UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

FAUN O'NEEL, individually and as Guardian Ad Litem for her children B.T., A.O., D.O., and A.T.,

Plaintiffs,

v.

CITY OF FOLSOM, a public entity; SPENSER HEICHLINGER, an individual; MELANIE CATANIO, an individual; LOU WRIGHT, an individual; DOE CITY OF FOLSOM DEFENDANTS, individuals; KERYN STARKS, an individual; SASHA SMITH, an individual; COUNTY OF SACRAMENTO, a public entity; DOE DCFAS DEFENDANTS, individuals; and DOES 1 through 10, inclusive,

Defendants.

No. 2:21-cv-02403 WBS DB

MEMORANDUM AND ORDER RE: COUNTY OF SACRAMENTO, SASHA SMITH, AND KERYN STARKES' MOTION FOR SUMMARY JUDGMENT

----oo0oo----

Plaintiff Faun O'Neel, individually and as guardian ad litem for her children B.T., A.O., D.O., and A.T, brought this § 1983 action alleging that defendants' removal of her four

children violated, inter alia, their Fourteenth Amendment right to familial association. (Second Am. Compl. ("SAC") (Docket No. 49).) Donnie Cox was subsequently appointed guardian ad litem for the four children on February 23, 2022. (Docket No. 9.) Defendants County of Sacramento, Sasha Smith, and Keryn Starkes now move for summary judgment. (Docket No. 80.)

I. Factual and Procedural Background

Plaintiff Faun O'Neel is the mother of child plaintiffs A.T., D.O., A.O., and B.T. (See Docket No. 93 at 56.) Danny O'Neel, not a party to this matter, is Faun O'Neel's husband and the children's stepfather. (See id.)

On December 20, 2020, D.O. left out food that the family's dog got into and made a mess in the kitchen, and Faun O'Neel disciplined D.O. (See Sealed Detention Report at 3-4.) Following this incident, D.O. told his sister B.T. that his mother choked him with both hands and carried him by the neck. (See Defs.' Statement of Undisputed Facts ("SUF") (Docket No. 80-1) ¶ 5.) B.T. then called 911 concerning D.O.'s choking allegation. (Id. ¶ 6.)[1]

Folsom Police Department officers responded to the 911 call and interviewed the children. (See Docket No. 93 at 48-51.) The officers left without removing the children from the home. (See Pls.' Statement of Material Facts ("SMF") ¶ 11.) Two days later, on December 22, 2020, Officer Melanie Catanio removed the

[1] Faun O'Neel maintained that she only grabbed D.O. by the back of the neck to get him to comply with her order to clean up the food and did not choke him or pick him up by the neck. (See Docket No. 93 at 16.) D.O. later recanted the choking allegation. (See SUF ¶ 80.)

four children from the home without a warrant, and thereafter interviewed the two older children, B.T. and A.O., at the Folsom Police Department. (SUF ¶ 11.) During her interview, A.O. made additional allegations that the parents physically punished both D.O. and herself, including smacking in the face and hitting with a belt. (Id. ¶¶ 14-16.) Following the interviews, the children were placed in the custody of the County of Sacramento Child Protective Services Department ("CPS"). (See id. ¶ 18.)

Keryn Starkes and Sasha Smith are social workers employed by CPS who were assigned to the O'Neel case. (See id. ¶¶ 43-50.) Sasha Smith was Keryn Starkes' supervisor. (See id. ¶ 20; SMF ¶ 36.)

Pursuant to a safety plan agreed upon by Starkes, the O'Neel parents, and maternal grandmother Fara Canutt on December 24, 2020, the children were placed into the custody of Canutt at the family home, while the parents were to live in a different location and were permitted to have supervised visitation. (See SUF ¶¶ 21-23.) The safety plan also required that the parents refrain from attempting to influence what the children said to law enforcement. (See id. ¶ 23.)

On January 8, 2021, Starkes filed petitions to have the children declared dependents of the Juvenile Court pursuant to California Welfare & Institutions Code § 300. (See id. ¶ 47.) That same day, Starkes also prepared and submitted a warrant application[2] for the removal of all four children pending a

[2] While separate applications were submitted for each child, the substantive content of the applications was identical. (See SMF ¶ 26.) The court will therefore use the singular "application."

hearing on the § 300 petitions, pursuant to Welfare & Institutions Code § 340(b)(2). (See id. ¶ 45.) The warrant application was granted by a judge the same day. (Id.) The children were then placed into CPS custody. (See Sealed Detention Report at 2.)

A detention hearing was held on January 14, 2021. At the hearing, a different judge determined that CPS had made a prima facie case that the children satisfied the criteria of § 300 due to a risk of physical abuse. (SUF ¶¶ 70-72.) At a dispositional hearing on February 1, 2021, that judge sustained the § 300 petitions by a preponderance of the evidence and adjudged the children as dependent children of the Juvenile Court. (Id. ¶ 74.) The court ordered the mother and children to reside in the same home as the parental grandparents until further order of the Court. (Id.) The children's dependency status was terminated on July 22, 2021. (Id. ¶ 75.)

II. Legal Standard

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party may move for summary judgment either for one or more claims or defenses, or for portions thereof. Id.

The moving party typically bears the initial burden of establishing the absence of a genuine issue of material fact and may satisfy this burden by presenting evidence that negates an essential element of the non-moving party's case. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). However, summary judgment must be entered "against a [non-moving] party who fails

to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." See id. Any inferences drawn from the underlying facts must be viewed in the light most favorable to the non-moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

III. Discussion

As relevant here, plaintiffs' third claim, brought against defendants Starkes and Smith, alleges judicial deception in the warrant application in violation of plaintiffs' constitutional right to familial association. The seventh claim alleges that Starkes and Smith are liable for false imprisonment based on false representations made in the warrant application. The sixth claim alleges that the County of Sacramento is liable pursuant to Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978).[3]

A. Judicial Deception

"The interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the Supreme Court."

---

[3] The first and second claims were brought against the other defendants (Catanio, Wright, and City of Folsom), who have since settled. (See Docket No. 96.)

Plaintiffs' opposition brief indicates that they have "elect[ed]" not to pursue the fourth and fifth claims, which allege judicial deception in other documents filed with the Juvenile Court. (See Opp'n (Docket No. 88) at 7.) Plaintiffs further represent that they "will submit a dismissal of the Fourth and Fifth Claims." (Id.) Plaintiffs have not yet filed a pleading voluntarily dismissing these claims. However, based on plaintiffs' clear intention to abandon them, the court will dismiss the fourth and fifth claims.

David v. Kaulukukui, 38 F.4th 792, 799 (9th Cir. 2022) (cleaned up). "[A]s part of the right to familial association, parents and children have a 'right to be free from judicial deception' in child custody proceedings and removal orders." Id. at 800.

"To support a § 1983 claim of judicial deception, a plaintiff must show that the defendant deliberately or recklessly made false statements or omissions that were material to the finding of probable cause." Greene v. Camreta, 588 F.3d 1011, 1034–35 (9th Cir. 2009), vacated in part on other grounds, 661 F.3d 1201 (9th Cir. 2011).

Under California law, "a warrant to remove a child prior to a hearing cannot issue absent a showing of probable cause to believe that '[t]here is a substantial danger to the safety or to the physical or emotional health of the child' and '[t]here are no reasonable means to protect the child's safety or physical health without removal.'" Scanlon v. County of Los Angeles, 92 F.4th 781, 805 (9th Cir. 2024) (quoting Cal. Welf. & Inst. Code § 340(b)(2)-(3)).

In the context of a judicial deception claim, "[a] misrepresentation or omission is 'material' if a court 'would have declined to issue the order had [the defendant] been truthful.'" David, 38 F.4th at 801 (quoting Greene, 588 F.3d at 1035) (alteration in original). "Whether a false statement was 'material' to the finding of probable cause is a question of law for the reviewing court." Greene, 588 F.3d at 1035; see also Chism v. Washington State, 661 F.3d 380, 389 (9th Cir. 2011) (materiality is a "purely legal question"). But see Scanlon, 92 F.4th at 802 (treating materiality as issue to be determined by

"reasonable trier of fact," but not addressing whether materiality is a factual or legal question).

1. Smith

It is undisputed that Starkes was responsible for the preparation of the warrant application. (See SUF ¶ 45.) Smith, Starkes' supervisor, did not sign the warrant application. (See Docket No. 93 at 74.) As far as the court can discern, Smith's only involvement with the warrant application was her review of it in her capacity as Starkes' supervisor. (See Keryn Starkes Dep. at 61:21-22, 135:20-136:14; Sasha Smith Dep. at 74:11-75:7.) It appears that Smith did not review the underlying evidence or documentation. (See SUF ¶ 56; Sasha Smith Dep. at 78:2-17.)

The parties have not identified any evidence in the record that suggests Smith had reason to doubt the accuracy of the representations made by Starkes' warrant application. Moreover, plaintiffs have not identified, and the court is unaware of, any authority holding that a supervisor must review the underlying evidence or documentation for a warrant application prepared by her subordinate. "Omissions or misstatements resulting from negligence or good faith mistakes will not invalidate an affidavit which on its face establishes probable cause," and "a claim of judicial deception [may not] be based on an officer's erroneous assumptions about the evidence he has received." Ewing, 588 F.3d at 1224; see also Motley v. Parks, 432 F.3d 1072, 1081 (9th Cir. 2005), overruled on other grounds by United States v. King, 687 F.3d 1189 (9th Cir. 2012) ("law enforcement officers are generally entitled to rely on information obtained from fellow law enforcement officers").

Smith's reliance on Starkes' representations thus cannot form the basis for a judicial deception claim. See Ewing, 588 F.3d at 1224. Accordingly, the court will grant summary judgment on the third claim in favor of defendant Smith.

2. Starkes

As stated above, defendant Starkes drafted the warrant application. Plaintiffs advance several theories concerning Starkes' alleged judicial deception in the warrant application.

a. Failure to Review SAFE Interviews

It is undisputed that Starkes relied on the representations of Officer Catanio and Dominique Smith concerning the content of the SAFE interviews, rather than reviewing the SAFE interview recordings or transcripts. Plaintiffs argue that this constitutes reckless disregard for the truth. They take issue with two representations or omissions that Starkes relied upon: first, Catanio and Dominique Smith's failure to inform her of the fact that D.O. recanted the choking allegation during the interview; and second, their representations that the children had been coached prior to their interviews in violation of the safety plan.

Catanio, who observed the interviews (see SUF ¶ 28), sent an email received by Dominique Smith and Starkes (see id. ¶¶ 40, 42) conveying her conclusion that the children had "clear[ly]" been coached on "what to say, and . . . what not to say," in violation of the safety plan, such that the "integrity of the [SAFE] interviews was completely compromised" (Docket No. 93 at 66). One of Dominique Smith's Case Management System ("CMS") entries also indicates generally that the safety plan was

not followed. (See Dominique Smith Dep. at 71:18-24.) Dominique Smith's CMS entries do not indicate that D.O. recanted the choking allegation during his SAFE interview, nor does Catanio's email concerning the interviews. (See Dominique Smith Dep. at 68:23-70:4; Docket No. 93 at 66.) Starkes relied upon these representations in drafting the warrant application. (See Docket No. 93 at 73.)

It is true that Starkes knew about the SAFE interviews prior to filing the warrant application and failed to review the recordings or transcripts. (See SUF ¶ 26; SMF ¶ 20.) However, the interviews were not requested by Starkes in the first place (see SUF ¶¶ 24-26), and there is no indication that she felt review of the interviews necessary to acquire adequate information from the children. More importantly, there is nothing in the record indicating that Starkes had reason to doubt the accuracy of Officer Catanio and Dominique Smith's representations to her concerning the SAFE interviews. See Motley, 432 F.3d at 1081 ("law enforcement officers are generally entitled to rely on information obtained from fellow law enforcement officers"); Kastis v. Alvarado, No. 1:18-cv-01325 DAD BAM, 2019 WL 3037912, at *10 (E.D. Cal. July 11, 2019) ("An assertion is made with reckless disregard when 'viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported.'") (quoting Wilson v. Russo, 212 F.3d 781, 788 (3d Cir. 2000)). Her failure to review additional information concerning the SAFE interviews thus constitutes, at most, mere "negligence or good faith mistakes"

that do not sustain a judicial deception claim. See Ewing, 588 F.3d at 1224.

b. Failure to Investigate Further

Plaintiffs also argue that D.O.'s representation that his mother picked him up and carried him around by the neck was so unbelievable that it should have prompted Starkes to further investigate the incident. D.O.'s description certainly strains credulity, especially given that there were no marks on his neck following the incident and he was twelve years old at the time. (See SMF ¶¶ 2-3, 7, 12; Docket No. 93 at 69.) Plaintiffs contend that Starkes should have therefore conducted further investigation -- for example by (1) reviewing the audio recordings of the children's interviews with Folsom Police, (2) reviewing the photos taken of D.O. that showed no visible marks or bruising on his neck (in addition to evidence already before her that indicated there were no marks), or (3) further questioning Faun O'Neel (in addition to the interview Starkes had already conducted) -- and that her failure to do so constitutes reckless disregard for the truth.

This argument is unavailing, particularly because the warrant application did include Faun O'Neel's alternative description of the December 20, 2020 incident, according to which she only "grabb[ed] [D.O.] by the back of the neck," but did not choke him or pick him up by the neck. (See Docket No. 93 at 71.) Further, there is no indication that the specific avenues of investigation identified by plaintiffs were so plainly necessary that failure to pursue them constitutes reckless disregard for the truth. Cf. Butler v. Elle, 281 F.3d 1014, 1025 (9th Cir.

2002) (where warrant was issued for failure to maintain vehicle title, officer's failure to search title database under defendant's legal name and business name, which were known to officer, could support claim for judicial deception).

It is possible that the investigation methods identified by plaintiffs may constitute "best practices." (See, e.g., Sasha Smith Dep. at 79:9-16 (indicating that reviewing photos referenced in a police report prior to writing a warrant application is a practice social workers "should" follow).) But a failure to abide by best practices does not rise to the level of judicial deception. As with Starkes' failure to review the SAFE interviews, her failure to investigate the case in the particular manner plaintiffs dictate constitutes, at most, mere negligence that cannot support a judicial deception claim. See Ewing, 588 F.3d at 1224.

Additionally, it is not clear that further avenues of investigation concerning the choking incident would have yielded information that, if included, would have been material. As discussed in greater detail below, the choking incident was not the only ground for the warrant. Even if the choking allegation was excluded, the court cannot say as a matter of law that the warrant would not have been granted.

c. Omissions from Warrant Application

Finally, plaintiffs point to Starkes' omission of several pieces of information that were known to her, including that (1) the safety plan allegedly did not require that the parents have only one hour of supervised virtual visitation every other day, and therefore the parents were not in violation of the

visitation provision by having frequent in-person visitation (see Decl. of Faun O'Neel (Docket No. 88-1 at 94-100) ¶ 27; Decl. of Fara Canutt (Docket No. 88-1 at 90-92) ¶ 4); (2) D.O. told Starkes he felt safe at home and wanted to remain with his mother (SMF ¶ 12); (3) D.O. gave varying descriptions of the part of the incident in which his mother pushed his face either "into" or "towards" the food spilled on the ground (see SMF ¶ 34; Docket No. 93 at 14); (4) D.O. had no physical marks or bruises (see SMF ¶ 2); and (5) the police did not remove the children when they first responded to the home and interviewed the children on December 20, 2020, but rather came back to remove the children two days later (see SMF ¶ 11; SUF ¶ 11).

Even if these pieces of information may tend to be exculpatory, they are overshadowed by the specific allegations of physical abuse against multiple children in the home, which are far more salient to the finding of probable cause. According to the warrant application, D.O. and A.O. "reported history of being physically abused by the mother and the father, which included being choked, spanked with a belt, and slapped in the face"; B.T. "reported being concerned that her mother would hurt her siblings again when she gets angry," particularly D.O. and A.O., who "get more severe punishments . . . including getting hit and pushed"; and A.O. "stated that when her mother gets overly mad, she gets smacked, pushed and spanked with a belt" and that "her last spanking by her father was last September or October 2020" (mere months before the December 2020 incident), which left her with "marks and bruises on her legs and her arms." (See Docket No. 93 at 70-72; SUF ¶ 52.)

Accordingly, the court concludes that the alleged omissions were immaterial. Even if the facts pointed to by plaintiffs had been included, the judge most likely would still have granted the warrant based on these allegations, which were not "made misleading by the omission" of the facts relied upon by plaintiffs such that the warrant application "considered as a whole, [was] materially misleading." See Scanlon, 92 F.4th at 799.

This conclusion is bolstered by the outcome of the detention hearing, where the plaintiffs were each represented by counsel and a different judge concluded CPS had made a prima facie case that the children met the criteria of Welfare & Institutions Code § 300. The judge there had before him a fuller factual and procedural record, along with D.O.'s statement that he felt safe at home and wanted to remain at home, and CPS's representation that the only violation of the safety plan was the family's alleged coaching of the children prior to interviews. (See SUF ¶¶ 58-69.) In ruling, the judge stated: "I find that removal of all the children is appropriate, based on allegations of physical abuse. One to [D.O.], but also a report of allegations that there is physical abuse to [A.O.] that occurred prior to this. The allegations seem to suggest this is not an isolated incident that just happened to [D.O.], but this is something that's been ongoing in the family, at least to two children." (Id. ¶ 70.)

As plaintiffs point out, the legal standard applied at the warrant application stage is different than the standard under § 300. In particular, the warrant required that, in

addition to making a showing of abuse or neglect under § 300, there were "no reasonable means to protect the child's safety or physical health without removal" pending hearing on the § 300 petitions. See Scanlon, 92 F.4th at 805 (quoting Cal. Welf. & Inst. Code § 340(b)(2)-(3)). While the judge's conclusion at the detention hearing that CPS has made a prima facie showing under § 300 is not equivalent to a finding of probable cause, the outcome of that hearing does make clear that the allegations of a history of excessive corporal punishment against multiple children would have been important at any stage of the case.

Based on the foregoing, the court concludes that there is no genuine dispute of material fact tending to show that Starkes committed judicial deception in the warrant application. Accordingly, the court will grant summary judgment on the third claim in favor of defendant Starkes.

B. Qualified Immunity

Even if any or all of the allegedly false statements in the warrant application or the alleged omissions from that application were found to constitute judicial deception, defendants would still be entitled to qualified immunity on plaintiffs' Fourteenth Amendment claim unless plaintiffs could establish that defendants acted in violation of clearly established law, such that any reasonable officer in the officers' position would understand that their conduct violated plaintiffs' constitutional rights. See Pearson v. Callahan, 555 U.S. 223, 232 (2009) ("Qualified immunity is applicable unless the official's conduct violated a clearly established constitutional right."); Saucier v. Katz, 533 U.S. 194, 202

(2001) ("The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.")

It may be clearly established that an officer may not make statements in a juvenile dependency petition that he knew to be false or would have known to be false if he had not recklessly disregarded the truth. See Greene, 588 F.3d at 1035; David, 38 F.4th at 800 (stating that "the right to be free from judicial deception in matters of child custody in beyond debate."). However, the Supreme Court has cautioned us not to define the law at such a high level of generality in defining what is clearly established. See City of Escondido, Cal. v. Emmonds, 586 U.S. 38, 42 (2019). In order for the making of such false statements to constitute a Fourteenth Amendment violation the statements must have been material. In other words, it is not enough that a defendant may have made one or more false statements or omitted one or more facts from a petition. The statement or omission may support a judicial deception claim only if the allegedly deceived court would have declined to issue the order had the statements not been made or the omitted facts been included. See David, 38 F.4th at 801.

Accordingly, in determining qualified immunity the more appropriate inquiry is whether the officer made false statements which he knew to be materially false or would have known to be materially false if he had not recklessly disregarded the truth. And with regard to the alleged omissions the appropriate inquiry is correspondingly whether the officer intentionally or with

reckless disregard for the truth omitted material facts.

In the context of a judicial deception claim, materiality is a question which must be determined by the reviewing court in each instance on a case-by-case basis. See Chism, 661 F.3d at 389. Here, this court has determined that none of the alleged misrepresentations or omissions, considered individually or collectively, were material because they did not influence the Juvenile Court Judge in his decision. But suppose this court had held otherwise and determined that one or more of the alleged misrepresentations were made with knowledge they were false and were material. Would that conclusion have been clear to any officer in the position of Starkes? The court concludes it would not, and that a reasonable officer in Starke's position could well have believed that the Juvenile Court Judge would still have issued the detention order even if the allegedly false statements were omitted and the omitted facts were included in the petition.

It must not be forgotten that juvenile dependency petitions and the applications for protective custody warrants are typically drafted under exigent circumstances and often considered and granted by a judge the same day they are submitted. CPS officials cannot be expected to include every fact that may or may not be potentially exculpatory in a protective custody warrant application. They are not required to provide a comprehensive recitation of every detail of the investigation up to that point. The warrant application need only include sufficient information to ensure that the facts presented are not "so wrenched from [their] context that the

judicial officer will not comprehend how [they] fit[] into the larger puzzle." See Scanlon, 92 F.4th at 799. Officials need only provide an adequately complete representation of the "total story" so as to not be "materially misleading." See id. (emphasis added).

Plaintiffs have been unable to point to any case, either at the Supreme Court or circuit level, which would have placed Starkes on notice that she could not rely upon the information provided to her by other social workers or law enforcement officers in drafting her application to the court. Much to the contrary, prevailing caselaw suggests they may do so. See Motley, 432 F.3d at 1081. Nor have plaintiffs been able to identify any caselaw to even suggest to Starkes that she had a constitutional obligation to conduct a further investigation under the circumstances. See Ewing, 588 F.3d at 1224.

As the Supreme Court has taught us, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). There is nothing in the record to permit an inference that defendants here were either plainly incompetent or knowingly violated the law. Accordingly, even if the court were to conclude that defendants' conduct violated the Fourteenth Amendment, at the very least they would be entitled to qualified immunity.

C. False Imprisonment

Plaintiffs allege that Starkes and Smith committed false imprisonment through their misrepresentations in the warrant application. Defendants do not address the elements of a

false imprisonment claim, but rather argue that the social workers' communications with the Juvenile Court are privileged under California Civil Code § 47.

Section 47 "establishes a privilege that bars liability in tort for the making of certain statements. Pursuant to section 47(b), the privilege bars a civil action for damages for communications made '[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to [statutes governing writs of mandate].'" Hagberg v. California Fed. Bank, 32 Cal. 4th 350, 360 (2004) (quoting Cal. Civ. Code § 47(b)) (alterations in original).

Plaintiffs argue that defendants are not immune from tort claims pursuant to section 47 if they satisfy the conditions of California Government Code § 820.21(a), which provides: "Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings . . . shall not extend to" (1) "perjury," (2) "fabrication of evidence," (3) "failure to disclose known exculpatory evidence," and (4) "obtaining testimony by duress," when any of these acts are "committed with malice." "Malice" is defined as "conduct that is intended by the person . . . to cause injury to the plaintiff," or "despicable conduct that is carried on . . . with a willful and conscious disregard of the rights or safety of others." Id. at § 820.21(b).

Plaintiffs are correct in that "[t]he language of section 820.21 includes 'notwithstanding any other provision of law' which makes it clear that section 47 cannot be interpreted without consideration of section 820.21." See Parkes v. County of San Diego, 345 F. Supp. 2d 1071, 1085–86 (S.D. Cal. 2004).

Plaintiffs contend that if they have established a genuine issue of material fact as to judicial deception, they have also done so with respect to the exception to immunity under section 820.21. However, as discussed above, the court concludes that the record presents no genuine dispute of material fact tending to show that Smith or Starkes engaged in judicial deception based on any false representations or omissions. There is thus likewise no dispute of fact as to whether they fabricated evidence or failed to disclose exculpatory evidence with malice.

Section 820.21 therefore does not apply to Smith and Starkes, and they are immune from the false imprisonment claim pursuant to the section 47 litigation privilege. Cf. id. at 1086 (because "there is a genuine issue of material fact as to whether [defendants] failed to disclose to the court exculpatory evidence with malice . . . [defendants] are not entitled to summary judgment based on the section 47(b) litigation privilege"). Accordingly, the court will grant summary judgment in defendants' favor on the seventh claim.

D. Municipal Liability

"To sustain their Monell claim, [plaintiffs] must show that the action that caused their constitutional injury was part of an 'official municipal policy of some nature.'" Scanlon, 92 F.4th at 811 (quoting Monell, 436 U.S. at 691)). The existence

of such a "policy" may be shown in several ways, including by (1) "prov[ing] the existence of a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law," City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (plurality opinion) (citation and internal quotation marks omitted), or (2) demonstrating that the municipality failed to adequately train employees so as to avoid the constitutional violations that occurred, see City of Canton, Ohio v. Harris, 489 U.S. 378, 388 (1989).

Plaintiffs allege that the County of Sacramento is liable based on (1) a "take one, take all" policy whereby CPS automatically removes all children from a home even if "only one [child] is the subject of allegations which might justify removal" (SAC ¶¶ 159-60); (2) inadequate training or supervision of social workers with respect to the constitutional rights that must respected in the course of removal proceedings (id. ¶¶ 153-55); and (3) a longstanding practice of improperly removing children without probable cause by engaging in judicial deception (id. ¶¶ 158, 167).

The parties have not identified any evidence in the record concerning the "take one, take all" policy. To the court's knowledge, the only evidence concerning the training of County social workers indicates that social workers are trained to be honest in their dealings with the juvenile courts and respect families' constitutional rights. (See Dominique Smith Dep. at 37:06-12; Starkes Dep. at 40:08-41:11; Docket No. 88-1 at 104-11.)

In support of their allegation of a longstanding practice of judicial deception, plaintiffs cite three cases brought against the County of Sacramento wherein social workers were alleged to have engaged in judicial deception. However, these cases do not constitute evidence the court can rely upon. Two of them settled prior to summary judgment. (See Henao v. County of Sacramento, 2:22-cv-00352 MCE KJN, Docket Nos. 24-29; Welch v. County of Sacramento, 2:07-cv-00794 GEB EFB, Docket Nos. 14-35.) Olvera v. County of Sacramento, 2:10-cv-550 WBS KJM, made it to summary judgment, but the court only determined that there was a dispute of material fact as to whether the social workers engaged in judicial deception, see 932 F. Supp. 2d 1123, 1165 (E.D. Cal. 2013) (Shubb, J.), and the case settled before trial (see Olvera Docket Nos. 208-221).

Plaintiffs also provide declarations from Joseph Henao and Jonathan Welch (see Docket No. 88-1 at 11-15, 124-27), the plaintiffs in the Henao and Welch matters cited above. Plaintiffs stated in their opposition that these witnesses were "disclosed in Rule 26 statements," but do not provide documentation to support that assertion. (See Opp'n at 29.) In reply, defendants provided a copy of plaintiffs' Rule 26 initial disclosures, which do not disclose Mr. Henao and Mr. Welch. (See Docket No. 103-3 at 13-22.)

"If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. Proc.

37(c)(1). As plaintiffs have shown neither that the witnesses were properly disclosed nor that any failure to disclose was justified or harmless, the court cannot consider the declarations of Mr. Henao and Mr. Welch. See Merch. v. Corizon Health, Inc., 993 F.3d 733, 740 (9th Cir. 2021) ("Rule 37(c)(1) is an 'automatic' sanction that prohibits the use of improperly disclosed evidence," which litigants can "escape . . . only if they prove that the discovery violations were substantially justified or harmless") (quoting Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1106 (9th Cir. 2001)).[4]

Because there is no evidence before the court to support any of plaintiffs' Monell theories, the court will grant summary judgment in favor of defendant County of Sacramento on the sixth claim.

IT IS THEREFORE ORDERED that defendants' motion for summary judgment be, and the same hereby is, GRANTED in favor of defendants on the third claim for judicial deception, sixth claim under Monell, and seventh claim for false imprisonment.

IT IS FURTHER ORDERED that, based on plaintiffs' abandonment of the claims, the fourth and fifth claims alleging judicial deception in other court filings are hereby DISMISSED.

Dated: April 18, 2024

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

[4] At oral argument, plaintiffs' counsel stated that he failed to disclose the declarants in accordance with Rule 26 and conceded that it would be improper for the court to consider their declarations.