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6 **Attorney for Plaintiffs MIRSAD HAJRO and JAMES R. MAYOCK**

7  
 8 UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN JOSE DIVISION

12 MIRSAD HAJRO, JAMES R. MAYOCK  
 13 Plaintiffs,  
 14 v.  
 15 UNITED STATES CITIZENSHIP  
 AND IMMIGRATION SERVICES,  
 16 T. DIANE CEJKA, Director  
 USCIS National Records Center,  
 ROSEMARY MELVILLE,  
 17 USCIS District Director of San Francisco,  
 MICHAEL CHERTOFF, Secretary  
 18 Department of Homeland Security,  
 MICHAEL B. MUKASEY, Attorney General  
 19 Department of Justice  
 20 Defendants

)  
 ) **No. C 08-1350 PSG**  
 )  
 ) **Notice Of Withdrawal Of**  
 ) **Plaintiffs' Alternative**  
 ) **Motion For Attorney's Fees**  
 ) **And Costs Under The Equal**  
 ) **Access To Justice Act**  
 ) **28 U.S.C. § 2412(d)**  
 ) **And [~~Proposed~~] Order**  
 )

21 On June 5, 2012, Plaintiffs filed a Motion For Attorney's Fees And Costs  
 22 Pursuant To the Freedom Of Information Act ("FOIA")(5 U.S.C. § 552(A)(4)(E)  
 23 and, *alternatively*, under the Equal Access To Justice Act ("EAJA") (28 U.S.C. §  
 24 2412(d)) (Dkt.93 and 94). Plaintiffs now withdraw the alternative motion for  
 25 attorneys' fees and costs under EAJA after determining that the EAJA motion  
 26 was premature.

27 *Hajro v. USCIS* C 08-1350 PSG  
 28 Pl. Withdrawal of Alternative EAJA Motion

1 EAJA states “A party seeking an award of fees and other expenses shall,  
2 within thirty days of final judgment in the action, submit to the court an  
3 application for fees and other expenses...” 28 U.S.C. § 2412(d)(1)(B). The term  
4 “final judgment” is defined in the statute as “a judgment that is final and not  
5 appealable”. 28 U.S.C. § 2412(d)(2)(G). (“[W]e...construe the Act’s definition of  
6 ‘final judgment’ as designating the date on which a party’s case has met its  
7 final demise, such that there is no longer any possibility that the district  
8 court’s judgment is open to attack.” *(internal punctuation omitted)* *Al-Harbi v.*  
9 *INS*, 284 F.3d 1080, 1084 (9<sup>th</sup> Cir. 2002). Since the Court’s decision in this  
10 case is currently on appeal in the Ninth Circuit, the judgment is not yet “final”  
11 and therefore the filing of the alternative EAJA motion was premature.  
12 Plaintiffs’ counsel apologizes for any confusion caused by this incorrect filing.

13 However, no such rule applies to a motion for attorney’s fees and costs  
14 under FOIA. Therefore, Plaintiffs’ motion for attorney’s fees and costs under  
15 FOIA (5 U.S.C. § 552(A)(4)(E)) should remain on calendar for a hearing on July  
16 24, 2012 at 10 a.m.

17  
18 Dated: June 9, 2012

Respectfully submitted,

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20 \_\_\_\_\_/s/\_\_\_\_\_  
21 Kip Evan Steinberg  
22 Attorney for Plaintiffs  
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1 **[Proposed] Order**

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3 Plaintiffs' alternative motion for attorney's fees and costs under the Equal  
4 Access To Justice (28 U.S.C. § 2412(d)) is withdrawn. Plaintiffs' motion for  
5 attorney's fees and costs under the Freedom Of Information Act ("FOIA")(5  
6 U.S.C. § 552(A)(4)(E) remains on the Court's calendar for July 24, 2012 at 10  
7 a.m.

8  
9 IT IS SO ORDERED.

10  
11 DATED: >i bY% ž&S%&.....

  
Paul S. Grewal  
United States Magistrate Judge