

1 Thus, the Court remanded the matter for further proceedings pursuant to sentence four of 42 U.S.C. §
2 405(g) on July 17, 2017. (*Id.* at 18) Following the entry of judgment in favor of Plaintiff (Doc. 22), the
3 Court awarded \$3,000.00 in attorney fees pursuant to the Equal Access to Justice Act. (Doc. 28 at 1)

4 Upon remand, the administration issued a partially favorable decision, finding Plaintiff was
5 entitled to \$89,920.00 in past-due benefits. (Doc. 29-3 at 2) Mr. Safa reports that the Law Offices of
6 Lawrence D. Rohlfing “received an electronic message which included a Form SSA-1099 which
7 indicate[d] attorney fees in the amount of \$22,4550.00.” (Doc. 29 at 15, Safa Decl. ¶ 4)

8 Counsel filed the motion now before the Court on December 2, 2020, seeking approximately
9 10% of the past-due benefits, in the amount of \$9,000.00. (Doc. 29 at 5) Mr. Safa also indicated he
10 would credit Plaintiff the amount of fees previously awarded under the EAJA. (*Id.* at 1) Plaintiff was
11 served with the motion and informed of the right to file a response to indicate whether he agreed or
12 disagreed with the requested fees within fourteen days. (*Id.* at 2, 17) Plaintiff has not opposed or
13 responded to the motion for fees. The Commissioner filed a response to the motion on December 3,
14 2020, indicating “[t]he Commissioner was not a party to the contingent-fee agreement between Counsel
15 and Plaintiff and therefore is not in a position to either assent to or object to the § 406(b) fees that
16 Counsel seeks from Plaintiff’s past-due benefits.” (Doc. 30 at 2)

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

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

20 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401,
21 *et seq*] who was represented before the court by an attorney, the court may determine
22 and allow as part of its 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. . . .

23 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)
24 controls fees awarded for representation of Social Security claimants). A contingency fee agreement
25 is unenforceable if it provides for fees exceeding the statutory amount. *Gisbrecht*, 535 U.S. at 807
26 (“Congress has provided one boundary line: Agreements are unenforceable to the extent that they
27 provide for fees exceeding 25 percent of the past-due benefits.”).

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1 **III. Discussion and Analysis**

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

10 Plaintiff entered into the contingent fee agreement in which he agreed to pay twenty-five
11 percent of any awarded past-due benefits. (Doc. 29-1 at 1) Counsel accepted the risk of loss in the
12 representation and expended a total of 17.2 hours while representing Plaintiff before the District Court.
13 (Doc. 29 at 5) Due to counsel’s work, the action was remanded further proceedings, and Plaintiff
14 received a favorable decision. For this, Mr. Safa requests a fee of \$9,000, which is approximately
15 10.1% of the past-due benefits owed. (Doc. 29 at 6) Because counsel intends to refund the \$3,000.00
16 that was previously paid under the EAJA, the net cost to Plaintiff is \$6,000. (*See id.* at 13) Finally,
17 although served with the motion and informed of the right to oppose the fee request (*id.* at 17), Plaintiff
18 did not file oppose the request and thereby indicates an implicit belief that the total amount requested
19 for attorney fees is reasonable

20 Significantly, there is no indication that counsel performed in a substandard manner or engaged
21 in severe dilatory conduct. Plaintiff was able to secure a remand for payment of benefits following the
22 appeal, including an award of past-due benefits. Finally, the fees requested do not exceed twenty-five
23 percent maximum permitted under 42 U.S.C. §406(b) or the amount agreed upon by counsel and
24 Plaintiff. (*See Doc. 29-1 at 1*)

25 **IV. Conclusion and Order**

26 Based upon the tasks completed and results achieved following the remand for further
27 proceedings, the Court finds the fees sought by Mr. Safa and the Law Offices of Lawrence D. Rohlring
28 are reasonable. Accordingly, the Court **ORDERS:**

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1. Counsel’s motion for attorney fees pursuant to 24 U.S.C. §406(b) in the amount of \$9,000.00 is **GRANTED**;
2. The Commissioner shall pay the amount directly to Counsel, the Law Offices of Lawrence D. Rohlfing; and
3. Counsel **SHALL** refund \$3,000.00 to Plaintiff Bryan Russell Pendergast.

IT IS SO ORDERED.

Dated: December 22, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE