



1 On August 28, 2014, the parties filed a stipulation for an award of attorney fees pursuant  
2 to the Equal Access to Justice Act (“EAJA”). On January 18, 2015, an order issued awarding  
3 Plaintiff attorney fees of \$1,900.00. (ECF No. 18.)

4 On remand, the ALJ found that Plaintiff was disabled as of October 1, 2011, and past  
5 benefits were awarded in the amount of 45,840.00. (ECF No. 19-1 at 4, 6.) The Commissioner  
6 withheld \$11,460.00 from the past-due benefit for attorney fees. This amount equals 25 percent  
7 of the retroactive benefit award. (Id. at 6.) Petitioner’s firm was paid \$6,000.00 of this award for  
8 representation of Plaintiff at the administrative level, leaving \$5,460.00 for attorney fees for  
9 representation in the court proceedings. (Id. at 6-7.)

10 In the instant motion, Petitioner seeks \$5,460.00 for 11.4 hours spent working on  
11 Plaintiff’s case. (ECF No. 19-3.)

## 12 II.

### 13 LEGAL STANDARD

14 In relevant part, 42 U.S.C. § 406(b)(1)(A) provides that when a federal court “renders a  
15 judgment favorable to a claimant . . . who was represented before the court by an attorney,” the  
16 court may allow reasonable attorney fees “not in excess of 25 percent of the total of the past-due  
17 benefits to which the claimant is entitled by reason of such judgment.” The payment of such  
18 award comes directly from the claimant’s benefits. 42 U.S.C. § 406(b)(1)(A).

19 The Supreme Court has explained that a district court reviews a petition for section 406(b)  
20 fees “as an independent check” to assure that the contingency fee agreements between the  
21 claimant and the attorney will “yield reasonable results in particular cases.” Gisbrecht v.  
22 Barnhart, 535 U.S. 789, 807 (2002). The district court must respect “the primacy of lawful  
23 attorney-client fee agreements,” and is to look first at the contingent-fee agreement, and then test  
24 it for reasonableness.” Crawford v. Astrue, 586 F.3d 1142, 1148 (9th Cir. 2009). Agreements  
25 seeking fees in excess of twenty-five percent of the past-due benefits awarded are not  
26 enforceable. Crawford, 586 F.3d at 1148. The attorney has the burden of demonstrating that the  
27 fees requested are reasonable. Gisbrecht, 535 U.S. at 808; Crawford, 586 F.3d at 1148.

28 In determining the reasonableness of an award, the district court should consider the

1 character of the representation and the results achieved. Gisbrecht, 535 U.S. at 800. Ultimately,  
2 an award of section 406(b) fees is offset by an award of attorney fees granted under the EAJA.  
3 28 U.S.C. § 2412. Gisbrecht, 535 U.S. at 796.

4 The Ninth Circuit has identified several factors that a district court can examine under  
5 Gisbrecht in determining whether the fee was reasonable. In determining whether counsel met  
6 his burden to demonstrate that the requested fees are reasonable, the court may consider (1) the  
7 standard of performance of the attorney in representing the claimant; (2) whether the attorney  
8 exhibited dilatory conduct or caused excessive delay which resulted in an undue accumulation of  
9 past-due benefits; and (3) whether the requested fees are excessively large in relation to the  
10 benefits achieved when taking into consideration the risk assumed in these cases. Crawford, 586  
11 F.3d at 1151.

### 12 III.

### 13 DISCUSSION

14 The Court has conducted an independent check to insure the reasonableness of the  
15 requested fees in relation to this action. Gisbrecht, 122 S.Ct. at 1828. Here, the fee agreement  
16 between Plaintiff and Petitioner provides for a fee consisting of “25% of the backpay awarded  
17 upon reversal of any unfavorable ALJ decision for work before” the Social Security  
18 Administration or the Court. (Social Security Representation Agreement, attached to Motion,  
19 ECF No. 19-2.) Plaintiff has been awarded benefits from March 2012 through July 2015 in the  
20 amount of \$45,840.00. (ECF No. 19-1 at 6.) In determining the reasonableness of the fees  
21 requested, the Court is to apply the test mandated by Gisbrecht.

#### 22 A. Reasonableness of Fee Request Under Gisbrecht

23 There is no indication that a reduction of fees is warranted for substandard performance.  
24 Counsel is an experienced, competent attorney who secured a successful result for Plaintiff early  
25 in the litigation. Plaintiff agreed to a 25 percent fee at the outset of the representation and  
26 Petitioner is seeking \$5,460.00. Petitioner has previously been paid \$6,000.00 for representing  
27 Plaintiff before the Social Security Administration. The total fee paid to Petitioner (\$6,000.00  
28 plus \$5,460.00 which equals \$11,460.00) would represent 25 percent of the past due award.

1 The \$11,460.00 fee is not excessively large in relation to the past-due award of  
2 \$45,840.00. In making this determination, the Court recognizes the contingent nature of this case  
3 and Counsel's assumption of the risk of going uncompensated. Hearn v. Barnhart, 262 F.Supp.2d  
4 1033, 1037 (N.D. Cal. 2003).

5 **B. LodeStar Cross Check for Reasonableness**

6 In order to determine whether the fee requested in this action is reasonable, the Court shall  
7 also consider the lode star calculation. Crawford v. Astrue, 586 F.3d 1142, 1151 (9th Cir. 2009)  
8 (the district court can consider the lodestar calculation, but only as an aid in assessing the  
9 reasonableness of the fee). The Ninth Circuit utilizes the "lodestar" approach for assessing  
10 reasonable attorneys' fees, where the number of hours reasonably expended is multiplied by a  
11 reasonable hourly rate. Gonzalez v. City of Maywood, 729 F.3d 1196, 1202 (9th Cir. 2013);  
12 Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 978 (9th Cir. 2008).

13 1. Reasonable Hours

14 Initially, the Court shall review the billing records to determine if the time that Petitioner  
15 billed in this action is reasonable. Although Grisbrecht did not specifically address that the hours  
16 billed must be reasonably spent on the action, any other interpretation would undermine the  
17 reasonableness check. See Statler v. Astrue, No. CV 05-01213 AN, 2009 WL 195955, at \*5  
18 (C.D. Cal. Jan. 26, 2009) (considering reasonableness of hours billed in determining similar fee  
19 request).

20 In reviewing the itemized record of the time spent working on this action, the Court finds  
21 that several of the entries record excessive amounts of time for the service provided. On October  
22 19, 2013, Petitioner spent .4 hours or 18 minutes preparing the civil cover sheet which is a one  
23 page check box form which generally just required filing in the names of the parties and  
24 Petitioner's contact information. (ECF No. 1-1.) The Court finds that .1 hours would be a  
25 reasonable amount of time to have completed this generic form that is filed in all cases.

26 On December 6, 2013, Petitioner recorded .4 hours to prepare and file the consent form,  
27 which similarly is a single page generic form which is filed in all cases and to which counsel  
28 affixed his signature. (ECF No. 4-2; see also Consent to Proceed Before a United States

1 Magistrate Judge filed in Gallardo v. Michael J. Astrue, No. 1:12-cv-01706-SKO (E.D. Cal.  
2 December 19, 2012) (in which Petitioner filed an identical form).) The Court finds that .1 hours  
3 would be a reasonable amount of time to bill for this task.

4 On December 17, 2013, Petitioner billed for .3 hours to prepare and file the proof of  
5 service. (ECF No. 1-1) However, this is another form document that would be filed in all Social  
6 Security cases and would only requiring minor edits to be filed herein. The Court finds that .1  
7 hours would be a reasonable amount of time to bill for the minor edits and filing of this  
8 document.

9 On April 30, 2014, Petitioner recorded .9 hours for legal research regarding the duties of  
10 the ALJ to weigh medical opinions. (Id.) This appears an unreasonable amount of time for an  
11 attorney with twelve years of experience who has represented over 150 clients in Social Security  
12 appeals and nearly 1,000 administrative hearings to research an issue that is present in virtually  
13 every Social Security case. (ECF No. 19 at ¶¶ 6, 7.) The Court finds that .4 hours would be a  
14 reasonable amount of time to research any current changes in the standards regarding the ALJ's  
15 duty to weigh medical opinions.

16 On June 30, 2014, Petitioner billed for .3 hours to review the order remanding this action  
17 and judgment issued in this action. (ECF No. 1-1.) The remand order was simply the stipulation  
18 prepared by the parties which Petitioner had previously billed for reviewing on two separate  
19 occasions and the judgment is merely a one page standard order issued in all dismissals. The  
20 Court finds that .1 hours would be a reasonable amount of time to have reviewed both of these  
21 documents.

22 The Court finds that making these deductions, Petitioner reasonably expended 9.9 hours  
23 on this action.

## 24 2. Reasonable Hourly Rate

25 When considering the total amount requested by Petitioner for representing Plaintiff in  
26 federal court, the fee request translates to approximately \$551.00 per hour for the time Petitioner  
27 expended in this action. In Crawford the appellate court found that a fee of \$875 and \$902 per  
28 hour, for time of both attorneys and paralegals, was not excessive. Crawford, 586 F.3d at 1152

1 (dissenting opinion). The Court finds that this is a reasonable hourly rate taking into  
2 consideration that the case was taken on a contingency basis and Petitioner's risk that he would  
3 not be compensated for the time expended in this action.

4 **C. Conclusion**

5 The Court finds that the requested fees are reasonable when compared to the amount of  
6 work Counsel performed in representing Plaintiff in court. Petitioner's representation of the  
7 claimant resulted in the action being remanded for further proceedings and benefits were  
8 awarded. Counsel also submitted a detailed billing statement which supports the request.

9 Fee awards may be made under both section 406(b) and EAJA, but the claimant's attorney  
10 must generally refund to the claimant the amount of the smaller fee. Gisbrecht, 535 U.S. at 796.  
11 Therefore, Petitioner shall refund to Plaintiff the amount of the EAJA fee that was previously  
12 awarded.

13 **VI.**

14 **ORDER**

15 For the reasons stated above, the Court finds that the fees sought by Petitioner pursuant to  
16 Section 406(b) are reasonable. Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Petitioner's motion for an award of attorney fees pursuant to Section 406(b) in the  
18 amount of \$5,460.00 is GRANTED; and  
19 2. Petitioner's award shall be offset by \$1,900.00 for the EAJA fees previously  
20 awarded pursuant to 28 U.S.C. § 2412(d)..

21 IT IS SO ORDERED.

22 Dated: October 30, 2015

23   
24 UNITED STATES MAGISTRATE JUDGE