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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DANIEL D.,<sup>1</sup>  
  
Plaintiff,  
  
v.  
  
COMMISSIONER OF SOCIAL  
SECURITY,  
  
Defendant.

Case No.: 22cv1312-LR

**ORDER GRANTING MOTION FOR  
ATTORNEY’S FEES PURSUANT TO  
42 U.S.C. § 406(b)**

**[ECF Nos. 21, 22]**

Pending before the Court is Plaintiff’s counsel’s “Motion for Authorization of Attorney’s Fees Pursuant to 42 U.S.C. § 406(b)” (“Motion for Attorney’s Fees”). (ECF No. 14.) For the reasons set forth below, the Court **GRANTS** the Motion for Attorney’s Fees and Amended Motion for Attorney’s Fees [ECF Nos. 21, 22].

**I. PROCEDURAL BACKGROUND**

On September 2, 2022, Plaintiff Daniel D., filed a civil Complaint against Defendant, the Commissioner of Social Security, seeking judicial review of the denial of

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<sup>1</sup> The Court refers to Plaintiff using only his first name and last initial pursuant to the Court’s Civil Local Rules. See S.D. Cal. Civ. R. 7.1(e)(6)(b).

1 his application for social security disability benefits. (ECF No. 1.) On September 1,  
2 2023, the Court issued an order granting Plaintiff’s merits brief and remanding for further  
3 proceedings. (See ECF No. 15.)

4 On November 17, 2023, the parties filed a “Joint Motion for Attorney’s Fees  
5 Under the Equal Access to Justice Act” seeking \$8,000.00 in attorney’s fees and costs of  
6 \$402.00. (ECF No. 18.) On November 30, 2023, the Court granted the motion and  
7 awarded attorney’s fees in the amount of \$8,000.00 and costs in the amount of \$402.00  
8 pursuant to the EAJA. (ECF No. 19.)

9 On February 28, 2025, Plaintiff’s counsel, Sherianne Laba, filed a Motion for  
10 Attorney’s Fees seeking an attorney’s fee award of \$31,424.20 under 42 U.S.C. § 406(b).  
11 (ECF No. 21.) She argues that the fee is reasonable considering the nature of his  
12 representation and the results he achieved in this case. (Id. at 3–7.) On March 7, 2025,  
13 Plaintiff’s counsel submitted a copy of a fee agreement, signed by Plaintiff and counsel,  
14 in which Plaintiff agrees to pay 25 percent of any past-due benefits awarded. (ECF No.  
15 22.)

16 On March 10, 2025, Defendant filed a response to Plaintiff’s counsel’s motion.  
17 (ECF No. 23.) Defendant asserts that the Commissioner of Social Security does not have  
18 a financial stake in the outcome of Plaintiff’s counsel’s motion, “plays a part in fee  
19 determination resembling that of a trustee for the claimants,” and “neither supports nor  
20 opposes [Plaintiff’s] counsel’s request for attorney’s fees under 42 U.S.C. § 406(b).” (Id.  
21 at 2.)

## 22 **II. LEGAL STANDARD**

23 Section 406(b) governs an attorney’s right to recover fees in a case where a  
24 judgment was rendered in favor of a Social Security disability insurance claimant. A  
25 district court may award “reasonable” attorney’s fees, not to exceed twenty-five percent  
26 of the total past-due benefits awarded to the claimant. See 42 U.S.C. § 406(b)(1)(A);  
27 Gisbrecht v. Barnhart, 535 U.S. 789 (2002). The United States Supreme Court has  
28 explained that:

1 § 406(b) does not displace contingent-fee agreements as the primary means  
2 by which fees are set for successfully representing Social Security benefits  
3 claimants in court. Rather, § 406(b) calls for court review of such  
4 arrangements as an independent check, to assure that they yield reasonable  
5 results in particular cases. Congress has provided one boundary line:  
6 Agreements are unenforceable to the extent that they provide for fees  
7 exceeding 25 percent of the past-due benefits. Within the 25 percent boundary  
8 . . . the attorney for the successful claimant must show that the fee sought is  
9 reasonable for the services rendered.

10 Gisbrecht, 535 U.S. at 807 (internal citation and footnote omitted).

11 In cases in which a contingency fee agreement exists, a district court should first  
12 look to the agreement and then test it for reasonableness. See id. at 808. When  
13 evaluating the reasonableness of a fee request under 42 U.S.C. § 406(b), a district court  
14 should consider the character of the representation and the results achieved. See id.;  
15 Crawford v. Astrue, 586 F.3d 1142, 1151 (9th Cir. 2009). District courts examine the  
16 following factors: (1) whether counsel’s performance was substandard; (2) whether  
17 counsel engaged in dilatory conduct; and (3) whether the requested fees are excessively  
18 large in relation to the benefits achieved, *i.e.*, whether the attorney enjoyed a “windfall.”  
19 Crawford, 586 F.3d at 1151–52.

20 The attorney’s fee award under 42 U.S.C. § 406(b) is paid by the claimant out of  
21 the past-due benefits awarded. Gisbrecht, 535 U.S. at 802. The EAJA also permits an  
22 attorney to receive fees for a successful Social Security representation. See Parrish v.  
23 Comm’r Soc. Sec. Admin., 698 F.3d 1215, 1216–17 (9th Cir. 2012). Fees awarded  
24 pursuant to the EAJA are paid by the government rather than the claimant. Id. at 1218.  
25 Attorneys are permitted to seek recovery under both 42 U.S.C. § 406(b) and EAJA, and  
26 to keep the larger fee, but they must refund the smaller fee to the claimant. See  
27 Gisbrecht, 535 U.S. at 796; Parrish, 698 F.3d at 1218.

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1 **III. DISCUSSION**

2 The contingency fee agreement between Plaintiff and his counsel, Sherianne Laba,  
3 provides that Plaintiff’s counsel would be paid a maximum of twenty-five percent<sup>2</sup> of  
4 past-due benefits awarded to Plaintiff. (See ECF No. 22-1.) Accordingly, the  
5 contingency fee agreement is within the statutory ceiling. See 42 U.S.C. § 406(b)(1)(A).  
6 The Court therefore needs to analyze the character of the representation and the results  
7 achieved to determine reasonableness of the fees Plaintiff’s counsel is seeking. See  
8 Crawford, 586 F.3d at 1145; see also Gisbrecht, 535 U.S. at 808.

9 Plaintiff’s counsel successfully represented Plaintiff, successfully demonstrating  
10 harmful legal error warranting remand. (See ECF No. 15.) Further, because the  
11 Commissioner awarded Plaintiff \$125,396.80 in past-due benefits on remand, Plaintiff’s  
12 counsel’s representation resulted in the sizeable award to Plaintiff. (See ECF No. 21-2.)  
13 This was a successful result for Plaintiff that would not have been achieved with a  
14 substandard performance by Plaintiff’s counsel. Accordingly, Plaintiff’s counsel did not  
15 render substandard representation or delayed this litigation. See Crawford, 586 F.3d at  
16 1151–52.

17 Additionally, the amount of time Plaintiff’s counsel expended on this case is not  
18 out of proportion to the fee award. Twenty-five percent of \$125,396.80, the amount that  
19 the Commissioner awarded Plaintiff on remand, is \$31,424.20. Plaintiff’s counsel seeks  
20 an attorney’s fee award of \$31,424.20, which represents 25 percent of the past-due  
21 benefits awarded to Plaintiff. Plaintiff’s counsel expended 40.4 hours of attorney time  
22 and 5.6 hours of paralegal time while representing Plaintiff. (ECF No. 21-3 at 1–2.)

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25 <sup>2</sup> Notably, the cap set forth in 42 U.S.C. § 406(b)(1)(A) limiting attorney’s fees to twenty-five percent  
26 of past-due benefits applies only to fees for representation before federal court, and not to aggregate fees  
27 awarded for representation before both the court and the agency. Culbertson v. Berryhill, 586 U.S. 53,  
28 54 (2019); see also Ricardo A. v. Saul, Case No.: 3:19-cv-00846-AHG, 2021 WL 718605, at \*2 n.3  
(S.D. Cal. Feb. 24, 2021) (“[T]he 25% cap set forth in Section 406(b)(1)(A) applies solely to attorney  
fees for representation in federal court.”).

1 When assessed against the proposed fee award, this amounts to a *de facto* hourly rate of  
2 \$683.13 for both attorney and paralegal work. The Court finds that Plaintiff counsel’s  
3 attorney’s fee request is reasonable, as multiple cases in this district have found similar  
4 *de facto* hourly rates to be reasonable. See Crawford, 586 F.3d at 1145–46, 1153  
5 (approving contingent fee awards that resulted in effective hourly rates of \$875, \$519,  
6 and \$813.5); Michelle H. v. Berryhill, Case No.: 18-CV-2328 JLS (RNB), 2022 WL  
7 1138146, at \*5 (S.D. Cal. Apr. 18, 2022) (finding that although effective hourly rate of  
8 \$907.76 was “higher than most other hourly rates” awarded in the Southern District of  
9 California, the award “more adequately mirrors the risk and complexity of [p]laintiff’s  
10 case and falls closer to the range of hourly rates anticipated by Crawford.”); Antonia M.  
11 v. Kijakazi, Case No. 20cv75-MSB, 2021 WL 6051690, at \*3 (S.D. Cal. Dec. 21, 2021)  
12 (finding that an hourly rate of \$966.18 was reasonable, where the requested fee award  
13 represented 14.4 percent of past-due benefits awarded to plaintiff); Ayersman v.  
14 Berryhill, Case No.: 17-cv-1121-WQH-JMA, 2021 WL 37717, at \*2 (S.D. Cal. Jan. 5,  
15 2021) (approving *de facto* rate of \$787.40); Richardson v. Colvin, Case No.: 15-cv-1456-  
16 MMA-BLM, 2017 WL 1683062, at \*2 (S.D. Cal. May 2, 2017) (approving *de facto* rate  
17 of \$770 and collecting other cases from this district approving *de facto* hourly rates of  
18 \$519, \$656, \$666.68, \$800, \$875, and \$902).

19 Notably, Plaintiff’s counsel took Plaintiff’s case on a contingency basis when  
20 Plaintiff had an unfavorable ruling from the ALJ. Courts have recognized that “basing a  
21 reasonableness determination on a simple hourly rate basis is inappropriate when an  
22 attorney is working pursuant to a reasonable contingency contract for which there runs a  
23 substantial risk of loss.” Ayersman v. Berryhill, Case No.: 17-cv-1121-WQH-JMA, 2021  
24 WL 37717, at \*2 (S.D. Cal. Jan. 5, 2021). Plaintiff’s counsel in this case assumed a  
25 substantial risk of nonpayment by agreeing to be paid on a contingency basis, and  
26 counsel’s work ultimately resulted in a highly favorable outcome for Plaintiff. The Court  
27 also notes that Plaintiff has not filed an opposition to her attorney’s fee request. (See  
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1 Docket.) The Court therefore finds that Plaintiff’s counsel’s attorney’s fee request is  
2 reasonable. See Crawford, 586 F.3d at 1145.

3 After an independent review, the Court concludes that the attorney’s fees  
4 Plaintiff’s counsel is seeking pursuant to 42 U.S.C. § 406(b) are reasonable. However,  
5 because Plaintiff was awarded \$8,000 in fees pursuant to the EAJA, the award of  
6 § 406(b) fees must be offset in that amount. See Gisbrecht, 535 U.S. at 796 (proving that  
7 an award of § 406(b) fees must be offset by any prior award of attorney’s fees granted  
8 under the EAJA).

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court **GRANTS** the Motion for Attorney’s Fees  
11 [ECF Nos. 21, 22]. The Court awards Plaintiff’s counsel, Sherianne Laba, \$31,424.20 in  
12 attorney’s fees. The Court further **ORDERS** Plaintiff’s counsel, Sherianne Laba, to  
13 reimburse Plaintiff \$8,000.00, the amount Plaintiff’s counsel received under EAJA.

14 **IT IS SO ORDERED.**

15 Dated: March 12, 2025

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19 Honorable Lupe Rodriguez, Jr.  
20 United States Magistrate Judge