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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DANIEL M.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,¹

Defendant.

Case No.: 3:20-cv-1021-AHG
**ORDER GRANTING JOINT
MOTION FOR ATTORNEY FEES
AND EXPENSES**

[ECF Nos. 24, 26]

Before the Court is the parties’ Joint Motion for the Award and Payment of Attorney Fees and Expenses. ECF No. 24. The parties jointly move the court to award Plaintiff Daniel M. (“Plaintiff”) attorney fees and expenses pursuant to the Equal Access to Justice

¹ Kilolo Kijakazi became the Acting Commissioner of the Social Security Administration on July 9, 2021. Although Plaintiff originally brought this action against Former Commissioner Andrew Saul, this case may properly proceed against Kilolo Kijakazi pursuant to 42 U.S.C. § 405(g).

1 Act (“EAJA”), 28 U.S.C. § 2412(d). *Id.* For the reasons set forth below, the Court
2 **GRANTS** the parties’ joint motion.

3 **I. BACKGROUND**

4 The underlying action involves Plaintiff’s challenge to the denial of his application
5 for social security supplemental security income benefits. On June 3, 2020, Plaintiff filed
6 a complaint against the acting Commissioner of Social Security. ECF No. 1. Defendant
7 filed the administrative record in lieu of an answer. ECF No. 19. The Court set a
8 scheduling order, requiring formal settlement discussions, a Joint Status Report be filed by
9 May 28, 2021, and a Joint Motion for Judicial Review of Final Decision of the
10 Commissioner of Social Security (“Joint Motion for Judicial Review”) be filed by
11 August 27, 2021. ECF No. 20. On May 25, 2021, instead of filing the Joint Status Report
12 or Joint Motion for Judicial Review, the parties filed a joint motion for voluntary remand
13 pursuant to sentence four of 42 U.S.C. § 405(g), which sought a remand and entry of
14 judgment. ECF No. 21. On May 26, 2021, the Court granted the joint motion, remanded
15 the case to the Commissioner of Social Security for further administration action, and
16 entered a final judgment reversing the final decision of the Commissioner. ECF No. 22. A
17 Clerk’s Judgment was entered on May 26, 2021. ECF No. 23. The instant motion follows.
18 ECF No. 24. The Court required the parties to submit supplemental briefing (ECF No. 25),
19 which the parties timely filed. ECF No. 26. The parties have jointly requested that
20 Plaintiff’s counsel receive compensation for 22.10 hours of work, at \$207.78 per hour for
21 work performed in 2020 and \$213.74 per hour for work completed in 2021, with the total
22 request discounted² to \$4,400.00. ECF Nos. 24, 26, 26-1, 26-3.

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26 ² In the parties’ itemization of fees, the total fee was calculated to be \$4,689.68. ECF No.
27 26-3 at 2. However, in the parties’ joint motion, the total fee requested was \$4,634.11. ECF
28 No. 26 at 1–2; ECF No. 26-1 at 3. Nonetheless, “the parties mutually agreed to settle for
\$4,400.” ECF No. 26 at 2; *see* ECF No. 24 at 1.

1 **II. THRESHOLD ISSUE OF TIMELINESS**

2 According to the EAJA, an application for fees must be filed “within thirty days of
3 final judgment.” 28 U.S.C. § 2412(d)(1)(B). A final judgment is “a judgment that is final
4 and not appealable” 28 U.S.C. § 2412(d)(2)(G). The Ninth Circuit has held that the
5 EAJA’s 30-day filing period does not begin to run until after the 60-day appeal period in
6 Federal Rule of Appellate Procedure 4(a).³ *Hoa Hong Van v. Barnhart*, 483 F.3d 600, 612
7 (9th Cir. 2007).

8 Here, the parties filed an attorney fees motion on August 18, 2021, 84 days after
9 final judgment was filed on May 26, 2021. The motion was filed 24 days after the 60-day
10 period expired and falls within the 30-day filing period. Accordingly, the motion for
11 attorney fees is timely.

12 **III. DISCUSSION**

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

18 **A. Prevailing party**

19 A plaintiff is a prevailing party if he “has ‘succeeded on any significant issue in
20 litigation which achieve[d] some of the benefit . . . sought in bringing suit.’” *Ulugalu v.*
21 *Berryhill*, No. 17cv1087-GPC-JLB, 2018 WL 2012330, at *2 (S.D. Cal. Apr. 30, 2018)
22 (quoting *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993)). Here, Plaintiff is the prevailing
23 party because this case was remanded pursuant to sentence four of 42 U.S.C. § 405(g).
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26 ³ Federal Rule of Appellate Procedure 4(a) provides that a “notice of appeal may be filed
27 by any party within 60 days after entry of the judgment or order appealed from” if one of
28 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 *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002) (“A plaintiff who obtains a
2 sentence four remand is considered a prevailing party for purposes of attorneys’ fees.”);
3 *Ulugalu*, 2018 WL 2012330, at *2 (in a case where the parties jointly stipulated to remand,
4 “because the Court granted the Commissioner’s proposed order for remand and entered
5 judgment in favor of Plaintiff pursuant to sentence-four, Plaintiff is a prevailing party”);
6 *see* ECF No. 22 (remanding the case pursuant to sentence four of 42 U.S.C. § 405(g)).

7 **B. Substantial justification**

8 The government bears the burden of proving that its position, both in the underlying
9 administrative proceedings and in the subsequent litigation, was substantially justified.
10 *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). Here, “Defendant has stipulated to the
11 attorney[] fees and does not argue that the prevailing party’s position was substantially
12 unjustified.” *Krebs v. Berryhill*, 16cv3096-JLS-BGS, 2018 WL 3064346, at *2 (S.D. Cal.
13 June 21, 2018); *see also Black v. Berryhill*, No. 18cv1673-JM-LL, 2019 WL 2436393, at
14 *1 (S.D. Cal. June 11, 2019) (finding the second element met because, “in light of the joint
15 nature of the parties’ request and the court’s prior order remanding this action, the
16 government has not shown that its position was substantially justified.”); ECF No. 26-1 at
17 2 (here, “Defendant’s attorney contacted Plaintiff’s attorney and suggested that that the
18 parties enter into a joint stipulation for remand of Plaintiff’s Social Security disability claim
19 for a new administrative hearing”). Furthermore, “[b]ecause the Commissioner filed a
20 voluntary stipulation for remand and the matter was referred to an Administrative Law
21 Judge to make a new determination as to Plaintiff’s disability, the Court is persuaded the
22 Commissioner did not have substantial justification for denying Plaintiff disability rights.”
23 *Ulugalu*, 2018 WL 2012330, at *3.

24 **C. Reasonableness of Hours**

25 The parties seek a fee award for 22.10 hours billed by Plaintiff’s counsel. ECF No.
26 26-2 at 2. The Court finds the number of hours billed by Plaintiff’s counsel reasonable. *See*
27 28 U.S.C. § 2412(d); *Nadarajah v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009); *see also*
28 *Costa v. Comm’r of SSA*, 690 F.3d 1132, 1136 (9th Cir. 2012) (reiterating the Ninth

1 Circuit’s previous position that “‘lawyers are not likely to spend unnecessary time on
2 contingency fee cases in the hope of inflating their fees’ because ‘the payoff is too
3 uncertain.’ [] As a result, courts should generally defer to the ‘winning lawyer’s
4 professional judgment as to how much time he was required to spend on the case.’”)
5 (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112–13 (9th Cir. 2008)); *see, e.g.*,
6 *Costa*, 690 F.3d at 1136 (noting “[m]any district courts have noted that twenty to forty
7 hours is the range most often requested and granted in social security cases”); *Krebs*, 2018
8 WL 3064346, at *2 (finding that 21.7 hours billed by plaintiff’s counsel and 3.5 hours
9 billed by a paralegal a reasonable number of hours).

10 **D. Reasonableness of Hourly Rate**

11 The EAJA provides that the Court may award reasonable attorney fees “based upon
12 prevailing market rates for the kind and quality of the services furnished,” but “attorney
13 fees shall not be awarded in excess of \$125 per hour unless the court determines that an
14 increase in the cost of living or a special factor, such as the limited availability of qualified
15 attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A).
16 The Ninth Circuit’s hourly EAJA rates for work performed in 2020 and 2021, factoring in
17 increases in the cost of living, were \$207.78 and \$213.74, respectively. *See United States*
18 *Courts for the Ninth Circuit, Statutory Maximum Rates Under the Equal Access to Justice*
19 *Act*, <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited Aug.
20 27, 2021); *see also Thangaraja v. Gonzales*, 428 F.3d 870, 876 (9th Cir. 2005) (“EAJA
21 provides for an upward adjustment of the \$125 rate contained in the statute, based on cost-
22 of-living increases”) (citing 28 U.S.C. § 2412(d)(2)(A)); *see, e.g., Black*, 2019 WL
23 2436393, at *1 (considering the Ninth Circuit’s hourly EAJA rate a reasonable rate).
24 Plaintiff’s counsel bills at an hourly rate of \$400. ECF No. 26 at 1. Here, Plaintiff’s counsel
25 seeks discounted compensation of \$207.78 per hour for work performed in 2020 and
26 \$213.74 per hour for work performed in 2021. ECF No. 26-1 at 1. As such, the Court finds
27 that the hourly rates billed by counsel are reasonable.

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

2 The parties jointly request that “[f]ees shall be made payable to Plaintiff, but if the
3 Department of the Treasury determines that Plaintiff does not owe a federal debt, then the
4 government shall cause the payment of fees, expenses and costs to be made directly to
5 Plaintiff’s attorney, Lisa Mouradian, pursuant to the assignment executed by Plaintiff.”
6 ECF No. 24 at 2; *see* ECF No. 26-4 (agreement signed by Plaintiff stating that “I assign
7 any right or interest I may have in the award of an EAJA fee and understand that the EAJA
8 award shall be paid to my attorney”).⁴

9 The Supreme Court has held that “a § 2412(d) fees award is payable to the litigant
10 and is therefore subject to a Government offset to satisfy a pre-existing debt that the litigant
11 owes the United States.” *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010). In *Ratliff*,
12 plaintiff’s counsel was successful in plaintiff’s Social Security benefits suit and the court
13 granted the unopposed motion for fees under the EAJA. *Id.* However, before paying the
14 fee award, the government discovered that plaintiff owed the United States a debt that
15 predated the award, and accordingly, the government sought an offset of that owed amount.
16 *Id.* Plaintiff’s counsel intervened and argued that the fee award belonged to plaintiff’s
17 counsel, and thus was not subject to offset for the litigant’s federal debts. *Id.* The Supreme
18 Court disagreed, finding that “Congress knows how to make fee awards payable directly
19 to attorneys where it desires to do so,” and because the fee was payable to a “prevailing
20 party,” Congress intended the fee to go to the litigant, and not the attorney. *Id.* at 595–97.

21 Nonetheless, “district courts have recognized that *Ratliff* does not prevent payment
22 of a fee award directly to the attorney where there has been a valid assignment and the
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25 ⁴ The Fee Agreement and Assignment of EAJA Fees, attached to the parties’ supplemental
26 briefing, refers to Plaintiff’s counsel as “Don Jorgensen, or his designee[.]” ECF No.
27 26-4. The Court notes that, although Ms. Mouradian signed the agreement (*see id.*), and
28 although Ms. Mouradian’s law firm of record is listed on the docket as Jorgensen Law,
neither the joint motion nor the supplemental briefing explicitly refers to her as the
designee.

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

18 Here, Plaintiff assigned his right to EAJA fees to his attorney. ECF No. 26-4.
 19 Accordingly, should Plaintiff not have a debt that is subject to offset, the award of fees may
 20 be paid directly to counsel.

21 **IV. CONCLUSION**

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

23 1. The parties’ Joint Motion for the Award and Payment of Attorney Fees and
 24 Expenses (ECF Nos. 24, 26) is **GRANTED**;

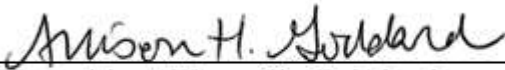
25 2. Plaintiff is awarded attorney fees under the EAJA in the amount of \$4,400.00
 26 *See* ECF No. 24 at 1; ECF No. 26 at 2; and

27 3. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010), any payment shall
 28 be made payable to Plaintiff and delivered to Plaintiff’s counsel, unless Plaintiff does not

1 owe a federal debt. If the United States Department of the Treasury determines that Plaintiff
2 does not owe a federal debt, the government shall accept Plaintiff's assignment of EAJA
3 fees and pay fees directly to Plaintiff's counsel. *See* ECF No. 24 at 2; *see, e.g., Mendoza v.*
4 *Saul*, No. 18cv925-SKO, 2020 WL 406773, at *5 (E.D. Cal. Jan 24, 2020).

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6 **IT IS SO ORDERED.**

7 Dated: September 2, 2021

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Honorable Allison H. Goddard
United States Magistrate Judge

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