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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MARTIN CAMPBELL,

CASE NO. 1:09-cv-00719-SMS

Plaintiff,

ORDER GRANTING MOTION FOR  
ATTORNEYS' FEES UNDER  
28 U.S.C. § 2412 (D)

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

(Doc. 20)

Defendant.

\_\_\_\_\_  
/

Plaintiff moves the Court to grant attorneys' fees of \$6197.00 under the Equal Access to Justice Act (28 U.S.C. § 2412 (d)) ("EAJA"). The Government objects to Plaintiff's fee request, contending that the requested fees are inflated by the inclusion of clerical tasks and by excessive and duplicative time spent on specific legal tasks. Having reviewed the motion and its supporting documentation, as well as the case file, this Court reduces Plaintiff's claim for attorneys' fees to eliminate clerical tasks and inflated billing, and orders the payment of fees totaling \$3590.88.

**I. Legal and Factual Background**

On April 21, 2009, Plaintiff, by his attorney Henry Reynolds, filed a two-page form complaint appealing the Commissioner's decision denying disability benefits. Reynolds filed Plaintiff's opening brief on November 17, 2009; the Commissioner filed opposition on December 21, 2009. The Court entered judgment on January 7, 2011. On March 22, 2011, Plaintiff filed a motion for attorneys' fees under the EAJA totaling \$6197.

1 **II. Discussion**

2 **A. Amount of Fee Request**

3 28 U.S.C. § 2412(d)(1)(A) provides:

4 Except as otherwise specifically provided by statute, a court shall award to a  
5 prevailing party other than the United States fees and other expenses, in addition  
6 to any costs awarded pursuant to subsection (a), incurred by that party in any civil  
7 action (other than cases sounding in tort), including proceedings for judicial  
8 review of agency action, brought by or against the United States in any court  
9 having jurisdiction of that action, unless the court finds that the position of the  
10 United States was substantially justified or that special circumstances make an  
11 award unjust.

12 A prevailing party under the EAJA is one who has gained by judgment or consent decree  
13 a material alteration of the legal relationship of the parties. *Perez-Arellano v. Smith*, 279 F.3d  
14 791, 794 (9<sup>th</sup> Cir. 2002).

15 Under the EAJA, attorneys' fees must be reasonable. 28 U.S.C. § 2412(d)(1)(A); *Perez-*  
16 *Arellano*, 279 F.3d at 794. The Court generally starts with the number of hours reasonably  
17 expended on the litigation multiplied by a reasonable hourly rate, and must provide a concise and  
18 clear explanation of the reasons for its determination. *Hensley v. Eckerhart*, 461 U.S. 424, 433,  
19 437 (1983); *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9<sup>th</sup> Cir. 2001). A court has wide latitude in  
20 determining the number of hours reasonably expended and may reduce the hours if the time  
21 claimed is excessive, redundant, or otherwise unnecessary. *Cunningham v. County of Los*  
22 *Angeles*, 879 F.2d 481, 484 (9<sup>th</sup> Cir. 1988), *cert. denied*, 493 U.S. 1035 (1990). The court has the  
23 obligation to exclude from the calculation any hours that were not reasonably expended on the  
24 litigation. *Spegon v. Catholic Bishop of Chicago*, 175 F.3d 544, 550 (7<sup>th</sup> Cir. 1999) (*internal*  
25 *quotations omitted*).

26 Plaintiff requests attorneys' fees totaling \$6197, attributable to 35.7 attorney hours  
27 expended in prosecuting Plaintiff's appeal. The Government objects to Plaintiff's fee request,  
28 citing excessive time spent on clerical tasks and excessive time spent on both the opening brief  
and preparation of the EAJA request.

Attorneys and paralegals may not legitimately bill for clerical or secretarial work.  
*Missouri v. Jenkins*, 491 U.S. 274, 288 n. 10 (1989). "It is appropriate to distinguish between

1 legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics  
 2 and other work which can often be accomplished by nonlawyers but which a lawyer may do if he  
 3 has no other help available.” *Id.*, quoting *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d  
 4 714, 717 (5<sup>th</sup> Cir. 1974). “[T]he court should disallow not only hours spent of tasks that would  
 5 normally not be billed to a paying client, but also those hours expended by counsel on tasks that  
 6 are easily delegable to non-professional assistance.” *Spegon*, 175 F.3d at 553 (*internal*  
 7 *quotations omitted*). Clerical work may not be billed since it is part of a law firm’s overhead.  
 8 *Jones v. Armstrong Cork Co.*, 630 F.2d 324, 325-26 (5<sup>th</sup> Cir. 1980). *See also Nadarajah v.*  
 9 *Holder*, 569 F.3d 906, 921 (9<sup>th</sup> Cir. 2009) (reducing paralegal bills to account for erroneous  
 10 billing of clerical work performed by paralegal).

11       Upon review, the Court finds the following entries to constitute impermissible clerical  
 12 services:

|    |         |  |           |
|----|---------|--|-----------|
| 13 | 4/23/09 | prepare and mail summonses                     | .5        |
| 14 | 4/24/09 | prepare and mail materials to marshals service | .8        |
| 15 | 4/26/09 | notice of submission of documents              | <u>.1</u> |
|    |         |  | 1.4 hours |

16       Accordingly, the Court will reduce the amount of time requested by 1.4 for activities that  
 17 reasonably could have been managed by clerical personnel.

18       Plaintiff further requests 2 hours for preparation of the summons and complaint. The  
 19 two-page complaint is clearly a word-processing template into which the relevant information  
 20 was inserted. Although Plaintiff’s attorney would have had to instruct clerical personnel  
 21 regarding the proper form and appropriate inserts for Plaintiff’s case, the attorney should have  
 22 been able to perform his non-clerical functions in one-half hour or less. This entry will be  
 23 reduced by 1.5 hours.

24       As submitted to the Court, the substantive portion of the Plaintiff’s opening brief consists  
 25 of sixteen pages: nine of these pages summarize the factual and procedural history of the case.  
 26 Plaintiff claims 19 hours for its preparation, including 12 hours by attorney Murthy and 7 hours  
 27 by attorney Reynolds. Five hours of Reynold’s time was allocated to editing and amending  
 28 Murthy’s work. The attorneys’ review of the agency record was billed separately.

1 Counsel fees should not include excessive, redundant, or otherwise unnecessary time such  
2 as those attributable to the supervision or correction of a junior attorney. *See Hensley*, 461 U.S.  
3 at 434. An attorney submitting a fee request should exercise the same billing judgment that he or  
4 she would use in preparing a bill for submission to the client, omitting ill-used or unnecessary  
5 time. *Id.* Murthy’s time was excessive; Reynold’s time is attributed partly to editing Murthy’s  
6 work. The Court will reduce Plaintiff’s request by seven hours.

7 The concept of billing judgment expressed in *Hensley* applies equally to the billing  
8 entries associated with the Reynolds’ activities before Plaintiff retained his services. Although  
9 reviewing the case is necessary in any event to proceed with prosecuting the case once the client  
10 has retained the law firm, lawyers would not typically bill clients for entries such as “decide to  
11 take [case]” or “send signup material to client,” or for multiple follow-up calls intended to set the  
12 hook and reel in the business. These entries total 4.3 hours. Allowing time for reasonable  
13 review of the case, the Court will reduce the requested fees by 2 hours.

14 Plaintiffs who are otherwise eligible for EAJA fees are entitled to recover for the time  
15 reasonably spent in litigating their request for fees, without regard to whether or not the  
16 government’s position with respect to the fee request was substantially justified. *Commissioner,*  
17 *Immigration and Naturalization Service v. Jean*, 496 U.S 154, 160-66 (1990). Plaintiff requests  
18 2.1 hours for preparation of an EAJA settlement letter, .5 hours for follow-up telephone calls and  
19 e-mails, and 2.0 hours to prepare the fee application once the parties could not agree to a  
20 settlement. The Commissioner objects, noting that the settlement letter he received consisted of  
21 “a short four-sentence email from counsel with the billing sheet, attorney assistant declaration  
22 and fee agreement attached.” Db2. The Commissioner adds that the fee application consisted of  
23 the same materials presented for the settlement request plus boilerplate materials used in the fee  
24 request in at least one prior case. The Court agrees that the time requested for preparation of the  
25 EAJA was excessive and should be reduced to one hour.

26 **III. Plaintiff’s Assignment of Payment to Attorney**

27 Attorneys’ fees payable under the EAJA (28 U.S.C. § 2412(d)) are appropriately payable  
28 to the prevailing litigant, not his or her attorney. *Astrue v. Ratliff*, 130 S.Ct. 2521, 2524 (2010).

1 This is because that a fee award under the EAJA is subject to offset for application to federal  
2 debts owed by the prevailing party under the Treasury Offset Program (31 U.S.C. § 3716). *Id.*  
3 When the party has assigned his or her right to attorneys' fees to his or her attorney, the  
4 government may ultimately direct the payment to the assignee if the prevailing party does not  
5 owe a debt to the government. *Id.* at 2529.

6 **IV. Conclusion and Order**

7 As set forth above, the Court reduces Plaintiff's fee request by 11.9 hours for 2009 for a  
8 reduction of \$2059.65 and by 3.1 hours for 2011 for a reduction of \$546.47. The total reduction  
9 in the requested fee is \$2606.12.

10 Accordingly, this Court AWARDS to Plaintiff attorneys fees under the EAJA of  
11 \$3590.88. Plaintiff having assigned any EAJA payment to which he may become entitled, to his  
12 attorney, Henry Reynolds, the Court ORDERS that any balance of the awarded fees remaining  
13 after the offset of the fees to satisfy Plaintiff's other federal obligations under the Treasury Offset  
14 Program (31 U.S.C. § 3716) shall be paid directly to Henry Reynolds on Plaintiff's behalf.

15  
16 IT IS SO ORDERED.

17  
18 Dated: June 21, 2011

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE