IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

CHRISTOPHER PUCKETT, Plaintiff	]	
	]	
Vs.		Civil Action No. 1:06-2382-BBM
KELLEY S. POWELL, in her official capacity as Probate Judge For Henry County, Georgia	]	
_____	]	

DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant Kelley S. Powell, in her official capacity as Probate Judge For Henry County, Georgia, and shows the Court as follows:

STATEMENT OF FACTS[1]

On September 25, 2006, Plaintiff came into the Henry County Probate Court to apply for the renewal and temporary renewal of his Georgia Firearms License ("License"). (Stipulated Fact para. 2). Plaintiff's existing License was scheduled to expire on November 6, 2006. (Stipulated Fact, para. 1). Plaintiff requested that he be issued a *temporary* renewal License, as his then-current license was scheduled to expire on November 6, 2006. (Stipulated Fact, para. 8).

[1] The parties have stipulated to the facts to be relied upon in these summary judgment proceedings. [See Consent Order Stipulating To Facts at Doc. 31. Defendant is merely repeating those stipulated facts here.

Plaintiff was assisted by Lenora Harris-Land, a deputy clerk employed by the Henry County Probate Court. (Stipulated Fact, para. 3). Rather than having Plaintiff fill out an application, Ms. Harris-Land asked Plaintiff for information orally, which she then entered onto an electronic version of Plaintiff's GFL application using her computer. (Stipulated Fact, para.4). Among the information requested by Ms. Harris-Land was Plaintiff's Social Security Number ("SSN") and the name and address of his current employer. (Stipulated Fact, Para.3). Plaintiff provided all of the information requested by Ms. Harris-Land. (Stipulated Fact, para. 3). Plaintiff and Defendant disagree as to whether Ms. Harris-Land informed Plaintiff, orally whether disclosure of his SSN was mandatory or optional. (Stipulated Fact, para. 5).

At the time Ms. Harris-Land requested Plaintiff's SSN, Plaintiff was not provided with information telling him by what statutory or other authority his SSN was being requested nor what uses would be made of it. (Stipulated Fact, para. 7).

On October 4, 2006, Plaintiff's attorney contacted Defendant via facsimile and e-mail and provided her with a copy of a Complaint and informed her of the "commencement of an action" against her in this Court. (Stipulated Fact, para. 10).

On October 9, 2006, Defendant issued Plaintiff a temporary renewal License which remained valid until January 8, 2007. (Stipulated Fact, para. 12- 13). On the

same day, Defendant's counsel wrote Plaintiff's counsel a letter stating that Plaintiff's SSN and employment information had been redacted from his application and from any other records or documents to which such information had been transferred. (Stipulated Fact, para. 12).

The temporary firearms license remained valid until January 8, 2007. (Stipulated Fact, para. 13), at which time Defendant issued Plaintiff his renewal License.

Plaintiff filed the instant suit on October 5, 2006. On December 22, 2006, Plaintiff filed an Amended Complaint alleging that Defendant was liable under 42 U.S.C. Sec. 1983 "for violations of Plaintiff's privacy rights as protected by the Federal Privacy Act of 1974 and the Fourteenth Amendment of (sic) the United States Constitution." (Amended Complaint, Section I, para. 1). Plaintiff alleges that "Defendant violated [his] privacy rights by requiring Plaintiff to disclose his private SSN in order to obtain the rights, benefits, and privileges afforded persons under [Georgia law]" and by "fail[ing] to provide Plaintiff the warning required by the Privacy Act when Defendant required Plaintiff to disclose his SSN." (Amended Complaint, Section I, para. 2-4).

Plaintiff also asserts a pendant state law claim based on an alleged violation the Georgia Firearms statute (O.C.G.A. Sec. 16-11-129) (Amended Complaint,

Section I, para. 5). As to this claim, Plaintiff alleges that Defendant violated Georgia law by requiring Plaintiff to disclose his employment information. (Id.).[2] However, in his summary judgment motion, Plaintiff alleges that Defendant violated this statute because she failed to issue Plaintiff a renewal license within 60-days of the date of his application. (Plaintiff's brief, p. 6).

For the reasons that follow, Plaintiff's motion for summary judgment should be denied.

ARGUMENT AND CITATIONS OF AUTHORITY

I. Plaintiff Has Failed To Establish A Significant Deprivation Arising From The Alleged Privacy Act Violation.

A. The Federal Privacy Act.

Section 7(a) of the Privacy Act provides that "[i]t shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security account number. **Pub.L. 93-579, 88 Stat. 1896 (1974), 5 U.S.C. Sec. 552a (note)**.

Section 7(b) of the Privacy Act provides that "[a]ny Federal, State or local government agency which requests an individual to disclose his social security

[2] Notwithstanding this alleging in Plaintiff's Complaint, Plaintiff's summary judgment motion fails to address this allegation. Accordingly, Plaintiff has abandoned this claim.

account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." **Id.**

In **Schwier v Cox, 340 F.3d 1284, 1293 (11th Cir. 2003),** the Eleventh Circuit held that the rights conferred by section 7 of the Privacy Act may be enforced under Section 1983.[3]

1. Plaintiff has abandoned his claim under Section 7(a) of The Federal Privacy Act.

Although Plaintiff alleges in his Amended Complaint that the Probate Court Clerk Ms. Harris-Land "advised Plaintiff that she could not process his application if he did not disclose his SSN" (Amended Complaint, Section V, para. 15), Plaintiff's summary judgment motion fails to offer any evidence in support of this assertion.(See Plaintiff's brief, p. 4). Moreover, Plaintiff apparently acknowledges that he has "dropped" his claim relating to the alleged mandatory disclosure of his SSN. (Plaintiff's brief, p. 3, fn. 2). Thus, Plaintiff is not entitled to summary judgment as to any claim asserted under Section 7(a) of the Privacy Act.

[3] As noted by the **Schwier** panel, there are two (2) separate provisions of the Federal Privacy Act - - Section 3 and Section 7. Section 3 applies exclusively to federal agencies. **Id. at 1288**. Section 7 however, applies to "Federal, state or local government agenc[ies]" and its provisions are "explicitly excluded from the remedial scheme of section 3". **Id.**

2. Even if Plaintiff has not abandoned his Section 7(a) claim, Defendant is entitled to Summary Judgment because there is no evidence that either Plaintiff's Renewal Application or Firearms License was conditioned upon the mandatory disclosure of his SSN.

In order for this Court to find a violation of Section 7(a), Plaintiff must demonstrate that he was denied a "right, benefit or privilege provided by law" upon refusing to provide his SSN.

The undisputed facts of this case demonstrate that Defendant never refused to process Plaintiff's renewal application nor refused to issue him a renewal if Plaintiff *refused* to provide his SSN.[4] At most, Plaintiff asserts that he was asked for, and provided his SSN. (Stipulated Fact, para. 3). Further, Plaintiff has presented no evidence that his application would not be processed in the absence of his SSN. Rather, the evidence demonstrates that Plaintiff's renewal application was processed in the absence thereof. (Stipulated Fact, para. 10-13). The undisputed facts show that Plaintiff was issued both a temporary and permanent license with this information having been redacted from his application. (Id.).

Plaintiff has not gone a single day without a valid firearms license. Plaintiff's former license expired on November 6, 2006. Plaintiff received a

[4] Because Plaintiff never refused to provide his SSN upon being requested to do so, it would appear that he would also be estopped from asserting any claim arising under Section 7(a).

temporary license on October 9, 2006. On the day that Plaintiff's temporary license expired, Plaintiff received his permanent license. (Stipulated Fact, para. 13). **Thus, Plaintiff has never been deprived of any right, benefit or privilege provided by Georgia law.**

Accordingly, the instant facts are materially distinguishable from the facts of **Camp v Cason, 2007 WL 869050 (11th Cir. decided March 23, 2007)**. In **Camp v Cason**, the Carroll County Probate Court requested the plaintiff's SSN in connection with his firearms renewal application, however, the plaintiff refused to provide the information. The Carroll County Probate Court refused to process the plaintiff's application unless the plaintiff disclosed his SSN. As a result of the Probate Court's refusal, the plaintiff's firearms license expired. Subsequent to his license expiring, the plaintiff filed suit seeking declaratory and injunctive relief. The **Camp** plaintiff received his firearms license only after the district court directed the defendant to process plaintiff's application without his SSN.

In the instant case, Plaintiff's application was processed with his SSN redacted therefrom. Moreover, unlike the plaintiff in **Camp v Cason**, **the instant Plaintiff never went a single day without a valid firearms license**. Because Plaintiff never suffered a denial of the "right, benefit or privilege" with respect to any action of Defendant, Plaintiff is not entitled to any relief under Section 7(a) of

the Privacy Act. **See also Schwier v Cox, 412 F.Supp.2d 1266, 1270 (N.D. Ga. 2005)**(defendant unlawfully violated plaintiffs rights under Section 7(a) of the Privacy Act by rejecting plaintiffs' voter registrations because plaintiffs refused to disclose their SSNs). In the instant case, Defendant never rejected Plaintiff's efforts to have his firearms license renewed.

B. Section 7(b) of the Federal Privacy Act.

As stated above, Section 7(b) places an affirmative obligation on the part of an agency requesting an individual's SSN to provide the individual with the legal authority by which the request is being made and the purpose for which the SSN will be used. In the instant case, Defendant admits that such notice was not provided to Plaintiff at the time his SSN was requested.[5] (Stipulated Fact, para. 7). The issue for this Court is to resolve is whether such failure rises to the level of a deprivation redressable under **42 U.S.C. Section 1983**. Defendant submits that it does not.

1. There can be no 1983 liability where the Plaintiff has not suffered a significant deprivation, detriment or harm.

To obtain relief under **§ 1983**, a plaintiff must show that a person acting under color of state law deprived him or her of a federal right. **Patrick v. Floyd**

[5] The parties disagree however, as to whether Plaintiff was informed that providing his SSN was optional. (Stipulated Fact, para. 5).

Medical Center, 201 F.3d 1313, 1315 (11th Cir.2000). This statutory provision safeguards not only against the deprivation of Constitutional rights, but also against the deprivation of certain rights conferred by federal statutes. **Blessing v Freestone, 520 U.S. 329, 346, 117 S.Ct. 1353 (1997**); **See also Maynard v. Williams, 72 F.3d 848 (11th Cir. 1996)**(Section 1983 not limited to constitutional violations but potentially encompasses violations of all federal statutes).

As stated above, the Eleventh Circuit has held that Section 7 of the Privacy Act confers substantive rights on individuals that may be vindicated by way of a 1983 action. **See Schwier v Cox, 340 F.3d at 1297**. However, in reaching this conclusion, the Court focused primarily on the language found in Section 7(a): "[T]he Privacy Act clearly confers a *legal right on individuals:* the right to refuse to disclose his or her ssn without suffering the loss "of any right, benefit, or privilege provided by law." **Id. at 1292**. (emphasis in original).

In the instant case, Defendant acknowledges that Plaintiff was not provided the full notice required by Section 7 (b). (Stipulated Fact, para. 12).[6] However, this fact alone does not necessarily entitle Plaintiff to relief as a matter of law. A review of relevant case law, reveals that a Section 7(b) violation should be viewed in the context of the substantive rights conferred by Section 7(a). In other

[6] As a result of this acknowledgment, Plaintiff argues that he "must be awarded judgment as a matter of law on Count I of his Amended Complaint." (Plaintiff's brief, p. 6)(emphasis in original).

words 7(b) cannot be read in isolation, but must be analyzed in the context of an individual's rights under 7(a). If an individual suffers no deprivation under 7(a), then a single, isolated violation of 7(b), would not appear to warrant the imposition of injunctive relief.

Section 7(a) makes it clear that a government agency may not **deny** to an individual a right, benefit or privilege as a result of that individual's refusal to provide his SSN. Accordingly, courts have consistently found an actionable violation of Section 7(b) **when there is an *attendant* deprivation caused by an agency mandating the disclosure of an individual's SSN. See Schwier v Cox, 412 F.Supp.2d 1266 (N.D. G. 2005)**(defendants violated 7(b) of Privacy Act because voter registration forms instructed applicants that disclosure of their SSNs was mandatory indicating that forms would not be processed in the absence thereof); **Stollenwerck v Miller, 2006 WL 463393 (E.D. Pa.)**(plaintiff's firearms license application rejected because plaintiff failed to comply with defendant's mandate that plaintiff provide his SSN in order to have application processed; accordingly, defendants actions violated both 7(a) and 7(b) of Privacy Act).

In the present case, there is no evidence that Defendant mandated the disclosure of Plaintiff's SSN. Moreover, there is no evidence that Defendant conditioned the processing of Plaintiff's firearms license application upon the

disclosure of his SSN. Plaintiff was never told (nor does he allege) that his GFL application would be rejected if he failed to provide his SSN.

Additionally, the fact that Defendant never made use of Plaintiff's SSN renders Defendant's failure to comply with the notice provisions of Section 7(b) a technical violation which fails rise to the level of a deprivational injury redressable under Section 1983. **See Chambers v Klein , 419 F.Supp. 569, 580 (D.C. N.J. 1976)**(even though agency failed to disclose the purpose for which plaintiff's SSN would be used, agency made no use of number; thus, injunctive relief not warranted based on this "technical violation of the Privacy Act."); But compare to **Greater Cleveland Welfare Rights Organization v Bauer, 462 F.Supp. 1313 (D.C. Ohio 1978)**(injunctive relief granted to prevent future 7(b) violations based on the continued, present actions of agency in obtaining *and using* SSNs without providing the required 7(b) notice) (emphasis supplied); see also **Yeager v Hackensack Water Co., 615 F.Supp. 1087 (D.C. N.J. 1985)**(he district court prohibited defendant from any *further use* of SSNs until 7(b) notice had been made)(emphasis supplied).

In the instant case, Plaintiff has not alleged any improper use of his SSN occasioned by Defendant's failure to provide him with notice required by 7(b), nor has Plaintiff alleged any deprivation attendant to this alleged violation of 78(b). In

other words, Plaintiff has suffered harm as a result of this lack of notice sufficient to invoke the remedies afforded under 42 USC §1983..

It is beyond question that not every violation of a federal statute results in a deprivation sufficient to invoke 1983 liability. This is especially so where there is no resulting harm or deprivation to the plaintiff. **See e.g. U.S. v Carranza, 921 F.2d 1557, 1563 (11th Cir. 1997)**(even if officials technically violated federal statute, no prejudice resulted). "[T]he problem of improper use [of an individual's SSN] was the prime moving force behind" enactment of Section 7(b). **Greater Cleveland Welfare Rights Organization v Bauer, 462 F.Supp. at 1320.**

As the foregoing cases demonstrate that in the absence of the actual improper use of an individual's SSN (i.e., an actual deprivation) the failure to provide the required 7(b) notice is merely a technical violation of the Privacy Act insufficient to warrant the imposition of liability under **42 U.S.C. Section 1983**.

2. The Disclosure of Plaintiff's Social Security Number Did Not Cause Any Constitutional Violation.[7]

[7] Curiously, Plaintiff alleges that he is seeking summary judgment as to "all issues in his Amended Complaint except the federal constitutional issue." (Plaintiff's brief, p. 3). Because Plaintiff is not moving for partial summary judgment, it is unclear whether Plaintiff is abandoning this claim. Accordingly, Defendant will address the merits of this claim.

Plaintiff's Amended Complaint alleges that the mandatory disclosure of his social security number violated his right to privacy under the Fourteenth Amendment to the United States Constitution. (Amended Complaint, Section I, para. 2). However, the contention that disclosure of one's social security number violates the right to privacy has been consistently rejected by federal courts. See **Sexton v Runyon, 2005 WL 2030865(N.D. Ind.)(quoting McElrath v Califano, 615 F. 2d 434, 441 (7th Cir. 1980)); Lambert v Hartmann, 2006 WL 3833529 (S.D. Ohio); See also Doyle v Wilson, 529 F.Supp.. 1343, 1348 (D.Del. 1982)**("the mandatory disclosure of one's social security number does not so threaten the sanctity of individual privacy as to require constitutional protection"); **Greater Cleveland Welfare Rights Organization v Bauer, 462 F.Supp. 1307, 1321-22 (E.D.Pa.), aff'd without opinion 487 F.2d 1394 (C.A. 1973); Conant v Hill, 326 F.Supp. 25, 26 (E.D. Va. 1971); Cantor v Supreme Court of Pennsylvania, 353 F.Supp. 1307, 1321-22 (E.D. Pa. 1973).**

Generally, the constitutional right to privacy embodies solely "those personal rights that can be deemed fundamental or implicit in the concept of ordered liberty." **McElrath v Califano, 615 F.2d 434, 441 (C.A. 7 1980)**. "A person's privacy interest in his social security number does not implicate either a fundamental right or one implicit in the concept of ordered liberty [and] thus, it is

not entitled to Constitutional protection." **Accord Spurlock v Ashley County, 2007 WL 858624 (W.D. Ark. March 20, 2007)**(allegation of unlawful mandatory disclosure of SSN cannot form the basis of a 1983 claim); **In re Turner, 193 B.R. 548 (Bankr.N.D. Calif. 1996)**(requiring the disclosure of a Social Security number does not violate a constitutional right to privacy).

Based on the foregoing, Plaintiff's privacy claim based on the mandatory disclosure of his SSN cannot be predicated on constitutional grounds. Because this claim fails as a matter of law, Defendant is entitled to summary judgment.

II. Plaintiff's State Law Claims Fail As A Matter of Law.

A. This Court should decline to exercise pendant jurisdiction over Plaintiff's State Law Claims.

Preliminarily, Defendant submits that in the event that this Court grants summary judgment dismisses Plaintiff's federal claims, Defendant urges this Court to dismiss the remaining state law claims as well. Pursuant to 28 U.S.C. 1367(c)(3), a district court may decline to exercise jurisdiction as to those claims over which it has supplemental jurisdiction once it has dismissed the claims over which it had original jurisdiction. The Eleventh Circuit has held that "state claims should ordinarily be dismissed if all federal claims are eliminated before trial." **Edwards v Okaloosa county, 5 F.3d (11th Cir. 1993)**. Indeed, the Eleventh

Circuit "encourage[s] district courts to dismiss any remaining state claims when… the federal claims have been dismissed prior to trial." **Raney v Allstate Insuracne Co. 370 F.3d 1086 (11th Cir. 2004); Accord Carnegie-Mellon Univ. V Cohill, 484 U.S. 343, 350, 108 S.Ct, 614, 619 (1988)**(pendent jurisdiction is not a plaintiff's right, but rather a "doctrine of discretion" that need not be exercised in every case).

In the instant case, Plaintiff's state law claims are not inextricably intertwined with the resolution of any federal right. Plaintiff seeks judicial interpretation of the Georgia firearms statute and also asserts a claim under the Georgia Constitution. Resolution of these claims would be better suited in state court. Moreover, the parties would not be inconvenienced or prejudiced by having these claims resolved in state court.

In the event that this Court decides to retain jurisdiction over Plaintiff's state law claims, as shown below, Plaintiff is not entitled to summary judgment with respect thereto.

B. Plaintiff Has Not Established An Actionable Violation of The Georgia Firearms Statute.

Plaintiff alleges that he is entitled to summary judgment because

Defendant failed to issue him a permanent firearms license within 60-days of the date of his application as required by Georgia law.[8] (Plaintiff's brief, p. 6). However, it is undisputed that Defendant provided Plaintiff with everything to which he was entitled to receive pursuant to the Georgia Firearms Statute.

Under Georgia law, applicants seeking a firearms license renewal are subject to criminal background checks by appropriate law enforcement agencies. See **O.C.G.A. Sec. 16-11-129 D9)(1)-(2)**. These law enforcement agencies are required to "notify the judge of the probate court within 50 days, by telephone and in writing, of any findings relating to the applicant which may bear on his or her eligibility for a license or renewal license…" **O.C.G.A. 16-11-129(d)(4)**. The statute mandates that the law enforcement agency shall return the application and blank license form with the fingerprint thereon directly to the judge of the probate court within this 50 day time period. **Id. "Not later than 60 days after the date of the application the judge of the probate court shall issue the applicant a license or renewal license…if no facts establishing ineligibility have been reported and if the judge determines the applicant has met all the qualifications, is of good moral character and has complied with all the requirements contained in this Code Section."**

[8] Again, Plaintiff has abandoned the claim that the Defendant improperly elicited employment information from him during the license renewal process. Plaintiff's brief makes no argument in furtherance of this claim.

In the instant case, it is undisputed that Defendant did not receive a report from a law enforcement agency within 50-days following the date of Plaintiff's application for a renewal GFL, indicating any derogatory information bearing on Plaintiff's eligibility for a GFL. (Stipulated Fact, para. 14).

However, Plaintiff applied for *both* a temporary renewal and a permanent GFL. (Stipulated Fact, para. 2; 8). The Georgia Firearms statute provides that if an individual has a license that is scheduled to expire within 90 days, the individual may apply for a ***temporary renewal license***. **O.C.G.A. 16-11-129(i)**. The temporary renewal license is valid for a period of 90 days from the date of issue. **O.C.G.A. 16-11-129(i)(3)**. **During this 90-day period, the temporary renewal license "shall be valid in the same manner and for the same purposes as a five-year license." Id.** (boldness supplied).

In the instant case, Plaintiff's license was scheduled to expire on November 6, 2006. (Stipulated Fact, para. 1). Defendant issued Plaintiff a temporary renewal license on October 9, 2006, which was valid for a 90-day period. (Stipulated Fact, para. 10). On January 8, 2006, Defendant issued Plaintiff his 5-year license. (Stipulated Fact, para. 13). **Thus, at no time was Plaintiff ever deprived of a valid firearms license.**

Notwithstanding this fact, Plaintiff seeks a declaration from this Court that Defendant violated Georgia law because he was not issued a 5-year license within 60 days of the date of application. Defendant acknowledges that Plaintiff did not receive his 5-year license within this time frame; however, prior to the expiration of his then-current license, **Defendant issued Plaintiff a temporary license that was "valid in the same manner and for the same purposes as a five-year license." O.C.G.A. 16-11-129(i)(4)**. Plaintiff cannot now be heard to complain that he did not receive a license in a timely manner because Plaintiff received exactly what he requested - - a temporary renewal license.[9]

It would be incongruous to hold Defendant liable for providing Plaintiff with the very thing requested by him. While it is true that Plaintiff did not receive his 5-year license within 60 days of the date of request, he did receive it prior to the expiration of his temporary license. **Accordingly, Plaintiff never went a single day without a valid firearms license.**

Plaintiff is not entitled to summary judgment as to this claim.

[9] Plaintiff has not alleged that he was not issued his temporary renewal license in a timely manner. Even if Plaintiff were to make such a claim, he would not be entitled to summary judgment. The facts are undisputed that Plaintiff received his temporary renewal license nearly one month prior to the expiration of his then-current license. (Stipulated Fact, para. 1 and 12).

C. Plaintiff Has Failed To Establish A Violation Of the Georgia Constitution.

Plaintiff alleges that the "Defendant violated the Georgia Constitution, which states, "[t]he right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne." **Ga. Const. Art. I, Section I, para. VIII**.[10] In particular, Plaintiff contends that the manner in which Defendant applied Georgia's licensing scheme in this case was unconstitutional. (Plaintiff's brief, p. 12).

Plaintiff has failed to present a scintilla of evidence that his right to bear arms was infringed in any manner. Even assuming that Defendant failed to issue a 5-year license within 60 days, at no time was Plaintiff ever without possession of a valid firearms license. Accordingly, Defendant incorporates herein by reference, her legal arguments raised in Section II of this brief.

III. Plaintiff Is Not Entitled To Prospective Injucntive Or Declaratory Relief.

[10] While Plaintiff has devoted a significant portion of his brief on this issue, his Amended Complaint makes only a cursory reference to the Georgia Constitution in the Prayer for Relief. (See Amended Complaint, Section VII, para . 45(c)(iii). Plaintiff failed to plead any facts in support of this claim and until now, the record is devoid of any assertions in this regard.

A plaintiff seeking injunctive or declaratory relief must show a sufficient likelihood of future harm. **See City of Los Angeles v Lyons, 461 U.S. 95, 103 S.Ct. 1660 (1983)**. Such threat of future harm must be "real and immediate," not "conjectural" or "hypothetical". **Id.** In the absence of evidence that a plaintiff will likely suffer future harm, the court will not issue an injunctive order. **See Arnold v Martin, 449 F.3d 1338 (11th Cir. 2006).** The mere possibility that the plaintiff might again be exposed to the same harm in the future is insufficient standing to seek injunctive relief. **City of Los Angeles v Lyons, 461 U.S. at 106.**; **See also Seminole Tribe of Florida v Florida, 517 U.S. 44, 116 S.Ct. 1114 (1996)**(prospective injunctive relief proper only when requested to end a *continuing* federal law violation).

Additionally, a plaintiff seeking a declaratory judgment cannot solely rely on evidence of past wrongs, but must instead demonstrate a live, "actual controversy with the defendant. **Tucker v Phyfer, 819 F.2d 1030 (11th Cir. 1997)**(a declaration that defendants' past conduct violated plaintiff's constitutional rights would be nothing more than a gratuitous comment without any force or effect). Instead, plaint must "credibly allege" that he faces a realistic threat from the future application of the challenged policy. **City of Los Angeles v Lyons, supra at 107.** If a plaintiff makes "no showing that he is realistically threatened by a repetition of

the challenged action, then he has not met the requirements for seeking an injunction in a federal court, whether the injunction contemplates intrusive structural relief or the cessation of a discrete practice." **Id. at 109.**

In the recent case of **Camp v Cason, 2007 WL 869050 (decided March 23, 2007)**, the plaintiff filed suit seeking prospective injunctive relief arising from the defendant's refusal to process his firearms application in the absence of his SSN. The Eleventh Circuit determined that plaintiff had standing to pursue his claims brought under the Federal Privacy Act claims notwithstanding the fact that plaintiff had received his firearms license during the pendency of the lawsuit (and after the district court ordered the defendant to process the application). In support of his request for prospective injunctive relief, the **Camp** plaintiff presented evidence of "other GFL applicants" to demonstrate a continuing violation of Section 7(b) of the Privacy Act. No such evidence is present (or even alleged) in the instant case.

In the instant case, Plaintiff seeks (1) a declaration that Defendant violated Section 7(b) of the Privacy Act. (Plaintiff's brief, p. 12). Plaintiff further seeks a "permanent injunction requiring Defendant to provide the warning in Section 7(b) of the Privacy Act, *if she requests GFL applicants to provide SSNs*." (Plaintiff's brief, p. 12). However, as to each of these requests for relief, Plaintiff fails to allege or point to any evidence in the record to demonstrate that there is a real and

imminent threat that the challenged violation is continuing or likely to occur again in the future.[11] No such evidence is present (or even alleged) in the instant case. Moreover, while Plaintiff espouses a requirement that the 7(b) notice be provided in writing, nothing in the history or text of the Privacy Act suggests that Congress intended for agencies to provide notice in this manner.

Plaintiff further seeks an "injunction requiring Defendant to expunge his SSN form Defendant's system and records." (Plaintiff's brief, p. 12). However, such expungement has already occurred. (Stipulated Fact, para. 12). Accordingly, Plaintiff's request is moot and must be dismissed. **See Tucker v Phyfer, 819 F.3d 1030(11th Cir. 1987)**(mootness doctrine requires that the plaintiff's controversy remain live throughout the litigation; once the controversy ceases to exist, the court must dismiss the cause for want of jurisdiction).[12]

Plaintiff's request for a declaration that "Defendant violated the Georgia Constitution's guarantee that the right to bear arms shall not be infringed", is negated by the fact that he has presented no evidence of any such infringement. As

[11] Plaintiff's request appears to seek prospective relief for persons other than himself - - i.e., other GFL applicants. However, this is not a class action suit and Plaintiff is only entitled to relief as to his individual, personal claims.
[12] Plaintiff's counsel argues that Defendant has not really expunged this information because "Defendant filed Plaintiff's [original] GFL application in this case." (Plaintiff's brief, p. 14). Defendant's counsel does in fact, have a copy of Plaintiff's *unredacted* GFL application. As counsel for Defendant, the undersigned received this document after Defendant received notice of Plaintiff's lawsuit. The document was maintained by *defense counsel* in its original form for possible future evidentiary purposes. When the undersigned discovered the inadvertent filing of this document made in connection with the filing of Defendant's Initial Disclosures. Defendant immediately moved to have this document placed under seal. (See Order Granting Defendant's Motion To Place Certain Documents Under Seal [Doc. 23]). Defense counsel's inadvertence in this regard should not be imputed to Defendant.

previously demonstrated herein, Plaintiff has never gone a single day without a valid firearms license.

Lastly, Plaintiff's request for a declaration that Defendant violated the Georgia Firearms and Weapons Act and request for a permanent injunction ordering Defendant to issue GFLs to eligible applicants within 60 days of the date of application, is not warranted under the facts of this case. Plaintiff has presented no evidence that Defendant is *presently* failing to comply with the 60-day requirement with respect to other GFL applicants. Thus, to the extent that Plaintiff seeks to obtain an injunction with respect to the rights of others who are not parties to this suit, the request should be denied. Plaintiff has neither alleged nor provided any competent evidence of a continuing violation as to the rights of other GFL applicants. Accordingly, there is no legal basis for the issuance of an injunction as to this issue. **See O'Shea v Littleton, 414 U.S. 488, 94 S.Ct. 669 (1974)**(federal authority counsels restraint in the issuance of injunctions against state officials in the administration of laws in the absence of irreparable injury which is both real and immediate).

CONCLUSION

Plaintiff's claim for attorney's fees is premature. Plaintiff must first occupy the position of a prevailing party before he can assert a claim for attorney's fees. Defendant will address that issue if and when necessary at the appropriate time.

As to Plaintiff's substantive claims, Defendant submits that Plaintiff has failed to establish the requisite deprivation necessary to impose 1983 liability against the Defendant. Notwithstanding the fact that Plaintiff only seeks injunctive and declaratory judgment relief, Plaintiff has failed to demonstrate that he has suffered an injury arising from the fact that he was not told by what authority his SSN was being requested and the uses to which the number would be put. This failure, however, must be viewed in the context of the substantive rights of which Plaintiff was never deprived: Plaintiff's GFL application was processed. Plaintiff was never told that his application would not be processed if he did not provided his SSN. Plaintiff did not object to providing his SSN when asked. Plaintiff provided his SSN when asked. Plaintiff received a temporary renewal license as requested by him. Plaintiff received a 5-year license as requested by him. After Plaintiff voiced concerns, Defendant redacted the SSN and employment information from her official records. Defendant never used Plaintiff's SSN in connection with the processing of his application. **In sum, Plaintiff has suffered**

no harm. Plaintiff has not even alleged that he was harmed as a result of the 7(b) violation. If Plaintiff is allowed to prevail under these facts, then the federal courts will be flooded with claims of technical violations of federal law, but with no resulting harm. 42 U.S.C. Section 1983 is designed to cure federal *deprivations*; it is not a vehicle to obtain an award of attorney's fees where there has been no substantive harm occasioned by the challenged actions of a government official.

Accordingly, Plaintiff's motion for summary judgment should be denied.

This 16th day of April, 2007.

/s/ Patrick D. Jaugstetter_____
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Local Rule 7.1D Certification

I certify that the foregoing Memorandum of Law was prepared using Times New Roman 14 point, a font and point selection approved in LR 5.1B.

/s/ Patrick D. Jaugstetter
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER PUCKETT,	)	
	)	
Plaintiff	)	CIVIL ACTION FILE NO.
	)	
v.	)	1:06-CV-2382-BBM
	)	
KELLEY S. POWELL in her official capacity as Probate Judge for Henry County, Georgia	)	
	)	
Defendant.	)	

CERTIFICATE OF FILING

I hereby certify that on the date shown below, I presented **Defendant's Response In Opposition To Plaintiff's Motion For Summary Judgment** to the Clerk of the Court for filing and uploading to the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

John Monroe, Esq.
9640 Coleman Road
Roswell, Georgia 30075

This 16th day of April, 2007.

/s/ Patrick D. Jaugstetter_____

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