

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT E. SETTLES,

Plaintiff,

No. CIV S-07-1820 EFB

vs.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

ORDER

The Commissioner has timely responded to this court’s order to show cause filed October 22, 2009. Dckt. Nos. 26, 25. Good cause having been shown, the order to show cause is hereby discharged.

The Commissioner has filed a statement of non-opposition to plaintiff’s request for attorney fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1). Plaintiff seeks a total of \$5,254.66, for a total of 30.5 hours work by his counsel.<sup>1</sup> The EAJA

---

<sup>1</sup> The requested fees are calculated as follows: 2.7 hours at \$166.46 per hour (2007 rates); 25.1 hours at \$172.85 per hour (2008 rates); and 2.7 hours, also at \$172.85 per hour (incurred in 2009 but utilizing 2008 rates). See Motion, Dckt. No. 23, at pp. 1-2.

EAJA rates are based on a threshold of \$125 per hour, plus cost-of-living adjustments. See 28 U.S.C. § 2412(d)(2)(A)(ii); *Sorenson v. Mink*, 239 F.3d 1140, 1148 (9th Cir.2001); *Thangaraja v. Gonzales*, 428 F.3d 870, 876-877 (9th Cir. 2005). Plaintiff’s request conforms with the annual statutory maximum hourly rates for EAJA awards published by the Ninth

1 provides that “a court shall award to a prevailing party . . . fees and other expenses . . . incurred  
2 by that party in any civil action . . . brought by or against the United States . . . unless the court  
3 finds that the position of the United States was substantially justified or that special  
4 circumstances make an award unjust,” 28 U.S.C. § 2412(d)(1)(A), provided the requested  
5 amount is reasonable, *id.*, § 2412(d)(2)(A). An applicant for Social Security benefits receiving a  
6 remand under sentence four of 42 U.S.C. §405(g), as here, is a prevailing party. *Shalala v.*  
7 *Schaefer*, 509 U.S. 292, 301-302 (1993).

8 Because the request is reasonable and appropriate and the Commissioner has filed no  
9 objection to the requested fees, IT IS HEREBY ORDERED that plaintiff’s motion for EAJA  
10 fees, Dckt. No. 23, is granted. Plaintiff is awarded \$5,254.66. Said fees shall be made payable  
11 to plaintiff’s attorney, pursuant to the agreement between plaintiff and his attorney.<sup>2</sup>

12 SO ORDERED.

13 DATED: October 26, 2009.

14   
15 EDMUND F. BRENNAN  
16 UNITED STATES MAGISTRATE JUDGE  
17  
18  
19  
20  
21  
22  
23  
24

25 Circuit. See [http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000039](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039).

26 <sup>2</sup> See Dckt. No. 23, Exhibit 3, Retainer and Contingent Fee Agreement, p. 2, ¶ 3D.