

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TIM GOMES, et al.,
Plaintiffs,
v.
SANTA CLARA COUNTY, et al.,
Defendants.

Case No. [5:18-cv-04191-EJD](#)

**ORDER GRANTING IN PART
DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT; DENYING
PLAINTIFFS’ MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Re: Dkt. Nos. 56, 63

In this action, Plaintiffs Tim and Catherine Gomes argue that their constitutional rights were violated when Santa Clara County social workers removed their two children (I.G. and H.G.) and placed them in county custody following allegations of neglect and abuse. Defendants Santa Clara County, Roshanda Burns, Linda Hsaio, Michael Shaheed, Sarah Arana, and Bob Beck now move for summary judgment in their favor. Plaintiffs also move for partial summary judgment in their favor. Having considered the Parties’ papers, the Court **GRANTS in part** Defendants’ motion for summary judgment and **DENIES** Plaintiffs’ motion for partial summary judgment.¹

I. BACKGROUND

A. Factual Background

Plaintiffs bring 15 claims against Defendants—Roshanda Burns, Linda Hsaio, Michael Shaheed, Sarah Arana, and Bob Beck. The first four claims relate to the removal of Plaintiffs’

¹ Pursuant to N.D. Cal. Civ. L.R. 7-1(b) and General Order 72-5, this Court found this motion suitable for consideration without oral argument. *See* Dkt. 73.

Case No.: [5:18-cv-04191-EJD](#)

**ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

1 older child I.G. *See* First Amended Complaint for Damages (“FAC”) ¶¶ 52–66, Dkt. 16. Claims
 2 five through nine relate to the removal of Plaintiffs’ younger child H.G. *Id.* ¶¶ 67–87. Claim
 3 thirteen relates to both children. *See id.* ¶¶ 116–22. In claims ten through twelve, Plaintiffs allege
 4 sexual battery, sexual harassment, and sexual discrimination against Defendant Shaheed. *Id.*
 5 ¶¶ 88–115. Claim fourteen alleges a *Monell* claim. *Id.* ¶¶ 123–24. Lastly, claim fifteen alleges an
 6 intentional infliction of emotional distress against Defendant Arana. *Id.* ¶¶ 125–31. Plaintiffs
 7 maintain that the social workers violated their Fourteenth Amendment right to familial association
 8 and their right to be free from the use of deception and false evidence in judicial proceedings.² *Id.*
 9 ¶¶ 56–87, 116–31. Plaintiffs further maintain that the social workers’ conduct was negligent
 10 and/or malicious. *Id.*

11 1. Removal of I.G.

12 In February 2013, Plaintiffs were arguing in the street about a quarter of a mile away from
 13 their home. When police officers learned that they had left 16-month-old I.G. alone at home, they
 14 went to Plaintiffs’ home and found I.G. near a heater and hazardous materials. In June 2013, I.G.
 15 was declared a dependent of the juvenile court and returned to Plaintiffs with family maintenance
 16 services. In February 2014, after Plaintiffs completed their case plan, the juvenile court dismissed
 17 the case. *See In re H.G.*, 2019 WL 1615301, at *1 (Cal. Ct. App. Apr. 16, 2019).

18 In January 2016, the Santa Clara County Department of Family and Children’s Services
 19 (“DFCS”) again alleged that Plaintiffs were neglecting I.G. based on the fact that police had
 20 discovered rotting food and human waste through the home. These conditions were allegedly
 21 hazardous to I.G.’s health and safety.

22
 23 ² The FAC also alleges that the warrantless seizure of H.G. violated Plaintiffs’ Fourth Amendment
 24 rights. FAC ¶¶ 71–75. This is an improper claim—Plaintiffs cannot bring a Fourth Amendment
 25 claim for unlawful seizure of their child—their claims are properly analyzed under the Fourteenth
 26 Amendment. *Wallis v. Spencer*, 202 F.3d 1126, 1146 n.8 (9th Cir. 2000) (“The claims of the
 27 parents in this regard should properly be assessed under the Fourteenth Amendment standard for
 28 interference with the right to family association. Because only the children were subjected to a
 seizure, their claims should be assessed under the Fourth Amendment.” (citations omitted)). On
 this ground, Count Six, Plaintiffs’ Fourth Amendment claim, is dismissed. Plaintiffs have
 acknowledged this. *See* Cormier Decl. ¶ 3, Ex. A, Interrogatory Response No. 4.

1 A month later, on February 29, 2016, DFCS received a referral after four-year-old I.G. was
2 found wandering alone in the street. When Catherine was contacted, she did not know that I.G.
3 was missing and refused to claim her. The home was again found to be dirty with unsafe
4 surroundings. *Id.* at *2.

5 In March 2016, DFCS filed a petition alleging that I.G. “came within” the provisions of
6 California Welfare and Institutions Code § 300(b). In June 2016, that petition was amended to
7 allege that I.G. was at risk of harm in Plaintiffs’ care due to Catherine’s mental health issues,
8 exposure to Plaintiffs’ domestic violence, and Tim’s failure to protect I.G. *See In re I.G. (“In re*
9 *I.G. I”)*, 2018 WL 5095117, at *1 (Cal. Ct. App. Oct. 19, 2018). As support, the amended petition
10 alleged that: (1) Catherine’s mental health issues were poorly managed and that she was placed on
11 a psychiatric hold in January 2016; (2) during a mental-health episode on February 2, 2016,
12 Catherine hit Tim on the back of the head; (3) when the police arrived following the domestic
13 violence incident, they found a large amount of food on the bed sheets, trash and food scattered
14 about the living room, and the odor of decomposing trash in all the rooms; (4) on February 29,
15 2016, I.G. was found wandering in the street unsupervised; (5) when the police took I.G. home,
16 Catherine stated that she did not know the child had been missing and would not claim her; and
17 (6) the police reported a foul smell emitting from the bedrooms and uncleaned cat litter and cat
18 feces. *Id.* The amended petition also included information about how I.G. was placed in
19 protective custody in February 2013 and was declared a dependent of the court. In June 2016,
20 based on this amended petition, the juvenile court again declared I.G. a dependent of the court. *Id.*
21 at *2.

22 Plaintiffs appealed this decision and argued that there was insufficient evidence to sustain
23 the allegations in the amended petition. *See id.* The appellate court disagreed. *Id.* at *15. The
24 court noted Plaintiffs’ inability to care for I.G., Plaintiffs’ unsanitary living conditions, I.G.’s
25 speech and social delays, and the fact that I.G. was often left alone with Catherine, who was
26 unable to care for her. From this, the appellate court held that there was substantial evidence to

1 support the juvenile court’s findings. *Id.*

2 Defendant Burns became the primary social worker on I.G.’s case in June 2016. Over the
3 next year, Defendant Burns attempted to provide services to Plaintiffs. Defendant Burns referred
4 Plaintiffs to mental health services, parent education classes, and intensive in-home services.
5 Defendant Burns also met, in person, with Plaintiffs at least once per month. Defendant Burns
6 maintains that while the parents made some effort, they were extremely resistant to court-ordered
7 services and often did not follow through with the services offered and did not complete any case
8 plan activities. *See* Dkt. 54-15.

9 In May 2017—following the March 2016 dependency determination—Catherine was
10 placed on an involuntary 72-hour psychiatric hold pursuant to California Welfare and Institutions
11 Code § 5150. The hold was expanded to a 14-day hold under § 5250. *Id.* at 15041. Tim informed
12 Defendant Burns of the hold. One of the treating psychiatrists told Defendant Burns that she
13 “would not leave a child with [Catherine].” *Id.*

14 On June 9, 2017, the day Catherine was expected to be released from the hold, DFCS
15 obtained a warrant to remove I.G. from Plaintiffs’ custody. Defendant Burns signed the
16 declaration in support of the warrant and cited, among other things, Catherine’s ongoing mental
17 illness and specific examples of Catherine’s concerning actions, such as coming to the door naked,
18 telling a social worker that someone was trying to chop her head off, and making threats to staff
19 during her psychiatric hold. Declaration of Rashonda Burns (“Burns Decl.”), Dkt. 54-9.
20 Defendant Burns also cited Tim’s poor insight and minimization of Catherine’s mental health
21 issues and their impact on I.G. *Id.* The declaration further stated that the previous disposition in
22 2013 had not been effective in protecting I.G. because of Catherine’s severe and untreated mental
23 health issues and Plaintiffs’ failure to comply with their case plan services. Based on this
24 information, the juvenile court issued a protective custody order and I.G. was placed in a foster
25 home.

1 In August 2017, the juvenile court held a contested jurisdiction/disposition hearing on the
2 dependency petition. At that time, I.G. experienced anxiety, exhibited bizarre behavior, was not
3 toilet-trained (at age five), and had a speech delay. The juvenile court found DFCS's allegations
4 to be true despite Plaintiffs' argument to the contrary. During an October 2017 interim review
5 hearing, the juvenile court ordered all previous orders to remain in effect. Plaintiffs' appealed the
6 juvenile court's orders and argued that there was no evidence to supporting the juvenile court's
7 orders regarding I.G.'s out-of-home placement. *See In re I.G. ("I.G. II")*, 2018 WL 6696489, at
8 *3 (Cal. Ct. App. Dec. 20, 2018). The appellate court reaffirmed that there was substantial
9 evidence to support the juvenile court's findings that the allegations in the June 2016 amended
10 petition were true and that there was sufficient evidence to support the juvenile court's later
11 rulings regarding I.G. *Id.*

12 A February 22, 2019, section 366.26 report recommended that parental rights for I.G. be
13 terminated so that I.G. could be adopted by her maternal aunt and uncle. Following a hearing, the
14 juvenile court found by clear and convincing evidence that I.G. was adoptable and terminated
15 Plaintiffs' parental rights. The appellate court upheld the juvenile court's finding. *See In re I.G.*
16 *("I.G. III")*, 2020 WL 500176 (Cal. Ct. App. Jan. 30, 2020).

17 **2. Removal of H.G.**

18 On November 7, 2017, Michael Shaheed replaced Defendant Burns and became the new
19 Continuing Social Worker for the Gomes family. A Continuing Social Worker is assigned to a
20 case after the jurisdiction and disposition hearings and after a child has officially become a
21 dependent of the court. *See* Declaration of Michael Shaheed ("Shaheed Decl."), Dkt. 56-9. At
22 this point, Catherine was pregnant with H.G. *Id.*

23 On November 22, 2017, Plaintiffs called Defendant Shaheed to let him know that
24 Catherine was at a Kaiser hospital in San Francisco and that she expected to be in labor soon.
25 H.G. was born two days later, on November 24, 2017. That afternoon, the County of Santa
26 Clara's Child Abuse and Neglect Center ("CANC") sent an email to Defendant Shaheed with a

27 Case No.: [5:18-cv-04191-EJD](#)

28 ORDER GRANTING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT;
DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1 “non-report”³ notifying Defendant Shaheed that Catherine had given birth. The reporting party
 2 learned that I.G. was not in Plaintiffs’ custody and called CANC to follow hospital policies. The
 3 call was not based on any concerns about the infant.

4 However, on November 27, 2017, Defendant Shaheed received a call from a Kaiser staff
 5 member expressing concern over Plaintiffs’ ability to care for H.G. Because DFCS had an open
 6 case for I.G. (H.G.’s sibling), Defendant Shaheed provided the staff member with the CANC’s
 7 number. Defendant Shaheed also relayed the staff members concerns to the CANC manager by
 8 phone and email. Shaheed Decl. ¶¶ 14–15.

9 Kaiser personal called the CANC and expressed concerns about Plaintiffs’ lack of attention
 10 toward H.G. *See* Declaration of Bob Beck (“Beck Decl.”), Dkt. 56-3; *see also* Dkt. 54-5 (report
 11 with Defendant Beck’s findings). By early afternoon on November 27, the Emergency Response
 12 Unit (“ER”) assigned social worker Katherine DiPaulo to the case. Beck Decl. ¶ 5. DiPaulo
 13 spoke to multiple Kaiser personnel, including a medical social worker, nurse, and doctor. She also
 14 interviewed Plaintiffs and observed Plaintiffs’ interactions with the infant. DiPaulo also observed
 15 coaching attempts by Kaiser staff to Plaintiffs. *Id.* ¶¶ 5–6. Concerns raised by Kaiser staff
 16 included letting H.G. cry for an extended time while Plaintiffs slept, leaving H.G. unswaddled to
 17 the point that her body temperature dropped, not changing diapers or feeding when needed,
 18 throwing dirty diapers and other trash, like Catherine’s bloody post-natal pads, on the floor rather
 19 than in the trash receptacles, and Tim holding H.G. by her neck and dangling her body. *Id.* ¶ 6.

20 Based on these concerns and on DiPaulo’s own observations, the ER team began the
 21 process of obtaining a warrant for the removal of H.G. *Id.* ¶ 7. Defendant Beck and DiPaulo
 22 discussed the case with their manager and decided that they would recommend removal of H.G. at
 23 the Joint Case Staffing meeting that was scheduled for the next morning. *Id.* ¶ 8. Defendant Beck
 24 and DiPaulo began work on the forms that they anticipated they would need if the Staffing

25
 26 ³ A “non-report” occurs when the CANC receives a referral or call, but determines that the
 27 information does not rise to a level requiring a response or that the information was previously
 28 reported and/or is already being addressed by the DFCS. Shaheed Decl. ¶ 13.

1 meeting resulted in a decision to seek a warrant. *Id.* ¶ 9; *see also* Dkt. 54-11 (email chain with
2 warrant attachments).

3 On the morning of November 28, the CANC received a call from Kaiser with similar
4 concerns to those expressed the previous day. *See* Dkt. 54-5 at 4472. The Staffing meeting took
5 place, with Defendants Beck and Shaheed, DiPaulo, and an attorney from county counsel in
6 attendance. Defendants decided to seek a warrant for H.G.’s removal. Beck Decl. ¶¶ 10–11.
7 DiPaulo and Defendant Beck continued to work on the warrant documents. They believed that
8 they would have enough time to obtain a productive custody warrant before H.G. was discharged.
9 *Id.* ¶ 11. However, on November 28, Kaiser staff informed Defendant Beck that H.G. and
10 Plaintiffs would be released “momentarily.” *Id.* ¶¶ 11. Defendant Beck estimated that he would
11 need at least a few more hours to obtain a warrant. *Id.* Because of the concerns raised by the
12 Kaiser staff, Defendant Beck believed that H.G. would be in immediate risk if she was in
13 Plaintiffs’ sole care. Accordingly, rather than proceed with the warrant process, the ER team
14 decided that exigent circumstances justified emergency removal. *Id.* ¶¶ 11–12; Dkt. 54-5 at 4474–
15 75. DiPaulo arrived at the hospital that afternoon to take custody of H.G. *Id.* ¶ 14.

16 Over the next two days, social workers spoke to Plaintiffs multiple times, gave them notice
17 of the upcoming December 1, 2017 court hearing, and tried to arrange separate visits for Plaintiffs
18 with H.G. Tim declined to attend the hearing and refused to attend the separate visits. *See*
19 Declaration of Marisela Dueñas (“Dueñas Decl.”) ¶¶ 6–8, Dkt. 56.

20 On or about December 1, 2017, the County submitted an Initial Hearing Report, which the
21 juvenile court admitted as evidence. *See* Dkt. 54-7. During the December 1 hearing, the juvenile
22 court judge stated that he believed there was sufficient evidence to remove H.G. *See* Dkt. 54-6 at
23 9. The judge authorized “the Department to set up the visits in a way that they believe allows
24 them to do the assessment they need to do,” even if that means separate visits. *Id.* at 9. The judge
25 then stated:

26
27
28 Case No.: [5:18-cv-04191-EJD](#)
ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

1 The Court finds [that] a prima facie case has been made that [H.G.]
 2 is described by section 300 of the Juvenile Court law. Her initial
 3 detention was justified given the serious concerns about how the
 4 parents behaved with [H.G.] while at the hospital, in addition to the
 5 concerns about why [I.G.] was brought into and continues to be in
 6 our system.

7 *Id.* at 10. The judge also adopted the findings and orders proposed by DFCS in its Initial Hearing
 8 Report. *Id.*

9 Ultimately, a section 366.26 report recommended that parental rights for H.G. be
 10 terminated so that she could be adopted by her maternal aunt and uncle. Following a hearing, the
 11 juvenile court found by clear and convincing evidence that H.G. was adoptable and terminated
 12 Plaintiffs' parental rights. The appellate court upheld the juvenile court's finding. *See I.G. III*,
 2020 WL 500176.

13 3. Sexual Misconduct Claims

14 Plaintiffs next allege that on January 6, 2018, Defendant Shaheed sexually assaulted
 15 Catherine during a party celebrating H.G.'s baptism. FAC ¶¶ 41–42. Plaintiffs allege that
 16 Defendant Shaheed approached Catherine while she was holding H.G. and began touching her
 17 “under the ruse of adjusting a blanket on the baby.” *Id.* ¶ 43. Defendant Shaheed “began rubbing
 18 [Catherine’s] legs in a sexual manner, with his full palms on her thighs.” *Id.* ¶ 44. She then
 19 screamed and called out for Tim. *Id.* ¶ 45. Tim claims that Catherine screamed so loudly that
 20 anyone in the room would have heard. *See* Declaration of Claire Cormier (“Cormier Decl.”), Ex.
 21 E at 120–35, 150–53, 154–55. Plaintiffs reported the incident to DFCS and Defendant Shaheed
 22 was removed as Plaintiffs’ social worker. An investigation was conducted.

23 Defendant Shaheed admits that he put a blanket over H.G. while Catherine was holding
 24 her. He denies that he touched Catherine’s legs. Shaheed Decl. ¶ 27; *see also id.*, Ex. F.

25 Following an investigation, the County found the claims to be unsubstantiated. The
 26 investigator, Tere Cohn-Hayes, based this conclusion on Catherine and Tim’s inconsistent stories.
 27 For example, Catherine told Hayes that in addition to screaming Tim’s name, she also yelled, “He
 28 has his hands on me!” She also claimed that Defendant Shaheed kept his hands on her legs until

Case No.: [5:18-cv-04191-EJD](#)

ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
 DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

1 Tim came in and removed them. Tim’s story was different. He did not report Catherine yelling,
 2 “He has his hands on me!” or that he had to remove Defendant Shaheed’s hands. Rather, Tim
 3 maintained that Defendant Shaheed removed his hands after Catherine yelled. *See* Declaration of
 4 Tere Cohn-Hayes (“Hayes Decl.”) ¶¶ 5–6, Dkt. 56.

5 Catherine’s parents contradict Plaintiffs’ allegations. Catherine’s parents, the Stephanovs,
 6 were in the room at the time of the alleged assault. Cormier Decl., Exs. C & D, Response Nos. 13
 7 & 14. Both Stephanovs noted that Defendant Shaheed told Catherine and Tim that they needed to
 8 keep H.G. warm and covered and that he tried to cover H.G. up when Plaintiffs failed to do so.
 9 Declaration of Alexander Stepanov (“A. Stepanov Decl.”) ¶ 12, Dkt. 56; Declaration of Helen
 10 Stepanov (“H. Stepanov Decl.”) ¶ 12, Dkt. 56. Both stated that, based on (1) the size and
 11 openness of the room where the touching allegedly occurred; (2) their presence in the room; (3)
 12 Defendant Shaheed’s professional demeanor; (4) the fact that neither of them saw any touching
 13 nor heard Catherine call out in distress; (5) the fact that Plaintiffs did not say anything to them
 14 about inappropriate touching until weeks after the reception; and (6) Catherine’s mental health
 15 history, they do not believe that Defendant Shaheed inappropriately touched Catherine. A.
 16 Stepanov Decl. ¶ 20; H. Stepanov Decl. ¶ 20.

17 **B. Procedural History**

18 On June 5, 2020, Defendants filed a motion for summary judgment. Motion for Summary
 19 Judgment (“D MSJ”), Dkt. 56.⁴ Plaintiffs filed their motion for partial summary judgment and an
 20 opposition brief on June 23, 2020. Motion for Partial Summary Judgment and Opposition (“P

21 _____
 22 ⁴ Defendants also filed a request for judicial notice. *See* Defendants’ Request for Judicial Notice
 23 (“RJN”), Dkt. 57. They ask the Court to take notice of California Court of Appeal decisions
 24 (specifically, those involving I.G. and H.G.), excerpts of juvenile dependency court transcripts, the
 25 content of documents filed with the Santa Clara County Juvenile Court, and of the DFCS’ Online
 26 Policies & Procedures. This court may take judicial notice of “proceedings in other courts, both
 27 within and without the federal judicial system, if those proceedings have a direct relation to
 28 matters at issue.” *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F. 2d
 244, 248 (9th Cir. 1992). The Court may also take notice of official information posted on
 government websites. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010).
 For these reasons, Defendants’ exhibits are subject to judicial notice and Defendants’ request for
 judicial notice is **GRANTED**.

Case No.: [5:18-cv-04191-EJD](#)

ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
 DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

1 MSJ/Opp.”), Dkt. 63. On July 8, 2020, Defendants filed their opposition to Plaintiffs’ motion for
 2 partial summary judgment. Opposition/Response re Motion for Summary Judgment (“D Opp.”),
 3 Dkt. 66. On July 16, 2020, Plaintiffs filed their reply to Defendants’ opposition. Reply re Motion
 4 for Partial Summary Judgment (“P Reply”), Dkt. 72.

5 II. LEGAL STANDARD

6 A court must grant summary judgment if the movant shows “that there is no genuine
 7 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
 8 Civ. P. 56(a). In order to satisfy this burden, “the moving party must either produce evidence
 9 negating an essential element of the nonmoving party’s claim or defense or show that the
 10 nonmoving party does not have enough evidence of an essential element to carry its ultimate
 11 burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d
 12 1099, 1102 (9th Cir. 2000). “In order to carry its ultimate burden of persuasion on the motion, the
 13 moving party must persuade the court that there is no genuine issue of material fact.” *Id.*

14 If the moving party meets its burden of production, the nonmoving party must produce
 15 evidence to support its claim or defense. *Id.* at 1103. If the nonmoving party fails to produce
 16 enough evidence to create a genuine issue of material fact, Rule 56(c) mandates that the moving
 17 party win the motion for summary judgment. *See id.*

18 III. DISCUSSION

19 A. Application of *Rooker Feldman* to Plaintiffs’ Claims

20 Defendants first argue that the *Rooker-Feldman* doctrine bars Plaintiffs’ Section 1983
 21 claims and their related state-law claims. The Court agrees that the doctrine bars Plaintiffs’
 22 Section 1983 claims as to I.G.. The Court, however, finds that the doctrine does not apply to the
 23 Section 1983 claims involving H.G.

24 The *Rooker-Feldman* doctrine is a well-established jurisdictional rule prohibiting federal
 25 courts from exercising appellate review over final state-court judgments. For instance, a plaintiff
 26 may not argue in federal court that a state court wrongly decided an issue. Likewise, the doctrine

27 Case No.: [5:18-cv-04191-EJD](#)

28 ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
 DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

1 “prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a de
2 facto appeal from a state court judgment.” *Reusser v. Wachovia Bank*, 525 F.3d 855, 858–89 (9th
3 Cir. 2008). A “de facto appeal” occurs where “claims raised in the federal court action are
4 ‘inextricably intertwined’ with the state court’s decision such that the adjudication of the federal
5 claims would undercut the state ruling or require the district court to interpret the application of
6 state laws or procedural rules.” *Id.* at 859. “The *Rooker-Feldman* doctrine, generally speaking,
7 bars a plaintiff from bringing a § 1983 suit to remedy an injury inflicted by the state court’s
8 decision.” *Loumena v. Kennedy*, 2015 WL 906070, at *5 (N.D. Cal. Feb. 27, 2015). The doctrine
9 may even apply when the merits of a state court decision are not directly contested. The relevant
10 inquiry is whether a plaintiff’s claim would “require review of the relevant state-court decisions.”
11 *Grimes v. Alameda Cty. Soc. Servs.*, 2011 WL 4948879, at *3 (N.D. Cal. Oct. 18, 2011).

12 Plaintiffs’ first and second claims relate to I.G.’s removal. While Plaintiffs admit that the
13 California Court of Appeal has consistently upheld I.G.’s removal and continued detention,
14 Plaintiffs argue that the courts never “adjudicated whether the facts presented by [Defendant]
15 Burns in order to obtain a warrant to remove I.G. were fraudulent facts (evidence).” Cormier
16 Decl., Exs. C & D, Interrogatory Response Nos. 1–6. Plaintiffs ground their I.G. Section 1983
17 claim in Defendant Burn’s warrant application, and argue that Defendants Hsaio and Burns’
18 falsification of evidence in the warrant application caused Plaintiffs to be unconstitutionally
19 deprived of I.G. The Court must decide if the state courts have already assessed this question.

20 There are multiple instances in the records where Plaintiffs argued that Defendant Burns
21 lied in her report. For instance, during a juvenile dependency hearing Plaintiffs argued that
22 Defendant Burns’ testimony and documents included statements that were “not true.” *See* Dkt.
23 54-3 at 4995 (“Tim: I would like to point out that there are certain facts in the report, the social
24 study, that are just in error or not true.”); *see also* Dkt. 54-8 at 921 (Tim objected to
25 characterization of Defendant Burns’ report); *Id.* at 929–30. The judge in the juvenile dependency
26 hearing disagreed with Plaintiffs’ argument that the report was fraudulent and found, after

27 Case No.: [5:18-cv-04191-EJD](#)

28 ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

1 listening to the testimony and reading the reports, that just cause existed to keep I.G. out of
 2 Plaintiffs' homes. This Court may not disrupt that finding. Allowing Plaintiffs to pursue their
 3 Section 1983 claims as to I.G. would do just that. It would require the Court to assess whether
 4 Defendant Burns' warrant included fraudulent statements. This question has already been
 5 considered and rejected by the juvenile dependency court. For that reason, the Court **GRANTS**
 6 Defendants' motion for summary judgment as to Plaintiffs' first and second counts.

7 Defendants further argue *Rooker-Feldman* bars Plaintiffs' claims as to H.G. The Court
 8 cannot agree. Plaintiffs argue that their Fourteenth Amendment rights were violated by the
 9 warrantless removal of H.G. Pursuant to section 315 of the Welfare and Institutions Code, which
 10 supported H.G.'s emergency removal, the juvenile court must determine whether the minor should
 11 be *further* detained. While the juvenile court must specify why the initial removal was necessary,
 12 there is no requirement that the court find that exigent circumstances existed to justify a
 13 warrantless removal. *See Anderson-Francois v. Cty. of Sonoma*, 2009 WL 1458240, at *5 (N.D.
 14 Cal. May 22, 2009); *see also Mabe v. San Bernardino Cty.*, 237 F.3d 1101, 1110 (9th Cir. 2001)
 15 ("The juvenile court's findings are not relevant to whether a sufficient exigency existed at the time
 16 of the removal to justify the warrantless action . . ."). In contrast, in the Ninth Circuit, a court
 17 must ask whether, at the time of the seizure, defendants had "reasonable cause to believe that the
 18 child [was] in imminent danger of serious bodily injury." Hence, this Court's inquiry into
 19 exigency will not disrupt the state court's determination that further removal of H.G. was proper.
 20 For that reason, the *Rooker-Feldman* doctrine does not bar Plaintiffs' H.G. claims.

21 **B. Fourteenth Amendment Claims/Immunity**

22 Plaintiffs argue that their Fourteenth Amendment rights were violated by the warrantless
 23 removal of H.G. and that they are entitled to summary judgment on these claims. The Court
 24 disagrees. Plaintiffs have not presented *any* evidence to show that exigent circumstances did not
 25 justify H.G.'s removal.

26
 27 Case No.: [5:18-cv-04191-EJD](#)

28 ORDER GRANTING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT;
 DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

1 Parents and children have a well-established constitutional right to live together without
 2 governmental interference. The Fourteenth Amendment guarantees that parents will not be
 3 separated from their children without due process of law except in emergencies. Officials violate
 4 this right if they remove a child absent “information at the time of the seizure that establishes
 5 ‘reasonable cause to believe that the child is in imminent danger of serious bodily injury and that
 6 the scope of the intrusion is reasonably necessary to avert that specific injury.’” *Rogers v. Cty. of*
 7 *San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007). “Serious allegations of abuse that have been
 8 investigated and corroborated usually give rise to a ‘reasonable inference of imminent danger
 9 sufficient to justify taking children into temporary custody’ if they might again be [abused] during
 10 the time it would take to get a warrant.” *Id.* at 1294–95.

11 The Court must determine whether Defendants (specifically Defendant Beck)⁵ had
 12 sufficient evidence of “imminent danger of serious bodily injury” to justify H.G.’s warrantless
 13 removal. Given that Defendants Beck and Ms. DiPaulo (1) knew about Plaintiffs’ extensive
 14 history of neglect, (2) knew about Kaiser staffs’ repeated concerns that Plaintiffs could not care for
 15 H.G., and (3) were in the process of obtaining a warrant to remove H.G., but lacked sufficient time
 16 to obtain the warrant, there is no question that exigent circumstances justifying removal existed.

17 First, removal is only appropriate where officials have reasonable cause to believe that a
 18 child will suffer serious bodily injury “*in the time that would be required to obtain a warrant.*”
 19 *Id.* at 1295 (emphasis added). Defendant Beck and others were pursuing a warrant *for that*
 20 *reason*—they believed that H.G. would be in serious imminent harm upon leaving the hospital
 21 with Plaintiffs. *Rogers* provides a cogent example: there, the risk of harm to the children was
 22 “flat.” The dirty, maggot-infested home, and malnourishment at issue were long-standing and
 23 known issues. Because the issues, while serious, were unlikely to cause any “significant
 24 worsening of the children’s physical conditions or an increase in the prospects of long-term harm,”
 25

26 _____
 27 ⁵ Plaintiffs include Defendant Shaheed in this claim, but there are no allegations connecting
 Shaheed to H.G.’s removal.

1 in the time it would have taken to obtain a warrant, the Ninth Circuit held that the plaintiffs had
2 sufficient grounds to support their Fourteenth Amendment claims. *Id.*

3 Plaintiffs thus are incorrect that *Rogers* held that “[b]ottle rot, malnourishment, and
4 disorderly home conditions do not present an imminent risk of serious bodily harm.” *See P*
5 *MSJ/Opp.* at 14–15. The *Rogers* court analyzed these risks in context—of special importance to
6 the decision was the fact that officials had previously left the children in the home *with these*
7 *conditions* for an extended period. Thus, it was not that exigency was not warranted based on the
8 conditions in the home. It was that the officials’ prior behavior showed that the conditions did not
9 present a serious risk of harm such that the children could be removed without a warrant,
10 especially because it would only take a “few hours” to obtain a warrant. *Id.* at 1294–95. This
11 aligns with the standard stated above: when analyzing exigency, courts must look to the officials’
12 behavior to see if the officials had reasonable cause, at the time of the removal, to believe that the
13 child was in imminent danger of serious bodily injury. If an official has previously allowed a
14 child to stay in a condition, that same condition likely cannot constitute exigency.

15 Based on the record in *Rogers*, it was clear that officials had time to obtain a warrant.
16 From this, Plaintiffs argue that an official should get a warrant if time permits. This is not in
17 dispute. The dispute at hand is whether time *did not* permit officials to obtain a warrant.

18 Unlike *Rogers*, the risk that Plaintiffs posed to H.G. was not stagnant. The Parties agree
19 that H.G. was not in any immediate danger while *in* the hospital. The hospital staff could, and did,
20 intervene before H.G. was placed in any serious jeopardy. But, once the hospital called
21 Defendants and announced that Plaintiffs and H.G. were to be released “momentarily,” exigency
22 arose. As confirmed by the Kaiser staff, Plaintiffs failure to (1) swaddle H.G., (2) hold H.G.
23 properly, (3) clean up after waste, and (4) respond to H.G.’s cries and need for changing, put H.G.
24 at serious risk. *See* DKt. 54-5 at 4473 (“Nurse [] expressed strong concerns that should this infant
25 be discharged to the parents, it [] is likely that serious harm or injury will occur to the child.”).
26 Hence, the moment Defendants learned that H.G. was to be taken from the hospital, the risk of

1 harm elevated and justified warrantless removal. This is exactly the type of exigent circumstance
 2 discussed in *Rogers*. Cf. *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 1184, 1192–1201 (9th Cir. 2016)
 3 (finding that no exigency existed that justified warrantless removal because there was no
 4 expectation that the baby would imminently be leaving the hospital).

5 Plaintiffs maintain that there was “ample time for the Defendants to secure a warrant.” P
 6 MSJ/Opp. at 16. Of course, Plaintiffs do not say *when* this time existed. They merely concluded,
 7 “Defendants did not secure a warrant despite the fact that the courts were open between the time
 8 that the staff meeting took place and the time H.G. was removed.” *Id.* This ignores the fact that
 9 (1) Defendant was *in the process* of obtaining a warrant, but (2) was unable to do so because they
 10 were told H.G. would be imminently released. It is possible that a jury could find through cross-
 11 examination that the circumstances were not as grave as the Kaiser nurses claimed. Factual issues
 12 thus remain. But, Plaintiffs have not shown that exigency did not exist and so the Court **DENIES**
 13 Plaintiffs’ motion for partial summary judgment

14 Defendants next contend that they are entitled to qualified immunity for their decision to
 15 remove H.G. without a warrant. See D MSJ at 24. A claim of qualified immunity requires a two-
 16 part inquiry: “(1) Was the law governing the official’s conduct clearly established? (2) Under that
 17 law, could a reasonable [official] have believed the conduct was lawful?” *Rogers*, 487 F.3d at
 18 1296–97. It is undisputed that, at the time the events took place, the Fourteenth Amendment
 19 prohibited government officials from removing a child from his or her parents absent evidence of
 20 “imminent danger of serious bodily injury,” and that the right was well-established. See *id.* at
 21 1294–97.

22 A reasonable officer would not have understood that the law required a warrant under the
 23 circumstances presented by the record. The investigation was in its infancy; Defendants had just
 24 learned about Plaintiffs’ alleged neglect of H.G. Indeed, H.G. was only days old. Moreover,
 25 Defendants were scrambling to secure a warrant before H.G. was released. Cf. *Anderson-*
 26 *Francois*, 2009 WL 1458240, at *7 (finding that a reasonable officer under the circumstances

27 Case No.: [5:18-cv-04191-EJD](#)

28 ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
 DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

1 would have understood that a warrant was required because the investigation had taken nearly six
 2 weeks and the allegations of abuse had been known for months prior to the warrantless removal).
 3 Also, there were specific evidence indicating that H.G. was in imminent danger—(1) Tim had
 4 picked H.G. up *by her neck and allowed her body to dangle*; (2) Plaintiffs, on multiple occasions,
 5 left H.G. unswaddled to the point where her body temperature dropped; and (3) Plaintiffs dropped
 6 dirty diapers, post-natal pads, and other trash on the floor, rather than in trash receptacles. More
 7 concerning, Plaintiffs were unreceptive to coaching attempts by nurses and social workers. All
 8 this, coupled with the fact that Plaintiffs had an ongoing juvenile dependency action involving
 9 I.G., confirms that there was a plethora of specific evidence showing that H.G. was in imminent
 10 danger of serious harm. The evidence goes beyond “the mere possibility that, because plaintiff []
 11 had abused her children in the past, she might do so again.” *Id.* Further, because the hospital told
 12 Defendants that H.G. was to be released *momentarily*, Defendants did not have the few hours
 13 needed to obtain a warrant.

14 Despite the above background, Plaintiffs argue that exigency did not exist. The Court’s
 15 recitation of the record shows the contrary. Accordingly, because Defendants had reasonable
 16 cause to believe that H.G. was in imminent danger of serious bodily injury, they were justified in
 17 removing H.G. without a warrant and are entitled to immunity for any liability following
 18 therefrom. For these reasons, Defendants motion for summary judgment is **GRANTED** as to
 19 Counts Five, Six, and Seven.

20 C. *Monell* Claim (3, 8, 14)

21 Plaintiffs also sue Santa Clara County. *See* FAC, Counts Three, Eight, and Fourteen. A
 22 public entity is subject to liability under Section 1983 only when a violation of a federally
 23 protected right can be attributed to (1) an express municipal policy, such as an ordinance,
 24 regulation or policy statement, see *Monell v. Department of Social Services of City of New York*,
 25 436 U.S. 658 (1978); (2) a “widespread practice that, although not authorized by written law or
 26 express municipal policy, is ‘so permanent and well settled as to constitute a custom or usage’

27 Case No.: [5:18-cv-04191-EJD](#)

28 ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
 DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

1 with the force of law,” see *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)); (3) the
 2 decision of a person with “final policymaking authority,” see *id.* at 123; or (4) inadequate training
 3 that is deliberately indifferent to an individual’s constitutional rights, see *City of Canton v. Harris*,
 4 489 U.S. 378 (1989). Plaintiffs must show a sufficient causal connection between the enforcement
 5 of the municipal policy or practice and the violation of their federally protected right. *Harris*, 489
 6 U.S. at 389; *Connick v. Thompson*, 563 U.S. 51, 60 (2011).

7 The Court may not assess the *Monell* claim as to I.G. Plaintiffs argue that the County
 8 should have reprimanded Defendant Burns for using false information in her warrant declaration.
 9 See Cormier Decl., Exs. A & B, Interrogatory Response Nos. 6–10. The juvenile court found
 10 Defendant Burns’ statements to be true. See *supra* III.A. The Court cannot assess the *Monell*
 11 claim as it relates to I.G.—doing so would require the Court to disrupt the trial court’s findings.
 12 This the Court cannot do. For that reason, Defendants motion for summary judgment is
 13 **GRANTED** as to Count Three.

14 As for the warrantless removal of H.G., Plaintiffs assert that the County had a “custom of
 15 detaining or removing children from their family and homes without exigent circumstances.”
 16 They argue that the DFCS’s policies were insufficient because they did not meet the Ninth
 17 Circuit’s standard. See Cormier Decl., Exs. A & B, Interrogatory Response Nos. 6–10. This is
 18 bizarre. The DFCS Online Policies and Procedures advise that a warrant is only appropriate where
 19 there is “immediate danger of serious physical harm.” See D MSJ at 25. In fact, the policies
 20 advise that when there is only “imminent” danger, a warrant should be sought. These policies thus
 21 comport and *exceed* the Ninth Circuit standard. See *Rogers*, 487 F.3d at 1294 (stating that
 22 officials must have “reasonable cause to believe that the child is in *imminent* danger of serious
 23 bodily injury” to justify a warrantless removal (emphasis added)).

24 The problem is compounded by Plaintiffs failure to show evidence of a custom of
 25 detaining or removing children from their families without exigent circumstances. Plaintiffs have
 26 not provided evidence of a “widespread” practice of wrongfully depriving parents of their children

1 or sufficient facts to support their allegation that the County had a practice of depriving parents of
 2 their children, had a practice of lying in warrant applications, and failed to adequately
 3 train/supervise its employees. *See Johnson v. City of Vallejo*, 99 F. Supp. 3d 1212, 1218 (E.D.
 4 Cal. 2015) (“Liability for improper custom may not be predicated on isolated or sporadic
 5 incidents; it must be founded upon practices of sufficient duration, frequency and consistency that
 6 the conduct has become a traditional method of carrying out policy.” (quotation marks and citation
 7 omitted)); *see also Connick v. Thompson*, 563 U.S. 51, 61 (2011) (“A municipality’s culpability
 8 for a deprivation of rights is at its most tenuous where a claim turns on a failure to train.”).
 9 Plaintiffs only cite to the removal of H.G. to support their *Monell* claim. This is insufficient as a
 10 matter of law. *See Okla. City v. Tuttle*, 471 U.S. 808, 814 (1985) (finding that proof of a single
 11 incident of unconstitutional activity is not sufficient to impose liability under *Monell*, unless proof
 12 of the incident includes proof that it was caused by an existing, unconstitutional municipal policy).
 13 Accordingly, the Court **GRANTS** Defendants’ motion for summary judgment as to Counts Eight
 14 and Fourteen.

15 **D. Supplemental Jurisdiction over Remaining State Law Claims**

16 The Court must now decide what to do with Plaintiffs’ state claims. *See* FAC, Counts
 17 Four, Nine, Ten–Twelve, & Fifteen. The Court can only retain jurisdiction over these claims if it
 18 exercises supplemental jurisdiction over them. *See* 28 U.S.C. § 1367(a); *see also* FAC ¶ 10.
 19 Supplemental jurisdiction is discretionary. *See Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001
 20 (9th Cir. 1997), *supplemented by* 121 F.3d 714 (9th Cir. 1997).

21 Courts “may”—and often do—“decline to exercise supplemental jurisdiction” if, as here, it
 22 has “dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3); *see*
 23 *also, e.g., Oliver v. Ralphs Grocery Co.*, 654 F.3d 903, 911 (9th Cir. 2011); *Yates v. Delano*
 24 *Partners, LLC*, 2012 WL 4944269, at *2 (N.D. Cal. Oct. 17, 2012); *R.K. v. Hayward Unified Sch.*
 25 *Dist.*, 2008 WL 1847221, at *2 (N.D. Cal. Apr. 23, 2008). As the Supreme Court and Ninth
 26 Circuit have “often repeated,” “in the usual case in which all federal-law claims are eliminated

27 Case No.: [5:18-cv-04191-EJD](#)

28 ORDER GRANTING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT;
 DENYING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

United States District Court
Northern District of California

1 before trial, the balance of factors will point toward declining to exercise jurisdiction over the
2 remaining state-law claims.” *Acri*, 114 F.3d at 1001 (alterations omitted) (quoting *Carnegie-*
3 *Mellon University v. Cohill*, 484 U.S. 343, 350 n.7 (1988)).


4 This is the usual case. First, the Court has not considered the merits of Plaintiffs’ state-law
5 claims, and so there is no judicial economy interest in retaining the case. Second, Plaintiffs have
6 not articulated any significant inconvenience that they would face in refileing in state court.
7 Indeed, the Parties have already engaged in discovery, so the issues should be clearer in the event
8 Plaintiffs choose to refile their claims in state court. The Court thus declines to exercise
9 supplemental jurisdiction over Plaintiffs’ state claims.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Defendants’ motion for summary judgment is **GRANTED in**
12 **part** as to Plaintiffs’ federal claims (Counts One–Three, Five–Eight, & Thirteen–Fourteen).
13 Plaintiffs’ motion for partial summary judgment is **DENIED**. The Court declines to exercise
14 supplemental jurisdiction over Plaintiffs’ state-law claims. The Clerk shall close the file and a
15 judgment in favor of Defendants shall follow.

16 **IT IS SO ORDERED.**

17 Dated: August 17, 2020

18 
19 EDWARD J. DAVILA
United States District Judge