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

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Delores K. Sharp,

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No. CV-09-1841-PHX-DGC

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Plaintiff,

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ORDER

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vs.

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Michael J. Astrue, Commissioner of
Social Security,

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Defendant.

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15 An administrative law judge (“ALJ”) denied Plaintiff’s application for disability
16 insurance benefits. Dkt. #11, Tr. 19-24. This decision became Defendant’s final decision
17 when the Appeals Council denied review. Tr. 2-4. Plaintiff then brought this action for
18 judicial review pursuant to 42 U.S.C. § 405(g). Dkt. #1. The Court reversed Defendant’s
19 decision and remanded the case for an award of benefits. Dkt. #19.

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20 Plaintiff has filed a motion for attorney’s fees pursuant to the Equal Access to Justice
21 Act, 28 U.S.C. § 2412 (“EAJA”). Dkt. #20. The motion is fully briefed. Dkt. ##21, 24, 25.
22 Oral argument has not been requested. For reasons stated below, the Court will grant the
23 motion and award Plaintiff attorney’s fees in the amount of \$8,577.55.

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24 “The EAJA creates a presumption that fees will be awarded to prevailing parties.”
25 *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). Plaintiff is a prevailing party because
26 this matter was remanded pursuant to sentence four of the Social Security Act, 42 U.S.C.
27 § 405(g). Dkt. #19; *see Shalala v. Schaefer*, 509 U.S. 292, 301 (1993); *Gutierrez v.*
28 *Barnhart*, 274 F.3d 1255, 1257 (9th Cir. 2001). The Court should award reasonable

1 attorney's fees under the EAJA unless Defendant shows that his position in this case was
2 "substantially justified or that special circumstances make an award unjust." 28 U.S.C. §
3 2412(d)(1)(A); *see Gutierrez*, 274 F.3d at 1258.

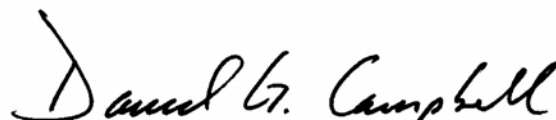
4 Defendant does not contend that an award of fees in this case would be unjust. Nor
5 has he shown that the positions taken in defense of the ALJ's erroneous decision were
6 substantially justified. The ALJ committed basic and fundamental errors: failing to provide
7 specific and legitimate reasons for rejecting a treating physician's opinion, giving significant
8 weight to the conclusory and inadequately supported opinions of non-examining physicians,
9 and failing to provide clear and convincing reasons for discrediting Plaintiff's subjective
10 complaints. Tr. 23; Dkt. #19. "It follows *a fortiori* [Defendant's] defense of the ALJ's
11 procedural errors was not substantially justified, and [Plaintiff] is entitled to attorneys' fees
12 under the EAJA." *Shafer v. Astrue*, 518 F.3d 1067, 1072 (9th Cir. 2008); *see Corbin v.*
13 *Apfel*, 149 F.3d 1051, 1052-53 (9th Cir. 1998) (the defense of "basic and fundamental errors"
14 is "difficult to justify").

15 Plaintiff's counsel, Dennis Peterson, has filed an affidavit (Dkt. #22) and an itemized
16 statement of fees (Dkt. #22-1) showing that he worked 49.8 hours on this case and that the
17 fees total \$8,577.55 (\$172 per hour). Having reviewed the affidavit and the statement of
18 fees, and having considered the relevant fee award factors, *see Hensley v. Eckerhart*, 461
19 U.S. 424, 429-30 & n.3 (1983), the Court finds that the amount of the requested fee award
20 is reasonable.

21 **IT IS ORDERED:**

- 22 1. Plaintiff's motion for attorney's fees (Dkt. #20) is **granted**.
23 2. Plaintiff is awarded **\$8,577.55** pursuant to the Equal Access to Justice Act,
24 28 U.S.C. § 2412.

25 DATED this 29th day of April, 2010.

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David G. Campbell
United States District Judge