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

KYLA LYNN RICHARDSON,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No.: 15-cv-1456-MMA-BLM

**ORDER GRANTING MOTION FOR
ATTORNEY’S FEES**

[Doc. No. 21]

Brian C. Shapiro, counsel for Plaintiff Kyla Lynn Richardson, moves for the award of attorney’s fees pursuant to 42 U.S.C. § 406(b) in the amount of \$20,417.00 from Plaintiff’s recovery of \$81,668.00 in past-due social security benefits. *See* Doc. No. 21. Plaintiff has not responded to Counsel Shapiro’s request, and the Social Security Administration Commissioner (“Commissioner”) does not take a position on the reasonableness of the requested amount.¹ *See* Doc. No. 22. The Court found this matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons set forth below, the Court **GRANTS** the motion for attorney’s fees.

¹ “[T]he Commissioner of Social Security has no direct financial stake in the answer to the § 406(b) question; instead, she plays a part in the fee determination resembling that of a trustee for the claimants.” *Gisbrecht v. Barnhart*, 535 U.S. 789, 811 (2002).

1 **BACKGROUND**

2 On July 1, 2015, Plaintiff filed this social security appeal challenging the denial of
3 her application for disability insurance benefits. *See* Doc. No. 1. The parties then filed
4 cross-motions for summary judgment. *See* Doc. Nos. 11, 12. The assigned magistrate
5 judge issued a Report recommending that the Court grant Plaintiff’s motion for summary
6 judgment, which the Commissioner filed objections to. *See* Doc. Nos. 14, 15. The Court
7 adopted the magistrate judge’s Report and Recommendation, granted Plaintiff’s motion
8 for summary judgment, denied the Commissioner’s motion for summary judgment, and
9 overruled the Commissioner’s objections. *See* Doc. No. 17. The Court remanded the
10 case for the calculation and award of benefits to Plaintiff. *See* Doc. No. 17.

11 The parties then jointly moved the Court for attorney’s fees and expenses in the
12 amount of \$4,750.00 pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. §
13 2412(d). *See* Doc. No. 19. The Court granted the joint motion. *See* Doc. No. 20. On
14 remand, the Commissioner awarded Plaintiff \$81,668.00 in retroactive social security
15 benefits.

16 Now, pursuant to a contingency fee agreement between Plaintiff and her attorney,
17 counsel requests the Court order the payment of attorney’s fees in the amount of
18 \$20,417.00, and reimburse Plaintiff in the amount of \$4,750.00 for EAJA fees previously
19 paid by the Commissioner.

20 **LEGAL STANDARD**

21 “Under 42 U.S.C. § 406(b), a court entering judgment in favor of [a social
22 security] claimant who was represented by an attorney ‘may determine and allow as part
23 of its judgment a reasonable fee for such representation, not in excess of 25 percent of the
24 total of the past-due benefits to which the claimant is entitled by reason of such
25 judgment.’” *Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th Cir. 2009) (en banc) (quoting
26 § 406(b)(1)(A)). “Within the 25 percent boundary, . . . the attorney for the successful
27 claimant must show that the fee sought is reasonable for the services rendered.”
28

1 *Gisbrecht*, 535 U.S. at 807.¹

2 “[A] district court charged with determining a reasonable fee award under §
3 406(b)(1)(A) must respect ‘the primacy of lawful attorney-client fee agreements,’ . . .
4 ‘looking first to the contingent-fee agreement, then testing it for reasonableness.’”
5 *Crawford*, 586 F.3d at 1148 (quoting *Gisbrecht*, 535 U.S. at 793, 808). When
6 determining reasonableness, the court must consider “whether the amount need be
7 reduced, not whether the lodestar amount should be enhanced.” *Id.* at 1149. While there
8 is not a definitive list of factors, courts should consider “the character of the
9 representation and the results the representative achieved.” *Gisbrecht*, 533 U.S. at 808.
10 “The court may properly reduce the fee for substandard performance, delay, or benefits
11 that are not in proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151.

12 Finally, any fee award under § 406 must be offset by any award of attorney’s fees
13 granted under the EAJA. 28 U.S.C. § 2412; *Gisbrecht*, 535 U.S. at 796.

14 DISCUSSION

15 In an agreement between Plaintiff and the Law Offices of Lawrence D. Rohlfling
16 dated May 19, 2015, Plaintiff agreed to pay counsel 25% of any past-due benefits
17 awarded by the Commissioner. *See* Doc. Nos. 21-1, 21-2. The parties entered into this
18 agreement prior to filing this appeal, and there is nothing in the record to suggest the
19 agreement was reached by improper means. Counsel for Plaintiff spent 26.5 hours on
20 this case, resulting in this Court’s order remanding the case for further administrative
21 proceedings and ultimately a favorable decision on remand. Plaintiff received an award
22 of \$81,668.00 in retroactive benefits. Plaintiff’s counsel seeks \$20,417.00 in attorney’s
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24
25 ¹ The lodestar calculation does not apply to determine reasonableness of fees under § 406(b). *Gisbrecht*,
26 535 U.S. at 802 (explaining that the lodestar method is applicable to “disputes over the amount of fees
27 properly shifted to the loser in the litigation” whereas “Section 406(b) is of another genre: [i]t authorizes
28 fees payable from the successful party’s recovery”); *see also Crawford*, 586 F.3d at 1148 (“SSDI
attorneys’ fees, in contrast [with fees authorized pursuant to fee-shifting statutes], are not shifted. They
are paid from the award of past-due benefits and the amount of the fee, up to 25% of past-due benefits,
is based on the agreement between the attorney and the client.”) (internal citation omitted).

1 fees, which constitutes 25% of the past-due award of \$81,668.00, and which is a proper
2 amount under § 406(b)(1)(A).

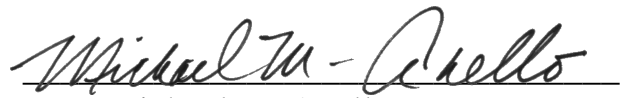
3 The Court finds there is no proper basis to reduce the award, and it is reasonable.
4 There is nothing in the record to suggest substandard performance, delay, or a
5 disproportionate amount of time spent on this case relevant to the benefits at stake. As a
6 result of counsel's work, Plaintiff received a highly favorable decision and a significant
7 award of past-due benefits. Finally, the effective hourly rate is approximately \$770,
8 which is within the range of rates awarded by some courts. *See Crawford*, 586 F.3d at
9 1153 (approving effective hourly rates of \$519, \$875, and \$902); *see, e.g., Likens v.*
10 *Colvin*, No. 11CV0407-LAB (BGS), 2014 WL 6810657, at *2 (S.D. Cal. Dec. 2, 2014)
11 (effective hourly rate of \$666.68 per hour); *Nash v. Colvin*, No. 12CV2781-GPC (RBB),
12 2014 WL 5801353, at *2 (S.D. Cal. Nov. 7, 2014) (effective hourly rate of \$656 per
13 hour); *Sproul v. Astrue*, No. 11CV1000-IEG (DHB), 2013 WL 394056, at *2 (S.D. Cal.
14 Jan. 30, 2013) (effective hourly rate of \$800 per hour). Thus, based on the character of
15 counsel's representation and the favorable results achieved, the Court finds the requested
16 fees in the amount of \$20,417.00 are reasonable.

17 **CONCLUSION**

18 For the foregoing reasons, the Court **GRANTS** Plaintiff's counsel's motion for
19 attorney's fees under 42 U.S.C. § 406(b) and **APPROVES** an award in the amount of
20 \$20,417.00. The Court further **ORDERS** Plaintiff's counsel to refund Plaintiff \$4,750.00
21 in EAJA fees that counsel previously accepted for work before this Court.

22 **IT IS SO ORDERED.**

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24 Date: May 2, 2017


25 Hon. Michael M. Anello
26 United States District Judge
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