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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 RICHARD E. STEARNS,

10 Plaintiff,

11 v.

12 CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

13
14 Defendant.

CASE NO. 3:14-cv-05611 JRC

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

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16 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
17 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.
18 Magistrate Judge and Consent Form, Dkt. 5; Consent to Proceed Before a United States
19 Magistrate Judge, Dkt. 6). This matter comes before the Court on plaintiff's contested
20 motion for attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412
21 (hereinafter "EAJA") (*see* Dkt. 34; *see also* Dkts. 35, 36).

22 Subsequent to plaintiff's success at obtaining a reversal of the decision of the
23 Social Security Administration, defendant Commissioner challenged plaintiff's request
24

1 for statutory attorneys' fees on the grounds that the requested fees are unreasonable given
2 the circumstances of this case (*see* Response, Dkt. 35, p. 2 (*citing* 28 § U.S.C. 2412(b))).

3 After considering and reviewing the record, including plaintiff's Application for
4 Costs and Fees, and the attached time and expense sheet (*see* Dkt. 34), the excellent
5 results obtained by plaintiff's counsel but the large amount of hours requested in this
6 matter (46.4 attorney hours and 3.3 paralegal hours) relative to other social security cases,
7 the Court concludes that plaintiff has requested reimbursement for attorneys' fees that
8 were not reasonably expended on the litigation. Therefore, plaintiff's fees for preparation
9 of the Opening Brief should be reduced by 10 hours, for a total number of hours of 39.7,
10 which is less than the requested reduction by defendant of a reduction to 30 total hours.
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12 Plaintiff requests \$9,132.14 in total fees for the underlying litigation. Although the
13 3.3 paralegal hours reasonably were expended (\$330), the 46.4 attorney hours were not
14 reasonably expended. Plaintiff's request for attorneys' fees representing attorney work
15 for \$8,802.14, should be reduced by 10 hours (\$1,896.80) to \$6,905.34

16 Defendant does not object to plaintiff's request for \$27.13 in expenses, which shall
17 be granted. Plaintiff also requests 1.8 additional hours for the time incurred defending the
18 fee petition, which should be awarded at the 2016 rate of \$189.68, for an additional
19 \$341.42 in fees.

20 Therefore, plaintiff's motion for fees and expenses is granted pursuant to the
21 Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA") in the amount of \$7,576.76 in
22 attorneys' fees (which includes 3.3 hours of paralegal time) and \$27.13 for expenses.
23

1 “has a burden of rebuttal that requires submission of evidence to the district court
2 challenging the accuracy and reasonableness of the hours charged or the facts asserted by
3 the prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392,
4 1397-98 (9th Cir. 1992) (citations omitted). The Court has an independent duty to review
5 the submitted itemized log of hours to determine the reasonableness of hours requested in
6 each case. *See Hensley, supra*, 461 U.S. at 433, 436-37.

7 DISCUSSION

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9 In this matter, plaintiff clearly was the prevailing party because he received a
10 remand of the matter to the administration for further consideration (*see* Order on
11 Complaint, Dkt. 31). In order to award a prevailing plaintiff attorney fees, the EAJA also
12 requires a finding that the position of the United States was not substantially justified. 28
13 U.S.C. § 2412(d)(1)(B). Defendant conceded that the government’s position was not
14 substantially justified, and argues that plaintiff’s recovery for attorneys’ fees should be
15 reduced, not eliminated (*see* Defendant’s Response to Plaintiff’s EAJA Motion for Fees,
16 Dkt. 35, p. 2, 5).

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

1 The undersigned also concludes that no special circumstances make an award of
2 attorney fees unjust. See 28 U.S.C. § 2412(d)(1)(A). Therefore, all that remains is to
3 determine the amount of a reasonable fee. See 28 U.S.C. § 2412(b); *Hensley, supra*, 461
4 U.S. at 433, 436-37; see also *Roberts v. Astrue*, 2011 U.S. Dist. LEXIS 80907 (W.D.
5 Wash. 2011), adopted by 2011 U.S. Dist. LEXIS 80913 (W.D. Wash. 2011).

6 Once the court determines that a plaintiff is entitled to a reasonable fee, “the
7 amount of the fee, of course, must be determined on the facts of each case.” *Hensley*,
8 *supra*, 461 U.S. at 429, 433 n.7. According to the U.S. Supreme Court, “the most useful
9 starting point for determining the amount of a reasonable fee is the number of hours
10 reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley*,
11 *supra*, 461 U.S. at 433. Here, defendant challenges the number of hours expended on this
12 matter (see Dkt. 35, p. 2).

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

23 The Court concludes that plaintiff’s results here were excellent. Although plaintiff
24 did not receive a remand with a direction to award benefits, the circumstances allowing

1 for such a result do not exist often in social security appeals before this Court. Plaintiff
2 here obtained a new hearing and a new decision following remand of this matter.
3 Although defendant claims that plaintiff’s “limited success” also is demonstrated by the
4 fact that this Court “decided to address only one of Plaintiff’s arguments,” such is not the
5 case (Dkt. 35, p. 4). Simply because the Court chooses to conserve judicial resources and
6 discusses only one dispositive issue does not mean that the plaintiff has not obtained
7 excellent results. Here, the Court discussed the ALJ’s error when reviewing the medical
8 evidence and concluded that because “resolving th[is] issue is dispositive, the Court will
9 assume that upon remand, the ALJ will reevaluate the entire record for purposes of
10 reaching a decision” (Dkt. 31, p. 3). In addition, the Court explicitly determined that
11 because of the ALJ’s error when evaluating the medical evidence, the ALJ also ““thereby
12 provide[d] an incomplete residual functional capacity [RFC] determination”” (*Id.* at 5
13 (*quoting Hill v. Astrue*, 698 F.3d 1153, 1161 (9th Cir. 2012)). The Court also concluded
14 that “plaintiff’s credibility should be assessed anew following remand of this matter” and
15 that regarding “the other issues raised by plaintiff, the ALJ is directed to reevaluate the
16 record anew on remand, in light of the comments set forth above” (*id.* at 7). Defendant’s
17 contention that plaintiff achieved limited success is unpersuasive.
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19 Because the Court concludes based on a review of the relevant evidence that the
20 plaintiff here obtained excellent results, the Court will look to “the hours reasonably
21 expended on the litigation,” which, when combined with the reasonable hourly rate,
22 encompasses the lodestar. *See Hensley, supra*, 461 U.S. at 435. Other relevant factors
23 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 reasonable hourly rate.”¹ *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 attorneys’
11 fees request, the gravamen of defendant’s contentions here concern the number of hours
12 reasonably expended on the litigation (*see* Dkt. 35, p. 2). *See also Hensley, supra*, 461
13 U.S. at 433.

14 Defendant first contends that “plaintiff’s billing is extensive for a routine disability
15 case that did not present novel or complex questions” (*id.* at p. 3). Defendant argues that
16 the “underlying case involved routine questions concerning the ALJ’s analysis of medical
17 opinion evidence, Plaintiff’s credibility, and the residual functional capacity assessed by
18 the ALJ” (*id.*). According to defendant, 47.1 hours is unreasonable for a “routine”
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21 ¹ 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 disability case (*id.*). This Court previously has rejected the argument that experienced
2 practitioners should be able to handle “routine” disability cases in 20-40 hours. Each
3 social security case is factually different, and there is no “routine” disability case.

4 As concluded by this Court previously: “The district courts within the Ninth
5 Circuit have not come to any consensus that only EAJA fee requests representing less
6 than 40 attorney hours in ‘typical’ social security appeals are reasonable.” *McCune v.*
7 *Astrue*, Case No. 10cv5074, 2011 U.S. Dist. LEXIS 92979 at *10-*11 (W.D. Wash.
8 2011) (unpublished opinion) (*citing Johnson v. Astrue*, 134 Soc. Sec. Rep. Service 4,
9 2008 U.S. Dist. LEXIS 68681 at *5, 9-10 (N.D. Cal. 2008) (although defendant
10 Commissioner contended that 47 hours of time was unreasonable on a social security
11 appeal that was fairly routine and not overly complex, the court awarded fees
12 representing 57 hours, as it disagreed with Commissioner’s contention and awarded 10
13 additional hours for the time plaintiff’s attorney expended replying to defendant’s
14 response to plaintiff’s request for fees); *Burleson v. Astrue*, 139 Soc. Sec. Rep. Service.
15 540, 2009 U.S. Dist. LEXIS 36782, 2009 WL 364115 at *3 (W.D. Wash. 2009) (“There is
16 no hard-and-fast cap on attorney fee awards at 40 hours”) (*citing Patterson v. Apfel*, 99
17 F.Supp.2d 1212, 1214 n.2 (C.D. Cal. 2000)) (other citation omitted)).

18 This conclusion by the Court is buttressed by a more recent Ninth Circuit decision.
19 *Costa v. Comm’r of Soc. Sec. Admin.*, 690 F.3d 1132, 1136 (9th Cir. 2012) (“we conclude
20 that it is also an abuse of discretion to apply a *de facto* policy limiting Social Security
21 claimants to 20 to 40 hours of attorney time in ‘routine’ cases”). However, “district courts
22 may consider [the] fact [that 20 to 40 hours is the range most often requested and granted
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1 in Social Security cases] in determining the reasonableness of a specific fee request . . .
2 .” and the Court takes note of this fact. *Id.* (citing *Patterson v. Apfel*, 99 Fed. Supp. 2d
3 1212, 1214 n.2 (C.D. Cal. 2000) (collecting cases)).The Court will address this
4 consideration in the context of this particular case below, *see infra*.

5 Defendant implies that the Supreme Court concluded that “courts should consider
6 awards in similar cases,” when determining the reasonableness of plaintiff’s requested
7 fee. *Id.* (citing *Hensley, supra*, 461 U.S. at 430 n.3). However, what the Court was
8 indicating at the cited reference was that the “amount of the fee, of course, must be
9 determined on the facts of each case.” *Hensley, supra*, 461 U.S. at 430. The Court noted
10 that the House Report “refers to the 12 factors set forth in *Johnson,*” *supra*, 488 F.2d at
11 714, but after discussing the factor of results obtained and concluding that no fee may be
12 awarded for work on unsuccessful claims unrelated to the successful claim, the Court
13 noted that a district court also “may consider [the] other factors identified in *Johnson,*
14 [supra, 488 F.2d at 717-19], though it should note that many of these factors usually are
15 subsumed within the initial calculation of hours reasonably expended at a reasonable
16 hourly rate.” *Hensley, supra*, 461 U.S. at 434 n.9 (citation omitted). As “awards in similar
17 cases” is one of these “other factors,” the Court does not agree with defendant’s
18 characterization of the Supreme Court’s holding as indicating that this Court necessarily
19 *must* consider awards in similar cases, although the Supreme Court indicated that this
20 Court “*may*” choose to do so, and this Court will do so here below, *see infra. Id.* at 430
21 n.3 (*see also* Defendant’s Response, Dkt. 35, p. 4).
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1 The Court has reviewed the facts of this case. *See Hensley, supra*, 461 U.S. at 429,
2 433 n.7 (once the court determines that a plaintiff is entitled to a reasonable fee, “the
3 amount of the fee, of course, must be determined on the facts of each case”). As noted in
4 the declaration from plaintiff’s attorney, in this case, as in multiple other instances
5 regarding fee petitions from this particular attorney, the attorney’s brother, counselor
6 Noah Yanich, “a very experienced litigator,” first “prepared a detailed summary of
7 [plaintiff’s] file, with precise citations to the court transcript and with legal analysis”
8 (Dkt. 36, Attachment 1, p. 2). Subsequently, plaintiff’s attorney completed the
9 preparation of the opening brief (Dkt. 34, Attachment 4, p. 2). From the time expenditure
10 itemization submitted by plaintiff, it appears that counselor Noah Yanich expended
11 approximately 25.3 hours preparing this “detailed summary,” while plaintiff’s attorney
12 expended over 10 hours reviewing the file and finalizing the opening brief (*see id.*).
13 Although it is not unusual in the practice of law for multiple attorneys to work on the
14 same case, it is not the case in all social security cases before this Court. And, when it
15 does occur, the attorneys generally appear to make efficient use of different attorney’s
16 expertise and abilities, and submit a fee petition with a smaller, or average, amount of
17 hours billed (*see, e.g., Spencer v. Colvin*, Case No. 15cv20-JRC (W.D. Wash. 2015)
18 (unpublished opinion), Dkt. 25-1, p. 4, Dkt. 25-4, p. 1, Dkt. 25-5, p. 1). For example, in a
19 case previously before this Court that was very similar to this one, where two attorneys
20 and a paralegal billed hours (just as in the case herein), and where the transcript was 983
21 pages long, similar to the case herein, the fee petition included just 15.7 hours for file
22 review and drafting of the Opening Brief, and 27.9 hours for the entire case (*see id.*). The
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1 Court is familiar with both of these cases, and the case at bar did not present issues that
2 were vastly more complicated or difficult such as to justify more than twice the amount
3 of hours for the Opening Brief, and almost twice as many hours for the entire case. Much
4 of the Opening Brief submitted in this case consisted of a recitation of the facts, many of
5 which were not particularly tailored to any specific argument. Based on the specific facts
6 of this case, the itemized hourly fee petition, and the particular Opening Brief herein, the
7 Court concludes that some of the hours incurred in the preparation of the Opening Brief
8 appear to be excessive. Before concluding if, and to what extent, the fees for the Opening
9 Brief should be reduced, the Court will provide a brief review of other Social Security
10 disability cases previously before this Court in the last eight months.
11

12 While over 35 hours were incurred by attorneys in the preparation of the Opening
13 Brief in the case herein, it is not uncommon for the Court to receive a fee petition totaling
14 18-40 hours for an entire social security case, with sometimes as few as 7-12 hours
15 incurred drafting the Opening Brief (*see, e.g.*, Case No. 15cv360, Dkt. 20-2, p. 3 (7.6
16 hours for file review and drafting of the Opening Brief, 15.6 hours for the entire case);
17 Case No. 14cv5825, Dkt. 17-3, p. 1 (12.5 hours for file review and drafting of the
18 Opening Brief, 22.7 hours for the entire case); Case No. 15cv929, Dkt. 19-2, pp. 1-2
19 (11.6 hours for file review and drafting of the Opening Brief, 18.3 hours for the entire
20 case); Case No. 15cv5006, Dkt. 19-1, p. 1 (11.9 hours for file review and drafting of the
21 Opening Brief, 20.1 hours for the entire case); Case No. 14cv5943, Dkt. 24-1, p. 1 (10.2
22 hours for file review and drafting of the Opening Brief, 21.9 hours for the entire case);
23 Case No. 14cv5772, Dkt. 20-3, pp. 1-2 (13 hours for file review and drafting of the
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1 Opening Brief, 25.1 hours for the entire case); Case No. 14cv6011, Dkt. 32-1, p. 1 (18.8
2 hours for file review and drafting of the Opening Brief, 27.6 hours for the entire case);
3 Case No. 15cv187, Dkt. 17-3, p. 1 (23.1 hours for file review and drafting of the Opening
4 Brief, 33.8 hours for the entire case); Case No. 14cv5793, Dkt. 23-1, p. 1 (18.75 hours for
5 file review and drafting of the Opening Brief, 32.25 hours for the entire case); Case No.
6 15cv5198, Dkt. 26-2, p. 1 (13.8 hours for file review and drafting of the Opening Brief,
7 38.57 for the entire case, including a Fed. R. Civ. P. 59(e) response); Case No. 15cv861,
8 Dkt. 19-2, p. 1 (21.1 hours for file review and drafting of the Opening Brief, 38.5 hours
9 for the entire case); Case No. 15cv5211, Dkt. 25-3, p. 1 (23.3 hours for file review and
10 drafting of the Opening Brief, 38.9 hours for the entire case); Case No. 15cv5352, Dkt.
11 17-2, p. 1 (17.6 hours for file review and drafting of the Opening Brief, 29.27 hours for
12 the entire case); Case No. 14cv6007, Dkt. 21-3, pp. 1-2 (14.1 hours for file review and
13 drafting of the Opening Brief, 24 hours for the entire case); Case No. 14cv5770, Dkt 22-
14 3, pp. 1-2 (24.5 hours for file review and drafting of the Opening Brief, 31.8 hours for the
15 entire case); Case No. 14cv5754, Dkt. 24-3, pp. 1-2 (16.7 hours for file review and
16 drafting of the Opening Brief, 30.3 hours for the entire case); Case No. 15cv20, Dkt. 25-
17 1, p. 4, 25-4, p. 1, 25-5, p. 1 (15.7 hours for file review and drafting of the Opening Brief,
18 27.9 hours for the entire case); Case No. 14cv5865, Dkt. 23-2, p. 1 (20.4 hours for file
19 review and drafting of the Opening Brief, 25.9 hours for the entire case); Case No.
20 15cv5098, Dkt. 10-1, p. 4, Dkt. 26-3, p. 1, Dkt. 26-4, p. 1 (25.4 hours for file review and
21 drafting of the Opening Brief, and 38.9 hours for the entire case). In this context,
22 incurring more than 35 hours drafting the Opening Brief and 49.7 hours for the entire
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1 case makes this fee petition one of the highest this Court has ever been presented with for
2 a Social Security case, if not the highest it has been presented with.

3 The Court also has considered the contention by plaintiff that the attorney herein
4 “did not represent [plaintiff] at his administrative hearing, and it therefore took extra time
5 to review this file and brief his case” (Dkt. 36-1, p. 2). However, this is not uncommon in
6 Social Security cases. Plaintiff also contends that more time “had to be expended due to
7 the need for a sentence six remand” (Dkt. 36, p. 2). The Court considers this fact, but
8 does not find that it justifies the extremely large number of hours expended on the case as
9 a whole, or the Opening Brief herein. The Court also has considered plaintiff’s reference
10 to the fact that plaintiff’s file “was over 900 pages long, which is unusually long and
11 increased the amount of time we had to expend on this case” (*see id.*). While it is true that
12 a 900 page record is on the long side, it does not appear to this Court to be so long as to
13 justify the exceedingly large fee requested in this case (*see, e.g.,* Case No. 15cv5281
14 (2297 pages); Case No. 15cv5943 (1390 pages); Case No. 15cv5098 (1263 pages); Case
15 No. 15cv20 (983 pages); Case No. 15cv187 (825 pages); Case No. 14cv5793 (788
16 pages); Case No. 15cv929 (784 pages); Case No. 14cv5825 (782 pages); Case No.
17 15cv5404 (780 pages); Case No. 14cv5754 (756 pages)). For example, in one case, the
18 record was 1390 pages long, much longer than in the case at bar, yet the attorney billed a
19 total of 21.9 hours for the entire case, with 10.2 hours being billed for completion of the
20 Opening Brief (*see* Case No. 15cv5943, Dkt. 24-1, pp. 1-2, Dkt. 12-1, p. 5). Similarly, in
21 a recent case with a record of 1263 pages, also much longer than the one in the case at
22 bar, the attorneys billed 25.4 hours for the opening brief, and 38.9 hours for the entire
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1 case (*see* Case No. 15cv5098, Dkt. 10-1, p. 4, Dkt. 26-3, p. 1, Dkt. 26-4, p. 1; *see also*
2 Case No. 15cv5281 (2297 page administrative record, where a plaintiff incurred 43.7
3 hours total for the entire case); Case No. 15cv20, Dkt. 10-1, p. 5, Dkt. 25-1, p. 4 (983
4 page administrative record, where a plaintiff incurred 27.9 hours for the entire case);
5 Case No. 15cv187, Dkt. 8-1, p. 3, Dkt. 17-3, p. 1 (825 page administrative record, where
6 a plaintiff incurred 33.8 hours for the entire case)). The Court already has noted a case
7 previously before this Court that is similar to this one, in which the transcript was 983
8 pages long but the fee petition included just 15.7 hours for file review and drafting of the
9 Opening Brief, and 27.9 hours for the entire case (*see Spencer, supra*, Case No. 15cv20-
10 JRC, Dkt. 25-1, p. 4, 25-4, p. 1, 25-5, p. 1).

12 Although the Court does not find persuasive that in general there are “routine”
13 social security disability cases that should be handled in 20-40 hours, the Court has
14 considered defendant’s argument that in this particular case, the number of hours
15 requested by plaintiff is unreasonable. As noted, although the Court does not agree with
16 defendant’s characterization of the Supreme Court’s holding as indicating that this Court
17 necessarily *must* consider awards in similar cases, the Court *may* do so, and has done so
18 herein.

19 Based on this Court’s review of this case and when paying particular attention the
20 facts, the record, and the Opening Brief in this matter herein, the Court concludes that the
21 amount of time expended on this case in its entirety, including but not limited to
22 plaintiff’s Opening Brief, is unreasonable. For example, the issues raised and discussed in
23 the Opening Brief or in the Reply brief were not unusually complicated or difficult. As
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1 | noted already, the amount of attorney time incurred preparing the Opening Brief is more
2 | than three times the amount incurred preparing Opening Briefs in multiple other similar
3 | Social Security cases, *see supra*. Similarly, as discussed, the amount of attorney hours
4 | incurred on the entire case is two to three times the amount incurred in other Social
5 | Security cases, *see supra*. The facts, record, and arguments made (either in the Opening
6 | Brief or in the Reply Brief) in this particular case were not so unusual or complex to
7 | require such a discrepancy or such a high number of attorney hours. The Court notes that
8 | this Court’s order was only seven pages long, with three and a quarter pages utilized to
9 | determine the dispositive issue, making it one of this Court’s shortest orders on a Social
10 | Security case. This factor is only a minor factor in this Court’s conclusion regarding
11 | hours and fees.
12 |

13 | Plaintiff has requested a total of 49.7 hours (46.4 attorney hours and 3.3 paralegal
14 | hours) (*see* Dkt. 34-3, pp. 1-2). Based on the particular facts and record in this case, and
15 | with consideration given to fee awards in similar cases, the Court concludes that although
16 | the paralegal hours requested is reasonable, plaintiff has requested an excessive amount
17 | of attorney hours that were not reasonably expended, particularly on the Opening Brief.
18 | *See Hensley, supra*, 461 U.S. at 434 (“the District Court [] should exclude from this
19 | initial fee calculation of hours that were not ‘reasonably expended’”), 430 n.3 and 434
20 | n.9 (“the district court also may consider other factors identified in *Johnson*, [] [*supra*,]
21 | 488 F.2d [] [at] 717-19” such as “awards in similar cases”); *see also Silva v.*
22 | *Bowen*, 658 F.Supp. 72, 73 (E.D. Penn. 1987) (“Twenty hours to draft, review and
23 | rewrite plaintiff’s summary judgment brief is excessive. The task could have been
24 |

1 comfortably completed with eight hours of work,” with the court reducing the requested
2 hours by 25 hours to a total of 29.25)).

3 The thirty five hours requested in preparation of the Opening Brief is excessive
4 and unreasonable. The Court therefore reduces by 10 hours the attorney hours for the
5 Opening Brief. *See Hensley, supra*, 461 U.S. at 434, 430 n.3, 434 n.9; *see also Sylvia,*
6 *supra*, 658 F.Supp. at 73 (“Twenty hours to draft, review and rewrite plaintiff’s summary
7 judgment brief is excessive. The task could have been comfortably completed with eight
8 hours of work”). However, the additional 1.8 hours requested by plaintiff for the defense
9 of the fee petition is reasonable, and should be added to plaintiff’s award.

10
11 Specifically, following a review of plaintiff’s request, the Court finds reasonable
12 plaintiff’s request for expenses in the amount of \$27.13, finds reasonable the request for
13 attorney’s fees representing 3.3 hours of paralegal work (\$330.00) and concludes that
14 plaintiff’s request for attorneys’ fees in the amount of \$8,802.14, representing 46.4 hours
15 of work is unreasonable and represents hours not reasonably expended on the litigation.
16 Therefore, plaintiff’s request for attorneys’ fees representing attorney work for \$8,802.14,
17 should be reduced by 10 hours (\$1,896.80) to \$6,905.34, for the reasons discussed herein.
18 As noted, plaintiff request for an additional 1.8 hours in attorneys’ fees for defense of the
19 fee petition is reasonable and should be added to the EAJA fee award (\$341.42,
20 calculated at the hourly rate of \$189.68).

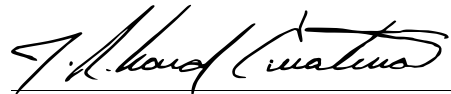
21 CONCLUSION

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23 It is hereby ORDERED that EAJA attorneys’ fees of \$7,576.76 (which includes
24 the \$330 for 3.3 paralegal hours) and expenses in the amount of \$27.13, shall be awarded

1 to plaintiff pursuant to the EAJA and consistent with *Astrue v. Ratliff*, 130 S.Ct. 2521,
2 2524, 2010 U.S. LEXIS 4763 at ***6-***7 (2010).

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 and expenses
5 are subject to any offset. If it is determined that plaintiff's EAJA fees and expenses are
6 not subject to any offset allowed pursuant to the Department of the Treasury's Offset
7 Program, then the check for EAJA fees and expenses shall be paid directly to Eitan
8 Kassel Yanich, Esq., either by direct deposit or by check payable to him based on
9 plaintiff's assignment of these amounts to plaintiff's attorney (*see* Plaintiff's Declaration
10 Regarding Net Worth and Payment of EAJA Fees, Dkt. 33). If there is an offset, the
11 remainder shall be made payable to plaintiff, based on the practice of the Department of
12 the Treasury (*see, e.g.*, Case No. 2:15-cv-122, Dkt. 22, p. 4). Any check for EAJA fees
13 and expenses shall be mailed to plaintiff's counsel, Eitan Kassel Yanich, Esq., at Law
14 Office of Eitan Kassel Yanich, PLLC, 203 Fourth Avenue E., Suite 321, Olympia, WA
15 98501.
16

17 Dated this 24th day of February, 2016.

18 

19 J. Richard Creatura
20 United States Magistrate Judge