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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANNABELLE HERNANDEZ,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

No. 2:15-cv-1322 DB

ORDER

This matter is before the court on plaintiff’s fully briefed motion for attorney’s fees pursuant to the Equal Access to Justice Act (“EAJA”).<sup>1</sup>

Plaintiff brought this action seeking judicial review of a final administrative decision denying her applications for Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“the Act”) and for Supplemental Security Income (“SSI”) under Title XVI of the Act. On January 9, 2017, following the filing of a motion for summary judgment by plaintiff and a cross-motion for summary judgment by defendant, the court granted plaintiff’s motion in part, reversed the decision of the Commissioner and remanded this action for further proceedings. (ECF No. 30.)

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<sup>1</sup> Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 7 & 10.)

1 On April 2, 2017, plaintiff filed this motion for attorney’s fees, seeking an award of  
2 \$3,750. (ECF No. 31.) On April 17, 2017, defendant filed an opposition to plaintiff’s motion.  
3 (ECF No. 32.) Plaintiff filed a reply on May 8, 2017. (ECF No. 33.)

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

11 “Substantial justification means ‘justified in substance or in the main—that is, justified to  
12 a degree that could satisfy a reasonable person.’” Tobeler v. Colvin, 749 F.3d 830, 832 (9th Cir.  
13 2014) (quoting Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013)). “Put differently, the  
14 government’s position must have a ‘reasonable basis both in law and fact.’” Meier, 727 F.3d at  
15 870 (quoting Pierce v. Underwood, 487 U.S. 552, 565 (1988)). “[T]he position of the United  
16 States includes both the government’s litigation position and the underlying agency action.”  
17 Campbell v. Astrue, 736 F.3d 867, 868 (9th Cir. 2013) (quoting Meier, 727 F.3d at 870); see also  
18 Shafer v. Astrue, 518 F.3d 1067, 1071 (9th Cir. 2008) (“the relevant question is whether the  
19 government’s decision to defend on appeal the procedural errors committed by the ALJ was  
20 substantially justified”).

21 A “party” under the EAJA is defined as including “an individual whose net worth did not  
22 exceed \$2,000,000 at the time the civil action was filed[.]” 28 U.S.C. § 2412(d)(2)(B)(i). The  
23 term “fees and other expenses” includes “reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).  
24 “The statute explicitly permits the court, in its discretion, to reduce the amount awarded to the  
25 prevailing party to the extent that the party ‘unduly and unreasonably protracted’ the final  
26 resolution of the case.” Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998) (citing 28 U.S.C. §§  
27 2412(d)(1)(C) & 2412(d)(2)(D)).

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

### 8 ANALYSIS

9 Here, the court finds that plaintiff is the prevailing party, that plaintiff did not unduly  
10 delay this litigation, and that plaintiff’s net worth did not exceed two million dollars when this  
11 action was filed. (ECF No. 4.) Defendant argues, however, that the government’s position was  
12 substantially justified. (ECF No. 32 at 3-9.) In this regard, defendant argues that “the ALJ’s  
13 findings had a reasonable basis in law and fact.” (Id. at 4.) The court finds defendant’s argument  
14 unpersuasive.

15 As articulated in the January 9, 2017 order, the ALJ rejected the opinion of an examining  
16 physician for legally impermissible reasons. See generally Garrison v. Colvin, 759 F.3d 995,  
17 1012-13 (9th Cir. 2014) (“an ALJ errs when he rejects a medical opinion or assigns it little weight  
18 while doing nothing more than ignoring it, asserting without explanation that another medical  
19 opinion is more persuasive, or criticizing it with boilerplate language that fails to offer a  
20 substantive basis for his conclusion”); Ryan v. Commissioner of Social Sec., 528 F.3d 1194,  
21 1199-200 (9th Cir. 2008) (“[A]n ALJ does not provide clear and convincing reasons for rejecting  
22 an examining physician’s opinion by questioning the credibility of the patient’s complaints where  
23 the doctor does not discredit those complaints and supports his ultimate opinion with his own  
24 observations.”); Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir. 2001) (“This court has  
25 repeatedly asserted that the mere fact that a plaintiff has carried on certain daily activities, such as  
26 grocery shopping, driving a car, or limited walking for exercise, does not in any way detract from  
27 her credibility as to her overall disability.”); Lester v. Chater, 81 F.3d 821, 832 (9th Cir. 1995)  
28 (“The Secretary may not assume that doctors routinely lie in order to help their patients collect

1 disability benefits.”); Embrey v. Bowen, 849 F.2d 418, 421-22 (9th Cir. 1988) (“To say that  
2 medical opinions are not supported by sufficient objective findings or are contrary to the  
3 preponderant conclusions mandated by the objective findings does not achieve the level of  
4 specificity . . . required, even when the objective factors are listed seriatim.”).

5 Accordingly, the court finds that the position of the government was not substantially  
6 justified. The EAJA expressly provides for an award of “reasonable” attorney fees. 28 U.S.C. §  
7 2412(d)(2)(A). Under the EAJA, hourly rates for attorney fees have been capped at \$125.00 since  
8 1996, but district courts are permitted to adjust the rate to compensate for an increase in the cost  
9 of living.<sup>2</sup> See 28 U.S.C. § 2412(d)(2)(A); Sorenson v. Mink, 239 F.3d 1140, 1147-49 (9th Cir.  
10 2001); Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998). Determining a reasonable fee  
11 “requires more inquiry by a district court than finding the product of reasonable hours times a  
12 reasonable rate.” Atkins, 154 F.3d at 988 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434  
13 (1983) (internal citations omitted)). The district court must consider “the relationship between  
14 the amount of the fee awarded and the results obtained.” Id. at 989 (quoting Hensley, 461 U.S.  
15 at 437).

16 Here, after drafting a thorough motion for summary judgment, and opposition to  
17 defendant’s motion for summary judgment, plaintiff successfully obtained a new hearing.  
18 Plaintiff’s counsel expended 22.75 hours of attorney time. (ECF No. 31 at 4.) The court finds the  
19 amount of attorney hours expended to be reasonable, especially when compared to the time  
20 devoted to similar tasks by counsel in like social security appeals coming before this court.<sup>3</sup> See  
21 Stamper v. Colvin, No. 2:12-cv-0192 AC, 2013 WL 6839691, at \*2 (E.D. Cal. Dec. 23, 2013)  
22 (finding 51 hours to be a reasonable amount of time); Boulanger v. Astrue, No. CIV S-07-0849  
23 DAD, 2011 WL 4971890, at \*2 (E.D. Cal. Oct. 19, 2011) (finding 58 hours to be a reasonable

24 <sup>2</sup> In accordance with the decision in Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir.  
25 2005), and Ninth Circuit Rule 39-1.6, the Ninth Circuit Court of Appeals maintains a list of the  
26 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 rates  
are equal to the statutory maximum rates established by the Ninth Circuit.

27 <sup>3</sup> Moreover, although plaintiff’s counsel expended 22.75 hours of time on this action—which  
28 would equate to a total award \$4,380.47—plaintiff is only seeking compensation in the amount of  
\$3,750.

1 amount of time); Watkins v. Astrue, No. CIV S-06-1895 DAD, 2011 WL 4889190, at \*2 (E.D.  
2 Cal. Oct. 13, 2011) (finding 62 hours to be a reasonable amount of time); Vallejo v. Astrue, No.  
3 2:09-cv-03088 KJN, 2011 WL 4383636, at \*5 (E.D. Cal. Sept. 20, 2011) (finding 62.1 hours to  
4 be a reasonable amount of time); see also Costa v. Commissioner of Social Sec. Admin., 690 F.3d  
5 1132, 1137 (9th Cir. 2012) (“District courts may not apply de facto caps limiting the number of  
6 hours attorneys can reasonably expend on ‘routine’ social security cases.”). See generally  
7 Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008) (“By and large, the court  
8 should defer to the winning lawyer’s professional judgment as to how much time he was required  
9 to spend on the case; after all, he won, and might not have, had he been more of a slacker.”).

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

17 Finally, found in a single sentence of plaintiff’s motion is a request that the attorney fees  
18 award “be paid to plaintiff’s attorney.” (ECF No. 31 at 1.) Defendant argues that any fee award  
19 must be paid directly to the plaintiff. (ECF No. 32 at 10.) Plaintiff’s reply brief disputes this  
20 assertion. (ECF No. 33 at 6.)

21 An attorney fee award under the EAJA is payable to the litigant and is therefore subject to  
22 a government offset to satisfy any pre-existing debt owed to the United States by the claimant.  
23 Astrue v. Ratliff, 560 U.S. 586, 592-93 (2010). Subsequent to the decision in Ratliff, some courts  
24 have ordered payment of the award of EAJA fees directly to plaintiff’s counsel pursuant to  
25 plaintiff’s assignment of EAJA fees, provided that the plaintiff has no debt that requires offset.  
26 See Blackwell v. Astrue, No. CIV 08-1454 EFB, 2011 WL 1077765, at \*5 (E.D. Cal. Mar. 21,  
27 2011); Dorrell v. Astrue, No. CIV 09-0112 EFB, 2011 WL 976484, at \*2-3 (E.D. Cal. Mar. 17,  
28 2011); Calderon v. Astrue, No. 1:08-cv-01015 GSA, 2010 WL 4295583, at \*8 (E.D. Cal. Oct. 22,

1 2010); Castaneda v. Astrue, No. EDCV 09-1850-OP, 2010 WL 2850778, at \*3 (C.D. Cal. July  
2 20, 2010). Similarly, in recently submitted stipulations and proposed orders for the award of  
3 attorney fees under the EAJA, the parties have stipulated that, if plaintiff does not owe a federal  
4 debt, the government will consider the plaintiff's assignment of EAJA fees and expenses to  
5 plaintiff's attorney and shall honor the assignment by making the fees and expenses payable  
6 directly to counsel.

7 Nonetheless, here, plaintiff has failed to produce any evidence of an assignment of  
8 plaintiff's attorney fees to plaintiff's counsel. The court, therefore, will not incorporate such a  
9 provision into this order.

### 10 CONCLUSION

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's motion for attorney fees under the Equal Access to Justice Act (ECF No. 31)  
13 is granted; and
- 14 2. Plaintiff is awarded \$3,750 in attorney's fees.

15 Dated: July 7, 2017



18 DEBORAH BARNES  
19 UNITED STATES MAGISTRATE JUDGE

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