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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

ADINA SHANNON RODRIGUEZ,

Plaintiff,

v.

NANCY A. BERRYHILL,  
Acting Commissioner of Social Security,

Defendant.

Case No. 1:15-cv-00384-SKO

**ORDER GRANTING PLAINTIFF'S  
COUNSEL'S MOTION FOR  
ATTORNEY'S FEES PURSUANT TO  
42 U.S.C. § 406(b)**

(Doc. 21)

**I. INTRODUCTION**

On February 28, 2018, counsel for Plaintiff Adina Shannon Rodriguez ("Plaintiff"), Lawrence D. Rohlfling, Esq., filed a motion for an award of attorney's fees pursuant to 42 U.S.C. § 406(b) (the "Motion"). (Doc. 21.) On February 28, 2018, the Court issued a minute order requiring Plaintiff and Defendant to file their objections to the Motion, if any, by no later than March 30, 2018. (Doc. 22.) Plaintiff was served with copies of the Motion and the minute order. (Doc. 23.) On March 30, 2018, the Commissioner filed a statement taking no position as to the reasonableness of the fee request (Doc. 24); Plaintiff did not file any objection to the motion.

For the reasons set forth below, the motion for an award of attorney's fees is GRANTED in the amount of \$11,100.00, subject to an offset of \$4,717.80 in fees already awarded pursuant to the Equal Access to Justice Act ("EAJA") on March 15, 2016 (*see* Doc. 19).

**II. BACKGROUND**

Plaintiff brought the underlying action seeking judicial review of a final administrative decision denying her claim for disability insurance benefits and supplemental security income

1 under the Social Security Act. (Doc. 1.) On December 28, 2015, upon stipulation by the parties,  
2 the Court ordered the case remanded to the agency for further proceedings. (Doc. 16.) On  
3 December 30, 2015, judgment was entered in accordance with the Court’s order. (Doc. 17.) On  
4 remand, the Commissioner awarded benefits to Plaintiff. (Doc. 21 at 3.) On February 28, 2018,  
5 the parties stipulated to an award of \$4,717.80 in attorney fees under EAJA (Doc. 19), and on  
6 March 15, 2018, the Court entered the stipulated order (Doc. 19).

7 On February 20, 2018, the Commissioner issued a notice that retroactive disability benefits  
8 had been awarded to Plaintiff and that \$11,103.50, representing 25% of Plaintiff’s past-due  
9 benefits, had been withheld from Plaintiff’s award of disability benefits for payment of any  
10 applicable attorney’s fees. (Doc. 21-2.) On February 28, 2018, counsel filed a motion for  
11 attorney’s fees in the amount of \$11,100.00, with an offset of \$4,717.80 for EAJA fees already  
12 awarded. (*See* Doc. 21 at 6.) It is counsel’s section 406(b) motion for attorney’s fees that is  
13 currently pending before the Court.

### 14 III. DISCUSSION

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

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

22 42 U.S.C. § 406(b)(1)(A) (emphasis added). “In contrast to fees awarded under fee-shifting  
23 provisions such as 42 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits  
24 awarded; the losing party is not responsible for payment.” *Crawford v. Astrue*, 586 F.3d 1142,  
25 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht v. Barnhart*, 535 U.S. 789, 802 (2002)). The  
26 Commissioner has standing to challenge the award, despite that the section 406(b) attorney’s fee  
27 award is not paid by the government. *Craig v. Sec’y Dep’t of Health & Human Servs.*, 864 F.2d  
28 324, 328 (4th Cir. 1989), *abrogated on other grounds in Gisbrecht*, 535 U.S. at 807. The goal of

1 fee awards under section 406(b) is to provide adequate incentive to represent claimants while  
2 ensuring that the usually meager disability benefits received are not greatly depleted. *Cotter v.*  
3 *Bowen*, 879 F.2d 359, 365 (8th Cir. 1989), *abrogated on other grounds in Gisbrecht*, 535 U.S. at  
4 807.

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

13 Generally, “a district court charged with determining a reasonable fee award under  
14 § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee arrangements,’ . . . ‘looking  
15 first to the contingent-fee agreement, then testing it for reasonableness.’” *Crawford*, 586 F.3d at  
16 1148 (quoting *Gisbrecht*, 535 U.S. at 793, 808). The United States Supreme Court has identified  
17 several factors that may be considered in determining whether a fee award under a contingent-fee  
18 agreement is unreasonable and therefore subject to reduction by the court: (1) the character of the  
19 representation; (2) the results achieved by the representative; (3) whether the attorney engaged in  
20 dilatory conduct in order to increase the accrued amount of past-due benefits; (4) whether the  
21 benefits are large in comparison to the amount of time counsel spent on the case; and (5) the  
22 attorney’s record of hours worked and counsel’s regular hourly billing charge for non-contingent  
23 cases. *Id.* (citing *Gisbrecht*, 535 U.S. at 807-08).

24 Here, the fee agreement between Plaintiff and the Law Offices of Lawrence D. Rohlifing,  
25 LLP, signed by Plaintiff and counsel<sup>1</sup>, provides:

26 If this matter requires judicial review of any adverse decision of the Social  
27 Security Administration, the fee for successful prosecution of this matter is a

28 <sup>1</sup> The agreement is signed by Plaintiff’s former counsel, Vijay J. Patel, who at that time was with the Law Offices of  
Lawrence D. Rohlifing.

1           **separate 25% of the backpay awarded upon reversal of any unfavorable ALJ**  
2           **decision for work before the court.** Attorney shall seek compensation under the  
3           [EAJA] and such amount shall credit to the client for fees otherwise payable for  
4           court work.

5 (Doc. 21-1, Rohlfig Decl. (dated March 1, 2015) (emphasis in original).)

6           The Court has considered the character of counsel’s representation of Plaintiff and the  
7           good results achieved by counsel, which included an award of benefits. As Plaintiff’s counsel, the  
8           Law Offices of Lawrence Rohlfig spent 27.7 hours representing Plaintiff, ultimately gaining a  
9           favorable decision in that the case was remanded to the Commissioner, who then awarded benefits  
10          to Plaintiff. (Doc. 21-3, Rohlfig Decl. (time sheets accounting for 23 attorney hours and 4.7  
11          paralegal hours spent representing Plaintiff before the district court).) There is no indication that a  
12          reduction of the award is warranted due to any substandard performance by Plaintiff’s counsel as  
13          counsel secured a successful result for Plaintiff. There is also no evidence that counsel engaged in  
14          any dilatory conduct resulting in delay.

15          Counsel states that his hourly rate is \$190.02 and his paralegals’ hourly rates are \$137.00,  
16          totaling an effective hourly rate of \$327.02. (Doc. 21-3, Rohlfig. Decl.) The Ninth Circuit has  
17          found similar—and in many cases, higher—effective hourly rates reasonable in social security  
18          contingency fee arrangements. *See Crawford*, 586 F.3d 1142, 1153 (9th Cir.2009) (explaining  
19          that the majority opinion found reasonable effective hourly rates equaling \$519, \$875, and \$902)  
20          (J. Clifton, concurring in part and dissenting in part); *see also Patterson v. Apfel*, 99 F. Supp. 2d  
21          1212, 1214 & n.2 (C.D. Cal. 2000) (noting that “a survey of several dozen cases in which  
22          attorney's fees were awarded in social security cases suggests that the 33.75 hours spent by  
23          plaintiff's counsel falls within the approved range,” and collecting cases). Further, the requested  
24          attorney’s fees amount of \$11,100 does not exceed 25% of the past-due benefits awarded and are  
25          not excessive in relation to the past-due award. *See generally Ortega v. Comm'r of Soc. Sec.*, No.  
26          1:12-cv-01030-AWI-SAB, 2015 WL 5021646, at \*3 (E.D. Cal. Aug. 21, 2015) (granting petition  
27          for an award of attorney’s fees pursuant to section 406(b) in the amount of \$24,350.00); *Thomas v.*  
28          *Colvin*, No. 1:11-cv-01291-SKO, 2015 WL 1529331, at \*3 (E.D. Cal. Apr. 3, 2015) (granting  
        petition for an award of attorney’s fees pursuant to section 406(b) in the amount of \$44,603.50);  
        *Boyle v. Colvin*, No. 1:12-cv-00954-SMS, 2013 WL 6712552, at \*2 (E.D. Cal. Dec. 19, 2013)

1 (granting petition for an award of attorney’s fees pursuant to section 406(b) in the amount of  
2 \$20,577.57); *Jamieson v. Astrue*, No. 1:09-cv-00490-LJO-DLB, WL 587096, at \*2 (E.D. Cal. Feb.  
3 9, 2011) (recommending an award of attorney’s fees pursuant to section 406(b) in the amount of  
4 \$34,500.00).

5 In making this determination, the Court recognizes the contingent-fee nature of this case  
6 and counsel’s assumption of risk in agreeing to represent Plaintiff under such terms. “District  
7 courts generally have been deferential to the terms of contingency fee contracts in § 406(b) cases.”  
8 *Harris v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003). Attorneys who agree to  
9 represent claimants pursuant to a contingent fee agreement assume the risk of receiving no  
10 compensation for their time and effort if the action does not succeed. *Id.* Here, Plaintiff’s attorneys  
11 accepted substantial risk of loss in representing Plaintiff, whose application had already been  
12 denied at the administrative level. Plaintiff agreed to the contingent fee. Working efficiently and  
13 effectively, the attorneys secured a remand, and ultimately, the award of substantial benefits to  
14 Plaintiff.

15 An award of attorney’s fees pursuant to section 406(b) in the amount of \$11,100.00 is,  
16 therefore, appropriate. An award of section 406(b) fees, however, must be offset by any prior  
17 award of attorney’s fees granted under the EAJA. 28 U.S.C. § 2412; *Gisbrecht*, 535 U.S. at 796.  
18 Plaintiff was previously awarded \$4,717.80 in fees pursuant to the EAJA; as such, the fee award  
19 will be offset by \$4,717.80 for a net award of \$6,382.50.

#### 20 **IV. CONCLUSION AND ORDER**

21 For the reasons stated above, the Court concludes that the fees sought by Plaintiff’s  
22 counsel pursuant to section 406(b) are reasonable. Accordingly, IT IS ORDERED that:

23 1. Plaintiff’s counsel’s motion for an award of attorney’s fees pursuant to 42 U.S.C. §  
24 406(b) in the amount of \$11,100.00 is GRANTED;

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2. Plaintiff's counsel is ordered to refund to Plaintiff \$4,717.80 of the section 406(b) fees awarded as an offset for the EAJA fees previously awarded pursuant to 28 U.S.C. § 2412(d).

IT IS SO ORDERED.

Dated: April 3, 2018

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE