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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVEN HARRINGTON,
Plaintiff,
v.
ANDREW SAUL,
Defendant.

Case No. 20-cv-04148-PJH

**ORDER GRANTING MOTION FOR
ATTORNEYS' FEES**

Re: Dkt. No. 25

Before the court is plaintiff's motion for attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). The matter is fully briefed and suitable for decision without oral argument. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS the motion for the following reasons.

BACKGROUND

On June 23, 2020, plaintiff appealed the decision from the Social Security Administration that he was not eligible for disability benefits. Dkt. 1. On April 12, 2021, plaintiff moved for summary judgment, and defendant cross moved for summary judgment. Dkt. 20, 21. On March 14, 2022, this court granted plaintiff's motion for summary judgment, in part, and denied defendant's motion for summary judgment in its entirety. Dkt. 23 at 15. On May 31, 2022, plaintiff moved for attorneys' fees, seeking an award of \$11,237.54. Dkt. 25 at 5. Defendant filed an opposition on June 16, 2022, and plaintiff filed a reply on the same day. Dkt. 27, 28.

DISCUSSION

1 **A. Legal Standard**

2 The EAJA mandates an award of attorneys’ fees and expenses to a prevailing
3 party, other than the United States, in any civil action other than one sounding in tort
4 “brought by or against the United States . . . unless the court finds the position of the
5 United States was substantially justified or that special circumstances make an award
6 unjust.” 28 U.S.C. § 2412(d)(1)(A).

7 In making this determination, a court “must focus on two questions: first, whether
8 the government was substantially justified in taking its original action; and, second,
9 whether the government was substantially justified in defending the validity of the action
10 in court.” Gutierrez v. Barnhart, 274 F.3d 1255, 1258–59 (9th Cir. 2001) (internal citation
11 and quotation marks omitted). The government bears the burden of showing substantial
12 justification. Flores v. Shalala, 49 F.3d 562, 569 (9th Cir. 1995).

13 If fees are awarded under the EAJA, the court has considerable discretion in
14 determining the amount of the fee award, including the reasonableness of the fees
15 claimed by the prevailing party. Gates v. Deukmejian, 987 F.2d 1392, 1398 (9th Cir.
16 1992). In determining what constitutes a reasonable fee award, a court should consider
17 factors such as the number of hours requested and duplication of effort. Id. at 1397. A
18 court should not, however, apply a “de facto cap on the number of hours for which
19 attorneys may be compensated under the EAJA in a ‘routine’ case challenging the denial
20 of social security benefits. Rather individualized consideration must be given to each
21 case.” Costa v. Comm'r of Soc. Sec. Admin., 690 F.3d 1132, 1134 (9th Cir. 2012). A
22 court may impose “a small reduction, no greater than 10 percent—a ‘haircut’—based on
23 its exercise of discretion and without a more specific explanation.” Moreno v. City of
24 Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008). Greater reductions require “a more
25 specific articulation of the court’s reasoning.” Id. at 1111.

26 **B. Analysis**

27 Plaintiff moves for a total fee award of \$11,237.54. Dkt. 25-1, ¶ 5. The parties do
28 not dispute that plaintiff is the prevailing party in this matter. See Gutierrez, 274 F.3d at

1 1257 (stating, “[a]n applicant for disability benefits becomes a prevailing party for the
2 purposes of the EAJA if the denial of her benefits is reversed and remanded regardless
3 of whether disability benefits ultimately are awarded”). Defendant does not assert that
4 the government’s position was substantially justified or that special circumstances exist
5 here. The parties do not dispute that plaintiff counsel’s hourly rates are reasonable under
6 Ninth Circuit standards—\$207.78 for 2020 and \$217.54 for 2021 and 2022. Statutory
7 Maximum Rates Under the Equal Access to Justice Act, United States Courts for the
8 Ninth Circuit, <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates>; See 8
9 U.S.C. § 2412 (d)(2)(A), Thangaraja v. Gonzales, 428 F.3d 870, 876–77 (9th Cir. 2005);
10 Ninth Circuit Rule 39-1.6. And plaintiff does not oppose defendant’s request that any
11 fees awarded be made payable to plaintiff if they are subject to the Treasury Offset
12 Program. Dkt. 27 at 2; Dkt. 28 at 12.

13 What the parties do dispute is the reasonableness of plaintiff’s proposed fee
14 award. Specifically, defendant argues plaintiff’s proposed fee award is unreasonable for
15 three reasons: (1) the number hours billed by counsel is too high given counsel’s
16 experience with social security cases and given the two “run-of-the-mill” issues raised in
17 this case; (2) plaintiff’s counsel billed for clerical work at an attorneys’ hourly rate; and (3)
18 plaintiff’s counsel billed .1 hours for perfunctory tasks. Dkt. 27 at 3–5. For these
19 reasons, defendant requests a fifty-percent reduction to plaintiff’s proposed fee award.
20 Id. at 5.

21 Under the EAJA, the prevailing party “bears the burden of establishing entitlement
22 to an award and documenting the appropriate hours expended and hourly rates.”
23 Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). The prevailing party must exercise
24 “billing judgment,” i.e., only bill for work that would be billed to a private client. Id. at 434
25 (“Hours that are not properly billed to one’s *client* also are not properly billed to one’s
26 adversary pursuant to statutory authority.”). And the prevailing party should not seek
27 fees for work that is “excessive, redundant, or otherwise unnecessary.” Id.

28 First, plaintiff’s counsel declares she spent 51.8 hours litigating this action. Dkt.

1 25-1. A court “should defer to the winning lawyer’s professional judgment as to how
2 much time he was required to spend on the case.” Moreno, 534 F.3d at 1112. It is not
3 unusual for an attorney to bill over 50 hours for social security matters of this nature that
4 involve a voluminous record. See Valle v. Berryhill, No. 16-CV-02358-JSC, 2018 WL
5 1449414, at *2 (N.D. Cal. Jan. 18, 2018) (awarding fees based on 116.9 billable attorney
6 hours); Stevenson v. Astrue, No. C 10-04837 LB, 2012 WL 5412704, at *7 (N.D. Cal.
7 Nov. 6, 2012) (awarding fees based on 59.3 billable attorney hours). There is no basis to
8 call into question plaintiff counsel’s declaration, including counsel’s experience with social
9 security matters or the routine nature of this case. See Gregory S. v. Saul, No. 19-CV-
10 07543-JSC, 2021 WL 1668059, at *3 (N.D. Cal. Apr. 28, 2021) (awarding fees to counsel
11 experienced in social security matters because social security “cases involve a myriad of
12 complex legal issues as well as oftentimes a voluminous administrative record”). Indeed,
13 it is “an abuse of discretion to apply a de facto policy limiting social security claimants to
14 twenty to forty hours of attorney time in routine cases.” Costa, 690 F.3d at 1137 (internal
15 quotation marks omitted). Accordingly, the court does not find plaintiff’s proposed fee
16 award unreasonable because it is based on 51.8 billable attorney hours.

17 Second, the Ninth Circuit has explained that “purely clerical or secretarial tasks
18 should not be billed at a paralegal or lawyer’s rate, regardless of who performs them.”
19 Davis v. City & Cnty. of San Francisco, 976 F.2d 1536, 1543 (9th Cir. 1992) (internal
20 quotation marks and alterations omitted). Plaintiff’s counsel stipulates to erroneously
21 billing .2 hours of clerical work at an attorney’s rate, and such entries are unreasonable.
22 Dkt. 28 at 7; Dkt. 25-2. Accordingly, plaintiff’s proposed fee award will be reduced by
23 \$41.56.

24 Third, courts have found .1 billing entries to be reasonable, so long as the entries
25 are not for perfunctory, vague, or redundant tasks. See Khan v. Comm’r of Soc. Sec.,
26 No. 18-CV-02868-JSC, 2019 WL 5102601, at *5 (N.D. Cal. Oct. 11, 2019). Plaintiff’s
27 counsel billed .1 hours for tasks such as reviewing orders, decisions, and an answer, and
28 drafting client emails and paperwork. These tasks and billing entries are not perfunctory,

1 vague, or redundant. As such, plaintiff's proposed fee award is not unreasonable on this
2 basis.

3 Accordingly, the court finds plaintiff's proposed award of \$11,237.54 minus \$41.56
4 reasonable.

5 Plaintiff seeks an additional award for the 2.5 attorney hours associated with
6 preparing plaintiff's reply brief. Under the EAJA, a plaintiff may seek fees for hours spent
7 litigating an EAJA fee award. See INS v. Jean, 496 U.S. 154, 162 (1990). Courts
8 routinely award fees for hours spent preparing reply briefs. See Valle, No. 16-CV-02358-
9 JSC, 2018 WL 1449414, at *3 (finding a billing entry for 9.75 hours reasonable for
10 preparing a reply brief); Potter v. Colvin, No. 14-cv-02562-JSC, 2015 WL 7429376, at *4
11 (N.D. Cal. Nov. 23, 2015) (awarding \$569.04 in fees for three hours spent preparing a
12 reply brief); Smith v. Astrue, No. C 10-4814 PJH, 2012 WL 3114595, at *5 (N.D. Cal. July
13 31, 2012) (awarding fees for 2.6 hours spent preparing a reply brief). Accordingly, the
14 court finds the additional fees in the amount of \$543.85 associated with plaintiff's reply
15 brief reasonable.

16 CONCLUSION

17 The court GRANTS plaintiff's motion and awards \$11,739.83 in attorneys' fees.
18 Barring evidence of a valid assignment, the EAJA fee award shall be paid directly to
19 plaintiff, subject to any administrative offset due to outstanding federal debt.

20 **IT IS SO ORDERED.**

21 Dated: July 29, 2022

22 /s/ Phyllis J. Hamilton
23 PHYLLIS J. HAMILTON
24 United States District Judge
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