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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HAROLD ARTHUR FOSTER,  
Plaintiff,  
v.  
CAROLYN W. COLVIN, Commissioner  
of Social Security,  
Defendant.

No. 2:13-cv-1593 DAD

ORDER

Plaintiff brought this action seeking judicial review of a final administrative decision denying his application for disability benefits under Title II of the Social Security Act. By order filed September 30, 2014, this case was remanded to the Commissioner with instructions to award benefits. (Dkt. No. 14.) On March 2, 2015, counsel for plaintiff filed a motion for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b). (Dkt. No. 19.)

According to the motion, at the outset of the representation, plaintiff and his counsel entered into a contingent-fee agreement. (Ex. 1 (Dkt. No. 19-1) at 1.<sup>1</sup>) Pursuant to that agreement plaintiff’s counsel now seeks attorney fees in the amount of \$12,083.43, which represents 12.5% of the retroactive disability benefits received by plaintiff on remand, for

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<sup>1</sup> Page number citations such as this one are to the page number reflected on the court’s CM/ECF system and not to page numbers assigned by the parties.

1 approximately 33.10 hours of attorney time expended on this matter. Defendant filed a response  
2 on March 16, 2015, stating that “[t]he Commissioner takes no position on whether the gross fee  
3 of (sic) that Counsel requests under the Social Security Act is reasonable under the case law.”  
4 (Dkt. No. 20 at 2.)

5 Attorneys are entitled to fees for cases in which they have successfully represented social  
6 security claimants.

7 Whenever a court renders a judgment favorable to a claimant under  
8 this subchapter who was represented before the court by an  
9 attorney, the court may determine and allow as part of its judgment  
10 a reasonable fee for such representation, not in excess of 25 percent  
11 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 . . . 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.

12 42 U.S.C. § 406(b)(1)(A). “In contrast to fees awarded under fee-shifting provisions such as 42  
13 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing  
14 party is not responsible for payment.” Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)  
15 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). Although an attorney fee  
16 award pursuant to 42 U.S.C. § 406(b) is not paid by the government, the Commissioner has  
17 standing to challenge the award. Craig v. Sec’y Dep’t of Health & Human Servs., 864 F.2d 324,  
18 328 (4th Cir. 1989). The goal of fee awards under § 406(b) is to provide adequate incentive to  
19 attorneys for representing claimants while ensuring that the usually meager disability benefits  
20 received are not greatly depleted. Cotter v. Bowen, 879 F.2d 359, 365 (8th Cir. 1989).

21 The 25% statutory maximum fee is not an automatic entitlement, and the court must  
22 ensure that the fee actually requested is reasonable. Gisbrecht, 535 U.S. at 808-09 (“[Section]  
23 406(b) does not displace contingent-fee agreements within the statutory ceiling; instead, § 406(b)  
24 instructs courts to review for reasonableness fees yielded by those agreements.”). “Within the 25  
25 percent boundary . . . the attorney for the successful claimant must show that the fee sought is  
26 reasonable for the services rendered.” Id. at 807. “[A] district court charged with determining a  
27 reasonable fee award under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee  
28 arrangements,’ ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’”

1 Crawford, 586 F.3d at 1149 (quoting Gisbrecht, 535 U.S. at 793 & 808). The Supreme Court has  
2 identified five factors that may be considered in determining whether a fee award under a  
3 contingent-fee arrangement is unreasonable and therefore subject to reduction by the court: (1)  
4 the character of the representation; (2) the results achieved by the representative; (3) whether the  
5 attorney engaged in dilatory conduct in order to increase the accrued amount of past-due benefits;  
6 (4) whether the benefits are large in comparison to the amount of time counsel spent on the case;  
7 and (5) the attorney's record of hours worked and counsel's regular hourly billing charge for  
8 noncontingent cases. Crawford, 586 F.3d at 1151-52 (citing Gisbrecht, 535 U.S. at 808). Below  
9 the court will consider these factors in assessing whether the fee requested by counsel in this case  
10 pursuant to 42 U.S.C. § 406(b) is reasonable.

11 Here, there is no indication that a reduction of fees is warranted due to any substandard  
12 performance by counsel. Rather, counsel is an experienced attorney who secured a successful  
13 result for plaintiff. There is also no evidence that plaintiff's counsel engaged in any dilatory  
14 conduct resulting in excessive delay. The court finds that the \$12,083.43 fee, which represents  
15 12.5 % of the past-due benefits paid to plaintiff, is not excessive in relation to the benefits  
16 awarded. (Ex. 2 (Dkt. No. 19-2) at 1-6.) In making this determination, the court recognizes the  
17 contingent fee nature of this case and counsel's assumption of the risk of going uncompensated in  
18 agreeing to represent plaintiff on such terms. See Hearn v. Barnhart, 262 F. Supp.2d 1033, 1037  
19 (N.D. Cal. 2003). Finally, counsel has submitted a detailed accounting of his billing in support of  
20 the requested fee.

21 Accordingly, for the reasons stated above, the court concludes that the fees sought by  
22 counsel pursuant to § 406(b) are reasonable. See generally Azevedo v. Commissioner of Social  
23 Security, No. 1:11-cv-1341 AWI SAB, 2013 WL 6086666, at \*2 (E.D. Cal. Nov. 19, 2013)  
24 (granting petition pursuant to 406(b) for \$17,893.75 in attorney's fees); Coulter v. Commissioner  
25 of Social Security, No. 1:10-cv-1937 AWI JLT, 2013 WL 5969674, at \*2 (E.D. Cal. Nov. 8,  
26 2013) (recommending award of \$15,084.23 in attorney's fees pursuant to 406(b)); Taylor v.  
27 Astrue, No. 1:06-cv-00957-SMS, 2011 WL 836740, at \*2 (E.D. Cal. Mar. 4, 2011) (granting  
28 petition pursuant to 406(b) for \$20,960 in attorneys' fees); Jamieson v. Astrue, No. 1:09cv0490

1 LJO DLB, 2011 WL 587096, at \*2 (E.D. Cal. Feb. 9, 2011) (recommending award of \$34,500 in  
2 attorney fees pursuant to 406(b)).

3 An award of § 406(b) fees is, however, offset by any prior award of attorney's fees  
4 granted under the Equal Access to Justice Act ("EAJA"). 28 U.S.C. § 2412; Gisbrecht, 535 U.S.  
5 at 796. Here, plaintiff's counsel was previously awarded \$5,300 in EAJA fees (see Dkt. No. 18)  
6 and the award under § 406(b) must be offset by that amount.

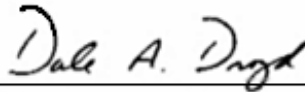
7 Accordingly, IT IS HEREBY ORDERED that:

8 1. Plaintiff's motion for attorney fees (Dkt. No. 19) under 42 U.S.C. § 406(b) is  
9 granted;

10 2. Counsel for plaintiff is awarded \$12,083.43 in attorney fees under § 406(b).  
11 The Commissioner is directed to pay the fee forthwith and remit to plaintiff the remainder of his  
12 withheld benefits; and

13 3. Upon receipt of the \$12,083.43 in attorney fees pursuant to § 406(b), counsel  
14 shall reimburse plaintiff in the amount of \$5,300 previously paid by the government under the  
15 EAJA.

16 Dated: April 29, 2015

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19 DALE A. DROZD  
20 UNITED STATES MAGISTRATE JUDGE

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