

1 JOHN C. BOYDEN, ESQ.
(SBN 3917)
2 ERICKSON, THORPE & SWAINSTON, LTD.
P.O. Box 3559
3 Reno, NV 89505
(775) 786-3930
4 Attorneys for Plaintiff

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IN THE UNITED STATES DISTRICT COURT

8

DISTRICT OF NEVADA

9

10 TRACY M. BLAKSTAD

11 Plaintiff,

CASE NO: 2:15-CV-00697-RFB-VCF

12

v.

13

14 CAROLYN W. COLVIN
Acting Commissioner of
Social Security,

15

Defendant.

16

_____ /

17

STIPULATED MOTION FOR EAJA FEES

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Plaintiff, by and through her counsel of record, JOHN C. BOYDEN, ESQ., of the law firm of ERICKSON, THORPE & SWAINSTON, hereby submits its Motion for EAJA Fees. This Motion is made and based upon the documents and pleadings on file herein.

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DATED this 19th day of May, 2016.

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ERICKSON, THORPE & SWAINSTON, LTD.

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BY: /s John C. Boyden
JOHN C. BOYDEN, ESQ.
Attorneys for Plaintiff

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3 **POINTS AND AUTHORITIES**
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5 Plaintiff's counsel has incurred attorneys' fees in the amount of \$5822.57 for Linda Ziskin,
6 Esq.,¹ and the amount of \$1008.48 for John C. Boyden, Esq., in preparation of the Motion for
7 Remand, for a total of \$6831.05, regarding the above-referenced matter. Accordingly, the time
8 sheets detailing such hours are attached. However, the parties have conferred, and have stipulated
9 to a total EAJA fee of **\$5450.00**. This amount satisfies all claims to EAJA fees in this matter. In
10 addition, costs (filing fee), pursuant to 28 U.S.C. § 2412(a)(2), have been incurred in the amount of
11 **\$400.00**. (See Docket #1; attached time sheet of John C. Boyden).
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13

14 To satisfy the requirements of the Equal Access to Justice Act, Plaintiff alleges that the
15 position of Defendant was not substantially justified; that Plaintiff had a net worth of less than two
16 million dollars at the time this civil action was filed; that Plaintiff's attorneys have expended
17 approximately 36 hours (see attached time records) in connection with this matter, that the current
18 EAJA hourly rate, as adjusted for inflation, is \$190.28 (based on the 2015-16 CPI-U approved by
19 the 9th Circuit; see Memorandum, available on the 9th Circuit website), that Plaintiff's attorneys have
20 incurred costs and expenses which are compensable under the EAJA in an amount equal to or greater
21 than the amount stipulated to be awarded; and that Plaintiff is entitled to an award of the full amount
22 of fees, costs, and expenses requested.
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25 Therefore, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and the stipulated
26 agreement of the parties, the Court should award these attorneys' fees (**\$5450.00**) and costs
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¹ Attorney Ziskin is licensed in Oregon and California, and practices as a contract associate to Attorney Boyden.

1 (\$400.00) to Plaintiff. Unless there is outstanding federal debt, pursuant to *Astrue v. Ratliff*, 130
2 S.Ct. 2521 (2010), and the assignment contained in the attached attorney-client fee agreement, the
3 check should be made payable to and mailed to Plaintiff's attorney, John C. Boyden, Esq., of
4 ERICKSON, THORPE & SWAINSTON, LTD., at the address above. (See attached fee agreement
5 and addendum containing assignment of fee).
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10 DATED this 19th day of May, 2016.
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13
14 BY: /s John C. Boyden
15 JOHN C. BOYDEN, ESQ.
16 Attorney for Plaintiff
17 Erickson, Thorpe & Swainston, Ltd.

18 BY: /s April A. Alongi
19 (by email authorization)
20 Assistant Regional Counsel
21 Social Security Administration, Region IX
22 160 Spear Street, Suite 800
23 San Francisco, CA 94105
24 415-977-8954
25
26
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1
2 IN THE UNITED STATES DISTRICT COURT

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5 DISTRICT OF NEVADA

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8 TRACY M. BLAKSTAD

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10
11 Plaintiff,

CASE NO: 2:15-CV-00697-RFB-VCF

12
13
14 v.

[PROPOSED] ORDER GRANTING
ATTORNEYS' FEES PURSUANT
TO THE EQUAL ACCESS TO JUSTICE ACT

15
16 CAROLYN W. COLVIN,

17 Acting Commissioner of Social Security,

18 Defendant.
19
20

21 _____
22 Plaintiff, TRACY M. BLAKSTAD, by and through her attorneys of record, ERICKSON,
23 THORPE & SWAINSTON, LTD., and JOHN C. BOYDEN, ESQ., have petitioned the Court for
24 the granting of attorneys' fees under the EAJA, in the stipulated amount of \$5450.00, and costs
25 of \$400.00.

26 Based upon the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, Plaintiff's EAJA
27 petition, and the agreement of the parties, it is hereby ordered that EAJA attorney's fees shall be
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1 awarded to Plaintiff, unless there is an allowable offset under the Department of the Treasury's
2 Offset Program. See *Astrue v. Ratliff*, 130 S.Ct. 2521 (2010).

3
4 If it is determined that Plaintiff's EAJA fees are not subject to any offset allowed under
5 the Department of the Treasury's Offset Program, then the check for EAJA fees shall be made
6 payable to Plaintiff's attorney, John C. Boyden, based upon Plaintiff's assignment of these
7 amounts to Plaintiff's attorney.

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9
10 Any check for EAJA fees should be mailed to Plaintiff's attorney as follows:

11 JOHN C. BOYDEN
12 ERICKSON, THORPE & SWAINSTON, LTD.
13 P.O. Box 3559
14 Reno, NV 89505

15 DATED this 26th day of May, 2016.

16
17 IT IS SO ORDERED:



18
19 HON. RICHARD F. BOULWARE, II
20 UNITED STATES DISTRICT JUDGE

21
22 PRESENTED BY:

23 /s/ John C. Boyden
24 JOHN C. BOYDEN, ESQ.
25 ERICKSON, THORPE & SWAINSTON, LTD.
26 Of Attorneys for Plaintiff
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AGREEMENT BETWEEN CLIENT AND ATTORNEY FOR EMPLOYMENT
OF ATTORNEY AS SOCIAL SECURITY DISABILITY REPRESENTATIVE

On the date indicated below, CLIENT agrees as follows:

1. **RETENTION OF ATTORNEY**

To employ JOHN C. BOYDEN, ESQ., (ATTORNEY) to represent CLIENT before the Social Security Administration (SSA) in CLIENT'S disability case. If CLIENT wins at any administrative level through the first administrative law judge (ALJ) decision after the date of this agreement, CLIENT agrees that the attorney fee will be the lesser of twenty-five percent (25%) of all my past due benefits awarded to CLIENT, or the dollar amount established pursuant to 42 U.S.C. 406(a)(2)(A), which is currently \$6,000.00, but may be increased from time to time by the Commissioner of Social Security. CLIENT understands that ATTORNEY has the right to seek administrative review to increase the amount of the fee set under the preceding sentence of this agreement; but if that happens, ATTORNEY will not ask for a fee of more than 25% of the total back benefits awarded in my case. If CLIENT receives both social security disability and SSI benefits, CLIENT understands that the total fee will not be more than 25% of all past due benefits, or no more than the limit set by 42 U.S.C. 460(b)(2)(A). CLIENT understands that if CLIENT does not win benefits that ATTORNEY gets no fee. All fees under this agreement are subject to approval or review by the Social Security Administration.

2. **SCOPE OF REPRESENTATION**

CLIENT understands that ATTORNEY does not represent CLIENT in any other public or private claim related to my disability, or with any other government agency or any insurance company unless separate arrangements, including a separate contract, have been made for representation on any other claim. Attorney is under no obligation to take any appeal from any order or decision in this case, and the timely filing of any appeal is the responsibility of CLIENT and not the ATTORNEY.

3. **FEDERAL COURT**

If the ATTORNEY represents CLIENT in an appeal to Federal Court, CLIENT agrees that ATTORNEY may petition for fees and costs in addition to those provided for in this agreement under the Equal Access to Justice Act or any other legal basis. This will not result in additional fees and costs being charged to the CLIENT.

4. **MISCELLANEOUS**

Attorney is entitled to a reasonable fee notwithstanding that CLIENT may discharge or obtain a substitute attorney before the ATTORNEY has completed the services by which he is hereby employed. ATTORNEY makes no warranties as to the successful termination of this cause of action, and all expressions made by ATTORNEY relative thereto are matters of ATTORNEY'S opinion only. CLIENT has not been promised that CLIENT will win.

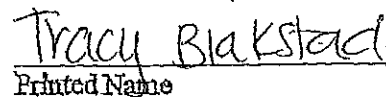
This agreement comprises the entire contract between ATTORNEY and CLIENT.

I accept and approve this agreement:

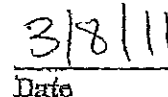


John C. Boyden, ESQ.
Primary Attorney
Disability Action Advocates, LLC


CLAIMANT SIGNATURE


Printed Name

Co-Representative


Date

**ADDENDUM TO AGREEMENT BETWEEN CLIENT
AND ATTORNEY FOR EMPLOYMENT OF ATTORNEY
AS SOCIAL SECURITY DISABILITY REPRESENTATIVE**

In addendum to my present Fee Agreement with Disability Action Advocates, I agree, as follows:

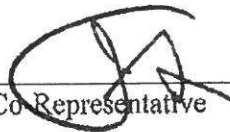
1) Federal Court. I understand that if my representative appeals my case to Federal Court that my representative (an attorney) may petition for fees and costs in addition to those provided for in this agreement under the Equal Access to Justice Act or any other legal basis. I agree that any fees awarded in Federal Court are not mine, and are hereby assigned and transferred to my attorney for the work completed on this case, and should be paid directly to my attorney as their fee.

I understand there is a chance the EAJA fee may be taxable to me.

I accept and approve this agreement.



John C. Boyden, Esq.



Co-Representative



Claimant Signature

John C. Boyden
Co-Representative

JOSEPH DITA III
Printed Name of Co-Rep.

TRACY BLAKSTAD
Printed Name

Printed Name of Co-Representative

Date

TIMESHEET

Date	Activity	Time
4/6/15	email discussion w/ rep re: potential fed ct case/new records	.3
4/14/15	review ALJ decision; rvw file and new evidence; eval for fed ct.	1.8
5/15/15	review Complaint and associated filings	.2
10/8/15	review Answer	.1
10/13/15	rvw ct order	.1
11/23/15	inspect transcript	.1
12/2/15	read, outline and annotate ALJ decision; identify issues	2.4
12/3/15	read transcript; annotate; medical research	4.9
12/4/15	finish reading transcript; begin opening portions of brief; legal research	4.5
12/7/15	draft arguments; continue legal research	5.9
12/8/15	continue writing arguments	4.7
12/9/15	finish args; edit, finalize and file brief	3.8
2/4/16	rvw proposed stip remand terms; review brief; confer with lead counsel (one atty's time charged)	.6
2/8/16	finalize stip remand terms; rvw filed stip remand	.2
2/19/16	rvw court order of remand; docket for fees	.1
5/5/16	prepare timesheet and motion; review and adjust Boyden time sheet	.9
	total hours atty Ziskin	30.6
	30.6 @ \$190.28 ¹	\$5822.57
	Total EAJA fees requested for J. Boyden (see attached)	\$1,008.48
	Total EAJA request both attorneys	<u>\$6831.05</u>

¹ EAJA rates pursuant to 9th Cir. website memorandum/*Thangaraja*.


**ERICKSON, THORPE &
SWAINSTON, LTD.**
ATTORNEYS AT LAW
**99 West Arroyo Street
Reno, Nevada 89509**
mailing address:
**P.O. Box 3559
Reno, Nevada 89505**
**telephone: 775.786.3930
facsimile: 775.786.4160**
Tax ID#: 88-0132965

May 6, 2016

Re: *Blakstad v. Colvin*
Client: *Tracy M. Blakstad*
Case No: *2:15-cv-00697-RFB-VCF*

Statement for Attorney's Fees and Costs Advanced

DATE	SERVICES RENDERED BY MR. BOYDEN	TIME	RATE	AMOUNT
4/15/15	Review and analysis of file, including medical records, hearing transcript and correspondence, for determination of fed court viability and in preparation for filing of Complaint	1.30	\$190.28	\$247.36
4/15/15	Telephone conference with client re: filing appeal and proceeding with case; explanation of legal issues and process	0.90	\$190.28	\$171.25
4/16/15	Preparation of Summons & Complaint, Certificate of Interested Parties	1.00	\$190.28	\$190.28
7/8/15	Preparation and review of Affidavit of Service and serve Summons & Complaint on three Social Security entities	0.40	\$190.28	\$76.11
7/20/15	Review and analysis of Notice of Association of Counsel	0.10	\$190.28	\$19.02
10/8/15	Review and analysis of Defendant's Answer to Complaint	0.10	\$190.28	\$19.02
10/13/15	Review and analysis of Court Order re: Review of Social Security Cases; docket deadlines	0.20	\$190.28	\$38.04
10/14/15	Inspection and review of administrative record, and forward same to L. Ziskin	0.20	\$190.28	\$38.04
12/9/15	Review and analysis of Motion to Remand; copy client with letter of explanation	0.40	\$190.28	\$76.11
2/19/16	Review and analysis of Report and Recommendation in Favor of Remand; letter to client with explanation; docket deadlines	0.40	\$190.28	\$76.11
2/19/16	Review and analysis of Court Order and Judgment; contact client with explanation of court findings and remand process	0.30	\$190.28	\$57.08
	TOTAL: Attorney J. Boyden	5.30		\$1,008.48
	Total hours 2015-2016: 5.3 @ \$190.28			\$1,008.48
	Total EAJA fees requested for J. Boyden			\$1,008.48

Re: Frye v. Colvin

Total Hours and Fees:

John Boyden, Esq. 5.30 hours as detailed above. \$ 1,008.48

Total Fees:.. \$ 1,008.48

Costs Advanced:

Filing fee for Complaint \$ 400.00

Postage (certified mail for service of Complaint) \$ 11.55

Postage (administrative record to L. Ziskin) \$ 21.00

Copies (757 pages - administrative record) \$ 75.70

Total Costs Advanced. \$ 508.25