

1 would stipulate to reducing the total attorney time by three hours and paralegal
2 time by one hour. (Reply at 8.) Plaintiff calculates the resulting fee (including the
3 time spent on preparing the Reply) to be \$3,709.00 (16.17 attorney hours x
4 \$172.24; 7.7 paralegal hours x \$120). (Reply at 3.)

5 **II.**

6 **DISCUSSION**

7 **A. Legal Standard.**

8 The Equal Access to Justice Act (“EAJA”) provides in pertinent part:

9 “Except as otherwise specifically provided by statute, a court shall
10 award to a prevailing party other than the United States fees and other
11 expenses . . . incurred by that party in any civil action (other than cases
12 sounding in tort), including proceedings for judicial review of agency
13 action, brought by or against the United States in any court having
14 jurisdiction of that action, unless the court finds that the position of the
15 United States was substantially justified or that special circumstances
16 make an award unjust.”

17 28 U.S.C. § 2412(d)(1)(A). To award attorney’s fees under the EAJA, the Court
18 must determine that: (1) the claimant was the prevailing party; (2) the government
19 has failed to show that its position was “substantially justified” or that special
20 circumstances make the award unjust; and (3) the requested fees and costs are
21 reasonable. Id. §§ 2412(d)(1)(A), 2412(d)(2)(A).

22 **B. The Requested Fees Are Reasonable.**

23 The Commissioner does not contest the hourly rate that counsel claims, but
24 only disputes the reasonableness of the hours billed. He claims that the time spent
25 was excessive considering the following factors: (1) Mr. LaTour’s experience
26 (Mr. LaTour personally billed up to 8.5 hours of file review, issue identification,
27 and possibly settlement proposal review (Pet. Ex. 2)); (2) the fact the medical
28 record consisted only of 75 pages; (3) Mr. LaTour’s review was duplicative of the

1 review conducted by the attorney who prepared the settlement proposal; (4) and
2 the issues were not complex. (Opp'n at 4-5.) Specifically, the Commissioner
3 claims the duplicative work in the matter warrants a seven-hour reduction in
4 attorney time. The Commissioner also contends that many of the paralegal tasks
5 completed were purely clerical or secretarial tasks. (Id. at 5-6.) Specifically, he
6 asserts that half of the time billed by the paralegal fell into that category and,
7 therefore, only 260 minutes should be allowed. (Id. at 6.) In total, therefore, the
8 Commissioner argues Plaintiff should be awarded no more than \$1,986.00 in
9 EAJA fees, and that the Court should disallow any fees for time spent on the
10 Reply. (Id. at 7.)

11 This Court has reviewed the settlement proposal prepared by counsel.
12 (Opp'n Ex. 1.) It contains three issues which appear to be thoroughly analyzed
13 and presented, with accompanying record cites and legal analysis. The Court finds
14 that the time counsel spent researching and preparing the settlement proposal
15 (seven hours) was justified and reasonable. Because the Plaintiff has agreed to
16 reduce the total attorney hours by three hours (Reply at 8), the Court need not
17 decide whether the eight hours billed by Mr. LaTour were excessive or
18 duplicative, as it finds that 5.5 hours was not. Thus, total attorney time allowed
19 before the Reply, is 12.5 hours, for a total billing of \$2,153.00 (12.5 x \$172.24).

20 Plaintiff also seeks an additional \$682.84 for preparation of the Reply.¹
21 (Reply at 8.) A prevailing party under the EAJA is entitled to fees for the
22 litigation over the fees. Comm'r, INS v. Jean, 496 U.S. 154, 160, 110 S. Ct. 2316,
23 110 L. Ed. 2d 989 (9th Cir. 1998). Having reviewed the EAJA briefings, the
24 Court finds that this fee request is also reasonable. Thus, total attorney billing
25 allowed amounts to \$2,835.24.

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27 ¹ This is based on 3.17 hours in attorney time at \$172.24 per hour. (Reply
28 at 7.)

1 With regard to the total paralegal time of 7.7 hours (after deducting one
2 hour as stipulated to by Plaintiff),² the Court has reviewed the services provided
3 and determines that a further reduction is warranted. Specifically, the 160 total
4 minutes billed on October 12, 2009 (“final proofread, edit settlement
5 proposal/email”), December 23, 2009 (“review memorandum/judgment - notify
6 client”), and January 19, 2010 (“file review, prepare itemization schedules, rough
7 and final EAJA request drafts, email to AUSA, OGC; prepare stipulation for
8 efilng”) contain some elements that might be deemed purely clerical. The Court
9 allocates sixty minutes of this time to non-clerical tasks. Thus, the revised
10 paralegal time is 400 minutes for a total allowed billing of \$800.00 ((520 - 60 -
11 60)/60) x \$120).

12 Accordingly, the Court finds that an EAJA fee award of \$3,595.12
13 (\$2,835.24 + \$800.00) is reasonable, as required under the EAJA.

14 **III.**

15 **ORDER**

16 For the reasons discussed above, Plaintiff’s Petition is GRANTED, and
17 Plaintiff’s counsel is awarded total EAJA fees of \$3,595.12.

18
19 DATED: July 20, 2010



20 **HONORABLE OSWALD PARADA**
21 **United States Magistrate Judge**

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27 ² Plaintiff agreed to reduce the time billed for form preparation, and
28 withdraw the claim for preparation of the consent form (10 minutes). (Reply at 8.)