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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Freddy Allen Samora,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.

No. CV-13-01703-PHX-DGC

ORDER

14
15 Plaintiff brought this action for judicial review pursuant to 42 U.S.C. § 405(g)
16 after his application for disability benefits was denied. Doc. 1. The Court reversed
17 Defendant's decision and remanded the case for further proceedings. Doc. 19.

18 Plaintiff has filed a motion for attorney's fees and costs pursuant to the Equal
19 Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). Doc. 21. Defendant has responded
20 (Doc. 22) and no party has requested oral argument. For reasons that follow, the Court
21 will grant the motion and award Plaintiff attorney's fees in the amount of \$4,039.63 and
22 costs in the amount of \$400.00.

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

1 this case was “substantially justified or that special circumstances make an award
2 unjust.” 28 U.S.C. § 2412(d)(1)(A); *see Gutierrez*, 274 F.3d at 1258. A position is
3 substantially justified “if it has a reasonable basis in fact and law.” *Pierce v. Underwood*,
4 487 U.S. 552, 566 n.2 (1988).

5 Defendant does not contend that an award of fees in this case would be unjust.
6 Nor has she shown that the positions taken in defense of the ALJ’s erroneous decision
7 were substantially justified.

8 Defendant argues that her position was substantially justified because it was
9 “reasonable in law and fact.” Doc. 22 at 3. The Court found that the ALJ committed
10 legal error by failing to identify legally sufficient reasons for rejecting the opinion of Dr.
11 Angulo, an examining psychologist. Doc. 19 at 5-8. The uncontroverted opinion of a
12 treating or examining physician can be rejected only for “clear and convincing reasons,”
13 and a contradicted opinion may be rejected “for specific and legitimate reasons that are
14 supported by substantial evidence in the record.” *Lester v. Chater*, 81 F.3d 821, 830 (9th
15 Cir. 1995) (internal citation omitted). The Court found that the ALJ did not identify any
16 evidence that contradicted Dr. Angulo’s opinion and failed to provide clear and
17 convincing reasons for rejecting his opinion. Doc. 19 at 5-8. Because the ALJ failed to
18 provide clear and convincing reasons for rejecting Dr. Angulo’s opinions, his decision
19 did not comport with the Ninth Circuit’s requirements and constituted legal error.
20 Defendant’s position therefore cannot be said to have a “reasonable basis in law,” and
21 was not substantially justified.

22 Plaintiff’s counsel, Tye Smith, has filed an affidavit (Doc. 21-1) and an itemized
23 statement of fees (Doc. 21-2) showing that 21.60 hours of work were performed on this
24 case. Having reviewed the affidavit and the statement of fees, and having considered the
25 relevant fee award factors, *see Hensley v. Eckerhart*, 461 U.S. 424, 429-30 & n.3 (1983),
26 the Court finds that the amount of the requested fee award is reasonable.

27 **IT IS ORDERED:**

- 28 1. Plaintiff’s motion for attorney’s fees (Doc. 21) is **granted**.

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2. Plaintiff is awarded **\$4,039.63** in attorney's fees pursuant to 28 U.S.C. § 2412 and **\$400.00** in costs pursuant to 28 U.S.C. § 1920.

Dated this 12th day of September, 2014.



David G. Campbell
United States District Judge