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

FABIAN REGALADO,

Plaintiff,

v.

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,^{1/}

Defendant.

Case No. CV 12-4968 JCG

**MEMORANDUM OPINION AND
ORDER**

Fabian Regalado (“Plaintiff”) challenges the Social Security Commissioner’s (“Defendant”) decision denying his application for disability benefits. Specifically, Plaintiff contends that the Administrative Law Judge (“ALJ”) improperly rejected the lay testimony of his brother, Victor Palencia. (Joint Stip. at 6, 21-22.) The Court agrees with Plaintiff for the reasons discussed below.

A. The ALJ Failed to Provide Germane Reasons for Rejecting Mr. Palencia’s Lay Testimony

“[L]ay testimony as to a claimant’s symptoms or how an impairment affects

^{1/} Carolyn W. Colvin is substituted as the proper defendant herein. *See* Fed. R. Civ. P. 25(d).

1 [their] ability to work *is* competent evidence and therefore *cannot* be disregarded
2 without comment.” *Stout v. Commissioner*, 454 F.3d 1050, 1053 (9th Cir. 2006)
3 (internal quotation marks, ellipses, and citation omitted) (emphasis in original).
4 Appropriately, then, an ALJ may discount the testimony of a lay witness only if he
5 provides specific “reasons that are germane to each witness.” *Id.* (citing *Dodrill v.*
6 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).)

7 Here, the ALJ appears to have misunderstood the nature and substance of Mr.
8 Palencia’s testimony. In just two sentences, the ALJ disregarded Mr. Palencia as
9 “not an acceptable medical source,” and his testimony as not based on “objective
10 diagnostic evidence.”^{2/} (AR at 27.)

11 But lay witnesses are *not* medical sources. *See* 20 C.F.R. § 404.1513
12 (discussing different uses for medical and non-medical sources). Unlike medical
13 evidence, which is used to “*establish* whether [a claimant has] a medically
14 determinable impairment,” lay testimony “*show[s]* the severity of [that]
15 impairment[] and how it affects [the claimant’s] ability to work.” *Id.* § 404.1513(a)
16 and (d)(4) (emphasis added). Recognizing this difference, the Ninth Circuit has
17 expressly rejected the notion that lay testimony need be supported, or even relevant
18 to the medical record. *Bruce v. Astrue*, 557 F.3d 1113, 1116 (9th Cir. 2009).

19 Thus, for the reasons state above, the ALJ erred in rejecting Mr. Palencia’s
20 testimony. Accordingly, the Court finds that substantial evidence did not support the
21 ALJ’s decision. *See Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001).

22 B. Remand is Warranted

23 With error established, this Court has discretion to remand or reverse and
24 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no

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26 ^{2/} Defendant appears to discuss reasons for the ALJ’s credibility determination
27 that are not actually stated by the ALJ. (*See* Joint Stip. at 15.) The Court limits its
28 discussion here, as it must, to only those reasons asserted by the ALJ in his decision.
See Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003).

1 useful purpose would be served by further proceedings, or where the record has been
2 fully developed, it is appropriate to exercise this discretion to direct an immediate
3 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).
4 But where there are outstanding issues that must be resolved before a determination
5 can be made, or it is not clear from the record that the ALJ would be required to find
6 plaintiff disabled if all the evidence were properly evaluated, remand is appropriate.
7 *See id.* at 594.

8 Here, there are outstanding issues which must be resolved before a final
9 determination can be made. On remand, the ALJ shall reconsider Mr. Palencia's
10 testimony, and either credit it or provide germane reasons for rejecting it.

11 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
12 **REVERSING** the decision of the Commissioner denying benefits and
13 **REMANDING** the matter for further administrative action consistent with this
14 decision.^{3/}

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16 Dated: April 30, 2013

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18 Hon. Jay C. Gandhi

19 United States Magistrate Judge
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27 ^{3/} In light of the Court's remand instructions, it is unnecessary to address
28 Plaintiff's remaining contentions. (*See Joint Stip.* at 4-8, 20-23.)