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**NOT FOR PUBLICATION**  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Kenneth Lemberg,  
Plaintiff,

vs.

Michael J. Astrue, Commissioner of Social  
Security,  
Defendant.

No. CV-08-01079-PHX-FJM

**ORDER**

The court has before it plaintiff’s motion for attorney’s fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d) (doc. 22). The Commissioner did not respond.

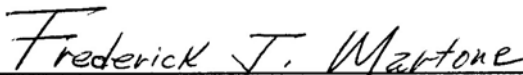
In our Order of March 15, 2010, we remanded this case to the Commissioner because the ALJ’s conclusions on plaintiff’s medical improvement and residual functional capacity were inconsistent with plaintiff’s credited complaints and a medical opinion (doc. 20). Plaintiff now requests an EAJA award in the total amount of \$6,395.62, representing filing costs in the amount of \$350.00 and attorney’s fees in the amount of \$6,045.62 for 35.1 hours of work. He applied the statutory rate adjusted by a cost-of-living increase, resulting in a rate of \$172.24 per hour.

Under the EAJA, a party prevailing against the United States may be awarded fees payable by the government if the government’s position in the litigation was not

1 “substantially justified.” 28 U.S.C. § 2412(d)(1)(A). We have discretion to consider the  
2 government’s failure to respond “a concession that its position in the litigation was not  
3 substantially justified.” Gwaduri v. I.N.S., 362 F.3d 1144, 1146 (9th Cir. 2004); see also  
4 LRCiv 7.2(i) (allowing non-compliance with briefing requirements to be deemed consent to  
5 the granting of a motion). Accordingly, after review of the government’s position and the  
6 reasonableness of the fees requested, we grant plaintiff’s motion.

7 **IT IS THEREFORE ORDERED GRANTING** plaintiff’s motion for an award of  
8 costs and attorney’s fees under the EAJA in the amount of \$6,395.62 (doc. 22).

9 DATED this 15<sup>th</sup> day of September, 2010.

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13 Frederick J. Martone  
14 United States District Judge  
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