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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 MARY FRANCES ANDERSON,

No. 2:15-cv-01954-AC

12 Plaintiff,

13 v.

ORDER

14 NANCY A. BERRYHILL, Acting  
15 Commissioner Of Social Security,

16 Defendant.  
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19 Plaintiff Mary Frances Anderson commenced this social security action on September 16,  
20 2015. ECF Nos. 1-3.<sup>1</sup> On July 27, 2016, the court granted plaintiff's motion for summary  
21 judgment, denied the Commissioner's cross-motion for summary judgment, remanded the case  
22 for an immediate award of benefits, and entered judgment for plaintiff. ECF Nos. 22, 23.  
23 Presently pending before the court is plaintiff's motion for attorneys' fees pursuant to the Equal  
24 Access to Justice Act ("EAJA"). ECF No. 24. The Commissioner filed an opposition to  
25 plaintiff's motion, and plaintiff filed a reply brief and declaration. ECF Nos. 26, 27, 28. In her  
26

27 <sup>1</sup> This case was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15) and both  
28 parties voluntarily consented to proceed before a United States Magistrate Judge pursuant to 28  
U.S.C. § 636(c). ECF No. 11.

1 reply, plaintiff construes the Commissioner's motion as an improperly noticed motion to strike,  
2 and asks for a revised briefing schedule on fees. ECF No. 27. It is the court's obligation to  
3 construe the filings of the parties, and the court finds the Commissioner's filing is properly  
4 construed as an opposition to plaintiff's motion for fees. Plaintiff's request for a revised briefing  
5 schedule is DENIED. After considering the parties' briefing and the applicable law, the court  
6 GRANTS plaintiff's motion for EAJA fees, but at a reduced rate.

7 The EAJA provides, in pertinent part, that:

8 Except as otherwise specifically provided by statute, a court shall  
9 award to a prevailing party other than the United States fees and  
10 other expenses, in addition to any costs awarded pursuant to  
11 subsection (a), incurred by that party in any civil action (other than  
12 cases sounding in tort), including proceedings for judicial review of  
13 agency action, brought by or against the United States in any court  
14 having jurisdiction of that action, unless the court finds that the  
15 position of the United States was substantially justified or that  
16 special circumstances make an award unjust.

17 A party seeking an award of fees and other expenses shall, within  
18 thirty days of final judgment in the action, submit to the court an  
19 application for fees and other expenses which shows that the party  
20 is a prevailing party and is eligible to receive an award under this  
21 subsection, and the amount sought, including an itemized statement  
22 from any attorney or expert witness representing or appearing in  
23 behalf of the party stating the actual time expended and the rate at  
24 which fees and other expenses were computed. The party shall also  
25 allege that the position of the United States was not substantially  
26 justified. Whether or not the position of the United States was  
27 substantially justified shall be determined on the basis of the record  
28 (including the record with respect to the action or failure to act by  
the agency upon which the civil action is based) which is made in  
the civil action for which fees and other expenses are sought.

The court, in its discretion may reduce the amount to be awarded  
pursuant to this subsection, or deny an award, to the extent that the  
prevailing party during the course of the proceedings engaged in  
conduct which unduly and unreasonably protracted the final  
resolution of the matter in controversy.

28 U.S.C. § 2412(d)(1)(A)-(C).

Here, the Commissioner does not dispute that plaintiff is a prevailing party, because he  
successfully obtained a remand for further proceedings under sentence four of 42 U.S.C. §  
405(g). Shalala v. Schaefer, 509 U.S. 292, 300-02 (1993). Furthermore, plaintiff's application

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1 for EAJA fees is timely, because it was filed within thirty days of final judgment in this action.<sup>2</sup>  
2 Nevertheless, the Commissioner argues that plaintiff is not entitled to an award of fees under the  
3 EAJA, because he failed to file an invoice of hours. ECF No. 26 at 2. Plaintiff rectified that  
4 oversight with her subsequently filed declaration and attachment. ECF No. 28. Because this  
5 error was promptly cured, the undersigned declines to strike plaintiff's motion for fees on these  
6 grounds.

7 Plaintiff further objects to the amount of plaintiff's claimed fees as unreasonable. The  
8 EAJA directs the court to award a reasonable fee. 28 U.S.C. § 2412(d)(2)(A). In determining  
9 whether a fee is reasonable, the court considers the reasonable hourly rate, the hours expended,  
10 and the results obtained. See Commissioner, INS v. Jean, 496 U.S. 154, 163 (1990); Hensley v.  
11 Eckerhart, 461 U.S. 424, 437 (1983); Atkins v. Apfel, 154 F.3d 986, 988 (9th Cir. 1998).

12 In considering a reasonable rate for attorneys' fees, an increase in the statutory rate of  
13 \$125 may be justified to account for increases in the cost of living. See Sorenson v. Mink, 239  
14 F.3d 1140, 1148 (9th Cir. 2001). The cost of living adjustment to the statutory cap is computed  
15 by multiplying the statutory cap by the consumer price index for urban consumers for the year in  
16 which the fees were earned, then dividing by the consumer price index figure on the date that the  
17 cap was imposed by Congress. Id. at 1148-49; see also Thangaraja v. Gonzales, 428 F.3d 870,  
18 876-77 (9th Cir. 2005).<sup>3</sup> The national, rather than local, change in cost of living should be  
19 applied to adjust the EAJA rate cap because "if Congress had wanted to allow for cost of living

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21 <sup>2</sup> The term "final judgment" for purposes of the EAJA "means a judgment that is final and not  
22 appealable...." 28 U.S.C. § 2412(d)(2)(G). The court entered judgment for plaintiff on July 27,  
23 2016. (ECF No. 23.) The judgment became a non-appealable "final judgment" 60 days later on  
24 September 25, 2016. See Fed. R. App. P. 4(a)(1)(B) (providing that the notice of appeal may be  
25 filed by any party within 60 days after entry of the judgment if one of the parties is the United  
26 States, a United States agency, or a United States officer or employee sued in an official  
27 capacity). Accordingly, plaintiff was required to file an application for EAJA fees no later than  
28 30 days after the "final judgment," i.e., by October 25, 2016. Plaintiff's October 24, 2016  
application is therefore timely.

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

1 adjustments in a particular region or city, it could have done so in the statute.” Stewart v.  
2 Sullivan, 810 F. Supp. 1102, 1107 (D. Haw. 1993).

3 The Commissioner does not oppose plaintiff’s requested rate, but contends that the  
4 requested hours are excessive. ECF No. 26 at 3-4. In this case, plaintiff submitted a timesheet,  
5 with entries broken down by various tasks performed related to the case, indicating that plaintiff’s  
6 counsel spent 73.80 hours on this case at a cost-of-living adjusted rate of \$192.68 per hour for  
7 attorney fees and \$130.00 per hour for paralegal fees, for a total fee request of \$11,087.87. ECF  
8 No. 28-2 at 5. A review of plaintiff’s invoice reveals that some “no-charge” items were included  
9 in the total calculation of hours, leading to an inflated bill. The correct calculation of charged  
10 paralegal hours is 42.6, and the correct attorney hours is 28.2, for a total of 70.8 hours.

11 After an independent review of the time entries, the court finds the amount of time spent  
12 by plaintiff’s counsel to be reasonable. Though counsel’s time entries are border on excessive,  
13 under the circumstances of this case, which involved multiple issues, they are not unreasonable.  
14 The entries contain sufficient detail and appropriately reflect the complex record in this case.  
15 ECF No. 28-2. Furthermore, in light of the fact that plaintiff obtained a favorable judgment  
16 remanding the case for further administrative proceedings, the amount of fees sought is consistent  
17 with the result obtained.

18 However, plaintiff seeks paralegal compensation at rate of \$130 per hour. Although not  
19 raised in defendant’s opposition, “[a]ccording to the court’s own research, ‘the paralegal rate  
20 favored in this district is \$75 per hour.’” Pehle v. Dufour, No. 2:06-cv-1889 EFB, 2014 WL  
21 546115, at \*7 (E.D. Cal. Feb. 11, 2014) (quoting Friedman v. California State Employees  
22 Association, No. CIV. 2:00-101 WBS DAD, 2010 WL 2880148, at \*4 (E.D. Ca. July 21, 2010));  
23 see also Kalani v. Statewide Petroleum, Inc., No. 2:13-CV-2287 KJM AC, 2014 WL 4230920, at  
24 \*6 (E.D. Cal. Aug. 25, 2014) (“courts in Sacramento have repeatedly determined in recent years  
25 that the prevailing hourly paralegal rate is \$75”). Plaintiff, therefore, will be awarded  
26 compensation for paralegal time at a rate of \$75 per hour.

27 Accordingly, after the rate of paralegal compensation to a rate of \$75 an hour, the court  
28 will award plaintiff compensation for 70.8 hours of time expended on this action (28.2 hours of

1 attorney time and 42.6 hours of paralegal time), at the rates discussed above, for a total award of  
2 \$8,628.57 in attorney's fees. Plaintiff's request for \$118.33 in costs spent on legal research will  
3 also be granted. See Sarro v. Astrue, 725 F.Supp.2d 364, 368 (E.D. N.Y. 2010) (awarding  
4 \$430.17 "for computerized research services").

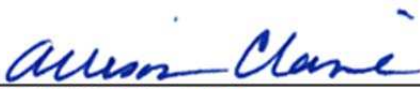
5 Therefore, the court will award plaintiff EAJA attorneys' fees and costs in the reduced  
6 amount of \$8,746.90. The court notes that plaintiff has executed an assignment of EAJA fees to  
7 plaintiff's counsel. (ECF No. 24-3.) However, the EAJA award must be made by this court to  
8 plaintiff, and not to counsel. See Astrue v. Ratliffe, 130 S. Ct. 2521 (2010). Nevertheless, if the  
9 government determines that plaintiff does not owe a federal debt that qualifies for offset, payment  
10 may be made in the name of plaintiff's attorney. The court rejects plaintiff's request to command  
11 the Commissioner to make the payment within 65 days.

12 Accordingly, for the reasons outlined above, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's motion for attorneys' fees under the EAJA (ECF No. 24) is GRANTED.
- 14 2. Plaintiff is awarded attorneys' fees in the total amount of \$8,746.90 pursuant to the  
15 EAJA. If the government determines that plaintiff does not owe a federal debt that  
16 qualifies for offset, payment may be made in the name of plaintiff's attorney.

17 IT IS SO ORDERED.

18 DATED: July 25, 2017

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20 ALLISON CLAIRE  
21 UNITED STATES MAGISTRATE JUDGE  
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