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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DIANA L. WEST, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MICHAEL J. ASTRUE, )  
 )  
Commissioner of Social Security, )  
 )  
Defendant. )

1:07-cv-01049-TAG  
  
ORDER DECLINING TO ORDER REMAND  
PURSUANT TO SENTENCE FOUR, AND  
DIRECTING PARTIES TO SUBMIT A  
CORRECTED STIPULATION AND  
PROPOSED ORDER  
  
(Doc. 26)

Plaintiff is proceeding with counsel with an action in which Plaintiff seeks judicial review of a final decision of the Commissioner of Social Security denying Plaintiff’s application for benefits. Pursuant to 28 U.S.C. § 636(c), both parties have consented to the Magistrate’s jurisdiction to conduct all proceedings, including ordering the entry of judgment.<sup>1</sup> Pending before the Court is the parties’ stipulation and proposed order for remand pursuant to sentence four of 42 U.S.C. § 405(g). (Doc. 26).

The fourth sentence of § 405(g) authorizes a court to enter “a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g). Under sentence four, a district court may remand in conjunction with a judgment affirming, modifying, or reversing the Commissioner’s decision; immediate entry of judgment is a primary feature that distinguishes a

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<sup>1</sup> Pursuant to the parties’ stipulation, on September 8, 2008, Judge O’Neill ordered the case assigned to the undersigned Magistrate Judge to conduct all further proceedings in this case.

1 sentence-four remand from a sentence-six remand. *Shalala v. Shaefer*, 509 U.S. 292, 297 (1993).  
2 A remand order pursuant to sentence four must be accompanied by a final judgment affirming,  
3 modifying, or reversing the administrative decision in accordance with sentence four. *Melkonyan*  
4 *v. Sullivan*, 501 U.S. 89, 102 (1991).

5 The Court appreciates the efforts of the parties to identify actions that require remand and  
6 to agree to remand actions to the Commissioner without the necessity of the Court's review of  
7 the merits of such cases. In the instant case, the stipulation and order submitted to the Court  
8 (Doc.36) records the parties' stipulation that the action be remanded pursuant to sentence four for  
9 further administrative action and reflects the parties' agreement regarding the scope of the  
10 appropriate administrative action upon remand. However, it does not contain a stipulation or  
11 request regarding entry of a final judgment; it does not specifically describe the party for whom  
12 judgment should be entered, the party against whom the judgment should be entered, or the form  
13 of the judgment (i.e., a final judgment affirming, modifying, or reversing the Commissioner's  
14 decision).<sup>2</sup> Because of these defects, the Court's affixing a signature to the line following the  
15 words "APPROVED AND SO ORDERED" would result in an ambiguous and incomplete order.  
16 Although the Court could fashion an order that would correct the defects in the stipulation and  
17 order submitted to the Court, in the interest of judicial economy and for the convenience of the  
18 Court, the Court will decline to sign the proposed order and will direct the parties to submit an  
19 appropriate, complete stipulation and proposed order.

20 \_\_\_\_\_Accordingly, the Court DECLINES to order remand pursuant to the document submitted  
21 by the parties on January 26, 2009, and entitled "STIPULATION AND PROPOSED ORDER OF  
22 VOLUNTARY REMAND AND DISMISSAL OF CASE, WITH DIRECTIONS TO CLERK TO  
23 ENTER JUDGMENT," (Doc. 26) without prejudice, and DIRECTS THE PARTIES to file a  
24 stipulation and order for remand pursuant to sentence four of 42 U.S.C. § 405(g) that, in addition  
25 to containing the parties' stipulation that the action be remanded pursuant to sentence four for  
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27 <sup>2</sup> Although there is a reference to request for entry of judgment in the title of the document, in the body of  
28 the stipulation, there is no stipulated request regarding the entry of judgment or description of the precise nature and  
form of judgment to be entered.

1 further administrative action and the parties' stipulation regarding the scope of the appropriate  
2 administrative action upon remand, also contains a stipulation and request for entry of a final  
3 judgment for Plaintiff and against Defendant that reverses the decision of the Commissioner.  
4

5 IT IS SO ORDERED.

6 Dated: January 29, 2009  
7 \_\_\_\_\_

/s/ Theresa A. Goldner  
UNITED STATES MAGISTRATE JUDGE