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10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12
13 JIMMY R. LEVINE,) Case No.: 2:13-cv-02189-EFB
14 Plaintiff,)
15 vs.) STIPULATION AND PROPOSED
16 CAROLYN W. COLVIN, Acting) ORDER FOR THE AWARD AND
Commissioner of Social Security,) PAYMENT OF ATTORNEY FEES
17 Defendant.) AND EXPENSES PURSUANT TO
18) THE EQUAL ACCESS TO JUSTICE
19) ACT, 28 U.S.C. § 2412(d) AND
20) COSTS PURSUANT TO 28 U.S.C. §
21) 1920
22)
23)
24)
25)
26)

20 TO THE HONORABLE EDMUND F. BRENNAN, MAGISTRATE
21 JUDGE OF THE DISTRICT COURT:

22 IT IS HEREBY STIPULATED by and between the parties through their
23 undersigned counsel, subject to the approval of the Court, that Jimmy R. Levine be
24 awarded attorney fees and expenses in the amount of two thousand seven hundred
25 dollars (\$2,700.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. §
26 2412(d). This amount represents compensation for all legal services rendered on

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

3 After the Court issues an order for EAJA fees to Jimmy R. Levine, the
4 government will consider the matter of Jimmy R. Levine's assignment of EAJA
5 fees to Young Cho. Pursuant to *Astrue v. Ratliff*, 130 S.Ct. 2521, 2529 (2010), the
6 ability to honor the assignment will depend on whether the fees are subject to any
7 offset allowed under the United States Department of the Treasury's Offset
8 Program. After the order for EAJA fees is entered, the government will determine
9 whether they are subject to any offset.

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

18 _____
19 ¹ 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.

25 Jimmy Levine contends that *U.S. v. \$186,416.00 in U.S. Currency*, 642 F.3d 753,
26 757 (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 This stipulation constitutes a compromise settlement of Jimmy R. Levine's
2 request for EAJA attorney fees, and does not constitute an admission of liability on
3 the part of Defendant under the EAJA or otherwise. Payment of the agreed amount
4 shall constitute a complete release from, and bar to, any and all claims that Jimmy
5 R. Levine and/or Young Cho including Law Offices of Lawrence D. Rohlring may
6 have relating to EAJA attorney fees in connection with this action.

7 This award is without prejudice to the rights of Young Cho and/or the Law
8 Offices of Lawrence D. Rohlring to seek Social Security Act attorney fees under
9 42 U.S.C. § 406(b), subject to the savings clause provisions of the EAJA.

10 DATE: August 19, 2014

Respectfully submitted,

LAW OFFICES OF LAWRENCE D. ROHLRING

/s/ Young Cho

11 BY: _____

12 Young Cho
13 Attorney for plaintiff Jimmy R. Levine
14

15 DATE: August 19, 2014

BENJAMIN B. WAGNER
United States Attorney

/s/ Patrick W. Snyder

16 _____
17 Patrick W. Snyder
18 Special Assistant United States Attorney
19 Attorneys for Defendant Carolyn W. Colvin,
20 Acting Commissioner of Social Security
21 (Per e-mail authorization)

22 **ORDER**

23 Approved and so ordered.

24 DATED: August 20, 2014.



25 _____
26 THE HONORABLE EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE