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6	UNITED STATES DISTRICT COURT	
7	CENTRAL DISTRICT OF CALIFORNIA	
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10	JAMES M. OLIVAS,	Case No. EDCV 14-1159-KK
11	Plaintiff,	
12	v. CAROLYN W. COLVIN, Acting	ORDER GRANTING MOTION FOR ATTORNEY FEES PURSUANT TO 42 U.S.C. § 406(B)
13	CAROLYN W. COLVIN, Acting Commissioner of Social Security,	42 U.S.C. § 406(B)
14	Defendant.	
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17	I.	
18	INTRODUCTION	
19	Plaintiff James M. Olivas's ("Plaintiff's") counsel, Vijay Jagdish Patel of	
20	Law Offices of Lawrence D. Rohlfing ("Counsel"), filed a Motion for Attorney	
21	Fees Pursuant to Title 42 of the United States Code, section 406(b) ("Motion").	
22	The Motion seeks an award in the amount of \$17,499.00 for representing Plaintiff	
23	in an action to obtain disability insurance benefits and supplemental security	
24	income, with a refund to Plaintiff of \$4,461.62 for the Equal Access to Justice Act	
25	("EAJA") fees previously awarded.	
26	The parties have consented to the jurisdiction of the undersigned United	
27	States Magistrate Judge, pursuant to Title 28 of the United States Code, section	
28	636(c). For the reasons stated below, the C	Court grants the Motion.

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2	<u>RELEVANT BACKGROUND</u>	
	On June 13, 2014, Plaintiff filed the complaint in this action. <u>See ECF</u>	
4	Docket No. ("Dkt.") 3, Compl. at 1. Plaintiff alleged defendant Carolyn W. Colvin	
5	("Defendant") had improperly denied Plaintiff's applications for disability	
6	insurance benefits and supplemental security income. <u>Id.</u> at 2-3. On February 9,	
7	2015, the Court found Defendant erred in denying Plaintiff's applications, and	
8	entered Judgment reversing and remanding the case to Defendant for further	
9	administrative proceedings. Dkt. 22, Judgment. On remand, Defendant stated she	
10	would withhold \$17,499.00 as twenty-five percent of Plaintiff's past due benefits	
11	"to pay [Plaintiff's] representative." Dkt. 25-3, Notice of Award at 4.	
12	On April 10, 2015, the Court awarded Counsel EAJA fees in the amount of	
13	\$4,461.62. Dkt. 24, Order Granting EAJA Fees.	
14	On April 20, 2016, pursuant to Title 42 of the United States Code, section	
15	406(b), Counsel filed the instant Motion seeking the amount of \$17,499.00 for	
16	representing Plaintiff in the underlying proceedings before the Court. Dkt. 25,	
17	Mot. Counsel states he would "reimburse James M. Olivas the amount of	
18	\$4,461.62 for the EAJA fees previously paid." <u>Id.</u> at 3. Counsel also states 27.9	
19	hours of attorney time were expended on Plaintiff's case, Dkt. 25-4, Itemized	
20	Hours, and seeks compensation pursuant to a contingency fee agreement stating	
21	Counsel would receive "25% of the backpay awarded upon reversal of an	
22	unfavorable ALJ decision," Dkt. 25-1, Contingency Fee Agreement.	
23	On April 20, 2016, Plaintiff was served with the Motion and informed he had	
24	a right to file a response to the Motion. Dkt. 25, Mot. at 2, 10. However, Plaintiff	
25	failed to file a timely response. On May 4, 2016, Defendant filed a Non-Opposition	
26	to the Motion stating she "takes no position on the reasonableness of the	
27	[Motion's] request." Dkt. 26, Non-Opposition at 4. Thus, the Court deems this	
28	matter submitted.	

1	III.
2	DISCUSSION
3	A. APPLICABLE LAW
4	Title 42 of the United States Code, section 406(b) ("Section 406(b)")
5	provides, in part:
6	Whenever a court renders a judgment favorable to a claimant under
7	this subchapter who was represented before the court by an attorney,
8	the court may determine and allow as part of its judgment a reasonable
9	fee for such representation, not in excess of 25 percent of the total of
10	the past-due benefits to which the claimant is entitled by reason of
11	such judgment, and the Commissioner of Social Security may
12	certify the amount of such fee for payment to such attorney out of, and
13	not in addition to, the amount of such past-due benefits.
14	42 U.S.C. § 406(b)(1)(A). Thus, "a prevailing [disability] claimant's [attorney's]
15	fees are payable only out of the benefits recovered; in amount, such fees may not
16	exceed 25 percent of past-due benefits." <u>Gisbrecht v. Barnhart</u> , 535 U.S. 789, 792,
17	122 S. Ct. 1817, 152 L. Ed. 2d 996 (2002).
18	Where a claimant entered into a contingent fee agreement with counsel, a
19	court must apply Section 406(b) "to control, not to displace, fee agreements
20	between Social Security benefits claimants and their counsel." <u>Id.</u> at 793. A court
21	should not use a "lodestar method," under which a district court "determines a
22	reasonable fee by multiplying the reasonable hourly rate by the number of hours
23	reasonably expended on the case." <u>Crawford v. Astrue</u> , 586 F.3d 1142, 1148 (9th
24	Cir. 2009) (en banc) (citation omitted). Rather, where the claimant and counsel
25	entered into a lawful contingent fee agreement, courts that use the "lodestar"
26	method as the starting point to determine the reasonableness of fees requested
27	under Section 406(b) improperly "reject the primacy of lawful attorney-client fee
28	agreements." <u>Gisbrecht</u> , 535 U.S. at 793. Thus, courts should not apply lodestar
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rules in cases where the claimant and counsel reached a contingent fee agreement
 because:

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

10 Crawford, 586 F.3d at 1149.

However, even in contingency fee cases, a court has "an affirmative duty to 11 assure that the reasonableness of the fee [asserted by counsel] is established." Id. 12 The court must examine "whether the amount need be reduced, not whether the 13 lodestar amount should be enhanced." Id. The court may consider factors such as 14 the character of the representation, the results achieved, the ratio between the 15 amount of any benefits awarded and the time expended, and any undue delay 16 attributable to counsel that caused an accumulation of back benefits in determining 17 18 whether a lawful contingent fee agreement is reasonable. See Gisbrecht, 535 U.S. 19 at 808; Crawford, 586 F.3d at 1151.

20 **B.** ANALYSIS

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Here, Counsel seeks a reasonable fee under Section 406(b). Plaintiff
retained Counsel to represent him in federal court in his appeal from the
administrative denial of benefits, and agreed to pay Counsel a contingent fee of
twenty-five percent of any past due benefits obtained. See Dkt. 25-1, Contingency
Fee Agreement. Consideration of the factors set forth in Gisbrecht and Crawford
warrants no reduction of the fee Counsel seeks.

The record discloses no issue regarding the quality or efficiency of Counsel's
representation before this Court, or any misconduct or delay by Counsel. Counsel

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obtained a favorable outcome for Plaintiff, ultimately resulting in a remand for 1 2 further administrative proceedings and an award of past due benefits. See Dkt. 22, 3 Judgment; Dkt. 25-3, Notice of Award. Further, the 27.9 hours expended to litigate this case was reasonable and within the approved range for social security 4 disability cases. See Patterson v. Apfel, 99 F. Supp. 2d 1212, 1214 & n.2 (C.D. Cal. 5 2000) (noting that "a survey of several dozen cases in which attorney's fees were 6 awarded in social security cases suggests that the 33.75 hours spent by plaintiff's 7 8 counsel falls within the approved range").

9 In addition, a fee of \$17,499.00 based on 27.9 hours of attorney time is reasonable. See Dkt. 25-4, Itemized Hours. The Court finds Counsel's effective 10 hourly rate of approximately \$627.40, id., reasonable under the circumstances. See 11 Villa v. Astrue, 2010 WL 118454, at *1-2 (E.D. Cal. Jan. 7, 2010) (approving 12 Section 406(b) fees exceeding \$1,000.00 per hour, and noting "[r]educing 13 14 [Section] 406(b) fees after Crawford is a dicey business"). Further, post-Gisbrecht 15 decisions have approved contingent fee agreements yielding hourly rates greater than the rate Counsel seeks. E.g., Daniel v. Astrue, 2009 WL 1941632, at *2-3 16 (C.D. Cal. July 2, 2009) (approving fees amounting to \$1,491.25 per hour). Hence, 17 in light of the hours Counsel expended, the Section 406(b) fee award amount 18 19 Counsel requests would not represent an unfair windfall to Counsel.

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

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1	IV.	
2	<u>ORDER</u>	
3	Based on the foregoing, IT IS HEREBY ORDERED: (1) Counsel's Motion	
4	for Attorney Fees Pursuant to Title 42 of the United States Code, section 406(b) is	
5	GRANTED ; and (2) Defendant is directed to pay Counsel the sum of \$17,499.00	
6	with a reimbursement to Plaintiff for EAJA fees previously awarded in the amount	
7	of \$4,461.62.	
8	Dated: May 06, 2016	
9	Dated: May 06, 2016	
10	HONORABLE KENLY KIYA KATO United States Magistrate Judge	
11	Onited States Magistrate Judge	
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