

1 36. Groneman’s attorneys agree they will credit this amount against any fee awarded under 42
2 U.S.C. § 406(b). ECF No. 38 at 7; *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002)
3 (stating that a claimant may obtain fee awards under both § 406(b) and the EAJA but the attorney
4 must refund the smaller fee amount to the claimant).

5 Under 42 U.S.C. § 406(b)(1)(A), when a claimant who is represented by counsel obtains a
6 favorable court judgment, “the court may determine and allow as part of its judgment a
7 reasonable fee for such representation, not in excess of 25 percent of the total of the past-due
8 benefits to which the claimant is entitled by reason of such judgment.” This fee is payable out of
9 the past-due benefits awarded to the claimant and not as an additional recovery from the
10 defendant. *Id.*

11 Although other fee-shifting schemes resort to use of the “lodestar” method to calculate a
12 reasonable attorney’s fee, § 406(b) is not a fee-shifting statute. *Gisbrecht*, 535 U.S. at 802. The
13 statute requires the attorney’s fee be taken from the past-due benefits awarded to the claimant and
14 not as an additional recovery from the defendant. *Id.* Thus, § 406(b) “does not displace
15 contingent-fee agreements as the primary means by which fees are set for successfully
16 representing Social Security benefits claimants in court. Rather, § 406(b) calls for court review of
17 such arrangements as an independent check, to assure that they yield reasonable results in
18 particular cases.” *Id.* at 807. The only statutorily-imposed constraint is that the fee agreement
19 cannot “provide for fees exceeding 25 percent of the past-due benefits.” *Id.* (citing
20 § 406(b)(1)(A)).

21 Consequently, in Social Security cases, I begin with the contingency fee agreement and
22 then “test[] it for reasonableness.” *Id.* at 808. “[T]he question is whether the amount need[s to] be
23 reduced, not whether the loadstar amount should be enhanced.” *Crawford v. Astrue*, 586 F.3d
24 1142, 1149 (9th Cir. 2009) (en banc). I may reduce the fee award “based on the character of the
25 representation and the results the representation achieved.” *Gisbrecht*, 535 U.S. at 808. Thus, I
26 “may properly reduce the fee for substandard performance, delay, or benefits that are not in
27 proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151. I may “consider the
28

1 lodestar calculation, but only as an aid in assessing the reasonableness of the fee.” *Id.* (emphasis
2 omitted).

3 The attorney seeking the fee award bears the burden of establishing the fee sought is
4 reasonable. *Id.* at 1148. The award of fees under § 406(b) lies within my discretion. *Id.* at 1147.

5 The fee agreement in this case provides for an award of 25% of past-due benefits, which
6 amounts to \$19,288.25. There is no evidence of substandard performance. Rather, counsel
7 obtained a favorable result in the form of a remand for an award of substantial past and future
8 benefits. There is no evidence counsel caused any delay to increase the contingent amount.
9 Additionally, the fees are not excessively large in relation to the past-due and future benefits
10 obtained for the claimant. *See* ECF No. 38-3 (Social Security Administration’s calculation on
11 remand of past-due benefits of \$77,153.00 and future monthly benefits in the amount of
12 \$1,014.00 per month). Groneman’s attorneys therefore have met their burden of establishing a
13 reasonable fee award in the amount of \$19,288.00.

14 IT IS THEREFORE ORDERED that the motion for attorney’s fees (**ECF No. 38**) is
15 **GRANTED**. Plaintiff Janine L. Groneman’s attorney, Marc V. Kalagian,³ is awarded attorney’s
16 fees pursuant to 42 U.S.C. § 406(b) in the amount of \$19,288.00.

17 IT IS FURTHER ORDERED that Marc V. Kalagian shall reimburse plaintiff Janine L.
18 Groneman the amount of \$3,500.00 for EAJA fees previously paid by the Commissioner.

19 DATED this 5th day of January, 2017.

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21 _____
22 ANDREW P. GORDON
23 UNITED STATES DISTRICT JUDGE
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27 _____
28 ³ Although another attorney and two paralegals worked on the case, Groneman’s counsel has proposed a form of order directing payment to Marc V. Kalagian. ECF No. 38-1.