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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 CLAYTON WOOD,  
8 Plaintiff,  
9 v.  
10 CAROLYN COLVIN,  
11 Defendant.

Case No. [14-cv-03764-JSC](#)

**ORDER RE: MOTION FOR  
ATTORNEY FEES**

Re: Dkt. No. 22

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13 Now pending before the Court is Plaintiff's motion for attorney's fees pursuant to the  
14 Equal Access to Justice Act, 28 U.S.C. § 2412(d). (Dkt. No. 22.) Under the EAJA, the  
15 government is "liable for such fees and expenses to the same extent that any other party would be  
16 liable under common law." 28 U.S.C. § 2412(b). The statute has been construed to allow the  
17 prevailing party to recover fees in cases involving "bad faith" by the government or an agency  
18 "unless the court finds that the position of the United States was substantially justified or that  
19 special circumstances make an award unjust." *Brown v. Sullivan*, 916 F.2d 492, 495 (9th Cir.  
20 1990) (quoting 28 U.S.C. § 2412(d)(1)(A)).

21 The party seeking fees must file an application within thirty days of final judgment in the  
22 action. 28 U.S.C. § 2412(d)(1)(B). "An EAJA application may be filed until 30 days after a  
23 judgment becomes 'not appealable'—i.e., 30 days after the time for appeal has ended." *Shalala v.*  
24 *Schaefer*, 509 U.S. 292, 302 (1993). Pursuant to Federal Rule of Appellate Procedure 4(a), the  
25 time for appeal in a civil case to which a federal officer is a party does not end until sixty days  
26 after entry of judgment. Fed. R. App. P. 4(a)(1)(B)(i).

27 The Court entered judgment in this matter on August 14, 2015. (Dkt. No. 20.) The  
28 judgment did not become final—i.e., "not appealable"—under Rule 4(a) until October 13, 2015.

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Plaintiff filed the motion on September 10, 2015. Thus, the 30-day time period for filing an application for EAJA fees had not yet begun when Plaintiff filed the instant motion. Defendant therefore properly contends that Plaintiff's motion was premature, and urges the Court to strike the motion or hold it in abeyance until after the expiration of the 60-day period within which the Commissioner may file an appeal and give the Commissioner 14 weeks to respond. (Dkt. No. 23.) The Court deems Plaintiff's motion timely filed as of October 14, 2015, and ORDERS Defendant to respond to the motion by December 17, 2015. Plaintiff may file a reply December 23, 2015.

**IT IS SO ORDERED.**

Dated: December 7, 2015

  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge