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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TAM PHAN NGUYEN, <p style="text-align: right;">Plaintiff,</p> v. NANCY BERRYHILL, Acting Commissioner of Social Security, <p style="text-align: right;">Defendant.</p>	Case No. 17-cv-1406-MMA (NLS) ORDER DENYING PLAINTIFF’S MOTION TO REOPEN CASE [Doc. No. 29]
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Plaintiff Tam Phan Nguyen (“Plaintiff”) filed an appeal from the final decision of Acting Commissioner of Social Security Nancy A. Berryhill (“the Commissioner”) denying his application for disability insurance benefits and Supplemental Security Income benefits on July 12, 2017. Doc. No. 1. The Magistrate Judge issued a Report and Recommendation on August 3, 2018, recommending that the Court grant in part Plaintiff’s motion for summary judgment, deny the Commissioner’s cross-motion for summary judgment, and remand the case for further proceedings. Doc. No. 18 at 39–40.¹

¹ All citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

1 The Court adopted Magistrate Judge’s Report and Recommendation and remanded the
2 case for further proceedings. Doc. No. 21. Plaintiff now moves to reopen the case in
3 light of the Administrative Law Judge (ALJ) again denying benefits. *See* Doc. No. 29.
4 The Commissioner filed an opposition to Plaintiff’s motion, *see* Doc. No. 30, but Plaintiff
5 did not reply. The Court found the matter suitable for determination on the papers and
6 without oral argument pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local
7 Rule 7.1.d.1. *See* Doc. No. 31. For the reasons set forth below, the Court **DENIES**
8 Plaintiff’s motion.

9 In a brief motion with less than one page of substance, Plaintiff seeks to reopen
10 this action “pursuant to 42 U.S.C. § 405(g) and order that the Commissioner file the
11 transcript of the plaintiff’s case record so that plaintiff may file a motion for summary
12 judgment.” Doc. No. 29-1 at 1. Plaintiff appears to make this motion to ultimately
13 challenge the ALJ’s post-remand denial of benefits. *See id.* The Commissioner responds
14 that this motion should be denied because the Court’s jurisdiction has ended and Plaintiff
15 should, instead, challenge the ALJ’s new findings in a new civil action. *See* Doc. No. 30
16 at 2. The Commissioner argues that the Court’s remand order was pursuant to sentence
17 four of § 405(g) because the Court did not reserve jurisdiction under sentence six of
18 § 405(g) and “neither statutory basis for sentence-six remand is applicable.” *See id.* at 4.
19 Additionally, the Commissioner contends that the parties treated the remand as one
20 pursuant to sentence four that resulted in a final judgment. *Id.* at 5.

21 In addressing Plaintiff’s motion, the Court begins with the statute. Under 42
22 U.S.C. § 405(g), there are two types of remand: “(1) remands pursuant to the fourth
23 sentence, and (2) remands pursuant to the sixth sentence.” *Melkonyan v. Sullivan*, 501
24 U.S. 89, 98 (1991). The text of sentence four to § 405(g) provides the following: “[t]he
25 court shall have power to enter, upon the pleadings and transcript of the record, a
26 judgment affirming, modifying, or reversing the decision of the Commissioner of Social
27 Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g),
28 sentence four. As opposed to sentence four, a sentence six remand “describes an entirely

1 different kind of remand.” *Melkonyan*, 501 U.S. at 98 (quoting *Sullivan v. Finkelstein*,
2 496 U.S. 617, 626 (1990)). The text of sentence six to § 405(g) states the following:

3
4 The court may, on motion of the Commissioner of Social Security made for
5 good cause shown before the Commissioner files the Commissioner’s
6 answer, remand the case to the Commissioner of Social Security for further
7 action by the Commissioner of Social Security, and it may at any time order
8 additional evidence to be taken before the Commissioner of Social Security,
9 but only upon a showing that there is new evidence which is material and
10 that there is good cause for the failure to incorporate such evidence into the
11 record in a prior proceeding; and the Commissioner of Social Security shall,
12 after the case is remanded, and after hearing such additional evidence if so
13 ordered, modify or affirm the Commissioner’s findings of fact or the
14 Commissioner’s decision, or both, and shall file with the court any such
15 additional and modified findings of fact and decision, and, in any case in
16 which the Commissioner has not made a decision fully favorable to the
17 individual, a transcript of the additional record and testimony upon which
18 the Commissioner’s action in modifying or affirming was based.

15 42 U.S.C. § 405(g), sentence six. In a sentence six remand, the reviewing “district court
16 does not affirm, modify, or reverse the Secretary’s decision; it does not rule in any way as
17 to the correctness of the administrative determination.” *Melkonyan*, 501 U.S. at 98.

18 Instead, “the court remands because new evidence has come to light that was not
19 available to the claimant at the time of the administrative proceeding and that evidence
20 might have changed the outcome of the prior proceeding.” *Id.* (citing *Finkelstein*, 496
21 U.S. at 626). Following a sentence six remand, the statute requires the Commissioner to
22 return to the district court to file such additional or changed factual findings, decisions,
23 and record. *See id.* (quoting 42 U.S.C. § 405(g), sentence six). “Unlike sentence four
24 remands, sentence six remands do not constitute final judgments.” *Akopyan v. Barnhart*,
25 296 F.3d 852, 855 (9th Cir. 2002).

26 As a preliminary matter, Plaintiff does not sufficiently provide the grounds for his
27 motion to reopen the case. *See Fed. R. Civ. P. 7(b)(1)(B); cf. Indep. Towers of*
28 *Washington v. Washington*, 350 F.3d 925, 930 (9th Cir. 2003) (“We require contentions

1 to be accompanied by reasons.”). Plaintiff compounds this oversight by failing to file a
2 reply to the Commissioner’s opposition brief. Therefore, Plaintiff has failed to carry his
3 burden to show why this action should be reopened. Regardless of this error, the Court
4 addresses the merits of Plaintiff’s motion.

5 Turning to the substance of Plaintiff’s motion, the Court remanded the action
6 pursuant to sentence four. In adopting the Magistrate Judge’s Report and
7 Recommendation and remanding the case for further proceedings, the Court found that
8 “the ALJ did not consider the entire record nor did he provide ‘specific and legitimate
9 reasons supported by substantial evidence’ in his decision to reject the medical opinions
10 and objective medical evidence of Plaintiff’s mental impairments.” Doc. No. 18 at 39
11 (quoting *Garrison v. Colvin*, 759 F.3d 995, 1013 (9th Cir. 2014)), *adopted in its entirety*
12 *by* Doc. No. 21 at 10. The Court remanded the ALJ’s decision “as to Plaintiff’s mental
13 health impairments” for further administrative proceedings. *Id.* at 40. In essence, the
14 Court ruled on the “correctness of the administrative decision.” *Melkonyan*, 501 U.S. at
15 98. The Court did not remand based on new evidence appearing that might have altered
16 the ALJ’s decision. The Court’s order constituted a final judgment that ruled on the
17 ALJ’s decision. Accordingly, the Court ordered remand pursuant to sentence four.

18 Moreover, Plaintiff treated the Court’s remand order as pursuant to sentence four.
19 After the Court issued its order, Plaintiff moved for attorneys’ fees under the Equal
20 Access to Justice Act (“EAJA”). *See* Doc. No. 25. In his motion, Plaintiff noted that the
21 request needed to be filed within thirty days of the Court’s final judgment and that the
22 Court’s remand order would become a final judgment on November 5, 2018. *See* Doc.
23 No. 25-1 at 2. Indeed, “[a] sentence four remand becomes a final judgment, for purposes
24 of attorneys’ fees claims brought pursuant to the EAJA, 28 U.S.C. § 2412(d), upon
25 expiration of the time for appeal.” *Akopyan*, 296 F.3d at 854 (citing *Shalala v. Schaefer*,
26 509 U.S. 292, 297 (1993)). Thus, Plaintiff himself moved for attorney’s fees under the
27 belief that the Court’s remand order was a final judgment pursuant to sentence four.
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