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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DERRICK NOBLES,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. 2:15-cv-2525 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”).¹

Plaintiff brought this action seeking judicial review of a final administrative decision denying plaintiff’s application for Disability Insurance Benefits under Title II of the Social Security Act. On March 17, 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, reversed the decision of the Commissioner, and remanded this action for further proceedings. (ECF No. 25.)

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¹ Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 6 & 8.)

1 On June 15, 2017, plaintiff filed the pending motion for attorney’s fees. (ECF No. 27.)
2 On July 11, 2017, defendant filed an opposition to plaintiff’s motion. (ECF No. 28.) Plaintiff
3 filed a reply on July 24, 2017. (ECF No. 29.)

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 “Substantial justification means ‘justified in substance or in the main—that is, justified to
27 a degree that could satisfy a reasonable person.’” Tobeler v. Colvin, 749 F.3d 830, 832 (9th Cir.
28 2014) (quoting Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013)). “Put differently, the

1 government’s position must have a ‘reasonable basis both in law and fact.’” Meier, 727 F.3d at
2 870 (quoting Pierce v. Underwood, 487 U.S. 552, 565 (1988)). “[T]he position of the United
3 States includes both the government’s litigation position and the underlying agency action.”
4 Campbell v. Astrue, 736 F.3d 867, 868 (9th Cir. 2013) (quoting Meier, 727 F.3d at 870); see also
5 Shafer v. Astrue, 518 F.3d 1067, 1071 (9th Cir. 2008) (“the relevant question is whether the
6 government’s decision to defend on appeal the procedural errors committed by the ALJ was
7 substantially justified”). “In determining whether a party is eligible for fees under EAJA, the
8 district court must determine whether the government’s position regarding the specific issue on
9 which the district court based its remand was ‘substantially justified’—not whether the ALJ
10 would ultimately deny disability benefits.” Gardner v. Berryhill, 856 F.3d 652, 656 (9th Cir.
11 2017).

12 ANALYSIS

13 Here, the court finds—and defendant does not dispute—that plaintiff is the prevailing
14 party, that plaintiff did not unduly delay this litigation, that plaintiff’s net worth did not exceed
15 two million dollars when this action was filed, and that the government’s position was not
16 substantially justified. (ECF No. 2.) In this regard, “[t]he Commissioner opposes Plaintiff’s
17 motion because this Court should award less than the amount requested, because it is
18 unreasonable.” (Def.’s Opp.’n (ECF No. 28) at 2.)

19 A. Plaintiff’s Fee Request

20 The EAJA expressly provides for an award of “reasonable” attorney fees. 28 U.S.C. §
21 2412(d)(2)(A). Under the EAJA, hourly rates for attorney fees have been capped at \$125.00 since
22 1996, but district courts are permitted to adjust the rate to compensate for an increase in the cost
23 of living.² See 28 U.S.C. § 2412(d)(2)(A); Sorenson v. Mink, 239 F.3d 1140, 1147-49 (9th Cir.
24 2001); Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998). Determining a reasonable fee

25 ² In accordance with the decision in Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir.
26 2005), and Ninth Circuit Rule 39-1.6, the Ninth Circuit Court of Appeals maintains a list of the
27 statutory maximum hourly rates authorized by the EAJA, as adjusted annually. The rates may be
28 found on the Court’s website. See <http://www.ca9.uscourts.gov>. Here, plaintiff’s requested
attorney rates are equal to, or lower than, the statutory maximum rates established by the Ninth
Circuit.

1 “requires more inquiry by a district court than finding the product of reasonable hours times a
2 reasonable rate.” Atkins, 154 F.3d at 988 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434
3 (1983) (internal citations omitted)). The district court must consider “the relationship between
4 the amount of the fee awarded and the results obtained.” Id. at 989 (quoting Hensley, 461 U.S.
5 at 437).

6 Here, after drafting a thorough motion for summary judgment, and opposition to
7 defendant’s motion for summary judgment, plaintiff successfully obtained a remand for further
8 proceedings. Including the time spent drafting plaintiff’s EAJA motion, plaintiff’s counsel
9 expended 36.4 hours of attorney time on this matter.³ (Pl.’s Mot. (ECF No. 27) at 3.) Having
10 considered the relationship between the amount of fees sought and the results obtained the court
11 finds defendant’s argument unpersuasive.

12 In this regard, the amount of hours expended by plaintiff’s counsel, especially when
13 compared to the time devoted to similar tasks by counsel in like social security appeals coming
14 before this court, was reasonable. See Stamper v. Colvin, No. 2:12-cv-0192 AC, 2013 WL
15 6839691, at *2 (E.D. Cal. Dec. 23, 2013) (finding 51 hours to be a reasonable amount of time);
16 Boulanger v. Astrue, No. CIV S-07-0849 DAD, 2011 WL 4971890, at *2 (E.D. Cal. Oct. 19,
17 2011) (finding 58 hours to be a reasonable amount of time); Watkins v. Astrue, No. CIV S-06-
18 1895 DAD, 2011 WL 4889190, at *2 (E.D. Cal. Oct. 13, 2011) (finding 62 hours to be a
19 reasonable amount of time); Vallejo v. Astrue, No. 2:09-cv-03088 KJN, 2011 WL 4383636, at *5
20 (E.D. Cal. Sept. 20, 2011) (finding 62.1 hours to be a reasonable amount of time); see also Costa
21 v. Commissioner of Social Sec. Admin., 690 F.3d 1132, 1137 (9th Cir. 2012) (“District courts
22 may not apply de facto caps limiting the number of hours attorneys can reasonably expend on
23 ‘routine’ social security cases.”). See generally Moreno v. City of Sacramento, 534 F.3d 1106,
24 1112 (9th Cir. 2008) (“By and large, the court should defer to the winning lawyer’s professional
25 judgment as to how much time he was required to spend on the case; after all, he won, and might
26 not have, had he been more of a slacker.”).

27 ³ Plaintiff has excluded from this request 1.6 hours of time that were arguably clerical in nature.
28 (Pl.’s Mot. (ECF No. 27) at 3.)

1 Accordingly, after carefully reviewing the record and the pending motion, the court
2 declines to conduct a line-by-line analysis of counsel’s billing entries. See, e.g., Stewart v.
3 Sullivan, 810 F. Supp. 1102, 1107 (D. Haw. 1993); Knowles v. Colvin, Case No. 1:14-cv-1657-
4 SKO, 2016 WL 3407594, at *3 (E.D. Cal. June 20, 2016); Duran v. Colvin, No. 2:11-cv-2978
5 DAD, 2013 WL 5673415, at *2 (E.D. Cal. Oct. 17, 2013); Vallejo v. Astrue, No. 2:09-cv-03088
6 KJN, 2011 WL 4383636, at *4 (E.D. Cal. Sept. 20, 2011); Destefano v. Astrue, No. 05-CV-3534,
7 2008 WL 623197, *4 (E.D. N.Y. Mar. 4, 2008).

8 **B. Assignment of Fee Award**

9 Defendant asks that “if EAJA fees are awarded, the Court specify that the assignment
10 cannot be honored without prior consideration by the Treasury Offset Program.” (Def.’s Opp.’n
11 (ECF No. 28) at 7.) An attorney fee award under the EAJA is payable to the litigant and is
12 therefore subject to a government offset to satisfy any pre-existing debt owed to the United States
13 by the claimant. Astrue v. Ratliff, 560 U.S. 586, 592-93 (2010).

14 Subsequent to the decision in Ratliff, some courts have ordered payment of the award of
15 EAJA fees directly to plaintiff’s counsel pursuant to plaintiff’s assignment of EAJA fees,
16 provided that the plaintiff has no debt that requires offset. See Blackwell v. Astrue, No. CIV 08-
17 1454 EFB, 2011 WL 1077765, at *5 (E.D. Cal. Mar. 21, 2011); Dorrell v. Astrue, No. CIV 09-
18 0112 EFB, 2011 WL 976484, at *2-3 (E.D. Cal. Mar. 17, 2011); Calderon v. Astrue, No. 1:08-cv-
19 01015 GSA, 2010 WL 4295583, at *8 (E.D. Cal. Oct. 22, 2010); Castaneda v. Astrue, No. EDCV
20 09-1850-OP, 2010 WL 2850778, at *3 (C.D. Cal. July 20, 2010). Similarly, in recently submitted
21 stipulations and proposed orders for the award of attorney fees under the EAJA, the parties have
22 stipulated that, if plaintiff does not owe a federal debt, the government will consider the plaintiff’s
23 assignment of EAJA fees and expenses to plaintiff’s attorney and shall honor the assignment by
24 making the fees and expenses payable directly to counsel.

25 Defendant also asks that plaintiff’s payment of attorney’s fees be “based on the
26 government’s discretionary waiver of the requirements of the Anti-Assignment Act, 31 U.S.C. §
27 3727.” (Def.’s Opp.’n (ECF No. 28) at 6.) Under the Anti-Assignment Act, a claim against “the
28 United States may not be assigned to a third party unless [certain] technical requirements are

1 met.” United States v. Kim, 806 F.3d 1161, 1169 (9th Cir. 2015); 31 U.S.C. § 3727. “[I]n
2 modern practice, the obsolete language of the Anti-Assignment Act means that the Government
3 has the power to pick and choose which assignments it will accept and which it will not.” Kim,
4 806 F.3d at 1169-70. The Anti-Assignment Act “applies to an assignment of EAJA fees in a
5 Social Security Appeal for disability benefits.” Yesipovich v. Colvin, 166 F.Supp.3d 1000, 1011
6 (N.D. Cal. 2015).

7 Here, the EAJA fees will be made payable “directly to plaintiff’s counsel, subject to any
8 government debt offset and subject to the government’s waiver of the requirements under the
9 Anti-Assignment Act.” Id. at 1011; see also Beal v. Colvin, Case No. 14-cv-4437 YGR, 2016
10 WL 4761090, at *4 (N.D. Cal. Sept. 13, 2016) (“Here, there is no information on whether
11 plaintiff owes any debt to the government. Therefore, the EAJA fee shall be paid directly to
12 plaintiff’s counsel, subject to any administrative offset due to outstanding federal debt and subject
13 to the government’s waiver of the requirements under the Anti-Assignment Act.”). Moreover,
14 “regardless of the payee, the check [should] be mailed to Plaintiff’s attorney.” Hill v.
15 Commissioner of Social Security, Case No. 1:14-cv-1813 SAB, 2016 WL 5341274, at *4 (E.D.
16 Cal. Sept. 23, 2016).

17 CONCLUSION

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff’s motion for attorney’s fees under the Equal Access to Justice Act (ECF No.
20 27) is granted;
- 21 2. Plaintiff is awarded \$7,013.55 in attorney fees under 28 U.S.C. § 2412(d);
- 22 3. Defendant is directed to determine whether plaintiff’s EAJA attorney’s fees are subject
23 to any offset permitted under the United States Department of the Treasury’s Offset Program and,
24 if the fees are not subject to an offset, shall cause payment of fees to be made directly to plaintiff
25 unless the Government decides to accept the assignment of fees; and

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4. Defendant is directed to mail the payment to plaintiff's counsel.

Dated: October 17, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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