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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRENDA E. DANIEL,)	Case No. EDCV 04-01188-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 January 16, 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, William M. Kuntz, Attorney at Law (collectively, the "Motion"). The Motion requests payment of attorney's fees in the total amount of \$18,143.50. On January 28, 2008, defendant filed a Response to Plaintiff's Counsel's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b). For the reasons stated below, the Motion is GRANTED.

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 **BACKGROUND**

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3 Plaintiff's counsel represented plaintiff before the United States
4 District Court pursuant to a contingency fee agreement ("Agreement"),
5 which provides in Paragraph 3 for attorney's fees "equal to 25% of all
6 past due benefits resulting from a the favorable decision on this Social
7 Security and/or SSI Disability claim." (Motion at 3, Exhibit 1.) On
8 March 31, 2006, the Court reversed the Commissioner's decision and
9 remanded this case for further administrative proceedings. (Motion at
10 3.) On November 14, 2006, the Commissioner issued a decision granting
11 plaintiff's application for benefits. (Motion at 3, Exhibit 2.) On
12 March 5, 2007, plaintiff was awarded \$100,574.00 in retroactive
13 benefits. (Motion at 3, Exhibit 3.) Pursuant to a stipulation of the
14 parties and related Court Order, plaintiff's counsel was awarded the sum
15 of \$1,942.00 in attorney's fees pursuant to the Equal Access to Justice
16 Act ("EAJA"). (Motion at 3.)

17

18 **APPLICABLE LAW**

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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

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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**
9

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% of past-due benefits.³ Neither "the character of the
13 representation" nor "the results the representative achieved" suggest
14 the unreasonableness of the fee sought. Indeed, the character of the
15 representation was clearly excellent in view of counsel's ability to
16 secure a remand Order and Judgment from this Court that ultimately
17 resulted in a substantial award of past-due disability benefits to his
18 client.

19
20 Further, plaintiff's counsel was not responsible for any
21 significant delay in securing plaintiff's benefits. Nothing in the
22 record before the Court suggests that there was any overreaching in the
23 making of the fee agreement or any impropriety on the part of counsel
24 in his representation of plaintiff before this Court. Counsel assumed
25 a significant risk of nonpayment inherent in a contingency agreement,
26 the agreed-upon contingent fee is less than the 25% statutory cap, and
27 the Motion seeks less than the agreed-upon fee. Although the *de facto*

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³ 25% of \$100,574.00 is \$25,143.50.

1 hourly rate of plaintiff's counsel's services amounts to \$1,491.25,⁴
2 counsel seeks only approximately 18% of plaintiff's past-due benefits,
3 rather than the 25% to which counsel is entitled under the Agreement.
4 In effect, the downward adjustment already imposed by counsel results
5 in a decreased fee award of approximately 75% of the total amount he
6 would be entitled to recover pursuant to the terms of the Agreement.
7 It is the Court's view that, despite the relatively high *de facto* hourly
8 rate, no further downward adjustment is warranted as counsel, who has
9 been practicing exclusively in the field of Social Security law since
10 1991, should not receive less compensation for efficiently performing
11 in 12 hours and 10 minutes what it takes the average lawyer to perform
12 in 33 hours. (Motion at 8, 10; Exhibit 7); see Patterson v. Apfel, 99
13 F. Supp. 2d 1212, 1214 & n.2 (C.D. Cal. 2000) (33.75 hours of attorney
14 time spent on a social security case is average and reasonable).
15 Therefore, under the totality of the circumstances, the Court finds that
16 counsel's requested fee of \$18,143.50 is reasonable under the inquiry
17 called for by Gisbrecht.

18
19 **CONCLUSION**
20

21 For the reasons set forth above, the Motion is GRANTED. Section
22 406(b) fees are allowed in the total amount of \$18,143.50 to be paid out
23 of the amount withheld by the Commissioner from plaintiff's past-due
24 benefits. In view of the previous payment of EAJA fees in the amount
25 of \$1,942.00 to counsel, the Commissioner shall certify payment to
26 counsel of a net fee of \$16,201.50. The balance of the withheld funds
27

28 ⁴ \$18,143.50 divided by 12 hours and 10 minutes of attorney time
equals \$1,491.25.

1 shall be paid to plaintiff.

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3 IT IS SO ORDERED.

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5 DATED: July 2, 2009

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Margaret A. Nagle

MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE

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