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1 constitutional rights. Accordingly, Cal Poly Pomona's policies and enforcement
2 practices are challenged on their face and as applied to the Plaintiff.
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4 **II. JURISDICTION AND VENUE**

5 4. This action arises under the United States Constitution, particularly the
6 First and Fourteenth Amendments, and the Civil Rights Act, 42 U.S.C. §§ 1983 and
7 1988.
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9 5. This Court has original jurisdiction
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1 20. When Defendant Foisy forced Plaintiff to stop handing out flyers, it
2 was the second time in two weeks that the university police had been called to
3 restrict his expressive activities.
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5 21. On January 21, 2015, Tomas stopped by a booth run by the university
6 parking services at an outdoor information fair to voice his opinion that campus
7 officers earned excessive salaries for a public institution. After initiating a
8 conversation with officers at the booth, Defendant Foisy and Officer Kenneth A.
9 Kerkhof arrived via squad car, approached Plaintiff, and asked whether Tomas was
10 familiar with the campus “free speech zone.” Kerkhof suggested it would be more
11 appropriate for Tomas to “go over there” where he could say anything he wanted as
12 long as it “wasn’t inciteful [sic].”
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15 22. On December 1, 2014, Plaintiff met with Defendants Byron Howlett
16 and La’Keisha Gilford-Beard to express his concerns about Cal Poly Pomona’s free
17 speech restrictions. Defendants Howlett and Gilford-Beard gave Tomas copies of
18 Cal Poly Pomona speech policies and insisted that Tomas was required to obtain
19 approval from the Office of Student Life before engaging in expressive activities on
20 campus. Specifically, Defendants Howlett and Gilford-Bear gave Tomas copies of:
21 (a) an “Interim University Grounds And Facilities Policy,” Ex. A; (b) an “Interim
22 Freedom of Expression Policy,” Ex. B; and (c) a document marked “Time, Place,
23 and Manner Restrictions,” Ex. C.
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1 23. Defendants Howlett and Gilford-Beard also maintained that Cal Poly
2 Pomona could withhold authorization for any activity involving free expression that
3 was not scheduled during weekly business hours, thus precluding Plaintiff's ability
4 to share his beliefs on campus outside of administrative working hours.
5

6 24. Cal Poly Pomona's policies create numerous roadblocks to free
7 expression and have forced Plaintiff to curtail his outreach activities.
8

9 **B. Cal Poly Pomona's Unconstitutional Speech Policies**

10 25. Expressive activities at Cal Poly Pomona are regulated by several
11 policies including (a) a 2008 Presidential Order on Use of University Buildings,
12 Facilities or Grounds ("2008 Presidential Order"), Ex. D; and (b) a 2014
13 Presidential Order on Use of University Buildings, Facilities or Grounds ("2014
14 Presidential Order"), Ex. E.
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16 26. Together, the policies establish an unconstitutional "free speech zone"
17 and impose unconstitutional prior restraints on expressive activities that limit free
18 expression at Cal Poly Pomona.
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20 27. The policies are contradictory, confusing, and do not provide adequate
21 notice to students regarding Cal Poly Pomona's policies on free expression. For
22 example, the Student Life webpage on the Cal Poly Pomona website provides links
23 to the Interim Freedom of Expression Policy (dated 2002) and the 2008 Presidential
24 Order policies, but not the 2014 Presidential Order.
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1 would not interfere with or disturb access to College buildings or sidewalks, impede
2 vehicular or pedestrian traffic, or in any way substantially disrupt the operations of
3 campus or the University's educational functions.
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5 34. Plaintiff wishes to engage in expressive activities, including handing
6 out flyers on campus without being limited to Cal Poly Pomona "free speech zone."
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8 35. Tomas has not engaged such activities outside of the free speech area
9 since being told by Defendant Foisy on February 4, 2015 that he needed a permit to
10 leaflet and could only do so in the "free speech zone," for fear that he will be
11 disciplined.
12

13 **2. Prior Restraint**

14 36. The 2008 Presidential Order and 2014 Presidential Order impose
15 further limitations on expressive activities by imposing several prior restraints on
16 anyone wishing to use University facilities, including the grounds, for
17 "solicitation."
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19 37. Plaintiff and similarly situated Cal Poly Pomona students must obtain
20 prior written authorization from Cal Poly Pomona officials in the Office of Student
21 Life before engaging in "solicitation" on campus. Once students are permitted to
22 engage in "solicitation," they are limited to expressing themselves within the free
23 speech zone, and they must display their authorization to speak at all times.
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25 38. The 2008 Presidential Order arbitrarily limits time for solicitation and
26 distribution of handbills to five days a quarter for each student and only between the
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1 46. Together, these policies have a chilling effect on Plaintiff’s rights and
2 those of all other students to engage freely and openly in expressive activities,
3 including distribution of literature about animal cruelty and other issues of public
4 concern.
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7 **VI. CAUSES OF ACTION**

8 **COUNT I**

9 **As-Applied Violation of Plaintiff’s Rights to Free Speech Under**
10 **The First and Fourteenth Amendments (42 U.S.C. § 1983) – Free Speech Zone**
11 **(Defendant Foisy)**

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1 experienced emotional injury as a consequence of being denied his First
2 Amendment rights.

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4 52. Plaintiff is entitled to a declaration that Defendants violated his First
5 Amendment rights. Additionally, Plaintiff is entitled to damages in an amount to be
6 determined by the evidence of this Court, and the reasonable costs of this lawsuit,
7 including reasonable attorneys' fees.
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10 **COUNT II**

11 **Facial Challenge to Violation of Right to Free Speech Under the Plaintiff's**
12 **First and Fourteenth Amendment Rights (42 U.S.C. § 1983) –**
13 **Free Speech Zone Policy**
14 **(Defendants Coley, Howlett, and Gilford-Beard)**

15 53. Plaintiff repeats and realleges each of the foregoing allegations in this
16 Complaint.

17 54. Through policy and practice Defendants have promulgated and
18 enforced a Free Speech Zone policy that prohibits free expression on all but a tiny
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1 56. Defendant Coley is responsible for Cal Poly Pomona's administration
2 and policy-making and has ultimate authority to approve the Free Speech Zone
3 Policy challenged herein.
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5 57. Defendants Howlett and Gilford-Beard oversee implementation and
6 enforcement of the Free Speech Zone Policy challenged herein. In their official
7 capacities, these Defendants informed the Plaintiff of the restrictions imposed by
8 the Free Speech Zone Policy.
9

10 58. As a legal consequence of the Defendants' violation of Plaintiff's and
11 other similarly situated students' First and Fourteenth Amendment rights, as alleged
12 above, all of which is irreparable injury *per se*, Plaintiff is entitled to declaratory
13 and injunctive relief, damages, and the reasonable costs of this lawsuit, including
14 reasonable attorneys' fees.
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17 **COUNT III**
18 **Facial Challenge to 2008 Presidential Order and 2014 Presidential Order**
19 **Violation of Right to Free Speech Under**
20 **the First and Fourteenth Amendments (42 U.S.C. § 1983) – Prior Restraint**
(Defendants Coley, Howlett, and Gilford-Beard)

21 59. Plaintiff repeats and realleges each of the foregoing allegations in this
22 Complaint.
23

24 60. Students have a First Amendment right to engage in expressive
25 activities and to distribute written materials in the public areas of a state college
26 without obtaining advance permission from government officials. *Widmar v.*
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1 *Vincent*, 454 U.S. 263, 267 n.5 (1981); *Papish v. Board of Curators of Univ. of Mo.*,
2 410 U.S. 667 (1973).

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4 61. Cal Poly Pomona policies that require all students to obtain permission
5 before engaging in expressive activities, including distributing handbills, are an
6 unconstitutional prior restraint. Cal Poly Pomona policies that require all student
7 groups to request permission ten days in advance to engage in expressive activity
8 outdoors, are an unconstitutional prior restraint. Defendants' 2008 President Order
9 and 2014 Presidential Order unconstitutionally subject the exercise of First
10 Amendment freedoms to the prior restraint of a license, without narrow, objective,
11 and definite standards to guide the licensing authority. *Shuttlesworth v. City of*
12 *Birmingham*, 394 U.S. 147, 150-51 (1969).

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16 62. Cal Poly Pomona's policies unconstitutionally prohibit students from
17 engaging in spontaneous expression due to the requirements to seek permission
18 before speaking, obtain approval of handbills and leaflets, wear a permit at all
19 times, and the limitations on speech to business hours.

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21 63. A permitting requirement is a prior restraint on speech and therefore
22 bears a heavy presumption against its constitutionality. *Berger v. City of Seattle*,
23 569 F.3d 1029, 1037 (9th Cir. 2009).

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25 64. Advance notice and permitting requirements are presumptively invalid
26 because of the significant burden they place on free speech. The Supreme Court
27 has labeled prior restraint on speech as "the essence of censorship." *Near v.*
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1 judicial declaration is necessary and appropriate at this time as to Counts I through
2 IV above.

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4 70. Plaintiff desires a judicial determination of his rights against
5 Defendants as they pertain to Plaintiff's right to speak without being subjected to
6 content-based requirements, a Free Speech Zone policy, and other policies that
7 impose prior restraints on speech, give school officials unlimited discretion whether
8 to allow expression and under what conditions, and that are vague, overbroad, and
9 that are not narrowly tailored to serve a substantial governmental interest.
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12 71. To prevent further violation of Plaintiff's constitutional rights by
13 Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant
14 to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring the Cal Poly Pomona's
15 policies unconstitutional.
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17 72. Pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, this Court issue a
18 permanent injunction prohibiting the Defendants from enforcing their restrictions
19 on Plaintiff's expressive activities to the extent they are unconstitutional, to prevent
20 the ongoing violation of Plaintiff's constitutional rights.
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VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that the Court enter judgment against Defendants and provide Plaintiff the following relief:

A. A declaratory judgment stating that Defendants’ speech codes as specified in this Complaint facially and as-applied to Plaintiff are unconstitutional and that they violate the Plaintiff’s rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

B. A permanent injunction restraining enforcement of Defendants’ unconstitutional speech codes and enforcement practices;

C. A declaratory judgment that Defendants’ censorship of Plaintiff’s expressive activities violated his First and Fourteenth Amendment rights’

D. Monetary damages in an amount to be determined by the Court to compensate Plaintiff for the impact of a deprivation of fundamental rights;

E. Plaintiff’s reasonable costs and expenses of this action, including attorneys’ fees, in accordance with 42 U.S.C. § 1988, and other applicable law; and

F. All other further relief to which Plaintiff may be entitled.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues properly triable by jury in this action.

Dated: March 31, 2015

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Respectfully submitted,

/s/ Rochelle L. Wilcox

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