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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN JOHN McELLIGOT,
Plaintiff,
v.
ANDREW SAUL, Commissioner of Social
Security,¹
Defendant.

No. 2:18-cv-2331 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”).² (ECF No. 26.) 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 2, 2020, following the filing of a motion for summary judgment by plaintiff and a cross-motion for summary judgment

¹ 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”).

² Both parties have previously consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). (See ECF Nos. 4 & 6.)

1 by defendant, the court granted plaintiff’s motion, reversed the decision of the Commissioner, and
2 remanded this action for further proceedings. (ECF No. 24.) On June 1, 2020, plaintiff filed a
3 motion for attorney’s fees. (ECF No. 26.) Defendant filed an opposition on June 18, 2020. (ECF
4 No. 27.)

5 **STANDARDS**

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

13 A “party” under the EAJA is defined as including “an individual whose net worth did not
14 exceed \$2,000,000 at the time the civil action was filed[.]” 28 U.S.C. § 2412(d)(2)(B)(i). The
15 term “fees and other expenses” includes “reasonable attorney fees.” 28 U.S.C. § 2412(d)(2)(A).
16 “The statute explicitly permits the court, in its discretion, to reduce the amount awarded to the
17 prevailing party to the extent that the party ‘unduly and unreasonably protracted’ the final
18 resolution of the case.” Atkins v. Apfel, 154 F.3d 986, 987 (9th Cir. 1998) (citing 28 U.S.C. §§
19 2412(d)(1)(C) & 2412(d)(2)(D)).

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

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1 ANALYSIS

2 Here, the court finds that plaintiff is the prevailing party, that plaintiff did not unduly
3 delay this litigation, and that there is no reason to believe plaintiff’s net worth exceeded two
4 million dollars when this action was filed. Moreover, as explained below, the court finds that the
5 position of the United States was not substantially justified.

6 A. Substantial Justification

7 “Substantial justification means ‘justified in substance or in the main—that is, justified to
8 a degree that could satisfy a reasonable person.’” Tobeler v. Colvin, 749 F.3d 830, 832 (9th Cir.
9 2014) (quoting Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013)). “Put differently, the
10 government’s position must have a ‘reasonable basis both in law and fact.’” Meier, 727 F.3d at
11 870 (quoting Pierce v. Underwood, 487 U.S. 552, 565 (1988)). “[T]he position of the United
12 States includes both the government’s litigation position and the underlying agency action.”
13 Campbell v. Astrue, 736 F.3d 867, 868 (9th Cir. 2013) (quoting Meier, 727 F.3d at 870); see also
14 Shafer v. Astrue, 518 F.3d 1067, 1071 (9th Cir. 2008) (“the relevant question is whether the
15 government’s decision to defend on appeal the procedural errors committed by the ALJ was
16 substantially justified”). “In determining whether a party is eligible for fees under EAJA, the
17 district court must determine whether the government’s position regarding the specific issue on
18 which the district court based its remand was ‘substantially justified’—not whether the ALJ
19 would ultimately deny disability benefits.” Gardner v. Berryhill, 856 F.3d 652, 656 (9th Cir.
20 2017).

21 Here, defendant argues that the government’s position was substantially justified. (Def.’s
22 Opp.’n (ECF No. 27) at 3-5.) Defendant’s arguments, however, simply rehashes the
23 unmeritorious arguments asserted in defendant’s cross-motion for summary judgment. Moreover,
24 the ALJ committed multiple legal errors, as established by settled circuit case law, involving the
25 step two analysis, treatment of the medical opinion evidence, and plaintiff’s subjective testimony.
26 Under these circumstances, the court cannot find that the government’s position was substantially
27 justified. See Tacas v. Astrue, No. CIV 09-2144 EFB, 2011 WL 5984007, at *2 (E.D. Cal. Nov.
28 29, 2011) (citing Gutierrez, 274 F.3d at 1259-60) (“when the government violates its own

1 regulations, fails to acknowledge settled circuit case law, or fails to adequately develop the
2 record, its position is not substantially justified.”).

3 **B. Plaintiff’s Fee Request**

4 The EAJA expressly provides for an award of “reasonable” attorney fees. 28 U.S.C. §
5 2412(d)(2)(A). Under the EAJA, hourly rates for attorney fees have been capped at \$125.00 since
6 1996, but district courts are permitted to adjust the rate to compensate for an increase in the cost
7 of living.³ See 28 U.S.C. § 2412(d)(2)(A); Sorenson v. Mink, 239 F.3d 1140, 1147-49 (9th Cir.
8 2001); Atkins, 154 F.3d at 987. Determining a reasonable fee “requires more inquiry by a
9 district court than finding the product of reasonable hours times a reasonable rate.” Atkins, 154
10 F.3d at 988 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434 (1983) (internal citations omitted)).
11 The district court must consider “the relationship between the amount of the fee awarded and the
12 results obtained.” Id. at 989 (quoting Hensley, 461 U.S. at 437).

13 Here, after drafting a motion for summary judgment plaintiff successfully obtained a
14 remand for further proceedings. Plaintiff’s fee motion seeks compensation for 45.5 hours of
15 attorney time. (Pl.’s EAJA Mot. (ECF No. 26) at 4.) The court finds the hours expended to be
16 reasonable, especially when compared to the time devoted to similar tasks by counsel in like
17 social security appeals coming before this court. See Clark v. Colvin, No. 2:14-CV-0851 DB,
18 2016 WL 4179803, at *4 (E.D. Cal. Aug. 8, 2016) (finding 67.25 hours to be a reasonable amount
19 of time); Boulanger v. Astrue, No. CIV S-07-0849 DAD, 2011 WL 4971890, at *2 (E.D. Cal.
20 Oct. 19, 2011) (finding 58 hours to be a reasonable amount of time); Watkins v. Astrue, No. CIV
21 S-06-1895 DAD, 2011 WL 4889190, at *2 (E.D. Cal. Oct. 13, 2011) (finding 62 hours to be a
22 reasonable amount of time); Vallejo v. Astrue, No. 2:09-cv-03088 KJN, 2011 WL 4383636, at *5
23 (E.D. Cal. Sept. 20, 2011) (finding 62.1 hours to be a reasonable amount of time); see also Costa
24 v. Commissioner of Social Sec. Admin., 690 F.3d 1132, 1137 (9th Cir. 2012) (“District courts

25 ³ 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. (Pl.’s EAJA Mot. (ECF No. 26) at 4.)

1 may not apply de facto caps limiting the number of hours attorneys can reasonably expend on
2 ‘routine’ social security cases.”). See generally Moreno v. City of Sacramento, 534 F.3d 1106,
3 1112 (9th Cir. 2008) (“By and large, the court should defer to the winning lawyer’s professional
4 judgment as to how much time he was required to spend on the case; after all, he won, and might
5 not have, had he been more of a slacker.”).

6 Accordingly, after carefully reviewing the record and the pending motion, the court
7 declines to conduct a line-by-line analysis of counsel’s billing entries. See, e.g., Commissioner,
8 I.N.S. v. Jean, 496 U.S. 154, 161-62 (1990) (“the EAJA—like other fee-shifting statutes—favors
9 treating a case as an inclusive whole, rather than as atomized line-items”); Stewart v. Sullivan,
10 810 F. Supp. 1102, 1107 (D. Haw. 1993); Duran v. Colvin, No. 2:11-cv-2978 DAD, 2013 WL
11 5673415, at *2 (E.D. Cal. Oct. 17, 2013).

12 Defendant notes that in the March 3, 2020 order the court “reordered and reorganized
13 plaintiff’s claims for purposes of clarity and efficiency,” and found it unnecessary to reach all of
14 plaintiff’s claims of error. (Def.’s Opp.’n (ECF No. 27) at 6.) Accordingly, defendant argues that
15 “much of” the hours plaintiff spent were on work the court “did not even consider” and that
16 plaintiff’s “brief could easily have been half as long and achieved the same result.” (Id. at 7.)
17 Defendant, however, misunderstands the court’s order.

18 The court reordered and reorganized plaintiff’s claims for purposes of clarity and
19 efficiency in drafting the March 3, 2020 order. That decision was informed largely by the nature
20 of the ALJ’s multiple errors and not because plaintiff’s briefing was unclear, unnecessary,
21 redundant, etc. Likewise, the court certainly did consider all of plaintiff’s briefing in drafting the
22 March 3, 2020 order. Again, the decision to not reach all of plaintiff’s claims of error was a
23 reflection of the ALJ’s multiple systemic errors that required remand for further proceedings and
24 not a reflection of the merits of the remaining unaddressed claims of error. It was also a
25 reflection of the fact that “the Eastern District has one of the highest weighted case loads per
26 judge in the nation.” Irving v. Lennar Corp., No. CIV S-12-0290 KJM EFB, 2013 WL 1308712,
27 at *6 (E.D. Cal. Apr. 1, 2013).

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