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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARMEN ANN MORROW,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner Of Social Security,  
  
Defendant.

No. 2:17-cv-00250-AC

ORDER

Plaintiff Carmen Ann Morrow commenced this social security action on February 3, 2017. ECF Nos. 1-3.<sup>1</sup> On October 31, 2017, the court signed the parties’ stipulation to remand the case to the Administrative Law Judge, and entered judgment for plaintiff. ECF Nos. 21, 22, 23. Presently pending before the court is plaintiff’s motion for attorneys’ fees pursuant to the Equal Access to Justice Act (“EAJA”). ECF No. 24. The Commissioner filed statement of non-opposition. ECF No. 25. Accordingly, the court GRANTS plaintiff’s motion for EAJA fees.

The EAJA provides, in part, that:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and

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<sup>1</sup> This case was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15) and both parties voluntarily consented to proceed before a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). ECF No. 7 and ECF No. 26.

1 other expenses, in addition to any costs awarded pursuant to  
2 subsection (a), incurred by that party in any civil action (other than  
3 cases sounding in tort), including proceedings for judicial review of  
4 agency action, brought by or against the United States in any court  
5 having jurisdiction of that action, unless the court finds that the  
6 position of the United States was substantially justified or that  
7 special circumstances make an award unjust.

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

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

27 28 U.S.C. § 2412(d)(1)(A)-(C).

28 Here, the Commissioner does not dispute that plaintiff is a prevailing party, because she  
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.<sup>2</sup>  
The Commissioner does not argue its position was substantially justified or that an award of  
EAJA fees is inappropriate. Therefore, having concluded that the Commissioner's position was

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<sup>2</sup> 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 October  
31, 2017. (ECF No. 23.) The judgment became a non-appealable "final judgment" 60 days later  
on December 30, 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  
States, a United States agency, or a United States officer or employee sued in an official  
capacity). Accordingly, plaintiff was required to file an application for EAJA fees no later than  
30 days after the "final judgment," i.e., by January 29, 2018. Plaintiff's January 26, 2018  
application is therefore timely.

1 not substantially justified, and that there are no other special circumstances that would make an  
2 award of EAJA fees unjust, the court finds that plaintiff is entitled to an award of fees pursuant to  
3 the EAJA.

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

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

19 The Commissioner does not oppose plaintiff's requested rate or total fee. ECF No. 25. In  
20 this case, plaintiff submitted a timesheet, with entries broken down by various tasks performed  
21 related to the case, showing that plaintiff's counsel spent 10.25 hours on this case in 2017, at a  
22 cost-of-living adjusted rate of \$196.75, for a total fee request of \$2,017.10. ECF No. 24-1 at 1, 5.  
23 After an independent review of the time entries, the court finds the amount of time spent by  
24 plaintiff's counsel to be reasonable and consistent with the result in this case.

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26 <sup>3</sup> 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 rates  
are within the statutory maximum rate established by the Ninth Circuit.

