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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EMMY SCHARLATT,

Plaintiff,

No. C 04-04724 PJH

v.

**ORDER RE: MOTION TO ALTER  
FEE AWARD**MICHAEL J. ASTRUE, Commissioner  
of Social Security Administration,Defendant.  

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On November 21, 2008, the court awarded plaintiff's attorney, Marc Kalagian, \$9,900.00 in attorney's fees. Because Kalagian had already been awarded \$3,600.00 pursuant to the Equal Access to Justice Act ("EAJA"), he was only due an additional \$6,300.00 following the court's November 21, 2008 order.

In his motion for fees, Kalagian noted that in accordance with the Commissioner's internal guidelines, Scharlatt had been advised that the administration was withholding \$15,236.75, or 25% of her award on remand, in the event that Scharlatt's attorney's fees were approved, and that the Commissioner continues to withhold those funds. See Kalagian Decl., Exh. 3. Because of the prejudice resulting to Scharlatt from Kalagian's delay in filing his fee motion, in its November 21, 2008 order, the court required the Commissioner to deduct from Kalagian's fee, an amount equal to the interest on the remaining \$8,936.75 owed to Scharlatt, as calculated pursuant to the statutory interest rate, beginning March 23, 2007, sixty days after the date of Scharlatt's award on remand, through July 23, 2008, the day that Kalagian filed the instant motion for attorney's fees, and to add that amount to the \$8,936.75 owed to Scharlatt.

Three days later, on November 24, 2008, Kalagian subsequently filed a motion to

1 alter the fee award. He claims that there is actually \$8,300 less in Scharlatt's withheld  
2 award than previously noted, and that Scharlatt is entitled to interest on \$636.75 instead of  
3 \$8,936.75. In support, Kalagian asserts that "as stated in his motion for attorneys' fees,  
4 hearing counsel at the remand hearing sought attorneys' fees in the amount of \$5,300."  
5 Kalagian, however, fails – in the instant motion *or* in his prior motion – to adequately  
6 explain who "hearing counsel" is, the role of "hearing counsel" in this case, or the impact of  
7 hearing counsel's alleged fees on the amount of Scharlatt's award that the Commissioner is  
8 withholding. He also asserts that an additional \$3,000 fee petition has been filed with the  
9 Commissioner below. Again, Kalagian fails to adequately explain what this \$3,000 fee  
10 petition represents and/or its impact on the amount of Scharlatt's award that the  
11 Commissioner is withholding. Without additional facts and explanation, the court declines  
12 to alter the fee award issued.

13 If Kalagian wishes for this court to further consider his motion to alter the fee award,  
14 he is ORDERED to submit a supplemental brief and/or declaration **no later than**  
15 **December 29, 2008** answering the above questions, and adequately explaining the  
16 procedure below, the relationship between the various fee applications below with  
17 Kalagian's motion before this court, the status of any fee requests below and whether or  
18 not those fees have already been disbursed from Scharlatt's award, and *why* and *how*  
19 those fee requests should impact this court's November 21, 2008 order.

20 **IT IS SO ORDERED.**

21  
22 Dated: December 12, 2008



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25 PHYLLIS J. HAMILTON  
26 United States District Judge  
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