

1 denial of benefits. (Doc. No. 1.) On December 2, 2019, the Court issued an order reversing the
2 Commissioner’s denial of benefits and ordering remand pursuant to sentence four of 42 U.S.C. §
3 405(g). (Doc. No. 10.) On January 8, 2020, the Court approved the parties’ stipulation to award
4 Plaintiff \$1,224.00 in attorneys’ fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C.
5 § 2412. (Doc. No. 13.) On remand, the Commissioner granted Plaintiff’s application for benefits and
6 issued a notice indicating that Plaintiff was entitled to receive \$25,560.59 in retroactive benefits. (Doc.
7 No. 14-1.)

8 In the present Motion, Plaintiff’s counsel asks the Court to award attorneys’ fees in the amount
9 of \$6,390.15. (Doc. No. 14.) Plaintiff’s counsel contends this fee is appropriate in light of the services
10 rendered and results achieved, as counsel was instrumental in obtaining a favorable result. (Doc. No. 14
11 at 3.) The Commissioner filed a statement in response to the Motion providing an analysis of the fee
12 request but taking no position regarding its reasonableness. (Doc. No. 16.)

13 **II. Legal Standard**

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

16 Whenever a court renders a judgment favorable to a claimant . . . who was represented
17 before the court by an attorney, the court may determine and allow as part of its
18 judgment a reasonable fee for such representation, not in excess of 25 percent of the
19 total of the past-due benefits to which the claimant is entitled by reason of such
20 judgment. . . .

21 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)
22 controls fees awarded for representation of Social Security claimants). A contingency fee agreement is
23 unenforceable if it provides for fees exceeding twenty-five percent of past-due benefits. *Gisbrecht*,
24 *supra*, 535 U.S. at 807.

25 **III. Discussion and Analysis**

26 District courts “have been deferential to the terms of contingency fee contracts § 406(b) cases.”
27 *Hern v. Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Cal. 2003). However, the Court must review
28 contingent-fee arrangements “as an independent check, to assure that they yield reasonable results in
particular cases.” *Gisbrecht*, 535 U.S. at 807. In doing so, the Court should consider “the character of
the representation and the results the representative achieved.” *Id.* at 808. In addition, the Court should

1 consider whether the attorney performed in a substandard manner or engaged in dilatory conduct or
2 excessive delays, and whether the fees are “excessively large in relation to the benefits received.”
3 *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc).

4 In this case, after carefully considering the fee agreement and the applicable law, the Court
5 finds Plaintiff’s counsel’s requested fees to be reasonable. In support of the motion, Plaintiff’s counsel
6 attached a written fee agreement which provided for a contingent fee of twenty-five percent of any
7 awarded retroactive benefits. (Doc. No. 14-2.) Plaintiff’s counsel accordingly accepted the risk of loss
8 in the representation. Plaintiff’s counsel additionally expended a total of six hours of attorney time
9 while representing Plaintiff before the District Court. (Doc. No. 14-3.) The requested fee amount
10 represents approximately twenty-five percent of past-due benefits and is within the applicable
11 maximum. As a result of counsel’s work, the matter was remanded for further proceedings before an
12 Administrative Law Judge, who issued a fully favorable decision and awarded Plaintiff benefits.

13 Plaintiff’s counsel provided a copy of the motion for attorneys’ fees to Plaintiff. (Doc. No. 14
14 at 4.) Although served with the motion, Plaintiff did not challenge the requested fees which attests to
15 their reasonableness. Likewise, the Commissioner, in its advisory capacity, also declined to dispute the
16 propriety of the amount of the fees requested by Plaintiff’s counsel. (Doc. No. 16.)

17 Additionally, there is no indication counsel performed in a substandard manner or engaged in
18 severe dilatory conduct to the extent that a reduction in fees is warranted. To the contrary, Plaintiff
19 was able to secure a fully favorable decision and remand for further proceedings, including an award
20 of past-due benefits. Accordingly, the Court finds the fees sought by counsel are reasonable in light
21 the results achieved in this action, and the amount does not exceed twenty-five percent maximum
22 permitted under 42 U.S.C. § 406(b).

23 **IV. Conclusion and Recommendations**

24 Based upon the foregoing, it is HEREBY RECOMMENDED that:

- 25 1. Counsel for Plaintiff’s motion for attorneys’ fees under 42 U.S.C. § 406(b) (Doc. No.
26 14) be GRANTED;
- 27 2. David F. Chermol, Esq., counsel for Plaintiff, be awarded \$6,390.15 in attorneys’ fees
28 pursuant to 42 U.S.C. § 406(b); and

1 3. Counsel for Plaintiff be directed to compensate Plaintiff in the amount of \$1,224.00 for
2 fees previously awarded pursuant to the EAJA.

3 These Findings and Recommendations will be submitted to the United States District Judge
4 assigned to the case pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
5 **days** after being served with these Findings and Recommendations, any party may file written
6 objections with the Court and serve a copy on all parties. The document should be captioned
7 “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are advised that
8 failure to file objections within the specified time may result in the waiver of the “right to challenge
9 the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)
10 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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12 IT IS SO ORDERED.

13 Dated: August 11, 2020

14 /s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE
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