

1 On April 30, 2016, Plaintiff filed a complaint for review of the administrative decision denying
2 her application for Social Security benefits. (Doc. 1) The Court determined the administrative law
3 judge erred in evaluating the medical record, because the ALJ failed to identify legally sufficient
4 reasons for rejecting the limitations identified by a physician. (Doc. 27 at 8-11) Therefore, the Court
5 remanded the matter for further administrative proceedings pursuant to sentence four of 42 U.S.C. §
6 405(g). (*Id.* at 11) Following the entry of judgment in favor of Plaintiff (Doc. 28), the Court awarded
7 \$4,100 in attorney fees pursuant to the Equal Access to Justice Act. (Doc. 29 at 1; Doc. 30 at 1)

8 Following the remand, an ALJ issued a “partially favorable decision,” finding she was disabled
9 from January 1, 2012 through March 13, 2018. (Doc. 31-2 at 1, 17-18) On August 6, 2018, the
10 Commissioner concluded Plaintiff was entitled to monthly disability benefits from Social Security
11 beginning June 2012. (Doc. 31-3 at 1) In total, Plaintiff was entitled to \$61,500.00 in past-due disability
12 benefits, out of which the Commissioner withheld \$15,375.00 for payment of attorney’s fees. (Doc. 31
13 at 3; Doc. 31-3 at 2)

14 Ms. Haley filed the motion now before the Court on March 20, 2019, seeking fees in the amount
15 of \$10,000. (Doc. 31) Ms. Haley served Plaintiff with the motion and informed of her right to file a
16 response to indicate whether she agreed or disagreed with the requested fees. (*Id.* at 2, 11) Plaintiff has
17 not opposed the motion.

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

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

21 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401, *et*
22 *seq*] who was represented before the court by an attorney, the court may determine
23 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. . . .

24 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)
25 controls fees awarded for representation of Social Security claimants).

26 A contingency fee agreement is unenforceable if it provides for fees exceeding the statutory
27 amount. *Gisbrecht*, 535 U.S. at 807 (“Congress has provided one boundary line: Agreements are
28 unenforceable to the extent that they provide for fees exceeding 25 percent of the past-due benefits.”).

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 she agreed to pay twenty-five
11 percent of any awarded past-due benefits. The Law Offices of Lawrence D. Rohlfing accepted the risk
12 of loss in the representation and expended a total of 24.6 hours while representing Plaintiff before the
13 District Court. (Doc. 31 at 3; Doc. 31-4 at 1-2) Due to counsel’s work to remand the action to an
14 administrative law judge, Plaintiff ultimately received an award of benefits for disability. For this, Ms.
15 Haley requests a fee of \$10,000. (Doc. 31 at 3) Because \$4,100 was paid under the EAJA, the net cost
16 to Plaintiff is \$5,900.00. Finally, though served with the motion and informed of the right to oppose the
17 fee request (Doc. 29 at 2, 11), Plaintiff did not do so and thereby indicates her implicit belief that the
18 fee request is reasonable.

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

25 **IV. Conclusion and Order**

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

- 27 1. Counsel’s motion for attorney fees pursuant to 24 U.S.C. §406(b) in the amount of
28 \$10,000 is **GRANTED**;

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2. The Commissioner shall pay the amount directly to Counsel, Denise Bourgeois Haley;
and
3. Counsel **SHALL** refund \$4,100 to Plaintiff Molly Lo.

IT IS SO ORDERED.

Dated: April 10, 2019

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE