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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Diana Decker,

Plaintiff,

vs.

Michael J. Astrue, Commissioner of Social Security,

Defendant.

No. CV 08-1919-PHX-JAT

ORDER

As an initial matter, pursuant to the mandate of the Ninth Circuit Court of Appeals (Doc. # 36), this Court’s Order, dated February 2, 2010, is vacated (Doc. # 27). Accordingly, the denial of social security benefits is reversed, and this matter is remanded to the Commissioner of the Social Security Administration (the “Commissioner”) for additional administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

Also pending before this Court is Plaintiff Diana L. Decker’s Application for Attorney Fees Under the Equal Access to Justice Act. (Doc. # 33.) Plaintiff petitions this Court for an award of attorney’s fees in the amount of \$13,014.00¹, and costs in the amount of \$805.00.

¹ The attorney’s fees incurred by Plaintiff’s counsel are calculated as follows: 3.8 hours at \$172.85/hour for work performed in 2008, 35.8 hours at \$174.24/hour for work performed in 2009, and 35.45 hours at \$174.64/hour for work performed in 2010.

1 In Appellee’s Unopposed Motion for Full Remand filed with the Ninth Circuit Court
2 of Appeals, the Commissioner agreed that “[i]n the event that Plaintiff/Appellant files a
3 motion for attorney’s fees under the Equal Access to Justice Act, 28 U.S.C. § 2412
4 [(“EAJA”)], the Commissioner agrees that he will not argue that his position was
5 substantially justified.” *Decker v. Astrue*, No. 10-15493 (9th Cir. Oct. 6, 2010) (Doc. # 17).

6 The EAJA provides that “a court may award reasonable fees and expenses of
7 attorneys, in addition to the costs which may be awarded pursuant to subsection (a) [of the
8 EAJA], to the prevailing party in any civil action brought by or against the United States or
9 any agency.” 28 U.S.C. § 2412(b). This Court shall award attorney’s fees and costs to a
10 prevailing party, “unless the court finds that the position of the United States was
11 substantially justified or that special circumstances make an award unjust.” *Id.* §
12 2412(d)(1)(A); *see Perez-Arellano v. Smith*, 279 F.3d 791, 793 (9th Cir. 2002). As noted
13 above, the Commissioner does not argue that his position was substantially justified. Nor
14 does the Commissioner argue that there are special circumstances that make an award of fees
15 and costs under the EAJA unjust. Further, the Commissioner does not dispute the amount
16 of fees and costs incurred.²

17 Considering the document hours and results obtained by Plaintiff’s counsel, this Court
18 finds there was adequate documentation, and no duplicative efforts, excessive time spent,
19 dilatory conduct, or disproportionate fees. Accordingly, this Court finds that an EAJA fee
20 award of \$13,819.00 is reasonable, as required under the EAJA. Moreover, given the fact
21 that this case has spanned multiple levels of appeals over the course of three years, this Court
22 not consider the claimed hours unreasonable.

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25 ² In fact, the rates charged by Plaintiff’s counsel in 2008, 2009 and 2010 equal the
26 Ninth Circuit’s statutory maximum hourly rates under the EAJA, adjusted for increases in
27 the cost of living. *See* “Statutory Maximum Rates Under the Equal Access to Justice Act,”
28 *available at* http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited
Feb. 28, 2011).

