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5 **IN THE UNITED STATES DISTRICT COURT**  
6 **FOR THE DISTRICT OF ARIZONA**  
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8 Patrick Dooley Harding,

9 Plaintiff,

10 v.

11 Commissioner of Social Security  
12 Administration,

13 Defendant.

No. CV-16-00419-PHX-JAT

**ORDER**

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15 Pending before the Court is Plaintiff Patrick Harding's Motion for Attorney Fees  
16 and Costs Under the Equal Access to Justice Act ("Motion"), (Doc. 20). Plaintiff has also  
17 filed a Memorandum in Support of Motion for Attorney Fees ("Memorandum"),  
18 (Doc. 21). After reviewing the Commissioner of Social Security Administration's  
19 (the "Commissioner's") Response, (Doc. 22), and Plaintiff's Reply, (Doc. 23), the Court  
20 grants in-part and denies in-part Plaintiff's Motion.

21 **I. Background**

22 Plaintiff originally filed an application for a period of disability, disability  
23 insurance benefits, and Supplemental Security Income ("SSI") before the Social Security  
24 Administration. (Doc. 21 at 2). Plaintiff's application was denied by an Administrative  
25 Law Judge ("ALJ"). (*Id.*). The Social Security Appeals Council denied Plaintiff's request  
26 for review. (*Id.*). Plaintiff filed an appeal before this Court and counsel filed a complaint  
27 on February 15, 2016. (Doc. 1). Plaintiff and counsel entered into a fee agreement for  
28 counsel's work before the Court. (Doc. 21-3 at 2).

1 On November 9, 2016, the Court vacated the Commissioner’s decision and  
2 remanded Plaintiff’s claim for further proceedings. (Doc. 18). On February 8, 2017  
3 Plaintiff filed the pending Motion. (Doc. 20).

4 **II. Legal Standard**

5 The United States Court of Appeals for the Ninth Circuit has succinctly stated the  
6 legal standard for an award of attorneys’ fees under the Equal Access to Justice Act  
7 (“EAJA”) as follows:

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

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

21 When awarding attorneys’ fees under the EAJA, the court should reimburse the  
22 prevailing party only for those fees which are reasonably expended by that party’s  
23 counsel. *See* 28 U.S.C. § 2412(d)(2)(A) (2012). The prevailing party bears the burden of  
24 proving the reasonableness of his request through sufficiently detailed accounts of hours  
25 expended on particular tasks so that the court can evaluate his application. *See Hensley v.*  
26 *Eckerhart*, 461 U.S. 424, 437 (1983); *see Neil v. Comm’r of Soc. Sec.*,  
27 495 F. App’x 845, 846 (9th Cir. 2012) (“A fee applicant should maintain billing records  
28 in a manner that enables a reviewing court to easily identify the hours reasonably

1 expended.” (quotation marks omitted)). Generally, if the court reduces a fee application it  
2 must provide a reason; however, “a district court can impose a reduction of up to 10  
3 percent—a ‘haircut’—based purely on the exercise of its discretion and without more  
4 specific explanation.” *Costa v. Comm’r of Soc. Sec.*, 690 F.3d 1132, 1135 (9th Cir. 2012)  
5 (citing *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)).

### 6 **III. Analysis**

7 The Commissioner concedes that her position was not substantially justified.  
8 (See Doc. 22 at 2 (“As procedural errors by the [ALJ] below rendered the government’s  
9 position not substantially justified, the Commissioner does not object to the motion for  
10 EAJA fees on this basis.”)). Because the Commissioner concedes this point, the Court  
11 next determines the measure of reasonable attorney’s fees to which Plaintiff is entitled  
12 under the EAJA.

13 Plaintiff originally requested \$8,291.34 in attorneys’ fees and costs for 30.5 hours  
14 of attorney time, 19.5 hours of paralegal time, and \$470 in costs. (Doc. 21-2 at 2).  
15 Plaintiff seeks attorneys’ fees at a rate of \$190.28 per hour for work in 2015 and \$192.68  
16 per hour for work in 2016.<sup>1</sup> The Commissioner objects to the amount of fees and costs  
17 requested, and seeks reductions for (1) Plaintiff’s counsels’ *pro hac vice* fee;  
18 (2) Plaintiff’s billing of clerical and secretarial tasks; (3) Plaintiff’s quarter-hour  
19 increment billing; and (4) ten percent of the EAJA award. (Doc. 22 at 3–9); *see also*  
20 *Moreno*, 534 F.3d at 1112. In his Reply, Plaintiff concedes to certain reductions,<sup>2</sup> adds  
21 fees for litigating this Motion, and updates the requested amount to \$8,801.21.  
22 (Doc. 23 at 2–5). The parties still dispute (1) reductions for three entries that were billed  
23 as quarter-hours; and (2) a reduction of ten-percent of all of Plaintiff’s fees and costs.

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26 <sup>1</sup> Plaintiff is entitled to the cost-of-living adjustment to the statutory hourly rate  
pursuant to the EAJA and *Thangaraja v. Gonzales*, 428 F.3d 870, 876–77 (9th Cir. 2005).

27 <sup>2</sup> Plaintiff conceded to reductions of \$70 in costs for the *pro hac vice* fee, 1.5  
28 paralegal hours for clerical and secretarial tasks, and 1.5 attorney hours for several  
quarter-hour billing entries and entries related to the *pro hac vice* application.  
(Doc. 23 at 3).

1           **A.     Reduction for Quarter-Hour Billing**

2           The Commissioner argues that Plaintiff’s quarter-hour billing increment overstated  
3 the number of hours worked. In the Response, the Commissioner references eight tasks  
4 that “could not have reasonably required fifteen minutes to complete.”<sup>3</sup> (Doc. 22 at 5).  
5 Plaintiff concedes that five of the entries did not take fifteen minutes, but disputes three  
6 entries that “each took at least fifteen minutes to complete.” (Doc. 23 at 2). In particular,  
7 Plaintiff contends that reviewing the Court’s Judgment, the Court’s scheduling order, and  
8 the complaint drafted by a paralegal each took fifteen minutes to complete. (*Id.*). The  
9 Court finds that each of the disputed entries reasonably took fifteen minutes to complete.  
10 *See Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007) (“The district court  
11 was in the best position to determine in the first instance whether counsel’s practice of  
12 billing by the quarter-hour resulted in a request for compensation for hours not  
13 reasonably expended on the litigation.”).

14           The Court rejects the Commissioner’s argument that fifteen minutes to review the  
15 Court’s order was overstated. Here, the Court’s order vacating and remanding the  
16 decision of the ALJ was approximately 21 pages. (Doc. 18). This entry does not appear  
17 excessive. The Court will not reduce the attorneys’ fees for reviewing the Court’s order.

18           Next, the Court will not reduce the attorneys’ fees for reviewing the scheduling  
19 order. (Doc. 6). Parties should carefully review such orders to ensure compliance with the  
20 Court’s rules. The Court therefore will not deduct attorneys’ fees for reviewing the  
21 scheduling order.

22           The Court will not reduce attorneys’ fees for reviewing a complaint drafted by a  
23 paralegal. Counsel should carefully review such a complaint to ensure the procedural  
24 history and timeline presented to the Court is accurate. In particular, the complaint

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26           <sup>3</sup> The Commissioner actually references nine tasks, but duplicates a task in the  
27 Response listed only once in Plaintiff’s time sheet. (Doc. 21-4 at 2). The Response  
28 includes “emailing Plaintiff regarding two attorneys’ *pro hac vice* applications” and  
“reviewing the email from the attorney admissions clerk regarding *pro hac vice*  
applications.” (Doc. 22 at 5). Because Plaintiff did not bill twice for this task, the two  
points will be consolidated. The Court will consider the Commissioner as objecting to  
eight of the tasks in Plaintiff’s time sheet.

1 includes five relevant dates, and specific details regarding the procedural history. The  
2 Court will not reduce attorneys' fees for review of the complaint drafted by the paralegal.  
3 Therefore, the Court agrees with Plaintiff's reduction of 1.5 attorneys' hours for items  
4 that were overstated by quarter-hour billing.

5 **B. Reduction of Ten Percent**

6 The Commissioner seeks a reduction of the EAJA award by ten percent.  
7 (Doc. 22 at 9). Courts may impose a "reduction, no greater than 10 percent . . . without a  
8 more specific explanation." *Moreno*, 534 F.3d at 1112 (concluding that it could not  
9 sustain a reduction of 25 percent when the district court could not tell by cursory  
10 examination which hours were unnecessarily duplicative). Here, the Commissioner does  
11 not argue that the hours are duplicative and the Court does not find evidence to suggest  
12 that the hours are duplicative. Because Plaintiff conceded to, and the Court approved of,  
13 certain reductions in the amount of attorneys' fees with specific explanation, further  
14 reduction is not necessary. Therefore, the Court will not reduce the EAJA award by ten  
15 percent.

16 **C. Attorneys' Fees for Litigating the Pending Motion**

17 Plaintiff, in the Reply, seeks an additional 4.25 attorney hours and 2 paralegal  
18 hours for time spent litigating the pending Motion. (Doc. 23 at 4). Plaintiff claims the  
19 paralegal spent 2 hours preparing, assembling, and drafting Plaintiff's Motion and  
20 Memorandum. (*Id.*). Plaintiff also claims the attorney spent 2.25 hours reviewing the  
21 Commissioner's Response and researching and outlining the Reply, and 2 hours drafting  
22 the Reply. (*Id.* at 3–4). Because the Commissioner's position was not substantially  
23 justified, Plaintiff is entitled to attorneys' fees for the pending litigation. *See Love v.*  
24 *Reilly*, 924 F.2d 1492, 1497 (9th Cir. 1991) ("[U]nder the EAJA, the prevailing party is  
25 automatically entitled to attorney's fees for any fee litigation once the district court has  
26 made a determination that the government's position was not substantially justified."  
27 (citing *Immigration & Naturalization Serv. v. Jean*, 496 U.S. 154, 160–61 (1990))). The  
28 hours logged in relation with litigating attorneys' fees appear reasonable and not


1 duplicative. Therefore, Plaintiff is entitled to an additional 2 paralegal hours and 4.25  
2 attorney hours, in the amount of \$1,018.89. The Court therefore will award Plaintiff  
3 \$8,801.21 in attorneys' fees under the EAJA.

4 **IV. Conclusion**

5 Based on the foregoing,

6 **IT IS ORDERED** that Plaintiff's Motion for Attorney Fees and Costs Under the  
7 Equal Access to Justice Act, (Doc. 20), is GRANTED in the amount of \$8,801.21. This  
8 award shall be payable directly to Plaintiff and is subject to offset to satisfy any  
9 preexisting debt that Plaintiff owes the United States pursuant to *Astrue v. Ratliff*,  
10 560 U.S. 586, 594 (2010).

11 Dated this 12th day of July, 2017.

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James A. Teilborg  
Senior United States District Judge