

1 Claimant is subsequently awarded benefits by the Social Security Administration (“SSA”), Claimant
2 agrees to pay Attorney a fee for Federal Court work equal to 25% of the past-due benefits.” (Doc. Nos.
3 20-3, 25-4.)

4 On December 23, 2014, Plaintiff filed this action seeking judicial review of the Commissioner’s
5 denial of benefits. (Doc. No. 1). The parties stipulated to a voluntary remand of the case for further
6 administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g), which the Court approved
7 on August 24, 2015. (Doc. No. 16.) On November 18, 2015, the Court approved the parties’
8 stipulation to award Plaintiff \$2,150.00 in attorneys’ fees pursuant to the Equal Access to Justice Act,
9 28 U.S.C. § 2412 (the “EAJA”). (Doc. No. 19.) On remand, the Commissioner granted Plaintiff’s
10 application for benefits and, on August 24, 2016, issued a notice indicating that Plaintiff was entitled to
11 receive approximately \$44,702.46 in retroactive benefits. (Doc. No. 20-2 at Ex. A; Doc. No. 25-1 at
12 Ex. A.) On December 16, 2019, the Commissioner issued a notice indicating that Plaintiff’s “revised”
13 retroactive benefits totaled \$31,942.73 because the Commissioner found that Plaintiff met the non-
14 medical rules and not the medical requirements to receive Supplemental Security Income. (Doc. No.
15 25-1 at Ex. B.)

16 In the present Motion, Plaintiff’s counsel asks the Court to award attorneys’ fees in the amount
17 of \$7,985.68. (Doc. No. 25-1.) The Commissioner filed a notice of non-opposition to the motion
18 requesting that any fee award include an instruction to counsel to compensate Plaintiff in the amount of
19 EAJA fees already received. (Doc. No. 27.)

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). A contingency fee agreement
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1 is unenforceable if it provides for fees exceeding twenty-five percent of past-due benefits. *Gisbrecht*,
2 *supra*, 535 U.S. at 807.

3 **III. Discussion and Analysis**

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

12 In this case, after carefully considering the fee agreement and the applicable law, the Court
13 finds Plaintiff’s counsel’s requested fees to be reasonable. In support of his motion for attorneys’ fees
14 under 42 U.S.C. § 406(b), Plaintiff’s counsel attached the contingent fee agreement which provided
15 for a contingent fee of twenty-five percent of any awarded retroactive benefits. (Doc. Nos. 20-3, 25-
16 4.) Plaintiff’s counsel accordingly accepted the risk of loss in the representation. Plaintiff’s counsel
17 additionally expended a total of 12.8 hours of attorney time while representing Plaintiff before the
18 District Court. (Doc. Nos. 20-4, 25-5.) As a result of counsel’s work, the matter was remanded for
19 further proceedings before an Administrative Law Judge, who issued a fully favorable decision and
20 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. Nos. 21, 26, 30.) Although served with the motion, Plaintiff did not challenge the
23 requested fees which attests to their reasonableness. Likewise, the Commissioner, in its advisory
24 capacity, declined to dispute the propriety of the amount of the fees requested by Plaintiff’s counsel.
25 (Doc. No. 27.)

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. § 406(b).

4 **IV. Conclusion and Order**

5 Based upon the foregoing, IT IS HEREBY ORDERED:

6 1. Plaintiff's counsel's motion for attorneys' fees under 42 U.S.C. § 406(b), as amended
7 (Doc. Nos. 20, 25), is GRANTED;

8 3. Plaintiff's counsel is awarded \$7,985.68 in attorneys' fees pursuant to 42 U.S.C. §
9 406(b); and

10 5. Plaintiff's counsel shall compensate Plaintiff in the amount of \$2,150.00 for fees
11 previously awarded pursuant to the EAJA.

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13 IT IS SO ORDERED.

14 Dated: March 9, 2020

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