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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	KEVIN BLANKENSHIP,	No. 2:16-cv-01024 AC
12	Plaintiff,	
13	v.	<u>ORDER</u>
14	ANDREW SAUL, Commissioner of Social	
15	Security,	
16	Defendant.	
17		
18	Plaintiff sought judicial review of a final decision of the Commissioner of Social Security	
19	("Commissioner"), denying his application for a period of disability and disability insurance	
20	benefits under Title II AND Title XVI of the Social Security Act ("the Act"). On October 25,	
21	2016 the signed the parties' stipulation to remand the matter for further proceedings, entering	
22	judgment in favor of plaintiff. ECF Nos. 15, 1	6.
23	Now pending before the court is plaintiff's January 31, 2020 motion for an award of	
24	attorney's fees pursuant to 42 U.S.C. § 406(b). ECF No. 20. On February 6, 2020, defendant	
25	filed a response asserting that defendant "is not in a position to either assent or	
26	object" to the fee request. ECF No. 22 at 2. For the reasons set forth below, the motion will be	
27	granted.	
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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, the court may determine and allow as part of its judgment a
12	reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by
13	reason of such judgment, and the Commissioner of Social Security may certify the amount of such fee for payment to such attorney
14	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
27 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. 2

boundary . . . the attorney for the successful claimant must show that the fee sought is reasonable
for the services rendered." <u>Id.</u> at 807. "[A] district court charged with determining a reasonable
fee award under § 406(b)(1)(A) must respect 'the primacy of lawful attorney-client fee
arrangements,' 'looking first to the contingent-fee agreement, then testing it for reasonableness.'"
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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Accordingly, for the reasons stated above, the court concludes that the fees sought by counsel pursuant to § 406(b) are reasonable.

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II. OFFSET FOR EAJA FEES

4 An award of § 406(b) fees must be offset by any prior award of attorney's fees granted 5 under the Equal Access to Justice Act ("EAJA"). 28 U.S.C. § 2412; Gisbrecht, 535 U.S. at 796. 6 Here, plaintiff's attorney was previously awarded EAJA fees. Counsel attempts to subvert the 7 usual process in which §406(b) fees are awarded and EAJA fees are refunded to the plaintiff by 8 reducing her pending fee request to a net award of \$7,250.00, so there is no excess fee recovery. 9 See ECF No. 20 at 5. The Commissioner opposes this route, and asks the court to award total § 10 406(b) fees and require plaintiff's counsel to remit to plaintiff the previously awarded EAJA fees. 11 ECF No. 22 at 4-5. The court agrees with the Commissioner that these fees must be addressed 12 separately. "The EAJA 'savings provision' provides that counsel must refund to the claimant the 13 amount of the smaller fee when a court approves both an EAJA fee and a § 406(b) fee for the 14 'same work,' . . ." Pub. L. No. 99-80, § 3, 99 Stat. 183 (1985)." Franz v. Colvin, 672 F. App'x 15 765, 766 (9th Cir. 2017) (unpublished). Plaintiff's counsel cites the desire for her client to receive 16 the EAJA fees more efficiently, and while the court sees the appeal of this, she cites no case law 17 indicating that this court can consider §406(b) fees and EAJA fees together without resorting to 18 the savings provision. Plaintiff did not reply to plaintiff's response. Thus, the court agrees with 19 the Commissioner that the total requested fees should be awarded, and the EAJA fees should be 20 remitted to plaintiff.

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Accordingly, IT IS HEREBY ORDERED that:

22 1. Plaintiff's Motion for attorney Fees under 42 U.S.C. § 406(b) (ECF No. 20), is
23 GRANTED;

24 2. Counsel for plaintiff is awarded \$9,000.00 in attorney's fees under § 406(b); the
25 Commissioner shall certify that amount to be paid to counsel from the funds previously withheld
26 for the payment of such fees; and

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1	3. Counsel for plaintiff is directed to remit to plaintiff the amount of \$1,750.00 for EAJA
2	fees previously paid to counsel by the Commissioner.
3	DATED: March 13, 2020
4	allison claire
5	UNITED STATES MAGISTRATE JUDGE
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