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10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**
12 **FRESNO DIVISION**

13 ANDY VILLA DIAZ,

14 Plaintiff,

15 v.

16 ANDREW SAUL, Commissioner of
17 Social Security,

18 Defendant.

Case No. 1:19-cv-01661-GSA

**STIPULATION FOR THE AWARD
AND PAYMENT OF ATTORNEY
FEES AND EXPENSES PURSUANT
TO THE EQUAL ACCESS TO
JUSTICE ACT; ORDER**

(Doc. 26)

19 IT IS HEREBY STIPULATED by and between the parties through their
20 undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded
21 attorney fees and expenses in the amount of FIVE THOUSAND EIGHT HUNDRED
22 SIXTY-ONE DOLLARS AND 76/100, \$5,861.76, under the Equal Access to Justice Act
23 (EAJA), 28 U.S.C. § 2412(d). This amount represents compensation for all legal services
24 rendered on behalf of Plaintiff by counsel in connection with this civil action, in
25 accordance with 28 U.S.C. § 2412(d).

26 After the Court issues an order for EAJA fees to Plaintiff, the government will
27 consider the matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to *Astrue*
28

1 v. *Ratliff*, 560 U.S. 586, 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability to honor
2 the assignment will depend on whether the fees are subject to any offset allowed under
3 the United States Department of the Treasury's Offset Program. After the order for EAJA
4 fees is entered, the government will determine whether they are subject to any offset.

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

10 This stipulation constitutes a compromise settlement of Plaintiff's request for
11 EAJA attorney fees, and does not constitute an admission of liability on the part of
12 Defendant under the EAJA or otherwise. Payment of the agreed amount shall constitute
13 a complete release from, and bar to, any and all claims that Plaintiff and/or Counsel
14 including Counsel's firm may have relating to EAJA attorney fees in connection with
15 this action.

16 This award is without prejudice to the rights of Counsel and/or Counsel's firm to
17 seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the savings
18 clause provisions of the EAJA.

19 Respectfully submitted,

20
21 Dated: October 23, 2020

/s/ Jonathan O. Peña

JONATHAN O. PEÑA

Attorney for Plaintiff

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23
24 Dated: November 17, 2020

McGREGOR W. SCOTT

United States Attorney

DEBORAH LEE STACHEL

Regional Chief Counsel, Region IX

Social Security Administration

By: * Ellinor R. Coder
Ellinor R. Coder
Special Assistant U.S. Attorney
Attorneys for Defendant
(*Permission to use electronic signature
obtained via email on November 17, 2020).

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ORDER

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2 Based upon the parties' Stipulation for the Award and Payment of Equal Access
3 to Justice Act Fees and Expenses, **IT IS ORDERED** that fees and expenses in the
4 amount of \$5,861.76 as authorized by 28 U.S.C. § 2412 be awarded subject to the terms
5 of the Stipulation.
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9 IT IS SO ORDERED.

10 Dated: November 17, 2020

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE