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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN FINKELSTEIN, et al.,

Plaintiffs,

v.

SAN MATEO COUNTY DISTRICT  
ATTORNEY'S OFFICE, et al.,

Defendants.

Case No. [18-cv-00009-EMC](#)

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS OR STAY**

Docket No. 13

Plaintiffs John and Jennifer Finkelstein have filed a § 1983 case against persons and entities who procured and/or assisted in procuring a search warrant against Mr. Finkelstein. Defendants are Jeffrey S. Cichocki, the City of San Mateo, Nicolas Ryan (a City employee), the San Mateo County District Attorney’s Office, and Vishal D. Jangla (a County employee). Currently pending before the Court is a motion to dismiss or stay brought by two of the defendants – namely, Mr. Ryan and the City of San Mateo (collectively, “San Mateo Defendants”). The motion is based on *Younger* abstention. Having considered the parties’ briefs and accompanying submissions, as well as the oral argument of counsel, the Court hereby **DENIES** the motion.

**I. FACTUAL & PROCEDURAL BACKGROUND**

Plaintiffs John and Jennifer Finkelstein have filed a § 1983 case against persons and entities who procured and/or assisted in procuring a search warrant against Mr. Finkelstein. These persons and entities include the San Mateo Defendants. The warrant that ultimately issued resulted in a search of Mr. Finkelstein’s residence and cars for child pornography, and items seized included computers, external hard drives, and cell phones. Evidently, nothing inculpatory was found and Mr. Finkelstein was never charged with any crime.

Subsequently, Mr. Finkelstein initiated a special proceeding under California Penal Code

1 §§ 1539-40 to challenge the search warrant and to recover computers, hard drives, and cell phones  
2 that were seized from him pursuant to the warrant. *See* Defs.’ RJN, Ex. A (motion)<sup>1</sup>; Compl., Ex.  
3 B (order on motion). California Penal Code § 1539 provides in relevant part that, “if the grounds  
4 on which the warrant was issued are controverted and a motion to return property is made . . . by a  
5 person who is not a defendant in a criminal action at the time the hearing is held, the judge or  
6 magistrate shall proceed to take testimony in relation thereto.” Cal. Pen. Code § 1539. Section  
7 1540 provides in relevant part: “If it appears . . . that there is no probable cause for believing the  
8 existence of the grounds on which the warrant was issued, the magistrate must cause [the property  
9 taken] to be restored to the person from whom it was taken.” *Id.* § 1540. The DA’s Office and the  
10 San Mateo City Attorney both opposed Mr. Finkelstein’s request for relief. *See* Compl. ¶ 27.

11 In October 2017, a California superior court judge granted Mr. Finkelstein’s motion to  
12 traverse the search warrant. The superior court declared the search warrant invalid and voided it.  
13 The City of San Mateo (and not the state) appealed in December 2017. *See* Defs.’ RJN, Ex. B  
14 (notice of filing of appeal). It appears that that appeal (Case No. A153206) is still pending.<sup>2</sup> *See*  
15 Defs.’ RJN, Ex. C (docket sheet).

16 In the meantime, the Finkelsteins initiated this federal court action, asserting the following  
17 causes of action (all related to the search warrant that was obtained against Mr. Finkelstein):

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19 <sup>1</sup> The Finkelsteins have objected to the San Mateo Defendants’ request for judicial notice on the  
20 grounds of (1) failure to demonstrate admissibility under Federal Rule of Evidence 201; (2) failure  
21 to authenticate; and (3) irrelevance. The objections are overruled. The documents offered by the  
22 San Mateo Defendants are primarily state court documents that have been filed. While the Court  
23 may not consider the truth of the content of the documents, the Court may take judicial notice of  
24 the fact that the documents were filed. As for relevance, clearly, the documents are relevant to the  
25 pending issue before the Court – *i.e.*, *Younger* abstention which requires consideration of whether  
26 there are ongoing state court proceedings.

27 <sup>2</sup> There was an independent proceeding in state court that also concerns the search warrant;  
28 however, that proceeding has concluded. More specifically, in November 2017, the State of  
California and the City of San Mateo filed before a state appellate court a petition for a writ of  
mandate and/or certiorari (Case No. A152939). In that petition, the governmental entities argued,  
*inter alia*, that (1) the state superior court acted in excess of its jurisdiction by granting a motion to  
quash a warrant, not as part of a return-of-property or suppression adjudication but rather to clear  
Mr. Finkelstein’s name; (2) the state superior court abused its discretion in rendering a decision in  
a moot case (*i.e.*, property had been returned to Mr. Finkelstein); and (3) the state superior court’s  
finding that Mr. Ryan had made a reckless, material misstatement of fact was not supported by  
substantial evidence. *See* Defs.’ RJN, Ex. D (petition). The petition for relief was denied as moot  
on December 1, 2017. *See* Merin Decl., Ex. A (docket sheet).

- 1 (1) Judicial deception in violation of § 1983 (against the individual defendants only);
- 2 (2) Use of untrustworthy information to establish probable cause in violation of § 1983
- 3 (against the individual defendants only);
- 4 (3) Use of untrustworthy information to procure a warrant in violation of § 1983 (against
- 5 the DA’s Office and City only);
- 6 (4) Use of search warrant application lacking probable cause on its face to procure a
- 7 warrant in violation of § 1983 (against the individual defendants only); and
- 8 (5) Unreasonable search and seizure without a warrant, probable cause, and exigent
- 9 circumstances in violation of § 1983 (against the individual defendants only).

## 10 II. DISCUSSION

11 Currently pending before the Court is the San Mateo Defendants’ motion to dismiss or stay  
12 pursuant to *Younger* abstention.

13 The case that gave its name to the *Younger* abstention doctrine  
14 originated when a criminal defendant sought a federal court  
15 injunction under 42 U.S.C. § 1983 against a pending state court  
16 prosecution, contending that the statute under which he was being  
17 prosecuted violated the First Amendment. 401 U.S. at 41. Relying  
18 in part on traditional equitable principles and in part on  
19 considerations of comity among dual judicial systems grouped under  
20 the term “Our Federalism,” *id.* at 44, *Younger* reiterated a  
21 “longstanding public policy against federal court interference with  
22 state court proceedings,” such that “the normal thing to do when  
23 federal courts are asked to enjoin pending [criminal] proceedings in  
24 state courts is not to issue such injunctions.” *Id.* at 43, 45; *see also*  
25 *id.* at 46 (stressing “the fundamental policy against federal  
26 interference with state criminal prosecutions”); *id.* at 53 (referring to  
27 “settled doctrines that have always confined very narrowly the  
28 availability of injunctive relief against state criminal prosecutions”).

22 *Green v. City of Tucson*, 255 F.3d 1086, 1094 (9th Cir. 2001), *overruled in part on other grounds*  
23 *by Gilbertson v. Albright*, 381 F.3d 965, 982 (9th Cir. 2004). As indicated by the above, *Younger*  
24 arose in the context of criminal proceedings and evidences particular solicitude by the federal  
25 courts towards ongoing state criminal proceedings. Where there is a parallel civil case, abstention  
26 doctrines other than *Younger* may apply,<sup>3</sup> but generally *Younger* does not. Admittedly, the

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28 <sup>3</sup> *See, e.g., R.R. St. & Co. v. Transp. Ins. Co.*, 656 F.3d 966, 975 (9th Cir. 2011) (noting that,  
“[g]enerally, as between state and federal courts, the rule is that the pendency of an action in the

1 Supreme Court has extended the *Younger* doctrine to some ongoing state civil proceedings but that  
 2 extension is narrow in scope; that is, “the *Younger* principle [has been extended] to civil  
 3 enforcement actions ‘akin to’ criminal proceedings and to suits challenging ‘the core of the  
 4 administration of a State’s judicial system.’” *ReadyLink Healthcare, Inc. v. State Comp. Ins.*  
 5 *Fund*, 754 F.3d 754, 758 (9th Cir. 2014).

6 Thus, under current law, *Younger* abstention applies only when the state proceedings: (1)  
 7 are ongoing, (2) are criminal or quasi-criminal enforcement actions or involve a state’s interest in  
 8 enforcing the orders and judgments of its courts, (3) implicate an important state interest, and (4)  
 9 allow litigants to raise federal challenges. *See id.* at 759. “If these ‘threshold elements’ are met, [a  
 10 court] then consider[s] whether the federal action would have the practical effect of enjoining the  
 11 state proceedings . . . .” *Id.* *Younger* abstention “remains an extraordinary and narrow exception  
 12 to the general rule” that “[a] federal court’s obligation to hear and decide a case is virtually  
 13 unflagging.” *Arevalo v. Hennessy*, No. 17-17545, 2018 U.S. App. LEXIS 3210, at \*5 (9th Cir.  
 14 Feb. 9, 2018) (internal quotation marks omitted).

15 *Younger* abstention does not apply to the instant case for at least two reasons. First, the  
 16 only ongoing state court proceeding on which the San Mateo Defendants rely is the appeal of the  
 17 state court’s order which invalidated and voided the search warrant as part of a special proceeding  
 18 under California Penal Code §§ 1539-40. That action was a post facto challenge to the legality of  
 19 the search warrant and sought to recover computers, hard drives, and cell phones that were seized  
 20 from Mr. Finkelstein pursuant to the warrant. Mr. Finkelstein was never charged with any crime,  
 21 and thus was never a criminal defendant subject to a criminal prosecution. Thus, there is no  
 22 ongoing criminal prosecution which might be the basis for *Younger* abstention to apply.  
 23 Moreover, the ongoing state proceeding here cannot be characterized as a civil enforcement action  
 24 akin to a criminal prosecution. *See, e.g., Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604-05 (1975) (a  
 25 civil nuisance proceeding). Therefore, the first element of *Younger* abstention can be satisfied

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26  
 27 state court is no bar to proceedings concerning the same matter’ in a federal court” but that there  
 28 are “exceptions to the general rule concerning concurrent state and federal proceedings” – *e.g.,*  
*Wilton/Brillhart and Colorado River*).

1 only if the state proceeding at issue here “involv[es] certain orders . . . uniquely in furtherance of  
2 the state courts’ ability to perform their judicial functions.” *Sprint Communs., Inc. v. Jacobs*, 134  
3 S. Ct. 584, 591-92 (2013) (internal quotation marks omitted). The Ninth Circuit has described  
4 such orders as orders “at the ‘core’ of the judicial process”; orders “involv[ing] the administration  
5 of the state judicial process”; and orders implicating “the process by which a state ‘compel[s]  
6 compliance with the judgments of its courts.’” *ReadyLink*, 754 F.3d at 759. Examples of such  
7 orders include the following: a civil contempt order, a requirement for posting bond pending  
8 appeal, or an appointment of a receiver. *See id. Compare Portrero Hills Landfill, Inc. v. County*  
9 *of Solano*, 657 F.3d 876, 887 (9th Cir. 2011) (noting that plaintiff’s “suit challenges neither the  
10 authority of state courts to issue such writs [of mandate] nor processes for their enforcement once  
11 issued”).

12 In *Cook v. Harding*, 879 F.3d 1035 (9th Cir. 2018), the Ninth Circuit recently addressed  
13 the issue of whether a state court proceeding fell within the ambit of this category. The plaintiff in  
14 *Cook* entered into a gestational surrogacy agreement with an individual. The relationship between  
15 the plaintiff and the individual soured before the children were born. The plaintiff thus filed a  
16 complaint in state superior court, alleging that a state statute finding gestational surrogacy  
17 contracts enforceable was unconstitutional. The state court rejected the complaint as being filed in  
18 the wrong court and without proper service. The individual who had contracted with the plaintiff  
19 then filed a petition in the state Children’s Court to enforce the contract; the plaintiff responded  
20 with a counterclaim challenging the validity of the contract and the constitutionality of the state  
21 statute. The next day, the plaintiff filed a nearly identical complaint in federal district court  
22 against the individual as well as state and county personnel, raising her constitutional claims under  
23 42 U.S.C. § 1983. The district court abstained pursuant to *Younger* but the Ninth Circuit reversed.

24 The defendants argued that *Younger* abstention was applicable because the state action was  
25 the right kind of ongoing state proceeding – one involving the state’s interest in enforcing the  
26 orders and judgments of its courts. The Ninth Circuit disagreed, explaining as follows:

27 Defendants contend that the [state court] case falls within this  
28 category because challenges to parentage determinations could  
impede the state courts’ ability to make other decisions based on that

1 parental status, such as custody and child support. This is an  
2 argument regarding the state courts' power to apply its laws in  
3 subsequent proceedings and the state's interest in its interrelated  
4 family laws. *It does not relate to the state courts' ability to enforce*  
5 *compliance with judgments already made.*

6 Following *Sprint*, we have made clear that the category of cases  
7 involving the state's interest in enforcing its courts' orders and  
8 judgments does not include cases involving "a 'single state court  
9 judgment' interpreting [a private agreement] and state law" because  
10 such cases do not implicate "the process by which a state 'compel[s]  
11 compliance with the judgments of its courts.'" *Cook does not*  
12 *question the process by which California courts compel compliance*  
13 *with parentage determinations under state law.* Rather, she alleges  
14 that Section 7962 is unconstitutional. Cook accordingly challenges  
15 the legislative prescriptions of Section 7962. As the Court held even  
16 before *Sprint*, *Younger* does not "require[] abstention in deference to  
17 a state judicial proceeding reviewing legislative . . . action."

18 2018 U.S. App. LEXIS 887, at \*10-11 (emphasis added). *Compare, e.g., Juidice v. Vail*, 430 U.S.  
19 327, 335 (1977) (stating that the contempt process is how a state "vindicates the regular operation  
20 of its judicial system"; also stating "[t]he contempt power lies at the core of the administration of a  
21 State's judicial system").

22 The instant case is analogous to *Cook*. Like the state proceeding in *Cook*, the state  
23 proceeding at issue here – *i.e.*, the appeal of the state superior court order invalidating and voiding  
24 the search warrant issued against Mr. Finkelstein – does not involve an order that is at the core of  
25 the judicial process; it does not involve the administration of the state judicial process or implicate  
26 the process by which a state compels compliance with the judgments of its courts. As the San  
27 Mateo Defendants admit, in the appeal, the government is simply asking whether a "judicial  
28 remedy is still available once the seized property has [already] been returned to the complainant."  
29 Mot. at 4. Neither the government nor Mr. Finkelstein is challenging the *process* by which by  
30 which California courts decide whether seized property should be returned to a person subject to a  
31 search warrant but never charged as a criminal defendant. Indeed, Mr. Finkelstein's action is akin,  
32 if anything, to a post-facto civil rights claim seeking relief for governmental wrongdoing.

33 Perhaps recognizing the weakness of their position, the San Mateo Defendants made a new  
34 argument in their reply brief – namely,

35 that California Penal Code §§ 1539-1540 establish[] a special  
36 proceeding by which the judicial officer who issued a search warrant  
37 can later review that decision in the context of returning the seized

1 property. At its core, [the proceeding] is about the California courts’  
2 ability to review their own previously issued orders – its own  
3 administration of its judicial process.

3 Reply at 4.

4 But this argument is not persuasive. That a court has the ability to (in essence) reconsider  
5 a decision does not mean that a core aspect of the administration of the state judicial process is at  
6 issue. To hold that all §§ 1539-40 proceedings would automatically qualify for *Younger*  
7 abstention would lead to an unwarranted expansion of *Younger* which the Supreme Court reined in  
8 with *Sprint*.

9 Second, even if the San Mateo Defendants were correct on the first *Younger* element (they  
10 are not), as noted above, “[*Younger*] abstention is only appropriate in the narrow category of  
11 circumstances in which the federal court action would actually ‘enjoin the [ongoing state]  
12 proceeding, or have the practical effect of doing so.’” *AmerisourceBergen Corp. v. Roden*, 495  
13 F.3d 1143, 1151 (9th Cir. 2007). According to the San Mateo Defendants, this requirement has  
14 been met in the instant case because the federal action could have a preclusive effect on the  
15 pending state proceeding. But the Ninth Circuit has clearly held that this *Younger* requirement is  
16 not satisfied just because there is a potential conflict between the federal and state court  
17 proceedings. *See id.* This requirement is not met simply because “the relief sought in federal  
18 court would, if entertained, likely result in a judgment whose preclusive effect would prevent the  
19 state court from independently adjudicating the issues before it.” *Id.* “[T]he possibility of a race  
20 to judgment is inherent in a system of dual sovereigns and, in the absence of ‘exceptional’  
21 circumstances, . . . that possibility alone is insufficient to overcome the weighty interest in the  
22 federal courts exercising their jurisdiction over cases properly before them.” *Id.*; *see also*  
23 *ReadyLink*, 754 F.3d at 759 (noting that “the mere possibility of inconsistent federal and state  
24 court judgments” is not enough to justify *Younger* abstention or it would “swallow whole both  
25 Colorado River abstention and preclusion”). Otherwise the doctrine of collateral estoppel would  
26 be enlarged and result regularly in *Younger* abstention, a result not countenanced by case law.<sup>4</sup>

27 \_\_\_\_\_  
28 <sup>4</sup> *Cf. Carmona v. Carmona*, 544 F.3d 988 (9th Cir. 2008) (noting that “the *Rooker-Feldman*  
doctrine bars suits ‘brought by state-court losers complaining of injuries caused by state-court

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**III. CONCLUSION**

For the foregoing reasons, the motion to dismiss or stay based on *Younger* abstention is denied.

This order disposes of Docket No. 13.

**IT IS SO ORDERED.**

Dated: March 20, 2018



EDWARD M. CHEN  
United States District Judge

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judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments” – “[i]n practice, . . . a fairly narrow preclusion doctrine, separate and distinct from res judicata and collateral estoppel”).