

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PENNY ESTHER EMBERSON,  
Plaintiff,  
v.  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security  
Defendant.

Case No.: 1:16-cv-01587-EPG

**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**

TO THE HONORABLE ERICA P. GROSJEAN, MAGISTRATE JUDGE OF THE  
DISTRICT COURT:

IT IS HEREBY STIPULATED, by and between the parties through their undersigned counsel, subject to the approval of the Court, that Penny Esther Emberson be awarded attorney fees in the amount of FOUR THOUSAND SEVEN HUNDRED dollars (\$4700) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). This amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 1920, 2412(d).

After the Court issues an order for EAJA fees to Penny Esther Emberson, the government will consider the matter of Penny Esther Emberson's assignment of EAJA fees to

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

6 Fees shall be made payable to Penny Esther Emberson, but if the Department of the  
7 Treasury determines that Penny Esther Emberson does not owe a federal debt, then the  
8 government shall cause the payment of fees, expenses and costs to be made directly to Law  
9 Offices of Lawrence D. Rohlfing, pursuant to the assignment executed by Penny Esther  
10 Emberson.<sup>1</sup> Any payments made shall be delivered to Brian C. Shapiro.

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

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

20 DATE: December 7, 2017 Respectfully submitted.

## LAW OFFICES OF LAWRENCE D. ROHLEFING

/s/ Brian C. Shapiro

BY: \_\_\_\_\_

Brian C. Shapiro

<sup>28</sup> <sup>1</sup> The parties do not stipulate whether counsel for the plaintiff has a cognizable lien under federal law against the recovery of EAJA fees that survives the Treasury Offset Program.

Attorney for plaintiff Penny Esther Emberson

DATED: December 7, 2017 PHILLIP A. TALBERT

## United States Attorney

/s/ Daniel P. Talbert

DANIEL P. TALBERT

## Special Assistant United States Attorney

Atorneys for Defendant NANCY A. BERRYHILL, Acting  
Commissioner of Social Security (Per e-mail authorization)

## **ORDER**

Based upon the stipulation of the parties, IT IS ORDERED that Plaintiff Penny Esther Emberson be awarded attorney fees and expenses in the amount of \$4700.00 as authorized by 28 U.S.C. § 2412, and no costs as authorized by 28 U.S.C. § 1920.

IT IS SO ORDERED.

Dated: **December 8, 2017**

/s/ *Eric P. Groj*  
UNITED STATES MAGISTRATE JUDGE

## PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 12631 East Imperial Highway, Suite C-115, Santa Fe Springs, California 90670.

On this day of December 8, 2017, I served the foregoing document described as  
**STIPULATION 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** on the interested parties in this action by  
placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ms. Penny Esther Emberson  
18533 Norwalk Drive  
Madera, CA 93638

I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Santa Fe Springs, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare that I am employed in the office of a member of this court at whose direction the service was made.

Brian C. Shapiro

*/s/ Brian C. Shapiro*

TYPE OR PRINT NAME

*SIGNATURE*

**CERTIFICATE OF SERVICE**  
**FOR CASE NUMBER 1:16-CV-01587-EPG**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for this court by using the CM/ECF system on December 8, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system, except the plaintiff served herewith by mail.

/s/ Brian C. Shapiro

Brian C. Shapiro

Attorneys for Plaintiff