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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 WILLIAM JOSEPH FINLEY,) Case No.: 1:16-cv-0272- JLT
12 Plaintiff,)
13 v.) ORDER GRANTING COUNSEL’S MOTION
14 COMISSIONER OF SOCIAL SECURITY,) FOR ATTORNEY FEES PURSUANT TO
15 Defendant.) 42 U.S.C. § 406(b)
16) (Doc. 22)
17)
18)
19)
20)

21 Josephine Gerrard, counsel for Plaintiff William Joseph Finley, seeks an award of attorney fees
22 pursuant to 42 U.S.C. § 406(b). (Doc. 22) Neither Plaintiff nor Defendant filed a response to the
23 motion. For the following reasons, the motion for attorney fees is **GRANTED**.

24 **I. Relevant Background**

25 Plaintiff entered into a contingent fee agreement with Ms. Gerrard on February 22, 2016, which
26 provided that if the federal court litigation resulted in past-due benefits paid to Plaintiff, his “attorney
27 has the right under [the] contract to ask the court to award as much as 25% of [the] past-due benefits.”
28 (Doc. 22-2 at 1)

On February 26, 2016, Plaintiff filed a complaint for review of the administrative decision
denying his Social Security benefits. (Doc. 17) On December 2, 2016, the parties filed a stipulation
for the matter to be remanded for further proceedings. (Doc. 18) Pursuant to the terms of the
stipulation, the Court remanded the action under sentence four of 42 U.S.C. § 405(g) and entered

1 judgment in favor of Plaintiff. (Docs. 18, 19) Following the entry of judgment, the Court awarded
2 \$6,000.00 in attorney fees pursuant to the Equal Access to Justice Act. (Doc. 21)

3 On December 20, 2017 an administrative law judge “issued a favorable decision..., finding the
4 plaintiff disabled as of April 28, 2009.” (Doc. 22 at 2) The Commissioner concluded Plaintiff was
5 entitled to past due benefits totaling \$107,403.00, out of which the Commissioner withheld 25% — in
6 the amount of \$26,870.75 — for payment of attorney’s fees. (Doc. 22 at 2; Doc. 22-1 at 1)

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

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

10 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401, *et*
11 *seq*] who was represented before the court by an attorney, the court may determine and
12 allow as part of its judgment a reasonable fee for such representation, not in excess of
13 25 percent of the total of the past-due benefits to which the claimant is entitled by
14 reason of such judgment. . . .

14 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)
15 controls fees awarded for representation of Social Security claimants). A contingency fee agreement
16 is unenforceable if it provides for fees exceeding twenty-five percent of past-due benefits. *Id.* at 807.

17 **III. Discussion and Analysis**

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

26 In this case, Plaintiff entered into the contingent fee agreement in which he agreed to pay
27 twenty-five percent of any awarded retroactive benefits. Ms. Gerrard accepted the risk of loss in the
28 representation when representing Plaintiff before the District Court. As a result of counsel’s work

before the court and the agency, the matter was remanded for further proceedings before an administrative law judge, who issued a fully favorable decision and awarded Plaintiff benefits. For this, Ms. Gerrard requested a fee of \$20,000.00 “as her fee for work before the agency.” (Doc. 22 at 2-3; Doc. 22-5 at 1) She now “seeks a fee authorization in the amount of \$4,875.50” pursuant to the Social Security Act. (Doc. 22 at 6, ¶11)

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

IV. Conclusion and Order

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

1. The motion for attorney fees pursuant to 24 U.S.C. §406(b) in the amount of \$4,875.50 is **GRANTED**; and
2. The Commissioner shall pay the amount directly to Counsel, Josephine Gerrard.

IT IS SO ORDERED.

Dated: **April 17, 2018**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE