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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Abdulbasit Abdullah,
10 Plaintiff,
11 v.
12 Social Security Administration
13 Commissioner,
14 Defendant.

No. CV-13-01811-PHX-DGC

ORDER

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16 Pursuant to 42 U.S.C. § 405(g), Plaintiff Abdulbasit Abdullah seeks judicial
17 review of the Commissioner's decision finding him not disabled within the meaning of
18 the Social Security Act. Doc. 15. Plaintiff has also filed a motion to supplement the
19 record.¹ Doc. 14. Defendant has filed a motion to remand and a supporting
20 memorandum. Docs. 16, 17. The motions are fully briefed and no party has requested
21 oral argument. For the reasons that follow, the Court will remand this case for further
22 proceedings.

23 **I. Background.**

24 Plaintiff applied for disability and supplemental security insurance benefits on
25 March 5, 2010, alleging disability beginning January 1, 2007. Doc. 15 at 2. After a
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27 ¹ In her motion for remand, Defendant concedes that Plaintiff's newly submitted
28 evidence "arguably relates back to Plaintiff's condition during the relevant time period
and could change the outcome of the hearing decision." Doc. 17 at 2. The Court will
therefore grant the motion to supplement the record.

1 hearing on October 14, 2011, an administrative law judge (“ALJ”) issued an opinion on
2 November 4, 2011 finding Plaintiff not disabled. A.R. 17-28. A request for review was
3 denied by the Appeals Council and the ALJ’s opinion became the Commissioner’s final
4 decision on September 4, 2013. Doc. 15 at 2.

5 **II. Legal Standard.**

6 Defendant’s decision to deny benefits will be vacated “only if it is not supported
7 by substantial evidence or is based on legal error.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d
8 880, 882 (9th Cir. 2006). “‘Substantial evidence’ means more than a mere scintilla, but
9 less than a preponderance, i.e., such relevant evidence as a reasonable mind might accept
10 as adequate to support a conclusion.” *Id.* In determining whether the decision is
11 supported by substantial evidence, the Court must consider the record as a whole,
12 weighing both the evidence that supports the decision and the evidence that detracts from
13 it. *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). If there is sufficient evidence to
14 support the Commissioner’s determination, the Court cannot substitute its own
15 determination. *See Young v. Sullivan*, 911 F.2d 180, 184 (9th Cir. 1990).

16 **III. Analysis.**

17 Plaintiff advances four arguments as to why the ALJ’s decision was erroneous.
18 First, he argues that the ALJ failed to address “whether the opinion of [Plaintiff]’s
19 treating physician, Dr. Sivakumar, and the evidence submitted from Dr. Geary establishes
20 that [Plaintiff] meets or equals Listings 11.12 and/or 12.04.” Doc. 15 at 1. Second, he
21 argues that the opinion of Dr. Sivakumar, one of his treating physicians, was improperly
22 rejected by the ALJ. *Id.* Next, Plaintiff contends that the ALJ improperly rejected his
23 subjective testimony. *Id.* Finally, Plaintiff argues that the ALJ erred by failing to obtain
24 the testimony of a vocational expert. *Id.*

25 Defendant asks the Court to remand the case to the Appeals Council for the
26 purpose of considering Plaintiff’s newly submitted evidence and for reconsidering
27 Plaintiff’s residual functional capacity, Plaintiff’s ability to communicate in English, and
28 “whether Plaintiff can perform other work existing in significant numbers in the national

1 economy[.]” Doc. 16 at 2. Plaintiff opposes Defendant’s motion to remand and argues
2 that the case should be remanded for an award of benefits based on the credit-as-true
3 doctrine. Doc. 18 at 1. Because there are outstanding issues that have yet to be resolved,
4 the Court will remand the case for further proceedings.

5 In *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996), the Ninth Circuit held
6 that evidence should be credited and an action remanded for an immediate award of
7 benefits when the following three factors are satisfied: (1) the ALJ has failed to provide
8 legally sufficient reasons for rejecting evidence; (2) there are no outstanding issues that
9 must be resolved before a determination of disability can be made; and (3) it is clear from
10 the record that the ALJ would be required to find the claimant disabled were such
11 evidence credited. Remand for an award of benefits is appropriate where the record is
12 “fully developed.” *Reddick*, 157 F.3d at 728.

13 Assuming, without deciding, that the ALJ improperly rejected either Dr.
14 Sivakumar’s opinion or Plaintiff’s testimony, it is not clear that the ALJ would be
15 required to find Plaintiff disabled if either was credited. There is no vocational expert
16 testimony considering Dr. Sivakumar’s opinion or Plaintiff’s testimony and explaining
17 what jobs would be available to Plaintiff if either was accepted as true. Further, the
18 record cannot be said to be fully developed where the Plaintiff has submitted additional
19 relevant records from Dr. Sivakumar which Defendant has not yet considered and
20 acknowledges “could change the outcome of the case.” Doc. 17 at 2. Accordingly, it is
21 not clear to the Court that the ALJ would be required to find Plaintiff disabled if Dr.
22 Sivamukar’s opinion or Plaintiff’s testimony were credited as true. The Court will
23 therefore remand the case for further proceedings. Because the Defendant has indicated
24 that an ALJ will reconsider a number of issues, including Plaintiff’s residual functioning
25 capacity, the Court need not address Plaintiff’s arguments.

