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1 constitutionality of the above-

2 Specifically, plain

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5 Fourtee

6 move to dismiss the FAC in its entirety, pursuant to Rule 12(b)(6) of the Federal Rules of

7 Civil Procedure.

8

LEGAL STANDARD

9

10 based on the lack of a cognizable legal theory or the absence of sufficient facts alleged

11 See _____, 901 F.2d 696,

12

13 See Bell Atlantic Corp. v.

14 Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). Cons

15 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual

16 See id

17 entitlement to relief requires more than labels and conclusions, and a formulaic recitation

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See id

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described policies.

a. High-Profile Speaker Policy

Plaintiffs contend the HPSP impermissibly restricts protected speech by affording

on the Horowitz and Coulter events.⁶

In support thereof, plaintiffs un-
policy (see FAC ¶ 2), required all events in -
(see id. ¶ 56), and, further, enabled
discretion see id. ¶ 69).

Additionally, plaintiffs allege, either the University nor [d]efendants . . . set forth the
exact nature and scope of the [HPSP], despite requests from [p]laintiffs, d[ed]
any criteria making clear who [was] -
HPSP] [had] been applied[,] . . . or what, if anything, render[ed] a particular venue . . .

See id. ¶ 56.)

At the hearing, defendants, citing dicta in Ward v. Rock Against Racism, 491 U.S.
781 (1989), argued, for the first time, that an challenge is improper
where, as here, the challenged policy does not afford discretion to deny expressive
activity, but only to impose time, place, and manner restriction on such activity. See id. at
793- claim based on discretion to regulate, but
not to ses permitting
facial challenges . . . have generally involved licensing schemes that ves[t] unbridled
discretion . . . to permit or deny expressive activity) (internal quotation and citation

⁶ To the extent plaintiffs continue to asse-lai 8 Tm0 g[()] TJETf1p
oper

1 omitted) (second alteration in original).

2 The Ninth Circuit, however, has permitted facial challenges based solely on time,
3 place, and manner restrictions,

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1 the three challenged criteria are sufficiently
2 definite.¹⁰ Although the Court questioned the constitutionality of the remaining criterion,
3 defined campus officials
4 determine that the complexity of the event requires the involvement of more than one
5 see FAC Ex. L at 2) ,
6 nonetheless is unavailing for two
7 reasons. First, as discussed in Section E, defendants are entitled to qualified immunity
8 as to any claim for damages resulting from implementation of said criterion.
9 Second, p and injunctive relief thereon are moot, as, on
10 January 9, 2018, the University issued a final version of the MEP ,¹¹ in
11 which the Complexity Provision has been revised. See Outdoor Media, 506 F.3d at 901,
12 907 (atory and injunctive relief claims rendered moot by repeal of
13 ordinance); see also ASU Students For Life v. Crow x 156, 158 (9th Cir.
14 2009)
15).¹²

16 **(2) Overbreadth**

17 invalidated as overbroad[,] if a
18 substantial number of its applications are unconstitutional, judged in relation to the

19 _____
10 10

20 campus officials determine that the event is likely to significantly affect campus safety
21 and security (based on assessment from the University of California Police Department,
22 hereafter UCPD) or significantly affects campus services (including kiosk guards, service
23 (2)
24 substantial likelihood of inte
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Accordingly, to the extent
to the HPSP,

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See id.; Ashcroft v. al-Kidd, 563 U.S. 731, 743 (2011)

United States District Court
Northern District of California

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Accordingly, plaintiffs claim for punitive damages is subject to dismissal.

CONCLUSION

For the reasons set forth above, is hereby GRANTED in part and DENIED in part as follows:

First Claim for Relief, to the extent such claim is based on a facial challenge to the MEP, the motion is hereby GRANTED, and, to the extent such claim is based on a facial challenge to the HPSP, and asserts an as-applied challenge to the HPSP and MEP predicated on the alleged unreasonableness of the restrictions imposed, the motion is hereby DENIED.

2. Second Claim for Relief, the motion to dismiss is hereby GRANTED.

3. to the extent such claim is based on a challenge to the MEP, the motion is hereby GRANTED, and, to the extent such claim is based on a challenge to the HPSP, the motion is hereby DENIED.

4 Fourth Claim for Relief, to the extent such claim is based on the Fox and Echaveste events, the motion is hereby GRANTED, and, to the extent such claim is based on the Sotomayor event, the motion is hereby DENIED.

5. As to plaintiffs claim for punitive damages, the motion is hereby GRANTED.

IT IS SO ORDERED

Dated: April 25, 2018


MAXINE M. CHESNEY
United States District Judge