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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|                                  |   |                     |
|----------------------------------|---|---------------------|
| PATTY JO SANDERS,                | ) | NO. EDCV 10-787-MAN |
|                                  | ) |                     |
| Plaintiff,                       | ) | MEMORANDUM OPINION  |
|                                  | ) |                     |
| v.                               | ) | AND ORDER           |
|                                  | ) |                     |
| MICHAEL J. ASTRUE,               | ) |                     |
| Commissioner of Social Security, | ) |                     |
|                                  | ) |                     |
| Defendant.                       | ) |                     |
| _____                            | ) |                     |

Plaintiff filed a Complaint on June 11, 2010, seeking review of the denial by the Social Security Commissioner (the "Commissioner") of plaintiff's application for supplemental security income ("SSI"). On July 9, 2010, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. The parties filed a Joint Stipulation on February 15, 2011, in which: plaintiff seeks an order reversing the Commissioner's decision and remanding this case for the payment of benefits or, alternatively, for further administrative proceedings; and defendant requests that the Commissioner's decision be affirmed or, alternatively, remanded for further administrative proceedings. The Court has taken the parties'

1 Joint Stipulation under submission without oral argument.

2  
3 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**  
4

5 Plaintiff filed an application for SSI on July 18, 2006.  
6 (Administrative Record ("A.R.") 53.) Plaintiff, who was born on  
7 November 8, 1967 (A.R. 10),<sup>1</sup> claims to have been disabled since May 15,  
8 2002, due to chronic obstructive pulmonary disease ("COPD"), congestive  
9 heart failure, high blood pressure, diabetes, "heart valves collapsing,"  
10 and back pain (A.R. 53, 62, 68). Plaintiff has no past relevant work  
11 experience. (A.R. 60.)  
12

13 After the Commissioner denied plaintiff's claim initially and upon  
14 reconsideration (A.R. 62-66, 68-72), plaintiff requested a hearing (A.R.  
15 73, 77-78). On June 4, 2008, plaintiff, who was represented by counsel,  
16 appeared and testified at a hearing before Administrative Law Judge  
17 Lowell Fortune (the "ALJ"). (A.R. 8-47.) At the hearing, testimony was  
18 given by medical expert Dr. Samuel Landau, M.D., a Board certified  
19 cardiologist and internist (A.R. 11-23, 55), and vocational expert Alan  
20 E. Cummings (A.R. 45-46, 53). On August 6, 2008, the ALJ denied  
21 plaintiff's claim (A.R. 53-61), and the Appeals Council subsequently  
22 denied plaintiff's request for review of the ALJ's decision (A.R. 1-3).  
23 That decision is now at issue in this action.

24 ///

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26 \_\_\_\_\_  
27 <sup>1</sup> On the date plaintiff filed her application for SSI, plaintiff  
28 was 38 years old, which is defined as a "younger individual." (A.R. 60;  
20 C.F.R. § 416.963.)

1                                    **SUMMARY OF ADMINISTRATIVE DECISION**

2  
3            The ALJ found that plaintiff has not engaged in substantial gainful  
4 activity since July 18, 2006, the date plaintiff filed her application  
5 for SSI.<sup>2</sup> (A.R. 55.) The ALJ determined that plaintiff has the  
6 following severe impairments: morbid obesity; diabetes mellitus II; and  
7 a right knee disorder.<sup>3</sup> (*Id.*) The ALJ also determined that plaintiff  
8 does not have an impairment or combination of impairments that meets or  
9 medically equals one of the impairments listed in 20 C.F.R. § Part 404,  
10 Subpart P, Appendix 1 (20 C.F.R. §§ 416.920(d), 416.925, 416.926).  
11 (A.R. 56.)  
12

13            After reviewing the record, the ALJ determined that plaintiff has  
14 the residual functional capacity ("RFC") to perform "a range of work  
15 between sedentary and light" as defined in 20 C.F.R. § 416.967. (A.R.  
16 57.) Specifically, the ALJ found that:  
17

18            [Plaintiff] can lift and/or carry 20 pounds occasionally, 10  
19 pounds frequently; stand and/or walk two hours in an eight-  
20 hour workday, and sit about six hours in an eight-hour  
21 workday. Her ability to push and/or pull is unlimited, other  
22

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23            <sup>2</sup>        Although plaintiff has no reported income, plaintiff stated  
24 that she washed and dried animals for less than minimum wage between  
25 March 20, and August 23, 2003. (A.R. 23-25, 55.) The ALJ found that  
26 these earnings did not constitute substantial gainful activity. (A.R.  
27 55.)

28            <sup>3</sup>        Relying on Dr. Landau's testimony, the ALJ also determined  
that plaintiff's following "medically determinable impairments" are not  
severe: left knee disorder, asthma/COPD, and hypothyroidism. (A.R.  
55.)

1 than as shown for lifting and/or carrying. She may  
2 occasionally climb ramps or stairs, bend, or stoop and is  
3 precluded from climbing ladders, ropes, or scaffolds, from  
4 balancing, crouching, kneeling, running, jumping, or working  
5 at heights, and she must avoid walking on uneven terrain.  
6 [Plaintiff] should also avoid continuous exposure to humidity  
7 or wetness, and should not be exposed to fumes, odors, dust,  
8 gases or chemicals. [Plaintiff] should work in a clean, air-  
9 conditioned environment.

10  
11 (*Id.*)  
12

13 The ALJ concluded that, because plaintiff has no past relevant  
14 work, "transferability of job skills is not an issue." (A.R. 60.)  
15 Based on plaintiff's "age, education, work experience, and [RFC]," and  
16 the testimony of Mr. Cummings, the ALJ determined that plaintiff is able  
17 to perform work "that exists in significant numbers in the national  
18 economy." (A.R. 61.) Accordingly, the ALJ concluded that plaintiff has  
19 not been under a disability within the meaning of the Social Security  
20 Act since July 18, 2006, the date the application was filed. (A.R. 53,  
21 61.)

22  
23 **STANDARD OF REVIEW**  
24

25 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's  
26 decision to determine whether it is free from legal error and supported  
27 by substantial evidence in the record as a whole. Orn v. Astrue, 495  
28 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is "such relevant

1 evidence as a reasonable mind might accept as adequate to support a  
2 conclusion.'" *Id.* (citation omitted). The "evidence must be more than  
3 a mere scintilla but not necessarily a preponderance." Connett v.  
4 Barnhart, 340 F.3d 871, 873 (9th Cir. 2003). "While inferences from the  
5 record can constitute substantial evidence, only those 'reasonably drawn  
6 from the record' will suffice." Widmark v. Barnhart, 454 F.3d 1063,  
7 1066 (9th Cir. 2006)(citation omitted).

8  
9 Although this Court cannot substitute its discretion for that of  
10 the Commissioner, the Court nonetheless must review the record as a  
11 whole, "weighing both the evidence that supports and the evidence that  
12 detracts from the [Commissioner's] conclusion." Desrosiers v. Sec'y of  
13 Health and Hum. Servs., 846 F.2d 573, 576 (9th Cir. 1988); see also  
14 Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). "The ALJ is  
15 responsible for determining credibility, resolving conflicts in medical  
16 testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d  
17 1035, 1039 (9th Cir. 1995).

18  
19 The Court will uphold the Commissioner's decision when the evidence  
20 is susceptible to more than one rational interpretation. Burch v.  
21 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may  
22 review only the reasons stated by the ALJ in his decision "and may not  
23 affirm the ALJ on a ground upon which he did not rely." Orn, 495 F.3d  
24 at 630; see also Connett, 340 F.3d at 874. The Court will not reverse  
25 the Commissioner's decision if it is based on harmless error, which  
26 exists only when it is "clear from the record that an ALJ's error was  
27 'inconsequential to the ultimate nondisability determination.'" Robbins  
28 v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006)(quoting Stout v.

1 Comm'r, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch, 400 F.3d  
2 at 679.

3  
4 **DISCUSSION**

5  
6 Plaintiff makes the following claims: (1) the ALJ improperly  
7 determined that plaintiff did not meet or equal Listing 1.02A of the  
8 Listing of Impairments; and (2) the ALJ improperly considered  
9 plaintiff's obesity. (Joint Stipulation ("Joint Stip.") at 2, 16.)

10  
11 **I. The ALJ Did Not Consider Properly Whether Plaintiff Met Or**  
12 **Equaled Listing 1.02A.**

13  
14 Plaintiff contends that the ALJ improperly considered whether  
15 plaintiff's combined impairments meet or equal the impairments set forth  
16 in Listing 1.02A and did not provide a proper explanation for his  
17 determination. (Joint Stip. at 7-9.) As discussed below, the ALJ erred  
18 in his assessment of whether plaintiff's disabilities meet or equal  
19 Listing 1.02A, because he failed to develop the record.<sup>4</sup>

20  
21 The Listings of Impairments set forth in 20 C.F.R. Part 404,  
22 Subpart P, Appendix 1 ("Listings") were "designed to operate as a  
23 presumption of disability that makes further inquiry unnecessary."

24  
25 <sup>4</sup> In addressing whether plaintiff meets or equals Listing 1.02A,  
26 both parties focus on whether plaintiff can ambulate effectively,  
27 pursuant to Section 1.00B2b of the Listings. However, the requirements  
28 of Listing 1.02A must first be met in addition to showing that plaintiff  
cannot ambulate effectively under Section 1.00B2b. Neither plaintiff  
nor defendant addresses whether plaintiff meets these foundational  
requirements, and the ALJ does not address these requirements in his  
decision.

1 Sullivan v. Zebley, 493 U.S. 521, 532 (1990). Indeed, physical and  
2 mental conditions contained in the Listings are considered so severe  
3 that "they are irrebuttably presumed disabling, without any specific  
4 finding as to the claimant's ability to perform his past relevant work  
5 or any other jobs." Lester v. Chater, 81 F.3d 821, 828 (9th Cir. 1995).  
6 Plaintiff bears the burden of proving that her impairment or combination  
7 of impairments meets or equals the criteria of a Listing. Tackett v.  
8 Apfel, 180 F.3d 1094, 1100 (9th Cir. 1999); see Zebley, 493 U.S. at 530-  
9 31 (burden is on the claimant to show that his or her impairment meets  
10 all of the specified medical criteria for a Listing or to present  
11 medical findings equal in severity to all the criteria for the one most  
12 similar listed impairment).

13  
14 An ALJ must evaluate the relevant evidence to determine whether a  
15 claimant's impairment or impairments meet or equal one of the specified  
16 impairments set forth in the Listings. Lewis v. Apfel, 236 F.3d 503,  
17 512 (9th Cir. 2001); 20 C.F.R. § 416.920(a)(4)(iii). A "boilerplate  
18 finding is insufficient to support a conclusion that a claimant's  
19 impairment does not [meet or equal a Listing]." Lewis, 236 F.3d at 512;  
20 see also, e.g., Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir.  
21 1990)(noting that the ALJ's unexplicated finding at step three was  
22 reversible error). An ALJ's lack of formal analysis and findings at step  
23 three, however, will not constitute reversible error when: the ALJ  
24 "discussed and evaluated evidence supporting his conclusion" in a  
25 different section of his decision; and with respect to equivalency,  
26 plaintiff "offered no theory, plausible or otherwise, as to how his  
27 [impairments] combined to equal a listed impairment." Lewis, 236 F.3d  
28 at 513-14.

1 Here, plaintiff argues that the medical evidence establishes that  
2 she met or equaled the impairments set forth in Listing 1.02A, which  
3 governs the major dysfunction of a joint due to any cause. Listing 1.02A  
4 is met when a claimant shows:

5  
6 [G]ross anatomical deformity (e.g., subluxation, contracture,  
7 bony or fibrous ankylosis, instability) and chronic joint pain  
8 and stiffness with signs of limitation of motion or other  
9 abnormal motion of the affected joint(s), and findings on  
10 appropriate medically acceptable imaging of joint space  
11 narrowing, bony destruction, or ankylosis of the affected  
12 joint(s).

13  
14 20 C.F.R. Part 404, Subpart P, Appendix 1, 1.02. In addition, a finding  
15 of the "involvement of one major peripheral weight-bearing joint (i.e.  
16 hip, knee, or ankle), resulting in inability to ambulate effectively, as  
17 defined in 1.00B2b," must be found to meet Listing 1.02A. (*Id.*)

18  
19 Section 1.00B2b of the Listings states that an "inability to  
20 ambulate effectively" means an "extreme limitation of the ability to  
21 walk; i.e., an impairment(s) that interferes very seriously with the  
22 individual's ability to independently initiate, sustain, or complete  
23 activities." Ineffective ambulation is "defined generally as having  
24 insufficient lower extremity functioning . . . to permit independent  
25 ambulation without the use of a hand-held assistive device(s) that  
26 limits the functioning of *both* upper extremities." Section  
27 1.00B2b(1)(emphasis added). This provision cites as "examples," *inter*  
28 *alia*, an "inability to walk *without the use of a walker, two crutches or*



1 two canes" or an "inability to use standard public transportation" or an  
2 "inability to carry out routine ambulatory activities, such as shopping"  
3 or an "inability to climb a few steps at a reasonable pace with the use  
4 of a single hand rail." Section 1.00B2b(2)(emphasis added).

5  
6 In assessing disability, it is the responsibility of the ALJ to  
7 resolve conflicts in medical testimony and analyze the evidence.  
8 Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). In the  
9 hierarchy of physician opinions considered in assessing a social  
10 security claim, "[g]enerally, a treating physician's opinion carries  
11 more weight than an examining physician's, and an examining physician's  
12 opinion carries more weight than a reviewing physician's." Holohan v.  
13 Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001); 20 C.F.R. § 416.927(d).  
14 The opinions of treating physicians are entitled to the greatest weight,  
15 because the treating physician is hired to cure and has a better  
16 opportunity to observe the claimant. Magallanes, 881 F.2d at 751. If  
17 the treating physician's "opinion is contradicted by another doctor, the  
18 Commissioner may not reject this opinion without providing 'specific and  
19 legitimate reasons' supported by substantial evidence in the record for  
20 so doing." *Id.*

21  
22 An ALJ "has a special duty to fully and fairly develop the record  
23 and to assure that claimant's interest are considered." Brown v.  
24 Heckler, 713 F.2d 441, 443 (9th Cir. 1983). Pursuant to 20 C.F.R. §  
25 416.912(e), the Administration "will seek additional evidence or  
26 clarification from your medical source when the report from your medical  
27 source contains a conflict or ambiguity that must be resolved, [or] the  
28 report does not contain all the necessary information . . . ." See

1 Smolen v. Chater, 80 F.3d 1273, 1288 (9th Cir. 1996)(noting that “[i]f  
2 the ALJ thought he needed to know the basis of [the doctor’s] opinions  
3 in order to evaluate them, he had a duty to conduct an appropriate  
4 inquiry”).

5  
6 Focusing on the requirements of Section 1.00B2b of the Listings,  
7 plaintiff argues that her medical records show that she “indeed suffers  
8 from the inability to ambulate effectively due to left knee problems and  
9 right knee problems.”<sup>5</sup> (Joint Stip. at 6.) Plaintiff relies on evidence  
10 of record that she was prescribed a walker and wheelchair by Dr. Craig  
11 R. Mueller, M.D., her treating physician. (A.R. 286, 289.) Plaintiff  
12 further argues that, because Dr. Landau and the ALJ concluded that she  
13 should *avoid* uneven terrain (A.R. 55, 57), and the “Listing[s] . . .  
14 states that an example of ineffective ambulation includes the inability  
15 to walk on rough or uneven surfaces” (Joint Stip. at 9), the evidence  
16 clearly supports plaintiff’s claim of ineffective ambulation, and thus,  
17 she meets Listing 1.02A (Joint Stip. at 8-9, 11-12). Finally, plaintiff  
18 argues that the ALJ “failed to evaluate the relevant evidence before  
19 concluding that [plaintiff’s] impairments do not meet or equal a listed  
20 impairment.” (Joint Stip. at 9.)

21  
22 Here, the ALJ erred by rejecting Dr. Mueller’s walker and  
23 wheelchair prescriptions without giving any specific and legitimate  
24  
25

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26  
27 <sup>5</sup> Although the ALJ found that only plaintiff’s right knee  
28 disorder was severe (A.R. 55), medical evidence shows “normal alignment”  
at the left knee joint, with some “minor degenerative changes at the  
lateral femoral condyle” (A.R. 246).

1 reasons for doing so.<sup>6</sup> The record indicates that plaintiff was  
2 prescribed a walker and a wheelchair. (A.R. 286, 289.) However, the  
3 ALJ pointed to a discrepancy between plaintiff's statement that Dr.  
4 Mueller prescribed a wheelchair for her, and the fact that the signature  
5 on the wheelchair prescription did not appear to be Dr. Mueller's  
6 signature as seen on examination forms. (A.R. 59-60, 257, 286.) The  
7 ALJ also highlighted an ambiguity regarding the dates on the  
8 prescription form. (A.R. 59-60.) These "unanswered discrepancies in  
9 the record" (*id.*) should have triggered the ALJ's duty to develop the  
10 record further.<sup>7</sup> The ALJ should have contacted Dr. Mueller and inquired  
11 into these "unanswered discrepancies." The ALJ's failure to do so  
12 constitutes error.

13  
14 Moreover, the ALJ failed to provide specific and legitimate reasons  
15 for disregarding the implicit opinion of Dr. Mueller that plaintiff  
16 required a walker or wheelchair to ambulate effectively. The ALJ should  
17 have contacted Dr. Mueller and inquired why plaintiff was prescribed a  
18 walker and a wheelchair, if the ALJ questioned her need for such  
19 assistive devices. Instead the ALJ disregarded this evidence based only  
20 on the "unanswered discrepancies" he found, without fully developing the  
21 record by giving plaintiff's treating physician an opportunity to  
22 address the discrepancies noted by the ALJ. Even if the medical expert  
23 and State Agency physicians determined that plaintiff could ambulate

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24  
25 <sup>6</sup> Dr. Mueller's prescription for a walker and a wheelchair would  
26 appear to constitute an implicit opinion that plaintiff cannot ambulate  
or move effectively without a walker or a wheelchair.

27 <sup>7</sup> The ALJ raises his concern with these "unanswered  
28 discrepancies in the record" in his discussion of plaintiff's  
credibility. (A.R. 59-60.)

1 effectively (A.R. 165, 168, 223, 254), the ALJ must still provide  
2 specific and legitimate reasons for disregarding Dr. Mueller's opinion.

3  
4 Therefore, the ALJ's conclusion that plaintiff did not meet Listing  
5 1.02A requirements, based on the medical expert and State Agency  
6 physicians' opinions, is improper. Clearly, *if* plaintiff meets the  
7 foundational requirements of Listing 1.02A *and* not only must be  
8 restricted from walking on uneven surfaces but also truly needs a walker  
9 or wheelchair, then she will meet the requirements of Listing 1.02A.  
10 The ALJ must develop the record regarding the walker/wheelchair  
11 prescription, and if the ALJ rejects Dr. Mueller's apparent opinion that  
12 plaintiff needs a walker and/or a wheelchair, the ALJ must provide  
13 specific and legitimate reasons for rejecting the treating physician's  
14 opinion.

15  
16 **II. The ALJ Must Review And Reconsider Plaintiff's Obesity.**

17  
18 Obesity is no longer, nor was it at the time of the ALJ's decision,  
19 a listed impairment. See Revised Medical Criteria for Determination of  
20 a Disability, Endocrine System and Related Criteria, 64 F.R. 46122  
21 (effective October 25, 1999)(former Listing 9.09, "Obesity," was removed  
22 from Appendix 1, Subpart P of Part 404, the Listing of Impairments).  
23 Although obesity is not a listed impairment, an ALJ must consider the  
24 effect of a claimant's obesity upon her other impairments, both severe  
25 and non-severe, and ability to work. Celaya v. Halter, 332 F.3d 1177,  
26 1182 (9th Cir. 2003); see also SSR 02-01p (requiring an ALJ to consider  
27 the effects of obesity at several points in the five-step sequential  
28 evaluation). An ALJ must "evaluate each case based on the information

1 in the case record," as obesity may or may not increase the severity of,  
2 or functional limitations associated with, of other impairments. SSR  
3 02-01p.

4  
5 Pursuant to SSR 02-01p, an ALJ must consider how obesity may  
6 interact with other impairments and affect whether a claimant meets a  
7 Listing: "obesity may increase the severity of coexisting or related  
8 impairments to the extent that the combination of impairments meets the  
9 requirements of a [L]isting. This is especially true of  
10 musculoskeletal, respiratory, and cardiovascular impairments." SSR 02-  
11 01p, 2000 WL 628049 (Sep. 12, 2002). As previously noted, plaintiff  
12 suffers from both musculoskeletal impairments -- a severe right knee  
13 disorder and non-severe left knee disorder -- and the non-severe  
14 medically determinable impairment of asthma/COPD.

15  
16 SSR 02-01p details how "obesity affects the cardiovascular and  
17 respiratory systems," making

18  
19 [I]t harder for the chest and lungs to expand. This means  
20 that the respiratory system must work harder to provide needed  
21 oxygen. This in turn makes the heart work harder to pump  
22 blood to carry oxygen to the body. Because the body is  
23 working harder at rest, its ability to perform additional work  
24 is less than would otherwise be expected.

25  
26 *Id.* Overall, "[t]he combined effects of obesity with other impairments  
27 may be greater than might be expected without obesity. For example,  
28 someone with obesity and arthritis affecting a weight-bearing joint may

1 have more pain and limitation than might be expected from arthritis  
2 alone." *Id.*

3  
4 The ALJ properly determined that plaintiff, who is five feet one  
5 and a half inches tall and weighs approximately 223 pounds, is morbidly  
6 obese and that her obesity is a severe impairment. (A.R. 54-55.)  
7 Considering plaintiff's morbid obesity in his RFC assessment, the ALJ  
8 found that, while plaintiff's obesity "imposes greater limitations on  
9 the claimant's ability to ambulate and sustain physical activities, it  
10 does not by itself or in combination with her other impairments meet the  
11 requirements of a listing." (A.R. 57.) Plaintiff argues that the ALJ  
12 failed to properly consider the impact of plaintiff's obesity at the  
13 "various stages of the disability determination process." (Joint Stip.  
14 at 16.) Plaintiff specifically contends that the ALJ failed to consider  
15 the impact of her obesity in making the step two and three  
16 determinations, as well as in determining her RFC. (*Id.*)

17  
18 Plaintiff argues that there is no indication that the ALJ properly  
19 considered the impact of her obesity on her non-severe impairments.  
20 This contention, as well as plaintiff's contention that the ALJ erred at  
21 step three and in his RFC determination, must be addressed after the ALJ  
22 further develops the record, as plaintiff's obesity may exacerbate her  
23 non-severe asthma/COPD as well as her severe right knee impairment and  
24 her non-severe left knee impairment.

25  
26 After furthering developing the record, if the ALJ determines that  
27 plaintiff meets Listing 1.02A, her obesity will not need to be  
28 addressed, because plaintiff will be presumptively disabled and

1 automatically entitled to disability benefits. However, if the ALJ  
2 determines that plaintiff does not meet Listing 1.02A, he must  
3 reconsider how plaintiff's obesity may interact with her current severe  
4 and non-severe impairments. In view of further development of the  
5 record, the ALJ may find that plaintiff's obesity causes the combination  
6 of her severe and non-severe impairments to be disabling. See Lewis,  
7 236 F.3d at 514 ("The claimant's symptoms 'must be considered in  
8 combination and must not be fragmentized in evaluating their effects.'"  
9 (quoting Lester, 81 F.3d at 829)).

### 10 11 **III. Remand Is Required.**

12  
13 The decision whether to remand for further proceedings or order an  
14 immediate award of benefits is within the district court's discretion.  
15 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where the  
16 record has not been fully developed and/or there are outstanding issues  
17 that must be resolved before a proper determination of disability can be  
18 made, and it is not clear from the record that the ALJ would be required  
19 to find the claimant disabled if all the evidence were properly  
20 evaluated, remand is appropriate. *Id.* at 1179-81.

21  
22 In this case, remand is the appropriate remedy to allow the ALJ the  
23 opportunity to remedy the above-mentioned deficiencies and errors. See,  
24 e.g., Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004)(remand for  
25 further proceedings is appropriate if enhancement of the record would be  
26 useful); McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 1989)  
27 (remand appropriate to remedy defects in the record). On remand, the  
28 ALJ needs to develop the record regarding the walker/wheelchair

1 prescription provided to plaintiff and then reconsider whether plaintiff  
2 meets or equals Listing 1.02A in the light of the developed record and  
3 her obesity. Further, should the ALJ reject the opinion of plaintiff's  
4 treating physician that she requires a wheelchair and/or walker to  
5 ambulate, the ALJ must set forth specific and legitimate reasons for so  
6 doing that are supported by the requisite substantial evidence. If  
7 after further developing the record, the ALJ determines that plaintiff  
8 does not meet Listing 1.02A, the ALJ must reconsider how plaintiff's  
9 obesity interacts with her current severe and non-severe impairments, as  
10 discussed *supra*.

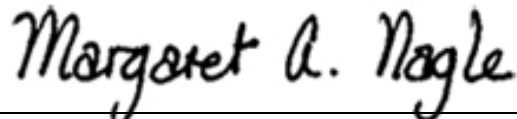
11  
12 **CONCLUSION**  
13

14 Accordingly, for the reasons stated above, IT IS ORDERED that the  
15 decision of the Commissioner is REVERSED, and this case is REMANDED for  
16 further proceedings consistent with this Memorandum Opinion and Order.  
17

18 IT IS FURTHER ORDERED that the Clerk of the Court shall serve  
19 copies of this Memorandum Opinion and Order and the Judgment on counsel  
20 for plaintiff and for defendant.  
21

22 **LET JUDGMENT BE ENTERED ACCORDINGLY.**  
23

24 DATED: July 6, 2011  
25

26 

27 MARGARET A. NAGLE  
28 UNITED STATES MAGISTRATE JUDGE