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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSEPH BIRD,

Plaintiff,

v.

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,

Defendant.

Case No. 1:16-cv-00755-SKO

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY FEES AND
EXPENSES PURSUANT TO THE EQUAL
ACCESS TO JUSTICE ACT**

(Doc. 19)

Before the Court is a “Motion for Attorney’s Fees and Expenses under the Equal Access to Justice Act” (the “Motion”) filed by Plaintiff Joseph Bird (“Plaintiff”) on November 3, 2017. (Doc. 19.) For the reasons set forth below, the Court GRANTS this Motion.

I. BACKGROUND

Plaintiff filed this action on May 31, 2016, seeking judicial review of a final administrative decision denying his application for Social Security disability benefits. (*See generally* Doc. 1.) On August 4, 2017, the Court issued an order reversing the final decision of the Administrative Law Judge (“ALJ”) and remanding the matter for further administrative proceedings. (*See* Doc. 17.)

On November 3, 2017, Plaintiff filed this Motion, seeking an award of attorney’s fees and expenses pursuant to the Equal Access to Justice Act (“EAJA”) in the amount of \$5,355.01.¹ (*See*

¹ While Plaintiff indicates on page 3 of the Motion that he seeks \$5,446.86 in total fees (including an amount for 31 hours in attorney time) (Doc. 19 at 3), it appears from the balance of the Motion—including the billing statement—

1 *id.* at 1; Doc. 19-1 at 1 (seeking an award of \$5,355.01 in total fees (27.55 hours in attorney time)
2 and \$6.13 in costs.) On November 6, 2017, the Commissioner of Social Security (the
3 “Commissioner” or “Defendant”) filed a “Statement of Non-Opposition,” indicating that “[t]he
4 Commissioner . . . has no opposition to Plaintiff’s fee request.” (Doc. 20 at 1.) Plaintiff’s Motion
5 is currently pending before the Court.

6 **II. LEGAL STANDARD**

7 The EAJA provides that “a court shall award to a prevailing party . . . fees and other
8 expenses . . . incurred by that party in any civil action . . . brought by or against the United States .
9 . . unless the court finds that the position of the United States was substantially justified or that
10 special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A); *see also* *Gisbrecht v.*
11 *Barnhart*, 535 U.S. 789, 796 (2002). “It is the government’s burden to show that its position was
12 substantially justified or that special circumstances exist to make an award unjust.” *Gutierrez v.*
13 *Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001).

14 A “party” under the EAJA is defined as including “an individual whose net worth did not
15 exceed \$2,000,000 at the time the civil action was filed[.]” 28 U.S.C. § 2412(d)(2)(B)(i). The
16 term “fees and other expenses” includes “reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).
17 “The statute explicitly permits the court, in its discretion, to reduce the amount awarded to the
18 prevailing party to the extent that the party ‘unduly and unreasonably protracted’ the final
19 resolution of the case.” *Atkins v. Apfel*, 154 F.3d 986, 987 (9th Cir.1998) (citing 28 U.S.C.
20 §§ 2412(d)(1)(C) & 2412(d)(2)(D)).

21 A party who obtains a remand in a Social Security case is a prevailing party for purposes
22 of the EAJA. *Shalala v. Schaefer*, 509 U.S. 292, 300-01 (1993) (“No holding of this Court has
23 ever denied prevailing-party status . . . to a plaintiff who won a remand order pursuant to sentence
24 four of § 405(g) . . . , which terminates the litigation with victory for the plaintiff”). “An applicant
25 for disability benefits becomes a prevailing party for the purposes of the EAJA if the denial of her
26 benefits is reversed and remanded regardless of whether disability benefits ultimately are
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28 that the correct amount sought is \$5,355.01 (including an amount for 27.55 hours in attorney time) (*Id.* at 1, 7-8; Doc. 19-1).

1 awarded.” *Gutierrez*, 274 F.3d at 1257.

2 III. DISCUSSION

3 There is no dispute that Plaintiff is the prevailing party in this litigation, as the Court
4 remanded the matter to the ALJ for further proceedings. (*See* Doc. 17 at 19); *see also* *Gutierrez*,
5 274 F.3d at 1257. Moreover, the Court finds that Plaintiff did not unduly delay this litigation, and
6 that Plaintiff’s net worth did not exceed two million dollars when this action was filed. The Court
7 further finds, as set forth below, that the Commissioner’s position was not substantially justified.
8 *See Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013) (position of the government “includes both
9 the government’s litigation position and the underlying agency action giving rise to the civil
10 action”).

11 A. The Commissioner’s Position was Not Substantially Justified.

12 Plaintiff asserts, and the Commissioner does not contest, that the Commissioner’s
13 underlying administrative decision was not substantially justified. (Doc. 19 at 6-7; Doc. 20.)
14 Substantial justification means “justified in substance or in the main—that is, justified to a degree
15 that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (internal
16 quotation marks and citation omitted). In other words, the government’s position must have a
17 reasonable basis both in fact and in law. *Id.* In considering whether the position of the
18 government is substantially justified, the position of the United States includes “both the
19 government’s litigation position and the underlying agency action giving rise to the civil action.”
20 *Meier*, 727 F.3d at 870.

21 In the social security context, it is the ALJ’s decision that is considered the “action or
22 failure to act” by the agency. *Id.* Under the substantial justification test, the court first considers
23 the ALJ’s decision and then considers the government’s litigation position in defending that
24 decision. *Id.* Where the underlying ALJ decision is not substantially justified, a court need not
25 address whether the Commissioner’s litigation position was justified. *Id.* at 872 (citing *Shafer v.*
26 *Astrue*, 518 F.3d 1067, 1071 (9th Cir. 2008) (“The government’s position must be substantially
27 justified at each stage of the proceedings” (internal quotation marks and citation omitted))).

28 Pursuant to *Meier*, determining whether the agency’s position was substantially justified

1 requires first examining the ALJ’s decision for substantial justification. 727 F.3d at 870. Here, as
2 detailed in the Court’s prior order, the ALJ committed legal error by failing to adequately explain
3 how he determined the particular limitations in Plaintiff’s residual functional capacity (“RFC”)
4 assessment.² (See Doc. 17 at 14-17.) An ALJ’s failure to adequately explain his determination of
5 the particular limitations in a claimant’s RFC is the type of fundamental agency error that is
6 difficult to consider substantially justified. See, e.g., *Allen v. Colvin*, No. 2:14-cv-00210-AC,
7 2014 WL 6901870, at *1-2 (E.D. Cal. Dec. 5, 2014) (finding the ALJ’s error “in determining
8 plaintiff’s physical limitations when assessing plaintiff’s residual functional capacity” was not
9 substantially justified); *Haislip v. Colvin*, No. 1:12-cv-00964 GSA, 2014 WL 184, at *2 (E.D. Cal.
10 May 8, 2014) (finding that the ALJ’s “fail[ure] to properly evaluate the medical evidence and fully
11 incorporate all of the combined limitations [in the plaintiff’s RFC] into the hypotheticals posed”
12 was not substantially justified).

13 Moreover, the Commissioner’s decision to not oppose Plaintiff’s fee request (Doc. 20) is
14 tantamount to a concession that the Commissioner’s position was not substantially justified. See
15 *Gwaduri v. I.N.S.*, 362 F.3d 1144, 1146 (9th Cir. 2004) (“[W]e do not generally favor requiring
16 judges in fee application proceedings to search out and research arguments that the other side does
17 not make or *sua sponte* to initiate an opposition to a fee request where none is offered by the party
18 affected, at least in the absence of a showing of injustice or hardship . . . It is well-within our
19 discretion to determine that the government’s lack of timely opposition is tantamount to a
20 concession that its position in the litigation was not substantially justified.”) (citations omitted).

21 As the ALJ’s underlying decision was not substantially justified, the Court need not
22 address whether, under the second part of the substantial justification test, the Commissioner’s
23 litigation position was justified. *Meier*, 727 F.3d at 872 (citing *Shafer*, 518 F.3d at 1071). The
24 Court therefore finds that Plaintiff is entitled to an award of fees and costs pursuant to the EAJA.

25 **B. Plaintiff’s Requested Attorney’s Fees and Costs are Reasonable.**

26 Plaintiff seeks a total award of \$5,355.01, comprised of 27.55 hours of attorney time and

27 ² In particular, “in making his RFC findings, the ALJ merely described the medical evidence and then stated
28 conclusions, without explaining how he arrived at his conclusions or what evidence supports his conclusions,” and the
ALJ’s RFC findings then served as a basis for testimony given by the vocational expert. (Doc. 17 at 16-17.)

1 \$6.13 in costs. (Doc. 19 at 1; Doc. 19-1 at 1.) The Commissioner “has no opposition to Plaintiff’s
2 fee request.” (Doc. 20.)

3 The EAJA provides for an award of “reasonable” attorney fees. 28 U.S.C.
4 § 2412(d)(2)(A). By statute, hourly rates for attorney fees under EAJA are capped at \$125 per
5 hour, but district courts are permitted to adjust the rate to compensate for increases in the cost of
6 living.³ 28 U.S.C. § 2412(d)(2)(A); *Sorenson v. Mink*, 239 F.3d 1140, 1147-49 (9th Cir. 2001);
7 *Atkins*, 154 F.3d at 987. Determining a reasonable fee “requires more inquiry by a district court
8 than finding the ‘product of reasonable hours times a reasonable rate.’” *Atkins*, 154 F.3d 988
9 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). The district court must consider “the
10 relationship between the amount of the fee awarded and the results obtained.” *Id.* at 989.

11 Here, Plaintiff’s attorney obtained a positive outcome for Plaintiff in that the Court
12 remanded the matter for further administrative proceedings. (*See* Doc. 19 at 3-4; *see also*
13 *generally* Doc. 17.) There is no indication that a reduction of the award is warranted due to any
14 substandard performance by Plaintiff’s counsel as counsel secured a successful result for Plaintiff.
15 Nor is there any evidence that Plaintiff’s counsel engaged in any dilatory conduct resulting in
16 delay.

17 The total requested award amount of \$5,355.01 is reasonable. Plaintiff requests an hourly
18 rate of \$192.68 for attorney work performed in 2016 and an hourly rate of \$195.95 for attorney
19 performed in 2017, both of which are consistent with the statutory maximum rates set forth by the
20 Ninth Circuit. *See supra* note 3. Moreover, the claimed total of 27.55 attorney hours represents a
21 reasonable amount of time for an attorney to expend on this particular matter. *See, e.g., Vallejo v.*
22 *Astrue*, No. 2:09-cv-3088 KJN, 2011 WL 4383636, at *4 (E.D. Cal. Sept. 20, 2011) (declining to
23 “conduct a line-by-line analysis” of billing entries to determine all 62.6 hours of attorney time
24 spent on the litigation were justified). In particular, such hours expended are well within the limit
25 of what would be considered a reasonable amount of time spent on this action when compared to
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27 ³ Pursuant to *Thangaraja v. Gonzales*, 428 F.3d 870, 876–77 (9th Cir. 2005), and the Ninth Circuit Rule 39-1.6, the
28 Ninth Circuit maintains a list of the statutory maximum hourly rates authorized under the EAJA, as adjusted annually
to incorporate increases in the cost of living. The rates are found on that court’s website:
http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039.

1 the time devoted to similar tasks by counsel in like Social Security appeals before this court.
2 *Costa v. Comm’r of Soc. Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (noting “[m]any
3 district courts have noted that twenty to forty hours is the range most often requested and granted
4 in social security cases”) (citing *Patterson v. Apfel*, 99 F.Supp.2d 1212, 1214 n.2 (C.D. Cal. 2000)
5 (collecting district court cases)); *see also Thompson v. Colvin*, No. 2:12-cv-01850-AC, 2015 WL
6 1767733, at *2 (E.D. Cal. Apr. 16, 2015) (finding 63.4 hours to be reasonable); *Boulanger v.*
7 *Astrue*, 2:07-cv-0849-DAD, 2011 WL 4971890, at *2 (E.D. Cal. Oct. 19, 2011) (finding 58 hours
8 to be a reasonable amount of time); *Valleyjo v. Astrue*, No. 2:09-cv-03088 KJN, 2011 WL
9 4383636, at *5 (E.D. Cal. Sept. 20, 2011) (finding 62.1 hours to be reasonable).

10 Plaintiff is therefore awarded EAJA fees for 27.55 total attorney hours for time spent on
11 the litigation and costs in the amount of \$6.13, for a total EAJA award in the amount of \$5,355.01.

12 **IV. CONCLUSION**

13 For the reasons set forth above, IT IS HEREBY ORDERED that Plaintiff’s motion for
14 EAJA fees and expenses is GRANTED in the amount of \$5,355.01.

15
16 IT IS SO ORDERED.

17 Dated: December 24, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE