

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 18 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KATHY CRAIG; GARY WITT,
individually and as successors-in-interest to
Brandon Lee Witt, deceased,

Plaintiffs-Appellees,

v.

NICHOLAS PETROPULOS,

Defendant-Appellant,

and

COUNTY OF ORANGE,

Defendant.

No. 19-55324

D.C. No.

8:17-cv-00491-CJC-KES

MEMORANDUM*

KATHY CRAIG; GARY WITT,
individually and as successors-in-interest to
Brandon Lee Witt, deceased,

Plaintiffs-Appellees,

v.

COUNTY OF ORANGE; NICHOLAS
PETROPULOS,

No. 19-56188

D.C. No.

8:17-cv-00491-CJC-KES

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

Defendants-Appellants.

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted May 5, 2021**
Pasadena, California

Before: OWENS and LEE, Circuit Judges, and SIMON,*** District Judge.
Dissent by Judge LEE

Nicholas Petropulos and the County of Orange (“Defendants”) appeal from a jury verdict awarding \$1.8 million in “loss of life” damages to Brandon Witt, who died in the custody of the Orange County Sheriff’s Department. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

On appeal, the Defendants argue that the district court improperly awarded compensatory damages for “the loss of life experienced by” Witt. Specifically, the Defendants contend that death is not compensable because a person cannot “experience” his loss of life; such damages are inherently speculative; and loss of life awards are not authorized by *Chaudhry v. City of Los Angeles*, 751 F.3d 1096 (9th Cir. 2014). We recently rejected these arguments in *Valenzuela v. City of*

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Michael H. Simon, United States District Judge for the District of Oregon, sitting by designation.

Anaheim, No. 20-55372, 2021 WL 3355499, at *4-5 (9th Cir. Aug. 3, 2021), when we upheld the jury’s loss of life award and determined that California state law prohibiting such damages was “inconsistent with [42 U.S.C.] § 1983.” *Valenzuela* is indistinguishable from this case. As a result, we affirm the jury’s \$1.8 million damages award for Witt’s loss of life.

AFFIRMED.

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U.S. COURT OF APPEALS

Craig v. Petropulos, 19-55324

LEE, Circuit Judge, dissenting:

I agree that the issue in this case is indistinguishable from our previous discussion of loss of life damages in *Valenzuela v. City of Anaheim*, No. 20-55372, 2021 WL 3355499 (9th Cir. Aug. 3, 2021). Therefore, I respectfully dissent for the same reasons laid out in my dissent in *Valenzuela*.