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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 OBIORA JIDEOFOR,

12 Plaintiffs,

13 v.

14 NANCY A. BERRYHILL, Acting  
15 Commissioner of Social Security,

16 Defendant.

Case No.: 13-CV-2163 W (JLB)

**ORDER GRANTING MOTION FOR  
ATTORNEY'S FEES UNDER 42  
U.S.C. § 406(b) [DOC. 24]**

17 Pending before the Court is Plaintiff's counsel Roger D. Drake's ("Counsel")  
18 motion for attorney's fees under 42 U.S.C. §406(b). Counsel requests an order granting  
19 him \$3,548.25 in fees and costs.

20 Section 406(b) provides, in relevant part:

21 Whenever a court renders a judgment favorable to a claimant under this  
22 subchapter who was represented before the court by an attorney, the court may  
23 determine and allow as part of its judgment a reasonable fee for such  
24 representation, not in excess of 25 percent of the total of the past-due benefits  
to which the claimant is entitled by reason of such judgment . . . .

25 Id. In evaluating a request for attorney's fees, courts look at the character of the  
26 representation and the results achieved. Gisbrecht v. Barnhart, 535 U.S. 789, 790 (2002)

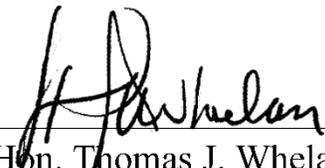
1 (reasoning that courts may consider the “character of the representation and the results  
2 the representative achieved”); see also Rodriguez v. Bowen, 865 F.2d 739, 746–47 (6th  
3 Cir. 1989) (reasoning that if an attorney is responsible for delay, then the attorney cannot  
4 profit from the setback, and that the attorney’s compensation should be proportionate to  
5 the time expended on the case).

6 Here, Counsel was awarded EAJA fees in the amount of \$4,000, however, those  
7 fees were garnished under Astrue v. Ratliff, 130 S.Ct. 2521, 2252–53 (2010) and the  
8 United States Department of the Treasury’s Offset Program. (*See EAJA Award* [Doc.  
9 23]; *Drake Dec.* [Doc. 24-2], ¶ 3, Ex. B [Doc. 24-4].) On remand, the new attorney who  
10 represented Plaintiff through administrative proceedings received a favorable decision  
11 and the administration withheld 25% of back benefits in the amount of \$9,548.25 to pay  
12 attorney’s fees. (*P&A* [Doc. 24-1] 2:1–7.) Plaintiff’s administrative counsel was  
13 awarded \$6,000 in attorney’s fees, leaving \$3,548.25 remaining to pay attorney’s fees  
14 incurred in this case. (*Id.* 2:7–9.) Counsel’s requested fee of \$3,548.25 is 9.3 percent of  
15 back benefits, well under the 25 percent statutory cap.

16 Additionally, the Court has reviewed the amount of time spent on this matter, as  
17 well as Counsel’s hourly rate. (*See Drake Dec.*, ¶ 10, Ex. C [Doc. 24-5].) The Court  
18 finds the effective hourly rate is consistent with the market and the work on this matter  
19 reasonable. Accordingly, the Court **GRANTS** Counsel’s motion for attorney’s fees  
20 [Doc. 24] and **AWARDS** Counsel attorney’s fees of \$3,548.25.

21 **IT IS SO ORDERED.**

22 Dated: June 9, 2017

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25 Hon. Thomas J. Whelan  
26 United States District Judge  
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