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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TIOFILO TORRES,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No.: 13-CV-0762 W (JMA)

**ORDER GRANTING MOTION FOR
ATTORNEYS' FEES PURSUANT TO
42 U.S.C. § 406(b) [DOC. 22]**

Pending before the Court is Plaintiff's counsel's motion for attorneys' fees pursuant to 42 U.S.C. § 406(b). [Doc. 22.] Defendant does not oppose. [Doc. 23.] Plaintiff has not filed a response. The Court decides the matter without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons that follow, the Court **GRANTS** Plaintiff's counsel's motion and awards fees in the amount of \$7,763.45.

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1 **I. BACKGROUND**

2 Attorney Steven Rosales represented Plaintiff Tiofilo Torres in his appeal of an
3 adverse decision of the Social Security Commissioner denying his claim for disability
4 benefits. The Court granted parties’ joint motion remand this case for further
5 administrative proceedings. (*See December 9, 2013 Order* [Doc. 17].) On remand, the
6 Commissioner awarded retroactive benefits totaling \$31,053.80. (*See Notice of Award*
7 [Doc. 22-4].) Mr. Rosales now moves for an award of \$7,763.45 in fees pursuant to 42
8 U.S.C. § 406(b). (*Rosales Mot.* [Doc. 22].) Defendant does not oppose. (*Def.’s Non-*
9 *opp’n* [Doc. 23].) Plaintiff has not filed a response.

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11 **II. LEGAL STANDARD**

12 **Whenever a court renders a judgment favorable to a claimant under this**
13 **subchapter who was represented before the court by an attorney, the court may**
14 **determine and allow as part of its judgment a reasonable fee for such**
15 **representation, not in excess of 25 percent of the total of the past-due benefits to**
16 **which the claimant is entitled by reason of such judgment, and the Commissioner of**
17 **Social Security may, notwithstanding the provisions of section 405(i) of this title, but**
subject to subsection (d) of this section, certify the amount of such fee for payment
to such attorney out of, and not in addition to, the amount of such past-due benefits.
In case of any such judgment, no other fee may be payable or certified for payment
for such representation except as provided in this paragraph.

18 42 U.S.C. § 406(b)(1)(A). “Congress . . . designed § 406(b) to control, not to displace,
19 fee agreements between Social Security benefits claimants and their counsel.” Gisbrecht
20 v. Barnhart, 535 U.S. 789, 793 (2002). “In many cases, . . . the Equal Access to Justice
21 Act (EAJA), enacted in 1980, effectively increases the portion of past-due benefits the
22 successful Social Security claimant may pocket.” Id. at 796 (citing 28 U.S.C. § 2412).
23 “Congress harmonized fees payable by the Government under EAJA with fees payable
24 under § 406(b) out of the claimant’s past-due Social Security benefits in this manner: Fee
25 awards may be made under both prescriptions, but the claimant’s attorney must ‘refun[d]
26 to the claimant the amount of the smaller fee.’ ” Id. (quoting Act of Aug. 5, 1985, Pub.
27 L. 99–80, § 3, 99 Stat. 186).

1 “Within the 25 percent boundary, . . . the attorney for the successful claimant must
2 show that the fee sought is reasonable for the services rendered.” Gisbrecht, 535 U.S. at
3 807. In making this determination, the Court first looks to the agreement between the
4 parties, then may reduce the award depending on “the character of the representation and
5 the results the representative achieved.” Id. at 807–08.

6 7 **III. DISCUSSION**

8 When Plaintiff employed Mr. Rosales, he agreed to a contingency fee arrangement
9 of 25% of past-due benefits awarded. (*See Torres Agreement* [Doc. 22-2].) Mr. Rosales
10 now seeks fees of \$7,763.45. (*Rosales Mot.* [Doc. 22-1] 2.) This amounts to 25% of the
11 \$31,053.80 net payable past due benefits awarded on remand. (*See Notice of Award*
12 [Doc. 22-4].)

13 Mr. Rosales meets his burden of demonstrating that the fees requested are
14 reasonable. See Crawford v. Astrue, 586 F.3d 1142, 1151 (9th Cir. 2009) (applying
15 Gisbrecht, 535 U.S. at 808). First, there is nothing to suggest that the quality of Mr.
16 Rosales’ work was substandard. He achieved favorable results for his client and
17 recovered substantial past-due benefits for Mr. Torres. Second, no reduction for
18 unreasonable delay is warranted. See id. at 1151–52. Third, the amount of the fees is not
19 excessive. Mr. Rosales worked 22.7 hours on this case, which yields an hourly rate of
20 approximately \$342. This is not unreasonable, and it compensates Rosales for the risk he
21 took in working the case on a contingent fee. (*See Rosales Invoice* [Doc. 22-5].) See id.
22 at 1145–54 (reversing three award reductions that had begun with a lodestar calculation
23 rather than using the agreed-upon percentage as a starting point) (“To aid the district
24 court’s evaluation of his request, Shapiro noted that the fee he requested was equivalent
25 to 3.55 times the lodestar calculation and reasonably accounted for the risk he assumed in
26 representing his client on a contingent-fee basis.”) Had there been no recovery, Mr.
27 Rosales would have received no fee. (*See Torres Agreement* [Doc. 22-2].)
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1 In light of the character of Mr. Rosales' representation and the favorable results
2 achieved, the figure is a reasonable one, and no downward adjustment is appropriate. See
3 Gisbrecht, 535 U.S. at 808.

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5 **IV. CONCLUSION & ORDER**

6 Plaintiff's counsel's motion is **GRANTED**.

7 Mr. Rosales is awarded attorneys' fees in the amount of \$7,763.45. He must credit
8 the amount that he has already received in EAJA fees to Plaintiff. See Gisbrecht, 535
9 U.S. at 796.

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11 **IT IS SO ORDERED.**

12 Dated: March 9, 2018

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14 
15 Hon. Thomas J. Whelan
United States District Judge