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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
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13 MARTHA G.,

14 Plaintiff,

15 v.

16 KILOLO KIJAKAZI, Acting
17 Commissioner of Social Security,

18 Defendant.
19
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Case No.: 21-cv-01702-JLB

**ORDER GRANTING JOINT
MOTION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES
AND EXPENSES PURSUANT TO
THE EQUAL ACCESS TO JUSTICE
ACT, 28 U.S.C. § 2412(d) AND COSTS
PURSUANT TO 28 U.S.C. § 1920**

[ECF No. 18]

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22 Before the Court is a joint motion for an order awarding Plaintiff \$4,900.00 in
23 attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d).
24 (ECF No. 18.) For the following reasons, the joint motion is **GRANTED**.

25 **I. BACKGROUND**

26 The underlying action involves Plaintiff's appeal of the Social Security
27 Administration's denial of her application for disability insurance benefits and
28 supplemental security income benefits. (ECF No. 1.) The Commissioner of Social

1 Security (“Commissioner”) filed the administrative record on July 6, 2022. (ECF No. 11.)
2 On September 14, 2022, Plaintiff filed a merits brief. (ECF No. 14.) On October 17, 2022,
3 the parties filed a joint motion for voluntary remand to the agency for further administrative
4 proceedings pursuant to sentence four of 42 U.S.C. § 405(g) and entry of judgment.¹ (ECF
5 No. 15.) That same day, the Court granted the joint motion and remanded the matter to the
6 agency for further administrative proceedings pursuant to sentence four of 42 U.S.C.
7 § 405(g). (ECF No. 16.) The Clerk of Court was directed to enter final judgment in favor
8 of Plaintiff, and against Defendant, reversing the final decision of the Commissioner. (*Id.*)
9 Judgment was entered on October 17, 2022. (ECF No. 17.)

10 II. DISCUSSION

11 A litigant is “entitled to attorney’s fees and costs if: (1) [s]he is the prevailing party;
12 (2) the government fails to show that its position was substantially justified or that special
13 circumstances make an award unjust; and (3) the requested fees and costs are reasonable.”
14 *Carbonell v. I.N.S.*, 429 F.3d 894, 898 (9th Cir. 2005) (citing *Perez–Arellano v. Smith*, 279
15 F.3d 791, 793 (9th Cir. 2002)); *see also* 28 U.S.C. § 2412(d)(1)(A).

16 The prevailing party is eligible to seek attorney’s fees within thirty days of final
17 judgment in the action. 28 U.S.C. § 2412(d)(1)(B). “A sentence four remand becomes a
18 final judgment, for purposes of attorneys’ fees claims brought pursuant to the EAJA, upon
19 expiration of the time for appeal.” *Akopyan*, 296 F.3d at 854 (citation omitted) (citing
20 *Schalala*, 509 U.S. at 297). Under Federal Rule of Appellate Procedure 4(a)(1)(B), the
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23 ¹ Pursuant to 42 U.S.C. § 405(g), an individual can seek judicial review after the final
24 decision of the Commissioner of Social Security. “The fourth and sixth sentences of
25 Section 405(g) set forth the exclusive methods by which district courts may remand to the
26 Commissioner of Social Security Administration.” *Akopyan v. Barnhart*, 296 F.3d 852,
27 854 (9th Cir. 2002) (citing *Schalala v. Schaefer*, 509 U.S. 292, 296 (1993)). Specifically,
28 sentence four provides that “[t]he [district] court shall have power to enter, upon the
pleadings and transcript of the record, a judgment affirming, modifying, or reversing the
decision of the Commissioner of Social Security, with or without remanding the cause for
a rehearing.” 42 U.S.C. § 405(g).

1 time for appeal expires sixty days after entry of judgment if one of the parties is a United
2 States officer sued in an official capacity. Therefore, a motion for attorney’s fees filed
3 after a sentence four remand is timely if filed within thirty days after Rule 4(a)’s sixty-day
4 appeal period has expired. *Hoa Hong Van v. Barnhart*, 483 F.3d 600, 602 (9th Cir. 2007).

5 Here, the Court finds the parties’ joint motion is timely² and that Plaintiff is entitled
6 to EAJA fees. First, the Court remanded this case for further administrative proceedings
7 pursuant to sentence four of 42 U.S.C. § 405(g) and entered judgment for Plaintiff. (ECF
8 Nos. 16; 17.) Plaintiff is therefore the prevailing party, for “[a] plaintiff who obtains a
9 sentence four remand,” even when further administrative review is ordered, “is considered
10 a prevailing party for purposes of attorneys’ fees.” *Akopyan*, 296 F.3d at 854 (citing
11 *Schaefer*, 509 U.S. at 297–98, 301–02); *see also Roland S. v. Saul*, No. 3:20-CV-01068-
12 AHG, 2021 WL 4081567, at *2 (S.D. Cal. Sept. 7, 2021) (finding the plaintiff to be the
13 prevailing party where the case was remanded pursuant to sentence four of 42 U.S.C. §
14 405(g) based on a joint motion for voluntary remand).

15 Second, the Commissioner makes no argument that her position was substantially
16 justified. *See Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013) (“It is the government’s
17 burden to show that its position was substantially justified.”). Rather, the Commissioner
18 filed a joint motion to voluntarily remand this case for further administrative proceedings,
19 and the instant fee request comes to the Court by way of a joint motion. *See Ulugalu v.*
20 *Berryhill*, No. 17-CV-01087-GPC-JLB, 2018 WL 2012330, at *3 (S.D. Cal. Apr. 30, 2018)
21 (finding the Commissioner did not demonstrate substantial justification for her position
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24 ² The instant joint motion was filed before the judgment became final. However, this
25 Court finds, as other courts have, that prematurity does not bar a motion for EAJA fees.
26 *See Auke Bay Concerned Citizen’s Advisory Council v. Marsh*, 779 F.2d 1391, 1393 (9th
27 Cir. 1986); *Sergio C. v. Kijakazi*, No. 20-CV-02270-AHG, 2022 WL 1122847, at *2 (S.D.
28 Cal. Apr. 14, 2022) (applying *Auke Bay* to conclude a plaintiff’s EAJA fee application in
a Social Security case was not premature where the court had remanded for payment of
benefits, despite the application being filed before the sixty-day appeal period had run).

1 where she filed a voluntary stipulation for remand and the matter was referred to an
2 administrative law judge to make a new determination as to the plaintiff's disability).

3 Finally, Plaintiff's requested fees are reasonable. Plaintiff's counsel declares that he
4 spent 1.60 hours in 2021 at an hourly rate of \$217.54, he spent 18.80 hours in 2022 at an
5 hourly rate of \$231.49, and a paralegal spent 2.3 hours at an hourly rate of \$143.00 working
6 on this case, for a discount total of \$4,900.00.³ (ECF Nos. 18 at 1; 18-1 at 1–2.) The hours
7 are reasonable in light of Plaintiff's results in the case. *See Hensley v. Eckerhart*, 461 U.S.
8 424, 435 (1983) ("Where a plaintiff has obtained excellent results, his attorney should
9 recover a fully compensatory fee."); *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132,
10 1136 (9th Cir. 2012) ("Many district courts have noted that twenty to forty hours is the
11 range most often requested and granted in social security cases.").

12 The hourly rate is also reasonable. Counsel's hourly rate of \$217.54 for work done
13 in 2021 is less than the Ninth Circuit's EAJA hourly rate, and Counsel's hourly rate of
14 \$231.49 for work done in 2022 is equal to the Ninth Circuit's EAJA hourly rate. *See*
15 *Statutory Maximum Rates Under the Equal Access to Justice Act*, U.S. COURTS FOR THE
16 NINTH CIRCUIT, <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last
17 visited November 16, 2022); *see also Roland S.*, 2021 WL 4081567, at *3 (finding hourly
18 rates consistent with the Ninth Circuit's EAJA rates to be reasonable). The paralegal rate
19 of \$143.00 is also consistent with the median hourly rate for paralegals in San Diego. *See*
20 *Nadarajah v. Holder*, 569 F.3d 906, 918 (9th Cir. 2009) (noting courts may approve
21 paralegal rates at prevailing market rates); *Roland S.*, 2021 WL 4081567, at *3 (finding an
22 hourly rate of \$143 for work done by a paralegal in 2020 and 2021 in the San Diego area
23 to be reasonable based on the prevailing market rate).

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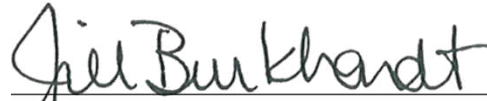
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27 ³ In Plaintiff's itemization of fees, the total fee was calculated to be \$5,028.98.
28 (ECF No. 18-1 at 2.) However, the parties negotiated a lesser amount and, in the parties'
joint motion, the total fee requested was \$4,900.00. (ECF No. 18 at 1.)

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court **GRANTS** the parties' joint motion
3 (ECF No. 18) and awards Plaintiff fees in the amount of \$4,900.00, as authorized by 28
4 U.S.C. § 2412(d), subject to the terms of the joint motion.

5 **IT IS SO ORDERED.**

6 Dated: November 16, 2022



Hon. Jill L. Burkhardt
United States Magistrate Judge

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