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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARK LUIS GUEVARRA, SR.,
Plaintiff,
v.
NANCY A. BERRYHILL¹, Acting
Commissioner of Social Security,
Defendant.

Case No. CV 14-4499-KK

ORDER GRANTING MOTION FOR
ATTORNEY FEES PURSUANT TO
42 U.S.C. § 406(B)

I.

INTRODUCTION

Plaintiff Mark Luis Guevarra, Sr.’s (“Plaintiff’s”) counsel, Erika Bailey Drake of Drake & Drake, P.C. (“Counsel”), filed a Motion for Attorney’s Fees Pursuant to 42 U.S.C. § 406(b) (“Motion”). The Motion seeks an award in the amount of \$6,230.75 for representing Plaintiff in an action to obtain Disability Insurance Benefits (“DIB”), with a refund to Plaintiff of \$3,500.00 for the Equal Access to Justice Act (“EAJA”) fees previously awarded.

¹ Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substitutes Nancy A. Berryhill as Defendant in the instant case.

1 The parties have consented to the jurisdiction of the undersigned United
2 States Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For the reasons stated
3 below, the Court grants the Motion.

4 **II.**

5 **RELEVANT BACKGROUND**

6 On June 11, 2014, Plaintiff filed the complaint in this action. See ECF
7 Docket No. (“Dkt.”) 1, Compl. Plaintiff alleged the Acting Commissioner of
8 Social Security (“Defendant”) improperly denied Plaintiff’s application for DIB.
9 Id. at 2-3. On May 7, 2015, the Court found Defendant erred in denying Plaintiff
10 benefits, and entered Judgment reversing and remanding the case to Defendant for
11 further administrative proceedings. Dkt. 28, Judgment. On remand, Defendant
12 stated she would withhold \$6,230.75 as twenty-five percent of Plaintiff’s past due
13 benefits “to pay [Plaintiff’s] representative.” Notice of Award, Dkt. 32, Ex. 1 at 2.

14 On June 9, 2015, the Court awarded Counsel EAJA fees in the amount of
15 \$3,500.00. Dkt. 30, Order Granting EAJA Fees.

16 On July 26, 2017, pursuant to 42 U.S.C. § 406(b), Counsel filed the instant
17 Motion seeking the amount of \$6,230.75 for representing Plaintiff in the underlying
18 proceedings before the Court. Dkt. 32, Mot. In the Motion, Counsel states she
19 “will refund to Plaintiff EAJA fees previously awarded in the amount of \$3,500.”
20 Id. at 1. According to Counsel, 18.5 hours of attorney time were expended on
21 Plaintiff’s case. Itemized Hours, Dkt. 32, Ex. 3. Counsel, therefore, seeks
22 compensation pursuant to a contingency fee agreement stating Counsel’s
23 attorney’s fees shall be “the lesser of 25 percent of [Plaintiff’s] past-due benefits or
24 the dollar amount established pursuant to section 206(a)(2)(A), which is currently
25 \$6,000.00, but may be increased from time to time by the Commissioner of Social
26 Security.” Contingency Fee Agreement, Dkt. 32, Ex. 2.

27 On July 26, 2017, Plaintiff was served with the Motion and informed he had a
28 right to file a response to the Motion. Dkt. 32, Mot. at 2, 9. Plaintiff failed to file a

1 timely response. On July 31, 2017, Defendant filed a Non-Opposition to the
2 Motion stating she “has no objection to the fee request.” Dkt. 33, Non-Opposition
3 at 2. Thus, the Court deems this matter submitted.

4 III.

5 DISCUSSION

6 A. APPLICABLE LAW

7 Pursuant to 42 U.S.C. § 406(b) (“Section 406(b)”):

8 Whenever a court renders a judgment favorable to a claimant under
9 this subchapter who was represented before the court by an attorney,
10 the court may determine and allow as part of its judgment a reasonable
11 fee for such representation, not in excess of 25 percent of the total of
12 the past-due benefits to which the claimant is entitled by reason of
13 such judgment, and the Commissioner of Social Security may . . .
14 certify the amount of such fee for payment to such attorney out of, and
15 not in addition to, the amount of such past-due benefits.

16 42 U.S.C. § 406(b)(1)(A). Thus, “a prevailing [disability] claimant’s [attorney’s]
17 fees are payable only out of the benefits recovered; in amount, such fees may not
18 exceed 25 percent of past-due benefits.” Gisbrecht v. Barnhart, 535 U.S. 789, 792,
19 122 S. Ct. 1817, 152 L. Ed. 2d 996 (2002).

20 Where a claimant entered into a contingent fee agreement with counsel, a
21 court must apply Section 406(b) “to control, not to displace, fee agreements
22 between Social Security benefits claimants and their counsel.” Id. at 793. A court
23 should not use a “lodestar method,” under which a district court “determines a
24 reasonable fee by multiplying the reasonable hourly rate by the number of hours
25 reasonably expended on the case.” Crawford v. Astrue, 586 F.3d 1142, 1148 (9th
26 Cir. 2009) (en banc) (citation omitted). Rather, where the claimant and counsel
27 entered into a lawful contingent fee agreement, courts that use the “lodestar”
28 method as the starting point to determine the reasonableness of fees requested

1 under Section 406(b) improperly “reject the primacy of lawful attorney-client fee
2 agreements.” Gisbrecht, 535 U.S. at 793. Thus, courts should not apply lodestar
3 rules in cases where the claimant and counsel reached a contingent fee agreement
4 because:

5 [t]he lodestar method under-compensates attorneys for the risk they
6 assume in representing [social security] claimants and ordinarily
7 produces remarkably smaller fees than would be produced by starting
8 with the contingent-fee agreement. A district court’s use of the
9 lodestar to determine a reasonable fee thus ultimately works to the
10 disadvantage of [social security] claimants who need counsel to
11 recover any past-due benefits at all.

12 Crawford, 586 F.3d at 1149.

13 However, even in contingency fee cases, a court has “an affirmative duty to
14 assure that the reasonableness of the fee [asserted by counsel] is established.” Id.
15 The court must examine “whether the amount need be reduced, not whether the
16 lodestar amount should be enhanced.” Id. The court may consider factors such as
17 the character of the representation, the results achieved, the ratio between the
18 amount of any benefits awarded and the time expended, and any undue delay
19 attributable to counsel that caused an accumulation of back benefits in determining
20 whether a lawful contingent fee agreement is reasonable. See Gisbrecht, 535 U.S.
21 at 808; Crawford, 586 F.3d at 1151.

22 **B. ANALYSIS**

23 Here, Counsel seeks a reasonable fee under Section 406(b). Plaintiff
24 retained Counsel to represent him in federal court in his appeal from the
25 administrative denial of benefits, and agreed to pay Counsel a contingency fee of
26 twenty-five percent of any past due benefits obtained. See Contingency Fee
27 Agreement, Dkt. 32, Ex. 2. Consideration of the factors set forth in Gisbrecht and
28 Crawford warrants no reduction of the fee Counsel seeks.

1 The record discloses no issue regarding the quality or efficiency of Counsel’s
2 representation before this Court, or any misconduct or delay by Counsel. Counsel
3 obtained a favorable outcome for Plaintiff, ultimately resulting in a remand for
4 further administrative proceedings and an award of past due benefits. See Dkt. 28,
5 Judgment; Notice of Award, Dkt. 32, Ex. 1. Further, the 18.5 hours expended to
6 litigate this case was reasonable and within the approved range for social security
7 disability cases. See Patterson v. Apfel, 99 F. Supp. 2d 1212, 1214 & n.2 (C.D. Cal.
8 2000) (noting that “a survey of several dozen cases in which attorney’s fees were
9 awarded in social security cases suggests that the 33.75 hours spent by plaintiff’s
10 counsel falls within the approved range”).

11 In addition, a fee of \$6,230.75 based on 18.5 hours of attorney time is
12 reasonable. See Itemized Hours, Dkt. 32, Ex. 3. The Court finds Counsel’s
13 effective hourly rate of approximately \$336.80 reasonable under the circumstances.
14 Dkt. 32 at 5; see Villa v. Astrue, 2010 WL 118454, at *1-2 (E.D. Cal. Jan. 7, 2010)
15 (approving Section 406(b) fees exceeding \$1,000.00 per hour, and noting
16 “[r]educing [Section] 406(b) fees after Crawford is a dicey business”). Further,
17 post-Gisbrecht decisions have approved contingent fee agreements yielding hourly
18 rates greater than the rate Counsel seeks. See, e.g., Daniel v. Astrue, 2009 WL
19 1941632, at *2-3 (C.D. Cal. July 2, 2009) (approving fees amounting to \$1,491.25
20 per hour). Hence, in light of the hours Counsel expended, the Section 406(b) fee
21 award amount Counsel requests does not represent an unfair windfall to Counsel.

22 Finally, nothing in the record suggests any overreaching in the making of the
23 fee agreement or any impropriety on the part of Counsel in representing Plaintiff.
24 Counsel assumed the risk of nonpayment inherent in a contingency agreement and
25 Counsel’s efforts proved successful for Plaintiff. Accordingly, the Court finds the
26 Section 406(b) fees Counsel requests reasonable.

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IV.
ORDER

Based on the foregoing, **IT IS HEREBY ORDERED:** (1) Counsel’s Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) is **GRANTED**; and (2) Defendant is directed to pay Counsel the sum of \$6,230.75 with a reimbursement to Plaintiff for EAJA fees previously awarded in the amount of \$3,500.00.

Dated: August 15, 2017



HONORABLE KENLY KIYA KATO
United States Magistrate Judge