

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

LESLEE MARIE LOBATO

Plaintiff,

v.

No. 17-cv-907-KRS

NANCY A. BERRYHILL,
Acting Commissioner of the
Social Security Administration,

Defendant.


**ORDER FOR THE AWARD OF ATTORNEY FEES
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER comes before the Court upon Plaintiff’s Opposed Motion for Attorney Fees Pursuant to the Equal Access to Justice Act (hereinafter “Opposed Motion”), (Doc. 24), filed February 13, 2019, and Supplemental Motion in Support of Attorney Fees Pursuant to the Equal Access to Justice Act (hereinafter “Supplemental Motion”), (Doc. 30), filed April 10, 2019. The Court, having granted in part Plaintiff’s Opposed Motion in an order entered April 4, 2019, (Doc. 29), and having considered Defendant’s Response to Plaintiff’s Supplemental Motion, (Doc. 31), wherein the Commissioner states that she takes no position on the motion, **FINDS** that Plaintiff’s Supplemental Motion is well-taken and should be **GRANTED**.

IT IS, THEREFORE, ORDERED that Plaintiff’s Supplemental Motion is **GRANTED** and **Plaintiff is awarded \$ 6,809.10 in attorney fees** pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). *See Astrue v. Ratliff*, 560 U.S. 586, 591-93 (2010) (EAJA fees are paid to the prevailing party, not the attorney). Payment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to EAJA fees in

connection with this action. The parties further agree that the EAJA award is without prejudice to Plaintiff's attorney's right to seek attorney fees pursuant to 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1) (2006).

IT IS FURTHER ORDERED that, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(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).



KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE