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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARNOLD D. THOMAS,  
  
Plaintiff,  
  
v.  
  
ANDREW SAUL, Commissioner of Social  
Security<sup>1</sup>,  
  
Defendant.

No. 2:18-cv-1903 DB

ORDER

This matter is before the court on plaintiff’s motion for attorney’s fees pursuant to the Equal Access to Justice Act (“EAJA”).<sup>2</sup> (ECF No. 21.) Plaintiff brought this action seeking judicial review of a charged overpayment for Disability Insurance Benefits under Title II of the Social Security Act. On March 24, 2020, the court granted plaintiff’s motion for summary judgment, reversed the decision of the Commissioner of Social Security, and remanded this

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<sup>1</sup> Andrew Saul became the Commissioner of the Social Security Administration on June 17, 2019. See <https://www.ssa.gov/agency/commissioner.html> (last visited by the court on July 30, 2019). Accordingly, Andrew Saul is substituted in as the defendant in this action. See 42 U.S.C. § 405(g) (referring to the “Commissioner’s Answer”); 20 C.F.R. § 422.210(d) (“the person holding the Office of the Commissioner shall, in his official capacity, be the proper defendant”).

<sup>2</sup> Both parties have previously consented to Magistrate Judge jurisdiction over this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 7 & 13.)

1 matter for further proceedings. (ECF No. 19.) On June 23, 2020, plaintiff filed a motion for  
2 \$4,717.10 in attorney’s fees. (ECF No. 21.) Defendant did not object to plaintiff’s motion.

### 3 **STANDARDS**

4 The EAJA provides that “a court shall award to a prevailing party . . . fees and other  
5 expenses . . . incurred by that party in any civil action . . . brought by or against the United States .  
6 . . unless the court finds that the position of the United States was substantially justified or that  
7 special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A); see also Gisbrecht v.  
8 Barnhart, 535 U.S. 789, 796 (2002). “It is the government’s burden to show that its position was  
9 substantially justified or that special circumstances exist to make an award unjust.” Gutierrez v.  
10 Barnhart, 274 F.3d 1255, 1258 (9th Cir. 2001).

11 A “party” under the EAJA is defined as including “an individual whose net worth did not  
12 exceed \$2,000,000 at the time the civil action was filed[.]” 28 U.S.C. § 2412(d)(2)(B)(i). The  
13 term “fees and other expenses” includes “reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).  
14 “The statute explicitly permits the court, in its discretion, to reduce the amount awarded to the  
15 prevailing party to the extent that the party ‘unduly and unreasonably protracted’ the final  
16 resolution of the case.” Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998) (citing 28 U.S.C. §§  
17 2412(d)(1)(C) & 2412(d)(2)(D)).

18 A party who obtains a remand in a Social Security case is a prevailing party for purposes  
19 of the EAJA. Shalala v. Schaefer, 509 U.S. 292, 300-01 (1993) (“No holding of this Court has  
20 ever denied prevailing-party status . . . to a plaintiff who won a remand order pursuant to sentence  
21 four of § 405(g) . . . , which terminates the litigation with victory for the plaintiff.”). “An  
22 applicant for disability benefits becomes a prevailing party for the purposes of the EAJA if the  
23 denial of her benefits is reversed and remanded regardless of whether disability benefits  
24 ultimately are awarded.” Gutierrez, 274 F.3d at 1257.

### 25 **ANALYSIS**

26 Here, the court finds that plaintiff is the prevailing party, that plaintiff did not unduly  
27 delay this litigation, and that plaintiff’s net worth did not exceed two million dollars when this  
28 action was filed. (ECF No. 3.) With respect to substantial justification, “[s]ubstantial

1 justification means ‘justified in substance or in the main—that is, justified to a degree that could  
2 satisfy a reasonable person.’” Tobeler v. Colvin, 749 F.3d 830, 832 (9th Cir. 2014) (quoting  
3 Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013)). “Put differently, the government’s position  
4 must have a ‘reasonable basis both in law and fact.’” Meier, 727 F.3d at 870 (quoting Pierce v.  
5 Underwood, 487 U.S. 552, 565 (1988)).

6 “[T]he position of the United States includes both the government’s litigation position  
7 and the underlying agency action.” Campbell v. Astrue, 736 F.3d 867, 868 (9th Cir. 2013)  
8 (quoting Meier, 727 F.3d at 870); see also Shafer v. Astrue, 518 F.3d 1067, 1071 (9th Cir. 2008)  
9 (“the relevant question is whether the government’s decision to defend on appeal the procedural  
10 errors committed by the ALJ was substantially justified”). “In determining whether a party is  
11 eligible for fees under EAJA, the district court must determine whether the government’s position  
12 regarding the specific issue on which the district court based its remand was ‘substantially  
13 justified’—not whether the ALJ would ultimately deny disability benefits.” Gardner v. Berryhill,  
14 856 F.3d 652, 656 (9th Cir. 2017).

15 As noted above, “[i]t is the government’s burden to show that its position was  
16 substantially justified.” Meier, 727 F.3d at 870. Here, given the government’s lack of opposition  
17 to plaintiff’s motion and the nature of the Administrative Law Judge’s error the court cannot find  
18 that the government’s position was substantially justified.

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

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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  
attorney rates are consistent with the statutory maximum rates established by the Ninth Circuit.  
(ECF No. 21 at 1.)

1 F.3d at 988 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434 (1983) (internal citations omitted)).  
2 The district court must consider ““the relationship between the amount of the fee awarded and the  
3 results obtained.”” Id. at 989 (quoting Hensley, 461 U.S. at 437).

4 Here, after drafting a motion for summary judgment plaintiff obtained a remand for  
5 further proceedings. Plaintiff’s fee motion seeks compensation for just 23 hours of attorney time.  
6 (ECF No. 21 at 4.) The court finds the hours expended to be reasonable, especially when  
7 compared to the time devoted to similar tasks by counsel in like social security appeals coming  
8 before this court. See Clark v. Colvin, No. 2:14-CV-0851 DB, 2016 WL 4179803, at \*4 (E.D.  
9 Cal. Aug. 8, 2016) (finding 67.25 hours to be a reasonable amount of time); Boulanger v. Astrue,  
10 No. CIV S-07-0849 DAD, 2011 WL 4971890, at \*2 (E.D. Cal. Oct. 19, 2011) (finding 58 hours  
11 to be a reasonable amount of time); Watkins v. Astrue, No. CIV S-06-1895 DAD, 2011 WL  
12 4889190, at \*2 (E.D. Cal. Oct. 13, 2011) (finding 62 hours to be a reasonable amount of time);  
13 Vallejo v. Astrue, No. 2:09-cv-03088 KJN, 2011 WL 4383636, at \*5 (E.D. Cal. Sept. 20, 2011)  
14 (finding 62.1 hours to be a reasonable amount of time); see also Costa v. Commissioner of Social  
15 Sec. Admin., 690 F.3d 1132, 1137 (9th Cir. 2012) (“District courts may not apply de facto caps  
16 limiting the number of hours attorneys can reasonably expend on ‘routine’ social security  
17 cases.”). See generally Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008) (“By  
18 and large, the court should defer to the winning lawyer’s professional judgment as to how much  
19 time he was required to spend on the case; after all, he won, and might not have, had he been  
20 more of a slacker.”).

21 Accordingly, after carefully reviewing the record and the pending motion, the court  
22 declines to conduct a line-by-line analysis of counsel’s billing entries. See, e.g., Commissioner,  
23 I.N.S. v. Jean, 496 U.S. 154, 161-62 (1990) (“the EAJA—like other fee-shifting statutes—favors  
24 treating a case as an inclusive whole, rather than as atomized line-items”); Stewart v. Sullivan,  
25 810 F. Supp. 1102, 1107 (D. Haw. 1993); Duran v. Colvin, No. 2:11-cv-2978 DAD, 2013 WL  
26 5673415, at \*2 (E.D. Cal. Oct. 17, 2013).

27 Plaintiff’s counsel requests that the fee award be paid to plaintiff’s counsel. (ECF No. 21  
28 at 1.) However, an attorney fee award under the EAJA is payable to the litigant and is therefore

1 subject to a government offset to satisfy any pre-existing debt owed to the United States by the  
2 claimant. Astrue v. Ratliff, 560 U.S. 586, 592-93 (2010).

3 Subsequent to the decision in Ratliff, some courts have ordered payment of the award of  
4 EAJA fees directly to plaintiff's counsel pursuant to plaintiff's assignment of EAJA fees,  
5 provided that the plaintiff has no debt that requires offset. See Blackwell v. Astrue, No. CIV 08-  
6 1454 EFB, 2011 WL 1077765, at \*5 (E.D. Cal. Mar. 21, 2011); Dorrell v. Astrue, No. CIV 09-  
7 0112 EFB, 2011 WL 976484, at \*2-3 (E.D. Cal. Mar. 17, 2011); Calderon v. Astrue, No. 1:08-cv-  
8 01015 GSA, 2010 WL 4295583, at \*8 (E.D. Cal. Oct. 22, 2010); Castaneda v. Astrue, No. EDCV  
9 09-1850-OP, 2010 WL 2850778, at \*3 (C.D. Cal. July 20, 2010). The Court will incorporate  
10 such a provision in this order.

### 11 CONCLUSION

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's motion for attorney fees under the Equal Access to Justice Act (ECF No. 21)  
14 is granted;
- 15 2. Plaintiff is awarded \$4,717.10 in attorney fees and cost under 28 U.S.C. § 2412(d); and
- 16 3. Defendant shall determine whether plaintiff's EAJA attorney's fees are subject to any  
17 offset permitted under the United States Department of the Treasury's Offset Program and, if the  
18 fees are not subject to an offset, shall honor plaintiff's assignment of EAJA fees and shall cause  
19 the payment of fees to be made directly to plaintiff's counsel pursuant to the assignment executed  
20 by plaintiff.

21 Dated: October 12, 2020

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25 DEBORAH BARNES  
26 UNITED STATES MAGISTRATE JUDGE

27 DLB:6  
28 DB\orders\orders.soc sec\thomas1903.eaja.ord