Joseph Mann shooting, despite public outcry and demand.

85. Later, Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT did

release three dash-cam recordings and two 9-1-1 audio recordings related to the Joseph Mann shooting, but only after being substantial pressured was applied by members of the Sacramento City Council, civil rights activists, and media outlets, including The Sacramento Bee, which obtained from a citizen surveillance footage showing the shooting of Joseph Mann. Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT's release of information related to the shooting of Joseph Mann was only accomplished as a means of "damage control" and in a manner that attempted to maintain control over the narrative of the shooting.

86. The fallout and public backlash based on Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT's response to the Joseph Mann shooting, including efforts to withhold recordings and information related to the shooting from the public, was followed by Defendant SAMUEL D. SOMERS JR.'s decision to "retire" from his position as Chief of Police in December 2016.

**William Mann Sr.'s Federal Litigation
Related To The Killing**

87. On August 4, 2016, William Mann Sr., as Joseph Mann's father on behalf of Joseph Mann and on behalf of himself, initiated litigation against Defendants CITY OF SACRAMENTO, JOHN C. TENNIS, and RANDY R. LOZOYA. *See Mann v. City of Sacramento*, United States District Court, Eastern District of California, Case No. 2:16-cv-01847-WBS-DB.

88. On February 17, 2017, the William Mann Sr. litigation was disposed of by a Fed. R. Civ. P. 41(a)(1)(A)(ii) stipulated of dismissal, following a settlement payment by Defendant CITY OF SACRAMENTO in the amount of \$719,000.00 to William Mann Sr.

**The Sacramento County District Attorney's
Office's Response To The Killing**

89. Pursuant to “protocol,” the Sacramento County District Attorney’s Office is obligated to “conduct an independent review of all officer-involved shooting incidents that result in injury or death, and other uses of force by law enforcement officers resulting in death within Sacramento County.”

90. On January 25, 2017, the Sacramento County District Attorney’s Office issued a memorandum containing factual findings and conclusions in connection with the shooting and killing of Joseph Mann. See [http://www.sacda.org/files/1414/8553/8646/OIS -- Mann.pdf](http://www.sacda.org/files/1414/8553/8646/OIS_-_Mann.pdf).

91. In a false and blatantly biased memo, the Sacramento County District Attorney’s Office reported that Defendants TENNIS and LOZOYA were “only approximately 15 feet away from [Joseph Mann]” when they were “forced” to make a “rapid decision” to shoot and kill Joseph Mann due to safety threats. The memo failed to acknowledge or to attribute any blame to Defendants TENNIS and LOZOYA for failing to employ de-escalation techniques, for failing to employ less than lethal force, and provoking the encounter that led to their decision to kill Joseph Mann.

92. Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT accepted and adopted the Sacramento County District Attorney's Office's memo's factual findings and conclusions in connection with the Joseph Mann shooting.

MUNICIPAL & SUPERVISORY ALLEGATIONS

93. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s failure to adequately train, supervise, and discipline their police force has created a cesspool of police misconduct and abuse.

94. Defendant SAMUEL D. SOMERS JR., acting as Police of Chief, was a policy-making authority for Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT as it relates to the training, supervision, and discipline of police officers under his command, including use of excessive force.

95. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. knew or should have known that employees under their command, including Defendants JOHN C. TENNIS and RANDY R. LOZOYA, were inadequately trained, supervised, or disciplined resulting from their inadequate policies, customs, or practices.

96. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. maintained policies, customs, or practices deliberately indifferent or acquiescing to, or failed to maintain policies, customs,

or practices when it was obvious that they were needed to prevent the use of unreasonable force against persons, particularly mentally ill persons, with whom their employees would necessarily have contact.

97. The presence of these policies, customs, or practices is confirmed by the killing of Joseph Mann and, specifically, the actions and inactions of Defendants JOHN C. TENNIS and RANDY R. LOZOYA. On information and belief, no re-training or discipline has resulted or occurred where:

- a) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to comply with mandatory policies of the Commission on Peace Officer Standards and Training, Learning Domain 37, as it pertains to approaching and engaging with mentally ill individuals;
- b) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to understand, appreciate, assess, and respond to irrational and non-compliant behavior commonly exhibited by mentally ill persons in interactions with law enforcement, without resorting to lethal force;
- c) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to appreciate the level of threat posed by mentally ill persons who are irrational and non-compliant, and to recognize that there was no real threat to themselves or others which could be used to justify the resort to lethal force;

- d) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to employ specialized techniques, such as maintaining physical distance (“comfort zones” or “boundaries”), nonthreatening communications, de-escalation or “pulling-back,” which modify the irrational and non-compliant behavior of mentally ill persons, instead of resorting to lethal force;
- e) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to call for backup, including calling and consulting for advice and/or bringing to the scene persons trained in crisis intervention or others trained in how appropriately to deal with mentally ill persons without the use of legal force, when faced with the irrational and non-compliant conduct of mentally ill persons; and
- f) Defendants JOHN C. TENNIS and RANDY R. LOZOYA failed to utilize less than lethal force available to them.

98. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. were or should have been on notice of these policies, customs, or practices, or the inadequacy of the policies, customs, or practices, through multiple sources, including:

- i) Past and subsequent incidents of excessive force utilized by Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS

JR.'s police force resulting in the filing of lawsuits, government claims, and citizens' complaints and the payment of settlements. For example, in *Halcomb v. City of Sacramento*, Eastern District of California, Case No. 2:14-cv-02796-MCE-DB, three police officers broke into the wrong residence seeking the subject of an arrest warrant and proceeded to use excessive force on a protesting occupant. The case was settled for \$220,000 after it was discovered that a police officer lied about the existence of a warrant. See <http://www.sacbee.com/news/local/crime/article147296244.html>>. In *Cain v. City of Sacramento*, Eastern District of California, Case No. 2:17-cv-00848-JAM-DB, a police officer grabbed, tackled, and punched a man without justification, and without realizing that he was being recorded. See <http://www.kcra.com/article/sacramento-pd-officer-beat-pedestrian-after-confrontation/9260550>>. On March 19, 2018, police officers shot and killed unarmed and non-threatening Stephon Clark, leading to a nationwide protest. See <https://www.nytimes.com/video/us/100000005813009/stephon-clark-killed-police-sacramento.html>>.

- ii) The multiple instances of misconduct involving Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s police force, as described.

- iii) The instances of misconduct that occurred in the open and in public by Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s police force, suggesting action with impunity.
- iv) The involvement of Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s police force in multiple instances of misconduct, as described above and reported elsewhere.

99. On information and belief, Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. were or should have been on notice, in particular, of Defendants JOHN C. TENNIS's unfitness for duty and frequent resort to unreasonable force through multiple sources, including:

- a) Defendant JOHN C. TENNIS's involved in a 1998 fatal incident where a suspect, Albert Glenn Thiel, was killed after fleeing from police. A coroner listed "mechanical asphyxia due to blunt-force trauma of the neck" as the cause of death, after reviewing the evidence which included Defendant JOHN C. TENNIS's attempt to place a chokehold on the decedent. In subsequent litigation by the decedent family against Defendant JOHN C. TENNIS, the matter was settled prior to trial.

- b) Divorce proceedings wherein Defendant JOHN C. TENNIS's former spouse accused him of domestic violence and child abuse.
- c) Multiple investigations of child abuse by the Child Protective Services against Defendant JOHN C. TENNIS.
- d) A temporary restraining order issued against Defendant JOHN C. TENNIS by the El Dorado County Superior Court on May 23, 2012, based on a complaint by his former spouse. The order forbid Defendant JOHN C. TENNIS from carrying a firearm or ammunition. However, less than two weeks after the order issued, Defendant SAMUEL D. SOMERS JR., then-deputy chief of operations, wrote a letter to an El Dorado County Superior Court Judge, Kenneth Melikian, informing him that possession of a firearm was "a condition of continued employment" for Defendant JOHN C. TENNIS. As a result, the judge modified the order to allow Defendant JOHN C. TENNIS to carry a gun on the job but at no other time.
- e) A 2014 internal affairs investigation by Defendant SACRAMENTO POLICE DEPARTMENT against Defendant JOHN C. TENNIS which was resolved with a written agreement and Defendant JOHN C. TENNIS admitting that he was plagued by "a long-term abuse of alcohol, which interfered with his ability to perform his duties" and required participation in an "educational

based discipline” plan related to substance abuse, in lieu of a 40-hour suspension without pay for violations of department policy. Defendant JOHN C. TENNIS was subsequently checked into a residential alcohol addiction treatment facility to address his addiction to alcohol. However, Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT not only continued to employ Defendant JOHN C. TENNIS as a patrol officer, but also assigned him to a beat in Del Paso Heights, a high-crime area where officers often find themselves in stressful confrontations.

100. On information and belief, additional evidence and information related to Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.’s policies, customs, or practices will be sought and obtained during the course of this litigation. Although access to the existence or absence of internal policies, customs, or practices, prior to discovery, is necessarily limited, on information and belief, Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. have access to and/or knowledge of past events and to statements of internal policies, customs, or practices at issue and, in some respects, may be in sole possession of evidence and facts needed to support or refute these claims.

FIRST CLAIM

Deprivation of Association

**(First and Fourteenth Amendments to the
U.S. Constitution; 42 U.S.C. § 1983)**

101. The First Claim is asserted by Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN against Defendants JOHN C. TENNIS and RANDY R. LOZOYA.

102. Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN, reallege and incorporate the allegations of the preceding paragraphs 1 to 80, to the extent relevant, as if fully set forth in this Claim.

103. Defendants JOHN C. TENNIS and RANDY R. LOZOYA, acting or purporting to act in the performance of their official duties as law enforcement officers, utilized unreasonable and excessive force in seizing and killing Joseph Mann, in violation of his Fourth and Fourteenth Amendment rights protected by the U.S. Constitution.

104. Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN, shared intimate human relationships with their brother, Joseph Mann, that presupposed deep attachments and commitments to the necessarily few other individuals with whom they shared not only a special community of thoughts, experiences, and beliefs, but also distinctively personal aspects of their lives.

105. Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN's First and Fourteenth Amendment rights secured by the U.S. Constitution, or were wantonly or oppressively done.

106. As a direct and proximate result of Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions and inactions, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN suffered injuries entitling them to receive compensatory and punitive damages against Defendants JOHN C. TENNIS and RANDY R. LOZOYA.

WHEREFORE, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN pray for relief as hereunder appears.

SECOND CLAIM

Municipal and Supervisory Liability

(First and Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)

107. The Second Claim is asserted by Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN against Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.

108. Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN reallege and incorporate the allegations of the preceding paragraphs

1 to 106, to the extent relevant, as if fully set forth in this Claim.

109. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR., acting under color of state law and as policy-makers, maintained policies, customs, or practices permitting or deliberately indifferent to, or failed to maintain policies, customs, or practices when it was obvious that they were needed to prevent, the use of excessive force, and were the moving force behind Defendants JOHN C. TENNIS and RANDY R. LOZOYA's violation of Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN's First and Fourteenth Amendment rights secured by the U.S. Constitution.

110. Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR. ratified and approved of Defendants JOHN C. TENNIS and RANDY R. LOZOYA decision and the basis for utilizing unreasonable lethal force against Joseph Mann, without justification, where they:

- a) issued a public statement the same day and immediately after the shooting occurred that stated that Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were justified, before sufficient investigation into the incident had occurred;
- b) failed to disseminate and actually obstructed public access to recordings and information concerning Joseph Mann's shooting;

- c) accepted and adopted, and found no reason to disagree with, the Sacramento County District Attorney's Office's findings and conclusions that Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were lawful and appropriate;
- d) failed to find that Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were inconsistent, uncompliant, or not conforming with Defendants CITY OF SACRAMENTO and SACRAMENTO POLICE DEPARTMENT policies;
- e) failed to find that Defendants JOHN C. TENNIS and RANDY R. LOZOYA's actions were inconsistent, uncompliant, or not conforming with mandatory training provided by the Commission on Peace Officer Standards and Training;
- f) failed to admonish Defendants JOHN C. TENNIS and RANDY R. LOZOYA in connection with Joseph Mann's killing; and/or
- g) failed to enact new or different policies, or to amend existing policies, that would prevent use of unreasonable force, specifically against persons suffering from mental illness, in the future.

111. Defendant SAMUEL D. SOMERS JR.'s actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs ROBERT MANN SR., VERN MURPHY-

MANN, and DEBORAH MANN's First and Fourteenth Amendment rights secured by the U.S. Constitution, or were wantonly or oppressively done.

112. As a direct and proximate result of Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR.'s actions and inactions, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN suffered injuries entitling them to receive compensatory damages against Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, and SAMUEL D. SOMERS JR., and punitive damages against Defendant SAMUEL D. SOMERS JR.

WHEREFORE, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN pray for relief as hereunder appears.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN seek Judgment as follows:

1. For an award of compensatory, general, and special damages against Defendants CITY OF SACRAMENTO, SACRAMENTO POLICE DEPARTMENT, SAMUEL D. SOMERS JR., JOHN C. TENNIS, and RANDY R. LOZOYA, according to proof at trial;

2. For an award of exemplary/punitive damages against Defendants SAMUEL D. SOMERS JR., JOHN C. TENNIS, and RANDY R. LOZOYA, in an amount

sufficient to deter and to make an example of them, because their actions and/or inactions, as alleged, were motivated by evil motive or intent, involved reckless or callous indifference to federally protected rights, or were wantonly or oppressively done;

3. For an award of reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, and any other statute as may be applicable; and

4. For an award of any other further relief, as the Court deems fair, just, and equitable, including an order referring the killing of Joseph Mann to the U.S. Department of Justice for prosecution of Defendants JOHN C. TENNIS and RANDY R. LOZOYA for violation of Joseph Mann's civil and constitutional rights.

Dated: December 10, 2018

Respectfully Submitted,

By: /s/Mark E. Merin

Mark E. Merin

Paul H. Masuhara

LAW OFFICE OF MARK E. MERIN

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Sacramento, California 95814

Telephone: (916) 443-6911

Facsimile: (916) 447-8336

Attorneys for Plaintiffs

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

JURY TRIAL DEMAND

A JURY TRIAL IS DEMANDED on behalf of Plaintiffs ROBERT MANN SR., VERN MURPHY-MANN, and DEBORAH MANN.

Dated: December 10, 2018

Respectfully Submitted,

By: /s/Mark E. Merin

Mark E. Merin

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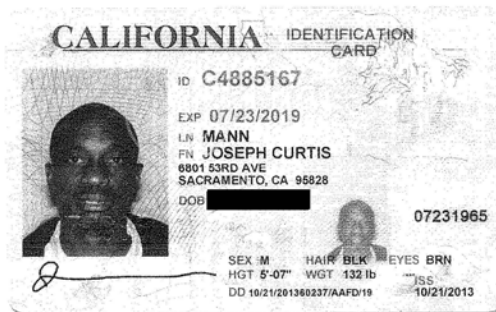
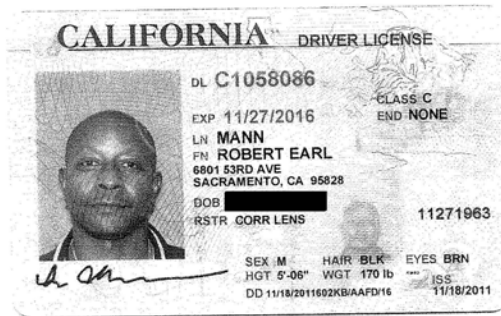
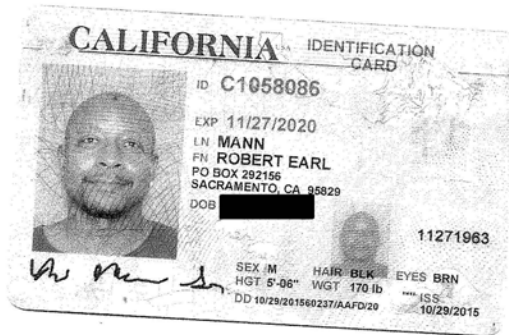
Facsimile: (916) 447-8336

Attorneys for Plaintiffs

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

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EXHIBIT A



APPENDIX I

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 19-15483

**D.C. No. 2:17-cv-01201-WBS-DB
U.S. District Court for Eastern California,
Sacramento**

[Filed June 18, 2020]

| | |
|--------------------------------|---|
| ROBERT MANN, Sr.; et al., |) |
| |) |
| Plaintiffs-Appellants, |) |
| |) |
| and |) |
| |) |
| ZACHARY MANN and WILLIAM MANN, |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| SACRAMENTO POLICE |) |
| DEPARTMENT; SAMUEL D. |) |
| SOMERS, Jr., |) |
| |) |
| Defendants, |) |
| |) |
| and |) |

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JOHN C. TENNIS; et al.,)
)
 Defendants-Appellees.)
_____)

MANDATE

The judgment of this Court, entered April 30, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

Costs are taxed against the appellees in the amount of \$81.90.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7