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

10 LEROY DENNIS MAYBERRY,

11 Plaintiff,

No. CIV S-08-1601 GGH

12 vs.
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14 MICHAEL J. ASTRUE,
15 Commissioner of
Social Security,

ORDER

16 Defendant.
17 _____/

18 Pending before the court is plaintiff's application for an award of attorney's fees
19 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d)(1). Plaintiff seeks attorney's
20 fees for 29.25 hours at \$172.85/hour for work done in 2008, and costs in the amount of \$350, for
21 a total amount of \$5,405.86. Plaintiff seeks a cost of living adjustment ("COLA") to the
22 statutory cap on attorney's fees of \$125/hour. The Commissioner has not filed a response.

23 The EAJA provides that the prevailing party in a civil action against the United
24 States may apply for an order for attorneys' fees and expenses within thirty days of final
25 judgment in the action. An applicant for Social Security benefits receiving a remand under
26 sentence four of 42 U.S.C. § 405(g) is a prevailing party, regardless of whether the applicant later

succeeds in obtaining the requested benefits. Shalala v. Schaefer, 509 U.S. 292 (1993). In this case, the matter was remanded under sentence four pursuant to the order of the court for further reassessment and findings. See Order filed July 24, 2009. Plaintiff thus is entitled to an award of fees under the EAJA. The court must allow the fee award unless it finds that the position of the United States was substantially justified. Flores v. Shalala, 49 F.3d 562, 568-69 (9th Cir. 1995).

Having no opposition from the Commissioner, the court finds that the requested fees are reasonable and that plaintiff is entitled to the amount requested.

Accordingly, IT IS HEREBY ORDERED that plaintiff's August 19, 2009, request for EAJA fees is granted. Plaintiff is awarded \$5055.86 in attorney's fees and \$350 in costs. Said fees shall be made payable to plaintiff's attorney.

DATED: 12/23/09

/s/ Gregory G. Hollows

GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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