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

10
11 MANUEL P. ESCAMILLA,
12 Plaintiff,
13 v.
14 ANDEW M. SAUL, Commissioner of
15 Social Security,
16 Defendant.

Case No. 17-cv-01621-BAS-JMA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR APPROVAL OF
ATTORNEY'S FEES (ECF No. 21)**

17
18 Presently before the Court is Plaintiff Manuel Escamilla's motion for approval of
19 attorney's fees under 42 U.S.C. § 406(b). (ECF No. 21.) The Commissioner of Social
20 Security responded to the motion. (ECF No. 23.) The Court finds Escamilla's motion
21 suitable for determination on the papers submitted and without oral argument. *See* Fed. R.
22 Civ. P. 78(b); Civ. L.R. 7.1(d)(1). For the following reasons, the Court **GRANTS** the
23 motion for approval of attorney's fees.

24 **I. BACKGROUND**

25 On August 24, 2012, Escamilla filed an application for a period of disability and
26 disability insurance benefits, alleging disability commencing on February 2, 2009.
27 (Administrative Record ("AR") 186–88, ECF No. 8.) The claim was denied on initial
28 review on January 24, 2014, and on reconsideration on June 23, 2014. (AR 129–34.)

1 Escamilla then requested a de novo hearing before an Administrative Law Judge (“ALJ”)
2 on July 10, 2014. An ALJ heard the case and determined Escamilla was not disabled as
3 defined under the Social Security Act. (AR 22–47.) Escamilla requested an Appeals
4 Council review, but the request was denied on June 13, 2017—making the ALJ’s decision
5 the final decision of the Commissioner. (AR 1–7.)

6 To challenge the Commissioner’s decision, Escamilla retained counsel and entered
7 into a Social Security Representation Agreement (“Representation Agreement”).
8 (Representation Agreement, Rohlfing Decl. ¶ 2, Ex. 1, ECF No. 21-1.) The Representation
9 Agreement provides that the fee for “successful prosecution of this matter is . . . 25% of
10 the backpay awarded upon reversal of any unfavorable ALJ decision for work before the
11 court.” (*Id.* § 4.)

12 On August 10, 2020, Escamilla sought judicial review in this Court. (ECF No. 1.)
13 He and the Commissioner then filed cross-motions for summary judgment. (ECF Nos. 10,
14 11.) On June 14, 2018, the Court issued an order granting Escamilla’s motion for summary
15 judgment and denying the Commissioner’s cross-motion. (ECF No. 15.) In brief, the
16 Court found that the ALJ committed harmful error by improperly handling medical opinion
17 evidence. (*Id.*) Hence, the Court reversed the Commissioner’s decision and remanded the
18 matter for further proceedings. (*Id.*)

19 In light of the Court’s decision, the parties filed a joint motion for an award of
20 attorney’s fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d).
21 (ECF No. 18.) The Court granted the joint motion and awarded Escamilla \$2,600 in
22 attorney’s fees. (ECF No. 20.)

23 Upon remand, an ALJ held a second hearing and heard additional testimony. And
24 in a fully-favorable decision dated June 5, 2020, the ALJ found Escamilla to be disabled
25 as of November 11, 2011. (Rohlfing Decl. ¶ 3, Ex. 2, ECF No. 21-2.) Accordingly, on
26 July 15, 2020, the Agency issued a notice providing that Escamilla is entitled to
27 approximately \$190,000 in past-due benefits. (*See id.* ¶ 4, Ex. 3, ECF No. 21-3.)
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1 Escamilla now returns to this Court to seek approval of attorney’s fees of \$30,000—
2 approximately 15.8% of the past-due benefits. (Mot., ECF No. 21.) The real-party-in-
3 interest, Escamilla’s counsel, served a copy of the motion on Escamilla and informed him
4 that he could oppose the request. (Proof of Service, ECF No. 21 at 15.) He has not done
5 so. The Commissioner, however, has filed a response. (ECF No. 23.)

6 **II. ANALYSIS**

7 The law regulates the fees that attorneys may charge Social Security claimants for
8 representation before the Social Security Administration and a reviewing court. *See* 42
9 U.S.C. § 406(a)–(b). The representation here concerned Escamilla’s claim for benefits
10 under Title II of the Social Security Act. Title II “‘is an insurance program’ that ‘provides
11 old-age, survivor, and disability benefits to insured individuals irrespective of financial
12 need.’” *Culbertson v. Berryhill*, 139 S. Ct. 517, 519–20 (2019) (quoting *Bowen v.*
13 *Galbreath*, 485 U.S. 74, 75 (1988)). A claim for Title II benefits may “result in payments
14 of past-due benefits—*i.e.*, benefits that accrued before a favorable decision—as well as
15 ongoing monthly benefits.” *Id.* (citations omitted).

16 Escamilla received an award of past-due benefits after this Court entered a judgment
17 in his favor. Hence, the relevant fee provision is 42 U.S.C. § 406(b). This statute provides:

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

24 42 U.S.C. § 406(b)(1)(A). Accordingly, § 406(b) limits fees for representation before the
25 court “to no more than 25% of past-due benefits and allows the agency to withhold past-
26 due benefits to pay these fees.” *Culbertson*, 139 S. Ct. at 520.

27 Social Security claimants routinely enter into “contingent-fee contracts that produce
28 fees no higher than the 25 percent ceiling.” *Gisbrecht v. Barnhart*, 535 U.S. 789, 800

1 (2002); *see also Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th Cir. 2009) (en banc). In
2 *Gisbrecht*, the Supreme Court determined that “§ 406(b) does not displace contingent-fee
3 agreements as the primary means by which fees are set for successfully representing Social
4 Security benefits claimants in court.” 535 U.S. at 807. Instead, because the statute
5 authorizes a “reasonable fee,” it “calls for court review of such arrangements as an
6 independent check, to assure that they yield reasonable results in particular cases.” *See id.*

7 Further, where a contingency agreement exists, the Supreme Court emphasized that
8 the starting point for assessing the reasonableness of the fee amount is the agreement itself,
9 not the familiar lodestar method. *Gisbrecht*, 535 U.S. at 797–809. In testing the
10 contingency agreement’s reasonableness, the court may appropriately reduce “the
11 attorney’s recovery based on the character of the representation and the results the
12 representative achieved.” *Id.* at 808. For example, a downward adjustment may be
13 justified if the attorney was responsible for delay, “so that the attorney will not profit from
14 the accumulation of benefits during the pendency of the case in court.” *Id.* at 808.
15 Moreover, where counsel is set to receive a windfall because “the benefits are large in
16 comparison to the amount of time counsel spent on the case, a downward adjustment is
17 similarly in order.” *See id.* at 808; *accord Astrue*, 586 F.3d at 1151 (“The court may
18 properly reduce the fee for substandard performance, delay, or benefits that are not in
19 proportion to the time spent on the case.”). “As evidence of the reasonableness of the
20 resulting fee, the court may require counsel to submit a record of hours spent and a
21 statement of normal hourly billing charges.” *Astrue*, 586 F.3d at 1151. However,
22 “‘satellite litigation’ over attorneys’ fees should not be encouraged.” *Id.* at 1152 (quoting
23 *Gisbrecht*, 535 U.S. at 808). Finally, although the court’s focus is on the contingency
24 agreement, the court can “consider the lodestar calculation, but *only as an aid* in assessing
25 the reasonableness of the fee.”¹ *Id.*

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28 ¹ Because fees under § 406(b) are paid from past-due benefits, the Commissioner of Social Security “has no direct financial stake in the answer to the § 406(b) question; instead [he] plays a part in the fee determination resembling that of a trustee for the claimants.” *Gisbrecht*, 535 U.S. at 798 n.6. The

1 Escamilla’s Representation Agreement authorizes his counsel to receive “25% of the
2 backpay awarded upon reversal of any unfavorable ALJ decision for work before the
3 court.” (Representation Agreement § 4.)² In assessing whether the requested fee is
4 reasonable, the Court initially notes that there is no evidence of “fraud or overreaching” in
5 the negotiation of the Representation Agreement. *See Astrue*, 586 F.3d at 1145. Indeed,
6 such agreements are common, and Escamilla has been given the opportunity to oppose the
7 motion for approval of his counsel’s fee. He has not done so. Further, a reduction for
8 substandard performance is not warranted. Escamilla’s counsel ably represented him and
9 was successful in obtaining a favorable judgment that led to his award of substantial past-
10 due benefits. Nor is a reduction for delay warranted here. Escamilla’s counsel met every
11 briefing deadline in this case, and there was thus no “‘excessive delay’ attributable to”
12 Escamilla’s counsel in the proceedings before this Court. *See id.* at 1146.

13 In addition, the proposed fee would not be a windfall to Escamilla’s counsel.
14 Although the Representation Agreement authorizes counsel to seek up to 25% of
15 Escamilla’s past-due benefits—approximately \$47,500—the requested fee of \$30,000 is
16 only about 15.8% of the past-due benefits. The requested fee, which is “significantly
17 lower” than the fee bargained for in the Representation Agreement, is “not excessively
18 large in relation to the benefits achieved.” *See Astrue*, 586 F.3d at 1151. Moreover,
19 Escamilla’s counsel’s decision to “voluntarily reduce[]” the requested fee from “the
20 allowable 25%” suggests the fee will not be a windfall. *See id.* at 1152.

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22 Commissioner “takes no position” in this case whether the requested fee “is reasonable under the case
23 law.” (ECF No. 23.)

24 ² The Representation Agreement also provides Escamilla’s counsel may seek a *separate* 25% of
25 his past-due benefits for work before the Agency. (*See* Representation Agreement §§ 3–4.) The Supreme
26 Court has determined that “the 25% cap” in § 406(b) “applies only to fees for representation before the
27 court, not the agency.” *Culbertson*, 139 S. Ct. at 522. Escamilla’s counsel states to the Court that he “will
28 seek fees under 42 U.S.C. § 406(a).” (Rohlfing Decl. ¶ 6.) However, “[t]he aggregate of all fees received
by counsel from administrative and Court awards will not exceed 25 percent of back benefits.” (*Id.*; *see*
also Mot. 6–7 (“Counsel exercises billing discretion to limit the aggregate of all fees received to 25% of
the past due benefits, the only withholding the Commissioner makes.”).) Hence, although the
Representation Agreement and the law may entitle Escamilla’s counsel to seek a larger share of his past-
due benefits than 25%, counsel represents that he will not do so in this case.

1 Further, the Court notes that counsel spent 11.2 hours of attorney time and 3.45 hours
2 of paralegal time on Escamilla’s case at the district court level. Although counsel is
3 receiving a substantial award on a per-hour basis, the Court does not want to penalize
4 counsel for being efficient. Counsel also highlights various district court decisions in the
5 Ninth Circuit approving comparable fees at comparably high hourly rates. (*See* Mot. at 4–
6 6.) The Court finds consideration of the hourly rate is not particularly helpful in this case
7 and does not establish the fee would be a windfall.

8 Overall, the Court finds that the requested fee is reasonable. Escamilla agreed that
9 his counsel would be paid up to 25% of his past-due benefits for representation in this
10 Court, and his counsel chose to bear the risk of non-payment in the event that the appeal
11 was unsuccessful. His counsel now seeks \$30,000, which is only approximately 15.8% of
12 the past-due benefits. Escamilla has not objected to this request. Given the circumstances
13 of the case, the Court finds a downward adjustment to the requested fee is not appropriate.
14 Therefore, the Court will grant Escamilla’s motion for approval of \$30,000 in fees under
15 42 U.S.C. § 406(b).

16 * * *


17 Having approved fees under § 406(b), the Court briefly discusses Escamilla’s
18 counsel’s prior EAJA award. As mentioned, the Court awarded Escamilla’s counsel
19 \$2,600 in fees under the EAJA. “Congress amended the EAJA in 1985 to add a savings
20 provision that allows attorneys to receive fees under both § 406(b) and [EAJA, 28 U.S.C.]
21 § 2412.” *Parrish v. Comm’r of Soc. Sec. Admin.*, 698 F.3d 1215, 1218 (9th Cir. 2012).
22 “However, in order to maximize the award of past-due benefits to claimants and to avoid
23 giving double compensation to attorneys, the savings provision requires a lawyer to offset
24 any fees received under § 406(b) with any award that the attorney receives under § 2412 if
25 the two were for the ‘same work.’” *Id.*; *see also* *Gisbrecht*, 535 U.S. at 796 (noting the
26 claimant’s attorney must refund to the claimant the smaller fee amount). Because here
27 Escamilla’s counsel’s fees under the EAJA and § 406(b) are for the same work, the Court
28 will order Escamilla’s counsel to remit the \$2,600 fee award to Escamilla.

1 **III. CONCLUSION**

2 In light of the foregoing, the Court **GRANTS** Escamilla’s motion for approval of
3 attorney’s fees under 42 U.S.C. § 406(b) (ECF No. 21). The Court approves Escamilla’s
4 counsel’s request to receive \$30,000 in fees withheld by the Social Security
5 Administration. Further, the Court **ORDERS** Escamilla’s counsel to remit to Escamilla
6 the \$2,600 that counsel received under the EAJA.

7 **IT IS SO ORDERED.**

8
9 **DATED: August 26, 2020**


10 **Hon. Cynthia Bashant**
11 **United States District Judge**