



1 compromise reached between the Commissioner and Plaintiff's counsel in this instance has created  
2 concern with respect to the pending motion for attorneys' fees under § 406(b). The stipulation on the  
3 EAJA fee award reduced the amount of fees paid by the Commissioner by \$2,640, or nearly two-thirds  
4 of the EAJA amount claimed by Plaintiff's counsel. *Compare* Docket No. 17 (agreeing to an EAJA fee  
5 award of \$1,425) *with* Docket No. 19-5 (calculating EAJA fee award at \$4,065).<sup>2</sup> Given that § 406(b)  
6 fee awards are offset by EAJA fee awards, *see Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (the  
7 EAJA award "effectively increases the portion of past-due benefits the successful Social Security  
8 claimant may pocket" through this offsetting function), the EAJA stipulation has effectively shifted the  
9 burden to pay attorneys' fees from the Commissioner to Plaintiff.<sup>3</sup> It certainly appears to be a perverse  
10 result that the responsibility to pay attorneys' fees presumably owed by the Commissioner should be  
11 effectively shifted to an individual that the Commissioner has now found to be disabled.

12 Because neither Plaintiffs' counsel nor the Commissioner has provided any explanation or legal  
13 authority on this issue, the Court hereby **ORDERS** that they each file supplemental briefs addressing  
14 it no later than February 11, 2016.

15 IT IS SO ORDERED.

16 DATED: January 28, 2016

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18 \_\_\_\_\_  
19 NANCY J. KOPPE  
20 United States Magistrate Judge  
21

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23 <sup>2</sup> An award of attorneys' fees pursuant to the EAJA requires a showing that the position of the United  
24 States was not substantially justified. *See, e.g., Meier v. Colvin*, 727 F.3d 867, 872 (9th Cir. 2013).  
25 Nonetheless, the standards for substantial justification mirror the standards for this Court's review of the  
26 Commissioner's decision, such that a finding against the Commissioner in this Court generally results in a  
27 finding that substantial justification was lacking. *See, e.g., id.*

28 <sup>3</sup> The Court is in no way doubting that Plaintiff's counsel and the Commissioner sought to  
compromise in good faith the EAJA attorneys' fees. Nor is the Court suggesting that Plaintiffs' counsel and  
the Commissioner consciously sought to shift the responsibility to pay for these attorneys' fees to Plaintiff.  
Nonetheless, the resulting situation has effectively done so.