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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 EDNA M. JOHNSON,

12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting Commissioner
15 of Social Security,

16 Defendant.
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Case No.: 3:13-cv-1764-GPC-NLS

**ORDER GRANTING COUNSEL FOR
PLAINTIFF'S MOTION FOR ATTORNEY
FEES PURSUANT TO 42 U.S.C. § 406(b)**

[Dkt. No. 29]

20 On October 17, 2016, counsel for Plaintiff Edna M. Johnson ("Plaintiff's counsel")
21 filed a motion for attorney's fees pursuant to 42 U.S.C. § 406(b) in the amount of
22 \$14,052.45. Dkt. No. 29-1 at 1.¹ Plaintiff did not file an opposition. Defendant filed a
23 response in its role as "trustee" for Plaintiff, without indicating a position on the
24 reasonableness of the request. Dkt. No. 31. Based on the reasoning below, the Court
25 **GRANTS** Plaintiff's counsel's motion for attorney fees pursuant to 42 U.S.C. § 406(b).
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28 ¹ Pagination follows that provided by CM/ECF.

1 **BACKGROUND**

2 On July 29, 2013, Plaintiff filed a complaint seeking review of the decision of the
3 Commissioner of Social Security, pursuant to Section 205(g) of the Social Security Act,
4 as amended, 42 U.S.C. § 405(g). Dkt. No.1 at 1. On December 2, 2013, Plaintiff filed a
5 motion for summary judgment arguing that the administrative law judge (“ALJ”) had
6 erred in denying Plaintiff disability benefits. Dkt. No. 13-1. Defendant filed a cross
7 motion for summary judgment on December 23, 2013, defending the correctness of the
8 ALJ’s decision. Dkt. No. 14-1. On May 16, 2014, the Magistrate Judge issued a Report
9 and Recommendation and concluded that Plaintiff’s motion for summary judgment
10 should be granted and that Defendant’s cross motion for summary judgment should be
11 denied. Dkt. No. 17. The Magistrate Judge also recommended that the final decision of
12 the Commissioner be reversed and remanded to the Social Security Administration for
13 further action. *Id.* at 19. On June 18, 2014 the Court adopted the Magistrate Judge’s
14 Report and Recommendation in full. Dkt. No. 18 at 1. Accordingly, the Court granted
15 Plaintiff’s motion for summary judgment and remanded the case to the Social Security
16 Administration for further proceedings consistent with the Magistrate Judge’s findings
17 and conclusions. *Id.* at 2-3.

18 On remand, the reviewing ALJ concluded that the claimant has been disabled
19 under section 1614(a)(3)(A) of the Social Security Act beginning on June 3, 2010. Dkt.
20 No. 29-5 at 15. Soon thereafter, on July 23, 2016, Plaintiff received notice that she had
21 been awarded \$56,209.80 in past-due benefits. *See* Dkt. No. 29-6 at 4. Plaintiff’s
22 counsel’s instant motion for attorney fees followed.

23 **DISCUSSION**

24 Sections 406(a) and (b) of Title II of the Social Security Act govern attorney fees
25 for representation of disability claimants in front of the Commissioner and in federal
26 court. 42 U.S.C. § 406(a) & (b). Section 406(a) governs fees for representation in
27 administrative proceedings before the Commissioner. 42 U.S.C. § 406(a). Section
28 406(b) governs fees for representation in the federal courts, and provides in relevant part:

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2 Whenever a court renders a judgment favorable to a claimant . . .who was
3 represented before the court by an attorney, the court may determine and allow
4 as part of its judgment a reasonable fee for such representation, not in excess
5 of 25 percent of the total past-due benefits to which the claimant is entitled by
6 reason of such judgment. . . .

7 42 U.S.C. § 406(b)(1)(A). The fee is payable “out of, and not in addition to, the amount
8 of [the] past-due benefits.” *Id.* Plaintiff’s counsel indicated that the firm does not seek
9 fees pursuant to § 406(a), but only pursuant to § 406(b). *See* Dkt. No. 29-1 at 3.

10 The United States Supreme Court has held that § 406(b) does not override or
11 displace attorney-client contingency fee agreements. *Gisbrecht v. Barnhart*, 535 U.S.
12 789, 808-09 (2002) (“[Section] 406(b) does not displace contingent-fee agreements
13 within the statutory ceiling; instead, § 406(b) instructs courts to review for
14 reasonableness fees yielded by those agreements.”). Rather, § 406(b) instructs courts to
15 review for reasonableness fees yielded by those agreements. *Id.* at 809; *see also*
16 *Crawford v. Astrue*, 586 F.3d 1142, 1148 (9th Cir. 2009) (en banc) (quoting *Gisbrecht*,
17 535 U.S. at 793, 808) (“a district court charged with determining a reasonable fee award
18 under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee
19 arrangements,’ . . . ‘looking first to the contingent-fee agreement, then testing it for
20 reasonableness.’”) Therefore, courts must first look to the contingent-fee agreement, then
21 determine whether the fees are reasonable. *Gisbrecht*, 535 U.S. at 808.

22 In determining whether fees are reasonable, attorney fees may be reduced based on
23 “the character of the representation and the results the representative achieved.” *Id.* Fees
24 may be subject to reduction if the attorney is responsible for delays or if the benefits are
25 large in comparison to the amount of time counsel spent on the case. *Id.* Courts should
26 also look at the attorney’s record of hours worked. *Id.* In other words, section 406(b)
27 requires the Court to conduct an independent check to assess the reasonableness of the
28 fee request in light of the particular circumstances of the case. *Id.*

1 On July 20, 2013, Plaintiff and her counsel entered into a U.S. District Court
2 Retainer Agreement and Assignment (“the Agreement”). Dkt. No. 29-3. Pursuant to that
3 Agreement, Plaintiff agreed to pay counsel a contingency-fee of up to 25% of past-due
4 benefits 1) if the U.S. District Court remanded her case to the Social Security
5 Administration and 2) if Plaintiff ultimately ended up receiving past-due benefits
6 pursuant to the subsequent administrative proceedings. *Id.* After Plaintiff’s counsel
7 succeeded in having Plaintiff’s case remanded, Plaintiff received a favorable decision
8 from the reviewing ALJ awarding her \$56,209.80 in past-due benefits. *See* Dkt. No. 29-6
9 at 4. The amount that Plaintiff’s counsel seeks in the instant motion, \$14,052.45, is
10 exactly 25% of that amount. Dkt. No. 29-1 at 3. The fees that Plaintiff’s counsel
11 requests conform to the terms of the Agreement and account for the 33 hours of attorney
12 time spent litigating Plaintiff’s appeal. *See* Dkt. No. 29-4 at 1. Plaintiff’s counsel has
13 also submitted a billing statement detailing the precise worked performed in order to
14 litigate Plaintiff’s case in federal court. *Id.*

15 Based on the amount sought by Plaintiff’s counsel, the effective hourly rate is
16 approximately \$425.83. This rate is significantly less than rates that have been found
17 reasonable in similar situations. *See Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1037
18 (N.D. Cal. 2003); *see also Coffman v. Comm’r of Social Security*, No. CV-13-1242-PK,
19 2015 WL 5008847 (D. Oregon Aug. 20, 2015) (\$643.40 per hour for 31.45 hours of work
20 was reasonable); *Knudsen v. Colvin*, No. CV 11-5093-JEM, 2015 WL 4205319 (C.D.
21 Cal. July 10, 2015) (hourly rate of \$973.78 for 26.7 hours of work was reasonable);
22 *Crawford*, 586 F.3d at 1145-46, 1153 (approving contingent fee awards that resulted in
23 effective hourly rates of \$875, \$519 and \$813.5 in 2009).

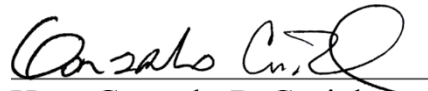
24 Also, the Court finds that none of the factors articulated in *Gisbrecht* counsel in
25 favor of reducing the award. Plaintiff’s counsel succeeded in remanding Plaintiff’s case
26 to the Social Security Administration, which ultimately led to Plaintiff receiving past-due
27 benefits that would have, otherwise, not been available to her. Plaintiff now stands to
28 collect over \$55,000 in past-due benefits and is entitled to upwards of \$866.00 per month

1 in benefits moving forward. *See* Dkt. No. 29-6 at 1. There is no evidence that Plaintiff's
2 counsel engaged in any dilatory conduct, and the Court notes that the controlling ALJ
3 decision came down just recently, in July 2016. *Id.* In addition, a review of counsel's
4 billing records reveals that the work performed by Plaintiff's Counsel was not excessive.
5 As such, the Court finds Plaintiff's counsel's request for attorney fees under § 406(b) to
6 be reasonable.

7 **CONCLUSION**

8 Because the Court's independent review finds that the attorney fees requested are
9 reasonable, and because Plaintiff has not filed an opposition to this request, the Court
10 **GRANTS** Plaintiff's counsel's motion for attorney's fees made pursuant to 42 U.S.C.
11 § 406(b) in the amount of \$14,052.45 payable to the Law Offices of Charles E. Binder
12 and Harry J. Binder, LLP. The Court further **ORDERS** that Plaintiff's counsel
13 immediately refund Plaintiff \$6,171.66 in attorney's fees already paid to Plaintiff's
14 counsel under the Equal Access to Justice Act. The Clerk of Court is directed to serve
15 this order on Plaintiff at: 501 Greenfield Drive, Apt. 36, El Cajon, CA 92021. The
16 hearing date set for January 6, 2016 is **VACATED**.

17 Dated: December 27, 2016

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19 Hon. Gonzalo P. Curiel
20 United States District Judge
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