



1 Plaintiff sought judicial review of the ALJ’s decision by filing a complaint with this Court on  
2 December 21, 2010, thereby initiating Case No. 1:10-cv-02378-JLT. The Court found the ALJ failed  
3 to inquire whether there was a conflict between the vocational expert’s testimony and the job  
4 descriptions provided in the *Dictionary of Occupational Titles*. (Case No. 1:10-cv-02378-JLT, Doc. 21  
5 at 9-14) Accordingly, the Court remanded the matter for further proceedings pursuant to sentence four  
6 of 42 U.S.C. § 405(g). (*Id.* at 14-15; *see also* Doc. 7-16 at 42-57) Following the entry of judgment in  
7 favor of Plaintiff, the Court awarded fees in the amount of \$3,200.00 under the Equal Access to Justice  
8 Act. (Doc. 23 at 1; Doc. 24 at 1)

9 Upon the remand, the ALJ issued an unfavorable decision finding Plaintiff was not disabled  
10 from October 2, 2007 through the date of the decision, issued on March 21, 2014. (Doc. 7-14 at 20, 46)  
11 The ALJ’s decision became the final decision of the Commissioner on September 3, 2015. (*Id.* at 2)  
12 Plaintiff then filed a complaint for judicial review of the second administrative decision denying his  
13 applications for Social Security benefits on October 23, 2015. (Doc. 1)

14 The Court determined the ALJ erred in evaluating the medical record and the opinion of  
15 Plaintiff’s treating physician. (Doc. 16 at 1, 13-14) Therefore, the Court remanded the matter for  
16 further proceedings pursuant to sentence four of 42 U.S.C. § 405(g). (*Id.* at 15) Following the entry of  
17 judgment in favor of Plaintiff (Doc. 17), the Court awarded fees and expenses in the amount of  
18 \$4,914.00 under the Equal Access to Justice Act. (Doc. 18 at 1; Doc. 19 at 1)

19 Following the remand, an ALJ issued a “fully favorable decision” awarding Plaintiff benefits,  
20 finding he was disabled as of October 2, 2017. (Doc. 20-2 at 1; Doc. 20-3 at 2) On June 26, 2018, the  
21 Commissioner concluded Plaintiff was “entitled to monthly disability benefits from Social Security  
22 beginning April 2008.” (Doc. 20-3 at 1) Accordingly, Plaintiff was entitled to past due benefits totaling  
23 \$128,339.00 in past-due disability benefits, out of which the Commissioner withheld 25% — in the  
24 amount of \$32,084.75 — for payment of attorney’s fees. (Doc. 20-3 at 3)

## 25 **II. Attorney Fees under § 406(b)**

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

28 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401, *et*

1           *seq*] who was represented before the court by an attorney, the court may determine  
2           and allow as part of its judgment a reasonable fee for such representation, not in  
3           excess of 25 percent of the total of the past-due benefits to which the claimant is  
4           entitled by reason of such judgment. . . .  
5           42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)  
6           controls fees awarded for representation of Social Security claimants). A contingency fee agreement  
7           is unenforceable if it provides for fees exceeding twenty-five percent of past-due benefits. *Id.* at 807.

7           **III. Discussion and Analysis**

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

16          Plaintiff entered into the contingent fee agreement in which he agreed to pay twenty-five  
17          percent of any awarded retroactive benefits. The Law Offices of Lawrence D. Rohlring accepted the  
18          risk of loss in the representation and expended a total of 41.41 hours while representing Plaintiff before  
19          the District Court. (Doc. 20 at 3; Doc. 20-4 at 1-2) As a result of counsel’s work, the matter was  
20          remanded twice by the District Court for further proceedings before an administrative law judge, who  
21          issued a fully favorable decision and awarded Plaintiff benefits for disability. For this, Mr. Rohlring  
22          requests a fee of \$32,084.75. (Doc. 20 at 1) Because \$8,114.00 was paid under the EAJA, the net cost  
23          to Plaintiff is \$23,970.75. (*Id.* at 7) Finally, although served with the motion and informed of the right  
24          to oppose the fee request (Doc. 27-1 at 2, 11), Plaintiff did not file an opposition and thereby indicates  
25          his belief that the fee request is reasonable.

26          Significantly, there is no indication Mr. Rohlring performed in a substandard manner or  
27          engaged in severe dilatory conduct to the extent that a reduction in fees is warranted. To the contrary,  
28          Plaintiff was able to secure a fully favorable decision following the second remand for further

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

4 **IV. Conclusion and Order**

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

- 6 1. The motion for attorney fees pursuant to 24 U.S.C. §406(b) in the amount of  
7 \$32,084.75 is **GRANTED**;
- 8 2. The Commissioner shall pay the amount directly to Counsel, Lawrence Rohlring; and
- 9 3. Counsel **SHALL** refund \$8,114.00 to Plaintiff Jose Belmontes.

10  
11 IT IS SO ORDERED.

12 Dated: July 25, 2018

13 /s/ Jennifer L. Thurston  
14 UNITED STATES MAGISTRATE JUDGE