

1 Brian C. Shapiro
Attorney at Law: 192789
2 Law Offices of Lawrence D. Rohlring
12631 East Imperial Highway, Suite C-115
3 Santa Fe Springs, CA 90670
Tel.: (562)868-5886
4 Fax: (562)868-8868
E-mail: rohlring.office@rohlringlaw.com

5 Attorneys for Plaintiff
6 Frank Martinez

7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 FRANK MARTINEZ,) Case No.: 1:13-cv-01491-BAM
11)
12 Plaintiff,) STIPULATION AND ORDER
13 vs.) AWARDING PAYMENT OF
14 CAROLYN W. COLVIN, Acting) ATTORNEY FEES PURSUANT TO
Commissioner of Social Security,) THE EQUAL ACCESS TO JUSTICE
15 Defendant.) ACT, 28 U.S.C. § 2412(d)
16)

17 TO THE HONORABLE BARBARA A. MCALUIFFE, MAGISTRATE
18 JUDGE OF THE DISTRICT COURT:

19 IT IS HEREBY STIPULATED by and between the parties through their
20 undersigned counsel, subject to the approval of the Court, that Frank Martinez be
21 awarded attorney fees and expenses in the amount of THREE THOUSAND TWO
22 HUNDRED dollars (\$3,200) under the Equal Access to Justice Act (EAJA), 28
23 U.S.C. § 2412(d). This amount represents compensation for all legal services
24 rendered on behalf of Plaintiff by counsel in connection with this civil action, in
25 accordance with 28 U.S.C. §§ 1920; 2412(d).
26

1 After the Court issues an order for EAJA fees to Frank Martinez, the
2 government will consider the matter of Frank Martinez's assignment of EAJA fees
3 to Brian C. Shapiro. The retainer agreement containing the assignment is attached
4 as exhibit 1. Pursuant to *Astrue v. Ratliff*, 130 S.Ct. 2521, 2529 (2010), the ability
5 to honor the assignment will depend on whether the fees are subject to any offset
6 allowed under the United States Department of the Treasury's Offset Program.
7 After the order for EAJA fees is entered, the government will determine whether
8 they are subject to any offset.

9 Fees shall be made payable to Frank Martinez, but if the Department of the
10 Treasury determines that Frank Martinez does not owe a federal debt, then the
11 government shall cause the payment of fees, expenses and costs to be made
12 directly to Law Offices of Lawrence D. Rohlifing, pursuant to the assignment
13 executed by Frank Martinez. *United States v. \$186,416.00*, 722 F.3d 1173, 1176
14 (9th Cir. 2013) (*\$186,416.00 II*) (ordering fees paid to counsel because of an
15 assignment that did not interfere with a raised superior lien).¹ Any payments made
16 shall be delivered to Brian C. Shapiro.

17
18 ¹ The Commissioner does not stipulate to the citation of *\$186,416.00 II*, and will
19 not participate in representing to this Court that it carries legal import in these
20 proceedings. *\$186,416 II* involved a different statute and very different factual
21 circumstances than those presented here, or in other Social Security cases.
22 Because the parties have agreed to the payment of EAJA fees, and the amount, and
23 to avoid motion practice solely related to Plaintiff's citation, the Commissioner
24 agrees to this stipulation. The Commissioner reserves the right to challenge the
25 applicability of *\$186,416 II* to any Social Security case, and this Stipulation should
26 not be construed as a waiver of such reservation.

24 Frank Martinez contends that *U.S. v. \$186,416.00 in U.S. Currency*, 642 F.3d 753,
25 757 (9th Cir. 2011) (*\$186,416.00 I*) held that there is no functional difference
26 between the CAFRA and EAJA in terms of "ownership" of the fee.

1 This stipulation constitutes a compromise settlement of Frank Martinez's
2 request for EAJA attorney fees, and does not constitute an admission of liability on
3 the part of Defendant under the EAJA or otherwise. Payment of the agreed amount
4 shall constitute a complete release from, and bar to, any and all claims that Frank
5 Martinez and/or Brian C. Shapiro including Law Offices of Lawrence D. Rohlfing
6 may have relating to EAJA attorney fees in connection with this action.

7 This award is without prejudice to the rights of Brian C. Shapiro and/or the
8 Law Offices of Lawrence D. Rohlfing to seek Social Security Act attorney fees
9 under 42 U.S.C. § 406(b), subject to the savings clause provisions of the EAJA.

10 DATE: April 23, 2015

Respectfully submitted,

11 LAW OFFICES OF LAWRENCE D. ROHLFING

12 */s/ Brian C. Shapiro*

13 BY: _____

14 Brian C. Shapiro
15 Attorney for plaintiff Frank Martinez

16 DATED: April 23, 2015

BENJAMIN B. WAGNER

17 DONNA L. CALVERT
18 Regional Chief Counsel, Region IX
19 Social Security Administration

20 */s/ Lynn M. Harada*

21 _____
22 Lynn M. Harada
23 Special Assistant United States Attorney
24 Attorneys for Defendant Carolyn W. Colvin,
25 Acting Commissioner of Social Security
26 (Per e-mail authorization)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER

Based upon the parties' Stipulation for the Award and Payment of Equal Access to Justice Act Fees and Expenses filed on April 23, 2015 (Doc. 17) ("the Stipulation"), IT IS ORDERED that fees and expenses in the amount of \$3,200.00 as authorized by 28 U.S.C. § 2412, be awarded subject to the terms of the Stipulation.

IT IS SO ORDERED.

Dated: May 1, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE