

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

James T. v. Frank Bisignano, Commissioner of Social Security

No. 3:22-cv-00694-SBC (S.D. Cal. Jan. 12, 2026) · No. 3:22-cv-00694-SBC · Decided January 12, 2026

OPINION

Turner

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JAMES T.1, Case No.: 3:22-cv-00694-SBC 12 Plaintiff,

ORDER GRANTING AMENDED

13 v. JOINT MOTION FOR (1) RELIEF

PURSUANT TO FED. R. CIV. P. 60(b)

14 FRANK BISIGNANO, Commissioner of

TO VACATE COURT’S PREVIOUS

Social Security,

15 ORDER AND (2) ENTRY OF NEW

Defendant. ORDER 16

17 AMENDED ORDER GRANTING

PLAINTIFF’S COUNSEL’S MOTION

18

FOR ATTORNEYS’ FEES

19 PURSUANT TO 42 U.S.C. § 406(b)

20 [Dkt. No. 37] 21 22 Pending before the Court is the parties’ January 5, 2026 Joint Motion for
(1) Relief 23 Pursuant to Fed. R. Civ. 60(b) to Vacate Court’s Previous Order and (2) Entry of
New 24 Order (Dkt. No. 37, hereinafter “Joint Motion”). For the reasons discussed below, the
Joint 25 Motion is GRANTED, the Court’s previous Order Granting Plaintiff’s Counsel’s Motion
26 27 1 The Court refers to Plaintiff using only his first name and last initial pursuant to the 28 1
for Attorneys’ Fees Pursuant to 42 U.S.C. § 406(b) (Dkt. No. 32) is VACATED, and the 2 Court
hereby issues the following Amended Order Granting Plaintiff’s Counsel’s Motion 3 for
Attorneys’ Fees Pursuant to 42 U.S.C. § 406(b).

4 I. PROCEDURAL HISTORY

5 Plaintiff’s counsel, Monica Perales, of the Law Offices of Lawrence D. Rohlfing, 6 Inc., CPC,
filed a motion for attorneys’ fees pursuant to 42 U.S.C. § 406(b), in which 7 counsel requested an

order granting attorneys' fees in the amount of \$40,336.00 (Dkt. No. 8 29) based on a Notice of Award dated April 20, 2025, totaling \$161,347.00 (Dkt. Nos. 29- 9 3; 29-4). The Court issued a briefing schedule providing a deadline for Plaintiff and 10 Defendant to respond to the motion (Dkt. No. 30). Defendant responded to the motion, 11 stating that the Commissioner neither supports nor opposes Plaintiff's counsel's request 12 for attorneys' fees (Dkt. No. 31). Plaintiff did not file a response. Accordingly, the Court 13 issued an order granting counsel's motion and awarding \$40,336.00 in fees (Dkt. No. 32). 14 An updated Notice of Award dated October 1, 2025, reflects past-due benefits of 15 \$146,008.00 (Dkt. No. 37 at 6). In light of the changed Notice of Award, on December 5, 16 2025, the Parties filed a Joint Motion for Relief Pursuant to Fed. R. Civ. P. 60(b) to Vacate 17 Order Granting Motion for Attorneys' Fees Pursuant to 42 U.S.C. § 406(b) and Entry of 18 New Order (Dkt. No. 34). This Joint Motion was amended and refiled on December 31, 19 2025, to include a copy of the updated Notice of Award (Dkt. No. 37), at the request of the 20 Court (Dkt. Nos. 35; 36). 21 "On motion and just terms, the court may relieve a party or its legal representative 22 from a final judgment, order, or proceeding" due to mistake, inadvertence, surprise, or 23 excusable neglect. Fed R. Civ. P. 60(b)(1). Here, the original attorneys' fee award of 24 \$40,336.00 was derived from the initial Notice of Award (Dkt. Nos. 29-3; 29-4) rather than 25 the updated Notice of Award (Dkt. No. 37 at 6). If the attorneys' fee is not also updated, 26 the \$40,336.00 originally awarded exceeds 25% of claimant's actual past-due benefits, 27 which is not permissible. See 42 U.S.C. § 406(b)(1)(A); *Gisbrecht v. Barnhart*, 535 U.S. 28 789, 807-09 (2002). The proper calculation under 42 U.S.C. § 406(b) based on the updated 1 Notice of Award for \$146,008.00 is for \$36,502.00 in attorneys' fees (Dkt. No. 37 at 3).

2 II. BACKGROUND

3 On May 16, 2022, Plaintiff initiated this action against Defendant Commissioner of 4 Social Security for judicial review under 42 U.S.C. § 405(g) of a final adverse decision for 5 social security disability benefits (Dkt. No. 1). On May 20, 2022, the parties consented to 6 Magistrate Judge jurisdiction over the case (Dkt. No. 7). On January 16, 2024, the Court 7 resolved the parties' joint motion for judicial review in favor of Plaintiff and remanded this 8 case for further administrative proceedings (Dkt. No. 26). The Court also granted the 9 parties' joint motion for attorneys' fees under the Equal Access to Justice Act ("EAJA"), 10 28 U.S.C. § 2412(d), in the amount of \$5,261.00 (Dkt. No. 28). 11 On remand, the Administrative Law Judge ("ALJ") issued a "fully favorable" 12 decision and found Plaintiff disabled as of April 1, 2018 (Dkt. No. 29-2). The Social 13 Security Administration issued a Notice of Award on April 20, 2025, in which Plaintiff 14 was awarded approximately \$161,347.00 in past-due disability benefits (Dkt. Nos. 29-3; 15 29-4). An updated Notice of Award dated October 1, 2025, awarded \$146,008.00 in past- 16 due disability benefits (Dkt. No. 37). 17 In the motion presently before the Court, Plaintiff's counsel seeks \$36,502.00 in 18 attorneys' fees pursuant to a representation agreement, dated April 20, 2021, in which 19 Plaintiff agreed to pay counsel "25% of the past due benefits awarded upon reversal of any 20 unfavorable ALJ decision for work before the Social Security Administration"

(Dkt. Nos. 21 29-1; 37).

22 III. LEGAL STANDARD

23 Under 42 U.S.C. § 406(b), “a court may allow a reasonable fee . . . not in excess of
24 25 percent of the . . . past-due benefits awards to the claimant” as attorneys’ fees for 25
representation in court proceedings. “[A] district court charged with determining a 26 reasonable
fee award under § 406(b)(1)(A) must respect ‘the primacy of lawful attorney- 27 client fee
agreements,’ ‘looking first to the contingent-fee agreement, then testing it for 28 reasonableness.’”
Crawford v. Astrue, 586 F.3d 1142, 1148 (9th Cir. 2009) (citing 1 *Gisbrecht v. Barnhart*, 535 U.S.
789 (2002)). Under this framework, the court does not 2 start with a lodestar calculation, rather,
the court “first look[s] to the fee agreement and 3 then adjusts downward if the attorney provided
substandard representation.” *Id.* at 1151. 4 “The court may properly reduce the fee for substandard
performance, delay, or benefits 5 that are not in proportion to the time spent on the case.” *Id.* 6 An
attorneys’ fee award under § 406(b) is paid by the claimant out of the past-due 7 benefits awarded
and the losing party is not responsible for payment. *Gisbrecht*, 535 U.S. 8 at 802, 122 S. Ct. 1817.
Attorneys are permitted to seek recovery under both the EAJA and 9 § 406(b), but to keep the
larger fee, must refund the smaller fee to the claimant. *Id.* at 796, 10 122 S. Ct. 1817; *Parrish v.*
Comm’r Soc. Sec. Admin., 698 F.3d 1215, 1218 (9th Cir. 2012).

11 IV. DISCUSSION

12 The contingency fee agreement between Plaintiff and his counsel, the Law Offices 13 of
Lawrence D. Rohlfing, Inc., CPC, provides that Plaintiff’s counsel was to be paid a 14 maximum
of twenty-five percent of past-due benefits awarded to Plaintiff (Dkt. No. 29-1). 15 As such, the
contingency fee agreement is within the statutory ceiling. See 42 U.S.C. § 16 406(b)(1)(A). On
remand, the Commissioner awarded Plaintiff approximately \$146,008.00 17 in past-due benefits
(Dkt. No. 37). Twenty-five percent of that amount is \$36,502.00. 18 Plaintiff’s counsel seeks an
attorneys’ fee award of \$36,502.00, exactly twenty-five percent 19 of the past-due benefits
awarded to Plaintiff. 20 Applying the first two Crawford factors, nothing in this case suggests that
Plaintiff’s 21 counsel rendered substandard representation or delayed this litigation. See *Crawford*,
586 22 F.3d at 1151-52. Plaintiff’s counsel timely and efficiently litigated this case, achieved 23
remand for her client, and secured a “fully favorable” decision on remand. Plaintiff’s 24 counsel’s
representation resulted in a sizeable award of past-due benefits to Plaintiff, as 25 well as monthly
benefits going forward (Dkt. Nos. 29-3; 29-4; 37). 26 Next, the Court considers the third
Crawford factor, whether the requested fees are 27 excessively large in relation to the benefits
achieved. See *Crawford*, 586 F.3d at 1151-52. 28 Plaintiff’s counsel’s firm expended 18.2 hours of
attorney time and 5.10 hours of paralegal 1 time, for a total of 23.3 hours, while representing
Plaintiff through the entry of the order of 2 remand (Dkt. Nos. 29 at 16; 29-5 at 1-2). Dividing the
requested fees by the number of 3 hours expended results in an effective hourly rate of \$1,566.61,
which may appear high. 4 However, this rate falls within the range of hourly rates awarded in
other Social Security 5 cases. See, e.g., *Tamiko T. v. Kijakazi*, Case No.: 20cv1229-KSC, 2023

WL 253114, at *3 6 (S.D. Cal. Jan. 18, 2023) (finding an effective hourly rate of \$1,339.29 “falls within the 7 range of hourly rates charged by attorneys in other matters based on the Court’s own 8 observations and according to the information provided by counsel in support of the 9 Motion”); Reddick v. Berryhill, Case No.: 16-cv-29-BTM-BLM, 2019 WL 2330895, at *2 10 (S.D. Cal. May 30, 2019) (determining on reconsideration that a fee award of \$43,000 for 11 21.6 hours of work by counsel on the case was reasonable, which equates to an hourly rate 12 of \$1,990.74); Roland S. v. Kijakazi, No. 20-cv-1068, 2023 WL 6966153, at *3 (S.D. Cal. 13 Oct. 20, 2023) (approving an effective hourly rate of \$1,438.35).

14 Furthermore, in taking on the case on a contingency basis, Plaintiff’s counsel bore 15 the risk in the event the appeal proved unsuccessful. Thus, in light of these factors and 16 circumstances, the Court finds that the requested fee is reasonable, and a downward 17 adjustment is not warranted. Therefore, the Court concludes that Plaintiff’s counsel’s 18 attorneys’ fees request of \$36,502.00 is reasonable. 19 Having approved of the fees, an adjustment must be made in light of the Court’s 20 prior award under the EAJA in the amount of \$5,261.00. “[I]n order to maximize the award 21 of past-due benefits to claimants and to avoid giving double compensation to attorneys, the 22 savings provision requires a lawyer to offset any fees received under § 406(b) with any 23 award that the attorney receives under § 2412 if the two were for the ‘same work.’” Parrish 24 v. Comm’r of Soc. Sec. Admin., 698 F.3d 1215, 1218 (9th Cir. 2012). Thus, as Plaintiff’s 25 counsel has also acknowledged, the previous amount recovered under the EAJA must be 26 reimbursed to Plaintiff (see Dkt. No. 29 at 11). 27 /// 28 ///

1 Vv. CONCLUSION

2 For the foregoing reasons, the Joint Motion is GRANTED, the Court’s previous 3 || Order Granting Plaintiff’s Counsel’s Motion for Attorneys’ Fees Pursuant to 42 U.S.C. § 4 406(b) filed August 21, 2025, is VACATED, and the Court GRANTS Plaintiffs motion 5 || for authorization of attorneys’ fees pursuant to 42 U.S.C. § 406(b). The Court approves the 6 requested fees in the amount of \$36,502.00, to be paid out of Plaintiffs past-due benefits 7 accordance with the Social Security Administration’s policy. IT IS FURTHER 8 || ORDERED that Plaintiff’s Counsel shall, after receipt of the above-awarded fee, refund 9 ||to Plaintiff the lesser of the fee awarded under 42 U.S.C. § 406(b) and any fees awarded 10 |under the Equal Access to Justice Act. In light of this order, the parties’ previously filed 11 motion (Dkt. No. 34) is TERMINATED as moot. 12 IT IS SO ORDERED. 13 || Dated: January 12, 2026 14 15 Be FA. M7 Hon. SteveB.Chu —™” 18 United States Magistrate Judge 19 20 21 22 23 24 25 26 27 28