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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Diana M. Mendoza,

10 Plaintiff,

11 v.

12 Michael J. Astrue, et al.,

13 Defendants.  
14

No. CV-12-00078-PHX-JAT

**ORDER**

15 Pending before the Court is Plaintiff Diana M. Mendoza (“Plaintiff”)’s motion for  
16 attorneys’ fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C.  
17 § 2412(d). (Doc. 38). The Court now rules on the motion.

18 **I. Background**

19 On June 12, 2007, Plaintiff filed an application for disability insurance benefits  
20 under Title II of the Social Security Act. (Doc. 12-3 at 18). Plaintiff’s claim was denied  
21 initially on September 13, 2007, and again upon reconsideration on June 19, 2008. (*Id.*)  
22 After a hearing, an Administrative Law Judge (“ALJ”) denied Plaintiff’s benefits claim  
23 on April 13, 2010, finding that although she suffered from severe fibromyalgia, she could  
24 perform past relevant work. (*Id.* at 15–30). On June 11, 2010, Plaintiff filed an appeal  
25 with the Appeals Council, Office of Hearings and Appeals, Social Security  
26 Administration, which ultimately denied review of the ALJ’s decision on November 17,  
27 2011. (*Id.* at 13). On January 12, 2012, Plaintiff filed a complaint with the Court seeking  
28 judicial review of the ALJ’s decision. (Doc. 1).

1 On April 30, 2013, the Court affirmed the ALJ's decision to deny Plaintiff  
2 disability benefits. (Doc. 27). The Court specifically held that the ALJ's decision was  
3 adequately supported by the evidence on the record and was not in legal error. (*Id.* at 6–  
4 21). The United States Court of Appeals for the Ninth Circuit reversed that decision on  
5 appeal and remanded for an award of benefits. (Doc. 34-1). Plaintiff now seeks  
6 \$19,127.50 in attorneys' fees pursuant to the EAJA. (Doc. 43 at 12).

## 7 **II. Legal Standard**

8 The Ninth Circuit has succinctly stated the legal standard for an award of  
9 attorneys' fees under the EAJA as follows:

10 EAJA provides that a court shall award to a prevailing party other  
11 than the United States fees and other expenses incurred by that party in any  
12 civil action unless the court finds that the position of the United States was  
13 substantially justified or that special circumstances make an award unjust.  
14 It is the government's burden to show that its position was substantially  
15 justified. Substantial justification means justified in substance or in the  
16 main—that is, justified to a degree that could satisfy a reasonable person.  
17 Put differently, the government's position must have a reasonable basis  
18 both in law and fact. The position of the United States includes both the  
19 government's litigation position and the underlying agency action giving  
20 rise to the civil action. Thus, if the government's underlying position was  
21 not substantially justified, we must award fees and need not address  
22 whether the government's litigation position was justified.

23 *Tobeler v. Colvin*, 749 F.3d 830, 832 (9th Cir. 2014) (citations, quotation marks, and  
24 alterations omitted).

## 25 **III. Analysis**

### 26 **A. Whether Plaintiff is entitled to an Award of Fees under the EAJA**

27 Because the Ninth Circuit reversed the ALJ's denial and remanded for an award of  
28 benefits, there is no dispute that Plaintiff is the prevailing party within the meaning of the  
EAJA. See *Gutierrez v. Barnhart*, 274 F.3d 1255, 1257 (9th Cir. 2001) (stating that an  
applicant for disability benefits becomes a prevailing party for the purposes of the EAJA  
if the denial of benefits is reversed and remanded regardless of whether disability benefits  
ultimately are awarded). Nonetheless, “the fact that one other court agreed or disagreed

1 with the Government does not establish whether its position was substantially justified.”  
2 *Pierce v. Underwood*, 487 U.S. 552, 596 (1988).

3 Although Plaintiff agrees that the reversal does not resolve the issue of attorneys’  
4 fees, she argues that the ALJ committed three errors that justify an award of fees.  
5 Specifically, Plaintiff asserts that awarding fees is appropriate because: (1) the ALJ’s  
6 decision to assign “little weight” to treating physician Dr. Nolan’s opinions was not  
7 supported by “reasonable, substantial and probative evidence”; (2) Plaintiff’s credibility  
8 was rejected without “specific, clear and convincing reasons”; and (3) the testimony of  
9 Plaintiff’s father-in-law was rejected without “specific, clear and convincing reasons.”  
10 (Doc. 43 at 2). In response, the Government posits that this Court’s prior agreement with  
11 its position on these issues indicates that a reasonable person could find that its litigation  
12 position was substantially justified. (Doc. 40 at 3).

13 The Ninth Circuit has made “clear that when an agency’s decision is unsupported  
14 by substantial evidence it is a strong indication that the position of the United States is  
15 not substantially justified.” *Campbell v. Astrue*, 736 F.3d 867, 869 (9th Cir. 2013). Only  
16 “decidedly unusual” cases overcome this “strong presumption.” *See Thangaraja v.*  
17 *Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005) (“Indeed, it will be only a decidedly unusual  
18 case in which there is substantial justification under the EAJA even though the agency’s  
19 decision was reversed as lacking in reasonable, substantial and probative evidence in the  
20 record.” (citation omitted)). In this case, the Ninth Circuit determined that “neither of the  
21 reasons the ALJ gave for assigning little weight to Dr. Nolan’s opinion were supported  
22 by substantial evidence.” (Doc. 34-1 at 19). Thus, as the Ninth Circuit found the ALJ’s  
23 decision to be lacking in “substantial evidence,” there is a “strong indication” that the  
24 Government’s position was not “substantially justified” unless the case is “decidedly  
25 unusual.” *Thangaraja*, 428 F.3d at 874. Rather than explain how this case meets this  
26 criteria, the Government focuses its argument entirely on the reasonableness of its  
27 actions. (Doc. 40 at 4–9). Although the Court agrees with the Government that record  
28 evidence supports the ALJ’s decision to afford “little weight” to Dr. Nolan’s opinion, the

1 circumstances of this case do not warrant a finding that the case is “decidedly unusual.”  
2 *See Campbell*, 736 F.3d at 869 (explaining that extrapolating medical records to make a  
3 decision about a past condition constitutes a “decidedly unusual case”). Consequently,  
4 because the Ninth Circuit held that the ALJ’s decision was not supported by “substantial  
5 evidence,” the Court must award Plaintiff her attorneys’ fees under the EAJA. *See Martin*  
6 *v. Comm’r of Soc. Sec. Admin.*, 598 F. App’x 485, 487 (9th Cir. 2015) (“This case is not  
7 one of those ‘decidedly unusual’ cases in which there is substantial justification under  
8 EAJA even though the agency’s decision was reversed for a lack of substantial  
9 evidence.” (citing *Meier v. Colvin*, 727 F.3d 867, 872 (9th Cir. 2013)).<sup>1</sup>

10 **B. Whether the Requested Fees are Reasonable**

11 Plaintiff requests \$19,127.50 in attorneys’ fees. (Doc. 43 at 11). Specifically,  
12 Plaintiff seeks to recover \$505.65 for 2.80 hours of work performed in 2011; \$5,197.82  
13 for 28.20 hours of work performed in 2012; \$2,693.08 for 14.40 hours of work performed  
14 in 2013; \$8,942.32 for 47.05 hours of work performed in 2014; and \$608.89 for 3.2 hours  
15 of work performed in 2015. (Doc. 38 at 1).<sup>2</sup> Plaintiff also requests recovery of \$1,179.74  
16 for 6.20 hours of work to review the Government’s opposition to her application for  
17 attorneys’ fees, perform legal research, and draft and edit her reply. (Doc. 43 at 11).<sup>3</sup>

18 The Government does not object to the upward cost of living requested by  
19 Plaintiff or to the number of hours that Plaintiff’s counsel spent on this case. After review  
20 of the relevant fee award factors, *see Hensley v. Eckerhart*, 461 U.S. 424, 429–30 & n.3

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22 <sup>1</sup> The Ninth Circuit held that the ALJ committed three errors, *see* (Doc. 34-1 at 2–  
23 4), but this error is itself sufficient to render the Government’s position not substantially  
24 justified.

25 <sup>2</sup> The statutory maximum hourly rate, adjusted for increases in the cost of living,  
26 for 2011 is \$180.59, for 2012 is \$184.32, for 2013 is \$187.02, for 2014 is \$190.06, and  
27 for 2015 is \$190.28. *See* United States Courts for the Ninth Circuit, Equal Access to  
Justice Act–Rates, [http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000039](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000039)  
(last visited June 21, 2016).

28 <sup>3</sup> This amount was calculated at \$190.28 per hour, the applicable statutory  
maximum hourly rate for 2015.

1 (1983),<sup>4</sup> the Court finds that the requested number of hours is reasonable and that  
2 Plaintiff is entitled to the cost-of-living adjustment to the statutory hourly rate pursuant to  
3 the EAJA and *Thangaraja*, 428 F.3d at 876–77. The Court will also award Plaintiff her  
4 attorneys’ fees for time spent litigating her EAJA fee application. *See Comm’r,*  
5 *Immigration & Naturalization Serv. v. Jean*, 496 U.S. 154, 161–62 (1990) (holding that a  
6 prevailing party in an EAJA action may recover attorneys’ fees incurred during fee  
7 litigation).

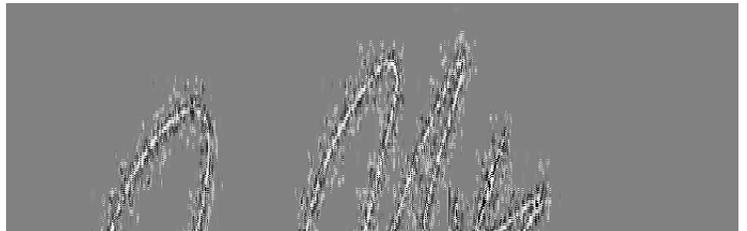
8 **IV. Conclusion**

9 Based on the foregoing,

10 **IT IS ORDERED** that Plaintiff’s Application for Attorney Fees under the Equal  
11 Access to Justice Act (Doc. 38) is **GRANTED**.

12 **IT IS FURTHER ORDERED** that Plaintiff is awarded \$19,127.50 in attorneys’  
13 fees. This award shall be made payable directly to Plaintiff and is subject to offset to  
14 satisfy any pre-existing debt that Plaintiff owes the United States pursuant to *Astrue v.*  
15 *Ratliff*, 560 U.S. 586 (2010).

16 Dated this 5th day of July, 2016.



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27 <sup>4</sup> In *Whitehead v. Colvin*, 2016 WL 1464469, at \*2 n.1 (W.D. Wash. Apr. 14,  
28 2016), the court noted that *Hensley* had been superseded, in part, by the Prison Litigation  
Reform Act. As this case does not involve prisoner litigation, this statutory change is  
irrelevant.