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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE L.,¹

Plaintiff,

v.

ANDREW SAUL,² Commissioner of
Social Security,

Defendant.

Case No. EDCV 18-966-KK

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

I.

INTRODUCTION

Plaintiff Jose L. (“Plaintiff”)’s counsel, William M. Kuntz of William Kuntz Law Offices PLC (“Counsel”), filed a Motion for Attorney Fees (“Motion”) pursuant to 42 U.S.C. § 406(b) (“Section 406(b”). The Motion seeks an award of \$14,244.00 for representing Plaintiff in an action to obtain disability insurance benefits, with a refund to Plaintiff of \$744.01 for the Equal Access to Justice Act (“EAJA”) fees previously awarded. The parties have consented to the jurisdiction of the undersigned

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

3 **II.**

4 **RELEVANT BACKGROUND**

5 On May 6, 2018, Plaintiff filed the Complaint in this action. ECF Docket No.
6 (“Dkt.”) 1, Compl. Plaintiff alleged the Commissioner of the Social Security
7 Administration (“Defendant”) improperly denied Plaintiff’s application for Title II
8 Disability Insurance Benefits (“DIB”) and Title XVI Supplemental Security Income
9 Benefits (“SSI”). Id. On March 20, 2019, the Court entered Judgment remanding the
10 case for further administrative proceedings. Dkt. 25, Order; Dkt. 26, Judgment.

11 On June 18, 2019, the Court issued an order granting Counsel’s Motion for
12 EAJA Fees awarding fees to Counsel in the amount of \$ 2,616.13.³ Dkt. 24, Order
13 Granting EAJA Fees.

14 On August 15, 2020, Counsel filed the instant Motion pursuant to Section
15 406(b) seeking attorney fees in the amount of \$14,244.00. Dkt. 29, Mot. Counsel
16 states 12 hours and 55 minutes of attorney time were spent representing Plaintiff in
17 federal court. Dkt. 29 at 21-22, Declaration of William M. Kuntz (“Kuntz Decl.”), ¶
18 5, Ex. 4. Counsel seeks compensation pursuant to a contingency agreement dated
19 June 8, 2017, which provides that if Plaintiff prevails in federal court, Counsel is
20 entitled to twenty-five percent (25%) of the past due benefits. Id., ¶ 2, Ex. 1.

21 On August 15, 2020, Counsel served Plaintiff with the Motion and informed
22 him that he had a right to file a response to the Motion within fourteen days of receipt
23 of his copy of the Motion. Dkt. 29 at 2, 23. Plaintiff has not filed a response to the
24 Motion.

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³ \$1,872.12 was withheld from the \$2,616.13 EAJA award in satisfaction of Plaintiff’s
28 prior debt, resulting in a net payment to Counsel of \$744.01. Dkt. 28, Mot. at 1-2, Ex.
8.

1 On August 18, 2020, Defendant filed a Response to the Motion. Dkt. 30.
2 Defendant provides an analysis of the fee request but “takes no position on the
3 reasonableness fee request.” Id. at 5.

4 The matter thus stands submitted.

5 III.

6 **DISCUSSION**

7 **A. APPLICABLE LAW**

8 Pursuant to Section 406(b):

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

17 42 U.S.C. § 406(b)(1)(A). Thus, “a prevailing [disability] claimant’s [attorney’s] fees
18 are payable only out of the benefits recovered; in amount, such fees may not exceed
19 25 percent of past-due benefits.” Gisbrecht v. Barnhart, 535 U.S. 789, 792, 122 S. Ct.
20 1817, 152 L. Ed. 2d 996 (2002).

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

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

5 [t]he lodestar method under-compensates attorneys for the risk they
6 assume in representing [social security] claimants and ordinarily produces
7 remarkably smaller fees than would be produced by starting with the
8 contingent-fee agreement. A district court’s use of the lodestar to
9 determine a reasonable fee thus ultimately works to the disadvantage of
10 [social security] claimants who need counsel to recover any past-due
11 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. The
15 court must examine “whether the amount need be reduced, not whether the lodestar
16 amount should be enhanced.” Id. The court may consider factors such as the
17 character of the representation, the results achieved, the ratio between the amount of
18 any benefits awarded and the time expended, and any undue delay attributable to
19 counsel that caused an accumulation of back benefits in determining whether a lawful
20 contingent fee agreement is reasonable. See Gisbrecht, 535 U.S. at 808; Crawford,
21 586 F.3d at 1151.

22 Additionally, the Court must determine whether a previously awarded EAJA
23 fee should be refunded to Plaintiff in the event both Section 406(b) and EAJA fees
24 are awarded. “Congress harmonized fees payable by the [Agency] under EAJA with
25 fees payable under § 406(b) out of the claimant’s past-due Social Security benefits in
26 this manner: Fee awards may be made under both prescriptions, but the claimant’s
27 attorney must ‘refun[d] to the claimant the amount of the smaller fee.’” Gisbrecht,
28 535 U.S. at 796.

1 **B. ANALYSIS**

2 Here, Counsel seeks a reasonable fee under Section 406(b). Plaintiff retained
3 Counsel to represent him in federal court in an appeal from the administrative denial
4 of benefits and agreed to pay Counsel a contingent fee of twenty-five percent of any
5 past due benefits obtained for work performed in court. See Kuntz Decl., Ex. 1.
6 Consideration of the factors set forth in Gisbrecht and Crawford warrants no
7 reduction of the fee Counsel seeks.

8 The record discloses no issue regarding the quality or efficiency of Counsel's
9 representation before this Court, or any misconduct or delay by Counsel. Counsel
10 obtained a favorable outcome for Plaintiff, ultimately resulting in a remand for further
11 administrative proceedings and an award of past due benefits. See dkt. 25, Judgment;
12 Kuntz Decl., ¶ 4, Exs. 3A, 3B. Further, the time expended to litigate this case, i.e.
13 approximately 13 hours, was reasonable and within the approved range for social
14 security disability cases. See Patterson v. Apfel, 99 F. Supp. 2d 1212, 1214 & n.2
15 (C.D. Cal. 2000) (noting that "a survey of several dozen cases in which attorney's fees
16 were awarded in social security cases suggests that the 33.75 hours spent by plaintiff's
17 counsel falls within the approved range").

18 In addition, a fee of \$14,244.00 based on approximately 13 hours of attorney
19 time is reasonable. See Kuntz Decl., ¶ 5, Ex. 4. The Court finds Counsel's effective
20 hourly rate of approximately \$1,102.48⁴ reasonable under the circumstances. See Villa
21 v. Astrue, No. CIV S-06-0846 GGH, 2010 WL 118454, at *1-2 (E.D. Cal. Jan. 7,
22 2010) (approving Section 406(b) fees exceeding \$1,000.00 per hour, and noting
23 "[r]educing [Section] 406(b) fees after Crawford is a dicey business"). Further, post-
24 Gisbrecht decisions have approved contingency fee agreements yielding substantially
25 higher hourly rates to the rate Counsel seeks. See, e.g., Daniel v. Astrue, No. EDCV
26 04-01188-MAN, 2009 WL 1941632, at *2-3 (C.D. Cal. July 2, 2009) (approving fees
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28 ⁴ The Court's calculation is achieved by dividing \$14,244.00 by 12.92 hours of time.

