



1 **II. DISCUSSION AND ANALYSIS**

2 Plaintiff’s counsel brings this petition pursuant to 42 U.S.C. §406(b). Section  
3 406(b) provides in relevant part:

4 Whenever a court renders a judgment favorable to a claimant under this  
5 subchapter who was represented before the court by an attorney, the court  
6 may determine and allow as part of its judgment a reasonable fee for such  
7 representation, not in excess of 25 percent of the total of the past-due  
8 benefits to which the claimant is entitled by reason of such judgment . . . .

9 In *Gisbrecht*, the Supreme Court resolved a division among the federal circuits  
10 on the appropriate method of calculating attorney fees under §406(b). Rejecting the  
11 “lodestar method” which several of the circuits (including the Ninth Circuit) had been  
12 applying, the Supreme Court held:

13 [Section] 406(b) does not displace contingent-fee agreements as the  
14 primary means by which fees are set for successfully representing Social  
15 Security benefits claimants in court. Rather, §406(b) calls for court  
16 review of such arrangements as an independent check, to assure that they  
17 yield reasonable results in particular cases. Congress has provided one  
18 boundary line: Agreements are unenforceable to the extent that they  
19 provide for fees exceeding 25 percent of the past-due benefits. . . . Within  
20 the 25 percent boundary, . . . the attorney for the successful claimant must  
21 show that the fee sought is reasonable for the services rendered.

22 535 U.S. at 807 (footnotes omitted).

23 In determining whether the amount of fees sought by Plaintiff’s counsel is  
24 “reasonable for the services rendered” here, the Court has considered a number of  
25 factors. Several of these factors fall in favor of Plaintiff’s counsel.

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1 Under *Gisbrecht*, the starting point of the analysis is the agreement between  
2 Plaintiff and his counsel. Here, the relevant terms of the contingent fee agreement  
3 between Plaintiff and Plaintiff’s counsel are as follows:

4 If this matter requires judicial review of any adverse decision of the  
5 Social Security Administration, the fee for successful prosecution of this  
6 matter is **a separate 25% of the backpay awarded upon reversal of**  
7 **any unfavorable ALJ decision for work before the court. . . .**

8 Exhibit 1, attached to Declaration of Brian C. Shapiro (emphasis in original).

9 Plaintiff agreed to up to a 25% contingency and the \$17,000 sought would be  
10 approximately 18% of the award. The Court has no basis for finding that there was  
11 any fraud or overreaching by counsel in the making of the contingent fee agreement  
12 with Plaintiff.

13 Second, the amount sought by Plaintiff’s counsel is not in excess of the 25%  
14 statutory limit.

15 Third, there is no excessive delay attributable to counsel which would unduly  
16 increase the past due benefits accumulated during the pendency of the case in court.

17 Finally, the Court must assess the overall reasonableness of the fee in light of  
18 the character of the representation and the results obtained. In this regard, Plaintiff’s  
19 counsel has the burden of demonstrating reasonableness. *Gisbrecht*, 535 U.S. at 807  
20 (“the attorney for the successful claimant must show that the fee sought is reasonable  
21 for the services rendered”).

22 Here, Plaintiff’s counsel obtained an order for remand for an additional hearing  
23 after full briefing in this Court. The time expended by counsel (18.8 hours of attorney  
24 time and 3.5 hours of paralegal time) is reasonable. The effective hourly rate for  
25 counsel, assuming a paralegal rate of \$150 per hour for the 3.5 hours of paralegal  
26 time, if Plaintiff’s counsel receives all of the fees he seeks, would be approximately  
27 \$876.

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1 The Court has reviewed other decisions awarding fees in this context for some  
2 guidance. *See, e.g., Palos v. Colvin*, 2016 WL 5110243 (C.D. Cal. 2016) (collecting  
3 cases and awarding an effective hourly rate of \$1,546.39). In *Crawford v. Astrue*, 586  
4 F.3d 1142 (9th Cir. 2009) (en banc), the Ninth Circuit held that a district court should  
5 test for reasonableness by examining “whether the amount [requested] need be  
6 reduced, not whether the loadstar amount should be enhanced.” *Id.* at 1149. Although  
7 necessarily imprecise, the Court must award an amount that is reasonable under the  
8 circumstances. In *Crawford*, the Ninth Circuit approved of fees ranging from \$519  
9 per hour to \$902 per hour. *Id.* at 1153. The Court sees no justification for reducing  
10 Plaintiff’s counsel’s fee here.

11 **III. CONCLUSION**

12 Based on the foregoing considerations, the Court finds and concludes that  
13 \$17,000.00 in fees is reasonable. The petition for attorney fees pursuant to 42 U.S.C.  
14 §406(b) is granted. Upon payment by the Commissioner of \$17,000 out of the  
15 withheld past due benefits, Plaintiff’s counsel shall refund to Plaintiff the lesser EAJA  
16 fee of \$3,800 (which Plaintiff’s counsel has already received).

17 IT IS SO ORDERED.

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19 DATED: July 2, 2019

/S/ FREDERICK F. MUMM  
FREDERICK F. MUMM  
United States Magistrate Judge