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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KURT BENSHOOF,
Plaintiff,
v.
MOSHE ADMON et al.,
Defendants.

CASE NO. 2:23-cv-01392-JNW
ORDER ON MOTION FOR RECUSAL

This is a *pro se* civil rights action against numerous defendants. This matter is before the Court on Plaintiff Kurt Benshoof’s Motion for Disqualification of Judge Jamal Whitehead (Dkt. No. 39) after an order of referral by Judge Whitehead (Dkt. No. 40). Having reviewed the relevant record, the Court DENIES the motion.

I. BACKGROUND

The factual background and procedural history of this matter are largely recounted in Judge Whitehead’s order on Plaintiff’s motions for a preliminary injunction and thus will not be repeated here. *See* Dkt. No. 38 at 2–5. In sum, Plaintiff’s complaint “spans 280 pages, contains

1 over 1,000 paragraphs in its statement of facts, and includes over 2,000 pages in attachments.”
2 *Id.* at 2; *see* Dkt. No. 9 (complaint). Plaintiff “appears to allege Defendants violated his due
3 process rights during multiple legal proceedings in Seattle Municipal Court and King County
4 Superior Court.” *Id.* Related issues include “family law cases” and “the implementation and
5 enforcement of COVID-19 mask mandates.” *Id.* at 2–3.

6 On October 31, 2023, Judge Whitehead denied Plaintiff’s motions for a preliminary
7 injunction and granted leave to amend the complaint. *See id.* at 5–16. On November 1, Plaintiff
8 filed the instant motion for “disqualification” of Judge Whitehead. *See* Dkt. No. 39. On
9 November 3, Judge Whitehead declined to voluntarily recuse and referred the motion to this
10 Court for decision. *See* Dkt. No. 40 at 2–4.

11 II. LEGAL STANDARD

12 Local Civil Rule (“LCR”) (3)(f) requires a challenged judge to review motions filed
13 pursuant to 28 U.S.C. § 144 or 28 U.S.C. § 455 and to determine whether to recuse voluntarily.
14 LCR 3(f). If the challenged judge declines to recuse voluntarily, they must direct the court clerk
15 to refer the motion to the chief judge for their review. *Id.* If the motion is directed at the chief
16 judge, or if the chief judge (or their designee) is unavailable, the clerk must refer the motion to
17 the active judge with the highest seniority. *Id.*

18 28 U.S.C. § 455(a) provides that a judge of the United States “shall disqualify himself” in
19 any proceeding in which their “impartiality must reasonably be questioned.” The statute further
20 provides that the judge must recuse “[w]here he has a personal bias or prejudice concerning a
21 party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” 28
22 U.S.C. § 455(b)(1). Similarly, 28 U.S.C. § 144 requires recusal when “a party to any proceeding
23 in district court makes and files a timely and sufficient affidavit that the judge before whom the
24 matter is pending has a personal bias or prejudice either against [them] or in favor of any adverse

1 party.” The standard for recusal under both statutes is the same—“[w]hether a reasonable person
2 with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be
3 questioned.” *United States v. McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012) (internal quotation
4 marks omitted). “The alleged prejudice must result from an extrajudicial source; a judge’s prior
5 adverse ruling is not sufficient cause for recusal.” *United States v. Studley*, 783 F.2d 934, 939
6 (9th Cir. 1986); *see also Liteky v. United States*, 510 U.S. 540, 555 (1994) (“[J]udicial rulings
7 alone almost never constitute a valid basis for a bias or partiality motion.”).

8 III. DISCUSSION

9 As an initial matter, this motion is before this Court because Chief Judge David Estudillo
10 is a named Defendant in this matter and is thus “unavailable.” LCR 3(f); *see* Dkt. No. 9.

11 Therefore, this Court will decide the motion.

12 Plaintiff seeks recusal on two grounds: “mental incompetence” and “bias.” Dkt. No. 39 at
13 4–5. But Plaintiff offers no extrajudicial evidence for any such findings. Instead, Plaintiff
14 devotes nearly half of his motion to rearticulating his arguments for a preliminary injunction and
15 offering point-by-point rebuttals to Judge Whitehead’s order on his motions. *See id.* at 2–4. The
16 asserted grounds for recusal are cast in the same mold: Plaintiff asserts, without specific
17 allegations or evidentiary support, that Judge Whitehead’s adverse order must be evidence of
18 mental incompetence or bias. *See id.* at 4 (arguing that “any judge so brazen as to openly
19 disregard the clear and dispositive requirement” of a case “suffers from a form of mental
20 incompetence”), 5 (arguing that “it is self-evident that [Judge] Whitehead’s biases or prejudices
21 . . . are so extreme as to attempt to undue sixty year of Civil Rights law”).

22 The Court agrees with Judge Whitehead’s refusal to recuse himself. As Judge Whitehead
23 observed in his order declining to recuse, “[Plaintiff] merely offers conclusory statements and
24 fails otherwise to show actual grounds for incompetence or personal bias.” Dkt. No. 40 at 3. The

1 crux of Plaintiff's motion appears to be a disagreement with Plaintiff's interpretation of *Hamm v.*
2 *City of Rock Hill*, 379 U.S. 306 (1964). See Dkt. No. 39 at 3. But "prior adverse judicial rulings
3 are 'not sufficient cause for recusal.'" *Major v. Wash. State Dep't of Corr.*, No. C23-5307, 2023
4 WL 6556257, at *1 (W.D. Wash. Sept. 5, 2023) (quoting *Studley*, 783 F.2d at 939). Without
5 more, recusal is inappropriate in this case.

6 **IV. CONCLUSION**

7 Accordingly, Plaintiff's Motion for Disqualification of Judge Jamal Whitehead (Dkt.
8 No. 39) is DENIED.

9 Dated this 14th day of November 2023.

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12 Tana Lin
13 United States District Judge
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