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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GEORGIY KULYA,

Plaintiff,

No. C 06-06539 JSW

v.

CITY AND COUNTY OF SAN FRANCISCO,
ET AL,

Defendants.

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT**

This matter comes before the Court upon consideration of the motion for summary judgment filed by Defendants. Having considered the parties' papers, relevant legal authority, and the record in this case, and having heard oral argument, the Court GRANTS Defendants' motion.

BACKGROUND

On September 24, 2005, six-year-old Yvan K. ("Yvan") told his mother, the ex-wife of Plaintiff Georgiy Kulya ("Georgiy"), that his father had hit him on multiple parts of his body, including a closed fist blow to the forehead. The parents had been involved in bitter divorce proceedings years earlier and Georgiy was granted primary custody with weekend visitation with Yvan's mother. After taking her son to the Taraval Police Station, Yvan repeated the story to several officers and paramedics, both in and outside the presence of his mother, in both English and his native Russian. Yvan's recitation of the facts remained consistent throughout and the officers and paramedics observed marks and bruises on the child. Based on the child's

1 report and demeanor, as well as the physical evidence, the police officer defendants ordered and
2 carried out Georgiy's arrest and reported the incident to Child Protective Services.

3 Based on the report, the social services agency workers began to investigate Yvan's
4 allegations. Based on their determination that there were exigent circumstances, the social
5 worker defendants held Yvan in custody for one night and filed a state law child dependency
6 petition. While the investigation continued for approximately one week, Yvan stayed with his
7 mother. After Yvan's recantation of the allegations, the social service agency withdrew the
8 dependency petition and Yvan was returned to his father's custody.

9 Georgiy filed suit against several police officers who ordered and effected his arrest as
10 well as various social workers who initiated the investigation and determined to detain Yvan.
11 Plaintiffs allege causes of action for: (1) civil rights violations under 42 U.S.C. § 1983 for both
12 father and son against the social worker defendants for deprivation of familial association; (2)
13 civil rights violations under 42 U.S.C. § 1983 against the social worker defendants for Yvan for
14 his initial seizure and detention; (3) civil rights violations under 42 U.S.C. § 1983 against the
15 social worker defendants on behalf of father and son for the continued placement of Yvan with
16 his mother pending the investigation or dependency hearing; (4) civil rights violations under 42
17 U.S.C. § 1983 against the police officer defendants for Georgiy based on his arrest; (5) civil
18 rights violation against the social worker defendants on behalf of father and son in violation of
19 California Civil Code § 52.1; (6) intentional infliction of emotional distress; (7) battery for
20 Georgiy against the arresting police officers; (8) false arrest/imprisonment on behalf of Georgiy
21 against the police officers; and (9) false arrest/imprisonment on behalf of Yvan against the
22 social workers.

23 The Court shall address additional facts as necessary to its analysis in the remainder of
24 this Order.

25 ANALYSIS

26 **A. Legal Standards Applicable to Motions for Summary Judgment.**

27 Summary judgment is proper when the "pleadings, depositions, answers to
28 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

1 genuine issue as to any material fact and that the moving party is entitled to judgment as a
2 matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” only if there is sufficient evidence
3 for a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*,
4 477 U.S. 242, 248-49 (1986). A fact is “material” if the fact may affect the outcome of the case.
5 *Id.* at 248. “In considering a motion for summary judgment, the court may not weigh the
6 evidence or make credibility determinations, and is required to draw all inferences in a light
7 most favorable to the non-moving party.” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir.
8 1997).

9 A principal purpose of the summary judgment procedure is to identify and dispose of
10 factually unsupported claims. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323-24 (1986). The
11 party moving for summary judgment bears the initial burden of identifying those portions of the
12 pleadings, discovery, and affidavits which demonstrate the absence of a genuine issue of
13 material fact. *Id.* at 323. Where the moving party will have the burden of proof on an issue at
14 trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for
15 the moving party. *Id.* Once the moving party meets this initial burden, the non-moving party
16 must go beyond the pleadings and by its own evidence “set forth specific facts showing that
17 there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The non-moving party must “identify
18 with reasonable particularity the evidence that precludes summary judgment.” *Keenan v. Allan*,
19 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251
20 (7th Cir. 1995)) (stating that it is not a district court’s task to “scour the record in search of a
21 genuine issue of triable fact”). If the non-moving party fails to make this showing, the moving
22 party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

23 **B. Legal Standards Applicable to Qualified Immunity.**

24 In support of their motion, Defendants argue that they are entitled to qualified immunity
25 on Plaintiff’s claims. Qualified immunity is “an entitlement not to stand trial or face the other
26 burdens of litigation.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). The privilege is an
27 immunity from suit rather than a mere defense to liability. *Id.* As a result, the Supreme Court
28 has repeatedly stressed the importance of resolving immunity questions at the earliest possible

1 stage in litigation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001) (citing *Hunter v. Bryant*, 502 U.S.
2 224, 227 (1991)).

3 In *Saucier*, the Supreme Court stated that a court called upon to rule on the issue of
4 qualified immunity must ask the following threshold question: “Taken in the light most
5 favorable to the party asserting the injury, do the facts alleged show the officer’s conduct
6 violated a constitutional right?” *See id.* (citing *Siegert v. Gilley*, 500 U.S. 226, 232 (1991)). “If
7 no constitutional right would have been violated were the allegations established, there is no
8 necessity for further inquiries concerning qualified immunity.” *Id.* However, if the Court finds
9 that the facts would show the violation of a constitutional right, the next inquiry is to determine
10 “whether the right was clearly established.” *Id.*

11 A constitutional right is clearly established for qualified immunity purposes if “[t]he
12 contours of the right [are] sufficiently clear that [at the time the alleged unlawful action is
13 taken] a reasonable official would understand that what he is doing violates that right.” *Id.* at
14 202 (citing *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). “This is not to say that an
15 official action is protected by qualified immunity unless the very action in question has
16 previously been held unlawful ...; but it is to say that in the light of pre-existing law the
17 unlawfulness must be apparent.” *Anderson*, 483 U.S. at 640. “In other words, an officer who
18 makes a reasonable mistake as to what the law requires under a given set of circumstances is
19 entitled to the immunity defense.” *Boyd v. Benton Co.*, 374 F.3d 773, 781 (9th Cir. 2004)
20 (citing *Saucier*, 533 U.S. at 205). Thus, a court “must determine whether the law governing the
21 official’s conduct was clearly established at the time the challenged conduct occurred.”
22 *Mendoza v. Block*, 27 F.3d 1357, 1360 (9th Cir. 1994) (citing *Hallstrom v. Garden City*, 991
23 F.2d 1473, 1482 (9th Cir. 1993)). A court should then address the question “whether, under that
24 clearly established law, a reasonable officer could have believed the conduct was lawful.” *Id.*

25 **C. Claims Against the Defendants Police Officers.**

26 Before even considering the issue of qualified immunity, the Court must determine
27 whether the police officers had probable cause to arrest Georgiy. Because the Court finds that
28 they did have probable cause and therefore there is no constitutional violation, that ends the

1 inquiry. The Court need not analyze the second step to determine whether the officials' conduct
2 violated clearly established rights.

3 "Probable cause to arrest exists when officers have knowledge or reasonably trustworthy
4 information sufficient to lead a person of reasonable caution to believe an offense has been or is
5 being committed by the person being arrested." *United States v. Lopez*, 482 F.3d 1067, 1072
6 (9th Cir. 2007) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). The Court looks to "the totality
7 of the circumstances known to the arresting officers, [to determine if] a prudent person would
8 have concluded there was a fair probability that [the defendant] had committed a crime."
9 *United States v. Smith*, 790 F.2d 789, 792 (9th Cir. 1986). Probable cause is an objective
10 standard and the officer's subjective intention in exercising his discretion to arrest is immaterial
11 for Fourth Amendment purposes. *Lopez*, 482 F.3d at 1072.

12 The determination whether these was probable cause is based upon the information the
13 officer had at the time of making the arrest. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004)
14 ("Whether probable cause exists depends on the reasonable conclusion to be drawn from the
15 facts known to the arresting officer at the time of the arrest"). It is essential to avoid hindsight
16 analysis, *i.e.*, to consider additional facts that became known only after the arrest was made. *Cf.*
17 *Hansen v. Black*, 885 F.2d 642, 645 (9th Cir. 1989) (holding that the reasonableness inquiry is
18 judged from the perspective of a reasonable office on the scene rather than with 20/20 vision of
19 hindsight).

20 **1. Fourth Cause of Action is Dismissed.**

21 In his fourth cause of action, Plaintiff Georgiy alleges that the police officer defendants
22 deprived him of his Fourth Amendment right to be free of unreasonable search and seizure due
23 to his warrantless arrest and brief detention. The Court finds that summary judgment on this
24 claim is appropriate because the undisputed facts establish that there was legally sufficient
25 probable cause to arrest Plaintiff, and the police officers may lawfully detain and arrest a person
26 if they have probable cause to do so. *See Beck v. Ohio*, 379 U.S. 89, 91 (1964). The plaintiff in
27 a civil rights action has the burden of demonstrating lack of probable cause, after a defendant
28 has provided "some evidence that the arresting officers had probable cause for a warrantless

1 arrest.” *Dubner v. City & County of San Francisco*, 266 F.3d 959, 965 (9th Cir. 2001). The
2 determination of whether probable cause existed focuses on the “facts available to the officers
3 at the moment of the arrest.” *Beck*, 379 U.S. at 89, 96. The existence of probable cause
4 necessarily turns upon the particular facts of the individual case. *John v. City of El Monte*, 515
5 F.3d 936, 941 (9th Cir. 2008).

6 In this matter, Plaintiff Georgiy was arrested on a charge of violating California Penal
7 Code § 273d(a), felony child endangerment. The elements of the offense are willful infliction
8 of cruel and inhuman corporal punishment or an injury resulting in a traumatic condition.
9 Before going to arrest Georgiy, the police officers had the following information: (1) Yvan had
10 told his mother who reported to the police, that Georgiy had struck the child with a closed fist;
11 (2) Yvan told Officer Lew that his father had hit him with a closed fist; (3) Yvan told Officer
12 Popoz the same thing, in Russian and out of the presence of his mother; (4) Yvan had reported
13 the same event to two paramedics; (5) Yvan complained of back pain; and (6) there was a
14 visible bruise on Yvan’s thigh. (*See Shapiro Decl.*, Ex. 2 at 36:24-37:24, 49:22-50:25; Ex. 3 at
15 33:2-34:22; Ex. 5 at 12:1-13:18; Ex. 6 at 17:19-24.)

16 In *John v. City of El Monte*, 515 F.3d 936 (9th Cir. 2008), the Court reversed the
17 decision of the district court denying summary judgment on a claim of qualified immunity. In
18 that case, the appellate court found that the officer had probable cause to arrest a female teacher
19 for allegedly sexually molesting a ten-year-old female student. The officers interviewed the
20 alleged victim, found her description of events to be accurate, and found the contemporaneous
21 evidence of notes describing the teacher behaving inappropriately to corroborate the allegations.
22 *Id.* at 941. The court found that the officers “had probable cause to arrest because ‘under the
23 totality of the circumstances known to the arresting officer[], a prudent person could have
24 concluded that [she] had committed the crime.’” *Id.* (citing *Peng v. Penghu*, 335 F.3d 970, 976
25 (9th Cir. 2003)).

26 Plaintiff, however, argues that the information known to the police officers at the time of
27 his arrest is insufficient as a matter of law to rise to the level of probable cause to arrest. First,
28 Plaintiff contends that the officers’ reliance on the boy’s report of the alleged abuse was

1 misplaced as the boy was likely coached by his mother as part of an ongoing custody dispute
2 between the parents. Plaintiff contends that an objectively reasonable officer would have
3 conducted a further investigation, including calling the accused father to ascertain his version of
4 events. The Court finds that such a course was not necessary – there is no support for the
5 position that an arresting officer inquire of the suspect whether the charges against him are
6 well-taken.¹ Further, Plaintiff tries to distinguish relevant authority on the basis that the
7 reporting child was older and there was no physical evidence of a crime. The Court finds those
8 distinctions unpersuasive. There was physical evidence of bruising on the child, although there
9 is some dispute about the extent of such bruising. Further, the fact that the six-year-old boy was
10 consistent over the five times he recounted the experience with his father is further support for
11 the reasonable belief that there was probable cause to arrest the father.

12 In *John*, the Court further stated that

13 In the context of the probable cause inquiry, we cannot say that on this evidence,
14 a reasonable jury could have reached the opposite conclusion. Even if a
15 reasonable jury might conclude the officer lacked probable cause, the arrest was
entitled to qualified immunity from a jury trial.

16 *Id.* Similarly, here, the Court finds that the physical evidence of bruises on the child’s thigh and
17 the child’s consistency throughout five opportunities to retell the events, under the totality of
18 the circumstances, demonstrates that the arresting officers had probable cause. Therefore, the
19 Court finds that because there was no constitutional violation and the fourth claim for violation
20 of Plaintiff Georgiy’s civil rights is subject to summary judgment. Furthermore, the Court finds
21 that even if there were a factual dispute regarding probable cause, the police officers are entitled
22 to qualified immunity.

23 Even assuming there was a triable issue of fact relating to the existence of probable
24 cause to arrest Plaintiff Georgiy, the Court must determine whether “it would be clear to a

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26 ¹ The Court finds the case cited by Plaintiffs, *Sevigny v. Dicksey*, 846 F.2d 953, 956
27 (4th Cir. 1988), to be entirely distinguishable on the facts. In that case, the Court found that
28 the police officers failed to conduct a proper investigation where the officers declined to
interview an impartial neighbor who allegedly witnessed the criminal acts. Here, inquiring
of the accused whether he in fact abused his own child is clearly distinguishable and the
Court does not hold that the lack of this inquiry renders the arrest unconstitutional for lack of
due process.

1 reasonable officer that his conduct was unlawful in the situation he confronted.” *Saucier*,
2 533 U.S. at 202. “If the law did not put the officer on notice that his conduct would be clearly
3 unlawful, summary judgment based on qualified immunity is appropriate.” *Id.* Given the
4 undisputed facts, the officers involved had a reasonable belief that they had probable cause to
5 arrest Plaintiff pursuant to California Penal Code § 273d(a). Even if the reasonable belief were
6 mistaken, qualified immunity attaches because their conduct did not violate a clearly
7 established constitutional right. *See Jackson v. City of Bremerton*, 268 F.3d 646, 651 (9th Cir.
8 2001) (holding that defendants were entitled to qualified immunity because, although mistaken,
9 they reasonably believed that their conduct did not violate a clearly established constitutional
10 right).

11 **2. Seventh Cause of Action is Dismissed.**

12 Further, because the Court finds there was reasonable cause to arrest, the causes of
13 action for battery in carrying out the arrest and false imprisonment claim associated with
14 Plaintiff Georgiy’s detention are subject to summary judgment. *See* California Penal Code §
15 835a (“any peace officer who has reasonable cause to believe that the person to be arrested has
16 committed a public offense may use reasonable force to effect the arrest.”) Plaintiff has not
17 alleged excessive force during his arrest, and accordingly, as Plaintiff conceded at oral
18 argument on this motion, the cause of action for battery is subject to summary judgment.

19 **3. Eighth Cause of Action is Dismissed.**

20 Similarly, the cause of action for false arrest/false imprisonment is subject to summary
21 judgment as the existence of probable cause is a complete defense to a claim of false arrest. *See*
22 *White v. Martin*, 215 Cal. App. 2d 641, 643 (1963); Cal. Penal Code § 836.5(b) (barring
23 liability “arising out of any arrest that is lawful or that the public office of employee, at the time
24 of the arrest, had reasonable cause to believed was lawful.”)

25 Accordingly, the Court GRANTS summary judgment as to claims four, seven and eight.
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1 **D. Claims Against the Defendant Social Workers.**

2 **1. First and Second Causes of Action Are Dismissed.**

3 The first and second causes of action allege that the various social workers involved in
4 this matter violated both Plaintiffs' constitutional rights in violation of 42 U.S.C. § 1983 by
5 removing the minor from the custody of his father in violation of the rights of familial
6 association with each other. Plaintiffs allege that the child was removed without consent,
7 probable cause, a protective custody warrant and without exigent circumstances justifying such
8 removal. Similar to the police officer defendants, in order to prevail, Plaintiffs must
9 demonstrate that (1) the social workers violated a clearly established constitutional right and (2)
10 that they unreasonably believed that their conduct was constitutionally sound. *See Saucier*, 533
11 U.S. at 201.

12 Although the rights to familial association is protected by the Constitution, parents have
13 a right not to "be separated from their children without due process of law, except in
14 emergencies." *Mabe v. San Bernadino County Dep't of Public Social Services*, 237 F.3d 1101,
15 1107 (9th Cir. 2001). Removal of a child is warranted "without a prior judicial authorization if
16 the information [officials] possess at the time of the seizure is such as provides reasonable cause
17 to believe that the child is in imminent danger of serious bodily injury and that the scope of the
18 intrusion is reasonably necessary to avert that specific injury." *Wallis v. Spencer*, 202 F.3d
19 1126, 1138 (9th Cir. 2000) (citations omitted). In this case, the social workers were aware that
20 (1) the child had repeatedly told the police officers and paramedics the same, consistent story
21 that his father had abused him; (2) there were bruises noted on the child's body; (3) the father
22 had been arrested for the alleged offense for felony abuse of the child which arrest was highly
23 unusual; (4) the father had a prior substantiated case of child abuse on his record; and (5)
24 Defendant Deborah Goldstein had asked the father, through speaking with his attorney, whether
25 he preferred the child remain with the mother pending a more thorough investigation or if he
26 would prefer to have the child sheltered, and the father opted for removal. (*See Shapiro Decl.*,
27 Ex. 9 at 75:18-78:25, 138:17-19, 139:10-11, 142:14-143:15, 166:13-167:24, 169:2-170:4; Ex.
28 12 at 51:4-24, 70:10-71:25, 81:4-23, 91:10-92:18, 104:15-18; Declaration of Robert R. Powell,

1 Ex. N at 95:15-103:21, 114:15-24, 164:12-168:12, 169:22-170:4; Ex. P at 71:5-72:25, 74:19-
2 20.)

3 Under these undisputed factual circumstances, the Court finds that there were exigent
4 circumstances giving rise to the need to remove the son from the father's custody without
5 obtaining a protective custody warrant. Here, there is no dispute of material fact regarding the
6 circumstances regarding whether there was reasonable cause to believe the child faced an
7 immediate threat of abuse. *See Ram v. Rubin*, 118 F.3d 1306, 1311 (9th Cir. 1997) ("serious
8 allegations of abuse which are investigated and corroborated usually give rise to a reasonable
9 inference of imminent danger.") Therefore, the social worker defendants are entitled to
10 judgment as a matter of law.²

11 However, even assuming *arguendo* that the social workers violated Plaintiffs'
12 constitutional rights, they were reasonable to believe that their conduct was within
13 constitutional parameters, considering there was ample undisputed indicia of potential harm to
14 the child. As a social worker with years of experience, in addition to all of the information she
15 had, Ms. Goldstein was acting reasonably when she felt concerned that, upon his release from
16 custody, the father might have been justifiably angry. (*See Shapiro Decl.*, Ex.9 at 138:17-19,
17 139:10-11, 166:13-167:24, 169:2-170:4.) Given the choice between an elected removal of the
18 child for one night in a shelter and the possibility of the parent's possibly retributive anger, in
19 conjunction with the current allegations and a substantiated past history, the social workers
20 acted reasonably in removing the child. Therefore, they are entitled to qualified immunity as a
21

22 ² To the extent Plaintiffs have attempted to state a claim for *Monell* liability on the
23 part of Children Protective Services as an agency, such a claim is without merit as the Court
24 finds that the exigent circumstances in this matter justified the removal of the child without
25 further due process. *See Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 691
26 (1978) (holding that a municipal agency may not be "held liable unless action pursuant to
27 official municipal policy of some nature caused a constitutional tort.") Thus, to establish that
28 the *Monell* liability, Plaintiffs must demonstrate that: (1) they had a constitutional right of
which they were deprived; (2) the agency had a custom created by those who may be fairly
said to determine official policy, which amounted to, at a minimum, deliberate indifference
to Plaintiffs' constitutional rights; and (3) the custom was the moving force behind the
constitutional violation. *See Blair v. City of Pomona*, 223 F.3d 1074, 1079 (9th Cir. 2000);
see also Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992). Plaintiffs have not met their
burden either to establish that there was such a constitutional violation or that the agency had
a custom of such violations.

1 matter of law. Therefore, the first and second causes of action fail for this additional reason.
2 *See Saucier*, 533 U.S. at 201.

3 **2. Third and Ninth Causes of Action Are Dismissed.**

4 The undisputed facts also justify the social workers' continued detention of the child
5 pending a full investigation and therefore Plaintiffs' third cause of action for violation of the
6 child's civil rights in violation of 42 U.S.C. § 1983 fails as well. Plaintiff Georgiy contends that
7 the social workers acted in violation of his due process rights when filing a dependency petition
8 and continuing Yvan's placement with his mother pending further investigation. In order to
9 violate one's right to substantive due process here, the conduct must be so offensive and
10 intentional as to "shock the conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 846
11 (1998). The Court does not find that, considering the undisputed facts, the conduct undertaken
12 by the social worker defendants constitutes conduct that was so offensive and intentional as to
13 shock the conscience. Rather, the agency determined that a further investigation was warranted
14 and, having placed the child in the mother's care, erred on the side of caution in not returning
15 the child to the previous custody schedule which would have required placing Yvan back in the
16 care of his father, against whom an investigation was pending. The agency also withdrew the
17 dependency petition without waiting for the decision of the Family Court, based on its
18 investigation and returned Yvan to his father's care within one week of the original detention.
19 The Court finds that, under the undisputed circumstances presented to the social workers, they
20 did not act in a manner so intentional and offensive as to shock the conscience. Accordingly,
21 summary judgment as to the third claim for relief is appropriate. Because the Court finds that
22 the continued placement of Yvan with his mother does not constitute an unconstitutional
23 detention, the Court likewise grants summary judgment as to the ninth cause of action for the
24 state law claim based upon the same facts for false arrest/imprisonment as to Yvan.

25 **3. Fifth Cause of Action is Dismissed.**

26 Both Plaintiffs allege a cause of action under California Civil Code § 52.1 against two of
27 the social worker defendants based on their alleged attempt to coerce Georgiy into agreeing to
28 let his son stay with his mother pending an investigation. Section 52.1 proscribes

1 “interfer[ence] by threats, intimidation or coercion, or attempts to interfere by threats,
2 intimidation or coercion, with the exercise or enjoyment by any individual of rights secured” by
3 the federal or state constitution. Cal. Civ. Code § 52.1(a). Section (j) of the same statute
4 provides:

5 Speech alone is not sufficient to support an action brought pursuant to
6 subdivision (a) or (b), except upon a showing that the speech itself threatens
7 violence against a specific person or group of persons; and the person or group
8 of persons against whom the threat is directed reasonably fears that, because of
the speech, violence will be committed against them or their property and that the
person threatening violence had the apparent ability to carry out the threat.

9 Viewing the facts alleged in the light most favorable to Plaintiffs, the Court finds that
10 the acts complained of are speech alone and therefore fail to state a claim under California Civil
11 Code § 52.1. Accordingly, the Court grants summary judgment as to Plaintiffs’ fifth cause of
12 action.

13 **4. Six Cause of Action is Dismissed.**

14 Plaintiffs allege a cause of action for intentional infliction of emotional distress
15 (“IIED”). To state a claim for IIED, a plaintiff must allege: “(1) outrageous conduct by the
16 defendant, (2) intention to cause or reckless disregard of the probability of causing emotional
17 distress, (3) severe emotional suffering and (4) actual and proximate causation of the emotional
18 distress.” *Cole v. Fair Oaks Fire Dept.*, 43 Cal. 3d 148, 155 n.7 (1987). This tort imposes
19 liability for “conduct exceeding all bounds usually tolerated by a decent society, of a nature
20 which is especially calculated to cause, and does cause, mental distress.” *Id.*

21 The Court has already found that, taken in the light most favorable to Plaintiffs, the
22 undisputed facts do not demonstrate that the conduct by defendants was so offensive or
23 intentional as to shock the conscience. Similarly, and for the same reasons, the Court does not
24 find that the allegations made in support of Plaintiffs’ IIED claim state a claim upon which
25 relief may be granted.³ Accordingly, summary judgment as to the six cause of action is granted.

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28 ³ In the alternative, upon dismissal of the federal claims, the Court declines to
exercise jurisdiction over Plaintiffs’ state law claims (claims six through nine). *See* 28
U.S.C. § 1367(c)(3).

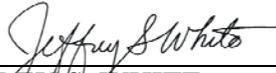
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CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' motion for summary judgment. A separate judgment shall issue.

IT IS SO ORDERED.

Dated: September 26, 2008



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE