

1 under the Equal Access to Justice Act,” and the amount awarded would be credited to Plaintiff “for fees
2 otherwise payable for court work.” (*Id.*)

3 On November 8, 2017, Plaintiff filed a complaint for review of the administrative decision
4 denying her application for Social Security benefits. (Doc. 1) The Court found the ALJ failed to
5 support his findings regarding Plaintiff’s language and did not address apparent conflicts between two
6 vocational resources. Therefore, the Court remanded the matter for further proceedings pursuant to
7 sentence four of 42 U.S.C. § 405(g). (*See* Doc. 18) Following the entry of judgment in favor of
8 Plaintiff (Doc. 19), the Court awarded \$3,300 in attorney fees pursuant to the Equal Access to Justice
9 Act. (Doc. 21 at 1)

10 Upon remand, an ALJ issued a “fully favorable” decision, finding Plaintiff was disabled
11 beginning September 11, 2015. (Doc. 22-2 at 1, 12) On December 14, 2019, the Social Security
12 Administration concluded Plaintiff was entitled to monthly benefits from Social Security beginning
13 March 2016. (Doc. 21-3 at 1) In total, Plaintiff was entitled to \$42,250.52 in past-due benefits, from
14 which the Commissioner withheld \$10,312.63 for payment of Plaintiff’s attorney’s fees. (Doc. 22 at 3;
15 Doc. 22- at 3)

16 Mr. Rohlring filed the motion now before the Court on January 2, 2020, seeking fees in the
17 amount of \$7,612.63. (Doc. 21) Mr. Rohlring served Plaintiff with the motion and informed her of the
18 right to file a response to indicate whether she agreed or disagreed with the requested fees. (*Id.* at 2, 11)
19 Plaintiff has not opposed the motion.

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

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

23 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401,
24 *et seq*] who was represented before the court by an attorney, the court may determine
25 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. . . .

26 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)
27 controls fees awarded for representation of Social Security claimants).

28 A contingency fee agreement is unenforceable if it provides for fees exceeding the statutory

1 amount. *Gisbrecht*, 535 U.S. at 807 (“Congress has provided one boundary line: Agreements are
2 unenforceable to the extent that they provide for fees exceeding 25 percent of the past-due benefits.”).

3 **III. Discussion and Analysis**

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

12 Plaintiff entered into the contingent fee agreement in which she agreed to pay twenty-five
13 percent of any awarded past-due benefits. (Doc. 22-1 at 1) The Law Offices of Lawrence D. Rohlfling
14 accepted the risk of loss in the representation and expended a total of 18.4 hours while representing
15 Plaintiff before the District Court. (Doc. 22 at 3; Doc. 22-4 at 1-2) Due to counsel’s work, the action
16 was remanded further proceedings, and Plaintiff received a fully favorable decision. For this, Mr.
17 Rohlfling requests a fee of \$ 7,612.63. (Doc. 22 at 3) Because \$3,300.00 was previously paid under the
18 EAJA, the net cost to Plaintiff is \$4,312.63. Finally, though served with the motion and informed of
19 the right to oppose the fee request (Doc. 22 at 2, 11), Plaintiff did not file oppose the request and
20 thereby indicates her implicit belief that the fee request is reasonable.

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

26 **IV. Conclusion and Order**

27 Based upon the tasks completed and results achieved following the remand for further
28 proceedings, the Court finds the fees sought by Mr. Rohlfling and the Law Offices of Lawrence D.

1 Rohlfig are reasonable. Accordingly, the Court **ORDERS**:

- 2 1. Counsel's motion for attorney fees pursuant to 24 U.S.C. §406(b) in the amount of
3 \$7,612.63 is **GRANTED**;
- 4 2. The Commissioner shall pay the amount directly to Counsel, the Law Offices of
5 Lawrence D. Rohlfig; and
- 6 3. Counsel **SHALL** refund \$3,300.00 to Plaintiff Mercedes Morales De Romero.

7
8 IT IS SO ORDERED.

9 Dated: February 7, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE