

1 On April 4, 2017, plaintiff filed the pending motion for attorney’s fees. (ECF No. 21.)
2 On April 19, 2017, defendant filed an opposition to plaintiff’s motion. (ECF No. 22.) Plaintiff
3 filed a reply on June 22, 2017. (ECF No. 23.)

4 **STANDARDS**

5 The EAJA provides that “a court shall award to a prevailing party . . . fees and other
6 expenses . . . incurred by that party in any civil action . . . brought by or against the United States
7 . . . unless the court finds that the position of the United States was substantially justified or that
8 special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A); see also Gisbrecht v.
9 Barnhart, 535 U.S. 789, 796 (2002). “It is the government’s burden to show that its position was
10 substantially justified or that special circumstances exist to make an award unjust.” Gutierrez v.
11 Barnhart, 274 F.3d 1255, 1258 (9th Cir. 2001).

12 A “party” under the EAJA is defined as including “an individual whose net worth did not
13 exceed \$2,000,000 at the time the civil action was filed[.]” 28 U.S.C. § 2412(d)(2)(B)(i). The
14 term “fees and other expenses” includes “reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).
15 “The statute explicitly permits the court, in its discretion, to reduce the amount awarded to the
16 prevailing party to the extent that the party ‘unduly and unreasonably protracted’ the final
17 resolution of the case.” Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998) (citing 28 U.S.C. §§
18 2412(d)(1)(C) & 2412(d)(2)(D)).

19 A party who obtains a remand in a Social Security case is a prevailing party for purposes
20 of the EAJA. Shalala v. Schaefer, 509 U.S. 292, 300-01 (1993) (“No holding of this Court has
21 ever denied prevailing-party status . . . to a plaintiff who won a remand order pursuant to sentence
22 four of § 405(g) . . . , which terminates the litigation with victory for the plaintiff.”). “An
23 applicant for disability benefits becomes a prevailing party for the purposes of the EAJA if the
24 denial of her benefits is reversed and remanded regardless of whether disability benefits
25 ultimately are awarded.” Gutierrez, 274 F.3d at 1257.

26 **ANALYSIS**

27 Here, the court finds—and defendant does not dispute—that plaintiff is the prevailing
28 party, that plaintiff did not unduly delay this litigation, and that plaintiff’s net worth did not

1 exceed two million dollars when this action was filed. (ECF No. 2.) Defendant argues, however,
2 that the government’s position was substantially justified. (Def.’s Opp.’n (ECF No. 22) at 3-10.)

3 **A. Substantial Justification**

4 “Substantial justification means ‘justified in substance or in the main—that is, justified to
5 a degree that could satisfy a reasonable person.’” Tobeler v. Colvin, 749 F.3d 830, 832 (9th Cir.
6 2014) (quoting Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013)). “Put differently, the
7 government’s position must have a ‘reasonable basis both in law and fact.’” Meier, 727 F.3d at
8 870 (quoting Pierce v. Underwood, 487 U.S. 552, 565 (1988)). “[T]he position of the United
9 States includes both the government’s litigation position and the underlying agency action.”
10 Campbell v. Astrue, 736 F.3d 867, 868 (9th Cir. 2013) (quoting Meier, 727 F.3d at 870); see also
11 Shafer v. Astrue, 518 F.3d 1067, 1071 (9th Cir. 2008) (“the relevant question is whether the
12 government’s decision to defend on appeal the procedural errors committed by the ALJ was
13 substantially justified”). “In determining whether a party is eligible for fees under EAJA, the
14 district court must determine whether the government’s position regarding the specific issue on
15 which the district court based its remand was ‘substantially justified’—not whether the ALJ
16 would ultimately deny disability benefits.” Gardner v. Berryhill, 856 F.3d 652, 656 (9th Cir.
17 2017).

18 Here, the court found that plaintiff was entitled to summary judgment on two claims of
19 error: (1) conflict between the Vocational Expert’s (“VE”) testimony and the information
20 contained in the Dictionary of Occupational Titles (“DOT”); and (2) an incomplete residual
21 functional capacity determination. (ECF No. 19.) With respect to the incomplete residual
22 functional capacity determination, defendant’s decision to defend was substantially justified.

23 In this regard, as defendant’s argument explains, in finding that the Administrative Law
24 Judge’s (“ALJ”) residual functional capacity determination was incomplete, the court relied on
25 the interpretation of Stubbs-Danielson v. Astrue, 539 F.3d 1169 (9th Cir. 2008), found in Brink v.
26 Commissioner of Social Sec. Admin., 343 Fed. Appx. 211 (9th Cir. 2009). (ECF No. 19 at 7.)
27 “While Brink . . . represent one line of interpretation of Stubbs-Danielson, there is another line of
28 [unpublished] cases consistent with the government’s position in this case.” (Def.’s Opp.’n (ECF

1 No. 22) at 7²) (citing cases). “If the question of law is unresolved and of unclear resolution, then
2 the government’s litigation of the issue is reasonable and substantially justified.” Kali v. Bowen,
3 854 F.2d 329, 330-31 (9th Cir. 1988).

4 Defendant, however, was not substantially justified with respect to the issue of the conflict
5 between the VE’s testimony and the DOT. In this regard, the court’s January 11, 2017 order
6 found that there was a conflict between the VE’s testimony that a person limited to performing
7 simple, repetitive tasks could perform jobs that required Level 3 Reasoning. (ECF No. 19 at 5-6.)
8 The court’s decision was supported by citations to, in part, Zavalin v. Colvin, 778 F.3d 842 (9th
9 Cir. 2015) and Rounds v. Commissioner of Social Sec. Admin., 807 F.3d 996 (9th Cir. 2015).

10 In Zavalin, the Ninth Circuit held “that there is an apparent conflict between . . . limitation
11 to simple, routine, or repetitive tasks, on the one hand, and the demands of Level 3 Reasoning, on
12 the other hand.” 778 F.3d at 843-44. In Rounds, the Ninth Circuit held that there was “an
13 apparent conflict between . . . one-and two-step tasks, and the demands of Level Two reasoning,
14 which requires a person to apply commonsense understanding to carry out detailed but
15 uninvolved written or oral instructions.” 807 F.3d at 1003 (quotation omitted).

16 The Ninth Circuit issued Zavalin on February 20, 2015, and Rounds on August 4, 2015.
17 As cited above, both of those decisions were published opinions constituting controlling
18 authority. Moreover, on August 25, 2015, the Ninth Circuit issued an unpublished decision
19 holding that “[t]he addition of the restriction . . . to ‘simple, 1-2 step work’ reinforces the
20 conclusion compelled by Rounds that [plaintiff’s] RFC is in apparent conflict with Reasoning
21 Level 2.” Tester v. Colvin, 624 Fed. Appx. 485, 488 (9th Cir. 2015).

22 In determining whether defendant was substantially justified, we “focus on two questions:
23 first, whether the government was substantially justified in taking its original action; and, second,
24 whether the government was substantially justified in defending the validity of the action in
25 court.” Gutierrez, 274 F.3d at 1259 (quoting Kali v. Bowen, 854 F.2d 329, 332 (9th Cir. 1988))
26 (internal quotation marks omitted).

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28 ² Page number citations such as this one are to the page number reflected on the court’s CM/ECF
system and not to page numbers assigned by the parties.

1 Here, defendant's answer was filed on November 9, 2015, and defendant's motion for
2 summary judgment was filed on January 19, 2016. (ECF Nos. 12, 16.) In this regard,
3 defendant's filings occurred after the Ninth Circuit issued the opinions in Zavalin, Rounds, and
4 Tester. Accordingly, the court finds that defendant's decision to defend on appeal was not
5 substantially justified. Cf. Allen-Howard v. Commissioner Social Sec. Admin., 615 Fed. Appx.
6 402, 403 (9th Cir. 2015) ("The Commissioner's litigation position in the district court was also
7 substantially justified. As noted, there was no controlling authority on the question raised in
8 Allen-Howard's appeal at the time the Commissioner filed its briefing.").

9 **B. Plaintiff's Fee Request**

10 The EAJA expressly provides for an award of "reasonable" attorney fees. 28 U.S.C. §
11 2412(d)(2)(A). Under the EAJA, hourly rates for attorney fees have been capped at \$125.00 since
12 1996, but district courts are permitted to adjust the rate to compensate for an increase in the cost
13 of living.³ See 28 U.S.C. § 2412(d)(2)(A); Sorenson v. Mink, 239 F.3d 1140, 1147-49 (9th Cir.
14 2001); Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998). Determining a reasonable fee
15 "requires more inquiry by a district court than finding the product of reasonable hours times a
16 reasonable rate." Atkins, 154 F.3d at 988 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434
17 (1983) (internal citations omitted)). The district court must consider "the relationship between
18 the amount of the fee awarded and the results obtained." Id. at 989 (quoting Hensley, 461 U.S.
19 at 437).

20 Here, after drafting a thorough motion for summary judgment, and opposition to
21 defendant's motion for summary judgment, plaintiff successfully obtained a remand for further
22 proceedings. Including the time spent on briefing the opposed EAJA motion, plaintiff's counsel
23 expended 23.7 hours of attorney time on this matter. (Pl.'s Mot. (ECF No. 21) at 8-10; Pl.'s
24 Reply (ECF No. 23) at 6.) The court finds the amount of hours expended to be reasonable,
25

26 ³ In accordance with the decision in Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir.
27 2005), and Ninth Circuit Rule 39-1.6, the Ninth Circuit Court of Appeals maintains a list of the
28 statutory maximum hourly rates authorized by the EAJA, as adjusted annually. The rates may be
found on the Court's website. See <http://www.ca9.uscourts.gov>. Here, plaintiff's requested
attorney rates are equal to the statutory maximum rates established by the Ninth Circuit.

1 especially when compared to the time devoted to similar tasks by counsel in like social security
2 appeals coming before this court.⁴ See Stamper v. Colvin, No. 2:12-cv-0192 AC, 2013 WL
3 6839691, at *2 (E.D. Cal. Dec. 23, 2013) (finding 51 hours to be a reasonable amount of time);
4 Boulanger v. Astrue, No. CIV S-07-0849 DAD, 2011 WL 4971890, at *2 (E.D. Cal. Oct. 19,
5 2011) (finding 58 hours to be a reasonable amount of time); Watkins v. Astrue, No. CIV S-06-
6 1895 DAD, 2011 WL 4889190, at *2 (E.D. Cal. Oct. 13, 2011) (finding 62 hours to be a
7 reasonable amount of time); Vallejo v. Astrue, No. 2:09-cv-03088 KJN, 2011 WL 4383636, at *5
8 (E.D. Cal. Sept. 20, 2011) (finding 62.1 hours to be a reasonable amount of time); see also Costa
9 v. Commissioner of Social Sec. Admin., 690 F.3d 1132, 1137 (9th Cir. 2012) (“District courts
10 may not apply de facto caps limiting the number of hours attorneys can reasonably expend on
11 ‘routine’ social security cases.”). See generally Moreno v. City of Sacramento, 534 F.3d 1106,
12 1112 (9th Cir. 2008) (“By and large, the court should defer to the winning lawyer’s professional
13 judgment as to how much time he was required to spend on the case; after all, he won, and might
14 not have, had he been more of a slacker.”).

15 Accordingly, after carefully reviewing the record and the pending motion, the court
16 declines to conduct a line-by-line analysis of counsel’s billing entries. See, e.g., Stewart v.
17 Sullivan, 810 F. Supp. 1102, 1107 (D. Haw. 1993); Knowles v. Colvin, Case No. 1:14-cv-1657-
18 SKO, 2016 WL 3407594, at *3 (E.D. Cal. June 20, 2016); Duran v. Colvin, No. 2:11-cv-2978
19 DAD, 2013 WL 5673415, at *2 (E.D. Cal. Oct. 17, 2013); Vallejo v. Astrue, No. 2:09-cv-03088
20 KJN, 2011 WL 4383636, at *4 (E.D. Cal. Sept. 20, 2011); Destefano v. Astrue, No. 05-CV-3534,
21 2008 WL 623197, *4 (E.D. N.Y. Mar. 4, 2008).

22 **C. Assignment of Fee Award**

23 Defendant asserts that “[s]hould the Court award fees, any fees awarded must be paid
24 directly to Plaintiff.” (Def.’s Opp.’n (ECF No. 22) at 10.) Defendant is correct. An attorney fee
25 award under the EAJA is payable to the litigant and is therefore subject to a government offset to
26 satisfy any pre-existing debt owed to the United States by the claimant. Astrue v. Ratliff, 560
27 U.S. 586, 592-93 (2010). Subsequent to the decision in Ratliff, some courts have ordered

28 ⁴ Defendant has not challenged the amount of hours or rate sought by plaintiff.

1 payment of the award of EAJA fees directly to plaintiff's counsel pursuant to plaintiff's
2 assignment of EAJA fees, provided that the plaintiff has no debt that requires offset. See
3 Blackwell v. Astrue, No. CIV 08-1454 EFB, 2011 WL 1077765, at *5 (E.D. Cal. Mar. 21, 2011);
4 Dorrell v. Astrue, No. CIV 09-0112 EFB, 2011 WL 976484, at *2-3 (E.D. Cal. Mar. 17, 2011);
5 Calderon v. Astrue, No. 1:08-cv-01015 GSA, 2010 WL 4295583, at *8 (E.D. Cal. Oct. 22, 2010);
6 Castaneda v. Astrue, No. EDCV 09-1850-OP, 2010 WL 2850778, at *3 (C.D. Cal. July 20,
7 2010). Similarly, in recently submitted stipulations and proposed orders for the award of attorney
8 fees under the EAJA, the parties have stipulated that, if plaintiff does not owe a federal debt, the
9 government will consider the plaintiff's assignment of EAJA fees and expenses to plaintiff's
10 attorney and shall honor the assignment by making the fees and expenses payable directly to
11 counsel.

12 Here, however, plaintiff has not requested that the attorney's fees be made payable to
13 plaintiff's counsel. Nor has plaintiff provided evidence of an assignment of plaintiff's attorney
14 fees to plaintiff's counsel. The court, therefore, will not incorporate such a provision into this
15 order.

16 CONCLUSION

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's motion for attorney fees under the Equal Access to Justice Act (ECF No. 21)
19 is granted; and
- 20 2. Plaintiff is awarded \$4,534.84 in attorney fees under 28 U.S.C. § 2412(d).

21 Dated: October 4, 2017

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24 
25 DEBORAH BARNES
26 UNITED STATES MAGISTRATE JUDGE

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