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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Pauline R. Turchetta,

No. CV-16-3244-PHX-DMF

10 Plaintiff,

11 v.

ORDER

12 Commissioner of Social Security
13 Administration,

14 Defendant.
15

16 Currently pending before the Court is Plaintiff Pauline Turchetta's Attorney's
17 Motion for an Award of Attorney's Fees brought pursuant to 42 U.S.C. § 406(b) (Doc. 31).
18 Turchetta's attorney requests \$17,521.25, and contends it is justified by the fee agreement
19 entered into between Turchetta and her attorney on January 20, 2015, and that the amount
20 is reasonable for the services rendered according to the guidelines set out in *Gisbrecht v.*
21 *Barnhart*, 535 U.S. 789, 807 (2002). (Doc. 31) Defendant has no objection to this request.
22 (Doc. 32)

23 **BACKGROUND**

24 Turchetta filed a complaint for judicial review of the Social Security
25 Administration's determination denying his claim for disability benefits and sought a
26 remand for an award of benefits. (Doc. 1) At the conclusion of briefing, the Court agreed.
27 (Doc. 27) The Court has previously granted Turchetta's attorney fees under the Equal
28 Access to Justice Act ("EAJA") in the amount of \$6,610.32. (Doc. 30)

1 The Court reviews a contingent-fee arrangement under Section 406(b) to determine
2 whether the amount is reasonable for the services rendered. *Gisbrecht, supra*. In
3 evaluating the reasonableness of the contingent-fee agreement, after it determines that the
4 amount does not exceed 25% of the award, the Court may consider whether (1) a claimant’s
5 counsel is responsible for delay, or (2) “the benefits are large in comparison to the amount
6 of time spent on the case.” *Id.* at 808. The Court may review “a record of the hours spent
7 representing the claimant and a statement of the lawyer's normal hourly billing charge for
8 noncontingent-fee cases.” *Id.*

9 The Court’s independent review concludes that the fees are reasonable. First, there
10 is no suggestion that counsel delayed this matter beyond reasonable requests for additional
11 time to file a reply brief. (Docs. 17, 19) Second, the Court has already approved counsel’s
12 award under EAJA; the Court will not re-examine the hours spent and the normal billing
13 rate. Third, the EAJA offset results in Turchetta actually paying out-of-pocket much less
14 than 25% of past-due benefits. Finally, because civil actions for Social Security disability
15 benefits have a significant risk of loss, the effective hourly rate is not unreasonable.

16 Finally, the Commissioner objected to granting fees for work performed at the
17 administrative level because those fees are only available under Section 406(a). (Doc. 32)
18 The Court notes that the motion is titled as a request for fees under Section 406(b) and was
19 expanded, via footnote, to include Section 406(a). (Doc. 31 at 2, n.2) Although counsel
20 has not used the most explicit method for invoking Section 406(a)’s entitlement to
21 administrative-level fees, the Court will consider the pending Motion as one under 42
22 U.S.C. § 406(a) and (b).

23 **IT IS THEREFORE ORDERED** granting Turchetta’s Motion for Attorney’s Fees
24 (Doc. 31).

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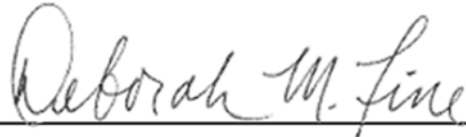
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1 **IT IS FURTHER ORDERED** granting Turchetta's counsel's request for
2 \$17,521.25. Further, Turchetta's counsel shall, after the receipt of this award, refund to
3 Plaintiff Pauline R. Turchetta the lesser of any fee awarded under 42 U.S.C. § 406(b) and
4 any fees awarded under the Equal Access to Justice Act.

5 Dated this 10th day of July, 2018.

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8 Honorable Deborah M. Fine
9 United States Magistrate Judge

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