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6 Ben Smith

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

10 BEN SMITH,) Case No.: 1:13-cv-01717-JLT
11)
12 Plaintiff,) STIPULATION FOR THE AWARD
13 vs.) AND PAYMENT OF ATTORNEY
14 CAROLYN W. COLVIN, Acting) FEES AND EXPENSES PURSUANT
Commissioner of Social Security,) TO THE EQUAL ACCESS TO
15 Defendant.) JUSTICE ACT, 28 U.S.C. § 2412(d)
AND COSTS PURSUANT TO 28
U.S.C. § 1920
16)

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18 TO THE HONORABLE JENNIFER L. THURSTON, MAGISTRATE
19 JUDGE OF THE DISTRICT COURT:

20 IT IS HEREBY STIPULATED by and between the parties through their
21 undersigned counsel, subject to the approval of the Court, that Ben Smith be
22 awarded attorney fees and expenses in the amount of THREE THOUSAND
23 SEVEN HUNDRED FIFTY dollars (\$3750) under the Equal Access to Justice Act
24 (EAJA), 28 U.S.C. § 2412(d). This amount represents compensation for all legal
25 services rendered on behalf of Plaintiff by counsel in connection with this civil
26 action, in accordance with 28 U.S.C. §§ 1920; 2412(d).

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

9 Fees shall be made payable to Ben Smith, but if the Department of the
10 Treasury determines that Ben Smith 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. Rohlfig, pursuant to the assignment
13 executed by Ben Smith. *United States v. \$186,416.00*, 722 F.3d 1173, 1176 (9th
14 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.

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

1 This stipulation constitutes a compromise settlement of Ben Smith's request
2 for EAJA attorney fees, and does not constitute an admission of liability on the part
3 of Defendant under the EAJA or otherwise. Payment of the agreed amount shall
4 constitute a complete release from, and bar to, any and all claims that Ben Smith
5 and/or Brian C. Shapiro including Law Offices of Lawrence D. Rohlring may have
6 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. Rohlring 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: February 4, 2015 Respectfully submitted,

11 LAW OFFICES OF LAWRENCE D. ROHLRING

12 /s/ *Brian C. Shapiro*

13 BY: _____
14 Brian C. Shapiro
Attorney for plaintiff Ben Smith

15 DATED: February 4, 2015

16 BENJAMIN B. WAGNER
United States Attorney

17 /s/ *Tina Saladino*

18 _____
19 Tina Saladino
20 Special Assistant United States Attorney
21 Attorneys for Defendant Carolyn W. Colvin,
Acting Commissioner of Social Security
(Per e-mail authorization)

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ORDER

IT IS ORDERED that fees and expenses in the amount of \$3750 as authorized by 28 U.S.C. § 2412 be awarded subject to the terms of the Stipulation.

IT IS SO ORDERED.

Dated: February 6, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE