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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERESA DIANE DAVIS,

 Plaintiff,

 v.

COMMISSIONER OF SOCIAL
SECURITY,

 Defendant.

No. 2:18-cv-2415-WBS-KJN

FINDINGS AND RECOMMENDATIONS
ON PLAINTIFF’S MOTION FOR FEES
UNDER THE EAJA

(ECF No. 28.)

Plaintiff filed a complaint against the Commissioner of Social Security concerning the ALJ’s denial of benefits. (ECF No. 1.) The action proceeded before the undersigned pursuant to Local Rule 302(c)(15) for the entry of findings and recommendations. (See ECF Nos. 7, 9.) On March 25, 2020, the undersigned found that the ALJ failed to fully consider all of plaintiff’s alleged mental impairments. (ECF No. 25.) It was recommended the case be remanded for further administrative proceedings. (Id.) The district court adopted the findings and recommendations, entering judgment on April 4, 2020. (ECF Nos. 26, 27.)

On July 12, 2020, plaintiff moved for attorney’s fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. (ECF No. 28.) The Commissioner opposed. (ECF No. 29.)

The undersigned finds the ALJ and Commissioner were substantially justified in asserting their positions. Thus, it is recommended plaintiff’s EAJA motion be DENIED. These findings and recommendations are submitted to the district court for review. See Local Rule 302(c)(15).

1 **Jurisdiction**

2 Under 28 U.S.C. § 636(b)(1)(A), a district judge may designate a magistrate judge to hear
3 any non-dispositive pretrial matter pending before the court. Section 636(b)(1)(B) allows the
4 district court to authorize a magistrate judge to “conduct hearings, including evidentiary hearings,
5 and to submit to a judge of the court proposed findings of fact, and recommendations for the
6 disposition” of motions that the magistrate cannot dispose of under section 636(b)(1)(A). Local
7 Rule 302(c)(15) refers proceedings brought under 42 U.S.C. to “review a final decision of the
8 Commissioner of Social Security, including dispositive and non–dispositive motions and matters.
9 A United States Magistrate may not enter a final judgment without the consent of all parties. 28
10 U.S.C. § 636(c); see also Williams v. King, 875 F.3d 500, 503-04 (9th Cir. 2017); Robert Ito
11 Farm, Inc. v. Cty. of Maui, 842 F.3d 681, 686 (9th Cir. 2016) (“Where the magistrate judge has
12 not received the full consent of the parties, he has no authority to enter judgment in the case, and
13 any purported judgment is a nullity.”) (quoting Kofoed v. Int'l Bhd. of Elec. Workers, Local 48,
14 237 F.3d 1001, 1004 (9th Cir. 2001)).

15 Plaintiff submitted her motion for attorney’s fees under the EAJA and submitted a
16 proposed order to the undersigned for review. (ECF No. 28.) However, as not all parties
17 consented to the jurisdiction of the magistrate judge, the undersigned cannot enter an order on
18 plaintiff’s motion. 28 U.S.C. § 636(c); Williams, 875 F.3d at 503-04; Estate of Connors, 6 F.3d
19 at 658. An award of attorney’s fees is a final judgment that requires jurisdiction. See Estate of
20 Connors v. O'Connor, 6 F.3d 656, 658 (9th Cir. 1993) (magistrate judge lacks authority to enter
21 final order on post–judgment motion for attorney's fees without the consent of all parties).
22 Instead, plaintiff’s EAJA motion proceeds before the undersigned for an entry of findings and
23 recommendations. See Local Rule 302(c)(15) (referring to the magistrate judge social security
24 review matters brought under Title 42 U.S.C., “including dispositive and non-dispositive motions
25 and matters.”); see also, e.g., Jackson v. Bd. of Trustees of Wolf Point, Montana, 2014 WL
26 1794551, at *1 (D. Mont. Apr. 21, 2014) (where the parties had not consented to the jurisdiction
27 of the magistrate judge, the court resolved the post-judgment motion for attorney's fees on
28 findings and recommendations for review by the district court).

1 **EAJA Analysis**

2 The EAJA, 28 U.S.C. § 2412(d)(1)(A)-(C), provides that:

3 Except as otherwise specifically provided by statute, a court shall
4 award to a prevailing party other than the United States fees and
5 other expenses, in addition to any costs awarded pursuant to
6 subsection (a), incurred by that party in any civil action (other than
7 cases sounding in tort), including proceedings for judicial review of
8 agency action, brought by or against the United States in any court
9 having jurisdiction of that action, unless the court finds that the
10 position of the United States was substantially justified or that
11 special circumstances make an award unjust.

12 A party seeking an award of fees and other expenses shall, within
13 thirty days of final judgment in the action, submit to the court an
14 application for fees and other expenses which shows that the party
15 is a prevailing party and is eligible to receive an award under this
16 subsection, and the amount sought, including an itemized statement
17 from any attorney or expert witness representing or appearing in
18 behalf of the party stating the actual time expended and the rate at
19 which fees and other expenses were computed. The party shall also
20 allege that the position of the United States was not substantially
21 justified. Whether or not the position of the United States was
22 substantially justified shall be determined on the basis of the record
23 (including the record with respect to the action or failure to act by
24 the agency upon which the civil action is based) which is made in
25 the civil action for which fees and other expenses are sought.

26 The court, in its discretion may reduce the amount to be awarded
27 pursuant to this subsection, or deny an award, to the extent that the
28 prevailing party during the course of the proceedings engaged in
 conduct which unduly and unreasonably protracted the final
 resolution of the matter in controversy.

 Here, plaintiff is a prevailing party because she successfully obtained a remand under
sentence four of 42 U.S.C. § 405(g). Shalala v. Schaefer, 509 U.S. 292, 300-02 (1993). Further,
plaintiff’s application for EAJA fees is timely, because it was filed within thirty days of final
judgment in this action.¹ Nevertheless, the Commissioner argues that plaintiff is not entitled to an
award of fees under the EAJA because the position of the Commissioner was substantially

¹ The term “final judgment” for purposes of the EAJA “means a judgment that is final and not
appealable....” 28 U.S.C. § 2412(d)(2)(G). The court entered judgment for plaintiff on April 14,
2020. (ECF No. 27.) The judgment became a non-appealable “final judgment” 60 days later.
See Fed. R. App. P. 4(a)(1)(B) (providing that the notice of appeal may be filed by any party
within 60 days after entry of the judgment if one of the parties is the United States, a United
States agency, or a United States officer or employee sued in an official capacity). Accordingly,
plaintiff could file an application for EAJA fees no later than 30 days after the “final judgment.”

1 justified. See Flores v. Shalala, 49 F.3d 562, 569 (9th Cir. 1995) (holding that claimant is entitled
2 to attorneys’ fees unless the government shows that its position “with respect to the issue on
3 which the court based its remand was ‘substantially justified’”).

4 In Pierce v. Underwood, the Supreme Court defined “substantial justification” as
5 “justified in substance or in the main” – that is, justified to a degree that could satisfy a reasonable
6 person. 487 U.S. 552, 565 (1988). This standard is “no different from the ‘reasonable basis in
7 both law and fact’ formulation adopted by the Ninth Circuit and the vast majority of other Courts
8 of Appeals that have addressed this issue. Id. A position does not have to be correct to be
9 substantially justified. Id. at 566 n.2; Lewis v. Barnhart, 281 F.3d 1081, 1083 (9th Cir. 2002). In
10 determining substantial justification, the court reviews both the underlying governmental action
11 being defended in the litigation and the positions taken by the government in the litigation itself.
12 28 U.S.C. § 2412(d)(2)(D). The burden of establishing substantial justification is on the
13 government. Gutierrez v. Barnhart, 274 F.3d 1255, 1258 (9th Cir. 2001).

14 The Commissioner’s argument that its position in this case was substantially justified is
15 persuasive. Plaintiff raised multiple arguments in her summary judgment motion, categorized as:

16 First, plaintiff contends the ALJ’s assessment of her mental
17 impairments is faulty, because the record was incomplete as to her
18 mental-health treatment, and evidence of her bipolar and other
19 mental conditions was ignored; thus plaintiff argues her RFC was
20 “devoid of any legitimate evidentiary support.” Second, plaintiff
21 avers the ALJ’s assessment of her physical impairments was
22 defective, as certain of them were not explicitly mentioned in the
23 decision, the consulting physicians’ opinions were given too much
24 weight, and plaintiff’s subjective symptoms were inappropriately
25 disregarded. Third, plaintiff argues the ALJ’s failure to . . . address
26 a 2009 determination of disability was error.

27 (ECF No. 25 at 4.) Ultimately, the undersigned was persuaded that the ALJ failed to adequately
28 analyze plaintiff’s mental impairments, and recommended remand for further review. (Id. at 5-9.)
The district court adopted the recommendations in full. (ECF No. 26.) In the instant motion,
plaintiff argues that because it was determined “the ALJ’s decision was not supported by
substantial evidence, the underlying government action was not substantially justified.” (ECF
No. 28 at 11-12.) However, plaintiff’s conclusory summation of the underlying proceedings
ignores the nuance expressed in the court’s previous findings.

1 Most importantly, the undersigned found plaintiff’s case “very near the line counseling
2 against remand.” (ECF No. 25 at 6, emphasis in original.) This analysis was so because, despite
3 plaintiff’s assertions that she had multiple undiagnosed mental impairments (mainly bipolar
4 disorder and ADHD), her medical records indicated she had primarily been diagnosed with
5 depression and anxiety—which the ALJ did in fact consider when formulating the RFC. (Id. at
6 7.) The undersigned found plaintiff’s assertions regarding the bipolar and ADHD conditions to
7 be particularly broad, generally lacking in support, and almost entirely in the background in the
8 proceedings before the ALJ—despite her being represented at the ALJ hearing. (Id.) However, it
9 appeared that many of the medications prescribed to plaintiff could also be used to treat bipolar
10 disorder or ADHD, and one consulting physician recognized the lengthy history of psychiatric
11 care. (Id.) The ALJ resolved these conflicts against plaintiff, pursuant to his duty to do so.
12 Edlund v. Massanari, 253 F. 3d 1152, 1156 (9th Cir. 2001). However, because it was unclear
13 whether the ALJ had considered the existence of these additional disorders, the court concluded
14 the ALJ should take a second look at the issue. (ECF No. 25 at 7-8.)

15 When applying this more-detailed description of the underlying proceedings to plaintiff’s
16 motion for attorney’s fees, it should be clear that both the ALJ and Commissioner were
17 substantially justified in their positions. To date, the undersigned is still not fully convinced that
18 plaintiff will be able to achieve a different result on remand. Given that many of the medications
19 plaintiff pointed to in support of her claim that she has ADHD and bipolar disorder can also be
20 used to treat depression and anxiety, it is just as probable that a further look at plaintiff’s mental
21 status will not change the ultimate result (either because plaintiff does not suffer from these
22 additional mental impairments, or that they have no effect on her residual functional capacity).
23 The ALJ focused on those impairments primarily reflected by the medical record, considered the
24 medication part and parcel with the demonstrated impairments, and resolved ambiguities in
25 plaintiff’s subjective testimony and the medical record against a more-restrictive RFC. Despite
26 the court’s findings on the merits of plaintiff’s claims, it was not unreasonable for the ALJ to do
27 so. It was equally reasonable for the Commissioner to move for summary judgment affirming the
28 ALJ’s decision on these grounds. Pierce, 487 U.S. at 565; Lewis, 281 F.3d at 1083; see also, e.g.,

1 Brainard v. Astrue, 2013 WL 773735, at *2 (D. Or. Feb. 28, 2013) (denying EAJA motion on
2 substantial justification grounds where, despite some procedural errors, the ALJ attempted to
3 resolve ambiguities in the record regarding a medical opinion and the plaintiff's symptom
4 testimony); Tindle v. Astrue, 2012 WL 5353913, at *6 (D. Ariz. Oct. 30, 2012) (finding that the
5 Commissioner had a reasonable basis in law and fact to defend the ALJ's decision where the court
6 found procedural error but the ALJ otherwise attempted to resolve conflicts in the record) (citing
7 Putz v. Astrue, 454 Fed. Appx. 632 (9th Cir. 2011) ("In light of the ambiguity of the evidence and
8 the closeness of the legal and factual questions posed by [plaintiff's] case, the district court did
9 not err in determining that the government's position was substantially justified.")).


10 Additionally, though the court only discussed the first of plaintiff's arguments in detail, it
11 was also noted that the ALJ's remaining analysis appeared well reasoned. (ECF No. 25 at 9.)
12 Without commenting further on the substance of plaintiff's remaining claims, the undersigned
13 finds both the ALJ and Commissioner were substantially justified regarding these alternate
14 arguments. Pierce, 487 U.S. at 565; Lewis, 281 F.3d at 1083.

15 RECOMMENDATIONS

16 Accordingly, it is HEREBY RECOMMENDED that plaintiff's motion for attorney's fees
17 under the EAJA be DENIED. These findings and recommendations are submitted to the United
18 States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).
19 Within fourteen (14) days after being served with these findings and recommendations, any party
20 may file written objections with the court and serve a copy on all parties. Such a document
21 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any
22 reply to the objections shall be served on all parties and filed with the court within fourteen (14)
23 days after service of the objections. The parties are advised that failure to file objections within
24 the specified time may waive the right to appeal the District Court's order. Turner v. Duncan,
25 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

26 Dated: August 10, 2020

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE