

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

4 JOSEPH A. TARONI,
5 Plaintiff,

6 v.

7 NANCY A. BERRYHILL, Acting
8 Commissioner of Social Security,
9 Defendant.

Case No. [5:16-cv-03520-EJD](#)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY FEES AND
COSTS**

Re: Dkt. No. 24

10 Plaintiff Joseph A. Taroni obtained a favorable ruling reversing and remanding to the
11 Commissioner of the Social Security Administration a final decision denying his claim for Social
12 Security Disability benefits. Dkt. No. 21. He now moves for an award of fees and costs under the
13 Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A). Dkt. No. 24.

14 Jurisdiction arises pursuant to 42 U.S.C. § 405(g). This motion is unopposed and suitable
15 for decision without oral argument. Civ. L.R. 7-1(b). The hearing scheduled for February 8,
16 2018, is therefore VACATED, and the court finds, concludes and orders as follows:

17 1. The EAJA requires the court to award to "a prevailing party other than the United
18 States fees and other expenses . . . incurred by that party in any civil action . . . including
19 proceedings for judicial review of agency action, brought by or against the United States in any
20 court having jurisdiction of that action, unless the court finds that the position of the United States
21 was substantially justified or that special circumstances make an award unjust." 28 U.S.C. §
22 2412(d)(1)(A). "The government has the burden of showing that its position was substantially
23 justified." Gardner v. Berryhill, 856 F.3d 652, 656 (9th Cir. 2017).

24 Definitions of § 2412(d)(1)(A)'s language provide additional guidance. "The 'position of
25 the United States' includes both the government's litigation position and the underlying agency
26 action giving rise to the civil action." Meier v. Colvin, 727 F.3d 867, 870 (9th Cir. 2013). In the
27 context of social security review, the "underlying agency action" is the decision of the

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1 Administrative Law Judge (“ALJ”). Id.

2 “Substantial justification means ‘justified in substance or in the main - that is, justified to a
3 degree that could satisfy a reasonable person.’” Id. (quoting Pierce v. Underwood, 487 U.S. 552,
4 565 (1988)). “Put differently, the government’s position must have a ‘reasonable basis both in law
5 and fact.’” Id.

6 “Fees and other expenses” includes reasonable attorney fees “based upon the prevailing
7 market rates for the kind and quality of the services furnished,” except that such fees “shall not be
8 awarded in excess of \$125 per hour unless the court determines that an increase in the cost of
9 living or a special factor . . . justifies a higher fee.” 28 U.S.C. § 2142(d)(2)(A).

10 2. Procedurally, an application for fees must be submitted within thirty days of final
11 judgment. 28 U.S.C. § 2412(d)(1)(B). The application must describe why the party seeking fees
12 is the prevailing party, and must detail “the amount sought, including an itemized statement from
13 any attorney . . . stating the actual time expended and the rate at which fees and other expenses
14 were computed.” Id. The moving party must also explain why the position of the United States
15 was not substantially justified. Id.

16 3. Plaintiff’s motion was timely-filed. A “final judgment” for fees under § 2142
17 “means a judgment that is final and not appealable.” Here, the court entered judgment on
18 September 13, 2017. Dkt. No. 22. The judgment became final sixty days later, or on November
19 13, 2017, upon expiration of the time to file an appeal. Fed. R. App. P. 4(a)(1)(B). This motion,
20 filed on December 13, 2017, was therefore submitted within thirty days of final judgment,
21 consistent with § 2412(d)(1)(B).

22 4. Plaintiff was the prevailing party in this action because the court issued a judgment
23 reversing the Commissioner’s final decision and remanding the matter for further proceedings.
24 Under the EAJA, “attorneys’ fees are to be awarded to a party winning a sentence-four remand
25 unless the Commissioner shows that his position with respect to the issue on which the district
26 court based its remand was ‘substantially justified.’” Lewis v. Barnhart, 281 F.3d 1081, 1083 (9th
27 Cir. 2002).

1 5. Having failed to respond to Plaintiff’s motion, the Government did not satisfy its
2 burden to show that its position was substantially justified. In any event, the Government would
3 have faced a difficult burden even if it had responded. The Ninth Circuit has observed that when
4 an agency decision is reversed as unsupported by the record, substantial justification under the
5 EAJA will only be found in “decidedly unusual” cases. Campbell v. Astrue, 736 F.3d 867, 868
6 (9th Cir. 2013).

7 This was not a “decidedly unusual” case because the ALJ’s decision could not withstand
8 basic review. An ALJ’s findings may be reversed if not supported by substantial evidence in the
9 record, or if based upon a misapplication of the law. Vertigan v. Halter, 260 F.3d 1044, 1049 (9th
10 Cir. 2001). As the court previously explained, the decision reviewed in this case suffered from
11 both types of deficiency. The Step Three determination that Plaintiff’s intellectual disability did
12 not satisfy Listing 12.05(C) was not supported by substantial evidence because the ALJ did not
13 describe clear and convincing reasons to reject the uncontradicted IQ testing result, which placed
14 Plaintiff within the qualifying range for the listing. The Step Four determination that Plaintiff
15 could perform “past relevant work” was incorrect as a matter of law because it was irreconcilable
16 with a contrary finding made at Step One, and it was unsupported by substantial evidence to the
17 extent the ALJ meant to rely on one of the exceptions listed in 20 C.F.R. § 404.1574(b)(3).
18 Similarly, the residual functional capacity found at Step Four was unsupported by substantial
19 evidence because it was unclear from the ALJ’s explanation exactly what she relied on to
20 conclude that Plaintiff had a moderate limitation in concentration. Finally, the finding that
21 Plaintiff had a high school education was not supported by substantial evidence because the ALJ’s
22 decision did not reflect a complete consideration of the relevant record evidence. For these
23 reasons, the court finds “the underlying agency action giving rise to the civil action” was not
24 substantially justified. Meier, 727 F.3d at 870.

25 6. Plaintiff requests a total fee award of \$4,482.61, which amounts to: (1) 10.5 hours
26 of attorney time in 2016 at an hourly rate of \$192.68, (2) 10.55 hours of attorney time in 2017 at
27 an hourly rate of \$195.95, and 3.7 hours of paralegal time at an hourly rate of \$106.00.

1 The rates for attorney time are at or below the applicable statutory maximum hourly rates
2 under the EAJA when adjusted for increases in the cost of living, as calculated by the Ninth
3 Circuit according to Thangaraja v. Gonzales, 428 F.3d 870, 876-77 (9th Cir. 2005).¹ In addition,
4 the amount of total attorney time spent on this case is appropriate to the issues presented. The
5 court therefore finds that the attorney component of the fees request is reasonable.

6 Plaintiff did not submit a resume or otherwise detail the qualifications and experience of
7 the paralegal that performed work on this case. Despite this deficiency, the hourly rate Plaintiff
8 applied to paralegal time falls at the low end of the range routinely applied in the Northern District
9 of California. See, e.g., Hernandez v. Lucky Fortune, Inc., No. 16-cv-01775-JCS, 2018 WL
10 317841, at *3 (N.D. Cal. Jan. 8, 2018). And the amount of time spent by the paralegal was
11 appropriate for the described tasks. As such, the court also finds that the paralegal component of
12 the fees request is reasonable.

13 In sum, Plaintiff's motion for fees and costs is GRANTED. Plaintiff is entitled to an
14 award of \$4,482.61 as reasonable attorney and paralegal fees under the EAJA. Plaintiff is also
15 entitled to reimbursement of the \$400.00 filing fee. The court orders Defendant to pay these
16 amounts to Harvey P. Sackett, as Plaintiff's assignee, and orders such payment tendered directly to
17 Mr. Sackett as soon as reasonably possible, but no later than 60 days from the date this order is
18 filed.

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20 **IT IS SO ORDERED.**

21 Dated: January 30, 2018

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EDWARD J. DAVILA
United States District Judge

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27 ¹ Statutory Maximum Rates Under the Equal Access to Justice Act,
28 https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited Jan. 29, 2018).
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