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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jeffery Jay Love,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-16-03267-PHX-DLR

ORDER

15
16 Plaintiff Jeffery Love appeals the Commissioner of the Social Security
17 Administration's ("Commissioner") denial of his application for Supplemental Security
18 Income ("SSI") benefits. The Court will eschew a lengthy recitation of the administrative
19 proceedings because, in response to Love's opening brief, the Commissioner concedes
20 error and requests that the Court remand this case for further administrative proceedings.
21 The sole disputed issue is whether further proceedings are necessary or whether the Court
22 should remand for an immediate award of benefits.

23 When the Commissioner's decision is tainted by legal error or not supported by
24 substantial evidence, the Court has discretion to reverse and remand either for further
25 proceedings or for an award of benefits. 42 U.S.C. § 405(g). With that said, "[a]n
26 automatic award of benefits in a disability case is a rare and prophylactic exception to the
27 well-established ordinary remand rule." *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir.
28 2017). In deciding whether to remand for an award of benefits, the Court considers the

1 following three factors: (1) did the ALJ fail to provide legally sufficient reasons for
2 rejecting evidence, (2) has the record has been fully developed and would further
3 proceedings serve no useful purpose, and (3) is it clear from the record that the ALJ
4 would be required to find the claimant disabled were such evidence credited? *Triechler*
5 *v. Comm’r of Soc. Sec.*, 775 F.3d 1090, 1100-01 (9th Cir. 2014). The Court need not
6 apply this so-called “credit-as-true” rule if evaluation of the record as a whole creates
7 serious doubt that the claimant is, in fact, disabled. *See Garrison v. Colvin*, 759 F.3d
8 995, 1021 (9th Cir. 2014).

9 The Commissioner concedes that the first element is met, but argues that further
10 proceedings are needed so that the ALJ may: (1) “update the evidence of record,” (2)
11 “reconsider the medical opinion evidence,” (3) “reevaluate the nature and severity of
12 Plaintiff’s impairments at step two,” (4) “reconsider the reliability of Plaintiff’s
13 symptoms allegations,” and (5) “reassess Plaintiff’s [Residual Functional Capacity
14 (“RFC”).” (Doc. 21 at 4-5.) These tasks do not appear to be outstanding issues, and
15 instead reflect the Commissioner’s desire for a redo. But Ninth Circuit “precedent and
16 the objectives of the credit-as-true rule foreclose the argument that a remand for the
17 purpose of allowing the ALJ to have a mulligan qualifies as a remand for a ‘useful
18 purpose.’” *Garrison*, 759 F.3d at 1021-22 (collecting cases).

19 The Commissioner also argues that further administrative proceedings are
20 appropriate because Love submitted additional evidence to the Appeals Council showing
21 that he was evaluated for multiple sclerosis in November 2015, after the ALJ’s non-
22 disability determination in March of that year. But the Appeals Council considered this
23 evidence and concluded, evidently without substantial rationale or support, that it would
24 not change the outcome of the case. Moreover, as Love points out, although his multiple
25 sclerosis diagnosis post-dated the ALJ’s decision, evidence of the symptoms associated
26 with the condition already was present in the record. (*See* AR 448-49, 452, 455.)

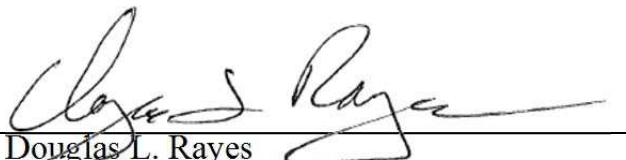
27 Love filed his application for SSI benefits over five years ago in October 2012.
28 The Commissioner admittedly erred in evaluating the medical opinion testimony, yet now

1 seeks another crack at assessing Love's SSI application. Having considered the parties'
2 arguments and the cited record evidence, the Court finds that further administrative
3 proceedings would not serve a useful purpose or advance the objectives of the credit-as-
4 true rule. Accordingly,

5 **IT IS ORDERED** that the final decision of the Commissioner of Social Security
6 is **REVERSED** and this matter is **REMANDED** for an award of benefits.

7 Dated this 21st day of March, 2018.

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Douglas L. Rayes
United States District Judge