

1 Whenever a court renders a judgment favorable to a claimant under
2 this subchapter who was represented before the court by an
3 attorney, the court may determine and allow as part of its judgment
4 a reasonable fee for such representation, not in excess of 25 percent
5 of the total of the past-due benefits to which the claimant is entitled
6 by reason of such judgment.

7 42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section
8 406(b) are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586
9 F.3d 1142, 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht v. Barnhart*, 535 U.S. 789, 802
10 (2002)). The twenty-five percent statutory maximum fee is not an automatic entitlement; the
11 court must ensure that the requested fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold
12 that § 406(b) does not displace contingent-fee agreements within the statutory ceiling; instead, §
13 406(b) instructs courts to review for reasonableness fees yielded by those agreements.”). In
14 assessing whether a fee is reasonable, the court should consider “the character of the
15 representation and the results the representative achieved.” *Id.* at 808. A “court may properly
16 reduce the fee for substandard performance, delay, or benefits that are not in proportion to the
17 time spent on the case.” *Crawford*, 586 F.3d at 1151.

18 The court finds that the requested fees are reasonable. Counsel’s billing records reflect a
19 total of 36.10 hours of attorney time on this case. ECF No. 27-5 at 5. Counsel’s request for
20 \$27,092.50, which is the equivalent of the statutory maximum, would constitute an hourly rate of
21 approximately \$750 for attorney services. Counsel did not engage in dilatory conduct or perform
22 in a substandard manner. Indeed, counsel’s representation resulted in this matter being remanded
23 for further proceedings, which resulted in a favorable decision and an award of benefits. ECF
24 Nos. 23, 24; ECF No. 27-5 at 7-12. Given counsel’s experience, the result obtained in this case,
25 and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable. *See, e.g.*,
26 *De Vivo v. Berryhill*, No. 1:15-cv-1332-EPG, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018)
27 (awarding fees at effective hourly range of \$1,116.26); *Jamieson v. Astrue*, No. 1:09-cv-0490
28 LJO DLB, 2011 WL 587096 (E.D. Cal. Feb. 9, 2011) (finding fee at effective hourly rate of
\$1,169.49 reasonable); *Naddour v. Colvin*, No. 13-CV-1407-BAS (WVG), 2016 WL 4248557
(S.D. Cal. Aug. 11, 2016) (awarding fee at effective hourly rate of \$1,063); *Palos v. Colvin*, No.

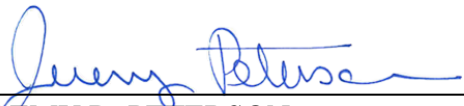
1 CV 15-04261-DTB, 2016 WL 5110243 (C.D. Cal. Sept. 20, 2016)) (finding fee at effective
2 hourly rate of \$1,546.39 reasonable).

3 Accordingly, it is hereby ORDERED that:

- 4 1. Plaintiff's counsel's motion for attorney's fees, ECF No. 27, is granted.
- 5 2. Plaintiff's counsel is awarded \$27,092.50 in fees pursuant to 42 U.S.C. § 406(b).
- 6 3. Plaintiff's counsel is directed to reimburse plaintiff the sum of \$7,000.00 for
7 previously paid EAJA fees pursuant to 28 U.S.C. § 2412(d).

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9 IT IS SO ORDERED.

10 Dated: November 7, 2023


11 JEREMY D. PETERSON
12 UNITED STATES MAGISTRATE JUDGE

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