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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 BAO XUYEN LE, et al.,

7 Plaintiffs,

8 v.

9 REVEREND DR. MARTIN LUTHER  
KING, JR. COUNTY, et al.,

10 Defendants.

C18-55 TSZ

MINUTE ORDER

11 The following Minute Order is made by direction of the Court, the Honorable  
12 Thomas S. Zilly, United States District Judge:

13 (1) Defendants' motion for clarification or reconsideration, docket no. 162, is  
GRANTED in part and DENIED in part as follows:

14 (a) The Court CLARIFIES the Minute Order entered April 26, 2019,  
15 docket no. 148, as follows. Contrary to defendants' contention, the Court's ruling  
16 striking the portion of King County's motion for summary judgment asserting  
17 immunity from suit pursuant to RCW 4.24.420 was not inconsistent with the  
18 survival of the claim brought under 42 U.S.C. § 1983 by plaintiff Bao Xuyen Le,  
19 the Personal Representative of the Estate of Tommy Le. RCW 4.24.420 explicitly  
20 states that it does not affect a right of action under § 1983. With respect to the  
21 survival of § 1983 claims, state law applies to the extent that it is not inconsistent  
22 with federal law and the policies underlying § 1983. *See* 42 U.S.C. § 1988(a);  
*Chaudhry v. L.A.*, 751 F.3d 1096, 1103 (9th Cir. 2014). Defendants' assertion that  
23 the remaining survival action is premised on a negligence theory under state law,  
*see* Defs.' Mot. at 5 (docket no. 162), is simply incorrect. The remaining survival  
action is brought under § 1983, and is viable because federal law, specifically  
§ 1988, incorporates Washington's law allowing all causes of action to survive to  
the personal representative of the decedent's estate. *See* RCW 4.20.046(1).

(b) Defendants' motion is otherwise denied.

1 (2) As a result of defendants’ motion for clarification or reconsideration, the  
2 Court has reviewed the jurisprudence concerning the survival of § 1983 claims, and has  
3 concluded that its earlier acceptance of plaintiffs’ concession regarding the unavailability  
4 of damages for “pain and suffering, anxiety, emotional distress, or humiliation” suffered  
5 by Tommy Le prior to his death might have been contrary to binding precedent. *See*  
6 *Chaudhry*, 751 F.3d at 1105; *see also Erickson v. Camarillo*, 2017 WL 2335659 (D. Ariz.  
7 May 30, 2017); *Ostling v. City of Bainbridge Is.*, 872 F. Supp. 2d 1117, 1125-27 (W.D.  
8 Wash. 2012). The Court therefore VACATES the portions of the Minute Order entered  
9 April 26, 2019, docket no. 148, limiting the damages that are recoverable in the survival  
10 action, *i.e.*, the last clause of Paragraph 1(a) and the related language in Paragraph 2(a).  
11 The portions of defendants’ motions for summary judgment in which they assert that  
12 RCW 4.20.046(1) operates to prohibit non-economic damages as to the § 1983 claim are  
13 DEFERRED, and counsel shall be prepared to address this issue at oral argument on  
14 May 16, 2019, at 9:00 a.m.

15 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
16 record.

17 Dated this 8th day of May, 2019.

18 William M. McCool  
19 Clerk

20 s/Karen Dews  
21 Deputy Clerk