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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 VINCENT THOMPSON,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL, Acting  
11 Commissioner of Social Security,

12 Defendant.

CASE NO. C17-305 BAT

**ORDER GRANTING EAJA  
FEES AND COSTS**

13 Vincent Thompson, moves for EAJA fees of \$7,779. Dkt. 20. The Commissioner argues  
14 that her position is substantially justified and no fees should be awarded. Dkt. 21. The Court  
15 rejects the Commissioner's argument and **GRANTS** plaintiff's motion. Plaintiff is also entitled  
16 to fees for the time spent writing and filing a reply and may submit for the Court's signature a  
17 proposed order for the additional amount.

18 Substantial justification requires the government to demonstrate its position had a  
19 reasonable basis in both law and fact at each stage of the proceedings, including both the  
20 government's litigation position, and the underlying agency action giving rise to the civil action.  
21 *Tobeler v. Colvin*, 749 F.3d 830, 832–34 (9th Cir. 2014). The "position of the United States"  
22 includes *both* the government's litigation position and the underlying agency action giving rise to  
23 the civil action. *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2014). Thus the Court first

1 considers the underlying agency action to determine whether the government's position is  
2 substantially justified. *Id.* at 872. A court need not address whether the government's subsequent  
3 litigation position is justified when the underlying agency position was not substantially justified.  
4 *Id.* at 872–73. Here the Commissioner reargues her position, a position the Court already rejected  
5 in reversing the ALJ's decision, and which the Court rejects as establishing substantial  
6 justification. To the extent the Commissioner raises new arguments, they cannot be relied upon  
7 to substantially justify a prior position.

8           Accordingly the Court **GRANTS** Mr. Thompson's motion, Dkt. 20, and **ORDERS** that  
9 plaintiff is awarded EAJA fees and expenses in the sum of \$7,779. The Court has reviewed the  
10 pleadings and finds the fee requested is reasonable. Subject to offsets allowed under the Treasury  
11 Offset Program, under *Astrue v. Ratliff*, 560 U.S. 586 (2010), payment of the award shall be sent  
12 to plaintiff's attorney Steve Hood at his address: Steve Hood, Attorney at Law, P.S., 114 W.  
13 Magnolia St., Ste. 400-157, Bellingham, WA 98225. Plaintiff is also entitled to fees for the time  
14 spent writing and filing the reply brief on the motion for EAJA fees. Plaintiff may submit for the  
15 Court's signature a proposed order for this additional amount.

16           DATED this 6th day of December, 2017.

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20 BRIAN A. TSUCHIDA  
21 United States Magistrate Judge  
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