UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 29 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Mr. KURT BENSHOOF,

Plaintiff - Appellant,

BRIANA GAGE,

Plaintiff,

v.

FREYA BRIER, et al.;

Defendants - Appellees,

MOSHE ADMON, et al.,

Defendants.

No. 24-952

D.C. No.
2:23-cv-01392-JNW
Western District of Washington,
Seattle

ORDER

Before: FRIEDLAND, VANDYKE, and MENDOZA, Circuit Judges.

Appellant's motion to expedite a decision on the motion for reconsideration en banc (Docket Entry Nos. 20, 21) is granted.

Appellant's motion for reconsideration en banc (Docket Entry No. 17) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

All other pending motions are denied as moot.

No further filings will be entertained in this closed appeal.

No. 24-952

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Mr. KURT BENSHOOF,

Plaintiff-Appellant,

BRIANA GAGE,

Plaintiff,

v.

FREYA BRIER, *et al.,*

Defendants-Appellees,

MOSHE ADMON, *et al.,*

Defendants.

APPELLANT'S PETITION FOR EN BANC REHEARING

TEMPORARY RESTRAINING ORDER APPEAL
From the United States Court for The Western District of Washington
Hon. Jamal N. Whitehead
No. 2:23-cv-1392-JNW

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GROUNDS FOR PETITION

Many Americans would like to sweep the last four years under the rug. There were many mistakes throughout the lives of Americans. Some of those mistakes were mirrored in our courts, where individuals acted administratively to deny Americans access to our courts. Applicant was one of those denied access, and by denying him access to our courts, our courts have covered Appellees violations of the Civil Rights of Act of 1964 with a paper thin, but hardened, veneer of legitimacy.

To err is human. We all make mistakes. They are often our greatest teachers if we acknowledge them. In the alternative, we will remain fools if we refuse to reconcile our mistakes. Collective mistakes require a collective reconciliation effort. Appellant respectfully requests the Court to restore law and facts as the granite pillars upon which our society was built, the foundation upon which our rights rely.

The Court claimed in its dismissal Order (DktEntry 15) that it "lacks jurisdiction over this appeal" because "the order challenged in the appeal is not final or appealable." The Court claimed that the district court's denial of Benshoof's Motion for Temporary Restraining Order (D.C. Dkt. #74) was not "tantamount to the denial of a preliminary

injunction."

Appellant will demonstrate herein that both of those claims were oversights or misapprehensions by the Court. Appellant will prove that district court's denial order was undeniably "tantamount to the denial of a preliminary injunction" by, among other things, quoting the district court's *own words:* "If notice of a motion for a temporary restraining order is given to the adverse party, the same legal standard as a motion for a preliminary injunction applies." Therefore, Appellant's appeal must be restored to the calendar, according to Fed.R.App.P. 40(a)(4)(B).

Because the subversion of the Civil Rights Act of 1964 is a question of exceptional importance pursuant to FRAP 35(a)(2), and because the Court's dismissal Order contradicts other Ninth Circuit decisions, Appellant requests *en banc* consideration to maintain uniformity of the Court's decisions pursuant to FRAP 35(a)(1).

ARGUMENT

I. Appellate Jurisdiction Evidenced

A. Tantamount to Preliminary Injunction

District court stated that if "notice of a motion for a temporary restraining order is given to the adverse party, the same legal standard

as a motion for a preliminary injunction applies." (quoting *Fang v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 16-cv-06071, 2016 WL 9275454, at *1 (N.D. Cal. Nov. 10, 2016), *aff'd*, 694 F. App'x 561 (9th Cir. 2017) (D.C. Dkt #29, pg. 7 ¶2) District court was thereafter collaterally estopped from asserting otherwise.

There is no dispute that Benshoof gave notice to defendant City of Seattle of his Motion for Temporary Restraining Order ("TRO") brought on appeal. (D.C. Dkt. #74, pg. 90) Pursuant to this notice, City of Seattle filed Response. (D.C. Dkt. #81)

There is no dispute that Benshoof gave notice to defendants PCC and Freya Brier by email. (D.C. Dkt. #83, pg. 1 ¶1) District court also acknowledged this fact. "Because PCC received actual notice of Benshoof's motion, the legal standard for a preliminary injunction applies." (D.C. Dkt. #92, pg. 4 ¶3)

Upon the foregoing undisputed facts, district court was collaterally estopped from asserting that it did not apply "the same legal standard as a motion for a preliminary injunction" to Benshoof's Motion for TRO.

It is undeniable that district court's denial of Benshoof's Motion for TRO was, in fact, "tantamount to the denial of a preliminary injunction."

Therefore, it was an error of fact by the Court to claim that it does not have jurisdiction to adjudicate Appellant's appeal of the district court's denial order.

B. Appealability Standard For TRO

The Court's dismissal Order cited *Reli. Tech. Ctr., Ch., Scientology v. Scott*, 869 F.2d 1306 (9th Cir. 1989). In that case this Court stated, "We have recognized, however, that a denial of a TRO may be appealed if the circumstances render the denial "tantamount to the denial of a preliminary injunction." *Environmental Defense Fund, Inc. v. Andrus,* 625 F.2d 861, 862 (9th Cir. 1980)." (*Id.*, at 1308)

The district court's denial was tantamount to the denial of a preliminary injunction, and *Reli. Tech. v. Scott* elucidated this Court's rationale. "In *Andrus* we held the denial of the TRO was tantamount to the denial of a preliminary injunction because of the presence of two factors: the denial of the TRO followed a "full adversary hearing" and "in the absence of review, the appellants would be effectively foreclosed from pursuing further interlocutory relief."" *Reli. Tech. v. Scott*, at1308

District court's denial followed a "full adversary hearing," including responses by the City and PCC, as well as replies from Benshoof. District

court's denial did not merely rule in favor of the City and PCC: district court claimed that the entirety of Benshoof's thirty-six-page TRO, supported by over one hundred pages of appendices, was "frivolous" and threatened Benshoof with sanctions. (D.C. Dkt. #92, pg. 4 ¶2)

The Court cannot claim that district court's abuses of discretion were the well-intentioned result of haste: even after reviewing Appellant's seventy-eight-page Opening Brief (DktEntry 3.1) district court revoked Appellant's IFP status, stating it "CERTIFIES that Benshoof's appeal is frivolous and not taken in good faith." (D.C. Dkt. #150 pg. 3 ¶4)

There was a full adversary hearing. The unrepentant animus of district court leaves no doubt that Appellant is "effectively foreclosed from pursuing further interlocutory relief." It was an error of law by the Court to cite *Reli. Tech. Ctr. v. Scott* to claim that it "lacks jurisdiction over this appeal" by inferring that the "order challenged in the appeal is not final or appealable."

II. Necessity of *en banc* Rehearing

A. Questions of Exceptional Importance

Civil Rights Law. There is no dispute that the Civil Rights Act of

1964 was one of the most important legislative acts of the twentieth century, a cornerstone of our democratic principles and essential in supporting the Equal Protection Clause of the Fourteenth Amendment. *Hamm v. City of Rockhill,* 379 U.S. 306 (1964) remains ensconced within the bedrock of our *corpus juris,* without debate.

Any inference from our federal judiciary that public accommodations and municipalities may exercise discretionary caprice in their enforcement of the Civil Rights Act threatens the well-being of millions of Americans. More threatening still is the inference that public accommodations and police may exercise such discretion by applying arbitrary and capricious standards to arrest those who would dissent by exercising their free expression and their firmly held religious beliefs.

It is true that police officers make well-intentioned mistakes in exigent circumstances. This is why such actions are protected by qualified immunity. However, it is axiomatic that malicious prosecutions lasting over three-and-one-half years are not "mistakes" born of haste. Rather, they are an pattern of intentional criminal misconduct. The prosecutors and judges involved cannot claim they were not afforded adequate time to deliberate the facts and law allegedly supporting City

of Seattle's malicious prosecutions of Benshoof. Those with law degrees cannot honestly claim an ignorance of the law.

Judicial Integrity. Not once, but twice, did the district court make clear its prejudicial contempt for Benshoof's TRO motion and for the judicial impartiality required to maintain the integrity of our courts.

Instead of refuting the facts and law presented in the thirty-six-page TRO, itself supported by over one hundred pages of appendices, district court retreated to the straw hut long favored by prevaricating pettifoggers who cannot argue the merits. Hiding from any pretense of honest debate inside the confines of this intellectual hovel, district court resorted to the judicial equivalent of a sixth grader shooting spit wads through a straw, tautologically claiming that Benshoof's TRO was "frivolous" and threatened him with sanctions. (D.C. Dkt. #92, pg. 4 ¶2)

After reviewing Appellant's seventy-eight-page Opening Brief (DktEntry 3.1) district court revoked Appellant's IFP status, stating it "CERTIFIES that Benshoof's appeal is frivolous and not taken in good faith." (D.C. Dkt. #150 pg. 3 ¶4)

B. Uniformity of Court's Decisions

The district court record, and the words of the district court itself,

clearly evidenced that the district court denial order was undeniably "tantamount to the denial of a preliminary injunction." There are three possible inferences to be drawn from the Courts's dismissal Order: (1) the federal courts are brazenly prejudicial toward Appellant in a way that shocks the conscience; (2) the Court has created a new and vague discretionary standard for when the denial of a TRO is tantamount to the denial of a preliminary injunction; or (3) the Court overlooked or misapprehended the facts and law.

If the Court intended to infer that brazen prejudice is acceptable in our federal courts toward *pro se* litigants such as Appellant, this would contradict decades of rulings by Ninth Circuit. If this were true, this would threaten the uniformity of Ninth Circuit's decisions.

If the Court intended to create a new and vague discretionary standard for when the denial of a TRO is tantamount to the denial of a preliminary injunction, such that litigants could not reasonably rely upon *Reli. Tech. Ctr., Ch., Scientology v. Scott*, 869 F.2d 1306 (9th Cir. 1989) and *Environmental Defense Fund, Inc. v. Andrus,* 625 F.2d 861 (9th Cir. 1980), this would threaten the uniformity of Ninth Circuit decisions.

If the Court overlooked or misapprehended the facts and law, the

interests of justice require the restoration of Appellant's appeal to the calendar.

RELIEF SOUGHT

For the reasons stated in this Petition, Appellant Kurt Benshoof respectfully requests that the Court grant his petition for an *en banc* rehearing of the Court's dismissal Order, considers the points of fact and law which the Court overlooked or misapprehended, and thereupon restore Appellant's appeal and motion for expedited hearing of his appeal to the calendar, pursuant to Fed.R.App.P. 40(a)(4)(B).

CERTIFICATE OF COMPLIANCE

The copy of the panel decision is attached hereto as Appendix A in compliance with Circuit Rule 40-1(c).

Appellant certifies that filing of this petition complies with the fourteen-day requirement of Fed.R.App.P. 40 (a)(1).

Appellant certifies that this petition contains 1,738 words, excluding the items exempted by Fed.R.App.P. 32(f). The petition's type size and typeface comply with Circuit Rule 27(d)(1)(D) and (E), and the line spacing and margins comply with Fed.R.App.P. 32(a)(4).

Appellant certifies that this single document petition under

Fed.R.App.P. 35(b)(3) complies with the word count limits for an *en banc* rehearing under Fed.R.App.P. 35(b)(2)(A); 40(b)(1).

VERIFICATION

I, Appellant Kurt A. Benshoof, do hereby declare that the foregoing facts are true and correct to the best of my knowledge, under penalty of perjury of the laws of the United States. Executed on this fourteenth day of April in the year 2024, in the city of Seattle, in the county of King, in the state of Washington.

s/ Kurt A. Benshoof
Kurt A. Benshoof, Appellant, *pro se*
1716 N 128th Street
Seattle, WA 98133
(206) 460-4202
kurtbenshoof@gmail.com

CERTIFICATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this 14th day of April 2024 he caused to be served a true and correct copy of the foregoing document on the below-listed parties by e-filing in the court's AMCS system, and by email to the following:

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DATED: April 14, 2024

Signed: s/ Kurt A. Benshoof

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Appendix A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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Mr. KURT BENSHOOF,

Plaintiff - Appellant,

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v.

FREYA BRIER, et al.,

Defendants - Appellees,

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Defendants.

No. 24-952

D.C. No.
2:23-cv-01392-JNW
Western District of Washington,
Seattle

ORDER

Before: FRIEDLAND, VANDYKE, and MENDOZA, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the February 16, 2024 order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291; *Religious Tech. Ctr. v. Scott*, 869 F.2d 1306 (9th Cir. 1989) (denial of temporary restraining order is appealable only if the denial is tantamount to the denial of a preliminary injunction). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Mr. KURT BENSHOOF,

Plaintiff - Appellant,

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ORDER

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All pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF and BRIANA GAGE,

Plaintiffs,

v.

MOSHE ADMON, DANIEL AUDERER, JUSTIN BOOKER, FREYA BRIER, CITY OF SEATTLE, NATHAN CLIBER, ZACHARY COOK, BENJAMIN COOMER, ANITA CRAWFORD-WILLIS, JENNY DURKAN, AMY FRANKLIN-BIHARY, WILLIE GREGORY, OWEN HERMSEN, DAVID KEENAN, GABRIEL LADD, MAGALIE LERMAN, MARY LYNCH, KATRINA OUTLAND, JESSICA OWEN, BLAIR RUSS, SPROUTS FARMERS MARKET, KING COUNTY, SEATTLE PUBLIC SCHOOLS, BIG 5 SPORTING GOODS, CENTRAL COOP, PUGET CONSUMERS CO-OP, FAYE CHESS, ANN DAVIDSON, ADAM EISENBERG, MATTHEW LENTZ, JEROME ROACHE, SOHEILA SARRAFAN, DAVID SULLIVAN, and JORDAN WALLACE,

CASE NO. 2:23-cv-1392

ORDER REVOKING IFP STATUS FOR APPEAL

Defendants.

1. INTRODUCTION

This matter comes before the Court on referral from the United States Court of Appeals for the Ninth Circuit (the "Referral"). Dkt. No. 114. Having reviewed the relevant record, the Court REVOKES Kurt Benshoof's in forma pauperis status for his appeal, No. 24-952.

2. BACKGROUND

After filing three unsuccessful motions for a temporary restraining order, Benshoof moved a fourth time asking the Court to (1) enjoin the City of Seattle from "acting to detain, arrest, imprison, prosecute, or sentence [him] relating to Seattle Municipal Court Nos. 656748 [and] 65674"; and (2) enjoin Puget Consumers Co-Op (PCC) from continuing to deny him access to its grocery stores. Dkt. No. 92 at 2. This Court denied Benshoof's first request as duplicative of his earlier motions requesting injunctive relief and denied his second request because he failed to show irreparable harm or a likelihood of success on the merits. Dkt. No. 92 at 4, 7. The Court also warned Benshoof that it would sanction him for violating Federal Rule of Civil Procedure 11(b)(2) if he continued to file frivolous motions.

On February 20, 2024, Benshoof filed a notice of interlocutory appeal regarding the Court's order denying his fourth motion for a temporary restraining order. Dkt. No. 93. The Ninth Circuit referred this matter to this Court "for the limited purpose of determining whether in forma pauperis status should continue

for this appeal or whether the appeal is frivolous or taken in bad faith." Dkt. No. 114 at 1. The Court addresses this question below.

3. ANALYSIS

Benshoof's IFP status should be revoked in this matter. A good faith appeal must seek review of at least one "non-frivolous" issue or claim. *See Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). A frivolous claim is one that "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Benshoof's TRO motion lacks an arguable basis in law.

In its order, this Court explained that the *Younger* abstention doctrine bars the relief Benshoof seeks, a doctrine the Court already discussed in the prior denial orders. *See* Dkt. Nos. 29 at 8-9; 38 at 15. Further, Benshoof failed to show any irreparable harm would result absent the requested TRO. Dkt. No. 92 at 6-7. Irreparable harm is a necessary component before the Court will impose such an extraordinary remedy. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Benshoof has not and cannot establish irreparable harm on the facts and claims alleged. Because Benshoof's motion for a TRO does not include a single non-frivolous claim, the Court concludes his appeal is not in good faith and that his IFP status to appeal must be revoked.

4. CONCLUSION

Accordingly, it is hereby ORDERED:

- The Court CERTIFIES that Benshoof's appeal is frivolous and not taken in good faith. Benshoof's in forma pauperis status is revoked.

- The Clerk of the Court SHALL provide a copy of this Order to all Parties and the Ninth Circuit.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 18th day of March, 2024.

Jamal N. Whitehead
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 27 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Mr. KURT BENSHOOF,

Plaintiff - Appellant,

BRIANA GAGE,

Plaintiff,

v.

FREYA BRIER, et al.;

Defendants - Appellees,

MOSHE ADMON, et al.;

Defendants.

No. 24-952

D.C. No.
2:23-cv-01392-JNW
Western District of Washington,
Seattle

REFERRAL NOTICE

This matter is referred to the district court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. *See* 28 U.S.C. § 1915(a)(3); *see also* Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where district court finds the appeal to be frivolous).

If the district court elects to revoke in forma pauperis status, the district court is requested to notify this court and the parties of such determination within 21 days of the date of this referral. If the district court does not revoke in forma

pauperis status, such status will continue automatically for this appeal pursuant to Fed. R. App. P. 24(a).

This referral shall not affect the briefing schedule previously established by this court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF and BRIANA D. GAGE,

Plaintiffs,

v.

MOSHE ADMON, DANIEL AUDERER, JUSTIN BOOKER, FREYA BRIER, CITY OF SEATTLE, NATHAN CLIBER, ZACHARY COOK, BENJAMIN COOMER, ANITA CRAWFORD-WILLIS, JENNY DURKAN, AMY FRANKLIN-BIHARY, WILLIE GREGORY, OWEN HERMSEN, DAVID KEENAN, GABRIEL LADD, MAGALIE LERMAN, MARY LYNCH, KATRINA OUTLAND, JESSICA OWEN, BLAIR RUSS, SPROUTS FARMERS MARKET, KING COUNTY, SEATTLE PUBLIC SCHOOLS, BIG 5 SPORTING GOODS, CENTRAL COOP, PUGET CONSUMERS CO-OP, FAYE CHESS, ANN DAVIDSON, ADAM EISENBERG, MATTHEW LENTZ, JEROME ROACHE, SOHEILA SARRAFAN, DAVID SULLIVAN, and JORDAN WALLACE,

Defendants.

CASE NO. 2:23-cv-1392

ORDER DENYING PLAINTIFF KURT BENSHOOF'S FOURTH MOTION FOR A TEMPORARY RESTRAINING ORDER

1. INTRODUCTION

This matter comes before the Court on Plaintiff Kurt Benshoof's fourth motion for a temporary restraining order. Dkt. No. 74. Benshoof asks the Court for two forms of injunctive relief: (1) an order enjoining Defendant City of Seattle from "acting to detain, arrest, imprison, prosecute, or sentence [him] relating to Seattle Municipal Court Nos. 656748 [and] 65674"; and (2) an order enjoining Defendant Puget Consumers Co-Op ("PCC") from continuing to deny Benshoof access to its grocery stores. *Id.* at 35-36. The Court DENIES both requests.

2. BACKGROUND

During 2020 and 2021, Benshoof refused to comply with PCC's policy that all shoppers must wear a mask or face shield when entering its stores. *See* Dkt. No. 47 at ¶¶ 129-257. Benshoof claims this policy violated his religious beliefs, which he describes as follows: "[t]he Breath of Life is sacred: it shall not be restricted nor impeded by coercion" and he is "spiritually proscribed from being coerced or forced to wear a face mask or face shield[.]" *Id.* at ¶¶ 1, 3. He goes on to say "[a] violation of the U.S. Constitution or the Washington Constitution constitutes a violation of Plaintiff's firmly held religious beliefs" and his "lawsuits are spiritual documents by which to perform exorcisms, removing demonic forces from the bodies of defendants[.]" *Id.* at ¶¶ 7, 10.

Benshoof also claims the policy was discriminatory because he cannot wear a face covering because of an unspecified disability. *Id.* at ¶¶ 11-12. Regarding his alleged disability, Benshoof states he "was sexually abused as a child by someone in a position of trust and authority; as such, demands by [D]efendants that [he]

restrict his breathing or cover his face were . . . abusive and triggering[.]" *Id.* at ¶ 11.

Several times, PCC employees asked Benshoof to put on a face covering or leave the store. *Id.* at ¶¶ 139, 163, 167, 173. PCC employees also called 911 to ask police to escort Benshoof from the store. *Id.* at ¶¶ 144, 165, 176, 180, 232. On October 2020, PCC "trespassed" Benshoof from all store locations. Dkt. Nos. 74 at 116; 88 at ¶ 6. Defendant Freya Brier drafted the trespass notice. Dkt. No. 84 at ¶ 6. Defendant Zachary Cook, the Fremont evening store manager, filed for a protective order against Benshoof in March 2021. Dkt. No. 47 at ¶ 245.

3. ANALYSIS

3.1 The Court has already denied Benshoof's motion for an injunction against the City of Seattle.

On September 29, 2023, Benshoof moved for a preliminary injunction enjoining the City of Seattle from "engaging in any act to harass, threaten, summon, *detain, arrest, prosecute, or imprison*" him under Seattle Municipal Court case number 656748. Dkt. No. 15 at 7 (emphasis added). The Court denied Benshoof's motion. Dkt. No. 38 at 16.

Days later, on October 2, 2023, Benshoof moved for a temporary restraining order enjoining the City of Seattle from "engaging in any act to harass, threaten, summon, *detain, arrest, sentence, or imprison*" him under Seattle Municipal Court case number 656749. Dkt. No. 16 at 16-17. The Court denied Benshoof's motion. Dkt. No. 29 at 10 (emphasis added).

To the extent Benshoof argues his present request is different from his previous requests, he is arguing semantics. Even if the wording of his requests are slightly different, the same reasoning articulated by the Court in denying his previous requests would apply—the relief he seeks is barred by *Younger v. Harris*, 401 U.S. 37 (1971). *See* Dkt. Nos. 29 at 8-9; 38 at 15.

The Court DENIES Benshoof's motion for a temporary restraining order against the City of Seattle as duplicative. Dkt. No. 74. If Benshoof continues to file frivolous motions, the Court will issue a show cause order asking why his conduct should not be sanctioned for violating Federal Rule of Civil Procedure 11(b)(2).

3.2 Benshoof fails to show irreparable harm absent an injunction against PCC.

Because PCC received actual notice of Benshoof's motion, the legal standard for a preliminary injunction applies. *Fang v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 16-cv-06071, 2016 WL 9275454, at *1 (N.D. Cal. Nov. 10, 2016), *aff'd*, 694 F. App'x 561 (9th Cir. 2017) ("[W]here notice of a motion for a temporary restraining order is given to the adverse party, the same legal standard as a motion for a preliminary injunction applies."). "A plaintiff seeking a preliminary injunction must establish that [(1) they are] likely to succeed on the merits, [(2)] that [they are] likely to suffer irreparable harm in the absence of preliminary relief, [(3)] that the balance of equities tips in [their] favor, and [(4)] that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As to the second element, courts will not grant relief "based only on a 'possibility' of irreparable harm." *Id.* at 22.

Benshoof argues the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Dkt. No. 74 at 34. He also argues the City of Seattle's prosecutions against him have prevented him from working, driving, traveling, entering grocery stores, entering courthouses, and reporting crimes to the Seattle Police Department. *Id.*

Benshoof fails to connect his alleged "irreparable harm" with the injunction sought—an order directing PCC to reverse its decision to "trespass" Benshoof from store locations. This relief is unrelated to the City's prosecutions. Nor would it halt any ongoing first amendment violations.

Benshoof brings 42 U.S.C. § 1983 claims against PCC, a private party. The Ninth Circuit has "recognized at least four different general tests that may aid us in identifying state action: "(1) public function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental nexus." *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020).

Benshoof alleges the second test—joint action. He makes conclusory allegations of conspiracy between PCC employees—Cook and Brier—and state officials. He alleges "Brier and Cook were private individuals pervasively entwined in joint actions with state actors as integral participants to deny [Benshoof] the full and equal enjoyment of the goods and service[s], and facilities of PCC." Dkt. No. 47 at ¶ 796. He also alleges "Brier, Cook, and [Seattle Municipal Court Judge] Lynch, acted as integral participants to set in motion a series of events by which [Benshoof] would be punished for his beliefs by denying him the full and equal enjoyment of the goods, service[s], and facilities of PCC through restraining orders." *Id.* at ¶ 807.

The only facts Benshoof alleges to support his claims are that Cook "in joint action with [SPD officers] threatened [him] with arrest if [he] and [his son] did not leave the store" and Cook, "with the financial assistance of PCC[,]" retained an attorney and "filed a petition for a protection order" against him. *Id.* at ¶¶ 183, 244-245. "After the renewed restraining order expired on April 19, 2023, PCC Vice President of Legal Counsel, Freya Brier notified [Benshoof] by FedEx letter that PCC employees would call 911 to arrest [him] if [he] entered one of PCC's sixteen store locations again." *Id.* ¶ 257.

Conclusory allegations, however, are not enough to state a claim of conspiracy. *See Simmons v. Sacramento Cnty. Superior Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003) (finding a plaintiff's "conclusory allegations that the lawyer was conspiring with state officers to deprive him of due process . . . insufficient."); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1184 (N.D. Cal. 2022) (finding "generalized statements about working together do not demonstrate joint action.").

In *Kiss v. Best Buy Stores*, No. 3:22-CV-00281-SB, 2022 WL 17480936, at *5 (D. Or. Dec. 6, 2022), *aff'd*, No. 23-35004, 2023 WL 8621972 (9th Cir. Dec. 13, 2023), the Oregon district court rejected arguments analogous to those Benshoof raises here. In *Kiss*, employees confronted the plaintiff and called police when he entered a Best Buy location without wearing a face covering in violation of the store's mask requirement. *Id.* at *1. The district court found no state action, rejecting the plaintiff's argument that summoning the police to arrest someone constitutes sufficient joint action to transform a private party into a state actor. *Id.* at *4. The district court ultimately held that because the plaintiff did not allege any

agreement between Best Buy and the police, the allegations could not support an inference of conspiracy. *Id.* at *5.

The same reasoning applies here. Cook called police to remove Benshoof from PCC and obtained a protective order. Benshoof makes no allegations to suggest some type of collusion beyond these facts that indicates a broader conspiracy. And what little Benshoof does offer in support of his Section 1983 claims against PCC shows that they are unlikely to succeed on the merits.

Because Benshoof does not show irreparable harm or a likelihood of success on the merits—required elements for the issuance of a TRO—the Court need not analyze the remaining *Winter* factors. The Court DENIES Benshoof's motion for a temporary restraining order against PCC.

4. CONCLUSION

Accordingly, the Court DENIES Benshoof's fourth motion for a temporary restraining order.

Dated this 16th day of February, 2024.

Jamal N. Whitehead
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF,

Plaintiff,

v.

MOSHE ADMON, DANIEL AUDERER, JUSTIN BOOKER, FREYA BRIER, CITY OF SEATTLE, NATHAN CLIBER, ZACHARY COOK. BENJAMIN COOMER, ANITA CRAWFORD-WILLIS, JENNY DURKAN, JAMES ERVIN, DAVID ESTUDILLO, MARSHALL FERGUSON, MICHAEL FOX, COREY FOY, AMY FRANKLIN-BIHARY, WILLIAM GATES, III, STEVEN GONZALEZ, TYLER GOSLIN, WILLIE GREGORY, OWEN HERMSEN, JAY INSLEE, DAVID KEENAN, GABRIEL LADD, DANIEL LENTZ, MAGALIE LERMAN, MARY LYNCH, SARAH MACDONALD, ANTHONY MARINELLA, RICHARDO MARTINEZ, BRADLEY MOORE, KATRINA OUTLAND, JESSICA OWEN, PCC NATURAL MARKETS, KYLE REKOFKE, STEVEN ROSEN, BLAIR RUSS, UMAIR SHAH, SPROUTS FARMERS MARKET, MICHAEL THURSTON, JARED WALLACE, and SANDRA WIDLAN,

Defendants.

CASE NO. 2:23-cv-1392

ORDER DENYING PLAINTIFF'S MOTIONS FOR PRELIMINARY INJUNCTION AND GRANTING LEAVE TO AMEND HIS COMPLAINT

1. INTRODUCTION

This matter is before the Court on its own motion. Plaintiff Kurt Benshoof, proceeding pro se and in forma pauperis, filed a civil rights complaint on September 19, 2023, naming 42 Defendants and pleading over 40 causes of action. *See generally* Dkt. No. 9. As explained below, the Court ORDERS Benshoof to replead his claims to comply with Fed. R. Civ. P. 8. The Court also DENIES Benshoof's two separately pending "Emergency Petitions for Preliminary Injunction." Dkt. Nos. 14, 15.

2. BACKGROUND

2.1 Factual allegations.

Benshoof's complaint spans 280 pages, contains over 1,000 paragraphs in its statement of facts, and includes over 2,000 pages in attachments. *See* Dkt. Nos. 9, 13. It is hard to make out the exact nature of his conflict among all of the irrelevant, conclusory, and confusing details, but Benshoof appears to allege Defendants violated his due process rights during multiple legal proceedings in Seattle Municipal Court and King County Superior Court. Dkt. No. 9 at 204-216. These cases include King County Superior Court Case No. 21-5-00680-6, a parentage action between Jessica Owen and Benshoof. *See* Dkt. Nos. 9 at 81-82; 13-2 at 13-18.

Owen and Benshoof are the parents of A.R.W. Dkt. No. 13-2 at 15. Benshoof alleges Owen and her attorneys made false statements about him, which led to a restraining order. Dkt. Nos. 9 at 82; 13-2 at 2-6. Under the restraining order, Benshoof cannot contact A.R.W. and he "may only effect service of process [on

Owen], for any and all legal proceedings, through use of either Pegasus Process Service or ABC Legal Services." Dkt. No. 13-2 at 4 (emphasis in original).

Beyond allegations about his family law cases, Benshoof brings claims about the implementation and enforcement of COVID-19 mask mandates.

Benshoof states his beliefs in his complaint:

> The Breath of Life is sacred and shall not be restricted nor impeded . . . [and] [t]he human body is a vessel of the Divine. God designed and created human bodies with innate immune systems enriched from the mother's breast milk.

Dkt. No. 9 at 20.

Benshoof also alleges his "invisible disabilities" preclude him from wearing a mask. *Id.* at 23. Specifically, he "was sexually abused as a child by someone in a position of trust and authority; as such, demands by [D]efendants that [he] restrict his breathing or cover his face were perceived by [Benshoof] as particularly ***abusive*** and ***triggering.***" *Id.* (emphasis in original). Benshoof alleges that being denied access to grocery stores and courts because of his refusal to wear a face mask violated his First Amendment right of religious expression and his rights guaranteed by the Americans with Disabilities Act. *See id.* at 188-191, 233-235.

2.2 Benshoof's first emergency petition for a preliminary injunction.

Benshoof asks the Court to bar the City and Seattle Police Department (SPD) officers from arresting and prosecuting him "under the family court Final Restraining Order for effecting service of process to 849 NE 130th ST [sic], Seattle, WA 98125 pursuant to Fed.R.Civ.P.4. [sic]." Dkt. Nos. 14 at 8; 14-1 at 2. According to Benshoof, Owen resides at the 849 NE 130th St. address. Dkt. No. 14 at 2.

Benshoof says both ABC Legal Services and Pegasus Process Service have refused to do business with him. *Id.*

2.3 Benshoof's second emergency petition for a preliminary injunction.

Benshoof seeks to enjoin the City and SPD officers from arresting and prosecuting him for charges levied in Seattle Municipal Court Case No. 656748. Dkt. No. 15 at 1. The municipal court docket shows Benshoof faces four charges of criminal trespass in the first degree, all of which are pending. *See City of Seattle v. Benshoof*, Case No. 656748 (Municipal Court of Seattle Nov. 13, 2020).[1] The matter is still pending although a warrant appears to have expired on August 29, 2023.

2.4 Procedural history.

Around a week after filing this lawsuit, Benshoof filed two "Emergency Petitions for Preliminary Injunction," and three motions for a temporary restraining order (TRO) on successive days between October 2-4, 2023. Dkt. Nos. 14, 15, 16, 20, 23. On October 6, 2023, the Court denied all three TRO motions. Dkt. No. 29.

In the past year, Benshoof has filed two other cases in this District that have raised similar issues about his family law disputes and objections to mask

[1] Under Rule 201(b), courts may take judicial notice of a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b)(2). Taking judicial notice of publicly available information provided by a government agency meets the requirements for judicial notice under the Rules. *See Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n. 2 (9th Cir. 2006) (holding facts contained in public records are considered appropriate subjects of judicial notice). Therefore, the Court takes judicial notice of the municipal court docket in *City of Seattle v. Benshoof*, Case No. 656748 (Municipal Court of Seattle Nov. 13, 2020) (available at http://web.seattle.gov/SMC/ECFPortal/default.aspx).

mandates. The court dismissed both actions. *See Benshoof v. Keenan, et al.*, No. 23-cv-751-RAJ, Dkt. No. 22 (W.D. Wash. Jun. 12, 2023); *Benshoof v. Fauci, et al.*, No. 22-cv-1281-LK, Dkt. Nos. 7 (W.D. Wash. Oct. 31, 2022).

3. DISCUSSION

3.1 Legal standards.

When a litigant proceeds in forma pauperis ("IFP"), "the court shall dismiss the case at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(i)–(iii); *see Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (internal citation omitted) ("[S]ection 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint that fails to state a claim."). "The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim." *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (citing *Lopez*, 203 F.3d at 1122).

Thus, the complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citation and quotation marks omitted). This standard "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

3.2 Benshoof's complaint is deficient.

Benshoof's complaint is sprawling. His causes of action are numbered within the complaint—46 in all—but they are not so clearly delineated as the enumeration would suggest. His claims can be roughly summarized as follows:

- Benshoof seeks declaratory judgment on 17 questions. *See* Dkt. No. 9 at 173-176 ("First Cause of Action").
- Benshoof pleads Constitutional violations, including several 42 U.S.C. § 1983 claims, *Bivens* claims, a denial of service under the 1964 Civil Rights Act, conspiracy under 42 U.S.C. § 1985(2)-(3) and 42 U.S.C. § 1986, and a related RICO action under 18 U.S.C. § 1962(c)-(d). *See id.* at 177-217, 218-268 (Benshoof's second through 22nd and 24th through 42nd causes of action).
- Benshoof seeks four preliminary injunctions, which he styles as his 43rd-46th causes of action. *See id.* at 268-277.
- Benshoof pleads two state-law claims: common law fraud and common law conspiracy. *See id.* at 220-224 (22nd and 23rd causes of action).

Some of these claims are deficient on their face. Others are impossible to understand as pled.

3.2.1 The Court lacks jurisdiction over Benshoof's "First Cause of Action" for "Declaratory Judgment."

The Uniform Declaratory Judgment Act, 28 U.S.C. § 2201, provides "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking

such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). "A lawsuit seeking federal declaratory relief must first present an actual case or controversy within the meaning of Article III," and "must also fulfill statutory jurisdictional prerequisites." *Gov't Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1223 (9th Cir. 1998) (citing *Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 239–40 (1937); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 672 (1950)). Because "[t]he Declaratory Judgment Act does not provide for its own subject matter jurisdiction," a plaintiff "must establish federal question jurisdiction or diversity jurisdiction before a district court can consider a request for declaratory judgment." *Fluke Corp. v. Ratner*, No. C07-1921-JPD, 2008 WL 11342997, at *2 n.2 (W.D. Wash. Apr. 18, 2008).

Benshoof asserts 17 questions that he labels "federal questions." But none of these questions are federal questions within the meaning of 28 U.S.C. § 1331. Nor does Benshoof allege diversity jurisdiction. Questions 1, 2, 3, 4, 6, 11, 12, 13, 16, and 17 ask the Court to interpret the Washington Constitution and Washington state statutes or court rules. *See* Dkt. No. 9 at ¶¶ 1281, 1282, 1283, 1284, 1286, 1291, 1292, 1293, 1296, 1297. Question 5 involves the jurisdiction of a family court, which is not a federal question. *See id.* ¶ 1285. Questions 8 and 14 relate to Benshoof's allegations against King County Superior Court Judge David Keenan and United States District Judge Richard Jones, however, the Court finds Benshoof's allegations against Judges Keenan and Jones are likely barred by absolute immunity so there is no live controversy between the parties. *See* Dkt. No. 9 at ¶¶ 1288, 1294; *see also infra* Section 3.2.3. Because the Court finds Benshoof's

allegations against William Gates to be deficient under Fed. R. Civ. P. 8(a), independent subject matter jurisdiction also does not exist for Questions 9 and 10, which ask the Court to decide whether Gates acted jointly with "state actors pursuant to 42 U.S.C. §§ 1983; 1985(2)(3)" and whether "the Bill and Melinda Gates Foundation is a 'person' under 18 U.S.C. § 1961(3) subject to 18 U.S.C. § 1962(d)." *See* Dkt. No. 9 at ¶¶ 1289, 1290; *see also infra* Section 3.3. Questions 7 and 15 are merely hypothetical. Question 7 asks whether a child can consent to receiving a COVID-19 vaccine and Question 15 asks whether the Ninth Circuit can "adjudicate Plaintiff's claims under 42 U.S.C. § 1983 when the facts evidence a prima facie case that judges of the U.S. District Court for the Western District of Washington acted, individually and in concert, to allow, enable, facilitate, or perpetrate violations of constitutional prohibitions?" *See* Dkt. No. 9 at ¶¶ 1287, 1295. These questions aren't tied to any live claim raised in this suit.

Accordingly, Benshoof does not meet the Declaratory Judgment Act's requirements, and he thus fails to state a claim for declaratory relief.

3.2.2 Benshoof's Section 1983 claims against private persons fail as a matter of law.

To state a Section 1983 claim, a plaintiff must "plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986). As for the first element, a defendant acts under the color of state law where they "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of the state.'" *West v.*

Atkins, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)). Generally, private parties are not acting under color of state law unless they conspire with state officials to deprive others of constitutional rights. *Price v. State of Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991) ("[P]rivate parties are not generally acting under color of state law"); *Simmons v. Sacramento Cnty. Superior Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003). Conclusory allegations, however, are not enough to state a claim of conspiracy. *Simmons*, 318 F.3d at 1161 (finding a plaintiff's "conclusory allegations that the lawyer was conspiring with state officers to deprive him of due process . . . insufficient.").

Benshoof brings Section 1983 claims against Owen, her current partner, Lerman, and her friend, Hermsen, alleging they conspired to deny Benshoof his parental rights and extort him for the value of his FJ Cruiser. Dkt. No. 9 at ¶¶ 416–418. Owen, Lerman, and Hermsen are private individuals and Benshoof alleges nothing beyond private action and conclusory claims of conspiracy with the municipal court and police officers. Therefore, Benshoof cannot maintain Section 1983 claims against Owen, Lerman, and Hermsen.

Benshoof's claims against Brier, Cliber, Franklin-Bihary, Marinella, Rekofke, and Russ, who are all private attorneys, similarly fail. *See Simmons*, 318 F.3d at 1161 (holding plaintiff could not sue counsel under § 1983 because he was a "lawyer in private practice who was not acting under color of state law" and conclusory conspiracy allegations were insufficient).

3.2.3 Benshoof's claims against immune parties also fail as a matter of law.

"Judges are absolutely immune from damage actions for judicial acts taken within the jurisdiction of their courts[.]" *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam) (citations omitted). Indeed, a judge retains absolute immunity even when the judge erroneously interprets jurisdiction. *See Sadoski v. Mosley*, 435 F.3d 1076, 1079 (9th Cir. 2006) (upholding immunity where a judge "acted in excess of his jurisdiction" but did "not act in clear absence of all jurisdiction."). Benshoof alleges several municipal and superior court judges acted without personal jurisdiction over him and further alleges he "did not consent to family court adjudicating his family affairs." *See* Dkt. No. 9 at 81, 146, 154. Even taking his allegations as true, Benshoof does not establish that any judges acted in clear absence of all jurisdiction. Thus, Benshoof's Section 1983 claims against Seattle Municipal Court judges and King County Superior Court judges all fail. Similarly, to the extent Benshoof alleges a *Bivens* claim against United States District Judge Richard Jones for his decisions in a prior habeas case, judicial immunity also blocks this claim. *See* Dkt. No. 9 at 172-173.

Benshoof sues United States District Judges David Estudillo and Ricardo Martinez, Washington State Supreme Court Chief Justice Steven González, and Seattle Municipal Court Judge Willie Gregory for issuing mask mandates in their courthouses. "Administrative decisions, even though they may be essential to the very functioning of the courts," are not within the scope of judicial immunity. *Forrester v. White*, 484 U.S. 219, 228–30 (1988). Even if the Court assumes without

deciding that these claims relate to administrative decisions for which judges are not immune, Benshoof's claims are moot. Benshoof has not alleged these mandates remain active or that he has suffered some actual harm. As a result, he lacks standing to bring a moot or hypothetical claim. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2200 (2021) ("No concrete harm, no standing.").

Benshoof's Section 1983 claims against MacDonald and Outland are also barred by prosecutorial immunity. Prosecutors are absolutely immune from Section 1983 actions when performing functions "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). In other words, a "prosecutor is fully protected by absolute immunity when performing the traditional functions of an advocate. *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997). "[T]he functional nature of the activities being performed, not the status of the person performing them, is the key to whether absolute immunity attaches." *Stapley v. Pestalozzi*, 733 F.3d 804, 810 (9th Cir. 2013).

Benshoof alleges City of Seattle Prosecutor MacDonald provided the court with insufficient evidence, engaged in ex parte communications with the judge during his court proceedings, failed to provide exculpatory evidence, and deceived the jury. Dkt. No. 9 at ¶¶ 954, 960, 995-997, 999, 1031-1034, 1047-1048. Benshoof alleges City of Seattle Prosecutor Outland failed to provide the Seattle Municipal Court evidence of proof of personal service or proof that Benshoof violated the law. Dkt. No. 9 at ¶¶ 1151-1155. The alleged conduct by MacDonald and Outland falls within the traditional function of an advocate, therefore, immunity precludes Benshoof's Section 1983 claims.

3.3 Benshoof's complaint violates Rule 8(a), so the Court orders him to replead his claims in compliance with the Civil Rules.

Benshoof alleges more—he alleges Section 1983 claims against SPD Officers Auderer, Coomer, Foy, Ladd, Lentz, and Wallace, Jane Adams Middle School Vice Principal Booker, Durken, Inslee, and Shah; he also alleges claims under Title II of the Civil Rights Act, 42 U.S.C. § 1985(2)-(3), 42 U.S.C. § 1986, and 18 U.S.C. § 1962(d). But the "prolixity," argumentativeness, redundancy, and often plain confusing nature of Benshoof's complaint makes it difficult to discern what the circumstances were that supposedly give rise to these claims. *See Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (upholding district court's dismissal of complaint without leave to amend because plaintiff violated Rule 8; explaining, "[o]ur district courts are busy enough without having to penetrate a tome approaching the magnitude of War and Peace to discern a plaintiff's claims and allegations.").

Rather than straightforwardly stating his claims and allegations, as required by Rule 8, Benshoof saddles the Court and Defendants with a nearly 300-page complaint and 2,000 pages of exhibits. A complaint so confusing that its "true substance, if any, is well disguised" may be dismissed sua sponte for failure to satisfy Rule 8. *Herns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir. 2008) (quoting *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1996)).

Instead of dismissal, however, the Court orders Benshoof to replead his claims. *Agnew v. Moody*, 330 F.2d 868, 870 (9th Cir. 1964) ("[T]he district court was entirely justified in holding that the complaint did not comply with Rule 8(a), and in

ordering [the plaintiff] to replead."); *see also Johnson Enter. of Jacksonville, Inc. v. FPL Grp., Inc.*, 162 F.3d 1290, 1332 n.94 (11th Cir. 1998) ("District courts have the inherent authority to demand repleader *sua sponte*.")

Any amended complaint must address—if possible—the deficiencies identified above and comply with Fed. R. Civ. P. 8 by providing a short plain statement of each of Benshoof's claims. For example, statements identifying (1) the right violated, (2) the name of the defendant who violated that right, (3) the specific, wrongful acts of the defendant, and (4) the resulting injuries, would suffice. It may be necessary to repeat this process for each named defendant.

3.4 Benshoof is not entitled to the injunctive relief sought in his separately pending motions.

Rather than leaving the question open during the pendency of an amended complaint, the Court addresses Benshoof's separately pending motions for injunctive relief. Dkt. Nos. 14, 15.

A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A party seeking a preliminary injunction must establish four elements: (1) they are "likely to succeed on the merits," (2) they will likely "suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [their] favor," and (4) "an injunction is in the public interest." *Id.* at 20.

In his first motion, Benshoof asks the Court to exempt him from a restraining order issued by King County Superior Court Judge David Keenan that bars

Benshoof from serving Owen except with process completed by Pegasus Process Service or ABC Legal Services.[2] *See* Dkt. Nos. 13-2 at 4; 14. The restraining order originated from a parentage action, Case No. 21-5-00680-6. This matter is beyond the Court's subject matter jurisdiction, however, because the subject of Benshoof's request and the relief sought are inextricably linked to his family law case. "It is well-settled that federal district courts have no jurisdiction over child custody issues, which are exclusively matters of state law." *Benshoof v. Keenan*, No. C23-751-RAJ, 2023 WL 4142956, at *1 (W.D. Wash. June 12, 2023) (citing *Ankenbrandt v. Richards*, 504 U.S. 689, 702–04) (1992) (affirming the domestic relations exception "divests the federal courts of power to issue divorce, alimony[,] and child custody decrees."). Because this Court likely lacks jurisdiction to grant the relief Benshoof seeks, he fails to establish he is likely to succeed on the merits and the Court DENIES his first motion for a preliminary injunction.

This is not the first time Benshoof has sought federal injunctive relief related to his child custody issues. *See Benshoof*, No. C23-751-RAJ, 2023 WL 4142956, at *1. In denying Benshoof's motion for a temporary restraining order and dismissing his complaint, the Honorable Richard A. Jones cautioned Benshoof that "federal

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[2] At one point in his motion, Benshoof argues due process requires that he be able to effect service of process through the U.S. Marshals. Dkt. No. 14 at 4. He further argues that the Court should enjoin the City of Seattle from detaining, arresting, imprisoning, or prosecuting the U.S. Marshals from serving process on Owen in this case. *Id.* at 1. The Court does not decide, at this time, whether the restraining order issued by Judge Keenan would allow service of process by the U.S. Marshals because Benshoof has yet to plead a claim against Owen. As the Court explained, Benshoof's Section 1983 claims against Owen fail because they involve only private action and, regardless, Benshoof must amend his complaint to comply with Fed. R. Civ. P. 8(a) before the Court will issue summonses.

courts are not courts of appeal from state decisions." *Id.* The Court reiterates this caution, as a pattern of unmeritorious litigation may lead to a bar order limiting Benshoof's ability to bring suit.

In his second motion, Benshoof asks the Court to enjoin the SPD from enforcing a bench warrant issued in the ongoing Seattle Municipal Court Case No. 656748. Dkt. No. 15. Federal courts will not interfere where "(1) there is an ongoing state judicial proceeding; (2) the proceeding implicate[s] important state interests; (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges; and (4) the requested relief seek[s] to enjoin or has the practice effect of enjoining the ongoing state judicial proceeding." *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018) (internal quotation marks omitted) (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)).

Here, the proceedings implicate local interests because the charges concern the City's ability to enforce local trespass laws. Benshoof does not allege the municipal court forum prevented him from raising his constitutional and jurisdictional claims. The requested relief would effectively disrupt and invalidate the municipal court proceedings even though Benshoof has not established bad faith, harassment, or extraordinary circumstances that would justify the Court setting aside abstention under the *Younger* abstention doctrine. Thus, Benshoof fails to show likelihood of success on the merits and the Court DENIES Benshoof's second motion for a preliminary injunction.

4. CONCLUSION

In sum, the Court orders as follows:

- The Court ORDERS Benshoof to file an amended complaint within 21 days of the date of this order that provides a short, plain, and concise statement of the factual basis for each of the claims as required by Fed. R. Civ. P. 8.
- The amended complaint will operate as a complete substitute for Benshoof's original pleading. Thus, any amended complaint must not cross-reference the original complaint, and must clearly identify the claims, the specific facts that support each claim, which allegations are relevant to which Defendants, and the specific relief requested.
- Failure to file a proper amended complaint within 21 days of the date of this order will result in dismissal of this action without prejudice.
- The Court DENIES Benshoof's emergency petitions for a preliminary injunction. Dkt. Nos. 14, 15.

Dated this 31st day of October, 2023.

Jamal N. Whitehead
United States District Judge

Hon. Mark A. Larrañaga

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KURT A. BENSHOOF, *Pro Se,*

Plaintiff,

vs.

CITY OF SEATTLE,

Defendant.

No. 23-2-23749-8 SEA

ORDER DENYING PLAINTIFF'S PETITION FOR THE WRIT OF PROHIBITION

THIS MATTER having come before the undersigned judge of the above-entitled Court pursuant to City's Partial Motion to Dismiss in the above-entitled cause, and the Court has read and considered the following:

1. Plaintiff's Petition for Writ of Prohibition,
2. City's Response to Plaintiff's Petition for Writ of Prohibition,
3. Declaration of Dallas LePierre in Objection to Plaintiff's Petition for Writ of Prohibition,
4. Declaration of Katrina Outland in Objection to Plaintiff's Petition for Writ of Prohibition.

Argument was also heard on January 26, 2024.

Based on the foregoing, it is hereby ORDERED that Plaintiff's Petition for Writ of Prohibition is **DENIED**.

DATED this 5th day of February, 2024.

Mark A. Larrañaga
Hon. Mark A. Larrañaga
King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number:	23-2-23749-8
Case Title:	BENSHOOF VS CITY OF SEATTLE
Document Title:	ORDER RE WRIT OF PROHIBITION
Signed By:	Mark Larranaga
Date:	February 05, 2024

Judge: Mark Larranaga

This document is signed in accordance with the provisions in GR 30.

Certificate Hash:	B53C561C3AC69D12359B2A3F0D343B31FEB70629
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Hon. Mark A. Larrañaga

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KURT A. BENSHOOF, *Pro Se,*

Plaintiff,

vs.

CITY OF SEATTLE,

Defendant.

No. 23-2-23764-1SEA

ORDER DENYING PLAINTIFF'S PETITION FOR THE WRIT OF PROHIBITION

THIS MATTER having come before the undersigned judge of the above-entitled Court pursuant to City's Partial Motion to Dismiss in the above-entitled cause, and the Court has read and considered the following:

1. Plaintiff's Petition for Writ of Prohibition,
2. City's Response to Plaintiff's Petition for Writ of Prohibition,
3. Declaration of Dallas LePierre in Objection to Plaintiff's Petition for Writ of Prohibition,
4. Declaration of Katrina Outland in Objection to Plaintiff's Petition for Writ of Prohibition.

Argument was also heard on January 26, 2024.

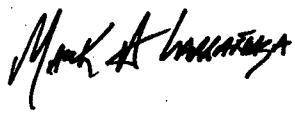
Based on the foregoing, it is hereby ORDERED that Plaintiff's Petition for Writ of Prohibition is **DENIED**.

DATED this 5th day of February, 2024.

Mark A. Larrañaga
Hon. Mark A. Larrañaga
King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number:	23-2-23764-1
Case Title:	BENSHOOF VS CITY OF SEATTLE
Document Title:	ORDER RE WRIT OF PROHIBITION
Signed By:	Mark Larranaga
Date:	February 05, 2024



Judge: Mark Larranaga

This document is signed in accordance with the provisions in GR 30.

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