

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUVIM SONNIK,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY, et
al.,

Defendants.

No. 2:18-cv-0366-TLN-GGH PS

ORDER

Plaintiff, a person who was involved in a traffic accident, has filed a complaint against Allstate, and literally hundreds of individuals, asserting a violation of California state insurance law, and an alleged claim of discrimination in the offering of insurance benefits.

The court is unable to determine a jurisdictional basis for this action. A federal court is a court of limited jurisdiction, and may adjudicate only those cases authorized by the Constitution and by Congress. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). The United States Constitution dictates this result insofar as Article III, section 1 provides that the judicial power of the United States is vested in the Supreme Court, “and in such inferior Courts as the Congress may from time to time ordain and establish.” Congress therefore confers jurisdiction upon federal district courts, as limited by Article III, section 1. See Ankenbrandt v. Richards, 504 U.S. 689, 697–99 (1992). Lack of subject matter jurisdiction may be raised at any

1 time by either party or by the court. See Attorneys Trust v. Videotape Computer Products, Inc.,
2 93 F.3d 593, 594–595 (9th Cir.1996). The burden to establish jurisdiction rests upon the plaintiff
3 who seeks access to the federal court. Thompson v. McCombe, 99 F3d. 352, 353 (9th Cir. 1996).
4 Plaintiff has failed to meet this burden.

5 A. *Federal Question Jurisdiction*

6 The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer “federal
7 question” and “diversity” jurisdiction, respectively. Statutes which regulate specific subject
8 matter may also confer federal jurisdiction. See generally, W.W. Schwarzer, A.W. Tashima & J.
9 Wagstaffe, Federal Civil Procedure Before Trial § 2:5. Unless a complaint presents a plausible
10 assertion of a substantial federal right, a federal court does not have jurisdiction. See Bell v.
11 Hood, 327 U.S. 678, 682 (1945). A federal claim which is so insubstantial as to be patently
12 without merit cannot serve as the basis for federal jurisdiction. See Hagans v. Lavine, 415 U.S.
13 528, 537-538 (1974).

14 Simple reference to federal law does not create subject-matter jurisdiction. Avitts v.
15 Amoco Prod. Co., 53 F.3d 690, 694 (5th Cir.1995). Subject-matter jurisdiction is created only by
16 pleading a cause of action within the court's original jurisdiction. Id. Plaintiff here predicates his
17 basis for federal question jurisdiction on a reference 28 U.S.C.§ 1331 which confers original
18 jurisdiction in civil cases that “aris[e] under the Constitution, laws, or treaties of the United
19 States.” ECF No. 1 at ¶ 3. Plaintiff’s basic statutory claim is a violation of California’s Fair
20 Settlement Practices Act and adverts to no federal statute or federal Constitutional provision the
21 violation of which resulted in his claimed injury. Instead he refers to 28 U.S.C. sections 2201 and
22 2202 which establish the availability of the *remedy* of declaratory relief, but neither of those
23 sections confer jurisdiction. In other words, under these statutes if there is an independent basis
24 for federal jurisdiction, the court may award declaratory relief, but the fact that the remedy is
25 theoretically available does not *itself* create federal jurisdiction. County of Santa Clara v. Trump,
26 267 F. Supp. 2d 1201, 1216 (N.D.Cal. 2017). In other words, the declaratory relief sections do
27 *not* establish federal jurisdiction.

28 ////

1 Secondarily, plaintiff claims jurisdiction under 28 U.S.C. § 1343, asserting a violation of
2 42 U.S.C. § 1983, but a reading of that statute makes clear that it is a civil rights provision which
3 again requires allegations that a specific federal law or Constitutional provision has been violated
4 by a defendant acting *under color of state law*. American Mfrs. Mutual etc. v. Sullivan, 526 U.S.
5 40, 51 (2012). Simply doing business in a state which might be regulated by state law does not
6 mean that the person or entity is acting “under color of state law.” Id. at 51. The fact that a
7 private company is perceived to have violated the Constitutional right of equal protection does
8 not itself give rise to a federal claim under section 1983. There is, nor does it appear that there
9 can be, such an allegation brought against the defendants identified in this case since their
10 violation, if any, relates to doing business in a state which is simply regulated by the state law
11 referenced in plaintiff’s complaint. Whether a claim is stated under section 1981 is not before the
12 court.

13 *B. Diversity Jurisdiction*

14 28 U.S.C. grants the federal court jurisdiction between citizens of the state who are suing
15 citizens of another state so long as the damages alleged exceed \$75,000. The purpose of diversity
16 jurisdiction is to provide a “neutral” forum in cases where one or more of the parties is a citizen
17 of another state or country and to protect against local prejudice that may exist in state courts. J.
18 A. Olson Co. v. Wiona, Miss., 818 F.2d 401, 404 (5th Cir. 1987); Asher v. Pacific Power and
19 Light Co., 249 F.Supp. 671, 674 (N.D.Cal. 1965). Here plaintiff alleges that the first named
20 defendant, Allstate Insurance Company, is amenable to jurisdiction under this statute as it fits the
21 criteria of section 1332(c)(1), i.e., it is a corporation incorporated under the laws of State of New
22 York and has its principal place of business in a State other than the State of Connecticut.¹ The
23 court will assume the reference to Connecticut is a typographical error and plaintiff meant to say
24 its principal place of business is *not* California, thus establishing diversity between himself and
25 Allstate. If the court is correct, and Allstate were the *only* defendant named, plaintiff would be
26 close to establishing diversity jurisdiction. However, he must demonstrate *complete* diversity

27 ¹ To assure a jurisdictional basis plaintiff should allege where defendant’s principal place of
28 business is, rather than where it is not.

1 between himself and *each and every* of the defendants named. See 28 U.S.C. § 1332(a)(1).
2 Plaintiff does not even attempt to do so here.

3 *CONCLUSION*

4 In light of the foregoing it is clear that the plaintiff has not stated a viable basis for
5 jurisdiction in this court as the Complaint now stands. Plaintiff is further advised that if he names
6 individual defendants, each and every one of those defendants must have participated in some
7 way in the violation of rights complained of.

8 IT IS THEREFORE ORDERED that:

- 9 1. The complaint is dismissed with leave to amend in conformity with the findings of
10 this Court;
- 11 2. Within 30 days of the date of this Order the plaintiff will file an amended
12 complaint; failure to do so will result in a recommendation that the case be dismissed.

13 **IT IS SO ORDERED.**

14 Dated: February 26, 2018

15 /s/ Gregory G. Hollows
16 UNITED STATES MAGISTRATE JUDGE
17
18
19
20
21
22
23
24
25
26
27
28