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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Marvin A. Saunders,

9  
10 Plaintiff,

11 vs.

12 Michael J. Astrue, Commissioner of Social  
13 Security,

14 Defendant.

No. CV-08-595-PHX-DGC

**ORDER**

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16 In a memorandum decision dated May 12, 2011, the Court of Appeals for the  
17 Ninth Circuit reversed the judgment affirming Defendant's denial of social security  
18 benefits to Plaintiff. Doc. 31-1. The Court of Appeals held that the ALJ improperly  
19 discredited Plaintiff's pain and symptom testimony and erred in determining his RFC, in  
20 part by erroneously rejecting the opinions of treating physicians in favor of a non-treating  
21 source. *Id.* at 2-9. The case has been remanded for further proceedings. *Id.* at 2, 5.

22 Plaintiff has filed a motion for attorneys' fees pursuant to the Equal Access to  
23 Justice Act ("EAJA"), 28 U.S.C. § 2412. Doc. 26. The motion is fully briefed. Docs.  
24 28, 32. Oral argument has not been requested. For reasons stated below, the motion will  
25 be denied.

26 The EAJA "authorizes federal courts to award attorneys' fees, court costs, and  
27 other expenses when a party prevails against the United States, although fee-shifting is  
28 not mandatory." *Hardisty v. Astrue*, 592 F.3d 1072, 1076 (9th Cir. 2010). Plaintiff is a

1 prevailing party because this matter has been remanded for further proceedings. *See*  
2 *Gutierrez v. Barnhart*, 274 F.3d 1255, 1257 (9th Cir. 2001). The Court should award  
3 reasonable attorneys’ fees under the EAJA unless Defendant shows that his position in  
4 this case was “substantially justified or that special circumstances make an award unjust.”  
5 28 U.S.C. § 2412(d)(1)(A).

6 To meet the “substantially justified” standard, Defendant’s position need not be  
7 “justified to a high degree.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Rather, it  
8 need only be “‘justified in substance or in the main’ – that is, justified to a degree that  
9 could satisfy a reasonable person.” *Id.* For reasons stated by Judge Murguia in affirming  
10 the ALJ’s decision (Doc. 20), and by Judge Bea in his dissent (Doc. 31-1 at 6-9), the  
11 Court finds Defendant’s position in this case, as a whole, to be substantially justified.  
12 Stated differently, although not correct, the position is such that “a reasonable person  
13 could think it correct[.]” *Pierce*, 478 U.S. at 566 n.2; *see Le v. Astrue*, 529 F.3d 1200,  
14 1201 (9th Cir. 2008).

15 The Court recognizes that Defendant’s “string of successes” in this case is not  
16 dispositive of the substantial justification inquiry. *Pierce*, 478 U.S. at 569. But the  
17 opinions of Judges Murguia and Bea clearly constitute objective indicia of substantial  
18 justification. *See id.*; *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1231 (9th  
19 Cir. 1990); *Lewis v. Barnhart*, 281 F.3d 1081, 1084 (9th Cir. 2002); *Gonzales v. Free*  
20 *Speech Coalition*, 408 F.3d 613, 620 (9th Cir. 2005). More importantly, the actual merits  
21 of Defendant’s position presented a “genuine dispute” as to whether Plaintiff was  
22 disabled within the meaning of the Social Security Act. *Pierce*, 478 U.S. at 565.

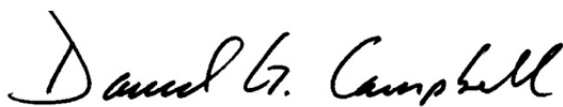
23 Plaintiff notes that the ALJ’s decision was not supported by substantial evidence  
24 (Doc. 32 at 2), but this does not mandate a fee award under the EAJA. In short, the Court  
25 finds Defendant’s “position as a whole substantially justified, albeit not ultimately  
26 adequate to sustain the agency’s decision.” *Al-Harbi v. I.N.S.*, 284 F.3d 1080, 1085 (9th  
27 Cir. 2002). The Court will exercise its discretion and deny the motion for attorneys’ fees.  
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*See Pierce*, 478 U.S. at 557-63.

**IT IS ORDERED** that Plaintiff's motion for attorneys' fees (Doc. 26) is **denied**.

Dated this 22nd day of July, 2011.



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David G. Campbell  
United States District Judge