

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Mitchell v. Bisignano

Mitchell · No. 22-cv-1649-DMS-KSC · Decided August 25, 2025

SUMMARY

The United States District Court for the Southern District of California granted in part a motion for attorney’s fees under the Equal Access to Justice Act in a Social Security disability case. The court awarded \$29,212.47 in attorney’s fees, denied requested costs for lack of supporting proof, and denied without prejudice counsel’s request for direct payment because no assignment was shown.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Dana M. Sabraw
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 25, 2025
DOCKET	22-cv-1649-DMS-KSC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's attorney moved for attorney's fees and costs under the Equal Access to Justice Act following a Social Security disability-benefits action that resulted in reversal of the ALJ's denial and remand for further proceedings.
STANDARD OF REVIEW	The court applied de novo review to Plaintiff's objections to the magistrate judge's Report and Recommendation and evaluated the EAJA fee application under the statutory prevailing-party, substantial-justification, special-circumstances, timeliness, and reasonableness standards.
PRECEDENTIAL VALUE	unpublished
PARTIES	Mary Mitchell v. Frank Bisignano, Commissioner of Social Security

TOPICS

- attorney fees
- judicial review of agency action
- administrative law
- appellate procedure
- civil procedure

PRACTICE AREAS

Social Security

administrative law

attorney fees

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the EAJA fee application was timely even though it was filed before final judgment became final and nonappealable.
2. Whether Plaintiff qualified as a prevailing party under the EAJA after obtaining reversal and remand for further administrative proceedings.
3. Whether an attorney may recover EAJA fees for work performed before formally appearing in the case where an attorney-client relationship existed.
4. Whether unsuccessful objections to the magistrate judge's Report and Recommendation constituted special circumstances or limited success requiring denial or reduction of EAJA fees.
5. Whether counsel established entitlement to a special-factor hourly-rate enhancement.
6. Whether counsel established entitlement to reimbursement of requested litigation costs.
7. Whether the EAJA fee award could be paid directly to counsel absent evidence of a valid assignment.

HOLDINGS

1. An EAJA fee application filed before final judgment is not necessarily untimely; section 2412(d)(1)(B) establishes the date after which an application must be rejected, and a pre-final-judgment application may be allowed if it otherwise satisfies the statute.
2. A claimant who obtains reversal of an agency denial and remand for further proceedings is a prevailing party under the EAJA, even if benefits have not yet been awarded.
3. An attorney may recover EAJA fees for services performed before formally appearing in the action when an attorney-client relationship existed during that earlier period.
4. Unsuccessful objections to a magistrate judge's Report and Recommendation do not, by themselves, constitute special circumstances making an EAJA award unjust or require exclusion of the related hours when the objections were legally sound and nonfrivolous.
5. An EAJA rate enhancement requires proof that counsel possesses distinctive knowledge or specialized skills, those skills were needed in the litigation, and they were unavailable elsewhere at the statutory rate; general Social Security experience and claimed lack of available counsel were insufficient here.
6. EAJA costs will not be awarded when counsel fails to provide an affidavit or other proof establishing the expenses incurred and their relation to the litigation, and a Lexis/Nexis subscription does not appear to be recoverable under 28 U.S.C. § 1920.
7. An EAJA fee award may be paid directly to counsel when there is a valid assignment and the plaintiff does not owe a government debt, but direct payment was denied without prejudice because no assignment was shown.

KEY QUOTATIONS

“§ 2412(d)(1)(B) only “establishes a clear date after which applications for attorney’s fees must be rejected as untimely; 30 days after final judgment.”” (at 1393)

“An applicant for disability benefits becomes a prevailing party for the purposes of the EAJA if the denial of her benefits is reversed and remanded regardless of whether disability benefits ultimately are awarded.” (at 1257)

“an attorney [must be] retained for a prevailing pro se litigant to recover attorneys fees under the EAJA.” (at 642)

“a host of reasonableness factors, including the quality of representation, the benefit obtained for the [plaintiff], the complexity and novelty of the issues presented, and the risk of nonpayment.” (at 546)

“some distinctive knowledge or specialized skill [is needed] for the litigation in question.” (at 572)

FACTUAL BACKGROUND

An ALJ denied Mary Mitchell's application for disability and disability-insurance benefits. The district court ultimately reversed the denial and remanded for further administrative proceedings, making Mitchell a prevailing party under the EAJA. Attorney Alexandra Manbeck advised Mitchell beginning in September 2022 and formally appeared in January 2024, while Mitchell otherwise proceeded pro se. Manbeck sought fees for work performed before and after her formal appearance, an enhanced hourly rate, costs, and direct payment of the award.

PROCEDURAL HISTORY

An ALJ denied Plaintiff's application for disability benefits, and Plaintiff filed this action after her administrative appeal was denied. The court referred the matter to Magistrate Judge Crawford, whose Report and Recommendation addressed Plaintiff's motion for summary judgment and recommended remand for further proceedings. On February 26, 2024, the district court overruled Plaintiff's objections and adopted the Report and Recommendation. Plaintiff appealed, but the Ninth Circuit dismissed the appeal for failure to prosecute. Plaintiff's counsel then sought EAJA fees and costs.

DISPOSITION

other

CASES CITED

- Comm’r I.N.S. v. Jean, 496 U.S. 154, 158 (1990)
- Yang v. Shalala, 22 F.3d 213, 215-16 (9th Cir. 1994)
- Auke Bay Concerned Citizen’s Advisory Council v. Marsh, 779 F.2d 1391, 1392-93 (9th Cir. 1986)
- Herman J. v. O’Malley, No. 23-cv-01005-AHG, 2024 WL 4611445, at *1-2 (S.D. Cal. Oct. 28, 2024)
- Dora R.S. v. O’Malley, No. 23-cv-00636-AJB-SBC, 2024 WL 4439260, at *1 (S.D. Cal. Oct. 7, 2024)
- Lundstrom v. Young, No. 18-cv-2856-GPC, 2023 WL 1120867, at *3 (S.D. Cal. Jan. 30, 2023)
- Ulugalu v. Berryhill, No. 17-cv-01087-GPC-JLB, 2018 WL 2012330, at *2 (S.D. Cal. Apr. 30, 2018)

- *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993)
- *Gutierrez v. Barnhart*, 274 F.3d 1255, 1257-58 (9th Cir. 2001)
- *Corbin v. Apfel*, 149 F.3d 1051, 1053 (9th Cir. 1998)
- *Merrell v. Block*, 809 F.2d 639, 642 (9th Cir. 1987)
- *Nadarajah v. Holder*, 569 F.3d 906, 916 (9th Cir. 2009)
- *Ed A. Wilson, Inc. v. General Services Administration*, 126 F.3d 1406, 1409 (Fed. Cir. 1997)
- *Waggoner v. Snow, Becker, Kroll, Klaris & Krauss*, 991 F.2d 1501, 1505 (9th Cir. 1993)
- *Beery v. State Bar*, 43 Cal. 3d 802, 812 (Cal. 1987)
- *Abela v. Gustafson*, 888 F.2d 1258, 1266 (9th Cir. 1989)
- *Costa v. Commissioner of Social Security Administration*, 690 F.3d 1132, 1135 (9th Cir. 2012)
- *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir. 2016)
- *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 941-42 (9th Cir. 2011)
- *Hensley v. Eckerhart*, 461 U.S. 424, 436-37 (1983)
- *Atkins v. Apfel*, 154 F.3d 986, 989 (9th Cir. 1998)
- *Long v. Colvin*, No. 13-cv-05716-SI, 2015 WL 3902160, at *2 (N.D. Cal. June 24, 2015)
- *Rogers v. Astrue*, No. 09-cv-02158, 2010 WL 4569058, at *3 (E.D. Cal. Nov. 3, 2010)
- *Penrod v. Apfel*, 54 F. Supp. 2d 961, 963 (D. Ariz. 1999)
- *Anh Tuyet Thai v. Saul*, No. 18cv2647-JAH-RBM, 2020 WL 4697971, at *2 (S.D. Cal. Aug. 13, 2020)
- *Pierce v. Underwood*, 487 U.S. 552, 572 (1988)
- *Love v. Reilly*, 924 F.2d 492, 1496 (9th Cir. 1991)
- *Pirus v. Bowen*, 869 F.2d 536, 541-42 (9th Cir. 1989)
- *Nguyen v. Berryhill*, 2017 WL 3020958, at *3, *5 (S.D. Cal. July 17, 2017)
- *Astrue v. Ratliff*, 560 U.S. 586, 130 S. Ct. 2521, 177 L. Ed. 2d (2010)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
 CALIFORNIA 10 11 Case No.: 22-cv-1649-DMS-KSC MARY MITCHELL, 12 Plaintiff,
 ORDER GRANTING IN PART 13 v. MOTION FOR ATTORNEY’S FEES AND DENYING
 COSTS 14 FRANK BISIGNANO, Commissioner of Social Security, 15 Defendant. 16 17 18
 Pending before the Court is a Motion filed by Plaintiff’s attorney, Alexandra 19 Manbeck, for an
 award of attorney’s fees and costs pursuant to the Equal Access to Justice 20 Act (“EAJA”), 28
 U.S.C. § 2412.

(Mot., ECF No. 31-1). Defendant filed a Response in 21 Opposition. (Opp’n, ECF No. 39).
 Thereafter, Plaintiff Mary Mitchell filed an 22 “Application to file a Declaration” in response to
 Ms. Manbeck’s Motion. (ECF No. 41). 23 Ms. Manbeck filed a Reply, (Reply, ECF No 42), and
 Defendant filed a Motion to Strike 24 the Reply, or in the alternative, to file a Sur-Reply.

(ECF No. 43). The Court denies 25 Defendant's Motion to Strike and accepts the Reply, Sur-Reply, and Plaintiff's 26 Declaration. The matter is submitted on the briefs without oral argument pursuant to Civil 27 Local Rule 7.1(d)(1). (ECF No. 40).

For the following reasons, the Court finds Ms. 28 Manbeck is entitled to reasonable attorney's fees in the amount of \$29,212.47, but no costs. 1 I. BACKGROUND 2 This matter came before the Court following an Administrative Law Judge's 3 ("ALJ") denial of Plaintiff's application for a period of disability benefits and disability 4 insurance benefits. (Compl., ECF No. 1, at 2).

Following denial of her appeal of the ALJ's 5 decision, Plaintiff, proceeding pro se, filed the instant action on October 24, 2022. (Id.). 6 Plaintiff filed her "motion for summary judgment" on July 21, 2023, requesting reversal of 7 the ALJ's order and subsequent remand, or, alternatively, remand for an order of benefits 8 to Plaintiff. (ECF No. 18, at 25).

Defendant agreed that the matter should be remanded to 9 the ALJ for further proceedings but opposed Plaintiff's request for an order of benefits. 10 (ECF No. 20). On November 9, 2023, Magistrate Judge Crawford issued a Report and 11 Recommendation to deny Plaintiff's motion for summary judgment and remand for an 12 order of benefits. (R&R, ECF No. 25). 13 Thereafter, Ms. Manbeck filed a Notice of Appearance as counsel of record on 14 January 2, 2024.

(ECF No. 28) ("Notice is hereby given that Plaintiff hereby appoints the 15 undersigned, Alexandra T. Manbeck, as her attorney of record in the above-captioned 16 case."). Plaintiff, with the assistance of Ms. Manbeck, objected to Judge Crawford's R&R 17 and argued that the case should be remanded for the calculation of award of benefits. (ECF 18 No. 29).

On February 26, 2024, the Court overruled Plaintiff's objections and adopted 19 Judge Crawford's R&R after de novo review. (ECF No. 30). On April 25, 2024, Plaintiff, 20 now proceeding pro se, filed an appeal of this Court's Order adopting Judge Crawford's 21 R&R to the Ninth Circuit. (ECF No. 33).

On October 7, 2024, the Ninth Circuit dismissed 22 Plaintiff's appeal for failure to prosecute. (ECF No. 46). 23 On March 18, 2024, Ms. Manbeck filed the subject Motion. Counsel requests fees 24 for billable work advising Plaintiff on a wide range of matters relating to the filing of 25 Plaintiff's complaint through appeal to the Ninth Circuit, and for preparing the present 26 Motion and related briefing.

(ECF No. 31-2, at 5). She claims her billable work began on 27 September 28, 2022, and concluded on July 19, 2024. (Id. at 4-5); (Reply). Plaintiff, in 28 her declaration, appears not to oppose Ms. Manbeck's request for attorney's fees, but states 1 the Motion was filed "without [her] knowledge or consent." (ECF No. 41, at 3). Plaintiff 2 also states Ms. Manbeck only agreed to provide "advice and help occasionally," while 3 Plaintiff represented herself from 2022 to 2024.

(ECF No. 41, at 2). According to Plaintiff, 4 Ms. Manbeck's representation began on January 2, 2024, when she entered her formal 5 appearance, and she only assisted with drafting some of Plaintiff's objections to Judge 6 Crawford's R&R. (Id. at 3). Plaintiff also claims Ms. Manbeck declined to file Plaintiff's 7 appeal and advised her to proceed pro se. (Id. at 4).

8 II. LEGAL STANDARD 9 Under the EAJA, a court shall award a "prevailing party" all reasonable attorney's 10 fees, costs, and other expenses "incurred by that party in any civil action (other than cases 11 sounding in tort), including proceedings for judicial review of agency action, brought by 12 or against the United States in any court having jurisdiction of that action, unless the court 13 finds that the position of the United States was substantially justified or that special 14 circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

Plaintiff is entitled to 15 attorney's fees under the EAJA if (1) the claimant is a "prevailing party"; (2) the 16 government's position was not "substantially justified"; (3) no special circumstances make 17 the fee award unjust; and (4) pursuant to 28 U.S.C. § 2412(d)(1)(B), any fee application is 18 submitted to the Court within 30 days of final judgment in the action and is supported by 19 an itemized statement.

Comm'r I.N.S. v. Jean, 496 U.S. 154, 158 (1990). 20 III. DISCUSSION 21 Defendant advances six arguments against an award of attorney's fees. First, under 22 the fourth EAJA factor, Plaintiff's request for attorney's fees is premature because no final 23 judgment has been entered. (Opp'n at 4–9).

Second, and relatedly, Plaintiff is not a 24 prevailing party because no final judgment has been entered. (Id. at 9). Third, Plaintiff is 25 not entitled to fees incurred while Plaintiff represented herself because pro se litigants 26 cannot recover fees under the EAJA. (Id. at 9–12). Fourth, under the "special 27 circumstances" EAJA factor, Plaintiff should not be entitled to any attorney's fees because 28 Ms. Manbeck's work on Plaintiff's objections to Judge Crawford's R&R was unsuccessful 1 and did not materially enhance Plaintiff's position.

(Id. at 17–20). Fifth, even if Plaintiff 2 is entitled to attorney's fees under the EAJA, the amount should be reduced to zero because 3 Plaintiff's objections were unsuccessful. (Id. at 12–14). Sixth, to the extent Ms. Manbeck 4 is entitled to fees, she should not receive a rate enhancement. (Id. at 14–17). Each 5 argument is addressed in turn. 6 A. Timeliness 7 The EAJA mandates that an application for an award of fees and other expenses shall 8 be submitted to the court "within thirty days of final judgment in the action." 28 U.S.C. 9 § 2412(d)(1)(B).

A final judgment is defined as "a judgment that is final and not 10 appealable, and includes an order of settlement." 28 U.S.C. § 2412(d)(2)(G). Because the 11 government is a party, the thirty-day deadline to file an application for fees and costs under 12 the EAJA would be sixty days post the Court's February 26, 2024 Order, or April 26, 2024, 13 if no appeal was filed in this case.

See Fed. R. App. P. 4(a)(1); *Yang v. Shalala*, 22 F.3d 14 213, 215–16 (9th Cir. 1994). Of course, as discussed, Plaintiff did file an appeal. (ECF 15 No. 33). 16 While the parties disagree over whether Plaintiff’s counsel filed her motion before 17 or after final judgment, as defined by the EAJA, the Court finds the Ninth Circuit’s 18 reasoning in *Auke Bay Concerned Citizen’s Advisory Council v. Marsh*, 779 F.2d 1391 (9th Cir.

1986), is instructive. *Auke Bay* confronted an application for attorney’s fees under the 20 EAJA which was made eight months before the district court entered its final judgment. 21 779 F.2d at 1392. The *Auke Bay* court, noting § 2412(d)(1)(B) was a jurisdictional 22 limitation that should be narrowly construed, held that § 2412(d)(1)(B) only “establishes a 23 clear date after which applications for attorney’s fees must be rejected as untimely; 30 days 24 after final judgment.” *Id.* at 1393.

The Ninth Circuit therefore permitted the pre-final 25 judgment application so long as the request met the requirements of § 2412(d)(1)(B). *Id.* 26 Here, the request for attorney’s fees is timely under *Auke Bay*. The Court joins other 27 courts in this district that have found fee applications under similar circumstances to be 28 timely. See, e.g., *Herman J. v. O’Malley*, No. 23-cv-01005-AHG, 2024 WL 4611445, at 1 *1–2 (S.D.

Cal. Oct. 28, 2024); *Dora R.S. v. O’Malley*, No. 23-cv-00636-AJB-SBC, 2024 2 WL 4439260, at *1 (S.D. Cal. Oct. 7, 2024); *Lundstrom v. Young*, No. 18-cv-2856-GPC, 3 2023 WL 1120867, at *3 (S.D. Cal. Jan. 30, 2023). Accordingly, the Court declines to 4 dismiss the Motion on this ground. 5 B. Prevailing Party 6 “A plaintiff is a prevailing party if she has ‘succeeded on any significant issue in 7 litigation which achieve[d] some of the benefit... sought in bringing suit.’” *Ulugalu v. Berryhill*, No. 17-cv-01087-GPC-JLB, 2018 WL 2012330, at *2 (S.D.

Cal. Apr. 30, 2018) 9 (quoting *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993)). Defendant argues that a final 10 judgment must first be entered before Plaintiff is a “prevailing party” under the EAJA, but 11 this interpretation is not supported by caselaw. See *Gutierrez v. Barnhart*, 274 F.3d 1255, 12 1257 (9th Cir. 2001) (“An applicant for disability benefits becomes a prevailing party for 13 the purposes of the EAJA if the denial of her benefits is reversed and remanded regardless 14 of whether disability benefits ultimately are awarded.”); *Corbin v. Apfel*, 149 F.3d 1051, 15 1053 (9th Cir.

1998) (“[A] party is eligible for fees under EAJA if [she] wins at any 16 intermediate stage in the proceedings—for instance, by obtaining a remand from the 17 appeals court.”). Because the Court reversed the ALJ’s denial of Plaintiff’s disability 18 benefits and remanded for further review, Plaintiff is a prevailing party under the EAJA. 19 C. Work Done While Plaintiff Proceeded Pro Se 20 Pro se plaintiffs are not eligible to recover fees for work they perform.

See *Merrell v. 21 Block*, 809 F.2d 639, 642 (9th Cir. 1987). “[A]n attorney [must be] retained for a prevailing 22 pro se litigant to recover attorneys fees under the EAJA.” *Id.* Defendant argues that 23 *Merrell* categorically bars an attorney from recovering fees for work the attorney billed 24 toward the pro se Plaintiff’s case prior to the attorney’s appearance in the case.

(Opp’n at 25 9–12). 26 The Court disagrees. “It is well-settled that an award of attorneys fees [under EAJA] 27 is not necessarily contingent upon an obligation to pay counsel ... [as] [t]he presence of an 28 attorney-client relationship suffices to entitle prevailing litigants to receive fee awards.” 1 *Nadarajah v. Holder*, 569 F.3d 906, 916 (9th Cir. 2009) (quoting *Ed A. Wilson, Inc. v. Gen.*

2 *Servs. Admin.*, 126 F.3d 1406, 1409 (Fed. Cir. 1997)). Here, the record demonstrates the 3 existence of an attorney-client relationship between Ms. Manbeck and Plaintiff since 4 September 2022, when Plaintiff solicited and received Ms. Manbeck’s advice on her case. 5 (ECF No. 41, at 2). See *Waggoner v. Snow, Becker, Kroll, Klaris & Krauss*, 991 F.2d 6 1501, 1505 (9th Cir.

1993) (“An attorney-client relationship is formed when an attorney 7 renders advice directly to a client who has consulted [her] seeking legal counsel.” (citing 8 *Beery v. State Bar*, 43 Cal. 3d 802, 812 (1987))). Plaintiff is therefore not precluded from 9 recovering attorney’s fees for services rendered by counsel prior to counsel’s formal 10 appearance on January 2, 2024.

11 D. Special Circumstances 12 Defendant argues Ms. Manbeck’s failure to convince this Court to overrule Judge 13 Crawford’s R&R constitutes “special circumstances [which] make an award unjust” under 14 the EAJA. (Opp’n at 17–20); 28 U.S.C. § 2412(d)(1)(A). “It is the government’s burden 15 to show that [Plaintiff’s] position was substantially justified or that special circumstances 16 exist to make an award unjust.” *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258 (9th Cir.

17 2001). The Court has “discretion to rely on equitable factors” to deny an award of fees 18 under the EAJA. *Abela v. Gustafson*, 888 F.2d 1258, 1266 (9th Cir. 1989). 19 The Court declines to find that special circumstances preclude an award of attorney’s 20 fees.

As discussed, Ms. Manbeck seeks attorney’s fees for a wide range of work. Plaintiff 21 also achieved partial success by receiving a reversal of decision and remand to the ALJ for 22 further proceedings. To the extent Plaintiff ultimately achieved only partial success, that 23 is properly addressed in determining Plaintiff’s request for reasonable fees. 24 E. Reasonableness of the Award 25 1.

Amount Plaintiff Requests 26 Plaintiff’s counsel requests \$31,704.04 in attorney’s fees for 19.5 billable hours in 27 2022, 33 hours in 2023, and 55.75 hours in 2024. (ECF No. 31-2, at 4–6). Counsel also 28 requests an enhanced rate of \$50 above each year’s EAJA statutory rate for hourly rates of 1 \$284.95 in 2022 and \$294.62 in 2023 and 2024. (*Id.* at 5).

The requested fees are summarized in the lodestar calculation below:

Date	Activity Description	Hourly Time	Amount	Rate
9/28/22	Discuss with claimant filing complaint;	2	\$284.95	
9/29/22	Search and email complaint sample 1.5;	1.5	\$284.95	
10/21/22	Discuss complaint, discuss remand option and litigation strategy	4.5	\$1,282.28	
10/22/22	Discuss remand appeal to Ninth Cir.	4.5	\$1,282.28	
1/26/23	Review hard copy administrative record.	3	\$883.86	
1/26/23	Discuss case with claimant, advise on strategy	2.5	\$736.55	
9/8/23	Discuss case strategy with claimant; discuss litigation procedures	6.5	\$1,915.03	
9/9/23	Consult with client.5; discuss opp. to remand	3	\$883.86	
9/10/23	Research case law on remand; advise claimant on litigation procedures against government	6	\$1,767.72	
11/11/23	Discuss opp. to remand; discuss with claimant legal representation, strategize	6	\$1,767.72	
12/23/23	Discuss w/ Claimant remand options; review prior motions and advise strategy	8	\$2,356.96	
1/2/24	Discuss with claimant legal representation, strategy re remand, review hard copy Adm. record	8.5	\$2,504.27	
1/3/24	Review Administrative Record and Summary Judgment & Opp. to remand	9	\$2,651.58	
1/4/24	Research remand law and draft Opposition to Remand; consult w/ Clt.	9	\$2,651.58	

1/5/24 Draft and finalize Memo in opposition to remand 2 1/6/24 Consult with claimant.5; discuss appeal 2.75 \$810.21 3 options 2/26/24 Review court order. Communicate with clt. \$294.62 1.75 \$515.59 4 2/28/24 Research remand law for appeal; discuss w/ clt 3.5 \$1,031.17 5 clt 3/1/24 Discuss case disposition w/clt and appellate 6.5 \$1,915.03 6 procedure 7 3/4/24 Discuss w/ clt to prepare timely Notice of Appeal 1.5 \$441.93 8 3/16/24 Prepare EAJA application 5.75 \$1,694.07 9 Total 108.25 \$31,704.05 10 11 In addition, counsel requests \$2,946.20 for 10 hours drafting the Reply at the 2024 12 rate.

(Reply, at 11). In total, counsel requests \$34,650.24 in attorney's fees. (Id.).¹ 13 2. Adjustments 14 Courts apply "the principles set forth in *Hensley*... to determine what constitutes a 15 reasonable fee award under the EAJA." *Costa v. Comm'r of Soc. Sec'y Admin.*, 690 F.3d 16 1132, 1135 (9th Cir. 2012).

Although the lodestar is presumptively reasonable, the Court 17 may adjust it by an appropriate multiplier "reflecting a host of reasonableness factors, 18 including the quality of representation, the benefit obtained for the [plaintiff], the 19 complexity and novelty of the issues presented, and the risk of nonpayment." *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir.

2016) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011)) (citation modified). Of 22 these factors, "a party's success in the litigation is the 'most critical.'" *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)). "[W]here the plaintiff has

achieved ‘only limited 24 25 1 The Government generally objects that Plaintiff’s additional request violates 28 U.S.C. 26 § 2412(d)(1)(B)’s requirement that Plaintiff submit an “itemized statement from any attorney... stating the actual time expended and the rate at which fees... were computed.” (ECF No. 43-1, at 5); 28 U.S.C. 27 § 2412(d)(1)(B).

Because Plaintiff’s counsel claims that all 10 hours were spent preparing Plaintiff’s Reply brief at her requested 2024 hourly rate, the Court finds that this request complies with 28 1 success,’ counting all hours expended on the litigation—even those reasonably spent— 2 may produce an ‘excessive amount.’” In re Bluetooth, 654 F.3d at 942 (quoting Hensley, 3 461 U.S. at 436).

4 “When an adjustment is requested on the basis of either the exceptional or limited 5 nature of the relief obtained by the plaintiff, the district court should... consider[] the 6 relationship between the amount of the fee awarded and the results obtained.” Yamada, 7 825 F.3d at 546. Where, as here, Plaintiff initiated briefing that did not lead to any further 8 benefit, the court must “consider[] the relationship between the amount of the fee awarded 9 and the results obtained.” Cf. Atkins v. Apfel, 154 F.3d 986, 989 (9th Cir.

1998) (quoting 10 Hensley, 461 U.S. at 437). Defendant argues that because Plaintiff’s objections to Judge 11 Crawford’s R&R were unsuccessful, Plaintiff should not recover fees incurred for that 12 failed effort. (Opp’n at 12–14). Plaintiff’s counsel disagrees that the objections were for 13 naught, arguing that the objections still preserved certain arguments for Plaintiff’s eventual 14 appeal.

(ECF No. 42, at 8–9). And while the appeal was dismissed for lack of prosecution, 15 it appears Plaintiff herself made that decision as she was then proceeding pro se. 16 The Court agrees that a plaintiff’s “failure to win all that she asked for does not mean 17 her award must be reduced.” Long v. Colvin, No. 13–cv–05716–SI, 2015 WL 3902160, at 18 *2 (N.D. Cal. June 24, 2015). “Indeed, if there is a ‘reasonable chance of obtaining benefits 19 from the court, without another round of administrative proceedings’ counsel should be 20 encouraged to pursue that remedy.” Id. (quoting Rogers v. Astrue, No. 09-cv-02158, 2010 21 WL 4569058, at *3 (E.D.

Cal. Nov. 3, 2010)). So long as Plaintiff’s reasons for objecting 22 to Judge Crawford’s R&R “were legally sound and not at all frivolous[,] [t]he fact that the 23 Court ultimately did not adopt her reasoning is not a basis for denying EAJA fees.” Penrod 24 v. Apfel, 54 F. Supp. 2d 961, 963 (D. Ariz. 1999). While the Court was unpersuaded by 25 Plaintiff’s objections to Judge Crawford’s R&R, Plaintiff’s arguments were not 26 unreasonable.

Accordingly, the Court declines to reduce Plaintiff counsel’s hours spent in 27 preparation for Plaintiff’s objection to Judge Crawford’s R&R. 28 1 3. Special Factor Enhancement 2 “A ‘special factor’ enhancement is available under the EAJA if ‘some distinctive 3 knowledge or specialized

skill [is needed] for the litigation in question.” Anh Tuyet Thai v. 4 Saul, No. 18cv2647-JAH-RBM, 2020 WL 4697971, at *2 (S.D.

Cal. Aug. 13, 2020) 5 (quoting *Pierce v. Underwood*, 487 U.S. 552, 572 (1988)). Such “special factors” may 6 include an “identifiable practice specialty” which constitute “some distinctive knowledge 7 or specialized skill needful for the litigation in question—as opposed to an extraordinary 8 level of the general lawyerly knowledge and ability useful in all litigation.” *Pierce*, 487 9 U.S. at 572. “Before approving the enhancement, a court must determine that (1) ‘the 10 attorney... possess[es] distinctive knowledge and skills,’ (2) ‘those distinctive skills [are] 11 needed in the litigation,’ and (3) ‘those skills [are not] available elsewhere at the statutory 12 rate.’” Anh Tuyet Thai, 2020 WL 4697971, at *2 (quoting *Love v. Reilly*, 924 F.2d 492, 13 1496 (9th Cir.

1991)). Plaintiff bears the burden of proving these requirements. *Id.* 14 Counsel argues she is entitled to an enhanced \$50 hourly rate “because of her 15 experience and knowledge of social security law, and of the lack of counsel willing or able 16 to represent Plaintiff.” (Mot. at 10). Defendant claims Ms. Manbeck lacks the type of 17 distinctive knowledge and skills that warrant an enhanced rate and that Plaintiff failed to 18 demonstrate that other counsel were unwilling or unable to represent Plaintiff.

(Opp’n at 19 14–17). 20 The Court agrees an enhanced fee is not warranted. “It is not enough, ... that the 21 attorney possess distinctive knowledge and skills.” *Pirus v. Bowen*, 869 F.2d 536, 541–42 22 (9th Cir. 1989) (stating distinctive knowledge and skills “warrant additional fees only if 23 they are in some way needed in the litigation and cannot be obtained elsewhere at the 24 statutory rate”).

Examples of cases involving “distinctive knowledge” or “specialized 25 skill” include “highly complex area[s] of the Social Security Act, with which plaintiff’s 26 attorneys had already developed familiarity and expertise,” *id.* at 542, or “knowledge of 27 legal issues relating to traumatized persons” in Social Security appeals involving refugees. 28 *Nguyen v. Berryhill*, No. 10-CV-2349-LAB-MDD, 2017 WL 3020958, at *3 (S.D.

Cal. 1 July 17, 2017). By comparison, Plaintiff’s appeal involved comparatively straightforward 2 issues: whether the ALJ failed to consider and appropriately weigh the opinions of 3 Plaintiff’s treating physicians and relevant records when the ALJ determined Plaintiff’s 4 residual functional capacity. (See generally ECF No. 18).

Accordingly, the Court declines 5 to award an enhanced hourly fee.² Applying relevant statutory rates of \$234.94 per hour 6 in 2022, \$244.62 per hour in 2023, and \$251.84 per hour in 2024 to 19.5 hours, 33 hours, 7 and 65.75 hours worked in those years, respectively, Plaintiff’s adjusted

lodestar is 8 \$29,212.47. See Statutory Maximum Rates Under the Equal Access to Justice Act, U.S. 9 CTS.

FOR THE NINTH CIR., [https://www.ca9.uscourts.gov/attorneys/statutory-maximum-](https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/) 10 rates/ (last visited Aug. 15, 2025). 11 F. Costs of Suit 12 Under the EAJA, a prevailing party may also recover “costs, as enumerated in 13 section 1920 of this title.” 28 U.S.C. § 2412(a)(1). “An applicant for reimbursement of 14 expenses bears the burden to produce evidence that permits the court to determine what 15 expenses were incurred in the litigation, and why they were incurred.

An attorney’s own 16 sworn affidavit provides the necessary proof that costs were in fact incurred.” Nguyen, 17 2017 WL 3020958, at *5 (internal citations omitted). 18 Ms. Manbeck initially requested reimbursement for \$100 in travel expenses, 19 photocopying, and postage costs. (Mot. at 15).

In her Reply, she requests an additional 20 \$600 for copying costs, \$29.04 for postage, and \$3,200 for “Casetext legal research” costs 21 for use of the Lexis/Nexis search platform. (Reply at 10–11). Defendant objects to an 22 award of costs because counsel failed to provide proof of the requested costs. (ECF No. 43- 23 1, at 4–5). 24 25 26 27 2 The Court also notes that Ms. Manbeck’s special expertise in representing Vietnamese-speaking litigants in Social Security appeals, while commendable, was not needed in this litigation.

(See Mot. at 11–15). 28 1 The Court agrees with Defendant. Counsel failed to file a confirming affidavit or 2 || other proof of costs. Additionally, counsel’s subscription to Lexis/Nexis does not appear 3 ||to be a recoverable cost under § 1920.

Accordingly, the Court declines to award costs to 4 || Plaintiff. 5 G. Assignment of Fees 6 Ms. Manbeck requests that payment of fees be made directly to her “pursuant to the 7 ||EAJA and consistent with *Astrue v. Ratliff*, 560 U.S. 586, 130 S. Ct. 2521, 177 L. Ed. 2d 8 (2010).” (Mot. at 17). “[D]istrict courts have recognized that Ratliff does not prevent 9 || payment of a fee award directly to the attorney where there has been a valid assignment 10 || and the plaintiff does not owe a debt to the government.” *Ulugalu*, 2018 WL 2012330, at 11 (collecting cases).

While there is no evidence of outstanding debt to the government, 12 ||there is also no evidence of an assignment of payment by Plaintiff to Ms. Manbeck. 13 || Accordingly, the Court denies without prejudice the request for direct payment to 14 || Plaintiff’s counsel. 15 IV. CONCLUSION 16 For these reasons, Plaintiff is awarded \$29,212.47 in attorney’s fees.

Costs are 17 || denied. 18 IT IS SO ORDERED. 19 || Dated: August 25, 2025 20 =n yn. L4\ 21 Hon. Dana M. Sabraw 22 United States District Judge 23 24 25 26 27 28