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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

CHRISTINE E. CUNNINGHAM,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
Defendant.

Case No. 3:10-cv-04313-LB

**ORDER REGARDING THE  
PLAINTIFF'S MOTION FOR  
ATTORNEY'S FEES AND  
CONTINUING HEARING**

[Re: ECF No. 28]

The plaintiff Christine Cunningham filed this action seeking judicial review of the Commissioner of the Social Security Administration's final decision denying her claims for supplemental social security income and disability insurance benefits. (Complaint, ECF No. 1.) On October 3, 2014, the court granted Ms. Cunningham's motion for summary judgment, denied the Commissioner's cross-motion for summary judgment, and remanded the action back to the Social Security Administration for an award of benefits. (10/3/2014 Order, ECF No. 23.) The court issued a judgment to that effect the same day. (10/3/2015 Judgment, ECF No. 24.)

On December 15, 2014, Ms. Cunningham and the Commissioner filed a stipulation for the award of \$6,750.00 in attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). (Stipulation, ECF No. 26.) The court granted the stipulation two days later. (12/17/2014 Order, ECF No. 27.)

On September 25, 2015, Ms. Cunningham's attorney, David Linden, filed a motion asking the  
ORDER (No. 3:10-cv-04313-LB)

1 court to award him \$18,742.50 in attorney’s fees pursuant to 42 U.S.C. § 406(b). (Motion, ECF  
2 No. 28.) Essentially, Mr. Linden asks the court to award him this amount in fees based on his  
3 retainer agreement with Ms. Cunningham.

4 The court has a few questions.

5 First, it does not appear that Mr. Linden ever served Ms. Cunningham with the motion. Other  
6 courts in similar contexts require service on the plaintiff because the plaintiff is the party most  
7 likely to raise any objections to this type of motion. Thus, the court believes that requiring service  
8 upon Ms. Cunningham is appropriate. *See Atkins v. Astrue*, No. C 10-0180 PJH, 2012 WL  
9 5350265, at \*5 (N.D. Cal. Oct. 29, 2012) (describing the plaintiff’s counsel’s failure to show that  
10 the plaintiff received notice of the plaintiff’s counsel’s motion under section 406(b) as a  
11 “deficiency” and denying the motion partly for this reason); *cf. Zutis v. Colvin*, No. C 12-01897  
12 WHA, 2015 WL 3766811, at \*1 (N.D. Cal. June 16, 2015) (noting that neither the plaintiff nor the  
13 Commissioner opposed the plaintiff’s counsel’s motion); *Dellapietra v. Colvin*, No. 11-cv-04697-  
14 JCS, 2013 WL 5863017, at \*1 (N.D. Cal. Oct. 30, 2013) (noting that the plaintiff’s counsel served  
15 the motion for fees under section 406(b) on the plaintiff and that the plaintiff did not appear or file  
16 any objection to the motion).

17 Second, although Mr. Linden states that “opposing counsel has authorized me to represent that  
18 the Commissioner takes no position on this motion,” the government has filed no statement to this  
19 effect. If this true, and even though Mr. Linden’s motion is not directed to the Commissioner, the  
20 court asks the Commissioner to file a statement of non-opposition. *See* N.D. Cal. Civ. L.R. 7-3(b).

21 Third, the exhibits attached to Mr. Linden’s motion are not authenticated. They are not  
22 accompanied by a declaration, and the declarations that were submitted do not speak to them. (*See*  
23 Wilborn Decl., ECF No. 28-5; Linden Decl., ECF No. 28-6.) This matters because the Mr.  
24 Linden’s motion hinges almost entirely on these exhibits, one of which purports to be a retainer  
25 agreement between Mr. Linden and Ms. Cunningham.

26 For these reasons, the court orders the following to take place by November 3, 2015.

27 First, Mr. Linden must serve Ms. Cunningham with his motion, any accompanying  
28 declarations, and this order.

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Second, the court asks the Commissioner to file a statement of non-opposition.

Third, Mr. Linden must file a declaration (whether by him or a different declarant) sufficiently authenticating the exhibits attached to the motion.

Fourth, in light of these directives, the court continues the hearing on Mr. Linden’s motion from October 29, 2015 to November 19, 2015 at 9:30 a.m. in Courtroom C.

**IT IS SO ORDERED.**

Dated: October 26, 2015

  
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LAUREL BEELER  
United States Magistrate Judge