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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DESHAWNTHA J.,
Plaintiff,
v.
MARTIN O’MALLEY, as Commissioner
of Social Security,
Defendant.

Case No.: 24-cv-00301-JLB

**ORDER GRANTING 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]

Before the Court is the parties’ 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 (“Joint Motion”). (ECF No. 18.) For the following reasons, the Joint Motion is **GRANTED IN PART**.

I. BACKGROUND

On February 15, 2024, Plaintiff Deshawntha J. (“Plaintiff”) filed a complaint pursuant to 42 U.S.C. § 405(g) seeking judicial review of a decision by the Commissioner

1 of Social Security (the “Commissioner”), denying her application for benefits under the
2 Social Security Act, Title XVI. (ECF No. 1.) The Commissioner filed the administrative
3 record on April 16, 2024. (ECF No. 12.)

4 The parties filed a Joint Motion for Voluntary Remand to the agency pursuant to
5 sentence four of 42 U.S.C. § 405(g) and entry of judgment on May 15, 2024. (ECF No.
6 14.) The Court granted the joint motion, remanded the matter for further administrative
7 proceedings pursuant to sentence four of 42 U.S.C. § 405(g), and directed the Clerk of
8 Court to enter a final judgment in favor of Plaintiff. (ECF Nos. 16–17.)

9 On July 1, 2024, the parties filed this Joint Motion requesting the Court award
10 Plaintiff attorney fees and expenses in the amount of \$ \$2,150.00¹ under 28 U.S.C. § 2412,
11 and no costs under 28 U.S.C. § 1920. (ECF No. 18 at 1.) This amount represents
12 compensation for all legal services rendered on behalf of Plaintiff by counsel in connection
13 with this action. (*Id.*)

14 **II. THRESHOLD ISSUE OF TIMELINESS**

15 The prevailing party is eligible to seek attorney’s fees within thirty days of final
16 judgment in the action. 28 U.S.C. § 2412(d)(1)(B). “A sentence four remand becomes a
17 final judgment, for purposes of attorneys’ fees claims brought pursuant to the EAJA, upon
18 expiration of the time for appeal.” *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002)
19 (internal citation omitted) (citing *Shalala v. Schaefer*, 509 U.S. 292, 297 (1993)). Under
20 Federal Rule of Appellate Procedure 4(a)(1)(B), the time for appeal expires sixty days after
21 entry of judgment if one of the parties is a United States officer sued in an official capacity.
22 Therefore, a motion for attorney’s fees filed after a sentence four remand is timely if filed
23 within thirty days after Rule 4(a)’s 60-day appeal period has expired. *Hoa Hong Van v.*
24 *Barnhart*, 483 F.3d 600, 607 (9th Cir. 2007).

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27 ¹ In Plaintiff’s itemization of fees, the total amount of the fees was calculated to be
28 \$2,319.13. (ECF No. 18-2.) However, the parties negotiated a lesser amount. In the Joint
Motion, the total fee requested for attorney fees is \$2,150.00. (ECF No. 18 at 1.)

1 Even where the appeals period has not yet run, an application for EAJA attorney fees
2 is timely, as long as “. . .(1) the applicant files *no more than* 30 days after final judgment,
3 and (2) the applicant is able to show that he or she ‘is a prevailing party and is eligible to
4 receive an award under this subsection’.” *Auke Bay Concerned Citizen’s Advisory Council*
5 *v. Marsh*, 779 F.2d 1391, 1393 (9th Cir. 1986) (emphasis added) (quoting 28 U.S.C. §
6 2412(d)(1)(B)); *see also Schaefer*, 509 U.S. at 302 (“An EAJA application may be filed
7 *until* 30 days after a judgment becomes ‘not appealable’—i.e., 30 days after the time for
8 appeal has ended.”) (emphasis added). The *Auke Bay* court further clarifies that an
9 application for EAJA fees that is filed before judgment is final is nonetheless timely where
10 “a court order substantially grants the applicant’s remedy before final judgment is entered.”
11 *Auke Bay*, 779 F.2d at 1393; *see, e.g., Sergio C. v. Kijakazi*, No. 20-CV-02270-AHG, 2022
12 WL 1122847, at *2 (S.D. Cal. Apr. 14, 2022) (applying *Auke Bay* to conclude a plaintiff’s
13 EAJA fee application in a Social Security case was not premature where the court had
14 remanded for payment of benefits, despite the application being filed before the 60-day
15 appeal period had run).

16 The Court ordered judgment and remanded Plaintiff’s claim to the Social Security
17 Administration (“SSA”) on May 17, 2024. (ECF No. 16). Judgment was entered on May
18 20, 2024. (ECF No. 17.) The parties filed the Joint Motion on July 1, 2024, 42 days after
19 judgment was entered, before Rule 4(a)’s 60-day appeal timeline had expired. (ECF No.
20 18.) Judgment was entered pursuant to a Joint Motion for Remand filed by both parties.
21 That judgment provided substantial relief prayed for in Defendant’s Complaint—remand
22 to the SSA and Judgment for Plaintiff. (ECF Nos. 14, 1.) Thus, the Court substantially
23 granted Plaintiff’s remedy before the judgment became final. The Court therefore finds the
24 Joint Motion timely.

25 **III. DISCUSSION**

26 A litigant is entitled to attorney’s fees under the EAJA if: “[A] [s]he is the prevailing
27 party; [B] the government fails to show that its position was substantially justified or that
28 special circumstances make an award unjust; and [C] the requested fees and costs are

1 reasonable.” *Carbonell v. I.N.S.*, 429 F.3d 894, 898 (9th Cir. 2005) (citing *Perez–Arellano*
2 *v. Smith*, 279 F.3d 791, 793 (9th Cir. 2002)); *see also* 28 U.S.C. § 2412(d)(1)(A). The
3 Court will address these elements in turn.

4 **A. Prevailing party**

5 “A plaintiff who obtains a sentence four remand” under 42 U.S.C. § 405(g), even
6 when further administrative review is ordered, “is considered a prevailing party for
7 purposes of attorneys’ fees.” *Akopyan*, 296 F.3d at 854 (citing *Schaefer*, 509 U.S. at 297–
8 98, 301–02). Here, Plaintiff is the prevailing party because the Court granted the joint
9 motion for voluntary remand, entered judgment in her favor, reversed the decision of the
10 Commissioner, and remanded the matter for further administrative proceedings. (*See* ECF
11 Nos. 16–17.)

12 **B. Substantial Justification**

13 It is the Commissioner’s burden to prove that his position, both in the underlying
14 administrative proceedings and in the subsequent litigation, was substantially justified
15 under 28 U.S.C. 2412(d)(1)(A). *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). Here,
16 the Commissioner makes no argument that his position was substantially justified. Rather,
17 the Commissioner filed a joint motion to voluntarily remand this case for further
18 administrative proceedings, and the instant fee request comes to the Court by way of a joint
19 motion. *See Ulugalu v. Berryhill*, No. 17-CV-01087-GPC-JLB, 2018 WL 2012330, at *3
20 (S.D. Cal. Apr. 30, 2018). In *Ulugalu*, the Court found that the Commissioner did not
21 demonstrate substantial justification for her position due to the very fact that she filed a
22 voluntary stipulation for remand and the matter was referred to an administrative law judge
23 to make a new determination as to the plaintiff’s disability—as did the Commissioner in
24 this action. *Id.*

25 The parties stipulate in their Joint Motion that “[t]his stipulation constitutes a
26 compromise settlement of [Plaintiff’s] request for EAJA attorney fees, expenses, and costs,
27 and does not constitute an admission of liability on the part of Defendant under the EAJA
28 or otherwise.” (ECF No. 18 at 2.) This, however, does not change the nature or

1 circumstances of the instant request. Despite the disclaimer, “the compromise nature of
2 the request is sufficient to find the second element met, given that ‘Defendant has stipulated
3 to the attorney[] fees and does not argue that the prevailing party's position was
4 substantially unjustified.’” *Dana F. v. Kijakazi*, No. 20-cv-01548-AHG, 2022 WL 542881
5 at *2 (S.D. Cal., Feb. 23, 2022) (quoting *Krebs v. Berryhill*, No. 16-cv-3096-JLS-BGS,
6 2018 WL 3064346 at *2 (S.D. Cal. Jun. 21, 2018)). For these reasons, the Court finds that
7 Plaintiff meets the second requirement.

8 **C. Reasonableness of Hours**

9 The parties attach Plaintiff counsel’s itemized list of hours and rates for this matter
10 to the Joint Motion. (ECF No. 18-2.) This list includes the hours billed and hourly rates
11 for attorney, paralegal, and clerical work for this matter.² “The most useful starting point
12 for determining the amount of a reasonable fee is the number of hours reasonably expended
13 on the litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S.
14 424, 433 (1983). The Court will discuss each in turn.

15 Beginning with the attorney hours billed on this matter, Plaintiff counsel lists a total
16 of 8.2 hours of attorney work, at a rate of \$244.62 per hour. (ECF No. 18-2.) “Many
17 district courts have noted that twenty to forty hours is the range most often requested and
18 granted in social security cases.” *Costa v. Comm’r of Soc. Sec. Admin.*, 690 F.3d 1132,
19 1136 (9th Cir. 2012); *see also Hensley*, 461 U.S. at 435 (“Where a plaintiff has obtained
20 excellent results, his attorney should recover a fully compensatory fee.”). Accordingly, the
21 Court finds the 8.2 total hours billed by Plaintiff’s counsel to be reasonable, especially in
22 light of Plaintiff’s results in the case.

23 Plaintiff asserts 0.8 hours of paralegal work on this matter. (ECF No. 18-2.) This
24 includes 0.2 hours for “receipt and review of scheduling order,” 0.3 hours for “status letter
25 to client,” and 0.3 hours for “letter to AC re effectuation of judgment.” (ECF No. 18-2.
26

27 ² Plaintiff Counsel categorized certain work performed by Enedina Perez as clerical (billed
28 at \$89.50 an hour) and certain of it as paralegal work (billed at \$179 per hour). The Court
will discuss these different charges by work type, rather than by employee.

1 Under the EAJA, attorney’s fees should not be awarded for work on merely clerical tasks,
2 including when completed by paralegals. *See Missouri v. Jenkins*, 491 U.S. 274, 288 n.10
3 (1989) (“[P]urely clerical or secretarial tasks should not be billed at a paralegal rate.”); *see*
4 *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009); *Rosemary G. V. v. Saul*, No. 3:19-
5 CV-00715-RBM, 2020 WL 6703123, at *4 (S.D. Cal. Nov. 12, 2020) (“ . . . time spent by
6 a paralegal on clerical matters is not recoverable, as this is to be subsumed in law firm
7 overhead rather than billed at paralegal rates.”) (citing *Nadarajah*, 569 F.3d at 906). Purely
8 clerical tasks include “filing, transcript, and document organization.” *Nadarajah*, 569 F.3d
9 at 921; *see also Rosemary G. V.*, 2020 WL 6703123, at *4 (“Receipt of a court order or
10 case filing is also clerical in nature.” (internal citations omitted)). Such tasks also include
11 drafting and preparing documents related to service of process. *Stella M. v. Kijakazi*, 22-
12 cv-00109-AHG, 2023 WL 8238984 at *3 (S.D. Cal., Apr. 27, 2023) (quoting *Henderson*
13 *v. Comm’r of Soc. Sec.*, 1:20-cv-0562-JLT, 2021 WL 2457540 at *3 (E.D. Cal. Jun. 16,
14 2021).

15 Here, the Court finds that, with one exception, the tasks listed above are sufficiently
16 substantive as to not be purely clerical. Both informing a client of the cases’ status and
17 informing an individual of an effectuation and judgment are of the type of work that rise
18 above the clerical and require some amount of legal skill or knowledge. *See Missouri*, 491
19 U.S. at 288 n.10. Therefore, the Court considers those tasks non-clerical. Review of a
20 scheduling order, however, presents a more borderline issue. The scheduling order in this
21 case contains only a series dates related to mandatory settlement discussions and merits
22 briefing. (ECF No. 13.) Given the absence of substantive legal material within, the Court
23 considers review of the order to be the type of “other work which can often be
24 accomplished. . .” by nonlegal staff. *See Missouri*, 491 U.S. at 288 n.10. Therefore, the
25 Court reduces the requested for paralegal activities by the 0.2 hours assigned to that
26 activity.

27 Plaintiff counsel include a final category of tasks billed at the clerical rate as follows:
28 0.4 hours for “filing of complaint”; 0.1 hours for “receipt and review of order granting

1 IFP”; 0.1 hours for “receipt of notice of appearance”; 0.9 hours for “receipt and assemble
2 CAR”; and 0.1 hours for “receipt of order and judgment.” (ECF No. 18-2.) These tasks
3 appear to be entirely clerical in nature. *Nadarajah*, 569 F.3d at 921; *see also Rosemary G.*
4 *V.*, 2020 WL 6703123, at *4; *Stella M.*, 2023 WL 8238984 at *3 (S.D. Cal., Apr. 27, 2023)
5 (quoting *Henderson*, 2021 WL 2457540 at *3. Likewise, the latter three tasks are attributed
6 to an employee who appears solely under the “clerical” billing rate on the itemized list.
7 (ECF No. 18-2.) Therefore, the Court shall deduct the totality of those hours (1.6 hours)
8 as non-recoverable clerical work.

9 This category also includes 0.3 hours for “preparation of certificate of interested
10 parties, civil coversheet[,] and IFP.” (*Id.*) Although less obviously strictly clerical on its
11 face, the Court finds this activity analogous to drafting and preparing documents for
12 service, which “courts in the Ninth Circuit have determined . . . are clerical tasks and
13 reduced the number of hours awarded as fees accordingly.” *Stella M.*, 2023 WL 8238984
14 at *3 (S.D. Cal., Apr. 27, 2023) (quoting *Henderson*, 2021 WL 2457540 at *3. Thus, the
15 Court finds this activity to be of a nonrecoverable type and reduces recoverable hours by
16 the 0.3 hours dedicated to it.

17 **D. Reasonableness of Hourly Rate**

18 The EAJA provides that the court may award reasonable attorney fees “based upon
19 prevailing market rates for the kind and quality of the services furnished,” but that “attorney
20 fees shall not be awarded in excess of \$125 per hour unless the court determines that an
21 increase in the cost of living or a special factor, such as the limited availability of qualified
22 attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A);
23 *Nadarajah*, 569 F.3d at 911. The statutory maximum EAJA rate for work performed in
24 2023 in the Ninth Circuit, factoring in increases in the cost of living, was \$244.62. *See*
25 *United States Courts for the Ninth Circuit, Statutory Maximum Rates Under the Equal*
26 *Access to Justice Act*, <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/>
27 (last visited July 3, 2024). When no new rate has been posted for the time period in which
28 work was performed, the courts are to apply the rate for the previous period. *Id.* As no

1 new rate has been posted for 2024, the Court will rely on the 2023 rate. Here, Counsel’s
2 attorney hourly rate matches exactly the Ninth Circuit’s EAJA hourly rate. (ECF No. 18-
3 2.) Accordingly, the Court finds that the hourly rate billed by counsel is reasonable. *See*
4 *Roland S. v. Saul*, No. 3:20-cv-01068-AHG, 2021 WL 4081567, at *3 (S.D. Cal. Sept. 7,
5 2021) (finding hourly rates consistent with the Ninth Circuit’s EAJA rates to be
6 reasonable).

7 The Court finds, however, that Plaintiff’s paralegal rates are not reasonable. Plaintiff
8 assigns an hourly rate of \$179.00 for paralegal work. (ECF No. 18-2.) District Courts in
9 the Southern District of California have found an hourly rate of \$143.00 reasonable for
10 paralegals and have reduced paralegal rates that are even slightly above that. *See*
11 *Jacqueline Q. v. Kijakazi*, No. 3:21-cv-00405-AHG, 2022 WL 17884451 at *3 (S.D. Cal.
12 Dec. 23, 2022) (reducing the requested paralegal rate of \$150.00 per hour to \$143.00 per
13 hour); *Roland*, 2021 WL 4081567, at *3; *Victoria C. v. Kijakazi*, 3:23-cv-01030-JLB, 2023
14 WL 5737788 at *3 (S.D. Cal. Sept. 5, 2023). The Joint Motion provides no support or
15 argument for the Court’s deviation from this rate. Therefore, the Court will not deviate
16 from the accepted local rate and accordingly reduces the paralegal rate to \$143.00 per hour.

17 **F. Assignment of Rights to Counsel**

18 The parties jointly request that “[f]ees shall be made payable to Plaintiff, but if the
19 Department of the Treasury determines that Plaintiff does not owe a federal debt, then the
20 government shall cause the payment of fees, expenses and costs to be made directly to
21 [Plaintiff’s counsel], pursuant to the assignment executed by [Plaintiff].” (ECF No. 18 at
22 2.) “[A] § 2412(d) fees award is payable to the litigant and is therefore subject to a
23 [g]overnment offset to satisfy a pre-existing debt that the litigant owes the United States.”
24 *Astrue v. Ratliff*, 560 U.S. 586, 589 (2010). However, this “does not prevent payment of a
25 fee award directly to the attorney where there has been a valid assignment and the plaintiff
26 does not owe a debt to the government.” *Ulugalu*, 2018 WL 2012330, at *4. Here, Plaintiff
27 assigned her EAJA fees to her attorney through the Law Offices of Lawrence D. Rohlifing,
28 Inc., CPC. (ECF No. 18-1; ECF No. 18 at 4.) Therefore, if Plaintiff has no federal debt

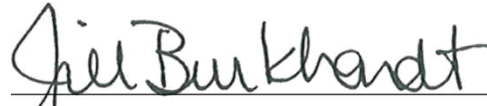
1 that is subject to offset, the award of fees and costs may be paid directly to attorney Law
2 Offices of Lawrence D. Rohlfing, Inc., CPC pursuant to the assignment agreement and the
3 parties' joint motion.

4 **IV. CONCLUSION**

5 Based on the foregoing, the Court **GRANTS IN PART** the parties' Joint Motion.
6 Considering the Court's reductions as described above, the Court **AWARDS** Plaintiff fees
7 in the amount of \$2,091.68 which is calculated as follows: 8.2 hours of attorney work at a
8 rate of \$244.62 per hour, for a product of \$2,005.88; and 0.6 hours of paralegal work at a
9 rate of \$143.00 per hour, for a product of \$85.80. This amounts to a **total** of \$2,091.68.

10 **IT IS SO ORDERED.**

11
12 Dated: July 8, 2024



Hon. Jill L. Burkhardt
United States Magistrate Judge