

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

JAMAL BACA,

Plaintiff,

v.

No. 2:16-cv-00228-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 the Parties' Stipulation to Award of Attorney Fees Under the Equal Access to Justice Act (Doc. 29) (hereinafter "Motion"), filed July 25, 2017. The Court, being fully advised in the premises, **FINDS** that the motion is well-taken and should be **GRANTED**.

IT IS, THEREFORE, ORDERED that the motion is **GRANTED** and **Plaintiff is awarded \$ 5,000.00 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).

IT IS FURTHER ORDERED that Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act (Doc. 28), filed July 10, 2017, is hereby **DISMISSED as MOOT**.



KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE