



1 awarded, pursuant to 42 U.S.C. § 406(b) or such amount as the Commissioner may designate  
2 under 42 U.S.C. § 406(a)(2)(A), less any fees received under the Equal Access to Justice Act  
3 (“EAJA”). *Id.* On March 6, 2018, Plaintiff brought this action seeking judicial review of a final  
4 administrative decision denying Plaintiff’s claim for disability insurance benefits and  
5 supplemental security income under the Social Security Act. (Doc. 1). On November 28, 2018,  
6 Plaintiff filed his opening brief. (Doc. 15). The Commissioner filed a reply brief on February 1,  
7 2019. (Doc. 18). Thereafter, the Court issued an order remanding the action pursuant to sentence  
8 four of 42 U.S.C. § 405(g). The Court found that the administrative law judge (“ALJ”) erred in  
9 his evaluation of Plaintiff’s residual functional capacity (“RFC”) and failed to apply the correct  
10 legal standards. (Doc. 19 p. 12). Thereafter, the Court issued an order on the parties’ stipulation  
11 for payment of \$4,300.00 in attorney’s fees pursuant to the Equal Access to Justice Act  
12 (“EAJA”). (Doc. 22). The U.S. Department of Treasury applied the entirety of this amount to  
13 offset Plaintiff’s outstanding debts. *See* (Doc. 23-4).

14 On remand, the Commissioner found Plaintiff has been disabled since November 12, 2013.  
15 (Doc. 23-1 p. 13). Plaintiff was awarded \$61,339.52 in retroactive benefits. (Doc. 23-3 p. 3).  
16 The award letter did not provide a cumulative total of past due benefits but instead indicated  
17 benefits due for various periods. *See id.* The Commissioner calculated that based on the 25%  
18 withheld for potential payment of attorney fees, the total past-due benefit appears to be  
19 \$15,334.88. (Doc. 28 p. 2 n.2).

20 On September 30, 2022, Counsel filed the instant motion. (Doc. 23). Plaintiff was served  
21 with the motion and advised he had 14 days to object. *Id.* at 2. Plaintiff filed no objections  
22 objection or any other response. On October 12, 2022, the Commissioner of Social Security  
23 (“Defendant”) filed a response to Plaintiff’s motion. (Doc. 28). Defendant summarized the  
24 applicable law but took no position on the reasonableness of the fee request. *Id.* Counsel filed a  
25 reply on October 14, 2022. (Doc. 29). Counsel represents that he will not seek any fees under 42  
26 U.S.C § 406(a). (Doc. 23 p. 7).

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1 **Standard of Review**

2 42 U.S.C. § 406(b) provides in relevant part:

3 Whenever a court renders a judgment favorable to a claimant under this subchapter  
4 who was represented before the court by an attorney, the court may determine and  
5 allow as part of its judgment a reasonable fee for such representation, not in excess  
6 of 25 percent of the total of the past-due benefits to which the claimant is entitled  
7 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. In case of any such judgment, no other fee  
may be payable or certified for payment for such representation except as provided  
in this paragraph.

8 42 U.S.C. § 406(b)(1)(A). In connection with a prevailing plaintiff's application for attorney's  
9 fees, the Commissioner typically does not act as an adversary, but "plays a part in the fee  
10 determination resembling that of a trustee for the claimants." *Gisbrecht v. Barnhart*, 535 U.S.  
11 789, 798 n.6 (2002). Thus, "[b]ecause the [Commissioner] has no direct interest in how much of  
12 the award goes to a counsel and how much to the disabled person, the district court has an  
13 affirmative duty to assure that the reasonableness of the fee is established." *Crawford v. Astrue*,  
14 586 F.3d 1142, 1149 (9th Cir. 2009); see *Gisbrecht*, 535 U.S. at 807-08 & n.17 (the 25% statutory  
15 maximum fee is not an automatic entitlement, and the court must ensure that the fee requested is  
16 reasonable).

17 When weighing the adequacy of a requested attorney's fees, the Court should respect "the  
18 primacy of lawful attorney-client fee agreements." *Gisbrecht*, 535 U.S. at 793. However,  
19 counsel still bears the burden of proving the requested fees are reasonable. *Id.* at 807. In  
20 determining reasonableness, the court may consider the experience of the attorney, the results  
21 achieved, and whether there is evidence the attorney artificially increased the hours worked or the  
22 hourly rate charged. *Id.* at 807-08; *Crawford*, 586 F.3d at 1151. Further, any 406(b) award is  
23 offset by attorney fees granted under the EAJA. *Parrish v. Comm'r of Soc. Sec. Admin.*, 698 F.3d  
24 1215, 1219 (9th Cir. 2012).

25 **Discussion**

26 Here, Plaintiff was represented by experienced counsel and achieved a favorable result,  
27 namely a remand on the merits of his brief, and ultimately a substantial award of past-due  
28 benefits. (Docs. 15, 19-20, 23-3). The undersigned has reviewed the docket in this matter and

1 concludes there is no indication that Counsel engaged in dilatory conduct, excessive delay, or  
2 substandard performance. *See* (Docs. 23, 25-5).

3 Counsel's itemized invoice for services reflects 23.3 hours spent on tasks such as  
4 reviewing the administrative transcript and pursuing the case to judgment, which the Court  
5 assesses is a reasonable amount of time for performance of those tasks. (Doc. 25-5). Counsel  
6 requests \$15,334.00 in fees, resulting in an hourly rate of \$658.11. Counsel avers that the  
7 effective hourly rate requested does not amount to a windfall based on similar awards granted.  
8 *See* (Doc. 23 at 5-6) (citing cases). The Ninth Circuit has found higher hourly rates reasonable in  
9 social security contingency fee arrangements. *E.g.*, *Crawford*, 586 F.3d at 1153 (explaining that  
10 the majority opinion found reasonable effective hourly rates equaling \$519.00, \$875.00, and  
11 \$902.00) (J. Clifton, concurring in part and dissenting in part). Even at this higher rate, the  
12 amount requested cannot be said to amount to a windfall to Plaintiff's counsel. *Id.* *See Smith v.*  
13 *Kijakazi*, No. 1:13-cv-01717-BAK (SKO), 2022 WL 1471035, at \*2 (E.D. Cal. May 10, 2022)  
14 (collecting cases finding that similar amounts in attorneys' fees requested were appropriate).

15 Furthermore, since the EAJA fee award was utilized to pay a debt owed (Doc. 23-4), the  
16 Court will not order an offset for the prior EAJA fee award. *See, e.g. Armstrong v. Comm'r of*  
17 *Soc. Sec.*, No. 2:15-cv-1344-DMC, 2020 WL 133948, at \*2 n.2 (E.D. Cal. Jan. 13, 2020)  
18 (declining to order an offset from a prior EAJA award because "[a]llowing an offset would have  
19 the effect of making counsel pay off plaintiff's federal debt obligation."); *Powers v. Berryhill*,  
20 No. 1:15-cv-00077-EPG, 2018 WL 3203098, at \*2 (E.D. Cal. June 28, 2018) (finding  
21 reimbursement of EAJA fees to Plaintiff unnecessary after EAJA payment being set against  
22 Plaintiff's federal debt); *Salinas v. Comm'r of Soc. Sec.*, No. 1:15-cv-00976-EPG, 2022 WL  
23 484905, at \*4 (E.D. Cal. Feb. 16, 2022) (same).

24 Based on the foregoing, the Court finds the request for fees in the amount of \$15,334.00 to  
25 be reasonable. *Gisbrecht*, 535 U.S. at 807-08.

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**Conclusion and Order**

Accordingly, it is HEREBY ORDERED

1. Counsel for Plaintiff’s motion for award of attorney’s fees pursuant to 42 U.S.C. § 406(b) (Doc. 23) is GRANTED;
2. Counsel shall be awarded attorneys’ fees in the amount of Fifteen Thousand, Three-Hundred and Thirty-Four Dollars (\$15,334.00), with no offset for EAJA fees previously awarded pursuant to U.S.C § 2412; and
3. The Clerk of the Court is respectfully directed to serve a copy of this Order on Plaintiff at the following address:

Jose G. Hernandez, Jr.  
2530 W. Fountain Way Apt 105  
Fresno, CA 93705

IT IS SO ORDERED.

Dated: February 6, 2024

  
UNITED STATES MAGISTRATE JUDGE