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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 JOHN FRANCO,
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13 Plaintiff,
14 v.
15 CAROLYN W. COLVIN, Acting
16 Commissioner of Social Security,
17 Defendant.

Case No.: 15-cv-2752-BTM-WVG

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

[ECF No. 25]

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19 Pending before the Court is Plaintiff John Franco's motion for attorney's
20 fees pursuant to 42 U.S.C. § 405(g). (ECF No. 25.) For the reasons set forth
21 below, the Court grants the motion.

22 **BACKGROUND**

23 On December 8, 2015, pursuant to 42 U.S.C. § 405(g) and 1383(c),
24 Plaintiff filed this action seeking review of the final decision by the Acting
25 Commissioner of Social Security (the Commissioner) to deny his social security
26 benefits. (ECF No. 1.)

27 On February 13, 2017, the Court granted Plaintiff's Motion for Summary
28 Judgment, denied Defendant's Motion for Summary Judgment, and remanded

1 this action for further administrative proceedings. (ECF No. 19.) The Court also
2 granted attorney's fees under the EAJA in the amount of \$2,800. (ECF No. 24.)

3 On remand, the Administrative Law Judge (ALJ) found Plaintiff disabled as
4 of August 16, 2016, and the Commissioner awarded Plaintiff \$36,622 in past-due
5 benefits.¹ (ECF No. 25-3.)

6 Plaintiff's counsel, Marc V. Kalagian, requests compensation for a total of
7 16.7 hours before this Court. Under a contingent-fee agreement, Plaintiff agreed
8 to pay counsel up to 25% of any past-due benefits award, which in this case
9 would be \$9,155.50. Counsel now seeks \$9,000 under 42 U.S.C. § 406(b),
10 which provides for a 25% cap on fees an attorney may charge a Social Security
11 claimant for representation in federal court under a contingent-fee motion. See
12 42 U.S.C. § 406(b)(1)(A).

13 DISCUSSION

14 This Court determines the reasonableness of the requested fees pursuant
15 to 42 U.S.C. § 406(b)(1)(A), which provides that "[w]henver a court renders a
16 judgment favorable to a claimant . . . who was represented before the court by an
17 attorney, the court may determine and allow as part of its judgment a reasonable
18 fee for such representation, not in excess of 25% of the total of the past-due
19 benefits to which the claimant is entitled by reason of such judgment." 42 U.S.C.
20 § 406(b)(1)(A)

21 The Ninth Circuit and United States Supreme Court permit district courts to
22 reduce requested fee awards if the attorney's fees are not in proportion to time
23 spent on the case, so long as the Court respects the contingent nature of the
24 representation and uses the lodestar as an aid rather than a starting point in
25 ascertaining reasonableness. See *Crawford v. Astrue*, 586 F.3d 1142, 1151 (9th
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27 ¹ The award letter did not provide a cumulative total of past-due benefits, but rather indicated benefits due for
28 various periods. Based on the indicated 25% withheld for potential payment of attorney's fees, \$36,622 is the
estimated total of Plaintiff's past due benefits.

1 Cir. 2009) (en banc) (“The court may properly reduce the fee for substandard
2 performance, delay, or benefits that are not in proportion to the time spent on the
3 case.”) (citing *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002)).

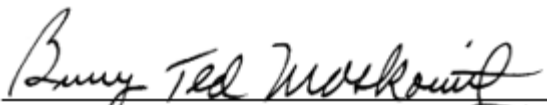
4 The Court concludes the requested fee of \$9,000 would not be a windfall.
5 None of the *Gisbrecht* factors weigh in favor of a reduction, and counsel
6 requested 24.6% of past-due-benefits, which falls below the 25% statutory cap.
7 The Court further concludes that the requested \$9,000 fee is reasonable as
8 compensation for the risk borne by contingency fee attorneys in social security
9 cases. See *Crawford*, 586 F.3d at 1152 (noting that contingency fees in part
10 compensate for “the risk that no benefits would be awarded or that there would
11 be a long court or administrative delay in resolving the cases”).

12 **CONCLUSION**

13 The Court **GRANTS** the motion for attorney’s fees (ECF No. 25). The
14 Court awards attorney’s fees to Marc V. Kalagian in the amount of \$9,000. Upon
15 receipt of the \$9,000, counsel is ordered to reimburse Plaintiff \$2,800, the
16 amount paid by the government under the EAJA.

17 **IT IS SO ORDERED.**

18 Dated: June 20, 2019

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20 Honorable Barry Ted Moskowitz
21 United States District Judge
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