

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LORI ANN BROWN,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,¹

Defendant.

No. 1:14-cv-01288-DAD-SKO

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
MOTION FOR ATTORNEY’S FEES
PURSUANT TO 42 U.S.C. § 406(b)

(Doc. Nos. 30, 35)

After plaintiff successfully obtained reversal of an administrative decision denying her application for Social Security disability benefits, defendant approved plaintiff’s claim for benefits and awarded her \$77,944.36 in back payments. (See Doc. No. 30.) Plaintiff’s counsel thereafter filed a motion for attorney’s fees pursuant to 42 U.S.C. § 406(b) in the amount of \$19,486.09, equal to 25% of plaintiff’s back benefits, subject to a refund to plaintiff of \$6,062.91 for attorney’s fees that were previously awarded pursuant to the Equal Access to Justice Act (“EAJA”). (Id.)

¹ On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of the Social Security Administration. See <https://www.ssa.gov/agency/commissioner.html> (last visited by the court on November 30, 2018). She is therefore substituted as the defendant in this action. See 42 U.S.C. § 405(g) (referring to the “Commissioner’s Answer”); 20 C.F.R. § 422.210(d) (“[T]he person holding the Office of the Commissioner shall, in [her] official capacity, be the proper defendant.”).

1 On July 23, 2018, the assigned magistrate judge issued an order requiring plaintiff and
2 defendant to file their responses in opposition or statements of non-opposition to plaintiff's
3 counsel's motion, if any, by August 20, 2018. (Doc. No. 31.) On August 8, 2018, defendant filed
4 a statement of non-opposition to the motion, acknowledging that defendant was not a party to the
5 fee agreement between plaintiff and her counsel and therefore "not in a position to either assent or
6 object to the § 406(b) fees that Counsel seeks from Plaintiff's past-due benefits" and taking "no
7 position on the reasonableness of the request." (Doc. No. 34 at 2-3.) Plaintiff did not file any
8 opposition to her counsel's motion for attorney's fees.

9 On September 11, 2018, the assigned magistrate judge issued findings and
10 recommendations recommending that the motion for an award of attorney's fees be granted in the
11 amount of \$19,486.09, subject to a refund to plaintiff of \$6,062.91 in fees already awarded
12 pursuant to the EAJA. (Doc. No. 35.) The findings and recommendations provided that any
13 party could file objections thereto within fourteen (14) days. No objections were filed and the
14 time period for doing so has expired.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c), this court has conducted a
16 de novo review of this case. Having carefully reviewed the entire file, the court finds the findings
17 and recommendations to be supported by the record and proper analysis.

18 Accordingly,

- 19 1. The findings and recommendations issued September 11, 2018 (Doc. No. 35) are
20 adopted in full;
- 21 2. The motion for attorney's fees pursuant to 42 U.S.C. § 406(b) (Doc. No. 30) is
22 granted in the amount of \$19,486.09; and
- 23 3. Plaintiff's counsel is ordered to refund to plaintiff \$6,062.91 of the § 406(b) fees
24 awarded as an offset for EAJA fees previously awarded pursuant to 28 U.S.C. §
25 2412(d) (Doc. No. 29).

26 IT IS SO ORDERED.

27 Dated: November 30, 2018

28 
UNITED STATES DISTRICT JUDGE