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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIANNE RENEE CABALLERO  
RODRIGUEZ,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

No. 2:14-cv-1030-EFB

ORDER

Plaintiff’s counsel moves for an award of attorney’s fees pursuant to 42 U.S.C. § 406(b) (ECF No. 18), and plaintiff moves to redact her birth date from the order granting her motion for summary judgment (ECF No. 21). For the reasons discussed below, the motions are granted.

I. Attorney’s Fees

Pursuant to 42 U.S.C. § 406(b), counsel for plaintiff seeks an award of attorney’s fees in the amount of \$39,973.45, which is 25 percent of past benefits due to plaintiff.<sup>1</sup> ECF No. 18. Plaintiff entered into a retainer agreement with her attorney which states that she would pay counsel 25 percent of any past-due benefits won as a result of the appeal in this case. ECF No. 19-3. Counsel spent 29 professional hours on plaintiff’s case. ECF No. 18-4.

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<sup>1</sup> Defendant takes no position in the reasonableness of counsel’s request. *See* ECF No. 20 at 3.

1 42 U.S.C. § 406(b)(1)(A) provides, in relevant part:

2 Whenever a court renders a judgment favorable to a claimant under  
3 this subchapter who was represented before the court by an  
4 attorney, the court may determine and allow as part of its judgment  
5 a reasonable fee for such representation, not in excess of 25 percent  
6 of the total of the past-due benefits to which the claimant is entitled  
7 by reason of such judgment.

8 Rather than being paid by the government, fees under the Social Security Act are awarded  
9 out of the claimant's disability benefits. *Russell v. Sullivan*, 930 F.2d 1443, 1446 (9th Cir. 1991),  
10 *receded from on other grounds*, *Sorenson v. Mink*, 239 F.3d 1140, 1149 (9th Cir. 1991).

11 However, the 25 percent statutory maximum fee is not an automatic entitlement; the court also  
12 must ensure that the requested fee is reasonable. *Bisbrecht v. Barnhart*, 535 U.S. 789, 808-09  
13 (2002) ("We hold that § 406(b) does not displace contingent-fee agreements within the statutory  
14 ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded by those  
15 agreements."). "Within the 25 percent boundary . . . the attorney for the successful claimant must  
16 show that the fee sought is reasonable for the services rendered." *Id.* at 807. A "court may  
17 properly reduce the fee for substandard performance, delay, or benefits that are not in proportion  
18 to the time spent on the case." *Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th Cir. 2009) (en banc)

19 After this court remanded for further proceedings, plaintiff was found disabled and  
20 awarded past-due benefits in the amount of \$159,893.80. ECF No. 18-2. Counsel's request for  
21 \$39,973.45, which is 25 percent of the past-due benefits, would constitute an hourly rate of  
22 \$1,378.39. Counsel did not delay these procedures and her representation of plaintiff was not  
23 substandard. Indeed, she successfully represented her client's interests before this court.  
24 Although the hourly rate exceeds the rate awarded in the majority of social security cases, based  
25 on the risk of loss taken in representing plaintiff, the quality of counsel's representation, counsel's  
26 experience in the field of Social Security law, and the results achieved in this case, the court finds  
27 that fee request is reasonable. *See Jamieson v. Astrue*, No. 1:09cv0490 LJO DLB, 2011 WL  
28 587096 (E.D. Cal. Feb. 9, 2011) (finding fee at effective hourly rate of \$1,169.49 reasonable);  
*Smith v. Astrue*, No. CIV S-06-2373 DAD, 2011WL 5024462, at \*2 (E.D. Cal. Oct. 20, 2011)  
(awarding fee at effective hourly rate of \$1,015); *Naddour v. Colvin*, No.: 13-CV-1407-BAS,

1 2016 WL 4248557 (S.D. Cal. Aug. 11, 2016) (awarding fee at effective hourly rate of \$1,063);  
2 *Kazanjian v. Astrue*, No. 09 civ. 3678 (BMC), 2011 WL 2847439, at \*1-2 (E.D.N.Y. July 15,  
3 2011) (finding that counsel “performed well, diligently, and with unusual efficiency,” and  
4 awarding fee at hourly rate of \$2,100).

5 Counsel concedes that the \$39,973.45 award should be offset in the amount of \$5,511.36  
6 for fees previously awarded under the Equal Access to Justice Act (“EAJA”). ECF No. 18-1 at 1.  
7 Accordingly, counsel will be granted \$34,462.09 pursuant to 42 U.S.C. § 406(b). *See Gisbrecht*  
8 *v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney’s fees are awarded under both  
9 EAJA and § 406(b), the attorney must refund the smaller of the two awards to the plaintiff).

10 II. Motion to Redact

11 Plaintiff moves to redact her birthdate from the court’s order granting her motion for  
12 summary judgment. ECF No. 21. The Commissioner does not oppose plaintiff’s motion. ECF  
13 No. 23.

14 Under Local Rule 140(a)(iv), court documents shall use the year of birth in place of the  
15 specific birth date, unless the court orders otherwise. Accordingly, plaintiff’s motion to redact  
16 her birth date is granted.

17 III. Conclusion

18 Accordingly, it is hereby ORDERED that:

- 19 1. Plaintiff’s counsel’s motion for attorney’s fees (ECF No. 32) is granted;
- 20 2. Plaintiff’s counsel is awarded \$34,462.09 in fees pursuant to 42 U.S.C. § 406(b);
- 21 3. Plaintiff’s motion to redact her birth date (ECF No. 21) is granted; and
- 22 4. The Clerk of the Court is directed to replace ECF No. 12 with a copy of the order

23 omitting plaintiff’s birth date.

24 DATED: November 27, 2017.

25   
26 EDMUND F. BRENNAN  
27 UNITED STATES MAGISTRATE JUDGE  
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