

1 1983. In general plaintiff alleges that these statutes provide claims based upon the alleged
2 discrimination practiced against him by defendant Allstate Insurance Company and a plethora of
3 its employees, associated agents and attorneys based on his ethnicity. Section 1981 is a
4 permissible basis for such a finding against Allstate only, section 1983 and section 2000e are not.
5 Plaintiff has also set forth three state law causes of action (supplemental jurisdiction) which will
6 not be the subject of discussion herein on their merits. Finally, Plaintiff was previously advised
7 that suing anyone and everyone associated with Allstate was impermissible.

8 *A. 42 U.S.C. SECTION 2000 (6th Cause of Action)*

9 The entire gravamen of this many faceted statute, generally referred to as Title VII, is to
10 eradicate discrimination in employment. “Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§
11 2000e et seq., makes it an unlawful employment practice for an employer to “fail or refuse to hire
12 or to discharge any individual, or otherwise to discriminate against any individual with respect to
13 his compensation, terms, conditions, or privileges of employment, because of such individual’s
14 race, color, religion, sex, or national origin.” Anderson v. Benedict, 2012 WL 962863 *2
15 (E.D.Cal. 2012). *Id.*, § 2000e–2(a)(1)..

16 Plaintiff, however, is not claiming he was discriminated against either by his employer or
17 by a potential employer. Rather plaintiff is complaining that he entered into a contractual
18 relationship with defendant Allstate Insurance Co.[“Allstate”] and that Allstate failed to fulfill its
19 contractual promises based on an alleged pattern of discrimination against minorities, including
20 plaintiff, who is of Russian descent. Thus this action may not proceed pursuant to 42 U.S.C.
21 2000e.

22 *B. 42 U.S.C, SECTION 1981 (5th Cause of Action)*

23 Plaintiff also raises this code section as a basis for a claim against Allstate. This statute
24 states:

25 (a) Statement of equal rights

26 All persons within the jurisdiction of the United States shall have the same rights in every
27 State and Territory to make and enforce contracts, to sue be parties, give evidence, and to
28 the full and equal benefit of all laws and proceedings for the security of persons and
property as is enjoyed by white citizens, and shall be subject to like punishment, pains,

1 penalties, taxes, licenses and exactions of every kind, and to no other.

2 (b) 'Make and enforce contracts' defined

3 For purposes of this section, the term 'make and enforce contracts' includes the making,
4 performance, modification, and termination of contracts, and the enjoyment of all benefits,
5 privileges, terms and conditions of the contractual relationship.

6 (c) Protection against impairment

7 The rights protected by this section are protected against impairment by nongovernmental
8 discrimination and impairment under color of law.

9 Plaintiff claims that Allstate, by whom he is contractually insured, treated him differently
10 when assessing his insurance claim and determining the value of his claim than it did other
11 insured persons because he is of Russian origin. This claim falls squarely within the terms of 42
12 U.S.C., section 1981. However plaintiff also purports to sue 120 individual defendants who
13 appear to be employees and agents of Allstate and attorneys representing Allstate for purposes of
14 claims adjustment. He does not claim, nor does it seem possible that he could claim, that he has
15 any contractual relationship with these individuals and thus they are not amenable to suit under
16 section 1981 and they should be dismissed from this action.

17 Finally plaintiff also names the Yolo County Superior Court and two Judges who sit in
18 that court as defendants. As with the other individual defendants, there is no claim, nor could
19 there be, that plaintiff was in a contractual relationship with these three named defendants.
20 Further, state courts and judicial officials are immune from suit. "Judges are immune from
21 damage suits for judicial acts taken within the jurisdiction of their courts. Judicial immunity
22 applies however erroneous the act may have been, and however injurious in its consequences it
23 may have proved to the plaintiff." Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir 1986). As
24 this court has noted before, this immunity extends even when the judge erred in a ruling or acted
25 in excess of his authority. Todd v. Shoopman, 2012 WL 3631563 (E.D.Cal. 2012). Thus this
26 action cannot continue against Superior Court Judges Cortes and White. See also Powell v.
27 Superior Court of California, Placer County, 2016 WL 7212799 (E.D.Cal. 2016) *citing* Demoran
28 v. Witt, 781 F.2d 155, 168 (9th Cir. 1985)

1 Neither may district courts review or act in contravention of determinations of state courts
2 which is what plaintiff apparently seeks when he names the Yolo County Superior Court as a
3 defendant. The courts of California may not be sued because of Eleventh Amendment immunity.
4 Hedges v. Superior Court, 2014 WL 5603982 (C.D. Cal. 2014) and cases cited therein.

5 C. *SECTION 1983* (4th Cause of Action)

6 Plaintiff was previously advised in the previous Order that Allstate, in performing the
7 alleged acts, was not a state actor involving actions taken under color of state law. This claim
8 should be finally dismissed.

9 D. *SUPPLEMENTAL STATE CLAIMS*

10 Plaintiff also claims Allstate violated the terms of California Code of Regulations section
11 25995.7 which establishes standards for the prompt, fair and equitable settlement of insurance
12 claims, and expressly disallows “discrimination in [the insurer’s] claims settlement practices
13 based upon the claimant’s age, race, gender, income, religion, language, sexual orientation,
14 ancestry, national origin, or physical disability, or upon the territory of the property or person
15 insured.” Having established federal jurisdiction by stating a claim pursuant to a federal statute –
16 42 U.S.C. section 1981 – plaintiff may maintain this action under the court’s supplemental
17 jurisdiction for state claims brought conjunctively with federal claims and based upon the same
18 general set of facts alleged in support of that federal claim. The court therefore will exercise
19 supplemental jurisdiction over the claims brought under the California Fair Settlement Practices
20 Act pursuant to 28 U.S.C. section 1367.

21 However, plaintiff in no way links the myriad of individuals that he has sued with any of
22 the state actions. Having been previously advised that he must do so, the undersigned will
23 recommend that all individual defendants be dismissed.

24 *CONCLUSION*

25 In light of the foregoing IT IS HEREBY RECOMMENDED that:

- 26 1. All named individual defendants other than Allstate be dismissed from this action;
27 2. The First Amended Complaint proceed pursuant to 42 U.S.C. section 1981 and
28 the supplemental state claim jurisdiction discussed above against defendant Allstate Insurance

1 Company only; the 42 U.S.C. section 2000e (6th Cause of Action) and section 1983 (4th Cause of
2 Action) claims be finally dismissed as to all defendants;

3 The Findings and Recommendations above are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
5 one days after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 “Objections to Magistrate Judge's Findings and Recommendations.” Any reply to the objections
8 shall be served and filed within fourteen days after service of the objections. The parties are
9 advised that failure to file objections within the specified time may waive the right to appeal the
10 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 IT IS HEREBY ORDERED;

12 1. Service on Allstate Insurance Company is deemed to be appropriate;

13 2. The Clerk of the Court is directed to issue forthwith, and the U.S. Marshal is
14 directed to serve within ninety days of the date of this order, all process pursuant to Fed. R. Civ.
15 P. 4, including a copy of this court’s status order, without prepayment of costs;

16 3. The Clerk of the Court shall send plaintiff one USM-285 form for the named
17 defendant, one summons, a copy of the complaint, an appropriate form for consent to trial by a
18 magistrate judge, and this court’s status order;

19 4. Plaintiff is directed to supply the U.S. Marshal, within 14 days from the date this
20 order is filed, all information needed by the Marshal to effect service of process, and shall file a
21 statement with the court that said documents have been submitted to the United States Marshal.
22 The court anticipates that, to effect service, the U.S. Marshal will require at least:

23 a. One completed summons for the defendant;

24 b. One completed USM-285 form for the defendant;

25 c. One copy of the endorsed filed complaint for the defendant, with an extra
26 copy for the U.S. Marshal;

27 d. One copy of this court’s status order for the defendant; and

28 e. One copy of the instant order for the defendant.

