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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD O. SMITH II,

No. C 10-4814 PJH

Plaintiff,

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

v.

CAROLYN W. COLVIN, Acting
Commissioner, Social Security
Administration,

Defendant.

Harvey Sackett, counsel for plaintiff Clifford O. Smith, applies for an award of attorney's fees and costs pursuant to the Social Security Act, 42 U.S.C. § 406(b)(1)(A). Defendant Carolyn W. Colvin does not oppose the fee application. Having reviewed the papers and considered the relevant authority, the court GRANTS Sackett's application for a net award of fees in the amount of \$2,886.19, as set forth below.

Plaintiff entered a contingent fee agreement with Sackett for 25% of past due benefits if he received a favorable decision at any time following an unfavorable or partially unfavorable administrative law judge decision either at any administrative level or at the judicial level. Mot., Ex. C. (doc. no. 35-5). Plaintiff commenced the instant action to appeal an unfavorable decision by an administrative law judge, denying his applications for Social Security benefits. By order entered March 26, 2012, the court remanded the matter for further administrative proceedings. By order entered July 31, 2012, the court granted in part plaintiff's motion for attorney's fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), ordering an award in the amount of \$7,084.31. Upon remand, the administrative law judge issued a favorable decision on March 5, 2013. Mot.,

1 Ex. A (doc. no. 35-3). Plaintiff was awarded past due benefits in the amount of \$70,882.00.
2 Mot., Ex. B (doc. no. 35-4).

3 Sackett seeks an award of \$9,970.50 pursuant to the contingent fee agreement,
4 which falls within the statutory maximum of 25% of in past-due benefits. In light of the
5 record, the court finds that \$9,970.50 is a reasonable fee for the services rendered,
6 pursuant to 42 U.S.C. § 406(b). See *Gisbrecht v. Barnhart*, 535 U.S. 789, 807-08 (2002).
7 Sackett further requests that plaintiff be credited in the amount of \$7,084.31 toward the fee
8 award as a result of the EAJA fees awarded by the court. *Id.* at 796 (fees may be awarded
9 both as payable by the government under EAJA and as fees payable under § 406(b) out of
10 the claimant's past-due Social Security benefits, "but the claimant's attorney must 'refund to
11 the claimant the amount of the smaller fee'" (quoting Act of Aug. 5, 1985, Pub. L. 99-80, §
12 3, 99 Stat. 186). Thus, the resulting net fee due to Sackett is the amount of \$2,886.19.

13 For the reasons set forth above, the fee application is GRANTED. The court awards
14 Sackett fees pursuant to § 406(b)(1)(A) in the amount of \$9,970.50, which is offset by the
15 EAJA fee award of \$7,084.31, for a net fee award of \$2,886.19, which is payable to Sackett
16 out of the amount of the past-due benefits.

17 **IT IS SO ORDERED.**

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19 Dated: February 19, 2014

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22 Phyllis J. Hamilton
23 UNITED STATES DISTRICT JUDGE
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