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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 NICHOLAS KENNETH WILLIAMS,

10 Plaintiff,

11 v.

12 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

13 Defendant.

CASE NO. C16-5382-MAT

ORDER RE: MOTION FOR EQUAL
ACCESS TO JUSTICE ACT FEES

14 INTRODUCTION

15 Plaintiff filed a motion for attorney fees and expenses pursuant to the Equal Access to
16 Justice Act (EAJA), 28 U.S.C. § 2412, and costs under 28 U.S.C. § 1920. (Dkt. 23.) He seeks
17 \$7,032.82 in attorney's fees, \$4.77 in expenses, and \$419.00 in costs. The Commissioner concedes
18 plaintiff's entitlement to fees, expenses, and costs, but seeks a thirty percent reduction of the fee
19 request. (Dkt. 25.) The Court, for the reasons set forth below, concludes plaintiff's motion should
20 be GRANTED in part, and plaintiff awarded the expenses and costs requested, and a reduced
21 amount of attorney fees.

22 DISCUSSION

23 Under EAJA, the Court awards fees and expenses to a prevailing party in a suit against the

1 government unless it concludes the position of the government was “substantially justified or that
2 special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). Having secured a
3 remand of this matter, plaintiff is the prevailing party. *Akopyan v. Barnhart*, 296 F.3d 852, 854
4 (9th Cir. 2002). There are no special circumstances that would make an award unjust and, as
5 conceded by the Commissioner, the government’s position was not substantially justified.

6 The Commissioner asks that the Court reduce the fee request by thirty percent. *See*
7 *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1111 (9th Cir. 2014) (“A district court can reduce
8 a lawyer’s request for duplicative or unnecessary work, and it can impose up to a 10 percent
9 reduction without explanation.”) The Commissioner objects to the billing of 9.2 hours for drafting
10 a reply brief “which was largely copied verbatim from the opening brief.” (Dkt. 25 at 2.)¹

11 Plaintiff maintains a reasonable number of hours – 36.5 hours in total – expended in this
12 case and that the reply brief addressed defendant’s arguments. He asserts time spent reviewing
13 defendant’s brief, citations to the record, and cases cited, as well as researching additional
14 argument and editing arguments for persuasiveness and compliance with page limitations.
15 Plaintiff notes the Ninth Circuit’s recognition that, “[b]y and large, the court should defer to the
16 winning lawyer’s professional judgment as to how much time he was required to spend on the
17 case; after all, he won, and might not have, had he been more of a slacker.” *Moreno v. City of*
18 *Sacramento*, 534 F.3d 1106 (9th Cir. 2008)

19 The Court may award EAJA fees for attorney hours reasonably expended by plaintiff’s
20 counsel. 28 U.S.C. § 2412(d)(2)(A). “The most useful starting point for determining the amount
21 of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a

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23 ¹ The Commissioner inaccurately states plaintiff did not contend his fee request was reasonable.
(*See* Dkt. 25 at 2 and Dkt. 24 at 3 (“The Amount of the Attorney’s Fees Requested is Reasonable.”))

1 reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). “[E]xcessive, redundant,
2 or otherwise unnecessary” hours should be excluded from the fee award. *Id.* at 434. The Court
3 must also consider the results obtained when determining whether the fees requested by a
4 prevailing party for an unsuccessful appeal are reasonable. *Atkins v. Apfel*, 154 F.3d 986, 986, 989
5 (9th Cir. 1998) (citing *Hensley*, 461 U.S. 424).

6 “[T]he fee applicant bears the burden of establishing entitlement to an award and
7 documenting the appropriate hours expended[.]” *Hensley*, 461 U.S. at 437. However, “the party
8 opposing the fee application has a burden of rebuttal that requires submission of evidence to the
9 district court challenging the accuracy and reasonableness of the hours charged or the facts asserted
10 by the prevailing party in its submitted affidavits.” *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98
11 (9th Cir. 1992) (citations omitted).

12 The Commissioner here maintains the fee request is not reasonable in seeking
13 compensation for 9.2 hours spent on a reply brief largely copied verbatim from the opening brief.
14 A comparison of the opening and reply briefs provides support for this contention. (*Compare* Dkt.
15 15, *with* Dkt. 20.) That is, while the reply brief does contain some argument responsive to the
16 Commissioner’s brief, it largely reiterates arguments previously raised and includes a number of
17 sections taken verbatim from the opening brief. (*See id.*) The Court, therefore, agrees a reduction
18 in fees appropriate. However, rather than a thirty percent reduction in the total fees sought, the
19 Court finds it appropriate to reduce the time spent on the reply brief by three hours.

20 The Court otherwise finds no basis for concluding the hours devoted to this case were
21 unreasonable. *See generally Costa v. Comm’r of SSA*, 690 F.3d 1132, 1136 (9th Cir. 2012) (court
22 may consider the fact many district courts have “noted that twenty to forty hours is the range most
23 often requested and granted in social security cases”, but should not “apply a de facto policy”

1 limiting claimants to that range of hours in “‘routine’ case.”; determination of amount of time spent
2 “will always depend on case-specific factors including, among others, the complexity of the legal
3 issues, the procedural history, the size of the record, and when counsel was retained.”) Imposing
4 the three-hour reduction to the 36.5 hours spent in total on this matter, plaintiff is entitled to
5 attorney’s fees for 33.5 hours, amounting to a reduction of \$578.04 and an award of \$6,454.78.

6 CONCLUSION

7 Plaintiff’s motion (Dkt. 23) is GRANTED in part. The Court herein finds plaintiff entitled
8 to an award of attorney’s fees in the amount of \$6,454.78, \$4.77 in expenses, and \$419.00 in costs.
9 Subject to any offset allowed under the Treasury Offset Program as discussed in *Astrue v. Ratliff*,
10 560 U.S. 586 (2010), payment of the award should be made to plaintiff’s attorney. The Clerk shall
11 send copies of this Order to the parties.

12 DATED this 17th day of July, 2017.

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15 Mary Alice Theiler
16 United States Magistrate Judge
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