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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HUGH J. HARRELL,
Plaintiff,
v.
NANCY A. BERRYHILL,
Defendant.

Case No. [16-cv-02428-MEJ](#)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES**

Re: Dkt. No. 32

On April 25, 2017, the undersigned granted in part Plaintiff Hugh Harrell's Motion for Summary Judgment, reversed the final decision of the Commissioner of Social Security, and remanded this action for further administrative proceedings. *See* Order, Dkt. No. 29. The undersigned found the Administrative Law Judge ("ALJ") failed to provide legally sufficient reasons for rejecting certain limitations Dr. Barnes had found, and in failing to include those limitations in his final residual functional capacity or in his hypothetical to the vocational expert. *Id.* at 10-11. The undersigned found the ALJ did not err in finding Plaintiff not fully credible or in finding transferability of job skills was not material. *Id.* at 12-17.

When the parties were unable to stipulate to Plaintiff's attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), Plaintiff filed the instant Motion. *See* Mot., Dkt. No. 32. The United States filed an Opposition (Dkt. No. 33), and Plaintiff filed a Reply (Dkt. No. 34). Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition without oral argument and hereby VACATES the August 17, 2017 hearing.

As is relevant here, the Court may award reasonable attorneys' fees under the EAJA to a prevailing party unless it finds the position of the United States was "substantially justified" or "special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A). The Court also may,

1 in its discretion, reduce the amount of fees requested or deny the award “to the extent that the
2 prevailing party . . . engaged in conduct which unduly and unreasonably protracted the final
3 resolution of the matter.” *Id.* § (d)(1)(C).

4 Plaintiff initially requested an award of \$8,370, representing 41.60 hours of attorney time
5 at a rate of \$192.68 per hour and 3.35 hours of paralegal time at a rate of \$106 per hour. *See Mot.*
6 at 6-7. Plaintiff’s Motion is supported by his attorney’s Itemization of Services Rendered. *See id.*,
7 Ex. C, Dkt. No. 32-3. The Itemization is reasonable on its face, showing Plaintiff’s attorney spent
8 9.1 hours reviewing the voluminous record; less than 20 hours drafting the motion for summary
9 judgment and statement of administrative record; and just over 10 hours reviewing the United
10 States’ cross-motion and preparing a response thereto. *Id.*

11 The United States does not argue the Commissioner’s position was substantially justified
12 or that special circumstances make an award unjust; it does not argue Plaintiff’s requested hourly
13 rate is unreasonable. The United States opposes the request on only one ground: the amount of
14 fees requested is unreasonable because Plaintiff prevailed on only one of the three issues he raised
15 in his Motion for Summary Judgment. *See Opp’n* at 2-3. The United States accordingly asks the
16 Court to reduce the fees by five hours of time expended, or \$964. *Id.* at 4 (arguing Plaintiff should
17 receive \$7,406 in EAJA fees). The United States also argues that when Plaintiff submits the reply
18 brief in support of this Motion, “he must demonstrate that the time spent preparing the brief was
19 reasonable.” *Id.* Plaintiff’s counsel submitted a supplemental declaration stating he spent a total
20 of 6.2 hours reviewing the United States’ opposition to the fee petition, researching relevant case
21 law, and drafting the reply and supplemental declaration. *See Suppl. Sackett Decl.*, Dkt. No. 34-1.

22 The undersigned previously has rejected the United States’ position that EAJA fees should
23 be reduced because the Court only accepted some of Plaintiff’s arguments:

24 Both of Plaintiff’s arguments in her summary judgment motion went
25 to support one claim for relief, i.e., a claim for disability benefits on
26 which she prevailed by obtaining a reversal of the ALJ’s decision
27 and a remand for further proceedings. *See Trefcer v. Colvin*, 2013
28 WL 6623823, at *4-5 (E.D. Cal. Dec. 16, 2013) (“Social Security
appeals are akin to a single claim for relief based on one set of facts
and involving related legal theories”); *Williams v. Astrue*, 2012 WL
3527224, at *3-4 (D. Or. June 26, 2012) (awarding fees where
plaintiff presented multiple arguments, not all of which were

1 successful, but were all in support of one claim for relief: a claim for
2 disability benefits through reversal and remand), *report and*
3 *recommendation adopted*, 2012 WL 3527207 (D. Or. Aug. 15,
4 2012). Because Plaintiff's claim for relief involved a common core
5 of facts and was based on related legal theories, “[m]uch of
6 counsel's time will be devoted generally to the litigation as a whole.
7 . . . Such a lawsuit cannot be viewed as a series of discrete claims.”
8 *Sorenson[v. Mink]*, 239 F.3d [1140,] 1147 [(9th Cir. 2001)]
9 (quoting *Hensley[v. Eckerhart]*, 461 U.S. [424,] 435 [(1983)]).

10 In considering the second-prong of the analysis, the Court looks at
11 the overall result obtained by the Plaintiff. Specifically, courts must
12 consider “whether ‘the plaintiff achieve[d] a level of success that
13 makes the hours reasonably expended a satisfactory basis for
14 making a fee award.’” *Id.* at 1147 (quoting *Hensley*, 461 U.S. at
15 434). “Where a plaintiff has obtained excellent results, his attorney
16 should recover a fully compensatory fee.” *Id.* (quotation omitted).
17 “A plaintiff may obtain excellent results without receiving all the
18 relief requested.” *Id.* (citing *Hensley*, 461 U.S. at 435 n.11). Here,
19 although Plaintiff presented two arguments, the Court was
20 persuaded by the first argument to remand in her favor. The Court's
21 decision to not reach the second argument of Plaintiff's argument
22 does not support a reduction of fees. *See Hensley*, 461 U.S. 424,
23 434 (“Litigants in good faith may raise alternative legal grounds for
24 a desired outcome, and the court's rejection of or failure to reach
25 certain grounds is not sufficient reason for reducing a fee.”
(emphasis added)); *Stevenson v. Astrue*, 2012 WL 5412704, at *7
(N.D. Cal. Nov. 6, 2012) (where plaintiff argued several reasons
against the denial of Social Security benefits, and “the court agreed
with him with respect to one of these reasons and remanded the
action for further proceedings . . . , the court will not reduce the
claimed hours.”). Given that [counsel] achieved the relief sought for
Plaintiff, she obtained an excellent result, and the fee award should
not be reduced because Plaintiff did not succeed on all the
contentions raised.

26 *Lauser v. Colvin*, 2015 WL 1884330, at *4-5 (N.D. Cal. Apr. 23, 2015). As in *Lauser*, the Court
27 here reversed the Commissioner's decision and remanded the case for further proceedings,
28 Plaintiff prevailed, and obtained “excellent results” even if he did not succeed on all the arguments
raised. The Court finds no reason to reach a different conclusion in this case.

29 Separately, the Court finds that United States' request to reduce the EAJA fees by five
30 hours is arbitrary. The United States offers no support for its calculations that this amount
31 corresponds to the work Plaintiff's counsel expended on the rejected arguments.

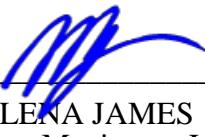
32 The Court finds an award of \$9,584.89 (representing the original amount requested, which
33 included 41.6 hours of attorney time at a rate of \$192.68 per hour and 3.35 hours of paralegal time
34 at a rate of \$106 per hour, as well as the supplemental 6.2 hours of attorney time expended in

1 connection with the reply), is reasonable. The Court accordingly **GRANTS** Plaintiff's Motion.

2 Within 30 days of the date of this Order, the United States shall tender payment for
3 attorneys' fees in the amount of \$9,584.89 to Harvey P. Sackett, as Plaintiff's assignee. Because
4 Plaintiff has assigned all fee awards to his attorney (*see* Mot., Ex. B (Attorney's Fee Contract)),
5 the United States shall tender payment directly to Mr. Sackett, subject to any administrative offset
6 due to Plaintiff's outstanding federal debt, if any exists.

7 **IT IS SO ORDERED.**

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9 Dated: August 9, 2017

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12 MARIA-ELENA JAMES
13 United States Magistrate Judge
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