

1 I. REASONABLENESS OF FEE REQUEST

2 At the outset of the representation, plaintiff and her counsel entered into a contingent-fee
3 agreement. ECF No. 19-4. Pursuant to that agreement plaintiff’s counsel now seeks attorney’s
4 fees in the amount of \$24,000, which represents \$14,839.50 less than 25% of the \$159,273 in
5 retroactive disability benefits received by plaintiff on remand (\$120,433.50 paid, plus \$38,839.50
6 withheld for attorney’s fees), for 26 hours of attorney time expended on this matter. ECF No. 19-
7 2 at 2-3. Plaintiff’s counsel has put the court and defendant on notice that a separate petition
8 under § 406(a) of the Act will be later filed by a separate legal entity that represented plaintiff in
9 her proceedings before the Social Security Administration for the remaining \$14,839.50. Id. at ¶
10 11. Plaintiff will be immediately credited the \$4,862.52 in EAJA fees already received by
11 plaintiff’s counsel. ECF No. 19 at 2.

12 Attorneys are entitled to fees for cases in which they have successfully represented social
13 security claimants:

14 Whenever a court renders a judgment favorable to a claimant under
15 this subchapter who was represented before the court by an
16 attorney, the court may determine and allow as part of its judgment
17 a reasonable fee for such representation, not in excess of 25 percent
18 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.

19 42 U.S.C. § 406(b)(1)(A). “In contrast to fees awarded under fee-shifting provisions such as 42
20 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing
21 party is not responsible for payment.” Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)
22 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). The goal of fee awards under
23 § 406(b) is “to protect claimants against “inordinately large fees” and also to ensure that
24 attorneys representing successful claimants would not risk “nonpayment of [appropriate] fees.””
25 Parrish v. Comm’r of Soc. Sec. Admin., 698 F.3d 1215, 1217 (9th Cir. 2012) (quoting Gisbrecht,
26 535 U.S. at 805).

27 The 25% statutory maximum fee is not an automatic entitlement, and the court must
28 ensure that the fee requested is reasonable. Gisbrecht, 535 U.S. at 808-09 (“406(b) does not

1 displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts
2 to review for reasonableness fees yielded by those agreements”). “Within the 25 percent
3 boundary . . . the attorney for the successful claimant must show that the fee sought is reasonable
4 for the services rendered.” Id. at 807. “[A] district court charged with determining a reasonable
5 fee award under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee
6 arrangements,’ ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’”
7 Crawford, 586 F.3d at 1149 (quoting Gisbrecht, 535 U.S. at 793, 808).

8 In determining whether the requested fee is reasonable, the court considers “‘the character
9 of the representation and the results achieved by the representative.’” Crawford, 586 F.3d at 1151
10 (quoting Gisbrecht, 535 U.S. at 808). In determining whether a reduction in the fee is warranted,
11 the court considers whether the attorney provided “substandard representation or delayed the
12 case,” or obtained “benefits that are not in proportion to the time spent on the case.” Id. Finally,
13 the court considers the attorney’s record of hours worked and counsel’s regular hourly billing
14 charge for non-contingent cases. Crawford, 586 F.3d at 1151-52 (citing Gisbrecht, 535 U.S. at
15 808); see also, E.D. Cal. R. 293(c)(1) (in fixing attorney’s fees the court considers “the time and
16 labor required”). Below, the court will consider these factors in assessing whether the fee
17 requested by counsel in this case pursuant to 42 U.S.C. § 406(b) is reasonable.

18 Here, plaintiff’s counsel is an experienced attorney who secured a successful result for
19 plaintiff. See Declaration of Shanny J. Lee (“Lee Decl.”) (ECF No. 19-2) ¶ 2-9. There is no
20 indication that a reduction of fees is warranted due to any substandard performance by counsel.
21 There is also no evidence that plaintiff’s counsel engaged in any dilatory conduct resulting in
22 excessive delay. The court finds that \$24,000, which represents \$14,839.50 less than 25% of the
23 \$159,273 in past-due benefits paid to plaintiff, is not excessive in relation to the benefits awarded.
24 In making this determination, the court recognizes the contingent fee nature of this case and
25 counsel’s assumption of the risk of going uncompensated in agreeing to represent plaintiff on
26 such terms. See Crawford, 586 F.3d at 1152 (“[t]he attorneys assumed significant risk in
27 accepting these cases, including the risk that no benefits would be awarded or that there would be
28 a long court or administrative delay in resolving the cases”). Finally, counsel has submitted a

1 detailed billing statement in support of the requested fee. ECF No. 19-5.

2 Accordingly, for the reasons stated above, the court concludes that the fees sought by
3 counsel pursuant to § 406(b) are reasonable.

4 II. OFFSET FOR EAJA FEES

5 An award of § 406(b) fees must be offset by any prior award of attorney's fees granted
6 under the Equal Access to Justice Act ("EAJA"). 28 U.S.C. § 2412; Gisbrecht, 535 U.S. at 796.
7 Here, plaintiff's attorney was previously awarded \$4,862.52 in EAJA fees. See ECF No. 19-2.
8 Counsel therefore must remit that amount to plaintiff.

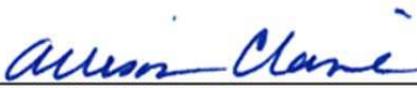
9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Plaintiff's Motion for attorney Fees under 42 U.S.C. § 406(b) (ECF No. 19), is
11 GRANTED;

12 2. Counsel for plaintiff is awarded \$24,000.00 in attorney's fees under § 406(b); the
13 Commissioner shall certify that amount to be paid to counsel from the funds previously withheld
14 for the payment of such fees; and

15 3. Counsel for plaintiff is directed to remit to plaintiff the amount of \$4,862.52 for EAJA
16 fees previously paid to counsel by the Commissioner.

17 DATED: June 14, 2017

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19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE
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