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6 John Allen Lovejoy

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

10 JOHN ALLEN LOVEJOY,
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12 Plaintiff,
13
14 v.
15 CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
16
17 Defendant.

Case No. 1:15-cv-00360-SKO

**STIPULATION AND ORDER
FOR THE AWARD AND PAYMENT OF
ATTORNEY FEES AND EXPENSES
PURSUANT TO THE EQUAL ACCESS
TO JUSTICE ACT, 28 U.S.C. § 2412(d)
AND COSTS PURSUANT TO 28 U.S.C.
§ 1920**

_____/ (Doc. 23)

17 TO THE HONORABLE Sheila K. Oberto, MAGISTRATE JUDGE OF THE UNITED
18 STATES DISTRICT COURT:

19 IT IS HEREBY STIPULATED by and between the parties through their undersigned
20 counsel, subject to the approval of the Court, that John Allen Lovejoy be awarded attorney fees in
21 the amount of three thousand four hundred dollars (\$3,400.00) under the Equal Access to Justice
22 Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of four hundred dollars (\$400.00) under
23 28 U.S.C. § 1920. This amount represents compensation for all legal services rendered on behalf
24 of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 1920;
25 2412(d).

26 After the Court issues an order for EAJA fees to John Allen Lovejoy, the government will
27 consider the matter of John Allen Lovejoy's assignment of EAJA fees to Young Cho. The retainer
28 agreement containing the assignment is attached as exhibit 1. Pursuant to *Astrue v. Ratliff*, 130

1 S.Ct. 2521, 2529 (2010), the ability to honor the assignment will depend on whether the fees are
2 subject to any offset allowed under the United States Department of the Treasury's Offset
3 Program. After the order for EAJA fees is entered, the government will determine whether they
4 are subject to any offset.

5 Fees shall be made payable to John Allen Lovejoy, but if the Department of the Treasury
6 determines that John Allen Lovejoy does not owe a federal debt, then the government shall cause
7 the payment of fees, expenses and costs to be made directly to Law Offices of Lawrence D.
8 Rohlring, pursuant to the assignment executed by John Allen Lovejoy. *United States v.*
9 *\$186,416.00*, 722 F.3d 1173, 1176 (9th Cir. 2013) (*\$186,416.00 II*) (ordering fees paid to counsel
10 because of an assignment that did not interfere with a raised superior lien).¹ Any payments made
11 shall be delivered to Young Cho.

12 This stipulation constitutes a compromise settlement of John Allen Lovejoy's request for
13 EAJA attorney fees, and does not constitute an admission of liability on the part of Defendant
14 under the EAJA or otherwise. Payment of the agreed amount shall constitute a complete release
15 from, and bar to, any and all claims that John Allen Lovejoy and/or Young Cho including Law
16 Offices of Lawrence D. Rohlring may have relating to EAJA attorney fees in connection with this
17 action.

18 This award is without prejudice to the rights of Young Cho and/or the Law Offices of
19 Lawrence D. Rohlring to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject
20 to the savings clause provisions of the EAJA.

21 DATE: May 2, 2016 Respectfully submitted,

22 LAW OFFICES OF LAWRENCE D. ROHLRING

23 ¹ The Commissioner does not stipulate to the citation of *\$186,416.00 II*, and will not participate in representing to this
24 Court that it carries legal import in these proceedings. *\$186,416 II* involved a different statute and very different
25 factual circumstances than those presented here, or in other Social Security cases. Because the parties have agreed to
26 the payment of EAJA fees, and the amount, and to avoid motion practice solely related to Plaintiff's citation, the
27 Commissioner agrees to this stipulation. The Commissioner reserves the right to challenge the applicability of
28 *\$186,416 II* to any Social Security case, and this Stipulation should not be construed as a waiver of such reservation.

Lovejoy contends that *U.S. v. \$186,416.00 in U.S. Currency*, 642 F.3d 753, 757 (9th Cir. 2011) (*\$186,416.00 I*) held
that there is no functional difference between the CAFRA and EAJA in terms of "ownership" of the fee. *U.S. v. Kim*,
797 F.3d 696, 699 (9th Cir. 2015) holds that the Anti-Assignment Act invalidates an assignment but does not preclude
the attorney from gaining an interest in the fees.

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/s/ Young Cho

BY: _____

Young Cho
Attorney for plaintiff John Allen Lovejoy

DATE: May 2, 2016

PHILLIP A. TALBERT
Acting United States Attorney
DEBORAH LEE STACHEL
Acting Chief Counsel, Region IX
U.S. Social Security Administration

/s/ Donna W. Anderson

DONNA W. ANDERSON
Special Assistant United States Attorney
Attorneys for Defendant Carolyn W. Colvin,
Acting Commissioner of Social Security
(Per e-mail authorization)

ORDER

Pursuant to the terms of the parties' stipulation, it is HEREBY ORDERED that Plaintiff be awarded \$3,400 in EAJA fees and costs.

IT IS SO ORDERED.

Dated: May 9, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE