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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD COPE,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of the Social Security
Administration, ¹

Defendant.

CASE NO. 2:15-cv-01744 JRC

ORDER ON PLAINTIFF'S
CONTESTED MOTION FOR
ATTORNEY'S FEES
PURSUANT TO THE EQUAL
ACCESS TO JUSTICE ACT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge and Consent Form, Dkt. 3; Consent to Proceed Before a United States Magistrate Judge, Dkt. 4). This matter comes before the Court on plaintiff's contested

¹ Nancy A. Berryhill is now the Acting Commissioner of Social Security. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Nancy A. Berryhill is substituted for Acting Commissioner Carolyn W. Colvin as the defendant in this suit. No further action needs to be taken pursuant to the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 motion for attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412
2 (hereinafter "EAJA"). *See* Dkts. 42, 43, 44, 45.

3 Subsequent to plaintiff's success at obtaining a reversal of the decision of the
4 Social Security Administration, defendant Commissioner challenged plaintiff's request
5 for statutory attorneys' fees on the grounds that the number of hours requested was
6 excessive and that "plaintiff failed to prevail on the central issue, namely ALJ bias." Dkt.
7 44, pp. 2-3.

8 Plaintiff presented a novel argument in support of his request for reversal and
9 remand of the ALJ's decision denying him Social Security disability benefits. The Court
10 "paid particular attention to [plaintiff's] argument," which it construed as that the "ALJ is
11 regularly denying benefits to those persons wh[o] claimed mental disabilities [and] who
12 have been found disabled by the Washington State Department of Social and Health
13 Services." Dkt. 40, pp. 18, 20. Regarding this contention, this Court concluded that
14 "plaintiff has not demonstrated that his sample is random, unbiased and statistically
15 significant." *Id.* at 21 (citations omitted). This conclusion suggests that more work needed
16 to be completed on this argument of bias in order to pursue it adequately, in contrast to
17 defendant's argument that plaintiff's attorney's hours incurred were excessive. However,
18 the fact that plaintiff's attorney declares that the number of attorney hours incurred on
19 this case is approximately 150 hours, when fee petitions in (otherwise) comparable social
20 security cases often represent fees for 20-40 hours of attorney time, calls into question the
21 economic viability of pursuit of this argument on bias. Simply because the fees are
22 statutorily reimbursed for successful appeals of social security disability appeals does not
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1 mean that any argument that is presented, no matter how many hours, should be
2 developed on the tab of taxpayers. Especially where there are other viable arguments
3 which could lead to reversal and remand. Only fees reasonably incurred should be
4 awarded. Fees representing time spent pursuing novel arguments requiring more than five
5 times the average time spent on similar cases are not reasonable. The Court agrees that
6 the fee request is excessive.

7
8 Plaintiff already reduced his fee request by approximately a third. Therefore,
9 although the Court concludes that the resultant fee request should be reduced, it should be
10 reduced only by thirty percent, as opposed to the approximately seventy percent
11 reduction requested by defendant. Plaintiff should be reimbursed for seventy hours of
12 attorney time.

13 Therefore, plaintiff's motion for fees and expenses is granted in part pursuant to
14 the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA") in the amount of \$13,487.60
15 in fees, reflecting seventy attorney hours, at \$192.68 per hour. This still appears to be the
16 largest fee awarded by this Court for a social security appeal, by about twenty hours.

17 Defendant does not object to plaintiff's request for reimbursement for costs.
18 Therefore, it is further ORDERED that costs in the amount of \$400.00 are to be awarded
19 to plaintiff pursuant to 28 U.S.C. § 1920.

20 BACKGROUND and PROCEDURAL HISTORY

21
22 On November 2, 2016, Court issued an Order reversing and remanding this matter
23 for further consideration by the Administration. *See* Dkt. 40.

1 The Court concluded that the ALJ erred in evaluating the medical evidence. Had
2 the ALJ properly considered the medical evidence, the residual functional capacity
3 (“RFC”) may have included additional limitations (*see id.*, p. 2). The Court also
4 concluded that plaintiff failed to meet his burden of establishing that the ALJ
5 demonstrated a generalized pattern of bias against claimants like plaintiff (*see id.*). This
6 matter was reversed pursuant to sentence four of 42 U.S.C. § 405(g) for further
7 consideration due to the harmful error in the evaluation of the medical evidence (*see id.*).
8

9 Subsequently, plaintiff filed a motion for EAJA attorney’s fees, to which
10 defendant objected (*see Dkt. 44*). Defendant does not contest that plaintiff is entitled to
11 EAJA fees but does “object to the reasonableness of the attorney time requested because
12 it is excessive” (*id.*, p. 2). Plaintiff filed a reply (*see Dkt. 45*).

13 STANDARD OF REVIEW

14 In any action brought by or against the United States, the EAJA requires that "a
15 court shall award to a prevailing party other than the United States fees and other
16 expenses unless the court finds that the position of the United States was
17 substantially justified or that special circumstances make an award unjust." 28 U.S.C. §
18 2412(d)(1)(A).

19 According to the United States Supreme Court, “the fee applicant bears the burden
20 of establishing entitlement to an award and documenting the appropriate hours
21 expended.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The government has the
22 burden of proving that its positions overall were substantially justified. *Hardisty v.*
23 *Astrue*, 592 F.3d 1072, 1076 n.2 (9th Cir. 2010), *cert. denied*, 179 L.Ed.2d 1215, 2011
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1 U.S. LEXIS 3726 (U.S. 2011) (*citing Flores v. Shalala*, 49 F.3d 562, 569-70 (9th Cir.
2 1995)). Further, if the government disputes the reasonableness of the fee, then it also
3 “has a burden of rebuttal that requires submission of evidence to the district court
4 challenging the accuracy and reasonableness of the hours charged or the facts asserted by
5 the prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392,
6 1397-98 (9th Cir. 1992) (citations omitted). The Court has an independent duty to review
7 the submitted itemized log of hours to determine the reasonableness of hours requested in
8 each case. *See Hensley, supra*, 461 U.S. at 433, 436-37.

10 DISCUSSION

11 In this matter, plaintiff clearly was the prevailing party because he received a
12 remand of the matter to the administration for further consideration (*see* Order on
13 Complaint, Dkt. 40). In order to award a prevailing plaintiff attorney fees, the EAJA also
14 requires a finding that the position of the United States was not substantially justified. 28
15 U.S.C. § 2412(d)(1)(B). Defendant conceded that the government’s position was not
16 substantially justified, and argues that plaintiff’s recovery for attorneys’ fees should be
17 reduced, not eliminated. *See* Defendant’s Response to Plaintiff’s EAJA Motion for Fees,
18 Dkt. 44, p. 2.

19 The Court agrees with defendant’s concession (*see id.*). This conclusion is based
20 on a review of the relevant record, including the government’s administrative and
21 litigation positions regarding the evaluation of the medical evidence. For these reasons,
22 and based on a review of the relevant record, the Court concludes that the government’s
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1 position in this matter as a whole was not substantially justified. *See Guitierrez v.*
2 *Barnhart*, 274 F.3d 1255, 1258-59 (9th Cir. 2001) (citations omitted).

3 The undersigned also concludes that no special circumstances make an award of
4 attorney fees unjust. See 28 U.S.C. § 2412(d)(1)(A).

5 Therefore, all that remains is to determine the amount of a reasonable fee. *See* 28
6 U.S.C. § 2412(b); *Hensley, supra*, 461 U.S. at 433, 436-37; *see also Roberts v. Astrue*,
7 2011 U.S. Dist. LEXIS 80907 (W.D. Wash. 2011), *adopted by* 2011 U.S. Dist. LEXIS
8 80913 (W.D. Wash. 2011).

9
10 Once the court determines that a plaintiff is entitled to a reasonable fee, “the
11 amount of the fee, of course, must be determined on the facts of each case.” *Hensley*,
12 *supra*, 461 U.S. at 429, 433 n.7. According to the U.S. Supreme Court, “the most useful
13 starting point for determining the amount of a reasonable fee is the number of hours
14 reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley*,
15 *supra*, 461 U.S. at 433. Here, defendant challenges the number of hours expended on this
16 matter. *See* Dkt. 44.

17 Here, plaintiff prevailed on the single claim of whether or not the denial of his
18 social security application was based on substantial evidence in the record as a whole and
19 not based on harmful legal error. When the case involves a “common core of facts or will
20 be based on related legal theories the district court should focus on the
21 significance of the overall relief obtained by the plaintiff in relation to the hours
22 reasonably expended on the litigation.” *See Hensley, supra*, 461 U.S. at 435. The
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1 Supreme Court concluded that where a plaintiff “has obtained excellent results, his
2 attorney should recover a fully compensatory fee.” *Id.*

3 The Court concludes that plaintiff’s results here were excellent. Although plaintiff
4 did not receive a remand with a direction to award benefits, the circumstances allowing
5 for such a result do not exist often in social security appeals before this Court. Plaintiff
6 obtained a new hearing and a new decision following remand of this matter. Although
7 defendant suggests that plaintiff’s “limited success” is demonstrated by the fact that
8 plaintiff did not achieve success on the merits based on the argument “that consumed so
9 much of his attorney’s time,” the Court does not agree. Dkt. 44, p. 4. Simply because the
10 Court finds one argument persuasive, and another argument unpersuasive, does not mean
11 that the plaintiff has not obtained excellent results. Here, the Court discussed the ALJ’s
12 error when reviewing the medical evidence and concluded that all of the medical
13 evidence should be reevaluated, as should plaintiff’s testimony. Dkt. 40, pp. 12-15.
14 Defendant’s contention that plaintiff achieved limited success is unpersuasive.

16 Because the Court concludes based on a review of the relevant evidence that the
17 plaintiff here obtained excellent results, the Court will look to “the hours reasonably
18 expended on the litigation,” which, when combined with the reasonable hourly rate,
19 encompasses the lodestar. *See Hensley, supra*, 461 U.S. at 435. Other relevant factors
20 identified in *Johnson, supra*, 488 F.2d at 717-19 “usually are subsumed within the initial
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1 calculation of hours reasonably expended at a reasonably hourly rate.”² *See Hensley*,
2 *supra*, 461 U.S. at 434 n.9 (other citation omitted); *see also Kerr v. Screen Extras Guild*,
3 *Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) (adopting *Johnson* factors); *Stevens v. Safeway*,
4 2008 U.S. Dist. LEXIS 17119 at *40-*41 (C.D. Cal. 2008) (“A court employing th[e]
5 *Hensley* lodestar method of the hours reasonably expended multiplied by a reasonable
6 hourly rate] to determine the amount of an attorneys’ fees award does not directly
7 consider the multi-factor test developed in *Johnson*, *supra*, 488 F.2d at 717-19, and *Kerr*,
8 *supra*, 526 F.2d at 69-70”).

9
10 As defendant does not object to plaintiff’s requested hourly rate for his attorney’s
11 fees request, the gravamen of defendant’s contentions here concern the number of hours
12 reasonably expended on the litigation (*see* Dkt. 44). *See also Hensley, supra*, 461 U.S. at
13 433.

14 Defendant first contends that addition errors in plaintiff’s request “suggest that
15 considerably less than 3 hours were spent preparing the motion, and that hours were
16 estimated rather than actually expended and recorded.” Dkt. 44, p. 3. Plaintiff responds in
17 a footnote that “the arithmetic mistake occurred because counsel for plaintiff
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21 ² The *Johnson* factors are: (1) The time and labor involved; (2) the novelty and difficulty of the questions
22 involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the
23 attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time
24 limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the
experience, reputation, and ability of the attorneys; (10); the ‘undesirability’ of the case; (11) the nature and length
of the professional relationship with the client; and (12) awards in similar cases. *Johnson, supra*, 488 F.2d at 717-
19) (citations omitted); *see also United States v. Guerette*, 2011 U.S. Dist. LEXIS 21457 at *4-*5 (D. Hi 2011)
 (“factors one through five have been subsumed” in the determination of a number of hours reasonably expended
multiplied by a reasonable rate); *but see City of Burlington v. Dague*, 505 U.S. 557 (1992) (rejecting factor 6 of
contingent nature of the fee).

1 substantially reduced the amount claimed from the more than 150 hours actually spent on
2 this case.” Dkt. 45, p. 1 n.1. The Court concludes that the presence of an arithmetic
3 mistake does not mean that the hours were unreasonable or insufficiently documented.

4 Defendant also argues that plaintiff “failed to prevail on the central issue of his
5 appeal, namely ALJ bias.” Dkt. 44, p. 3. Plaintiff disputes that the bias issue was the
6 “central issue,” but regardless, the Court has concluded that plaintiff obtained excellent
7 results. The Court will not divide up briefs by their respective arguments, and award fees
8 only for time incurred on successful arguments. As noted by defendant, “the most critical
9 factor is the degree of success obtained.” *Id.* at 4 (quoting *Hensley*, 461 U.S. at 436).

10
11 However, the Court finds persuasive defendant’s argument that plaintiff’s attorney
12 filed over 1,000 pages of material, including 54 ALJ decisions, and the fact that this
13 attorney “filed nearly identical materials in another nine cases in this district claiming
14 identical bias allegations against two other ALJs in the Seattle Hearing Office
15 should have produced certain efficiencies, which are not reflected in the number of hours
16 claimed.” Dkt. 44, pp. 3-4. The Court also notes defendant’s argument that the taxpayer
17 should not be penalized for counsel’s increasing the size of the administrative record by
18 more than 1,600 pages, his claim of needing time to review all of these pages, and his
19 novel arguments regarding ALJ bias that achieved nothing.” *Id.* at p. 6 (citing *Hensley*,
20 461 U.S. at 434 (noting in parenthetical that “hours that are not properly billed to one’s
21 client also are not properly billed to one’s adversary pursuant to statutory authority)
22 (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 , 552 (2010) (“[A] ‘reasonable’
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1 fee is a fee that is sufficient to induce a capable attorney to undertake the representation
2 of a meritorious case”)).

3 Plaintiff presented a novel argument in support of his request for reversal and
4 remand of the ALJ’s decision denying him Social Security disability benefits. The Court
5 construed plaintiff’s argument as that the “ALJ is regularly denying benefits to those
6 persons wh[o] claimed mental disabilities [and] who have been found disabled by the
7 Washington State Department of Social and Health Services.” Dkt. 40, p. 20. Among
8 other conclusions, this Court concluded that “plaintiff has not demonstrated that his
9 sample is random, unbiased and statistically significant.” *Id.* at 21 (citations omitted). This
10 conclusion suggests that more work needed to be completed on this argument in order to
11 pursue it adequately, in contrast to defendant’s argument that plaintiff’s attorney’s hours
12 incurred were excessive. However, the fact that plaintiff’s attorney declares that the
13 number of attorney hours incurred on this case is approximately 150 hours (while
14 requesting reimbursement for only 100 hours), when fee petitions in
15 otherwise comparable social security cases often represent fees for 20-40 total hours of
16 attorney time, calls into question the economic viability of pursuit of this argument on
17 bias. Would a client paying his own fees pay an attorney for these many hours to pursue
18 this argument? *See Hensley*, 461 U.S. at 434 (“hours that are not properly billed to one’s
19 client also are not properly billed to one’s adversary pursuant to statutory authority)
20 (quoting *Copeland v. Marshall*, 205 U.S. App. D.C. 390, 401 (1980) (en banc)). Simply
21 because the fees are statutorily reimbursed for successful appeals of social security
22 disability appeals does not mean that any argument that is presented, no matter how many
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1 hours necessarily must be incurred to pursue adequately said argument, should be
2 developed on the tab of taxpayers.

3 Generally, when a claimant successfully appeals a social security disability
4 determination and receives a remand of the matter, the claimant has achieved excellent
5 results, leading to full reimbursement of all attorney fees incurred. It typically does not
6 matter that an attorney may have put forth various arguments to support the request for
7 remand, and may only have achieved success on one of the arguments. However, only
8 fees reasonably incurred should be awarded. Fees representing time spent pursuing novel,
9 and unsuccessful, arguments requiring about five times the average time spent on similar
10 cases are not reasonable. The Court agrees that the fee request is excessive.
11

12 There is no “*de facto* policy limiting Social Security claimants to 20 to 40 hours of
13 attorney time in ‘routine’ cases.” *Costa v. Comm’r of Soc. Sec. Admin.*, 690 F.3d 1132,
14 1136 (9th Cir. 2012). However, “district courts may consider [the] fact [that 20 to 40
15 hours is the range most often requested and granted in Social Security cases] in
16 determining the reasonableness of a specific fee request” *Id.* (citing *Patterson v.*
17 *Apfel*, 99 Fed. Supp. 2d 1212, 1214 n.2 (C.D. Cal. 2000) (collecting cases)).

18 Based on the specific facts of this case, the itemized hourly fee petition, and the
19 particular briefs herein, the Court concludes that some of the hours incurred appear to be
20 excessive.
21

22 Before concluding that the fees should be reduced, the Court reviewed other
23 Social Security disability cases previously before this Court. *See Johnson*, 488 F.2d at
24 717-19 (noting that awards in similar cases is one of the relevant factors when

1 determining the amount of a reasonable attorney's fee). While over 45 hours were
2 incurred by plaintiff's attorney in the preparation of the Opening Brief in the case herein,
3 it is not uncommon for the Court to receive a fee petition totaling 18-40 hours for an
4 entire social security case, with sometimes as few as 7-12 hours incurred drafting the
5 Opening Brief (*see, e.g.*, Case No. 15cv360, Dkt. 20-2, p. 3 (7.6 hours for file review and
6 drafting of the Opening Brief, 15.6 hours for the entire case); Case No. 14cv5825, Dkt.
7 17-3, p. 1 (12.5 hours for file review and drafting of the Opening Brief, 22.7 hours for the
8 entire case); Case No. 15cv929, Dkt. 19-2, pp. 1-2 (11.6 hours for file review and
9 drafting of the Opening Brief, 18.3 hours for the entire case); Case No. 15cv5006, Dkt.
10 19-1, p. 1 (11.9 hours for file review and drafting of the Opening Brief, 20.1 hours for the
11 entire case); Case No. 14cv5943, Dkt. 24-1, p. 1 (10.2 hours for file review and drafting
12 of the Opening Brief, 21.9 hours for the entire case); Case No. 14cv5772, Dkt. 20-3, pp.
13 1-2 (13 hours for file review and drafting of the Opening Brief, 25.1 hours for the entire
14 case); Case No. 14cv6011, Dkt. 32-1, p. 1 (18.8 hours for file review and drafting of the
15 Opening Brief, 27.6 hours for the entire case); Case No. 15cv187, Dkt. 17-3, p. 1 (23.1
16 hours for file review and drafting of the Opening Brief, 33.8 hours for the entire case);
17 Case No. 14cv5793, Dkt. 23-1, p. 1 (18.75 hours for file review and drafting of the
18 Opening Brief, 32.25 hours for the entire case); Case No. 15cv5198, Dkt. 26-2, p. 1 (13.8
19 hours for file review and drafting of the Opening Brief, 38.57 for the entire case,
20 including a Fed. R. Civ. P. 59(e) response); Case No. 15cv861, Dkt. 19-2, p. 1 (21.1
21 hours for file review and drafting of the Opening Brief, 38.5 hours for the entire case);
22 Case No. 15cv5211, Dkt. 25-3, p. 1 (23.3 hours for file review and drafting of the
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1 Opening Brief, 38.9 hours for the entire case); Case No. 15cv5352, Dkt. 17-2, p. 1 (17.6
2 hours for file review and drafting of the Opening Brief, 29.27 hours for the entire case);
3 Case No. 14cv6007, Dkt. 21-3, pp. 1-2 (14.1 hours for file review and drafting of the
4 Opening Brief, 24 hours for the entire case); Case No. 14cv5770, Dkt 22-3, pp. 1-2 (24.5
5 hours for file review and drafting of the Opening Brief, 31.8 hours for the entire case);
6 Case No. 14cv5754, Dkt. 24-3, pp. 1-2 (16.7 hours for file review and drafting of the
7 Opening Brief, 30.3 hours for the entire case); Case No. 15cv20, Dkt. 25-1, p. 4, 25-4, p.
8 1, 25-5, p. 1 (15.7 hours for file review and drafting of the Opening Brief, 27.9 hours for
9 the entire case); Case No. 14cv5865, Dkt. 23-2, p. 1 (20.4 hours for file review and
10 drafting of the Opening Brief, 25.9 hours for the entire case); Case No. 15cv5098, Dkt.
11 10-1, p. 4, Dkt. 26-3, p. 1, Dkt. 26-4, p. 1 (25.4 hours for file review and drafting of the
12 Opening Brief, and 38.9 hours for the entire case).

14 In this context, incurring more than 45 hours drafting the Opening Brief and
15 requesting reimbursement for 100 hours for the entire case, (while incurring 150 hours),
16 makes this fee petition the highest this Court has ever been presented with for a Social
17 Security case, and about twice as high as the largest previously presented for this type of
18 case.

19 The Court has reviewed the facts of this case. *See Hensley, supra*, 461 U.S. at 429,
20 433 n.7 (once the court determines that a plaintiff is entitled to a reasonable fee, “the
21 amount of the fee, of course, must be determined on the facts of each case”). Although
22 the Court does not find persuasive that in general there are “routine” social security
23 disability cases that should be handled in 20-40 hours, the Court has considered
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1 defendant's argument that in this particular case, the number of hours requested by
2 plaintiff is unreasonable. Because of the comparison to similar cases, the novelty of the
3 ALJ bias issue and the extremely large amount of hours incurred presenting this novel
4 argument, the Court concludes that the fee request is unreasonable, as are the number of
5 hours of attorney time incurred in this matter.

6 Plaintiff already reduced his fee request by approximately a third. Therefore,
7 although the Court concludes that the resultant fee request should be reduced, it should be
8 reduced only by thirty percent, as opposed to the approximately seventy percent
9 reduction requested by defendant. Plaintiff should be reimbursed for seventy hours of
10 attorney time. *See Hensley*, 461 U.S. at 436-37 (There is no precise rule or formula for
11 making these determinations: The district court may attempt to identify specific hours
12 that should be eliminated, or it may simply reduce the award"). Even that reduced
13 amount is substantially higher than most of the cases reviewed above.

14 Therefore, plaintiff's request for attorneys' fees representing attorney work should
15 be reduced by 30 hours, for the reasons discussed herein (calculated at the hourly rate of
16 \$192.68). The Court finds reasonable plaintiff's request for costs in the amount of
17 \$400.00
18

19 CONCLUSION

20 It is hereby ORDERED that plaintiff's motion for fees is granted in part pursuant
21 to the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA") in the amount of
22 \$13,487.60 in fees, reflecting seventy attorney hours, at \$192.68 per hour, pursuant to the
23 Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA").
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1 It is further ORDERED that costs in the amount of \$400.00 are awarded to
2 plaintiff pursuant to 28 U.S.C. § 1920.

3 The Acting Commissioner shall contact the Department of Treasury after the
4 Order for EAJA fees and expenses is entered to determine if the EAJA fees are subject to
5 any offset. If it is determined that plaintiff's EAJA fees are not subject to any offset
6 allowed pursuant to the Department of the Treasury's Offset Program, then the EAJA
7 fees shall be awarded to plaintiff.

8 Although plaintiff requests direct payment to his attorney, defendant notes that
9 plaintiff "has not submitted proof of assignment of such fees to his attorney, [t]hus, any
10 fees awarded should be made payable to plaintiff." Dkt. 44, p. 7. Plaintiff does not
11 dispute this argument in his reply. If there is an offset, the remainder shall be made
12 payable to plaintiff, based on the practice of the Department of the Treasury (*see, e.g.*,
13 Case No. 2:15-cv-122, Dkt. 22, p. 4). Any check for EAJA fees and expenses shall be
14 mailed to plaintiff's counsel, William Rutzick, Esq., at Schroeter, Goldmark & Bender,
15 810 Third Avenue, Suite, 500, Seattle, WA 98104.

16 Dated this 10th day of May, 2017.

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19 J. Richard Creatura
20 United States Magistrate Judge