UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GREGORY MICHAEL LEDET, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	)	Civil Action No. 16-0865 (ABJ)

MEMORANDUM OPINION AND ORDER

Plaintiff Gregory M. Ledet has filed this motion for attorney's fees and costs pursuant to 18 U.S.C. § 925A, and he seeks a fee award of $9,353.45 and costs of $422.20 for a total of $9,775.65. The defendant in this action, the United States, maintains that plaintiff is not entitled to attorney's fees and costs under the applicable statute, and the Court agrees.[1] Because plaintiff is not a "prevailing party" within the meaning of 18 U.S.C. § 925A, plaintiff's motion for attorney's fees and costs will be denied.

BACKGROUND

This lawsuit arose out of plaintiff's attempts to purchase firearms. Plaintiff made his first attempt on February 27, 2016, but the National Instant Criminal Background Check System ("NICS") denied the transaction. Compl. [Dkt. # 2] ¶ 7. After plaintiff received a letter from the FBI indicating that the transaction was denied because he was a "prohibited person" under 18 U.S.C. §§ 922(a)(20)

1 Defendant did not contest the reasonableness of the fees submitted by plaintiff's attorney other than in a footnote at the very end of its opposition to plaintiff's motion. Def.'s Opp. to Pl.'s Mot. for Atty's Fees & Costs [Dkt. # 13] ("Def.'s Opp.") at 10–11 n.1. Because plaintiff is not a "prevailing party" and therefore is not entitled to attorney's fees, there is no need to reach the question of the reasonableness of the fees.

and (g)(1), *id*. ¶ 8, plaintiff contacted the Louisiana State Police and the Terrebonne Parish Clerk of Court in Louisiana to have his records updated. *Id.* ¶ 9. Once that had been accomplished, plaintiff attempted a second firearm purchase on March 17, 2016, but that transaction was denied as well. *Id*. ¶ 11.

Plaintiff brought this lawsuit seeking a court order directing that the "erroneous information be corrected and the transfer be approved." Compl. ¶¶ 20–21. After plaintiff filed his complaint, the parties agreed to stay the proceedings while defendant verified the NICS data causing the denials. Joint Mot. for Stay of Proceedings [Dkt. # 8] ¶ 3. While the matter was pending, defendant corrected plaintiff's NICS records and approved "plaintiff's subsequent firearm transactions." Joint Status Report & Proposed Schedule [Dkt. # 10] ("Joint Status Report") ¶ 3. This resolved the issues presented in the case, and the parties filed a stipulation of dismissal on October 12, 2016. Stipulation of Dismissal [Dkt. # 11]. Thereafter, plaintiff filed a motion seeking attorney's fees under 18 U.S.C. § 925A, Pl.'s Mot. for Atty's Fees & Costs [Dkt. # 12] ("Pl.'s Mot."); Pl.'s Mem. of P. & A. in Supp. of Pl.'s Mot. [Dkt. # 12-1] ("Pl.'s Mem."), and the matter has been fully briefed. *See* Def.'s Opp.; Reply in Supp. of Pl.'s Mot. [Dkt. # 14] ("Pl.'s Reply").

ANALYSIS

Under what is known as the "American Rule," courts follow "a general practice of not awarding fees to a prevailing party absent explicit statutory authority." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 602 (2001), quoting *Key Tronic Corp. v. United States*, 511 U.S. 809, 819 (1994). In cases involving a person denied a firearm due to the provision of erroneous information, the statute that creates a remedy for the would-be purchaser, 18 U.S.C. § 925A, provides that statutory authority under certain circumstances:

> In any action under this section, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.

18 U.S.C. § 925A. The central inquiry in this matter, then, is whether plaintiff is a "prevailing party" within the meaning of this provision.

A prevailing party is "a party in whose favor a judgment is rendered, regardless of the amount of damages awarded." *Buckhannon*, 532 U.S. at 603, quoting *Black's Law Dictionary* (7th ed. 1999). In *Thomas v. National Science Foundation*, the D.C. Circuit articulated a three-part test to be applied when determining whether a party should be deemed to be the "prevailing party" for purposes of a fee-shifting statute: (1) whether there was a court-ordered change in the legal relationship of the parties; (2) whether the claimant received a favorable judgment; and (3) whether the judicial pronouncement was accompanied by judicial relief. 330 F.3d 486, 492–93 (D.C. Cir. 2003).

While plaintiff ultimately achieved the relief he was seeking, he cannot satisfy the first prong of the *Thomas* test because defendant took corrective action voluntarily. As the Supreme Court explained in *Buckhannon,* a party obtaining a favorable outcome through a "nonjudicial alteration of actual circumstances" has "never" served as the basis for an attorney's fee award. *Buckhannon*, 532 U.S. at 606 (internal quotation marks omitted). That is because the voluntary change "lacks the necessary judicial *imprimatur*." *Id*. at 605; *see also District of Columbia v. Jeppsen ex rel. Jeppsen*, 514 F.3d 1287, 1291 (D.C. Cir. 2008) ("[A] plaintiff does not prevail even though its action has caused the defendant to change its primary conduct, because the plaintiff does not thereby obtain a 'judicially sanctioned change in the legal relationship of the parties.'"), quoting *Buckhannon*, 532 U.S. at 604–05.

Here, defendant's change in position was voluntary, and it can only be characterized as a "nonjudicial alteration of actual circumstances." *Buckhannon*, 532 U.S. at 606 (internal quotation marks omitted).[2]

Plaintiff fails to establish the second and third elements of the *Thomas* test as well: whether the claimant received a favorable judgment, and whether the judicial pronouncement was accompanied by judicial relief. *Thomas*, 330 F.3d at 493. Here, upon dismissal of the case, the Court did not issue any judgment whatsoever, let alone a judgment favorable to plaintiff, and the Court did not impose any relief. Thus, plaintiff's ultimate ability to complete the sought-after gun transactions resulted not from an "enforceable judgment[] on the merits [or a] court-ordered consent decree[]," *Buckhannon*, 532 U.S. at 604, but from steps voluntarily undertaken by the parties themselves. Any fee award would be plainly inconsistent with the Supreme Court's statement in *Buckhannon:*

> We cannot agree that the term "prevailing party" authorizes federal courts to award attorney's fees to a plaintiff who, by simply filing a nonfrivolous but nonetheless potentially meritless lawsuit (it will never be determined), has reached the "sought-after destination" without obtaining any judicial relief.

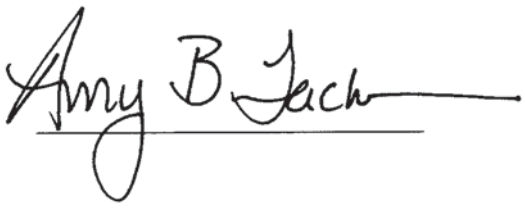
Id. at 606.

2 Plaintiff contends that the agreed-upon stipulated dismissal altered the legal relationship between the parties because it "forever foreclose[d] the suit on a procedural . . . ground as by a favorable judgment on the merits." Pl.'s Mem. at 6, citing *Jeppsen*, 514 F.3d at 1290. But plaintiff's reliance on this sentence in *Jeppsen* is misplaced because in this excerpt, the *Jeppsen* court was addressing circumstances under which a *defendant* could be deemed a prevailing party, not a plaintiff. *Jeppsen*, 514 F.3d at 1290.

For these reasons, the Court finds that plaintiff is not a "prevailing party" within the meaning of 18 U.S.C. § 925A and therefore, he is not entitled to an attorney's fee award. Pursuant to Federal Rule of Civil Procedure 54(d) and 18 U.S.C. § 925A, it is hereby

ORDERED that plaintiff's Motion for Attorney's Fees and Costs [Dkt. # 12] is **DENIED**.

SO ORDERED.



AMY BERMAN JACKSON
United States District Judge

DATE: June 16, 2017