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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GAVIN B. DAVIS,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, *et al.*,

Defendants.

Case No. 17-cv-01997-BAS-AGS

ORDER:

**(1) GRANTING DEFENDANT
FEDERAL BUREAU OF
INVESTIGATION'S
UNOPPOSED MOTION TO
DISMISS (ECF No. 5)**

AND

**(2) DISMISSING DEFENDANT
UNRUH WITHOUT PREJUDICE**

On September 29, 2017, Plaintiff Gavin B. Davis, proceeding pro se, commenced this action against Defendants Federal Bureau of Investigation (“FBI”) and John Gregory Unruh. (ECF No. 1.) Davis alleges that Unruh committed domestic terrorism by “cyberstalking” him in violation of 18 U.S.C. § 2331(5) (domestic terrorism/Patriot Act) and 47 U.S.C. § 223 (use of telecommunications device in interstate commerce to harass). (Compl. ¶¶ 1, 5, 21 (ECF No. 1)). Plaintiff further alleges that the FBI failed to investigate this cyberstalking, despite Plaintiff “provid[ing] direct evidence” of this activity, in violation of 42 U.S.C. § 1983, 18

1 U.S.C. §§ 241-242, and *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).
2 (Compl. ¶ 21.)

3 The FBI moves to dismiss Plaintiff’s claims on various grounds. (ECF No. 5.)
4 Specifically, the FBI argues that it is not subject to civil liability under Plaintiff’s
5 theories. (*Id.*) Additionally, the FBI states that the United States has not waived its
6 sovereign immunity with respect to these claims, and therefore, argues that the Court
7 lacks subject matter jurisdiction. (*Id.*) Plaintiff has not opposed Defendant’s motion.

8
9 **I. FBI**

10 Civil Local Rule 7.1(e)(2) provides that a party opposing a motion must file
11 either an opposition or a statement of non-opposition no later than fourteen calendar
12 days prior to the noticed hearing date. If a party fails to comply with this rule, “that
13 failure may constitute a consent to the granting of a motion or other request for ruling
14 by the court.” Civ. L.R. 7.1(f)(3)(c); *accord Ghazali v. Moran*, 46 F.3d 52, 53 (9th
15 Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper
16 ground for dismissal.”).

17 Here, because the hearing date for the FBI’s motion was January 22, 2018,
18 Plaintiff was required to file either an opposition or a statement of non-opposition by
19 January 8, 2018. *See* Civ. L.R. 7.1(e)(2). Plaintiff failed to comply with this
20 requirement. The Court also notes that Plaintiff “was given ample time to respond
21 to” Defendant’s motion, and there is no evidence before the Court that Plaintiff was
22 not aware of the pending motion. *See Ghazali*, 46 F.3d at 54. The Court therefore
23 finds that Plaintiff’s failure to file an opposition constitutes Plaintiff’s consent to the
24 granting of Defendant’s motion. *See* Civ. L.R. 7.1(f)(3)(c).

25 Accordingly, the Court **GRANTS** Defendant FBI’s motion and **DISMISSES**
26 **WITH PREJUDICE** claims against FBI.

1 **II. Defendant Unruh**

2 Plaintiff alleges claims against Defendant Unruh based on two federal criminal
3 statutes, 18 U.S.C. § 2331(5) (domestic terrorism) and 47 U.S.C. § 223(a) (use of
4 telecommunications device in interstate communications to annoy, abuse, harass, or
5 threaten any person). “[T]he fact that a federal statute has been violated and some
6 person harmed does not automatically give rise to a private right of action.” *Touche*
7 *Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979) (quotation omitted). “Instead, the
8 statute must either explicitly create a right of action or implicitly contain one.” *In re*
9 *Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1230 (9th Cir. 2008) (citation
10 omitted); *see also Alexander v. Sandoval*, 532 U.S. 275, 286 (2001 (Scalia, J.) (“Like
11 substantive federal law itself, private rights of action to enforce federal laws must be
12 created by Congress”); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980)
13 (finding that criminal provisions that provide no basis for civil liability do not give
14 rise to a civil cause of action); *Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979)
15 (“[T]his Court has rarely implied a private right of action under a criminal statute.”)

16 Neither statute Plaintiff seeks to invoke in his Complaint is a criminal
17 provision providing for a private cause of action. Thus, various courts have concluded
18 allegations that these criminal statutes were violated are insufficient to state a claim.
19 *See Jianjun Xie v. Oakland Unified Sch. Dist.*, No. C 12-02950 CRB, 2012 WL
20 5869707 at *6 (N.D. Cal. Nov. 19, 2012) (holding that harassment under 47 U.S.C.
21 § 223 provides no civil remedy); *Cox v. Randazza*, No. 2:13-cv-00297-MMD-VCF,
22 2013 WL 6408736, at *6 (D. Nev. Nov. 27, 2013) (stating that claims under 47
23 U.S.C. § 223 are not properly brought in a civil complaint); *Sloan v. Truong*, 573 F.
24 Supp. 2d 823, 829 (S.D.N.Y. 2008) (same); *Boyd v. City of Oceanside Police Dep’t*,
25 No. 11-cv-3039-LAB (WMc), 2013 WL 5671164, at *5 (S.D. Cal. Oct. 11, 2013)
26 (finding no private civil right of action under domestic terrorism statute, 18 U.S.C. §
27 2331); *Archer v. City of Taft*, No. 1:12-cv-00261-AWI-JLT, 2012 WL 1458136, at
28 *6 (E.D. Cal. Apr. 26, 2012) (same). This Court agrees. To the extent Plaintiff is

1 claiming federal jurisdiction because of a violation of a federal criminal statute, he
2 fails to state a claim and the Complaint should be dismissed pursuant to Rule
3 12(b)(6).

4 To the extent Plaintiff is alleging some other state law claim, because there are
5 no allegations about the amount in controversy, he fails to state sufficient information
6 to show that subject matter jurisdiction exists in federal court. Therefore, the Court
7 **DISMISSES** *sua sponte* the Complaint against Unruh. However, the Court will give
8 Plaintiff leave to amend the Complaint against Unruh only. If Plaintiff elects to file
9 an amended Complaint against Unruh, he must put the basis of his claim and why it
10 belongs in federal court. Simply alleging violation of a federal criminal statute is
11 insufficient.

12
13 **III. Conclusion**

14 The Court **GRANTS** the FBI's Motion to Dismiss with prejudice. (ECF No.
15 5.) The Court **DISMISSES** *sua sponte* the remaining claims against Defendant
16 Unruh, but gives Plaintiff leave to file an amended Complaint against Unruh only.
17 Any amended Complaint must address the concerns expressed by the Court in this
18 Order and must be filed **no later than April 6, 2018.**

19 **IT IS SO ORDERED.**

20
21 **DATED: March 7, 2018**


Hon. Cynthia Bashant
United States District Judge