

1 After considering plaintiff's briefing and the applicable law, the court grants plaintiff's motion for
2 EAJA fees.

3 The EAJA provides, in part, that:

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

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

27 The court, in its discretion may reduce the amount to be awarded
28 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 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
for EAJA fees is timely, because it was filed within thirty days of final judgment in this action.²

² The term "final judgment" for purposes of the EAJA "means a judgment that is final and not
appealable...." 28 U.S.C. § 2412(d)(2)(G). The court entered judgment for plaintiff on July 25,
2017. ECF No. 31. The judgment became a non-appealable "final judgment" 60 days later on
September 23, 2017. See Fed. R. App. P. 4(a)(1)(B) (providing that the notice of appeal may be
filed by any party within 60 days after entry of the judgment if one of the parties is the United
(continued...)

1 The commissioner does not argue that its position was substantially justified.

2 Therefore, having concluded that the Commissioner's position was not substantially
3 justified, and that there are no other special circumstances that would make an award of EAJA
4 fees unjust, the court finds that plaintiff is entitled to an award of fees pursuant to the EAJA.

5 The EAJA directs the court to award a reasonable fee. 28 U.S.C. § 2412(d)(2)(A). In
6 determining whether a fee is reasonable, the court considers the reasonable hourly rate, the hours
7 expended, and the results obtained. See Commissioner, INS v. Jean, 496 U.S. 154, 163 (1990);
8 Hensley v. Eckerhart, 461 U.S. 424, 437 (1983); Atkins v. Apfel, 154 F.3d 986, 988 (9th Cir.
9 1998).

10 In considering a reasonable rate for attorneys' fees, an increase in the statutory rate of
11 \$125 may be justified to account for increases in the cost of living. See Sorenson v. Mink, 239
12 F.3d 1140, 1148 (9th Cir. 2001). The cost of living adjustment to the statutory cap is computed
13 by multiplying the statutory cap by the consumer price index for urban consumers for the year in
14 which the fees were earned, then dividing by the consumer price index figure on the date that the
15 cap was imposed by Congress. Id. at 1148-49; see also Thangaraja v. Gonzales, 428 F.3d 870,
16 876-77 (9th Cir. 2005).³ The national, rather than local, change in cost of living should be
17 applied to adjust the EAJA rate cap because "if Congress had wanted to allow for cost of living
18 adjustments in a particular region or city, it could have done so in the statute." Stewart v.
19 Sullivan, 810 F. Supp. 1102, 1107 (D. Haw. 1993).

20 The Commissioner does not oppose plaintiff's requested rate. Plaintiff submitted a
21 timesheet, with entries broken down by various tasks performed related to the case, showing that
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23 States, a United States agency, or a United States officer or employee sued in an official
24 capacity). Accordingly, plaintiff was required to file an application for EAJA fees no later than
25 30 days after the "final judgment," i.e., by October 23, 2017. Plaintiff's October 22, 2017
26 application is therefore timely.

27 ³ In accordance with the decision in Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir.
28 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 plaintiff's counsel spent 28.7 hours on this case, at a cost-of-living adjusted rate of \$192.68 (2016
2 federal EAJA rate), for a total fee request of \$5,529.91. ECF No. 32-2 at 2-3. After an
3 independent review of the time entries, the court finds the amount of time spent by plaintiff's
4 counsel to be reasonable. In light of the fact that plaintiff obtained a favorable judgment
5 remanding the case for further administrative proceedings, the amount of fees sought is consistent
6 with the result obtained.

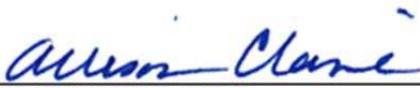
7 Therefore, the court will award plaintiff EAJA attorneys' fees in the full amount of
8 \$5,529.91. The court notes that plaintiff has executed an assignment of EAJA fees to plaintiff's
9 counsel. (ECF No. 32-1 at 3.) However, the EAJA award must be made by this court to plaintiff,
10 and not to counsel. See Astrue v. Ratliffe, 130 S. Ct. 2521 (2010). Nevertheless, if the
11 government determines that plaintiff does not owe a federal debt that qualifies for offset, payment
12 may be made in the name of plaintiff's attorney.

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

- 14 1. Plaintiff's motion for attorneys' fees under the EAJA (ECF No. 32) is GRANTED.
- 15 2. Plaintiff is awarded attorneys' fees in the total amount of \$5,529.91 pursuant to the
16 EAJA. If the government determines that plaintiff does not owe a federal debt that
17 qualifies for offset, payment may be made in the name of plaintiff's attorney.

18 IT IS SO ORDERED.

19 DATED: January 12, 2018

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21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE
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