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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Jeremy S.,
Plaintiff,
v.
MARTIN O’MALLEY, Commissioner of
Social Security,¹
Defendant.

Case No.: 23-cv-00184-AJB-JLB

**ORDER GRANTING JOINT MOTION
FOR ATTORNEY’S FEES PURSUANT
TO THE EQUAL ACCESS TO
JUSTICE ACT**

(Doc. No. 19)

Presently before the Court is the parties’ joint motion for attorney’s fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). (Doc. No. 19.) The Court decides the matter without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons set forth, the Court **GRANTS** the joint motion.

I. BACKGROUND

On January 1, 2023, Plaintiff filed a complaint, seeking judicial review of the Commissioner’s decision to deny his claim for benefits. (Doc. No. 1.) Thereafter, Plaintiff filed his opening brief, (Doc. No. 9), to which the Commissioner responded, (Doc. No. 13), and Plaintiff replied, (Doc. No. 14).

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Commissioner O’Malley is automatically substituted following his appointment in December 2023.

1 Magistrate Judge Jill L. Burkhardt filed a Report and Recommendation (“R&R”) on
2 January 29, 2024, recommending that Plaintiff’s merits brief be granted, the
3 Commissioner’s decision be reversed, and the action be remanded for further
4 administrative proceedings. (Doc. No. 17.) Upon review of the R&R and receiving no
5 objections from the parties, the Court adopted Magistrate Judge Burkhardt’s R&R in its
6 entirety. (Doc. No. 18.)

7 On May 1, 2024, the parties filed the instant motion. (Doc. No. 19.) The parties
8 jointly request that Plaintiff receive an award of attorney fees in the amount of \$8,500.00
9 under the EAJA, and no costs under 28 U.S.C. § 1920. (*Id.* at 2.) The parties submitted a
10 time sheet showing that one attorney at Yancey Law, PC completed a total of 44.6 hours
11 of work at \$244.62 per hour (the EAJA rate for 2023), for a total of \$10,910.05. (Doc. No.
12 19-2.)

13 **II. THRESHOLD ISSUE OF TIMELINESS**

14 The prevailing party is eligible to seek attorney’s fees within thirty days of final
15 judgment in the action. 28 U.S.C. § 2412(d)(1)(B). “A sentence four remand becomes a
16 final judgment, for purposes of attorneys’ fees claims brought pursuant to the EAJA, upon
17 expiration of the time for appeal.” *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002)
18 (internal citation omitted). Under Federal Rule of Appellate Procedure 4(a)(1)(B), the time
19 for appeal expires sixty days after entry of judgment if one of the parties is a United States
20 officer sued in an official capacity. Therefore, a motion for attorney’s fees filed after a
21 sentence four remand is timely if filed within thirty days after Rule 4(a)’s sixty-day appeal
22 period has expired. *See Hoa Hong Van v. Barnhart*, 483 F.3d 600, 611–12 (9th Cir. 2007).

23 Here, the parties filed an attorney fees motion on May 1, 2024, 47 days after final
24 judgment was filed on March 15, 2024. Therefore, the motion before the Court may seem
25 premature since it was filed before the end of the 60-day appeal period. *See Auke Bay*
26 *Concerned Citizen’s Advisory Council v. Marsh*, 779 F.2d 1391, 1393 (9th Cir. 1986)
27 (“Section 2412(d)(1)(B) establishes a clear date *after which* applications for attorney fees
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1 must be rejected as untimely; 30 days after final judgment. The statute is less clear about a
2 time *before which* applications must be rejected.”).

3 However, even where the appeal period has not yet run, an application for EAJA
4 attorney fees is nonetheless timely “if (1) the applicant files *no more than* 30 days after
5 final judgment, and (2) the applicant is able to show that he or she ‘is a prevailing party
6 and is eligible to receive an award under this subsection.’” *Id.* (emphasis added) (quoting
7 28 U.S.C. § 2412(d)(1)(B)). Thus, an early application is timely where “a court order
8 substantially grants the applicant’s remedy before final judgment is entered” such that the
9 applicant is able to show that he has prevailed. *Id.* The Court finds these criteria are met
10 here, such that the joint motion for EAJA fees is timely. *See Jalal H. v. Comm’r of Soc.*
11 *Sec.*, No.: 3:22-cv-02043-AHG, 2023 WL 3295182, at *2 (S.D. Cal. May 5, 2023) (holding
12 the joint motion for the plaintiff’s EAJA fee was timely where motion was filed before the
13 60-day appeal period had run); *Dickey v. Colvin*, No. 14-CV-00629-WHO, 2015 WL
14 575986, at *3 (N.D. Cal. Feb. 10, 2015) (applying *Auke Bay* to conclude a plaintiff’s EAJA
15 fee motion was not premature in a Social Security case, although the motion was filed
16 before the 60-day appeal period had run, where the court had remanded for payment of
17 benefits rather than further proceedings). Here, the Court substantially granted Plaintiff’s
18 remedy before entry of final judgment by granting Plaintiff’s merits brief and reversing the
19 final decision of the Commissioner denying Plaintiff’s application for benefits. (*See Doc.*
20 *Nos. 17, 18.*) Therefore, the Court finds the joint motion is timely.

21 **III. DISCUSSION**

22 A litigant is entitled to attorney’s fees and costs under the EAJA if: “(1) he is the
23 prevailing party; (2) the government fails to show that its position was substantially
24 justified or that special circumstances make an award unjust; and (3) the requested fees and
25 costs are reasonable.” *Carbonell v. I.N.S.*, 429 F.3d 894, 898 (9th Cir. 2005) (citing *Perez–*
26 *Arellano v. Smith*, 279 F.3d 791, 793 (9th Cir. 2002)); *see also* 28 U.S.C. § 2412(d)(1)(A).

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1 **A. Prevailing Party**

2 A plaintiff is a prevailing party if he “has ‘succeeded on any significant issue in
3 litigation which achieve[d] some of the benefit . . . sought in bringing suit.’” *Ulugalu v.*
4 *Berryhill*, No. 17cv1087-GPC-JLB, 2018 WL 2012330, at *2 (S.D. Cal. Apr. 30, 2018)
5 (quoting *Schalala v. Schaefer*, 509 U.S. 292, 302 (1993)). Here, as discussed above,
6 Plaintiff is the prevailing party because the Court granted his merits brief, reversed the
7 decision of the Commissioner, and remanded the matter pursuant to sentence four of 42
8 U.S.C. § 405(g).

9 **B. Substantial Justification**

10 Next, the Commissioner makes no argument that his position was substantially
11 justified. *See Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013) (“It is the government’s
12 burden to show that its position was substantially justified.”). Rather, the instant fee request
13 comes to the Court by way of a joint motion. (*See* Doc. No. 19.) Accordingly, the
14 Commissioner has not met his burden of showing his position was substantially justified
15 or that special circumstances make an award unjust.

16 **C. Reasonableness of Hours**

17 Next, the parties seek a fee award for 44.6 hours billed by Plaintiff’s counsel. (Doc.
18 No. 19-2.) The counsel’s hours are reasonable in light of Plaintiff’s results in the case. *See*
19 *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (“Where a plaintiff has obtained excellent
20 results, his attorney should recover a fully compensatory fee.”); *Jawad v. Barnhart*, 370 F.
21 Supp. 2d 1077, 1080 (S.D. Cal. 2005) (relying on *Hensley* in finding that 53 hours billed
22 by the plaintiff’s counsel in a social security appeal was “reasonable in light of the relative
23 complexity of this social security appeal and the level of success [counsel] achieved for
24 Plaintiff.”); *cf. Johnson v. Colvin*, No. 12CV1877-WQH-DHB, 2014 WL 3014875, at *3–
25 4 (S.D. Cal. July 2, 2014) (finding it was reasonable for the plaintiff’s counsel to spend 55
26 hours in a social security case, although the case did not present novel issues, because the
27 “case was somewhat complex[,]” the administrative record was 1,034 pages, and plaintiff’s
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1 counsel briefed a total of 79 pages on the cross-motions for summary judgment, the report
2 and recommendation, and the EAJA motion).

3 Additionally, “courts should generally defer to the ‘winning lawyer’s professional
4 judgment as to how much time [s]he was required to spend on the case.” *Costa v. Comm’r*
5 *of Soc. Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (quoting *Moreno v. City of*
6 *Sacramento*, 534 F.3d 1106, 1112–13 (9th Cir. 2008)). Therefore, the Court will not
7 question counsel’s judgment that the hours expended by Plaintiff’s counsel were necessary
8 to achieve a favorable result in this case.

9 **D. Reasonableness of Hourly Rate**

10 The EAJA provides the Court may award reasonable attorney fees “based upon
11 prevailing market rates for the kind and quality of the services furnished,” but “attorney
12 fees shall not be awarded in excess of \$125 per hour unless the court determines that an
13 increase in the cost of living or a special factor, such as the limited availability of qualified
14 attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A).
15 The Ninth Circuit’s hourly EAJA rates for work performed in 2023, factoring in increases
16 in the cost of living, was \$244.62. *See* United States Courts for the Ninth Circuit, *Statutory*
17 *Maximum Rates Under the Equal Access to Justice Act*,
18 <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited May 6,
19 2024); *see also* *Thangaraja v. Gonzales*, 428 F.3d 870, 876 (9th Cir. 2005) (“EAJA
20 provides for an upward adjustment of the \$125 rate contained in the statute, based on cost-
21 of-living increases”) (citing 28 U.S.C. § 2412(d)(2)(A)); *see, e.g., Black v. Berryhill*, No.:
22 18cv1673 JM (LL), 2019 WL 2436393, at *1 (S.D. Cal. June 11, 2019) (considering the
23 Ninth Circuit’s hourly EAJA rate a reasonable rate). Here, although the total amount of
24 attorney fees would ordinarily total \$10,910.05 given Plaintiff’s counsel’s typical billing
25 rates, and applying the 2023 EAJA rate of \$244.62 to the 44.6 hours of work done in 2023,
26 the parties request a total discounted amount of \$8,500.00. (*See* Doc. No. 19.) As such, the
27 Court finds that the hourly rate billed by counsel is reasonable.

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

2 The parties jointly request that “[f]ees shall be made payable to Plaintiff, but if the
3 Department of the Treasury determines that Plaintiff does not owe a federal debt, then the
4 government shall cause the payment of fees, expenses and costs to be made directly to
5 Martha Yancey, pursuant to the assignment executed by Plaintiff.” (Doc. No. 19 at 2; *see*
6 *also* Doc. No. 19-1 (agreement signed by Plaintiff stating, “I hereby assign any entitlement
7 that I may have to a fee under the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412(d),
8 to my attorney, Martha Yancey.”).

9 The Supreme Court has held that “a § 2412(d) fees award is payable to the litigant
10 and is therefore subject to a Government offset to satisfy a pre-existing debt that the litigant
11 owes the United States.” *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010). Nonetheless,
12 “district courts have recognized that *Ratliff* does not prevent payment of a fee award
13 directly to the attorney where there has been a valid assignment and the plaintiff does not
14 owe a debt to the government.” *Ulugalu*, 2018 WL 2012330, at *4–*5 (reviewing
15 plaintiff’s assignment agreement and ordering that the EAJA fees be paid to plaintiff’s
16 counsel, subject to any administrative offset due to outstanding federal debt); *Bell v.*
17 *Berryhill*, No. 16cv809-MMC, 2018 WL 452110, at *5 (N.D. Cal. Jan. 17, 2018) (same);
18 *Blackwell v. Astrue*, No. CIV-08-1454-EFB, 2011 WL 1077765, at *4–*5 (E.D. Cal. Mar.
19 21, 2011) (same); *Castaneda v. Astrue*, No. EDCV-09-1850-OP, 2010 WL 2850778, 2010
20 U.S. Dist. LEXIS 72887 (C.D. Cal. Jul. 20, 2010) (same); *see also Calderon v. Astrue*, No.
21 08cv1015-GSA, 2010 WL 4295583, at *8 (E.D. Cal. Oct. 21, 2010) (“Plaintiff, as the
22 prevailing litigant, would normally be awarded the fees described above, subject to any
23 offset for applicable government debts. Defendant, however, seems to be content to permit
24 payment to Plaintiff’s counsel if Plaintiff does not have any qualifying government debt .
25 . . . This Court finds the government’s position to be reasonable and will therefore permit
26 payment to Plaintiff’s counsel provided Plaintiff has no government debt that requires
27 offset”).

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1 Here, Plaintiff assigned his right to EAJA fees to his attorney. (Doc. No. 19-1.)
2 Accordingly, if Plaintiff has no federal debt that is subject to offset, the award of fees may
3 be paid directly to his counsel Martha Yancey, pursuant to the assignment agreement.

4 **IV. CONCLUSION**

5 Based on the foregoing, the Court hereby **ORDERS** that:


6 1. The parties' Joint Motion for the Award of Attorney Fees Under the Equal
7 Access to Justice Act, (Doc. No. 19), is **GRANTED**;

8 2. Plaintiff is awarded attorney fees under the EAJA in the amount of \$8,500.00;
9 and

10 3. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010), any payment shall
11 be made payable to Plaintiff and delivered to Plaintiff's counsel, unless Plaintiff does not
12 owe a federal debt. If the United States Department of the Treasury determines that Plaintiff
13 does not owe a federal debt, the government shall accept Plaintiff's assignment of EAJA
14 fees and pay fees directly to Martha Yancey at the law firm Yancey Law, PC.

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16 **IT IS SO ORDERED.**

17 Dated: May 6, 2024

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19 Hon. Anthony J. Battaglia
20 United States District Judge
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