

1 On May 20, 2014, Plaintiff filed this action seeking judicial review of the Commissioner's
2 denial of benefits. (Doc. No. 1). On August 6, 2015, the Court issued an order upholding the
3 Commissioner's decision to deny benefits. (Doc. No. 17.) Plaintiff filed a notice of appeal and, on
4 September 19, 2017, the Ninth Circuit Court of Appeals reversed the Court's order dated August 6,
5 2015. (Doc. No. 20.) On November 7, 2017, the Court issued an order remanding this action for
6 further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). (Doc. No. 22.)
7 The Commissioner issued a decision to grant Plaintiff's application for benefits and, on October 2,
8 2018, the Commissioner issued a notice indicating that Plaintiff's retroactive benefits totaled
9 \$39,887.68. (Doc. No. 28 at 3.) On January 31, 2018, the Court approved the parties' stipulation to
10 award Plaintiff \$8,800.00 in attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §
11 2412(d). (Doc. No. 27.)

12 In the present Motion, Plaintiff's counsel asks the Court to direct the Commissioner to certify
13 the fee of \$9,970.00 for legal fees incurred in this Court. Plaintiff's counsel contends this fee is
14 reasonable in light of the services rendered and results achieved, particularly as this matter took more
15 than seven years to resolve and required representation before the Court of Appeals. (Doc. No. 28 at
16 5). The Commissioner filed a notice of non-opposition noting that the \$9,970.00 requested is less than
17 25 percent of the past-due benefits awarded and further requesting that any fee award include an
18 instruction to counsel to compensate Plaintiff in the amount of EAJA fees already received. (Doc. No.
19 30.)

20 **II. Legal Standard**

21 An attorney may seek an award of fees for representation of a Social Security claimant who is
22 awarded benefits:

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

26 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)
27 controls fees awarded for representation of Social Security claimants); 42 U.S.C. § 1383(d)(2)(A)
28 (incorporating the provisions of section 406). A contingency fee agreement is unenforceable if it

1 provides for fees exceeding twenty-five percent of past-due benefits. *Gisbrecht, supra*, 535 U.S. at
2 807.

3
4 **III. Discussion and Analysis**

5 District courts “have been deferential to the terms of contingency fee contracts § 406(b) cases.”
6 *Hern v. Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Cal. 2003). However, the Court must review
7 contingent-fee arrangements “as an independent check, to assure that they yield reasonable results in
8 particular cases.” *Gisbrecht*, 535 U.S. at 807. In doing so, the Court should consider “the character of
9 the representation and the results the representative achieved.” *Id.* at 808. In addition, the Court
10 should consider whether the attorney performed in a substandard manner or engaged in dilatory
11 conduct or excessive delays, and whether the fees are “excessively large in relation to the benefits
12 received.” *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc).

13 In this case, after carefully considering the fee agreement and the applicable law, the Court
14 finds Plaintiff’s counsel’s requested fees to be reasonable. In support of his motion for attorneys’ fees
15 under 42 U.S.C. § 406(b), Plaintiff’s counsel attached the contingent fee agreement which provided
16 for a contingent fee of twenty-five percent of any awarded retroactive benefits. Plaintiff’s counsel
17 accepted the risk of loss in the representation and expended a total of 61.35 hours while representing
18 Plaintiff before the District Court and the Ninth Circuit Court of Appeals. (Doc. No. 28 at 8.) As a
19 result of counsel’s work, the matter was remanded for further proceedings before an Administrative
20 Law Judge, who issued a fully favorable decision and awarded Plaintiff benefits.

21 Plaintiff’s counsel provided a copy of the notice of award and the motion for attorney’s fees to
22 Plaintiff. (Doc. No. 28). Although served with the motion, Plaintiff did not challenge the requested
23 fees which attests to their reasonableness. Likewise, the Commissioner, in its advisory capacity, also
24 declined to dispute the propriety of the amount of the fees requested by Plaintiff’s counsel. (Doc. No.
25 30.)

26 Additionally, there is no indication counsel performed in a substandard manner or engaged in
27 severe dilatory conduct to the extent that a reduction in fees is warranted. To the contrary, Plaintiff
28 was able to secure a fully favorable decision and remand for further proceedings, including an award

1 of past-due benefits. Accordingly, the Court finds the fees sought by counsel are reasonable in light
2 the results achieved in this action, and the amount does not exceed twenty-five percent maximum
3 permitted under 42 U.S.C. §§ 1383(b)(2)(D) and 406(b).

4 **IV. Conclusion and Order**

5 Based upon the foregoing, the Court **ORDERS**:

6 1. Plaintiff's counsel's motion for attorneys' fees under 42 U.S.C. §1383(d)(2)(B) (Doc.
7 No. 28) is GRANTED;

8 2. Plaintiff's counsel is awarded \$9,970.00 in attorneys' fees pursuant to 42 U.S.C. §
9 406(b); and

10 3. Plaintiff's counsel shall compensate Plaintiff in the amount of \$8,800.00 for fees
11 previously awarded pursuant to the EAJA.

12
13 IT IS SO ORDERED.

14 Dated: April 22, 2019

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE