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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JENNIFER HORST, JMW, *minor*,  
and LAW, *minor*,

Plaintiffs,

v.

STATE OF WASHINGTON  
ASSISTANT ATTORNEY  
GENERAL JODY CAMPBELL,  
DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES, CHILDREN'S  
ADMINSTRATION, DEPARTMENT  
OF CHILD AND FAMILY  
SERVICES AND CHILD  
PROTECTIVE SERVICES, *et al.*,

Defendants.

NO. 4:17-CV-5152-TOR

ORDER DISMISSING COMPLAINT

BEFORE THE COURT is Plaintiffs' Complaint filed on September 26,  
2017 (ECF No. 2; *see also* ECF No. 6 (duplicate)) and Motion to Appoint Counsel  
(ECF No. 7). Plaintiffs Jennifer Horst, JMW, and LAW are proceeding *pro se* and  
*in forma pauperis*. Defendants have not been served.

1 The Court has conducted the required screening of the Complaint (ECF No. 2)  
2 under 28 U.S.C. § 1915(e)(2)<sup>1</sup> and determines that Plaintiffs’ claims do not survive  
3 screening, as discussed below. The Court **will not** direct service of the Complaint  
4 upon Defendants. Because amendment of the Complaint would be futile, the  
5 Complaint is DIMISSED without leave to amend.

#### 6 STANDARD OF REVIEW

7 Section 1915(e) “not only permits but requires” the court to *sua sponte*  
8 dismiss an *in forma pauperis* complaint that is frivolous or malicious; fails to state  
9 a claim on which relief may be granted;<sup>2</sup> or seeks monetary relief against a  
10 defendant who is immune from such relief. *Lopez v. Smith*, 203 F.3d 1122, 1126–

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12 <sup>1</sup> Although 28 U.S.C. §§ 1915 and 1915A reference “prisoners,” the  
13 application of the statutes, including the requirement that the district court screen  
14 the complaint, extends to an *in forma pauperis* complaint. *Calhoun v. Stahl*, 254  
15 F.3d 845 (9th Cir. 2001); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000)  
16 (en banc).

17 <sup>2</sup> A motion to dismiss pursuant to Rule 12(b)(6) is similarly based on whether  
18 the non-moving party has failed to state a claim on which relief can be granted, so  
19 Rule 12(b)(6) standards govern a § 1915 review for legal sufficiency. *Knapp v.*  
20 *Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013).

1 27 (9th Cir. 2000) (en banc). The facts alleged in a complaint are to be taken as  
2 true and must “plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*,  
3 556 U.S. 662, 679 (2009). Mere legal conclusions “are not entitled to the  
4 assumption of truth.” *Id.* The complaint must contain more than “a formulaic  
5 recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550  
6 U.S. 544, 555 (2007). It must plead “enough facts to state a claim to relief that is  
7 plausible on its face.” *Id.* at 570.

#### 8 ALLEGATIONS IN COMPLAINT

9 Plaintiffs’ complaint details a troubling saga arising out of the State of  
10 Washington’s removal of Plaintiffs JMW and LAW from the care of their mother,  
11 Plaintiff Jennifer Horst. In sum, Plaintiffs allege JMW and LAW suffered as a  
12 result of child placement decisions by the State of Washington and its agencies and  
13 employees. Plaintiffs assert a series of statutory and constitutional violations and  
14 cite various legislative acts, *see* ECF No. 2 at 4, many of which do not create a  
15 private right of action or otherwise do not apply.<sup>3</sup>

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17 <sup>3</sup> For example, Plaintiffs cite “the Welfare and Institutions Code[,]” ECF No.  
18 2 at 5, but this appears to reference California, not Washington, law. Plaintiffs also  
19 cite (1) the McKinney-Vento Act, (2) No Child Left Behind Act, (3) Every Student  
20 Succeeds Act, (4) 42 U.S.C. § 622, State Plans for Child Welfare, and (5) the

1 Plaintiffs request the sum of \$50,000 each to Ms. Horst and JMW. ECF No.  
2 2 at 25. Plaintiffs otherwise request an “express prohibitory injunction with the  
3 defendants to withdraw their Title 13 guardianship petition from the Juvenile  
4 division of Benton County Superior Court per Title 28 U.S. Code § 1443 in  
5 reference to case numbers 13-7-00150-6 (dependency case) and 17-7-00070-7  
6 (guardianship case).”<sup>4</sup> ECF No. 2 at 4. Plaintiffs explain that “[t]he Juvenile  
7 division of Benton County Superior Court is scheduled for a guardianship petition  
8 trial in October of 2017. Plaintiffs seek concurrent jurisdiction with the family law  
9 division of Benton County Superior Court so that the dependency in juvenile court  
10 may be dismissed.”<sup>5</sup> ECF No. 2 at 4; *see also* ECF No. 2 at 25.

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14 Adoption Safe Families Act—all of which set conditions for States receiving  
15 federal money rather than create private rights of action.

16 <sup>4</sup> 28 U.S.C. § 1443 merely allows the defendant to remove a suit brought in  
17 state court under certain limited circumstances. This is a right of removal for a  
18 defendant; it does not give Plaintiff access to federal courts nor does it create a  
19 cause of action.

20 <sup>5</sup> The Court does not have concurrent jurisdiction over family matters, as  
discussed more below.

1 **DISCUSSION**

2 Plaintiffs' Complaint (ECF No. 2) centers on a dispute involving the  
3 decision of the State of Washington as it pertains to the domestic relationship of  
4 Plaintiffs. As discussed below in more detail, the Court may not grant the relief  
5 Plaintiffs seek either in the form of monetary damages or injunctive relief.  
6 Accordingly, the case must be dismissed.

7 **A. Monetary damages**

8 Per the Eleventh Amendment of the United States Constitution, federal  
9 courts may not issue an award of monetary damages against a State, its agencies,  
10 or its employees, absent a waiver by the State. *Puerto Rico Aqueduct & Sewer*  
11 *Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993) (“Absent waiver, neither a  
12 State nor agencies acting under its control may ‘be subject to suit in federal  
13 court.’”) (*quoting Welch v. Texas Dept. of Highways and Public Transportation*,  
14 483 U.S. 468, 480 (1987)). “Washington state courts have held that the State of  
15 Washington has not waived its Eleventh Amendment immunity for purposes of  
16 actions under § 1983.” *Safouane v. Fleck*, 226 F. App’x at 760 (9th Cir. 2007)  
17 (citing *Rains v. State*, 100 Wash.2d 660 (1983)). Accordingly, the Court may not  
18 issue an award of damages against the state agency defendants or its employees  
19 acting in their official capacity.

1 Plaintiffs list several employees of the State of Washington as defendants “in  
2 both their official and individual capacities . . . .” ECF No. 2 at 1. However,  
3 Plaintiffs have not alleged anything demonstrating any of the listed defendants did  
4 anything actionable in their individual capacities. Moreover, to the extent there is  
5 any basis for a suit against the named defendants individually, none of the federal  
6 causes Plaintiffs cite apply to private actors and any other remaining claims may  
7 only be brought in a federal court if diversity jurisdiction exists. However  
8 diversity jurisdiction does not exist since the parties all appear to be residents of  
9 Washington.

10 Accordingly, the Court cannot entertain Plaintiff’s suit for monetary  
11 damages.

### 12 **B. Injunctive Relief**

13 The injunctive relief Plaintiffs seek is also beyond the reach of this Court.  
14 Any request to review past decisions involving the merits of a domestic relation  
15 decision of the State must be denied. *See Safouane v. Fleck*, 226 F. App’x at 758  
16 (“Under the *Rooker–Feldman* doctrine, federal courts lack jurisdiction to  
17 determine whether the proceedings regarding parental rights with respect to [their]  
18 children were valid, because those proceedings were concluded before the filing of  
19 this action.”); *see also Exxon–Mobil Corp. v. Saudi Basic Ind. Corp.*, 544 U.S.  
20 280, 284 (2005) (*Rooker–Feldman* doctrine precludes review where Plaintiffs are

1 “state-court losers complaining of injuries caused by state-court judgments  
2 rendered before the district court proceedings commenced and inviting district  
3 court review and rejection of those judgments.”).

4 The Court must abstain from otherwise intervening in ongoing state  
5 domestic relation cases, as “it has been the policy of federal courts to avoid  
6 assumption of jurisdiction in this species of litigation.” *Magaziner v. Montemuro*,  
7 468 F.2d 782, 787 (3d Cir. 1972). As the Supreme Court has stated, “[t]he whole  
8 subject of the domestic relations of husband and wife, parent and child, belongs to  
9 the laws of the states and not to the laws of the United States.” *In re Burrus*, 136  
10 U.S. 586, 593-594 (1890).

11 The Ninth Circuit has addressed the very issue presented before the Court in  
12 the case of *H.C. ex rel. Gordon v. Koppel*, which in relevant part states:

13 The Supreme Court in *Younger* “espouse[d] a strong federal policy  
14 against federal-court interference with pending state judicial proceedings.”  
15 *Middlesex County Ethics Comm. v. Garden State Bar Ass’n.*, 457 U.S. 423,  
16 431 (1982). “Absent extraordinary circumstances, *Younger* abstention is  
17 required if the state proceedings are (1) ongoing, (2) implicate important  
18 state interests, and (3) provide the plaintiff an adequate opportunity to  
19 litigate federal claims.” *San Remo Hotel*, 145 F.3d 1095, 1103 (9th Cir.  
20 1998); *see also Woodfeathers, Inc. v. Washington County, Oregon*, 180 F.3d  
1017, 1020 (9th Cir. 1999). When the case is one in which the *Younger*  
doctrine applies, the case must be dismissed. *See Delta Dental Plan of Cal.,  
Inc. v. Mendoza*, 139 F.3d 1289, 1294 (9th Cir. 1998). The requirement that  
state proceedings be ongoing is satisfied. Indeed, the plaintiffs’ claim is  
predicated on that fact, because it seeks an order requiring procedural due  
process to be observed in the future course of the litigation.

Important state interests also are implicated. “Family relations are a  
traditional area of state concern.” *Moore v. Sims*, 442 U.S. 415, 435

1 (1979); *see also Morrow v. Winslow*, 94 F.3d 1386, 1397 (10th Cir. 1996).  
2 In addition, a state has a vital interest in protecting “the authority of the  
3 judicial system, so that its orders and judgments are not rendered  
4 nugatory.” *Juidice v. Vail*, 430 U.S. 327, 336 n.12 (1977). This is a  
5 particularly appropriate admonition in the field of domestic relations, over  
6 which federal courts have no general jurisdiction, *see Ankenbrandt v.*  
7 *Richards*, 504 U.S. 689, 697–701 (1992), and in which the state courts have  
8 a special expertise and experience. *See Hisquierdo v. Hisquierdo*, 439 U.S.  
9 572, 581 (1979).

6 The plaintiffs have an adequate state forum in which to pursue their  
7 federal claims. In fact, they have already raised some of the same due  
8 process issues in the California appellate courts. Plaintiffs may appeal  
9 through those courts after final judgment.

8 This is precisely the type of case suited to *Younger* abstention. *See*  
9 *Mann v. Conlin*, 22 F.3d 100, 106 (6th Cir.1994) (holding that *Younger*  
10 abstention was appropriate in § 1983 action alleging that a state court judge  
11 violated plaintiff’s due process rights in custody battle). Plaintiffs desire  
12 wholesale federal intervention into an ongoing state domestic dispute. They  
13 seek vacation of existing interlocutory orders, and a federal injunction  
14 directing the future course of the state litigation. This is not the proper  
15 business of the federal judiciary.

12 *H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 612–14 (9th Cir. 2000) (citations  
13 altered; internal brackets in original).

14 As in *Koppell*, Plaintiffs request “wholesale federal intervention into an  
15 ongoing state domestic dispute,” important state interests regarding familial  
16 relations are implicated, and state court can provide Plaintiffs an adequate  
17 opportunity to litigate the claims brought before the Court. Accordingly, the Court  
18 may not entertain Plaintiffs request for an injunction.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 2 1. Plaintiffs' Complaint is **DISMISSED** without leave to amend.
- 3 2. Plaintiffs' Motion to Appoint Counsel (ECF No. 7) is **DENIED AS**
- 4 **MOOT.**
- 5 3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of
- 6 this Order would not be taken in good faith and would lack any arguable
- 7 basis in law or fact. Plaintiffs' *in forma pauperis* status is hereby
- 8 **REVOKED.**

9 The District Court Executive is directed to enter this Order and Judgment

10 accordingly, furnish copies to Plaintiffs, and **close** the file.

11 **DATED** November 9, 2017.



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*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge