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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROLAND S.,

Plaintiff,

v.

ANDREW SAUL, Commissioner of
Social Security,

Defendant.

Case No.: 3:20-cv-01068-AHG

**ORDER GRANTING JOINT
MOTION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES
AND EXPENSES**

[ECF No. 25]

1 Before the Court is the parties’ Joint Motion for the Award and Payment of Attorney
2 Fees and Expenses Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and
3 Costs Pursuant to 28 U.S.C. § 1920.¹ ECF No. 25. For the reasons set forth below, the
4 Court **GRANTS** the parties’ joint motion.

5 **I. BACKGROUND**

6 The underlying action involves Plaintiff’s appeal of the Social Security
7 Administration’s denial of his application for supplemental security income at the agency
8 level. ECF No. 1. After the Commissioner of Social Security (“Defendant”) filed the
9 administrative record in lieu of an answer, the Court issued a scheduling order. ECF No.
10 20. Among other requirements in the scheduling order, the Court directed the parties to
11 engage in formal settlement discussions, and set a deadline of June 11, 2021 for the parties
12 either to stipulate to a dismissal or remand of the case, or to file a Joint Status Report
13 notifying the Court that they were unable to resolve the matter in settlement discussions.
14 *See id.* at 2.

15 On June 10, 2021, the parties filed a joint motion for voluntary remand pursuant to
16 sentence four of 42 U.S.C. § 405(g). ECF No. 22. On June 11, 2021, the Court granted the
17 joint motion, remanded the case to the Commissioner of Social Security for further
18 administrative action, and entered a final judgment reversing the final decision of the
19 Commissioner. ECF No. 23. A Clerk’s Judgment was entered the same day. ECF No. 24.

20 On August 30, 2021, the parties filed the instant motion. ECF No. 25. The Court
21 required the parties to submit supplemental briefing (ECF No. 26), which the parties timely
22 filed. ECF No. 27. The parties have jointly requested that Plaintiff’s counsel receive
23 compensation for 5.36 hours of work, at \$207.78 per hour for 2.82 hours of work done in
24 2020 and \$213.74 for 2.54 hours of work done in 2021, and that two paralegals who
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28 ¹ Although the joint motion is styled as a motion seeking fees and costs, the amount of costs sought is \$0.00. *See* ECF No. 25 at 1. The Court therefore does not address the request for “costs” in its discussion.

1 assisted Plaintiff’s counsel receive compensation for 3.4 hours of work at \$143.00 per hour,
2 with the total request discounted² to \$1,600.00. ECF Nos. 25, 27.

3 **II. THRESHOLD ISSUE OF TIMELINESS**

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

10 Here, the parties filed the motion for EAJA fees on August 30, 2021, 80 days after
11 final judgment was entered on June 11, 2021. The motion was filed 20 days after the 60-
12 day period expired and falls within the 30-day filing period. Accordingly, the motion for
13 attorney fees is timely.

14 **III. DISCUSSION**

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

20 **A. Prevailing party**

21 A plaintiff is a prevailing party if he “has ‘succeeded on any significant issue in
22 litigation which achieve[d] some of the benefit . . . sought in bringing suit.’” *Ulugalu v.*
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25 ² In the parties’ itemization of fees, the total fee was calculated to be \$1,615.04. ECF No.
26 27-1 at 2. However, in the parties’ joint motion, the total fee requested was \$1,600. ECF
27 No. 25.

28 ³ Federal Rule of Appellate Procedure 4(a) provides that a “notice of appeal may be filed
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 *Berryhill*, No. 17cv1087-GPC-JLB, 2018 WL 2012330, at *2 (S.D. Cal. Apr. 30, 2018)
2 (quoting *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993)). Here, Plaintiff is the prevailing
3 party because this case was remanded pursuant to sentence four of 42 U.S.C. § 405(g).
4 *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002) (“A plaintiff who obtains a
5 sentence four remand is considered a prevailing party for purposes of attorneys’ fees.”);
6 *Ulugalu*, 2018 WL 2012330, at *2 (in a case where the parties jointly stipulated to remand,
7 “because the Court granted the Commissioner’s proposed order for remand and entered
8 judgment in favor of Plaintiff pursuant to sentence-four, Plaintiff is a prevailing party”);
9 *see* ECF Nos. 22, 23 (remanding the case pursuant to sentence four of 42 U.S.C. § 405(g)).

10 **B. Substantial justification**

11 The government bears the burden of proving that its position, both in the underlying
12 administrative proceedings and in the subsequent litigation, was substantially justified.
13 *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). Here, the parties have stipulated to the
14 EAJA amount, and explain that the stipulation “constitutes a compromise settlement of
15 [Plaintiff’s] request for EAJA attorney fees[.]” ECF No. 25 at 2. Although Defendant’s
16 stipulation does not constitute an admission of liability on its part, the compromise nature
17 of the request is sufficient to find the second element met, given that “Defendant has
18 stipulated to the attorney[] fees and does not argue that the prevailing party’s position was
19 substantially unjustified.” *Krebs v. Berryhill*, 16cv3096-JLS-BGS, 2018 WL 3064346, at
20 *2 (S.D. Cal. June 21, 2018); *see also Black v. Berryhill*, No. 18cv1673-JM-LL, 2019 WL
21 2436393, at *1 (S.D. Cal. June 11, 2019) (finding the second element met because, “in
22 light of the joint nature of the parties’ request and the court’s prior order remanding this
23 action, the government has not shown that its position was substantially justified.”).
24 Furthermore, “[b]ecause the Commissioner filed a voluntary stipulation for remand and the
25 matter was referred to an Administrative Law Judge to make a new determination as to
26 Plaintiff’s disability, the Court is persuaded the Commissioner did not have substantial
27 justification for denying Plaintiff disability rights.” *Ulugalu*, 2018 WL 2012330, at *3.

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C. Reasonableness of Hours

1 The parties seek a fee award for 5.36 hours billed by Plaintiff’s counsel and 3.4 hours
2 billed by Plaintiff’s counsel’s paralegals, for a total of 8.76 hours. ECF No. 27-1. The Court
3 finds the number of hours billed by Plaintiff’s counsel and paralegals reasonable. *See* 28
4 U.S.C. § 2412(d); *Nadarajah v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009); *see also Costa*
5 *v. Comm’r of SSA*, 690 F.3d 1132, 1136 (9th Cir. 2012) (reiterating the Ninth Circuit’s
6 previous position that “‘lawyers are not likely to spend unnecessary time on contingency
7 fee cases in the hope of inflating their fees’ because ‘the payoff is too uncertain.’ [] As a
8 result, courts should generally defer to the ‘winning lawyer’s professional judgment as to
9 how much time he was required to spend on the case.’”) (quoting *Moreno v. City of*
10 *Sacramento*, 534 F.3d 1106, 1112–13 (9th Cir. 2008)). Indeed, the number of hours billed
11 is quite modest compared to the typical range seen in social security appeals. *See, e.g.,*
12 *Costa*, 690 F.3d at 1136 (noting “[m]any district courts have noted that twenty to forty
13 hours is the range most often requested and granted in social security cases”); *Krebs*, 2018
14 WL 3064346, at *2 (finding 21.7 hours billed by plaintiff’s counsel and 3.5 hours billed
15 by a paralegal a reasonable number of hours); *Rogers v. Astrue*, No. 1:09-CV-02158-JLT,
16 2010 WL 4569058, at *6 (E.D. Cal. Nov. 3, 2010) (reducing counsel’s compensation for
17 time spent opposing remand and arguing for an immediate award of benefits, but
18 nonetheless finding 9.6 hours billed by an attorney and 2.5 hours billed by a paralegal to
19 be reasonable in a case where, as here, the Commissioner voluntarily remanded a social
20 security appeal pursuant to sentence four of 42 U.S.C. § 405(g)).

D. Reasonableness of Hourly Rate

21 The EAJA provides that the Court may award reasonable attorney fees “based upon
22 prevailing market rates for the kind and quality of the services furnished,” but “attorney
23 fees shall not be awarded in excess of \$125 per hour unless the court determines that an
24 increase in the cost of living or a special factor, such as the limited availability of qualified
25 attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A).
26 The Ninth Circuit’s hourly EAJA rates for work performed in 2020 and 2021, factoring in
27 increases in the cost of living, were \$207.78 and \$213.74, respectively. *See United States*
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1 Courts for the Ninth Circuit, *Statutory Maximum Rates Under the Equal Access to Justice*
2 *Act*, <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited Sep. 7,
3 2021); *see also Thangaraja v. Gonzales*, 428 F.3d 870, 876 (9th Cir. 2005) (“EAJA
4 provides for an upward adjustment of the \$125 rate contained in the statute, based on cost-
5 of-living increases”) (citing 28 U.S.C. § 2412(d)(2)(A)); *see, e.g., Black*, 2019 WL
6 2436393, at *1 (considering the Ninth Circuit’s hourly EAJA rate a reasonable rate).
7 Consistent with the Ninth Circuit’s hourly EAJA rates, Plaintiff’s counsel seeks
8 compensation of \$207.78 per hour for work performed in 2020 and \$213.74 per hour for
9 work performed in 2021. ECF No. 27-1. As such, the Court finds that the hourly rates billed
10 by counsel are reasonable.

11 The Court also finds the \$143 hourly rate billed by the paralegals at Plaintiff’s
12 counsel’s firm to be reasonable. Plaintiff’s counsel selected this billing rate for EAJA
13 purposes because it “represents the median paralegal billing rate in California as reported
14 in *United States Consumer Law Attorney Fee Survey Report 2017-2018*, pp. 58-59 (R.L.
15 Burdge 2015)[.]” ECF No. 27 at 2; *see also* ECF No. 27-2 at 20 (copy of the cited Burdge
16 Attorney Fee Survey Report). Plaintiff’s counsel further notes that the 2015-2019 USAO
17 fee matrix and the 2019 Laffey Matrix support even higher rates for paralegals, at \$166
18 and \$203, respectively. *See* ECF No. 27-2 at 43 (USAO fee matrix), 47 (Laffey Matrix).

19 Courts may consider the *United States Consumer Law Attorney Fee Survey Report*
20 to determine the appropriate market rate for paralegals in a given area. *See, e.g., Ulugalu*,
21 2018 WL 2012330, at *4; *Rosemary G. V. v. Saul*, No. 3:19-CV-00715-RBM, 2020 WL
22 6703123, at *5 (S.D. Cal. Nov. 12, 2020) (approving a \$130 rate for paralegal fees, but
23 noting that the *United States Consumer Law Attorney Fee Survey Report* provides that the
24 median hourly rate for paralegals in San Diego specifically is \$147). *See also* ECF No. 27-
25 2 at 34 (confirming the average paralegal billing rate in San Diego is \$147). Accordingly,
26 the Court agrees that a \$143 hourly rate for a paralegal in the San Diego area is reasonable.

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

28 The parties jointly request that “[f]ees shall be made payable to [Plaintiff], but if the
Department of the Treasury determines that [Plaintiff] does not owe a federal debt, then

1 the government shall cause the payment of fees, expenses and costs to be made directly to
2 Law Offices of Lawrence D. Rohlffing, pursuant to the assignment executed by [Plaintiff].”
3 ECF No. 25 at 2; *see also* ECF No. 25-1 (agreement signed by Plaintiff stating that the
4 attorney shall seek compensation under the EAJA, and the Plaintiff “shall endorse such
5 documents as are needed to pay Attorney any amounts under the EAJA and assigns such
6 fee awards to Attorney.”).

7 The Supreme Court has held that “a § 2412(d) fees award is payable to the litigant
8 and is therefore subject to a Government offset to satisfy a pre-existing debt that the litigant
9 owes the United States.” *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010). Nonetheless,
10 “district courts have recognized that *Ratliff* does not prevent payment of a fee award
11 directly to the attorney where there has been a valid assignment and the plaintiff does not
12 owe a debt to the government.” *Ulugalu*, 2018 WL 2012330, at *4–*5 (reviewing
13 Plaintiff’s assignment agreement and ordering that the EAJA fees be paid to plaintiff’s
14 counsel, subject to any administrative offset due to outstanding federal debt); *Bell v.*
15 *Berryhill*, No. 16cv809-MMC, 2018 WL 452110, at *5 (N.D. Cal. Jan. 17, 2018) (same);
16 *Blackwell v. Astrue*, No. CIV-08-1454-EFB, 2011 WL 1077765, at *4–*5 (E.D. Cal. Mar.
17 21, 2011) (same); *Castaneda v. Astrue*, No. EDCV-09-1850-OP, 2010 U.S. Dist. LEXIS
18 72887, at *6–*8 (C.D. Cal. Jul. 20, 2010) (same); *see also Calderon v. Astrue*, No.
19 08cv1015-GSA, 2010 WL 4295583, at *8 (E.D. Cal. Oct. 21, 2010) (“Plaintiff, as the
20 prevailing litigant, would normally be awarded the fees described above, subject to any
21 offset for applicable government debts. Defendant, however, seems to be content to permit
22 payment to Plaintiff’s counsel if Plaintiff does not have any qualifying government debt
23 This Court finds the government’s position to be reasonable and will therefore permit
24 payment to Plaintiff’s counsel provided Plaintiff has no government debt that requires
25 offset”); *cf. Hernandez v. Berryhill*, No. 15cv1322-DB, 2017 WL 2930802, at *3 (E.D.
26 Cal. July 10, 2017) (declining to order that the EAJA fees be paid to plaintiff’s counsel,
27 subject to any administrative offset due to outstanding federal debt, because the parties
28 failed to produce evidence of an assignment agreement).

1 Here, Plaintiff assigned his right to EAJA fees to his attorney. ECF No. 25-1.
2 Accordingly, if Plaintiff has no federal debt that is subject to offset, the award of fees may
3 be paid directly to Law Offices of Lawrence D. Rohfling, pursuant to the assignment
4 agreement.

5 **IV. CONCLUSION**

6 Based on the foregoing, the Court hereby **ORDERS** that:

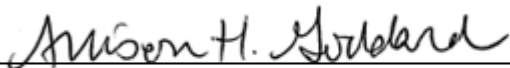
7 1. The parties' Joint Motion for the Award and Payment of Attorney Fees and
8 Expenses Pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412(d) and Costs
9 Pursuant to 28 U.S.C. § 1920 (ECF No. 25) is **GRANTED**;

10 2. Plaintiff is awarded attorney fees under the EAJA in the amount of \$1,600.00;
11 and

12 3. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 588–89 (2010), any payment shall
13 be made payable to Plaintiff and delivered to Plaintiff's counsel, unless Plaintiff does not
14 owe a federal debt. If the United States Department of the Treasury determines that Plaintiff
15 does not owe a federal debt, the government shall accept Plaintiff's assignment of EAJA
16 fees and pay fees directly to Plaintiff's counsel. *See* ECF No. 25 at 2; *see, e.g., Mendoza v.*
17 *Saul*, No. 18cv925-SKO, 2020 WL 406773, at *5 (E.D. Cal. Jan 24, 2020).

18 **IT IS SO ORDERED.**

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20 Dated: September 7, 2021

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24 Honorable Allison H. Goddard
25 United States Magistrate Judge
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