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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 ALANA GAMBRELL,

No. C-07-0232 EDL

9 Plaintiff,

**ORDER GRANTING MOTION FOR  
ATTORNEY'S FEES**

10 v.

11 JO ANNE BARNHART,

12 Defendant.  
13 \_\_\_\_\_/

14 Plaintiff Alana Gambrell's attorney moves the Court to award \$10,000 in attorney's fees  
15 under 42 U.S.C. § 406(b) in this social security benefits case. 42 U.S.C. § 406(b)(1)(A) provides  
16 that whenever a Court renders judgment favorable to a claimant under 42 U.S.C. §§ 401 et seq., the  
17 Court may "allow as part of its judgment a reasonable fee for such representation, not in excess of  
18 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such  
19 judgment."

20 In Gisbrecht v. Barnhart, 535 U.S. 789 (2002), the Supreme Court set forth the process for  
21 determining reasonable fees under that statute. The Court held that agreements are not enforceable  
22 to the extent that they provide for fees exceeding 25 percent of past due benefits. Id. at 807. Within  
23 that boundary, the attorney for the successful claimant must show that the fee sought is reasonable  
24 for the services rendered. Id. The attorney bears the burden of persuasion that this statutory  
25 requirement has been satisfied. Id. at n. 17. The attorney's recovery may be reduced based on the  
26 character of the representation and the results the representative achieved. Id. at 808. For example,  
27 if the attorney is responsible for delay, or if the benefits are large in comparison to the time counsel  
28 spent on the case, a reduction is proper. Id. For this reason, courts may examine a record of the  
hours spent representing the claimant and the lawyer's normal billing hours for noncontingent fee

1 cases to assess the reasonableness of the fees. Id.

2 In the present case, Plaintiff filed an application for Social Security disability benefits on  
3 August 18, 2004. The claim was denied at all administrative levels, and Plaintiff filed an action in  
4 this Court. Pursuant to stipulation by the parties, the Court reversed and remanded the case to the  
5 administrative law judge, directing the ALJ to give further consideration to certain medical and other  
6 evidence. See June 8, 2007 Stipulation and Order of Remand. The ALJ subsequently held a  
7 hearing, and issued a favorable decision, finding that Plaintiff had been disabled since August 28,  
8 2001. The Social Security Administration calculated her past-due benefits to be \$40,786 and  
9 withheld \$10,196.50 for payment of any approved attorney’s fees. Plaintiff and her attorney had  
10 entered into an agreement on January 9, 2007 specifying that if her claim were decided favorably,  
11 she would pay a fee equal to 25% of past due benefits resulting from her claim. See Pl. Ex. B.

12 The fees sought here are reasonable. First, Plaintiff contracted with Plaintiff’s attorney to  
13 pay 25% of past-due benefits and is still in support of paying this fee. There is no reason to question  
14 the sincerity of Plaintiff’s declaration that she concurs with the fee request. Second, Plaintiff’s  
15 attorney was not responsible for any delay in the resolution of this claim. He promptly filed his  
16 motion for summary judgment on May 18, 2007, after Defendant filed its answer to the complaint on  
17 April 6, 2007 and filed the administrative record on April 13, 2007. Thereafter, counsel reached an  
18 agreement for reversal and remand, which was ordered on June 8, 2007. Third, Plaintiff’s counsel  
19 worked on this case for nineteen hours, and all of those hours were reasonably spent. While the  
20 approval of the requested fee would result in an hourly rate of \$512.82, which is certainly a high  
21 hourly rate, “any reliance on a non-contingent rate without taking into account the contingent nature  
22 of this . . . fee could undercompensate [Plaintiff’s counsel].” Hearn v. Barnhart, 262 F. Supp. 2d  
23 1033, 1037 (N.D. Cal. 2003) (noting that in 2003, a social security attorney in the San Francisco bay  
24 area earned approximately \$ 300 per hour on a non-contingent basis). Plaintiff’s attorney agreed to  
25 a “contingency fee arrangement in which he assumed the risk of receiving nothing for his time and  
26 effort if plaintiff was unsuccessful.” The risk of no recovery was certainly present here, where  
27 Plaintiff was denied at all administrative levels before she filed this suit. Fourth, the Social Security  
28 Commissioner does not object to the award.

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Plaintiff's attorney's 42 U.S.C. § 406(b) request for \$10,000 in fees is therefore approved, and his motion is granted. The award of § 406(b) fees is offset by an award of attorney's fees granted under the Equal Access to Justice Act (EAJA). 28 U.S.C. § 2412; Gisbrecht, 535 U.S. at 796. Accordingly, Plaintiff's counsel is ordered to return the EAJA offset of \$3,455.00 to Plaintiff forthwith.

**IT IS SO ORDERED.**

Dated: September 15, 2008

*Elizabeth D. Laporte*

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ELIZABETH D. LAPORTE  
United States Magistrate Judge