IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

ROSS EUGENIO VARELA,

Plaintiff,

vs.

No. CV 17-0317 SMV

NANCY A. BERRYHILL, Acting Commissioner of Social Security,

Defendant.

ORDER AWARDING ATTORNEY FEES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(d)

THIS MATTER is before the Court on the Stipulated Motion for Award of Attorney Fees under the Equal Access to Justice Act, (Doc. 29), filed June 25, 2018, in which the parties stipulate to awarding Plaintiff EAJA fees in the amount of \$5,000.00.

IT IS THEREFORE ORDERED that Plaintiff be awarded \$5,000.00 in attorney

fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). See Astrue v. Ratliff, 560

U.S. 586, 591–93 (2010) (providing EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED that if Plaintiff's counsel receives attorney fees under both

the EAJA and 42 U.S.C. § 406(b), Section 206(b) of the Social Security Act, Plaintiff's counsel

shall refund the smaller award to Plaintiff pursuant to Weakley v. Bowen, 803 F.2d 575, 580

(10th Cir. 1986).

IT IS SO ORDERED.

STEPHAN M. VIDMAR United States Magistrate Judge Presiding by Consent

Submitted by:

s/ Francesca J. MacDowell Francesca J. MacDowell Attorney for Plaintiff

Approved by email on June 25, 2018 by:

Kathryn C. Bostwick, Special AUSA Attorney for Commissioner