

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ROBERTO AUGUSTINE FELIX,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,  
COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,  
Defendant.

---

) Case No. CV 11-10353 JCG

**MEMORANDUM OPINION AND  
ORDER**

Roberto Augustine Felix (“Plaintiff”) challenges the Social Security Commissioner’s (“Defendant”) decision denying his application for disability benefits. Specifically, Plaintiff asserts that the Administrative Law Judge (“ALJ”) failed to include in his residual functional capacity (“RFC”) determination the opinions of certain physicians he purported to accept. (Joint Stip. at 3-10.) Defendant concedes error, and thus the Court need only determine the remedy – that is, whether to remand this case for further administrative proceedings, or to reverse and direct an immediate award of benefits. (See Joint Stip. at 6.)

The decision of whether to reverse or remand is within the court’s discretion. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no useful purpose

1 would be served by further proceedings, or where the record has been fully  
2 developed, it is appropriate to exercise discretion to direct an immediate award of  
3 benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004). But where  
4 there are outstanding issues that must be resolved before a determination can be  
5 made, or it is not clear from the record that the ALJ would be required to find  
6 plaintiff disabled if all the evidence were properly evaluated, remand is appropriate.  
7 *See id.* at 594.

8 Here, at least two outstanding issues remain.

9 First, the ALJ's error, as even Plaintiff admits, can be interpreted as either an  
10 incomplete RFC determination, or a partial rejection of the physician opinions. (*See*  
11 *Joint Stip.* at 3 (stating ALJ improperly "rejected, misstated, and/or omitted"  
12 opinions).) On one hand, the RFC may simply be incomplete because the ALJ  
13 omitted the physician opinions, and yet seemingly approved of them, giving one  
14 "great weight" and finding another to be "consistent" with his RFC. (AR at 20.)  
15 Alternatively, the omissions may indicate that the opinions were partially rejected  
16 because the ALJ – after discussing the substance of each opinion in detail –  
17 produced an RFC without ever outwardly accepting each opinion in whole. The  
18 Court finds no reliable indication either way, and will not venture into that terrain on  
19 a whim.

20 Second, even if the Court were to revise the RFC to reflect the omitted  
21 opinions, the existing testimony of the vocational expert would not be responsive to  
22 the new RFC. Thus, before disability can be determined, the vocational expert must  
23 testify anew. Remand is, therefore, necessary.

24 Accordingly, on remand, the ALJ shall reevaluate the opinions of the treating  
25 and examining physicians and either credit them as true, or provide specific and  
26 legitimate reasons for any portion that is rejected. In addition, if necessary, the ALJ  
27 shall obtain additional information and clarification regarding Plaintiff's  
28 impairments. On the basis of this information, the ALJ shall then redetermine

1 Plaintiff's RFC.

2 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered  
3 **REVERSING** the decision of the Commissioner denying benefits and  
4 **REMANDING** the matter for further administrative action consistent with this  
5 decision.<sup>1/</sup>

6

7

8 Dated: August 29, 2012

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

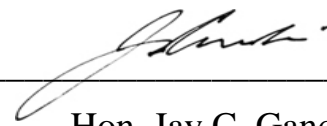
24

25

26

27

28



---

Hon. Jay C. Gandhi  
United States Magistrate Judge

---

<sup>1/</sup> In light of the Court's remand instructions, it is unnecessary to address Plaintiff's remaining contentions. (See Joint Stip. at 10-14, 17.)