

1 but nevertheless taking “no position on the reasonableness of the request.” (*See* Doc. 26 at 2, 4.)
2 Plaintiff did not file any objection to the motion by the April 7, 2021 deadline. (*See* Docket.)

3 For the reasons set forth below, Counsel’s motion for an award of attorney’s fees is granted
4 in the amount of \$16,000.00, subject to an offset of \$4,000.00 in fees already awarded pursuant to
5 the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), on February 22, 2019 (*see* Doc.
6 21).

7 **II. BACKGROUND**

8 Plaintiff brought the underlying action seeking judicial review of a final administrative
9 decision denying her claim for disability benefits under the Social Security Act. (Doc. 1.) The
10 Court reversed the Commissioner’s denial of benefits and remanded the case to the agency for
11 further proceedings. (Doc. 18.) Judgment was entered in favor of Plaintiff and against the
12 Commissioner on November 27, 2018. (Doc. 19.) On February 20, 2019, the parties stipulated to
13 an award of \$4,000.00 in attorney fees under EAJA, which was entered on February 22, 2019.
14 (Docs. 20, 21.)

15 On remand, the Commissioner found Plaintiff disabled as of June 10, 2013. (*See* Doc. 22-
16 3.) On February 27, 2021, the Commissioner issued a letter to Plaintiff approving her claim for
17 benefits and awarding her \$108,013.52 in back payments beginning December 2013. (*See* Doc. 22-
18 4 at 3 (indicating 25% of past due benefits totals \$27,003.38).) On March 10, 2021, Counsel filed
19 a motion for attorney’s fees in the amount of \$16,000.00, with an offset of \$4,000.00 for EAJA fees
20 already awarded. (Doc. 22 at 1.) It is Counsel’s section 406(b) motion for attorney’s fees that is
21 currently pending before the Court.

22 **III. DISCUSSION**

23 Pursuant to the Social Security Act, attorneys may seek a reasonable fee for cases in which
24 they have successfully represented social security claimants. Section 406(b) provides the following:

25 Whenever a court renders a judgment favorable to a claimant under this subchapter
26 who was represented before the court by an attorney, the court may determine and
27 allow as part of its judgment a reasonable fee for such representation, *not in excess*
28 *of 25 percent of the total of the past-due benefits to which the claimant is entitled by*
reason of such judgment, and the Commissioner of Social Security may . . . certify
the amount of such fee for payment to such attorney out of, and not in addition to,
the amount of such past-due benefits

1 42 U.S.C. § 406(b)(1)(A) (emphasis added). “In contrast to fees awarded under fee-shifting
2 provisions such as 42 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits
3 awarded; the losing party is not responsible for payment.” *Crawford v. Astrue*, 586 F.3d 1142, 1147
4 (9th Cir. 2009) (en banc) (citing *Gisbrecht v. Barnhart*, 535 U.S. 789, 802 (2002)). The
5 Commissioner has standing to challenge the award, despite that the section 406(b) attorney’s fee
6 award is not paid by the government. *Craig v. Sec’y Dep’t of Health & Human Servs.*, 864 F.2d
7 324, 328 (4th Cir. 1989), *abrogated on other grounds in Gisbrecht*, 535 U.S. at 807. The goal of
8 fee awards under section 406(b) is to provide adequate incentive to represent claimants while
9 ensuring that the usually meager disability benefits received are not greatly depleted. *Cotter v.*
10 *Bowen*, 879 F.2d 359, 365 (8th Cir. 1989), *abrogated on other grounds in Gisbrecht*, 535 U.S. at
11 807.

12 The 25% maximum fee is not an automatic entitlement, and courts are required to ensure
13 that the requested fee is reasonable. *Gisbrecht*, 535 U.S. at 808–09 (section 406(b) does not displace
14 contingent-fee agreements within the statutory ceiling; instead, section 406(b) instructs courts to
15 review for reasonableness fees yielded by those agreements). “Within the 25 percent boundary . . .
16 the attorney for the successful claimant must show that the fee sought is reasonable for the services
17 rendered.” *Id.* at 807; *see also Crawford*, 586 F.3d at 1148 (holding that section 406(b) “does not
18 specify how courts should determine whether a requested fee is reasonable” but “provides only that
19 the fee must not exceed 25% of the past-due benefits awarded”).

20 Generally, “a district court charged with determining a reasonable fee award under
21 § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee arrangements,’ . . . ‘looking
22 first to the contingent-fee agreement, then testing it for reasonableness.’” *Crawford*, 586 F.3d at
23 1148 (quoting *Gisbrecht*, 535 U.S. at 793, 808). The United States Supreme Court has identified
24 several factors that may be considered in determining whether a fee award under a contingent-fee
25 agreement is unreasonable and therefore subject to reduction by the court: (1) the character of the
26 representation; (2) the results achieved by the representative; (3) whether the attorney engaged in
27 dilatory conduct in order to increase the accrued amount of past-due benefits; (4) whether the
28 benefits are large in comparison to the amount of time counsel spent on the case; and (5) the

1 attorney's record of hours worked and counsel's regular hourly billing charge for non-contingent
2 cases. *Id.* (citing *Gisbrecht*, 535 U.S. at 807–08).

3 Here, the fee agreement between Plaintiff and Counsel, signed by both parties, provides:

4 If this matter requires judicial review of any adverse decision of the Social Security
5 Administration, the fee for successful prosecution of this matter is a **separate 25%**
6 **of the past due benefits awarded upon reversal of any unfavorable ALJ decision**
7 **for work before the court.** Attorney shall seek compensation under the Equal
Access to Justice Act and such amount shall credit to the client for fees otherwise
payable for that particular work.

8 (Doc. 22-2 (signed August 29, 2017).)

9 The Court has considered the character of Counsel's representation of Plaintiff and the good
10 results achieved by Counsel, which included an award of benefits. Counsel spent 23.1 hours
11 representing Plaintiff, ultimately gaining a favorable decision in that the Commissioner's decision
12 was reversed and remanded to the agency for reconsideration. (Doc. 22 at 3, 19; Doc. 22-5 (time
13 sheets accounting for 20.25 attorney hours and 2.85 paralegal hours spent representing Plaintiff
14 before this Court).) There is no indication that a reduction of the award is warranted due to any
15 substandard performance by Counsel, as Counsel secured a successful result for Plaintiff. There is
16 also no evidence that Counsel engaged in any dilatory conduct resulting in delay.

17 Although the accepted range in the Fresno Division for experienced attorneys like Counsel
18 with over twenty years of experience (*see* Doc. 22 at 21) is between \$250 and \$375 per hour in non-
19 contingency cases, *see Silvester v. Harris*, No. 1:11–CV–2137 AWI SAB, 2014 WL 7239371 at *4
20 (E.D. Cal. Dec. 17, 2014), here the effective hourly rate requested equals \$692.64 per hour. This
21 hourly rate is not excessive when compared to what the Ninth Circuit has approved in cases
22 involving social security contingency fee arrangements. *See Thomas v. Colvin*, No.
23 1:11–cv–01291–SKO, 2015 WL 1529331, at *2–3 (E.D. Cal. Apr. 3, 2015) (upholding an effective
24 hourly rate of \$1,093.22 for 40.8 hours of work); *Jamieson v. Astrue*, No. 1:09CV0490 LJO DLB,
25 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011) (upholding an effective hourly rate of \$1,169.49
26 for 29.5 hours of work); *Palos v. Colvin*, No. CV 15–04261–DTB, 2016 WL 5110243, at *2 (C.D.
27 Cal. Sept. 20, 2016) (upholding an effective hourly rate of \$1,546.39 for 9.7 hours of work); *Villa*
28 *v. Astrue*, No. CIV–S–06–0846 GGH, 2010 WL 118454, at *1–2 (E.D. Cal. Jan. 7, 2010)

1 (approving section 406(b) fees exceeding \$1,000 per hour for 10.4 hours of work, and noting that
2 “[r]educing § 406(b) fees after *Crawford* is a dicey business”). Further, attorney’s fees in the amount
3 of \$16,000.00 are less than 25% of the past-due benefits awarded (\$27,003.38) and are not excessive
4 in relation to the past-due award. *See generally Ortega v. Comm’r of Soc. Sec.*, No. 1:12-cv-01030-
5 AWI-SAB, 2015 WL 5021646, at *3 (E.D. Cal. Aug. 21, 2015) (granting petition for an award of
6 attorney’s fees pursuant to section 406(b) in the amount of \$24,350.00); *Thomas*, 2015 WL
7 1529331, at *3 (granting petition for an award of attorney’s fees pursuant to section 406(b) in the
8 amount of \$44,603.50); *Jamieson*, 2011 WL 587096, at *2 (recommending an award of attorney’s
9 fees pursuant to section 406(b) in the amount of \$34,500).

10 In making this determination, the Court recognizes the contingent-fee nature of this case and
11 Counsel’s assumption of risk in agreeing to represent Plaintiff under such terms. “District courts
12 generally have been deferential to the terms of contingency fee contracts in § 406(b) cases.” *Hearn*
13 *v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003) (“Because attorneys like Mr. Sackett
14 contend with a substantial risk of loss in Title II cases, an effective hourly rate of only \$450 in
15 successful cases does not provide a basis for this court to lower the fee to avoid a ‘windfall.’”
16 (quoting *Gisbrecht*, 535 U.S. at 807)). Attorneys who agree to represent claimants pursuant to a
17 contingent fee agreement assume the risk of receiving no compensation for their time and effort if
18 the action does not succeed. *Id.* Here, Counsel accepted substantial risk of loss in representing
19 Plaintiff, whose application had already been denied at the administrative level. Plaintiff agreed to
20 the contingent fee. (*See* Doc. 22-2.) Working efficiently and effectively, Counsel secured a remand,
21 and ultimately, the award of substantial benefits to Plaintiff. (*See* Docs. 18, 22-3.)

22 An award of attorney’s fees pursuant to section 406(b) in the amount of \$16,000.00 is,
23 therefore, appropriate. An award of section 406(b) fees, however, must be offset by any prior award
24 of attorney’s fees granted under the EAJA. 28 U.S.C. § 2412; *Gisbrecht*, 535 U.S. at 796. As
25 Plaintiff was previously awarded \$4,000.00 in fees pursuant to the EAJA, Counsel shall refund this
26 amount to Plaintiff.

27 IV. CONCLUSION AND ORDER

28 For the reasons stated above, the Court concludes that the fees sought by Counsel pursuant

1 to section 406(b) are reasonable. Accordingly, IT IS ORDERED that:

2 1. Counsel’s unopposed motion for an award of attorney’s fees pursuant to 42 U.S.C. §
3 406(b) in the amount of \$16,000.00 (Doc. 22) is granted;

4 2. Counsel shall refund to Plaintiff \$4,000.00 of the section 406(b) fees awarded as an
5 offset for the EAJA fees previously awarded pursuant to 28 U.S.C. § 2412(d) (Doc. 21); and

6 3. Counsel for Plaintiff shall file on the Court’s docket proof of service of this order
7 upon Plaintiff at her current or last known address.

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9 IT IS SO ORDERED.

10 Dated: April 27, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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