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

JAMES TRUETT,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No.: 13-CV-2742 W (BLM)

**ORDER GRANTING MOTION FOR  
ATTORNEYS' FEES PURSUANT TO  
42 U.S.C. § 406(b) [DOC. 20]**

Pending before the Court is Plaintiff's counsel's motion for attorneys' fees pursuant to 42 U.S.C. § 406(b). [Doc. 20.] Defendant does not oppose. [Doc. 21.] 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 \$22,000.

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1 **I. BACKGROUND**

2 Attorney Brian Shapiro represented Plaintiff James Truett in his appeal of an  
3 adverse decision of the Social Security Commissioner denying his claim for disability  
4 benefits. Upon cross-motions for summary judgment, this Court accepted the Report and  
5 Recommendation of Magistrate Judge Major and remanded the case for further  
6 proceedings. (*See July 11, 2017 Order* [Doc. 20].) On remand, the Commissioner  
7 awarded retroactive benefits totaling \$94,957.40—a net of \$88,354.88 once deductions  
8 are taken into account. (*See Revised Notice of Award* [Doc. 20-4] 4.) Mr. Shapiro now  
9 moves for an award of \$22,000 in fees pursuant to 42 U.S.C. § 406(b). (*Shapiro Mot.*  
10 [Doc. 20].) Defendant does not oppose. (*Def.’s Non-opp’n* [Doc. 21].) Plaintiff has not  
11 filed a response.

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13 **II. LEGAL STANDARD**

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

24 42 U.S.C. § 406(b)(1)(A). “Congress . . . designed § 406(b) to control, not to displace,  
25 fee agreements between Social Security benefits claimants and their counsel.” *Gisbrecht*  
26 *v. Barnhart*, 535 U.S. 789, 793 (2002). “In many cases, . . . the Equal Access to Justice  
27 Act (EAJA), enacted in 1980, effectively increases the portion of past-due benefits the  
28 successful Social Security claimant may pocket.” *Id.* at 796 (citing 28 U.S.C. § 2412).  
“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 ‘refun[d]

1 to the claimant the amount of the smaller fee.’ ” Id. (quoting Act of Aug. 5, 1985, Pub.  
2 L. 99–80, § 3, 99 Stat. 186).

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

### 8 9 **III. DISCUSSION**

10 When Plaintiff employed Mr. Shapiro, he agreed to a contingency fee arrangement  
11 of 25% of past-due benefits awarded. (*See Truett Agreement* [Doc. 20-2].) Mr. Shapiro  
12 now seeks fees of \$22,000. (*Shapiro Mot.* [Doc. 20-1] 3:3.) This amounts to  
13 approximately 24.9% of the \$88,354.88 net underpayment awarded on remand. (*See*  
14 *Revised Notice of Award* [Doc. 20-4] 4.)

15 Mr. Shapiro meets his burden of demonstrating that the fees requested are  
16 reasonable. See Crawford v. Astrue, 586 F.3d 1142, 1151 (9th Cir. 2009) (applying  
17 Gisbrecht, 535 U.S. at 808). First, there is nothing to suggest that the quality of Mr.  
18 Shapiro’s work was substandard. He achieved favorable results for his client and  
19 recovered substantial past-due benefits for Mr. Truett. Second, no reduction for  
20 unreasonable delay is warranted. See id. at 1151–52. Third, the amount of the fees is not  
21 excessive. Even though Mr. Shapiro worked only 12.3 hours on this case, which yields a  
22 high hourly rate of \$1,788.62, this figure compensates Shapiro for the risk he took in  
23 working the case on a contingent fee. (*See Shapiro Invoice* [Doc. 20-5].) See id. at  
24 1145–54 (reversing three award reductions that had begun with a lodestar calculation  
25 rather than using the agreed-upon percentage as a starting point) (“To aid the district  
26 court’s evaluation of his request, Shapiro noted that the fee he requested was equivalent  
27 to 3.55 times the lodestar calculation and reasonably accounted for the risk he assumed in  
28

1 representing his client on a contingent-fee basis.”) Had there been no recovery, Mr.  
2 Shapiro would have received no fee. (*See Truett Agreement* [Doc. 20-2].)

3 In light of the character of Mr. Shapiro’s representation and the favorable results  
4 achieved, the figure is a reasonable one, and no downward adjustment is appropriate. See  
5 Gisbrecht, 535 U.S. at 808.

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7 **IV. CONCLUSION & ORDER**

8 Plaintiff’s counsel’s motion is **GRANTED**.

9 Mr. Shapiro is awarded attorneys’ fees in the amount of \$22,000.

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11 **IT IS SO ORDERED.**

12 Dated: August 31, 2017

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15 Hon. Thomas J. Whelan  
United States District Judge