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9 Attorneys for Plaintiff  
10 Kim R. Harmon

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12  
13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF CALIFORNIA**  
15

16 KIM R. HARMON,	)	No. 2:13-cv-01374 DAD
	)	
17 Plaintiff,	)	STIPULATION AND ORDER FOR
	)	THE AWARD AND PAYMENT OF
18 vs.	)	ATTORNEY FEES AND EXPENSES
19 CAROLYN W. COLVIN, Acting	)	PURSUANT TO THE EQUAL
20 Commissioner of Social Security,	)	ACCESS TO JUSTICE ACT, 28 U.S.C.
	)	§ 2412(d) AND COSTS PURSUANT
21 Defendant.	)	TO 28 U.S.C. § 1920
	)	
	)	

22 TO THE HONORABLE DALE A. DROZD, MAGISTRATE JUDGE OF  
23 THE DISTRICT COURT:

24 IT IS HEREBY STIPULATED by and between the parties through their  
25 undersigned counsel, subject to the approval of the Court, that Kim R. Harmon be  
26 awarded attorney fees and expenses in the amount of Three Thousand Three  
Hundred dollars (\$3,300.00) under the Equal Access to Justice Act (EAJA), 28  
U.S.C. § 2412(d), and costs in the amount of Four Hundred dollars (\$400.00)  
under 28 U.S.C. § 1920. This amount represents compensation for all legal

1 services rendered on behalf of Plaintiff by counsel in connection with this civil  
2 action, in accordance with 28 U.S.C. §§ 1920; 2412(d).

3 After the Court issues an order for EAJA fees to Kim R. Harmon, the  
4 government will consider the matter of Kim R. Harmon's assignment of EAJA fees  
5 to Marc V. Kalagian. The retainer agreement containing the assignment is  
6 attached as exhibit 1. Pursuant to *Astrue v. Ratliff*, 130 S.Ct. 2521, 2529 (2010),  
7 the ability to honor the assignment will depend on whether the fees are subject to  
8 any offset allowed under the United States Department of the Treasury's Offset  
9 Program. After the order for EAJA fees is entered, the government will determine  
10 whether they are subject to any offset.

11 Fees shall be made payable to Kim R. Harmon, but if the Department of the  
12 Treasury determines that Kim R. Harmon does not owe a federal debt, then the  
13 government shall cause the payment of fees, expenses and costs to be made  
14 directly to Law Offices of Rohlfing & Kalagian, LLP, pursuant to the assignment  
15 executed by Kim R. Harmon. *United States v. \$186,416.00*, 722 F.3d 1173, 1176  
16 (9th Cir. 2013) (*\$186,416.00 II*) (ordering fees paid to counsel because of an  
17 assignment that did not interfere with a raised superior lien).<sup>1</sup>

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18  
19 <sup>1</sup> The Commissioner does not stipulate to the citation of *\$186,416.00 II*, and will  
20 not participate in representing to this Court that it carries legal import in these  
21 proceedings. *\$186,416 II* involved a different statute and very different factual  
22 circumstances than those presented here, or in other Social Security cases.  
23 Because the parties have agreed to the payment of EAJA fees, and the amount, and  
24 to avoid motion practice solely related to Plaintiff's citation, the Commissioner  
25 agrees to this stipulation. The Commissioner reserves the right to challenge the  
26 applicability of *\$186,416 II* to any Social Security case, and this Stipulation should  
not be construed as a waiver of such reservation. Kim R. Harmon contends that  
*U.S. v. \$186,416.00 in U.S. Currency*, 642 F.3d 753, 757 (9th Cir. 2011)  
(*\$186,416.00 I*) held that there is no functional difference between the CAFRA and  
EAJA in terms of "ownership" of the fee.

1 Any payments made shall be delivered to Marc V. Kalagian. This stipulation  
2 constitutes a compromise settlement of Kim R. Harmon's request for EAJA  
3 attorney fees, and does not constitute an admission of liability on the part of  
4 Defendant under the EAJA or otherwise. Payment of the agreed amount shall  
5 constitute a complete release from, and bar to, any and all claims that Kim R.  
6 Harmon and/or Marc V. Kalagian including Law Offices of Rohlfing & Kalagian,  
7 LLP may have relating to EAJA attorney fees in connection with this action.

8 This award is without prejudice to the rights of Marc V. Kalagian and/or the  
9 Law Offices of Rohlfing & Kalagian, LLP to seek Social Security Act attorney  
10 fees under 42 U.S.C. § 406(b), subject to the savings clause provisions of the  
11 EAJA.

12  
13 DATE: November 20, 2014 Respectfully submitted,

14 LAW OFFICES OF ROHLFING & KALAGIAN, LLP

15 */s/ Marc V. Kalagian*

16 BY: \_\_\_\_\_  
17 Marc V. Kalagian  
18 Attorney for plaintiff Kim R. Harmon

19  
20 DATED: November 20, 2014 BENJAMIN B. WAGNER  
21 United States Attorney

22 */s/ Paul Sachelari*

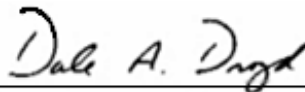
23 BY: \_\_\_\_\_  
24 Paul Sachelari  
25 Special Assistant United States Attorney  
26 Attorneys for Defendant Carolyn W. Colvin,  
Acting Commissioner of Social Security  
(Per e-mail authorization)

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**ORDER**

Pursuant to the parties' stipulation, IT IS SO ORDERED

Dated: November 20, 2014



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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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