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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STACY HILL,

Plaintiff,

v.

NANCY A. BERRYHILL,¹ Acting
Commissioner of Social Security,

Defendant.

Case No. EDCV 16-2426-KK

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

I.

INTRODUCTION

Counsel for Plaintiff Stacy Hill, Bill LaTour of the Law Offices of Bill LaTour (“Counsel”), filed a Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) (“Motion”). The Motion seeks an award of \$25,186 for representing Plaintiff in an action to obtain disability insurance benefits with a refund to Plaintiff of \$4,000 for the Equal Access to Justice Act (“EAJA”) fees previously awarded. The parties have consented to the jurisdiction of the undersigned United States

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 Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For the reasons stated below,
2 the Court grants the Motion.

3 **II.**

4 **RELEVANT BACKGROUND**

5 On November 23, 2016, Stacy Hill (“Plaintiff”) filed the Complaint in this
6 action. ECF Docket No. (“Dkt.”) 1, Compl. Plaintiff alleged the Commissioner of
7 the Social Security Administration (“Defendant”) improperly denied Plaintiff’s
8 applications for Disability Insurance benefits and Supplemental Security Income.
9 Id. On July 24, 2017, the Court found Defendant erred in denying Plaintiff benefits
10 and entered Judgment reversing and remanding the case to Defendant for further
11 administrative proceedings. Dkt. 20, Order; Dkt. 21, Judgment.

12 On August 23, 2017, the Court issued an order approving the parties’
13 stipulation awarding EAJA fees to Counsel of \$4,000. Dkt. 23, Order Granting
14 EAJA Fees.

15 On August 2, 2018, Counsel filed the instant Motion, pursuant to 42 U.S.C.
16 § 406(b) (“Section 406(b)”), seeking the amount of \$25,186 for representing
17 Plaintiff in the underlying proceedings before the Court. Dkt. 24, Mot. at 1.
18 Counsel states 23.6 hours of attorney and paralegal time were expended on
19 Plaintiff’s case. Dkt. 24-10, Exh. 8, Itemized Hours. Counsel seeks compensation
20 pursuant to a contingency agreement dated November 7, 2016 stating “fee
21 agreement allows [Plaintiff’s] attorney to apply for a full 25% of [Plaintiff’s] back
22 award for attorney fees pursuant to 42 U.S.C § 406(b)”. Dkt. 24-7, Exh. 5,
23 Contingency Agreement. Additionally, Counsel seeks an order to reimburse
24 Plaintiff the amount of \$4,000 for EAJA fees paid by the Deputy Commissioner.
25 Mot. at 1.

26 On August 1, 2018, Counsel served Plaintiff with the Motion and informed
27 her she had a right to file a response to the Motion. Mot. at 2. Plaintiff has not
28 filed a response.

1 On August 2, 2018, Defendant filed a notice of non-opposition to this
2 Motion. Dkt. 25. Thus, the Court deems this matter submitted.

3 III.

4 DISCUSSION

5 A. APPLICABLE LAW

6 Pursuant to Section 406(b):

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

15 42 U.S.C. § 406(b)(1)(A). Thus, “a prevailing [disability] claimant’s [attorney’s]
16 fees are payable only out of the benefits recovered; in amount, such fees may not
17 exceed 25 percent of past-due benefits.” Gisbrecht v. Barnhart, 535 U.S. 789, 792,
18 122 S. Ct. 1817, 152 L. Ed. 2d 996 (2002).

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

1 Gisbrecht, 535 U.S. at 793. Thus, courts should not apply lodestar rules in cases
2 where the claimant and counsel reached a contingent fee agreement because:

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

10 Crawford, 586 F.3d at 1149.

11 However, even in contingency fee cases, a court has “an affirmative duty to
12 assure that the reasonableness of the fee [asserted by counsel] is established.” Id.
13 The court must examine “whether the amount need be reduced, not whether the
14 lodestar amount should be enhanced.” Id. The court may consider factors such as
15 the character of the representation, the results achieved, the ratio between the
16 amount of any benefits awarded and the time expended, and any undue delay
17 attributable to counsel that caused an accumulation of back benefits in determining
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**

21 Here, Counsel seeks a reasonable fee under Section 406(b). Plaintiff
22 retained Counsel to represent her in federal court in her appeal from the
23 administrative denial of benefits, and agreed to pay Counsel a contingent fee of
24 twenty-five percent of any past due benefits obtained. Dkt. 24-7, Exh. 5,
25 Contingency Agreement. Consideration of the factors set forth in Gisbrecht and
26 Crawford warrants no reduction of the fee Counsel seeks.

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

1 obtained a favorable outcome for Plaintiff, ultimately resulting in a remand for
2 further administrative proceedings and an award of past due benefits. See Dkt. 21,
3 Judgment. Further, the time expended to litigate this case was reasonable and
4 within the approved range for social security disability cases. See Patterson v.
5 Apfel, 99 F. Supp. 2d 1212, 1214 & n.2 (C.D. Cal. 2000) (noting that “a survey of
6 several dozen cases in which attorney’s fees were awarded in social security cases
7 suggests that the 33.75 hours spent by plaintiff’s counsel falls within the approved
8 range”).

9 In addition, a fee of \$25,186 based on 23.6 hours of attorney and paralegal
10 time is reasonable. See Dkt. 24-10, Exh. 8, Itemized Hours. The Court finds
11 Counsel’s effective hourly rate of approximately \$1,067.20, id., reasonable under
12 the circumstances. See Villa v. Astrue, No. CIV S-06-0846 GGH, 2010 WL
13 118454, at *1-2 (E.D. Cal. Jan. 7, 2010) (approving Section 406(b) fees exceeding
14 \$1,000.00 per hour, and noting “[r]educing [Section] 406(b) fees after Crawford is
15 a dicey business”). Further, post-Gisbrecht decisions have approved contingency
16 fee agreements yielding higher hourly rates to the rate Counsel seeks. See, e.g.,
17 Daniel v. Astrue, No. EDCV 04-01188-MAN, 2009 WL 1941632, at *2-3 (C.D.
18 Cal. July 2, 2009) (approving fees amounting to \$1,491.25 per hour); see also Palos
19 v. Colvin, No. CV 15-04261-DTB, 2016 WL 5110243, at *2 (C.D. Cal. Sept. 20,
20 2016) (finding “an hourly rate of \$1,546.39 for attorney and paralegal services” is
21 reasonable). Hence, in light of the hours Counsel expended, the Section 406(b) fee
22 award amount Counsel requests would not represent an unfair windfall to Counsel.

23 Finally, nothing in the record suggests any overreaching in the making of the
24 fee agreement or any impropriety on the part of Counsel in representing Plaintiff.
25 Counsel assumed the risk of nonpayment inherent in a contingency agreement and
26 Counsel’s efforts proved successful for Plaintiff. Accordingly, the Court finds the
27 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 \$25,186 with a reimbursement to Plaintiff for EAJA fees previously awarded in the amount of \$4,000.

Dated: August 22, 2018



HONORABLE KENLY KIYA KATO
United States Magistrate Judge