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

13 Jonathan Ray Rodriguez Borges,

14 Plaintiff,

15 v.

16 Martin O'Malley<sup>1</sup>, Commissioner of  
17 Social Security,

18 Defendant.

Case No. 1:23-cv-01574-SKO

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

**(Doc. 21)**

19  
20 IT IS HEREBY STIPULATED by and between the parties through their  
21 undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded  
22 attorney fees and expenses in the amount of SEVEN THOUSAND FOUR HUNDRED  
23 EIGHTY-FIVE DOLLARS AND 37/100 (\$7,485.37) under the Equal Access to Justice  
24

25  
26 <sup>1</sup> Martin O'Malley became the Commissioner of Social Security on December 20,  
27 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley  
28 should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action  
need be taken to continue this suit by reason of the last sentence of section 205(g) of the  
Social Security Act, 42 U.S.C. § 405(g).

1 Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00)  
2 under 28 U.S.C. §1920. This amount represents compensation for all legal services  
3 rendered on behalf of Plaintiff by counsel in connection with this civil action, in  
4 accordance with 28 U.S.C. §§ 1920, 2412(d).

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

12 Fees shall be made payable to Plaintiff, but if the Department of the Treasury  
13 determines that Plaintiff does not owe a federal debt, then the government shall cause  
14 the payment of fees, expenses and costs to be made directly to Counsel, pursuant to  
15 the assignment executed by Plaintiff. Any payments made shall be delivered and  
16 made payable to Plaintiff's counsel, Jonathan O. Peña. Additionally, any payment of  
17 costs under 28 U.S.C. §1920 may be made either by electronic fund transfer (EFT) or  
18 by check.

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

25 This award is without prejudice to the rights of Counsel and/or Counsel's firm  
26 to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the  
27 savings clause provisions of the EAJA.  
28

1 Respectfully submitted,

2  
3 Dated: August 27, 2024

/s/ Jonathan O. Peña  
4 JONATHAN O. PEÑA  
5 Attorney for Plaintiff

6 Dated: August 27, 2024

7 PHILLIP A. TALBERT  
8 United States Attorney  
9 MATHEW W. PILE  
10 Associate General Counsel  
11 Office of Program Litigation  
12 Social Security Administration

13 By: \* Edmund J. Darcher  
14 Edmund J. Darcher  
15 Special Assistant U.S. Attorney  
16 Attorneys for Defendant  
17 (\*Permission to use electronic signature  
18 obtained via email on August 27, 2024).

19 **ORDER**

20 Based upon the parties' Stipulation and Unopposed Motion for the Award and Payment of Equal  
21 Access to Justice Act Fees and Expenses (the "Stipulation") (Doc. 21),

22 **IT IS ORDERED** that fees and expenses in the amount of SEVEN THOUSAND FOUR  
23 HUNDRED EIGHTY-FIVE DOLLARS AND 37/100 (\$7,485.37) as authorized by the Equal Access  
24 to Justice Act (EAJA), 28 U.S.C. § 2412(d) and costs in the amount of ZERO dollars (\$0.00) under 28  
25 U.S.C. §1920, be awarded subject to the terms of the Stipulation.

26 IT IS SO ORDERED.

27 Dated: August 28, 2024

/s/ Sheila K. Oberto  
28 UNITED STATES MAGISTRATE JUDGE