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

ARMANDO HAROS, JR.,
Plaintiff,
v.
CAROLYN W. COLVIN,
COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

Case No. LA CV 15-6471 JCG
**MEMORANDUM OPINION AND
ORDER**

Armando Haros, Jr. (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Plaintiff contends that the Administrative Law Judge (“ALJ”) improperly assessed (1) the medical evidence, (2) Plaintiff’s credibility, and (3) Plaintiff’s wife’s testimony. (*See* Joint Stip. at 3-17, 19-30.) The Commissioner concedes error on each of these issues. (*Id.* at 17-19, 25-26, 29.) The Court agrees with the parties that the ALJ’s decision is defective. The only remaining issue is the form of remand. (*Id.* at 30-32.)


With error established, this Court has discretion to remand or reverse and award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no useful purpose would be served by further proceedings, or where the record has been fully developed, it is appropriate to direct an immediate award of benefits. *Benecke v.*

1 *Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004). But where outstanding issues must be
2 resolved before a determination can be made, or where the record does not make clear
3 that proper evaluation of the evidence would require a disability finding, remand is
4 appropriate. *Id.* at 594.

5 The Court is mindful that “the touchstone for an award of benefits is the
6 existence of a disability, not the agency’s legal error.” *Brown-Hunter v. Colvin*, 806
7 F.3d 487, 495 (9th Cir. 2015). Because it is unclear, on this record, whether Plaintiff
8 was in fact disabled during the relevant period, remand here is on an “open record.”
9 *Id.*; *Burrell v. Colvin*, 775 F.3d 1133, 1141-42 (9th Cir. 2014). Given the necessity of
10 remand, the parties may freely take up all issues raised in the Joint Stipulation, and any
11 other issues relevant to resolving Plaintiff’s claim of disability, before the ALJ.

12 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
13 **REVERSING** the decision of the Commissioner denying benefits and **REMANDING**
14 the matter for further administrative action consistent with this decision.

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16 DATED: August 23, 2016

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18 _____
19 Hon. Jay C. Gandhi
20 United States Magistrate Judge

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22 **This Memorandum Opinion and Order is not intended for publication. Nor is it**
23 **intended to be included or submitted to any online service such as**
24 **Westlaw or Lexis.**

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