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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Robert Glenn Kline,

10 Plaintiff,

11 v.

12 Carolyn W. Colvin,

13 Defendant.
14

No. CV-14-08242-PCT-DGC

AMENDED ORDER

15 Pursuant to Plaintiff's unopposed motion to amend (Doc. 30),

16 Plaintiff Robert Glenn Kline seeks review under 42 U.S.C. § 405(g) of the final
17 decision of the Commissioner of Social Security, which denied him disability insurance
18 benefits and supplemental security income under sections 216(i), 223(d), and
19 1614(a)(3)(A) of the Social Security Act. Because the decision of the Administrative
20 Law Judge ("ALJ") was not supported by substantial evidence and was based on legal
21 error, the decision will be vacated and the matter remanded for an award of benefits.

22 **I. Background.**

23 Plaintiff is a 53 year old male who previously worked as a recreational vehicle
24 repairer. On March 29, 2010, Plaintiff applied for disability insurance benefits and
25 supplemental security income, alleging disability beginning December 2007.¹ On
26 January 23, 2013, he appeared with his attorney and testified at a hearing before an ALJ.

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28 ¹ The ALJ's opinion incorrectly stated that Plaintiff alleged disability beginning
June 23, 2010, A.R. 25, which is after Plaintiff's application date.

1 A vocational expert also testified. On March 13, 2013, the ALJ issued a decision that
2 Plaintiff was not disabled within the meaning of the Social Security Act. The Appeals
3 Council denied Plaintiff's request for review of the hearing decision, making the ALJ's
4 decision the Commissioner's final decision.

5 **II. Legal Standard.**

6 The district court reviews only those issues raised by the party challenging the
7 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court
8 may set aside the Commissioner's disability determination only if the determination is
9 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d
10 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a
11 preponderance, and relevant evidence that a reasonable person might accept as adequate
12 to support a conclusion considering the record as a whole. *Id.* In determining whether
13 substantial evidence supports a decision, the court must consider the record as a whole
14 and may not affirm simply by isolating a "specific quantum of supporting evidence." *Id.*
15 As a general rule, "[w]here the evidence is susceptible to more than one rational
16 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be
17 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

18 **III. The ALJ's Five-Step Evaluation Process.**

19 To determine whether a claimant is disabled for purposes of the Social Security
20 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears
21 the burden of proof on the first four steps, but the burden shifts to the Commissioner at
22 step five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

23 At the first step, the ALJ determines whether the claimant is engaging in
24 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not
25 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant
26 has a "severe" medically determinable physical or mental impairment.
27 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step
28 three, the ALJ considers whether the claimant's impairment or combination of

1 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
2 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to
3 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the
4 claimant’s residual functional capacity and determines whether the claimant is still
5 capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not
6 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step,
7 where he determines whether the claimant can perform any other work based on the
8 claimant’s residual functional capacity, age, education, and work experience.
9 § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is
10 disabled. *Id.*

11 At step one, the ALJ found that Plaintiff met the insured status requirements of the
12 Social Security Act through December 31, 2014, and that he had not engaged in
13 substantial gainful activity since his alleged onset date. A.R. 22. At step two, the ALJ
14 found that Plaintiff had the following severe impairments: sleep apnea, degenerative disc
15 disease of the lumbar and thoracic spine, fibromyalgia, obesity, major depressive
16 disorder, anxiety disorder, “carpal tunnel syndrome status post release surgery,” and
17 “status post removal of hardware – right ankle.” *Id.* At step three, the ALJ determined
18 that Plaintiff did not have an impairment or combination of impairments that met or
19 medically equaled an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404.
20 A.R. 28. At step four, the ALJ found that Plaintiff had the residual functional capacity to
21 perform:

22 light work as defined in 20 CFR 404.1567(b) except the claimant is able to
23 occasionally balance, stoop, crouch, kneel, crawl, and climb ramps and
24 stairs. The claimant should never operate foot controls with his right lower
25 extremity, or be required to climb ladders, ropes, or scaffolds. The
26 claimant should also avoid concentrated exposure to non-weather related
27 extreme hot, extreme cold, pulmonary irritants, poorly ventilated areas,
28 dangerous with moving mechanical parts, and exposure to unprotected
heights. The claimant will also require a position having simple repetitive
and routine tasks that can be learned through demonstration, without the
reading of instructions.²

² A.R. 31.

1 The ALJ further found Plaintiff unable to perform any of his past relevant work. A.R. 36.
2 At step five, the ALJ concluded that, considering Plaintiff's age, education, work
3 experience, and residual functional capacity, there were jobs that existed in significant
4 numbers in the national economy that Plaintiff could perform, including "Photocopier
5 Operator," "Routing Clerk," and "Router." A.R. 37.

6 **IV. Analysis.**

7 Plaintiff argues that the ALJ's disability determination was defective for three
8 reasons: (1) the ALJ improperly rejected the medical opinions of Plaintiff's treating
9 physician, (2) the ALJ improperly rejected the opinion of Plaintiff's treating mental
10 health certified physician assistant, and (3) the ALJ improperly discounted Plaintiff's
11 testimony. The Court will address each argument below.

12 **A. Opinion of Plaintiff's Treating Physician.**

13 Plaintiff argues that the ALJ improperly discounted the medical opinions of
14 Dr. Henry H. Kaldenbaugh. Dr. Kaldenbaugh has been Plaintiff's treating physician for
15 more than 20 years. A.R. 61. During the time period relevant to this case,
16 Dr. Kaldenbaugh consulted with Plaintiff on 30 occasions concerning Plaintiff's
17 fibromyalgia and related health issues.³ Dr. Kaldenbaugh also prescribed several
18 medications to treat Plaintiff's fibromyalgia and its symptoms.⁴

19 In December 2010, Dr. Kaldenbaugh completed a Fibromyalgia Residual
20 Functional Capacity Questionnaire. A.R. 330-32. Dr. Kaldenbaugh indicated that
21 Plaintiff suffered from fibromyalgia and that this condition had lasted for 12 months or
22 could be expected to last for the next 12 months. A.R. 330. Dr. Kaldenbaugh reported
23 that Plaintiff's signs and symptoms included multiple tender points, nonrestorative sleep,
24 frequent severe headaches, incoordination, severe fatigue, depression, numbness and

25 ³ See Plaintiff Br., Doc. 19, at 13 n.13 (collecting administrative record citations
26 documenting 30 consultations between Plaintiff and Dr. Kaldenbaugh).

27 ⁴ See, e.g., A.R. 520 (prescribing Tramadol, an opioid drug used to treat chronic
28 moderate to moderately severe pain); A.R. 281 (prescribing Savella, a drug approved by
the Food and Drug Administration to treat fibromyalgia).

1 tingling of upper extremities, vestibular dysfunction, cognitive impairment, and low back
2 pain. *Id.* He stated that Plaintiff experienced moderately severe pain (i.e., “[p]ain
3 seriously affect[ing] ability to function”) and severe fatigue (i.e., fatigue “which
4 precludes ability to function”), and that these symptoms were sufficiently severe to
5 interfere with Plaintiff’s attention and concentration “daily and almost constantly.”
6 A.R. 332. Dr. Kaldenbaugh further opined that, as a result of these symptoms, Plaintiff
7 would not be able to work on a regular and continuing basis. *Id.* Subsequently, in
8 summarizing Plaintiff’s January 22, 2013 consultation, Dr. Kaldenbaugh stated that
9 Plaintiff “is significantly disabled due to his current diagnoses and is unable to work even
10 part time.” A.R. 958.

11 The Ninth Circuit has held that the uncontradicted opinion of a claimant’s treating
12 physician can be rejected only for “clear and convincing” reasons. *Lester v. Chater*, 81
13 F.3d 821, 830 (9th Cir. 1995) (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir.
14 1988)). Even if contradicted by the opinion of another doctor, a treating physician’s
15 opinion “can only be rejected for specific and legitimate reasons that are supported by
16 substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (internal citation omitted).
17 Under the “specific and legitimate reasons” standard, an ALJ must present “a detailed
18 and thorough summary of the facts and conflicting clinical evidence, stating his
19 interpretation thereof, and making findings.” *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th
20 Cir. 1986). “[T]he ALJ must do more than offer [her] conclusions. [She] must set forth
21 [her] own interpretations and explain why they, rather than the doctors’, are correct.”
22 *Embrey*, 849 F.2d at 421-22.

23 The Court concludes that Dr. Kaldenbaugh’s opinion is properly evaluated under
24 the “clear and convincing” standard. Although the ALJ stated that Dr. Kaldenbaugh’s
25 opinion was contradicted by “the well-supported medical opinion of other sources as
26 mentioned in this opinion,” she did not explain which aspects of Dr. Kaldenbaugh’s
27 opinion were contradicted or by whom. A.R. 35. In her brief, the Commissioner asserts
28 that Dr. Kaldenbaugh’s “opinion of disability” is contradicted by Dr. Brecheisen.

1 Doc. 24 at 8. But Dr. Brecheisen did not contradict the pertinent aspects of
2 Dr. Kaldenbaugh's opinion – namely, that Plaintiff experienced moderately severe pain
3 and severe fatigue which disrupted Plaintiff's attention and concentration "daily and
4 almost constantly." Dr. Brecheisen reported that although Plaintiff suffered from
5 fibromyalgia, a physical examination did not reveal "any objective medical evidence of
6 the claimant's allegation of permanent disability." A.R. 313. This statement is not
7 inconsistent with Dr. Kaldenbaugh's conclusion that Plaintiff suffered moderately severe
8 pain and severe fatigue as the result of his fibromyalgia. *See* SSR 12-2p, 77 Fed. Reg.
9 43,640, 43,643 (recognizing that "objective medical evidence" will not always
10 substantiate the intensity and persistence of pain and other symptoms caused by
11 fibromyalgia); *see also* 20 C.F.R. § 404.1529(c)(3) (recognizing that a claimant may
12 suffer symptoms that "suggest a greater severity of impairment than can be shown by
13 objective medical evidence alone").

14 Even if Dr. Kaldenbaugh's opinion were properly characterized as contradicted,
15 the ALJ's rejection of the opinion would constitute reversible error because the ALJ did
16 not provide legitimate reasons for discounting it. The ALJ offered the following rationale
17 for her decision to accord "little weight" to Dr. Kaldenbaugh's opinion:

18 [Dr. Kaldenbaugh's] opinions are based solely on the claimant's subjective
19 pain complaint and while Dr. Kaldenbaugh has treated the claimant for his
20 fibromyalgia pain, Dr. Kaldenbaugh is merely a primary care physician and
21 not a rheumatologic specialist. . . . Further, while Dr. Kaldenbaugh
22 diagnosed the claimant with fibromyalgia, upon digital palpitation, a
23 positive pain response was listed at 8 of 18 tender point locations on
24 December 30, 2010, the same day the opinion was completed, insufficient
25 to warrant such a diagnosis under SSR 12-2p. . . . Combined, as this
26 opinion is conclusory, and unsupported by Dr. Kaldenbaugh's own treating
27 records, as well as the well-supported medical opinion of other sources as
28 mentioned in this opinion, little weight was afforded to the medical source
opinion offered by Dr. Kaldenbaugh and only [to] the extent it is consistent
with the above analysis.⁵

25 The ALJ's assertions that Dr. Kaldenbaugh's opinion was "conclusory,"
26 "unsupported by Dr. Kaldenbaugh's own treating records," and based "solely on the

28 ⁵ A.R. 35.

1 claimant’s subjective pain complaint” are not supported by the record, which shows that
2 Dr. Kaldenbaugh made a variety of objective findings consistent with his assessment of
3 Plaintiff’s limitations.⁶ The ALJ’s assertion that Dr. Kaldenbaugh’s digital palpitation is
4 insufficient to warrant a fibromyalgia diagnosis under SSR 12-2p (the Social Security
5 Administration’s Policy Interpretation Ruling on Evaluation of Fibromyalgia) is both
6 incorrect and irrelevant. It is incorrect because SSR 12-2p does not require any positive
7 tender point findings where the patient has a history of widespread pain and repeated
8 manifestations of six or more fibromyalgia symptoms not attributable to another malady.
9 *See* 77 Fed. Reg. at 43,642. It is irrelevant because the ALJ does not dispute that Plaintiff
10 suffers from fibromyalgia. A rheumatologist, Dr. Ken Epstein, diagnosed Plaintiff with
11 Fibromyalgia, A.R. 259, 261-63, and the ALJ herself found that Plaintiff suffers from
12 fibromyalgia, A.R. 27. Finally, the fact that Dr. Kaldenbaugh is not a rheumatologist is
13 also irrelevant. Neither the ALJ nor the Commissioner suggests that a rheumatologic
14 specialization is necessary to treat and evaluate the severity of Plaintiff’s pain and
15 fatigue.

16 Because the ALJ failed to provide legitimate reasons for rejecting
17 Dr. Kaldenbaugh’s opinion, let alone clear and convincing ones, the Commissioner’s
18 decision must be vacated.⁷

22 ⁶ *See, e.g.*, A.R. 334 (describing digital palpitation, which elicited pain from eight
23 tender point sites); A.R. 280 (noting that patient was “moving slowly due to lower back
24 pain and unable to squat due to quadriceps femoris weakness”); A.R. 352 (reporting that
25 “[p]atient fell in home several days ago hitting knees”); A.R. 360 (patient appears
26 “moderately uncomfortable” and “depressed”); A.R. 362 (reporting that Plaintiff “has
fallen several times during the past week and feels dizzy with standing. Was bedridden
for three days.”).

27 ⁷ Although the ALJ’s failure to credit Dr. Kaldenbaugh’s medical opinion is
28 dispositive, the Court will proceed to the remaining issues in this case in the interest of
judicial economy.

1 **B. Opinion of Plaintiff’s Treating Physician Assistant.**

2 Plaintiff’s second contention is that the ALJ improperly discounted the medical
3 opinion of Robert F. Nordman, PAC, who treated Plaintiff’s depression during the time
4 period relevant to this case.⁸

5 Physician assistants are not considered “acceptable medical sources” for purposes
6 of documenting a medical impairment. 20 C.F.R. § 404.1513(a). They are, however,
7 considered “other sources” the Commissioner may rely on to show the severity of a
8 claimant’s impairments and how those impairments may affect her ability to work.
9 § 404.1513(d)(1). The ALJ may discount a physician assistant’s opinion by giving
10 “germane reasons” for doing so that are “substantiated by the record.” *See Molina v.*
11 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Under this standard, the ALJ may discount
12 a physician assistant’s opinion if, for example, it is conclusory (e.g., expressed in a
13 standardized check-the-box form that fails to provide supporting reasons or clinical
14 findings), inconsistent with the physician assistant’s treatment records, or inconsistent
15 with other objective medical evidence in the record. *See id.*; *Bayliss v. Barnhart*, 427
16 F.3d 1211, 1218 (9th Cir. 2005).

17 PAC Nordman provided Plaintiff with mental health care from October 2011
18 through at least December 2012. *See, e.g.*, A.R. 803 (Oct. 4, 2011); A.R. 598 (Dec. 13,
19 2012). During this time, Nordman prescribed a number of medications to treat
20 depression. *See, e.g.*, A.R. 803 (prescribing Remeron and Wellbutrin). In December
21 2012, Nordman completed a check-the-box questionnaire assessing Plaintiff’s ability to
22 perform work-related activity. *See* A.R. 592-93. Nordman indicated that Plaintiff’s
23 psychiatric status imposed a variety of “severe” and “moderately severe” limitations on
24 his ability to carry out work on a sustained basis in a routine work setting. *See id.* For
25 example, Nordman reported that Plaintiff’s condition had caused a severe deterioration in
26 Plaintiff’s personal habits, and would severely limit his ability to perform simple and

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28 ⁸ Although Nordman’s evaluation appears to be cosigned by Dr. Dan Graber, Plaintiff does not dispute that the evaluation is properly attributed to Nordman. *See* Doc. 19 at 12 n.12.

1 repetitive tasks on a sustained basis. *See id.* Nordman included a handwritten note on the
2 questionnaire stating that Plaintiff “relies heavily on his spouse for app[ointments],
3 remember [sic] things, etc. Unlikely [Plaintiff] will be able to work again.” *Id.*

4 The ALJ determined that Nordman was not an acceptable medical source and
5 concluded that his opinion should be discounted because the “extreme set of limitations”
6 identified in his opinion was “not supported by the medical evidence offered by the
7 claimant.” A.R. 31. This was a germane reason for discounting Nordman’s conclusions.
8 *See Bayliss*, 427 F.3d at 1218 (conflict between objective medical evidence and a lay
9 person’s opinion is a germane reason for discounting that opinion). The record confirms
10 that at least some of Nordman’s findings were inconsistent with the objective medical
11 evidence. *See, e.g.*, A.R. 310-11 (opinion of Dr. Mark Brecheisen, concluding Plaintiff
12 suffers from “mild depression” and “is able to perform basic activities of daily living
13 such as personal grooming and hygiene”). The Court concludes that the ALJ did not err
14 in discounting Nordman’s opinion.

15 **C. Plaintiff’s Credibility.**

16 In evaluating the credibility of a claimant’s testimony regarding subjective pain or
17 other symptoms, the ALJ is required to engage in a two-step analysis. First, the ALJ
18 must determine whether the claimant presented objective medical evidence of an
19 impairment that could reasonably be expected to produce some degree of the pain or
20 other symptoms alleged. *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009). Second,
21 if the Plaintiff has made such a showing and there is no evidence of malingering, the ALJ
22 may reject the claimant’s testimony about the severity of the symptoms only by giving
23 specific, clear, and convincing reasons for the rejection. *Id.*

24 Plaintiff testified that he stopped working due to pain and frequent falls. A.R. 50.
25 He stated: “I can’t sit down a long time without a lot of pain. And I can’t stand very
26 long. I have to be able to stand, sit, and lay. And there’s no job that’ll let me lay down
27 that I know of.” A.R. 51. He testified that he fell “a couple times a week.” A.R. 52. He
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1 further testified that he was struggling with severe depression associated with his chronic
2 pain. A.R. 59.

3 The ALJ found that Plaintiff's medically determinable impairments could
4 reasonably be expected to cause these symptoms, but concluded that Plaintiff's
5 statements regarding the intensity, persistence, and limiting effects of the symptoms were
6 not fully credible. A.R. 32. The ALJ gave three reasons for this conclusion. First, the
7 Plaintiff's testimony was not fully supported by objective medical evidence. A.R. 33.
8 Second, Plaintiff's testimony was undermined by his failure to pursue follow-up
9 rheumatologic care. A.R. 34. Third, Plaintiff's testimony was undermined by his failure
10 to start exercising or quit smoking and by his testimony that he maintained a
11 woodworking hobby as a stress reliever and held yard sales at his home. *Id.* The Court
12 concludes that these do not constitute clear and convincing reasons for rejecting
13 Plaintiff's testimony.

14 Plaintiff's inability to point to objective medical evidence substantiating the
15 intensity of the pain and fatigue caused by his fibromyalgia is unremarkable, and does not
16 constitute grounds for discounting Plaintiff's testimony. SSR 12-2p specifically
17 contemplates that there will be cases where "objective medical evidence does not
18 substantiate a person's statements about the intensity, persistence, and functionally
19 limiting effects" of his or her fibromyalgia symptoms, and instructs the ALJ to look
20 beyond the medical evidence to determine whether the claimant's complaint is reliable in
21 such a case. 77 Fed. Reg. 43,640, 43,643. *See also Preston v. Sec'y of Health & Human*
22 *Servs.*, 854 F.2d 815, 817-18 (6th Cir. 1988) (noting that physical examinations of
23 patients with fibromyalgia "will usually yield normal results – a full range of motion, no
24 joint swelling, as well as normal muscle strength and neurological reactions.").

25 The ALJ's second reason – that Plaintiff did not pursue follow-up rheumatologic
26 care after being diagnosed by Dr. Epstein in 2010 – is not a clear and convincing reason
27 for discounting Plaintiff's testimony. The Commissioner is correct that the amount of
28 treatment "is an important indicator of the intensity and persistence of [Plaintiff's]

1 symptoms.” Doc. 24 at 13 (citing 20 C.F.R. § 404.1529(c)(3)). But the record indicates
2 that Plaintiff’s sought extensive treatment for fibromyalgia and was prescribed several
3 medications for this condition and its symptoms. *See, e.g.*, A.R. 281 (prescribing Savella
4 to treat fibromyalgia). Plaintiff received this treatment from his general practice
5 physician and not a rheumatologist, but the ALJ fails to explain why that fact detracts
6 from Plaintiff’s credibility.

7 The ALJ’s third reason – that Plaintiff’s other activities undermine his credibility –
8 also misses the mark. Although the Court absolutely agrees with the ALJ’s apparent
9 view that quitting smoking and taking up exercise would improve Plaintiff’s condition,
10 his failure to do so does not show that his testimony about pain and fatigue is suspect.
11 Making these lifestyle changes can be difficult for someone in good health; they are even
12 more challenging for a person suffering from sleep apnea, degenerative disc disease,
13 fibromyalgia, obesity, major depressive disorder, anxiety disorder, carpal tunnel
14 syndrome, and complications related to ankle surgery. Plaintiff’s failure to take these
15 clearly beneficial steps does not constitute a clear and convincing reason for concluding
16 that he was being untruthful about his pain and fatigue.

17 Nor does Plaintiff’s participation in woodworking and yard sales amount to a clear
18 and convincing reason to conclude that he was being untruthful. The ALJ did not find
19 that Plaintiff engaged in these activities on a regular basis or for a significant part of the
20 day, and the record indicates that Plaintiff spent far less time on these activities than
21 would be required to complete a typical work shift. *See, e.g.*, A.R. 52-53 (Plaintiff
22 engaged in woodworking for “a half an hour every time, not [an] everyday-type [of]
23 thing”). Nor did the Commissioner find that Plaintiff’s alleged symptoms would have
24 precluded him from engaging in these activities on a limited basis.

25 The Court concludes that the ALJ failed to provide specific, clear, and convincing
26 reasons for rejecting Plaintiff’s testimony about the severity of his symptoms. *Vasquez*,
27 572 F.3d at 591.

28

1 **V. Remedy.**

2 Where an ALJ fails to provide adequate reasons for rejecting evidence of a
3 claimant’s disability, the Court must credit that evidence as true. *Lester*, 81 F.3d at 834.
4 An action should be remanded for an immediate award of benefits when the following
5 factors are satisfied: (1) the record has been fully developed and further administrative
6 proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally
7 sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion;
8 and (3) the ALJ would be required to find the claimant disabled if the improperly
9 discredited evidence were credited as true. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th
10 Cir. 2014) (internal citations omitted). There is “flexibility” which allows “courts to
11 remand for further proceedings when, even though all conditions of the credit-as-true rule
12 are satisfied, an evaluation of the record as a whole creates serious doubt that a claimant
13 is, in fact, disabled.” *Garrison*, 759 F.3d at 1020.

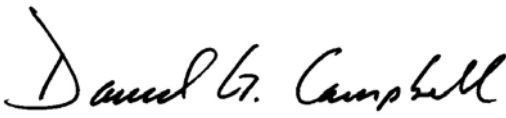
14 The relevant factors require the Court to remand for an award of benefits. The
15 ALJ failed to provide a legally sufficient reason for rejecting Dr. Kaldenbaugh’s medical
16 opinion, and this opinion, if credited as true, would require the ALJ to enter an award of
17 benefits. *See* A.R. 70 (testimony of Social Security Administration’s vocational expert,
18 concluding that Plaintiff would be precluded from doing any work if he suffered from the
19 limitations described in Dr. Kaldenbaugh’s medical opinion). The ALJ likewise failed to
20 provide a legally sufficient reason for rejecting Plaintiff’s symptom testimony, and this
21 testimony, if credited as true, would also require the ALJ to enter an award of benefits.
22 Finally, the Court’s independent evaluation of the record as a whole does not reveal any
23 substantial grounds for doubting that the claimant is disabled. Therefore, the Court
24 concludes that remand for an award of benefits is the appropriate remedy in this case.

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IT IS ORDERED that Plaintiff's unopposed motion to amend (Doc. 30) is **granted**.

IT IS ORDERED the final decision of the Commissioner of Social Security is **vacated** and this case is **remanded** for an award of benefits based on Plaintiff's application dated July 6, 2010, with a finding of disability beginning June 23, 2010.

Dated this 12th day of January, 2016.



David G. Campbell
United States District Judge