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14 UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA  
 16 **FRESNO DIVISION**

17 JANET BERRY, )  
 18 )  
 19 Plaintiff, )  
 20 )  
 21 v. )  
 22 )  
 23 MICHAEL J. ASTRUE, )  
 24 Commissioner of Social Security, )  
 25 )  
 26 Defendant. )  
 27 )  
 28 )

Case No. 2:09-cv-01741-GGH

**STIPULATION AND ORDER  
 SETTLING ATTORNEY'S FEES  
 PURSUANT TO THE EQUAL ACCESS  
 TO JUSTICE ACT, 28 U.S.C. § 2412(d)**

IT IS HEREBY STIPULATED by and between the parties, through their undersigned counsel, subject to the Court's approval, that Plaintiff be awarded attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), in the amount of TWO THOUSAND, NINE HUNDRED DOLLARS AND 57 CENTS (\$2,900.57).<sup>1</sup> 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. § 2412(d).

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<sup>1</sup>Under the EAJA, a "prevailing party" must file an application for attorney fees "within thirty days of final judgment." 28 U.S.C. § 2412(d)(1)(A), (B); see also *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). The Commissioner has waived the defense of timeliness in this case. Waiver applies to in this case only and should not be construed as an intent to agree to waiver in any other case.

1 After the Court issues an order for EAJA fees and expenses to Plaintiff, the government  
2 will consider the matter of Plaintiff's assignment of EAJA fees and expenses to Plaintiff's  
3 attorney. Pursuant to Astrue v. Ratliff, 130 S.Ct. 2521 (U.S. June 14, 2010), the ability to honor  
4 the assignment will depend on whether the fees and expenses are subject to any offset allowed  
5 under the United States Department of the Treasury's Offset Program. After the order for EAJA  
6 fees and expenses is entered, the government will determine whether they are subject to any  
7 offset.

8 Fees and expenses shall be made payable to Plaintiff, but if the Department of the  
9 Treasury determines that Plaintiff does not owe a federal debt, then the government shall cause  
10 the payment of fees, expenses and costs to be made directly to Bess M. Brewer, pursuant to the  
11 assignment executed by Plaintiff. Any payments made shall be delivered to Plaintiff's counsel.

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

17 This award is without prejudice to the rights of Plaintiff's counsel to seek Social Security  
18 Act attorney fees under 42 U.S.C. § 406, subject to the offset provisions of the EAJA.

19 Dated: March 18, 2011

*/s/Bess M. Brewer*  
*(As authorized via email)*

BESS M. BREWER  
Attorney for Plaintiff

22 Dated: March 18, 2011

BENJAMIN B. WAGNER  
United States Attorney  
LUCILLE GONZALES MEIS  
Regional Chief Counsel, Region IX  
Social Security Administration

25 */s/Timothy R. Bolin*  
TIMOTHY R. BOLIN  
Special Assistant U.S. Attorney  
Attorneys for Defendant

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**ORDER**

**APPROVED AND SO ORDERED:**

Dated: March 22, 2011

/s/ Gregory G. Hollows  
HON. GREGORY G. HOLLOWS  
United States Magistrate Judge