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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENNA C.,¹

Plaintiff,

v.

ANDREW SAUL,² Commissioner of
Social Security,

Defendant.

Case No. EDCV 15-285-KK

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

I.

INTRODUCTION

Plaintiff Enna C. (“Plaintiff”)’s counsel, Brian C. Shapiro of the Law Offices of Lawrence D. Rohlfing (“Counsel”), filed a Motion (“Motion”) for Attorney Fees Pursuant to 42 U.S.C. § 406(b) (“Section 406(b)"). The Motion seeks an award of \$14,015.25 for representing Plaintiff in an action to obtain disability insurance benefits with a refund to Plaintiff of \$5,000.00 for the Equal Access to Justice Act (“EAJA”)

¹ Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

² The Court substitutes Andrew Saul, the current Commissioner of Social Security, as Defendant in this action. Fed. R. Civ. P. 25(d).

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

4 **II.**

5 **RELEVANT BACKGROUND**

6 On February 17, 2015, Plaintiff filed the Complaint in this action. ECF Docket
7 No. (“Dkt.”) 1, Compl. Plaintiff alleged the Commissioner of the Social Security
8 Administration (“Defendant”) improperly denied Plaintiff’s application for Title II
9 Disability Insurance Benefits (“DIB”) and Title XVI Supplemental Security Income
10 (“SSI”). *Id.* at 1. On February 10, 2016, the Court entered Judgment reversing and
11 remanding the case for further administrative proceedings. Dkt. 25, Order; Dkt. 26,
12 Judgment.

13 On April 12, 2016, the Court issued an order approving the parties’ stipulation
14 awarding EAJA fees to Counsel in the amount of \$5,000.00. Dkt. 28, Order
15 Approving EAJA Fees.

16 On August 28, 2019, Counsel filed the instant Motion for Authorization of
17 Attorney’s Fees Pursuant to Section 406(b) seeking attorney’s fees in the amount of
18 \$14,015.25 and requesting the Court “order counsel to reimburse [Plaintiff] the
19 amount of \$5,000.00 for the EAJA fees previously paid.” Dkt. 30, Mot. Counsel
20 states 27.7 hours of attorney and paralegal time were spent representing Plaintiff in
21 federal court. Dkt. 30 at 12-13, Declaration of Brian C. Shapiro (“Shapiro Decl.”), ¶
22 5; Dkt. 30-3, Itemized Hours. Counsel seeks compensation pursuant to a contingency
23 agreement dated July 27, 2015, which provides, “[t]he fee for successful prosecution
24 of this matter is a separate 25% of the past due benefits awarded upon reversal of any
25 unfavorable ALJ decision for work before the court.” Shapiro Decl., ¶ 2; Dkt. 30-1,
26 Social Security Representation Agreement at ¶ 4.

1 On August 28, 2019, Counsel served Plaintiff with the Motion and informed
2 her that she had a right to file a response to the Motion. Dkt. 30 at 14-15, Proof of
3 Service; Dkt. 30, Mot. at 2. Plaintiff has not filed a response.

4 On September 11, 2019, Defendant filed a Response to the Motion. Dkt. 31.
5 Defendant's Response "takes no position on the reasonableness of the request" of the
6 \$14,015.25 fee but provides an analysis of the fee request based on Defendant's role
7 "resembling that of a trustee for the claimants." Id. at 5.

8 Thus, the Court deems this matter submitted.

9 III.

10 DISCUSSION

11 A. APPLICABLE LAW

12 Pursuant to Section 406(b):

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

21 42 U.S.C. § 406(b)(1)(A). Thus, "a prevailing [disability] claimant's [attorney's] fees
22 are payable only out of the benefits recovered; in amount, such fees may not exceed
23 25 percent of past-due benefits." Gisbrecht v. Barnhart, 535 U.S. 789, 792, 122 S. Ct.
24 1817, 152 L. Ed. 2d 996 (2002).

25 Where a claimant entered into a contingent fee agreement with counsel, a court
26 must apply Section 406(b) "to control, not to displace, fee agreements between Social
27 Security benefits claimants and their counsel." Id. at 793. A court should not use a
28 "lodestar method," under which a district court "determines a reasonable fee by

1 multiplying the reasonable hourly rate by the number of hours reasonably expended
2 on the case.” Crawford v. Astrue, 586 F.3d 1142, 1148 (9th Cir. 2009) (en banc).
3 Rather, where the claimant and counsel entered into a lawful contingent fee
4 agreement, courts that use the “lodestar” method as the starting point to determine
5 the reasonableness of fees requested under Section 406(b) improperly “reject the
6 primacy of lawful attorney-client fee agreements.” Gisbrecht, 535 U.S. at 793. Thus,
7 courts should not apply lodestar rules in cases where the claimant and counsel reached
8 a contingent fee agreement because:

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

16 Crawford, 586 F.3d at 1149.

17 However, even in contingency fee cases, a court has “an affirmative duty to
18 assure that the reasonableness of the fee [asserted by counsel] is established.” Id. The
19 court must examine “whether the amount need be reduced, not whether the lodestar
20 amount should be enhanced.” Id. The court may consider factors such as the
21 character of the representation, the results achieved, the ratio between the amount of
22 any benefits awarded and the time expended, and any undue delay attributable to
23 counsel that caused an accumulation of back benefits in determining whether a lawful
24 contingent fee agreement is reasonable. See Gisbrecht, 535 U.S. at 808; Crawford,
25 586 F.3d at 1151.

26 Additionally, the Court must determine whether a previously awarded EAJA
27 fee should be refunded to Plaintiff in the event both Section 406(b) and EAJA fees
28 are awarded. “Congress harmonized fees payable by the [Agency] under EAJA with

1 fees payable under § 406(b) out of the claimant’s past-due Social Security benefits in
2 this manner: Fee awards may be made under both prescriptions, but the claimant’s
3 attorney must ‘refun[d] to the claimant the amount of the smaller fee.’” Gisbrecht,
4 535 U.S. at 796.

5 **B. ANALYSIS**

6 Here, Counsel seeks a reasonable fee under Section 406(b). Plaintiff retained
7 Counsel to represent her in federal court in her appeal from the administrative denial
8 of benefits and agreed to pay Counsel a contingent fee of twenty-five percent of any
9 past due benefits obtained for work performed in court. See Shapiro Decl., ¶ 2; Dkt.
10 30-1, Social Security Representation Agreement at ¶ 4. Consideration of the factors
11 set forth in Gisbrecht and Crawford warrants no reduction of the fee Counsel seeks.

12 The record discloses no issue regarding the quality or efficiency of Counsel’s
13 representation before this Court, or any misconduct or delay by Counsel. Counsel
14 obtained a favorable outcome for Plaintiff, ultimately resulting in a remand for further
15 administrative proceedings and an award of past due benefits. See Dkt. 26, Judgment;
16 Shapiro Decl., ¶¶ 3-4; Dkt. 30-2, Notice of Award. Further, the time expended to
17 litigate this case, i.e. 27.7 hours, was reasonable and within the approved range for
18 social security disability cases. See Patterson v. Apfel, 99 F. Supp. 2d 1212, 1214 &
19 n.2 (C.D. Cal. 2000) (noting that “a survey of several dozen cases in which attorney’s
20 fees were awarded in social security cases suggests that the 33.75 hours spent by
21 plaintiff’s counsel falls within the approved range”).

22 In addition, a fee of \$14,015.25 based on 27.7 hours of attorney time is
23 reasonable. See Dkt. 30-4, Itemized Hours. The Court finds Counsel’s effective
24 hourly rate of approximately \$505.97³ reasonable under the circumstances. See Villa
25 v. Astrue, No. CIV S-06-0846 GGH, 2010 WL 118454, at *1-2 (E.D. Cal. Jan. 7,
26 2010) (approving Section 406(b) fees exceeding \$1,000.00 per hour, and noting
27

28 ³ The Court’s calculation is achieved by dividing \$14,015.25 by 27.7 hours of time.

1 “[r]educing [Section] 406(b) fees after Crawford is a dicey business”). Further, post-
2 Gisbrecht decisions have approved contingency fee agreements yielding similar hourly
3 rates to the rate Counsel seeks. See, e.g., Daniel v. Astrue, No. EDCV 04-01188-
4 MAN, 2009 WL 1941632, at *2-3 (C.D. Cal. July 2, 2009) (approving fees amounting
5 to \$1,491.25 per hour); see also Palos v. Colvin, No. CV 15-04261-DTB, 2016 WL
6 5110243, at *2 (C.D. Cal. Sept. 20, 2016) (finding “an hourly rate of \$1,546.39 for
7 attorney and paralegal services” is reasonable). Hence, in light of the hours Counsel
8 expended, the Section 406(b) fee award amount Counsel requests would not represent
9 an unfair windfall to Counsel.

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

15 **IV.**

16 **ORDER**

17 Based on the foregoing, **IT IS HEREBY ORDERED** (1) Counsel’s Motion
18 for Attorney Fees Pursuant to Section 406(b) is **GRANTED**; (2) Defendant is
19 directed to pay Counsel the sum of \$14,015.25 with a reimbursement to Plaintiff for
20 EAJA fees previously awarded in the amount of \$5,000.00.

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22 Dated: October 08, 2019

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25 HONORABLE KENLY KIYA KATO
26 United States Magistrate Judge
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