

1 Jonathan O. Peña, Esq.
 2 CA Bar ID No.: 278044
 3 Peña & Bromberg, PLC
 4 2440 Tulare St., Ste. 320
 5 Fresno, CA 93721
 6 Telephone: 559-439-9700
 7 Facsimile: 559-439-9723
 8 Email: info@jonathanpena.com
 9 Attorney for Plaintiff, Kimalae R Smith

10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 Kimalae R Smith,
 13
 14 Plaintiff,
 15
 16 v.
 17 Kilolo Kijakazi, Acting
 18 Commissioner of Social Security,
 19
 20 Defendant.

No. 2:21-cv-0326-DB

**STIPULATION FOR THE AWARD
 AND PAYMENT OF ATTORNEY
 FEES AND EXPENSES PURSUANT
 TO THE EQUAL ACCESS TO
 JUSTICE ACT; AND ORDER**

21 IT IS HEREBY STIPULATED by and between the parties through their
 22 undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded
 23 attorney fees and expenses in the amount of TWO THOUSAND FIVE-HUNDRED
 24 FORTY-FIVE DOLLARS and 21/100 (\$0.00) under the Equal Access to Justice Act
 25 (EAJA), 28 U.S.C. § 2412(d), and cost in the amount of zero dollars (\$0.00) under 28
 26 U.S.C. §1920. This amount represents compensation for all legal services rendered on
 27 behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28
 28 U.S.C. § 2412(d).

1 After the Court issues an order for EAJA fees to Plaintiff, the government will
2 consider the matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to
3 *Astrue v. Ratliff*, 560 U.S. 586, 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability
4 to honor the assignment will depend on whether the fees are subject to any offset
5 allowed under the United States Department of the Treasury's Offset Program. After
6 the order for EAJA fees is entered, the government will determine whether they are
7 subject to any offset.

8 Fees shall be made payable to Plaintiff, but if the Department of the Treasury
9 determines that Plaintiff does not owe a federal debt, then the government shall cause
10 the payment of fees, expenses and costs to be made directly to Counsel, pursuant to
11 the assignment executed by Plaintiff. Any payments made shall be delivered to
12 Plaintiff's counsel, Jonathan O. Peña.

13 This stipulation constitutes a compromise settlement of Plaintiff's request for
14 EAJA attorney fees, and does not constitute an admission of liability on the part of
15 Defendant under the EAJA or otherwise. Payment of the agreed amount shall
16 constitute a complete release from, and bar to, any and all claims that Plaintiff and/or
17 Counsel including Counsel's firm may have relating to EAJA attorney fees in
18 connection with this action.

19 This award is without prejudice to the rights of Counsel and/or Counsel's firm
20 to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the
21 savings clause provisions of the EAJA.

22 Respectfully submitted,

23
24 Dated: May 5, 2022

25 /s/ Jonathan O. Peña
26 JONATHAN O. PEÑA
27 Attorney for Plaintiff

28 Dated: May 5, 2022

PHILLIP A. TALBERT

1 United States Attorney
2 PETER K. THOMPSON
3 Acting Regional Chief Counsel, Region IX
4 Social Security Administration

5 By: * Linda H Green

6 Linda H Green
7 Special Assistant U.S. Attorney
8 Attorneys for Defendant
9 (*Permission to use electronic signature
10 obtained via email on May 4, 2022).
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ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

DATED: May 6, 2022

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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