

1 BENJAMIN B. WAGNER
United States Attorney
2 DONNA L. CALVERT
Acting Regional Chief Counsel, Region IX
3 Social Security Administration
4 SUNDEEP R. PATEL
Special Assistant United States Attorney
5

6 160 Spear Street, Suite 800
San Francisco, CA 94105
7 Telephone: (415) 977-8981
Facsimile: (415) 977-8873
8 Email: Sundeep.Patel@ssa.gov

9 Attorneys for Defendant

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12
13 SACRAMENTO DIVISION

14 MICHAEL G. COTTLE,) CASE NO. 10-1886 CKD
15)
16 Plaintiff,) STIPULATION AND ORDER
vs.) TO REOPEN
17)
18 CAROLYN W. COLVIN,)
Acting Commissioner of Social Security,)
19 Defendant.¹)

20 The parties hereby stipulate, through their undersigned attorneys, and with the approval
21 of the Court, that this case shall be reopened.

22 On March 10, 2011, pursuant to the stipulation of the parties, this Court remanded the
23 instant case to the Commissioner for a new hearing. The parties stipulated to remand this case
24

25 ¹ Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013.
26 Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin should be
27 substituted for Michael J. Astrue as the defendant in this suit. No further action need be taken to
28 continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42
U.S.C. § 405(g).

1 because Defendant was unable to prepare the certified administrative record the hearing file
2 being unavailable. The proceedings on remand have culminated in an April 20, 2012 decision
3 unfavorable to Plaintiff.

4 Now that the administrative proceedings have concluded, reopening is necessary. In a
5 sentence-six remand case, the Court retains jurisdiction following the remand. *See Melkonyan v.*
6 *Sullivan*, 501 U.S. 89, 98 (1991) (district court retains jurisdiction over Social Security cases
7 remanded under 42 U.S.C. § 405(g), sentence six, and where the final administrative decision is
8 favorable to one party or the other, the Commissioner is to return to the court following
9 completion of the administrative proceedings on remand so that the court may enter a final
10 judgment or, as in this case, a dismissal); *see also Shalala v. Schaefer*, 509 U.S. 292, 298-300
11 (1993).

12 [A] sentence six remand, because of clear language in the social security statute,
13 implies and necessarily involves a reservation of jurisdiction for the future and
14 contemplates further proceedings in the district court and a final judgment at the
15 conclusion thereof. A sentence six remand judgment, the Court said, is therefore
always interlocutory and never a “final” judgment.

16 *Carrol v. Sullivan*, 802 F.Supp. 295, 300 (C. D. Cal. 1992) (*paraphrasing and quoting*
17 *Melkonyan*).

18 It is therefore appropriate to reopen this case in order to resolve the Court’s sentence-six
19 jurisdiction. Upon reopening, Defendant will serve the certified administrative record within 120
20 days of this Court’s order.

21 //
22 //
23 //

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

Respectfully submitted,

Dated: June 4, 2013

LAW OFFICES OF HAROLD HADLEY

By: /s/ Sundeep Patel for Jesse Kaplan*
**As authorized by email on June 4, 2013*
JOSEPH C. FRAULOB
Attorney for Plaintiff

Dated: June 4, 2013

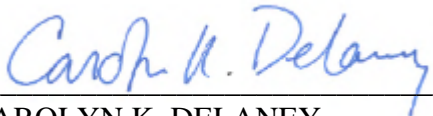
BENJAMIN B. WAGNER
United States Attorney
DONNA L. CALVERT
Acting Regional Chief Counsel, Region IX
Social Security Administration

By: /s/ Sundeep R. Patel
SUNDEEP R. PATEL
Special Assistant U. S. Attorney

ORDER

Pursuant to stipulation, it is so ordered.

Dated: June 5, 2013



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE