

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEPHANIE T. SOLDWISCH,
Plaintiff,
v.
ANDREW SAUL, Commissioner of
Social Security,
Defendant.

Case No.: 19cv1127 JM (BLM)

**ORDER ON PLAINTIFF’S MOTION
FOR ATTORNEY FEES, COSTS
AND EXPENSES**

Plaintiff Stephanie T. Soldwisch moves the court to award attorney fees, costs, and expenses pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). (Doc. No. 21.) The motion has been fully briefed and the court finds it suitable for submission without oral argument in accordance with Civil Local Rule 7.1(d)(1). For the below reasons, the motion is **GRANTED**.

I. BACKGROUND

Plaintiff requests attorney fees, costs, and expenses related to her appeal of the denial of her application for disability benefits by the Social Security Administration (SSA). On February 5, 2020, the Magistrate Judge recommended that the case be remanded to the SSA for additional administrative proceedings. (Doc. No. 17.) The Magistrate Judge issued a Report and Recommendation (“R&R”) finding that the case should be remanded because 1.) the SSA found Plaintiff disabled on a subsequent application for benefits

1 apparently based on the same evidence that the SSA considered in conjunction with the
2 application at issue, and 2.) the SSA failed to provide the court with a complete
3 administrative record upon which to review the SSA’s final decision. (Id.) The SSA did
4 not object to the R&R. On March 20, 2020, the court fully adopted the R&R. (Doc. No.
5 18.) Plaintiff timely filed the instant motion on June 19, 2020. (Doc. No. 21.) The SSA
6 filed an opposition on July 6, 2020, (Doc. No. 22), to which Plaintiff replied on July 11,
7 2020, (Doc. No. 23).

8 II. LEGAL STANDARDS

9 “Under EAJA, a litigant is entitled to attorney’s fees and costs if: (1) [s]he is the
10 prevailing party; (2) the government fails to show that its position was substantially
11 justified or that special circumstances make an award unjust; and (3) the requested fees and
12 costs are reasonable.” *Carbonell v. I.N.S.*, 429 F.3d 894, 898 (9th Cir. 2005); 28 U.S.C.
13 §2412(d)(1)(A). An applicant for disability benefits becomes a prevailing party for the
14 purposes of the EAJA if the denial of her benefits is reversed and remanded regardless of
15 whether disability benefits ultimately are awarded.” *Gutierrez v. Barnhart*, 274 F.3d 1255,
16 1257 (9th Cir. 2001) (citation omitted).

17 “[T]he fee applicant bears the burden of establishing entitlement to an award and
18 documenting the appropriate hours expended.” *Hensley v. Eckerhart*, 461 U.S. 424, 437
19 (1983). “[T]he most useful starting point for determining the amount of a reasonable fee
20 is the number of hours reasonably expended on the litigation multiplied by a reasonable
21 hourly rate.” *Id.* at 433. Hours that are excessive, redundant, or otherwise unnecessary
22 should be excluded from an award of fees. *Id.* at 434. “There is a strong presumption that
23 the ‘lodestar figure’ represents a reasonable fee,” and it should be reduced only in “rare
24 instances.” *Morales v. City of San Rafael*, 96 F.3d 359, 364 n.8 (9th Cir. 1996); see also
25 *Doan v. Berryhill*, Case No. 16-cv-00841-BAS-AGS, 2018 WL 2761733, at *3 (S.D. Cal.
26 June 7, 2018) (“Generally, the court should defer to the winning lawyer’s professional
27 judgment as to how much time was required for the case.”). If the government disputes
28 the reasonableness of the fee, then it “has a burden of rebuttal that requires submission of

1 evidence to the district court challenging the accuracy and reasonableness of the hours
2 charged or the facts asserted by the prevailing party in its submitted affidavits.” *Gates v.*
3 *Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992).

4 **III. DISCUSSION**

5 Plaintiff requests a total of \$12,397.10 in attorney fees for 60.4 hours of work at a
6 rate of \$205.25 per hour. She also requests \$540.35 in costs and expenses. In support of
7 her request, Plaintiff attached itemized records of the time her counsel spent on each task
8 for which she billed. (See Doc. No. 21-2.) She also attached a declaration from her counsel
9 citing eight EAJA cases outside of this district in which she was awarded more than the
10 amount sought here. (See Doc. No. 21-2 at 2-3.)

11 The SSA does not dispute, and the court agrees, that Plaintiff is the prevailing party,
12 that the SSA’s position was not substantially justified, and that no special circumstances
13 make the award unjust. The SSA also does not dispute, and the court agrees, that Plaintiff’s
14 counsel’s \$205.25 hourly rate is reasonable and consistent with the EAJA. See *Beatriz B.*
15 *v. Saul*, Case No.: 3:19-cv-785-AHG, 2020 WL 5203371, at *2 (S.D. Cal. Sept. 1, 2020)
16 (“The Ninth Circuit’s hourly EAJA rate for attorney work performed in 2019, factoring in
17 an increase in the cost of living, was \$205.25.”).

18 From an overall perspective, similar cases in this district involving similarly
19 experienced attorneys support the reasonableness of the total hours worked and amount
20 requested here. See *Truong v. Berryhill*, Case No.: 3:17-cv-02179-BEN-RNB, 2019 WL
21 1863655, at *5 (S.D. Cal. Apr. 24, 2019) (77.75 hours and \$19,476.52); *Minh Doan v.*
22 *Berryhill*, Case No.: 3:17-cv-02179-BEN-RNB (S.D. Cal. 2018) (97.5 hours and
23 \$ 23,642.76); *Alzayadie v. Astrue*, No. 09-CV-1886 JLS (JMA), 2011 WL 940766, at *1
24 (S.D. Cal. Mar. 14, 2011) (noting that courts have found it reasonable to spend 60, 69, 72,
25 and 73 hours litigating social security cases). The SSA nonetheless takes issue with several
26 specific aspects of Plaintiff’s motion.

1 **A. Clerical Tasks**

2 The SSA argues that Plaintiff’s counsel unreasonably billed for 5.2 hours, or
3 \$1,067.30, performing clerical tasks. (Doc. No. 22 at 3-4.) In motions for attorney fees in
4 social security cases, district courts have found a variety of tasks to be unreasonably
5 clerical, two of which are included in Plaintiff’s counsel’s bill. See *Keovongsa v. Colvin*,
6 Case No.: 3:16-CV-00842-BTM-NLS, 2019 WL 354621, at *3 (S.D. Cal. Jan. 28, 2019)
7 (preparing summonses and cover sheets); *Kirk v. Berryhill*, 244 F. Supp. 3d 1077, 1084
8 (E.D. Cal. 2017) (preparing service of process and consent forms). Here, however, the
9 bulk of the disputed entries, i.e. eight of the 23 disputed entries, or 2.1 hours’ worth of
10 work, involve communications with Plaintiff via letter, phone, and e-mail. Although
11 Plaintiff’s counsel does not state the reason for each communication with her client,
12 communicating with her client is part of her professional responsibilities and is not, as the
13 SSA suggests, per se clerical. The SSA does not explain why any of these communications
14 were clerical or otherwise undeserving of compensation. Additionally, the amount of time
15 Plaintiff’s counsel billed for communicating with her client is within the reasonable range.
16 See *Yesipovich v. Colvin*, 166 F. Supp. 3d 1000, 1008 (N.D. Cal. 2015) (finding it
17 reasonable for Plaintiff’s counsel to have spent 2.3 hours communicating with her client
18 via letter, phone, and e-mail).

19 Additionally, the remaining entries challenged by the SSA, though perhaps routine,
20 involve tasks that are just as much legal as they are clerical, if not more so. These include
21 communicating with referring counsel, drafting the complaint, preparing documents for
22 service, drafting a certificate of service, preparing a declination of assignment to a
23 magistrate judge, communicating with opposing counsel, reviewing an ex parte motion,
24 and attempting to settle the instant dispute. To the extent these tasks did not necessarily
25 require the work of an attorney, the amount of time billed by Plaintiff’s counsel is within
26 the reasonable range. See *Nelson v. Berryhill*, Case No.: 17-cv-00614-AJB-KSC, 2019
27 WL 2232954, at *1 (S.D. Cal. May 23, 2019) (“[M]inimal time spent on litigation-related
28 tasks may be reasonable in some circumstances.”). For example, Plaintiff’s counsel billed

1 a total of 2.3 hours for preparing an engagement letter and drafting a letter to the client
2 (1 hour), drafting the complaint and civil cover sheet (24 minutes), drafting a letter to the
3 client and SSA (30 min), preparing documents for service on the SSA (12 minutes),
4 drafting a certificate of service (6 minutes), and preparing a declination of assignment to a
5 magistrate judge (6 minutes). (See Doc. No. 21-2 at 8.) Accordingly, based on the
6 documentation provided by Plaintiff’s counsel, and the minimal argument put forth by the
7 SSA, the court declines to find that any of Plaintiff’s counsel’s billing entries were
8 unreasonably clerical.

9 **B. Duplicative Billing**

10 The SSA argues that six minutes of Plaintiff’s counsel’s bill, or \$20.53 worth of
11 work, were unreasonably duplicative. The SSA complains that Plaintiff’s counsel billed
12 12 minutes of work for drafting a declaration, and four days later, billed for six minutes of
13 work “redrafting” the declaration. (Doc. No. 22 at 4.) Plaintiff’s counsel states she
14 redrafted the declaration after reviewing an e-mail from the referring attorney. (Doc. No.
15 23 at 4.) Although this does not explain why the declaration needed to be “redrafted,”
16 spending a total of 18 minutes on a declaration is reasonable.

17 **C. Drafting the Instant Motion**

18 Plaintiff’s counsel billed a total of 7.5 hours, or \$1,539.38, for researching and
19 drafting the instant motion. (Doc. No. 21-2 at 8, 12.) Plaintiff also requests an additional
20 4.5 hours, or \$923.63, for drafting her reply to the SSA’s opposition, for a total of 12 hours,
21 or \$2,463.01, related to litigating the instant motion. (Doc. No. 23 at 7.) The SSA argues
22 that, based on Plaintiff’s counsel’s extensive experience, she should only be awarded two
23 hours, or \$410.50, for researching and drafting the instant motion. (Doc. No. 22 at 4-5.)

24 Certainly, some courts have reduced the amount of time experienced social security
25 attorneys can bill for preparing motions for attorney fees. See *Anh Tuyet Thai v. Saul*, Case
26 No.: 18cv2647-JAH-RBM, 2020 WL 4697971, at *3 (S.D. Cal. Aug. 13, 2020) (reducing
27 9.5 hours spent preparing motion to 2 hours); see also *Adams v. Saul*, No. 19CV335-BLM,
28 2020 WL 1332473, at *5 (S.D. Cal. Mar. 20, 2020) (approving 4.5 hours for filing a motion,

1 not including the reply). Here, however, Plaintiff’s counsel submits declarations attesting,
2 under the penalty of perjury, that she spent 12 hours litigating the instant motion. (Doc.
3 Nos. 21-2, 23-1.) Nothing in the record suggests she did not reasonably do so. See Guzman
4 v. Berryhill, Case No.: 17cv2593-CAB-AGS, 2019 WL 1923932, at *2 (S.D. Cal. Apr. 29,
5 2019) (“[T]he Court sees no reason to dispute Plaintiff’s counsel’s representation that all
6 hours were reasonably expended”). Although Plaintiff’s counsel is undoubtedly
7 experienced and has previously filed similar motions that may have been used as templates,
8 she still had to gather the supporting documents, fill-in the relevant party and factual
9 information, address particularized legal issues, edit supporting declarations, update case
10 citations, proof-read, file the motion, etc. This could reasonably occupy 7.5 hours.
11 Additionally, replying to the SSA’s opposition could reasonably occupy 4.5 hours given
12 that replies depend on the arguments raised in the opposition, which in this case appear to
13 be at least somewhat particularized. The SSA also provides no specific reason to impose
14 a two-hour cap on preparing the instant motion. See *Costa v. Comm. of SSA*, 690 F.3d
15 1132, 1134 (9th Cir. 2012) (“[I]t is improper for district courts to apply a de facto cap on
16 the number of hours for which attorneys may be compensated under the EAJA in a ‘routine’
17 case challenging the denial of social security benefits.”); see also *Gates*, 987 F.2d at 1397-
18 98 (if challenging the reasonableness of fees supported by affidavit, the SSA has the burden
19 of submitting evidence). Accordingly, the requested fees related to drafting the instant
20 motion appear reasonable.

21 **D. Costs**

22 Under 28 U.S.C. § 1920(a), “[a] judge may tax as costs [f]ees of the
23 clerk[.]” The SSA argues that the \$400 filing fee for which Plaintiff seeks reimbursement
24 is a cost pursuant to 28 U.S.C. § 1920, not an expense under the EAJA. (Doc. No. 22 at
25 5.) The SSA does not dispute, however, that Plaintiff is entitled to a total of \$540.35, in
26 costs and/or expenses, which includes the \$400 filing fee. In her reply, Plaintiff does not
27 address whether the \$400 filing fee is an expense under the EAJA or a cost under 28 U.S.C.
28 § 1920. Based on the documentation provided by Plaintiff in support of her request for

1 costs, and because the SSA does not dispute that Plaintiff is entitled to \$504.35 in costs
2 and/or expenses, the court finds this amount is reasonable without deciding which authority
3 is more applicable. See *Thorne v. Saul*, Case No.: 18cv1874-MMA (LL), 2019 WL
4 3974088, at *2 (S.D. Cal. Aug. 22, 2019) (doing the same).

5 **E. Payment**

6 Finally, Plaintiff’s counsel requests that payment be made directly to her, rather than
7 to Plaintiff. (Doc. No. 21 at 14.) The SSA argues that under the EAJA, fees are payable
8 only to the “prevailing party.” (Doc. No. 22 at 5 (citing 28 U.S.C. § 2412(d)(1)(A)).) The
9 SSA explains:

10 To comply with the Treasury Offset Program, when a court issues an order for
11 EAJA fees (ordered payable to the plaintiff, not counsel), the government
12 considers any assignment of EAJA fees to determine whether they are subject
13 to any offset. If the plaintiff does not owe a government debt that qualifies
14 for offset, then payment may be made in counsel’s name based on the
government’s discretionary waiver of the requirements of the Anti-
Assignment Act, 31 U.S.C. § 3727.

15 (Id. at 5-6.) Plaintiff responds by arguing that “[t]his Court and others have issued orders
16 for EAJA fees, costs, and expenses to be paid directly to a Plaintiff’s counsel, subject to
17 administrative offset due to the Plaintiff’s government debt, if any exists, in accordance
18 with the Supreme Court’s decision in *Astrue v. Ratliff*, 130 S. Ct. 2521 (2010).” (Doc. No.
19 23 at 8 (listing cases).)

20 District courts have repeatedly addressed this specific issue by ordering that payment
21 be made directly to plaintiff’s counsel after it is determined that the plaintiff owes no debt
22 subject to offset. See *Beatriz B.*, 2020 WL 5203371, at *4 (“[S]hould Plaintiff not have a
23 debt that is subject to offset, the award of fees may be paid directly to counsel.”); *Toni*
24 *Lynn B. v. Saul*, Case No.: 3:19-cv-925-AHG, 2020 WL 4001981, at *4 (S.D. Cal. July 15,
25 2020) (“[S]hould Plaintiff not have a debt that is subject to offset, the award of fees may
26 be paid directly to counsel.”); *Truong*, 2019 WL 1863655, at *6 (S.D. Cal. Apr. 24, 2019)
27 (“This award shall be payable directly to the Plaintiff and is subject to offset to satisfy any
28 preexisting debt that Plaintiff owes the United States pursuant to *Astrue*[.]”); *Guzman*, 2019

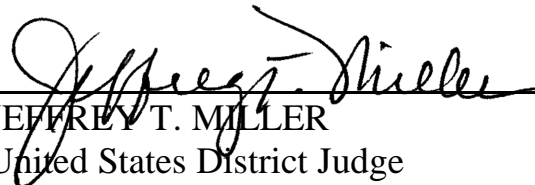
1 WL 1923932, at *2 (“Pursuant to Astrue, if the government determines Plaintiff does not
2 owe a federal debt, then the government shall cause the payment of the award to be made
3 directly to Plaintiff’s attorney.”). Accordingly, as ordered below, payment will be directed
4 in a similar manner.

5 **IV. CONCLUSION**

6 Plaintiff is entitled to attorney fees, expenses, and costs because she is the prevailing
7 party and the SSA’s position was not substantially justified. See 28 U.S.C.
8 § 2412(d)(2)(H). Plaintiff’s counsel’s fees, costs, and expenses are reasonable in light of
9 the tasks performed and results achieved. Accordingly, Plaintiff’s Motion for Attorney
10 Fees, Costs, and Expenses (Doc. No. 21) is **GRANTED**. Plaintiff is awarded \$12,397.10
11 in attorney fees and \$540.35 in costs and/or expenses. Payment shall be made payable to
12 Plaintiff and delivered to Plaintiff’s counsel, unless Plaintiff does not owe a federal debt.
13 If the United States Department of the Treasury determines that Plaintiff does not owe a
14 federal debt, the government shall accept Plaintiff’s assignment of EAJA fees and pay fees
15 directly to Plaintiff’s counsel. See Beatriz B., 2020 WL 5203371, at *4.

16 IT IS SO ORDERED.

17 DATED: September 14, 2020

18 
19 JEFFREY T. MILLER
20 United States District Judge
21
22
23
24
25
26
27
28