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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, 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.

CASE NO. 2:23-cv-1392

ORDER DENYING PLAINTIFF'S
MOTIONS FOR TEMPORARY
RESTRAINING ORDER

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 warranted
21 issued 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
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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).¹ The matter is still pending although the warrant appears to have expired on
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21 ¹ 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
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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 (9th 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
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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 2.² 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

21 ² 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*
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**
21 **complaint under 28 U.S.C. § 1915(e)(2).**

22 When a litigant proceeds *in forma pauperis*, "the court shall dismiss the case
23 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

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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20 _____
21 Jamal N. Whitehead
22 United States District Judge
23