UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZION T. GRAE-EL, et al., Plaintiffs, v. CITY OF SEATTLE, et al., Defendants.	CASE NO. C21-1678JLR ORDER

I. INTRODUCTION

Before the court is Defendants the City of Seattle, Officer Ryoma Nichols, and Sergeant Daina Boggs's (collectively, the "City Defendants") motion for judgment on the pleadings. (Mot. (Dkt. # 51); Reply (Dkt. # 67).) Plaintiffs Zion T. Grae-El and Caprice Strange (collectively, "Plaintiffs") oppose the motion in separate filings. (Grae-El Resp. (Dkt. # 54); Strange Resp. (Dkt. # 60).[1]) The court has considered the parties'

[1] Plaintiffs cumulatively submit 27 pages of responsive briefing (*see* Grae-El Resp.; Strange Resp.), which exceeds their allotment under the local rules, *see* Local Rule W.D. Wash.

submissions, the relevant portions of the record, and the applicable law. Being fully advised,[2] the court GRANTS the City Defendants' motion for judgment on the pleadings.

II. BACKGROUND

This case arises from a report of suspected child abuse made by Natalie Long, an employee of Seattle Public Schools ("SPS"), to Child Protective Services ("CPS"), a component of the Washington State Department of Children, Youth & Families ("DCYF"). (Compl. (Dkt. # 1-1) at 11.[3]) On November 28, 2018, Leslie Meekins, a teacher at Dunlap Elementary School, became concerned that one of her students—Ms. Strange's minor child, A.S.[4]—had been the victim of abuse. (*See id.* at 11, 55.) Ms. Meekins, who is required by state law to report instances of suspected abuse, evidently relayed her concerns to Ms. Long. (*See id.*)

Based on Ms. Meekins' concerns, Ms. Long "and two other SPS staff" each questioned A.S. on November 28, 2018 about the suspected abuse in an allegedly

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LCR 7(e) (providing that "briefs in opposition" to a dispositive motion "shall not exceed twenty-four pages"). The City Defendants point out Plaintiffs' technical violation, but do not claim to be prejudiced by it or ask the court to strike the extra pages. (*See* Reply at 1.) Thus, the court will consider Plaintiffs' full submission but reminds Plaintiffs that, despite their *pro se* status, they must review and comply with the court's Local Rules, which are available on the court's website at https://www.wawd.uscourts.gov/local-rules-and-orders.

[2] Mr. Grae-El requests oral argument (*see* Grae-El Resp. at 1), but the court concludes that argument would not be helpful to its disposition of the motion, *see* Local Rule W.D. Wash. LCR 7(b)(4).

[3] When citing to Mr. Grae-El and Ms. Strange's filings, the court refers to the page numbers contained in the CM/ECF header.

[4] The minor children are referred to using their initials. Ms. Strange is the biological mother of A.G., A.S., and Z.A.G., who is also Plaintiff Zion T. Grae-El's biological son. (Compl. at 6.) In addition to Z.A.G., Mr. Grae-El is the biological father of E.A.D. and E.M.D. (*Id.* at 5-7.)

unrecorded interview. (*Id.* at 11-12, 35.) During the interview, A.S. allegedly told Ms. Long that he had been hit in the stomach by his stepfather, Mr. Grae-El, and that he was experiencing pain in his leg and shin. (*Id.* at 11.) Ms. Long and her colleagues also observed marks on A.S.'s face that they thought "looked like someone grabbed his face really hard," but did not observe any bruising on A.S.'s stomach. (*Id.*) They reported these observations to Annaliese Ferreria at DCYF, stated that they did not think the Seattle Police Department ("SPD") needed to be contacted at that time, and relayed that A.S. was not expressing a fear of returning home. (*Id.*) Accordingly, the children were sent home after school. (*See id.* at 11-12.)

That evening, Ms. Ferreria, others from DCYF, and SPD Officers Nichols and Timothy Jones went to Plaintiffs' home to conduct a "safety assessment." (*Id.* at 12, 31.[5]) The group apparently spoke only to Mr. Grae-El in a tense exchange in which he shouted through a closed door and asserted his rights to refuse to permit them to enter his home. (*Id.* at 14.) Mr. Grae-El did, however, agree to allow each of the children to go outside, one at a time, to speak with Ms. Ferreria and the SPD officers. (*Id.*) Plaintiffs allege that, in the course of speaking with Ms. Ferreria, none of the children said "they did not feel safe at home or were scared to return home, despite [A.S.] and [A.G.] being asked." (*Id.*)

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[5] The City Defendants dispute that Officer Nichols was present at the Plaintiffs' home on November 28, 2018 (*see* Reply at 3), but the court must accept Plaintiffs' factual allegations as true for purposes of this motion. *See Iqbal*, 556 U.S. at 678.

Plaintiffs quote from Officer Jones's "initial report" documenting the November 28, 2018 safety assessment and assert that he did not report seeing "any signs of distress" from the children, and though he "could 'see into the [Plaintiffs'] apartment a little bit,'" he "didn't see anything that concerned [him] at the time." (*Id.* at 31 (purporting to quote from Officer Jones' "initial report").) Plaintiffs further allege that Office Jones did not describe any "dangerous or injurious living conditions," or observe "the children being afraid, [Mr. Grae-El] being aggressive, or even an observed injury." (*Id.*) Nevertheless, Plaintiffs allege that Officer Jones was under "the impression that CPS wanted [him] to grab" one of the children "when he came out or force [his] way in to take the kids." (*Id.*)

None of the children were taken that evening and instead remained in the home and attended school the following morning. Ms. Ferreria arrived at Dunlap Elementary at 10:45 AM on November 29, 2018, and called for SPD officers to place the children in protective custody, which she stated, "should have been done last night." (*Id.* at 15.) In response, Officer Nichols arrived at Dunlap Elementary sometime between 2 PM and 2:50 PM. (*Id.* at 16.) Plaintiffs allege that Ms. Ferreria had already decided at that point that the children should be placed into protective custody and made no effort over the course of the school day "to ascertain any more information about the initial incident, or speak with" Marites Perez-Aniag, the teacher at Dunlap Elementary who allegedly "had the longest and strongest relationship with the family," having taught A.S. the prior school year. (*Id.* at 30.)

After Officer Nichols arrived, Ms. Ferreria apparently did conduct a further group interview of Plaintiffs' children with Officer Nichols. (*Id.* at 16.) During that interview,

Officer Nichols overheard E.A.D. tell Ms. Ferreria that "scratches on both sides of her neck and a small scar by her right collarbone . . . were caused by [Ms. Strange] hitting her with a belt and spatula in a separate incident." (*Id.*) Neither Ms. Ferreria nor Officer Nichols recorded these interviews "due to SPD and CPS anticipating [that] a far more thorough interview" would be conducted at a later time. (*Id.* (quotation marks omitted).)

Thereafter, Officer Nichols created a "supplemental report" on November 29, 2018, in which he indicated that he had "screened the incident" with Sergeant Boggs. (*Id.* at 30 (quoting and paraphrasing from Officer Nichols' November 29, 2018 report).) Officer Nichols noted that CPS and SPD had been unable to remove the children the prior evening because Mr. Grae-El's "aggressive and confrontational demeanor" made it "unsafe to do so," and that E.A.D. had "told" him that Ms. Strange "struck her face and legs with a belt." (*Id.*) Officer Nichols was able to see a "mark on [E.A.D.'s] left cheek," which she confirmed was from Ms. Strange hitting her. (*Id.* at 31.) E.A.D. also told Officer Nichols "that she had a bruise on her left thigh," though he was unable to see this mark because E.A.D. "was wearing pants." (*Id.*)

Officer Nichols then completed a custody without court order ("CWO") form, which largely incorporated information from his "supplemental report," to certify that he believed probable cause existed to place the children in temporary protective custody without a warrant. (*Id.* at 31.) On the CWO form, Officer Nichols allegedly stated that A.S. reported "being struck by" Mr. Grae-El on November 27, 2018; the injury had been reported to CPS on November 28, 2018; in a subsequent interview with A.S., E.M.D., A.G., and E.A.D., the children "reported a pattern of physical discipline often involving a

belt"; and E.A.D. had "also reported she was struck by a belt and indicated an injury," which Officer Nichols had observed. (*Id.* at 31 (purporting to quote from CWO).) Accordingly, Officer Nichols concluded "that all 5 children are in danger of physical harm if returned home." (*Id.* at 31-32.) Without obtaining a warrant, Officer Nichols then placed the children into protective custody. (*See id.* at 30-32.)

Following placement into protective custody, the children were taken to Seattle Children's Hospital ("Children's") where medical examinations were conducted to assess whether the children had any physical signs of abuse. (*Id.* at 25-28.) Children's staff identified what they believed to be signs of abuse and neglect and presented these findings to DCYF. (*Id.* at 46.) The children were then removed from Plaintiffs' custody and either sent to a foster home in Bellingham, Washington or to live with their non-custodial parent. (*See id.* at 17.) A dependency action was also initiated against Plaintiffs. (*See id.* at 18, 21.)

Mr. Grae-El was arrested on January 10, 2019 and subsequently charged with "with one count of rape of a child in the first degree as to E.A.D., and one count of assault of a child in the third degree as to A.S.," for allegedly hitting "A.S. with a belt and spatula." (*See* Verification of State Records (Dkt. # 20), Ex. 3 at 156 (Mr. Grae-El's motion for relief from his conviction).[6]) Ms. Strange was initially charged with "with one count of assault of a child in the third degree as to E.A.D." (*Id.*) Mr. Grae-El was

[6] The court takes judicial notice of records from Plaintiffs' state court proceeding. *See* Fed. R. Evid. 201; *see Byrd v. Phoenix Police Dep't*, 885 F.3d 639, 641 (9th Cir. 2018) (taking judicial notice of documents filed in the § 1983 plaintiff's state court criminal matter to determine whether *Heck* applied).

separately tried on the rape indictment and acquitted on September 4, 2019. (*Id.* at 156-57.) Following his acquittal, the State filed an amended information which charged Mr. Grae-El with three counts of second degree assault (A.S. and E.M.D.) and one count of third degree assault (A.S.). (*Id.* at 157.) The amended information charged Ms. Strange with two counts of second degree assault (A.S. and E.M.D.) and one count of third degree assault (E.A.D.). (*Id.*)

Mr. Grae-El and Ms. Strange subsequently accepted a plea agreement whereby Mr. Grae-El pled guilty to "one count of assault of a child in the third degree (E.M.D.) and one count of assault in the fourth degree (A.S.)," and Ms. Strange "entered guilty pleas to two counts of assault in the fourth degree (E.A.D. and A.S)." (*Id.* at 158.) Mr. Grae-El alleges that his fourth degree assault conviction was "for hitting [A.S.]'s hand with his own hand using 'moderate force.'" (Compl. at 33.) In September 2020, Mr. Grae-El moved to vacate his convictions on the grounds that he was provided with ineffective assistance of counsel during the plea process. *See State v. Grae-El*, No. 82306-0-I, 2022 WL 670953, at *3 (Wash. Ct. App. Mar. 7, 2022). After holding an evidentiary hearing, the trial court denied Mr. Grae-El's motion in a ruling that was recently affirmed on appeal. *Id.* at *3, 9.

Plaintiffs initiated this action in King County Superior Court on or about November 19, 2021. (*See* NOR (Dkt. # 1) ¶ 1; Compl. at 1.) The City Defendants removed this matter from King County Superior Court on December 16, 2021. (*See* NOR at 1.)

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III. ANALYSIS

The City Defendants construe Plaintiffs' claims against them as including: (1) First Amendment claims against Officer Nichols for retaliating against Mr. Grae-El for refusing to permit an inspection of his home on November 28, 2018 (Compl. at 49); (2) Fourth Amendment claims against Officer Nichols for judicial deception (*id.* at 48-49); (3) Fourteenth Amendment claims against Officer Nichols for violating their right to familial association without due process (*id.* at 49); (4) claims under *Brady v. Maryland*, 373 U.S. 83 (1963), alleging that the City Defendants suppressed Officer Jones' police report and Officer Nichols' body worn video ("BWV") footage from November 28 and 29, 2018 (*id.* at 53); (5) Fourteenth Amendment claims under *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978), alleging that the City of Seattle violated Plaintiffs' right to familial association by promulgating SPD Policy Manual 15.220-POL-7 (*id.* at 54); and (6) claims for intentional infliction of emotional distress ("IIED") under Washington law (*id.* at 50). (Mot. at 5; 21-23.) Plaintiffs do not dispute this formulation, which the court also finds to be a reasonable summation of Plaintiffs' claims. (*See generally* Grae-El Resp.; Strange Resp.; Compl. at 48-54.)

The City Defendants argue that judgment on the pleadings is appropriate because: (1) Plaintiffs' judicial deception and familial relations claims are barred under *Heck v. Humphrey*, 512 U.S. 477 (1994) (Mot. at 7-10), or (2) unsupported by allegations showing that Officer Nichols—or any other SPD officer—lacked probable cause or a reasonable basis to place Plaintiffs' children in protective custody (*id.* at 10-14); (3) Plaintiffs' *Brady* claims fail "[b]ecause they do not identify anything material in these

documents and cannot identify how the lack of disclosure harmed them (*id.* at 14-16); (4) Officer Nichols and Sergeant Boggs are entitled to qualified immunity (*id.* at 16-18); (5) Plaintiffs' *Monell* claims rest on a misstatement of SPD Policy and are unsupported by any underlying constitutional violation (*id.* at 18-21); (6) Plaintiffs' claims against Sergeant Boggs rest on a theory of supervisory liability, which cannot support a claim under 42 U.S.C. § 1983 (*id.* at 21-22); (7) Plaintiffs' First Amendment claims for retaliation fail because the actions taken against Plaintiffs were reasonable and supported by probable cause (*id.* at 22); and (8) Plaintiffs fail to plead the required elements of an IIED claim under Washington law (*id.* at 22-23).

The court begins by describing the legal standard that applies to a motion for judgment on the pleading before turning to consider Plaintiffs' claims, beginning with their First Amendment retaliation claims.

A. Federal Rule of Civil Procedure 12(c)

Federal Rule of Civil Procedure 12(c) provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1990). In ruling on motions brought under Rule 12(c), the court considers the complaint, documents over which the court may take judicial notice, and exhibits attached to the complaint. *See Webb v. Trader Joe's Co.*, 999 F.3d 1196, 1201 (9th Cir. 2021); Fed. R. Civ. P. 10(c) ("A

copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.").

The standard for dismissing claims under Rule 12(c) is "substantially identical" to the Rule 12(b)(6) standard set forth in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012). To survive a motion to dismiss under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Although not a "probability requirement," this standard asks for "more than a sheer possibility that a defendant has acted unlawfully." *Id.* "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

When considering a motion for judgment on the pleadings, a court may consider material which is properly submitted as part of the complaint without converting the motion into a motion for summary judgment. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

B. First Amendment Retaliation

Plaintiffs allege that Officer Nichols' placement of their children in protective custody "was in part, direct retaliation" for Mr. Grae-El's "assertive demeanor" during

the November 28, 2018 safety assessment and his decision to decline the DCYF and SPD officials to enter his home without a warrant. (*See* Compl. at 51.) The City Defendants argue that Plaintiffs' First Amendment claims must be dismissed because they "have failed to plead that probable cause was lacking" for Officer Nichols' seizure of the children and their subsequent arrest. (*See* Mot. at 22.) They further assert that "the fact of their prosecution, which has not been called into doubt, shows that prior courts have found probable cause existed." (*Id.* (citing *Nieves v. Bartlett*, ___ U.S. ___, 139 S. Ct. 1715, 1724 (2019)).)

"To plead a First Amendment claim for retaliation, a plaintiff must allege (1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the protected conduct and the retaliatory action." *Pallas v. Accornero*, No. 19-CV-01171-LB, 2019 WL 3975137, at *5 (N.D. Cal. Aug. 22, 2019) (first citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977); and then citing *Ford v. Yakima*, 706 F.3d 1188, 1193 (9th Cir. 2013)). "To prevail on such a clam, a plaintiff must establish a 'causal connection' between the government defendant's 'retaliatory animus' and the plaintiff's 'subsequent injury.'" *Nieves*, 139 S. Ct. at 1722 (quoting *Hartman v. Moore*, 547 U.S. 250, 259 (2006)). Generally, this causal showing requires that plaintiffs plead and prove an absence of probable cause for the arrest. *See id.* (requiring that the official's retaliatory motive be a "but-for" cause of the adverse action).

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As alleged in the complaint, Officer Nichols based his conclusion that the children were "in danger of physical harm if returned home" on the following: Mr. Grae-El's "aggressive and confrontational demeanor" during the safety assessment; reports that A.S. said Mr. Grae-El hit him on November 27, 2018; his own interviews with the children on November 29, 2018, during which A.S. "described several open slaps across the face," and E.A.D.'s report that Ms. Strange "struck her face and legs with a belt" causing a "mark on [E.A.D.'s] left cheek," which Officer Nichols was able to observe, and "a bruise on her left thigh," which Officer Nichols did not observe because E.A.D. "was wearing pants"; and reports from A.S., E.M.D., A.G., and E.A.D.—Plaintiffs' school-age children—that their parents engaged in "a pattern of physical discipline often involving a belt." (*See* Compl. at 30-32.)

Plaintiffs allege facts that conflict with some, but not all, of the grounds on which Officer Nichols justified removing the children without a court order. For instance, they dispute Officer Nichols' characterization of Mr. Grae-El's demeanor during the safety assessment on November 28, 2018 as "aggressive and confrontational," and characterize it instead as "protective" and "assertive." (*See* Compl. at 15-16; *see also id.* at 32 (alleging that Officer Jones did not record Mr. Grae-El's conduct as aggressive or dangerous); Grae-El Resp. at 12.) Further, Plaintiffs note that A.S.'s injury was inconsistently described by SPS, DCYF, and SPD officials as arising from either a punch to the stomach, punch to the eye, or an open slap to the face, and also allege that Officer Nichols' falsely asserted in his report and CWO form that "he observed bruising on EAD's left cheek." (*See* Compl. at 30, 48; Grae-El Resp. at 8.) Plaintiffs also fault

Officer Nichols for failing to note that E.A.D. initially told Ms. Perez-Aniag that she was not sure how she got a scratch on her neck but later stated that she received it when either Mr. Grae-El or Ms. Strange hit her with a belt. (*See* Compl. at 35-36; Grae-El Resp. at 17-18.)

Plaintiffs "do not dispute that 'whoopins' took place," however, only that they caused "markings that meet the definition of abuse." (*See* Grae-El Resp. at 3.) And they do not allege any facts that call into doubt that A.S. told numerous adults from SPS, CPS, and SPD that he was hit by Mr. Grae-El on November 27, 2018. (*See* Compl. at 30.) Indeed, Plaintiffs allege that an injury was visible on A.S.'s face during the safety assessment on November 28, 2017. (*See* Compl. at 50 (denying that "injuries were observed on the face of any child other than [A.S.] during the safety assessment").[7]) Plaintiffs also seemingly accept that Officer Nichols at least "overheard" E.A.D. tell Ms. Ferreria that "scratches on both sides of her neck and a small scar by her right collarbone . . . were caused by Caprice hitting her with a belt and spatula in a separate incident" (*see id.* at 16), and acknowledge that E.A.D. told Ms. Perez-Aniag that the visible scratch on her neck was from being hit with a belt (*id.* at 35-36). (*See also* Strange Resp. at 3 (conceding that E.A.D. told Ms. Ferreria "that one scratch on her neck came from" Ms. Strange, but asserting that E.A.D. "[l]ater recanted the collarbone

[7] In his response, Mr. Grae-El contends that he told either Officer Nichols or Officer Jones during the safety assessment that the marks on A.S.'s face were caused by a dog. (*See* Grae-El Resp. at 12, 17.) However, Plaintiffs do not allege any facts in support of this alternate dog theory in their complaint and they may not add new facts through a response brief. (*See generally* Compl.); *see also Webb*, 999 F.3d at 1201 (describing materials the court may consider when evaluating a motion under Rule 12(c)).

scratch allegation according to [Ms. Perez-Aniag").) Finally, Plaintiffs do not dispute that the children collectively "reported a pattern of physical discipline often involving a belt" to Officer Nichols (*id.* at 31), even though they would characterize this conduct as lawful parental discipline (*see id.* at 48; *see also* Grae-Resp. at 3 (admitting practice of "whooping" children)).

The court need not accept as true Plaintiffs' conclusions that their methods of physically disciplining their children stopped short of abuse, but otherwise accepts as true their allegations about what Officer Nichols' investigation revealed. *See Iqbal*, 556 U.S. at 678. Omitting the information Plaintiffs allege Officer Nichols misrepresented, the court nevertheless concludes that Officer Nichols had "investigated and corroborated" sufficiently "[s]erious allegations of abuse" to "give rise to a reasonable inference of imminent danger sufficient to justify taking children into temporary custody," if the children might have suffered further harm before a warrant could have been obtained. *See Rogers v. Cty. of San Joaquin*, 487 F.3d 1288, 1294-95 (9th Cir. 2007).

Plaintiffs contend that, even if the allegations relayed to Officer Nichols constituted serious allegations of abuse, Officer Nichols had time to obtain a warrant before placing the children into protective custody. (*See* Grae-El Resp. at 18.) They allege in their complaint that Officer Nichols "chose to wait over 14 hours after the '[safety] assessment' before" removing the children. (Compl. at 32.) That could suggest a lack of true exigence except that counting the passage of time from the safety assessment starts the proverbial clock too soon. *See Rogers*, 487 F.3d at 1294-95 (requiring an investigation to corroborate "serious allegations of abuse" before assessing

whether, if the abuse is confirmed, there is sufficient time to obtain a warrant). Notwithstanding Ms. Ferreria's assertion that placement of the children into protective custody "should have been done [the prior] night" (Compl. at 15), it appears from the complaint that Officer Nichols was not able to establish probable cause until after he interviewed the children at their school and learned about the pattern of physical discipline they reported, which did not happen until sometime after 2 PM on the afternoon of November 29, 2018 (*see id.* at 16, 31-32). Only at that point—when there would have been little time to obtain a warrant before the children were to be released to their parents at the end of the school day—does the exigency question become relevant. *See Rogers*, 487 F.3d at 1294-95; *Barnes v. Cty. of Placer*, 654 F. Supp. 2d 1066, 1071 (E.D. Cal. 2009) (analyzing exigency based on the time between confirmation of suspected abuse and the close of the school day), *aff'd*, 386 F. App'x 633 (9th Cir. 2010). Given the time of day at which Officer Nichols was able to confirm the serious allegations of a pattern of abuse, including a recent incident of that abuse against at least A.S., Plaintiffs fail to allege facts showing that Officer Nichols acted unreasonably by inferring that the children would be in danger if returned home at the end of the school day. *See Rogers*, 487 F.3d at 1294-95.

Because Plaintiffs have not alleged that Officer Nichols lacked probable or reasonable cause to place the children into protective custody without a warrant on November 29, 2018, they fail to state a First Amendment claim for retaliation. *See*

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Nieves, 139 S. Ct. at 1722.[8] The City Defendants' motion as to these claims is therefore GRANTED and Plaintiffs' First Amendment claims for retaliation are DISMISSED without prejudice.

C. Plaintiffs' Fourth Amendment Claim for Judicial Deception and Fourteenth Amendment Claim for Deprivation of Familial Association

Plaintiffs allege that Officer Nichols violated their Fourth Amendment rights through the preparation of a police report and CWO form that contained material and deceptive statements and which served as the basis for removing Plaintiffs' children from their custody without a warrant, thereby depriving them of their Fourteenth Amendment right to familial association without due process. (*See* Compl. at 48-49.[9]) The City Defendants assert that these claims must be dismissed because they are barred under *Heck v. Humphrey*, 512 U.S. 477 (1994). (*See* Mot. at 7-10.)

In *Heck v. Humphrey*, the Supreme Court held that a § 1983 damages action "must be dismissed" where it will "necessarily imply the invalidity of" an existing conviction or sentence, "unless the plaintiff can demonstrate that the conviction or sentence has already

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[8] Plaintiffs also allege Officer Nichols' retaliation violated SPD Policy Manual 5.002-POL-4, which prohibits retaliation against those exercising their constitutional rights. (*See* Compl. at 51.) Because Plaintiffs have failed to establish that Officer Nichols retaliated against them under the First Amendment, and do not separately develop this alleged violation of SPD's anti-retaliation policy, any such claim is also DISMISSED without prejudice.

[9] Plaintiffs seemingly allege the City Defendants violated RCW 9A.84.040, which makes it a gross misdemeanor to knowingly make a false report that is likely to cause an emergency response. To the extent Plaintiffs intended to state a claim under this state criminal statute, that claims is DISMISSED with prejudice because RCW 9A.84.040 provides no enforceable right of action to a private citizen. *See also Keyter v. 230 Gov't Officers*, 372 F. Supp. 2d 604, 611 (W.D. Wash. 2005) ("[T]here no private right of action in the criminal law."), *aff'd sub nom. Keyter v. Locke*, 182 F. App'x 684 (9th Cir. 2006).

been invalidated." *Heck*, 512 U.S. at 487; *see also Muhammad v. Close*, 540 U.S. 749, 751 (2004) ("[W]here success in a . . . § 1983 damages action would implicitly question the validity of conviction or duration of sentence, the litigant must first achieve favorable termination of his available state, or federal habeas, opportunities to challenge the underlying conviction or sentence."). Thus, where a conviction stands, a claim that is "fundamentally inconsistent with the unlawful behavior for which section 1983 damages are sought," will be barred by *Heck*. *See Beets v. Cnty. of Los Angeles*, 669 F.3d 1038, 1042 (9th Cir. 2012) (quoting *Smith v. City of Hemet*, 394 F.3d 689, 695 (9th Cir. 2005) (en banc)). When the underlying conviction is the result of a guilty plea, and not a verdict following trial, the court must similarly determine whether success in the § 1983 action would undermine the validity of the plea agreement. *See City of Hemet*, 394 F.3d at 699; *see also Hooper v. Cnty. of San Diego*, 629 F.3d 1127, 1133 (9th Cir. 2011). It is the defendants' burden to establish that *Heck* applies by showing that "success in the action would necessarily imply the invalidity of a criminal conviction." *Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048, 1056 n.5 (9th Cir. 2016).

The parties do not dispute that, at present, Mr. Grae-El's convictions for third and fourth degree assault and Ms. Strange's convictions for fourth degree assault remain in effect. Thus, the question before the court is whether Plaintiffs would impugn those convictions by prevailing in this action on their Fourth or Fourteenth Amendment claims. *See Beets*, 669 F.3d at 1042. The City Defendants argue that success in this matter would do precisely that because Plaintiffs (1) "were charged with assault for the 'whoopins' which A.S. and E.A.D., and E.M.D. (as well as A.G.) reported to Officer Nichols";

(2) subsequently pled guilty to assaulting their children; and, thus, (3) "[a] finding in Plaintiffs' favor . . . would require" a declaration from the court "that the factual predicate for Plaintiffs' guilty pleas (that they abused A.S., E.A.D., and E.M.D.) was false." (Mot. at 9.) The court agrees.

As a legal matter, it seems inescapable that, in order to have success on their judicial deception claims, Plaintiffs must demonstrate that Officer Nichols lacked probable cause because establishing that fact is an essential element of their claims. *See Ewing v. City of Stockton*, 588 F.3d 1218, 1224 (9th Cir. 2009) (establishing that judicial deception claim cannot prevail where the challenged affidavit "on its face establishes probable cause"). Likewise, Plaintiffs will only prevail on their familial association claims if they can establish that Officer Nichols lacked "reasonable cause to believe that" Plaintiffs' children were "likely to experience serious bodily harm *in the time that would be required to obtain a warrant*." *Kirkpatrick v. Cnty. of Washoe*, 843 F.3d 784, 790 (9th Cir. 2016) (emphasis in original) (quoting *Rogers*, 487 F.3d at 1295).[10] Accordingly, Plaintiffs broadly allege that Officer Nichols lacked any reasonable basis to act because he intentionally mischaracterized "parental discipline as abuse" in his reports, which he then "used to justify the removal of the children" and "to support criminal charges" against Plaintiffs. (*See* Compl. at 48; *see also id.* at 51 (alleging that when Officer Nichols decided to take the children into protective custody without a court order, "no

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[10] "[T]he tests under the Fourth and Fourteenth Amendment for when an official may remove a child from parental custody without a warrant are equivalent." *Id.* at 789.

valid claim of abuse had been made by any child to SPD, only lawful parental discipline").)

If proven, these allegations would "implicitly question the validity" of Plaintiffs' existing guilty pleas for assaulting their children because they would directly challenge whether probable cause existed for their underlying arrest. *See Muhammad*, 540 U.S. at 751. "There is no question that *Heck* bars" challenges that would call into question whether defendants had probable cause to either effectuate the § 1983 plaintiff's arrest or to bring criminal charges against him. *See Smithart*, 79 F.3d at 952. Accordingly, under *Heck*, Plaintiffs' Fourth and Fourteenth Amendment claims cannot proceed. *See id.* (affirming dismissal on *Heck* grounds where plaintiff sought to invalidate his conviction "expressly or by implication").

Mr. Grae-El attempts to argue that his Fourth and Fourteenth Amendment claims are sufficiently factually distinct and should not be barred by *Heck* because neither the facts of his third degree assault charge (for hitting A.S.'s hand) nor his fourth degree assault charge (for assaulting E.M.D.) played any role in Officer Nichols' November 29, 2018 abuse findings or Mr. Grae-El's subsequent arrest. (*See* Grae-El Resp. at 14-15.) Thus, he argues that success on his Fourth and Fourteenth Amendment claims would not call into doubt the validity of his guilty pleas, as his convictions pertain to separate instances of child abuse not considered by Officer Nichols in making his determination to place the children in protective custody. (*See id.*) Mr. Grae-El correctly notes that, as alleged, Officer Nichols did not base his abuse determination on a specific allegation that Mr. Grae-El hit A.S. on the hand, though he did rely on reports that Mr. Grae-El hit A.S.

and that Plaintiffs generally engaged in "a pattern of physical discipline" amounting to physical abuse. (*See* Compl. at 30-32 (describing the allegations Officer Nichols included in his November 29, 2018 report and on the CWO form).) Officer Nichols' finding that Plaintiffs engaged in a pattern of abusive physical discipline was both central to his probable cause finding and is at the heart of Plaintiffs' Fourth and Fourteenth Amendment claims. (*See id.* at 48, 51.)

Moreover, records from the state court criminal proceedings, which Mr. Grae-El submits as exhibits to his response brief and over which the court takes judicial notice, further illustrate that Mr. Grae-El's criminal proceedings pertained to allegations of child abuse during the summer and fall of 2018. (*See* Grae-El Plea Statement (Dkt. # 54-7 (sealed)) at 8 (explaining that Mr. Grae-El is guilty of assault in the third degree because "on or between 6/1/18 and 11/30/18," he "committed the crime of Assault 4 DV against my stepson A.S." by "intentionally commit[ing] an offensive or unwanted touching when [he] was physically disciplining him when I hit his hand"); Information (Dkt. # 54-6 (sealed)) at 2-3 (charging Mr. Grae-El with third degree assault for hitting A.S. with a "belt and spatula" "between November 15, 2018 and November 30, 2018").[11]) Those criminal proceedings—and Mr. Grae-El's ultimate guilty plea—thus arose from the same conduct during the same time frame that Officer Nichols considered when he concluded he had reasonable cause to believe Plaintiffs' children needed to be placed into protective

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[11] The court takes judicial notice of these court filings pursuant to Federal Rule of Evidence 201. Fed. R. Evid. 201; *Byrd*, 885 F.3d at 641 (taking judicial notice of documents filed in the § 1983 plaintiff's state court criminal matter to determine whether *Heck* applied).

custody to shield them from further abuse. (*See id.*) Thus, Mr. Grae-El challenges conduct that is not "distinct temporally or spatially from the factual basis for [his] conviction." *Beets*, 669 F.3d at 1042. And he does so in a manner that would, if successful, "implicitly question the validity" of his convictions. *See Muhammad*, 540 U.S. at 751. Accordingly, his Fourth and Fourteenth Amendment claims are not timely and may not proceed. *See Heck*, 512 U.S. at 486-87.

Ms. Strange also tries in vain to draw a factual distinction between the conduct to which she pled guilty and that which she challenges through this action. She asserts that *Heck* does not bar her claims because the factual predicate for the offense to which she pled guilty could not, as a matter of Washington law, arise out of the same child abuse fact pattern as her Fourth and Fourteenth Amendment claims. (*See* Strange Resp. at 5 ("[T]here is no assault 4 of a child charge that exists in Washington.").) That argument is unavailing. Washington law certainly permits a parent to be convicted for fourth degree assault if their physical discipline exceeds the limits of allowable corporal punishment. *See State v. Redmond*, ___ P.3d ___, 2009 WL 3723831, at *1-3 (Wash. Ct. App. 2009) (affirming fourth degree assault conviction of father who hit his daughter and then defended his conduct as lawful parental discipline). Indeed, that is precisely the offense to which Ms. Strange pled guilty. (*See* Verification of State Court Records, Ex. 3 at 158 (describing Ms. Strange's guilty plea).)

Thus, Ms. Strange's Fourth and Fourteenth Amendment claims are *Heck* barred for the same reason as Mr. Grae-El's claims: they arise out of conduct that is closely related to the conduct for which she pled guilty and would, if successful, call into

question the validity of her convictions for assaulting her children. *See Muhammad*, 540 U.S. at 751; *Beets*, 669 F.3d at 1042. Indeed, the application of *Heck* is even more straightforward in Ms. Strange's case. She pled guilty "to two counts of assault in the fourth degree (E.A.D. and A.S.)" (Verification of State Court Records, Ex. 3 at 158 (describing Ms. Strange's guilty plea)) and now challenges Officer Nichols' probable cause finding, which was partly based on E.A.D.'s assertion that Ms. Strange hit her with a belt (*see* Compl. at 33). That sort of direct attack on the probable cause finding underlying her criminal proceedings is prohibited by *Heck*. *See Smithart*, 79 F.3d at 952.

For the reasons given above, Plaintiffs Fourth and Fourteenth Amendment claims have not yet accrued and are thus barred under *Heck*, 512 U.S. at 486-87.[12] Plaintiffs may be able to assert these claims if they successfully invalidate their convictions. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995). Accordingly, the City Defendants' motion as to Plaintiffs' Fourth and Fourteenth Amendment claims is therefore GRANTED, and those claims are DISMSSED without prejudice.

D. Evidentiary Suppression Under *Brady v. Maryland*

Plaintiffs additionally allege that they were not given two pieces of exculpatory or impeachment evidence in the discovery produced as part of their criminal proceeding or in the course of their dependency proceeding. (*See* Compl. at 53.) Specifically, Plaintiffs

[12] Because the court finds that these claims are barred under *Heck*, it does not consider whether these claims have been adequately pled or, if they are, whether Officer Nichols or Sergeant Boggs enjoy qualified immunity. Likewise, the court does not consider whether Plaintiffs have stated a claim for conspiracy to violate these rights, which they mentioned only in passing in their complaint. (*See* Compl. at 48.)

take issue with the City Defendants' alleged failure to provide them with Officer Jones' November 28, 2018 report and Officer Nichols' BWV footage from November 29, 2018. (*See id.*) Plaintiffs mention the attorneys who were allegedly responsible for producing discovery in those matters only in passing, and neither name them as defendants in this action nor allege that they possessed the missing information during those proceedings but failed to provide it to Plaintiffs. (*See id.*) Rather, the gist of Plaintiffs' grievance regarding this missing evidence seems to be that Officer Nichols failed to consider mitigating or exculpatory facts when he prepared his November 29, 2018 police report then used that to draft the CWO form which Plaintiffs believe to be contained in Officer Jones' report and Officer Nichols' BWV footage. (*See* Grae-El Resp. at 11 (arguing that "[t]he omission of this exculpatory evidence from [Officer Nichols'] report was detrimental to the defense of" Plaintiffs).) Thus, it appears that Plaintiffs' allegations regarding missing evidence principally serves to buttress their Fourth and Fourteenth Amendment claims, which challenge Officer Nichols' probable cause determination. (*See* Compl. at 53.) Those claims are barred under *Heck*. *See supra* at 12-15.

To the extent Plaintiffs intended to state independent claims for withheld evidence, those are properly construed as claims for the unlawful suppression of exculpatory or impeachment evidence by Officer Nichols or Sergeant Boggs, in violation of Plaintiffs' due process rights under *Brady v. Maryland*, 373 U.S. 83 (1963). (*See* Compl. at 53; *see also* Mot. at 14-16.) "*Brady* suppression occurs when the government fails to turn over even evidence that is 'known only to police investigators and not to the prosecutor.'" *Youngblood v. W. Virginia*, 547 U.S. 867, 869-70 (2006). To establish a *Brady* violation

for suppression by an investigating officer, plaintiffs must allege that "(1) the officer suppressed evidence that was favorable to the accused from the prosecutor and the defense, (2) the suppression harmed the accused, and (3) the officer 'acted with deliberate indifference to or reckless disregard for an accused's rights or for the truth in withholding evidence from prosecutors.'" *Mellen v. Winn*, 900 F.3d 1085, 1096 (9th Cir. 2018) (quoting *Tennison v. City & Cty. of San Francisco*, 570 F.3d 1078, 1087, 1089 (9th Cir. 2009)). Only suppressed evidence that "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict" will suffice to establish such a due process violation. *See id.* (quoting *Kyles v. Whitley*, 514 U.S. 419, 435 (1995)).

The City Defendants argue that Plaintiffs have failed to state suppression claims under *Brady* "[b]ecause they do not identify anything material in these documents and cannot identify how the lack of disclosure harmed them." (*See id.* at 14.) Plaintiffs do allege, however, that Officer Jones' report "is of paramount importance in this case, as is the body cam footage." (Compl. at 53.) They further explain that they would have used this evidence to rebut Officer Nichols' assessment that Mr. Grae-El had an aggressive demeanor during the safety assessment on November 28, 2018 and that the children were in distress in Plaintiffs' care. (*See id.* at 31 (noting that Officer Jones' report "was absent of any description of the children being afraid, [Mr. Grae-El] being aggressive, or even an observed injury" on the children).

Even if Plaintiffs had been able to make use of Officer Jones' report and Officer Nichols' BWV footage in that manner, the court is not convinced that such evidence

would have "put the whole case in such a different light as to undermine confidence in the verdict." *Mellen*, 900 F.3d at 1096 (quotation marks omitted). As noted above, even accounting for what this countervailing evidence allegedly shows, Officer Nichols had sufficiently corroborated allegations of abuse to warrant a finding of probable or reasonable cause. *See supra* at 12-15. Accordingly, the City Defendants' motion as to these claims is GRANTED and Plaintiffs' *Brady* claims are DISMISSED without prejudice.

E. SPD's Liability Under *Monell v. New York City Department of Social Services*

Plaintiffs also seek to impose municipal liability against SPD based on its failure to act to preserve Plaintiffs' constitutional rights. (*See* Compl. at 53 (first citing *Monell*, 436 U.S. at 694; and then citing *Van Ort v. Est. of Stanewich*, 92 F.3d 831 (9th Cir. 1996).) Plaintiffs allege that SPD Policy Manual 15.220-POL-2 "is unconstitutional" and permitted Plaintiffs' children to be placed into protective custody in violation of their Fourteenth Amendment rights to familial association. (*See* Compl. at 54.) Specifically, Plaintiffs take issue with the "subjective opinion clause" in SPD Policy Manual 15.220-POL-2, which they allege created a "grey area . . . in which discretion is abused and bias can thrive," as it did here by allowing Officer Nichols and Sergeant Boggs to "authorize[] the removal of children without due process." (*Id.* at 53-54.)

SPD Policy Manual 15.220-POL-2 contains definitions for terms used in section 220 of title 15 of the SPD Policy Manual, which pertains to SPD policies relating to child welfare. *See SPD Policy Manual 15.220-POL-2*, Seattle Police Dep't (May 7, 2019), https://www.seattle.gov/police-manual/title-15---primary-investigation/15220---child-

welfare.[13] Included in that section is a definition for when a "child is in dangerous circumstances." *See id.* The SPD Policy Manual instructs officers to "determine that a child is in dangerous circumstances based on" three objective factors: (1) "The child's physical condition"; (2) "The environment where the child is encountered"; and (3) "The time of day and situation where the child is encountered." *Id.* However, SPD policy provides that the "officer's subjective opinion is the determining factor if the child is in a dangerous circumstance." *Id.* Where the officer has "reason to believe, or the child reports, either child abuse or neglect during the investigation of . . . children in dangerous circumstances," SPD policy requires the officer to then "follow the procedures for investigating child abuse." SPD Policy Manual 15.220-POL-6. The procedures for investigating child abuse provide that, before an SPD officer may "take custody of abused or neglected children" without a court order, they must satisfy SPD Policy Manual 15.220-POL-7 and RCW 26.44.050, both of which require that the officer find that "there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050." *See* SPD Manual 15.220-POL-7; *see also* RCW 26.44.050.

To establish a municipal liability claim based on the municipalities' failure "to act to preserve constitutional rights," a plaintiff must show: (1) that it "possessed a

[13] The court finds that the contents of Title 15 of the SPD Policy Manual are "not subject to reasonable dispute" and, accordingly, takes judicial notice of the language contained therein. *See* Fed. R. Evid. 201.

constitutional right of which he was deprived; (2) that the municipality had a policy; (3) that this policy 'amounts to deliberate indifference' to the plaintiff's constitutional right; and (4) that the policy is the 'moving force behind the constitutional violation.'" *Van Ort*, 92 F.3d at 835 (quoting *Oviatt v. Pearce,* 954 F.2d 1470, 1474 (9th Cir. 1992)). To the extent Plaintiffs' municipal liability claims are based on their Fourth and Fourteenth Amendment claims, they fail to meet the fourth prong of that test because *Heck* bars those claims, *supra* at 17-22, and prevents them from "show[ing] an underlying constitutional violation." *See Lockett v. Cnty. of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020); *see also Foley v. Kaldenbach*, No. 15-CV-1627-CAB-AGS, 2018 WL 325027, at *3 (S.D. Cal. Jan. 8, 2018) (dismissing municipal liability claims where plaintiff's underlying constitutional claims were barred under *Heck*).

Even if *Heck* did not apply to bar Plaintiffs from establishing an underlying constitutional violation, their municipal liability claims would nevertheless fail because Plaintiffs misunderstand what SPD policy requires. As summarized above, even where an SPD officer's *subjective* opinion is the determinative factor in concluding that a child is in a dangerous circumstance, SPD policy nevertheless requires the officer to *objectively* determine whether the child has been abused and whether it is feasible to obtain a warrant before placing the child in protective custody. *See* SPD Policy Manual 15.220-POL-6; *id.* at 15.220-POL-7; *see also Nieves*,139 S. Ct. at 1724 ("[P]robable cause speaks to the objective reasonableness of an arrest."); *State v. Graham*, 927 P.2d 227, 233 (Wash. 1996) ("Under both the federal and state constitutions, probable cause is the objective standard by which the reasonableness of an arrest is measured."). Where

that standard is met, parents whose children are removed will have received all of the process that is constitutionally due. *See Rogers*, 487 F.3d at 1294 (permitting extra-judicial removal of a child on a finding of "reasonable cause"); *see also Draper v. United States*, 358 U.S. 307, 311 n.3 (1959) (concluding that "probable cause" and "reasonable grounds" are "substantial equivalents of the same meaning").

Because SPD Policy does not permit the warrantless removal of children based purely on an officer's subjective opinion but, rather obligates SPD officers to make a constitutionally compliant finding before children can be removed without a court order, Plaintiffs have failed to allege that SPD policy could be "the moving force" behind their alleged constitutional violation. *See Van Ort*, 92 F.3d at 835. Accordingly, Plaintiffs fail in their attempt to establish municipal liability for SPD based on its promulgation of a policy that failed to prevent Plaintiffs' alleged constitutional harms. Moreover, because dismissal of Plaintiffs' municipal liability claims is based on the court's determination that SPD policy requires compliance with the constitution, the court further concludes that Plaintiffs will be unable to cure the deficiencies in this claim through amendment. Accordingly, the City Defendants' motion as to this claim is GRANTED and Plaintiffs' municipal liability claims are DISMISSED with prejudice. *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (permitting dismissal with prejudice where amendment would be futile).

F. Sergeant Boggs' Supervisory Liability

Plaintiffs mention Sergeant Boggs sparingly few times in their lengthy complaint, but seem to allege that she is liable for unspecified constitutional violations based on:

(1) her role as Officer Nichols' supervisor (*see* Compl. at 31); and (2) her failure to "advise" Officer Nichols "to record interviews with [Plaintiffs'] children" (*see id.* at 50). Although section 1983 permits a cause of action against a supervising official in their individual capacity, based on their "own culpable action or inaction in the training, supervision, or control of [their] subordinates," or for their acquiescence in the constitutional violations of their subordinates, *see Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991), Plaintiffs fail to state such a claim here.

As with their municipal liability claims, Plaintiffs' supervisory liability claims against Sergeant Boggs fails because they have not established an underlying constitutional deprivation. *See Lockett*, 977 F.3d at 741. Even if Plaintiffs had established a predicate constitutional violation, however, they fail to allege that Sergeant Boggs did anything wrong. For instance, although they allege that "[Sergeant] Boggs did not advise [Officer Nichols] to record interviews with children" (Compl. at 50), they also make the conflicting allegation that Officer Nichols' BWV footage captured the November 29, 2018 "incident" (*see, e.g.*, *id.* at 53). More generally, Plaintiffs' passing references to Sergeant Boggs' involvement fails to allege sufficient facts to "raise [their] right to relief above the speculative level." *See Twombly*, 550 U.S. at 555. Accordingly, the City Defendants' motion as to these claims is GRANTED and Plaintiffs' claims against Sergeant Boggs are DISMISSED without prejudice.

G. IIED Claim

Finally, Plaintiffs allege that the City Defendants intentionally caused them emotional distress. (*See* Compl. at 50.) An IIED claim—also known as the tort of

"outrage"—has three elements: "(1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to plaintiff of severe emotional distress." *Kloepfel v. Bokor*, 66 P.3d 630, 632 (Wash. 2003). Liability under this tort is reserved for "conduct 'which the recitation of the facts to an average member of the community would arouse his resentment against the actor and lead him to exclaim "Outrageous!"'" *Id.* (quoting *Reid v. Pierce County*, 961 P.2d 333, 337 (Wash. 1998)). Plaintiffs here allege no facts that would provoke such community outrage; indeed, the court has concluded that Plaintiffs fail to allege that Officer Nichols lacked probable or reasonable cause to place the children into protective custody without a warrant. *See supra* at 12-15. Accordingly, the City Defendants' motion as to this claim is GRANTED and Plaintiffs' IIED claim is DISMISSED without prejudice.

IV. CONCLUSION

For the foregoing reasons, the City Defendants' motion for judgment on the pleadings (Dkt. # 51) is GRANTED. Plaintiffs' claims against the City Defendants are DISMISSED. The court DISMISSES all of Plaintiffs' claims without prejudice and with leave to amend, except for their municipal liability claim against SPD and any claims under RCW 9A.84.040, which the court DISMISSES with prejudice. The court will provide further guidance to Plaintiffs regarding seeking leave to amend these claims in a forthcoming order. (*See* 3/8/33 Order (Dkt. # 61) at 2.)

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Dated this 18th day of April, 2022.

JAMES L. ROBART
United States District Judge