

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

KEVIN DALE LUHR,
Plaintiff,

v.

NANCY A. BERRYHILL,
Defendant.

Case No. 17-cv-00686-EDL (RMI)

**ORDER RE: MOTION FOR
ATTORNEYS' FEES UNDER**

Re: Dkt. No. 30

United States District Court
Northern District of California

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Having considered Plaintiff's motion for fees (dkt. 30), Defendant's response (dkt. 31), and the Parties' competing proposed orders (dkt. 34-1 and 34-2), the court finds that the 25% contingency fee of \$27,510.43 is reasonable and allowable under 42 U.S.C. § 406(b)(1)(A). The court previously awarded \$4,788.53 in fees under the Equal Access to Justice Act ("EAJA") (*see* dkt. 29), an amount that has already been received by Plaintiff's counsel. Accordingly, Plaintiff's motion for fees under § 406(b)(1) in the amount of \$27,510.43 is **GRANTED**; the Commissioner is directed to certify payment in that amount to Plaintiff's counsel and Plaintiff's counsel is **ORDERED** to refund \$4,788.53 to Plaintiff upon receipt of that award. As to the Parties' disagreement (*see* dkt. 34) regarding counsel's request for a "net award," the court disagrees with that interpretation and instead adopts Defendant's position. *See e.g. Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refund to the claimant the amount of the smaller fee.") (emphasis added) (citations omitted).

IT IS SO ORDERED.

Dated: April 26, 2021



ROBERT M. ILLMAN
United States Magistrate Judge