

1 **BACKGROUND**

2 Plaintiff was diagnosed with a malignant, inoperable, lethal brain stem tumor (or
3 “glioma”) in 2010. He applied for disability insurance benefits, but the Administrative
4 Law Judge (“ALJ”) found that Plaintiff was not disabled because his pain testimony was
5 “not entirely credible.” Plaintiff appealed the denial of benefits to this Court.

6 On February 6, 2017, the Court ruled in Plaintiff’s favor, reversing and remanding
7 for an award of benefits. The Commissioner effectuated this Court’s decision, issuing a
8 notice indicating retroactive benefits of \$49,461.00. The Commissioner withheld 25% of
9 past due benefits, or \$12,365.25, to pay Plaintiff’s Counsel.

10 Now before the Court, Counsel requests a fee of \$12,300.00 under the contingency
11 fee contract. Counsel worked 42.4 hours on this case and has provided the Court with
12 time summaries. He has also provided the Court with the contingency fee agreement and
13 information pertaining to the average and median hourly rates that attorneys make in the
14 California region. (Doc. No. 27, Exs. 2-5.)

15 **LEGAL STANDARD**

16 The Social Security Act provides:

17 Whenever a court renders a judgment favorable to a claimant . . . who was
18 represented before the court by an attorney, the court may determine and
19 allow as part of its judgment a reasonable fee for such representation, not in
20 excess of 25 percent of the total of the past-due benefits to which the
21 claimant is entitled by reason of such judgment, and the Commissioner of
22 Social Security may . . . certify the amount of such fee for payment to such
23 attorney out of, and not in addition to, the amount of such past-due benefits.

24 42 U.S.C. § 406(b); *see also* *Gisbrecht v. Barnhart*, 535 U.S. at 789 (2002). In
25 determining an award under section 406(b), courts first look to the contingency fee
26 agreement, then test it for reasonableness. (*Id.*) at 808. To aid the Court in assessing
27 reasonableness, the Court may require the claimant’s attorney to submit a record of the
28 hours spent representing the claimant and a statement of the lawyer’s normal hourly
billing charge for noncontingent-fee cases. (*Id.*)

1 **DISCUSSION**

2 **A. Contingency Fee Agreement**

3 On February 19, 2015, Mr. Cho and Mr. Shorts entered a contingency fee
4 agreement. (Doc. No. 27-2.) Mr. Shorts agreed that counsel’s fee would be “25% of the
5 back pay awarded upon reversal of any unfavorable ALJ decision for work before the
6 court.” (*Id.*) There is no evidence the fee agreement was entered into involuntarily, or
7 that it benefits the attorney more than the client. Mr. Cho’s request of \$12,300 is slightly
8 less than the 25% of back pay agreed to in the contingency agreement and set aside by
9 the Social Security Administration. The requested amount does not exceed the 25% limit
10 imposed by 42 U.S.C. § 406(b).

11 **B. Reasonableness**

12 In *Gisbrecht*, the Supreme Court directed lower courts to consider “the character of
13 the representation and the results the representative achieved” to determine
14 “reasonableness.” *Gisbrecht*, 535 U.S. at 808. A court may properly reduce the fee for
15 substandard performance, delay, or benefits that are not in proportion to the time spent on
16 the case. (*Id.*); *Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th Cir. 2009.)

17 Here, Counsel seeks a fee of \$12,300 of the past-due benefits paid or payable to
18 Plaintiff. The Social Security Administration calculates Plaintiff’s past-due benefits at
19 \$49,461.00. (Doc. No. 27.) In using the reasonableness test laid out in *Gisbrecht*, there
20 is no evidence to indicate that Counsel’s representation was inadequate or insufficient.
21 On the contrary, the case went in favor of the Plaintiff and was remanded for the
22 calculation and award of benefits. And, there is no evidence that suggests any delay on
23 Counsel’s part.

24 Regarding the last factor, Counsel is asking for \$12,300 out of the \$49,461.00 that
25 was awarded to Plaintiff for past due benefits. Counsel spent 42.4 hours before the
26 District Court concerning this case. This would equate to Counsel charging
27 approximately \$290 per hour, which is less than the \$439 per hour rate that the average
28 attorney charges in the California region. (Doc. No. 27, Exs. 3-5.)

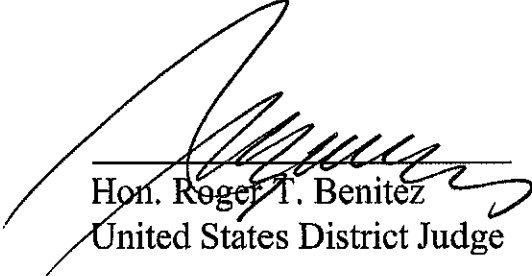
1 Based on its review, the Court finds that the requested fee is reasonable.

2 **CONCLUSION**

3 For the reasons set forth above, Counsel's motion for attorney fees (Doc. No. 27) is
4 **GRANTED**. The Commissioner is **ORDERED** to pay Counsel \$12,300.00.

5 **IT IS SO ORDERED.**

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7 Dated: December 24, 2017

8 
9 Hon. Roger T. Benitez
United States District Judge

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