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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SUSAN CHEN, et al.,

11 Plaintiffs,

12 v.

13 NATALIE D'AMICO, et al.,

14 Defendants.

CASE NO. C16-1877JLR

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

15 **I. INTRODUCTION**

16 Before the court are: (1) Defendants City of Redmond (“the City”) and Natalie
17 D’Amico’s (collectively, “City Defendants”) motion for summary judgment against
18 Plaintiff Susan (Shiying) Chen (1st MSJ (Dkt. # 106)); City Defendants’ motion for
19 summary judgment against Plaintiffs Naixing (Nash) Lian, J.L., and L.L. (Ms. Chen, Mr.
20 Lian, J.L., and L.L. are collectively referred to as “Plaintiffs”) (2d MSJ (Dkt. # 108)); and
21 Plaintiffs’ motion for summary judgment against City Defendants (3d MSJ (Dkt. # 141)).
22 The parties filed responses and replies to the motions. (*See* 1st Resp. (Dkt. # 155); 2d

1 Resp. (Dkt. # 151); 3d Resp. (Dkt. # 142); 1st Reply (Dkt. # 166); 2d Reply (Dkt. # 165);
2 3d Reply (Dkt. # 143); *see also* Joinder (Dkt. # 144).) The court has considered the
3 motions, the parties’ submissions concerning the motions, the relevant portions of the
4 record, and the applicable law. Being fully advised,¹ the court GRANTS City
5 Defendants’ summary judgment motion against Ms. Chen; GRANTS in part, DENIES in
6 part, and DENIES as moot in part City Defendants’ summary judgment motion against
7 Mr. Lian, J.L., and L.L.; and GRANTS in part and DENIES in part Plaintiffs’ motion for
8 summary judgment against City Defendants.

9 II. BACKGROUND

10 A. J.L.’s Medical History

11 Ms. Chen and Mr. Lian are the parents of J.L. and L.L. (FAC (Dkt. # 96) ¶¶ 3-7;
12 Lian Decl. (Dkt. # 122) ¶ 2; Chen Decl. (Dkt. # 131) ¶ 1.) J.L. was born in 2008, and
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14 ¹ Ms. Chen requests oral argument on City Defendants’ first summary judgment motion.
15 (*See* 1st Resp. at 1.) The general rule is that the court should not deny a request for oral
16 argument made by a party opposing a motion for summary judgment unless the motion is denied.
17 *Dredge Corp. v. Penny*, 338 F.2d 456, 462 (9th Cir. 1964). However, a district court’s denial of
18 a request for oral argument on summary judgment does not constitute reversible error in the
19 absence of prejudice. *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998) (citing *Fernhoff v.*
20 *Tahoe Reg’l Planning Agency*, 803 F.2d 979, 983 (9th Cir. 1986)). There is no prejudice in
21 refusing to grant oral argument where the parties have ample opportunity to develop their legal
22 and factual arguments through written submissions to the court. *Id.* (“When a party has an
adequate opportunity to provide the trial court with evidence and a memorandum of law, there is
no prejudice [in refusing to grant oral argument]”) (quoting *Lake at Las Vegas Investors*
Grp., Inc. v. Pac. Malibu Dev. Corp., 933 F.2d 724, 729 (9th Cir. 1991)) (alterations in
Partridge). Ms. Chen has provided the court lengthy written submissions in opposition to City
Defendants’ summary judgment motion (*see generally* 1st Resp.), as well as in support of
Plaintiffs’ summary judgment motion (*see generally* 3d MSJ; 3d Reply). The court has
determined that oral argument would not be of assistance in deciding any of the pending
summary judgment motions, *see* Local Rules W.D. Wash. LCR 7(b)(4), and thus DENIES Ms.
Chen’s request for oral argument.

1 | L.L. was born in 2010. (FAC ¶¶ 6-7.) In 2012, J.L. was diagnosed with gastrointestinal
2 | (“GI”) problems and Autism Spectrum Disorder. (Chen Decl. ¶¶ 3-7; *see also* Lo Decl.
3 | (Dkt. # 132) ¶ 2, Exs. B-L at RED00721.²) GI issues are common in children with
4 | autism. (*See* Green Decl. (Dkt. # 129) ¶ 6.) From August 2012 to October 2013,
5 | Plaintiffs took J.L. to several medical providers, including a naturopath, to address his GI
6 | issues. (*See* 1st Resp. at 5 (citing medical records).)

7 | One of J.L.’s medical providers is Dr. John Green, an autism specialist in Portland,
8 | Oregon. (*See* Green Decl. ¶¶ 2-11.) J.L. first saw Dr. Green in October 2012. (*Id.*) At
9 | this appointment, Dr. Green recommended a low carbohydrate diet for J.L. (*See id.* ¶ 19
10 | (“[M]y Case Summary also discusses various low carbohydrate diets that I
11 | recommended.”); RED00575 (“No sugar, no potato, no rice, no yams or sweet
12 | potatoes.”).) Because Dr. Green was in Portland and Plaintiffs are in Washington (*see*
13 | Lian Decl. ¶ 1), Plaintiffs allege that Dr. Green referred J.L. to Dr. Hatha Gbedawo (*see*
14 | Chen Decl. ¶ 10; Gbedawo Decl. (Dkt. # 158) ¶ 6; *but see* RED00565 (Dr. Green’s case
15 | summary, explaining that he “subsequently learned that [J.L.’s] care had been transferred
16 | in April 2013 to Hatha Gbedawo ND.”)). Dr. Gbedawo is a “board certified naturopathic
17 | physician,” who saw J.L. nine times between April 2013 and October 2013. (Gbedawo
18 | Decl. ¶¶ 2, 7.)

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21 | ² Documents cited solely as “REDXXXXX” are sealed documents that were part of
22 | Detective D’Amico’s investigative file for the investigation of Ms. Chen. (*See* Dkt. # 133.)
These documents are attached to the declaration of T. Augustine Lo as exhibits B-L. (*See* Lo.
Decl. ¶ 2.)

1 On October 7, 2013, Ms. Chen took J.L. to see Dr. Kate Halamay at Pediatric
2 Associates. (RED00351-53.) Dr. Halamay had seen J.L. previously. (E.g., RED00339.)
3 According to the notes from the October 7 appointment, J.L. had been experiencing
4 abdominal pain for around six weeks. (RED00351.) Dr. Halamay recommended that
5 Ms. Chen take J.L. to the GI department at Seattle Children’s Hospital (“SCH”), but Ms.
6 Chen declined, stating that “she has seen them for the past 14 months and they ‘have not
7 done anything for [J.L.]’” (RED00352.) Dr. Halamay’s notes show that J.L. only visited
8 the SCH GI department once in the prior year. (*Id.*) Ms. Chen then asked Dr. Halamay
9 to order a number of labs, but Dr. Halamay refused because she was “unfamiliar with
10 several of them and would not know how to interpret them.” (RED00353.)

11 On October 19, 2013, Ms. Chen and Mr. Lian took J.L. to Dr. Julie Ellner at
12 Mercer Island Pediatrics, in part hoping that Dr. Ellner would order the labs they were
13 seeking. (*See* RED00107; Chen Decl. ¶ 27-28.) Dr. Ellner’s notes state that Ms. Chen
14 was worried that J.L. has a “severe problem with kidney or liver,” that he was losing
15 weight, and was eating poorly. (RED00107.) Ms. Chen told Dr. Ellner that J.L. had
16 laboratory tests at a hospital in New York, as well as an ultrasound, which showed that
17 there was something wrong with J.L.’s liver. (*Id.*) However, Ms. Chen did not bring the
18 lab results to Dr. Ellner; nor was she able to remember the doctor or the hospital where
19 the tests were performed. (*Id.*) Dr. Ellner referred J.L. to the emergency room. (*Id.*)

20 Later that day, instead of going to the emergency room, Ms. Chen took J.L. to
21 Pediatric Associates. (*See* RED00356-58; D’Amico Decl. (Dkt. # 107) ¶ 3h, Ex. H
22 (“CPS Docs”) at RED00050-51.) Similar to Dr. Ellner, Dr. Roberta Winch at Pediatric

1 Associates told Ms. Chen to take J.L. to emergency care. (RED00358 (“IT IS VERY
2 IMPORTANT [J.L.] BE SEEN FOR FURTHER EVAL IN THE ED [emergency
3 department] AT SCH. I RECCOMEND [sic] THEY GO NOW. PARENTS AGREED
4 TO BE SEEN AT SCH ED AND SAID THEY WILL GO THERE NOW.”).) Ms. Chen
5 says that she did not understand Dr. Winch’s instruction. (See Chen Decl. ¶ 27.) Instead,
6 Ms. Chen took J.L. to SCH’s urgent care to have lab work done. (*Id.*; RED00853-55.)

7 Ms. Chen returned to SCH urgent care on October 20, 2013, to pick up J.L.’s lab
8 work. (Chen Decl. ¶ 28.) Once there, doctors told Ms. Chen that J.L.’s lab work was
9 abnormal, showing elevated levels of creatinine and blood urea nitrogen (“BUN”). (*Id.*)
10 Ms. Chen then took J.L. to SCH emergency care. (*Id.*; CPS Docs at RED00050-51.)
11 That day, Dr. Russell Migita in SCH’s emergency department examined J.L. and
12 performed additional tests, which showed J.L. improved since his October 19, 2013, lab
13 results, but were still “not normal.” (RED00370-75.) Dr. Migita also expressed that J.L.
14 “would benefit from having a coordinated workup that includes endocrinology,
15 gastroenterology, and nephrology.” (RED00374.) However, Dr. Migita discharged J.L.
16 from the hospital on October 20, 2013, because he did not have “hypertensive emergency
17 at this time and d[id] not meet the eminent risk criteria for medical hold.” (See
18 RED00374-75.) Dr. Migita released J.L. on the understanding that Ms. Chen and Mr.
19 Lian would follow-up with J.L.’s primary care provider. (RED00374-75 (noting “Plan”
20 to see Dr. Halamay “[w]ithin 1 to 3 days”).)

21 On October 23, 2013, Ms. Chen brought J.L. to see Dr. Gbedawo. (Chen Decl.
22 ¶ 31; Gbedawo Decl. ¶ 8.) Dr. Gbedawo understood that J.L. had been to emergency and

1 urgent care a few days earlier and that he had been discharged “as non-emergent.”
2 (Gbedawo Decl. ¶ 8.) At the appointment, Dr. Gbedawo “did not recommend that [Ms.
3 Chen] take J.L. to the emergency department.” (*Id.*) Rather, he recommended that Ms.
4 Chen take J.L. “to a nephrologist and a nutritionist for additional consultations, and
5 ordered additional labs and imaging.” (*Id.*)

6 Later that day, Ms. Chen took J.L. to Dr. Halamay, as she had been instructed by
7 Dr. Migita. (Chen Decl. ¶ 32.) According to Dr. Halamay’s notes, Dr. Hal Quinn at
8 Mercer Island Pediatrics, who had seen J.L. previously, called Dr. Halamay before the
9 appointment. (RED00397; RED00105-06.) Dr. Quinn:

10 [E]xpressed great concern about this pt as well as family, feels that he his
11 [sic] very sick, concern about failure to thrive, has lost several pounds since
12 April, concerned that family has been going from dr to dr but that pt is not
13 actually receiving appropriate medical attention.

14 (*Id.*) At the October 23 appointment, Dr. Halamay noted that J.L. appeared “[v]ery tired”
15 and continued to “have distended abdomen,” though Ms. Chen said his condition was
16 improving. (RED00397.) Dr. Halamay also noted that Ms. Chen was confused about
17 doctors’ instructions from October 19 and 20 to take J.L. to certain specialists. (*Id.*) Dr.
18 Halamay recommended that Ms. Chen admit J.L. to the hospital “at once” so that he
19 could be seen by renal, endocrine, and GI specialists. (*Id.*) Ms. Chen “refused to take
20 [J.L.] for admission, even after [Dr. Halamay] stated that [she] felt admission was
21 medically necessary given his abdominal distension, weight loss, and worsening lab
22 values compared to those drawn a few weeks ago.” (*Id.*)

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1 Ms. Chen recalls that she “felt as though Dr. Halamay and SCH were dismissive
2 and had not provided proper care for [J.L.]” (Chen Decl. ¶ 32.) Further, Ms. Chen told
3 Dr. Halamay at the October 23 appointment that she “would not go back to see [Dr.
4 Halamay] anymore” and that she “would make a complaint against her.” (*Id.*) Dr.
5 Halamay told Ms. Chen that, if Ms. Chen did not admit J.L. to the hospital, then she was
6 going to call the Child Protective Services (“CPS”) division of the Washington State
7 Department of Social and Health Services (“DSHS”). (*Id.*; RED00397.) Ms. Chen
8 restated that she would not take J.L. to SCH and left Dr. Halamay’s office. (*Id.*) Dr.
9 Halamay then called CPS. (RED00397; CPS Docs at RED00051.)

10 Late at night on October 23, 2013, a CPS social worker arrived at Plaintiffs’ home
11 and took J.L. to SCH’s emergency department. (*See* 3d MSJ at 7; *but see* Chen Decl.
12 ¶ 33 (stating that “[a]t [CPS]’s recommendation, we took J.L. to SCH.”).) J.L. was seen
13 on October 24, 2013, by Dr. Virginia Sanders and Dr. Shannon Staples. (*See*
14 RED00791.) According to Dr. Sanders’s summary, J.L.’s showed a “failure to thrive . . .
15 [and] gross malnutrition and muscle wasting. Concern for medical cause of wasting vs.
16 neglect.” (RED00792.) J.L. was then admitted to SCH’s “general medicine service” to
17 treat his malnutrition and receive a Suspected Child Abuse Network (“SCAN”)
18 consultation. (*Id.*)

19 While at SCH on October 24, 2013, providers gave J.L. Pedialyte even though Ms.
20 Chen told them that “whenever [J.L.] eats sugar his belly gets big.” (RED00927,
21 RED00930.) Ms. Chen also told the SCH providers that J.L. “cannot eat many foods,
22 including carbohydrates or sugar,” but Ms. Chen was unable to “identify any food that he

1 | does eat.” (RED00927-28.) In addition, Ms. Chen interfered with providers’ attempts to
2 | give J.L. Pedialyte. (D’Amico Decl. ¶ 3c, Ex. C (“D’Amico Report”) at RED00015.)

3 | The doctors noted that Ms. Chen was “asked to leave” the hospital room “because of her
4 | erratic and obstructionist behavior.” (RED00930.) However, after J.L. consumed several
5 | ounces of Pedialyte, J.L. “reaccumulated significant abdominal distention,” which
6 | required the doctors to use a catheter to relieve the distention. (*Id.*)

7 | **B. J.L.’s Placement in Foster Care**

8 | CPS removed J.L. and L.L. from Ms. Chen and Mr. Lian’s custody on October 24,
9 | 2013. (*See* 3d MSJ at 7.) A 72-hour dependency hearing was held from October 28 to
10 | October 30, 2013, to determine if J.L. should be removed from Plaintiffs’ home. (*See*
11 | FAC ¶ 59.) Dr. Green and Dr. Gbedawo provided testimony in support of Ms. Chen at
12 | the dependency hearing. (*See id.*) After the hearing, L.L. was returned to Ms. Chen and
13 | Mr. Lian, but J.L. remained in CPS’s custody. (*Id.* ¶ 61; 3d MSJ at 7 n.8.) J.L. was kept
14 | at SCH until November 7, 2013, at which time he was placed into foster care. (*See*
15 | RED01139.) It appears that J.L. remained in CPS’s custody until September 12, 2014,
16 | when the Attorney General’s Office (“AGO”) terminated his dependency proceedings.
17 | (*See* Lo Decl. ¶ 9, Ex. S; *see also* FAC ¶ 72; *but see* (Rienschel Decl. (Dkt. # 110) ¶ 3, Ex.
18 | 3 (“Exception Justification”) at 14 (explaining that J.L. was returned to Mr. Lian’s care in
19 | July 2014).)

20 | J.L.’s weight fluctuated during his first weeks in CPS’s custody. (*See*
21 | RED01102-39.) For example, J.L. weighed 26.9 pounds when he was admitted to SCH
22 | on October 24, 2013, which is the third percentile. (RED00791.) By November 3, 2013,

1 J.L.'s weight increased to 32.19 pounds. (RED01126.) However, by the time J.L. was
2 placed in foster care on November 7, 2013, his weight had decreased to 30.2 pounds.
3 (RED01138.) On November 20, 2013, after J.L. had been in foster care for nearly two
4 weeks, his weight had decreased even further to 29 pounds. (RED00109 (but noting that
5 that J.L. is "doing much better now" and that his weight is in the thirteenth percentile).)

6 **C. Detective D'Amico's Investigation**

7 Detective D'Amico was assigned to investigate Plaintiffs on October 24, 2013.
8 (See D'Amico Report at RED00008-22.) Two month prior, Detective D'Amico had
9 received 40 hours of specialized training in "Child Abuse Interviewing and Assessment."
10 (Shickich Decl. (Dkt. # 167) ¶ 10, Ex. A.) Detective D'Amico started the investigation
11 by following up on work done by RPD Officer Paul Chung and Seattle Police
12 Department ("SPD") Officer Michael Severance. (D'Amico Report at RED00009-10.)
13 As part of Officer Chung's initial investigation, he learned that CPS "believed [Ms.
14 Chen] was suffering from Munchausen Syndrome³ and therefore would purposely harm
15 [J.L.] as a result of this to gain attention." (*Id.* at RED00010.)

16 On the morning of October 24, 2013, Detective D'Amico visited J.L. at SCH. (*Id.*
17 at RED00011.) Afterward, Detective D'Amico went with Detective Lieutenant Matthew
18 Peringer to Plaintiffs' residence and spoke with Ms. Chen and Mr. Lian. (*Id.* at
19

20 ³ It appears that CPS meant that it believed Ms. Chen was suffering from Munchausen by
21 Proxy, which "is a psychological disorder marked by attention-seeking behavior by a caregiver
22 through those who are in their care," rather than Munchausen Syndrome, which "is a type of
mental illness in which a person repeatedly acts as if he or she has a physical or mental disorder
when, in truth, he or she has caused the symptoms." (See 2d Resp. at 29 n.142.)

1 RED00011-12.) Detective D’Amico and Detective Lieutenant Peringer interviewed Ms.
2 Chen and Mr. Lian without the use of an interpreter even though English was their
3 second language. (*Id.* at RED00012; Chen Decl. ¶ 39; Lian Decl ¶ 14.) Detective
4 D’Amico focused the interview on J.L.’s diet. (*Id.*) According to Detective D’Amico,
5 Ms. Chen said that J.L. was on a “special diet that was gluten free and lacked
6 carbohydrates.” (D’Amico Report at RED00012.) Ms. Chen and Mr. Lian contest this
7 characterization, saying that they explained that they provided J.L. with fresh fruit and
8 gluten-free bread. (Chen Decl. ¶¶ 39-40.) All agree, though, that it was explained at this
9 meeting that Mr. Lian did most of the cooking. (*See* D’Amico Report at RED00012;
10 Lian Decl. ¶ 16.) After the meeting, Detective D’Amico went back to SCH where she
11 spoke with “several” physicians who explained that J.L.’s kidneys were in a pre-renal
12 state caused by dehydration and that his liver was not functioning properly. (*See*
13 D’Amico Report at RED00013.)

14 On October 25, 2013, Ms. Chen and Mr. Lian went to a meeting at the CPS office.
15 (Chen Decl. ¶ 42.) Detective D’Amico attended the meeting. (*Id.*; D’Amico Report at
16 RED00013.) Ms. Chen and Mr. Lian claim that, at the meeting, they told CPS about Dr.
17 Green’s dietary advice to restrict carbohydrates. (Chen Decl. ¶ 42; Lian Decl. ¶ 17.)
18 After the meeting, CPS reported that it was “concerned for the imm[edi]ate safety of
19 [J.L.] in parents’ care,” and was “recommend[ing] out of home placement for [J.L.] upon
20 his discharge from the hospital.” (CPS Docs at RED00069.)

21 On November 5, 2013, Detective D’Amico participated by telephone in a SCAN
22 meeting at SCH. (D’Amico Report at RED00014.) According to Detective D’Amico’s

1 notes, SCH medical staff advised that “there were no findings of a lack of tolerance with
2 any food they had given J.L.,” and that, even had J.L. been on a special diet, “he would
3 not have been left malnourished and dehydrated.” (*Id.*) SCH medical staff classified
4 J.L.’s condition when he was first admitted as indicative of “serious bodily harm.” (*Id.*)

5 On November 7, 2013, CPS provided Detective D’Amico with a list of J.L.’s 13
6 medical providers. (*Id.*) Detective D’Amico requested records from all the providers and
7 “received all but three providers’ medical records” by December 4, 2013. (*Id.*) Detective
8 D’Amico summarized each provider’s records in her police report and identified the three
9 providers that had not responded to her records request: Pediatric Associates, Magnolia
10 Behavioral Therapy, and Bothell Pediatric and Hand Therapy. (*Id.* at RED00014-18.) In
11 addition, Detective D’Amico summarized and attached an email from CPS
12 memorializing a phone call with a fourteenth provider, a speech pathologist who worked
13 with J.L. (*Id.* at RED00018-19.)

14 On December 9, 2013, still lacking some of the medical records, Detective
15 D’Amico determined:

16 At this time, there is probable cause to believe [Ms. Chen] violated RCW
17 9A.42.030 Criminal Mistreatment 2nd degree for acting in a manner that
18 created an imminent risk of great bodily harm to [J.L.] causing him to be
19 admitted to Seattle Children’s Hospital for approximately three weeks.
There is also probable cause to believe [Ms. Chen] withheld basic necessities
of life to include nutrition as [J.L.] was diagnosed as grossly malnourished
and dehydrated upon arrival at Seattle Children’s Hospital.

20 (*Id.* at RED00019.) That same day, Detective D’Amico signed a probable cause
21 certification to file criminal charges against Ms. Chen and transmitted her investigative

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1 file—which included J.L.’s available medical records—to the King County Prosecuting
2 Attorney’s Office (“the KCPAO”). (D’Amico Decl. ¶ 6, Ex. E (“PCC”).)

3 After transmitting her investigative file and probable cause certification to the
4 KCPAO, Detective D’Amico followed up with the medical providers who had not
5 provided records. (D’Amico Report at RED00019.) In mid-December 2013, Bothell
6 Pediatric and Hand Therapy and Magnolia Behavioral Therapy provided Detective
7 D’Amico their records. (*Id.* at RED00019-20.) Pediatric Associates provided its records
8 on January 23, 2014. (*Id.* at RED00021.) In addition, on January 27, 2014, Detective
9 D’Amico requested updated records from SCH and Mercer Island Pediatrics, which the
10 providers gave on February 10 and 12, 2014, respectively. (*Id.*) Detective D’Amico
11 summarized these additional records and transmitted them to the KCPAO, along with an
12 updated report. (*Id.* at RED00020-22; D’Amico Decl. ¶ 9.)

13 **D. Criminal Charges Against Ms. Chen**

14 On January 31, 2014, the KCPAO charged Ms. Chen with one count of criminal
15 mistreatment in the second degree for her actions between October 19 and 24, 2013.
16 (Carlstrom Decl. (Dkt. # 111) ¶ 3, Ex. A.) No criminal charges were filed against Mr.
17 Lian. (FAC ¶ 111.) Carla Carlstrom, a Senior Deputy Prosecuting Attorney with the
18 KCPAO, “made the decision to file” the charge against Ms. Chen. (Carlstrom Decl.
19 ¶¶ 2-7.) Before filing the charge, Ms. Carlstrom spoke with Detective D’Amico and was
20 aware that J.L.’s medical records file was incomplete. (*Id.* ¶ 6.)

21 Ms. Chen was arraigned on February 18, 2014. (FAC ¶ 117.) On July 29, 2014,
22 Ms. Chen’s public defender, Twyla Carter, wrote to the KCPAO requesting dismissal of

1 the charge against Ms. Chen. (Rienschel Decl. ¶ 3, Ex. 2 (“Carter Letter”); *see also* Carter
2 Decl. (Dkt. # 127) ¶ 15.) On September 19, 2014, the KCPAO dropped the criminal case
3 against Ms. Chen. (Rienschel Decl. ¶ 3, Ex. 5 (“Order of Dismissal”).)

4 The KCPAO said that it dropped the charges against Ms. Chen in part because
5 “[r]ecords unavailable at the time of filing complete the timeline of events between
6 October 19, 2013, and October 24, 2013.” (Rienschel Decl. ¶ 3, Ex. 3 (“Exception
7 Justification”) at 14.) The KCPAO explained that it based its initial charging decision on
8 three facts: (1) that Ms. Chen failed to take J.L. to emergency care immediately when
9 recommended by physicians on October 19, 2013; (2) that Ms. Chen took Pedialyte away
10 from J.L. against SCH’s medical providers’ orders; and (3) Ms. Chen’s pattern of taking
11 J.L. to see multiple providers who were not coordinating J.L.’s care. (*Id.* at 13.) The
12 records the KCPAO reviewed after filing the charge undermined its charging decision.

13 First, the records showed that Ms. Chen took J.L. to emergency care each time a
14 doctor requested it, even if she delayed the visit. (*Id.* at 14 (explaining that two doctors
15 requested that Ms. Chen take J.L. to emergency care on October 19, 2013, and that she
16 took J.L. to emergency care on October 20, 2013).) The KCPAO based its
17 misunderstanding on a report by Dr. James Metz from the SCAN team who “mistakenly
18 wrote in a report” that Ms. Chen “refused admittance to the ER” on October 20, 2013,
19 against Dr. Migita’s advice. (*Id.*) In reality, Dr. Migita discharged J.L. on October 20,
20 2013, because J.L. did not have “hypertensive emergency at this time and d[id] not meet
21 the eminent risk criteria for medical hold.” (*Id.*; *see also* RED00374-75.)

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1 Second, the records revealed that J.L. was on a special diet at the advice of
2 medical providers and that Dr. Green advised Ms. Chen “never to give [J.L.] Pedialyte
3 because it would cause distention.” (Exception Justification at 14-15.) The KCPAO also
4 noted that other doctors, including J.L.’s then-current pediatrician, did not believe that
5 Ms. Chen starved J.L. and that J.L.’s weight continued to fluctuate while he was in foster
6 care. (*Id.* at 15.) The KCPAO further stated that, since J.L. returned to Mr. Lian in July
7 2014, he “has been doing substantially better according to CPS reports.” (*Id.*)

8 Third, the KCPAO maintained that even the updated records showed Ms. Chen
9 had an “evasive” relationship with J.L.’s medical providers, which prevented them from
10 coordinating J.L.’s care. (*Id.*) Ultimately, however, the KCPAO determined that it
11 would be unable to meet its burden of proof against Ms. Chen at trial:

12 Central to this case is [Ms. Chen’s] decision to see multiple providers all at
13 once who were not coordinating [J.L.’s] care. These issues were confounded
14 by a language barrier and [Ms. Chen’s] unwillingness to be completely
15 transparent with doctors. On one instance when visiting Dr. Jeffrey Wright
16 in August 2012, for example, [Ms. Chen] was downright evasive and likely
17 dishonest with him. However, there is no clear evidence that [Ms. Chen]
18 withheld food or medical care or that [Ms. Chen] knew [J.L.] was even facing
19 great bodily harm because, after all, Dr. Migita released [J.L.] from the ER
20 on 10/20/13.

21 (*Id.*)

22 **E. Procedural History**

Plaintiffs originally brought this action *pro se* in December 2016. (*See* Dkt.) In
June 2017, the court appointed Plaintiffs *pro bono* counsel. (*See* 6/13/17 Am. Order
(Dkt. # 15).) After extensive motions practice on the pleadings, in March 2018, the court
granted in part and denied in part City Defendants’ motion to dismiss Plaintiffs’ claims

1 and granted Plaintiffs leave to amend. (*See generally* 3/27/18 Order (Dkt. # 90); *see also*
2 10/16/17 Order (Dkt. # 53); 11/30/17 Order (Dkt. # 73).) Plaintiffs filed the operative
3 complaint on July 30, 2018. (*See* FAC.)

4 On November 29, 2018, City Defendants brought two motions for summary
5 judgment on all seven of Plaintiffs' claims that relate to them. (*See* 1st MSJ; 2d MSJ.)
6 Six of these claims are for various constitutional violations pursuant to 42 U.S.C. § 1983:
7 (1) unlawful arrest; (2) fabrication/withholding of evidence; (3) selective enforcement;
8 (4) malicious prosecution; (5) substantive due process; and (6) procedural due process.
9 (*See* FAC ¶¶ 132-208.) Plaintiffs' seventh claim alleges malicious prosecution under
10 Washington State law. (*Id.* ¶¶ 221-40.) City Defendants' first motion for summary
11 judgment is against Ms. Chen and concerns all seven of Plaintiffs' claims asserted against
12 City Defendants. (*See* 1st MSJ at 2.) City Defendants' second motion for summary
13 judgment is against Mr. Lian, J.L., and L.L., and concerns only the substantive and
14 procedural due process claims because Mr. Lian, J.L., and L.L. do not have standing to
15 assert the other five claims. (*See* 2d MSJ at 2; 2d Resp. at 28 (Mr. Lian, J.L., and L.L.
16 agreeing that they only assert the due process claims against City Defendants).) In
17 addition, City Defendants seek summary judgment against Mr. Lian, J.L., and L.L. on
18 their malicious prosecution counterclaim. (*See* 2d MSJ at 2; *see also* Countercl. (Dkt.
19 # 97) at 23-28.)

20 On December 6, 2018, Plaintiffs brought a motion for relief under Federal Rule of
21 Civil Procedure 56(d), in part requesting additional time to conduct discovery and to
22 respond to City Defendants' motions for summary judgment. (*See* 56(d) Mot. (Dkt.

1 # 116.) Before the court ruled on Plaintiffs' Rule 56(d) motion, Plaintiffs filed their own
2 motion for summary judgment on City Defendants' malicious prosecution counterclaim.
3 (See 3d MSJ.) Shortly thereafter, the court granted in part Plaintiffs' Rule 56(d) motion.
4 (See 2/13/19 Order (Dkt. # 146).)

5 The court now addresses the three pending motions for summary judgment.

6 III. ANALYSIS

7 A. Preliminary Matters

8 1. Motion to Strike

9 City Defendants move to strike certain material that Plaintiffs' rely upon in
10 opposition to City Defendants' motions for summary judgment. (See 2d Reply at 14-15.)
11 The disputed material consists of: (1) statements in Mr. Lian's declaration that City
12 Defendants characterize as hearsay (*see id.* at 14; Lian Decl. ¶ 12); (2) statements in Ms.
13 Carter's declaration that City Defendants claim lack foundation, are an unfounded expert
14 opinion, are mere speculation, or are hearsay (*see* 2d Reply at 14; Carter Decl. ¶¶ 5,
15 12-13, 16-21); (3) statements in Dr. Green's declaration that City Defendants allege
16 contradict his testimony at the 72-hour dependency hearing (*see* 2d Reply at 14-15;
17 Green Decl. ¶¶ 10, 14, 20); and (4) statements in Ms. Chen's declaration that City
18 Defendants characterize as legal conclusions and unfounded expert testimony (2d Reply
19 at 15; Chen Decl. ¶ 48).

20 The court need not reach these issues because they do not change the court's
21 determination.

22 //

1 **B. Summary Judgment Standard**

2 Summary judgment is appropriate if the evidence, when viewed in the light most
3 favorable to the non-moving party, demonstrates “that there is no genuine dispute as to
4 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.
5 P. 56(a); see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*,
6 477 F.3d 652, 658 (9th Cir. 2007). A fact is “material” if it might affect the outcome of
7 the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is
8 “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the
9 non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001)
10 (citing *Anderson*, 477 U.S. at 248-49).

11 The moving party bears the initial burden of showing there is no genuine issue of
12 material fact and that he or she is entitled to prevail as a matter of law. *Celotex*, 477 U.S.
13 at 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can
14 show the absence of an issue of material fact in two ways: (1) by producing evidence
15 negating an essential element of the nonmoving party’s case, or (2) by showing that the
16 nonmoving party lacks evidence of an essential element of its claim or defense. *Nissan*
17 *Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving
18 party will bear the ultimate burden of persuasion at trial, it must make a prima facie
19 showing in support of its position on that issue. *UA Local 343 v. Nor-Cal Plumbing, Inc.*,
20 48 F.3d 1465, 1471 (9th Cir. 1994). That is, the moving party must present evidence that,
21 if uncontroverted at trial, would entitle it to prevail on that issue. *Id.* at 1473. If the
22 moving party meets its burden of production, the burden then shifts to the nonmoving

1 party to identify specific facts from which a fact finder could reasonably find in the
2 nonmoving party’s favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 252.

3 The court is “required to view the facts and draw reasonable inferences in the light
4 most favorable to the [non-moving] party.” *Scott v. Harris*, 550 U.S. 372, 378 (2007).

5 The court may not weigh evidence or make credibility determinations in analyzing a
6 motion for summary judgment because these are “jury functions, not those of a judge.”
7 *Anderson*, 477 U.S. at 249-50. Nevertheless, the nonmoving party “must do more than
8 simply show that there is some metaphysical doubt as to the material facts Where
9 the record taken as a whole could not lead a rational trier of fact to find for the
10 nonmoving party, there is no genuine issue for trial.” *Scott*, 550 U.S. at 380 (internal
11 quotation marks omitted) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
12 475 U.S. 574, 586-87 (1986)). “Conclusory allegations unsupported by factual data
13 cannot defeat summary judgment.” *Rivera v. Nat’l R.R. Passenger Corp.*, 331 F.3d 1074,
14 1078 (9th Cir. 2003). Nor can a party “defeat summary judgment with allegations in the
15 complaint, or with unsupported conjecture or conclusory statements.” *Hernandez v.*
16 *Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003).

17 “[W]hen simultaneous cross-motions for summary judgment on the same claim
18 are before the court, the court must consider the appropriate evidentiary material
19 identified and submitted in support of both motions, and in opposition to both motions,
20 before ruling on each of them.” *Tulalip Tribes*, 783 F.3d at 1156 (quoting *Fair Hous.*
21 *Council of Riverside Cty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir. 2001)).

22 The court “rule[s] on each party’s motion on an individual and separate basis,

1 determining, for each side, whether a judgment may be entered in accordance with the
2 Rule 56 standard.” *Tulalip Tribes*, 783 F.3d at 1156 (quoting 10A Charles Alan Wright,
3 Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2720 (3d ed.
4 1998)); *see also* *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 790-91 (9th Cir. 2006)
5 (“We evaluate each motion separately, giving the nonmoving party in each instance the
6 benefit of all reasonable inferences.” (citations and internal quotation marks omitted)).

7 **C. City Defendants’ Motion Against Ms. Chen**

8 1. Malicious Prosecution Claims

9 To prove malicious prosecution, a plaintiff must show, *inter alia*, “that there was
10 want of probable cause for the institution or continuation of the prosecution” that the
11 plaintiff claims to be malicious. *Hanson v. City of Snohomish*, 852 P.2d 295, 298 (Wash.
12 1993). Accordingly, “probable cause is a complete defense to malicious prosecution.”
13 *Id.* City Defendants move for summary judgment on Ms. Chen’s state law and § 1983
14 malicious prosecution claims because there was probable cause to charge her with
15 criminal mistreatment in the second degree. (*See* 1st MSJ at 7-9.)

16 “The probable-cause standard is incapable of precise definition or quantification
17 into percentages because it deals with probabilities and depends on the totality of the
18 circumstances.” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). That said, “[t]he
19 substance of all the definitions of probable cause is a reasonable ground for belief of
20 guilt.” *Id.* (citing *Brinegar v. United States*, 228 U.S. 160, 175 (1949)). Courts require a
21 “fair probability” on which “reasonable and prudent [people,] not legal technicians, act.”
22 *Florida v. Harris*, 568 U.S. 237, 243 (2013) (quoting *Illinois v. Gates*, 462 U.S. 213, 231

1 (1983)) (alterations in original); *see also State v. Gaddy*, 93 P.3d 872, 875 (Wash. 2004)
2 (explaining that probable cause exists when “reasonably trustworthy information [is]
3 sufficient to cause a reasonable officer to believe a crime has been committed.”
4 (emphasis omitted)). “There must be some objective evidence which would allow a
5 reasonable officer to deduce that a particular individual has committed or is in the process
6 of committing a criminal offense.” *McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th Cir.
7 1984). Further, “[a]t the time of arrest, the arresting officer need not have evidence to
8 prove each element of the crime beyond a reasonable doubt.” *Gaddy*, 93 P.3d at 875.
9 But “[m]ere suspicion, common rumor, or even strong reasons to suspect are not
10 enough.” *Id.* And police officers “may not disregard facts tending to dissipate probable
11 cause.” *United States v. Lopez*, 482 F.3d 1067, 1073 (9th Cir. 2007) (quotation marks
12 and citation omitted).

13 Probable cause “is a question of law to be determined by the court.” *Act*
14 *Up!/Portland v. Bagley*, 988 F.2d 868, 873 (9th Cir. 1993). But the court should not
15 determine probable cause at the summary judgment stage if a genuine issue of material
16 fact exists. *Id.*

17 Here, Detective D’Amico determined that there was probable cause to charge Ms.
18 Chen with criminal mistreatment in the second degree pursuant to RCW 9A.42.030. (*See*
19 D’Amico Report at RED00019; PCC.) The KCPAO then charged Ms. Chen with this
20 crime. (*See Carlstrom Decl.* ¶ 3, Ex. A.) A person is guilty of criminal mistreatment in
21 the second degree if he or she acts with criminal negligence and “either (a) creates an
22 imminent and substantial risk of death or great bodily harm by withholding any of the

1 basic necessities of life, or (b) causes substantial bodily harm by withholding any of the
2 basic necessities of life.” RCW 9A.42.030(1). A person acts with criminal negligence
3 “when he or she fails to be aware of a substantial risk that a wrongful act may occur and
4 his or her failure to be aware of such substantial risk constitutes a gross deviation from
5 the standard of care that a reasonable person would exercise in the same situation.” RCW
6 9A.08.010(1)(d).

7 City Defendants allege that the undisputed facts create probable cause that Ms.
8 Chen was guilty of criminal mistreatment. (1st MSJ at 7-9.) City Defendants point out
9 that: (1) J.L. lost two pounds between August 2013 and October 2013, was in the third
10 percentile of weight for a three-year-old, and weighed less as a three-year-old than he
11 weighed as a two-year-old; (2) that between October 19 and 23, 2013, multiple providers
12 referred J.L. to emergency care; (3) that multiple physicians diagnosed J.L. as
13 malnourished; and (4) that SCH determined that J.L. needed to be hospitalized for more
14 than two weeks. (*See id.*) In addition, City Defendants argue that a reasonable person
15 could infer that J.L.’s malnourished condition was caused by Ms. Chen withholding
16 carbohydrates. (*Id.*) Moreover, City Defendants allege that a reasonable person could
17 infer that Ms. Chen reduced J.L.’s carbohydrate intake even though she was aware of the
18 substantial risk of harm to J.L. because, in April 2013, Dr. Green recommended that Ms.
19 Chen increase J.L.’s carbohydrate intake. (*Id.*; *see also* RED00565 (Dr. Green’s
20 November 15, 2013, case summary, which notes that on April 1, 2013, Dr. Green had a
21 phone consultation with Ms. Chen where he “recommended[] aiming to increase [J.L.’s
22 carbohydrate intake”).) City Defendants also cite Ms. Chen’s failure to take J.L. to the

1 emergency department on October 19, 2013, disregarding two medical providers'
2 referrals, as grounds for probable cause of criminal mistreatment. (*Id.*)

3 Ms. Chen argues there was not probable cause because (1) there is no proof that
4 she caused “J.L. any harm, let alone ‘substantial bodily harm,’” and (2) because J.L. was
5 never in any imminent risk of death or great bodily harm. (1st Resp. at 17.) Ms. Chen
6 points out that SCH’s emergency department found that J.L. was in a “stable” condition
7 on both October 20 and October 24. (*Id.* at 17-18 (citing RED00375, RED00931).)
8 Further, Ms. Chen argues that she did not act with criminal negligence because she
9 “diligently sought out medical advice to address J.L.’s conditions, and tried her best to
10 follow that advice.” (*Id.* at 18.) Lastly, Ms. Chen argues that Detective D’Amico
11 consciously disregarded facts that undermined probable cause, including that J.L. was
12 unable to tolerate Pedialyte. (*Id.*)

13 Even drawing all reasonable inferences in Ms. Chen’s favor, the undisputed
14 evidence shows that there was probable cause that Ms. Chen committed criminal
15 mistreatment in the second degree pursuant to RCW 9A.42.030. As explained above, on
16 October 23, 2013, Dr. Halamay recommended that Ms. Chen admit J.L. to the hospital
17 “at once.” (RED00397.) Ms. Chen “refused to take him for admission,” and J.L. was
18 only taken to the SCH emergency department after CPS intervened. (*Id.*; Chen Decl.
19 ¶ 33.) Once at SCH on October 24, 2013, J.L. was diagnosed with “failure to thrive . . .
20 [and] gross malnutrition and muscle wasting.” (RED00792; *see also* D’Amico Decl.
21 ¶ 3q, Ex. Q at RED01236 (“[J.L.] appeared grossly malnourished.”); *id.* at RED01237
22 (noting J.L.’s “profoundly malnourished state.”).) J.L. also weighed 26.9 pounds as a

1 three-year-old, which is the third percentile for his age group. (RED00791.) Further,
2 SCH medical staff classified J.L.’s condition when he was first admitted as indicative of
3 “serious bodily harm.” (D’Amico Report at RED00014.)

4 Importantly, medical providers implicated Ms. Chen in J.L.’s condition. (*See*
5 RED00930 (“Clinical exam shows gross malnutrition and muscle wasting Given
6 mother’s resistance to medical evaluation in this ill child, he is currently in state
7 custody.”) Doctors specifically listed their “concern” that Ms. Chen was “unable to
8 provide care/information and concern for intentional malnutrition.” (*Id.*) The SCH
9 providers also noted Ms. Chen’s “erratic and obstructionist behavior.” (*Id.*)

10 In addition, the SCAN team noted that the SCH medical staff did not find J.L.
11 lacked “tolerance with food they had given” him, and that even had J.L. been on a special
12 diet, “he would not have been left malnourished and dehydrated.” (D’Amico Report at
13 RED00014.) Notes from SCH medical providers support the SCAN team’s discussion.
14 (*See* D’Amico Decl. ¶ 3q, Ex. Q at RED001237 (“In general, [J.L.] was able to tolerate a
15 full diet with no signs or symptoms of food allergy or intolerance.”).)

16 These facts provide “objective evidence which would allow a reasonable officer
17 to deduce that” Ms. Chen committed criminal mistreatment in the second degree.
18 *McKenzie*, 738 F.2d at 1008 (9th Cir. 1984). Based on the objective evidence, a
19 reasonable officer could find that Ms. Chen, through criminal negligence, created an
20 imminent and substantial risk of great bodily harm to J.L. by withholding the basic
21 necessities of life, or had already caused J.L. substantial bodily harm by withholding the
22 basic necessities of life. RCW 9A.42.030(1); RCW 9A.08.010(1)(d). Although facts

1 weigh against probable cause—such as J.L.’s autism and its complex co-morbidities, as
2 well as J.L.’s initial intolerance for Pedialyte and his low-carbohydrate diet—these facts
3 do not negate that doctors considered J.L. to be grossly malnourished on October 24,
4 2013, that Ms. Chen had ignored medical providers’ requests to seek help for J.L., that
5 Ms. Chen only went to SCH on October 24, 2013, at the insistence of CPS, and that
6 medical providers implicated Ms. Chen as a potential cause of J.L.’s condition.

7 Courts have found that a child’s “failure to thrive and malnutrition” support a
8 finding of probable cause. *See Baker v. Cty. of L.A.*, No. CV 11-5550-GHK (PJWx),
9 2013 WL 11323599, at *13 (C.D. Cal. Sept. 27, 2013); *Swinton v. City of N.Y.*, 785 F.
10 Supp. 2d 3, 9 (E.D.N.Y. 2011). Here, J.L.’s “failure to thrive” (*see* RED00792),
11 combined with the undisputed record the court just detailed, support a finding of probable
12 cause of criminal mistreatment in the second degree against Ms. Chen.

13 To the extent that Detective D’Amico did not, according to Ms. Chen, sufficiently
14 promote mitigating factors in her police report or probable cause certificate, the court
15 finds that these mitigating factors do not “dissipate” probable cause. *See Lopez*, 482 F.3d
16 at 1073. Further, the court recognizes that the KCPAO’s decision to drop the charge
17 against Ms. Chen casts doubt on the initial existence of probable cause. But the
18 KCPAO’s decision was made considering the beyond a reasonable doubt burden of
19 proof, which is more demanding than the probable cause standard. (*See* Exception
20 Justification at 15 (“The State will have to prove BRD [beyond a reasonable doubt] to
21 jury unanimity”)); *Pringle*, 540 U.S. at 371 (“Finely tuned standards such as proof
22 beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials,

1 have no place in the [probable-cause] decision.” (alteration in original) (citation
2 omitted)).

3 In sum, the undisputed facts show that probable cause existed that Ms. Chen
4 committed criminal mistreatment in the second degree. This finding is a “complete
5 defense” to Ms. Chen’s malicious prosecution claims. *See Hanson*, 852 P.2d at 298.
6 Therefore, the court GRANTS City Defendants’ motion for summary judgment against
7 Ms. Chen on counts IV and VIII of the complaint.

8 2. Presumption of Prosecutorial Independence

9 City Defendants’ second ground for summary judgment is directed at Ms. Chen’s
10 four constitutional tort claims brought against Detective D’Amico. (*See* 1st MSJ at 9-11;
11 *see also* FAC ¶¶ 132-85.) These claims include unlawful arrest, fabrication/withholding
12 of evidence, selective enforcement, and malicious prosecution.⁴ (*See id.*) City
13 Defendants argue that they are entitled to summary judgment on these claims because of
14 the presumption of prosecutorial independence. (*Id.*)

15 Ms. Chen points out, however, that the presumption of prosecutorial independence
16 has only been applied as a bar to claims that involve a finding of probable cause. (*See* 1st
17 Resp. at 22 (citing *Caldwell v. City & Cty. of S.F.*, 889 F.3d 1105, 1116 (9th Cir. 2018)).)
18 Therefore, according to Ms. Chen, the presumption could only serve as a defense to the
19 unlawful arrest and malicious prosecution claims. (1st Resp. at 22.) City Defendants do
20

21 ⁴ Although the court addressed Ms. Chen’s § 1983 malicious prosecution claim in the
22 previous section, *see supra* § III.C, the court addresses it again here because the prosecutorial
independence analysis applies equally to the unlawful arrest and malicious prosecution claims.

1 not contest this argument. (*See generally* 1st Reply.) This issue was recently presented,
2 but not decided, in the Ninth Circuit. *See Caldwell*, 889 F.3d at 1115-16 (noting the
3 dispute over whether “prosecutorial independence only severs the causal chain where the
4 underlying civil rights violation is based on a lack of probable cause,” but choosing to
5 “not resolve the parties’ debate”). This court likewise does not decide the issue because
6 it is not necessary to resolution of the motion. Here, the court only considers whether the
7 presumption of prosecutorial independence is a bar to Ms. Chen’s unlawful arrest and
8 malicious prosecution claims.

9 “Typically, in constitutional tort cases, the ‘[f]iling of a criminal complaint
10 immunizes investigating officers . . . because it is presumed that the prosecutor filing the
11 complaint exercised independent judgment in determining that probable cause for an
12 accused’s arrest exists at that time.” *Caldwell* 889 F.3d at 1115 (quoting *Smiddy v.*
13 *Varney*, 665 F.2d 261, 266 (9th Cir. 1981)). However, a plaintiff may rebut this
14 presumption by showing “that the independence of the prosecutor’s judgment has been
15 compromised.” *Beck v. City of Upland*, 527 F.3d 853, 862 (9th Cir. 2008). A plaintiff
16 may accomplish this by establishing “that officers either presented false evidence to or
17 withheld crucial information from the prosecutor.” *Caldwell*, 889 F.3d at 1116.

18 Regarding the presentation of false evidence, the plaintiff must show that the officers
19 gave the prosecutor “information known by them to be false.” *Id.* (citation omitted).

20 City Defendants argue that Detective D’Amico did not present false evidence or
21 withhold crucial information from the KCPAO that would rebut the presumption of
22 prosecutorial independence. (*See* 1st MSJ at 9-11.) City Defendants allege that, when

1 the presumption has been overcome, police reports have been the only source of
2 information provided to prosecutors. (*Id.* at 10.) Here, however, Detective D’Amico
3 provided the KCPAO with all of J.L.’s available healthcare records in addition to her
4 police report and probable cause certificate. (*Id.* at 10-11; *see also* Carlstrom Decl. ¶ 4.)
5 The KCPAO also reviewed materials from other police officers and CPS. (Carlstrom
6 Decl. ¶ 4.) In addition, the KCPAO was aware that J.L.’s medical records were
7 incomplete when it first received materials from Detective D’Amico. (1st MSJ at 11;
8 Carlstrom Decl. ¶ 6.) Detective D’Amico later supplemented those records. (Carlstrom
9 Decl. ¶ 5.) And the lead prosecutor, Ms. Carlstrom, made her own summary of J.L.’s
10 medical history, rather than relying solely on Detective D’Amico’s characterizations.
11 (*See* Shickich Decl. ¶ 3, Ex. 2 (“Carlstrom Summary”) (sealed).)

12 Ms. Carlstrom also discussed the case with two colleagues, including her
13 supervisor, before bringing the charge. (*See* Shickich Decl. ¶ 2, Ex. 1 (“Carlstrom Tr.”)
14 at 38:13-21.) In that discussion, Ms. Carlstrom brought up “the extra complexities of
15 [J.L.] being a child who already had special needs and potential medical issues,” and that
16 “there was a lot of history with this child, at least the records that [the KCPAO] had.”
17 (*Id.* at 49:11-23.) Ultimately, Ms. Carlstrom—a Senior Deputy Prosecuting Attorney
18 who has “been involved in the investigation and prosecution of over 2500 child abuse and
19 neglect cases”—decided to charge Ms. Chen based on her “independent professional
20 judgment” and her “thorough review” of the evidence, with full knowledge that she did
21 not yet have complete medical records. (Carlstrom Decl. ¶¶ 2, 6-7.)

22 //

1 Ms. Chen argues, however, that “[t]he *sole evidence* presented by” the KCPAO
2 when it charged Ms. Chen was Detective D’Amico’s probable cause certificate, which
3 shows the KCPAO’s reliance on Detective D’Amico. (1st Resp. at 20-21.) Ms. Chen
4 also alleges that the prosecutor’s charge was inconsistent with the medical records—as
5 evidenced by the KCPAO later dropping the charge—which shows that the prosecutor
6 did not thoroughly review the materials. (*Id.*) Further, Ms. Chen argues that the
7 KCPAO’s lack of witness interviews or consultation with medical professionals shows
8 that it did not exercise independent judgment. (*Id.*) Finally, Ms. Chen argues that
9 Detective D’Amico had exculpatory evidence in her possession that she did not provide
10 to the KCPAO, including an interview with Dr. Green and an email from Defendant
11 Kimberly Danner from DSHS that attached a letter from Dr. Gbedawo detailing J.L.’s
12 liver and kidney functions. (*Id.*)

13 The court concludes that the presumption of prosecutorial independence applies.
14 First, Ms. Chen has not presented evidence that, even when viewed in the light most
15 favorable to her, shows that City Defendants provided the KCPAO with “information
16 known by them to be false,” *Caldwell*, 889 F.3d at 1116; (*see generally* 1st Resp.); nor
17 has the court independently found any. Although the KCPAO dropped the charge against
18 Ms. Chen, that action was due to evidence “unavailable at the time of filing.” (Exception
19 Justification at 14.) To the extent the evidence was misrepresented to the KCPAO prior
20 to charging Ms. Chen, that was not City Defendants’ fault; rather, it was due to the
21 SCAN team’s misunderstanding of the events. (*See id.* (“Dr. Metz, a SCAN doctor at
22 SCH, mistakenly wrote in a report that [Ms. Chen] refused admittance to the ER . . . and

1 that [Ms. Chen] refused to follow Dr. Russell Migita’s advice on 10/20/13 by leaving the
2 ER against medical advice.”.) Detective D’Amico’s report in fact corrects the SCAN
3 team’s misunderstanding. (D’Amico Report at RED00011 (“10/20/13 [Ms. Chen] . . .
4 returned with [J.L.] and he was admitted at Seattle Children’s Hospital. [J.L.’s] lab
5 results had stabilized and therefore he was discharged.”).)

6 Second, City Defendants did not withhold “crucial information” from the KCPAO.
7 In short, the two pieces of information that Ms. Chen claims City Defendants withheld
8 were not “crucial.” *See Caldwell*, 889 F.3d at 1117 (the court determining on summary
9 judgment whether information withheld was crucial). The first piece of information is
10 Dr. Gbedawo’s letter, which mainly concerned J.L.’s kidney, thyroid, and liver function.
11 (*See Gbedawo Decl.* ¶ 9, Ex. A (“10/24/19 Gbedawo Letter”) at 2.) In the letter, Dr.
12 Gbedawo also mentioned that she felt “strongly it is in [J.L.’s] best interest to be in the
13 care of his mother.” (*Id.*) The second piece of information is a phone call between
14 Detective D’Amico and Dr. Green, which occurred in mid-November 2013. (*See Green*
15 *Decl.* ¶¶ 13-15.) Dr. Green states that the phone call was “perfunctory” and that
16 Detective D’Amico “made no discernable effort to ensure she understood the medical
17 advice that I provided to [Ms. Chen] and [Mr. Lian].” (*Id.* ¶¶ 7, 13-15.) According to Dr.
18 Green, he “made it very clear” during the call that he “did not see anything that [he]
19 would regard as abusive or that would support a finding of child neglect or withholding
20 basic necessities of life” regarding Ms. Chen or Mr. Lian’s care of J.L. (*Id.* ¶ 13.)

21 Although Detective D’Amico failed to give the KCPAO these pieces of
22 information, Detective D’Amico gave prosecutors two other letters from healthcare

1 providers—one from Dr. Green and one from Dr. Brooke Greiner, “an experienced
2 pediatric occupational therapist who worked extensively with [Ms.] Chen and her son
3 J.L.” (*see* Greiner Decl. (Dkt. # 134) ¶ 2)—that stated that Ms. Chen was doing her best
4 to address J.L.’s needs (*see* 1st Resp. at 13-14 (recognizing that “Dr. Green and Dr.
5 Greiner happened to include copies of their letters in their respective files turned over to
6 [Detective] D’Amico,” which in turn were given to the KCPAO)). Similarly, Detective
7 D’Amico provided the KCPAO with a letter from Dr. Gbedawo’s clinic, Vital Kids
8 Medicine, which stated that “[n]othing in our charting reflects any knowledge of neglect,
9 as we were unaware of any.” (RED00767.)

10 Failing to include Dr. Gbedawo’s additional letter, which bolstered information
11 Detective D’Amico had already provided to the KCPAO from Dr. Gbedawo’s clinic as
12 well as other medical providers, does not constitute withholding “crucial information”
13 from the prosecutor. The withheld letter authored by Dr. Gbedawo is largely redundant
14 of the information already provided by her clinic. Similarly, the “perfunctory” phone call
15 with Dr. Green is not “crucial information” that could rebut the presumption. (*See* Green
16 Decl. ¶ 13-15.) This phone call was in addition to the medical records from Dr. Green
17 that Detective D’Amico provided to the KCPAO. (*Id.* ¶ 7; *see also* RED00563.)
18 Moreover, Dr. Green’s opinion expressed over the phone is undermined by the fact that
19 his “last visit” with Plaintiffs was a phone consultation on April 1, 2013—over six
20 months before the relevant events. (*See* RED00565.) Thus, the court cannot say that
21 withholding the phone call with Dr. Green constituted a “crucial” omission.

22 //

1 The allegations here stand in contrast to cases where courts have found that
2 omitted evidence rebutted the presumption of prosecutorial independence. For example,
3 in *Barlow v. Ground*, 943 F.2d 1132 (9th Cir. 1991), “the prosecutor had only the
4 arresting officers’ police reports available to him” when he filed charges. *Id.* at 1137.
5 Likewise, in *Borunda v. Richmond*, 885 F.2d 1384 (9th Cir. 1988), “[t]he criminal
6 prosecutor had no information available to him other than that contained in the police
7 report submitted by appellants.” *Id.* at 1390. Here, in addition to Detective D’Amico’s
8 report and probable cause certificate, Ms. Carlstrom had all of J.L.’s available healthcare
9 records—totaling well over 1,000 pages—and files from other police officers and CPS.
10 (See Carlstrom Decl. ¶ 4.) Ms. Carlstrom attests that she thoroughly reviewed all of this
11 information, and that Detective D’Amico later supplemented those records. (Carlstrom
12 Decl. ¶¶ 4-5.)

13 It is true that the presumption can be rebutted even when a prosecutor was
14 provided evidence outside of the police reports. See, e.g., *Blankenhorn v. City of Orange*,
15 485 F.3d 463, 483-84 (9th Cir. 2007); *Caldwell*, 889 F.3d at 1112-13. But in those cases,
16 the prosecutors either did not review the outside evidence, see *Blankenhorn*, 485 F.3d at
17 483 (noting that the prosecutor “did not look at the video, relying instead on . . . police
18 reports”), or the officer fabricated the outside evidence, *Caldwell*, 889 F.3d at 1112-13
19 (concluding there were triable issues whether (1) the officer manufactured a show-up that
20 was designed to manipulate a witness’s memory, and (2) the officer fabricated a
21 statement from the defendant by falsifying notes).

22 //

1 Here, in contrast, it is undisputed that the City Defendants provided thousands of
2 pages of evidence outside of the police report and that the KCPAO reviewed this
3 evidence. Moreover, not only did City Defendants not falsify any evidence, they
4 corrected evidence that others incorrectly recorded. Further, the evidence that City
5 Defendants are accused of withholding is not crucial: the evidence constitutes a few
6 pages of material that is either redundant or of limited value due to the perfunctory nature
7 of the phone call and the fact that Dr. Green’s last visit with Plaintiffs was over six
8 months before the relevant events.

9 Again, the touchstone inquiry here is whether “the independence of the
10 prosecutor’s judgment has been compromised.” *Beck*, 527 F.3d at 862. Viewing the
11 evidence in the light most favorable to Ms. Chen, the court finds that the KCPAO’s
12 judgment was not compromised. The presumption of prosecutorial independence
13 therefore applies.

14 Thus, the court GRANTS City Defendants’ motion for summary judgment against
15 Ms. Chen on counts I and IV of the complaint.

16 3. Qualified Immunity

17 City Defendants also move for summary judgment because Detective D’Amico is
18 entitled to qualified immunity on all of Ms. Chen’s 42 U.S.C. § 1983 claims. (1st MSJ at
19 11-24.)⁵ Police officers “generally are shielded from liability for civil damages insofar as

21 ⁵ City Defendants do not argue that they are entitled to qualified immunity on Ms. Chen’s
22 § 1983 malicious prosecution claim. (*See generally* 1st MSJ.) The court therefore will not
address this issue.

1 their conduct does not violate clearly established statutory or constitutional rights of
2 which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818
3 (1982). In determining whether a police officer is entitled to qualified immunity, the
4 court must decide: (1) whether the facts that the plaintiff alleges assert a violation of a
5 constitutional right; and (2) whether the right at issue was “clearly established” at the
6 time the defendant engaged in the misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232
7 (2009) (discussing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). To determine whether a
8 right was clearly established, “the standard is one of fair warning: where the contours of
9 the right have been defined with sufficient specificity that a state official had fair warning
10 that [his] conduct deprived a victim of his rights, [he] is not entitled to qualified
11 immunity.” *Serrano v. Francis*, 345 F.3d 1071, 1077 (9th Cir. 2003) (quotation marks
12 and citation omitted). Where a “genuine issue of material fact exists that prevents a
13 determination of qualified immunity at summary judgment, the case must proceed to
14 trial.” *Bonivert v. Clarkson*, 883 F.3d 865, 871-72 (9th Cir. 2017). Courts may consider
15 the two prongs of the qualified immunity analysis in any order. *See Chism v.*
16 *Washington*, 661 F.3d 380, 386 (9th Cir. 2011).

17 Further, “[a]n officer’s liability under section 1983 is predicated on his ‘integral
18 participation’ in the alleged violation.” *Blankenhorn*, 485 F.3d at 481 n.12 (quoting
19 *Chuman v. Wright*, 76 F.3d 292, 294-95 (9th Cir. 1996)). “[I]ntegral participation does
20 not require that each officer’s actions themselves rise to the level of a constitutional
21 violation.” *Boyd v. Benton Cty.*, 374 F.3d 773, 780 (9th Cir. 2004). “But it does require

22 //

1 | some fundamental involvement in the conduct that allegedly caused the violation.”

2 | *Blankenhorn*, 485 F.3d at 481 n.12 (citing *Boyd*, 374 F.3d at 780).

3 | City Defendants’ qualified immunity argument varies as to each of Ms. Chen’s
4 | causes of action. (*See* 1st MSJ at 11-24.) The court will address the claims in turn.

5 | *a. Judicial Deception*

6 | Ms. Chen asserts that Detective D’Amico fabricated and omitted material
7 | information from her probable cause certificate and police report. (*See* FAC ¶¶ 132-45.)
8 | Without these fabrications and omissions, Ms. Chen alleges, there was not probable cause
9 | to arrest her. (*Id.*) Therefore, Ms. Chen claims that Detective D’Amico caused her
10 | unlawful arrest in violation of the Fourth Amendment. (*Id.*) Although styled as an
11 | “unlawful arrest” claim in the complaint (*see id.*), Ms. Chen recharacterizes it as a “claim
12 | for judicial deception” in her summary judgment response. (*See* 1st Resp. at 22; *see also*
13 | 3/27/18 Order at 22 (“Based on those allegations, Plaintiffs appear to assert a judicial
14 | deception claim”).)

15 | For a judicial deception claim to survive summary judgment on the ground of
16 | qualified immunity, Ms. Chen “must 1) make a ‘substantial showing’ of deliberate
17 | falsehood or reckless disregard for the truth and 2) establish that, but for the dishonesty,
18 | the [arrest] would not have occurred.” *Liston v. Cty. of Riverside*, 120 F.3d 965, 973 (9th
19 | Cir. 1997) (citing *Hervey v. Estes*, 65 F.3d 784, 788-89 (9th Cir. 1995)). Courts “must
20 | test and interpret affidavits which underlie an arrest in a ‘commonsense and realistic
21 | fashion.” *United States v. Esparza*, 546 F.2d 841, 843 (9th Cir. 1976) (quoting *United*
22 | *States v. Ventresca*, 380 U.S. 102, 108 (1965)). Moreover, “not all inaccuracies in an

1 | investigative report give rise to a constitutional claim.” *Spencer v. Peters*, 857 F.3d 789,
2 | 798 (9th Cir. 2017) (citing *Black v. Montgomery Cty.*, 835 F.3d 358, 372 (3d Cir. 2016)).
3 | False statements and omissions are material if the probable cause affidavit, “once
4 | corrected and supplemented,” would not support probable cause. *Chism*, 661 F.3d at 389.

5 | Ms. Chen alleges that Detective D’Amico’s probable cause certificate contains
6 | nine material misstatements and omissions that evidence Detective D’Amico’s deliberate
7 | and reckless conduct.⁶ The court will address each of these statements individually and
8 | then analyze whether, when considered individually or together, they allow Ms. Chen’s
9 | judicial deception claim to survive summary judgment.

10 | (1) “*All other causes of J.L.’s condition aside from malnutrition had been ruled*
11 | *out.*” (1st Resp. at 24 (citing PCC at RED00027).) Ms. Chen argues that numerous
12 | medical records state the opposite: that causes besides malnutrition must be ruled out
13 | before determining the cause of J.L.’s condition. (*See* 1st Resp. at 24 (citing RED00415,
14 | RED00976).) However, the disputed statement from Detective D’Amico’s probable
15 | cause certificate is supported by the SCAN team’s finding that “[J.L.] has been doing
16 | very well and gaining weight since coming to [SCH]. All other causes and labs to
17 | explain weight loss have been negative.” (Rienschel Decl. ¶ 3, Ex. 17 (sealed).) Further,
18 |

19 | ⁶ Ms. Chen lists these alleged misstatements and omissions in bullet points, which she
20 | construes as giving her license to make her relevant arguments in single-space type for almost
21 | two pages of her response. (*See* 1st Resp. at 24-25.) This violates the local rules. *See* Local
22 | Rules W.D. Wash. LCR 10(e)(1) (“The text of any typed or printed brief must be 12 point or
larger and must, with the exception of quotations, be double spaced.”). Ms. Chen’s transgression
is especially egregious considering that the court granted her leave to file an overlength response
brief. (*See* 4/1/19 Order (Dkt. # 148).) The court will not tolerate such flouting of its rules
moving forward.

1 | some of the records that Ms. Chen relies on explicitly reference J.L.’s malnutrition and
2 | Ms. Chen’s caregiving as the likely cause of J.L.’s condition. (See RED00415 (notes
3 | from SCH stating that J.L. “has a constellation of symptoms . . . of unclear etiology,
4 | although some of these may be related to chronic malnutrition or inappropriate
5 | supplements,” and that J.L.’s “poor weight gain [is] likely due to malnutrition and
6 | possible child neglect”); RED00975-76 (SCAN team notes stating that “other etiologies
7 | must be ruled out” to explain J.L.’s “significantly distended abdomen,” though “[i]t is
8 | thought that this could potentially be due to his severe state of poor nutrition,” and that “it
9 | does seem that there is an element of neglect given his current nutritional status”).)

10 | (2) “Further investigation revealed [Ms.] Chen restricted J.L. from eating many
11 | things such as carbohydrates although she was never told J.L. could not have
12 | carbohydrates by any doctor.” (1st Resp. at 24 (citing PCC at RED00027).) Ms. Chen
13 | argues that this statement is false or “extremely misleading” because Ms. Chen did not
14 | prevent J.L. from eating carbohydrates and because J.L.’s doctors had recommended a
15 | low-carbohydrate diet. (1st Resp. at 24.) But it is undisputed that Ms. Chen reduced
16 | J.L.’s carbohydrate intake. (See *id.*) It is also undisputed that Dr. Green recommended in
17 | April 2013 to “increase [to J.L.’s] carbohydrate intake.” (RED00565.) Moreover, Ms.
18 | Chen told SCH providers that J.L. “cannot eat many foods, including carbohydrates or
19 | sugar,” but she was unable to “identify any food that he does eat.” (RED00927-28.)

20 | (3) “[Ms.] Chen had also brought J.L. to 14 different healthcare providers in a
21 | two year period and she refused to share information amongst these providers. This
22 | made it nearly impossible to have continuous care and left J.L. not being monitored for

1 *both weight and developmental gains by any one provider.*” (1st Resp. at 24 (citing PCC
2 at RED00027).) Ms. Chen argues that J.L. only “had a small number of primary
3 providers” and that she “did not prevent communication among these providers.” (1st
4 Resp. at 24.) Further, Ms. Chen argues that J.L. was being regularly monitored by his
5 primary provider—presumably Dr. Gbedawo. (*Id.*; *see also* Gbedawo Decl. ¶ 7 (noting
6 nine appointments with J.L. between April 2013 and October 2013).) But the 10-pages
7 of medical records Dr. Gbedawo provided to Detective D’Amico did not make it clear
8 that Dr. Gbedawo was coordinating J.L.’s care or monitoring his weight gain and
9 development. (*See* RED00770-79.) Nor does Dr. Gbedawo’s undisclosed monitoring
10 negate that J.L. saw at least 14 different healthcare providers. Moreover, the medical
11 records are full of examples of Ms. Chen’s “obstructionist” behavior (RED00930); her
12 requests that medical reports “not be sent to referring provider or Kindering Center, only
13 to her” (RED00225); that Ms. Chen “specified to NOT send report to” one of J.L.’s
14 providers (D’Amico Decl. ¶ 6, Ex. J (sealed) at RED00232); that Ms. Chen was “very
15 reluctant” to disclose J.L.’s list of medications and supplements to a medical provider
16 (D’Amico Decl. ¶ 6, Ex. P (sealed) at RED00907); that Ms. Chen “was not providing [a]
17 full history” (Riesche Decl. ¶ 3, Ex. 18 (sealed) at CHEN0005739); and that Ms. Chen
18 was “evasive,” “had her own agenda,” refused to allow the tests that doctors
19 recommended, and would “not reveal the extensive past evaluations that were done by
20 specialists at SCH” (RED00762). Further, in a discussion between two of J.L.’s
21 providers, one of them was “concerned that family has been going from dr to dr but that
22 pt is not actually receiving appropriate medical attention.” (RED00397; RED00105-06.)

1 The record contains additional examples that support this statement from the probable
2 cause certificate. (See 1st MSJ at 15-17 (citing medical records).)

3 (4) “[Ms.] Chen acted in a manner which created an imminent risk of great bodily
4 harm to J.L., causing him to be admitted to [SCH] for approximately three weeks.” (1st
5 Resp. at 24 (citing PCC at RED00027).) As the court already discussed, J.L.’s gross
6 malnutrition, Ms. Chen’s “erratic and obstructionist behavior,” J.L.’s ultimate ability to
7 tolerate “a full diet with no signs or symptoms of food allergy or intolerance,” and
8 medical providers implicating Ms. Chen as a potential cause for J.L.’s condition support a
9 finding that Ms. Chen acted in a manner which created an imminent risk of great bodily
10 harm to J.L. See *supra* § III.C.1. The court recognizes that J.L. was kept at SCH for 15
11 days (October 24 through November 7), rather than the “approximately three weeks” that
12 Detective D’Amico wrote in her certificate, though the court also recognizes that J.L. had
13 numerous medical appointments starting on October 19, 2013. (See RED01138.)

14 (5) “There is also probable cause to believe [Ms. Chen] withheld basic necessities
15 of life to [sic] including nutrition as [J.L.] was diagnosed as grossly malnourished and
16 dehydrated upon arrival at Seattle Children’s Hospital.” (1st Resp. at 25 (citing PCC at
17 RED00027).) Ms. Chen argues that this statement is false or misleading because J.L. had
18 been extremely sick for several days before Ms. Chen took him to SCH, where J.L. was
19 diagnosed as non-emergent. (1st Resp. at 25.) Ms. Chen also argues that this statement
20 falsely attributes the responsibility for J.L.’s nutrition to Ms. Chen even though Mr. Lian
21 was primarily involved in feeding J.L. (*Id.*) As discussed, SCH allowed Ms. Chen and
22 Mr. Lian to take J.L. home on October 20, 2013, because J.L. did not have “hypertensive

1 emergency at this time and does not meet the eminent risk criteria for medical hold,” but
2 based on the understanding that they would immediately follow up with Dr. Halamay.
3 (See RED00374-75.) SCH’s notes from that visit also reveal that J.L. was diagnosed
4 with “failure to thrive,” that his lab results are “improved but not normal,” and that “he
5 would benefit from having a coordinated workup that includes endocrinology,
6 gastroenterology, and nephrology to aid with diagnosis and management of his chronic
7 issues.” (*Id.*) Further, by October 24, 2013—after Ms. Chen took J.L. to the hospital
8 only after CPS’s encouragement—SCH doctors diagnosed J.L. with “failure to thrive . . .
9 [and] gross malnutrition and muscle wasting. Concern for medical cause of wasting vs.
10 neglect.” (RED00792.) J.L. was then admitted to SCH’s general medicine service to
11 treat his malnutrition and receive a SCAN team consultation. (*Id.*) On November 5,
12 2013, the SCH medical staff advised the SCAN team that J.L. was “severely
13 malnourished” (RED00816), and even had J.L. been on a special diet, “he would not have
14 been left malnourished and dehydrated” (D’Amico Report at RED00014). It is true that
15 the probable cause certificate statement did not account for Mr. Lian’s role as primarily
16 being involved with feeding J.L. However, Detective D’Amico’s police report, which
17 was simultaneously transmitted to the KCPAO, notes that “[Mr. Lian] does most of the
18 cooking.” (*Id.* at RED00012.)

19 (6) *Detective D’Amico failed to disclose J.L.’s autism and the extensively*
20 *documented, complex co-morbidities resulting from that condition, including chronic GI*
21 *issues.* (See 1st Resp. at 25.) Detective D’Amico’s certificate does not mention that J.L.
22 was diagnosed with autism. (See generally PCC.) Nor does Detective D’Amico mention

1 that GI issues are common with autism. (*See id.*) But Detective D’Amico transmitted
2 J.L.’s available medical records to the KCPAO with her probable cause certificate. These
3 files included records from Lakeside Center for Autism. (*See Carlstrom Decl.* ¶ 4.)
4 Detective D’Amico’s police report also mentions that J.L. was diagnosed with autism.
5 (*See D’Amico Report* at RED00018.) Moreover, Detective D’Amico submitted a
6 “Detective/Officer Comment Sheet” to the KCPAO along with her probable cause
7 certificate, in which she stated: “A problem with this case is that it is nearly impossible
8 to differentiate between the developmental delays the victim was born with versus the
9 developmental delays he has suffered as a result of prolonged malnutrition.” (D’Amico
10 Decl. ¶ 6, Ex. D (“Comment Sheet”) at RED00024.)

11 *(7) Detective D’Amico failed to disclose that none of the medical providers with*
12 *the most experience with Ms. Chen and J.L. and the most knowledge of his medical*
13 *conditions believed that Ms. Chen had anything to do with his condition. (See 1st Resp.*
14 *at 25.) The probable cause certificate did not mention Dr. Green, Dr. Gbedawo, or Dr.*
15 *Greiner’s belief that Ms. Chen did not cause J.L.’s condition. (See id.) However, as*
16 *discussed above, Detective D’Amico provided the KCPAO with letters from Dr. Green*
17 *and Dr. Greiner, as well as a letter from Dr. Gbedawo’s clinic, that supported Ms. Chen.*
18 *See supra § III.C.2.*

19 *(8) Detective D’Amico failed to disclose that Pedialyte caused J.L. significant GI*
20 *distress. (See 1st Resp. at 25.) Ms. Chen argues that the probable cause certificate*
21 *should have mentioned J.L.’s adverse reaction to Pedialyte. (Id.) City Defendants argue,*
22 *however, that it would make little sense to mention J.L.’s reaction to Pedialyte when the*

1 | probable cause certificate made no mention that Ms. Chen took Pedialyte away from J.L.
2 | (1st Reply at 13.)

3 | (9) *Detective D’Amico failed to disclose that because J.L. was sick, Ms. Chen had*
4 | *taken J.L. to multiple doctors and the emergency room just days before he was removed,*
5 | *and that the hospital discharged him as non-emergent.* (See 1st Resp. at 25.) Ms. Chen’s
6 | allegation here is similar to her argument about statement (5). The court will not rehash
7 | the arguments.

8 | Considering each of these statements individually as well as together, and viewing
9 | the evidence in the light most favorable to Ms. Chen, the court concludes that Ms. Chen
10 | has not made a “substantial showing” that Detective D’Amico exhibited deliberate
11 | falsehood or reckless disregard for the truth. *See Liston*, 120 F.3d at 973. For example,
12 | regarding the first statement in dispute, Detective D’Amico’s statement that “[a]ll other
13 | causes of J.L.’s condition aside from malnutrition had been ruled out” is supported by
14 | numerous statements in the records, including the SCAN team’s finding that “[J.L.] has
15 | been doing very well and gaining weight since coming to [SCH]. All other causes and
16 | labs to explain weight loss have been negative.” (See Riensche Decl. ¶ 3, Ex. 17 (sealed);
17 | *see also* RED00415, RED00975-76.) Likewise, the court concludes that, had the
18 | probable cause certificate been corrected or supplemented in the areas where it did not
19 | perfectly capture the thousands of pages of medical evidence, there still was probable
20 | cause to charge Ms. Chen. *See Chism*, 661 F.3d at 389. Again, regarding the first
21 | disputed sentence—had Detective D’Amico supplemented the probable cause certificate
22 | with the full statements that Ms. Chen cites, there still would have been probable cause to

1 charge Ms. Chen. (*See, e.g.*, RED00415 (notes from SCH medical provider stating that
2 J.L. “has a constellation of symptoms . . . of unclear etiology, although some of these
3 may be related to chronic malnutrition or inappropriate supplements,” and that J.L.’s
4 “poor weight gain likely due to malnutrition and possible child neglect.”).) The other
5 inaccuracies in the probable cause certificate—*e.g.*, saying that J.L. was in the hospital
6 for “approximately three weeks” instead of 15 days—likewise do not evidence deliberate
7 or reckless falsehoods on Detective D’Amico’s behalf and, additionally, were not
8 material to the finding of probable cause. *See Esparza*, 546 F.2d at 843 (explaining that
9 courts “must test and interpret affidavits which underlie an arrest in a ‘commonsense and
10 realistic fashion.’”). The court therefore GRANTS City Defendants’ motion for
11 summary judgment against Ms. Chen on count I of the complaint based on qualified
12 immunity.

13 *b. Deliberate Fabrication*

14 Ms. Chen claims that Detective D’Amico “deliberately fabricated evidence that
15 was used to criminally charge and prosecute” her, including by making material false
16 statements and omitting material exculpatory information in her police report, probable
17 cause certificate, and communications with prosecutors. (*See* FAC ¶¶ 146-54; 1st Resp.
18 at 27.) Ms. Chen also claims that Detective D’Amico used coercive and abusive
19 interview techniques to yield false information. (*See id.*)

20 “The Fourteenth Amendment prohibits the deliberate fabrication of evidence by a
21 state official.” *Spencer*, 857 F.3d at 793. Deliberate fabrication can be established by
22 direct or circumstantial evidence. *Id.* To prevail on a deliberate fabrication claim, “a

1 plaintiff must prove that (1) the defendant official deliberately fabricated evidence and
2 (2) the deliberate fabrication caused the plaintiff’s deprivation of liberty.” *Id.* at 798
3 (citing *Costanich v. Dep’t of Soc. & Health Servs.*, 627 F.3d 1101, 1111 (9th Cir. 2010)).

4 Similar to the discussion in the prior section, the court concludes that, even when
5 viewing the evidence in the light most favorable to Ms. Chen, Detective D’Amico did not
6 deliberately fabricate evidence. *See supra* § III.C.3.a. In fact, in one instance that is at
7 the heart of the KCPAO’s decision to charge Ms. Chen, even though the SCAN team
8 mistakenly wrote that Ms. Chen refused to admit J.L. to the emergency room on October
9 20, 2013 (*see* Exception Justification at 14), Detective D’Amico correctly noted that J.L.
10 “had stabilized and therefore he was discharged” (*see* D’Amico Report at RED00011).

11 Ms. Chen also argues that Detective D’Amico’s failure to use an interpreter when
12 interviewing her and Mr. Lian evidences deliberate fabrication of evidence. (1st Resp. at
13 27-28.) Ms. Chen claims that, due in part to the lack of an interpreter, Detective
14 D’Amico’s “description of this interview in the police report is inaccurate and
15 misleading.” (*Id.*) Specifically, Ms. Chen alleges that the police report incorrectly states
16 that J.L. does not eat “bread, crackers, or fruit,” that certain supplements in the pantry
17 were for Ms. Chen’s skin, that “there appeared to be no extracurricular activities” even
18 though Ms. Chen said she took J.L. “to the park, playground, library and other places for
19 activities,” and that Ms. Chen would “discipline” J.L. for eating foods he was not
20 supposed to have.” (Chen Decl. ¶¶ 39-41; *see also* D’Amico Report at RED00012-13.)

21 “[A]n interviewer who deliberately mischaracterizes witness statements in her
22 investigative report . . . commits a constitutional violation,” but “not all inaccuracies in an

1 | investigative report give rise to a constitutional claim.” *Spencer*, 857 F.3d at 798
2 | (quoting *Costanich*, 627 F.3d at 1111). “Mere careless[ness] is insufficient, as are
3 | mistakes of tone.” *Id.* (quotation marks and citations omitted). Further, “[e]rrors
4 | concerning trivial matters cannot establish causation, a necessary element of any § 1983
5 | claim.” *Id.* Further, “mere allegations that Defendants used interviewing techniques that
6 | were in some sense improper, or that violated state regulations, without more, cannot
7 | serve as the basis for a claim under § 1983.” *Devereaux v. Abbey*, 263 F.3d 1070, 1075
8 | (9th Cir. 2001) (en banc).

9 | Here, Detective D’Amico explicitly stated before discussing her interview with
10 | Ms. Chen and Mr. Lian that “[i]t was apparent [Ms. Chen] spoke English as a second
11 | language and we had some trouble communicating.” (D’Amico Report at RED00012;
12 | *see also* Comment Sheet at RED00024 (“The family is from China and that is their first
13 | language.”).) Further, Detective D’Amico qualified all the statements for which Ms.
14 | Chen takes issue. For example, Detective D’Amico’s report states that J.L. did, in fact,
15 | eat some gluten-free bread. (*See* D’Amico Report at RED00012 (“I saw a bag of
16 | gluten-free bread and asked [Ms. Chen] if [J.L.] was able to have any of those. [Ms.
17 | Chen] pointed the [sic] nutritional label and advised she couldn’t give him much.”).) The
18 | statement regarding the supplements is similarly qualified (*see id.* (“[Ms. Chen] told me
19 | some of the supplements were for her skin”)), as well as “trivial” and therefore unable to
20 | establish § 1983 causation, *see Spencer*, 857 F.3d at 798. Likewise, Detective D’Amico
21 | said “[i]t appeared there were no extracurricular activities or anything outside of school
22 | for [J.L.] and [L.L.],” which is not inconsistent with Ms. Chen’s alleged statement that

1 she took J.L. outside the home for activities. (See D’Amico Report at RED00012; Chen
2 Decl. ¶ 41.) Lastly, Detective D’Amico’s comments about potential physical abuse were
3 similarly qualified:

4 [Ms. Chen] informed me if [J.L.] would try to get food that he was not
5 supposed to have, he would be disciplined for it. [Ms. Chen] made somewhat
6 of a swatting gesture with her hand as if she was demonstrating what she
7 would do to [J.L.] I asked her how [J.L.] would be disciplined, and she
8 couldn’t give me a clear answer. I asked her if she physically punishes [J.L.]
9 for trying to eat food she doesn’t allow him to eat, and she began to talk about
10 another topic.

11 (D’Amico Report at RED00012.) Moreover, Detective D’Amico stated shortly thereafter
12 in her report that “[Ms. Chen] also went on to say how much she cares for [J.L.] and that
13 she takes him to the doctor all the time.” (*Id.*) In short, the court does not find that
14 Detective D’Amico deliberately mischaracterized Ms. Chen (or Mr. Lian’s) statements in
15 her investigative report. To the contrary, she noted that English was their second
16 language and qualified her report to show her lack of certainty regarding Ms. Chen’s and
17 Mr. Lian’s statements.

18 This stands in contrast to instances where courts found that an officer was not
19 entitled to qualified immunity because there was a genuine issue on whether he or she
20 deliberately fabricated evidence. For example, the Ninth Circuit determined that an
21 officer was not entitled to qualified immunity where she indicated in her police report
22 that she had interviewed 34 people, but “later admitted that she had made only brief
contact with eighteen of the individuals listed,” including misrepresenting that she
interviewed doctors central to the case. See *Costanich*, 627 F.3d at 1112. Similarly, a
court declined to award an officer qualified immunity where the officer wholly created

1 statements by a witness and the witness denied providing any information on the topics.
2 *See McSherry v. City of Long Beach*, 560 F.3d 1125, 1130 (9th Cir. 2009); *Spencer*, 857
3 F.3d at 798 (“[The officer’s] investigative reports contained scores of quotations
4 attributed to Kathryn and Matthew, both of whom unequivocally testified at trial that they
5 had never made those statements.”). Here, in contrast, Detective D’Amico’s alleged
6 misstatements—to the extent there were any—followed her preamble that English was
7 not Ms. Chen’s first language and were qualified in ways to show her lack of certainty.
8 Moreover, Detective D’Amico did not wholly fabricate statements; rather, in viewing the
9 evidence in a light most favorable to Ms. Chen, the inaccuracies in Detective D’Amico’s
10 report show mere “careless[ness],” “mistakes of tone,” and/or involve trivial matters that
11 cannot form the basis of a § 1983 claim. *See Spencer*, 857 F.3d at 798.

12 The court therefore GRANTS City Defendants’ motion for summary judgment
13 against Ms. Chen on count II of the complaint based on qualified immunity.

14 *c. Selective Enforcement*

15 Ms. Chen brings a Fourteenth Amendment selective enforcement claim against
16 Detective D’Amico alleging that, in short, Ms. Chen was targeted by Detective D’Amico
17 “due to her gender and her assumed gender role as J.L.’s mother.” (1st Resp. at 28-29;
18 FAC ¶¶ 155-68.)

19 To prevail on a selective enforcement claim, “a plaintiff must demonstrate that
20 enforcement had a discriminatory effect and the police were motivated by a
21 discriminatory purpose.” *Lacey v. Maricopa Cty.*, 693 F.3d 896, 920 (9th Cir. 2012)
22 (quotation marks and citation omitted). “In order to prove discriminatory effect, ‘the

1 claimant must show that similarly situated individuals . . . were not prosecuted.” *Id.*
2 (quoting *United States v. Armstrong*, 517 U.S. 456, 465 (1996)). Individuals are
3 similarly situated “when their circumstances present no distinguishable legitimate
4 prosecutorial factors that might justify making different prosecutorial decisions with
5 respect to them.” *United States v. Ford*, No. 3:14-cr-00045-HZ, 2016 WL 4443167, at *4
6 (D. Or. Aug. 22, 2016) (quoting *United States v. Olvis*, 97 F.3d 739, 744 (4th Cir. 1996)).
7 The standard for proving discriminatory effect “is a demanding one.” *Id.* (quotation
8 marks and citation omitted). Discriminatory intent requires that the prosecutor took a
9 course of action at least in part because of “its adverse effects upon an identifiable
10 group.” *Id.* at *7 (quotation marks omitted).

11 Ms. Chen alleges that she and Mr. Lian are similarly situated. (*See* 1st Resp. at
12 29.) Yet, according to Ms. Chen, Detective D’Amico treated her differently despite
13 knowing that CPS sought to remove J.L. and L.L. from both Ms. Chen’s and Mr. Lian’s
14 custody, that Mr. Lian frequently accompanied Ms. Chen to J.L.’s medical appointments,
15 and that, if anything, Mr. Lian was more responsible for J.L.’s nutrition. (*See id.* at
16 28-29.) Ms. Chen argues that the reasonable inference is that Detective D’Amico
17 pursued Ms. Chen and not Mr. Lian because of unlawful gender bias and socially
18 constructed beliefs about gender roles. (*Id.* at 29.)

19 City Defendants argue that Ms. Chen was originally brought to their attention by
20 SPD, SCH, and CPS, which reported that Ms. Chen—not Mr. Lian—attempted to
21 interfere with J.L.’s care, showed hostility toward J.L. in therapy sessions, and showed
22 signs of Munchausen by Proxy. (1st MSJ at 21-22; D’Amico Decl. ¶ 3, Ex. A at

1 RED0002, Ex. F at RED00038; CPS Docs at RED00051.) City Defendants also point
2 out that the KCPAO based its charging decision against Ms. Chen on (1) a mistaken
3 belief that Ms. Chen failed to take J.L. to emergency care immediately when
4 recommended by physicians on October 19, 2013; (2) the fact that Ms. Chen took
5 Pedialyte away from J.L. against SCH’s medical providers’ orders; and (3) Ms. Chen’s
6 pattern of taking J.L. to see multiple providers who were not coordinating J.L.’s care.
7 (See 1st MSJ at 22; Exception Justification at 13.) At least the first and second factors
8 only implicate Ms. Chen. Further, the KCPAO charged Ms. Chen for actions that
9 occurred between October 19 and 24, 2013. (See Carlstrom Decl. ¶ 3, Ex. A.) In that
10 time-period, five medical providers recommended taking J.L. to emergency care—those
11 records mention that Ms. Chen was at all five appointments, while Mr. Lian was at just
12 two. (See 1st MSJ at 22 (citing records).) Further, certain records from that time-period
13 implicate “mother’s resistance to medical evaluation in this ill child,” but do not mention
14 Mr. Lian. (See, e.g., RED00930.)

15 The court finds that there is no genuine dispute of material fact that there were
16 “distinguishable legitimate prosecutorial factors that might justify” making different
17 prosecutorial decisions with respect to Ms. Chen and Mr. Lian. See *Ford*, 2016 WL
18 4443167, at *4. The court therefore GRANTS City Defendants’ motion for summary
19 judgment against Ms. Chen on count III of the complaint based on qualified immunity.

20 *d. Substantive and Procedural Due Process*

21 “Parents and children have a well-elaborated constitutional right to live together
22 without governmental interference. That right is an essential liberty interest protected by

1 the Fourteenth Amendment’s guarantee that parents and children will not be separated by
2 the state without due process of law except in an emergency.” *Hardwick v. Cty. of*
3 *Orange*, 844 F.3d 1112, 1116 (9th Cir. 2017) (internal quotation marks and citation
4 omitted). A plaintiff has a due process right protecting him or her “against deliberate
5 government use of perjured testimony and fabricated evidence in [a] dependency court
6 proceeding” that is designed to separate the plaintiff from his or her immediate family.
7 *Id.*

8 Here, Ms. Chen alleges that Detective D’Amico “participat[ed] in the deprivation
9 of Plaintiffs’ due process rights pertaining to the removal of J.L. and L.L., and the
10 family’s right to be free of interference.” (1st Resp. at 30; *see also* FAC ¶¶ 186-208.)
11 Ms. Chen claims that Detective D’Amico did so by “conduct[ing] a flawed and biased
12 investigation, and prepar[ing] a false and misleading report and [probable cause
13 certificate], which falsely implicated [Ms.] Chen in wrongdoing and led to her
14 prosecution for felony child abuse.” (1st Resp. at 30.) These allegations relate to the
15 KCPAO’s criminal proceedings against Ms. Chen, not the dependency action that
16 deprived Ms. Chen of the rights at issue in this claim. But, Ms. Chen points out that,
17 once the criminal case against her was terminated, the AGO dismissed the dependency
18 action. (*See id.*; Lo Decl. ¶ 9, Ex. S.) Thus, although Detective D’Amico did not directly
19 participate in the dependency proceedings, Ms. Chen claims that Detective D’Amico’s
20 actions make her at least an “integral participant” in the deprivation of Ms. Chen’s due
21 process rights and therefore liable under § 1983. (1st Resp. at 31); *Blankenhorn*, 485
22 F.3d at 481 n.12.

1 City Defendants argue that Ms. Chen’s due process claims are “frivolous” because
2 Detective D’Amico never testified or presented evidence at any dependency proceeding.⁷
3 (1st MSJ at 22-23; FAC ¶¶ 187(a), 200(a).) In addition, City Defendants assert that Ms.
4 Chen has not provided sufficient authority or evidence to support her claims that the
5 criminal investigation and proceedings prolonged the dependency action, that the
6 dependency action itself was an “unlawful intrusion,” or that Detective D’Amico was an
7 integral participant in any alleged unlawful intrusion. (Reply at 15-16.)

8 Ms. Chen’s due process claims fail. It is undisputed that Detective D’Amico did
9 not testify or present evidence at the dependency proceedings. (*See* 1st MSJ at 22-23; 1st
10 Resp. at 30-31.) Ms. Chen instead argues that Detective D’Amico should be implicated
11 in the dependency action because Detective D’Amico “was communicating with CPS at
12 the time [of the dependency proceedings], and was knowledgeable of the dependency
13 proceedings, and the theories of the facts held by CPS social workers.” (1st Resp. at 30
14 (citing Lo Decl. ¶¶ 10-11, Exs. T-U).) But the evidence Ms. Chen cites in no way shows
15 that Detective D’Amico “participated in” or “facilitated” the dependency proceedings.
16 (*See* 1st Resp. at 30.) The evidence involves emails from a DSHS representative
17 updating Detective D’Amico on the status of J.L. in foster care and Ms. Chen’s and Mr.
18 Lian’s lack of cooperation with DSHS (*see* Lo Decl. ¶ 10, Ex. T), and emails between

19 //

21 ⁷ City Defendants make a one-sentence argument in a footnote that this claim is untimely
22 because it is based on allegations of fact that were not made in the original complaint. (*See* 1st
MSJ at 23, n.4.) City Defendants do not cite sufficient law or facts on which the court could
decide this assertion. The court therefore will not address this argument at this time.

1 Ms. Carlstrom and Detective D’Amico in which Ms. Carlstrom says she received
2 numerous emails from DSHS (*see* Lo Decl. ¶ 11, Ex. U).

3 Moreover, neither the October 28-30, 2013, 72-hour dependency hearing, nor Ms.
4 Chen’s late-November 2013 motion for revision of the shelter care order (*see* FAC ¶ 62)
5 could have relied on Detective D’Amico’s police report or probable cause certificate
6 because Detective D’Amico did not author these documents until December 9, 2013 (*see*
7 D’Amico Report at RED00019; PCC). Regardless, the court has already determined that
8 Detective D’Amico did not present a “false and misleading” information in these
9 documents. *See surpa* § III.C.3.b; (1st Resp. at 31.) Thus, even if the dependency
10 proceedings relied on Detective D’Amico’s police report or probable cause certificate—
11 which Ms. Chen has not presented any evidence to support—such reliance would not be a
12 due process violation. *See Hardwick*, 844 F.3d at 1116 (explaining that a plaintiff has a
13 due process right protecting him or her “against deliberate government use of perjured
14 testimony and fabricated evidence in [a] dependency court proceeding”).

15 Detective D’Amico was also not an “integral participant” in the alleged unlawful
16 intrusion into Ms. Chen’s right to be with J.L. (*See* 1st Resp. at 31.) The cases Ms. Chen
17 cites for this proposition are off base. For example, in *Bonivert v. City of Clarkston*, 883
18 F.3d 865 (9th Cir. 2018), officers were considered integral participants in an unlawful
19 entry where, even though they did not lead the unlawful entry into the home, they
20 “developed a plan of entry” with the officer who first entered, “provided armed backup”
21 as that officer broke into the back door, and entered the home directly after the lead
22 officer. *Id.* at 879; *see also Blankenhorn*, 485 F.3d at 481 n.12 (explaining that an officer

1 | who arrived at the scene after the arrest was completed “did not participate in any integral
2 | way in the arrest,” but an officer who handcuffed the plaintiff was an integral participant
3 | in a later excessive use of force made possible by the handcuffing). Here, Detective
4 | D’Amico was not in any way a participant—let alone an integral participant—in the
5 | dependency action.

6 | Detective D’Amico’s participation in the criminal proceedings does not change
7 | that fact. At best, Ms. Chen’s claim is that Detective D’Amico’s probable cause
8 | certificate and police report helped convince the KCPAO to initiate criminal proceedings,
9 | which helped convince the AGO to prolong the dependency action. Again, this argument
10 | ignores that the dependency proceedings began before Detective D’Amico drafted or
11 | submitted the certificate or report. (*See* FAC ¶ 52; D’Amico Report at RED00019.)

12 | Finally, and fundamentally, Ms. Chen fails to allege that an “unlawful intrusion”
13 | occurred as the result of the dependency hearing. (*See generally* FAC; 1st Resp.)
14 | Certainly, a dependency hearing that removes a child from his or her parents’ custody is
15 | not in and of itself a constitutional violation. *See Santosky v. Kramer*, 455 U.S. 745, 758
16 | (1982) (discussing that parental rights termination proceedings are valid so long as
17 | parents receive due process). And, as discussed, there is no genuine dispute of fact that
18 | Detective D’Amico did not violate Ms. Chen’s due process rights at the dependency
19 | hearing, such as by causing or presenting “perjured testimony” or “fabricated evidence.”
20 | *See Hardwick*, 844 F.3d at 1116.

21 | The court therefore GRANTS City Defendants’ motion for summary judgment
22 | against Ms. Chen on counts V and VI of the complaint based on qualified immunity.

1 **D. City Defendants’ Motion Against Mr. Lian, J.L., and L.L.**

2 City Defendants move for summary judgment against Mr. Lian, J.L., and L.L.
3 (collectively referred to as “Mr. Lian” for purposes of this section) on all seven claims
4 asserted against City Defendants, as well as City Defendants’ malicious prosecution
5 counterclaim. (*See generally* 2d MSJ.) City Defendants first argue that Mr. Lian only
6 has standing to assert the substantive and procedural due process claims, and therefore
7 the other claims should be dismissed. (*Id.*) Mr. Lian explains, however, that he only
8 brings the due process claims, and therefore City Defendants’ request for summary
9 judgment against him on the other causes of action is moot. (*See* 2d Resp. at 28.) The
10 court agrees and DENIES as moot City Defendants’ request for summary judgment on
11 counts I, II, III, IV, and VIII against Mr. Lian.

12 The court addresses the remaining portions of City Defendants’ motion in turn.

13 1. Substantive and Procedural Due Process

14 Mr. Lian’s substantive and procedural due process claims are identical to those
15 articulated by Ms. Chen. (*See* FAC ¶¶ 186-208.) For the reasons articulated above with
16 respect to City Defendants’ motion against Ms. Chen, the court GRANTS City
17 Defendants’ motion for summary judgment against Mr. Lian on counts V and VI of the
18 complaint based on qualified immunity. *See surpa* § III.C.3.d. It is undisputed that
19 Detective D’Amico did not testify or present evidence at the dependency proceedings.⁸

20
21 ⁸ Mr. Lian claims that Detective D’Amico’s probable cause certificate should be
22 considered “testimony.” (*See* 2d Resp. at 22.) But, as stated, this ignores that the certificate was
created on December 9, 2013 (*see* PCC), well after the late-October 2013 dependency hearing,
and therefore could not have been used as “testimony” at the dependency hearing.

1 *Id.* Detective D’Amico was also not an “integral participant” in the alleged unlawful
2 intrusion into Ms. Chen’s right to be with J.L. *Id.* Lastly, Mr. Lian fails to support the
3 allegation that Detective D’Amico caused an “unlawful intrusion” to occur as the result
4 of the dependency hearing. *Id.*

5 Mr. Lian makes an additional argument that Ms. Chen avoided: Detective
6 D’Amico violated his due process rights by failing to disclose all evidence in her
7 possession that might have been favorable. (*See* 2d Resp. at 26-27; *cf.* 1st Resp. at 30-31
8 (explaining that “[Ms.] Chen is not challenging the disclosure of exculpatory information
9 to her”).) Mr. Lian equivocates on what ground he asserts this argument, though it
10 appears he is claiming a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). (2d Resp.
11 at 26-27.) “In order to prevail on a *Brady* claim, a defendant must demonstrate that: (1)
12 the evidence at issue is favorable, either because it is exculpatory or because it is
13 impeaching; (2) such evidence was suppressed by the State, either willfully or
14 inadvertently; and (3) prejudice resulted.” *Raley v. Ylst*, 470 F.3d 792, 804 (9th Cir.
15 2006). There was no *Brady* violation in this case.

16 The evidence that Mr. Lian claims was withheld consists of: (1) medical records
17 from Dr. Gbedawo that Dr. Gbedawo never provided to Detective D’Amico in the first
18 place and (2) the phone call with Dr. Green.⁹ (*Id.* at 27 & n.140; *see also* 2d Reply at 10
19 n.4 (explaining that the Evergreen Center records that Mr. Lian identifies in footnote 140
20

21 ⁹ City Defendants note in their response to Plaintiffs’ summary judgment motion that Mr.
22 Lian’s interrogatories also allege that Detective D’Amico withheld exculpatory information
concerning SCH and Dr. Halamay. (*See* 3d Resp. at 19; Riensche Decl. ¶ 3, Ex. 7 at 55-58.)
The court addresses the SCH and Dr. Halamay information below. *See infra* § III.E.

1 as being withheld were in fact provided, but there was an “oversight” that failed to
2 initially account for these records.) Obviously Detective D’Amico did not suppress
3 evidence that she never had. And, as discussed, no “prejudice resulted” from Detective
4 D’Amico’s failure to disclose the call with Dr. Green. *See supra* § III.C.2. The lack of
5 prejudice is underscored by the fact that both Dr. Green and Gbedawo testified and
6 submitted letters at the 72-hour dependency hearing. (*See* FAC ¶ 59; Riensche Decl. ¶ 2,
7 Ex. 8 at CHEN0005996-6000.)

8 Even if all three *Brady* factors were met, there still is no *Brady* violation because
9 Mr. Lian was “aware of the essential facts enabling him to take advantage of any
10 exculpatory evidence.” *Raley*, 470 F.3d at 804 (quoting *United States v. Brown*, 582 F.2d
11 197, 200 (2d Cir. 1978)). In *Raley*, for example, the defendant did not have a viable
12 *Brady* claim on the prosecution’s alleged withholding of medical records because the
13 defendant knew about his own medical visits and prescriptions, which was “sufficient to
14 alert defense counsel to the probability” that the disputed medical records existed. *Raley*,
15 470 F.3d at 804. Here, Mr. Lian was aware that J.L. had visited Dr. Gbedawo and Dr.
16 Green, which made him “aware of the essential facts enabling him to take advantage of
17 any exculpatory evidence.” *Id.*

18 The court therefore GRANTS City Defendants’ motion for summary judgment
19 against Mr. Lian on counts V and VI of the complaint based on qualified immunity.
20 Deciding the claims on qualified immunity, the court does not address the other due
21 process arguments presented by the parties.

22 //

1 2. Malicious Prosecution Against Mr. Lian, J.L., and L.L.

2 City Defendants also move for summary judgment against Mr. Lian based on City
3 Defendants' malicious prosecution counterclaim. (2d MSJ at 19-21; Countercl. at 23-28.)

4 A party may bring a malicious prosecution counterclaim on the ground that the
5 original tort action "was instituted with knowledge that the same was false, and
6 unfounded, malicious and without probable cause in the filing of such action, or that the
7 same was filed as a part of a conspiracy to misuse judicial process by filing an action
8 known to be false and unfounded." RCW 4.24.350(1). A law enforcement officer
9 bringing a malicious prosecution claim pursuant to RCW 4.24.350 still must prove the
10 remaining common law elements of malicious prosecution except for arrest, seizure,
11 damages, or termination or abandonment of the proceedings in the officer's favor. *See*
12 *Nguyen v. Cty. of Clark*, No. C10-5267BHS, 2011 WL 181393, at *2-3 (W.D. Wash. Jan.
13 19, 2011). Therefore, the relevant malicious prosecution elements include:

14 (1) that the prosecution claimed to have been malicious was instituted or
15 continued by the defendant; (2) that there was want of probable cause for the
16 institution or continuation of the prosecution; (3) that the proceedings were
instituted or continued through malice; . . . and ([4]) that the plaintiff suffered
injury or damage as a result of the prosecution.

17 *Id.*; *see also Hanson*, 852 P.2d at 298. A plaintiff can show malice in a malicious
18 prosecution case by establishing that "the prosecution complained of was undertaken
19 from improper or wrongful motives or in reckless disregard of the rights of the plaintiff."
20 *Nguyen*, 2011 WL 181393, at *4.

21 City Defendants argue that Mr. Lian's due process claims are frivolous because
22 Mr. Lian knew when he filed the claims that: (1) Detective D'Amico did not testify or

1 present evidence in the dependency action; (2) the AGO was aware of Plaintiffs’
2 contentions regarding Dr. Green’s and Dr. Gbedawo’s dietary advice, as well as the
3 records from other medical providers; (3) CPS—not RPD—was investigating the
4 dependency matter for the AGO; and (4) he had no evidence of any medical record being
5 submitted to Detective D’Amico that recommended reducing J.L.’s carbohydrate intake.
6 (2d MSJ at 19-20.)

7 Mr. Lian claims that “[t]hese facts are in dispute.” (2d Resp. at 29.) Mr. Lian
8 explains that, by “testifying and providing evidence at the dependency hearing,” Mr. Lian
9 meant that Detective D’Amico “wrongfully facilitated the dependency actions.” (*Id.* at
10 22.) Mr. Lian further states that he based his claims on the fact that Detective D’Amico
11 communicated with the KCPAO and CPS, and that CPS relied in part on the KCPAO for
12 its dependency proceedings as evidenced by the AGO terminating the proceedings after
13 the KCPAO dropped the criminal case. (*See id.*; *see also* Lo Decl. ¶¶ 10-11, Exs. T-U.)
14 Further, at least Dr. Green’s medical records that were submitted to Detective D’Amico
15 recommended restricting J.L.’s carbohydrate intake. (*See* RED00575.)

16 At this stage, viewing the evidence in the light most favorable to Mr. Lian, the
17 court finds that there is a genuine dispute of material fact whether Mr. Lian instituted his
18 due process claims “with knowledge that the same was false, and unfounded, malicious
19 and without probable cause.” RCW 4.24.350(1). The court likewise concludes that there
20 is a genuine dispute of material fact whether Mr. Lian’s claims were “filed as a part of a
21 conspiracy to misuse judicial process by filing an action known to be false and

22 //

1 unfounded.” *Id.* The court therefore DENIES City Defendants’ motion for summary
2 judgment against Mr. Lian on City Defendants’ malicious prosecution counterclaim.

3 **E. Plaintiffs’ Motion Against City Defendants**

4 Plaintiffs move for summary judgment on City Defendants’ malicious prosecution
5 counterclaim. (*See generally* 3d MSJ; *see also* Joinder.) Similar to City Defendants’
6 motion against Ms. Chen, Plaintiffs move for summary judgment on the ground that
7 probable cause existed for Plaintiffs to bring all their claims against City Defendants. (3d
8 MSJ at 12-17; *see also* 1st MSJ at 7-9.)

9 A defendant asserting a malicious prosecution counterclaim under RCW 4.24.350
10 must base the counterclaim “on an ‘action,’ not merely on a factual allegation.” *Watson*
11 *v. City of Vancouver*, No. C13-5936RBL, 2015 WL 1137530, at *14 (W.D. Wash. Mar.
12 12, 2015) (quoting *Brin v. Stutzman*, 951 P.2d 291, 297-98 (1998)). When a malicious
13 prosecution counterclaim is based on more than one charge, “the court must ‘separately
14 analyze the charges claimed to have been maliciously prosecuted.’” *Garvais v. United*
15 *States*, No. CV-03-0290-JLQ, 2010 WL 610282, at *14 (E.D. Wash. Feb. 17, 2010)
16 (quoting *Johnson v. Knorr*, 477 F.3d 75, 85 (3d Cir. 2007)), *aff’d*, 421 F. App’x 769 (9th
17 Cir. 2011). In other words, a finding of probable cause on one of a plaintiff’s charges—
18 which is as a complete defense to malicious prosecution—does not foreclose a malicious
19 prosecution action on a different charge. *See Garvais*, 2010 WL 610282, at *14-15.¹⁰ In
20

21 ¹⁰ The court in *Garvais* explained that no Washington State court “squarely addresses
22 whether the . . . charge-by-charge analysis on probable cause is employed in Washington.” 2010
WL 610282, at *15. But, following the holdings from “multiple federal Circuit Courts,” *Garvais*

1 asserting a claim, “a civil plaintiff need not have the degree of certainty as to the
2 existence of the facts on which the proceedings is based that is required of a prosecutor in
3 a criminal proceeding.” *Brin*, 951 P.2d at 299. Rather, “the civil plaintiff must have a
4 reasonable belief that the relevant facts can be established through the trial process.” *Id.*

5 Plaintiffs allege that they had a “reasonable belief in both the existence of facts on
6 which their claims are based and in the legal validity of their claims.” (3d MSJ at 14.)
7 The court has discussed at length the evidence and arguments in this case and will not
8 restate them here. For the reasons discussed above, the court finds that Ms. Chen had
9 probable cause to allege her judicial deception, deliberate fabrication, selective
10 enforcement, and malicious prosecution claims. Although City Defendants prevailed on
11 summary judgment on these claims, the court concludes that Ms. Chen had a reasonable
12 belief in the facts on which these claims were based. Thus, the court GRANTS
13 Plaintiffs’ motion for summary judgment on City Defendants’ malicious prosecution
14 counterclaim as it relates to Ms. Chen’s judicial deception, deliberate fabrication,
15 selective enforcement, and malicious prosecution claims, counts I, II, III, IV, and VIII.

16 However, the court concludes that genuine issues of material fact exist regarding
17 whether Plaintiffs had probable cause to bring their substantive and procedural due
18 process claims. *See Act Up!/Portland*, 988 F.2d at 873 (“[T]he court should not
19 determine probable cause at the summary judgment stage if a genuine issue of material
20 fact exists.”). Plaintiffs’ complaint alleges that Detective D’Amico “wrongfully

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22 determined that the Washington Supreme Court “would follow this charge-by-charge approach
to the probable cause element.” *Id.* at *14-15.

1 facilitated the dependency actions” by “[t]estifying at and/or providing false and
2 misleading evidence in favor of the dependency hearings” and by “[p]ossessing but
3 failing to disclose” exculpatory material. (*See* FAC ¶¶ 187, 200.) But it is undisputed
4 that Detective D’Amico did not testify or present evidence at the dependency hearings.
5 *See supra* §§ III.C.3.d, III.D.1, III.D.2. Even construing Plaintiffs claims to mean that
6 Detective D’Amico wrongfully “participated in” or “facilitated” the dependency
7 proceedings (*see* 1st Resp. at 30-31; 2d Resp. at 22), there remains a genuine dispute of
8 material fact whether probable cause existed for this claim. Likewise, a genuine dispute
9 exists regarding whether Plaintiffs had a reasonable belief that Detective D’Amico
10 withheld material evidence from the dependency action. The alleged withheld evidence
11 is from Dr. Green, Dr. Gbedawo, Dr. Halamay, and SCH. (*See* 3d Resp. at 19.)
12 However, all of these parties testified and/or submitted letters at the 72-hour dependency
13 hearing. (*See id.*; Riensche Decl. ¶ 2, Ex. 8 at CHEN0005996-6000.) Further, as
14 discussed above, Plaintiffs knew about the purported exculpatory material such that it
15 could not support an action based on unlawful withholding. *See supra* § III.D.1.

16 Therefore, the court DENIES Plaintiffs’ motion for summary judgment on City
17 Defendants’ malicious prosecution counterclaim as it relates to Plaintiffs’ substantive and
18 procedural due process claims, counts V and VI.

19 IV. CONCLUSION

20 For the foregoing reasons, the court GRANTS City Defendants’ summary
21 judgment motion against Ms. Chen (Dkt. # 106), GRANTS in part, DENIES in part, and
22 DENIES as moot in part City Defendants’ summary judgment motion against Mr. Lian,

1 J.L., and L.L. (Dkt. # 108), and GRANTS in part and DENIES in part Plaintiffs' motion
2 for summary judgment against City Defendants (Dkt. # 141).

3 Dated this 24th day of May, 2019.

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6 JAMES L. ROBART
7 United States District Judge
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