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

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9
10 Audra E. Hopkins,
11 Plaintiff,

No. CV-18-08129-PCT-DGC

AMENDED ORDER

12 v.

13 Kilolo Kijakazi, Acting Commissioner of
the Social Security Administration,

14 Defendant.
15

16 Plaintiff Audra Hopkins has made an application to the Court for attorneys' fees
17 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Doc. 26. No party
18 requests oral argument, and the motion is fully briefed. Docs. 27, 30, 33. For reasons set
19 forth below, the Court will grant the motion.

20 **I. Background.**

21 On March 15, 2017, an administrative law judge ("ALJ") denied Plaintiff's
22 application for social security benefits, finding that Plaintiff was not disabled within the
23 meaning of the Social Security Act. Doc. 18 at 1. That denial became the Commissioner's
24 final decision when the Appeals Council denied Plaintiff's request for review. *Id.* at 2.

25 Plaintiff brought an action for judicial review pursuant to 42 U.S.C. § 405(g).
26 Doc. 1. On November 5, 2018, Plaintiff filed her opening brief and requested remand for
27 an immediate award of benefits. Doc. 12. The Commissioner offered to remand for further
28 proceedings on December 28, 2018. *See* Docs. 14 at 2; 27-2 at 4; 30 at 4. Plaintiff rejected

1 that offer. Docs. 27-2 at 5; 30 at 4. The Commissioner filed her response brief, requesting
2 remand for further proceedings. Doc. 16. Plaintiff's opposed the Commissioner's position
3 in the reply brief, arguing that remand was unnecessary and instead seeking an immediate
4 award of benefits. Doc. 17. Because outstanding issues required resolution before a
5 determination of disability could be made, the Court remanded the case for further
6 proceedings. See Doc. 18 at 16. Plaintiff appealed (Doc. 20), and the Ninth Circuit
7 affirmed (Doc. 24).

8 Plaintiff's attorney, Mark Caldwell, requests \$12,693.49 in attorneys' fees. See
9 Doc. 33 at 8. This includes \$9,591.88 for time devoted to Plaintiff's appeal of the
10 Commissioner's decision (Doc. 27-2 at 1-5), \$2,175.65 for Plaintiff's opposition to the
11 Commissioner's brief (Doc. 27-2 at 5), and \$925.96 for the fee petition (Doc. 33 at 8).

12 **II. Legal Standard.**

13 Under the EAJA, the Court must award attorneys' fees to a prevailing party in
14 "proceedings for judicial review of agency action . . . unless the [C]ourt finds that the
15 position of the United States was substantially justified or that special circumstances make
16 an award unjust." 28 U.S.C. § 2412(d)(1); *Gutierrez v. Barnhart*, 274 F.3d 1255, 1258
17 (9th Cir. 2001). Under this provision, courts routinely award attorneys' fees to claimants
18 who successfully challenge the Social Security Administration's denial of disability
19 benefits. See, e.g., *Tobeler v. Colvin*, 749 F.3d 830 (9th Cir. 2014).

20 **III. Reasonableness of Fees.**

21 The Commissioner "waives the right to argue substantial justification and does not
22 contest that Plaintiff is entitled to reasonable EAJA fees." Doc. 30 at 2. The Commissioner
23 instead argues that the Court should deduct 10.6 hours from Plaintiff's fee request because
24 she rejected the Commissioner's offer to voluntarily remand and did not obtain all of the
25 relief for which she argued. Doc. 30 at 2, 4-5. The Court does not agree.

26 First, a rejected offer to remand for further proceedings provides no reason to reduce
27 a fee award. See *Gallagher v. Comm'r of Soc. Sec. Admin.*, No. CV-19-05766-PHX-MTL,
28 2021 WL 2895288, at *3 (D. Ariz. July 9, 2021) ("[T]he Court will not reduce the award

1 merely because the Commissioner offered to remand the case.”); *Long v. Colvin*, No. 13-
2 CV-05716-SI, 2015 WL 3902160, at *2 (N.D. Cal. June 24, 2015). A plaintiff is “not
3 obligated to stipulate to remand.” *Wright v. Comm’r of Soc. Sec. Admin.*, No. CV-19-
4 04508-PHX-DLR, 2020 WL 6781308, at *1 (D. Ariz. Nov. 18, 2020) (citations omitted)
5 (collecting cases).

6 Second, Plaintiff’s opening brief requested remand without further administrative
7 proceedings and, in the alternative, remand for further administrative proceedings.
8 Doc. 12 at 22. Plaintiff argued that the ALJ erroneously rejected the opinion of Plaintiff’s
9 treating physician, Dr. Janikowski, and disregarded Plaintiff’s symptom testimony. *Id.*

10 In response, the Commissioner asked the Court to remand the case for further
11 proceedings. Doc. 16. Essentially, “[t]he Commissioner’s [brief] was merely a concession
12 that Plaintiff was entitled to a remand for further administrative proceedings, combined
13 with an opposition to a remand for benefits.” *McCormick v. Comm’r of Soc. Sec. Admin.*,
14 No. CV-20-01780-PHX-DWL, 2022 WL 3139936, at *3 (D. Ariz. Aug. 4, 2022).
15 Plaintiff’s reply urged the Court to remand for an immediate award of benefits and applied
16 the credit-as-true standard to the facts. Doc. 17 at 6, 8.

17 The Court ultimately remanded for further proceedings with instructions to the ALJ
18 to reevaluate Dr. Janikowski’s medical opinion and Plaintiff’s symptom testimony.
19 Doc. 16. The Court’s decision reflected a partial victory for Plaintiff. *McCormick*, 2022
20 WL 3139936, at *3 (rejecting, under similar circumstances, “[t]he Commissioner[’s]
21 attempts to recast the Court’s order remanding for further proceedings as a win for the
22 Commissioner” and noting “the victory [was] Plaintiff’s, even though she didn’t get
23 everything she requested”). Moreover, courts in this circuit have acknowledged that “[i]f
24 counsel has a reasonable chance of obtaining benefits from the court, without another round
25 of administrative proceedings (and the attendant delay), he or she should be encouraged to
26 pursue that remedy.” *Rogers v. Astrue*, No. 1:09-CV-02158-JLT, 2010 WL 4569058, at
27 *3 (E.D. Cal. Nov. 3, 2010) (citations omitted); *see, e.g., McCormick*, 2022 WL 3139936,
28 at *3-4 (D. Ariz. Aug. 4, 2022); *Penrod v. Apfel*, 54 F. Supp. 2d 961, 963 (D. Ariz. 1999)

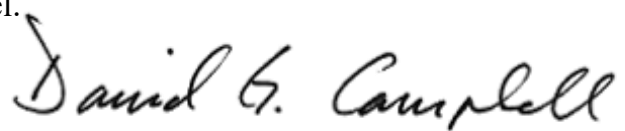
1 (“It is of little, if any consequence that Plaintiff preferred summary judgment over remand.
2 Material errors were made during administrative proceedings Plaintiff’s reasons for
3 seeking summary judgment and opposing remand were legally sound and not at all
4 frivolous.”).

5 The Court’s decision not to award all of the relief Plaintiff requested does not change
6 the fact that her appeal reversed an unfavorable outcome and produced new proceedings.
7 “[A] plaintiff who has won substantial relief should not have her attorney’s fees reduced
8 simply because the district court did not adopt each contention raised.” *Schwarz v. Sec’y*
9 *of Health & Hum. Servs.*, 73 F.3d 895, 901 (9th Cir. 1995); *see also Alvey v. Comm’r of*
10 *Soc. Sec. Admin.*, No. CV-20-08105-PHX-SPL, 2022 WL 375848, at *6 (D. Ariz. Feb. 8,
11 2022) (“[J]ust because the Court rejects an argument does not mean the argument was
12 unreasonable and that fees should be reduced.”). The Court therefore will not reduce the
13 fees requested by Plaintiff.¹

14 **IT IS ORDERED** that Plaintiff’s motion for attorneys’ fees (Doc. 26) is **granted**
15 and Plaintiff is awarded **\$12,693.49** pursuant to 28 U.S.C. § 2412.

16 **IT IS FURTHER ORDERED** that if the Commissioner determines that Plaintiff
17 does not owe a debt that is subject to offset under the Treasury Offset Program and agrees
18 to waive the requirements of the Anti-Assignment Act, 31 U.S.C. § 3727(b), the fees will
19 be made payable to Plaintiff’s counsel. However, if there is a debt owed under the Treasury
20 Offset Program, the remaining EAJA fees after offset will be paid by check made out to
21 Plaintiff but delivered to Plaintiff’s counsel.

22 Dated this 9th day of March, 2023.



23
24 **David G. Campbell**
25 Senior United States District Judge

26 ¹ The Commissioner also requests that the Court find the time that Plaintiff’s counsel
27 spent “drafting a reply to [her] EAJA opposition” to be “unreasonable and non-
28 compensable.” Doc. 30 at 5. But “having prevailed entirely in the fees motion, Plaintiff
is also entitled to the fees incurred in litigating it.” *Latahotchee v. Comm’r of Soc. Sec.*
Admin., No. CV-19-05668-PHX-DWL, 2021 WL 3089117, at *4 (D. Ariz. July 22, 2021)
(citations omitted).