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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PABLO REYNA,

CASE NO. 1:09-cv-01970-SMS

Plaintiff,

ORDER DISMISSING MOTION FOR
ATTORNEYS' FEES

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

(Docs. 31 and 36)

Defendant.

On October 3, 2012, this Court ordered Plaintiff to supplement his motion for attorneys' fees with (1) a copy of the letter or other documentation from Social Security Administration confirming the final total amount of benefits to be paid to him pursuant to this Court's order and (2) proof of service on Plaintiff Pablo Reyna of the motion for attorneys' fees. Plaintiff responded by providing the requested proof or service and a letter from the Social Security Administration increasing the amount being withheld on his behalf for attorneys' fees. Plaintiff did not provide written confirmation of the final total amount of past benefits payable to him as the Court had directed him to do. Plaintiff's attorneys stated that they do not request the increased amount now being withheld on Plaintiff's behalf but only the amount that they previously requested.

The Court may determine and allow attorneys' fees not to exceed 25 percent of the total past-due benefits to which a claimant is entitled as a result of a judgment in his favor. 42 U.S.C. § 406(b). Calculating attorneys' fees proportional to total amount of past-due benefits paid to

1 their client contemplates that the Court know the final total amount. Amounts withheld pending
2 the Administration's determination of the final total amount may approximate the ceiling on the
3 fees that ultimately will be payable to a claimant's attorneys but cannot be substituted for a
4 proper calculation based on the final amount of past-due fees. Without knowing the final amount
5 of Plaintiff's past-due benefits, the Court cannot calculate and order payment of attorneys' fees to
6 his counsel.

7 Accordingly, Plaintiff's motion for attorneys' fees pursuant to 42 U.S.C. § 406(b) (Doc.
8 31) is DISMISSED without prejudice to Plaintiff's renewing his motion upon determination of
9 the final amount of past-due benefits.

10
11 IT IS SO ORDERED.

12 **Dated: October 16, 2012**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE