

1 agreement. ECF No. 28-1. Pursuant to that agreement plaintiff's counsel now seeks attorney's
2 fees in the amount of \$15,844.00, which represents 25% of the \$63,376.00 in retroactive disability
3 benefits received by plaintiff on remand for 27.7 hours of attorney time expended on this matter.
4 ECF Nos. 28 ¶¶ 3.1-3.4, 28-4.

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)). The goal of fee awards under
16 § 406(b) is “to protect claimants against “inordinately large fees” and also to ensure that
17 attorneys representing successful claimants would not risk “nonpayment of [appropriate] fees.””
18 Parrish v. Comm’r of Soc. Sec. Admin., 698 F.3d 1215, 1217 (9th Cir. 2012) (quoting Gisbrecht,
19 535 U.S. at 805).

20 The 25% statutory maximum fee is not an automatic entitlement, and the court must
21 ensure that the fee requested is reasonable. Gisbrecht, 535 U.S. at 808-09 (“406(b) does not
22 displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts
23 to review for reasonableness fees yielded by those agreements”). “Within the 25 percent
24 boundary . . . the attorney for the successful claimant must show that the fee sought is reasonable
25 for the services rendered.” Id. at 807. “[A] district court charged with determining a reasonable
26 fee award under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee
27 arrangements,’ ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’”
28 Crawford, 586 F.3d at 1149 (quoting Gisbrecht, 535 U.S. at 793, 808).

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

11 Here, plaintiff’s counsel is an experienced attorney who secured a successful result for
12 plaintiff. See ECF No. 38 at ¶ 3.4. There is no indication that a reduction of fees is warranted
13 due to any substandard performance by counsel. There is also no evidence that plaintiff’s counsel
14 engaged in any dilatory conduct resulting in excessive delay. The court finds that the \$15,844.00
15 fee, which represents 25% of the \$63,376.00 in past-due benefits paid to plaintiff, is not excessive
16 in relation to the benefits awarded. 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 Crawford, 586 F.3d at 1152 (“[t]he attorneys
19 assumed significant risk in accepting these cases, including the risk that no benefits would be
20 awarded or that there would be a long court or administrative delay in resolving the cases”).
21 Finally, counsel has submitted a detailed billing statement in support of the requested fee. ECF
22 No. 28-4.

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

25 26 II. OFFSET FOR EAJA FEES

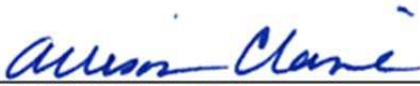
27 An award of § 406(b) fees must be offset by any prior award of attorney’s fees granted
28 under the Equal Access to Justice Act (“EAJA”). 28 U.S.C. § 2412; Gisbrecht, 535 U.S. at 796.

1 Here, plaintiff's attorney was previously awarded \$3,805.65 in EAJA fees. See ECF No. 27.
2 Counsel therefore must remit that amount to plaintiff.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's Motion for attorney Fees under 42 U.S.C. § 406(b) (ECF No. 28), is
5 GRANTED;
6 2. Counsel for plaintiff is awarded \$15,844.00 in attorney's fees under § 406(b); and
7 3. Counsel for plaintiff is directed to remit to plaintiff the amount of \$3,805.65 for EAJA
8 fees previously paid to counsel by the Commissioner.

9 DATED: July 17, 2017

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11 ALLISON CLAIRE
12 UNITED STATES MAGISTRATE JUDGE
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