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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 MARQUITA MARIE Q.,  
12 Plaintiff,  
13 v.  
14 KILOLO KIJAKAZI, Acting  
15 Commissioner of Social Security  
16 Administration,  
17 Defendant.

Case No.: 19-cv-01280-KSC

**ORDER GRANTING UNOPPOSED  
MOTION FOR ATTORNEY FEES**

**[Doc. No. 27]**

18 Before the Court is a Motion for Attorney Fees Pursuant to 42 U.S.C.  
19 § 1383(d)(2)(B), in which plaintiff's counsel requests an award of fees for representing  
20 plaintiff in connection with her application for Social Security disability benefits (the  
21 "Motion"). Doc. No. 27. The Motion is unopposed.<sup>1</sup> Pursuant to Civil Local Rule 7.1.d.1,  
22 the Court finds the Motion suitable for disposition without argument. For the reasons stated  
23 herein, the Court **GRANTS** the Motion and **ORDERS** that counsel's fees be paid from  
24 plaintiff's benefit award consistent with the terms of this Order.  
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27 <sup>1</sup> Plaintiff was given the opportunity to oppose the Motion but did not do so. Doc. No. 28.  
28 On March 17, 2022, defendant notified the Court that it takes no position on counsel's  
request for fees. *See* Doc. No. 30.

1 **I. BACKGROUND**

2 Plaintiff filed an application for Social Security Disability Insurance benefits on May  
3 16, 2013. Plaintiff’s claim was denied through the highest level of administrative review,  
4 and on November 1, 2016, plaintiff appealed that denial to the District Court. *See Marquita*  
5 *Marie Q. v. Berryhill*, Case No. 16-cv-2716-CAB-KSC (S.D. Cal. Nov. 1, 2016), Docket  
6 No. 1. The Honorable Cathy Ann Bencivengo of this District reversed and remanded  
7 plaintiff’s claim to the Social Security Administration (the “Administration”) for further  
8 proceedings on April 30, 2019. *See id.*, Docket No. 12.

9 On remand, the Administrative Law Judge again returned a finding that plaintiff was  
10 not disabled, which later became the final decision of the Commissioner. Doc. No. 24 at 7,  
11 Doc. No. 1 at 2. Plaintiff filed the current action on July 10, 2019, seeking judicial review  
12 of the Commissioner’s second decision denying benefits. *See* Doc. No. 1. On November  
13 30, 2020, the undersigned Magistrate Judge granted plaintiff’s motion for summary  
14 judgment, reversed the Administrative Law Judge’s decision, and remanded the case to the  
15 Administration for further proceedings. *See generally* Doc. No. 24.

16 The Commissioner granted plaintiff’s application for benefits on remand. *See* Doc.  
17 No. 27 at 4; *see also* Doc. No. 27-2; Doc. No. 27-3. The Administration calculated  
18 plaintiff’s past-due benefits in the amount of \$77,133.95. *Id.*

19 Throughout these proceedings, plaintiff has been represented by the Law Office of  
20 Lawrence D. Rohlring Inc., CPC.<sup>2</sup> On November 28, 2017, plaintiff signed a “Social  
21 Security Representation Agreement” with counsel, agreeing that “in consideration of the  
22 services to be performed by [counsel],” counsel would be paid 25% of any past due benefits  
23 awarded to plaintiff if her appeals were successful. *See* Doc. No. 27-1.

24 Counsel now moves the Court for approval of an award of attorneys’ fees in the  
25 amount of \$15,000, offset by any amounts received pursuant to the Equal Access to Justice  
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27 <sup>2</sup> References to “counsel” herein include the Law Offices of Lawrence D. Rohlring Inc.,  
28 CPC, and any attorneys and staff employed by that firm.

1 Act (the “EAJA”).<sup>3</sup> Doc. No. 27 at 5. The requested fees represent 19.45 percent of  
2 plaintiff’s past-due benefits. *Id.* at 6.

3 **II. LEGAL STANDARDS**

4 An attorney who obtains a favorable result for a Social Security claimant is entitled  
5 to compensation for such representation from any benefits recovered. *See* 42 U.S.C.  
6 § 1383(d)(2)(B) (hereafter “Section 1383”); *see also* 42 U.S.C. § 406(b) (hereafter “Section  
7 406(b)"). Counsel moves for payment of fees pursuant to Section 1383, which provides:

8 if the claimant is determined to be entitled to past-due benefits under this  
9 subchapter and the person representing the claimant is an attorney, the  
10 Commissioner of Social Security shall pay out of such past-due benefits to  
11 such attorney an amount equal to the lesser of—

- 12 (i) so much of the maximum fee as does not exceed 25 percent of such  
13 past-due benefits (as determined before any applicable reduction under  
14 subsection (g) and reduced by the amount of any reduction in benefits  
15 under this subchapter or subchapter II pursuant to section 1320a-6(a) of  
16 (ii) (ii) the amount of past-due benefits available after any applicable  
reductions.

17 42 U.S.C. § 1383(d)(2)(B). The statute further incorporates the provisions of Section  
18 406(b), stating that those provisions “shall apply to this part to the same extent as they  
19 apply in the case of subchapter II [of this chapter].” *See* 42 U.S.C. § 1383(d)(2)(A). Like  
20 Section 1383, Section 406(b) prohibits fee awards “in excess of 25 percent of the total of  
21 the past-due benefits to which the claimant is entitled by reason of such judgment.” *See* 42  
22 U.S.C. § 406(b)(1)(A). Neither statute instructs the Court as to how counsel’s fees should  
23 be calculated.

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26 <sup>3</sup> Counsel specifically moves the Court to order: (1) payment of the fee of \$15,000; (2) that  
27 counsel reimburse plaintiff in the amount of \$1,156.44 for EAJA fees received in  
28 connection with the first District Court action; and (3) that counsel reimburse plaintiff in  
the amount of EAJA fees received in connection with the instant action. Doc. No. 27 at 2.

1 In assessing attorneys' fees in the Social Security context, both the Supreme Court  
2 and the Ninth Circuit have signaled a preference for reasonableness considerations over  
3 forced lodestar calculations. *See Gisbrecht*, 535 U.S. at 808-09 and *Crawford v. Astrue*,  
4 586 F.3d 1142 (9th Cir. 2009) (en banc). In *Gisbrecht*, the district court disregarded the  
5 plaintiffs' contingency-fee agreements with their clients and instead calculated counsel's  
6 "reasonable fee" by using the lodestar method, resulting in significantly lower fees, and the  
7 Ninth Circuit affirmed.<sup>4</sup> 535 U.S. at 797-98. The *Gisbrecht* court reversed. *Id.* at 809.  
8 Noting that contingent-fee agreements are nearly ubiquitous in the Social Security context,  
9 the Supreme Court held that the 25 percent cap on fee awards under Section 406(b) (and,  
10 by extension, Section 1383) was not meant to render such agreements unenforceable, but  
11 to protect claimants from "inordinately large fees." *Gisbrecht*, 535 U.S. at 800, 805. So  
12 long as the agreed-upon fee did not exceed the statutory maximum, the Supreme Court  
13 reasoned, the parties' agreement should be honored. *See id.* at 793.

14 The Ninth Circuit has since reiterated that under *Gisbrecht*, "[contingency fee]  
15 agreements [are] the primary means for determining [counsel's] fee." *Crawford*, 586 F.3d  
16 at 1149; *See Crawford*, 586 F.3d at 1148 (noting that "the Supreme Court flatly rejected  
17 [the] lodestar approach"). The *Crawford* court further explained why the lodestar method  
18 is disfavored, observing that it "under-compensates attorneys for the risk they assume in  
19 representing [a Social Security Disability benefits] claimant," thereby discouraging  
20 qualified counsel from accepting disability benefits cases and decreasing the availability  
21 of counsel for claimants who require representation for recovery. 586 F.3d at 1149; *see*  
22 *also Sproul v. Astrue*, No. 11-CV-1000-IEG (DHB), 2013 WL 394056, at \*2-3 (S.D. Cal.  
23 January 30, 2013) ("An attorney that can collect only a lodestar amount when he wins a  
24 Social Security benefits case and absolutely nothing when he loses a benefits case is an  
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28 <sup>4</sup> The lodestar method calculates the attorney's fee by multiplying the hours reasonably  
spent on the representation by a reasonable hourly rate. *Id.* at 797.

1 attorney likely to forego representing Social Security claimants altogether.”) (citation  
2 omitted).

3 The *Gisbrecht* and *Crawford* courts declined to enumerate a precedential list of  
4 factors for judges to consider for fee awards, instead stating that the Court should consider  
5 “the character of the representation and the results the representative achieved.” *Crawford*,  
6 586 F.3d at 1151 (citing *Gisbrecht*, 535 U.S. at 808). Although the Court should respect  
7 the “primacy of attorney-client fee agreements,” counsel’s fee may be reduced on a  
8 showing of delay, excessive billing, or other indicia of unreasonableness. *Gisbrecht*, 535  
9 U.S. at 793, 808.

### 10 III. DISCUSSION

#### 11 A. Evaluation of Counsel’s Fee Request

12 With the foregoing considerations in mind, the Court turns to the fee request  
13 presently before the Court. To reiterate, plaintiff’s past due benefits are \$77,133.95; of that  
14 amount, counsel requests a fee of \$15,000, or approximately 19.45 percent.<sup>5</sup> *See* Doc. No.  
15 27 at 4. This amount is less than the statutory maximum; it also less than the 25 percent fee  
16 plaintiff agreed to when she retained counsel.<sup>6</sup> *See* 42 U.S.C. § 1383(d)(2)(B); *see also*  
17 Doc. No. 27-1 (retainer agreement). Counsel argues that this amount is reasonable  
18 “[c]onsidering the nature of the representation and the results achieved, and testing the  
19 reasonableness with the time expended, consideration of hourly rates, market treatment of  
20 contingency, and the relative dearth of qualified counsel for court review of agency  
21 determinations . . .” Doc. No. 27 at 4. The Court agrees.

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26 <sup>5</sup> Counsel will also seek an administrative fee for representing plaintiff in administrative  
27 proceedings but represents that the “aggregate of all fees received by counsel ... will not  
28 exceed the withholding in this case.” *See* Doc. No. 27 at 8.

<sup>6</sup> Twenty-five percent of plaintiff’s retroactive benefits is \$19,283.48.

1           1. Nature of Representation and Result Achieved

2           As an initial matter, under *Gisbrecht*, the Court should give effect to the parties’  
3 agreement unless the record reveals a basis for doing otherwise. 535 U.S. at 807. Here, the  
4 Administration ultimately deemed plaintiff disabled, entitling her to over \$77,000 in past-  
5 due benefits – a favorable result. As to the nature of the representation, the Court observes  
6 that counsel has represented plaintiff on a contingency basis in two separate actions in this  
7 District. During the nearly six years of litigation in federal court regarding plaintiff’s  
8 entitlement to disability benefits, counsel has not been paid. *See Thomas v. Colvin*, No.  
9 1:11CV01291, 2015 WL 1529331, at \*3 (E.D. Cal. Apr. 3, 2015) (noting the “contingent-  
10 fee nature of this case and counsel’s assumption of risk in agreeing to represent Plaintiff  
11 under such terms” supported a request for 25 percent of benefits, and awarding same). The  
12 Court finds these factors weigh in favor of the requested fee award.

13           2. Whether Counsel’s Requested Fee Is Excessive

14           The Court has also considered whether counsel’s fee is excessive in comparison to  
15 the work performed or to prevailing market rates. In this regard, the Court has reviewed  
16 the detailed billing records submitted in support of the requested fees. *See generally* Doc.  
17 No. 27-4. Although the Court’s reasonableness determination is not – and should not be –  
18 premised on a simple hourly rate calculation, an assessment of counsel’s effective hourly  
19 rate for the work performed nevertheless provides a useful guide as to whether the  
20 requested fee is excessive or represents a windfall in comparison to the work performed.  
21 Counsel’s billing records demonstrate that counsel expended 21.25 attorney hours and 3.9  
22 paralegal hours on the first District Court case, and 15 attorney hours and 3.25 paralegal  
23 hours on the instant litigation, for a total of 43.4 hours. *See* Doc. No. 27 at 4 n.3; *see also*  
24 Doc. No. 27-4. Dividing the requested fees by the number of hours expended yields an  
25 effective hourly rate of \$345.62. This rate is well within the range (on the low end, in fact)  
26 of hourly rates charged by other attorneys who litigate consumer matters (including their  
27 government counterparts), according to data provided by counsel. *See generally* Doc. No.  
28 27-5. Moreover, other courts in this District have approved fee requests with significantly

1 higher effective hourly rates. *See, e.g., Sproul*, 2013 WL 394056, at \*2 (S.D. Cal. Jan. 30,  
2 2013) (approving a 25% fee award, for an effective hourly rate of \$794.63); *see also Iler*  
3 *v. Berryhill*, No. 14cv2026-MMA (BGS), 2018 WL 3969182, at \*2 (S.D. Cal. July 30,  
4 2018) (approving an effective hourly rate of \$943.55); *Ricardo A. v. Saul*, No. 3:19-cv-  
5 00846-AHG, 2021 WL 718605, at \*2 (S.D. Cal. Feb. 24, 2021) (collecting cases approving  
6 “*de facto*” hourly rates between \$402 and \$902). The Court finds these factors weigh in  
7 favor of the requested fee award.

### 8 3. Policy Considerations

9 The Court has also considered the public interest in incentivizing qualified attorneys  
10 to represent disability claimants. As the court in *Crawford* recognized, attorneys for  
11 claimants “assume significant risk in accepting these cases, including the risk that no  
12 benefits would be awarded or that there would be a long court or administrative delay in  
13 resolving the cases.” 586 F.3d at 1152. Even if successful, counsel may have to “wait[] a  
14 long, long time for payment.” *Id.* Giving effect to the parties’ negotiated fee agreement  
15 compensates the attorneys not only for the time expended but the risks assumed, and  
16 ensures their willingness to undertake those risks again in future cases. *See id.; accord*  
17 *Streeter v. Kijakazi*, No. 1:18-cv-01276-SKO, 2021 WL 4065545, at \*2 (E.D. Cal. Sept. 7,  
18 2021) (noting that “[t]he goal of fee awards in this context is to provide adequate incentive  
19 to represent claimants” while protecting claimants from the “depletion” of the benefits  
20 recovered). The Court finds this factor also weighs in favor of granting counsel’s fee  
21 request.

### 22 4. Whether Any Reduction in the Amount of Fees Requested Is Necessary

23 Finally, the Court has also evaluated whether any other circumstances warrant a  
24 reduction in the requested fees. The Administration’s ultimate determination that plaintiff  
25 is entitled to disability benefits demonstrates that the case was meritorious, and the record  
26 does not reveal any inordinate delay caused by counsel, work that was substandard,  
27 unnecessary or duplicative, or other indications that counsel’s fee is excessive.

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1           5. Conclusion Regarding Reasonableness of Counsel's Fee

2           In summary, as a result of counsel's efforts, plaintiff received a favorable decision  
3 and an award of past-due benefits of over \$77,000. Counsel's requested fees are less than  
4 both the 25 percent statutory maximum and the amount that plaintiff agreed in advance to  
5 pay for a successful outcome. The Court has found no evidence of delay or other factors  
6 that would necessitate reducing the requested fees. Accordingly, the Court finds that  
7 counsel's request for attorneys' fees request is reasonable, and **GRANTS** the Motion.

8 **B. Counsel Must Refund Plaintiff Any Fees Received Pursuant to the EAJA**

9           The EAJA also permits an attorney to receive fees for successful Social Security  
10 representations.<sup>7</sup> *See Parrish v. Comm'r of Soc. Sec. Admin.*, 698 F.3d 1215, 1216-17 (9th  
11 Cir. 2012). However, unlike fees recovered pursuant to Section 1383 or Section 406(b),  
12 which are paid by the claimant, EAJA fees are paid by the government. *Id.* at 1218. While  
13 “[f]ee awards may be made under both prescriptions, . . . the claimant’s attorney must  
14 ‘refun[d] to the claimant the amount of the smaller fee.’” *Gisbrecht*, 535 U.S. at 796  
15 (quoting Pub.L. No. 99–80, § 3, 99 Stat. 183 (1985)). Accordingly, counsel must refund  
16 plaintiff for any EAJA fees that counsel has received for work before the Court.<sup>8</sup>

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19 <sup>7</sup> Pursuant to the EAJA:

20           [A] court shall award to a prevailing party other than the United States fees  
21 and other expenses . . . incurred by that party in any civil action (other than  
22 cases sounding in tort), including proceedings for judicial review of agency  
23 action, brought by or against the United States in any court having jurisdiction  
24 of that action, unless the court finds that the position of the United States was  
25 substantially justified or that special circumstances make an award unjust.

26 *See* 28 U.S.C. § 2412 (d)(1)(A).

27 <sup>8</sup> In connection with plaintiff's first appeal to the District Court, Judge Bencivengo granted  
28 counsel's request for EAJA fees, of which counsel received \$1,156.44. Doc. No. 27 at 2.  
Counsel explains that the fees authorized by Judge Bencivengo were reduced in satisfaction  
of plaintiff's child support debt. *Id.* at 2 n. 1. This Court also awarded plaintiff's counsel  
EAJA fees in the amount of \$3,300.00. *See* Doc. No. 26. However, counsel reports that no



**ORDER**

Based on the foregoing, the Court **GRANTS** counsel’s motion for attorneys’ fees pursuant to 42 U.S.C. § 1383 [Doc. No. 27] and **APPROVES** an award in the amount of \$15,000.00 to the Law Offices of Lawrence D. Rohlfing Inc., CPC. The Court further **ORDERS** plaintiff’s counsel to refund plaintiff \$1,156.44 in EAJA fees that counsel received in connection with the first District Court action, and further to refund plaintiff any portion of the \$3,300 EAJA fees awarded in this action that are received by counsel.

**IT IS SO ORDERED.**

Dated: April 18, 2022



Hon. Karen S. Crawford  
United States Magistrate Judge

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amount of this award has yet been paid, and “it is unknown if the U.S. Department of the Treasury will apply part or all of that fee towards any outstanding debt that [plaintiff] may owe.” Doc. No. 27 at 2.