



1 evaluating the credibility of Plaintiff’s subjective complaints. (Doc. 23 at 10-15) Therefore, the Court  
2 remanded the matter for further administrative proceedings pursuant to sentence four of 42 U.S.C. §  
3 405(g). (*Id.* at 16) Following the entry of judgment in favor of Plaintiff (Doc. 24), the Court awarded  
4 \$3,124.00 in attorney fees pursuant to the Equal Access to Justice Act. (Doc. 26)

5 Following the remand, an administrative law judge “issued a fully favorable decision awarding  
6 Ms. Ursua-Holmes... Social Security Disability benefits.” (Doc. 27 at 3) The Commissioner  
7 concluded Plaintiff was “entitled to monthly disability benefits from Social Security beginning April  
8 2013.” (Doc. 27-1 at 4) Accordingly, Plaintiff was entitled to past due benefits totaling \$69,600.00,  
9 out of which the Commissioner withheld 25% — in the amount of \$17,140.00 — for payment of  
10 attorney’s fees. (Doc. 27 at 3; Doc. 27-1 at 6)

11 **II. Attorney Fees under § 406(b)**

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

14 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401, *et*  
15 *seq*] who was represented before the court by an attorney, the court may determine and  
16 allow as part of its judgment a reasonable fee for such representation, not in excess of  
17 25 percent of the total of the past-due benefits to which the claimant is entitled by  
reason of such judgment. . . .

18 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)  
19 controls fees awarded for representation of Social Security claimants). A contingency fee agreement  
20 is unenforceable if it provides for fees exceeding twenty-five percent of past-due benefits. *Id.* at 807.

21 **III. Discussion and Analysis**

22 District courts “have been deferential to the terms of contingency fee contracts § 406(b) cases.”  
23 *Hern v. Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Cal. 2003). However, the Court must review  
24 contingent-fee arrangements “as an independent check, to assure that they yield reasonable results in  
25 particular cases.” *Gisbrecht*, 535 U.S. at 807. In doing so, the Court should consider “the character of  
26 the representation and the results the representative achieved.” *Id.* at 808. In addition, the Court  
27 should consider whether the attorney performed in a substandard manner or engaged in dilatory  
28 conduct or excessive delays, and whether the fees are “excessively large in relation to the benefits

1 received.” *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc).

2 In this case, Plaintiff entered into the contingent fee agreement in which she agreed to pay  
3 twenty-five percent of any awarded retroactive benefits. Ms. Shvarts accepted the risk of loss in the  
4 representation and expended a total of 17.3 hours while representing Plaintiff before the District Court.  
5 (Doc. 27 at 4; Doc. 27-1 at 12) As a result of counsel’s work, the matter was remanded for further  
6 proceedings before an administrative law judge, who issued a fully favorable decision and awarded  
7 Plaintiff benefits for disability. For this, Ms. Shvarts requests a fee of \$17,140.00. (Doc. 27 at 2)  
8 Because \$3,124.00 was paid under the EAJA, the net cost to Plaintiff is \$14,016.00. (*Id.*) Finally,  
9 although served with the motion and informed of the right to oppose the fee request (Doc. 27-1 at 2),  
10 Plaintiff did not file an opposition and thereby indicates her belief that the fee request is reasonable.

11 Significantly, there is no indication Ms. Shvarts performed in a substandard manner or engaged  
12 in severe dilatory conduct to the extent that a reduction in fees is warranted. To the contrary, Plaintiff  
13 was able to secure a fully favorable decision following the remand for further proceedings, including  
14 an award of past-due benefits. Accordingly, the Court finds the fees sought by Ms. Shvarts are  
15 reasonable in light the results achieved in this action, and the amount does not exceed twenty-five  
16 percent maximum permitted under 42 U.S.C. §406(b).

17 **IV. Conclusion and Order**

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

- 19 1. The motion for attorney fees pursuant to 24 U.S.C. §406(b) in the amount of  
20 \$17,140.00 is **GRANTED**;
- 21 2. The Commissioner shall pay the amount directly to Counsel, Michelle Shvarts; and
- 22 3. Counsel **SHALL** refund \$3,124.00 to Plaintiff Teresa Ursua-Holmes.

23  
24 IT IS SO ORDERED.

25 Dated: February 12, 2018

/s/ Jennifer L. Thurston  
26 UNITED STATES MAGISTRATE JUDGE