

1 **I. PROCEDURAL HISTORY**

2 Plaintiff retained counsel on May 2, 2015. See ECF No. 33-1, pg. 2. Plaintiff and
3 counsel had a fee agreement providing for the attorney to be paid 25% of past-due benefits
4 received. See id. Plaintiff brought this action for judicial review of an unfavorable administrative
5 decision on August 14, 2019. See ECF No. 1. The district court reversed the agency’s decision
6 and remanded for the calculation of benefits on April 5, 2021. See ECF No. 29. The agency has
7 withheld \$28,651.75, accounting for 25% of Plaintiff’s \$114,607.00 in past-due benefits. ECF
8 No. 33-3, 2. Counsel also received \$5,634.24 in fees under the Equal Access to Justice Act
9 (EAJA) pursuant to stipulation of the parties. See ECF No. 32.

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11 **II. DISCUSSION**

12 Under the Social Security Act, “[w]henever a court renders a judgment favorable
13 to a claimant under this subchapter who was represented before the court by an attorney, the court
14 may determine and allow as part of its judgment a reasonable fee for such representation, not in
15 excess of 25 percent of the total past-due benefits to which the claimant is entitled by reason of
16 such judgment. . . .” 42 U.S.C. § 406(b)(1)(A). No other fee may be payable or certified for such
17 representation except as allowed in this provision. See id.

18 A remand constitutes a “favorable judgment” under § 406(b). See Shalala v.
19 Schaefer, 509 U.S. 292, 300-01 (1993). While the Ninth Circuit has not directly addressed the
20 issue, all other circuits to address the issue have concluded that the district court is authorized to
21 award fees under § 406(b) when it remands for further proceedings and, following remand, the
22 claimant is awarded past-due benefits. See Garcia v. Astrue, 500 F. Supp. 2d 1239, 1243 (C.D.
23 Cal. 2007). Limiting § 406(b) awards to cases in which the district court itself awards past-due
24 benefits would discourage counsel from requesting a remand where it is appropriate. See Bergen
25 v. Comm’r of Soc. Sec., 454 F.3d 1273, 1277 (11th Cir. 2006).

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1 The 25 percent statutory maximum fee is not an automatic entitlement, and the
2 court must ensure that the fee actually requested is reasonable. See Gisbrecht v. Barnhart, 535
3 U.S. 789, 808-09 (2002). “Within the 25 percent boundary . . . the attorney for the successful
4 claimant must show that the fee sought is reasonable for the services rendered.” Id. at 807. “In
5 determining the reasonableness of fees sought, the district court must respect ‘the primacy of
6 lawful attorney-client fee arrangements,’ ‘looking first to the contingent-fee agreement, then
7 testing it for reasonableness.’” Crawford v. Astrue, 586 F.3d 1142, 1149 (9th Cir. 2009) (quoting
8 Gisbrecht, 535 U.S. at 793 and 808).

9 The Supreme Court has identified five factors that may be considered in
10 determining whether a fee award under a contingent-fee agreement is unreasonable and therefore
11 subject to reduction by the court. See Crawford, 586 F.3d at 1151-52 (citing Gisbrecht, 535 U.S.
12 at 808). Those factors are: (1) the character of the representation; (2) the results achieved by the
13 representative; (3) whether the attorney engaged in dilatory conduct in order to increase the
14 accrued amount of past-due benefits; (4) whether the benefits are large in comparison to the
15 amount of time counsel spent on the case; and (5) the attorney’s record of hours worked and
16 counsel’s regular hourly billing charge for non-contingent cases. See id.

17 Finally, an award of fees under § 406(b) is offset by any prior award of attorney’s
18 fees granted under the Equal Access to Justice Act. See Gisbrecht, 535 U.S. at 796.

19 The Commissioner has filed a response to Plaintiff’s counsel’s motion. This
20 filing, however, amounts to nothing more than a recitation of applicable caselaw and contains
21 nothing in the way of analysis specific to this case. In particular, the Commissioner’s response
22 does not set forth any reasons why the Court should deny, in whole or in part, counsel’s motion.
23 The Court, therefore, considers Plaintiff’s counsel’s motion as unopposed, despite the fact that
24 counsel filed a reply. In this case, having considered the factors above, the Court finds Plaintiff’s
25 counsel’s request reasonable given the fee agreement with Plaintiff, the results achieved, and the
26 lack of any evidence of dilatory conduct designed to increase past-due benefits. Notably, counsel
27 seeks less than 25% of the award of past-due benefits. The Court also notes that the
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1 Commissioner stipulated to an award \$5,634.24 under the EAJA, which Plaintiff's counsel
2 appropriately asks be ordered to offset any award requested in the current motion.

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III. CONCLUSION

Based on the foregoing, the undersigned recommends that Plaintiff's motion be granted, counsel be paid \$26,500.00, and counsel be directed to reimburse \$5,634.24 to Plaintiff.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: July 29, 2022



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE