

Clerk stamps date here when form is filed.

**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**06/16/2021**  
**rsanniguel**  
By \_\_\_\_\_, Deputy  
Case Number:

**1 Petitioner (Employer)**

a. Name: City of Sacramento

Lawyer for Petitioner (if any for this case):

Name: Emilio Camacho State Bar No.: 282507

Firm Name: Sacramento City Attorney

b. Address (If you have a lawyer, give your lawyer's information.):

Address: 915 I Street

City: Sacramento State: CA Zip: 95814

Telephone: 916-808-5346 Fax: 916-808-7455

E-Mail Address: ecamacho@cityofsacramento.org

Fill in court name and case number

**34-2021-70009184**  
Superior Court of California, County of Sacramento  
Gordon D. Schaber, Sacramento County Courthouse  
720 9<sup>th</sup> Street  
Sacramento, CA 95814

Fill in case number:

Case Number:  
**34-2021-70009184**

**2 Employee in Need of Protection**

Full Name: Howard Chan

**3 Respondent (Person From Whom Protection Is Sought)**

Full Name: Skyler Michel-Evleth, aka Skyler Henry

*The court will complete the rest of this form.*

**4 Notice of Hearing**

**A court hearing is scheduled on the request for restraining orders against the respondent:**

|                       |                          |                     |  |
|-----------------------|--------------------------|---------------------|--|
| <b>Hearing Date</b> → | Date: <u>JUL 07 2021</u> | Time: <u>8:30am</u> | Name and address of court if different from above: |
|                       | Dept.: <u>1</u>          | Room: _____         |  |

**5 Temporary Restraining Orders (Any orders granted are on Form WV-110, served with this notice.)**

a. Temporary Restraining Orders for personal conduct and stay away orders as requested in Form WV-100, Request for Workplace Violence Restraining Orders, are (check only one box below):

- (1)  All **GRANTED** until the court hearing.
- (2)  All **DENIED** until the court hearing. (Specify reasons for denial in b, below.)
- (3)  Partly **GRANTED** and partly **DENIED** until the court hearing. (Specify reasons for denial in b, below.)

b. Reasons that Temporary Restraining Orders as requested in Form WV-100, *Petition for Workplace Violence Restraining Orders*, for personal conduct or stay away are denied are:

(1)  The facts as stated in Form WV-100 do not sufficiently show reasonable proof that the employee has suffered unlawful violence or a credible threat of violence by the respondent, and that great or irreparable harm to the employee would result if a temporary restraining order is not issued.

(2)  Other (specify):  As stated on Attachment 5b.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6 Service of Documents by the Petitioner**

At least  five  \_\_\_\_\_ days before the hearing, someone age 18 or older—not you or anyone to be protected—must personally give (serve) a court file-stamped copy of this Form WV-109, *Notice of Court Hearing*, to the respondent along with a copy of all the forms indicated below:

- a. WV-100, *Petition for Workplace Violence Restraining Orders* (file-stamped)
- b.  WV-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**
- c. WV-120, *Response to Petition for Workplace Violence Restraining Orders* (blank form)
- d. WV-120-INFO, *How Can I Respond to a Petition for Workplace Violence Restraining Orders?*
- e. WV-250, *Proof of Service of Response by Mail* (blank form)
- f.  Other (specify): CV/E 214 Zoom (Remote Appearance)

Date: 6-16-2021

*[Signature]*  
Judicial Officer

**To the Petitioner:**

- The court cannot make the restraining orders after the court hearing unless the respondent has been personally given (served) a copy of your request and any temporary orders. To show that the respondent has been served, the person who served the forms must fill out a proof of service form. Form WV-200, *Proof of Personal Service*, may be used.
- For information about service, read Form WV-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the respondent in time, you may ask for more time to serve the documents. Use Form WV-115, *Request to Continue Court Hearing and to Reissue Temporary Restraining Order*.



**To the Respondent**

- If you want to respond to the request for orders in writing, file Form WV-120, *Response to Request for Workplace Violence Restraining Orders*, and have someone age 18 or older—not you or anyone to be protected—mail it to the petitioner.
- The person who mailed the form must fill out a proof of service form. Form WV-250, *Proof of Service of Response by Mail*, may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested.
- You may bring witnesses and other evidence.
- At the hearing, the judge may make restraining orders against you that could last up to three years and may order you to sell or turn in any firearms that you own or possess.



**Request for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.



Date:

**JUN 17 2021**

Clerk, by

, Deputy

## **Attachment 5(b)**

Petitioner, the City of Sacramento, is seeking protection for City Manager Howard Chan and his family. Respondent is Skyler Michel-Evleth. The gravamen of the Petition are statements and actions of Respondent relating to his perception of Chan's management of the City of Sacramento and protests outside Chan's home of in connection with that opinion. City Manager Chan seeks a stay away order of 100 yards from both his house and his workplace, which happens to be City Hall. Respondent also appears to be a staffer for a member of City Council.

City Manager Chan's declaration alleges Respondent protested outside his house on July 22, 2020 and March 28, 2021. A copy of a flier inviting persons to the protest referred to the protest as a "Sit in/Die in!" As to the July 22, 2020 protest, Chan's declaration states protestors pounded on his door and caused damage to his garage door and yard. The police report attached to the petition states the City Manager Chan confirmed that Respondent was one of the protestors that entered his property and pounded on his door. The report also states Respondent was following Chan and other co-workers but Chan indicated: "I am not concerned about it at the moment."

City Manager Chan's declaration references a second protest on March 28, 2021 and states officers of the Sacramento County Police Department were stationed outside his home during this protest. The declaration does not suggest any improper conduct occurred during that protest and the police report states "no vandalism occurred." There was a flyer for this protest as well, stylized as a "Wanted" poster with Chan's photograph although no direct threats were made on that flyer. The evidence submitted does not state whether Respondent actually attended the second protest or had anything to do with creating the flyer.

Exhibit 3 to the petition contains media documents making reference to a statement made by Respondent regarding Democratic Senator Kyrsten Sinema that "You should be terrified for the rest of your life" and "You should never be able to leave your house if that is how you're going to use your position to govern." Respondent added "the same thing sort of applies with the mayor and city manager of this city (Sacramento)...."

A declaration was also submitted by Sacramento Mayor Darrell Steinberg. Mayor Steinberg indicates he spoke to Respondent and asked him "whether the statements he made [to the media] now reflected his current point of view." According to Mayor Steinberg, Respondent stated that: "he opposes physical violence against any person."

The standard for a temporary restraining order is met "if the petitioner also files a declaration that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the respondent, and that great or irreparable harm would result to an employee." (Code Civ Proc, § 527.8, subd. (e).)

Also relevant is Code of Civil Procedure § 527.8(c), which provides: "This section does not permit a court to issue a temporary restraining order or order after hearing prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law."

However, “[t]he First Amendment permits ‘restrictions upon the content of speech in a few limited areas, which are “of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.” ’ ” (*Virginia v. Black* (2003) 538 U.S. 343, 358–359 [155 L. Ed. 2d 535, 123 S. Ct. 1536].) These categories include defamatory speech, fighting words, incitement to riot or imminent lawless action, obscenity and child pornography.” (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1249.)

At this point, a temporary restraining order is at issue, and Petitioner must provide “reasonable proof” that “great or irreparable harm would result to an employee [Chan]” if the temporary restraining order is not granted. “[I]njunctive relief lies only to prevent threatened injury and has no application to wrongs that have been completed.” (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332.) “It should neither serve as punishment for past acts, nor be exercised in the absence of any evidence establishing the reasonable probability the acts will be repeated in the future.” (*Ibid.*) “Thus, to authorize the issuance of an injunction, it must appear with reasonable certainty that the wrongful acts will be continued or repeated.” (*Gold v. Los Angeles Democratic League* (1975) 49 Cal. App. 3d 365, 372.)

The evidence presented with the Petition does not meet this standard. The most aggravated incident occurred during the July 22, 2020 protest. The Court is not unconcerned with the conduct the Petition alleges occurred on that date and does not condone it. (*Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists* (2002) 290 F.3d 1058, 1073 “[V]iolent conduct is beyond the pale of constitutional protection.”.) However, this occurred almost a year ago. Moreover, despite being the most concerning incident, no restraining order was filed at that time. The day *after* the incident, Chan stated he was “not concerned” with the fact Respondent was following him and also declined to file criminal charges against Respondent.

No evidence was presented that any acts of violence, threats, or vandalism occurred during the March 2021 protest. Furthermore, the evidence does not indicate whether Respondent even attended that protest or whether he was responsible for making the flyer for that protest.

As to the March 2021 statements in the podcast (“You should be terrified for the rest of your life”/“You should never be able to leave your house if that is how you’re going to use your position to govern”), they were expressly targeted at Senator Sinema, with the addition that the same thing “sort of” applies to Mayor Steinberg and City Manager Chan. While such statements are also not condonable, from a legal perspective the Supreme Court “explicitly distinguished between political hyperbole, which is protected, and true threats, which are not.” (*Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists* (2002) 290 F.3d 1058, 1072.) More evidence can be provided about these statements at the upcoming hearing to address the context and the First Amendment implications.

Mayor Steinberg testified he met with Respondent last week and that Respondent stated to him that he “opposes physical violence against any person.” Moreover, no evidence was presented that Respondent has ever physically harmed any person, including the other persons mentioned in his statements such as Senator Sinema and Mayor Steinberg. Indeed, Mayor Steinberg testified he met with Respondent in

person (apparently without incident) although Mayor Steinberg was also named in the March 2021 podcast along with Chan.

In summary, the evidence presented does not meet the applicable legal standard and there are obvious First Amendment concerns. Moreover, some of the evidence provided by the City actually undercut its own position that a temporary restraining order is warranted. Thus, the Court DENIES the petition for a temporary restraining order. However, the parties will have the opportunity to fully present their evidence at the scheduled hearing, and the Court will weigh the evidence in conjunction with the above legal principles, before reaching a final decision on a permanent restraining order.

[The Court makes the following disclosure: Judge Acero is acquainted with City Manager Chan and worked with him on a community task force designed to increase diversity in hiring in the City of Sacramento. This occurred in approximately 2018- 2019.]