

• ORIGINAL

A.R.W.

AFFIDAVIT OF [REDACTED]

A.R.W.

I, [REDACTED], state and declare as follows:

1. I am the son of Kurt Benshoof and Jessica Owen.
2. My dad has never engaged in domestic violence.
3. My dad has never abused me in any way and has never spanked me.
4. In December 2015 my mom was angry and block the front door, and chased my dad around our house, and I was held in my dad's left arm.
5. My mom tried to grab me, and my dad used his right hand to grab my mom's upper left arm to keep her away.
6. My dad accidentally bumped my head against the wall or door frame because he was running from my mom to get out of the house.
7. My mom called the police and showed the police a bruise on her right arm and lied to police that my dad grabbed her on her right arm and bruised it.
8. My mom lied to me in July 2021 and coerced me to get a Pfizer vaccine.
9. My mom told me the Pfizer vaccine was safe, effective and FDA Approved.
10. My mom told me that I wouldn't be able to play with my friends or attend school unless I got the Pfizer vaccine.
11. My mom did not tell me that the Pfizer vaccine could cause permanent disability or death to me.
12. When I told my dad in August 2021 that my mom had me get the Pfizer vaccine, my dad showed me the CDC Vaccine Adverse Event Reporting System data, and how many thousands of people had died or been disabled after getting the Pfizer vaccine.
13. My dad showed me CDC data that showed I was at zero risk of being hospitalized or dying from Covid-19.
14. My dad explained to me that, because me and my mom had got Covid-19 a few months earlier that I had natural immunity, and getting a Pfizer vaccine was unnecessary and potentially lethal.
15. After realizing that my mom coerced me to get a Pfizer vaccine that was not safe, effective or necessary, I didn't want to talk to my mom or go back to her house.
16. My dad made me call my mom because he said she was accusing him of withholding me from my mom.
17. When I called my mom, she was very angry and started yelling and said my dad was an "abuser," which upset me, so I walked away from my phone and went to my room.
18. My dad used my phone to text my mom to invite her to come over to my dad's house and have a family discussion together, but my mom refused to.
19. My mom then got a temporary restraining order to try to take me and my dad's car.

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20. My mom said in her declaration that if she took me from my dad that it would devastate me.
21. In King County Superior Court Case No. 21-2-11149-8 SEA, my mom lied to family court by saying that my dad withheld me from my mom in August 2020.
22. The truth is, I didn't want to talk to my mom at that time, or see her.
23. After my dad won the hearing on September 3, 2021 for Case No. 21-2-11149-8, my dad made me call my mom so that she wouldn't worry. I didn't want to call my mom, but my dad said I had to.
24. Later that day, my mom and her girlfriend Justice (her real name is Magalie Lerman) had the police arrest my dad, and Justice drove away in my dad's FJ Cruiser with me inside.
25. My mom and Justice then kept my dad's FJ Cruiser in their garage for about eight months.
26. During September of 2021, my mom texted my dad from my phone, pretending that she was me.
27. Pretending to be me, my mom texted my dad that I was busy and that it was scary when he came over to her house to see me, and that I didn't want him to come back.
28. During September of 2021, my mom wouldn't let my dad see me or talk to me.
29. In September of 2021, my mom got a family attorney named Nathan Cliber and my mom got another temporary restraining order against my dad in Case No. 21-5-00680-6.
30. My mom lied and said that my dad wasn't my presumed dad in her Petition to Decide Parentage. Everyone knows my dad is my dad, and always has been.
31. My mom lied to family court by saying that my dad refused to be acknowledged as my dad.
32. My mom lied to family court by saying that my dad had abused me.
33. My mom lied to family court by saying that my dad had exercised "coercive control."
34. My mom lied to family court by saying that my dad had engaged in domestic violence.
35. After my mom lied to family court to take me from my dad, she again coerced me to get another Pfizer vaccine in October of 2020.
36. My mom said that my dad was crazy because he said that the Pfizer vaccine wasn't safe, effective, or necessary.
37. My mom tried to get my dad to give her money to get his FJ Cruiser back.
38. My mom and Justice said that unless my dad gave them \$100,000 they would evict my dad from his house where I had lived with him since 2015.
39. On July 6, 2022 I went to my dad's house, but the police made me go back to my mom's house.
40. In August of 2022 I considered killing myself because I didn't know if I would be forced to stay at my mom's until I am eighteen years old.
41. Then my mom got family court to forbid any contact at all with my dad.

42. On January 23, 2023, I left my mom a note that said I had hated her for months and that I wanted to go back to my dad's house, and that if she loved me she should stop keeping me from my dad.
43. My mom found the note before I walked to my dad's house. She told me that she would talk to her attorney about resolving things with my dad, and then she said I could go over to my dad's house.
44. After I walked over to my dad's house, my mom called the police to get my dad arrested, and the police came made me go back to my mom's house.
45. Justice hates my dad, and Justice does not care about what I want or need.
46. My mom does not care about what I want or what I need. She hates my dad, and keeps lying to keep me from being with my dad.
47. On February 10, 2023, I signed a Durable Power-of-Attorney Agreement with my dad, so that he can act on my behalf in all matters.
48. It is my express wish that my dad initiates a lawsuit against my mom and her family attorney because they lied to take me away from my dad.
49. It is my express wish that my dad has King County Superior Court Case No. 21-5-00680-6 SEA vacated because it was fraudulently initiated with lies by my mom and her family attorney, Nathan Cliber.
50. It is my express wish that my dad act as a "Next Friend" pursuant to FrCP 17(c)(2), or as my "guardian" or "fiduciary" pursuant to FrCP 17(1)(A)(D), or pursuant to RCW 11.125 Uniform Power of Attorney Act, so that my dad can bring claims on my behalf, either in Equity or in law, so I can go home to him.

### **WASHINGTON DURABLE FINANCIAL POWER OF ATTORNEY**

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THE POWERS LISTED IN THIS DOCUMENT DO NOT INCLUDE ALL POWERS THAT ARE AVAILABLE UNDER APPLICABLE LAW. ADDITIONAL POWERS AVAILABLE UNDER LAW MAY BE ADDED BY SPECIFICALLY LISTING THEM UNDER THE SPECIAL INSTRUCTIONS SECTION OF THIS DOCUMENT. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, A [REDACTED] W [REDACTED] currently residing at 849 NE 130<sup>th</sup> ST, Seattle, WA 98125 hereby appoint Kurt A. Benshoof, currently residing at 1716 N 128<sup>th</sup> ST, Seattle, WA 98133 as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following subjects:

- Real property transactions.
- Tangible personal property transactions.
- Banking and other financial institution transactions.
- Insurance and annuity transactions.
- Estate, trust, and other beneficiary transactions.
- Claims and litigation.
- Personal and family maintenance.
- Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service.
- Retirement plan transactions.
- Tax matters.

#### **SPECIAL INSTRUCTIONS:**

1. The foregoing powers shall specifically include the right to request and receive any health information or other medical records as would I with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records, as may be governed by, and the foregoing shall constitute my release authority to the agent as authorized pursuant to, the Health Insurance Portability and Accountability Act (HIPAA). The foregoing release authority given my agent has no expiration date and shall expire only in the event I revoke the authority by written instrument delivered to my health-care provider or by revocation of this Power of Attorney.
2. The foregoing powers shall specifically include the power of my agent to submit claims, seek and receive reimbursements, pursue, settle or compromise claims, and to otherwise take any and all actions as may be necessary or desirable for purposes of enforcing the principal's rights, benefits and entitlements under any medical policies, medical reimbursement or other medical or health-care related plans or programs.
3. In addition to the statutory powers granted above with respect to retirement plan transactions, my agent is hereby granted the power to (i) access any account values and information relating to any interest which I may have in any qualified retirement plan, profitsharing plan, defined benefit plan, contribution plan, IRA, SEP-IRA, Roth IRA, 403(b) annuity plan, other annuity plan, Code Section 526 plan, Code Section 529 plan, and/or any other retirement or

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savings plan or account (collectively, the "retirement and savings accounts"), (ii) make contributions to retirement and savings accounts, (iii) make, authorize or otherwise direct the withdrawal and distribution of assets for my benefit from retirement and savings accounts and (iv) take any and all actions as may be desirable for purposes of ensuring the application and use of such retirement and savings accounts for my needs, and to comply with applicable tax and other laws pertaining thereto.

4. My agent may access, control, archive, transfer, and delete my digital assets. Digital assets include my email accounts, digital music, digital photographs, digital videos, gaming accounts, software licenses, social-network accounts, file-sharing accounts, financial accounts, domain registrations, Domain Name System (DNS) service accounts, blogs, listservs, web-hosting accounts, tax-preparation service accounts, online stores and auction sites, online accounts, and any similar digital asset that currently exists or may be developed as technology advances. My digital assets may be stored on the cloud or on my own digital devices. My agent may access, use, and control my digital devices in order to access, control, archive, transfer, and delete my digital assets. Digital devices include desktops, laptops, tablets, peripherals, storage devices, mobile telephones, smartphones, and any similar hardware that currently exists or may be developed as technology advances.

**EFFECTIVE DATE:**

A.R.W. THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED. THIS POWER OF ATTORNEY WILL CONTINUE TO BE EFFECTIVE EVEN THOUGH I BECOME INCAPACITATED.

A.R.W. THIS POWER OF ATTORNEY IS EFFECTIVE ON February 10, 2023. IT WILL CONTINUE UNTIL IT IS REVOKED. THIS POWER OF ATTORNEY WILL CONTINUE TO BE EFFECTIVE EVEN THOUGH I MAY BE CONSIDERED, OR BECOME CONSIDERED, INCAPACITATED.

n/a THIS POWER OF ATTORNEY SHALL BECOME EFFECTIVE ONLY AT SUCH TIME AS I BECOME INCAPACITATED AND SHALL CONTINUE THEREAFTER EVEN THOUGH I AM INCAPACITATED UNTIL SUCH TIME AS I AM NO LONGER INCAPACITATED, UNLESS THIS POWER OF ATTORNEY IS REVOKED.

For purposes of this Power of Attorney, "incapacitated" shall mean either (1) an adjudication by a court of competent jurisdiction to the effect that I am incompetent, or (2) the appointment by a court of competent jurisdiction of a conservator or guardian for my estate or (3) written certification by two (2) physicians who are unrelated to me or to each other in any personal, business or professional capacity that in their opinion I am substantially unable to

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manage my financial resources or resist fraud or undue influence. The effective date of such incapacity shall be the earlier of (a) the date of the order or decree adjudicating the incapacity, (b) the date of the order or decree appointing the conservator or guardian, or (c) the later date where both of the physicians' certifications described in this paragraph are obtained. A certified copy of the order or decree declaring incapacity or appointing a conservator or guardian or a copy of the physicians' certifications described herein shall be attached to the original of this Power of Attorney (and photocopies thereof shall be attached to photocopies hereof).

**EXERCISE OF POWER OF ATTORNEY WHERE MORE THAN ONE AGENT DESIGNATED:**

If I have designated more than one (1) agent, the agents may act separately as follows: at any time while two (2) or more persons are acting as my co-agents, any one (1) or more of such persons may be given the power to execute documents on my behalf or bind me in any particular transaction(s) or type(s) of transactions as set forth herein, and any such action taken by such person(s) pursuant to such power may be relied upon by third parties dealing with the agent(s). At any time while two (2) or more persons are acting as my agents, all decisions made hereunder shall be made by a majority of the agents. The power granted to an agent under the first sentence of this paragraph must be granted by a majority vote of the agents.

Successor Attorney-in-Fact. If Kurt A. Benshoof (agent's name) is unable or unwilling to serve or to continue to serve as my attorney-in-fact for any reason, then Peter L. Kral (alternate agent's name), presently residing at 1757 Greentree Rd. Encinitas, CA 92024 (address) is hereby appointed successor attorney-in-fact hereunder.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

All prior general powers of attorney I have executed are hereby revoked.

Signed this 10th day of February , 2023.

  
(signature)



A  R  W   
(printed name)

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## ACKNOWLEDGMENT

### Statement of Witnesses

On February 10, 2023, the declarer of this document, A [REDACTED] R [REDACTED] W [REDACTED] signed it in my presence. I believe the declarer is able to understand this document, and to have signed it voluntarily.

- I am not related to the principal by blood, marriage, or state registered domestic partnership.

## VERIFICATION

As a Witness, I do hereby declare that all herein be true and correct to the best of my knowledge, under penalty of perjury in the State of Washington.

Executed this 10th day of February, in the year 2023, in Seattle, in King County, in Washington state.

Witness 1

Kyrrah Nork

Signature

Kyrrah Nork

Print Name  
411 75<sup>th</sup> Place SW  
Everett, WA 98203

Address

Witness 2

Michael Bayles

Signature

Michael Bayles

Print Name  
411 75<sup>th</sup> place SW  
Everett, WA 98203

Address

Witness 3  
Signature

Thomas Clay Layton  
500<sup>th</sup> Name

8623 Palatine Ave<sup>7</sup> N, Apt 326 Seattle, Wa  
98103  
Address

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 27 2023

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

KURT BENSHOOF, individually and on  
behalf of minor A.R.W.,

Plaintiff-Appellant,

v.

DAVID S. KEENAN; et al.,

Defendants-Appellees.

No. 23-35418

D.C. No. 2:23-cv-00751-RAJ  
Western District of Washington,  
Seattle

ORDER

Before: W. FLETCHER, CALLAHAN, and BENNETT, Circuit Judges.

A review of the record and the responses to the June 28, 2023 order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

No further filings will be entertained in this closed case.

**AFFIRMED.**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 28 2023

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

KURT BENSHOOF, individually and on  
behalf of minor A.R.W.,

Plaintiff-Appellant,

v.

DAVID S. KEENAN; et al.,

Defendants-Appellees.

No. 23-35418

D.C. No. 2:23-cv-00751-RAJ  
Western District of Washington,  
Seattle

ORDER

Before: R. NELSON and BUMATAY, Circuit Judges.

The motion for injunctive relief (Docket Entry No. 2) is denied. *See Feldman v. Ariz. Sec'y of State*, 843 F.3d 366, 367 (9th Cir. 2016) (“The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction.”); *see also Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (defining standard for preliminary injunction in district court). No motions for reconsideration of the denial of injunctive relief will be entertained.

A review of the record suggests that this appeal may be appropriate for summary disposition under Ninth Circuit Rule 3-6(b) because the district court did not err in dismissing the petition for lack of subject matter jurisdiction. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982); *see also Lehman v. Lycoming*

*County Children's Servs. Agency*, 458 U.S. 502, 511-12 (1982) (federal habeas corpus not available to challenge state's child custody determination).

Within 21 days after the filing date of this order, appellant must show cause why summary affirmance of the district court's judgment is not appropriate. A response may be filed within 10 days after service of the memorandum.

If appellant does not comply with this order, this appeal will be automatically dismissed by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

The briefing schedule is stayed pending further order of the court.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KURT BENSHOOF,

CASE NO. 2:23-cv-1392

**Plaintiff,**

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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.

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

## Defendants.

## 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

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

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

5           Benshoof states his beliefs in his complaint:

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

9           Dkt. No. 9 at 20.

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

18       **2.2 Benshoof’s first emergency petition for a preliminary injunction.**

19          Benshoof asks the Court to bar the City and Seattle Police Department (SPD)  
20       officers from arresting and prosecuting him “under the family court Final  
21       Restraining Order for effecting service of process to 849 NE 130th ST [sic], Seattle,  
22       WA 98125 pursuant to Fed.R.Civ.P.4. [sic].” Dkt. Nos. 14 at 8; 14-1 at 2. According  
23       to Benshoof, Owen resides at the 849 NE 130th St. address. Dkt. No. 14 at 2.  
24

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

3 **2.3 Benshoof's second emergency petition for a preliminary injunction.**

4 Benshoof seeks to enjoin the City and SPD officers from arresting and  
5 prosecuting him for charges levied in Seattle Municipal Court Case No. 656748.  
6 Dkt. No. 15 at 1. The municipal court docket shows Benshoof faces four charges of  
7 criminal trespass in the first degree, all of which are pending. See *City of Seattle v.*  
8 *Benshoof*, Case No. 656748 (Municipal Court of Seattle Nov. 13, 2020).<sup>1</sup> The matter  
9 is still pending although a warrant appears to have expired on August 29, 2023.  
10

11 **2.4 Procedural history.**

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

16 In the past year, Benshoof has filed two other cases in this District that have  
17 raised similar issues about his family law disputes and objections to mask  
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<sup>1</sup> Under Rule 201(b), courts may take judicial notice of a fact that is not subject to  
20 reasonable dispute because it "can be accurately and readily determined from  
21 sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b)(2).  
22 Taking judicial notice of publicly available information provided by a government  
23 agency meets the requirements for judicial notice under the Rules. See *Santa*  
24 *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>).

1 mandates. The court dismissed both actions. *See Benshoof v. Keenan, et al.*, No. 23-  
2 cv-751-RAJ, Dkt. No. 22 (W.D. Wash. Jun. 12, 2023); *Benshoof v. Fauci, et al.*, No.  
3 22-cv-1281-LK, Dkt. Nos. 7 (W.D. Wash. Oct. 31, 2022).

4 **3. DISCUSSION**

5 **3.1 Legal standards.**

6 When a litigant proceeds in forma pauperis (“IFP”), “the court shall dismiss  
7 the case at any time if the court determines that . . . the action . . . (i) is frivolous or  
8 malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks  
9 monetary relief against a defendant who is immune from such relief.” 28 U.S.C.  
10 § 1915(e)(2)(i)–(iii); *see Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (internal  
11 citation omitted) (“[S]ection 1915(e) not only permits but requires a district court to  
12 dismiss an [IFP] complaint that fails to state a claim.”). “The standard for  
13 determining whether a plaintiff has failed to state a claim upon which relief can be  
14 granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure  
15 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 1108,  
16 1112 (9th Cir. 2012) (citing *Lopez*, 203 F.3d at 1122).

17 Thus, the complaint “must contain sufficient factual matter, accepted as true,  
18 to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662,  
19 678 (2009) (internal citation and quotation marks omitted). This standard “does not  
20 require ‘detailed factual allegations,’ but it demands more than an unadorned, the-  
21 defendant-unlawfully-harmed-me accusation.” *Id.* (quoting *Bell Atl. Corp. v.*  
22 *Twombly*, 550 U.S. 544, 555 (2007)).

1           **3.2 Benshoof's complaint is deficient.**

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

- 5           • Benshoof seeks declaratory judgment on 17 questions. *See* Dkt. No. 9 at  
6 173-176 (“First Cause of Action”).
- 7           • Benshoof pleads Constitutional violations, including several 42 U.S.C. §  
8 1983 claims, *Bivens* claims, a denial of service under the 1964 Civil Rights  
9 Act, conspiracy under 42 U.S.C. § 1985(2)-(3) and 42 U.S.C. § 1986, and a  
10 related RICO action under 18 U.S.C. § 1962(c)-(d). *See id.* at 177-217, 218-  
11 268 (Benshoof's second through 22nd and 24th through 42nd causes of  
12 action).
- 13           • Benshoof seeks four preliminary injunctions, which he styles as his 43rd-  
14 46th causes of action. *See id.* at 268-277.
- 15           • Benshoof pleads two state-law claims: common law fraud and common law  
16 conspiracy. *See id.* at 220-224 (22nd and 23rd causes of action).

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

20           **3.2.1 The Court lacks jurisdiction over Benshoof's “First Cause of  
Action” for “Declaratory Judgment.”**

21           The Uniform Declaratory Judgment Act, 28 U.S.C. § 2201, provides “[i]n a  
22 case of actual controversy within its jurisdiction . . . any court of the United States  
23 . . . may declare the rights and other legal relations of any interested party seeking  
24

1 such declaration, whether or not further relief is or could be sought.” 28 U.S.C.  
2 § 2201(a). “A lawsuit seeking federal declaratory relief must first present an actual  
3 case or controversy within the meaning of Article III,” and “must also fulfill  
4 statutory jurisdictional prerequisites.” *Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220,  
5 1223 (9th Cir. 1998) (citing *Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227,  
6 239–40 (1937); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 672 (1950)).  
7 Because “[t]he Declaratory Judgment Act does not provide for its own subject  
8 matter jurisdiction,” a plaintiff “must establish federal question jurisdiction or  
9 diversity jurisdiction before a district court can consider a request for declaratory  
10 judgment.” *Fluke Corp. v. Ratner*, No. C07-1921-JPD, 2008 WL 11342997, at \*2 n.2  
11 (W.D. Wash. Apr. 18, 2008).

12 Benshoof asserts 17 questions that he labels “federal questions.” But none of  
13 these questions are federal questions within the meaning of 28 U.S.C. § 1331. Nor  
14 does Benshoof allege diversity jurisdiction. Questions 1, 2, 3, 4, 6, 11, 12, 13, 16, and  
15 17 ask the Court to interpret the Washington Constitution and Washington state  
16 statutes or court rules. *See* Dkt. No. 9 at ¶¶ 1281, 1282, 1283, 1284, 1286, 1291,  
17 1292, 1293, 1296, 1297. Question 5 involves the jurisdiction of a family court, which  
18 is not a federal question. *See id.* ¶ 1285. Questions 8 and 14 relate to Benshoof’s  
19 allegations against King County Superior Court Judge David Keenan and United  
20 States District Judge Richard Jones, however, the Court finds Benshoof’s  
21 allegations against Judges Keenan and Jones are likely barred by absolute  
22 immunity so there is no live controversy between the parties. *See* Dkt. No. 9 at ¶¶  
23 1288, 1294; *see also infra* Section 3.2.3. Because the Court finds Benshoof’s  
24

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

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

16

17 **3.2.2 Benshoof’s Section 1983 claims against private persons fail as a  
matter of law.**

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

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

10       Benshoof brings Section 1983 claims against Owen, her current partner,  
11       Lerman, and her friend, Hermsen, alleging they conspired to deny Benshoof his  
12       parental rights and extort him for the value of his FJ Cruiser. Dkt. No. 9 at ¶¶ 416–  
13       418. Owen, Lerman, and Hermsen are private individuals and Benshoof alleges  
14       nothing beyond private action and conclusory claims of conspiracy with the  
15       municipal court and police officers. Therefore, Benshoof cannot maintain Section  
16       1983 claims against Owen, Lerman, and Hermsen.

17       Benshoof’s claims against Brier, Cliber, Franklin-Bihary, Marinella, Rekofke,  
18       and Russ, who are all private attorneys, similarly fail. See *Simmons*, 318 F.3d at  
19       1161 (holding plaintiff could not sue counsel under § 1983 because he was a “lawyer  
20       in private practice who was not acting under color of state law” and conclusory  
21       conspiracy allegations were insufficient).

1                   **3.2.3 Benshoof's claims against immune parties also fail as a matter**  
2                   **of law.**

3                   “Judges are absolutely immune from damage actions for judicial acts taken  
4                   within the jurisdiction of their courts[.]” *Schucker v. Rockwood*, 846 F.2d 1202, 1204  
5                   (9th Cir. 1988) (per curiam) (citations omitted). Indeed, a judge retains absolute  
6                   immunity even when the judge erroneously interprets jurisdiction. *See Sadoski v.*  
7                   *Mosley*, 435 F.3d 1076, 1079 (9th Cir. 2006) (upholding immunity where a judge  
8                   “acted in excess of his jurisdiction” but did “not act in clear absence of all  
9                   jurisdiction.”). Benshoof alleges several municipal and superior court judges acted  
10                   without personal jurisdiction over him and further alleges he “did not consent to  
11                   family court adjudicating his family affairs.” *See* Dkt. No. 9 at 81, 146, 154. Even  
12                   taking his allegations as true, Benshoof does not establish that any judges acted in  
13                   clear absence of all jurisdiction. Thus, Benshoof’s Section 1983 claims against  
14                   Seattle Municipal Court judges and King County Superior Court judges all fail.  
15                   Similarly, to the extent Benshoof alleges a *Bivens* claim against United States  
16                   District Judge Richard Jones for his decisions in a prior habeas case, judicial  
17                   immunity also blocks this claim. *See* Dkt. No. 9 at 172-173.

18                   Benshoof sues United States District Judges David Estudillo and Ricardo  
19                   Martinez, Washington State Supreme Court Chief Justice Steven González, and  
20                   Seattle Municipal Court Judge Willie Gregory for issuing mask mandates in their  
21                   courthouses. “Administrative decisions, even though they may be essential to the  
22                   very functioning of the courts,” are not within the scope of judicial immunity.  
23                   *Forrester v. White*, 484 U.S. 219, 228–30 (1988). Even if the Court assumes without  
24

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

6 Benshoof's Section 1983 claims against MacDonald and Outland are also  
7 barred by prosecutorial immunity. Prosecutors are absolutely immune from Section  
8 1983 actions when performing functions "intimately associated with the judicial  
9 phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). In  
10 other words, a "prosecutor is fully protected by absolute immunity when performing  
11 the traditional functions of an advocate. *Kalina v. Fletcher*, 522 U.S. 118, 131  
12 (1997). "[T]he functional nature of the activities being performed, not the status of  
13 the person performing them, is the key to whether absolute immunity attaches."  
14 *Stapley v. Pestalozzi*, 733 F.3d 804, 810 (9th Cir. 2013).

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

1           **3.3 Benshoof's complaint violates Rule 8(a), so the Court orders him to**  
2           **replead his claims in compliance with the Civil Rules.**

3           Benshoof alleges more—he alleges Section 1983 claims against SPD Officers  
4           Auderer, Coomer, Foy, Ladd, Lentz, and Wallace, Jane Adams Middle School Vice  
5           Principal Booker, Durken, Inslee, and Shah; he also alleges claims under Title II of  
6           the Civil Rights Act, 42 U.S.C. § 1985(2)-(3), 42 U.S.C. § 1986, and 18 U.S.C. §  
7           1962(d). But the “prolixity,” argumentativeness, redundancy, and often plain  
8           confusing nature of Benshoof’s complaint makes it difficult to discern what the  
9           circumstances were that supposedly give rise to these claims. *See Cafasso, U.S. ex*  
10           *rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (upholding  
11           district court’s dismissal of complaint without leave to amend because plaintiff  
12           violated Rule 8; explaining, “[o]ur district courts are busy enough without having to  
13           penetrate a tome approaching the magnitude of War and Peace to discern a  
14           plaintiff’s claims and allegations.”).

15           Rather than straightforwardly stating his claims and allegations, as required  
16           by Rule 8, Benshoof saddles the Court and Defendants with a nearly 300-page  
17           complaint and 2,000 pages of exhibits. A complaint so confusing that its “true  
18           substance, if any, is well disguised” may be dismissed *sua sponte* for failure to  
19           satisfy Rule 8. *Herns v. San Bernardino Police Dep’t*, 530 F.3d 1124, 1131 (9th Cir.  
20           2008) (quoting *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1996)).

21           Instead of dismissal, however, the Court orders Benshoof to replead his  
22           claims. *Agnew v. Moody*, 330 F.2d 868, 870 (9th Cir. 1964) (“[T]he district court was  
23           entirely justified in holding that the complaint did not comply with Rule 8(a), and in  
24

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

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

10 **3.4 Benshoof is not entitled to the injunctive relief sought in his  
11 separately pending motions.**

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

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

22 In his first motion, Benshoof asks the Court to exempt him from a restraining  
23 order issued by King County Superior Court Judge David Keenan that bars  
24

1 Benshoof from serving Owen except with process completed by Pegasus Process  
2 Service or ABC Legal Services.<sup>2</sup> See Dkt. Nos. 13-2 at 4; 14. The restraining order  
3 originated from a parentage action, Case No. 21-5-00680-6. This matter is beyond  
4 the Court's subject matter jurisdiction, however, because the subject of Benshoof's  
5 request and the relief sought are inextricably linked to his family law case. "It is  
6 well-settled that federal district courts have no jurisdiction over child custody  
7 issues, which are exclusively matters of state law." *Benshoof v. Keenan*, No. C23-  
8 751-RAJ, 2023 WL 4142956, at \*1 (W.D. Wash. June 12, 2023) (citing *Ankenbrandt*  
9 *v. Richards*, 504 U.S. 689, 702-04 (1992) (affirming the domestic relations  
10 exception "divests the federal courts of power to issue divorce, alimony[,] and child  
11 custody decrees."). Because this Court likely lacks jurisdiction to grant the relief  
12 Benshoof seeks, he fails to establish he is likely to succeed on the merits and the  
13 Court DENIES his first motion for a preliminary injunction.

14 This is not the first time Benshoof has sought federal injunctive relief related  
15 to his child custody issues. See *Benshoof*, No. C23-751-RAJ, 2023 WL 4142956, at  
16 \*1. In denying Benshoof's motion for a temporary restraining order and dismissing  
17 his complaint, the Honorable Richard A. Jones cautioned Benshoof that "federal  
18

19 \_\_\_\_\_  
20 <sup>2</sup> At one point in his motion, Benshoof argues due process requires that he be able to  
21 effect service of process through the U.S. Marshals. Dkt. No. 14 at 4. He further  
22 argues that the Court should enjoin the City of Seattle from detaining, arresting,  
23 imprisoning, or prosecuting the U.S. Marshals from serving process on Owen in this  
24 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.

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

4 In his second motion, Benshoof asks the Court to enjoin the SPD from  
5 enforcing a bench warrant issued in the ongoing Seattle Municipal Court Case No.  
6 656748. Dkt. No. 15. Federal courts will not interfere where “(1) there is an ongoing  
7 state judicial proceeding; (2) the proceeding implicate[s] important state interests;  
8 (3) there is an adequate opportunity in the state proceedings to raise constitutional  
9 challenges; and (4) the requested relief seek[s] to enjoin or has the practice effect of  
10 enjoining the ongoing state judicial proceeding.” *Arevalo v. Hennessy*, 882 F.3d 763,  
11 765 (9th Cir. 2018) (internal quotation marks omitted) (quoting *ReadyLink*  
12 *Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014)).

13 Here, the proceedings implicate local interests because the charges concern  
14 the City’s ability to enforce local trespass laws. Benshoof does not allege the  
15 municipal court forum prevented him from raising his constitutional and  
16 jurisdictional claims. The requested relief would effectively disrupt and invalidate  
17 the municipal court proceedings even though Benshoof has not established bad  
18 faith, harassment, or extraordinary circumstances that would justify the Court  
19 setting aside abstention under the *Younger* abstention doctrine. Thus, Benshoof  
20 fails to show likelihood of success on the merits and the Court DENIES Benshoof’s  
21 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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KURT BENSHOOF,

CASE NO. 2:23-cv-1392

Plaintiff,

**ORDER DENYING PLAINTIFF'S  
MOTIONS FOR TEMPORARY  
RESTRANING ORDER**

1

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, GABREL LADD, DANEIL 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.

1 Plaintiff Kurt Benshoof, proceeding pro se and *in forma pauperis*, filed a  
2 Section 1983 civil rights complaint on September 19, 2023. Dkt. No. 9. Benshoof  
3 sues 42 Defendants and pleads 46 causes of action in his 280-page complaint. *Id.* In  
4 less than a week's time, Benshoof has moved for three temporary restraining orders  
5 (TROs). Dkt. Nos. 16, 20, 23. In each motion, he seeks to enjoin the City of Seattle  
6 from arresting or imprisoning him on a bench warrant issued by the Municipal  
7 Court of Seattle, which stems from three on-going criminal cases. *See id.* Because  
8 the doctrine of *Younger* abstention bars the Court from deciding Benshoof's claims,  
9 and because he is unlikely to succeed on the merits in any event, the Court DENIES  
10 Benshoof's TRO motions.

## 11 1. BACKGROUND

12 The Court granted Benshoof leave to proceed *in forma pauperis*, but it has  
13 not issued summonses yet, so Benshoof has not served Defendants with process. *See*  
14 Dkt. 8. Benshoof moved for three temporary restraining orders on successive days  
15 between October 2-4, 2023. Dkt. Nos. 16, 20, 23. The City opposed each motion. Dkt.  
16 Nos. 21, 24, 26. The Court discusses the circumstances behind each TRO motion  
17 below.

### 18 1.1. Benshoof's first TRO.

19 On October 2, 2023, Benshoof filed his first TRO motion. Dkt. No. 16. In it, he  
20 alleges he will be unlawfully imprisoned by the City based on a bench warrant issued  
21 by the Seattle Municipal Court in his pending criminal Case No. 656749. *Id.*  
22 at 1. Benshoof attached a copy of the docket from his municipal court case to his  
23

1 motion, showing that he is representing himself pro se and failed to appear for a  
2 sentencing hearing on September 28, 2023, which prompted the municipal court to  
3 issue a bench warrant that same day. Dkt. No. 16-3 at 1, 12.

4 Benshoof describes the underlying charges and criminal proceeding like this:

5 Beginning in August 2020, Benshoof refused to wear a mask while shopping  
6 at PCC Community Markets because of his “firmly held religious beliefs” and  
7 “invisible disability.” Dkt. No. 16 at 2. In October 2020, PCC cashiers denied  
8 Benshoof checkout services because he was not wearing a mask, so he left payment  
9 for his groceries inside the store, but away from the checkout stand. *Id.* at 3. PCC  
10 then accused Benshoof of shoplifting. *Id.* The City filed charges against Benshoof for  
11 criminal trespass and theft and a trial was eventually held. Dkt. No. 16-3 at 1, 6–8.

12 During his trial, Benshoof alleges the judge refused to “show the jury video of  
13 [him] leaving payment for his groceries out of view of the checkout security camera,”  
14 and the prosecutor “knowingly and willfully deceived the jury to believe that  
15 [Benshoof] did not leave payment for his groceries.” Dkt. No. 9 at 142, ¶¶ 1046–  
16 1047. Benshoof further argues the “City judges, prosecutors, and police officers have  
17 knowingly and willfully conspired with PCC employees against [him] for the  
18 exercise of [his] rights protected by the First Amendment” and to deny “equal access  
19 to shop at PCC[.]” Dkt. No. 16 at 8. Benshoof contends these actions amount to a  
20 malicious prosecution by the City. *Id.*

21 On September 23, 2021, the municipal court entered guilty findings on the  
22 two charges against Benshoof. Dkt. No. 16-3 at 8–9.

1 Back to the TRO; Benshoof alleges that absent an order restraining the  
2 Seattle Police Department (SPD) from arresting him under the bench warrant, he  
3 will be unable to “call 911 to make any future victim witness complaint[s] without  
4 facing immediate unlawful imprisonment[,]” and he will suffer a “loss of First  
5 Amendment rights[.]” Dkt. No. 16 at 10–11. Additionally, Benshoof claims he “has  
6 been living under threat of immediate unlawful arrest every day for months. This  
7 retaliation must stop immediately, lest another one of the poorly trained SPD  
8 officers who has drawn, or may draw, a loaded firearm at [Benshoof] pulls the  
9 trigger.” *Id.* at 16.

10 Benshoof argues he will prevail on the merits because he “is entirely innocent  
11 of any wrongdoing, and is in fact the victim, the only possible outcome is [his]  
12 eventual vindication of any wrongdoing and the vacatur of [the municipal court case  
13 judgment].” *Id.* at 15.

14 **1.2. Benshoof’s second TRO.**

15 On October 3, 2023, Benshoof moved for a second TRO. Dkt. No. 20. This  
16 motion concerns a separate municipal proceeding, Case No. 669329, in which the  
17 City charged Benshoof with violating a vulnerable adult protective order. *See id.* at  
18 1; *City of Seattle v. Benshoof*, Case No. 669329 (Municipal Court of Seattle Nov. 8,  
19 2022).<sup>1</sup> The matter is still pending although the warrant appears to have expired on

20  
21 <sup>1</sup> Under Rule 201(b), the court may take judicial notice of a fact that is not subject to  
22 reasonable dispute because it “can be accurately and readily determined from  
23 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Taking judicial notice of publicly available information provided by a government

1 July 19, 2023. *City of Seattle v. Benshoof*, Case No. 669329 (Municipal Court of  
2 Seattle Aug. 15, 2022). When Benshoof failed to appear in person for a hearing, the  
3 judge issued a bench warrant on June 21, 2023. *See id.*

4 Based on Benshoof's allegations, the charge appears to relate to a conflict he  
5 had with Jessica Owen. *See generally* Dkt. No. 9 at 146–149. Benshoof and Owen  
6 have a child, A.R.W. *Id.* at 24 ¶ 30. They appear to dispute the custody arrangement  
7 for A.R.W. *See id.* at 205 ¶¶ 1496–99. Benshoof alleges the judge presiding over his  
8 municipal court case disregarded his argument that the court lacked jurisdiction.  
9 *Id.* at 147 ¶¶ 1094–96.

10 Benshoof argues a TRO is necessary to prevent irreparable harm. Dkt. No. 20  
11 at 18. He generally lists the same harms identified in his first TRO motion: “the fact  
12 that [he] cannot call 911 to make any future victim witness complaint without  
13 facing immediate unlawful imprisonment” and that these retaliatory prosecutions  
14 cause a loss of First Amendment rights. *Id.*; *see also* Dkt. No. 16 at 10. Like the first  
15 TRO motion, Benshoof argues he will prevail on the merits because he “is entirely  
16 innocent of any wrongdoing, and is in fact the victim,” leading the Court to dismiss  
17

18  
19 agency meets the requirements for judicial notice under the Rules. *See Santa*  
20 *Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n. 2 (9th Cir.  
21 2006) (holding that facts contained in public records are considered appropriate  
22 subjects of judicial notice). Therefore, the Court takes judicial notice of the  
23 municipal court docket in *City of Seattle v. Benshoof*, Case No. 669329 (Municipal  
Court of Seattle Nov. 8, 2022) and *City of Seattle v. Benshoof*, Case No. 671384  
(Municipal Court Mar. 14, 2023) (available at  
<http://web.seattle.gov/SMC/ECFPortal/default.aspx>).

1 his underlying municipal proceeding, Case No. 669329. Dkt. No. 20 at 21; *see also*  
2 Dkt. No. 16 at 15.

3 **1.3. Benshoof's third TRO.**

4 On October 4, 2023, Benshoof moved for another TRO, even though his  
5 arguments largely mirror those found in his second TRO motion. *Compare* Dkt. No.  
6 20 and Dkt. No. 23. In this motion, Benshoof claims he is in danger of imminent  
7 arrest because of a bench warrant issued in municipal Case No. 671384. Dkt. No. 23  
8 at 1. The City brings 89 charges; two stalking charges, a custodial interference  
9 charge, and 86 charges of violating a vulnerable adult protection order. *See City of*  
10 *Seattle v. Benshoof*, Case No. 671384 (Municipal Court of Seattle Mar. 14, 2023).  
11 The disposition is pending, and Benshoof has again failed to appear. *Id.* Benshoof  
12 makes the same jurisdictional arguments found in his second TRO motion and  
13 repeats the same arguments about irreparable harm and likelihood of success on  
14 the merits. *See* Dkt. Nos. 20 at 18–19, 21; 23 at 19–20, 22.

15 **2. DISCUSSION**

16 **2.1. Legal standard for temporary restraining orders.**

17 In this District, TRO motions that do not meet the ex parte requirements  
18 must be served on the opposing party and “include a certificate of service[.]” LCR  
19 65(b)(1). Formal service of process need not occur before moving for a TRO, so long  
20 as the adverse party has actual notice of the TRO motion. *H-D Michigan, LLC v.*  
21 *Hellenic Duty Free Shops S.A.*, 694 F.3d 827, 842 (7th Cir. 2012); *Glasser v.*  
22 *Blixseth*, No. C14-1576 RAJ, 2014 WL 12514894, at \*1 (W.D. Wash. Nov. 14, 2014).  
23 Once notified of the TRO, “the adverse party must (1) file a notice indicating

1 whether it plans to oppose the motion within twenty-four hours after service of the  
2 motion, and (2) file its response, if any, within forty-eight hours after the motion is  
3 served.” LCR 65(b)(5).

4 If “notice of a motion for a temporary restraining order is given to the adverse  
5 party, the same legal standard as a motion for a preliminary injunction applies.”

6 *Fang v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 16-cv-06071, 2016 WL  
7 9275454, at \*1 (N.D. Cal. Nov. 10, 2016), *aff’d*, 694 F. App’x 561 (9th Cir. 2017). In  
8 evaluating the merits of a motion for a temporary restraining order, courts consider  
9 the (1) likelihood of success on the merits; (2) irreparably injury to the moving  
10 party; (3) any substantial injury to other interested parties; and (4) public interest.

11 *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017). The first factor—likely  
12 success on the merits—is the most important. *Garcia v. Google, Inc.*, 786 F.3d 733,  
13 740 (9th Cir. 2015). If the moving party does not show likelihood of success on the  
14 merits, the court need not consider the other three factors. *Id.* (citing *Ass’n des  
15 Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9<sup>th</sup> Cir. 2013)).

16 **2.2. Benshoof fails to establish he is likely to succeed on the merits of any  
17 of his TRO motions.**

18 Benshoof notified the City that he would be seeking temporary restraining  
19 orders by sending copies of his motions to its legal service email address. Dkt. Nos.  
20 16 at 18; 20 at 24; 23 at 25. The City appeared and responded to Benshoof’s TRO  
21  
22  
23

1 motions. Dkt. Nos. 17, 18, 21, 24, 26. The City argues Benshoof's claims are barred  
2 by *Younger v. Harris*, 401 U.S. 37 (1971). Dkt. No. 21 at 2.<sup>2</sup> The Court agrees.

3 From Benshoof's arguments, it is doubtful the causes of action asserted  
4 entitle him to the relief he seeks. It appears the allegations above relate to  
5 Benshoof's Section 1983 claims that the City violated his First, Eighth, and  
6 Fourteenth Amendment rights and engaged in a malicious prosecution. He alleges  
7 the charges violated his First Amendment rights because he had religious reasons  
8 for not wearing a mask, and that the municipal court set unreasonable bail and  
9 warrants in violation of the Eighth Amendment. Dkt. No. 9 at 188 ¶ 1383, 189 ¶  
10 1391; *see generally* 201–02. He also alleges his due process rights were violated  
11 because he could not present an exculpatory video to the jury. *Id.* at 208 ¶ 1519.

12 Because Benshoof seeks relief related to an ongoing criminal proceeding in  
13 municipal court, his claims will likely be barred by *Younger* abstention. Federal  
14 courts will not interfere were “(1) there is ‘an ongoing state judicial proceeding’; (2)  
15 the proceeding ‘implicate[s] important state interests’; (3) there is ‘an adequate  
16 opportunity in the state proceedings to raise constitutional challenges’; and (4) the  
17 requested relief ‘seek[s] to enjoin’ or has ‘the practice effect of enjoining’ the ongoing  
18 state judicial proceeding.” *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018)  
19 (quoting *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758  
20

21 <sup>2</sup> The City also argues Benshoof's claims cannot proceed under *Heck v. Humphrey*,  
22 512 U.S. 477, 487 (1994). Dkt. No. 21 at 2. Because it appears municipal court Case  
23 Nos. 656749, 669329, and 671384 remain ongoing, the Court applies the *Younger*  
abstention doctrine and finds it unnecessary to also analyze the motions under  
*Heck*.

1 (9th Cir. 2014)). Where there is bad faith, harassment, or some other extraordinary  
2 circumstances that would make abstention inappropriate, *Younger* does not apply.

3 *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n.*, 457 U.S. 423, 435 (1982).

4 Here, there are multiple ongoing proceedings in municipal court in which  
5 Benshoof has failed to appear. The proceedings implicate local interests because the  
6 charges concern the City's ability to enforce local trespass and theft laws, as well as  
7 uphold its protective orders. Further, Benshoof does not allege the municipal court  
8 forum prevented him from raising his constitutional and jurisdictional claims. The  
9 requested relief would effectively disrupt and invalidate the municipal court  
10 proceedings given that Benshoof asks the Court to enjoin enforcement of another  
11 court's warrants.

12 Finally, Benshoof fails to establish bad faith, harassment, or extraordinary  
13 circumstances that would justify the Court setting aside abstention under *Younger*.  
14 As the City points out, Benshoof does not show harms beyond those "incidental to  
15 every criminal proceeding brought lawfully and in good faith." *Younger*, 401 U.S. at  
16 47 (citation omitted). Because federal abstention is almost certain, Benshoof fails to  
17 show likelihood of success on the merits and therefore does not meet the  
18 requirements for a temporary restraining order.

19 **2.3. The Court will issue summonses if it finds Benshoof has stated a  
20 plausible claim for relief after completing its review of Benshoof's  
complaint under 28 U.S.C. § 1915(e)(2).**

21 When a litigant proceeds *in forma pauperis*, "the court shall dismiss the case  
22 at any time if the court determines that . . . the action . . . (i) is frivolous or  
23 malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks

1 monetary relief against a defendant who is immune from such relief." 28 U.S.C.  
2 § 1915(e)(2)(i)–(iii). As stated above, Benshoof's complaint is 280 pages long, and  
3 alleges 46 causes of action against 42 defendants. Dkt. No. 9. Benshoof also filed  
4 2,034 pages of "Exhibits." Dkt. Nos. 13-1, 13-2, 13-3, 13-4. Given the length and  
5 number of claims, the Court has not yet completed its review under 28 U.S.C.  
6 § 1915(e)(2)(i)–(iii). Once completed, the Court will issue summonses, or dismiss all  
7 or part of Benshoof's complaint with or without leave to amend.

8 In addition, Benshoof filed two "Emergency Motion[s] for Preliminary  
9 Injunction" under Fed. R. Civ. P. 65(a). Dkt. Nos. 14, 15. Benshoof noted his motions  
10 for the same day he filed them. But under LCR 7(d)(3), motions seeking a  
11 preliminary injunction are noted "no earlier than the fourth Friday after filing and  
12 service of the motion." Thus, the Court revises the noting dates for Dkt. Nos. 14 and  
13 15 to October 13, 2023.

14 **CONCLUSION**

15 Accordingly, the Court DENIES Benshoof's motions for a temporary  
16 restraining order. Dkt. Nos. 16, 20, 23. The Clerk is directed to change the noting  
17 dates for Dkt. Nos. 14 and 15 to October 13, 2023.

18 Dated this 6th day of October, 2023.

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Jamal N. Whitehead  
22 United States District Judge  
23

**HONORABLE RICHARD A. JONES**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KURT BENSHOOF,

Plaintiff,

V.

DAVID KEENAN, *et al.*,

## Defendants.

Case No. C23-751-RAJ

**ORDER DISMISSING  
COMPLAINT AND DENYING  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

## 1. INTRODUCTION

This matter comes before the Court on *pro se* Plaintiff's Motion for a Temporary Restraining Order ("TRO"). Dkt. # 15. For the reasons that follow, the Court **DENIES** Plaintiff's motion and dismisses the habeas petition.

## II. DISCUSSION

## **A. Dismissal for lack of jurisdiction**

A judge ... may dismiss an action *sua sponte* for lack of jurisdiction." *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1342 (9th Cir. 1981); see also Fed. R. Civ. P. 12(h)(3). Having reviewed the complaint, the record, and the applicable law, the Court concludes there is no jurisdiction to hear this petition. The record shows that a final order granting child custody to Defendant Owen was entered in October 2022 and

1 Plaintiff's prior appeals in state court for habeas relief have been denied. Dkt. # 18-1 at  
2, 23, 27.

3 It is well-settled that federal district courts have no jurisdiction over child custody  
4 issues, which are exclusively matters of state law. *See Ankenbrandt v. Richards*, 504 U.S.  
5 689, 702-704 (1992) (holding that the domestic relations exception to federal subject  
6 matter jurisdiction "divests the federal courts of power to issue divorce, alimony and  
7 child custody decrees."). Although styled as a habeas petition, Plaintiff's allegations here  
8 raise issues of child custody. Federal habeas corpus has never been available to challenge  
9 parental rights or child custody. *See Lehman v. Lycoming County Children's Services*,  
10 458 U.S. 502, 511 (1982). A federal habeas petition challenging a state's child-custody  
11 determination simply seeks to relitigate the petitioner's interest in his or her own parental  
12 rights. *See id.* A federal court has no jurisdiction to relitigate these interests; and federal  
13 courts are not courts of appeal from state decisions. *See D.C. Ct. App. v. Feldman*, 460  
14 U.S. 462, 486 (1983). Accordingly, the petition is **DISMISSED** for lack of jurisdiction.

15 **B. Temporary restraining order**

16 A TRO is an "extraordinary remedy that may only be awarded upon a clear  
17 showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*,  
18 555 U.S. 7, 22 (2008).<sup>1</sup> To obtain a TRO, Plaintiff must show that (1) it is likely to  
19 succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of  
20 preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in  
21 the public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009).

22 Having found no jurisdiction to hear this petition, the Court finds that Plaintiff has  
23 not established a likelihood of success on the merits, irreparable harm in the absence of a  
24 TRO, that the balance of equities tips in his favor, or that an injunction is in the public  
25 interest. Therefore, the Court **DENIES** Plaintiff's Motion for a TRO. Dkt. # 15.

26 <sup>1</sup> The standard for issuing a TRO is identical to the standard for issuing a preliminary  
27 injunction. *New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347  
(1977).

1                   **III. CONCLUSION**  
2

3                   For the reasons above, the Court **DENIES** Plaintiff's motion for a Temporary  
4                   Restraining Order ("TRO") and dismisses the habeas petition with prejudice. Dkt. # 15.  
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6                   DATED this 12th day of June, 2023.  
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10                   The Honorable Richard A. Jones  
11                   United States District Judge  
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**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

KURT BENSHOOF,

Petitioner,

v.

HON. DAVID KEENAN, ADRIAN  
DIAZ, and JESSICA R. OWEN,

Respondents.

No. 101964-5

RULING DISMISSING PETITION

Pro se petitioner Kurt Benshoof filed a pleading directly in this court, entitled “VERIFIED PETITION FOR COMMON LAW WRIT OF HABEAS CORPUS” (petition), together with a motion for leave to file said petition. In response to questions from the deputy clerk, petitioner clarified he is not filing a personal restraint petition but is instead seeking relief by way of a common-law habeas petition. To the extent this petition seeks to initiate an original action contemplated under article IV, section 4 of the Washington Constitution, the petition is dismissed pursuant to RAP 16.2(d), as explained more fully below.

The instant petition consists of 87 pages of text, not including the title page, table of contents, and table of authorities. As indicated, petitioner also filed a motion for leave to file the petition, apparently trying to comply with a King County Superior

Court order restricting petitioner's filing of pleadings in that court.<sup>1</sup> The motion is unnecessary here but is granted to expedite ruling on the petition.

The petition is packed with factual allegations but there are no supporting exhibits. The petition cites documents apparently contained in lower court files but none of those have been provided here. Accordingly, there is no way for this court to assess the veracity of petitioner's bald allegations.

The petition names as respondents King County Superior Court Judge David Keenan, Seattle Police Chief Adrian Diaz, and private citizen Jessica Owen. To the extent the petition is styled as an original action against a state officer, it cannot be lodged against respondent Owen. RAP 16.2(a).

As for petitioner's many claims for relief, they mainly relate to a child custody dispute between petitioner and respondent Owen. Petitioner claims Owen wrongfully took custody of the child and ownership of his motor vehicle. He also castigates COVID-19 mask and vaccine mandates. He complains that the child has been vaccinated without his permission. Petitioner contends he is the victim of religious discrimination. He claims he has been unlawfully arrested. He claims he has been barred from access to the courts and court records. Petitioner demands this court issue a show cause order directed at respondents compelling them to be examined based on his allegations.

Petitioner claims to be seeking a writ of habeas corpus, but Washington appellate courts no longer consider petitions for writs of habeas corpus; that procedure has been superseded by personal restraint procedures set forth in Title 16 of the Rules of Appellate Procedure. RAP 16.3(b). It is also uncertain petitioner is restrained for purposes of a personal restraint petition, *see* RAP 16.4(a) (personal restraint petitioner

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<sup>1</sup> It appears there is a pending action in Division One of the Court of Appeals concerning the superior court's order.

must be under “restraint”). In an event, petitioner has expressly stated that he is not seeking relief by personal restraint petition. Upon close inspection of the petition, it seems petitioner asserts claims vaguely sounding in mandamus or prohibition, two ancient forms of writ this court has original jurisdiction to issue under article IV, section 4 of our state’s constitution. The petition here will be treated as such.<sup>2</sup> Accordingly, before me for determination is whether to retain the petition in this court for a decision on the merits, transfer it to the superior court for further proceedings, or dismiss it outright. RAP 16.2(d).<sup>3</sup>

Writs of mandamus or prohibition are extraordinary remedies turning on, in the case of mandamus, the existence of nondiscretionary duties of the respondent officials or, in the case of prohibition, an official acting without or outside of their jurisdiction. *See, e.g., Colvin, et al. v. Inslee, et al.*, 195 Wn.2d 879, 890-94, 467 P.3d 953 (2020) (discussing mandamus); *Riddle v. Elofson*, 193 Wn.2d 423, 430, 439 P.3d 647 (2019). Petitioner fails to identify any duties that can be compelled by a writ of mandamus or any extrajurisdictional actions that must be suspended or prevented by way of a writ of prohibition. More critically, petitioner has not persuasively shown that he has no plain, speedy, and adequate remedies at law—in state or federal court—for all of the alleged injustices he complains of. *See King County v. Sorensen*, 200 Wn.2d 252, 258, 516 P.3d 388 (2022) (mandamus); *Riddle*, 193 Wn.2d at 430 (prohibition). An original action in mandamus or prohibition is not cognizable under these

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<sup>2</sup> Quo warranto and other writs necessary for this court’s appellate or revisory jurisdiction are not at play here. CONST. art. IV, § 4.

<sup>3</sup> Petitioner contends the Rules of Appellate Procedure do not apply here because he is seeking a “common law” writ, but these rules do apply because they set forth the procedures necessary for seeking relief in this court. Original actions of the type contemplated by petitioner are governed by procedures set forth in RAP 16.2. Procedural rules governing motions filed in this court set forth in Title 17 RAP govern. RAP 16.2(c). It is not necessary to call for an answer to the petition in this instance. RAP 17.4(c)(1).

circumstances, and nothing else in petitioner's filings indicates he is entitled to relief directly in this court.

The petition is dismissed.

  
\_\_\_\_\_  
COMMISSIONER

May 8, 2023

1  
2 The Honorable Marshall Ferguson  
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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

8 KURT BENSHOOF,  
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Plaintiff,

10 v.  
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12 NATHAN CLIBER, JESSICA OWEN,  
13 MAGALIE LERMAN, and OWEN  
14 HERMSEN,  
15 Defendants.

NO. 22-2-15958-8 SEA

16 ORDER DENYING PLAINTIFF KURT  
17 BENSHOOF'S REQUEST FOR LEAVE TO  
18 FILE PETITION FOR WRIT OF *HABEAS*  
19 *CORPUS*

20 On January 31, 2024, Plaintiff Kurt Benshoof filed with this Court an application for  
21 approval to file a petition for a writ of *habeas corpus* against Jessica Owen, Magalie Lerman, and  
22 Nathan Cliber, each of whom is protected from Mr. Benshoof's abusive litigation by this Court's  
23 March 31, 2023 Order Restricting Abusive Litigation Of Kury Benshoof ("Abusive Litigation  
24 Order"). Sub No. 189.

25 The Court has reviewed Mr. Benshoof's application materials. Based upon such review, it  
is

ORDERED, ADJUDGED, AND DECREED that Mr. Benshoof's request for leave to file  
his proposed *habeas corpus* petition is DENIED. The Abusive Litigation Order bars Mr.  
Benshoof's proposed petition against Ms. Owen, Ms. Lerman, and Mr. Cliber for the reasons set  
forth below.

ORDER DENYING PLAINTIFF KURT  
BENSHOOF'S REQUEST FOR LEAVE  
TO FILE PETITION FOR WRIT OF  
*HABEAS CORPUS* - 1

JUDGE MARSHALL FERGUSON  
KING COUNTY SUPERIOR COURT  
516 THIRD AVENUE  
SEATTLE WA 98104  
(206) 477-1513

1 Washington's state constitution secures for citizens the right to petition for a writ of *habeas*  
2 *corpus*. "The privilege of the writ of *habeas corpus* shall not be suspended, unless in case of  
3 rebellion or invasion the public safety requires it." Const. art. 1, § 13. The writ referred to in our  
4 constitution is more fully known as a writ of *habeas corpus ad subjiciendum*, which is a writ  
5 "directing an official who is detaining another to show the cause of that person's confinement, and  
6 why he or she should not be released." *Petition of Runyan*, 121 Wn.2d 432, 853 P.2d 424 (1993).  
7 "The writ is not a substitute for an appeal or a writ of error." *Fleetwood v. Rhay*, 7 Wn. App. 225,  
8 226, 498 P.2d 891 (1972), citing *Massey v. Rhay*, 76 Wn.2d 78, 455 P.2d 367 (1969). Yet, that is  
9 precisely what Mr. Benshoof seeks to accomplish here.

10 In his proposed petition, Mr. Benshoof seeks to reverse a civil restraining order protecting  
11 defendant Jessica Owen entered in a separate parentage action filed in 2021 in this Court<sup>1</sup>; he  
12 demands that this Court investigate "whether family court had jurisdiction" in that other matter and  
13 look into allegedly fraudulent proceedings in that case; and he claims that assorted constitutional  
14 violations occurred in those other proceedings. In other words, Mr. Benshoof clearly intends to use  
15 his proposed *habeas* petition as a substitute for appeal of those other proceedings. His petition is  
16 frivolous and without merit. If permitted to proceed, Mr. Benshoof's *habeas corpus* proceeding  
17 would be antithetical to justice and would only serve to further harass and burden Ms. Owen, Ms.  
18 Lerman, and Mr. Cliber through abusive litigation.

19 Accordingly, Mr. Benshoof is barred from filing his *habeas corpus* petition.

20 DATED this 4th day of March, 2024.

22 \_\_\_\_\_  
23 Judge Marshall Ferguson  
24 King County Superior Court  
25 \_\_\_\_\_

1 King County Superior Court Case No. 21-5-00680-6 SEA.

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 22-2-15958-8

Case Title: BENSHOOF VS CLIBER ET AL

Document Title: ORDER RE MOTION RE HABEAS PETITION

Signed By: Marshall Ferguson

Date: March 04, 2024



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Judge: Marshall Ferguson

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

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1 Hon. Mark A. Larrañaga  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

9 KURT A. BENSHOOF, *Pro Se*,

10 Plaintiff,

No. 23-2-23752-8 SEA

11 vs.

12 CITY OF SEATTLE,  
13 Defendant.

ORDER DENYING PLAINTIFF'S  
PETITION FOR THE WRIT OF  
PROHIBITION

14  
15 THIS MATTER having come before the undersigned judge of the above-entitled Court  
16 pursuant to City's Partial Motion to Dismiss in the above-entitled cause, and the Court has read and  
17 considered the following:

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

22  
23 ORDER DENYING PLAINTIFF'S  
PETITION FOR THE WRIT OF PROHIBITION - 1

(23-2-23749-8 SEA)

47a

1 Argument was also heard on January 26, 2024.

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

4 DATED this 5<sup>th</sup> day of February, 2024.

5  
6 Mark A. Larrañaga  
7 Hon. Mark A. Larrañaga  
King County Superior Court

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ORDER DENYING PLAINTIFF'S  
PETITION FOR THE WRIT OF PROHIBITION - 2

(23-2-23749-8 SEA)

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 23-2-23752-8

Case Title: BENSHOOF VS CITY OF SEATTLE

Document Title: ORDER RE WRIT OF PROHIBITION

Signed By: Mark Larranaga

Date: February 05, 2024



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Judge: Mark Larranaga

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

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1 Hon. Mark A. Larrañaga  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

9 KURT A. BENSHOOF, *Pro Se*,

10 Plaintiff,

No. 23-2-23761-7SEA

11 vs.

12 CITY OF SEATTLE,

13 Defendant.

ORDER DENYING PLAINTIFF'S  
PETITION FOR THE WRIT OF  
PROHIBITION

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

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

23 ORDER DENYING PLAINTIFF'S  
PETITION FOR THE WRIT OF PROHIBITION - 1

(23-2-23749-8 SEA)

1 Argument was also heard on January 26, 2024.

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

4 DATED this 5<sup>th</sup> day of February, 2024.

5  
6 Mark A. Larrañaga  
7 Hon. Mark A. Larrañaga  
King County Superior Court

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ORDER DENYING PLAINTIFF'S  
PETITION FOR THE WRIT OF PROHIBITION - 2

(23-2-23749-8 SEA)

**51a**

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 23-2-23761-7  
Case Title: BENSHOOF VS CITY OF SEATTLE  
Document Title: ORDER RE WRIT OF PROHIBITION

Signed By: Mark Larranaga  
Date: February 05, 2024



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Judge: Mark Larranaga

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

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CASE #: 21-5-00680-6 SEA

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

In re: )  
JESSICA R. OWEN, ) NO. 21-5-00680-6 SEA  
Petitioner, )  
and ) ORDER DENYING RESPONDENT'S  
KURT A. BENSHOOF, ) MOTION TO VACATE  
Respondent. )  
Clerk's Action Required

JUDGMENT SUMMARY

A. Judgment Creditor: JESSICA R. OWEN  
B. Judgment Debtor: KURT A. BENSHOOF  
C. Principal judgment amount \$5,040.00  
D. Interest to date of Judgment \$  
E. Attorney's fees \$  
F. Costs \$  
G. Other recovery amount \$  
H. Principal judgment shall bear interest at 12% per annum (1% per month).  
I. Attorney's fees, costs and other recovery amounts shall bear interest at \_\_\_\_\_% per  
annum.  
J. Attorney for Judgment Creditor: NATHAN CLIBER  
K. Attorney for Judgment Debtor: *pro se*

2           THIS MATTER having come on before the undersigned Judge of the above-entitled  
4           Court on the below-stated date; the court, having reviewed the file and records herein, now,  
6           therefore makes the following **FINDINGS**:

- 8           1) Respondent's *Motion for Order to Show Cause and Order to Vacate Judgment/Order re:*  
9           *King County Superior Court Case No. 21-5-00680-6 SEA Under CR 60* (hereafter  
10           "Motion to Vacate") is without merit.
- 12           2) The issues presented by Respondent in his *Motion to Vacate* flow from his mistaken  
13           belief that Petitioner was legally precluded from filing this action. His belief, or anger, or  
14           both led him to stop participating in the case and resulted him demanding that he not be  
15           contacted by Petitioner, her lawyer or generally any one else. Unsurprisingly, Petitioner  
16           filed a motion for default judgment, which a Court granted. Final orders then entered  
17           because Respondent was not participating.
- 19           3) He now requests that final orders be undone.
- 21           4) Mr. Benshoof's motion follows a string of frivolous pleadings which has resulted in him  
22           being designated a vexatious litigant. This motion is also frivolous. Additionally, Mr.  
23           Benshoof supported his motion with a declaration from his son, whom Mr. Benshoof is  
24           currently prohibited from contacting. This leads this Court to one of two conclusions:  
25           either Mr. Benshoof made up the declaration (in which case he is lying to this Court) or  
26           he procured it from the child, in which case he is violating a valid court order. Either of  
27           these actions is sanctionable and the latter is particularly egregious.
- 29           5) Sanctions are appropriate given this conduct.

34           It is therefore, hereby **ORDERED, ADJUDGED and DECREED**:

- 36           1) Respondent's request that final orders in this matter be vacated is **DENIED**, with  
37           prejudice.
- 39           2) Respondent is barred from initiating further Petitions, Motions, or other litigation under  
40           this cause number as a result of Judge Ferguson's *Order Granting Defendants' Joint*  
41           *Motion for a Vexatious Litigant Order Against Plaintiff, and Temporary Order*  
42           *Restricting Abusive Litigation by Kurt Benshoof*, and all subsequent orders related  
43           thereto, under KCSC Case No 22-2-15958-8 SEA.
- 45           3) Petitioner shall have a judgement against Respondent in the amount of \$5,040.00,  
46           payable within 30 days of this order. Payment in the form of a cashier's check, payable  
47           to Petitioner, shall be delivered to Petitioner's attorney's office at the address below.

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3 Judge Sean P. O'Donnell

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 21-5-00680-6

Case Title: OWEN VS BENSHOOF

Document Title: ORDER DENYING MOTION/PETITION

Signed By: Sean O'Donnell

Date: March 24, 2023



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Judge: Sean O'Donnell

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

Certificate Hash: 22C471BDBBADB7622DCA6C95C191992CF79C14F6

Certificate effective date: 1/30/2019 8:24:49 AM

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O=KCDJA, CN="Sean O'Donnell:  
nHo0hQvS5hGLVE33AFk6yQ=="

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
KING COUNTY**

Kurt A. Benshoof,

Petitioner

vs

Judge David Keenan,  
Commissioner Jason Holloway,  
Nathan Cliber,  
Seattle Police Chief Adrian Diaz,  
Jessica R. Owen,  
Magalie Lerman,

Respondents.

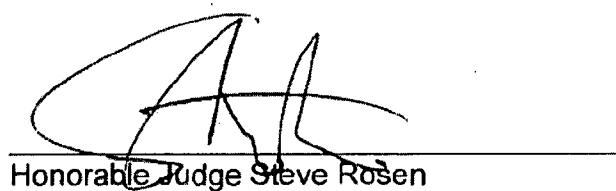
NO. 22-2-11112-7 SEA

**Order On Writ of Habeas Corpus**

The Court, having reviewed the Petitioner's Writ and attached materials, and having reviewed the Court file and the Court files for the other cause numbers mentioned in the Writ, now decides that the Petitioner's Writ of Habeas Corpus should be DENIED without oral argument. Therefore,

**IT IS SO ORDERED.**

Dated: July 21, 2022



Honorable Judge Steve Rosen