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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 SONYA WOLF; ROGER CRAIG
12 in his capacity as Guardian
13 ad Litem for the minor
14 NICHOLAS H.,

14 Plaintiffs,

NO. CIV. S-08-964 FCD/GGH

15 v.

MEMORANDUM AND ORDER

16 CITY OF STOCKTON; OFFICER
17 DARREN SANDOVAL, individually
18 and in his official capacity
19 as police officer for the City
20 of Stockton, et al.,

19 Defendants.

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21 This matter is before the court on the parties' cross-
22 motions for summary judgment, or alternatively, partial summary
23 judgment in this action brought by plaintiff Sonya Wolf ("Wolf")
24 on behalf of herself and her minor son, Nicholas H. ("Nicholas"),
25 represented by Roger Craig in his capacity as Guardian ad Litem
26 for Nicholas (collectively, "plaintiffs"). By this action,
27 plaintiffs allege various civil rights violations, pursuant to 42
28 U.S.C. § 1983 ("Section 1983"), against defendants City of

1 Stockton (the "City"), Officer Darren Sandoval ("Sandoval") and
2 Officer Eric Azarvand ("Azarvand") (collectively, "defendants")
3 arising from the officers' response to and investigation of a
4 report of child neglect. Officers responded to a report, by
5 Nicholas' father, that Nicholas was living with his mother in his
6 mother's van. Plaintiffs allege the officers acted without legal
7 justification in detaining Wolf, searching Wolf's van¹ and
8 interviewing Nicholas. Plaintiffs sue the City under Monell v.
9 Department of Social Servs., 436 U.S. 658 (1978) which permits a
10 municipality to be held liable for damages under Section 1983
11 where the municipality itself causes the constitutional
12 deprivation.

13 Defendants move for summary judgment, arguing (1) plaintiffs
14 have no evidence of any constitutional violations by the
15 defendant officers because the officers' conduct was justified
16 under emergency aid exception to the warrant requirement;
17 (2) even if a constitutional violation could be established, the
18 officers are entitled to qualified immunity because they did not
19 act contrary to any clearly established law permitting child
20 welfare checks under these circumstances; and (3) plaintiffs have
21 no evidence of any formal governmental policy or longstanding
22 practice or custom of the City which violates plaintiffs'
23 constitutional rights.

24 In the amended complaint, plaintiffs alleged the officers
25 deprived them of (1) their right to liberty without due process

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27 ¹ While plaintiffs object to the "search" of Wolf's van,
28 as set forth below, it is undisputed that the officers did not
physically enter Wolf's van; rather, they opened the doors to the
van to observe Nicholas.

1 of law; (2) their right to be free from unreasonable interference
2 with a parent-child relationship; (3) the right to procedural due
3 process; (4) the right to be free from arbitrary intrusions on
4 plaintiffs' physical and emotional well-being; and (6) the right
5 to be free from the use of excessive force. (Am. Compl., filed
6 July 19, 2009 [Docket #15].) However, in opposing defendants'
7 motion, brought against all of said claims, as well as in cross-
8 moving for summary judgment, plaintiffs argue only that the
9 officers' actions violated their Fourth Amendment rights to be
10 free from unlawful search or seizure. (Mem. of P. & A. in Supp.
11 of Pls.' MSJ and in Opp'n to Defs.' MSJ, filed Jan. 19, 2010
12 [Docket #27].) As such, the court finds based on plaintiffs'
13 arguments that they have abandoned their other claims for relief
14 pled in the amended complaint, including alleged violations of
15 their substantive and procedural due process rights under the
16 Fourteenth Amendment and their excessive force claim under the
17 Eighth Amendment. The court thus considers herein only whether
18 the officers violated plaintiffs' Fourth Amendment rights.

19 The court heard oral argument on the motions on February 26,
20 2010. By this order, it now renders its decision, holding that
21 there is no material issue of fact as to whether defendants
22 violated plaintiffs' Fourth Amendment rights, and thus, summary
23 judgment is properly granted in defendants' favor. Because the
24 court finds that plaintiffs' constitutional rights were not
25 violated, it need not consider whether the individual defendants
26 would otherwise be entitled to qualified immunity or whether
27 plaintiffs could sustain a Monell claim against the City.

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1 **BACKGROUND²**

2 At around 9:00 p.m. on September 8, 2006, Wolf parked her
3 van in a Denny's parking lot at 2670 West March Lane in Stockton,
4 California. (UF #1.) Wolf testified she stopped at Denny's to
5 take care of her dogs. (UF #2.)

6 On September 8, Officers Sandoval and Azarvand were partners
7 in the same patrol car. (UF #3.) They were dispatched to the
8 Denny's on March Lane because they received a report that a
9 father had telephoned the police expressing concern over the
10 welfare of his child, who the father said had been living in a
11 van with his mother in the Denny's parking lot. (UF #s 4, 6; RDF
12 #58.)³ The father asked that police check on the welfare of his
13 child. (Id.) The officers received a description of the vehicle
14 as a white van with something about "flying dogs" on the outside
15 of the van. (UF #5.)

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18 ² Unless otherwise noted, the court finds the following
19 facts undisputed. (Pls.' Resp. to Defs. Stmt. of Undisp. Facts,
20 filed Jan. 19, 2010 [Docket #22] ["UF"].) In support of their
21 opposition and affirmative motion, plaintiffs submitted
22 additional purported undisputed and disputed facts. (Id.
["DF"].) However, in large part, the court disregards these
facts as they are immaterial to the motion for the reasons
discussed below. (Defs.' Reply to Pls.' Stmt. of Facts, filed
Feb. 11, 2010 ["RDF"].)

23 ³ As undisputed facts, defendants offered the following:
24 "[They] were dispatched to the Denny's on March Lane for a person
25 living in their car with a child" and the "reporting party was
26 Wolf's ex-husband." (UF ¶s 4, 6.) At the hearing, however,
27 defendants clarified that the officers knew the "person"
28 allegedly living in her van with a child, was the mother of the
child. Defendants also clarified that the officers knew the
reporting party was the father of the child allegedly living in
the van with his mother, and that the father had expressed
concern about the child's welfare when he telephoned police,
asking the police to check on his child. Plaintiffs did not
dispute these facts at the hearing.

1 The officers found a van matching the description in the
2 back of the Denny's parking lot. (UF #7.) To determine whether
3 anyone was in the van, Officer Azarvand walked around the van
4 knocking on parts of the van with his hand. (UF #8.) There was
5 no response. (Id.) Wolf testified she heard the banging, saw it
6 was the police, but did not respond because she was hoping they
7 would go away. (Green Decl., filed Nov. 9, 2009, Ex. D, 31:8-25-
8 32:1-7 [Docket #19-4].)

9 Officer Azarvand checked the doors and found the passenger
10 door unlocked. He opened the door and asked Wolf to step out of
11 the van; she promptly complied so that a dog would not jump out
12 of the van. (UF # 9, 10.) The officers told Wolf they were
13 there because they received a report of a child living in the
14 van. (UF #11; RDF #35.) They asked Wolf if she had a child in
15 the van, and she responded, yes. (UF #12.) The officers told
16 Wolf they needed to check if the child was okay. (RDF #36.)
17 The officers observed four dogs in the van; two in cages and two
18 outside of cages. (UF #14.)

19 Wolf used her cell phone to make a call. (RDF #37.) She
20 then tried to get to the front door of the van, pushing Azarvand
21 twice in an attempt to close the door, but Azarvand stood in the
22 way. (UF #13; RDF #s 38, 67.) Azarvand told Wolf that the
23 officers were "in charge now." (RDF #39.) Wolf began screaming
24 at Nicholas, telling him to close the van doors, lock them and
25 not let the officers inside the van. (UF #15.) The officers
26 then handcuffed Wolf and placed her in their patrol car. (UF
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1 #16; RDF #s 40, 68.)⁴

2 Officer Azarvand took Wolf's van keys⁵ and opened the back
3 van doors to speak with the child, Nicholas. (UF #17.)
4 Nicholas, who was seven at the time, was wearing pull-up diapers.
5 (UF #19.) Azarvand observed Nicholas sitting on a little, thin
6 mattress with a pillow and blanket, and he was concerned about
7 him for sanitary and safety reasons. (RDF #60.)⁶ The officers
8 observed a pizza box in the back of the van. (UF #26).

9 Officer Azarvand began interviewing Nicholas. (UF #20.)
10 Wolf objected to the interview, telling the officers they needed
11 a warrant to search the van and to interview Nicholas. (RDF #s
12 53-55.) Wolf also told Azarvand that Nicholas' father makes
13 false police reports about her. (RDF #61.) While Nicholas was
14 being interviewed by Azarvand, Nicholas was able to see his
15 mother sitting in the patrol car, which was a couple of yards
16 away. (UF #s 21-22.)

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18 ⁴ Azarvand did not believe that Wolf's momentary struggle
19 with him rose to a level that she violated California Penal Code
20 § 148 (resisting, delaying or obstructing a peace officer in the
21 performance of his duties). (RDF #59.) Azarvand did not intend
22 to arrest Wolf when he put her in the patrol car. (RDF #s 64-
23 65.) The officers placed her in the car in order to facilitate
24 the interview of Nicholas. (RDF # 70.)

25 ⁵ Wolf concedes she allowed Azarvand to take her van
26 keys. She testified that, after the officers would not let her
27 go and threatened to call Child Protective Services and Animal
28 Control, she felt she had no choice but to comply with the
29 officers' directions. (DF #s 44-47.) Defendants dispute that
30 the officers acted in a threatening manner to Wolf but that
31 dispute of fact is not material to the motion. (RDF #s 44-47.)

32 ⁶ Wolf testified that Nicholas was wearing pull-up
33 diapers because it was late at night and he was still wetting the
34 bed. She explained that Nicholas had a mattress and blankets to
35 be comfortable as he watched a movie. (RDF #s 48-49.)
36 Defendants do not dispute these facts. (Id.)

1 Nicholas told Azarvand he lived in the van but then said he
2 sometimes stayed at his grandmother's house; he said, however,
3 that even though his grandmother has a house, he and his mother
4 still sleep in the van. (UF #18, 23.) In response to Azarvand's
5 question whether Nicholas went to school, Nicholas replied that
6 he went to "karate" three times a week. (UF #s 24-25.) The
7 officers testified the interview of Nicholas lasted five minutes.
8 (Green Decl., Ex A at 59:24-25, Ex. C at 47:11-12.)

9 At the scene, the officers telephoned Nicholas' father, who
10 told Azarvand that he received the information from either his or
11 Wolf's sister that Nicholas was living in Wolf's van at the
12 Denny's parking lot. The officers also called Wolf's mother who
13 said Wolf and Nicholas lived with her. (UF #s 27-28.)

14 After officers interviewed Nicholas, Wolf was released and
15 returned to the van. (UF #29.)⁷ While Azarvand believed it was
16 unusual that Nicholas was in pull-up diapers, he did not believe
17 it was a circumstance that rose to the level of an imminent
18 danger. (RDF #62.) Nor did the officers observe any safety or
19 sanitary risks in the van. (RDF #63.) The officers concluded
20 that Nicholas appeared healthy and well cared for and they left
21 the scene. (UF #30.) The entire incident lasted about one hour.
22 (RDF # 73.)

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26 ⁷ Wolf attests that at some point a third officer arrived
27 on the scene, telling her that the officers would do anything,
28 including ripping the door off the van, in order to talk to
Nicholas. Defendants dispute her testimony, claiming that no
other officer responded to the scene. (RDF #57.) This factual
dispute is not material to the motion.

1 256 (1986).

2 In judging evidence at the summary judgment stage, the court
3 does not make credibility determinations or weigh conflicting
4 evidence. See T.W. Elec. Serv., Inc. v. Pacific Elec.
5 Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir. 1987) (citing
6 Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S.
7 574, 587 (1986)). The evidence presented by the parties must be
8 admissible. Fed. R. Civ. P. 56(e). Conclusory, speculative
9 testimony in affidavits and moving papers is insufficient to
10 raise genuine issues of fact and defeat summary judgment. See
11 Falls Riverway Realty, Inc. v. City of Niagara Falls, 754 F.2d
12 49, 57 (2d Cir. 1985); Thornhill Publ'g Co., Inc. v. GTE Corp.,
13 594 F.2d 730, 738 (9th Cir. 1979).

14 ANALYSIS

15 1. Constitutional Claims

16 Plaintiffs argue defendants violated their Fourth Amendment
17 rights in searching Wolf's van and seizing plaintiffs without a
18 warrant. According to plaintiffs, a report of a mother living
19 with her child in a van does not present such an emergent
20 situation to justify the officers' conduct in this case.
21 Importantly, plaintiffs conceded at oral argument that the
22 officers had a duty to investigate the father's report and locate
23 the van in order to check on the welfare of the child. However,
24 they contend that once Wolf refused to cooperate, the officers
25 should have ended their investigation and sought a warrant before
26 proceeding any further.

27 Defendants argue, to the contrary, that they not only had an
28 obligation to respond to the father's report and locate the van

1 but they had a further obligation, particularly considering
2 Wolf's uncooperative and obstructive behavior, to fully
3 investigate the situation to confirm the child's safety.
4 Defendants contend their conduct was specifically justified under
5 the emergency aid exception to the Fourth Amendment's warrant
6 requirement.

7 The Ninth Circuit first recognized this exception in United
8 States v. Cervantes, 219 F.3d 882 (9th Cir. 2000). There, the
9 court concluded that the emergency doctrine justified an
10 officer's entry into an apartment to investigate a chemical odor
11 consistent with methamphetamine production. Id. at 891. The
12 court applied the doctrine because the officer reasonably
13 believed that there was an emergency requiring his immediate
14 assistance due to the risk of explosion created by
15 methamphetamine labs. Id. In addition, the court concluded that
16 his entry was not motivated by the desire to collect evidence,
17 and that there was a reasonable basis to associate the apartment
18 searched with the emergency. Id.

19 The court explained that the emergency doctrine is derived
20 from police officers' community caretaking function. A function
21 that had long been recognized by the United States Supreme Court.
22 In Mincey v. Arizona, 437 U.S. 385 (1978), the Court acknowledged
23 the right of the police to respond to emergencies, reasoning that
24 entry or search that would otherwise be barred by the Fourth
25 Amendment may be justified by the need to protect life or avoid
26 serious injury. Id. at 392.

27 Thus, in Cervantes, the Ninth Circuit adopted a three prong
28 test for determining whether the emergency aid exception is

1 applicable to a particular set of circumstances: (1) the police
2 must have reasonable grounds to believe that there is an
3 emergency at hand and an immediate need for their assistance for
4 the protection of life or property; (2) the search must not be
5 primarily motivated by the intent to arrest and seize evidence;
6 and (3) there must be some reasonable basis, approximating
7 probable cause, to associate the emergency with the area or place
8 to be searched. Cervantes, 219 F.3d at 888-90.

9 Here, the officers had reasonable grounds to believe there
10 existed an immediate need for their assistance. This case is
11 simply not about a child living in a van with his mother, as
12 plaintiffs argue. The officers were acting upon a report by a
13 child's father, who was concerned about his child's safety and
14 welfare in light of the fact that the father believed his child
15 was living in a van with his mother at a restaurant parking lot.
16 The father's report of suspected child neglect contained specific
17 information, describing the van and its location. The officers
18 found the van matching the father's description in the exact
19 location reported by the father.

20 Immediately upon approaching the van, the officers'
21 suspicions and concerns for the child's welfare were heightened
22 by Wolf's bizarre conduct. At first, while in the van, Wolf was
23 wholly unresponsive to the officers' inquiries. Once out of the
24 van, she was obstructive to any efforts by the officers to check
25 on the child. She physically blocked the officers from the van.
26 She then began screaming at Nicholas to lock the doors and not
27 let the officers inside the van. As a result, the officers had
28 to restrain her in order to check on the child. Such behavior by

1 Wolf supported the officers' reasonable belief that "they had a
2 duty under the community caretaking function to investigate a
3 potential emergency situation." Martin v. City of Oceanside, 360
4 F.3d 1078, 1082 (9th Cir. 2004) (holding the same where officers
5 responded to a father's phone call that his adult daughter may be
6 "urgently" "in trouble" inside her home; officers went to the
7 home and found the daughter's and her companion's cars in the
8 driveway, their neighbors reported that the two should be home,
9 the officers knocked but there was no response and the daughter
10 did not pick up the phone when the officers called the house).⁸

11 Second, the officers' seizure of plaintiffs and search of
12 the van was not motivated by an intent to arrest or to seize
13 evidence. At no time did the officers intend to arrest Wolf or
14 tell her that she was going to be arrested, and Wolf was not, in
15 fact, arrested. It became necessary to detain Wolf in order to
16 conduct even a cursory interview of Nicholas. Moreover, the
17 officers opened the van doors and made certain visual
18 observations, but they did not enter the van or search any part
19 of the van or gather any physical evidence whatsoever. Once the
20 officers determined that Nicholas was safe, they released Wolf
21 and left Nicholas in his mother's care. The entire incident was
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24 ⁸ In Martin, after receiving information from a neighbor
25 that the daughter and her companion were likely in the home, the
26 officers entered the house through the garage with their
27 flashlights on and guns drawn. The officers checked the
28 downstairs, found no one, and then proceeded up the stairway to
the second floor. When they got to the top of the stairs, the
daughter exited a bedroom at the other end of the hallway. The
officers requested that she identify herself, and after a short
argument about the officers not having a warrant, she produced
identification. The officers confirmed she was safe, and left
the house shortly thereafter. Id. at 1081.

1 brief, lasting only approximately an hour.⁹ See id. (finding
2 this prong of the test met where once the officers verified the
3 daughter's identity and saw that she was not in trouble, they
4 left the residence immediately).

5 Finally, the officers had a reasonable basis for associating
6 a potential emergency with Wolf's van. As discussed above, the
7 van was found in the exact location reported by Nicholas' father,
8 and his description of Wolf's vehicle matched the van found in
9 the parking lot. Upon initially contacting Wolf, she was
10 obstructive and combative, screaming at Nicholas to "lock the
11 doors" and keep the officers out of the van. The officers
12 observed four dogs in the van, two in cages and two outside of
13 cages; after opening the van doors, the officers observed food
14 items in the van and Nicholas in diapers, sitting on a thin
15 mattress.

16 Also, in order to satisfy this third prong of the test, an
17 officer's search must to be limited to only those areas necessary
18 to respond to the perceived emergency. Such is clearly the case
19 here as officers only opened the back van doors to speak with
20 Nicholas briefly. There is no evidence the officers entered the
21 van; Nicholas could see his mother at all times; they briefly
22 asked Nicholas questions limited to his well being and attempted
23 to verify his responses by calling his grandmother and father.
24 The officers did no more than reasonably necessary to confirm
25 Nicholas' safety. Id. (finding where the officers did no more
26 than search the areas of the daughter's home where she could

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28 ⁹ Undoubtedly, the reason the incident took that long was
Wolf's obstructive behavior.

1 potentially be located, this prong of the test was satisfied).

2 Plaintiffs' arguments to the contrary are unavailing.

3 First, contrary to plaintiffs' protestations, the officers do not
4 have a legal obligation to investigate the reporting father
5 before performing a welfare check on his child. Id. (noting no
6 obligation to investigate the father who called the police
7 department to request a check on the safety of his adult
8 daughter). Thus, plaintiffs' proffered evidence concerning
9 alleged, previous false reports by Nicholas' father against her;
10 Nicholas' father's alleged violations of his supervised
11 visitation rights for Nicholas; and Wolf's prior lawsuits against
12 the county for the improper removal of Nicholas from her home are
13 irrelevant to the motion. (DF #s 31-34.) The officers had no
14 knowledge of these matters prior to the incident, and they had no
15 duty to obtain such information before responding to a father's
16 request to check on his child's welfare.

17 Moreover, the Ninth Circuit has specifically applied the
18 emergency aid exception in a case involving a child's welfare.
19 In United States v. Bradley, 321 F.3d 1212 (9th Cir. 2003),
20 officers received information from an arrested 9 year old's
21 mother that the child was home with a friend. Officers went to
22 the home and no one answered their knocks. They then received
23 information from the mother that the child was actually with a
24 neighbor. The officers went to the neighbor's house, and the
25 neighbor told the officers he did not have the child. The
26 officers then went back to the boy's house and knocked again with
27 no answer. They found a door unlocked and went inside, and found
28 the child alone but safe. The court validated the search under

1 the emergency aid exception set forth in Cervantes. Id. at 1215
2 (holding these facts supported the district court's finding that
3 the officers' entry into the home was motivated by a concern for
4 the child's welfare and thus, was lawful). Such is similarly the
5 case here. The record adequately reflects that the officers
6 acted out of a genuine concern for Nicholas' welfare.

7 Likewise, White v. Pierce County, 797 F.2d 812 (9th Cir.
8 1986), is a factually analogous case, which although it pre-dates
9 Cervantes, is nonetheless persuasive authority since the court
10 recognized that the *exigent* circumstances justified the
11 warrantless entry into a home to investigate a report of
12 suspected child abuse. There, deputies were dispatched to
13 investigate a report that a 7-year old child had been seen
14 playing in his yard without his shirt on, and he was observed
15 with severe welts on his back. Upon arrival at the home, the
16 deputies told the father of the report of abuse and asked to
17 examine the son. The father refused, stating the deputies needed
18 a warrant or court order. The child attempted to show the
19 deputies his back, but the father ordered him not to and to go to
20 another room. The deputies insisted on examining the child's
21 back, believing based on the father's conduct, that the child was
22 being abused and would be injured further if not removed from the
23 residence immediately. The father became violent and abusive.
24 The deputies attempted to enter the house, and the father
25 assaulted them; the deputies then forcibly subdued and handcuffed
26 the father. They then entered the house and examined the child.
27 They found no signs of abuse. The father was arrested and
28 charged with assault and interfering with a police officer.

1 The Ninth Circuit found the search lawful, affirming the
2 district court's finding of qualified immunity based on the facts
3 that the officers had probable cause to believe the boy was being
4 abused and exigent circumstances¹⁰ justified the warrantless
5 entry into the home. Id. at 815-816.

6 Here, based on the above case law and the facts in this
7 case, the court finds that the officers' warrantless search and
8 seizure in this case falls squarely within the emergency aid
9 exception and community caretaking function. As in Martin, this
10 case involved a "reasonable reques[t] that prompted police to
11 fulfill their responsibility to investigate potentially
12 suspicious activity and protect the communities they serve." Id.
13 at 1083. Therefore, the court finds the emergency aid exception
14 applicable, and its elements met, and thus it cannot find any
15 constitutional error in the officers' actions in this case.
16 Defendants' motion for summary judgment must accordingly be
17 GRANTED.

18 **2. Qualified Immunity**

19 Defendants, alternatively, move for summary judgment on the
20 ground of qualified immunity. Public officials are entitled to
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22 ¹⁰ It is these exigent circumstances which distinguish
23 White and this case from Calabretta v. Floyd, 189 F.3d 808 (9th
24 Cir. 1999), also a case pre-dating Cervantes but raising some
25 similar issues. Calabretta, however, is distinguishable, as
26 there the court found an "absence of emergency"--there was no
27 exigent circumstances where the social worker and officers
28 delayed entry into the home for fourteen days after the report of
suspected child abuse. The court found that clearly there was no
perceived immediate danger of serious harm to the children. This
court has found to the contrary in this case. Considering the
nature of Nicholas' father's report and Wolf's combative and
obstructive conduct, the officers reasonably perceived an
emergent situation.

1 qualified immunity for acts that do not violate "clearly
2 established . . . constitutional rights of which a reasonable
3 person would have known." Harlow v. Fitzgerald, 457 U.S. 800,
4 818 (1982). Ultimately, where a defendant's conduct violates
5 constitutional rights and the law is clearly established, the
6 defendant may not claim qualified immunity.

7 Here, for the reasons set forth above, the court has
8 addressed the "threshold" inquiry under the qualified immunity
9 analysis and finds that there is no triable issue of fact that
10 plaintiffs' Fourth Amendment rights were violated by the
11 officers' conduct in responding to and investigating the report
12 of child neglect. Pearson v. Callahan, 129 S. Ct. 808 (2009);
13 Saucier v. Katz, 533 U.S. 194, 201 (2001). As such, the court
14 need not make the second inquiry under the qualified immunity
15 analysis to determine whether the relevant law was clearly
16 established. Martin, 360 F.3d at 1082 (finding that because the
17 "emergency aid" exception applied, there was no "actua[l]"
18 violation of a constitutional right and thus, the analysis under
19 Saucier properly ended at the first step). Because there is no
20 constitutional violation, qualified immunity is not at issue.

21 **3. Monell Liability**

22 Because plaintiffs have not established a constitutional
23 violation, there can be no municipal liability. It is well-
24 established that a public entity cannot be held liable where
25 there is no underlying constitutional violation by its employees.
26 Long v. City and County of Honolulu, 511 F.3d 901, 907 (9th Cir.
27 2007) (citing City of Los Angeles v. Heller, 475 U.S. 796, 799
28 (1986)) (holding that where there was no constitutional violation

1 of plaintiff Long's rights by the defendant officers, there was
2 "no basis for finding the officers inadequately trained" to
3 establish liability under Monell). Similarly, here, plaintiffs
4 base their Monell claim on the allegation that the City
5 improperly trained its officers to respond to a report of child
6 neglect. Because the court finds no constitutional error by the
7 officers, it must also find that plaintiffs cannot establish a
8 Monell claim against the City. Id.

9
10 **CONCLUSION**

11 For the foregoing reasons, the court GRANTS defendants'
12 motion for summary judgment. Plaintiffs' cross-motion for
13 judgment in their favor is accordingly DENIED. The Clerk of the
14 Court is directed to close this file.

15 IT IS SO ORDERED.

16 DATED: March 4, 2010

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FRANK C. DAMRELL, JR.
20 UNITED STATES DISTRICT JUDGE
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