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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jesus Zamora,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.

No. CV-13-01970-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 his 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. 16.

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. 18. The motion is fully briefed
20 and no party has requested oral argument. For reasons that follow, the Court will grant
21 the motion and award Plaintiff attorney's fees in the amount of \$7,493.20 and costs in the
22 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. 16; *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. 19 at 5. The Court found that the ALJ committed
10 legal error by failing to identify legally sufficient reasons for rejecting the opinions of Dr.
11 Bencomo, an examining physician, and Dr. Chaney, one of Plaintiff’s treating physicians.
12 Doc. 16 at 5-8. The uncontroverted opinion of a treating or examining physician can be
13 rejected only for “clear and convincing reasons,” and a contradicted opinion “for specific
14 and legitimate reasons that are supported by substantial evidence in the record.” *Lester v.*
15 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (internal citation omitted). The Court found that
16 the ALJ did not provide any reasons for rejecting a portion of Dr. Bencomo’s opinion and
17 failed to provide clear and convincing reasons for rejecting Dr. Chaney’s opinion.
18 Doc. 16 at 5-8. Because the ALJ failed to provide specific and legitimate or clear and
19 convincing reasons for rejecting these opinions, her decision did not comport with the
20 Ninth Circuit’s requirements and constituted legal error. Defendant’s position therefore
21 cannot be said to have a “reasonable basis in law,” and was not substantially justified.

22 Plaintiff’s counsel, Stephanie Lake, has filed an affidavit (Doc. 18-2) and an
23 itemized statement of fees (Doc. 18-1) showing that she worked 39.60 hours on this
24 case.¹ 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.

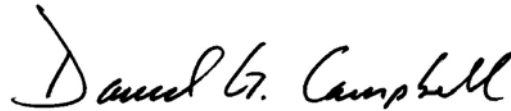
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28 ¹ In his reply brief, Plaintiff also requests an additional \$474.45 for time spent
pursuing this fee motion. Doc. 20 at 3. Because Plaintiff does not submit an affidavit or
itemized statement in support of these fees, the Court will deny the request.

1 Plaintiff's counsel also requests that fees owed to Plaintiff be awarded to her.
2 Doc. 18 at 4. The Court will not grant this request, however, because, as Defendant
3 correctly notes, this determination must be made by the Commissioner after confirming
4 that Plaintiff has assigned his right to fees and does not owe a debt that is subject to offset
5 under the Treasury Offset Program. Doc. 19 at 9-10 (citing *Astrue v. Ratcliff*, 560 U.S.
6 586, 594 (2010) ("EAJA fees are payable to litigants and are thus subject to offset where
7 a litigant has outstanding federal debts.")).

8 **IT IS ORDERED:**

- 9 1. Plaintiff's motion for attorney's fees (Doc. 18) is **granted**.
- 10 2. Plaintiff is awarded **\$7,493.20** in attorney's fees and **\$400.00** in costs
11 pursuant to 28 U.S.C. § 2412.

12 Dated this 5th day of September, 2014.

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16 David G. Campbell
17 United States District Judge
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