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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 RACHEL MICHELLE TWILLEY,) Case No.: 1:18-cv-0201 JLT
12 Plaintiff,)
13 v.) ORDER GRANTING COUNSEL’S MOTION
14 KILOLO KIJAKAZI¹) FOR ATTORNEY FEES PURSUANT TO
15 Acting Commissioner of Social Security,) 42 U.S.C. § 406(b)
16 Defendant.) (Doc. 25)

17 Laura Krank, counsel for Plaintiff Rachel Twilley, seeks an award of attorney fees in the
18 amount of \$17,723.00 pursuant to 42 U.S.C. § 406(b). (Doc. 25.) Neither Plaintiff nor the
19 Commissioner of Social Security have opposed the motion. For the following reasons, the motion for
20 attorney fees is **GRANTED**.

21 **I. Relevant Background**

22 Plaintiff entered into a “Social Security Representation Agreement” with the Law Offices of
23 Lawrence D. Rohlfing on March 14, 2016. (Doc. 25-1 at 1.) In the agreement, Plaintiff indicated that
24 if she was awarded benefits after judicial review and remand for further proceedings, counsel was
25 authorized to seek fees under the Equal Access to Justice Act in an amount equal to “25% of the
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27 ¹ The action was originally filed against Andrew M. Saul in his capacity as the Commissioner of Social Security.
28 (See Doc. 1 at 1.) The Court has substituted Kilolo Kijakazi, who has since been appointed the Acting Commissioner of
Social Security, as the defendant. See Fed. R. Civ. P. 25(d).

1 backpay awarded.” (*Id.*) The agreement also indicated counsel could seek fees for work done before
2 the Court prior to remand, and any amount awarded would be reimbursed to Plaintiff if fees were also
3 paid from the past due benefits. (*Id.*)

4 On February 7, 2018, Plaintiff filed a complaint for review of the partially favorable
5 administrative decision regarding his application for Social Security benefits. (Doc. 1.) The Court
6 found the administrative law judge failed to apply the proper legal standards in evaluating Plaintiff’s
7 mental residual functional capacity. (Doc. 21 at 8-14.) Thus, the Court remanded the matter for further
8 proceedings pursuant to sentence four of 42 U.S.C. § 405(g) on August 9, 2019. (*Id.* at 14-15.)
9 Following the entry of judgment in favor of Plaintiff, the Court awarded \$5,000.00 in attorney fees
10 pursuant to the Equal Access to Justice Act. (Doc. 23; Doc. 24 at 1.)

11 Upon remand, an ALJ determined Plaintiff was disabled beginning September 23, 2014, and
12 issued a fully favorable decision on April 29, 2021. (Doc. 25-2 at 1-9.) The Administration found
13 Plaintiff was entitled to benefits beginning in March 2015 and was owed past-due benefits in the total
14 amount of \$70,894.52. (*See* Doc. 25-3 at 1, 3.) From this total, the Administration withheld
15 \$17,723.63 for the payment of attorney fees. (Doc. 25-3 at 3.)

16 Counsel filed the motion now before the Court on October 28, 2021, seeking fees in the amount
17 of \$17,723.00. (Doc. 25.) However, Ms. Krank notes the net fee to Plaintiff is \$12,723.00, due to the
18 amount previously approved under the EAJA. (*Id.* at 13.) Plaintiff was served with the motion by U.S.
19 mail on July 22, 2021 and notified that he may oppose the motion in writing within fourteen days of the
20 date of service. (*Id.* at 2, 26.) To date, Plaintiff has not filed an opposition, or otherwise responded to
21 the motion for fees. The Commissioner “has no objection to the fee request.” (Doc. 26 at 2.)

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

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

25 Whenever a court renders a judgment favorable to a claimant under [42 USC § 401,
26 *et seq*] who was represented before the court by an attorney, the court may determine
27 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 . . .

28 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)

1 controls fees awarded for representation of Social Security claimants).

2 As the Ninth Circuit observed, “virtually all attorneys charge a contingency fee” in Social
3 Security cases. *Crawford v. Astrue*, 586 F.3d 1142, 1155 (9th Cir. 2009). District courts “have been
4 deferential to the terms of contingency fee contracts § 406(b) cases.” *Hern v. Barnhart*, 262 F.Supp.2d
5 1033, 1037 (N.D. Cal. 2003). Nevertheless, the Court must review contingent-fee arrangements “as an
6 independent check, to assure that they yield reasonable results in particular cases.” *Gisbrecht*, 535 U.S.
7 at 807. A contingency fee agreement is unenforceable if it provides for fees exceeding the statutory
8 amount of 25 percent. *Id.* (“Congress has provided one boundary line: Agreements are unenforceable
9 to the extent that they provide for fees exceeding 25 percent of the past-due benefits.”); *see also*
10 *Crawford*, 586 F.3d at 1155 (“42 U.S.C. § 406(b) sets the maximum percentage that may be charged
11 for representing a claimant in district court at 25 percent of past benefits recovered).

12 **III. Discussion and Analysis**

13 In evaluating a fee requested pursuant to a contingency agreement, the Court should consider
14 “the character of the representation and the results the representative achieved.” *Gisbrecht*, 535 U.S. at
15 808. In addition, the Court should consider whether the attorney performed in a substandard manner or
16 engaged in dilatory conduct or excessive delays, and whether the fees are “excessively large in relation
17 to the benefits received.” *Crawford*, 586 F.3d at 1149.

18 Plaintiff entered into the contingent fee agreement in which she agreed to pay twenty-five
19 percent of any awarded past-due benefits. (Doc. 25-1 at 1.) Counsel accepted the risk of loss in the
20 representation and expended a total of 28.4 hours while representing Plaintiff before the District Court.
21 (Doc. 25-4 at 1-2.) Tasks undertaken included reviewing the administrative record, which was more
22 than 1,200 pages; legal research regarding the issues presented; and preparation of the complaint,
23 confidential letter brief, opening brief, and reply brief. (*See id.*) Due to counsel’s work, the action
24 was remanded further proceedings, and Plaintiff received a fully favorable decision from the Social
25 Security Administration. For this, Ms. Krank requests a fee of \$17,723.00, which is just under the
26 25% of the past-due benefits withheld for fees. (Doc. 25 at 6.) Because \$5,000.00 was previously
27 approved under the EAJA, and Ms. Krank requests the firm be directed to refund this amount, the net
28 cost to Plaintiff is \$17,800.00. (*Id.* at 13, 21-22.) Finally, although served with the motion (*id.* at 26),

Plaintiff did not oppose the request and thereby indicates an implicit belief that the total amount requested for attorney fees is reasonable.

Significantly, there is no indication that counsel performed in a substandard manner or engaged in severe dilatory conduct. Plaintiff was able to secure a remand for payment of benefits following the appeal, including an award of past-due benefits beginning March 2015. (*See* Doc. 25-3 at 1.) Finally, the fees requested do not exceed twenty-five percent maximum permitted under 42 U.S.C. §406(b) or the amount agreed upon by counsel and Plaintiff. (*See* Doc. 25-1 at 1.)

IV. Conclusion and Order

Based upon the tasks completed and results achieved following the remand for further proceedings, the Court finds the fees sought by counsel are reasonable. Accordingly, the Court

ORDERS:

1. Counsel's motion for attorney fees pursuant to 24 U.S.C. §406(b) (Doc. 25) is **GRANTED**.
2. The Commissioner **SHALL** pay \$17,723.00 directly to Counsel, the Law Offices of Rohfling & Kalagian, LLP, out of the funds being withheld.
3. Any remaining funds being held by the Administration **SHALL** be released to Plaintiff Rachel Michelle Twilley; and
4. Once payment is received for the fees awarded under the EAJA and Section 406(b), Counsel **SHALL** refund \$5,000.00 to Plaintiff.

IT IS SO ORDERED.

Dated: **November 18, 2021**

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE