

1 after which the Commissioner filed a stipulation for the remand on March 23, 2017. (Doc. 18)
2 Accordingly, the Court ordered the matter remanded pursuant to sentence four of 42 U.S.C. § 405(g),
3 and entered judgment in favor of Plaintiff. (Docs. 19, 20)

4 Following the entry of judgment, Plaintiff filed the motion for fees and costs under the Equal
5 Access to Justice Act (“EAJA”) on June 12, 2017. (Doc. 21) Defendant filed an opposition to the
6 motion on July 28, 2017 (Doc. 23), to which Plaintiff filed a brief in rely on August 4, 2017 (Doc. 24).

7 **II. Legal Standards for EAJA Fees**

8 The EAJA provides that a court shall award fees and costs incurred by a prevailing party “in
9 any civil action . . . including proceedings for judicial review of agency action, brought by or against
10 the United States . . . unless the court finds that the position of the United States was substantially
11 justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). A party
12 eligible to receive an award of attorney fees under the EAJA must be the prevailing party who received
13 a final judgment in the civil action. 28 U.S.C. § 2412(d)(2)(H).

14 The party seeking the award of EAJA fees has the burden of proof that fees requested are
15 reasonable. *See Hensley v. Eckerhart*, 461 U.S. 424, 434, 437 (1983); *see also Atkins v. Apfel*, 154 F.3d
16 988 (9th Cir. 1998) (specifically applying these principles to fee requests under the EAJA). As a result,
17 “[t]he fee applicant bears the burden of documenting the appropriate hours expended in the litigation,
18 and must submit evidence in support of those hours worked.” *Gates v. Deukmejian*, 987 F.2d 1392,
19 1397 (9th Cir. 1992); *see also* 28 U.S.C. § 2412(d)(1)(B) (“A party seeking an award of fees and other
20 expenses shall . . . submit to the court an application for fees and other expenses which shows . . . the
21 amount sought, including an itemized statement from any attorney . . . stating the actual time
22 expended”). The court has an independent duty to review the evidence to determine the reasonableness
23 of the hours requested in each case. *Hensley*, 461 U.S. at 433, 436-47.

24 Where documentation of the expended time is inadequate, the Court may reduce the requested
25 award. *Hensley*, 461 U.S. at 433, 436-47. Further, “hours that were not ‘reasonably expended’”
26 should be excluded from an award, including “hours that are excessive, redundant, or otherwise
27 unnecessary.” *Id.* at 434. A determination of the number of hours reasonably expended is within the
28 Court’s discretion. *Cunningham v. County of Los Angeles*, 879 F.2d 481, 484-85 (9th Cir. 1988).

1 **III. Discussion and Analysis**

2 A claimant who receives a sentence four remand in a Social Security case is a prevailing party
3 for EAJA purposes. *Shalala v. Schaefer*, 509 U.S. 292, 301-02 (1993); *Flores v. Shalala*, 49 F.3d 562,
4 568 (9th Cir. 1995). Consequently, Plaintiff was the prevailing party, because the parties stipulated to
5 a remand for further proceedings, which was then ordered by the Court. (Docs. 18, 19) The
6 Commissioner does not dispute Plaintiff’s status as a prevailing party, but argues the fees requested
7 are excessive. (Doc. 23 at 2-4)

8 The Commissioner argues that “fee request includes excessive, redundant, and unnecessary
9 hours, and should be reduced.” (Doc. 23 at 2, emphasis omitted) The Commissioner contends that
10 Plaintiff “provides no authority to support her claim that approximately 16 hours of fees for a
11 settlement letter was reasonable,” and this is “nearly the same number of hours typically worked
12 through the merits stage.” (*Id.* at 3 [emphasis omitted], citing *Costa v. Comm’r of Soc. Sec.*, 690 F.3d
13 1132 (9th Cir. 2012)) As the Commissioner observes, the Ninth Circuit noted that “twenty to forty
14 hours is the range most often requested and granted in social security cases.” *Costa*, 690 F.3d at 1136.

15 **A. Attorney Time**

16 The Commissioner asserts that Plaintiff should not be awarded fees for the time spent by her
17 attorney, Harvey Sackett, to prepare a memorandum to the file and finalizing the settlement letter.
18 (Doc. 23 at 3-4) Specifically, the “Itemization of Services Rendered” indicates Mr. Sackett spent 5.0
19 hours on January 18, 2017, during which he “[r]eviewed, summarized and annotated [the]
20 administrative record re merit of commencing a civil action; dictated long memorandum to file (244
21 pages).” (Doc. 21-3 at 1) In addition, Mr. Sackett reports he spent 5.6 hours on January 25, 2017 to
22 finalize Plaintiff’s confidential letter brief for submission to the Office of General Counsel. (*Id.* at 1)
23 The Commissioner asserts these entries are vague and argues, “it is also inherently dubious that
24 someone would create a 244-page document in preparation for a settlement letter.” (*Id.* at 4) Therefore,
25 “the Commissioner requests that [the] Court reduce Plaintiff’s hours from approximately sixteen hours
26 to six hours for drafting a settlement letter.” (*Id.* at 4)

27 In response, Plaintiff contends the entry dated January 28, 2017 in the “Itemization of Services
28 Rendered” contained “an inadvertent error,” and should have indicated Mr. Sackett “[r]eviewed,

1 summarized and annotated administrative record (244 pages) re merit of commencing a civil action;
2 dictated long memorandum to file.” (Doc. 24 at 2) Further, Plaintiff asserts that “[a]n itemization of
3 time for 16.15 hours is well within the realm of reasonable for such cases.” (*Id.* at 5, citing *e.g.*,
4 *Stamper v. Colvin*, 2013 WL 6839691, at *2 (E.D. Cal. Dec. 23, 2013) (finding 51 hours a reasonable
5 amount of time); *Boulanger v. Astrue*, 2011 WL 4971890, at *2 (E.D. Cal. Oct. 19, 2011) (finding 58
6 hours a reasonable amount of time); *Watkins v. Astrue*, 2011 WL 4889190, at *2 (E.D. Cal. Oct. 13,
7 2011) (finding 62 hours a reasonable amount of time); *Vallejo v. Astrue*, 2011 WL 4383636, at *5 (E.D.
8 Cal. Sept. 20, 2011) (finding 62.1 hours a reasonable amount of time)). Further, Plaintiff’s counsel
9 notes that the Ninth Circuit opined, “District courts may not apply de facto caps limiting the number of
10 hours attorneys can reasonably expend on ‘routine’ social security cases.” (*Id.*, quoting *Costa*, 690
11 F.3d at 1137).

12 Significantly, in each of the cases cited by Plaintiff, the action proceeded beyond the exchange
13 of letter briefs. Thus, the tasks performed by counsel also included the preparation of additional
14 documents, such as motions for summary judgment or opening briefs, and reply briefs. *See Stamper*,
15 2013 WL 6839691 at *1 (noting the matter was remanded by the court “following the filing of a motion
16 for summary judgment by plaintiff and a cross-motion for summary judgment by defendant”);
17 *Boulanger*, 2011 WL 4971890, at *1 (indicating the plaintiff filed a motion for summary judgment and
18 the defendant filed a cross-motion, after the matter was remanded for further proceedings); *Watkins v.*
19 *Astrue*, 2011 WL 4889190, at *2 (noting plaintiff “secured a remand despite defendant’s cross-motion
20 for summary judgment”); *Vallejo*, 2011 WL 4383636, at *1, 4 (noting the plaintiff prevailed on a
21 motion for summary judgment, and counsel spent 17.4 hours to draft a reply brief). Because the matter
22 now before the Court did not proceed beyond the exchange of confidential letter briefs, these cases are
23 clearly distinguishable and offer little support to Plaintiff’s assertion that the hours expended by
24 counsel are reasonable.

25 1. Vagueness

26 As an initial matter, the Commissioner argues the Court should “reduce Plaintiff’s fee request
27 because counsel submitted billing entries that were vague and inadequately explained.” (Doc. 23 at 3-
28 4, citing *Montanez v. Simon*, 755 F.3d 547, 556 (7th Cir. 2014) [“The district court has broad discretion

1 to strike ...vague or unjustified billing entries”]).

2 The Court has reviewed the “Itemizations of Services Rendered” by counsel and the paralegals,
3 and finds the billing records are sufficiently specific as to the tasks completed. While several entries
4 include blocks of time—where counsel and the paralegals fail to identify the duration of time spent on
5 individual tasks and instead include more than one task in the entry—there is no vagueness as to the
6 tasks completed. Accordingly, the Court declines to reduce the fee award for vagueness.

7 2. Excessive time

8 The Court’s review of the “Itemization of Services Rendered” by Mr. Sackett revealed
9 excessive time. Mr. Sackett indicates that on July 17, 2016, he spent 0.3 hours to review Plaintiff’s
10 amended application to proceed *in forma pauperis*. (Doc. 21-3 at 1) Plaintiff’s application was a
11 simple two-page form, primarily consisting of check-list questions that required a claimant to mark
12 “yes” or “no,” and provide brief explanations for certain responses. (See Doc. 4 at 1-2) At most,
13 review of the document—which was prepared by the paralegal— should take five minutes, particularly
14 for experienced counsel such as Mr. Sackett. Accordingly, the Court is unable to find the request for
15 0.3 hours for this task is reasonable, and the fee award will be reduced to 0.1 hours.

16 3. Hours not related to the matter before the Court

17 The itemization of time includes hours not related to the matter now before the Court or the
18 preparation of the letter brief. Mr. Sackett indicates that he spent 5.0 hours to review, summarize, and
19 annotate the administrative record regarding the “merit of commencing a civil action” on January 25,
20 2017. (Doc. 21-3 at 1) However, there is no indication that the “civil action” referred to is, in fact, the
21 matter now before the Court. Rather, the complaint for judicial review of the ALJ’s decision was filed
22 on July 8, 2016², and Mr. Sackett began drafting the confidential letter brief to the Commissioner a
23 week prior to this entry. (Doc. 1; Doc. 21-3 at 1) Consequently, this time does not appear related to the
24 request for judicial review that had been previously filed, or the subsequent remand obtained, and
25 should not be awarded. *Gauchat-Hargis v. Forest River, Inc.*, 2013 WL 4828594 at *4 (E.D. Cal. Sept.
26 6, 2013) (“Time spent on tasks that are not relevant to the case at issue should be eliminated...”).

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² Pursuant to Rule 11 of the Federal Rules of Civil Procedure, Mr. Sackett was obligated determine the merits of the action prior to the filing of Plaintiff’s complaint for judicial review on July 8, 2017.

1 4. Conclusion

2 In light of the excessive time spent on the review of Plaintiff’s application to proceed *in forma*
3 *pauperis* and the billing of time not related to the request for judicial review of the ALJ’s decision, the
4 Court reduces Mr. Sackett’s time by 5.2 hours. This results a total of 12.2 hours³ expended by Mr.
5 Sackett on the litigation, which the Court finds reasonable for the limited tasks required in the action.

6 **B. Paralegal Time**

7 Plaintiff asserts that paralegals expended 2.9 hours of work on the action for tasks including, but
8 not limited to, the preparation of the complaint, teleconferences with Plaintiff, reviewing orders from
9 the Court, and filing documents. (Doc. 21-3 at 2)

10 Significantly, the Supreme Court determined that “purely clerical work or secretarial tasks
11 should not be billed at a paralegal or lawyer’s rate, regardless of who performs them.” *Missouri v.*
12 *Jenkins*, 491 U.S. 274, 288 n. 10 (1989). For example, the time spent to e-file documents is routinely
13 found to be clerical work that is non-compensable. *See L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888,
14 899 (E.D. Cal. 2009) (finding organizing and updating files appeared clerical, and declining to award
15 fees where the applicant “tendered no evidence that these are tasks that required the skill of a
16 paralegal”); *Em v. Astrue*, 2012 U.S. Dist. LEXIS 28011, at *12 (E.D. Cal. Mar. 2, 2012) (clerical tasks
17 including mailing and filing “are not typically compensable under the EAJA”); *Carter v. Astrue*, 2009
18 U.S. Dist. LEXIS 1501 at *12-13 (E.D. Cal. Feb. 25, 2009) (finding time spent e-filing documents or
19 converting pleadings was not compensable under the EAJA, given the “purely clerical or secretarial”
20 nature of the tasks). Here, Plaintiff seeks fees for 1.2 hours for the filing of documents, mailing hard
21 copies, and “[c]onversion of EAJA pleadings to PDF.” (Doc. 23-1 at 2) Given the clerical nature of
22 these tasks, the fee award for time expended by paralegals is reduced from 2.9 hours to 1.7 hours.

23 **C. Hourly rate**

24 Plaintiff requests the hourly rate of \$192.68 for attorney time and \$106.00 for paralegal time in
25 this action. (Doc. 21 at 5) Defendant does not object to these rates. (*See* Doc. 23 at 4) Notably, the
26 hourly rate for Mr. Sackett represents the statutory maximum set by the Ninth Circuit in 2016, and the
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28 ³ This includes 10.95 hours through the filing of the motion for EAJA fees, and 1.25 hours to review the
Commissioner’s opposition and prepare a reply brief. (*See* Doc. 24-1 at 2)

1 requested paralegal rate is within the range of accepted in the Eastern District of California. *See*
2 “Statutory Maximum Rates Under the Equal Access to Justice Act,” available at
3 http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited July 28, 2017); *see also*
4 *Silvester v. Harris*, 2014 WL 7239371 at *4 (E.D. Cal. Dec. 2014) (“The current reasonable hourly rate
5 for paralegal work in the Fresno Division ranges from \$75 to \$150, depending on experience”).
6 Consequently, the Court finds the hourly rates requested are reasonable.

7 **IV. Conclusion and Order**

8 As a prevailing party, Plaintiff is entitled to an award of attorney’s fees under the EAJA because
9 the ALJ’s decision and the Commissioner’s position in defending it to this Court were not substantially
10 justified. *See* 28 U.S.C. § 2412(d)(2)(H). However, as discussed above, the original request by
11 Plaintiff was not reasonable. With the reduction set forth above, Plaintiff is entitled to fees for **13.9**
12 hours of work, which includes 12.2 hours by Mr. Sackett and 1.2 hours by paralegals. The Court finds
13 this time was reasonable in light of the tasks undertaken on behalf of Plaintiff. Thus, she is entitled to
14 an award of totaling **\$2,530.90**.⁴ Pursuant to *Astrue v. Ratliff*, 130 S. Ct. 2521 (2010), this amount is
15 payable to the plaintiff and not the attorney who worked on the matter. Accordingly, the Court

16 **ORDERS:**

- 17 1. The request for fees is **GRANTED** in the modified amount of \$2,530.90; and
18 2. This amount **SHALL** be paid to Plaintiff Marianne Clemons.

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20 IT IS SO ORDERED.

21 Dated: August 18, 2017

/s/ Jennifer L. Thurston
22 UNITED STATES MAGISTRATE JUDGE

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⁴ This amount includes \$180.20 for the paralegals’ time and \$2,350.70 for Mr. Sackett’s time.