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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 FAIR EDUCATION SANTA
14 BARBARA, Inc., a 501(c)(3)
organization

15 Plaintiff,

16 v.

17 SANTA BARBARA UNIFIED
18 SCHOOL DISTRICT, a public school
district; and JUST COMMUNITIES
19 CENTRAL COAST, INC., a
501(c)(3) organization

20 Defendants.
21
22

CASE NO. 2:18-cv-10253-SVW-PLA

**DEFENDANT JUST
COMMUNITIES CENTRAL
COAST, INC.'S MOTION TO
DISMISS COUNTS I-IV, AND VI
OF PLAINTIFF'S COMPLAINT**

The Honorable Stephen V. Wilson

Date: February 25, 2019

Time: 1:30 pm

Courtroom: 10A

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on February 25, 2019 at 1:30 p.m., in Courtroom 10A, 10th Floor, United States District Court for the Central District of California, First Street Courthouse, 350 West 1st Street, Los Angeles, California, 90012, Defendant Just Communities Central Coast, Inc. (“JCCC”) will and hereby does move for an order dismissing Counts I-IV and VI in Plaintiff Fair Education Santa Barbara, Inc. (“FESB”)’s Complaint.

In particular, JCCC moves to dismiss FESB’s claims under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (Count I), the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, via 41 U.S.C. § 1983 (Count II), and Cal. Gov. Code § 11135 (Count III) for failing to plead sufficient facts demonstrating standing; Cal. Educ. Code § 220 (Count IV) for failure to state a claim under that section’s heightened pleading standard; and Cal. Pub. Con. Code § 20111 (Count VI) for lack of subject matter jurisdiction.

This motion is supported by the following Memorandum of Points and Authorities filed concurrently herewith, all pleadings and papers on file or to be filed in the above-entitled action, argument of counsel, and any other matters that may properly come before the Court for its consideration.

Pursuant to L.R. 7-3, counsel for JCCC reached out to FESB’s counsel to facilitate a conversation concerning JCCC’s Motion. Counsel for all parties spoke by telephone on January 7, 2019, but were not able to reach a resolution that obviated this motion. The parties agreed to a hearing date of February 25, 2019 to allow FESB additional time to consider JCCC’s arguments in this motion and ensure all counsel could participate in the hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff FESB’s wide-ranging Complaint suffers multiple fundamental pleading defects that warrant dismissal of each of the five¹ claims against JCCC. FESB’s sprawling allegations run the gamut from federal discrimination claims to an alleged violation of California public-contract bidding requirements; on that last claim, FESB also filed a Motion for Preliminary Injunction. But each of FESB’s claims is insufficient, as a matter of law, and must be dismissed. In particular, FESB does not have individual or organizational standing to bring the federal and state-analogue discrimination claims, and the California Education Code § 220 claim does not meet the pleading standard. Moreover, as also discussed in JCCC’s Opposition to FESB’s Motion for Preliminary Injunction, this Court does not have jurisdiction over FESB’s state law claim related to the formation of the contract between JCCC and the Santa Barbara Unified School District (“SBUSD”). For these reasons, and as discussed more fully herein, FESB’s claims against JCCC should be dismissed.

II. STATEMENT OF RELEVANT FACTS

JCCC is an organization that prioritizes the development of culturally proficient and equitable school communities, seeking to “bring together community members and empower them to be leaders who promote equity around issues of race, socioeconomic class, sexual orientation, [and] gender.” Dkt. No. 1-1 (2018 Proposed Contract between JCCC and SBUSD) at 2; Dkt. No. 1 (Complaint) at 5. JCCC offers a number of services to school communities, such as SBUSD, including training and educational programs that foster diversity, inclusion, and equity, as well as school-specific coaching and consultation. Dkt. No. 1 at 5. JCCC “work[s] to ensure that Central Coast schools, organizations and communities are places of opportunity, not places of limitations.” *Id.* JCCC’s trainings

¹ FESB asserts Count V (alleged violation of California Education Code § 60044) only against SBUSD.

1 “seek to improve outcomes especially for cultural groups whose needs are currently not
2 being met,” but they also “anticipate outcomes improving for all groups” as a result. Dkt.
3 No. 1-1 at 10.

4 Based in Santa Barbara, JCCC provides trainings and services to the tri-county area
5 of Ventura, Santa Barbara, and San Luis Obispo. Dkt. No. 1-2 at 59, 65, 68. JCCC employs
6 facilitators who live and work locally and were educated at local institutions. Dkt. No. 1-2
7 (JCCC slides) at 152–155. Many JCCC facilitators hold bachelor’s and advanced degrees.
8 *Id.*

9 JCCC’s programs are focused on “closing the educational achievement gap.” Dkt.
10 No. 1-1 (2018 Proposed Contract between JCCC and SBUSD) at 1. For example, JCCC’s
11 “Institute for Equity in Education” (“IEE”) program does this by building trusting
12 relationships between participants of different backgrounds, teaching educators to rely on
13 culturally-relevant examples and experiences. *Id.* at 1, App’x. A; *see also* Dkt. No. 1-2
14 (JCCC slides) at 1, 7–8, 15, 59, 87–93, 98-100, 156. Other workshops help educate parents
15 on equity concepts, or teach students about institutional racism and educational inequality
16 in the context of the history of the United States educational system. Dkt. No. 1-1 at
17 App’x. A, Dkt. No. 1-2 at 98-100.

18 Plaintiff FESB alleges that it is an organization formed to advocate for fair education
19 policies in the Santa Barbara Unified School District and in Santa Barbara County. Dkt.
20 No. 1 ¶ 11-12. FESB further alleges that it is a coalition of “concerned parents of students
21 in the Santa Barbara Unified School District,” who are residents and tax payers within
22 Santa Barbara County and who are parents of current minor students in the SBUSD system
23 that identify as Caucasian, Christian and/or male. *Id.*

24 **III. ARGUMENT**

25 **A. Legal Standards**

26 A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the
27 claims stated in the complaint. Fed. R. Civ. Proc. 12(b)(6). To survive a motion to dismiss,
28

1 a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to
 2 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
 3 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility
 4 when the plaintiff pleads factual content that allows the court to draw the reasonable
 5 inference that the defendant is liable for the misconduct alleged.” *Id.* A complaint that
 6 offers mere “labels and conclusions” or “a formulaic recitation of the elements of a cause
 7 of action will not do.” *Id.* (quoting *Twombly*, 550 U.S. at 555) (internal quotation marks
 8 omitted). “Allegations in the complaint, together with reasonable inferences therefrom,
 9 are assumed to be true for purposes of the motion.” *Odom v. Microsoft Corp.*, 486 F.3d
 10 541, 545 (9th Cir. 2007). Dismissal is proper where there is a “‘lack of a cognizable legal
 11 theory’” or “‘the absence of sufficient facts alleged under a cognizable legal theory.’”
 12 *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (quoting *Balistreri v.*
 13 *Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990)).

14 **B. Counts I-III: FESB Lacks Standing To Bring Its Title VI, 42**
 15 **U.S.C. § 1983, And Cal. Gov. Code § 11135 Alleged**
 16 **Discrimination Claims**

17 The Supreme Court has recognized that “it is not enough that the party invoking the
 18 power of the court have a keen interest in the issue.” *Hollingsworth v. Perry*, 570 U.S.
 19 693, 700, 133 S. Ct. 2652, 2659, 186 L. Ed. 2d 768 (2013). Rather, “[o]ne of the essential
 20 elements of a legal case or controversy is that the plaintiff have standing to sue.” *Trump*
 21 *v. Hawaii*, 138 S. Ct. 2392, 2416 (2018). The Standing Doctrine ensures that litigants have
 22 “a personal stake in the outcome of the controversy as to . . . justify the exercise of the
 23 court’s remedial powers on their behalf.” *Town of Chester v. Laroe Estates, Inc.*, — U.S.
 24 —, 137 S. Ct. 1645, 1650, 198 L.Ed.2d 64 (2017) (citations and internal alterations
 25 omitted). The “irreducible constitutional minimum” of standing requires that a plaintiff
 26 allege that he has “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged
 27 conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial
 28 decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016), as

1 revised (May 24, 2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61,
2 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

3 **1. None of FESB’s Alleged Members Have Standing To Bring**
4 **These Claims**

5 The Supreme Court has explained that “the plaintiff must have suffered an ‘injury
6 in fact’—an invasion of a legally protected interest which is (a) concrete and
7 particularized.” *Lujan*, 504 U.S. at 560. But FESB has not pled any direct injury to its
8 members. Instead, FESB’s Complaint asserts two potential “injuries:”² (1) a hostile
9 educational environment created by JCCC’s allegedly discriminatory materials, and (2) a
10 financial cost to taxpayers derived from paying for JCCC’s trainings. Because neither
11 satisfies the Constitutional minimums for standing, FESB’s Title VI, § 1983, and Cal. Gov.
12 Code § 11135 claims must be dismissed. *See* Dkt. No. 1 ¶ 4, 7.

13 FESB claims to be a “coalition of concerned parents of students in the Santa Barbara
14 Unified School District, all of whom are residents and tax payers within Santa Barbara
15 County.” *Id.* at ¶¶ 11–12, 20. There is no question that Federal taxpayer standing is
16 prohibited except in extremely limited circumstances for challenges to congressional
17 spending in violation of the Establishment clause. *DaimlerChrysler Corp. v. Cuno*, 547
18 U.S. 332, 333–34, 126 S. Ct. 1854, 1856, 164 L. Ed. 2d 589 (2006) (“Although *Flast* held
19 out the possibility that ‘specific [constitutional] limitations’ other than the Establishment
20 Clause might support federal taxpayer standing, only the Establishment Clause has been
21 held to do so since[.]” (citations omitted)). Instead, when alleging claims based on
22 “stigmatizing injuries” caused by discrimination, standing is proper for “those persons who
23 are *personally denied equal treatment*’ by the challenged discriminatory conduct[.]” *Allen*

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25
26 ² FESB further alleges in its Motion for Preliminary Injunction that as “SBUSD
27 taxpayers,” it has standing to bring California state law claim concerning competitive
28 bids. Dkt. No. 8 at 25–27. Without admitting that the facts support such an allegation
as to the state law contract bidding claim, JCCC focuses here on the separate issue of
Plaintiff’s lack of standing to bring the federal and state discrimination claims.

1 *v. Wright*, 468 U.S. 737, 755 (1984)³, *abrogated on other grounds by Lexmark Int'l, Inc. v.*
2 *Static Control Components, Inc.*, 572 U.S. 118 (2014).

3 But FESB has made no such allegation. FESB claims to be comprised of parents of
4 students in SBUSD schools that “identify as Caucasian, Christian and/or male.” Dkt. No. 1
5 ¶ 20. FESB, however, does not identify who its members are, whether its members have
6 attended or been subjected to any of JCCC’s allegedly discriminatory materials, or whether
7 any of its members have been discriminated against at all. *Cf. Allen*, 468 U.S. at 755 (“Yet
8 standing was denied in each case because the plaintiffs were not personally subject to the
9 challenged discrimination.”); *see also Nat’l Ass’n for Advancement of Colored People v.*
10 *Horne*, 626 F. App’x 200, 201 (9th Cir. 2015) (“Plaintiffs have not alleged that their
11 members were *personally denied equal treatment* under *Allen*, as stigmatic injury caused
12 by being a target of official discrimination is not itself a personal denial of equal
13 treatment.”); *Jones v. Beverly Hills Unified Sch. Dist.*, No. WDCV087201JFWPJW, 2010
14 WL 11549365, at *3 (C.D. Cal. Feb. 23, 2010) (finding no standing where parent’s
15 “retaliation claim is based on retaliation directed at her daughter, *not her*”); *Crawford v.*
16 *Kern Cty. Cty. Sch. Dist. Bd. of Trustees*, No. 1:10CV-0425-OWW-JLT, 2010 WL
17 1980246, at *3 (E.D. Cal. May 12, 2010), *report and recommendation adopted sub nom.*
18 *Crawford v. Kern Cty. Sch. Dist. Bd. of Trustees*, No. 1:10CV-0425-OWW-JLT, 2010 WL
19 2555637 (E.D. Cal. June 21, 2010) (“Although they allege that ‘parents’ are prevented
20 from having unfettered access to school meetings and to the classroom, *they do not allege*
21 *that they have been so prevented.*”).

22 And FESB’s claims of a “hostile educational environment” are similarly unavailing.
23 FESB claims that JCCC’s teachings have led to “[a]nti-white graffiti [that] has appeared
24 within SBUSD schools,” “[a]nti-white racial epithets [that] have been hurled at SBUSD
25 teachers and students,” and “[a]nti-white slogans [that] have recently defaced the Mission
26 Santa Barbara.” Dkt. No. 1 ¶ 27. Even taken as true, FESB never alleges (and appears to

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28 ³ Emphasis added throughout except as otherwise noted.

1 have no basis to allege) that any of these alleged actions were directed at FESB or its
 2 members, as would be required to demonstrate a “concrete and particularized” injury
 3 requisite for standing. *See Lujan*, 504 U.S. at 560. Without this “Constitutional
 4 minimum,” FESB cannot demonstrate it has standing to pursue its claims in federal court.
 5 This Court should dismiss its Title VI, Cal. Gov. Code § 11135, and § 1983 claims for this
 6 reason alone.⁴

7 Additionally, in order to show injury under Title VI, the Ninth Circuit requires a
 8 showing of not only a (1) “a racially hostile environment,” but also (2) that the “district
 9 had notice of the problem” and (3) that it “failed to respond adequately to redress the
 10 racially hostile environment.” *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022,
 11 1033 (1998) (quoting 59 Fed.Reg. at 11449). These same requirements apply to claims
 12 made under Cal. Gov. Code § 11135. *Darensburg v. Metro. Transp. Comm'n*, 636 F.3d
 13 511, 519 (9th Cir. 2011) (“Title VI is identical in prohibiting discrimination [to Cal. Gov.
 14 Code § 11135], but applies to programs sponsored with federal funds. 42 U.S.C. § 2000d.
 15 In light of the parallel language of state and federal law, federal law provides important
 16 guidance. . . .”). FESB’s Complaint is additionally devoid of any alleged facts suggesting
 17 either of the Defendants had the requisite notice (either actual or constructive), or that they
 18 failed to adequately redress the allegedly hostile environment after being put on notice.
 19 Accordingly, this Court should dismiss FESB’s Title VI and Cal. Gov. Code § 11135
 20 claims for these additional reasons.

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 23 ⁴ Moreover, in order to demonstrate standing in Federal Courts, FESB must also
 24 demonstrate causation such that its alleged injury is “fairly ... trace[able] to the
 25 challenged action of the defendant.” *Lujan*, 504 U.S. at 560. Plaintiff can make no
 26 such showing, in part, because they refuse to identify their individual members. *Allen*,
 27 468 U.S. at 758–59 (criticizing claims alleging discriminatory outcomes involving
 28 third-party “parents of children attending such schools[] who may not even exist in the
 respondents’ communities). While FESB has alleged a “hostile educational
 environment,” it has not shown that these events—including anti-white racial slurs
 and graffiti, some of which has not even occurred in Santa Barbara schools—have
 anything to do with JCCC’s educational materials taught in SBUSD school since
 2005. Dkt. No. 1 ¶ 27.

1 **2. FESB Also Does Not Sufficiently Plead That It Has**
 2 **Organizational Standing To Bring These Claims**

3 FESB has similarly failed to sufficiently plead organizational standing for its § 1983
 4 claim. “An organization may have standing to bring suit on behalf of its members if (1) its
 5 members would otherwise have standing to sue in their own right, (2) the interests it seeks
 6 to protect are germane to the organization's purpose, and (3) the participation of individual
 7 members in the lawsuit is not required.” *Jankey v. Beach Hut*, No. CV 05-3856 SVW
 8 JTLX, 2005 WL 5517235, at *6 (C.D. Cal. Dec. 8, 2005) (quoting *Hunt v. Washington*
 9 *Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

10 As discussed above, FESB cannot demonstrate that any of its members have
 11 standing to sue in their own right. *Supra* Section B.1; *see also Black Faculty Ass'n of Mesa*
 12 *Coll. v. San Diego Cmty. Coll. Dist.*, 664 F.2d 1153, 1157 (9th Cir. 1981) (“Because neither
 13 [Plaintiffs] suffered or were threatened by any injury which could have given them standing
 14 in their own right, BFA cannot have associational standing to sue on their behalf.”).
 15 Accordingly, FESB fails at least the first requirement necessary to demonstrate it would
 16 have organizational standing for the Title VI, § 1983, or Cal. Gov. Code § 11135 claims,
 17 and those claims should be dismissed.

18 **C. Count IV: FESB Does Not Sufficiently Plead A Discrimination**
 19 **Claim Under California Education Code § 220**

20 California Education Code § 220 prohibits “discrimination on the basis of disability,
 21 gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual
 22 orientation” by educational institutions that receive or benefit from state financial
 23 assistance. Cal. Educ. Code § 220. Claims made pursuant to this section are governed by
 24 the same elements as a federal cause of action under Title IX. *See Donovan v. Poway*
 25 *Unified Sch. Dist.*, 167 Cal.App.4th 567, 603, 84 Cal.Rptr.3d 285 (2008). To sufficiently
 26 plead such a claim, a plaintiff must allege: “(1) he or she suffered *severe, pervasive and*
 27 *offensive harassment*, that *effectively deprived* plaintiff of the right of equal access to
 28 educational benefits and opportunities; (2) the school district had actual knowledge of that

1 harassment; and (3) the school district acted with *deliberate indifference* in the face of
2 such knowledge.” *Donovan*, 167 Cal.App.4th at 579 (internal quotations omitted); *Davis*
3 *Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 652 (1999) (“[T]he
4 behavior be serious enough to have the systemic effect of denying the victim equal access
5 to an educational program or activity.”). Because FESB has neither pled that its students
6 suffered such “severe, pervasive and offensive harassment” nor that SBUSD acted with
7 “deliberate indifference” to that harassment, its claims fail as a matter of law and should
8 be dismissed.

9 FESB’s sole allegation supporting this alleged discrimination is that “SBUSD and
10 JCCC *intentionally discriminated against certain of Plaintiff’s members and/or their minor*
11 *children students* on the basis of their race, ethnicity, religion and/or gender by
12 intentionally supporting, promoting and implementing JCCC’s programming in SBUSD’s
13 schools with knowledge of its discriminatory content and application, *which has created a*
14 *hostile educational environment for teachers and students who are Caucasian, Christian*
15 *and/or Male.*” Dkt. No. 1 ¶ 54. Elsewhere, FESB claims that “[t]he negative effects of
16 JCCC’s programming are . . . creating a hostile educational environment for teachers and
17 students that fall within a so-called ‘Privileged Group,’” which, it alleges, is evidenced by
18 “[a]nti-white graffiti [that] has appeared within SBUSD schools,” “[a]nti-white racial
19 epithets have been hurled at SBUSD teachers and students,” and “[a]nti-white slogans
20 [that] have recently defaced the Mission Santa Barbara.” *Id.* ¶ 27. These allegations are
21 insufficient.

22 First, FESB’s vague and conclusory allegations of a “hostile educational
23 environment” or “intentional discrimination” do not rise to the requisite standard for § 220.
24 A complaint that offers mere “‘labels and conclusions’ or ‘a formulaic recitation of the
25 elements of a cause of action will not do.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550
26 U.S. at 555). Rather, FESB must plead *specific facts* that demonstrate the “severe,
27 pervasive and offensive harassment” or “deliberate indifference” necessary to make a claim

1 under California Education Code § 220, including that the school ignored complaints about
2 such harassment or that the measures they took to address such complaints were
3 inadequate. *See Donovan*, 167 Cal.App.4th at 317-18 (“[D]eliberate indifference is a ‘very
4 high standard’” and “ensures that the disciplinary actions of school officials will not be
5 second-guessed by the courts.”).

6 Second, none of the remaining atmospheric facts alleged by FESB constitute a
7 “hostile educational environment” demonstrating that FESB or any minor-children of its
8 members have suffered “severe, pervasive and offensive harassment, that effectively
9 deprived plaintiff of the right of equal access to educational benefits and opportunities,” as
10 is required for this claim. *Donovan*, 167 Cal.App.4th at 579. Undoubtedly, racial
11 harassment can create a hostile environment if it is “*sufficiently severe* that it would
12 interfere with the educational program of a reasonable person of the same age and race as
13 the victim.” *See Monteiro*, 158 F.3d at 1033 (allowing Title VI claim to proceed where
14 Plaintiff alleged her ninth-grade daughter (and others) were routinely called “niggers,” the
15 term was graffitied on the civics and social-studies buildings, and the school ignored
16 numerous complaints).

17 But here, FESB’s statement that “Anti-white graffiti has appeared within SBUSD
18 schools” or that “Anti-white racial epithets” have been used does not provide enough facts
19 necessary to demonstrate the harassment is “sufficiently severe” to deprive a reasonable
20 person of their education, nor does it demonstrate SBUSD administrators knowingly
21 allowed such harassment to continue. FESB does not allege: what this “anti-white graffiti”
22 is, how often it has “appeared,” which school(s) or building(s) were graffitied, whether
23 students saw the graffiti, or any facts that would allow the Court to draw inferences as to
24 these events. Dkt. No. 1 ¶ 27. FESB’s allegations of “anti-white racial epithets” lack those
25 same details. *Id.* FESB does not even allege the ages of any potentially-affected minor
26 children, which was a key factor considered by the Ninth Circuit when accepting a similar
27 claim under Title VI. *Monteiro*, 158 F.3d at 1033-34 (“This is especially so when we also

1 consider . . . the victim's age.”); *see also Walsh v. Tehachapi Unified Sch. Dist.*, 827 F.
 2 Supp. 2d 1107, 1115 (E.D. Cal. 2011) (dismissing Plaintiff’s Title IX complaint for failure
 3 to “allege any facts surrounding the circumstances in which the harassing comments were
 4 allegedly made,” leaving court unable to determine whether harassment “was sufficiently
 5 hostile and severe”); *Davis*, 526 U.S. at 651 (emphasizing harassment must be severe and
 6 persistent because “schools are unlike the adult workplace” and “at least early on, students
 7 are still learning how to interact appropriately with their peers.”). FESB’s conclusory
 8 statements are insufficient to demonstrate the “severe, pervasive and offensive harassment”
 9 required here.

10 Further, FESB has not pled sufficient facts to enable an inference that the anti-white
 11 slogans at the “recently” defaced Mission Santa Barbara are a result of (or even related to)
 12 the allegedly-discriminatory course materials taught in SBUSD schools since 2005.
 13 Indeed, FESB has provided almost no factual details of this event, merely claiming that the
 14 defacement included “anti-white slogans.” Dkt. No. 1 ¶ 27; *see Sprewell v. Golden State*
 15 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (“Nor is the court required to accept as true
 16 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
 17 inferences.”).

18 At bottom, FESB has not fulfilled the pleading requirements necessary to make a
 19 claim under California Education Code § 220, and this claim should be dismissed.

20 **D. Count VI: This Court Has No Subject Matter Jurisdiction Over**
 21 **Plaintiff’s Cal. Contract Code Section 20111 Claim**

22 FESB cannot—and does not even try to—demonstrate that this court has subject
 23 matter jurisdiction over its claim pursuant to California Public Contract Code § 20111.
 24 Dkt. No. 8 (Plaintiff’s Notice of Motion) at 1. FESB alleges that the district court has
 25 jurisdiction over its case pursuant to 28 U.S.C. §§ 1331 and 1343. Dkt. No. 1 (Complaint)
 26 ¶ 9. But those statutes describe *federal question* subject matter jurisdiction; neither
 27 provides jurisdiction for this court to adjudicate a *state-law claim*. *See* 28 U.S.C. § 1331
 28 (“arising under the Constitution, laws, or treaties *of the United States*”); 28 U.S.C. § 1343

1 (providing jurisdiction over *federal* civil rights claims). As such, this Court should dismiss
 2 FESB’s Claim under California Public Contract Code § 20111 for this failure to plead
 3 jurisdiction alone. Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it
 4 lacks subject-matter jurisdiction, the court must dismiss the action.”).

5 Moreover, this Court does not have the authority to assert supplemental jurisdiction
 6 over this claim. District courts may exercise supplemental jurisdiction only over “all other
 7 claims that are so related to [federal] claims in the action . . . that they form part of the same
 8 case or controversy” under Article III of the Constitution.⁵ 28 U.S.C. § 1367. A state law
 9 claim “is part of the same case or controversy when it shares a ‘common nucleus of
 10 operative fact’ with the federal claims and the state and federal claims would normally be
 11 tried together.” *White v. Deloitte & Touche*, 553 F. App’x 754, 755 (9th Cir. 2014) (quoting
 12 *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004)).

13 Here, FESB’s federal law claims—*see* Dkt. No. 1 (Complaint) at Counts I and II—
 14 are based on the allegedly discriminatory *content* of JCCC’s educational programming.⁶
 15 By contrast, Count VI challenges the bidding and contracting process conducted by
 16 SBUSD. The elements of a claim alleging a violation of California Public Contract Code
 17 § 20111 include: 1) contract with school district; 2) contract for more than \$50,000; and 3)
 18 whether the contract was required to be put out to bid. Dkt. No. 1 ¶¶ 64–72. None of
 19 those elements share a “common nucleus of operative fact” with the alleged discriminatory
 20 content of JCCC’s programs that form the basis of Plaintiff’s Counts I and II. At best, the
 21 contract may be “logically related” or “provide[] background” to the federal claims, but
 22 that is not enough to establish supplemental jurisdiction. *See Tranik Enters. Inc. v.*

23 _____
 24 ⁵ Subject matter jurisdiction also exists when the citizenship of the parties is sufficiently
 25 diverse, *see* 28 U.S.C. § 1332, but because all relevant parties in this case are
 26 California residents, there is no basis for diversity jurisdiction. *See* Dkt. No. 1 ¶ 12.

27 ⁶ JCCC does not argue here that FESB’s state law discrimination claims—Count III, for
 28 alleged violation of California Government Code § 11135, and Count IV, for violation
 of California Education Code Section § 220—fail this common nucleus of operative
 fact test.

1 *AuthenticWatches.com, Inc.*, No. 2:16-cv-02931-SVW-JC, 2016 WL 11002491 at *3 (C.D.
2 Cal. Oct. 28, 2016) (quoting *Burgess v. Omar*, 345 F. Supp. 2d 369, 372 (S.D.N.Y. 2004))
3 (“the Court finds that the counterclaims do not arise out of the same transaction or
4 occurrence as the Plaintiff’s original claims, the Defendants are free to bring their claims
5 against the Plaintiff in a separate action in state court.”). Even if the Court finds that there
6 is a common nucleus of operative facts, because FESB does not have standing on the
7 federal discrimination claims, the court may not retain supplemental jurisdiction on the
8 state law claims. *See Scott v. Pasadena Unified School Dist.* 306 F.3d 646, 664 (9th Cir.
9 2002) (citing *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 806 (9th
10 Cir.2001) (“If the district court dismisses all federal claims on the merits, it has discretion
11 under § 1367(c) to adjudicate the remaining claims; if the court dismisses for lack of subject
12 matter jurisdiction, it has no discretion and must dismiss all claims.”)). Supplemental
13 jurisdiction is unavailable, and without it, no subject matter jurisdiction exists for this court
14 to entertain Count IV of FESB’s Complaint.

15 **IV. CONCLUSION**

16 For the above reasons, JCCC respectfully request that this Court dismiss FESB’s
17 claims under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*; the Equal
18 Protection Clause of the Fourteenth Amendment of the United States Constitution, via 41
19 U.S.C. § 1983; Cal. Gov. Code § 11135 for failing to plead sufficient facts demonstrating
20 standing; Cal. Educ. Code § 220 for failure to state a claim under that sections heightened
21 pleading standard; and Cal. Pub. Con. Code § 20111 for lack of supplemental jurisdiction.
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