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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL J. VICARI,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Defendant.

No. C 09-05238 SI

**ORDER GRANTING APPLICATION
FOR AWARD OF ATTORNEY'S FEES**

Currently before the Court is plaintiff's application for an award of attorneys fees, following this Court's remand, a favorable determination by the Social Security Administration on remand, and an award of past due benefits. Docket No. 49. Plaintiff's counsel is seeking an award from plaintiff of \$13,123.50 under 42 U.S.C. § 406(b), which would be reduced by \$8,029.82 in fees this Court has already awarded counsel under the Equal Access to Justice Act, for a net fee award of \$5,093.68. The government does not object to the fee request. Docket No. 51.

Section 406(b) of the Act provides that when a plaintiff prevails on a judgment, the Court may determine a reasonable fee for the plaintiff's counsel, which can be no more than 25 percent of the plaintiff's entitlement to the total past-due benefits. 42 U.S.C. § 406(b)(1)(A). The Court must review counsel's request for fees "as an independent check" to assure that the contingency fee agreement will "yield reasonable results in particular cases." *See Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Section 406(b) "does not displace contingent-fee agreements within the statutory ceiling; instead

1 § 406(b) instructs courts to review for reasonableness fees yielded by those agreements.” *Id.* at 808-09.
2 The Court should consider the character of the representation and the results achieved in making its
3 determination. *Id.* An award of § 406 fees is offset by any award of attorney fees granted under the
4 EAJA. 28 U.S.C. § 2412; *Gisbrecht*, 535 U.S. at 796.

5 The Court finds that the amount of fees sought is reasonable. As an initial matter, the Court
6 finds that the fee agreement is within the statutory ceiling: the fee agreement between plaintiff and his
7 counsel
8 provides that if plaintiff received a favorable decision, plaintiff agreed to pay counsel a fee the lesser
9 of 25 percent of the past-due benefits awarded or \$6,000. The Court further finds that plaintiff’s counsel
10 assumed a substantial risk of not recovering attorney’s fees because the claims had been denied after
11 exhausting administrative remedies. The work by plaintiff’s counsel was not insubstantial; plaintiff’s
12 counsel was successful in having this matter remanded back to the Social Security Agency and plaintiff
13 prevailed on remand and obtained past-due benefits as well as ongoing benefits. After review of the
14 record, the Court finds that the requested attorney’s fees are reasonable and do not constitute a windfall.
15 *See Gisbrecht*, 535 U.S. 789; *see Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1036- 37 (N.D. Cal. 2003).

16 Having considered plaintiff’s counsel’s application, the Court GRANTS the application and
17 awards plaintiff’s counsel a net fee award of \$5,093.68 under § 406(b).

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19 **IT IS SO ORDERED.**

20 Dated: January 23, 1013



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22 SUSAN ILLSTON
23 United States District Judge
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