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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TONI LYNN B.,

Plaintiff,

v.

ANDREW SAUL, Commissioner of
Social Security,

Defendant.

Case No.: 3:19-cv-925-AHG

**ORDER GRANTING JOINT
MOTION FOR ATTORNEY FEES
AND EXPENSES**

[ECF No. 26]

Before the Court is the parties’ Joint Motion for the Award and Payment of Attorney Fees and Expenses. ECF No. 26. The parties jointly move the court to award Plaintiff Toni Lynn B. (“Plaintiff”) attorney fees and expenses pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). Id. For the reasons set forth below, the Court **GRANTS** the parties’ joint motion.

I. BACKGROUND

The underlying action involves Plaintiff’s challenge to the denial of her application for social security disability and supplemental security income benefits. On May 16, 2019, Plaintiff filed a complaint against the acting Commissioner of Social Security. ECF No. 1. Defendant filed the administrative record in lieu of an answer. ECF No. 15. The Court set a scheduling order, requiring formal settlement discussions and a joint status report, as well as that a Joint Motion for Judicial Review of Final Decision of the Commissioner of Social Security (“Joint Motion for Judicial Review”) be filed by February 14, 2020, which it later

1 extended to April 9, 2020. ECF Nos. 17, 20. On March 26, 2020, instead of filing the Joint
2 Motion for Judicial Review, the parties filed a joint motion for voluntary remand pursuant
3 to sentence four of 42 U.S.C. § 405(g), which sought a remand and entry of judgment in
4 favor of Plaintiff. ECF No. 23. On March 27, 2020, the Court granted the joint motion,
5 remanded the case to the Commissioner of Social Security for further administration action,
6 and entered a final judgment in favor of Plaintiff and against Defendant, reversing the final
7 decision of the Commissioner. ECF No. 24. A Clerk’s Judgment was entered on
8 March 27, 2020. ECF No. 25. The instant motion follows. Here, the parties have jointly
9 requested that Plaintiff’s counsel receive \$205.25 per hour for 14.8 hours of work
10 performed and \$130 per hour for 2.9 hours of paralegal work, with the total request
11 discounted¹ to \$3,314.70. ECF Nos. 26, 26-2.

12 **II. THRESHOLD ISSUE OF TIMELINESS**

13 According to the EAJA, an application for fees must be filed “within thirty days of
14 final judgment.” 28 U.S.C. § 2412(d)(1)(B). A final judgment is “a judgment that is final
15 and not appealable” 28 U.S.C. § 2412(d)(2)(G). The Ninth Circuit has held that the
16 EAJA’s 30-day filing period does not begin to run until after the 60-day appeal period in
17 Federal Rule of Appellate Procedure 4(a).² *Hoa Hong Van v. Barnhart*, 483 F.3d 600, 612
(9th Cir. 2007).

18 Here, the parties filed an attorney fees motion on June 23, 2020, 88 days after final
19 judgment was filed on March 27, 2020. The motion was filed 28 days after the 60-day
20 period expired and falls within the 30-day filing period. Accordingly, the motion for
21 attorney fees is timely.

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24 ¹ In the parties’ itemization of fees, the total fee was calculated to be \$3,414.70. ECF No.
25 26-2 at 2. However, in the parties’ joint motion, the agreed amount requested was
26 \$3,314.70. ECF No. 26 at 2–3.

27 ² Federal Rule of Appellate Procedure 4(a) provides that a “notice of appeal may be filed
28 by any party within 60 days after entry of the judgment or order appealed from” if one of
the parties is the United States or a United States officer sued in an official capacity. FED.
R. APP. P. 4(a)(1)(B).

1 **III. DISCUSSION**

2 Under the EAJA, a litigant is entitled to attorney fees and costs if: “(1) [s]he is the
3 prevailing party; (2) the government fails to show that its position was substantially
4 justified or that special circumstances make an award unjust; and (3) the requested fees and
5 costs are reasonable.” *Carbonell v. I.N.S.*, 429 F.3d 894, 898 (9th Cir. 2005). The Court
6 will address these in turn.

7 **A. Prevailing party**

8 A plaintiff is a prevailing party if she “has ‘succeeded on any significant issue in
9 litigation which achieve[d] some of the benefit . . . sought in bringing suit.’” *Ulugalu v.*
10 *Berryhill*, No. 17cv1087-GPC-JLB, 2018 WL 2012330, at *2 (S.D. Cal. Apr. 30, 2018)
11 (quoting *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993)). Here, Plaintiff is the prevailing
12 party because this case was remanded pursuant to sentence four of 42 U.S.C. § 405(g) and
13 judgment was entered in Plaintiff’s favor. *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th
14 Cir. 2002) (“A plaintiff who obtains a sentence four remand is considered a prevailing party
15 for purposes of attorneys’ fees.”); *Ulugalu*, 2018 WL 2012330, at *2 (in a case where the
16 parties jointly stipulated to remand, “because the Court granted the Commissioner’s
17 proposed order for remand and entered judgment in favor of Plaintiff pursuant to sentence-
18 four, Plaintiff is a prevailing party”); see ECF Nos. 24, 25 (remanding the case pursuant to
19 sentence four of 42 U.S.C. § 405(g) and entering judgment in Plaintiff’s favor).

20 **B. Substantial justification**

21 The government bears the burden of proving that its position, both in the underlying
22 administrative proceedings and in the subsequent litigation, was substantially justified.
23 *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). Here, “Defendant has stipulated to the
24 attorney[] fees and does not argue that the prevailing party’s position was substantially
25 unjustified.” *Krebs v. Berryhill*, 16cv3096-JLS-BGS, 2018 WL 3064346, at *2 (S.D. Cal.
26 June 21, 2018); see also *Black v. Berryhill*, No. 18cv1673-JM-LL, 2019 WL 2436393, at
27 *1 (S.D. Cal. June 11, 2019) (finding the second element met because, “in light of the joint
28 nature of the parties’ request and the court’s prior order remanding this action, the
government has not shown that its position was substantially justified.”). Furthermore,

1 “[b]ecause the Commissioner filed a voluntary stipulation for remand and the matter was
2 referred to an Administrative Law Judge to make a new determination as to Plaintiff’s
3 disability, the Court is persuaded the Commissioner did not have substantial justification
4 for denying Plaintiff disability rights.” Ulugalu, 2018 WL 2012330, at *3.

5 **C. Reasonableness of Hours**

6 The parties seek a fee award for 14.8 hours billed by Plaintiff’s counsel and 2.9 hours
7 billed by a paralegal. ECF No. 26-2 at 1. The Court finds the number of hours billed by the
8 paralegal and Plaintiff’s counsel reasonable. See 28 U.S.C. § 2412(d); *Nadarajah v.*
9 *Holder*, 569 F.3d 906, 918 (9th Cir. 2009) (a prevailing party may recover reasonable
10 paralegal fees); see also *Costa v. Comm’r of SSA*, 690 F.3d 1132, 1136 (9th Cir. 2012)
11 (reiterating the Ninth Circuit’s previous position that “‘lawyers are not likely to spend
12 unnecessary time on contingency fee cases in the hope of inflating their fees’ because ‘the
13 payoff is too uncertain.’ [] As a result, courts should generally defer to the ‘winning
14 lawyer’s professional judgment as to how much time he was required to spend on the
15 case.’”) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112–13 (9th Cir. 2008));
16 *Black*, 2019 WL 2436393, at *1 (finding 2.7 hours billed by a paralegal and 14.1 hours
17 billed by plaintiff’s counsel a reasonable number of hours).

18 **D. Reasonableness of Hourly Rate**

19 The EAJA provides that the Court may award reasonable attorney fees “based upon
20 prevailing market rates for the kind and quality of the services furnished,” but “attorney
21 fees shall not be awarded in excess of \$125 per hour unless the court determines that an
22 increase in the cost of living or a special factor, such as the limited availability of qualified
23 attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A).
24 Plaintiff’s counsel bills at an hourly rate of \$205.25 and his paralegal bills at an hourly rate
25 of \$130. ECF No. 26-2 at 1. The parties’ joint motion fails to provide any reason or
26 authority for fees above the statutorily mandated amount of \$125 per hour. However,
27 the Ninth Circuit’s hourly EAJA rate for work performed in 2019, factoring in an
28 increase in the cost of living, was \$205.25. See *United States Courts for the Ninth
Circuit, Statutory Maximum Rates Under the Equal Access to Justice Act*,

1 https://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited Jul. 7,
2 2020); see also *Thangaraja v. Gonzales*, 428 F.3d 870, 876 (9th Cir. 2005) (“EAJA
3 provides for an upward adjustment of the \$125 rate contained in the statute, based on cost-
4 of-living increases”) (citing 28 U.S.C. § 2412(d)(2)(A)); see, e.g., *Black*, 2019 WL
5 2436393, at *1 (considering the Ninth Circuit’s hourly EAJA rate a reasonable rate);
6 *Ulugalu*, 2018 WL 2012330, at *3 (same). Furthermore, the Court may approve paralegal
7 rates at prevailing market rates. *Nadarajah*, 569 F.3d at 918; *Black*, 2019 WL 2436393, at
8 *1 (approving paralegal’s hourly rate of \$130 for EAJA award); *Smith v. Berryhill*,
9 17cv2108-CAB-RNB, 2019 U.S. Dist. LEXIS 89885, at *5 (S.D. Cal. Mar. 14, 2019)
10 (approving paralegal’s hourly rate of \$130 for EAJA award). As such, the Court finds that
11 the hourly rates billed by the paralegal and counsel are reasonable.

12 **E. Assignment of Rights to Counsel**

13 The parties jointly request that “[f]ees shall be made payable to Toni Lynn B[.], but
14 if the Department of the Treasury determines that Toni Lynn B[.] does not owe a federal
15 debt, then the government shall cause the payment of fees, expenses and costs to be made
16 directly to Law Offices of Lawrence D. Rohlfig, pursuant to the assignment executed by
17 Toni Lynn B[.]” ECF No. 26 at 2; see ECF No. 26-1 (agreement signed by Plaintiff stating
18 that “Client ... assigns such [EAJA] fee awards to Attorney”).

19 The Supreme Court has held that “a § 2412(d) fees award is payable to the litigant
20 and is therefore subject to a Government offset to satisfy a pre-existing debt that the litigant
21 owes the United States.” *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010). In *Ratliff*,
22 plaintiff’s counsel was successful in plaintiff’s Social Security benefits suit and the court
23 granted the unopposed motion for fees under the EAJA. *Id.* However, before paying the
24 fee award, the government discovered that plaintiff owed the United States a debt that
25 predated the award, and accordingly, the government sought an offset of that owed amount.
26 *Id.* Plaintiff’s counsel intervened and argued that the fee award belonged to plaintiff’s
27 counsel, and thus was not subject to offset for the litigant’s federal debts. *Id.* The Supreme
28 Court disagreed, finding that “Congress knows how to make fee awards payable directly
to attorneys where it desires to do so,” and because the fee was payable to a “prevailing

1 party,” Congress intended the fee to go to the litigant, and not the attorney. Id. at 595–97.

2 Nonetheless, “district courts have recognized that Ratliff does not prevent payment
3 of a fee award directly to the attorney where there has been a valid assignment and the
4 plaintiff does not owe a debt to the government.” Ulugalu, 2018 WL 2012330, at *4–*5
5 (reviewing Plaintiff’s assignment agreement and ordering that the EAJA fees be paid to
6 plaintiff’s counsel, subject to any administrative offset due to outstanding federal debt);
7 Bell v. Berryhill, No. 16cv809-MMC, 2018 WL 452110, at *5 (N.D. Cal. Jan. 17, 2018)
8 (same); Blackwell v. Astrue, No. CIV-08-1454-EFB, 2011 WL 1077765, at *4–*5 (E.D.
9 Cal. Mar. 21, 2011) (same); Castaneda v. Astrue, No. EDCV-09-1850-OP, 2010 U.S. Dist.
10 LEXIS 72887, at *6–*8 (C.D. Cal. Jul. 20, 2010) (same); see also Calderon v. Astrue, No.
11 08cv1015-GSA, 2010 WL 4295583, at *8 (E.D. Cal. Oct. 21, 2010) (“Plaintiff, as the
12 prevailing litigant, would normally be awarded the fees described above, subject to any
13 offset for applicable government debts. Defendant, however, seems to be content to permit
14 payment to Plaintiff’s counsel if Plaintiff does not have any qualifying government debt .
15 . . . This Court finds the government’s position to be reasonable and will therefore permit
16 payment to Plaintiff’s counsel provided Plaintiff has no government debt that requires
17 offset”); cf. Hernandez v. Berryhill, No. 15cv1322-DB, 2017 WL 2930802, at *3 (E.D.
18 Cal. July 10, 2017) (declining to order that the EAJA fees be paid to plaintiff’s counsel,
19 subject to any administrative offset due to outstanding federal debt, because the parties
20 failed to produce evidence of an assignment agreement).

21 Here, Plaintiff assigned her right to EAJA fees to her attorney. ECF No. 26-1.
22 Accordingly, should Plaintiff not have a debt that is subject to offset, the award of fees may
23 be paid directly to counsel.

24 **IV. CONCLUSION**

25 As set forth above, it is hereby ordered that:

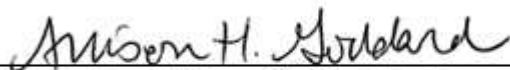
26 1. The parties’ Joint Motion for the Award and Payment of Attorney Fees and
27 Expenses (ECF No. 26) is **GRANTED**;

28 2. Plaintiff is awarded attorney fees under the EAJA in the amount of \$3,314.70.
See ECF No. 26 at 2; and

1 3. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010), any payment shall
2 be made payable to Plaintiff and delivered to Plaintiff’s counsel, unless Plaintiff does not
3 owe a federal debt. If the United States Department of the Treasury determines that Plaintiff
4 does not owe a federal debt, the government shall accept Plaintiff’s assignment of EAJA
5 fees and pay fees directly to Plaintiff’s counsel. See ECF No. 26 at 2; see, e.g., *Mendoza v.*
6 *Saul*, No. 18cv925-SKO, 2020 WL 406773, at *5 (E.D. Cal. Jan 24, 2020).

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8 **IT IS SO ORDERED.**

9 Dated: July 15, 2020

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11 Honorable Allison H. Goddard
12 United States Magistrate Judge
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