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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JACQUELINE K.,

12 Plaintiff,

13 v.

14 KILOLO KIJAKAZI,

15 Acting Commissioner of Social Security,

16 Defendant.

Case No.: 3:21-cv-00405-AHG

**ORDER GRANTING JOINT
MOTION FOR AWARD AND
PAYMENT OF ATTORNEY FEES
AND EXPENSES**

[ECF No. 19]

17 Before the Court is the parties' Joint Motion for the Award and Payment of Attorney
18 Fees and Expenses. ECF No. 19. The parties jointly move the Court to award Plaintiff
19 Jacqueline K. ("Plaintiff") attorney fees and expenses pursuant to the Equal Access to
20 Justice Act ("EAJA"), 28 U.S.C. § 2412(d). *Id.* For the reasons set forth below, the Court
21 **GRANTS** the parties' joint motion.

22 **I. BACKGROUND**

23 The underlying action involves Plaintiff's challenge to the denial of her application
24 for supplemental security income benefits. On March 8, 2021, Plaintiff filed a complaint
25 against the acting Commissioner of Social Security. ECF No. 1. Defendant filed the
26 administrative record in lieu of an answer. ECF No. 12. The Court set a scheduling order,
27 requiring that the parties file a Joint Motion for Judicial Review of Final Decision of the
28 Commissioner of Social Security ("Joint Motion for Judicial Review"). ECF No. 18. The

1 parties timely filed their Joint Motion for Judicial Review on March 10, 2022. ECF No. 16.
2 On September 30, 2022, the Court issued an Order on the parties’ Joint Motion for Judicial
3 Review, reversing the final decision of the Commissioner of Social Security and remanding
4 the action for further proceedings. ECF No. 17. A Clerk’s Judgment was entered on the
5 same date. ECF No. 18. The instant motion follows.

6 The parties have jointly requested that Plaintiff’s counsel receive compensation for
7 21.3 hours of work, at \$217.54 per hour for work performed in 2021 and \$231.49 per hour
8 for work completed in 2022, and counsel’s paralegals receive compensation for 4 hours of
9 work, at \$150.00 per hour, with the total request discounted¹ to \$5,400.00. ECF Nos. 19,
10 19-2.

11 **II. THRESHOLD ISSUE OF TIMELINESS**

12 According to the EAJA, an application for fees must be filed “within thirty days of
13 final judgment.” 28 U.S.C. § 2412(d)(1)(B). A final judgment is “a judgment that is final
14 and not appealable” 28 U.S.C. § 2412(d)(2)(G). The Ninth Circuit has held that the
15 EAJA’s 30-day filing period does not begin to run until after the 60-day appeal period in
16 Federal Rule of Appellate Procedure 4(a).² *Hoa Hong Van v. Barnhart*, 483 F.3d 600, 612
17 (9th Cir. 2007).

18 Here, the parties filed the motion for EAJA fees on December 22, 2022, 83 days
19 after judgment was entered on September 30, 2022. The motion was filed 23 days after the
20 60-day period expired and falls within the 30-day filing period. Accordingly, the Joint
21 Motion is timely.

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24 ¹ In the parties’ itemization of fees, the total fee was calculated to be \$5,497.26. ECF No.
25 19-2 at 2. However, in the parties’ joint motion, the total fee requested was \$5,400.00. ECF
26 No. 19 at 1.

27 ² Federal Rule of Appellate Procedure 4(a) provides that a “notice of appeal may be filed
28 by any party within 60 days after entry of the judgment or order appealed from” if one of
the parties is the United States or a United States officer sued in an official capacity. Fed.
R. App. P. 4(a)(1)(B).

1 **III. DISCUSSION**

2 Under the EAJA, a litigant is entitled to attorney fees and costs if: “(1) he is the
3 prevailing party; (2) the government fails to show that its position was substantially
4 justified or that special circumstances make an award unjust; and (3) the requested fees and
5 costs are reasonable.” *Carbonell v. I.N.S.*, 429 F.3d 894, 898 (9th Cir. 2005). *See also* 28
6 U.S.C. § 2412(a), (d). The Court will address these elements in turn.

7 **A. Prevailing party**

8 A plaintiff is a prevailing party if she “has ‘succeeded on any significant issue in
9 litigation which achieve[d] some of the benefit . . . sought in bringing suit.’” *Ulugalu v.*
10 *Berryhill*, No. 17cv1087-GPC-JLB, 2018 WL 2012330, at *2 (S.D. Cal. Apr. 30, 2018)
11 (quoting *Schaefer*, 509 U.S. at 302). Here, Plaintiff is the prevailing party because the Court
12 granted his motion for judicial review, reversed the final decision of the Commissioner of
13 Social Security denying his application for supplemental security income benefits, and
14 remanded the action for further proceedings at the administrative level. ECF No. 17.

15 **B. Substantial justification**

16 The government bears the burden of proving that its position, both in the underlying
17 administrative proceedings and in the subsequent litigation, was substantially justified
18 under 28 U.S.C. 2412(d)(1)(A). *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). Here,
19 the parties have stipulated to the EAJA fee amount, and explain that the stipulation
20 “constitutes a compromise settlement of [Plaintiff]’s request for EAJA attorney fees[.]”
21 ECF No. 19 at 2. Although Defendant’s stipulation does not constitute an admission of
22 liability on its part, the compromise nature of the request is sufficient to find the second
23 element met, given that “Defendant has stipulated to the attorney[] fees and does not argue
24 that the prevailing party’s position was substantially unjustified.” *Krebs v. Berryhill*, No.
25 16-cv-3096-JLS-BGS, 2018 WL 3064346, at *2 (S.D. Cal. June 21, 2018); *see also Black*
26 *v. Berryhill*, No. 18-cv-1673-JM-LL, 2019 WL 2436393, at *1 (S.D. Cal. June 11, 2019)
27 (finding the second element met because, “in light of the joint nature of the parties’ request
28 and the court’s prior order remanding this action, the government has not shown that its

1 position was substantially justified.”). Accordingly, the Court finds no basis to deny the
2 EAJA fee request pursuant to § 2412(d)(1)(A).

3 **C. Reasonableness of Hours**

4 The parties seek a fee award for 21.3 hours billed by Plaintiff’s counsel. ECF No.
5 19-2. The Court finds the number of hours billed by Plaintiff’s counsel reasonable. *See* 28
6 U.S.C. § 2412(d); *Nadarajah v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009); *see also Costa*
7 *v. Comm’r of SSA*, 690 F.3d 1132, 1136 (9th Cir. 2012) (reiterating the Ninth Circuit’s
8 previous position that “‘lawyers are not likely to spend unnecessary time on contingency
9 fee cases in the hope of inflating their fees’ because ‘the payoff is too uncertain.’ [] As a
10 result, courts should generally defer to the ‘winning lawyer’s professional judgment as to
11 how much time he was required to spend on the case.’”) (quoting *Moreno v. City of*
12 *Sacramento*, 534 F.3d 1106, 1112–13 (9th Cir. 2008)); *see, e.g., Costa*, 690 F.3d at 1136
13 (noting “[m]any district courts have noted that twenty to forty hours is the range most often
14 requested and granted in social security cases”); *Krebs*, 2018 WL 3064346, at *2 (finding
15 that 21.7 hours billed by plaintiff’s counsel and 3.5 hours billed by a paralegal a reasonable
16 number of hours).

17 The parties also seek a fee award for 4 hours billed by Plaintiff’s counsel’s paralegals.
18 ECF No. 19-2. Paralegal fees are also recoverable fees under the EAJA. *See Richlin Sec.*
19 *Serv. Co. v. Chertoff*, 553 U.S. 571, 581, 128 S. Ct. 2007, 170 L. Ed. 2d 960 (2008) (stating
20 “we think EAJA . . . must be interpreted as using the term ‘attorney. . . fees’ to reach fees
21 for paralegal services as well as compensation for the attorney’s personal labor.”) (ellipses
22 in original); *see also Nadarajah*, 569 F.3d at 918 (a prevailing party may recover
23 reasonable paralegal fees). However, time spent by a paralegal on clerical matters is not
24 recoverable, as this should be subsumed in law firm overhead rather than billed at paralegal
25 rates. *Nadarajah*, 569 F.3d at 921. “‘Receipt’ of a court order or case filing is also clerical
26 in nature.” *Rosemary G.V. v. Saul*, No. 3:19-cv-715-RBM, 2020 WL 6703123, at *3 (S.D.
27 Cal. Nov. 12, 2020) (collecting cases and excluding 0.85 hours for paralegal entries such
28 as “receipt of scheduling order” and “receipt and review of IFP from client”); *Douzat v.*

1 *Saul*, No. 17-cv-1740-NJK, 2020 WL 3408706, at *3 (D. Nev. June 11, 2020) (excluding
2 1.1 hours of paralegal time for “receipt” of an order or other court document); *McDade v.*
3 *Saul*, No. 17-cv-763-JCS, 2019 WL 6251229, at *6 (N.D. Cal. Nov. 22, 2019) (excluding
4 1.67 hours of paralegal time billed for receipt of documents, status reports to the client, and
5 similar tasks, and also excluding 0.2 hours of attorney time for “receipt” of a motion and
6 an email). Here, 2 paralegal entries include clerical tasks and that prorated time will be
7 excluded. *See* ECF No. 19-2 at 1 (billing 0.5 hours for “receipt of memo and filing of
8 complaint and related papers” and 0.4 hours for “receipt of administrative record,
9 preparation of memorandum to [counsel] regarding same”). The Court will, therefore,
10 exclude 0.18 hours as clerical. Additionally, the Court will exclude 0.3 hours as excessive.
11 Here, paralegal Enedina Perez billed 0.4 hours for “preparation of magistrate consent.” *Id.*
12 However, in an EAJA fee application submitted 3 days ago in another case, the same
13 paralegal billed 0.1 hours for the exact same task. *See* Joint Motion for EAJA Attorney
14 Fees, *Blake R. v. Kijakazi*, No. 20-cv-1759-AHG (S.D. Cal. Dec. 20, 2022), ECF No. 27-
15 2. The remaining 3.52 hours of paralegal time, however, appear reasonable and appropriate.
16 *Krebs*, 2018 WL 3064346, at *2.

17 **D. Reasonableness of Hourly Rate**

18 The EAJA provides that the Court may award reasonable attorney fees “based upon
19 prevailing market rates for the kind and quality of the services furnished,” but “attorney
20 fees shall not be awarded in excess of \$125 per hour unless the court determines that an
21 increase in the cost of living or a special factor, such as the limited availability of qualified
22 attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A).
23 As noted, the statutory maximum EAJA rate for work performed in 2021 in the Ninth
24 Circuit, factoring in increases in the cost of living, was \$217.54, and the statutory
25 maximum EAJA rate for the first half of 2022 was \$231.49. *See* United States Courts for
26 the Ninth Circuit, *Statutory Maximum Rates Under the Equal Access to Justice Act*,
27 <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited Dec. 22,
28 2022); *see also* *Thangaraja v. Gonzales*, 428 F.3d 870, 876 (9th Cir. 2005) (“EAJA

1 provides for an upward adjustment of the \$125 rate contained in the statute, based on cost-
2 of-living increases”) (citing 28 U.S.C. § 2412(d)(2)(A)); *see, e.g., Black*, 2019 WL
3 2436393, at *1 (considering the Ninth Circuit’s hourly EAJA rate a reasonable rate).
4 Consistent with the Ninth Circuit’s hourly EAJA rates, Plaintiff’s counsel billed at a rate
5 of \$217.54 per hour for work performed in 2021, and at a rate of \$231.49 for work
6 performed in 2022. ECF No. 19-2 at 1. As such, the Court finds that the hourly rate billed
7 by counsel is reasonable.

8 The parties, however, have not established that the requested paralegal rate of
9 \$150.00 is reasonable. *See Blake R. v. Kijakazi*, No. 20-cv-1759-AHG, 2022 U.S. Dist.
10 LEXIS 230893, at *8 (S.D. Cal. Dec. 22, 2022) (finding an hourly rate of \$143 for work
11 done by paralegals in 2021 and 2022 in the San Diego area to be reasonable); *Lisa M. v.*
12 *Kijakazi*, No. 21-cv-1501-JLB, 2022 WL 17069826, at *1 n.2 (S.D. Cal. Nov. 17, 2022)
13 (finding an hourly rate of \$143 for work done by a paralegal in 2022 in the San Diego area
14 to be reasonable); *Roland S. v. Saul*, No. 3:20-cv-1068-AHG, 2021 WL 4081567, at *3
15 (S.D. Cal. Sept. 7, 2021) (finding an hourly rate of \$143 for work done by a paralegal in
16 2020 and 2021 in the San Diego area to be reasonable based on the prevailing market rate,
17 noting that the parties included evidentiary support for its paralegal hourly rate). Thus,
18 without information from the parties regarding the paralegals’ experience or education, or
19 other evidentiary support regarding the median hourly rate for paralegals in San Diego, the
20 parties have not persuaded the Court that \$150 is reasonable. Thus, the Court reduces the
21 paralegal rate from \$150 to \$143, the hourly rate recently approved by multiple courts in
22 this district. *See, e.g., id.*

23 **E. Assignment of Rights to Counsel**

24 The parties jointly request that “[f]ees shall be made payable to [Plaintiff], but if the
25 Department of the Treasury determines that Plaintiff does not owe a federal debt, then the
26 government shall cause the payment of fees and costs to be made directly to [Plaintiff’s
27 counsel], pursuant to the assignment executed by Plaintiff.” ECF No. 19 at 2; *see also* ECF
28 No. 19-1 at ¶ 4 (agreement signed by Plaintiff stating agreement signed by Plaintiff stating

1 that Plaintiff “shall endorse such documents as are needed to pay Attorney any amounts
2 under the EAJA and assigns such fee awards to Attorney.”).

3 The Supreme Court has held that “a § 2412(d) fees award is payable to the litigant
4 and is therefore subject to a Government offset to satisfy a pre-existing debt that the litigant
5 owes the United States.” *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010). Nonetheless,
6 “district courts have recognized that *Ratliff* does not prevent payment of a fee award
7 directly to the attorney where there has been a valid assignment and the plaintiff does not
8 owe a debt to the government.” *Ulugalu*, 2018 WL 2012330, at *4–5 (reviewing Plaintiff’s
9 assignment agreement and ordering that the EAJA fees be paid to plaintiff’s counsel,
10 subject to any administrative offset due to outstanding federal debt); *Bell v. Berryhill*, No.
11 16cv809-MMC, 2018 WL 452110, at *5 (N.D. Cal. Jan. 17, 2018) (same); *Blackwell v.*
12 *Astrue*, No. CIV-08-1454-EFB, 2011 WL 1077765, at *4–5 (E.D. Cal. Mar. 21, 2011)
13 (same); *see also Calderon v. Astrue*, No. 08cv1015-GSA, 2010 WL 4295583, at *8 (E.D.
14 Cal. Oct. 21, 2010) (“Plaintiff, as the prevailing litigant, would normally be awarded the
15 fees described above, subject to any offset for applicable government debts. Defendant,
16 however, seems to be content to permit payment to Plaintiff’s counsel if Plaintiff does not
17 have any qualifying government debt This Court finds the government’s position to
18 be reasonable and will therefore permit payment to Plaintiff’s counsel provided Plaintiff
19 has no government debt that requires offset”).

20 Here, Plaintiff assigned his right to EAJA fees to his attorneys at the Law Offices of
21 Lawrence D. Rohlfing, Inc., CPC. ECF No. 19-1. Accordingly, if Plaintiff has no federal
22 debt that is subject to offset, the award of fees and costs may be paid directly to attorney
23 Steven G. Rosales pursuant to the assignment agreement and in accordance with the
24 parties’ Joint Motion.

25 **IV. CONCLUSION**

26 The Court finds that a reduction of 0.18 hours of clerical paralegal work and another
27 reduction of 0.30 hours of excessive paralegal work is warranted. The Court further reduces
28 the paralegals’ hourly rate from the \$150 per hour requested to \$143 per hour. The

1 remainder of Plaintiff's fee request is reasonable: 21.3 hours of attorney time, at \$217.54
2 per hour for 2.4 hours of work performed in 2021 and \$231.49 per hour for 18.9 hours of
3 work completed in 2022, and 3.52 hours of paralegal time, at \$143.00 per hour. Though
4 the Court reduced the paralegal fees and hourly rates, the Court adopts the parties'
5 discounted³ \$5,400.00 request.

6 Accordingly, for the reasons set forth above, the Court hereby **ORDERS** that:

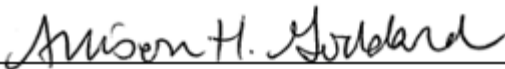
7 1. The parties' Joint Motion for the Award and Payment of Attorney Fees and
8 Expenses Pursuant to the Equal Access to Justice Act (ECF No. 19) is **GRANTED**;

9 2. Plaintiff is awarded attorney fees under the EAJA in the amount of \$5,400.00;
10 and

11 3. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010), any payment shall
12 be made payable to Plaintiff and delivered to Plaintiff's counsel, unless Plaintiff does not
13 owe a federal debt. If the United States Department of the Treasury determines that Plaintiff
14 does not owe a federal debt, the government shall accept Plaintiff's assignment of EAJA
15 fees and pay fees directly to Steven G. Rosales at the Law Offices of Lawrence D. Rohlfing,
16 Inc., CPC.

17 **IT IS SO ORDERED.**

18 Dated: December 23, 2022

19 
20 _____
21 Honorable Allison H. Goddard
22 United States Magistrate Judge
23

24 _____
25 ³ In the parties' itemization of fees, the total requested fees were calculated to be \$5,497.26.
26 ECF No. 19-2 at 2. After excluding the 0.18 clerical hours of paralegal time, excluding the
27 0.30 excessive hours of paralegal time, and adjusting the remaining paralegal time to be at
28 a rate of \$143 per hour instead of \$150 per hour, the total is recalculated to be \$5,400.62.
However, in the parties' joint motion, the total fee requested was \$5,400.00. ECF No. 19
at 1.