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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MONICA L. CHUBA,

 Plaintiff,

 v.

COMMISSIONER OF SOCIAL
SECURITY,

 Defendant.

No. 2:20-CV-0315-DMC

ORDER

Plaintiff, who is proceeding with retained counsel, brought this action for judicial review of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). Final judgment was entered on November 2, 2021. See ECF No. 23-1, pg. 1. Pending before the Court is Plaintiff’s counsel’s Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) in the amount of \$6,701.95. See ECF No. 23. Plaintiff was provided notice of counsel’s motion and has not filed any response thereto. See id. at 3.

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1 **I. PROCEDURAL HISTORY**

2 Counsel began representing Plaintiff on February 3, 2020. ECF No. 23-1, pg.1.
3 Plaintiff and counsel had a contingent fee agreement requiring Plaintiff to pay counsel 25% of
4 any past-due benefits awarded by the agency, less any payment to counsel under the Equal
5 Access to Justice Act (EAJA). See ECF No. 23-3, pg. 1. Plaintiff with counsel initiated an action
6 for judicial review of an unfavorable administrative decision on February 11, 2020. See ECF No.
7 1. The matter was remanded to the agency via stipulation of the parties on November 2, 2020.
8 See ECF No. 22. Additionally, pursuant to stipulation of the parties, Plaintiff was awarded
9 \$,2701.14 in attorney’s fees pursuant to the EAJA, minus any offsets determined by the
10 government. See ECF No. 21. Plaintiff’s counsel states that the agency presumably withheld
11 \$10,569.95 for attorney’s fees, reflecting 25% of a total award of past-due benefits in the amount
12 of \$42,279.80. See ECF No. 23-2, pg. 2. Plaintiff’s counsel requests a reduced fee of \$6,701.95.
13 Id.

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15 **II. DISCUSSION**

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

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

1 v. Comm’r of Soc. Sec., 454 F.3d 1273, 1277 (11th Cir. 2006).

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

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

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

20 The Commissioner has filed a response to Plaintiff’s counsel’s motion. This
21 filing, however, amounts to nothing more than a recitation of applicable caselaw and contains
22 nothing in the way of analysis specific to this case. In particular, the Commissioner’s response
23 does not set forth any reasons why the Court should deny, in whole or in part, counsel’s motion.
24 The Court, therefore, considers Plaintiff’s counsel’s motion as unopposed. In this case, having
25 considered the factors above, the Court finds Plaintiff’s counsel’s request of \$6,701.95 reasonable
26 given the fee agreement with Plaintiff, the results achieved, and the lack of any evidence of
27 dilatory conduct designed to increase past-due benefits. In making this finding, the Court notes
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1 that the Commissioner stipulated to an award of \$2,701.14 under the EAJA, which Plaintiff's
2 counsel appropriately asks be ordered to offset any award requested in the current motion.

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III. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's counsel's motion, ECF No. 23, is granted and counsel is awarded fees pursuant to 42 U.S.C. § 406(b) in the amount of \$6,701.95, paid to counsel by the Commissioner of Social Security out of past-due benefits awarded to Plaintiff and withheld by the agency, to the extent such benefits have not already been paid to Plaintiff; and
2. Counsel shall reimburse to Plaintiff \$2,701.14 previously paid to counsel under the EAJA.

Dated: July 29, 2022



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE