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

CHRIS WILLIS, MARY WILLIS, INDIVIDUALLY AND SUCCESSORS IN INTEREST TO STEPHEN WILLIS,)	Case No. 1:09-CV-01766-BAM
)	
Plaintiffs,)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
)	
vs.)	
)	
CITY OF FRESNO, OFFICER GREG CATTON, and OFFICER DANIEL ASTACIO,)	
)	
Defendants.)	
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)	

I. INTRODUCTION

This matter is currently before the Court following a stipulated bench trial and oral argument by counsel on November 6, 2017. Having carefully reviewed the trial transcripts, the parties’ briefs, as well as the Court’s entire file, and after hearing the arguments of counsel, the Court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52.

II. BACKGROUND

A. Procedural History

1. The Jury’s Verdict

On March 28, 2009, Stephen Willis was fatally shot by Defendants Greg Catton and Daniel Astacio, who were Officers with the Fresno Police Department at the relevant time. Stephen Willis’s parents, Chris and Mary Willis (“Plaintiffs”), allege that Stephen Willis’s

1 Fourth Amendment rights were violated as a result of the shooting. Plaintiffs further allege that
2 Officer Catton and Officer Astacio were negligent in causing the death of Stephen Willis.

3 Following over four years of extensive litigation and a ten-day jury trial in December
4 2013, the jury returned a verdict finding that Officer Catton used excessive force in violation of
5 Stephen's Fourth Amendment rights, and Officer Catton was negligent in causing Stephen's
6 death. The jury found Officer Astacio was not liable on Plaintiffs' Fourth Amendment and
7 negligence claims. On Plaintiffs' Fourth Amendment claim, the jury awarded \$1 in nominal
8 damages, and Plaintiffs' were not awarded any compensation for Stephen's pre-death pain and
9 suffering.¹ On Plaintiffs' wrongful death claim, the jury awarded funeral and burial expenses in
10 the amount of \$10,224.00, and further awarded Plaintiffs \$1,500,000.00 in compensatory
11 damages. The jury also made a finding of comparative negligence, and determined that Stephen
12 was eighty percent responsible for his injuries. On January 31, 2014, the Court entered
13 judgment in favor of the Plaintiffs, and awarded Plaintiffs \$1 on Plaintiffs' Fourth Amendment
14 claim, and \$302,044.80 (20% of \$1,510,224.00) on Plaintiffs' wrongful death claim. (Doc.
15 251.)

16 2. Intervening Decision of *Chaudhry*

17 After the jury trial in this case, the Ninth Circuit decided *Chaudhry v. City of Los*
18 *Angeles*, 751 F.3d 1096, 1105 (9th Cir. 2014). *Chaudhry* held that "the prohibition against pre-
19 death pain and suffering damages limits recovery too severely to be consistent with 28 U.S.C.
20 section 1983's deterrence policy" in matters where the decedent's death was caused by the
21 violation of federal law. In *Chaudhry*, the decedent, an autistic man, was shot and killed by a
22 Los Angeles Police Officer. The jury awarded the victim's family \$700,000 for the wrongful
23 death claim and \$1,000,000 for pre-death pain and suffering. Judgment was entered for
24 \$1,700,000, but the trial court struck the award for pre-death pain and suffering as barred in a
25 wrongful death action. The Ninth Circuit reversed the district court on the pain and suffering
26 award because the state laws preclusion of pre-death pain and suffering was: (1) inconsistent
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28 ¹ Prior to trial, this Court granted Defendants' motion in limine and precluded any evidence of Stephen's pre-death pain and suffering as inconsistent with this District's limitation on such damages. (Doc. 176, Defendant's Motion; Doc. 189 Court's Tentative Ruling; Doc. 197, Order on Motions in Limine.)

1 with the deterrent goal of §1983; (2) it incentivized death over severe injury, and (3) was
2 particularly unfair to typical §1983 Plaintiffs like prisoners and targets of police brutality and
3 profiling.

4 3. **The Appeal in this Case and the Proceedings Following Remand**

5 On appeal from the jury’s verdict in this case, the Ninth Circuit affirmed all aspects of
6 the trial court proceedings, except this Court’s refusal to permit pre-death pain and suffering
7 damages. The Ninth Circuit issued an opinion vacating this Court’s judgment on Plaintiffs’ 28
8 U.S.C. §1983 claim and remanded the case so that Plaintiffs “may present evidence in support
9 of their claim for pre-death pain and suffering damages,” in light of the intervening change of
10 controlling law established in *Chaudhry*. See *Willis v. City of Fresno*, 680 Fed.Appx. 589, 592
11 (March 1, 2017). The Ninth Circuit further specified that on remand “plaintiffs will be limited
12 to recovering only those pre-death pain and suffering damages caused by Officer Catton’s final
13 shot or shots.” *Id.*

14 On remand, the parties stipulated to a bench trial of the damages with briefing and based
15 upon evidence already in the record. Plaintiffs filed their opening briefs on October 2, 2017.
16 Defendants filed their responsive brief on October 25, 2017. Plaintiffs filed a reply on
17 November 1, 2017. The Court heard oral argument on November 6, 2017. Plaintiffs appeared
18 by Counsel Walter Walker, in person and by Peter Koenig, by telephone. Defendants appeared
19 by Counsel Mildred O’Linn and Lynn Carpenter, both in person.

20 **B. The Parties’ Arguments Regarding Pre-Death Pain and Suffering**

21 In support of their claim for pre-death pain and suffering, Plaintiffs argue that a
22 substantial amount of damages should be awarded for the purpose of deterrence. Plaintiffs
23 argue that §1983’s policy of deterrence cannot be fostered with a minimal award for pre-death
24 pain and suffering damages. Plaintiffs argue that Section 1983’s critical concerns are
25 compensation of the victims of unconstitutional action and deterrence of like misconduct in the
26 future. Plaintiffs seek a pre-death award of \$1,000,000 for Stephen’s pain and suffering, just as
27 was awarded in *Chaudhry*. Plaintiffs cite evidence that Stephen survived for 30 to 60 seconds
28 after Officer Catton’s last shots. (Doc. 278, Catton Transcript, p. 901-902.) Plaintiffs argue

1 that Defendants destroyed the evidence of Stephen’s pain and suffering with his death, and
2 cannot be rewarded for evidence destruction. Plaintiffs argue Stephen was a young man
3 wounded and defenseless as he felt his life ebbing away. Stephen, age 23, would be
4 experiencing not just the physical pain of his gunshot wounds, but the fear, anxiety, and mental
5 anguish that anyone suffers when aware that his life is ending under such physically exacting
6 circumstances.

7 Defendants argue that a minimal award, if any award, is warranted for the few seconds
8 of time Stephen may have survived. Defendants argue that Plaintiffs must establish Stephen
9 was conscious for an “appreciable amount of time” and that he cannot be awarded pain and
10 suffering “substantially contemporaneous with death.” Defendants cite numerous cases which
11 hold that a person must survive for an appreciable amount of time to be awarded any pain and
12 suffering. Defendants argue that Plaintiffs cannot prove Stephen was conscious for any
13 appreciable period after the final shot, and it is purely guess work to divide damages between
14 the justified gun shots and the unjustified gunshots. It is speculative to separate the pain and
15 suffering among the various bullet wounds and even Dr. DiMaio was unable to determine which
16 bullet wounds were the last. Defendants also argue that Stephen was intoxicated, with a blood
17 alcohol of .29, such that he had an increased tolerance to pain or was too intoxicated to feel
18 pain.

19 III. FINDINGS OF FACT

20 The fatal encounter between Stephen Willis and Officers Astacio and Catton and the
21 facts leading up to the “last shot(s)” by Officer Catton are well known to the parties. These
22 facts were the subject of the jury trial and the appeal to the Ninth Circuit, and are memorialized
23 in numerous decisions of this Court and the Ninth Circuit. Therefore, the Court will not recount
24 those facts here. Rather, and as required by the Ninth Circuit’s remand, the Court now decides
25 the pertinent facts as to Stephen’s pain and suffering, starting from the final shot(s).

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- 1 1. Stephen Willis was alive when Officer Catton fired his final shot(s). The jury found
2 excessive force with Officer Catton’s last shot(s).²
- 3 2. The Ninth Circuit affirmed the jury’s verdict of excessive force by Officer Catton.
- 4 3. Stephen’s final position was lying on his left side in an exaggerated fetal position. (Doc.
5 277, Jacobo Transcript, p. 574-75, 588-89, 594.)
- 6 4. Officer Catton cannot recall if he fired one final shot or 2 shots when Stephen Willis was
7 lying on his left side. (Doc. 278, Catton Transcript, p. 851.)
- 8 5. At the time of the final shots, Officer Jacobo saw multiple flashes from Officer Catton’s
9 gun. (Doc. 277, Jacobo Transcript, p. 575.)
- 10 6. There was a brief period of time, possibly several seconds, between when Officer
11 Jacobo saw Officer Catton fire the last shots and to when Officer Jacobo moved towards
12 and approached Officer Catton’s position. (Doc. 277, Jacobo Transcript, p. 574, 589,
13 594.)
- 14 7. Once Officer Jacobo got to Officer Catton, Officer Jacobo then looked over the car and
15 saw Stephen Willis on his left side, in an exaggerated fetal position, “rolling” or “slowly
16 moving.” (Doc. 277, Jacobo Transcript, p. 574-75, 588-89, 594.)
- 17 8. Following the final shot(s), Stephen Willis was slowly moving.
- 18 9. Officer Jacobo and Officer Catton had a brief conversation – Jacobo listening to what
19 Officer Catton was saying about the gun and the holes in Stephen’s back. (Doc. 277,
20 Jacobo Transcript, p. 575, 594.)
- 21 10. Officer Jacobo observed Stephen’s body slowly moving and watched him until he
22 stopped moving. (Doc. 277, Jacobo Transcript, p. 574:15.)
- 23 11. More seconds elapsed until Officer Jacobo and Officer Cerda, who had already joined
24 Officers Jacobo and Catton, approached Stephen Willis. (Doc. 277, Jacobo Transcript,
25 p. 594-95.)

26 ² The Court rejects Defendants’ arguments that Stephen was already dead at the moment of the final shots. At trial,
27 Defendants took the position that Stephen was alive and a threat to officer safety, necessitating Officer Catton’s
28 final shots. Despite this argument at trial, the jury found excessive force from the final shots, which means the jury
implicitly found Stephen was alive at the moment of the final shots. Therefore, this Court concludes Stephen was
alive at the moment of the final shots. Moreover, as a matter of law, the Court finds that excessive force cannot be
inflicted upon a dead person. (See Doc. 237, Jury Instruction no. 20.)

- 1 12. Officer Catton believes it was 30 to 60 seconds from the time that he fired the last
2 rounds and Officers Cerda and Jacobo came around to Officer Catton's position and
3 then approached Stephen Willis and secured Stephen. (Doc. 278, Catton Transcript, p.
4 901-902.)
- 5 13. Officer Cerda and Officer Jacobo approached Stephen, and Officer Cerda rolled Stephen
6 over. (Doc. 277, Jacobo Transcript, p. 597; Doc. 280, Cerda Transcript, p. 1513 ("We
7 came to the body and we moved the body to search him for weapons and take him into
8 custody.)).
- 9 14. Once Officers Jacobo and Cerda reached Stephen, "we moved the body over from the
10 position that he was and rolled him on to his back." (Doc. 280, Cerda Transcript, p.
11 1514.)
- 12 15. Once rolled onto his back, Officer Cerda could tell Stephen was not breathing. (Doc.
13 280, Cerda Transcript, p. 1533-34.)
- 14 16. Officer Cerda saw that Stephen's "pupil was blown" and Officer Cerda knew that
15 Stephen was "clearly dead." (Doc. 280, Cerda Transcript, p. 1533-34.)
- 16 17. It cannot be determined which shot or shots that struck Stephen was the final fatal shot.
- 17 18. Stephen Willis's body was compromised by all of the shots which struck his body, but
18 most were treatable. (Doc. 279, Gopal Transcript, p. 1157.)
- 19 19. There were multiple bullet wounds, but it cannot be determined the order in which each
20 of the bullets struck Stephen. (Doc. 279, Gopal Transcript, p. 1167.)
- 21 20. None of the wounds would have been instantly incapacitating. (Doc. 281, DiMaio
22 Transcript, p. 1662.)
- 23 21. Bullet Wounds C and F are into the back of Stephen Willis. (Doc. 281, DiMaio
24 Transcript, p. 1657:1-4.)
- 25 22. Bullet wounds C and F are consistent with Stephen Willis's final position, on the
26 ground, lying on his left side. (Doc. 281, DiMaio Transcript, p. 1661-1662.)
- 27 23. Bullet wound B hit Stephen Willis from the left side and went through the stomach,
28 diaphragm and through the spleen. (Doc. 279, Gopal Transcript, p. 1151-52.)

1 24. The injury to the spleen would cause rapid or eventual death if medical attention were
2 not provided, but it is an injury which a person could survive with treatment. (Doc. 279,
3 Gopal Transcript, p. 1151-52.)

4 25. Wound F is in the back sacral bone of the pelvis and this would cause a lot of pain, but
5 is not a fatal wound. (Doc. 279, Gopal Transcript, p. 1156-57.)

6 26. Wound C is in the right back side and traveled in a straight-line line and went into the
7 heart. (Doc. 279, Gopal Transcript, p. 1156; Doc. 281, DiMaio Transcript, p. 1662.)

8 27. With this type of heart wound, Wound C, a person can be conscious for 15 seconds, and
9 probably longer, before the person bleeds out. (Doc. 281, DiMaio Transcript, p. 1662,
10 1681-82.)

11 28. Expert testimony establishes that shots C and F, and possibly shot B, were sufficiently
12 debilitating to eventually cause death. (Testimony of Drs. Gopal and DiMaio.)

13 29. From the time Officer Catton fired his final shot(s) to the time Officers Jacobo and
14 Cerda placed their hands on Willis and turned him over, approximately 15-30 seconds
15 elapsed.³

16 30. Stephen Willis survived the last of the gunshots for a period of 15-30 seconds.

17 31. Stephen Willis was conscious, undiminished by alcohol in these final moments, and
18 knew the circumstances that were upon him.⁴

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21 ³ The Court discounts Officer Catton's testimony that it was 30-60 seconds before Officers Jacobo and Cerda
22 placed their hands on Stephen. The Court finds that Officer Catton's estimate elongates the time frame based upon
23 his involvement in a traumatic experience which the Court finds "slows things down." In short, the medical
testimony is more persuasive.

24 ⁴ The evidence is disputed whether Stephen had a .29 alcohol level (such that he was sensory incapacitated) or
25 whether the alcohol level was the result of fermentation. This Court need not decide if Stephen had this alcohol
26 level. Evidence was presented at trial that Stephen did not appear to be intoxicated at all when the officers
27 encountered him. Evidence was also presented that had Stephen had a .29 alcohol level, Stephen would have been
28 falling down drunk, which he was not. For instance, Stephen was able to drive safely home. (Doc. 279, Barbour
and Uribe Testimonies.) In the encounter with the officers, Stephen had the mental wherewithal to seek shelter
immediately and remain hidden while nearly 40 bullets were shot at him. The Court does not find that Stephen
Willis was so incapacitated by the purported .29 alcohol level that his pain sensations were eliminated or
significantly reduced. The Court also makes a reasonable inference that Stephen, a man experienced with guns,
after being struck by multiple bullets, knew he was in a life and death situation, which, if he was inebriated,
sobered him. Therefore, the Court finds that Stephen was undiminished by alcohol in the final moments.

1 **IV. CONCLUSIONS OF LAW**

2 **A. The Issue of the Separation of the Gun Shots**

3 As a threshold matter, Plaintiffs may only be awarded pain and suffering for the
4 excessive force used by Officer Catton. That force involves 1 or 2 final shots. Plaintiffs cannot
5 be awarded any pain and suffering for shots fired by Officer Astacio. The jury found that
6 Officer Astacio did not use excessive force, and therefore, any shots by Officer Astacio were
7 not excessive force.

8 In addition, any shots fired by Officer Catton, **other than the final shots**, were not
9 excessive force. As found by the jury and this Court in interpreting the jury’s verdict, and as
10 affirmed by the Ninth Circuit, the unlawful, excessive shots can be narrowed to the 1 or 2 final
11 shots.

12 **B. Compensatory v. Deterrence v. Punitive Pain and Suffering**

13 Plaintiffs argue that based on *Chaudhry*, deterrence is an essential element of damages
14 which should be compensated separate and apart from pain and suffering. According to
15 Plaintiffs, compensation should be based not only on the less than a minute of pain and
16 suffering but for an amount sufficient to punish Officer Catton. Basically, Plaintiff argues that a
17 \$1 million award is comprised of the actual pain and suffering plus some punitive element.

18 An important principle of damages in §1983 actions is that compensatory damages may
19 be awarded only for the actual injuries suffered as a result of the violation of constitutional
20 rights. Compensatory damages awarded under §1983 must be based on the actual injuries
21 caused by the deprivation of the constitutional right. *Carey v. Phipus*, 435 U.S. 247, 256, 264,
22 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978) (§ 1983 actions are a “species of tort liability” intended to
23 “compensate persons for injuries that are caused by the deprivation of constitutional rights.”);
24 *see also Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (“Deterrence is also
25 an important purpose of this system, but it operates through the mechanism of damages that are
26 compensatory—damages grounded in determinations of plaintiffs’ actual losses.”); *Robertson v.*
27 *Wegmann*, 436 U.S. 584, 590-91, 98 S. Ct. 1991, 1995, 56 L. Ed. 2d 554 (1978) (The policies
28 underlying §1983 include compensation of persons injured by deprivation of federal rights and

1 prevention of abuses of power by those acting under color of state law.)

2 Pain and suffering damages, like any other damages, must be proved. Compensation for
3 damages must be proved, even in a §1983 action. *Carey*, 435 U.S. at 264, 98 S.Ct., at 1052 (no
4 compensatory damages could be awarded for violation of that right absent proof of actual
5 injury.) Whatever the injury, “damages must always be designed to compensate injuries caused
6 by the [constitutional] violation.” *Carey*, 435 U.S. at 265.

7 Deterrence is fostered by an award of damages. An award of pre-death pain and
8 suffering fosters the §1983 policy of deterrence of wrongdoing. Indeed, the Supreme Court has
9 recognized that Congress intended the “award of compensatory damages” achieves §1983’s
10 goal of deterrence. In *Robertson*, the Supreme Court elaborated that compensatory damages
11 deter potential wrongdoers because “[a] state official contemplating illegal activity must always
12 be prepared to face the prospect of a 1983 action being filed against him.” 436 U.S. at 592. *See*
13 *also Chaudhry*, 751 F.3d at 1105 (“[I]f Section 1983 did not allow recovery for loss of life
14 notwithstanding inhospitable state law, deterrence would be further subverted since it would be
15 more advantageous to the unlawful actor to kill rather than injure.”) “Section 1983 presupposes
16 that damages that compensate for actual harm ordinarily suffice to deter constitutional
17 violations. *Stachura*, 477 U.S. at 310, citing *Carey*, 435 U.S. at 256-57. The Supreme Court
18 also has characterized compensatory damages in Section 1983 actions as “mandatory” when a
19 violation is found. *See Smith v. Wade*, 461 U.S. 30, 52 (1983) (“Compensatory damages, by
20 contrast, are mandatory; once liability is found, the jury is required to award compensatory
21 damages in an amount appropriate to compensate the plaintiff for his loss.”).

22 Based on the above Supreme Court authority, this Court cannot accept Plaintiffs’
23 argument of enhancing the award to further “deterrence.” In their reply brief, Plaintiffs argue
24 that \$1 million pain and suffering should be awarded because: “Catton bragged to his fellow
25 officers, “You see that bullet hole there?”; Stephen Willis cannot tell us what he was feeling
26 because defendant “ended his ability to speak for himself;” that Defendants maddeningly took
27 contradictory positions at trial (Stephen was going for his gun at the time of the final shots) to
28 the polar opposite position in their damages argument (Stephen Willis was already dead at the

1 final shot) and other entirely inconsistent positions as those taken at trial. (Doc. 367, Plaintiffs’
2 Reply Brief.) These arguments, based upon a punitive element rather than actual proof of pain
3 and suffering, are as much the result of frustration from the eight and one half year saga that has
4 been this case, more than proof of what Stephen Willis suffered during his final moments.
5 Plaintiffs’ argument is more akin to imposing a punitive element into the damages calculation,
6 as opposed to damages designed to compensate. Rather than compensating for injury, “[t]he
7 purpose of punitive damages is to punish the defendant for his willful or malicious conduct and
8 to deter others from similar behavior.” *Stachura*, 477 U.S. at 306 n. 9, 106 S.Ct. 2537.
9 Therefore, this Court rejects Plaintiffs’ argument that a \$1 million dollar award for pre-death
10 pain and suffering is justified for the purposes of deterrence, as inconsistent with controlling
11 case authorities.

12 **C. “Appreciable Amount of Time” and “Substantially Contemporaneous with**
13 **Death”**

14 Defendants cite to a series of non-civil rights cases which hold that to recover pre-death
15 pain and suffering damages, a plaintiff must establish that the decedent was conscious for “an
16 appreciable length” of time prior to his death and that the pain and suffering was not
17 “substantially contemporaneous with death.” *St. Louis IM &S.Ry. Co. v. Craft*, 237 U.S. 648,
18 655 (1915) (pain and suffering is not compensable if substantially contemporaneous with
19 death); *Great N. Ry. Co. v. Capital Trust Co.*, 242 U.S. 144, 146 (1916) (compensable only if
20 conscious for an “appreciable length of time.”); *Ghotra v. Bandila Shipping Inc.*, 113 F.3d
21 1050, 1061 (9th Cir. 1997) (10 seconds of insensible consciousness is not an “appreciable
22 time”). In *Ghotra v. Bandila Shipping Inc.*, 113 F.3d 1050, 1061 (9th Cir. 1997), the Ninth
23 Circuit held that Plaintiff must establish that decedent was conscious for some appreciable
24 amount of time to be eligible for pre-death pain and suffering. Decedent was aboard a ship
25 when he fell from a crane to the bottom of a vessel ultimately causing his death. Plaintiff
26 presented evidence that the decedent may have been conscious for at least ten seconds after his
27 fatal injuries. The Ninth Circuit noted that federal courts have not generally allowed recovery
28 for pre-death pain and suffering in cases where death resulted from a sudden and severe

1 accident or impact. The Ninth Circuit upheld summary judgment in favor of the defendants
2 where the decedent had been conscious for, at most, 10 seconds after his injury and before his
3 death. *See also Cook v. Ross Island Sand & Gravel.*, 626 F.2d 746, 750-752 (9th Cir. 1980)
4 (wrongful death action where employee of Ross Island drowned, the court upheld an award of
5 \$35,000 for 2.5 minutes of suffering).

6 This Court distinguishes these cases cited by Defendants as not persuasive in a civil
7 rights context. First, each of these cases dealt with either state common law or other statutory
8 regimes not comparable to policies fostered in §1983. Each of the cases was brought in some
9 form of a negligence action. Both *St. Louis IM & S.Ry. Co. v. Craft*, and *Great N. Ry. Co. v.*
10 *Capital Trust Co.*, involved the Employers' Liability Act for accidental deaths during the course
11 of employment. *Cook v. Ross Island Sand & Gravel* also involved the accidental death of an
12 employee. None of these cases assessed compensatory damages after the intentional wrongful
13 conduct of a state actor, resulting in a violation of Constitutional rights.

14 Second, it would be inconsistent with *Chaudhry* to limit recovery only to instances
15 where Plaintiff can show an “appreciable time” prior to death. In *Chaudhry*, the Ninth Circuit
16 held that the California’s survival statute limits recovery too severely to be consistent with
17 §1983’s deterrence policy because California did not allow damages for pre-death pain and
18 suffering. *Chaudhry*, 751 F.3d at 1103, 1105. That conclusion advanced “[o]ne of Congress’s
19 primary goals in enacting §1983”—“provid[ing] a remedy for killings unconstitutionally caused
20 or acquiesced in by state governments,” *id.* at 1103—by avoiding the “perverse effect of making
21 it more economically advantageous for a defendant to kill rather than injure his victim.” *Id.* at
22 1104.

23 Section 1983’s twin policies of compensation and deterrence would be undermined
24 should defendants benefit from a plaintiff dying quickly following a defendant’s intentional
25 Constitutional violation. If a plaintiff were denied recovery for pre-death pain and suffering for
26 “mere moments” of suffering, the perverse effect cautioned in *Chaudhry* would result—there
27 would be an economic incentive to “kill them fast,” thereby cutting off claims for pain and
28 suffering. Thus, the policies of compensation and deterrence are furthered by awarding

1 damages for **every second** a decedent survived following a Constitutional violation. “The
2 policies underlying [Section] 1983 include compensation of persons injured by deprivation of
3 federal rights and prevention of abuses of power by those acting under color of state law.”
4 *Dennis v. Higgins*, 498 U.S. 439, 444 (1991).

5 **D. Assessment of Monetary Damages**

6 The Court has found from the evidence presented at trial that Stephen Willis survived
7 for 15-30 seconds following the final shots. The Court must now assess pain and suffering
8 damages.

9 The Supreme Court in *Carey* and *Stachura* held firm to its view that “whatever the
10 constitutional basis for § 1983 liability, [compensatory] damages must always be designed ‘to
11 compensate injuries caused by the [constitutional] deprivation.’” As stated above, this Court
12 does not find the cases cited by Defendants persuasive for eliminating damages where a
13 decedent fails to suffer for “an appreciable time,” but those same cases are instructional for
14 computing compensatory damages for pre-death pain and suffering.

15 In *Cook v. Ross Island Sand & Gravel Co.*, 626 F.2d 746, 750 752 (9th Cir. 1980), a
16 decedent’s estate was awarded \$35,000 for 2.5 minutes of suffering while he drowned.
17 Plaintiff’s medical expert testified that Plaintiff was likely conscious when he entered the water
18 (no evidence of a skull fracture), and that he likely remained conscious for 2.5 minutes before
19 he drowned. Thus, the court upheld \$35,000.⁵ In *Guyton v. Phillips*, 532 F. Supp. 1154, 1167
20 (N.D. Cal. 1981), *disapproved of on other grounds by Peraza v. Delameter*, 722 F.2d 1455 (9th
21 Cir. 1984), a civil rights case, decedent was shot first in the buttocks by an officer, he began to
22 buckle and proceed into a staggered run, got to the sidewalk and finally fell down. A second
23 shot was then fired by another officer hitting the victim slightly below the neck; the two shots
24 collectively killed the victim. Decedent was awarded \$15,000 for 15 minutes of suffering. In
25 *Hambrook v. Smith*, No. 14-00132 ACK-KJM, 2016 WL 4408991, at *36 (D. Haw. Aug. 17,
26 2016), decedent died during a tourism scuba diving lesson when he got swept away and was

27 ⁵ In *Cook*, the court also said: “This Court will not adopt a ‘stop watch’ approach to the question of whether a
28 decedent remained conscious for a legally substantial period of time after he sustained the injuries that eventually
resulted in his death. Rather, this Court will approach the question of a decedent’s consciousness only after a
careful examination of the facts of each individual case.” *Cook v. Ross Island Sand & Gravel Co.*, 626 F.2d at 751.

1 yelling for help. The Court found that a total time of approximately one to two-and-a-half-
2 minutes elapsed while decedent was conscious of his impending death. The Court found that
3 “while the decedent’s pre-death pain and suffering may have been relatively short, it was
4 agonizing and frightful.” His estate was awarded \$50,000. In *Randall v. Chevron U.S.A., Inc.*,
5 a seamen fell into the water when attempting to evacuate a vessel during high seas. *Randall v.*
6 *Chevron*, 13 F.3d 888, 901 (5th Cir. 1994) (overruled on other grounds *Bienvenu v. Texaco,*
7 *Inc.*, 164 F.3d 901 (5th Cir. 1999)). He managed to swim to the leg of a platform and clung as
8 best he could in rough water for twenty-five minutes. Efforts to save him were unsuccessful
9 and he eventually drowned. When his body was recovered his legs were lacerated from being
10 thrown against the barnacle encrusted leg of the platform by the rough waves. On appeal, the
11 Fifth Circuit reduced a jury award for pre-death pain and suffering from \$1,000,000 to \$500,000
12 for the twenty-five minutes of pain and suffering.

13 The above cases provide the Court with some guidance. The Court acknowledges that
14 pain and suffering damages cannot be supported entirely by rational analysis, but is inherently
15 subjective, involving experience and emotions, as well as calculation. See *Dixon v.*
16 *International Harvester Co.*, 754 F.2d 573, 590 (5th Cir.1985). Based on the evidence, the
17 Court concludes that Stephen Willis suffered pain and suffering damages after the last shot(s)
18 by Officer Catton in the amount of \$25,000.

19 **V. CONCLUSION AND ORDER**

20 For the reasons discussed herein, following the conclusion of a bench trial in this matter,
21 and in accordance with these Findings of Fact and Conclusions of Law, IT IS HEREBY
22 ORDERED, that judgment shall be AMENDED to include, in favor of Plaintiffs and against
23 Defendant Officer Catton, an award of \$25,000 for Stephen Willis’s pre-death pain and
24 suffering. (Doc. 251.)

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The Judgment shall be AMENDED to reflect as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in accordance with the Special Verdict and the Findings of Fact and Conclusions of Law in favor of plaintiffs Chris Willis and Mary Willis, as Successors in Interest to Stephen Willis, and against defendant Greg Catton in the amount of **\$25,001.00**.

IT IS SO ORDERED.

Dated: November 28, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE