

1 object” to the fee request. ECF No. 24 at 2. For the reasons set forth below, the motion will be
2 granted.

3 I. REASONABLENESS OF FEE REQUEST

4 At the outset of the representation, plaintiff and his counsel entered into a contingent-fee
5 agreement. ECF No. 23-1. Pursuant to that agreement plaintiff’s counsel now seeks attorney’s
6 fees in the amount of \$8,121.00, which represents less than 25% of the \$37,686.00 in retroactive
7 disability benefits received by plaintiff on remand, for 24 hours of attorney time expended on this
8 matter. ECF Nos. 23 at 3; 23-3.

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

11 Whenever a court renders a judgment favorable to a claimant under
12 this subchapter who was represented before the court by an attorney,
13 the court may determine and allow as part of its judgment a
14 reasonable fee for such representation, not in excess of 25 percent of
15 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.

16 42 U.S.C. § 406(b)(1)(A). “In contrast to fees awarded under fee-shifting provisions such as 42
17 U.S.C. § 1988, the fee is paid by the claimant out of the past-due benefits awarded; the losing
18 party is not responsible for payment.” Crawford v. Astrue, 586 F.3d 1142, 1147 (9th Cir. 2009)
19 (en banc) (citing Gisbrecht v. Barnhart, 535 U.S. 789, 802 (2002)). The goal of fee awards under
20 § 406(b) is “to protect claimants against “inordinately large fees” and also to ensure that
21 attorneys representing successful claimants would not risk “nonpayment of [appropriate] fees.””
22 Parrish v. Comm'r of Soc. Sec. Admin., 698 F.3d 1215, 1217 (9th Cir. 2012) (quoting Gisbrecht,
23 535 U.S. at 805).

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

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

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

15 Here, plaintiff’s counsel is an experienced attorney who reviewed a “fact-intensive”
16 administrative record and secured a successful result for plaintiff. ECF No. 23 at 4. There is no
17 indication that a reduction of fees is warranted due to any substandard performance by counsel.
18 There is also no evidence that plaintiff’s counsel engaged in any dilatory conduct resulting in
19 excessive delay. The court finds that the \$8,121.00 fee, which represents only 21.5% of the
20 \$37,686.00 in past-due benefits paid to plaintiff, is not excessive in relation to the benefits
21 awarded. In making this determination, the court recognizes the contingent fee nature of this case
22 and counsel’s assumption of the risk of going uncompensated in agreeing to represent plaintiff on
23 such terms. See Crawford, 586 F.3d at 1152 (“[t]he attorneys assumed significant risk in
24 accepting these cases, including the risk that no benefits would be awarded or that there would be
25 a long court or administrative delay in resolving the cases”). Finally, counsel has submitted a
26 detailed billing statement in support of the requested fee. ECF No. 23-3.

27 Accordingly, for the reasons stated above, the court concludes that the fees sought by
28 counsel pursuant to § 406(b) are reasonable.

1 II. OFFSET FOR EAJA FEES

2 An award of § 406(b) fees must be offset by any prior award of attorney’s fees granted
3 under the Equal Access to Justice Act (“EAJA”). 28 U.S.C. § 2412; Gisbrecht, 535 U.S. at 796.
4 Here, plaintiff’s attorney was previously awarded \$4,300.00.in EAJA fees. See ECF No. 22.
5 Counsel therefore must remit that amount to plaintiff.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff’s Motion for attorney Fees under 42 U.S.C. § 406(b) (ECF No. 23), is
8 GRANTED;
- 9 2. Counsel for plaintiff is awarded \$8,121.00 in attorney’s fees under § 406(b); the
10 Commissioner shall certify that amount to be paid to counsel from the funds previously withheld
11 for the payment of such fees; and
- 12 3. Counsel for plaintiff is directed to remit to plaintiff the amount of \$4,300.00 for EAJA
13 fees previously paid to counsel by the Commissioner.

14 DATED: October 14, 2020

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE
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