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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MANUEL CISNEROS,)	Case No. CV 04-4985-MAN
)	
Plaintiff,)	
)	
v.)	ORDER RE: MOTION FOR
)	ATTORNEY FEES PURSUANT TO
MICHAEL J. ASTRUE, ¹)	42 U.S.C. § 406(b)
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	
_____)	

On September 10, 2008, counsel for plaintiff filed a Notice of Motion and Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b), with a supporting memorandum of points and authorities and declaration by plaintiff's counsel, Steven G. Rosales of the Law Offices of Lawrence D. Rohlring (collectively, the "Motion"). Defendant did not file a response to the Motion. The Motion requests payment of attorney's fees in the total amount of \$9,243.45 for 11.1 hours of work performed before this Court, i.e. 7.8 hours of attorney time and 3.3 hours of paralegal

¹ Michael J. Astrue became the Commissioner of the Social Security Administration on February 12, 2007. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, he is substituted in place of former Commissioner Jo Anne B. Barnhart as the defendant in this action.

1 time. For the reasons stated below, the Motion is GRANTED.

2
3 **BACKGROUND**

4
5 Plaintiff's counsel represented plaintiff before the United States
6 District Court pursuant to a contingency fee agreement ("Agreement"),
7 which provides in Paragraph 3 for attorney's fees of **"25% of the backpay**
8 **awarded upon reversal of any unfavorable ALJ decision."** (Motion at 4,
9 Exhibit 1; emphasis in original.) On December 21, 2004, the Court
10 remanded this case for further administrative proceedings. (Motion at
11 3.) On remand, the Commissioner issued a decision granting plaintiff's
12 application for benefits and awarded plaintiff approximately \$58,213.80
13 in retroactive benefits. (Exhibit 2.) Pursuant to a stipulation of the
14 parties and related Order of this Court filed on January 27, 2005,
15 plaintiff's counsel was awarded the sum of \$1,500.00 in attorney's fees
16 pursuant to the Equal Access to Justice Act ("EAJA"). (Motion at 3.)

17
18 **APPLICABLE LAW**

19
20 Section 406(b) of Title 42 provides:

21
22 Whenever a court renders a judgment favorable to a claimant
23 . . . who was represented before the court by an attorney,
24 the court may determine and allow as part of its judgment a
25 reasonable fee for such representation, not in excess of 25
26 percent of the total of the past-due benefits to which the
27 claimant is entitled In case of any such judgment,
28 no other fee may be payable . . . for such representation

1 except as provided in this paragraph.

2
3 42 U.S.C. § 406(b)(1)(A).²

4
5 In Gisbrecht v. Barnhart, 535 U.S. 789 (2002), the Supreme Court
6 held that Section 406(b)

7
8 does not displace contingent-fee agreements as the primary
9 means by which fees are set for successfully representing
10 Social Security benefits claimants in court. Rather, §
11 406(b) calls for court review of such arrangements as an
12 independent check, to assure that they yield reasonable
13 results in particular cases. Congress has provided one
14 boundary line: Agreements are unenforceable to the extent
15 that they provide for fees exceeding 25 percent of the
16 past-due benefits. Within this 25 percent boundary . . . the
17 attorney for the successful claimant must show that the fee
18 sought is reasonable for the services rendered.

19
20 *Id.* at 807 (citations omitted).

21
22 The hours spent by counsel representing the claimant and counsel's
23 "normal hourly billing charge for noncontingent-fee cases" may aid "the
24 court's assessment of the reasonableness of the fee yielded by the fee

25
26 ² For representation of a benefits claimant at the
27 administrative level, an attorney may file a fee petition or fee
28 agreement. 42 U.S.C. § 406(a). In the event of a determination
favorable to the claimant, the Commissioner "shall . . . fix . . . a
reasonable fee" for the attorney's services. 42 U.S.C. § 406(a)(1).

1 agreement." Gisbrecht, 535 U.S. at 808. The Court appropriately may
2 reduce counsel's recovery

3
4 based on the character of the representation and the results
5 the representative achieved. If the attorney is responsible
6 for delay, for example, a reduction is in order so that the
7 attorney will not profit from the accumulation of benefits
8 during the pendency of the case in court. If the benefits
9 are large in comparison to the amount of time counsel spent
10 on the case, a downward adjustment is similarly in order.

11
12 *Id.* (citations omitted).

13
14 Significantly, since Gisbrecht, district courts have been
15 deferential to the terms of contingency contracts in Section 406(b)
16 cases, recognizing that the resulting *de facto* hourly rates typically
17 exceed those for non-contingency fee arrangements. See Ellick v.
18 Barnhart, 445 F. Supp. 2d, 1166, 1169-71 (C.D. Cal. 2006)(surveying
19 post-Gisbrecht cases and finding decisions approving fee awards
20 involving range of net hourly rates of up to \$982 per hour); Hearn v.
21 Barnhart, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003)(awarding
22 \$25,132.50 in Section 406(b) fees, equivalent to \$450 per hour, and
23 citing, *inter alia*, Martin v. Barnhart, 225 F. Supp. 2d 704 (W.D. Va.
24 2002)(awarding \$10,189.50, equivalent to \$605 per hour), and Coppett v.
25 Barnhart, 242 F. Supp. 2d 1380 (S.D. Ga. 2002)(awarding \$6,554.12,
26 equivalent to \$350.49 per hour)); see also Mudd v. Barnhart, 418 F.3d
27 424, 427 (4th Cir. 2005)(affirming denial of motion challenging
28 \$12,231.50 fee award equivalent to 25% of past benefits and hourly rate

1 of \$736.84); Blizzard v. Astrue, 496 F. Supp. 2d 320, 324 (S.D.N.Y.
2 2007)(approving \$26,798.25 fee award equaling 25% of past benefits and
3 amounting to an hourly rate of \$705); Koester v. Astrue, 482 F. Supp.
4 2d 1078, 1083 (E.D. Wis. 2007)(finding \$16,890 fee award amounting to
5 25% of past benefits and hourly rate of \$580.67 to be reasonable and
6 rejecting characterization of award as "windfall").

7
8 **DISCUSSION**
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10 The Court finds that the Motion demonstrates that "the fee sought
11 is reasonable for the services rendered" and is less than the
12 agreed-upon 25 percent of past-due benefits.³ Neither "the character
13 of the representation" nor "the results the representative achieved"
14 suggest the unreasonableness of the fee sought.

15
16 Plaintiff's counsel was not responsible for any significant delay
17 in securing plaintiff's benefits. Nothing in the record before the
18 Court suggests that there was any overreaching in the making of the fee
19 agreement or any impropriety on the part of counsel in his
20 representation of plaintiff before this Court. Counsel assumed the risk
21 of nonpayment inherent in a contingency agreement, the agreed-upon
22 contingent fee does not exceed the 25% statutory cap, and the Motion
23 seeks less than the agreed-upon fee. In view of these circumstances and
24 of the range of hourly rates charged for legal services in the Los
25 Angeles area, the Court finds that the combined *de facto* hourly rate of
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³ 25% of \$58,213.80 is \$14,553.45.

