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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Anett C. Pierce,

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No. CV-06-02666-PHX-NVW

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Plaintiff,

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**ORDER**

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vs.

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Michael J. Astrue, Commissioner of Social  
Security Administration,

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Defendant.

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Before the Court is Plaintiff's Attorney's Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) (Doc. 54). Defendant has not responded to Plaintiff's motion.

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**I. Background**

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Plaintiff filed an application for Social Security Disability benefits on July 10, 2003, which was denied initially and upon reconsideration. An administrative law judge affirmed the denial of benefits, and this court affirmed the administrative law judge's decision on October 26, 2007. The Ninth Circuit reversed and remanded the case for an award of benefits. On remand, Plaintiff was awarded \$94,746 in past due benefits, \$22,144.50 of which was withheld for payment of attorney fees (Doc. 54-1). On August 4, 2010, Plaintiff sought \$19,861.30 in attorney's fees and costs under the Equal Access to Justice Act (EAJA) (Doc. 44). The Court awarded \$17,789.51 in fees and \$805.00 in costs, for a total EAJA award of \$18,594.51 (Doc. 51). Plaintiff's counsel now seeks an award of \$23,686.65 under

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1 42 U.S.C. § 402(b) (Doc. 54).

2 **II. Discussion**

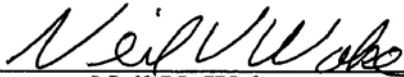
3 Plaintiff retained counsel under a contingency fee agreement providing for payment  
4 to counsel of twenty-five percent of the past due benefits awarded to Plaintiff. Under 42  
5 U.S.C. § 406(b)(1)(A), “[w]henver a court renders a judgment favorable to a claimant ...  
6 who was represented before the court by an attorney, the court may determine and allow as  
7 part of its judgment a reasonable fee for such representation, not in excess of 25 percent of  
8 the total of the past-due benefits[.]” Although Section 406(b) “does not displace  
9 contingent-fee agreements” that fall within the twenty-five percent statutory maximum, the  
10 Court does “review for reasonableness fees yielded by those agreements.” *Gisbrecht v.*  
11 *Barnhart*, 535 U.S. 789, 808 (2002). In determining whether the fee sought is “reasonable  
12 for the services rendered[.]” *id.* at 807, the Court may consider the character of the  
13 representation, the results achieved, performance, delay, and whether the benefits were  
14 proportionate to the time spent on the case. *Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th  
15 Cir. 2009). A reduction in fees may be warranted if the “benefits are large in comparison to  
16 the amount of time counsel spent on the case[.]” or the attorney “is responsible for delay ...  
17 so that the attorney will not profit from the accumulation of benefits during the pendency of  
18 the case in court.” *Gisbrecht*, 535 U.S. at 808.

19 Here, Plaintiff’s counsel requests a § 406(b) award in the amount of \$23,686.65.  
20 Counsel performed 104.65 hours of work, which results in an hourly rate of \$226.35. This  
21 rate is not presumptively unreasonable; indeed, courts have found much higher hourly rates  
22 to be reasonable. *See, e.g., Grunseich v. Barnhart*, 439 F. Supp. 2d 1032, 1035 (C.D. Cal.  
23 2006) (awarding \$600 hourly rate). In light of the contingency fee agreement, and  
24 accounting for the risk inherent in contingency fee arrangements, the proportionality of the  
25 award, and counsel’s successful representation of Plaintiff, the Court finds the amount sought  
26 is reasonable. The Court will award Plaintiff \$23,686.65 under § 406(b), which will be offset  
27 by the previously awarded EAJA fee. *See Gisbrecht*, 535 U.S. at 796 (noting that although  
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1 Congress permits fee awards under both the EAJA and § 406(b), “the claimant’s attorney  
2 must refund to the claimant the amount of the smaller fee”).

3 IT IS THEREFORE ORDERED that Plaintiff’s Attorney’s Motion for an Award of  
4 Attorney Fees Under 42 U.S.C. § 406(b) (Doc. 54) is granted in the amount of \$23,686.65.  
5 Counsel shall refund the previously awarded EAJA fee of \$17,789.51 to Plaintiff.

6 DATED this 22<sup>nd</sup> day of August, 2011.

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Neil V. Wake  
United States District Judge

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