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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANNA LYNN TRAPP,

 Plaintiff,

 v.

COMMISSIONER OF SOCIAL
SECURITY,

 Defendant.

Case No. 1:19-cv-00742-AWI-EPG

ORDER GRANTING PLAINTIFF’S
COUNSEL’S MOTION FOR ATTORNEY’S
FEES PURSUANT TO 42 U.S.C. § 406(b)

(ECF No. 26)

Before the Court is a motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b) filed by Shellie Lott, counsel for Plaintiff Anna Lynn Trapp (“Plaintiff”). (ECF No. 26.) For the following reasons, the motion for an award of attorney’s fees is GRANTED in the amount of \$14,722.75. Plaintiff’s counsel shall reimburse Plaintiff for the \$7,050.00 in fees and costs previously awarded pursuant to the Equal Access to Justice Act (“EAJA”). (*See* ECF No. 25.)

I. BACKGROUND

Plaintiff brought the underlying action seeking judicial review of a final administrative decision denying her claim for Disability Insurance Benefits under the Social Security Act. (ECF No. 1.) On January 23, 2019, Plaintiff filed her opening brief. (ECF No. 18.) On March 19, 2020, the parties filed a stipulation agreeing to a voluntary remand of this case pursuant to sentence for of 42 U.S.C. § 405(g). (ECF No. 21.) The Court entered an order approving the stipulation and

1 judgment was entered on March 19, 2020. (ECF Nos. 22, 23.)

2 On May 7, 2020, the parties filed a stipulation for an award of \$7,050.00 in attorneys' fees
3 under EAJA. (ECF No. 24.) Senior District Judge Anthony W. Ishii entered an order awarding
4 attorneys' fees under EAJA pursuant to the stipulation. (ECF No. 25.)

5 On remand, an administrative law judge held a hearing on February 23, 2021, which
6 resulted in a fully favorable decision dated April 8, 2021. (ECF No. 26-1 at 1.) The
7 Commissioner awarded \$58,891.00 in past-due benefits to Plaintiff. (ECF No. 26-2 at 5.)

8 On August 19, 2021, Plaintiff's counsel filed a motion seeking attorneys' fees in the
9 amount of \$14,722.75 pursuant to 42 U.S.C. § 406(b), with a credit to Plaintiff for the EAJA fees
10 previously awarded. (ECF No. 26.) Plaintiff and the Commissioner of Social Security were each
11 served with a copy of the motion. (ECF No. 26 at 3.) The Commissioner has filed a response to
12 the motion neither assenting nor objecting to the requested fees. (ECF No. 27.) On September 28,
13 2021, the Court granted Plaintiff's counsel leave to file supplemental briefing in support of the
14 motion addressing the reasonableness of the requested fee award. (ECF No. 28.) On October 12,
15 2021, Plaintiff's counsel filed a supplemental brief in support of the motion. (ECF No. 29.) The
16 supplemental brief was also served on Plaintiff and the Commissioner. (ECF No. 29 at 5.)
17 Plaintiff has not filed an objection or any other response to the motion.

17 **II. DISCUSSION**

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

20 Whenever a court renders a judgment favorable to a claimant under this subchapter
21 who was represented before the court by an attorney, the court may determine and
22 allow as part of its judgment a reasonable fee for such representation, *not in excess*
23 *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 . . .

24 certify the amount of such fee for payment to such attorney out of, and not in
25 addition to, the amount of such past-due benefits . . .

26 42 U.S.C. § 406(b)(1)(A) (emphasis added).

27 "In contrast to fees awarded under fee-shifting provisions such as 42 U.S.C. § 1988, the
28 [406(b)] fee is paid by the claimant out of the past-due benefits awarded; the losing party is not

1 responsible for payment.” *Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th Cir. 2009) (en banc)
2 (citing *Gisbrecht v. Barnhart*, 535 U.S. 789, 802 (2002)). Even though the section 406(b) attorney
3 fees award is not paid by the government, the Commissioner has standing to challenge the award.
4 *Craig v. Sec’y Dep’t of Health & Human Servs.*, 864 F.2d 324, 328 (4th Cir. 1989), *abrogated on*
5 *other grounds in Gisbrecht*, 535 U.S. at 807. The goal of fee awards under section 406(b) is to
6 provide adequate incentive to represent claimants while ensuring that the usually meager
7 disability benefits received are not greatly depleted. *Cotter v. Bowen*, 879 F.2d 359, 365 (8th Cir.
8 1989), *abrogated on other grounds in Gisbrecht*, 535 U.S. at 807.

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

18 Generally, “a district court charged with determining a reasonable fee award under
19 § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee arrangements,’ . . .
20 ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’” *Crawford*, 586
21 F.3d at 1148 (quoting *Gisbrecht*, 535 U.S. at 793, 808). The United States Supreme Court has
22 identified several factors that may be considered in determining whether a fee award under a
23 contingent-fee agreement is unreasonable and therefore subject to reduction by the court: (1) the
24 character of the representation; (2) the results achieved by the representative; (3) whether the
25 attorney engaged in dilatory conduct in order to increase the accrued amount of past-due benefits;
26 (4) whether the benefits are large in comparison to the amount of time counsel spent on the case;
27 and (5) the attorney’s record of hours worked and counsel’s regular hourly billing charge for non-
28 contingent cases. *Id.* (citing *Gisbrecht*, 535 U.S. at 807-08).

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1 Here, the fee agreement between Plaintiff and Plaintiff's counsel, which is signed by
2 Plaintiff, provides:

3 This is a contingent fee contract. If Attorney prevails before the Federal Court, and
4 if Claimant is subsequently awarded benefits by the Social Security
5 Administration ("SSA"), Claimant agrees to pay Attorney a fee for Federal Court
6 work equal to 25% of the past-due benefits.

7 If Attorney prevails before the Federal Court, Attorney will make application to
8 the court to order SSA to pay attorney fees in accordance with the Equal Access to
9 Justice Act ("EAJA"). Time records for such fees will be kept on a 1/10 hour
10 convention and charged at the maximum rate allowed under EAJA. Such fees are
11 generally made payable directly to Attorney.

12 I hereby assign any and all rights to any attorney fees payable under the Equal
13 Access of Justice Act to my attorneys, Shellie Lott, CERNEY KREUZE & LOTT,
14 LLP, and hereby consent to the payment of those fees directly to my attorneys
15 either by check payable to my attorneys or by direct deposit into my attorneys'
16 bank account.

17 If Claimant subsequently is awarded benefits after the remand from Federal Court,
18 Claimant will owe Attorney the difference between the 25% fee specified above
19 and the amount paid by SSA in accordance with EAJA. Applicable regulations
20 require approval by the Court of the fee requested, and the Court must determine if
21 the fee is reasonable.

22 (ECF No. 26-3 at 1.)

23 The Court has considered the character of counsel's representation of Plaintiff and the
24 good results achieved by counsel, which included an award of benefits. Plaintiff's counsel
25 represents that she and attorney Sarah H. Bohr spent a total of 37.8 hours of attorney time
26 representing Plaintiff in this matter. (ECF Nos. 26-4, 29-1.) Counsel ultimately gained a favorable
27 decision in that the case was remanded to an Administrative Law Judge and resulted in an award
28 of benefits to Plaintiff. (ECF No. 29.) There is no indication that a reduction of the award is
warranted due to any substandard performance by Plaintiff's counsel as counsel secured a
successful result for Plaintiff. There also is no evidence that counsel engaged in any dilatory
conduct resulting in delay.

Plaintiff's counsel seeks an award of \$14,722.75, which results in a blended hourly rate
for attorney time of approximately \$389.49. The Ninth Circuit has found similar—and in many
cases, higher—effective hourly rates reasonable in social security contingency fee arrangements.
See, e.g., Crawford, 586 F.3d at 1153 (explaining that the majority opinion found reasonable
effective hourly rates equaling \$519, \$875, and \$902) (J. Clifton, concurring in part and

1 dissenting in part); *see also Patterson v. Apfel*, 99 F. Supp. 2d 1212, 1214 & n.2 (C.D. Cal. 2000)
2 (noting that “a survey of several dozen cases in which attorney's fees were awarded in social
3 security cases suggests that the 33.75 hours spent by plaintiff's counsel falls within the approved
4 range,” and collecting cases).

5 Further, the requested attorney fees award of \$14,722.75 is approximately 25% of past-
6 due benefits awarded to Plaintiff. This amount is equal to, but does not exceed, 25% of past-due
7 benefits and is not excessive in relation to the past-due benefits awarded. *See generally Ortega v.*
8 *Comm'r of Soc. Sec.*, No. 1:12-cv-01030-AWI-SAB, 2015 WL 5021646, at *3 (E.D. Cal. Aug.
9 21, 2015) (granting section 406(b) attorney fees in the amount of \$24,350.00); *Thomas v. Colvin*,
10 No. 1:11-cv-01291-SKO, 2015 WL 1529331, at *3 (E.D. Cal. Apr. 3, 2015) (granting
11 section 406(b) attorney fees in the amount of \$44,603.50); *Boyle v. Colvin*, No. 1:12-cv-00954-
12 SMS, 2013 WL 6712552, at *2 (E.D. Cal. Dec. 19, 2013) (granting section 406(b) attorney fees
13 in the amount of \$20,577.57); *Jamieson v. Astrue*, No. 1:09-cv-00490-LJO-DLB, 2011 WL
14 587096, at *2 (E.D. Cal. Feb. 9, 2011), *adopted by* 2011 WL 841363 (recommending an award of
15 section 406(b) attorney fees in the amount of \$34,500.00).

16 In making this determination, the Court recognizes the contingent-fee nature of this case
17 and counsel's assumption of risk in agreeing to represent Plaintiff under such terms. “District
18 courts generally have been deferential to the terms of contingency fee contracts in § 406(b)
19 cases.” *Harris v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003). Attorneys who agree to
20 represent claimants pursuant to a contingent fee agreement assume the risk of receiving no
21 compensation for their time and effort if the action does not succeed. *Id.* Here, Plaintiff's
22 attorneys accepted substantial risk of loss in representing Plaintiff, whose application had already
23 been denied at the administrative level. Plaintiff agreed to the contingent fee, and counsel
24 successfully secured a remand and ultimately an award of substantial benefits to Plaintiff.

25 An award of attorney fees pursuant to section 406(b) in the amount of \$14,722.75 is
26 therefore appropriate. An award of section 406(b) fees, however, must be offset by any prior
27 award granted under the EAJA. *See* 28 U.S.C. § 2412; *Gisbrecht*, 535 U.S. at 796. Plaintiff was
28 previously awarded \$7,050.00 in fees pursuant to EAJA; as such, the section 406(b) award will be
offset by \$7,050.00 for a net award of \$7,672.75.

1 **III. CONCLUSION AND ORDER**

2 For the reasons stated above, the Court finds that the attorney fees sought by Plaintiff's
3 counsel pursuant to section 406(b) are reasonable. Accordingly, IT IS HEREBY ORDERED:

4 1. Plaintiff's counsel's motion for an award of attorney fees pursuant to 42 U.S.C. §
5 406(b) (ECF No. 26) in the amount of \$14,722.75 is GRANTED;

6 2. Plaintiff's counsel is ordered to reimburse Plaintiff \$7,050.00 for the EAJA fees and
7 costs previously awarded pursuant to 28 U.S.C. § 2412.

8 3. The Clerk of the Court is respectfully directed to serve a copy of this Order on
9 Plaintiff at the following address.

10 Anna Lynn Trapp
11 1317 Carver Road #3
12 Modesto, CA 95350

13 IT IS SO ORDERED.

14 Dated: November 9, 2021

15 /s/ Eric P. Gray
16 UNITED STATES MAGISTRATE JUDGE
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