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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Tamra Jolley,  
10 Plaintiff,  
11 v.  
12 Carolyn W Colvin,  
13 Defendant.  
14

No. CV-12-02447-PHX-JAT

**ORDER**

15 Pending before the Court is Plaintiff Tamra Jolley (“Plaintiff”)’s motion for  
16 attorneys’ fees pursuant to 42 U.S.C. § 406(b). (Doc. 40). The Court now rules on the  
17 motion.

18 **I. Background**

19 On October 6, 2010, an Administrative Law Judge (“ALJ”) denied Plaintiff’s  
20 request for social security benefits. (Docs. 1 at 2; 9 at 2). The Social Security Appeals  
21 Council denied review of the ALJ’s decision on September 24, 2012. (Docs. 1 at 2; 9 at  
22 2). After exhausting her administrative appeals, Plaintiff filed this lawsuit seeking  
23 judicial review of the ALJ’s decision. (Docs. 1 at 2; 9 at 2). On appeal, Defendant  
24 conceded error and asked this Court to remand to the agency for further proceedings.  
25 (Docs. 17, 18). Plaintiff opposed the motion, instead seeking a remand for an immediate  
26 award of benefits. (Doc. 21). After ordering additional briefing, the Court granted  
27 Defendant’s motion to remand the claim for further proceedings. (Doc. 32 at 11). After  
28 additional proceedings, the ALJ determined that Plaintiff is disabled. (Doc. 40-1 at 2–6).

1           On May 30, 2014, Plaintiff moved for attorneys’ fees and costs under the Equal  
2 Access to Justice Act (“EAJA”). (Doc. 34). On August 27, 2015, the Court awarded  
3 Plaintiff her requested attorneys’ fees and costs pursuant to the EAJA. (Doc. 39). On  
4 October 19, 2015, Plaintiff filed the pending motion for attorneys’ fees under § 406(b).  
5 (Doc. 40).

## 6   **II.    Analysis**

7           Section 406(b) provides that whenever the Court renders a favorable judgment to a  
8 social security claimant, the Court can award reasonable attorneys’ fees for representation  
9 of the claimant. § 406(b)(1)(A). The reasonable fee cannot exceed twenty-five percent of  
10 the total past-due benefits awarded to the claimant. *Id.* The fee is payable out of, and not  
11 in addition to, the amount of the past-due benefits. *Id.* Section 406(b) “does not displace  
12 contingent-fee agreements as the primary means by which fees are set for successfully  
13 representing Social Security benefits claimants in court. Rather, § 406(b) calls for court  
14 review of such arrangements as an independent check, to assure that they yield  
15 reasonable results in particular cases.” *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002).  
16 To that end, “Congress has provided one boundary line: Agreements are unenforceable to  
17 the extent that they provide for fees exceeding 25 percent of the past-due benefits.” *Id.*  
18 Therefore, the Court must ensure the fee is 1) reasonable, and 2) limited to 25 percent of  
19 past-due benefits. *Id.*

20           Moreover, the Court must be sure to “respect the primacy of lawful attorney-client  
21 fee agreements.” *Crawford v. Astrue*, 586 F.3d 1142, 1150 (9th Cir. 2009) (en banc)  
22 (internal quotations omitted). While reviewing this agreement, the Court must still test  
23 the resulting award for reasonableness. *Id.* at 1149. In other words, “the district court  
24 must first look to the fee agreement and then adjust downward if the attorney provided  
25 substandard representation or delayed the case, or if the requested fee would result in a  
26 windfall.” *Id.* at 1151. When determining reasonableness, the Court should consider the  
27 following non-exhaustive factors: the character of the representation, the results achieved,  
28 performance, delay, whether the benefits were proportionate to the time spent on the case,

1 and, as an aid if necessary, the lodestar calculation. *Id.*

2 Plaintiff and her counsel had a contingent-fee agreement in this case typical of fee  
3 agreements in disability benefit cases. Specifically, the contingent-fee agreement  
4 provides that “attorney fees for Federal Court work will be equal to the greater of 1) 25%  
5 of all past due benefits including benefits payable to spouse, children, and others, without  
6 regard to the maximum statutory allowance . . . or 2) fees awarded pursuant to the  
7 [EAJA] . . . .” (Doc. 40-1 at 9). Plaintiff was awarded \$124,386.00 in past due benefits.  
8 (*Id.* at 1–4). Twenty-five percent of this award is \$31,096.50. (*Id.*) Plaintiff’s counsel  
9 requested the full twenty-five percent amount, (Doc. 40 at 14), which the Government  
10 does not oppose, (Doc. 41)

11 Given the factors outlined in *Crawford*, the Court finds the contingent-fee  
12 agreement in this case to be reasonable, and thus, will award Plaintiff’s counsel  
13 attorneys’ fees in the amount of \$31,096.50 pursuant to § 406(b). *See* 586 F.3d at 1151.  
14 Because Plaintiff was also awarded EAJA fees, (Doc. 39), Plaintiff’s counsel must refund  
15 the lesser of these two fee awards to Plaintiff, *see Gisbrecht*, 535 U.S. at 796.

16 **III. Conclusion**

17 Based on the foregoing,

18 **IT IS ORDERED** that Plaintiff’s Attorney’s Motion for an Award of Attorney  
19 Fees under 42 U.S.C. § 406(b) (Doc. 40) is **GRANTED** in the amount of \$31,096.50.

20 **IT IS FURTHER ORDERED** that Plaintiff’s counsel must refund the lesser of  
21 the EAJA fee award and the § 406(b) fee award to Plaintiff.

22 Dated this 5th day of July, 2016.

