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II. BACKGROUND

Plaintiff brought the underlying action seeking judicial review of a final administrative decision denying her claim for disability benefits under the Social Security Act. (Doc. 1.) On appeal, the Court ordered that the Administrative Law Judge’s opinion be reversed and remanded the case for further proceedings. (Docs. 23; 26 (denying the Commissioner’s motion to amend the judgment).) On August 10, 2012, Plaintiff petitioned for an award of attorney fees and expenses under the Equal Access to Justice Act (“EAJA”). (Doc. 27.) On March 13, 2013, Plaintiff’s counsel’s petition for attorney’s fees was denied. (Doc. 31.)

On January 31, 2015, the Commissioner issued a notice that retroactive disability benefits were awarded to Plaintiff. (Doc. 32-3.) The letter noted that \$2,918.55, representing 25 percent of Plaintiff’s past-due benefits, was withheld from Plaintiff’s award of disability benefits for payment of any applicable attorney fees. (Doc. 32-3.) On February 3, 2015, Mr. Rohlffing filed a motion for attorney's fees in the amount of \$2,918.55, with an offset of \$0.00 for EAJA fees already awarded. (Doc. 32.) It is counsel’s Section 406(b) motion for attorney’s fees that is currently pending before the Court.

III. DISCUSSION

17 Pursuant to the Social Security Act, attorneys may seek a reasonable fee for cases in which
18 they have successfully represented social security claimants. Section 406(b) provides the
19 following in relevant part:

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

24 42 U.S.C. § 406(b)(1)(A) (emphasis added). “In contrast to fees awarded under fee-shifting
25 provisions such as 42 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits
26 awarded; the losing party is not responsible for payment.” *Crawford v. Astrue*, 586 F.3d 1142,
27 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht v. Barnhart*, 535 U.S. 789, 802 (2002)). The
28 Commissioner has standing to challenge the award, despite that the Section 406(b) attorney’s fee

1 award is not paid by the government. *Craig v. Sec’y Dep’t of Health & Human Servs.*, 864 F.2d
2 324, 328 (4th Cir. 1989), *abrogated on other grounds in Gisbrecht*, 535 U.S. at 807. The goal of
3 fee awards under Section 406(b) is to provide adequate incentive to represent claimants while
4 ensuring that the usually meager disability benefits received are not greatly depleted. *Cotter v.*
5 *Bowen*, 879 F.2d 359, 365 (8th Cir. 1989), *abrogated on other grounds in Gisbrecht*, 535 U.S. at
6 807.

7 The twenty-five percent (25%) maximum fee is not an automatic entitlement, and courts
8 are required to ensure that the requested fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (Section
9 406(b) does not displace contingent-fee agreements within the statutory ceiling; instead, Section
10 406(b) instructs courts to review for reasonableness fees yielded by those agreements). “Within
11 the 25 percent boundary . . . the attorney for the successful claimant must show that the fee sought
12 is reasonable for the services rendered.” *Id.* at 807; *see also Crawford*, 586 F.3d at 1148 (holding
13 that Section 406(b) “does not specify how courts should determine whether a requested fee is
14 reasonable” but “provides only that the fee must not exceed 25% of the past-due benefits
15 awarded”).

16 Generally, “a district court charged with determining a reasonable fee award under
17 § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee arrangements,’ . . . ‘looking
18 first to the contingent-fee agreement, then testing it for reasonableness.’” *Crawford*, 586 F.3d at
19 1148 (quoting *Gisbrecht*, 535 U.S. at 793, 808). The United States Supreme Court has identified
20 several factors that may be considered in determining whether a fee award under a contingent-fee
21 agreement is unreasonable and therefore subject to reduction by the court: (1) the character of the
22 representation; (2) the results achieved by the representative; (3) whether the attorney engaged in
23 dilatory conduct in order to increase the accrued amount of past-due benefits; (4) whether the
24 benefits are large in comparison to the amount of time counsel spent on the case; and (5) the
25 attorney’s record of hours worked and counsel’s regular hourly billing charge for non-contingent
26 cases. *Id.* (citing *Gisbrecht*, 535 U.S. at 807-08).

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1 Here, the fee agreement between Plaintiff and her counsel provides:

2 “The fee for successful prosecution of this matter is **25% of the backpay awarded**
3 **upon reversal of any unfavorable ALJ decision for work before the Social**
4 **Security Administration.**”

5 (Doc. 32-1.) The Court has considered the character of counsel’s representation of Plaintiff and
6 the good results achieved by counsel, which included an award of benefits. Plaintiff’s counsel’s
7 office expended 33.3 hours of attorney and paralegal time on the case. (Doc. 32, Rohlfig Decl.,
8 ¶ 4.) There is no indication that a reduction of the award is warranted due to any substandard
9 performance by Plaintiff’s counsel as counsel secured a successful result for Plaintiff. There is
10 also no evidence that Mr. Rohlfig engaged in any dilatory conduct resulting in delay.

11 Attorney’s fees in the amount of \$2,918.55.00 represents 25% of the past-due benefits paid
12 to Plaintiff and are not excessive in relation to the past-due award. (Docs. 32-2; 34.) *See*
13 *generally Taylor v. Astrue*, No. 1:06-cv-00957-SMS, WL 836740, at *2 (E.D. Cal. Mar. 4, 2011)
14 (granting petition for an award of attorney’s fees pursuant to Section 406(b) in the amount of
15 \$20,960.00); *Jamieson v. Astrue*, No. 1:09-cv-00490-LJO-DLB, WL 587096, at *2 (E.D. Cal. Feb.
16 9, 2011) (recommending an award of attorney’s fees pursuant to Section 406(b) in the amount of
17 \$34,500.00); *Logan-Laracuenta v. Astrue*, No. 1:07-cv-00983-SMS, WL 4689519, at *2 (E.D.
18 Cal. Nov. 10, 2010) (granting petition for attorney’s fees pursuant to Section 406(b) in the amount
19 of \$23,558.62).

20 In making this determination, the Court recognizes the contingent-fee nature of this case
21 and counsel’s assumption of risk in agreeing to represent Plaintiff under such terms. *See Hearn v.*
22 *Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003) (“Because attorneys like Mr. Sackett
23 contend with a substantial risk of loss in Title II cases, an effective hourly rate of only \$450 in
24 successful cases does not provide a basis for this court to lower the fee to avoid a ‘windfall.’”
(quoting *Gisbrecht*, 535 U.S. at 807)).

25 An award of Section 406(b) fees, however, must be offset by any prior award of attorney’s
26 fees granted under the EAJA. 28 U.S.C. § 2412; *Gisbrecht*, 535 U.S. at 796. Plaintiff was
27 awarded \$0 in fees pursuant to the EAJA; as such, there is no offset in the fee award.

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IV. CONCLUSION AND ORDER

For the reasons stated above, the Court concludes that the fees sought by Plaintiff's counsel pursuant to Section 406(b) are reasonable.

Accordingly, IT IS ORDERED that Plaintiff's counsel's motion for an award of attorney's fees pursuant to Section 406(b) in the amount of \$2,918.55 is GRANTED subject to no offset for EAJA fees previously awarded.

IT IS SO ORDERED.

Dated: March 23, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE