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3 state what weight each opinion is entitled and 3) re-evaluate Plaintiff’s residual functional
4 capacity.” Docket # 7. Since Plaintiff did not oppose, this Court granted the Commissioner’s
5 request, and Judgment of dismissal was entered on December 27, 2006. Docket # 9.

6 On March 23, 2007, Plaintiff moved for attorney’s fees under Section 204 of the Equal
7 Access to Justice Act (“AEJA”), 28 U.S.C. § 2412. According to Plaintiff, since the present case
8 was remanded pursuant to sentence four of 42 U.S.C. §405(g), she is a “prevailing party” under
9 Section 204, and Shalala v. Schaefer, 509 U.S. 292, 296 (1993). She further provided an
10 itemized statement stating the actual time expended and the rate at which fees were computed
11 by her attorney. Docket # 10-2. The Commissioner objects to the computation of attorney’s fees
12 alleging they are unreasonable and excessive. Docket # 11.

13 **Standard of Review**

14 The EAJA “is a fee-shifting statute that creates a right to attorney’s fees in appropriate
15 civil actions against the United States...[i]t’s purpose is to ensure that individuals are not
16 deterred from seeking review of unjustified governmental action.” Perkins v. Astrue, 568 F.
17 Supp. 2d 102, 103 (D. Mass. 2008). Under Section 204 of the EAJA, “...a court may award
18 reasonable fees and expenses of attorneys ... to the prevailing party in any civil action brought
19 by or against the United States or any agency or any official of the United States acting in his
20 or her official capacity in any court having jurisdiction of such action.” 28 U.S.C. § 2412 (b).
21 It further provides, in relevant part, that “...a court shall award to a prevailing party other than
22 the United States fees and other expenses . . . incurred by that party in any civil action . . . ,
23 including proceedings for judicial review of agency action, brought by or against the United
24 States in any court having jurisdiction of that action, unless the court finds that the position of
25 the United States was substantially justified or that special circumstances make an award
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3 unjust.” Trinidad v. Secretary of HHS, 935 F.2d 13, 15 (1st Cir. 1991) (citing 28 U.S.C. §
4 2412(d)(1)(A)).

5 Once a claimant achieves “prevailing party” status, “the government can defeat a fee
6 award only by demonstrating that its position was ‘substantially justified’ or that ‘special
7 circumstances’ make an award unjust.” Trinidad, 935 F.2d at 15 (citations omitted). “If the
8 government can make neither showing, an award of fees to a prevailing party is ‘mandatory.’”
9 Id. (citations omitted).

10 The claimant must submit a fee application to the court “within thirty days of final
11 judgment in the action,”² accompanied by an itemized statement documenting the time
12 expended and the rate at which fees are computed.³ 28 U.S.C. § 2412 (d)(1)(B). Subsection
13 (d)(1)(B) further provides that “[t]he court, in its discretion, may reduce the amount to be
14 awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party
15 during the course of the proceedings engaged in conduct which unduly and unreasonably
16 protracted the final resolution of the matter in controversy.”

17 **Applicable Law and Analysis**

18 The Commissioner does not contest the timeliness of Plaintiff’s application, nor contend
19 either that its position was substantially justified or that an award would be unjust because of
20 special circumstances. Instead he posits that the charges are excessive, and should be reduced
21 accordingly. Docket # 11. According to the Commissioner, Plaintiff’s counsel’s arguments
22 played no role in the decision to remand the case. Docket # 11, p. 3. Specifically, he contends

23 ² A sentence four remand is treated as a final judgment for purposes of filing attorney fee
24 applications under EAJA. Santiago-Aybar v. Comm’r of Soc. Sec., 545 F. Supp. 2d 231, 234 (D.P.R.
25 2008).

26 ³ The claimant shall also “allege that the position of the United States was not substantially
justified,” and Plaintiff here acted accordingly.

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3 that at the time the request for remand was filed, Plaintiff's counsel had not set forth any
4 arguments regarding the ALJ's decision's alleged lack of substantial evidence. Id. at 4. The
5 Commissioner also avers that certain tasks by Plaintiff's counsel are unnecessary and
6 unjustified, and thus should be disallowed by this Court. In her reply, Plaintiff asserts that the
7 requested attorney's fees are reasonable and properly correlate to the time expended in the
8 preparation and litigation of the case.

9 As previously stated, Section 204 allows for "reasonable" attorney's fees. On this front,
10 the EAJA further provides that "...attorney fees shall not be awarded in excess of \$ 125 per hour
11 unless the court determines that an increase in the cost of living or a special factor, such as the
12 limited availability of qualified attorneys for the proceedings involved, justifies a higher fee..."
13 28 U.S.C. § 2414 (d)(2)(A)(ii). In the instant case, Plaintiff's request for attorney's fees is
14 calculated at the rate of \$ 125.00 per hour,⁴ reflecting the above-mentioned statutory maximum.

15 The First Circuit has held that "[w]hen fee-shifting is in prospect, 'district judges have
16 great discretion in deciding what claimed legal services should be compensated.'" United States
17 v. One Star Class Sloop Sailboat, 546 F.3d 26, 37 (1st Cir. Mass. 2008) (citing Brewster v.
18 Dukakis, 3 F.3d 488, 492 (1st Cir. 1993). Similarly, when dealing with a fee-shifting statute,
19 "courts typically ascertain reasonable attorneys' fees by means of the lodestar method." United
20 States v. One Star Class Sloop Sailboat, 546 F.3d 26, 38 (1st Cir. Mass. 2008) (citing Hensley
21 v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933 (1983). This entails "multiplying the number
22 of hours productively spent by a reasonable hourly rate." Id. (citing Torres-Rivera v.
23 O'Neill-Cancel, 524 F.3d 331, 336 (1st Cir. 2008). After determining the time reasonably

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26 ⁴ Plaintiff does not add the cost of living increases since the 1996 amendment rate. Thus the maximum hourly rate could be higher under certain circumstances.

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3 expended by the prevailing party’s counsel, the court must focus on the rates to be applied to
4 those hours. O’Neill-Cancel, 524 F.3d at 336-337.

5 Reasonable hourly rates “vary depending on the nature of the work, the locality in which
6 it is performed, the qualifications of the lawyers, and other criteria.” One Star Class, 546 F.3d
7 at 38. Thus “the prevailing market rates in the relevant community,” are an adequate starting
8 point. Id. at 40. On this front, “the rate that private counsel actually charges for her services,
9 while not conclusive, is a reliable indicium of market value.” Id. at 40. Therefore, court may use
10 “counsel’s standard rate, or the prevailing market rate in the forum, or a reasonable rate in
11 between.” Id. at 41.

12 After “the basic lodestar is calculated, the court may adjust it, up or down, to reflect other
13 considerations, such as the results obtained,” Id. at 38. (citing Coutin v. Young & Rubicam P.R.,
14 Inc., 124 F.3d 331, 337, n. 3 (1st Cir. 1997), and “the time and labor actually required for the
15 efficacious handling of the matter.” O’Neill-Cancel, 524 F.3d at 336. The court may also
16 adjust the award considering: (1) the time and labor required; (2) the novelty and difficulty of
17 the questions; (3) the skill requisite to perform the legal services properly; (4) the preclusion of
18 other employment by the attorney(s) due to acceptance of the case; (5) the customary fee; (6)
19 the nature of the fee (fixed or contingent); (7) the time limitations imposed by the client or the
20 circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation,
21 and ability of the attorney(s); (10) the “undesirability” of the case; (11) the nature and length
22 of the professional relationship with the client; and (12) the size of awards in similar cases.
23 Guillemard-Ginorio v. Contreras, 603 F. Supp. 2d 301, 310 (D.P.R. 2009) (citations omitted).

24 Furthermore, in analyzing the “number of hours productively spent, the court should
25 ‘eliminate time that was unreasonably, unnecessarily, or inefficiently devoted to the case’ and
26 may, under appropriate circumstances, ‘disallow time spent in litigating failed claims.’” One

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3 Star Class, 546 F.3d at 38 (citations omitted); see also Torres-Rivera v. O’Neill-Cancel, 524
4 F.3d 331, 336 (1st Cir. 2008). Also, when a prevailing party achieves “only limited success, the
5 trial court may reduce the fee request to an amount that reasonably reflects that circumstance.”
6 Id. at 39. Accordingly, a party may be entitled to recover fees for time productively spent, but
7 not time invested in issues that are litigated profligately, unnecessarily, or without benefit to the
8 prevailing party. Id. Notwithstanding, courts may also reduce a prevailing party’s requested fees
9 even if the party has succeeded on all or substantially all of his claims, by eliminating specific
10 hours or reduce the overall fee to account for the prevailing party’s limited success. One Star
11 Class, 546 F.3d at 39-40 (citing Hensley, 461 U.S. at 436-37); O’Neill-Cancel, 524 F.3d at 336.
12 Furthermore, “[t]here is no rigid prescription that must be followed in effecting such a
13 reduction. Id. at 40.

14 In order to receive the proper award of attorney fees, a prevailing party must submit with
15 its motion evidence to support the number of hours and rates sought, including specific
16 information about number of hours, dates, and the nature of the work performed, and show that
17 the rates being sought are comparable to those in the community. Guillemard-Ginorio, 603 F.
18 Supp. 2d at 317 (citing Hensley, 461 U.S. 424, 433 (1983)). The Supreme Court has held that
19 “[w]here the documentation of hours is inadequate, the district court may reduce the award
20 accordingly.”

21 Considering the foregoing, in determining whether the requested attorney’s fees are
22 reasonable, this Court must employ the lodestar method. In so doing, we first note that hourly
23 rates depend on those prevailing in the community by lawyers with comparable skill, experience
24 and reputation, as well as whether the time was invested in-court or out-of-court.
25 Guillemard-Ginorio, 603 F. Supp. 2d at 311-312 (citing Ciudadana v. Gracia-Morales, 359 F.
26 Supp.2d 38, 45 (D.P.R. 2005) (finding rates of \$ 200.00 an hour for out-of- court work and \$

225.00 an hour in-court work justified); International College of Business and Technology, Inc., 356 F. Supp.2d 92, 96-97 (D.P.R. 2005) (finding rate of \$ 190 and \$ 125 to be appropriate); Top Entertainment Corp. v. Torrejon, 349 F. Supp.2d 248, 253-255 (D.P.R. 2004) (finding hourly rate of \$ 125.00 reasonable); Anywhere, Inc. v. Romero, 344 F. Supp.2d 345, 348 (D.P.R. 2004) (finding that an hourly rate of \$ 250.00 for the more experienced attorney and of \$ 150.00 for the less experienced attorneys reasonable); Vieques Conservation and Historical Trust, Inc. v. Martinez, 313 F.Supp.2d 40, 47 (D.P.R. 2004) (reducing attorney’s hourly rate to \$ 225 to equate with local rates); Rodriguez-Sostre v. Municipio de Canovanas, 251 F. Supp.2d 1055, 1058 (D.P.R. 2003) (awarding \$ 225.00 to \$ 250.00 for in-court time and \$ 200.00 for out-of-court time)). In its motion for attorney’s fees, Plaintiff’s counsel provides the hours, dates, and the nature of the work performed. He further notes that the EAJA provides a maximum \$125.00 hourly rate. In light of the foregoing, and the above-cited case law, this Court finds that the \$125 hourly fee is reasonable.

Upon reviewing the record, this Court notes that present counsel’s only court submission was the complaint, which is “boilerplate” in this type of case. See Trinidad, 935 F.2d at 18. As in Trinidad, the remaining time was expended on ministerial tasks, since counsel’s work prior to the remand order entailed little if any substantive analysis, and there were no court appearances. Moreover, albeit Plaintiff is a “prevailing party” because of remand under sentence four of 42 U.S.C. §405(g), the case was remanded solely based on the Commissioner’s request, not Plaintiff’s counsel’s efforts aside from filing the appeal. Therefore, the time and labor actually required for the efficacious handling of the matter was minimum. However, this Court also notes that Plaintiff only requests for attorney’s fees for 13 hours of rendered services, which is not excessive or unreasonable in this type of case.

Based on the foregoing, this Court will reduce the fees awarded for the following item:

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| 8/22/2006 | Study & Analysis of the prior decisions on the present case of the Commissioner and of all documents, reports and other medical evidence brought to the office so as to determine which areas needed clarification. | 2.00 x \$125.00 = \$250.00 | Reduced to 1.00 x \$125.00 = \$125.00 |
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Specifically, we find that the amount of time invested in examining the Commissioner’s prior decision, and accompanying documents is unreasonable, especially compared to Plaintiff’s counsel itemization of five hours for the study and analysis of the 400-page transcript. However, the rest of Plaintiff’s counsel’s services are reasonably calculated. As a result, Plaintiff’s counsel is awarded \$1,603.00 in attorney’s fees.

Conclusion

Based on the foregoing, Plaintiff’s motion for attorney’s fees is **GRANTED in part and DENIED in part**, and Plaintiff’s counsel is awarded \$1,603.00 in attorney’s fees.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 11th day of March, 2010.

S/ Salvador E. Casellas
SALVADOR E. CASELLAS
 United States District Judge