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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Bernard Laborin,) CIV 13-2167-PHX-MHB

10 Plaintiff,) **ORDER**

11 vs.)

12 Carolyn W. Colvin, Commissioner of the)
13 Social Security Administration,)

14 Defendant.)

15 Pending before the Court is Plaintiff Bernard Laborin application for attorney’s fees
16 under the Equal Access to Justice Act (“EAJA”) (Doc. 40). After reviewing the arguments
17 of the parties, the Court now issues the following ruling.

18 Plaintiff filed applications for disability insurance benefits and supplemental security
19 income alleging disability beginning August 8, 2008. His applications were denied initially
20 and on reconsideration. Thereafter, Plaintiff requested a hearing before an administrative law
21 judge. A hearing was held on August 9, 2012, and the ALJ issued a decision finding that
22 Plaintiff was not disabled. The Appeals Council denied Plaintiff’s request for review, making
23 the ALJ’s decision the final decision of the Commissioner. Plaintiff then sought judicial
24 review of the ALJ’s decision pursuant to 42 U.S.C. § 405(g).

25 This Court, after reviewing the administrative record and the arguments of the parties,
26 affirmed the decision of the ALJ. Plaintiff then appealed the Court’s decision to the Ninth
27 Circuit Court of Appeals.

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1 On October 11, 2017, the Ninth Circuit issued its Mandate, finding that the ALJ's
2 decision was not supported by substantial evidence, and remanding this matter back to the
3 district court with instructions to remand to the Commissioner for further proceedings.
4 Specifically, the court found: (1) the ALJ erred in giving treating physician Dr. Tran's
5 opinion "very little weight" without analyzing the required factors; (2) the ALJ erred in
6 rejecting some of Laborin's symptom testimony; and (3) the ALJ erred by not sufficiently
7 explaining why Laborin's lumbar spine impairment did not meet or medically equal a Social
8 Security Listing.¹

9 The EAJA allows "a prevailing party other than the United States fees and other
10 expenses ... incurred by that party in any civil action ... unless the court finds that the position
11 of the United States was substantially justified or that special circumstances make an award
12 unjust." 28 U.S.C. § 2412(d)(1)(A). An applicant for disability benefits becomes a prevailing
13 party for the purposes of the EAJA if the denial of her benefits is reversed and remanded
14 regardless of whether disability benefits are ultimately awarded. See Shalala v. Schaefer, 509
15 U.S. 292, 300-02 (1993).

16 The "position of the United States" includes both its litigating position and the "action
17 or failure to act by the agency upon which the civil action is based." 28 U.S.C. §
18 2412(d)(2)(D). For this position to be substantially justified, it must be "justified in substance
19 or in the main – that is, justified to a degree that could satisfy a reasonable person." Pierce

21 ¹ The Ninth Circuit also issued an Opinion explicitly rejecting the ALJ's use of the following
22 "boilerplate statement" –

23 After careful consideration of the evidence, the undersigned finds that the claimant's
24 medically determinable impairments could reasonably be expected to cause the
25 alleged symptoms; however, the claimant's statements concerning the intensity,
26 persistence and limiting effects of these symptoms are not credited to the extent they
27 are inconsistent with the above residual functional capacity.

28 The court found that such language "encourages an inaccurate assessment of a claimant's credibility
and also permits determination of RFCs that are inconsistent with truly credible testimony. The
approach taken by the ALJ was inconsistent with the Social Security Act and should not be used in
disability decisions."

1 v. Underwood, 487 U.S. 552, 565 (1988) (holding that substantially justified means having
2 a reasonable basis both in law and fact). In EAJA actions, the government bears the burden
3 of proving that its position was substantially justified. See Gonzales v. Free Speech
4 Coalition, 408 F.3d 613, 618 (9th Cir. 2005). However, “the government’s failure to prevail
5 does not raise a presumption that its position was not substantially justified.” Kali v. Bowen,
6 854 F.2d 329, 332 (9th Cir. 1988).

7 When analyzing the government’s position for substantial justification, the Court’s
8 inquiry should be focused on the issue that was the basis for remand and not the merits of
9 Plaintiff’s claim in its entirety or the ultimate disability determination. See Flores v. Shalala,
10 49 F.3d 562, 569 (9th Cir. 2008); see also Corbin v. Apfel, 149 F.3d 1051, 1052 (9th Cir.
11 1998) (“The government’s position must be substantially justified at each stage of the
12 proceedings.”).

13 Plaintiff moves for an award of attorney’s fees under the EAJA in the amount of
14 \$20,216.10. Defendant opposes Plaintiff’s request, arguing that the government’s position
15 was substantially justified.

16 It is undisputed that Plaintiff is the prevailing party. Therefore, the issue before the
17 Court is whether Defendant’s position in opposing Plaintiff’s appeal was “substantially
18 justified.” Shafer v. Astrue, 518 F.3d 1067, 1071 (9th Cir. 2008). Having reviewed the
19 parties’ pleadings and the record in this matter, the Court concludes that Defendant’s
20 decision to defend the ALJ’s determination was not substantially justified.

21 In its response, Defendant argues that, although the Ninth Circuit did not agree, the
22 Commissioner was substantially justified since this Court “agreed with the Commissioner’s
23 position,” illustrating “that a reasonable person could – and did – think that the
24 Commissioner’s position was not ‘arbitrary, frivolous, unreasonable or groundless.’”
25 Defendant argues that this Court’s ruling, along with the fact that the Ninth Circuit found that
26 the ALJ did not err in discounting the lay witness testimony of Plaintiff’s wife and that an
27 immediate award of benefits was inappropriate, shows that the Commissioner’s position was
28 substantially justified.

1 As stated previously, the Ninth Circuit determined that the ALJ's decision was not
2 supported by substantial evidence. The ALJ's multiple errors in assessing Dr. Tran's opinion,
3 rejecting Plaintiff's credibility, and failing to explain why Plaintiff's lumbar spine
4 impairment did not meet or medically equal a Social Security Listing, were clear procedural
5 errors and, as such, the Court cannot say that the Commissioner's defense of the ALJ's
6 findings were substantially justified. See, e.g., Roe v. Comm'r of Soc. Sec., 651 Fed.Appx.
7 583, 585 (9th Cir. 2016); Corbin, 149 F.3d at 1053 (finding that "the government's defense
8 of basic and fundamental procedural errors" is "difficult to justify").

9 Defendant contends that this Court "agreed with the Commissioner's position,"
10 demonstrating "that a reasonable person could – and did – think that the Commissioner's
11 position was not 'arbitrary, frivolous, unreasonable or groundless.'" The Court is not
12 persuaded. Although it is proper to consider the government's past successes when
13 evaluating substantial justification, see Meier v. Colvin, 727 F.3d 867, 873 (9th Cir. 2013)
14 (citing Lewis v. Barnhart, 281 F.3d 1081, 1084 (9th Cir. 2002)), success at the district court
15 level alone does not make the government's position substantially justified when, as in this
16 case, the ALJ failed to (1) offer specific and legitimate reasons that are supported by
17 substantial evidence in the record for contradicting a treating physician, or (2) offer clear and
18 convincing reasons for rejecting a claimant's credibility. Thus, the Commissioner's success
19 at the district court, without more, fails to demonstrate that the government's position is
20 substantially justified. Therefore, Plaintiff is entitled to reasonable attorney's fees under the
21 EAJA.

22 Because Plaintiff is entitled to attorney's fees, the Court will determine whether the
23 requested fees are reasonable. Plaintiff moves for an award of attorney's fees in the amount
24 of \$20,216.10. Along with his application, Plaintiff's counsel has filed an Itemization of
25 Services and Affidavit indicating that the fee amount represents 103.40 hours of attorney
26 time, 6.40 hours of paralegal time, and costs associated with this case. Defendant has not
27 objected to the number of hours spent on this matter or to the hourly rate. The Court finds
28 that Plaintiff's request for a total cumulative fee award of \$20,216.10 is reasonable. Plaintiff's

1 application for attorney’s fees under the Equal Access to Justice Act (“EAJA”) (Doc. 40) will
2 be granted.

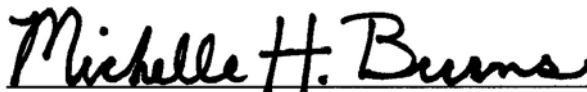
3 Accordingly,

4 **IT IS ORDERED** that Plaintiff’s application for attorney’s fees under the Equal
5 Access to Justice Act (Doc. 40) is **GRANTED**;

6 **IT IS FURTHER ORDERED** that Plaintiff is awarded \$20,216.10 pursuant to the
7 Equal Access to Justice Act;

8 **IT IS FURTHER ORDERED** that, this award shall be payable to Plaintiff and is
9 subject to offset to satisfy any pre-existing debt that Plaintiff owes the United States pursuant
10 to Astrue v. Ratliff, 560 U.S. 586, 594 (2010).

11 DATED this 22nd day of January, 2018.

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14 Michelle H. Burns
15 United States Magistrate Judge
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