

1 PHILLIP A. TALBERT
Acting United States Attorney
2 DEBORAH LEE STACHEL, CSBN 230138
Acting Regional Chief Counsel, Region IX
3 Social Security Administration
CAROLYN B. CHEN, CSBN 256628
4 Special Assistant United States Attorney
160 Spear Street, Suite 800
5 San Francisco, California 94105
6 Tel: (415) 977-8943
Fax: (415) 744-0134
7 E-mail: donna.w.anderson@ssa.gov

8 Attorneys for Defendant

9 Jonathan O. Peña, Esq.
CA Bar ID No.: 278044
10 Peña & Bromberg, PLC
5740 N. Palm Avenue
11 Suite 103
Fresno, CA 93704
12 Telephone: 559-412-5390
13 Facsimile: 866-282-6709
info@jonathanpena.com
14 Attorney for Plaintiff, Kong Peng Lee

15 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

16 KONG PENG LEE,

17 Plaintiff,

18 v.

19 NANCY A. BERRYHILL¹, Acting
20 Commissioner of Social Security,
21 Defendant.

Case No. 1:15-cv-01859-BAM

JOINT STIPULATION AND ORDER FOR THE
AWARD OF ATTORNEY FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT (EAJA) 28
U.S.C. § 2412(d)

22 _____
23 ¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the
24 Federal Rules of Civil Procedure, the Court should substitute Nancy A. Berryhill for Acting
25 Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be taken to
26 continue this suit by reason of the last sentence of section 405(g) of the Social Security Act, 42 U.S.C. §
27 405(g).
28

1 TO THE HONORABLE BARBARA A. MCAULIFFE, MAGISTRATE JUDGE OF THE
2 UNITED STATES DISTRICT COURT:

3 The Parties through their undersigned counsel, subject to the Court's approval, stipulate that
4 Plaintiff be awarded attorney fees in the amount of SIX THOUSAND, NINE HUNDRED DOLLARS
5 (\$6,900.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). This amount
6 represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection
7 with this civil action, in accordance with 28 U.S.C. § 2412(d).

8 After the Court issues an order for EAJA fees to Plaintiff, the government will consider the
9 matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586,
10 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability to honor the assignment will depend on
11 whether the fees are subject to any offset allowed under the United States Department of the
12 Treasury's Offset Program. After the order for EAJA fees is entered, the government will determine
13 whether they are subject to any offset.
14

15 Fees shall be made payable to Plaintiff, but if the Department of the Treasury determines that
16 Plaintiff does not owe a federal debt, then the government shall cause the payment of fees, expenses
17 and costs to be made directly to counsel, pursuant to the assignment executed by Plaintiff. Any
18 payments made shall be delivered to Plaintiff's counsel, Jonathan O. Peña, Esq.

19 This stipulation constitutes a compromise settlement of Plaintiff's request for EAJA fees, and
20 does not constitute an admission of liability on the part of Defendant under the EAJA. Payment of SIX
21 THOUSAND, NINE HUNDRED DOLLARS (\$6,900.00) in EAJA attorney fees shall constitute a
22 complete release from, and bar to, any and all claims that Plaintiff and Plaintiff's attorney, Jonathan O.
23 Peña, Esq., may have relating to EAJA attorney fees in connection with this action.

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2 This award is without prejudice to the rights of Plaintiff's attorney to seek Social Security Act
3 attorney fees under 42 U.S.C. § 406(b), subject to the savings clause provisions of the EAJA.

4 Respectfully submitted,

5 Dated: June 14, 2017

6 /s/ Jonathan O. Peña
7 JONATHAN O. PEÑA
8 Attorney for Plaintiff

9 Dated: June 14, 2017

10 PHILLIP A. TALBERT
11 Acting United States Attorney
12 DEBORAH LEE STACHEL
13 Acting Regional Chief Counsel, Region IX
14 Social Security Administration

15 By: /s/ Carolyn B. Chen*

16 CAROLYN B. CHEN
17 Special Assistant U.S. Attorney
18 Attorneys for Defendant
19 (*Permission to use electronic signature
20 obtained from counsel in email dated 6/14/17)

21 ORDER

22 Based upon the parties' stipulation for the award of attorney fees under the Equal Access to
23 Justice Act filed on June 14, 2017, IT IS HEREBY ORDERED that fees in the amount of \$6,900.00 as
24 authorized by 28 U.S.C. § 2412, be awarded subject to the terms of the stipulation.

25 IT IS SO ORDERED.

26 Dated: June 14, 2017

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE