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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Deborah Marie Sproule,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.

No. CV-13-01427-PHX-DGC

ORDER

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15 Plaintiff brought this action for judicial review pursuant to 42 U.S.C. § 405(g)
16 after her application for disability benefits was denied. Doc. 1. The Court reversed
17 Defendant's decision and remanded the case for an award of benefits. Doc. 27.

18 Plaintiff has filed a motion for attorney's fees pursuant to the Equal Access to
19 Justice Act, 28 U.S.C. § 2412 ("EAJA"). Doc. 29. The motion is fully briefed and no
20 party has requested oral argument. For reasons that follow, the Court will grant the
21 motion and award Plaintiff attorney's fees in the amount of \$7,836.13.

22 "The EAJA creates a presumption that fees will be awarded to prevailing parties."
23 *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995). Plaintiff is a prevailing party
24 because this matter was remanded pursuant to sentence four of the Social Security Act,
25 42 U.S.C. § 405(g). Doc. 28; *see Shalala v. Schaefer*, 509 U.S. 292, 301 (1993);
26 *Gutierrez v. Barnhart*, 274 F.3d 1255, 1257 (9th Cir. 2001). The Court should award
27 reasonable attorney's fees under the EAJA unless Defendant shows that her position in
28 this case was "substantially justified or that special circumstances make an award unjust."

1 28 U.S.C. § 2412(d)(1)(A); *see Gutierrez*, 274 F.3d at 1258. A position is substantially
2 justified “if it has a reasonable basis in fact and law.” *Pierce v. Underwood*, 487 U.S.
3 552, 566 n.2 (1988).

4 Defendant does not contend that an award of fees in this case would be unjust.
5 Nor has she shown that the positions taken in defense of the ALJ’s erroneous decision
6 were substantially justified. Defendant argues that because “reasonable people could
7 disagree whether the ALJ’s decision in this case was appropriate,” her position in this
8 case was substantially justified. Doc. 32 at 3.

9 The Court found that the ALJ committed legal error by failing to identify legally
10 sufficient reasons for rejecting the opinion of Dr. Nolan, one of Plaintiff’s treating
11 physicians. Doc. 27 at 4. The opinion of a treating or examining physician “can only be
12 rejected for specific and legitimate reasons that are supported by substantial evidence in
13 the record.” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (internal citation omitted).
14 The Court found that the ALJ failed to offer anything more than conclusions in support of
15 her decision to reject the opinion of Dr. Nolan and referred generally to its contradiction
16 with other evidence in the record rather than specifically identifying and interpreting the
17 contradictory evidence. Doc. 27 at 4. Because the ALJ’s decision did not comport with
18 the Ninth Circuit’s requirement for rejecting the opinion of a treating or examining
19 physician, Defendant’s position cannot be said to have a “reasonable basis in law” and
20 was not substantially justified.

21 Plaintiff’s counsel, Mark Caldwell, has filed an affidavit (Doc. 31) and an
22 itemized statement of fees (Doc. 31-1) showing that he worked 41.90 hours on this case.¹
23 Having reviewed the affidavit and the statement of fees, and having considered the
24 relevant fee award factors, *see Hensley v. Eckerhart*, 461 U.S. 424, 429-30 & n.3 (1983),
25 the Court finds that the amount of the requested fee award is reasonable.

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28 ¹ Plaintiff’s reply brief requests fees for an additional 1.7 hours of time spent
drafting the reply brief. Doc. 33 at 4. Because the request is not accompanied by any
supporting documentation, the Court will not consider it.

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IT IS ORDERED:

1. Plaintiff's motion for attorney's fees (Doc. 29) is **granted**.
2. Plaintiff is awarded **\$7,836.13** pursuant to 28 U.S.C. § 2412.

Dated this 9th day of July, 2014.



David G. Campbell
United States District Judge