

1 22.)

2 For the reasons that follow, Plaintiff’s request for the magistrate judge to order the
3 stipulated EAJA fees is DENIED. Instead, the undersigned submits the matter on findings and
4 recommendations for the district court’s review.

5 **Analysis**

6 Under 28 U.S.C. § 636(b)(1)(A), a district judge may designate a magistrate judge to hear
7 any non–dispositive pretrial matter pending before the court. Section 636(b)(1)(B) allows the
8 district court to authorize a magistrate judge to “conduct hearings, including evidentiary hearings,
9 and to submit to a judge of the court proposed findings of fact, and recommendations for the
10 disposition” of motions that the magistrate cannot dispose of under section 636(b)(1)(A). Local
11 Rule 302(c)(17) has so delegated proceedings brought under 42 U.S.C. to “review a final decision
12 of the Commissioner of Social Security, including dispositive and non–dispositive motions and
13 matters. However, a United States Magistrate may not enter a final judgment without the consent
14 of all parties. 28 U.S.C. § 636(c); see also Williams v. King, 875 F.3d 500, 503-04 (9th Cir.
15 2017); Robert Ito Farm, Inc. v. Cty. of Maui, 842 F.3d 681, 686 (9th Cir. 2016) (“Where the
16 magistrate judge has not received the full consent of the parties, he has no authority to enter
17 judgment in the case, and any purported judgment is a nullity.”) (quoting Kofoed v. Int’l Bhd. of
18 Elec. Workers, Local 48, 237 F.3d 1001, 1004 (9th Cir. 2001)).

19 Here, the parties have stipulated as follows:

- 20 1. “That Plaintiff, Jeffrey R. Rhoades, be awarded attorney fees and expenses in the amount
21 of six thousand nine hundred dollars (\$6,900.00) under the Equal Access to Justice Act
22 (EAJA), 28 U.S.C. § 2412(d), and no costs under 28 U.S.C. § 1920. This amount
23 represents compensation for all legal services rendered on behalf of Plaintiff by counsel in
24 connection with this civil action, in accordance with 28 U.S.C. § 2412(d).”
- 25 2. After the Court issues an order for EAJA fees to Jeffrey R. Rhoades, the government will
26 consider the matter of Jeffrey R. Rhoades’ assignment of EAJA fees to The Metsker Law
27 Firm. Pursuant to Astrue v. Ratliff, 130 S. Ct. 2521, 2529 (2010), the ability to honor the
28 assignment will depend on whether the fees are subject to any offset allowed under the

1 United States Department of the Treasury's Offset Program. After the order for EAJA
2 fees is entered, the government will determine whether they are subject to any offset.

3 3. Fees shall be made payable to Jeffrey R. Rhoades, but if the Department of the Treasury
4 determines that Jeffrey R. Rhoades does not owe a federal debt, then the government shall
5 cause the payment of fees and expenses to be made directly to The Metsker Law Firm,
6 pursuant to the assignment executed by Jeffrey R. Rhoades. Any payments made shall be
7 delivered to The Metsker Law Firm.

8 4. This stipulation constitutes a compromise settlement of Jeffrey R. Rhoades' request for
9 EAJA attorney fees, and does not constitute an admission of liability on the part of
10 Defendant under the EAJA or otherwise. Payment of the agreed amount shall constitute a
11 complete release from, and bar to, any and all claims that Jeffrey R. Rhoades, John D.
12 Metsker and/or The Metsker Law Firm may have relating to EAJA attorney fees in
13 connection with this action. This award is without prejudice to the rights of John D.
14 Metsker and/or The Metsker Law Firm to seek Social Security Act attorney fees under 42
15 U.S.C. § 406(b), subject to the savings clause provisions of the EAJA.

16 (ECF No. 22.) The parties submitted this stipulation as a part of a proposed order, and have
17 requested the approval of the magistrate judge (Id.)

18 The undersigned is not opposed to the substance of the parties' stipulation. Given that
19 Plaintiff obtained a voluntary remand after submitting his motion for summary judgment, the
20 administrative record in this case is over 1000 pages, and the rates set by the Ninth Circuit's rules,
21 an award of \$6,900.00 appears more than reasonable. The procedure concerning the assignment
22 of fees also appears appropriate. Further, the amount also appears to be the product of
23 negotiations between the parties as a compromise. Thus, the undersigned finds that this award of
24 fees, as defined by the stipulation, should be approved.


25 However, an award of attorney fees is a final judgment that requires jurisdiction. See
26 Estate of Conners v. O'Connor, 6 F.3d 656, 658 (9th Cir.1993) (magistrate judge lacks authority
27 to enter final order on post-judgment motion for attorney's fees without the consent of all
28 parties); see also, e.g., Jackson v. Bd. of Trustees of Wolf Point, Montana, 2014 WL 1794551, at

1 *1 (D. Mont. Apr. 21, 2014) (where the parties had not consented to the jurisdiction of the
2 magistrate judge, the court resolved the post-judgment motion for attorney's fees on findings and
3 recommendations for review by the district court). Thus, the undersigned cannot sign off on
4 parties' proposed order. Instead, the matter will be submitted on findings and recommendations
5 for review by the presiding district judge. After the recommendation is entered, the parties will
6 be given 14 days to file objections. Thereafter, the district court will review the motion as his
7 calendar allows. See [http://www.caed.uscourts.gov/caednew/index.cfm/news/important-letter-re-](http://www.caed.uscourts.gov/caednew/index.cfm/news/important-letter-re-caseload-crisis/)
8 [caseload-crisis/](http://www.caed.uscourts.gov/caednew/index.cfm/news/important-letter-re-caseload-crisis/)

9 Accordingly, IT IS HEREBY RECOMMENDED that the parties' stipulation as to
10 plaintiff's receipt of Equal Access to Justice Act ("EAJA") fees under 28 U.S.C. § 2412(d) (ECF
11 No. 22) be approved.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
17 objections shall be filed and served within fourteen days after service of the objections. The
18 parties are advised that failure to file objections within the specified time may waive the right to
19 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: October 31, 2019

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22 _____
23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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