

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

ERICA S.,

Plaintiff,

v.

MARTIN J. O’MALLEY, Commissioner
of Social Security,

Defendant

Case No.: 24-cv-00698-AJB-MSB

**ORDER GRANTING JOINT
MOTION FOR AWARD OF
ATTORNEY’S FEES PURSUANT TO
THE EQUAL ACCESS TO JUSTICE
ACT (28 U.S.C. § 2412(d))**

(Doc. No. 16)

Before the Court is the parties’ joint motion for the award of attorney fees and expenses pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). (Doc. No. 16.) For the reasons set forth below, the Court **GRANTS** the joint motion.

I. BACKGROUND

On April 17, 2024, Plaintiff Erica S. (“Plaintiff”) filed a complaint pursuant to 42 U.S.C. § 405(g) seeking judicial review of a decision by Martin O’Malley, the Acting Commissioner of Social Security (the “Commissioner”), denying her application for social security disability insurance benefits. (Doc. No. 1.) The Commissioner filed the

1 administrative record on June 17, 2024. (Doc. No. 6.) Thereafter, Plaintiff filed a merits
2 brief. (Doc. No. 10.) Upon review of Plaintiff’s merits brief and the Administrative Record,
3 the Commissioner, joined by Plaintiff, filed a joint motion for voluntary remand pursuant
4 to sentence four of 42 U.S.C. § 405(g). (Doc. No. 13.) On October 10, 2024, the Court
5 granted the parties’ joint motion, entered final judgment in favor of Plaintiff, reversed the
6 decision of the Commissioner, and remanded the matter for further administrative
7 proceedings pursuant to sentence four of 42 U.S.C. § 405(g). (Doc. No. 14.)

8 On November 7, 2024, the parties filed the instant joint motion requesting the Court
9 award Plaintiff’s counsel \$5,210.40 in attorney fees and \$405.00 in costs. (Doc. No. 16
10 at 1.) This amount represents compensation for all legal services rendered on behalf of
11 Plaintiff by counsel in connection with this action. (*Id.*)

12 **II. THRESHOLD ISSUE OF TIMELINESS**

13 The prevailing party is eligible to seek attorney’s fees within thirty days of final
14 judgment in the action. 28 U.S.C. § 2412(d)(1)(B). “A sentence four remand becomes a
15 final judgment, for purposes of attorneys’ fees claims brought pursuant to the EAJA, upon
16 expiration of the time for appeal.” *Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002)
17 (internal citation omitted) (citing *Shalala v. Schaefer*, 509 U.S. 292, 297 (1993)). Under
18 Federal Rule of Appellate Procedure 4(a)(1)(B), the time for appeal expires sixty days after
19 entry of judgment if one of the parties is a United States officer sued in an official capacity.
20 Therefore, a motion for attorney’s fees filed after a sentence four remand is timely if filed
21 within thirty days after Rule 4(a)’s sixty-day appeal period has expired. *Hoa Hong Van v.*
22 *Barnhart*, 483 F.3d 600, 607 (9th Cir. 2007); *see also Auke Bay Concerned Citizen’s*
23 *Advisory Council v. Marsh*, 779 F.2d 1391, 1393 (9th Cir. 1986) (“*Auke Bay*”) (holding
24 that an application for attorney fees under the EAJA filed *before* a judgment is final is
25 timely nonetheless so long as the applicant can show “is a prevailing party and is eligible
26 to receive an award under this subsection”).

27 ///

28 ///

1 Here, the instant joint motion was filed 28 days after judgment was entered and, thus,
2 before the judgment became final. However, the Court’s order entering judgment in favor
3 of Plaintiff “substantially grant[ed] the applicant’s remedy before final judgment is
4 entered” by reversing the decision of the Commissioner and remanding the case for further
5 proceedings. *See Auke Bay*, 779 F.2d at 1393. Accordingly, the Court finds the joint motion
6 timely. *See, e.g., Dora R.S. v. O’Malley*, No. 23-CV-00636-AJB-SBC, 2024 WL 4439260
7 (S.D. Cal. Oct. 7, 2024) (holding the joint motion for the plaintiff’s EAJA fee was timely
8 where motion was filed before the 60-day appeal period had run); *Sergio C. v. Kijakazi*,
9 No. 20-CV-02270-AHG, 2022 WL 1122847, at *2 (S.D. Cal. Apr. 14, 2022) (applying
10 *Auke Bay* to conclude a plaintiff’s EAJA fee application in a Social Security case was not
11 premature where the court had remanded for payment of benefits, despite the application
12 being filed before the sixty-day appeal period had run).

13 **III. DISCUSSION**

14 “Under EAJA, a litigant is entitled to attorney’s fees and costs if: (1) [s]he is the
15 prevailing party; (2) the government fails to show that its position was substantially
16 justified or that special circumstances make an award unjust; and (3) the requested fees and
17 costs are reasonable.” *Carbonell v. I.N.S.*, 429 F.3d 894, 898 (9th Cir. 2005); *see also* 28
18 U.S.C. § 2412(d)(1). The Court will address these elements in turn.

19 **A. Prevailing party**

20 “A plaintiff who obtains a sentence four remand” under 42 U.S.C. § 405(g), even
21 when further administrative review is ordered, “is considered a prevailing party for
22 purposes of attorneys’ fees.” *Akopyan*, 296 F.3d at 854 (citing *Schalala v. Schaefer*, 509
23 U.S. 292, 297–98, 301–02 (1993)). Here, Plaintiff is the prevailing party because the Court
24 granted the parties’ joint motion for voluntary remand, reversed the decision of the
25 Commissioner, and remanded the matter for further administrative proceedings. (*See* Doc.
26 No. 14.)

27 ///

28 ///

1 **B. Substantial Justification**

2 It is the Commissioner’s burden to prove that his position, both in the underlying
3 administrative proceedings and in the subsequent litigation, was substantially justified
4 under 28 U.S.C. 2412(d)(1)(A). *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). Here,
5 the Commissioner makes no argument that his position was substantially justified. Rather
6 the instant fee request comes to the Court by way of a joint motion. (*See* Doc. No. 16.)
7 Accordingly, the Commissioner has not met his burden of showing his position was
8 substantially justified or that special circumstances make an award unjust.

9 **C. Reasonableness of Hours**

10 “The most useful starting point for determining the amount of a reasonable fee is the
11 number of hours reasonably expended on the litigation multiplied by a reasonable hourly
12 rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). “Many district courts have noted
13 that twenty to forty hours is the range most often requested and granted in social security
14 cases.” *Costa v. Comm’r of SSA*, 690 F.3d 1132, 1136 (9th Cir. 2012); *see also Hensley*,
15 461 U.S. at 435 (“Where a plaintiff has obtained excellent results, his attorney should
16 recover a fully compensatory fee.”). Accordingly, the Court finds the 21.3 total hours billed
17 by Plaintiff’s counsel to be reasonable in light of Plaintiff’s results in the case. *See Martha*
18 *G. v. Kijakazi*, No. 21-CV-01702-JLB, 2022 WL 17069832, at *2 (S.D. Cal. Nov. 17, 2022)
19 (finding 20.4 hours expended by counsel and 2.3 hours by a paralegal reasonable where
20 the parties filed a joint motion to remand after the plaintiff filed a merits brief).

21 **D. Reasonableness of Hourly Rate**

22 The EAJA provides that the court may award reasonable attorney fees “based upon
23 prevailing market rates for the kind and quality of the services furnished,” but that “attorney
24 fees shall not be awarded in excess of \$125 per hour unless the court determines that an
25 increase in the cost of living or a special factor, such as the limited availability of qualified
26 attorneys for the proceedings involved, justifies a higher fee.” 28 U.S.C. § 2412(d)(2)(A).
27 In this Circuit, factoring in increases in the cost of living, the statutory maximum EAJA
28 rate for work performed in 2024 is \$244.62. *See* UNITED STATES COURTS FOR THE NINTH

1 CIRCUIT, *Statutory Maximum Rates Under the Equal Access to Justice Act*,
2 <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited Nov. 25,
3 2024).¹

4 Here, Plaintiff’s counsel billed 21.3 hours at the Ninth Circuit’s EAJA hourly rate,
5 and thus seeks \$5,210.40. (Doc. No. 16-2.) Accordingly, the Court finds that the hourly
6 rate billed by counsel is reasonable. *See Roland S. v. Saul*, No. 3:20-cv-01068-AHG, 2021
7 WL 4081567, at *3 (S.D. Cal. Sept. 7, 2021) (finding hourly rates consistent with the Ninth
8 Circuit’s EAJA rates to be reasonable).

9 **E. Costs**

10 Filing fees are recoverable costs under the EAJA. 28 U.S.C. §§ 1920, 2412(d); *see*
11 *Darren Jeffrey C. v. Kijakazi*, No.: 3:21-cv-01012-AHG, 2022 WL 17826795, at *4 (S.D.
12 Cal. Dec. 20, 2022) (awarding \$402 in filing costs after the Court remanded in the
13 plaintiff’s favor). Here, Plaintiff seeks reimbursement of the \$405.00 filing fee expended
14 to initiate this action. Although Plaintiff does not attach any receipt in support of the costs
15 requested, Plaintiff offers the filing fee receipt number, and the Court takes judicial notice
16 that the docket in this action reflects the payment of the filing fee. (Doc. No. 1 (\$405.00
17 filing fee, receipt number ACASDC-18767821); Doc. No. 16-2 (listing under costs: “Filing
18 Fee receipt number ACASDC-18767821”.) Accordingly, the Court grants the
19 reimbursement costs in the amount of \$405.00.

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

21 The parties jointly request that “[f]ees shall be made payable to Plaintiff, but if the
22 Department of the Treasury determines that Plaintiff does not owe a federal debt, then the
23 government shall cause the payment of fees, expenses and costs to be made directly to
24 [Plaintiff’s counsel], pursuant to the assignment executed by Plaintiff.” (Doc. No. 16 at 2.)
25

26
27 ¹ At the time of the issuing of this Order, no rate is posted for work performed in 2024. Accordingly,
28 the Court is using the 2023 posted rate for 2024. *See id.* (“If no rate is posted for the period in which your
work was performed, please use the rate that is posted for the previous period.”).


1 “[A] § 2412(d) fees award is payable to the litigant and is therefore subject to a Government
2 offset to satisfy a pre-existing debt that the litigant owes the United States.” *Astrue v.*
3 *Ratliff*, 560 U.S. 586, 589 (2010). However, this “does not prevent payment of a fee award
4 directly to the attorney where there has been a valid assignment and the plaintiff does not
5 owe a debt to the government.” *Ulugalu v. Berryhill*, No. 3:17-cv-01087-GPC-JLB, 2018
6 WL 2012330, at *4 (S.D. Cal. Apr. 30, 2018). Here, Plaintiff assigned her EAJA fees to
7 her attorney, Martha Yancey. (Doc. No. 16-1.) Therefore, if Plaintiff has no federal debt
8 that is subject to offset, the award of fees may be paid directly to attorney Martha Yancey
9 pursuant to the assignment agreement and the parties’ joint motion.

10 **IV. CONCLUSION**

11 Based on the foregoing, the Court **GRANTS** the parties’ joint motion and
12 **AWARDS** Plaintiff \$5,210.40 in attorney fees and \$405.00 in expenses pursuant to
13 28 U.S.C. § 1920 and § 2412, subject to the terms of the joint motion.

14 **IT IS SO ORDERED.**

15 Dated: November 26, 2024

16 
17 Hon. Anthony J. Battaglia
18 United States District Judge
19
20
21
22
23
24
25
26
27
28