

1 I. REASONABLENESS OF FEE REQUEST

2 At the outset of the representation, plaintiff and his counsel entered into a contingent-fee
3 agreement. ECF No. 20-1. Pursuant to that agreement plaintiff’s counsel now seeks attorney’s
4 fees in the amount of \$7,250.00, to accompany the \$1,750.00 in previously awarded Equal Access
5 to Justice Act fees,¹ which represents less than 25% of the \$106,990.00 in retroactive disability
6 benefits received by plaintiff on remand, for 11.05 hours of attorney time expended on this
7 matter. ECF Nos. 20 at 3, 20-2.

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

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

15 42 U.S.C. § 406(b)(1)(A). “In contrast to fees awarded under fee-shifting provisions such as 42
16 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing
17 party is not responsible for payment.” Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)
18 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). The goal of fee awards under
19 § 406(b) is “to protect claimants against “inordinately large fees” and also to ensure that
20 attorneys representing successful claimants would not risk “nonpayment of [appropriate] fees.””
21 Parrish v. Comm’r of Soc. Sec. Admin., 698 F.3d 1215, 1217 (9th Cir. 2012) (quoting Gisbrecht,
22 535 U.S. at 805).

23 The 25% statutory maximum fee is not an automatic entitlement, and the court must
24 ensure that the fee requested is reasonable. Gisbrecht, 535 U.S. at 808-09 (“406(b) does not
25 displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts
26 to review for reasonableness fees yielded by those agreements”). “Within the 25 percent

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28 ¹ The parties previously stipulated to an award of \$1,750 in EAJA fees. ECF Nos. 18, 19.
Plaintiff’s total award request amounts to \$9,000.

1 boundary . . . the attorney for the successful claimant must show that the fee sought is reasonable
2 for the services rendered.” Id. at 807. “[A] district court charged with determining a reasonable
3 fee award under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee
4 arrangements,’ ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’”
5 Crawford, 586 F.3d at 1149 (quoting Gisbrecht, 535 U.S. at 793, 808).

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

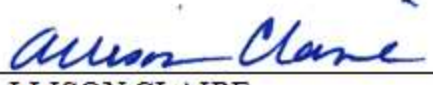
16 Here, plaintiff’s counsel is an experienced attorney who secured a successful result for
17 plaintiff. There is no indication that a reduction of fees is warranted due to any substandard
18 performance by counsel. There is also no evidence that plaintiff’s counsel engaged in any
19 dilatory conduct resulting in excessive delay. The court finds that the \$7,250.00 fee (or \$9,000
20 inclusive of awarded EAJA fees), which represents less than 25% of the \$106,990.00 in past-due
21 benefits paid to plaintiff, is not excessive in relation to the benefits awarded. In making this
22 determination, the court recognizes the contingent fee nature of this case and counsel’s
23 assumption of the risk of going uncompensated in agreeing to represent plaintiff on such terms.
24 See Crawford, 586 F.3d at 1152 (“[t]he attorneys assumed significant risk in accepting these
25 cases, including the risk that no benefits would be awarded or that there would be a long court or
26 administrative delay in resolving the cases”). Finally, counsel has submitted a detailed billing
27 statement in support of the requested fee. ECF No. 39 at 1-3.

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3. Counsel for plaintiff is directed to remit to plaintiff the amount of \$1,750.00 for EAJA fees previously paid to counsel by the Commissioner.

DATED: March 13, 2020



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE