

No. 24). However, Mr. Fitzgerald filed his Motion before the Court issued the Order and based on the findings of the Report and Recommendation alone. (Doc. No. 22-1 at 1.) Because no judgment had entered at the time of the filing, Mr. Fitzgerald was not yet a prevailing party, and his Motion was premature.

Accordingly, the Motion (Doc. No. 22) is **TERMINATED AS MOOT** and Mr. Fitzgerald is directed to re-file his request for attorney's fees based on the final judgment in this case.

It is so ORDERED.

Entered this the 15th day of February, 2013.



JOHN T. NIXON, SENIOR JUDGE
UNITED STATES DISTRICT COURT