

1 WO  
2  
3  
4  
5

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Neil M. Heggem,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.  
14

No. CV-13-02218-PHX-JAT

**ORDER**

15 Pending before the Court is Plaintiff Neil M. Heggem's motion for attorneys' fees  
16 pursuant to the Equal Access to Justice Act ("EAJA"). (Doc. 33). The Court now rules on  
17 the motion.

18 **I. Background**

19 On June 24, 2013, an Administrative Law Judge ("ALJ") denied Plaintiff's request  
20 for social security benefits. (Doc. 13 at 1). The Social Security Appeals Council denied  
21 review of the ALJ's decision on August 31, 2013. (*Id.*) After Plaintiff filed an appeal for  
22 judicial review of the ALJ's decision, this Court affirmed the ALJ's decision. (Doc. 24).  
23 On March 23, 2015, Plaintiff filed an appeal in the United States Court of Appeals for the  
24 Ninth Circuit challenging this Court's affirmance of the ALJ's decision. (Doc. 26). On  
25 June 1, 2016, the Ninth Circuit reversed and remanded for supplemental proceedings  
26 upon the Commissioner's request for voluntary remand. (Doc. 30).

27 **II. Legal Standard**

28 The Ninth Circuit has succinctly stated the legal standard for an award of

1 attorneys' fees under the EAJA as follows:

2 EAJA provides that a court shall award to a prevailing party other  
3 than the United States fees and other expenses incurred by that party in any  
4 civil action unless the court finds that the position of the United States was  
5 substantially justified or that special circumstances make an award unjust.  
6 It is the government's burden to show that its position was substantially  
7 justified. Substantial justification means justified in substance or in the  
8 main—that is, justified to a degree that could satisfy a reasonable person.  
9 Put differently, the government's position must have a reasonable basis  
10 both in law and fact. The position of the United States includes both the  
11 government's litigation position and the underlying agency action giving  
12 rise to the civil action. Thus, if the government's underlying position was  
13 not substantially justified, we must award fees and need not address  
14 whether the government's litigation position was justified.

15 *Tobeler v. Colvin*, 749 F.3d 830, 832 (9th Cir. 2014) (citations, quotation marks, and  
16 alterations omitted).

17 When awarding attorneys' fees under the EAJA, the Court should reimburse the  
18 prevailing party only for those fees which are reasonably expended by that party's  
19 counsel. *See* 28 U.S.C. § 2412(d)(2)(A). The prevailing party bears the burden of proving  
20 the reasonableness of his request through sufficiently detailed accounts of hours  
21 expended on particular tasks so that the Court can evaluate his application. *See Hensley v.*  
22 *Eckerhart*, 461 U.S. 424, 437 (1983); *see Neil v. Comm'r of Soc. Sec.*, 495 F. App'x 845,  
23 846 (9th Cir. 2012) ("A fee applicant should maintain billing records in a manner that  
24 enables a reviewing court to easily identify the hours reasonably expended." (quotation  
25 omitted)). Generally, if the Court reduces a fee application it must provide a reason,  
26 however, "a district court can impose a reduction of up to 10 percent—a 'haircut'—based  
27 purely on the exercise of its discretion and without more specific explanation." *Costa v.*  
28 *Comm'r of Soc. Sec.*, 690 F.3d 1132, 1135 (9th Cir. 2012) (citing *Moreno v. City of*  
*Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008)).

1     **III. Analysis**

2             Because the Commissioner concedes that her position was not substantially  
3 justified, *see* (Doc. 34 at 1), Plaintiff is entitled to an award of his reasonable attorneys’  
4 fees pursuant to the EAJA.

5             As to the reasonableness of Plaintiff’s fee request, the Commissioner argues that  
6 Plaintiff should only be reimbursed for fees related to legal work and not fees involving  
7 clerical or secretarial work. (Doc. 34). The Commissioner identifies several instances in  
8 Plaintiff’s itemized statement of attorney hours in which Plaintiff’s counsel billed for  
9 “filing and docketing pleadings, receiving and/or reviewing notices or standard orders,  
10 and filing extensions of time.” (*Id.* at 3). The Commissioner further points out that  
11 Plaintiff’s counsel “block billed” on multiple occasions, “making it difficult to evaluate  
12 the reasonableness of the time entries on their face.” (*Id.*) As a result, the Commissioner  
13 requests that Plaintiff’s fee application be reduced “by at least \$665.00 to account for  
14 clerical time that cannot be billed at an attorney rate.” (*Id.* at 3–4).

15             In reply, Plaintiff asserts that the Commissioner’s opposition to his motion for  
16 attorneys’ fees “is a waste of judicial resources” and suggests that the Court “should not  
17 opt to get involved in such minutia.” (Doc. 37 at 2). Plaintiff posits—without citing to  
18 any legal authority—that his “EAJA petition should have proceeded unopposed simply  
19 due to the amount in controversy.” (*Id.*) Accordingly, Plaintiff refused to “go into detail  
20 over every line item put in issue by the agency” because doing so would “not [be] a good  
21 use of the Court’s time.” (*Id.*) Plaintiff also postulates that “[f]ull briefing [on a motion  
22 for attorneys’ fees under the EAJA] is not a good use of resources, and the lack of full  
23 briefing is not a reflection of a lack of merit.” (*Id.* at 3). Ultimately, Plaintiff contends  
24 that should the Court reduce the amount of requested fees, it should “split the disputed  
25 amount between the parties” rather than “combing the record.” (*Id.*)

26             Notwithstanding Plaintiff’s advice to the contrary, the Court “combed through the  
27 record” as is required for all fee applications brought pursuant to the EAJA. *See, e.g.,*  
28 *Hensley*, 461 U.S. at 433 (stating that a district court has an independent duty to

1 determine whether an attorneys’ fee award is reasonable); *Moreno*, 534 F.3d at 1111 (“A  
2 district court . . . awards only the fee that it deems reasonable.”). This task was not as  
3 daunting as Plaintiff inferred, as the relevant portion of the record—Plaintiff’s itemized  
4 statement of attorney hours—is a mere three pages long. *See* (Doc. 33-1 at 5–7).

5 Plaintiff bears the burden of establishing that his attorneys’ fees request is  
6 reasonable and does not include work that cannot be billed at an attorney rate. Here, the  
7 Court agrees with the Commissioner that Plaintiff’s counsel billed for non-attorney  
8 clerical work on several occasions. For example, Plaintiff’s counsel appeared to bill for  
9 “prepar[ing] and fil[ing]” every document Plaintiff filed in this case. *See* (Doc. 33-1 at 5–  
10 7). Such work is not compensable at an attorney’s rate of billing. *See Missouri v. Jenkins*,  
11 491 U.S. 274, 288 n.10 (1989) (finding that clerical and secretarial tasks are non-legal  
12 work and are not compensable under attorney rates); *Nadarajah v. Holder*, 569 F.3d 906,  
13 921 (9th Cir. 2009) (holding that when clerical tasks such as filing, transcript, and  
14 document organization “are billed at hourly rates, the court should reduce the hours  
15 requested to account for the billing errors”). Unfortunately, due to Plaintiff’s counsel’s  
16 block billing, the Court is unable to determine exactly how much time counsel spent on  
17 each task. As the billed services span years 2013, 2014, 2015, and 2016, the Court in its  
18 discretion will subtract 0.2 hours for each 2013 and 2016 and 1.0 hour for each 2014 and  
19 2015. *See Neil*, 495 F. App’x at 847 (finding that district court acted within its discretion  
20 when it reduced the plaintiff’s fee award by 0.3 hours for an entry “that was vague and  
21 inadequately explained” and approving the district court’s 10% reduction for an entry that  
22 was block billed).<sup>1</sup> As a result, the Court will subtract 2.4 hours from Plaintiff’s fee  
23 application and will award Plaintiff his attorneys’ fees for 67.0 hours of attorney time.<sup>2</sup>

---

24  
25 <sup>1</sup> The Court reduced a different amount per year because of the amount of billing  
26 entries for each year. The bulk of counsel’s billing entries occurred in 2014 and 2015.

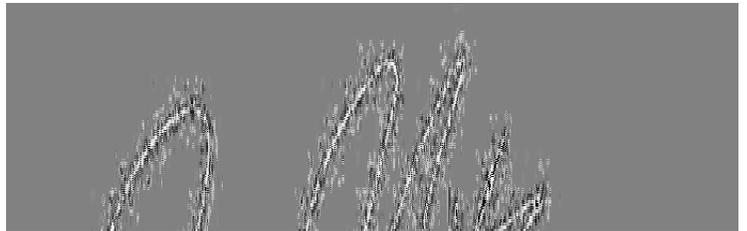
27 <sup>2</sup> The Court finds that Plaintiff is entitled to the cost-of-living adjustment to the  
28 statutory hourly rate pursuant to the EAJA and *Thangaraja v. Gonzales*, 428 F.3d 870,  
876–77 (9th Cir. 2005). Thus, Plaintiff will be awarded \$12,733.82 based on his  
counsel’s 3.0 hours of work in 2013 at \$187.02 per hour, 31.2 hours in 2014 at \$190.06

1 **IV. Conclusion**

2 Based on the foregoing,

3 **IT IS ORDERED** that Plaintiff's Application for Attorney Fees under the Equal  
4 Access to Justice Act, (Doc. 33), is **GRANTED** in the amount of \$12,733.82. This award  
5 shall be made payable directly to Plaintiff and is subject to offset to satisfy any pre-  
6 existing debt that Plaintiff owes the United States pursuant to *Astrue v. Ratliff*, 560 U.S.  
7 586 (2010).

8 Dated this 8th day of August, 2016.



26  
27  
28

---

per hour, 31.6 hours during 2015 at \$190.28 per hour, and 1.2 hours during the first half of 2016 at \$191.70 per hour. *See* United States Courts for the Ninth Circuit, Equal Access to Justice Act—Rates, [http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000039](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039) (last visited August 8, 2016).