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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAELONI DALE MARKS,
Plaintiff,
v.
ANDREW SAUL, Commissioner of Social
Security,
Defendant.

No. 2:16-cv-1701-EFB

ORDER

Plaintiff’s counsel has filed a renewed motion for an award of attorney’s fees under 42 U.S.C. § 406(b).¹ ECF No. 26. Plaintiff entered into a retainer agreement with his attorney which provides that he would pay counsel the lesser of 25 percent of any award of past-due benefits resulting from the appeal in this case, or \$6,000. ECF No. 26-1. Counsel now seeks an award of attorney’s fees in the amount of \$6,000. *See* ECF No. 27-2. Counsel spent 47 professional hours on plaintiff’s case. ECF No. 26 at 3.

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¹ Counsel’s original motion failed to demonstrate his entitlement to attorney’s fees and, consequently, it was denied without prejudice to renewal. ECF No. 25.

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 attorney,
4 the court may determine and allow as part of its judgment a
5 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
reason of such judgment.

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

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

18 After this court remanded for further proceedings, plaintiff was found disabled and
19 awarded past-due benefits in the amount of \$47,370. ECF Nos. 27-1 & 27-2. Counsel's request
20 for \$6,000, which is less than the statutory maximum, would constitute an hourly rate of \$127.66.
21 This rate is clearly reasonable given the risk of loss taken in representing plaintiff and the results
22 achieved in this case. *See Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1037 (N.D. Cal. 2003)
23 (discussing cases where courts granted fees based on hourly rates from \$187.55 to \$694.44, and
24 awarding effective hourly rate of \$450.00); *Mondello v. Astrue*, No. Civ S-04-973 DAD, 2009
25 WL 636542, at *2 (E.D. Cal. March 11, 2009) (awarding fees that represented a rate of
26 approximately \$801.00 per hour); *see also De Vivo v. Berryhill*, No. 1:15-cv-1332-EPG, 2018
27 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at effective hourly range of \$1,116.26).


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Accordingly, it is hereby ORDERED that:

1. Plaintiff's counsel's renewed motion for attorney's fees (ECF No. 26) is granted; and
2. Plaintiff's counsel is awarded \$6,000 in fees pursuant to 42 U.S.C. § 406(b).²

DATED: November 19, 2019.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

² Because counsel did not seek fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1), the award is not subject to offset. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney's fees are awarded under both EAJA and § 406(b), the attorney must refund the smaller of the two awards to the plaintiff).