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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVEN SWARTWOOD;
JOANNA SWARTWOOD; R.S., a
minor; and D.S., a minor by and
through their Guardian *Ad Litem*,
Judy Swartwood,

Plaintiffs,

v.

COUNTY OF SAN DIEGO; SAN
DIEGO HEALTH AND HUMAN
SERVICES AGENCY; POLINSKY
CHILDRENS CENTER; MAYA
BRYSON; WENDY CURIEL;
DELLY ROLLINS; and SUSAN
SOLIS,

Defendants.

CASE No: 12-CV-1665 W (BGS)

**ORDER: (1) GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
[DOC. 42]; (2) GRANTING IN
PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
AGAINST THE INDIVIDUAL
DEFENDANTS [DOC. 45]; AND
(3) GRANTING PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST
THE COUNTY DEFENDANTS
[DOC. 46]**

Plaintiffs are Steven and Joanna Swartwood, their son D.S., and daughter R.S.
Defendants are the County of San Diego, the San Diego Health and Human Service
Agency, the Polinsky Children's Center (collectively, the "County"), and four
individuals employed by the Agency: Maya Bryson, Wendy Curiel, Kelly Rollins, and
Susan Solis (collectively, the "Individual Defendants").

1 Plaintiffs filed this lawsuit after D.S. and R.S. were removed from their home
2 without a warrant and subjected to medical exams, which included a urine test and
3 examination of their genitalia, without notice to Steven or Joanna. Defendants admit
4 that the medical exams were performed pursuant to the County's policy that does not
5 provide notice to the parents and excludes them from the medical exams. Plaintiffs
6 contend Defendants' conduct in removing the children, continuing to detain the
7 children, and conducting the medical exams violated their Fourth Amendment and
8 Fourteenth Amendment rights and are suing under 42 U.S.C. § 1983. Plaintiffs also
9 allege a number of state-law causes of action.

10 Pending before the Court are the parties' cross motions for partial summary
11 judgment. The parties have also filed a number of evidentiary motions, which are
12 addressed in a separate order. (*See Evidentiary Order* [Doc. 73].) The Court decides
13 the cross-motions on the papers submitted and without oral argument. See Civ. L. R.
14 7.1(d.1). For the reasons discussed below, the Court **GRANTS IN PART** and
15 **DENIES IN PART** Defendants' motion [Doc. 42], **GRANTS IN PART** and **DENIES**
16 **IN PART** Plaintiffs' motion against the Individual Defendants [Doc. 45], and
17 **GRANTS** Plaintiffs' motion against the County [Doc. 46].

18
19 **I. BACKGROUND**¹

20 **A. R.S. sustains facial injuries while at day care.**

21 In approximately April 2011, Joanna enrolled D.S. and R.S. at Shelly's Home
22 Daycare. At the time, D.S. was 3, and R.S. was 1.

23 On Monday, May 16, 2011, Joanna dropped the children off at daycare. At
24 about 2:40 p.m., Joanna received a telephone call from the daycare owner, Shelley
25 McCoshum, who said that redness developed on R.S.'s face around 11:00 a.m. from

26
27 ¹ Throughout this order, parties and witnesses will be referred to by their last name. However,
28 to avoid any confusion, where multiple parties or witnesses share the same last name, they will be
referred to by their first name.

1 either a fall on the trampoline or an allergic reaction. (*Joanna Dec.* [Doc. 45-6], ¶ 6.²)

2 Steven picked up the children from daycare. When they arrived home, Joanna
3 saw redness and puffiness on R.S.'s face and called Kaiser's nurse line. (*Joanna Dec.*, ¶
4 7.) After discussing R.S.'s condition, the nurse advised Joanna to take R.S. to the first
5 available appointment, which was the following day at 4:30 p.m. (*Id.*)

6 The next day, R.S. and D.S. did not go to daycare, but instead stayed with their
7 maternal grandparents. (*Joanna Dec.*, ¶ 8.) At the 4:30 p.m. appointment, Dr. Andrea
8 Siano examined R.S. and told Joanna that R.S.'s facial injuries appeared to be "inflicted
9 and non-accidental" in nature, and advised her to take R.S. and D.S. to Kaiser Zion
10 Hospital's emergency room for further testing. (*Id.*, ¶ 9.³) Upon hearing that R.S.'s
11 injuries appeared non-accidental, Joanna became tearful and upset. (*Defs' NOL* [Doc.
12 42-13], Ex. A (sealed) [Doc. 44] at p.1.) Based on Joanna's reaction, Dr. Siano did not
13 suspect that R.S.'s injuries were caused by anyone in the family. (*Id.*)

14 Joanna followed Dr. Siano's advice. (*Joanna Dec.*, ¶ 10.) After leaving the
15 doctor's office, Joanna drove home, picked up D.S. and Steven, and then the entire
16 family drove to Kaiser Zion Hospital's emergency room. (*Id.*, ¶ 10.) Dr. Paul B.
17 Dohrenwend was the attending physician. He spent approximately an hour and 45
18 minutes with the Swartwoods, during which time he examined R.S. and concurred that
19 her facial injuries appeared non-accidental. (*Id.*, ¶ 11; *Owens Dec.* [Doc. 42-6], ¶ 8.)
20 Dr. Dohrenwend and the Swartwoods also discussed whether R.S. should undergo
21 further testing. (*Joanna Dec.*, ¶ 11.) There was extensive discussion regarding the risks
22 of radiation and the possibility R.S. could develop tumors in the future. (*Id.*, ¶ 17;

23
24 ² Plaintiffs filed duplicate copies of certain documents (e.g., Steven and Joanna's declarations,
25 their Request for Judicial Notice, etc...), one in support of the motion against the Individual
26 Defendants and the other in support of the motion against the County.

27 ³ Joanna's declaration states that Dr. Siano advised her to take "R.S. and R.S. to" the
28 hospital. (*J. Swartwood Dec.*, ¶ 9.) The Court assumes she meant "R.S. and D.S." based on
Joanna's statement in the next paragraph that "[i]n accordance with Dr. Siano's advice, I went
home and picked up D.S. . . and took both R.S. and D.S. to Kaiser Zion ER. (*Id.*, ¶ 10.)

1 *Steven Dec.* [Doc. 45-7], ¶ 11.) Dr. Dohrenwend consulted with three Kaiser
2 pediatricians who opined that additional testing that evening was not necessary because
3 R.S. “was not presenting with neurological problems or vomiting.” (*Defs’ NOL*, Ex. A
4 (sealed) at p.1; *Owens Dec.*, ¶ 8; *Joanna Dec.*, ¶ 11.) And after Dr. Dohrenwend
5 indicated that he would not have his own children subjected to the additional testing,
6 Steven and Joanna decided to decline having the testing done that evening. (*Joanna*
7 *Dec.*, ¶ 17; *Steven Dec.*, ¶ 11.) However, the Swartwoods planned to consult with R.S.’s
8 regular pediatrician, Dr. Rachel Ireland, the next day. (*Steven Dec.*, ¶ 11; *Pls Sealed*
9 *Exhibits* [Doc. 48], Ex. 7 at p. 3.)

10
11 **B. R.S.’s injuries are reported to Child Protective Services.**

12 Meanwhile, Dr. Siano contacted the Agency’s child abuse hotline and made a
13 mandated report of R.S.’s injuries. Dr. Siano talked to the Agency’s hotline screener,
14 Patience Owens, and reported that Joanna had brought in her one-year-old daughter
15 due to concerns about a rash on her face. (*Owens Dec.*, ¶ 3; *Defs’ NOL*, Ex. A (sealed)
16 at p. 1.) Dr. Siano told Owens that Joanna was contacted the day before by the daycare
17 and told R.S. developed a rash, but Dr. Siano believed R.S.’s facial injuries were
18 “inflicted and non-accidental.” (*Id.*) Dr. Siano reported that Joanna also stated that
19 the Swartwood’s son, D.S., who also attends the daycare, “has been crying and hesitant
20 to attend the daycare for the past two weeks.” (*Owens Dec.*, ¶ 3.) Dr. Siano stated that
21 she referred Joanna to Kaiser’s emergency room for further testing, informed Owens
22 that Joanna appeared tearful and upset upon hearing that the injuries appeared
23 non-accidental, and stated that she “did not have any suspicions that the abuse came
24 from the family . . . based on what Joanna reported.” (*Id.*; *Defs’ NOL*, Ex. A (sealed)
25 at p.1.)

26 Later, Owens contacted the emergency room to confirm Joanna had taken the
27 children. (*Owens Dec.*, ¶ 4.) Emergency room nurse Michelle Fowler confirmed the
28 Swartwoods were there, and that Dr. Dohrenwend had examined R.S. (*Id.*, ¶ 6.) Dr.

1 Dohrenwend then got on the phone and told Owens that “the parents elected not have
2 R.S. undergo the CT scan, skeletal exam, or X-rays because of the amount of radiation
3 involved, and because R.S. did not present with neurological problems or vomiting. He
4 said they had consulted with three different pediatricians at Kaiser and feel the extra
5 testing is not needed.” (*Id.*, ¶ 8; *see also Defs’ NOL*, Ex. B (sealed) [Doc. 44] at p. 1.)
6 Dr. Dohrenwend also told Owens that the parents “expressed that they would not send
7 the minors back to the daycare given the suspicion that the marks are being considered
8 to be inflicted injuries.” (*Defs’ NOL*, Ex. B (sealed) at p. 1.)

9 Owens then talked to Nurse Fowler again, who stated that the “marks [on R.S.’s
10 face] could be from coughing or other activity such as vomiting.” (*Owens Dec.*, ¶ 9.)
11 Joanna was then put on the phone and asked Owens “if she should send the children
12 back to the daycare tomorrow. She also asked if she should contact the daycare
13 provider to inform them about the children not attending tomorrow. [Owens] told her
14 a social worker from the Agency would be contacting them shortly to answer their
15 questions.” (*Id.*, ¶ 10; *Defs’ NOL*, Ex. B (sealed) at p. 1.)

16
17 **C. Defendant Wendy Curiel decides to send Defendant Maya Bryson to**
18 **the Swartwoods’ home.**

19 On May 17, 2011, Defendant Wendy Curiel was working as a Protective Services
20 Supervisor in the Child Abuse Hotline/Emergency Response Stand-by Program. (*Curiel*
21 *Dec.* [Doc. 42-3], ¶ 2.) Throughout the afternoon and evening, Curiel had been talking
22 to Owens about what she “learned from speaking with Dr. Siano and others regarding”
23 R.S.’s injuries. (*Id.*, ¶ 4.) Based on those conversations, Curiel understood Joanna
24 reported receiving a call from R.S.’s daycare about being injured as a result from
25 “possibly . . . falling on the trampoline or from allergies,” but Dr. Siano stated that the
26 injuries “appeared to be intentionally inflicted.” (*Id.*, ¶¶ 4, 5.) Curiel was informed that
27 R.S. was not taken to the doctor until the following day, and that Dr. Siano referred
28 Joanna to the emergency room for additional testing. (*Id.*, ¶¶ 5, 6.) Because R.S.’s

1 injuries were non-accidental, Curiel was concerned for her safety and “wanted to find
2 out the results from the additional testing at the hospital before deciding what action
3 (if any) the Agency should take.” (*Id.*, ¶ 6.)

4 Later, Owens informed Curiel that the Swartwoods went “to the Kaiser ER, but
5 the parents decided not to have any additional testing done.” (*Curiel Dec.*, ¶ 7.)
6 Additionally, Owens stated that even though the parents said the injuries first appeared
7 while R.S. was at daycare and were told the injuries “appeared to be intentionally
8 inflicted, Ms. Swartwood asked Ms. Owens whether she should bring the children back
9 to daycare the following day.” (*Id.*) Curiel, therefore, decided to send a social worker
10 to meet the Swartwoods at the hospital, and told Owens to ask the hospital to hold the
11 family until a social worker could meet with them. (*Id.*) According to Curiel, such
12 requests are “standard” and are “routinely followed” by the hospitals. (*Id.*) However,
13 “the hospital told Ms. Owens they would not hold the family there and that the family
14 was being discharged.” (*Id.*)

15 At some point in the evening, Curiel called Defendant Maya Bryson, who was
16 working as an on-call Senior Protective Services employee that evening. (*Curiel Dec.*,
17 ¶ 8; *Bryson Dec.* [42-2], ¶ 2.) Curiel told Bryson about Owen’s report of R.S.’s injuries
18 and assigned her the case. (*Bryson Dec.*, ¶ 3; see *Curiel Dec.*, ¶ 13.) Bryson contends
19 that she reviewed Owens’ report and was told by Curiel that the pediatrician had
20 referred R.S.’s parents to the emergency room for further testing, “which could include
21 a scan of the child’s head . . . and full body x-rays[.]” (*Id.*, ¶¶ 3, 5.) Curiel also stated
22 that the parents had taken R.S. to the emergency room, but had left “without having
23 the additional testing done.” (*Id.*, ¶ 6.) Curiel asked Bryson to go the parents’ house
24 to interview them and to determine if the child was safe. (*Id.*, ¶ 6.)

25
26 **D. Bryson and Curiel decide to place the children into protective custody.**

27 The Swartwoods returned home after being released from the hospital. Steven
28 and Joanna knew from the conversation with Owens that a social worker was going to

1 their house. The Swartwoods assumed the social worker was being sent to discuss the
2 situation at daycare. (*Joanna Dec.*, ¶ 13; *Steven Dec.*, ¶ 7.)

3 Sometime after 9:30 p.m., Bryson arrived at the Swartwood's home with three
4 uniformed police officers. (*Bryson Dec.*, ¶ 8.) Believing she was there to discuss the
5 daycare, Steven and Joanna invited her and the officers into their home. (*Joanna Dec.*,
6 ¶ 13; *Steven Dec.*, ¶ 7.) Bryson then asked to see R.S., who was sleeping. (*Joanna Dec.*,
7 ¶ 14; *Bryson Dec.*, ¶ 9.) According to Joanna, Bryson "demanded" that Joanna disrobe
8 R.S. so Bryson could visually inspect her. (*Joanna Dec.*, ¶ 14.) During the inspection,
9 Bryson took photographs of R.S. (*Id.*; *Bryson Dec.*, ¶ 11.) Later, Bryson demanded
10 them to wake up and disrobe D.S. so she could also exam him. (*Joanna Dec.*, ¶ 18;
11 *Bryson Dec.*, ¶ 16.)

12 While Joanna rocked R.S. back to sleep, Bryson began interviewing Steven.
13 (*Joanna Dec.*, ¶ 15; *Steven Dec.*, ¶ 9.) Steven recounted the previous days events with
14 Bryson. He picked up R.S. from daycare, noticed a "weird rash" on her face, and was
15 told by the home daycare provider that they "didn't know what had happened but that
16 she may have fallen on the trampoline." (*Bryson Dec.*, ¶ 13.) Steven also indicated that
17 over the past few days, D.S. began "crying his eyes out" about having to go to daycare.
18 (*Id.*) He told her they went to the emergency room, and declined the additional testing
19 because they were concerned about the risks of radiation and the possibility of tumors.
20 (*Id.*; *Steven Dec.*, ¶ 11.) Bryson asked why R.S. was not taken to the doctor immediately
21 after they noticed her injuries. (*Bryson Dec.*, ¶ 13.) Steven did not respond, though he
22 had informed her earlier that when they arrived home from daycare, R.S.'s demeanor
23 "seemed fine.' 'She was not groggy[.]' 'It didn't seem . . . real bad.'" (*Pls' Sealed*
24 *Exhibits*, Ex. 7 at p. 3.) Steven also denied being rough or aggressive with the children,
25 and denied grabbing R.S. by the face or doing anything else that would have caused the
26 injuries. (*Bryson Dec.*, ¶ 13.)

27 Bryson then interviewed Joanna, whose statements regarding the events on May
28 16 and May 17 were consistent with Steven's statements. (*See Bryson Dec.*, ¶ 14.)

1 Bryson again asked why R.S. was not taken to the doctor immediately. (*Id.*, ¶ 14.)
2 Joanna stated that she “immediately called the Kaiser Nurse Line” and obtained the
3 first available appointment. (*Joanna Dec.*, ¶ 16; *Bryson Dec.*, ¶ 14; *Pls Sealed Exhibits*,
4 Ex. 7 at p. 1.) Joanna also denied any physical discipline at the home, denied ever
5 grabbing R.S. in an aggressive or abusive manner, and denied ever seeing Steven do so.
6 (*Id.*) Bryson then told Joanna that she was “concerned that R.S. was not thoroughly
7 evaluated medically, given the extensive injuries to her face[.]” (*Bryson Dec.*, ¶ 15.)

8 After examining the children and interviewing the parents, Bryson contends she
9 was concerned about the children’s safety because “R.S. was a pre-verbal child who had
10 extensive, serious facial injuries that had been, according to doctors, intentionally
11 inflicted, and her caretakers (her parents) could not explain how she got injured.”
12 (*Bryson Dec.*, ¶ 17.) Bryson then walked outside the home and called Curiel to discuss
13 the investigation. (*Id.*, ¶ 18.) The two decided that R.S. and D.S. should be taken into
14 protective custody. (*Id.*; *Curiel Dec.*, ¶ 15.)

15 Bryson went back into the home and told the Swartwoods that she was removing
16 the children and placing them in protective custody at the Polinsky Children’s Center.
17 (*Joanna Dec.*, ¶ 20; *Bryson Dec.*, ¶¶ 19-20.) The Swartwoods pleaded with Bryson not
18 to take the children, provided her with Shelly McChosum’s (the home daycare owner)
19 phone number and asked Bryson to call Shelly so she could confirm that R.S.’s injuries
20 occurred while at daycare. (*Joanna Dec.*, ¶ 20; *Bryson Dec.*, ¶ 19.) The Swartwoods also
21 proposed leaving the children with the grandparents. (*Joanna Dec.*, ¶ 20.) Bryson
22 refused. (*Id.*) According to Bryson’s declaration, “the role of the stand-by worker is not
23 to conduct lengthy investigations which may take numerous hours or potentially days
24 or weeks My role as a stand-by worker was to make a decision based on the
25 evidence I learned at the home, as well as the evidence the Agency learned from the
26 referral and from speaking to the reporting parties.” (*Bryson Dec.*, ¶ 20.)

27

28

1 E. D.S. and R.S. are subjected to further medical exams without notifying
2 their parents.

3 Bryson took R.S. and D.S. to the Polinsky Children's Center, a San Diego
4 County emergency shelter and group home. They arrived sometime between midnight
5 and 1:00 a.m. (*Bryson Dec.*, ¶ 22.) At approximately 2:00 a.m., R.S. and D.S. were
6 examined by the nursing staff for things that were "[c]ontagious or need medical
7 attention immediately." (*Pls.' Sealed Exhibits*, Ex. 19 at PCC 057; Ex. 29 at PCC 046;
8 Ex. 32 at p. 143.) D.S. then had urine taken for drug testing. (*Id.*, Ex. 29 at PCC
9 048–051.)

10 At 3:25 a.m., a plastic bag with adhesive and cotton balls was placed around the
11 front part of R.S.'s genitals in order to obtain a urine sample for drug testing. (*Pls'*
12 *Sealed Exhibits*, Ex. 19 at PCC 063, PCC 065, PCC 069; Ex. 32 at pp. 169–170.)
13 However, as of 8:50 a.m., not enough urine was collected so more cotton balls were
14 applied. (*Id.*, Ex. 19 at PCC 063.) Finally, at 12:40 p.m. a sample was collected. (*Id.*)
15 Both D.S.'s and R.S.'s urine tests came back "negative" for drugs. (*Id.*, Ex. 19 at PCC
16 065; Ex. 29 at PCC 050.)

17 At some point during the day, Dr. Wendy Wright, a Board certified child-abuse
18 specialist, conducted a medical exam on R.S. and D.S. (*Dr. Wright Dec.* [Doc. 42-12],
19 ¶ 10.) The exams involve the examination of "22 items," including the children's
20 genitalia and rectum. (*Pls' Sealed Exhibits*, Ex. 19 at PCC 060; Ex. 29 at PCC 047; Ex.
21 34 at p.60.) During R.S.'s exam, which confirmed Dr. Siano's and Dr. Dohrenwend's
22 findings that her injuries were non-accidental, R.S. was uncooperative. (*Id.*, Ex. 19 at
23 PCC 060; *Dr. Wright Dec.*, ¶ 10.)

24 The next day, Wednesday May 19, Dr. Wright accompanied R.S. to Kaiser
25 hospital to undergo a skeletal exam. (*Pls' Sealed Exhibits*, Ex. 19 at PCC 053, PCC 062,
26 PCC 063, PCC 066.) Before going, the Agency was specifically advised that the parents
27 declined to allow the testing. (*Rollins Dec.* [Doc. 42-9], ¶ 15.) R.S. was tested anyway,
28 and the results were normal. (*Pls' Sealed Exhibits*, Ex. 19 at PCC 066.)

1 **F. The investigation and continued detention of R.S. and D.S.**

2 On the morning of May 18, 2011, Defendant Susan Solis was a supervisor in the
3 Agency's Court Intervention Unit. (*Solis Dec.* [Doc. 42-11], ¶ 2.) When she arrived
4 to work, Solis was told the Agency had removed two children from their parents'
5 custody the night before. (*Id.*, ¶ 3.) The case was assigned to Solis's unit "for an
6 investigation to determine whether the children, whose last name was Swartwood,
7 should be returned to their parents' care, or whether the Agency should file a petition
8 in Juvenile Court requesting continued detention out of home." (*Id.*) The Agency's
9 policy, which Solis believed was based on state law, provided her unit with 48 hours to
10 make a decision. (*Id.*) Because the removal occurred "after hours," Solis believed the
11 48-hour window began at 8:00 a.m. on the morning after removal. (*Id.*)

12 At approximately 9:00 a.m., Solis assigned the Swartwood case to Court
13 Intervention social worker Defendant Kelly Rollins. (*Rollins Dec.* [Doc. 42-9], ¶ 3.)
14 Rollins was responsible for investigating the facts surrounding the removal and, with the
15 assistance of Solis and the Juvenile Dependency County Counsel, determining if there
16 was sufficient grounds to believe the children were not safe with their parents and,
17 therefore, should be further detained. (*Id.*) Rollins also believed she had 48 hours,
18 beginning at 8:00 a.m. that morning to make the determination. (*Id.*)

19 Rollins talked briefly to Solis about the case and then read the data on the
20 computer regarding the matter, which consisted of Owens' and Bryson's reports.
21 (*Rollins Dec.*, ¶ 5.) Shortly thereafter, Rollins was told that the children's grandparents
22 had gone to the Polinsky Children's Center and wanted to talk to someone. (*Id.*, ¶ 6.)
23 Rollins drove to the center and spoke with the grandparents. (*Id.*) They expressed
24 surprise about the removal and stated that they had no concerns about the parents'
25 treatment of the children (*Id.*)) After talking to the grandparents, Rollins visited the
26 children. (*Id.*, ¶ 7.)

27 At about 12:45 p.m., Rollins received a phone call from Dr. Ireland and Dr.
28 Siano. (*Pls' Sealed Exhibits*, Ex. 11 at p. 6.) The doctors "were upset about the

1 removal.” (*Rollins Dec.*, ¶ 11.) Dr. Ireland said “she had no concerns whatsoever
2 regarding the family” and that the parents “are very attentive with appropriate
3 concerns.” (*Id.*; *Pls’ Sealed Exhibits*, Ex. 7 at p. 12.) She also relayed that Dr. Siano
4 “had no concerns whatsoever about the family[.]” (*Pls’ Sealed Exhibits*, Ex. 7 at p. 12.)
5 According to Dr. Ireland’s medical notes, Rollins stated that someone at the Agency
6 was under the impression that Steven and Joanna had left the emergency room the
7 previous night against medical advice (“AMA”). (*Pls’ Sealed Exhibits*, Ex. 11 at p. 6.)
8 Dr. Ireland informed Rollins that based on her review of the charts, there was no
9 mention that they left AMA. (*Id.*) Additionally, the “doctors told [Rollins] it was their
10 impression from reading the medical notes that the ER doctor approved the parents
11 getting a second opinion from Dr. Ireland the next day regarding the additional testing.”
12 (*Rollins Dec.*, ¶ 11.)

13 After lunch, Rollins went to the Swartwood home to interview the parents. (*Pls’*
14 *Exhibits*, Ex. 25 at p.1; *Rollins Dec.*, ¶ 8.) The parents retold the story about Joanna
15 dropping the children off at the home daycare, receiving the call about R.S.’s injuries,
16 contacting the nurse hotline that night, and getting the first available appointment with
17 Dr. Siano. (*Id.*) Rollins was also told about the exams with Dr. Siano and Dr.
18 Dohrenwend. (*Id.*) The parents were very upset about the removal. (*Id.*) Rollins told
19 them she would be meeting with County Counsel the following day to decide whether
20 to proceed to court. (*Id.*)

21 During the interview, Rollins provided a form entitled “Consent for Treatment
22 - Parent,” which Joanna signed. (*Rollins Dec.*, ¶ 10; *Defs’ NOL*, Ex. D (sealed) [Doc.
23 44], Ex. E (sealed) [Doc. 44].) The form gave the County permission to provide
24 “treatment” to D.S. and R.S. while they were “in any facility operated by the Health
25 and Human Services Agency . . . **if the treatment is recommended** by a licensed
26 physician, dentist, psychiatrist or other mental health practitioner.” (*Def.s NOL*, Ex.
27 D (sealed), Ex. E. (sealed) (emphasis added).) However, Joanna also checked a box on
28 the form stating that she preferred for any “treatment” to be provided by the children’s

1 regular pediatrician, Dr. Ireland. (*Id.*) Rollins also discussed the recommendation for
2 a skeletal exam for R.S., but “the Swartwoods did not agree[.]” (*Rollins Dec.*, ¶ 9.)
3 Rollins returned to her office and spoke briefly with Solis to update her about the case.
4 (*Id.*, ¶ 10.)

5 Later, Rollins drove to the children’s daycare and spoke to the owners, Shelly and
6 Dan McCoshum. (*Rollins Dec.*, ¶ 12.) Shelly reported that R.S. and D.S. were jumping
7 on the trampoline with other children shortly before lunch, “when [R.S.] began to cry
8 very loudly.” (*Pls’ Sealed Exhibits*, Ex. 7 at p. 5.) Shelly stated that she did not see the
9 actual incident, and therefore was not sure if R.S. “hit her face on [D.S.’s] knee, or if
10 she ran into the netting around the outside of the” trampoline.” (*Id.*) However, R.S.
11 “was crying very loudly, and her face was very red.” (*Id.*) R.S. eventually calmed down
12 and ate lunch, but after waking up from a nap, Shelly “realized that [R.S.’s] face was
13 still quite red, so she called” Joanna. (*Id.*, at p. 6.) Shelly further confirmed that R.S.
14 did not have any marks on her face when she arrived at daycare. (*Rollins Dec.*, ¶ 12.)
15 Shelly also denied that they caused the bruising by hitting or grabbing R.S. and denied
16 seeing anyone else do so. (*Id.*) Rollins then returned to her office and called Dr.
17 Wright, who stated that R.S.’s injuries were not consistent with Shelly’s explanation.
18 (*Id.*, ¶ 13.) Rollins concedes that by the end of the day, it appeared that the daycare
19 was the place where R.S.’s injuries occurred. (*Id.*, ¶ 14.)

20 On the morning of May 19, Rollins received a phone call from “someone at
21 Polinsky” stating that they were sending R.S. to have the skeletal x-rays done. (*Rollins*
22 *Dec.*, ¶ 15.) Rollins informed the caller that the parents did not agree to the exam.
23 (*Id.*) Later, Rollins was informed that the skeletal exam came back normal, with no
24 concerns. (*Id.*, ¶ 20.)

25 Rollins then discussed the case with Solis. They remained concerned because no
26 one had admitted causing R.S.’s injuries, nor did anyone say they saw someone else
27 cause them. (*Id.*, ¶ 17; *Solis Dec.*, ¶ 7.) Additionally, they wondered if it was possible
28

1 that one of the parents grabbed R.S.'s face just before dropping her off at daycare, and
2 that the marks did not show up until later. (*Solis Dec.*, ¶ 7.)

3 Rollins then met with County Counsel to discuss her findings. (*Rollins Dec.*, ¶
4 19.) They also discussed the timing of the "event causing the injury" and whether one
5 of the parents could have grabbed R.S.'s face just before dropping her off at daycare.
6 (*Id.*) They, therefore, consulted with Dr. Wright and Dr. Premi Saresh, another child
7 abuse expert. (*Id.*) Both doctors said "the marks on R.S.'s face would have shown up
8 right away, so it was probable that the injury-causing event happened very close to the
9 time the marks were notice[d] on [R.S.'s] face[.]" (*Id.*) Based on this evidence, "the
10 decision was made not to proceed with a petition to the Juvenile Court, and [Rollins]
11 immediately notified the Swartwoods that their children were being released back into
12 their care. (*Id.*, ¶ 20.)

13
14 **G. The Swartwoods file this lawsuit against the County and Individual**
15 **Defendants.**

16 On July 3, 2012, Plaintiffs filed this lawsuit against the County and Individual
17 Defendants. Plaintiffs allege Defendants Bryson and Curiel violated D.S. and R.S.'s
18 Fourth Amendment rights and the family's Fourteenth Amendment rights as a result
19 of the unlawful removal without a warrant. Plaintiffs further allege that Defendants
20 Rollins and Solis violated the same constitutional rights by failing to release the
21 children after it became clear that they did not need to be protected from Steven and
22 Joanna. As for the County, Plaintiffs allege constitutional violations arising out of the
23 County's policy of conducting medical exams on children admitted to the Polinsky
24 Children's Center without notice and outside the presence of the children's parents.
25 Plaintiffs also seek to hold the County liable for the Individual Defendants' conduct
26 under Monell v. New York City Department of Social Services, 436 U.S. 658 (1978)

27 In their cross-motions for partial summary judgment, the Individual Defendants
28 contend they are entitled to qualified immunity under federal and state law. The

1 County argues that it is not liable under Monell because the Individual Defendants did
2 not violate any constitutional rights and because no County policy or practice
3 contributed to any alleged violation. The County further argues that its medical exam
4 policies do not violate the Fourth and Fourteenth Amendments.

5 Plaintiffs' motion seeks partial summary judgment against the Individual
6 Defendants on the basis that the undisputed facts establish violations of the family's
7 Fourth and Fourteenth Amendment rights. Plaintiffs also seek partial summary
8 judgment against the County on the grounds that its medical policies led to a violation
9 of the same constitutional rights.

10 11 **II. STANDARD**

12 Summary judgment is appropriate under Rule 56(c) where the moving party
13 demonstrates the absence of a genuine issue of material fact and entitlement to
14 judgment as a matter of law. See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477
15 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law,
16 it could affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
17 248 (1986); Freeman v. Arpaio, 125 F.3d 732, 735 (9th Cir. 1997). A dispute about
18 a material fact is genuine if "the evidence is such that a reasonable jury could return a
19 verdict for the nonmoving party." Anderson, 477 U.S. at 248.

20 A party seeking summary judgment always bears the initial burden of establishing
21 the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The moving
22 party can satisfy this burden in two ways: (1) by presenting evidence that negates an
23 essential element of the nonmoving party's case; or (2) by demonstrating that the
24 nonmoving party failed to make a showing sufficient to establish an element essential
25 to that party's case on which that party will bear the burden of proof at trial. Id. at
26 322–23. "Disputes over irrelevant or unnecessary facts will not preclude a grant of
27 summary judgment." T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d
28 626, 630 (9th Cir. 1987).

1 “The district court may limit its review to the documents submitted for the
2 purpose of summary judgment and those parts of the record specifically referenced
3 therein.” Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1030 (9th Cir.
4 2001). Therefore, the court is not obligated “to scour the record in search of a genuine
5 issue of triable fact.” Keenan v. Allen, 91 F.3d 1275, 1279 (9th Cir. 1996) (citing
6 Richards v. Combined Ins. Co., 55 F.3d 247, 251 (7th Cir. 1995)).

7 If the moving party meets its initial burden, the nonmoving party cannot defeat
8 summary judgment merely by demonstrating “that there is some metaphysical doubt as
9 to the material facts.” Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475
10 U.S. 574, 586 (1986); Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th
11 Cir. 1995) (citing Anderson, 477 U.S. at 252) (“The mere existence of a scintilla of
12 evidence in support of the nonmoving party’s position is not sufficient.”). Rather, the
13 nonmoving party must “go beyond the pleadings and by her own affidavits, or by ‘the
14 depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts
15 showing that there is a genuine issue for trial.’” Celotex, 477 U.S. at 324 (quoting
16 Fed.R.Civ.P. 56(e)).

17 When making this determination, the court must view all inferences drawn from
18 the underlying facts in the light most favorable to the nonmoving party. See
19 Matsushita, 475 U.S. at 587. “Credibility determinations, the weighing of evidence, and
20 the drawing of legitimate inferences from the facts are jury functions, not those of a
21 judge, [when] he [or she] is ruling on a motion for summary judgment.” Anderson, 477
22 U.S. at 255.

23 24 **III. DISCUSSION**

25 The issues raised in the parties’ motions can be divided into four events: (1) the
26 claim against Bryson and Curiel regarding their decision to remove R.S. and D.S. from
27 Joanna and Steven’s custody; (2) the claim against Rollins and Solis for the continued
28 detention of R.S. and D.S.; (3) the claim against the County for not allowing Steven

1 or Joanna to attend R.S. and D.S.'s medical exams; and (4) the claim against the
2 County for conducting the medical exams without parental notice or consent.

3
4 **A. Bryson and Curiel's decision to remove the children from the**
5 **Swartwood home.**

6 Bryson and Curiel contend that their decision to remove R.S. and D.S. from their
7 parents' custody was objectively reasonable because Bryson and Curiel reasonably
8 believed the children were in imminent danger of serious physical harm. (*Defs' MSJ*
9 [Doc. 42-1], 10: 7-8.) Accordingly, Bryson and Curiel seek summary judgment based
10 on qualified immunity. (*Id.*, 11 :1-2.)

11 Plaintiffs argue that the undisputed facts establish there was no reasonable cause
12 to believe R.S. or D.S. were in imminent danger of serious bodily injury. (*Pls' MSJ Re.*
13 *Indiv. Defs.* [Doc. 45-1], pp. 15–16.) Plaintiffs, therefore, seek partial summary
14 judgment against Bryson and Curiel for violating R.S. and D.S.'s Fourth Amendment
15 rights, and the family's Fourteenth Amendment rights. (*Id.*, p.19.)

16 "Parents and children have a well-elaborated constitutional right to live together
17 without governmental interference." Wallis v. Spencer, 202 F.3d 1126, 1136 (9th Cir.
18 2000). "The Fourteenth Amendment guarantees that parents will not be separated
19 from their children without due process of law except in emergencies." Mabe v. San
20 Bernardino Cnty., Dept. of Pub. Soc. Serv.s, 237 F.3d 1101, 1107 (9th Cir. 2001).
21 "Officials violate this right if they remove a child from the home absent information at
22 the time of the seizure that establishes reasonable cause to believe that the child is in
23 imminent danger of serious bodily injury and that the scope of the intrusion is
24 reasonably necessary to avert that specific injury." Rogers v. Cnty. of San Joaquin, 487
25 F.3d 1288, 1294 (9th Cir. 2007) (citations and internal quotation marks omitted).

26 "The Fourth Amendment also protects children from removal from their homes
27 absent such a showing." Rogers, 487 F.3d at 1294 (citing Dow v. Lebbos, 348 F.3d 820,
28 827 n.9 (9th Cir. 2003)). "Officials, including social workers, who remove a child from

1 its home without a warrant must have reasonable cause to believe that the child is likely
2 to experience serious bodily harm in the time that would be required to obtain a
3 warrant.” Id. (citing Mabe, 237 F.3d at 1108). “[T]he same legal standard applies in
4 evaluating Fourth and Fourteenth Amendment claims for the removal of children.”
5 Wallis, 202 F.3d at p.1137 n. 8. With these principles in mind, the Court addresses the
6 parties’ arguments.

7
8 **1. Qualified immunity.**

9 Qualified immunity protects government officials from liability for civil damages
10 as long as “their conduct does not violate clearly established statutory or constitutional
11 rights of which a reasonable person would have known.” Pearson v. Callahan, 555 U.S.
12 223, 231 (2009) (citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). “Qualified
13 immunity balances two important interests—the need to hold public officials
14 accountable when they exercise power irresponsibly and the need to shield officials from
15 harassment, distraction, and liability when they perform their duties reasonably.” Id.

16 A public official is entitled to qualified immunity “unless the official’s conduct
17 violated a clearly established constitutional right. [Citation omitted.]” Pearson, 555
18 U.S. at 232. In Saucier v. Katz, 533 U.S. 194 (2001), the Supreme Court mandated a
19 two-step approach to evaluating qualified immunity. First, the court must decide if the
20 facts make out a violation of a constitutional right. Id. at 201. If so, the second step
21 is whether the right at issue was “clearly established” at the time of the official’s alleged
22 misconduct. Id. Whether the governing law was clearly established and whether
23 specific facts constitute a violation of established law are legal determinations. Mabe,
24 237 F.3d at 1106 (citations omitted).

25 However, Saucier’s two-step approach is no longer mandatory. Pearson, 555 U.S.
26 at 236. Instead, district courts may exercise discretion in deciding which of the two
27 prongs should be addressed first. Id. The Court will follow Saucier’s approach.

28

1 a. Was there a violation of a constitutional right?

2 The first issue is whether Bryson and Curiel's removal of R.S. and D.S. from their
3 parents' custody violated Plaintiffs' constitutional rights. There is no dispute that
4 Bryson and Curiel did not have a warrant when they removed R.S. and D.S. from the
5 Swartwoods' home. Thus, Bryson and Curiel violated Plaintiffs' constitutional rights
6 unless, at the time of removal, they believed R.S. and D.S. were in imminent danger of
7 serious bodily injury from Steven or Joanna and that the scope of the intrusion was
8 reasonably necessary to avert the specific injury. Wallis, 202 F.3d at 1138.

9 In their moving papers, Defendants contend six facts justify the warrantless
10 removal of the children:(1) R.S. was a pre-verbal child who suffered bruising on her
11 face; (2) doctors had determined that R.S.'s injuries were intentionally inflicted; (3) the
12 parents could not explain how the injuries occurred; (4) her parents "had not brought
13 R.S. for medical treatment on the day the injuries were discovered"; (5) the parents left
14 the emergency room without having the additional testing done that Dr. Siano
15 recommended; and (6) the parents were still considering taking the children back to
16 daycare the next day.⁴ (*Defs.' MSJ*, p. 10.)

17 The primary problem with Defendants' argument is that there was no basis to
18 believe Steven or Joanna caused R.S.'s injuries. The Supreme Court "has frequently
19 emphasized the importance of the family[,]” referring to the right to “raise one’s
20 children” as “essential,” a “basic civil right[] of man,” and “far more precious . . . than
21 property rights.” Stanley v. Illinois, 405 U.S. 645, 651 (1972) (citations omitted).
22 Given this “essential” civil right, it is difficult to conceive of a situation where the state

23
24 ⁴ At the start of the motion, Defendants contend that three facts justify the removal:
25 “Exigent circumstances justified the removal of the [R.S.] and her three year-old brother
26 because the girl was pre-verbal, she had injuries to her face, and her parents could not explain
27 how the injuries occurred.” (*Defs' MSJ*, at p.1.) This argument appears consistent with
28 Bryson's declaration, in which she contends “she was concerned about the children's safety”
because “R.S. was a pre-verbal child who had extensive serious facial injuries that had been,
according to the doctors, intentionally inflicted, and her caretakers (parents) could not explain
how she got injured.” (*Bryson Dec.*, ¶ 17.) Bryson does not cite the other 3 factors as a basis
for removal. Nevertheless, the Court will assume that Bryson also relied on those factors.

1 may remove a child from his or her parents' custody without a warrant, in the absence
2 of some indication that the parents had a role in the child's injuries, whether by
3 affirmative conduct (e.g., striking the child) or neglect (e.g., failing to supervise or
4 protect). The reason is obvious: without such an indication, there is simply no basis for
5 a government official to believe the child is in imminent danger from the parents.

6 In Arce, plaintiffs appealed the dismissal of their section 1983 claim for the
7 warrantless removal of their children. In granting defendants' motion, the trial court
8 concluded as a matter of law, the warrantless seizure did not violate plaintiffs' rights
9 because the complaint alleged the child was "diagnosed with Shaken Baby Syndrome,"
10 which the court found established that officials "had reasonable cause to believe the
11 children were likely to experience serious bodily harm if left in their parents' custody."
12 Id. at 1474–75.

13 On appeal, the Court of Appeal reasoned that "[i]mplicit in the court's ruling is
14 a finding that reasonable cause existed to believe that the parents were responsible for
15 A.L.'s injuries." Id. at 1475. The court then rejected the contention that the nature
16 of the injury was sufficient to support that belief:

17 In sum, although we do not dispute that Shaken Baby Syndrome is a
18 serious, life-threatening injury, we disagree with the County defendants'
19 assertion that a child may be detained without prior judicial authorization
20 based solely on the fact that he or she has suffered a serious injury.
21 Rather, the case law demonstrates that the warrantless detention of a
22 child is improper unless there is 'specific, articulable evidence' that the
23 child would be placed at imminent risk of serious harm absent an
24 immediate interference with parental custodial rights. [Citation.] It
25 follows that, if a child suffers a serious injury, and there is no reasonable
26 cause to believe that the parents either caused the injury or committed
27 other conduct that places the child at imminent risk of harm . . . the state
28 may not interfere with parental custody unless it obtains judicial
authorization to do so.

Id. at 1481–82 (citing Wallis, 202 F.3d at 1138, and Ram, 118 F.3d at 1311). Because
the complaint alleged the police and hospital's social workers did not suspect the
parents caused the child's injuries, but instead the injuries may have been caused at the
daycare, the Court of Appeal reversed. See also Croft v. Westmoreland County

1 Children and Youth Services, 103 F.3d 1123, 1126 (3rd Cir. 1997) (“[A] state has no
2 interest in protecting children from their parents unless it has some reasonable and
3 articulable evidence giving rise to a reasonable suspicion that a child has been abused
4 or is in imminent danger of abuse. [Citations omitted.]”)

5 Defendants’ theory in this case is similar to the theory in Arce. Bryson and
6 Curiel contend that the removal was justified because of the nature of R.S.’s injuries, her
7 age, and the parents’ inability to explain how the injuries occurred. Implicit in this
8 argument is the assumption that Steven and Joanna’s inability to offer an explanation
9 reasonably suggested they caused R.S.’s injuries. But this assumption was undermined
10 by Steven and Joanna’s explanation that the injuries occurred at daycare. The
11 explanation was also consistent with the parents’ statement to Bryson that D.S. had
12 recently begun “crying his eyes out” about going to daycare. (*Bryson Dec.*, ¶ 13.) The
13 issue, therefore, is whether there was any reason for Bryson or Curiel to believe the
14 parents were lying. Defendants have not identified any facts that would support such
15 a belief. And the record is devoid of any evidence suggesting that Dr. Siano, Dr.
16 Dohrenwend, Nurse Fowler, or Owens believed the parents were being untruthful.

17 Even more troubling—given the lack of evidence suggesting the parents were
18 lying—is that before the children were removed, Bryson had an opportunity to attempt
19 to verify the parents’ story. Steven and Joanna gave Bryson the home daycare owner’s
20 telephone number and pleaded with her to call and verify that R.S.’s injuries occurred
21 there. Bryson refused. In her declaration, Bryson appears to offer an explanation as to
22 why she would not call: “the role of the stand-by worker is not to conduct lengthy
23 investigations which may take numerous hours or potentially days or weeks.” (*Bryson*
24 *Dec.*, ¶ 19.) The explanation is insufficient for two reasons.

25 First, there is no dispute that a telephone call takes seconds or minutes, not
26 hours, days or weeks. Second, a child suspected of being abused or neglected cannot
27 be removed “unless reasonable avenues of investigation are first pursued.” Wallis, 202
28 F.3d at 1138 (citing Sevigny v. Dicksey, 846 F.2d 953, 957 (4th Cir. 1988)).

1 Accordingly, because there was no evidence Steven or Joanna abused R.S., Bryson and
2 Curiel were required to pursue reasonable avenues of investigation before removing the
3 children. Whether a reasonable avenue exists “depends in part upon the time element
4 and nature of the allegations.” Id. Taking into consideration the time, the nature of
5 the allegations, and the effort required to make the telephone call, the Court finds
6 attempting to call the home daycare owner was a reasonable avenue of investigation
7 that Bryson or Curiel were required to pursue before removing the children.⁵

8 Defendants nevertheless argue that because Wallis involved the removal of
9 children by police officers, who have “different roles and duties” than social workers,
10 the requirement to first pursue reasonable avenues of investigation does not apply to
11 them. (*Defs’ Opp. Re. Individ. Defs.* [Doc. 52], p. 8.) The Court disagrees. Although
12 police officers and social workers generally have different roles and duties, in deciding
13 whether to remove a child without judicial authorization, their roles are identical:
14 determining whether there is reasonable cause to believe the child is in imminent
15 danger. Nor do Defendants cite support for the assertion that a different standard
16 applies depending on whether the decision to remove is made by a police officer, social
17 worker or some other public official.

18 For all of these reasons, the Court finds Bryson and Curiel’s reliance on the fact
19 that R.S. was preverbal, suffered intentionally inflicted facial injuries and the parents
20 could not explain how they occurred is insufficient.

21 Additionally, the remaining three facts relied upon by Bryson and Curiel—the
22 delay in seeking medical treatment, decision to forgo additional testing and Joanna’s
23 alleged consideration about sending the children back to daycare—also fail to suggest
24

25 ⁵ Defendants argue that it is unclear whether anyone would have even answered the
26 phone at the daycare or whether anyone would have been willing or available to talk to the
27 Agency at that time of night. Defendants miss the point. Wallis requires officials to pursue
28 reasonable avenues of investigation. What that investigation will uncover will always be
unknown until it is actually pursued. Therefore, it is not a defense to assert that the
investigation was unnecessary because it was unclear what would have been discovered.

1 that Steven and Joanna caused R.S.'s injuries or that the children were in imminent
2 danger. Bryson and Curiel knew that immediately after R.S. arrived home, Joanna
3 contacted the Kaiser nurse line to seek medical advice about R.S.'s injuries and she
4 obtained the first available appointment to see Dr. Siano. (*Owens Dec.*, ¶ 3; *Defs' NOL*,
5 Ex. A. (sealed) at p.1.) Steven also informed Bryson that despite the injuries, R.S.'s
6 demeanor "seemed fine," she "was not groggy" and the injuries did not seem "real bad."
7 (*Pls' Sealed Exhibits*, Ex. 7 at p. 3.) Additionally, Bryson and Curiel were also aware
8 that the decision to forgo the additional testing was based on Dr. Dohrenwend's
9 medical advice after he consulted with three different Kaiser pediatricians. (*Owens*
10 *Dec.*, ¶ 8; *see also Defs' NOL*, Ex. A (sealed) at p.2.) Defendants also knew that the
11 decision was based on the fact that R.S. "did not present with neurological problems or
12 vomiting" and because the parents were concerned about "the amount of radiation
13 involved. . . ." (*Id.*) Based on these undisputed facts, the parents' decisions regarding
14 R.S.'s medical care do not support an inference that the parents caused R.S.'s injuries
15 or posed a threat of imminent harm to their children.

16 As for Bryson and Curiel's contention that the removal was justified because the
17 parents were purportedly considering sending the children back to daycare, this fact is
18 unavailing for at least two reasons. To begin with, the scope of the intrusion must be
19 reasonably necessary to avert the specific injury. Wallis, 202 F.3d at 1138. Here, if the
20 concern was that the children might be sent to daycare the next morning, the scope of
21 the intrusion—removing the children—was not reasonably necessary to address the
22 danger. Rather, Bryson could have established a safety plan specifically preventing
23 Steven and Joanna from sending the children to daycare. (*See Fox Dec.* [Doc. 42-4],
24 ¶ 6.⁶)

25
26 ⁶ At paragraph 6, Ann Fox, a Protective Services Program Manager, stated that since
27 2011, the Agency uses "safety plans," which are "agreements, usually between parents and the
28 Agency, for parents to take specific actions, or prevent specific actions from taking place, with
the intent of keeping a child in their home rather than removing them." (*Fox Dec.*, ¶ 6.)
Additionally, during her deposition, Solis confirmed that she wondered "why were the children

1 Furthermore, Defendants' contention that this fact justified removal lacks merit.
2 Although there is no dispute that Joanna asked Owens "if she should send the children
3 back to the daycare tomorrow," Joanna also "asked [Owens] if she should contact the
4 daycare provider to inform them about the children not attending tomorrow." (*Owens*
5 *Dec.*, ¶ 10.) At best, this evidence indicates Joanna was unsure about what to do. Yet,
6 there is no indication in Bryson's declaration that she ever asked the Swartwoods if they
7 intended to return the children to daycare, ever expressed any concern about the
8 children returning to daycare or raised the issue at all with Steven or Joanna. The
9 complete absence of the issue from Bryson's declaration contradicts the contention that
10 she relied on this fact as a basis for removal. Moreover, Defendants fail to explain how
11 Joanna's uncertainty about whether to send the children back to daycare is evidence
12 the parents caused R.S.'s injuries or that the children were in imminent danger.⁷

13 Finally, not only do the six facts cited by Defendants fail to support an inference
14 of imminent harm, but the information obtained from the reporting parties—i.e., the
15 medical professionals who examined R.S.—contradict the belief that the children were
16 in imminent harm. There is no dispute Dr. Siano did "not have any suspicions that the
17 abuse came from the family of origin based on what [Joanna]" reported. (*Defs' NOL*,
18 *Ex. A* (sealed) at p.1.) Dr. Siano also stated that Joanna acted appropriately (i.e.,
19 becoming tearful and upset) after hearing that R.S.'s injuries were non-accidental. (*Id.*;

20
21 removed in the first place" and stated that believed that there were "other ways this could have
22 been handled[,] such as "[p]utting a safety plan in place and not removing the children . . .
23 ." (*Solis Dep.* [Doc. 65-2], pp. 352–353 (attached to *Cox Dec. In Support of Pls.' Reply Re. Indiv.*
Defs. [Doc. 65-1]).)

24 ⁷ The concern that the children might be returned to daycare is also unavailing because
25 the alleged danger was not imminent. To satisfy this standard, the social workers "must have
26 reasonable cause to believe that the child is likely to experience serious bodily harm in the time
27 that would be required to obtain a warrant." *Rogers v. County of San Joaquin*, 487 F.3d 1288,
28 1294 (9th Cir. 2007). Here, there is no dispute that the children were removed around
midnight, and thus would not be sent to school for six to eight hours. There is no showing that
Bryson and Curiel could not obtain a warrant before the children would be sent to daycare.

1 *see also* Defs' MSJ, p.3.) Undisputably, Bryson was aware of these facts, which were
2 identified in Owens' first report, before she decided to remove the children. (*See Bryson*
3 *Dec.* ¶ 19.)

4 The information received from Kaiser hospital also did not support a finding of
5 imminent harm. There is no dispute that Dr. Dohenwrend spent an hour and 45
6 minutes with the Swartwood family, examining R.S. and discussing her injuries with
7 Steven and Joanna. Yet, when Owens asked "the hospital to hold the family until a
8 social worker came and met with them, which is a standard request we make of
9 hospitals and which *is routinely followed*[,]” the hospital refused and instead stated that
10 “the family was being discharged.” (*Curiel Dec.*, ¶ 7, emphasis added.) The hospital's
11 refusal to hold the family further suggests that neither Dr. Dohrenwend nor Nurse
12 Fowler believed the children were in imminent danger.

13 For these reasons, the Court finds Plaintiffs have established a violation of D.S.
14 and R.S.'s Fourth Amendment rights and the family's Fourteenth Amendment rights.

15
16 **b. Was the right clearly established?**

17 In evaluating whether a right is “clearly established,” the “relevant, dispositive
18 inquiry . . . is whether it would be clear to a reasonable officer that his conduct was
19 unlawful in the situation he confronted.” *Saucier*, 533 U.S. at 202. “If the law did not
20 put the official on notice that his conduct would be clearly unlawful, summary judgment
21 based on qualified immunity is appropriate.” *Id.*

22 Defendants argue that Bryson and Curiel are entitled to qualified immunity
23 because the governing law was not clearly established when R.S. and D.S. were
24 removed. (*Defs' MSJ*, p. 12.) They then repeat this argument in opposing Plaintiffs'
25 motion against the individual defendants: “Even if . . . the facts known by Bryson and
26 Curiel did not give them cause to believe the children were in imminent danger, the
27 Court should grant the workers qualified immunity because a reasonable social worker
28 would not know that removal was clearly unlawful in that situation.” (*Defs' Opp. Re.*

1 *Indiv. Defs.*, p. 14.) In support of this argument, Defendants contend that courts
2 “should not conduct inquiry into whether a right is clearly established at a ‘high level
3 of generality’” and instead the “inquiry must be made in a more ‘particularized sense’
4 . . . and ‘on a more specific level.’” (*Id.*, at p. 15, citing Brosseau v. Haugen, 543 U.S.
5 194, 199 (2004) and Saucier, 533 U.S. at 202.) Accordingly, Defendants argue that
6 because “[n]o case has held that in similar circumstances, in which a preverbal child has
7 suffered intentionally inflicted facial injuries by an unknown perpetrator, exigency did
8 not exist and it would be unlawful to remove the child from her parents’ care,” the law
9 was not clearly established. (*Id.*, p. 16.) The Court disagrees.

10 In Rogers, 487 F.3d 1288, the district court was faced with the same argument
11 advanced by Bryson and Curiel. The court granted the defendant social worker’s
12 summary-judgment motion for qualified immunity, “holding that the application of the
13 law to medical neglect was not clearly established.” Id. at 1297.

14 In reversing, the Ninth Circuit explained that “it is not necessary that a case be
15 on ‘all fours’ with the facts of the instant case. A right is clearly established if ‘the
16 contours of the right are sufficiently clear that a reasonable official would understand
17 that what he is doing violates that right.” Rogers, at 1287 (citing Saucier, 533 U.S. at
18 202). Because the court had “repeatedly held that a family’s rights were violated if the
19 children were removed absent an imminent risk of serious bodily harm[,]” the court
20 held that a “reasonable social worker would need nothing more to understand that she
21 may not remove a child from its home on the basis of a medical condition that does not
22 present such a risk.” Id.

23 Here, the law regarding the warrantless removal of a child was clearly established
24 when Bryson and Curiel removed the children from the Swartwood home. By “1993,
25 it was clear that a parent . . . could not be summarily deprived of that custody without
26 notice and a hearing, except when the children were in imminent danger.” Ram v.
27 Rubin, 118 F.3d 1306, 1310 (9th Cir. 1997). The Ninth Circuit reaffirmed this holding
28 in 2000 in Wallis, and instructed that “the scope of the intrusion” into the family’s

1 liberty interest must be reasonably necessary to avert that specific injury. Id. at 1138
2 (citations omitted). Wallis also clarified that at the time of the removal, there must be
3 “specific, articulable evidence that provides reasonable cause to believe that a child is
4 in imminent danger of abuse,” and officials must have pursued “reasonable avenues of
5 investigation.” Id. “Whether a reasonable avenue of investigation exists . . . depends
6 in part upon the time element and the nature of the allegations.” Id. Since Wallis, the
7 Ninth Circuit has continued to confirm the exigency requirement. See Mabe, 237 F.3d
8 at 1107; Rogers, 487 F.3d at 1294.

9 Indeed, although Defendants contend that the law was not clearly established,
10 their moving papers and opposition to Plaintiffs’ motion identify and argue the proper
11 legal standard: reasonable cause to believe the children were in imminent danger.
12 (*Defs.’ MSJ*, pp. 8–9, 10, 12; *Defs.’ Opp. Re. Individ. Defs.*, p. 13.) For these reasons, the
13 Court finds that at the time R.S. and D.S. were taken into protective custody without
14 a warrant, the law was clearly established.

15 For these reasons, Bryson and Curiel are not entitled to qualified immunity.

16
17 **2. Plaintiffs’ request for partial summary judgment against Bryson**
18 **and Curiel.**

19 Having determined that Bryson and Curiel are not entitled to qualified immunity,
20 the Court considers Plaintiffs’ request for partial summary judgment against them.
21 Specifically, Plaintiffs request a determination that Bryson and Curiel’s conduct violated
22 D.S. and R.S.’s Fourth Amendment rights and the entire family’s Fourteenth
23 Amendment rights.

24 In opposing Plaintiffs’ motion, Bryson and Curiel raise two issues. First they
25 contend that in order to be found liable, Plaintiffs must establish that their decision to
26 remove the children was so “offensive and intentional as to ‘shock the conscience.’”
27 (*Defs.’ Opp. Re. Individ. Defs.* [Doc. 52], pp. 11–12, citing Kulya v. City & Cnty. of San
28 Francisco, 2008 U.S. Dist. LEXIS 73952 at *21 (N.D. Cal. 2008).) Plaintiffs respond

1 that Defendants rely on the wrong legal standard and that the correct standard is an
2 “unwarranted interference.” The Court agrees with Plaintiffs. See Crow v. Cnty. of
3 San Diego, 593 F.3d 841, 876 n.23 (9th Cir. 2010) (rejecting defendants’ argument that
4 a “shocks the conscience” standard applies to a claim for the deprivation of familial
5 companionship, and stating that the standard is an “unwarranted interference”) (citing
6 Lee v. Cnty. of Los Angeles, 250 F.3d 668, 685 (9th Cir. 2001)); McLaughlin v. Cnty.
7 of El Dorado, 2012 WL 5387883 (E.D. Cal. 2012) (rejecting defendants argument that
8 the shocks-the-conscience standard applies to a procedural due process claim of
9 removing children without due process of law).⁸

10 Second, Defendants argue that Plaintiffs are not entitled to summary judgment
11 because, under the totality of the circumstances, Bryson and Curiel had reasonable
12 cause to believe the children were in imminent danger. (*See Defs. Opp. Re. Individ. Defs.*
13 [Doc. 52], pp. 5–7.) For the reasons discussed more thoroughly above, the Court finds
14 that reading the evidence in the light most favorable to Bryson and Curiel, the six facts
15 relied upon to remove the children do not support a reasonable belief that the parents
16 caused R.S.’s injuries or that the children were in imminent danger. Given the
17 complete absence of such information, as well as the statements and conduct of the
18 medical staff who examined R.S. on May 17, the Court finds that Bryson and Curiel’s
19 decision to remove the children without judicial authorization constituted an
20 unwarranted interference with the children’s Fourth Amendment rights and the
21 family’s Fourteenth Amendment rights. Accordingly, Plaintiffs are entitled to partial
22 summary judgment against Bryson and Curiel.

23
24
25
26 ⁸ Also, in Rogers, 487 F.3d 1288, the Ninth Circuit reversed the district court’s order
27 granting defendants summary-judgment based on qualified immunity and the denying plaintiffs’
28 summary-judgment motion. Id. at 1298. Notably, in finding that plaintiffs were entitled to
summary judgment, the court did not refer to the shocks-the-conscience standard, instead
focusing on if defendant had reasonable cause to believe the children faced imminent harm.

1 **B. The continued detention of D.S. and R.S. by Rollins and Solis.**

2 Defendants argue that Rollins and Solis are entitled to qualified immunity
3 because they “returned the children as soon as they learned the injury-causing act most
4 likely occurred at the daycare, and their actions fell within child welfare social worker
5 standards and practice.” (*Def. MSJ*, pp. 14-15.) Plaintiffs counter that because by the
6 end of the day on Wednesday, May 18, “there can be no reasonable dispute that the
7 continued detention of the children was unreasonable and unconstitutional,” partial
8 summary judgment against Rollins and Solis is appropriate. (*Pls.’ MSJ Re. Individ. Defs.*
9 [Doc. 45-1], p. 22.)

10
11 **1. Qualified immunity.**

12 **a. Was a constitutional right violated?**

13 The constitutional right at issue is the family’s right to “live together without
14 governmental interference.” *Santosky*, 455 U.S. at 753; *Wallis*, 202 F.3d at 1136.
15 Plaintiffs contend that in evaluating Rollins’ and Solis’ conduct, the Court should look
16 to California Welfare & Institutions Code § 309, which Plaintiffs contend codifies the
17 Fourth Amendment’s and Fourteenth Amendment’s limitations for continuing to
18 detain children removed from their parents’ custody. Defendants do not appear to
19 dispute that this section governs Rollins’ and Solis’ conduct.

20 Section 309 provides, in relevant part:

21 (a) Upon delivery to the social worker of a child who has been taken into
22 temporary custody under this article, the social worker shall immediately
23 investigate the circumstances of the child and the facts surrounding the
24 child's being taken into custody and attempt to maintain the child's family
25 through the provision of services. The social worker shall immediately
26 release the child to the custody of the child's parent, guardian, or
27 responsible relative unless one or more of the following conditions exist:

 * * *

26 (2) continued detention of the child is a matter of immediate and urgent
27 necessity for the protection of the child and there are no reasonable means
28 by which the child can be protected in his or her home or the home of a
responsible relative.

1 Cal. Welf. & Inst. Code § 309(a). Based on this language, there appear to be two issues
2 in evaluating Rollins and Solis' conduct. First, whether they "immediately" conducted
3 a reasonable investigation into the removal. Second, whether they "immediately
4 release[d]" the children after determining that they were not in immediate and urgent
5 need of protection from the parents.

6 The undisputed facts establish that shortly after learning that the Swartwood
7 children were removed, Solis assigned the investigation to Rollins and the two discussed
8 the case. Rollins then reviewed the notes on the computer, drove to the Polinsky
9 Children's Center to meet with the grandparents, and then visited the children. She
10 then returned to her office and talked to Dr. Ireland and Dr. Siano about R.S.'s
11 examination the previous day. Shortly after lunch, Rollins drove to meet and interview
12 Joanna and Steven, and then drove to the home daycare to interview the daycare
13 owners. Rollins ended the day by processing the information learned.

14 The next day, Rollins and County Counsel contacted doctors specializing in child
15 abuse and confirmed R.S.'s injuries would have manifested quickly after the event
16 causing the injury. At that point, Rollins and County Counsel called the parents and
17 released the children. Based on these undisputed facts, it is clear that Rollins and Solis
18 complied with section 309(a)'s obligation to "immediately investigate the
19 circumstances" of the children's removal.

20 The primary dispute is whether Rollins and Solis complied with section 309's
21 additional mandate of "immediately releas[ing] the child to the custody of the child's
22 parent" when it became apparent that the continued detention was not a matter of
23 immediate and urgent necessity for the children's protection. With respect to this issue,
24 the Court finds that reading all inferences in favor of Plaintiffs, a reasonable jury could
25 conclude that Rollins and Solis did not.

26 As discussed more fully above, the information Rollins learned from Bryson's and
27 Owens' reports did not support a finding that the parents played a role in R.S.'s injuries.
28 The reports indicated that the physicians were not concerned about the parents, their

1 decision to forgo the additional testing was appropriate, and the parents reported R.S.’s
2 injuries occurred at daycare. (*Defs’ NOL*, Ex. A (sealed), p. 1.) Rollins also knew Dr.
3 Dohrenwend described R.S. “as an active and happy one year-old” and the hospital
4 refused the Agency’s request to hold the family. (*Id.*, Ex. A at p.1; Ex. B and p. 1.)

5 Moreover, none of the information Rollins received from interviewing the
6 parents, the daycare providers, the grandparents or Dr. Siano and Dr. Ireland—who
7 Rollins characterized as “upset” about the removal—could reasonably have raised a
8 concern about the parents. In fact, Rollins admits that *all* of the information gathered
9 during the first day of her investigation indicated R.S.’s injuries occurred at daycare.

10 Defendants, nevertheless, argue that Rollins had 48 hours to conduct her
11 investigation and the continued detention was appropriate because Rollins had yet to
12 confirm the timing of the injury-causing event. Neither argument is persuasive.

13 First, in support of the claim that Rollins had 48 hours to decide whether to
14 return the children, Defendants cite California Welfare & Institution Code § 313.
15 However, that provision applies “whenever a minor is taken into custody by a peace
16 officer or probation officer” Bryson and Curiel do not contend that they were
17 peace officers or probation officers. Thus, section 313 does not apply. Moreover, the
18 language of section 309 explicitly provides that the children “shall” be “immediately
19 release[d]” to the parents “unless” the continued detention is necessary to protect the
20 children. This requirement does not support Defendants’ claim of a 48-hour
21 investigative window.

22 Second, Rollins claim that she needed to confirm the timing of the injury-causing
23 event before releasing the children is unavailing. Section 309 requires “immediate”
24 release unless there is grounds to believe the continued detention was a “matter of
25 immediate and urgent necessity for the protection of the child. . . .” *Id.* Rollins and
26 Solis have failed to identify any evidence supporting such a belief. And under the facts
27 of this case, taken in the light most favorable to the Swartwoods, a reasonable jury
28 could conclude that verifying the timing of the injury-causing event was insufficient to

1 support a continued belief that the children needed to be protected. Thus, assuming
2 section 309 creates a federally protected liberty interest, the Court finds Rollins and
3 Solis have failed to establish Plaintiffs' constitutional rights were not violated.

4
5 **b. Was the law clearly established?**

6 The next issue is whether the law was clearly established at the time of the
7 violation. As an initial matter, unlike cases addressing a warrantless removal of a child,
8 there is a lack of authority regarding the legal standard applicable to the continued
9 detention of a child. Plaintiffs, however, contend that section 309(a) "bears" on the
10 issue of whether the continued detention of R.S. and D.S. constituted an unwarranted
11 interference with the Swartwoods' constitutional right to live together without
12 governmental interference. (*Pls.' MSJ Re. Indiv. Defs.*, p. 20.) In support of this
13 contention, Plaintiffs rely on Parques v. County of San Diego, 345 F.Supp.2d 1071 (S.D.
14 Cal. 2014). (*Id.*, pp. 21–22.) The Court is not persuaded.

15 In Parques, plaintiffs sued social workers for the continued detention of the
16 children. In evaluating defendants' claim for qualified immunity, the district court used
17 section 309 to determine whether a constitutional right was violated. Id. at 1090.
18 However, at issue in Parques was whether the social workers conducted an investigation
19 or evaluated whether there was a reasonable means by which to protect the children
20 while the mother remained in custody. Id. Thus, under Parques, a reasonable social
21 worker would understand that they violate a family's constitutional rights if they do not
22 perform an immediate investigation into whether the children's continued detention
23 is necessary to protect them.

24 In contrast to Parques, here, Plaintiffs do not contend that Rollins and Solis failed
25 to immediately conduct an investigation. Indeed, as explained above, the undisputed
26 facts support a finding that Rollins acted diligently during the first day in investigating
27 the children and the circumstances surrounding their removal. Instead, the issue is
28 whether Rollins and Solis had 48 hours to complete their investigation before making

1 a determination about whether to return the children to their parents. Parkes did not
2 address that issue, nor have Plaintiffs pointed to any other authority on point. For this
3 reason, the Court finds the law was not clearly established at the time Rollins and Solis
4 investigated the continued detention of R.S. and D.S. For this reason, the Court finds
5 Rollins and Solis are entitled to qualified immunity.

6
7 **C. Whether any of the Individual Defendants' conduct was pursuant to**
8 **a County policy or practice.**

9 The County also seeks partial summary judgment on Plaintiffs' claims for the
10 removal of D.S. and R.S. from their parents' custody. The County raises two arguments
11 in support of the motion.

12 First, the County argues that because the Individual Defendants did not violate
13 Plaintiffs' rights, the County cannot be liable. (*Defs' MSJ*, p. 17.) Because this Court
14 has found that Plaintiffs' rights were violated, the County's first argument lacks merit.

15 Second, the County contends that in order to be liable for the Individual
16 Defendants' conduct, Plaintiffs must prove that their misconduct was pursuant to an
17 official policy or practice. See Monell, 436 U.S. at 691. According to the County,
18 because its policy requires a reasonable belief that the children are in imminent harm
19 before a social worker may remove children without a warrant, the County contends
20 Plaintiffs cannot prevail on their claim for Monell liability. (*Defs' MSJ*, p. 17.)

21 However, Rollins and Solis both stated that the County's policy provided them
22 48 hours to conduct an investigation before deciding whether to return R.S. and D.S.
23 to their parents' custody. (*Rollins Dec.*, ¶ 3; *Sollis Dec.*, ¶ 3.) Accordingly, at the very
24 least, a disputed issue of material fact exists as to whether the County's policy was the
25 driving force in Rollins' and Solis' failure to return the children at the conclusion of the
26 first day of investigation.

27 As for Bryson and Curiel, the County's own witnesses testified that their decision
28 to remove the children was within the training and standards they received from the

1 County. (*Lane Dec.* [Doc. 42-5], ¶ 3.) Based on that testimony, another disputed issue
2 of fact exists regarding whether Bryson and Curiel's conduct was pursuant to a custom
3 and practices of the County.

4
5 **D. The County's medical exams of R.S. and D.S.**

6 Plaintiffs contend that the County's policy for conducting medical examinations
7 on children admitted to the Polinsky Children's Center is unconstitutional for two
8 reasons: (1) the policy precludes parents from attending the medical exam; and (2) the
9 examination is performed without parental notice or consent, without a court order
10 regarding the specific child and in the absence of exigency. Plaintiffs further contend
11 that the County's policy was the moving force in violating R.S. and D.S.'s Fourth
12 Amendment rights and the family's Fourteenth Amendment rights. (*Pls.' Not. Mt. Re.*
13 *Cnty.* [Doc. 46], 2:12–20.⁹)

14 The County admits that Steven and Joanna were not allowed to attend the
15 examination because of its policy: "there is no factual dispute about parental presence
16 at the Polinsky exams. Parents are not allowed in the exam room when the Polinsky
17 exams are conducted, though they are allowed to visit their children in the visitation
18 area and speak to the doctors about their children's medical issues." (*Defs.' Opp. Re.*
19 *Cnty.* [Doc. 53], p. 11.) Instead, the County argues that partial summary judgment is
20 appropriate because R.S.'s and D.S.'s medical exams did not violate Plaintiffs'
21 constitutional rights for a number of reasons. As for Plaintiffs' second claim, the
22 County does not address whether its medical-examination policy requires parental
23 notice or consent. However, the County argues that its exams are authorized by law
24 and that Joanna consented to R.S.'s and D.S.'s exams.

25 Two Ninth Circuit cases control this Court's evaluation of the parties' claims.
26
27

28 ⁹ The Court interprets Plaintiffs' motion as presenting an as-applied challenge to the
County's policy, as opposed to a facial challenge.

1 In Wallis, 202 F.3d 1126, police officers removed children from their parents'
2 custody based on a mental patient's statements that the father intended to sacrifice his
3 son in a ritual to Satan. Three days after the children were removed, an evidentiary
4 physical exam was performed, which included internal body cavity examinations. The
5 exams were performed without notice to the parents. Ultimately, a court ordered the
6 children returned to the parents, who then filed suit against the County. The district
7 court granted the County's summary-judgment motion, and plaintiff's appealed.

8 In reversing the district court, the Ninth Circuit explained that "[p]arents and
9 children have a well-elaborated constitutional right to live together without
10 governmental interference." Wallis, 202 F.3d at 1136 (citations omitted). This
11 "includes the right of parents to make important medical decisions for their children,
12 and of children to have those decisions made by their parents rather than the state."
13 Id. at 1141 (citing Parham v. J.R., 442 U.S. 584 (1979)). Accordingly, the court held
14 that the Constitution assures parents,

15 in the absence of parental consent, [physical examinations] of their child
16 may not be undertaken for investigative purposes at the behest of state
17 officials unless a judicial officer has determined, upon notice to the
18 parents, and an opportunity to be heard, that grounds for such an
19 examination exist and that the administration of the procedure is
20 reasonable under all the circumstances.' [van Emrik v. Chemung County
21 Dept. of Social Servs.,] 911 F.2d 863, 867 (2d Cir. 1990). Barring a
22 reasonable concern that material physical evidence might dissipate
[citation omitted] or that some urgent medical problem exists requiring
medical attention, the state is required to notify parents and to obtain
judicial approval before children are subjected to investigatory physical
examinations.

23 Id. at 1141.

24 The Ninth Circuit then held that the Constitution also guarantees parents the
25 right to be present at their child's exam, and guarantees children the right to have their
26 parents present, unless a valid reason exists for the parent's exclusion:

27 Moreover, parents have a right arising from the liberty interest in family
28 association to be with their children while they are receiving medical
attention (or to be in a waiting room or other nearby area if there is a valid

1 reason for excluding them while all or a part of the medical procedure is
2 being conducted). Likewise, children have a corresponding right to the
3 love, comfort, and reassurance of their parents while they are undergoing
4 medical procedures, including examinations—particularly those, such as
5 here, that are invasive or upsetting.

6 Id. at 1142.

7 Nine years after Wallis, the Ninth Circuit again addressed the constitutionality
8 of excluding parents from their child’s medical exams. In Greene v. Camreta, 588 F.3d
9 1011 (2009), defendants obtained a court order placing two children in protective
10 custody. The court also ordered a medical “assessment” of the children at the KIDS
11 Center. Id. at 1019.

12 On the day of the assessment, the mother went to the facility “intending to
13 cooperate with the KIDS Center and lend whatever assistance and support she could
14 to her daughter.” Greene, 588 F.3d at 1019 (internal brackets omitted). However, at
15 the direction of one of the defendants, the mother was forced to leave the premises.
16 During the exam, the child was told to undress, her entire body was examined, pictures
17 were taken of her “private parts,” and a magnifying glass scope was used to visually
18 examine her. Id. In the lawsuit that followed, the mother challenged, among other
19 things, her exclusion from the premises during her daughter’s assessment. The district
20 court granted defendant’s summary-judgment motion, and plaintiff appealed.

21 In evaluating plaintiff’s challenge, the Ninth Circuit stated that Wallis
22 established two points:

23 first, parents and children maintain clearly established familial rights to be
24 with each other during potentially traumatic medical examinations; and
25 second, this right may be limited in certain circumstances to presence
26 nearby the examinations, if there is some “valid reason” to exclude family
27 members from the exam room during a medical procedure.

28 Id. at 1036. Relying on these principles, the court found that the “process” of
“visual[ly] inspecti[ng] and photographing [] the children’s genitals . . . could certainly
be emotionally traumatic to a young girl. [Citation omitted.]” Id. at 1037.
Accordingly, the Ninth Circuit reversed the district court because, under those facts,

1 the “children’s right to their mother’s comfort and their mother’s right to provide such
2 comfort were thus at their apex.” Id.

3 With these principles in mind, the Court turns to the parties’ claims.
4

5 **1. County’s policy of barring parents from their child’s exam.**

6 There is no dispute that the County’s policy excludes parents from their
7 children’s medical exams at the Polinsky Children’s Center. The County defends this
8 policy on two grounds. First, the County argues that because the Polinsky Children’s
9 Center medical “assessments” are not “forensic investigatory examinations,” Wallis and
10 Greene do not apply. (*Defs’ MSJ*, p. 18.) Second, the County argues that even if Wallis
11 and Greene apply, there are valid reasons for excluding parents.
12

13 **a. Wallis and Greene apply to the County’s medical**
14 **assessments.**

15 The County argues that the family’s Fourteenth Amendment rights do not apply
16 to the medical examinations conducted at the Polinsky Children’s Center because the
17 examinations are “nothing like the invasive investigatory exams of *Wallis*.” (*Defs. MSJ*,
18 p. 18.) According to the County, the children “are given a medical assessment” that
19 “includes a standard pediatric physical exam for the primary purpose of ensuring the
20 health and well-being of the children entering Polinsky, as well as to ensure no
21 contagious diseases are brought into the facility.” (*Id.*) Further, the County contends
22 that the exams “are brief, lasting 10-20 minutes, and the physician and staff maintain
23 a light, pleasant atmosphere” and “[m]ost children are not upset during the exam.”
24 The Court disagrees for several reasons.

25 First, the County’s attempt to distinguish its “medical assessment” from the
26 “forensic investigatory examinations” conducted in Wallis and Greene is unavailing.
27 To begin with, it is worth mentioning that the exams in Greene were also referred to
28 as “assessments,” not “forensic investigatory” exams as the County contends. See Id.,

1 588 F.3d at 1019 (“the Juvenile Court . . . scheduled KIDS Center assessments for both
2 girls”), 1037 (“The KIDS Center assessments . . .”). More importantly, the description
3 of the assessment in Greene establishes that it was similar to the County’s exams.

4 In Greene, “[d]uring the examination, [the child] was told to undress, and the
5 examiners ‘looked all over [her] body,’ ‘took pictures of [her] private parts,’ and used
6 a magnifying glass scope to visually examine her.” Id. at 1019. Similarly, here, there
7 is no dispute the exams involved an examination of the children’s external genitalia and
8 rectum (i.e., private parts), as well as 20 other “items” identified on the Polinsky
9 Children’s Center Admission Physical Examination form, which necessarily required the
10 children to undress. (*Pls’ Sealed Exhibits*, Ex. 19 at PCC 060; Ex. 29 at PCC 047; Ex.
11 34 at p.60.) Dr. Wright also confirmed that where sexual or physical abuse is
12 discovered, pictures are taken. (*Wright Dec.*, ¶ 7.) In light of these undisputed facts,
13 the only distinguishing feature between the County’s exams and the exam in Greene
14 is the use of the magnifying scope. Nothing in Wallis or Greene suggests that the
15 Fourteenth Amendment liberty interest only applies when a magnifying scope is used.

16 Second, although the County contends that the “primary purpose” of its exams
17 is to ensure the well-being of the children, there is no dispute that the exams are still
18 investigatory because the physician is “looking for” contagious diseases **and signs of**
19 **physical or sexual abuse**. The investigatory nature is also borne out by the fact that the
20 exam involves the examination of “22 items,” and by Dr. Wright’s statements that
21 during the “visual evaluation of the genitalia,” she is “looking for signs of physical or
22 sexual abuse” and that “[w]e take photos of any bruises or marks we see on the children
23 during the examinations.” (*Wright Dec.*, ¶ 7.)

24 Third, even assuming the County’s medical assessments are significantly different
25 from the exams in Wallis and Greene, neither case indicates that a family’s
26 constitutional rights depend on how long the exam lasts or the degree of invasiveness.
27 To the contrary, Wallis held that “parents have a right arising from the liberty interest
28 in family association to be with their children *while they are receiving medical attention* .

1 . . .” Id., 202 F.3d at 1142 (emphasis added). With regard to the children, Wallis held
2 they have “a corresponding right to the love, comfort, and reassurance of their parents
3 while they are undergoing *medical procedures . . .*” Id. (emphasis added). Because there
4 is no dispute that R.S. and D.S. were receiving *medical attention* or *undergoing a medical*
5 *procedure* while at the Polinsky Children’s Center, under Wallis and Greene, Steven and
6 Joanna had a constitutional right to attend, and R.S. and D.S. had a constitutional right
7 to have their parents present.

8 Finally, the County’s assertion that the exams do not implicate the Fourteenth
9 Amendment because children rarely get upset is also unavailing. In Greene, the Ninth
10 Circuit explained that parents have “clearly established familial rights to be with each
11 other during *potentially* traumatic medical examinations.” Id., 588 F.3d at 1036
12 (emphasis added). Use of the word “potentially” necessarily means that the right is not
13 contingent on the child becoming upset or traumatized. Indeed, the child in Green
14 testified that “she felt fine after the examination was over and did not feel sick or
15 upset.” Id., at 1019. Despite this testimony, the court held the child had a
16 constitutional right to have her mother present, and the mother a constitutional right
17 to be present. Id. at 1037.

18 For all these reasons, the County’s contention that its medical assessments need
19 not comply with the mandates of Wallis and Greene lack merit.¹⁰

20
21 b. *The County’s reasons for excluding parents from the exams*
22 *are not supported by the evidence or the law.*

23 Next, the County offers six justifications for excluding parents from their
24 children’s examinations. Three of the County’s alleged justifications appear to be based
25 on a concern that the parents might interfere with the exam. Specifically, the County

26 _____
27 ¹⁰ The County cites Mann v. County of San Diego, 2013 U.S. Dist. LEXIS 112094 (S.D.
28 Cal., Aug. 8, 2013) in support of its argument that its policy is not unconstitutional. For the reasons discussed above, the Court disagrees with Mann.

1 contends that parents are excluded because: (1) the offending parent or parent
2 supportive of the offending parent can negatively effect the exam; (2) the staff creates
3 upbeat and light atmosphere; and (3) the potential for parents to manipulate exams.¹¹
4 (*Defs.’ Opp. Re. Cnty.*, p. 6.)

5 But the County has not cited any evidence suggesting that Steven or Joanna
6 would have interfered with the purportedly upbeat and light atmosphere, or that they
7 would have attempted to manipulate R.S.’s or D.S.’s exam. Similarly, the County has
8 pointed to no evidence suggesting that at the time of the exams there was reasonable
9 grounds to believe either Steven or Joanna was an “offending parent” or “parent
10 supportive of an offending parent” that could have negatively effected the exam. For
11 the reasons discussed above, the evidence was to the contrary.

12 Next, the County contends parents are validly excluded because the exam is
13 brief, lasting approximately 10–20 minutes. (*Defs.’ Opp. Re. Cnty.*, p. 6.) But the
14 County fails to explain why this factor is sufficient to disregard the family’s Fourteenth
15 Amendment liberty interest. And while Dr. Wright confirms that the exams are brief,
16 she provides no basis for concluding that the presence of Steven or Joanna at the exam
17 would have impacted the length of the exam. (*Dr. Wright Dec.* [Doc. 42-12], ¶ 9.)
18 Moreover, Dr. Wright’s own declaration confirms that some of her exams last as long
19 (i.e., 20 minutes) as the full blown “forensic investigatory” exams.

20 Similarly, the County contends that parents are properly excluded because the
21 doctors are available for a limited time. (*Defs.’ Opp. Re. Cnty.*, p. 6.) Again, the
22 County’s opposition fails to explain why this justifies excluding parents from their
23 child’s exam. Dr. Wright’s declaration states that having to schedule exams around the
24 parents’ availability would negatively impact the ability of the staff to perform timely
25

26
27 ¹¹ The County also alleges that “practical difficulties” justify excluding the parents.
28 However, the County has failed to identify such difficulties in either its Opposition or the
declarations of Wendy Wright, M.D., or Norma Rincon, which were cited in the Opposition
as supporting evidence. (*See Defs.’ Opp. Re. Cnty.*, 6:13–25.)

1 exams, potentially leading to the loss of evidence of injuries. (*Dr. Wright Dec.*, ¶ 13.¹²)

2 There are *at least* two problems with this justification.

3 First, in this case, the evidence of R.S.'s injuries was already documented. There
4 is no dispute that the injuries were documented during Dr. Siano's exam and Dr.
5 Dohrenwend's exam at the Kaiser's emergency room. Additionally, Bryson took
6 pictures of R.S.'s injuries and then examined the rest of her body. As for D.S., there is
7 no dispute that he was also examined by Dr. Dohrenwend, and that Bryson also
8 examined his body. In short, these undisputed facts establish that the County's concern
9 that evidence might be lost lacks merit.

10 Second, if a parent genuinely appears to be attempting to delay the exam so that
11 evidence will dissipate, under Wallis and Greene, the County would then be justified
12 in proceeding with the exam. But this necessarily requires the County to attempt to
13 notify the parents about the exam and allow them a reasonable opportunity to attend.
14 Regardless, here the undisputed facts establish that the children's exams were not
15 required to preserve evidence and there is no evidence to support an inference that
16 Steven or Joanna would have attempted to delay or interfere with the exams.

17 Finally, the County contends that Steven and Joanna were properly excluded
18 from the exam because the clinic is located in a confidential area of the Polinsky
19 Children's Center. (*Defs.' Opp. Re. Cnty.*, p. 6.) According to the County's witnesses,
20 parents are properly excluded from the confidential area to protect other children's
21 identities and their medical and juvenile records, which are kept in the clinic. (*See Dr.*
22 *Wright Dec.*, ¶ 14; *Rincon Dec.*, (sealed) [Doc. 42-8], ¶ 3.) The explanation lacks merit.

23 Given the fundamental rights at stake, this Court reads the County's ability to
24 exclude parents from their child's exam as an exception to the general rule that parents
25 must be allowed to attend. This finding is supported by the Ninth Circuit's explanation

26
27 ¹² The Court has granted Defendants' request to file Dr. Wright's declaration under seal
28 because it contains confidential information related to R.S. and D.S.'s medical exams.
However, certain non-confidential statements in the declaration have been referenced in this
order.

1 that the right to be present “may be limited *in certain circumstances* to presence nearby
2 the examination, if there is some ‘valid reason’ to exclude family members from the
3 exam room during the procedure.” Greene, 588 F.3d at 1036 (emphasis added). So,
4 for example, a valid reason will exist if there is reasonable cause to believe the parent
5 is abusive or, perhaps, where the non-abusive parent is so emotionally distraught that
6 they would disrupt the exam.

7 However, under the County’s policy, the exception has become the general rule.
8 It admits that all parents are excluded from their child’s exam because of where the
9 County has chosen to conduct its medical exams. Even more troubling, the evidence
10 clearly establishes that—at the time of R.S. and D.S.’s medical exams—the County had
11 known for approximately seven years, since its involvement in Parkes, that the location
12 where it conducted the medical exams violated the family’s constitutional rights, yet the
13 County did nothing to relocate the exam room. For these reasons, the Court finds the
14 County’s justification insufficient, and that its policy was the moving force in violating
15 the family’s constitutional rights.

16

17 **2. Lack of parental notice and consent.**

18 Plaintiffs contend the County’s medical examination of R.S. and D.S. violated
19 the family’s constitutional rights because there was no parental consent, the exams were
20 performed without a valid court order, and there was no exigency. (*Pls.’ MSJ Re. Cnty.*
21 [*Doc. 46-1*], p. 3.) The County contends (1) the exams are lawful because they are
22 authorized by law, and (2) Joanna consented to the exams.

23

24 **a. The County’s exams are not authorized by law.**

25 The County contends that its exams are lawful because they were authorized by
26 a 2007 Juvenile Court Order (the “2007 Order”) and complied with California Welfare
27 & Institutions Code § 324.5. These arguments lack merit.

28

1 The 2007 Order authorizes “a comprehensive health assessment as recommended
2 by the AAP . . . for a child prior to the detention hearing in order to ensure the health,
3 safety, and well-being of the child.” (*Pls’ RJN* [Doc. 46-3], Ex. 1 [Doc. 46-4] at p. 1.)
4 Under its terms, “the assessment may include one or more of the following, as is
5 **necessary and appropriate to meet the child’s needs**: . . . b. A physical examination by
6 a licensed medical practitioner.” (*Id.*, emphasis added.) The 2007 Order further
7 provides that it “shall expire four years after the date of issuance unless superseded or
8 rescinded by subsequent order or rule of court.” (*Id.* at p.2.) The County’s reliance on
9 this order is misplaced for several reasons.

10 First, under Wallis, parental consent is unnecessary where “a judicial officer has
11 determined, upon notice to the parents, and an opportunity to be heard, that grounds
12 for such an examination exist and that the administration of the procedure is
13 reasonable under all the circumstances.” Id., 202 F.3d at 1141. Here, the Order was
14 issued in January 2007. Because there is no dispute that R.S. and D.S. were removed
15 and examined in 2011, it is undisputed that Steven and Joanna did not receive notice
16 and did not have an opportunity to be heard. Accordingly, the 2007 Order is
17 insufficient under Wallis to authorize the medical exams of R.S. and D.S. without
18 parental consent.

19 Second, the 2007 Order authorizes exams that are “necessary and appropriate to
20 meet the child’s needs” (*Pls’ RJN*, Ex. 1 at p. 1.) Here, Dr. Wright’s testimony
21 does not explain why the examinations were necessary and appropriate to meet the
22 needs of R.S. and D.S. The lack of such evidence is compounded by the undisputed
23 fact that less than 24 hours before the County conducted the exams, R.S. and D.S. were
24 examined by Dr. Dohrenwend, and R.S. had also been examined by Dr. Siano. In light
25 of those exams, it is entirely unclear why the County believed another exam of the
26 children was “necessary and appropriate.”

27 Third, by its terms, the 2007 Order expired “four years after the date of issuance
28” (*Pls’ RJN*, Ex. 1 at p. 2.) Because the order was issued on January 8, 2007, it

1 expired on January 8, 2011, and thus did not apply to R.S. and D.S.'s exams. And the
2 County has neither argued nor provided evidence indicating that the 2007 Order was
3 ever extended. For this additional reason, the County's reliance on the order as
4 authorization for the exams lacks merit.

5 Next, the County asserts that the exams were lawful under California Welfare
6 & Institutions Code § 324.5. This statute requires a local law enforcement agency or
7 local child welfare department that takes a child suspected of physical or sexual abuse
8 into protective custody to "consult with a medical practitioner" specializing in child
9 abuse to "determine whether a physical examination of the child is appropriate." Cal.
10 Welf. & Inst. Code § 324.5(a). "If deemed appropriate," the agency or department
11 "shall cause the child to undergo a physical examination" by a medical practitioner
12 specializing in child abuse "and, *whenever possible*, shall ensure that this examination
13 take place within 72 hours of the time the child was taken into protective custody." *Id.*
14 (emphasis added).

15 Nothing in section 324.5(a) authorized the County to perform the examinations
16 on R.S. and D.S. without parental notice and consent or in the absence of judicial
17 authorization. Indeed, as Plaintiffs point out, the County raised this exact argument in
18 Wallis, and the Ninth Circuit recognized that there is "no apparent conflict between
19 the requirements of this opinion and the statute in question." *Id.*, 202 F.3d at 1141, f.n.
20 12.¹³ This Court also fails to see any conflict between Wallis's requirements and section
21 324.5. Accordingly, the Court finds the statute did not authorize the medical
22 examinations of D.S. and R.S. without parental notice or consent.

23 //

24 //

25

26

27 ¹³ However, because the medical exams at issue in Wallis occurred seven years before
28 the statute was enacted, the Ninth Circuit did not decide "whether or to what extent the law
is affected by our decision here." *Id.*, 202 F.3d at 1141 n.12.

b. The County's consent forms do not cover the medical assessments.

“It is well established that a search conducted pursuant to a valid consent is constitutionally permissible.” Dubbs v. Head Start, Inc., 336 F.3d 1194, 1199, 1207 (10th Cir. 2003) (citations omitted). Additionally, “because the Fourth Amendment prohibits only ‘unreasonable’ searches and seizures, the Supreme Court has held that the Amendment is satisfied when, under the circumstances, it is objectively reasonable for the official to believe that the scope of a person’s consent permitted him to conduct the search.” Id. (citations omitted).

Here, the County argues that Joanna consented to R.S. and D.S.’s medical exams when she signed the form entitled “Consent for Treatment - Parent.” (*Defs.’ MSJ*, p. 20.) There are three problems with the County’s reliance on this form.

First, the undisputed evidence establishes that the consent forms did not cover the children’s drug testing or R.S.’s skeletal exam. There is no dispute that Joanna did not sign the forms until well after the County began urine testing the children. Joanna signed the consent forms sometime “after lunch,” when Rollins traveled to the Swartwood home to interview them. (*Rollins Dec.*, ¶ 10; *Defs’ NOL*, Ex. D (sealed) [Doc. 44], Ex. E (sealed) [Doc. 44].) However, the undisputed evidence establishes that the urine testing began at approximately 2:00 a.m. earlier that morning. (*Id.*) Thus, when the testing was performed, Joanna had not “consented” to the medical treatment.

Similarly, there is no dispute that when Rollins gave Joanna the forms to sign, Rollins raised the issue of conducting a skeletal exam on R.S. (*Rollins Dec.*, ¶ 9.) Rollins admits that Steven and Joanna both refused to consent to the skeletal exam. (*Id.*) There is also no dispute that before the exam was performed, “someone” told Rollins that R.S. was being taken to Kaiser for the skeletal exam, and Rollins specifically notified them that the parents did not consent to the exam. (*Id.*, ¶ 15.)

1 Based on these undisputed facts, it was not “objectively reasonable” for the County to
2 believe that the scope of Joanna’s consent covered the skeletal exam.

3 The second problem with the consent forms is that they only permitted Dr.
4 Wright to conduct the medical exams “if . . . for any reason[,]” Dr. Ireland could not
5 perform the exam. The County’s consent form gives the parent the option of indicating
6 a preference for their child to receive “treatment” from a designated “private physician.”
7 (*Def.s NOL*, Ex. D (sealed) [Doc. 44], Ex. E. (sealed) [Doc. 44].) The form states that
8 “[i]f private treatment is selected and cannot, for any reason, be performed, I hereby
9 authorize treatment at a licensed hospital/medical facility.” (*Id.*)

10 Here, in signing the form, Joanna selected the “private physician” option and
11 consented to the children’s regular pediatrician, Dr. Ireland, as the doctor authorized
12 to provide treatment. (*Def.s NOL*, Ex. D (sealed), Ex. E. (sealed).) Thus, based on the
13 terms of the consent form, Joanna consented to a County physician providing
14 “treatment” to R.S. and D.S. “if” there was some reason Dr. Ireland could not do so.
15 Defendants have failed to argue, much less provide any evidence indicating that Dr.
16 Ireland could not perform R.S.’s and D.S.’s medical assessments. Accordingly, the
17 County has failed to establish that the consent forms allowed Dr. Wright to perform
18 R.S.’s and D.S.’s medical assessments.

19 Third, Plaintiffs challenge the validity of the consent forms. Specifically,
20 Plaintiffs contend Joanna signed the forms without informed consent because the forms
21 misleadingly characterize the physical examinations as conditional. (*Pls.’ Reply Re.*
22 *Cnty.* [Doc. 64], p. 4.) The Court agrees.

23 By signing the “Consent for Treatment - Parent” form, Joanna consented to
24 “medical, developmental, dental, and mental health care to be given” to R.S. and D.S.
25 “while . . . in any facility operated by the Health and Human Services Agency . . . *if the*
26 *treatment is recommended by a licensed physician, dentist, psychiatrist or other mental health*
27 *practitioner.”* (*Def.s NOL*, Ex. D (sealed), Ex. E. (sealed) (emphasis added).) The form
28 also lists a variety of procedures comprising “[m]edical, developmental, dental, or

1 mental health care,” which includes the sole reference to “routine admission and
2 placement examination.” (*Id.*) Then, as discussed above, the form allows the parent
3 to select a “private physician” to perform the treatment. (*Id.*)

4 The form is misleading because it strongly suggests at the time the document is
5 signed that there are no plans to provide “treatment” to the child. Instead, by
6 indicating that such treatment will be provided “if . . . recommended by a licensed”
7 doctor, the form leaves the parent with the impression that there has been no
8 determination made as to whether the child will receive any treatment. In reality,
9 pursuant to the County’s policy, when the form is signed, the child *shall* undergo a
10 “routine admission and placement examination.”

11 Moreover, the very title of the form, “Consent for Treatment–Parent” and
12 repeated use of the term “treatment” in the document is also misleading. According
13 to the American Heritage Medical Dictionary, the term “treatment” refers to
14 “[a]dministration or application of remedies to a patient or for a disease or an injury;
15 medicinal or surgical management; therapy.” (The American Heritage Medical
16 Dictionary 551 (2008).) Similarly, Mosby’s Medical Dictionary defines the term as
17 “the care and management of a patient to combat, ameliorate, or prevent a disease,
18 disorder, or injury.” (Mosby, Inc., Mosby’s Medical Dictionary (8th ed. 2009), available
19 at <http://medical-dictionary.thefreedictionary.com/treatment>.) Consistent with these
20 definitions, the form specifically states that “treatment” will be provided “if . . .
21 recommended . . .” Thus, the County’s repeated use of the term “treatment” leaves
22 the parent with the distinct impression that by signing the form, the parent is
23 consenting to the child receiving medical care if a condition—such as a fever, cold,
24 etc.—arises while the child is in the Polinsky Children’s Center. The form does not
25 provide any notice that in executing the form, the parent is consenting to the County’s
26 mandatory 22-point health assessment that includes an examination of the child’s
27 external genitalia and rectum.

28

1 In a case involving forms soliciting parental permission for tests “if needed,” the
2 Tenth Circuit criticized the form for failing to obtain adequate consent. Dubbs, 336
3 F.3d at 1199, 1207. Resting on the common law adage of construing “ambiguous
4 language against the interest of the party that drafted it,” the court found that a typical
5 reasonable parent would not have understood the forms to constitute consent to the
6 administration of “general physical exams.” Id. at 1208, 1209 (citing Mastrobuono v.
7 Shearson Lehman Hutton, Inc., 514 U.S. 52, 62–63 (1994)).

8 Similar to the forms in Dubbs, the County’s consent forms create an “exercise in
9 obfuscation and misdirection.” 336 F.3d at 1211. As in Dubbs, the County’s forms
10 require parents to parse the language, which seems to authorize treatment if
11 recommended rather than the mandatory 22-point medical exam performed by the
12 County. Reading the ambiguity in the forms against the drafting party—the County—
13 the Court finds that the forms failed to notify Joanna that R.S. and D.S. would be
14 subjected to the mandatory medical assessments.

15
16 **E. Plaintiffs’ state-law claims.**

17 Defendants seek partial summary judgment as to Plaintiffs’ state-law claims for
18 assault, battery, false imprisonment, and state civil rights violations on two grounds.
19 First, Defendants contend the Individual Defendants are immune from liability for
20 Plaintiffs’ injuries under California law. (*Def. MSJ*, pp. 21–22.) Second, Defendants
21 contend the undisputed facts establish that the Individual Defendants are not liable.
22 (*Id.*, pp. 22–23.) Because the Court finds that the Individual Defendants are protected
23 by state immunity, partial summary judgment as to the state-law claims is appropriate.

24
25 **1. State immunity.**

26 California law insulates government workers from injuries resulting from their
27 actions by granting them “discretionary immunity,” “whether or not such discretion be
28 abused.” Cal. Gov’t Code § 820.2. Additionally, California law affords protection to

1 public employees who cause injuries by “instituting or prosecuting any judicial or
2 administrative proceeding within the scope of [their] employment, even if [they] act
3 maliciously and without probable cause.” Id. § 821.6.

4 Defendants contend that state immunity provides broad protection for their
5 actions, even where the social workers’ actions were improper under federal law. In
6 fact, “[t]he immunity even applies to ‘lousy’ decisions in which the worker abuses his
7 or her discretion, including decisions based on ‘woefully inadequate information.’”
8 Christina C. v. Cnty. of Orange, 220 Cal. App. 4th 1371, 1381 (2013) (citing Ortega
9 v. Sacramento Cnty. Dept. of Health & Human Serv.s, 161 Cal. App. 4th 713,
10 733(2008)). As Defendants point out, discretionary immunity applies even to “grossly
11 incorrect” conclusions and “improper evaluation[s]” by social workers. Id. (citing 161
12 Cal. App. 4th at 733 (2008)).

13 Plaintiffs respond that Defendants are not entitled to immunity because
14 California Civil Code § 820.21 withdraws civil immunity from juvenile court social
15 workers and child protection workers if they maliciously commit perjury, fabricate
16 evidence, fail to disclose known exculpatory evidence, or obtain testimony by duress,
17 fraud, or undue influence. Thus, in order to establish that discretionary immunity does
18 not apply, Plaintiffs must point to specific evidence establishing the circumstances fall
19 within section 820.21.

20
21 a. Defendants Curiel and Bryson.

22 Plaintiffs contend that Bryson and Curiel “attempted to obtain testimony by
23 duress, fraud and undue influence.” (*Pl.s’ Opp.* [Doc. 54], p. 22.) Focusing solely on
24 Bryson, they claim she “used duress and undue influence” during her initial
25 interrogation of the parents at their home, including forcing them to “strip their
26 children for her inspection,” and afterward, by forcibly removing the children “with the
27 express intent to have them examined and tested . . . in an attempt to obtain further
28 evidence against the family.” (*Id.*) Plaintiffs argument is insufficient for two reasons.

1 First, Plaintiffs' argument is based largely on conclusory allegations that are not
2 supported by citations to evidence. For example, Plaintiffs claim Bryson came to their
3 home under false pretenses to examine and remove the children. But the undisputed
4 evidence establishes that Dr. Siano and Nurse Fowler contacted the Agency and made
5 mandatory reports of R.S.'s injuries. The evidence further establishes that Curiel sent
6 Bryson to the Swartwood home to investigate and determine whether the children were
7 safe. Joanna also admits in her declaration that when Bryson arrived at her house,
8 Joanna "invited" her in. Additionally, while Joanna contends that Bryson "demanded"
9 that Joanna disrobe the children so Bryson could examine them, neither Steven nor
10 Joanna's declaration provide any specific factual details suggesting that Bryson was
11 "taking an unfair advantage" of Plaintiffs.

12 Second, aside from failing to cite evidence pointing to duress or undue influence,
13 Plaintiffs wrongly interpret "testimony" to encompassing Bryson's questioning Steven
14 and Joanna, examining the children in their home, or removing the children from their
15 parents' custody. However, "testimony" applies to conduct closely related to the
16 judicial process, and not home interviews such as Bryson's or information obtained from
17 an examination that is included in a draft detention report. See Olvera v. Cnty. of
18 Sacramento, 932 F. Supp. 2d 1123, 1179 (E.D. Cal. 2013). Thus, even if the facts
19 suggested Bryson or Curiel took advantage of the Plaintiffs, they fail to provide
20 evidence that the information obtained was "testimony." For these reasons, Bryson and
21 Curiel are immune from liability for Plaintiffs' state-law claims.

22
23 **b. Defendants Rollins and Solis.**

24 Plaintiffs argue Rollins and Solis, holding positions of authority, signed a
25 detention report falsely alleging abuse by the parents and "failed to provide exculpatory
26 information." (*Pls. Opp.*, p. 22.) But Plaintiffs fail to specify the exculpatory facts that
27 were not disclosed.

28

1 More importantly, the undisputed facts establish that in conferring with County
2 Counsel, Rollins disclosed that the only hesitation in returning the children to their
3 parents' custody was the timing of the injury causing event. The evidence further
4 establishes that once the County's pediatricians confirmed the event likely occurred
5 around the time that the injuries manifested, Rollins and Solis decided to return the
6 children. Based on these undisputed facts, and Plaintiffs failure to point to any
7 evidence supporting the claim that section 820.21 applies, the Court also finds
8 Defendants Rollins and Solis are immune from liability for Plaintiffs' state-law claims.

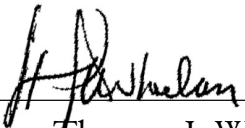
9
10 **IV. CONCLUSION & ORDER.**

11 For the reasons stated above, the Court **GRANTS IN PART** and **DENIES IN**
12 **PART** Defendants' motion for partial summary judgment [Doc. 42], **GRANTS IN**
13 **PART** and **DENIES IN PART** Plaintiffs' motion for partial summary judgment against
14 the Individual Defendants [Doc. 45], and **GRANTS** Plaintiffs' motion for partial
15 summary judgment against the County [Doc. 46] as follows:

- 16 1. The Court finds defendants Rollins and Curiel are entitled to qualified
17 immunity with respect to Plaintiffs' federal claims, and defendants Bryson,
18 Curiel, Rollins and Solis are entitled to immunity with respect to Plaintiff's
19 state-law claims. Defendants' motion is denied in all other respects.
- 20 2. The Court finds Plaintiffs are entitled to partial summary judgment against
21 Bryson and Curriel on the federal claims arising out of R.S. and D.S.'s
22 removal from the parents' custody. Plaintiffs' motion is denied in all other
23 respects.
- 24 3. Plaintiffs are also entitled to partial summary judgment against the County
25 on the federal claims with respect to the medical exams of R.S. and D.S.

26 **IT IS SO ORDERED.**

27 DATE: September 30, 2014

28


Hon. Thomas J. Whelan
United States District Judge