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

8 John C. Hernandez,

9 Plaintiff,

10 vs.

11 Michael J. Astrue, Commissioner of Social
12 Security,

13 Defendant.

No. CV-09-621-PHX-DGC

ORDER

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15 On January 15, 2010, the Court reversed Defendant's decision denying social
16 security benefits to Plaintiff. Doc. 32. On remand, Defendant awarded Plaintiff \$55,996
17 in past-due benefits, withholding 25 percent of that amount – \$13,999 – for the
18 payment of potential attorney's fees. Doc. 43-1.

19 Plaintiff's counsel, Mark Caldwell, has filed a motion for award of attorney's fees
20 under 42 U.S.C. § 406(b). Doc. 42. Defendant does not oppose the motion. Doc. 44.
21 The requested fee award of \$13,999 is consistent with the contingent fee agreement
22 between Plaintiff and Mr. Caldwell (Doc. 43-2), and is reasonable in that it represents an
23 hourly rate of \$358. *See Gisbrecht v. Barnhart*, 535 U.S. 789 (2002).

24 **IT IS THEREFORE ORDERED:**

25 1. The motion for award of attorney's fees (Doc. 42) is **granted** pursuant to
26 42 U.S.C. § 406(b).

27 2. Mark Caldwell, counsel for Plaintiff, is awarded **\$13,999.00** in attorney's
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fees, to be paid out of the sums withheld by Defendant from Plaintiff's past-due benefits.

3. Mr. Caldwell shall, after receipt of the award under 42 U.S.C. § 406(b), refund to Plaintiff the **\$6,734.58** previously awarded under the Equal Access to Justice Act, 28 U.S.C. § 2412. Doc. 41.

Dated this 24th day of March, 2011.



David G. Campbell
United States District Judge