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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICOLAS ANTONIO ALVARADO,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. 2:17-cv-01519 CKD

ORDER

Based on 42 U.S.C. § 406(b), counsel for plaintiff in the above-entitled action seeks an award of attorney fees in the amount of \$11,000.00 for 15.9 hours of professional time devoted to the representation of plaintiff before this court. Counsel concedes that this amount should be offset in the amount of \$2,900.00 for fees previously awarded under EAJA.

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

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a 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.

Rather than being paid by the government, fees under the Social Security Act are awarded out of the claimant's disability benefits. Russell v. Sullivan, 930 F.2d 1443, 1446 (9th Cir. 1991),

1 receded from on other grounds, Sorenson v. Mink, 239 F.3d 1140, 1149 (9th Cir. 2001).

2 However, the 25 percent statutory maximum fee is not an automatic entitlement; the court also
3 must ensure that the requested fee is reasonable. Gisbrecht v. Barnhart, 535 U.S. 789, 808-09
4 (2002) (“We hold that § 406(b) does not displace contingent-fee agreements within the statutory
5 ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded by those
6 agreements.”). “Within the 25 percent boundary ... the attorney for the successful claimant must
7 show that the fee sought is reasonable for the services rendered.” Id. at 807.

8 Counsel seeks fees for 15.9 hours. The Court has considered the character of counsel’s
9 representation and the good results achieved by counsel, which included an award of retroactive
10 benefits totaling over \$44,000.00. Counsel submitted a detailed billing statement that supports
11 her request. (ECF No. 23-4.) There is no indication that a reduction of the award is warranted
12 due to any substandard performance by plaintiff’s counsel, as counsel secured a successful result.
13 There is also no evidence that plaintiff’s counsel engaged in any dilatory conduct resulting in
14 delay.

15 Based on the quality of counsel’s representation and the results achieved in this case, the
16 undersigned finds the number of hours expended to be reasonable. Accordingly, the undersigned
17 will award the amount of attorney fees requested.

18 Accordingly, IT IS HEREBY ORDERED that plaintiff’s counsel is awarded \$11,000.00
19 in attorney fees pursuant to 28 U.S.C. § 406, to be offset in the amount of \$2,900.00 previously
20 awarded under EAJA. Plaintiff’s counsel shall reimburse Nicholas Antonio Alvarado in the
21 amount of \$2,900.00.

22 Dated: June 6, 2019

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24 _____
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE

27 2/alvarado1519.fee-406(a)

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