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II.

BACKGROUND

Plaintiff was born on May 23, 1977. [Administrative Record (“AR”) at 33, 105.] He has an eleventh grade education and has past relevant work experience as a maintenance worker. [AR at 15, 109-10, 113, 115-17.]

On May 6, 2008, plaintiff filed his applications for Disability Insurance Benefits and Supplemental Security Income payments, alleging that he has been unable to work since January 14, 2008, due to mental illness, disc herniations, and arthritis. [AR at 9, 33, 35, 87-95, 98-102, 105-14.] After plaintiff’s applications were denied initially and on reconsideration, he requested a hearing before an Administrative Law Judge (“ALJ”). [AR at 37-42, 45-49, 51.] A hearing was held on November 16, 2009, at which time plaintiff appeared with counsel and testified on his own behalf. Plaintiff’s wife also testified. [AR at 16-32.] On December 22, 2009, the ALJ determined that plaintiff was not disabled. [AR at 6-15.] When the Appeals Council denied plaintiff’s request for review of the hearing decision on July 17, 2010, the ALJ’s decision became the final decision of the Commissioner. [AR at 1-3.] This action followed.

III.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence or if it is based upon the application of improper legal standards. Moncada v. Chater, 60 F.3d 521, 523 (9th Cir. 1995); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992).

In this context, the term “substantial evidence” means “more than a mere scintilla but less than a preponderance -- it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” Moncada, 60 F.3d at 523; see also Drouin, 966 F.2d at 1257. When determining whether substantial evidence exists to support the Commissioner’s decision, the Court examines the administrative record as a whole, considering adverse as well as supporting evidence. Drouin, 966 F.2d at 1257; Hammock v. Bowen, 879 F.2d 498, 501 (9th

1 Cir. 1989). Where the evidence is susceptible to more than one rational interpretation, the Court
2 must defer to the decision of the Commissioner. Moncada, 60 F.3d at 523; Andrews v. Shalala,
3 53 F.3d 1035, 1039-40 (9th Cir. 1995); Drouin, 966 F.2d at 1258.

4 5 IV.

6 THE EVALUATION OF DISABILITY

7 Persons are “disabled” for purposes of receiving Social Security benefits if they are unable
8 to engage in any substantial gainful activity owing to a physical or mental impairment that is
9 expected to result in death or which has lasted or is expected to last for a continuous period of at
10 least twelve months. 42 U.S.C. § 423(d)(1)(A); Drouin, 966 F.2d at 1257.

11 12 A. THE FIVE-STEP EVALUATION PROCESS

13 The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing
14 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lester v. Chater, 81 F.3d 821,
15 828 n.5 (9th Cir. 1995, as amended April 9, 1996). In the first step, the Commissioner must
16 determine whether the claimant is currently engaged in substantial gainful activity; if so, the
17 claimant is not disabled and the claim is denied. Id. If the claimant is not currently engaged in
18 substantial gainful activity, the second step requires the Commissioner to determine whether the
19 claimant has a “severe” impairment or combination of impairments significantly limiting his ability
20 to do basic work activities; if not, a finding of nondisability is made and the claim is denied. Id.
21 If the claimant has a “severe” impairment or combination of impairments, the third step requires
22 the Commissioner to determine whether the impairment or combination of impairments meets or
23 equals an impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R., Part 404,
24 Subpart P, Appendix 1; if so, disability is conclusively presumed and benefits are awarded. Id.
25 If the claimant’s impairment or combination of impairments does not meet or equal an impairment
26 in the Listing, the fourth step requires the Commissioner to determine whether the claimant has
27 sufficient “residual functional capacity” to perform his past work; if so, the claimant is not disabled
28 and the claim is denied. Id. The claimant has the burden of proving that he is unable to perform

1 past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets this burden, a prima facie
2 case of disability is established. The Commissioner then bears the burden of establishing that the
3 claimant is not disabled, because he can perform other substantial gainful work available in the
4 national economy. The determination of this issue comprises the fifth and final step in the
5 sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d
6 at 1257.

7
8 **B. THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS**

9 In this case, at step one, the ALJ concluded that plaintiff has not engaged in any substantial
10 gainful activity since January 14, 2008, the alleged onset date of disability.¹ [AR at 11.] At step
11 two, the ALJ concluded that plaintiff has severe impairments of obesity and disc herniations at L4-
12 L5 and L5-S1. [Id.] At step three, the ALJ concluded that plaintiff’s impairments do not meet or
13 equal any of the impairments in the Listing. [AR at 12.] The ALJ further found that plaintiff
14 retained the residual functional capacity (“RFC”)² “to perform the full range of medium work³.”
15 [AR at 13.] At step four, the ALJ concluded that plaintiff is capable of performing his past relevant
16 work as a maintenance worker. Accordingly, the ALJ found plaintiff not disabled. [AR at 15.]

17
18 **V.**

19 **THE ALJ’S DECISION**

20 Plaintiff contends that the ALJ failed to properly: (1) consider the severity of plaintiff’s
21 mental impairment at step two of the sequential evaluation; (2) consider the state agency
22 physician’s opinion; (3) determine plaintiff’s RFC; (4) consider plaintiff’s credibility; (5) evaluate

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24 ¹ The ALJ also determined that plaintiff is insured for Disability Insurance Benefits purposes
through September 30, 2008. [AR at 11.]

25 ² RFC is what a claimant can still do despite existing exertional and nonexertional limitations.
26 Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

27 ³ Medium work is defined as work involving “lifting no more than 50 pounds at a time with
28 frequent lifting or carrying of objects weighing up to 25 pounds.” 20 C.F.R. §§ 404.1567(c),
416.967(c).

1 plaintiff's combined impairments and symptoms in determining whether his impairments equal the
2 Listing; and (6) consider the mental demands of plaintiff's past work. [Joint Stipulation ("JS") at
3 2-3.] As set forth below, the Court agrees with plaintiff, in part, and remands the matter for further
4 proceedings.

5
6 **A. STEP TWO DETERMINATION**

7 Plaintiff contends that the ALJ erred in concluding at step two of the sequential evaluation
8 that plaintiff's mental impairment is not severe. Specifically, plaintiff contends that the ALJ did not
9 properly consider various medical records pertaining to plaintiff's mental impairment, including the
10 treatment notes of treating physician Dr. Samuel E. Dey; the May 30, 2008, Mental Residual
11 Functional Capacity Assessment ("MRFCA") of nonexamining physician Dr. Kelly J. Loomis; and
12 the August 27, 2008, psychotherapy evaluation of Erica Herrera, M.F.T. Intern. [See JS at 3-5.]

13 A "severe" impairment, or combination of impairments, is defined as one that significantly
14 limits physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1520, 416.920. In
15 assessing the severity of plaintiff's alleged mental impairment, the ALJ was required to reflect in
16 the decision his consideration of plaintiff's mental functional limitations under four broad criteria
17 (also known as the "paragraph B criteria"): 1) activities of daily living; 2) social functioning; 3)
18 concentration, persistence, or pace; and 4) episodes of decompensation. See 20 C.F.R., Pt. 404,
19 Subpt. P, App. 1, §12.00C; see also 20 C.F.R. §§ 404.1520a, 416.920a; (as amended by 76 FR
20 24802-01 (May 3, 2011)). If a claimant is rated as having greater than "mild" limitations in any of
21 the first three criteria or more than no episodes of decompensation in criteria four, or if "the
22 evidence otherwise indicates that there is more than a minimal limitation in [the claimant's] ability
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1 to do basic work activities,” then the claimant’s mental impairment should be found to be
2 “severe.”⁴ 20 C.F.R. §§ 404.1520a, 416.920a; see also 20 C.F.R. §§ 404.1521, 416.921.

3 From March 2008 to at least August 2008, plaintiff received psychiatric medication
4 management treatment from Dr. Dey. [See AR at 175-76, 201, 204.] Although Dr. Dey’s
5 treatment notes indicate that plaintiff’s symptoms of dysphoria, apathy, social isolation, social
6 withdrawal, and anxiety improved somewhat while he was taking Celexa, Dr. Dey discontinued
7 plaintiff’s prescription for Celexa and instead prescribed Paxil because Celexa caused plaintiff to
8 have diarrhea. [Id.] Plaintiff found Paxil to be “not very effective at relieving [his] target
9 symptoms,” and he stopped taking the medication at the direction of his doctor because it caused
10 him stomach upset. [AR at 204.] Plaintiff reported feeling worse after he stopped taking Paxil, and
11 Dr. Dey discussed “other possible approaches” to rectifying plaintiff’s psychiatric problem,
12 including prescribing Zoloft. [Id.]

13 In a Psychiatric Review Technique form dated May 30, 2008, Dr. Loomis noted that plaintiff
14 has the medically determinable impairment of Mood/Bipolar Disorder and analyzed plaintiff’s
15 mental functional limitations under the paragraph B criteria discussed above. Specifically, Dr.

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17 ⁴ “The Supreme Court has recognized that including a severity inquiry at the second stage
18 of the evaluation process permits the [Commissioner] to identify efficiently those claimants whose
19 impairments are so slight that they are unlikely to be found disabled even if the individual’s age,
20 education, and experience are considered.” Corrao v. Shalala, 20 F.3d 943, 949 (9th Cir. 1994)
21 (citing Bowen v. Yuckert, 482 U.S. 137, 153, 107 S.Ct. 2287, 96 L.Ed.2d 119 (1987)). However,
22 an overly stringent application of the severity requirement would violate the statute by denying
23 benefits to claimants who meet the statutory definition of “disabled.” Corrao, 20 F.3d at 949 (citing
24 Bowen v. Yuckert, 482 U.S. at 156-58 (O’Connor, J., concurring)). Despite use of the term
25 “severe,” most circuits, including the Ninth Circuit, have held that “the step-two inquiry is a de
26 minimis screening device to dispose of groundless claims.” Smolen v. Chater, 80 F.3d 1273, 1290
27 (9th Cir. 1996) (citing Bowen v. Yuckert, 482 U.S. at 153-54); see Hawkins v. Chater, 113 F.3d
28 1162, 1169 (10th Cir. 1997) (“A claimant’s showing at level two that he or she has a severe
impairment has been described as ‘de minimis’”) (citation omitted); see also Hudson v. Bowen,
870 F.2d 1392, 1396 (8th Cir. 1989) (evaluation can stop at step two only when there is no more
than minimal effect on ability to work). An impairment or combination of impairments should be
found to be not severe only when the evidence establishes merely a slight abnormality that has
no more than a minimal effect on an individual’s physical or mental ability to do basic work
activities. See Corrao, 20 F.3d at 949 (citing Yuckert v. Bowen, 841 F.2d 303, 306 (9th Cir.
1988)); see also SSR 85-28 (“an impairment is not severe if it has no more than a minimal effect
on an individual’s physical or mental ability(ies) to do basic work activities”).

1 Loomis concluded that plaintiff has a mild functional limitation with regard to restrictions of daily
2 living; has moderate functional limitations with regard to maintaining social functioning and
3 concentration, persistence, or pace; and has had no repeated episodes of decompensation. [AR
4 at 180, 183, 188.] Dr. Loomis further opined in a May 30, 2008, MRFCA that plaintiff had the
5 mental RFC to understand, remember, and carry out one- and two-step instructions; maintain
6 sufficient concentration, persistence and pace to complete simple tasks during a normal workday
7 and workweek; and interact adequately with coworkers and supervisors, but that plaintiff “may
8 have difficulty dealing with the demands of general public contact.” [AR at 179.] Dr. Loomis
9 indicated that his May 30, 2008, opinions were based on the mental status examinations and
10 reported information in plaintiff’s treatment record. [See AR at 192.] Another nonexamining
11 psychiatrist, Dr. B.A. Smith, also concluded that plaintiff is limited to performing “unskilled non
12 detailed tasks in a non public setting” (i.e., nonpublic, simple, repetitive, tasks). [See AR at 207.]

13 On August 27, 2008, plaintiff underwent a Psychotherapy Initial Evaluation conducted by
14 Ms. Herrera, during which time plaintiff presented, among other symptoms, anger, depression,
15 problems sleeping, irritability, mood swings, problems concentrating, distractability, low motivation,
16 social withdrawal, feelings of worthlessness, racing thoughts, avoidance of people, anxiety,
17 fatigue, and low frustration tolerance. [See AR at 202.] Ms. Herrera noted that plaintiff
18 demonstrated appropriate speech with regular rate and rhythm; spontaneous stream of thought;
19 intact associations and memory; no abnormal or psychotic thoughts; fair judgment, insight,
20 attention span, and concentration; orientation to person, place, and time; and an ability to establish
21 eye contact. Ms. Herrera further noted that plaintiff had an anxious mood and affect, dominated
22 the conversation and talked excessively, and had scattered thoughts. Ms. Herrera diagnosed
23 plaintiff as having “Bipolar Disorder, Most Recent Episode Mixed, Moderate” and assigned plaintiff
24 a Global Assessment of Functioning (“GAF”) score of 50.⁵ [AR at 203.]

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26 ⁵ A GAF score is the clinician’s judgment of the individual’s overall level of functioning. It is
27 rated with respect only to psychological, social, and occupational functioning, without regard to
28 impairments in functioning due to physical or environmental limitations. Diagnostic and Statistical
Manual of Mental Disorders (“DSM-IV”), at 32 (4th Ed. 2000). A GAF score in the range of 41-50
(continued...)

1 In the decision, the ALJ analyzed plaintiff's mental impairment under the four paragraph B
2 criteria discussed above and concluded that plaintiff had no episodes of decompensation and only
3 mild limitations in the functional areas of activities of daily living; social functioning; and
4 concentration, persistence, or pace. Accordingly, the ALJ determined at step two of the sequential
5 evaluation that plaintiff's mental impairment is not severe. [AR at 11-12.] In reaching this
6 determination, the ALJ noted that plaintiff "had some brief mental health treatment of a minimal
7 nature in 2008," but concluded that the 2008 treatment records reflected that plaintiff's mental
8 health had improved "even with the minimal treatment" and that the August 27, 2008, Evaluation
9 "does not reflect severe mental limitations." [AR at 14.] The ALJ further concluded that the GAF
10 score of 50 assessed by Ms. Herrera was "grossly excessive in its asserted limits and is
11 unsupported by [plaintiff's] complaints or the mental status examination." [Id.] The ALJ also
12 stated in the decision that he "disagree[d]" with the state agency physician's opinion that plaintiff
13 should be limited to non-public, simple, repetitive tasks, as the ALJ concluded that the "mental
14 health records reveal [plaintiff] only has mild mental limitations."⁶ [Id.] The ALJ did not specifically
15 address Dr. Loomis' opinion that plaintiff has "moderate" limitations under two of the four
16 paragraph B criteria.

17 The ALJ's step-two determination that plaintiff's mental impairment is not severe is not
18 supported by substantial evidence. First, the ALJ's conclusion that plaintiff's treatment notes
19 reveal that his mental health improved with treatment in 2008 reflects a misreading or an improper
20 selective consideration of the evidence. See Edlund v. Massanari, 253 F.3d 1152, 1159 (9th Cir.
21 2001) (error for ALJ to "selectively focus[] on ... [evidence] which tend[s] to suggest non-
22 disability"); Gallant v. Heckler, 753 F.2d 1450, 1456 (9th Cir. 1984) (error for ALJ to ignore or
23 misstate competent evidence in order to justify his conclusion). Rather, Dr. Rey's treatment notes

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25 ⁵(...continued)

26 indicates serious symptoms or any serious impairment in social, occupational, or school
27 functioning (e.g., unable to keep a job). Id. at 34.

28 ⁶ It is not clear from the ALJ's decision if he intended to reject Dr. Loomis', Dr. Smith's, or
both of the doctors' opinions.

1 reflect that plaintiff's psychiatric symptoms fluctuated during the time that Dr. Rey treated him, and,
2 as was last noted by Dr. Rey in August 2008, had apparently worsened. [See AR at 175-76, 201,
3 204.] Dr. Rey's notes also show that plaintiff was directed to discontinue two different psychiatric
4 medications due to negative side effects. [Id.] Thus, Dr. Rey's treatment notes do not constitute
5 substantial evidence supporting the ALJ's step-two conclusion that plaintiff's mental impairment
6 is not severe.

7 Next, the ALJ improperly rejected the state agency physicians' opinions on the basis that
8 the ALJ "disagree[d]" that plaintiff's mental limitations were more than minimal because an "ALJ
9 may not substitute his own layman's opinion for the findings and opinion of a physician." Gonzalez
10 Perez v. Sec'y of Health & Human Servs., 812 F.2d 747, 749 (1st Cir. 1987); see also Morales v.
11 Apfel, 225 F.3d 310, 317 (3d Cir. 2000) (an ALJ may not reject a physician's opinion based on
12 "speculation or lay opinion"). The ALJ's assertion that plaintiff has no more than mild mental
13 limitations, by itself, is an insufficient reason for rejecting Dr. Loomis' contrary expert opinion or
14 Dr. Loomis' and Dr. Smith's expert opinions that plaintiff is limited to simple, repetitive, nonpublic
15 tasks. See Social Security Ruling ("SSR")⁷ 96-6p ("Findings ... made by State agency medical and
16 psychological consultants ... regarding the nature and severity of an individual's impairment(s)
17 must be treated as expert opinion evidence of nonexamining sources"). Rather, to properly reject
18 Dr. Loomis' and Dr. Smith's expert opinions, the ALJ was required to review the various factors
19 set forth in the regulations for considering opinion evidence, including, among other things, the
20 supportability and consistency of their opinions with the overall record. See 20 C.F.R. §§
21 404.1527, 416.927 (as amended by 76 FR 24802-01 (May 3, 2011)); see also SSR 96-6p. As the
22 Court finds that the ALJ misconstrued the medical treatment evidence concerning plaintiff's mental
23 impairment, the ALJ's interpretation of that evidence (i.e., that plaintiff's mental health records

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26 ⁷ SSRs do not have the force of law. Nevertheless, they "constitute Social Security
27 Administration interpretations of the statute it administers and of its own regulations," and are
28 given deference "unless they are plainly erroneous or inconsistent with the Act or regulations."
Han v. Bowen, 882 F.2d 1453, 1457 (9th Cir. 1989).

1 reveal only mild mental limitations) does not support his rejection of the nonexamining physicians'
2 opinions.

3 Finally, to the extent the ALJ found plaintiff's alleged mental impairment to be not severe
4 because the ALJ concluded that plaintiff sought only "minimal" or infrequent treatment, this reason
5 is also suspect. The Ninth Circuit has "particularly criticized the use of a lack of treatment to reject
6 mental complaints both because mental illness is notoriously underreported and because it is a
7 questionable practice to chastise one with a mental impairment for the exercise of poor judgment
8 in seeking rehabilitation." Regennitter v. Comm'r of Soc. Sec. Admin., 166 F.3d 1294, 1299-1300
9 (9th Cir. 1999) (internal quotations omitted). Accordingly, remand is warranted for the ALJ to
10 reconsider the severity of plaintiff's mental impairment.⁸

11
12 **B. RFC DETERMINATION**

13 Plaintiff contends that the ALJ erred in reaching the RFC determination because the ALJ
14 failed to incorporate Dr. Loomis' opinion that plaintiff is limited to nonpublic, simple, repetitive tasks
15 and did not provide adequate reasons for rejecting Dr. Loomis' opinion. [See JS at 7-11.]

16 In determining plaintiff's disability status, the ALJ had the responsibility to determine
17 plaintiff's RFC after considering "all of the relevant medical and other evidence" in the record,
18 including all medical opinion evidence. 20 C.F.R. §§ 404.1545(a)(3), 416.945(a)(3); see SSR 96-
19 8p, 1996 WL 374184, at *5, *7. Since the Court finds that the ALJ failed to properly consider the
20 evidence concerning plaintiff's mental impairment -- including Dr. Loomis' opinions regarding
21 plaintiff's mental limitations -- remand is necessary for the ALJ to reevaluate plaintiff's RFC once
22 the ALJ has reconsidered the medical evidence as directed herein.

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27 ⁸ As the Court finds reconsideration of the medical evidence pertaining to plaintiff's mental
28 impairment warranted for the reasons expressed above, the Court will not determine whether the
ALJ improperly rejected the GAF score of 50 assessed by Ms. Herrera.

1 **C. PLAINTIFF’S CREDIBILITY AND LISTING § 1.04A**

2 Plaintiff argues that the ALJ improperly rejected plaintiff’s credibility and subjective
3 symptoms and failed to properly determine whether plaintiff’s impairments equal § 1.04A of the
4 Listing. [See JS at 12-15, 18-21.]

5 **1. Plaintiff’s Credibility**

6 At the hearing, plaintiff testified that he was unable to work due to severe pain and stiffness
7 in his lower back that significantly limits his mobility and ability to sit, stand, walk, and lift things.
8 [AR at 19-20, 23-24.] Plaintiff further testified that his back problems result in numbness,
9 weakness, and cramps in his legs, which have caused him to fall. [AR at 19.] Plaintiff also
10 explained that he suffers from difficulty concentrating, mood swings, frustration, problems
11 socializing, and depression as a result of his pain and the limiting effects of his back problems.
12 [AR at 20-22.]

13 In the decision, the ALJ stated that while he found that plaintiff’s “medically determinable
14 impairments could reasonably be expected to cause the alleged symptoms ... [plaintiff’s]
15 statements concerning the intensity, persistence and limiting effects of these symptoms are not
16 credible to the extent they are inconsistent with the above [RFC] assessment.” [AR at 14.] As the
17 Court concludes that reconsideration of the RFC determination is warranted, and the ALJ rejected
18 plaintiff’s credibility based, in part, on the ALJ’s analysis of the medical evidence, which the Court
19 finds erroneous for the reasons discussed herein, the ALJ is directed to reassess plaintiff’s
20 credibility after the medical evidence has been reconsidered.

21 **2. Listing § 1.04A**

22 To make a proper step-three finding, “[a]n ALJ must evaluate the relevant evidence before
23 concluding that a claimant’s impairments do not meet or equal a listed impairment. A boilerplate
24 finding is insufficient to support a conclusion that a claimant’s impairment does not do so.” Lewis
25 v. Apfel, 236 F.3d 503, 512 (9th Cir. 2001) (citing Marcia v. Sullivan, 900 F.2d 172, 176 (9th Cir.
26 1990)). “The regulations ... require the Secretary to review the symptoms, and make specific
27 findings essential to the conclusion. ... [The ALJ’s] findings should be as comprehensive and
28 analytical as feasible and, where appropriate, should include a statement of subordinate factual

1 foundations on which the ultimate factual conclusions are based, so that a reviewing court may
2 know the basis for the decision.” Gonzalez v. Sullivan, 914 F.2d 1197, 1200 (9th Cir. 1990)
3 (quotations and citations omitted); see 20 C.F.R. §§ 404.1526(c), 416.926(c) (“When we
4 determine if your impairment medically equals a listing, we consider all evidence in your case
5 record about your impairment(s) and its effects on you that is relevant to this finding.”). If a
6 claimant has an impairment or combination of impairments that meet(s) or equal(s) a condition
7 outlined in the Listing, then the claimant is presumed disabled at step three of the evaluation
8 process, and the ALJ need not make any specific findings as to his ability to perform his past
9 relevant work or any other jobs. See 20 C.F.R. §§ 404.1520(d), 416.920(d); Lester, 81 F.3d at
10 828.

11 To meet § 1.04A of the Listing, plaintiff must establish that he 1) suffers from a spinal
12 disorder (such as herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis,
13 degenerative disc disease, facet arthritis, vertebral fracture) that results in compromise of a nerve
14 root or the spinal cord; 2) has “nerve root compression characterized by neuro-anatomic
15 distribution of pain”; 3) has “limitation of motion of the spine”; 4) has “motor loss (atrophy with
16 associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss”; and
17 5) has a positive straight-leg raising test, as he is claiming injury to his lower back. 20 C.F.R. Pt.
18 404, Subpt. P, App. 1, § 1.04A.

19 The medical evidence indicates that plaintiff has herniated lumbar discs at L4-L5 and L5-
20 S1, displacement of the right S1 nerve root, mild bilateral foraminal stenosis, and mild spinal canal
21 stenosis of the lumbar spine. [See AR at 218-19, 221-22, 225-27.] It appears that these
22 impairments, in addition to plaintiff’s complaints of back and leg pain (which are likewise
23 documented in plaintiff’s medical records) [see id.], may satisfy the first and second requirements
24 of §1.04A. With regard to the third, fourth, and fifth requirements of § 1.04A, some of plaintiff’s
25 treatment notes reflect that he had limited range of motion in his lumbar spine [AR at 210];
26 experienced, among other symptoms, swelling, tingling, weakness, and numbness in his lower
27 back, left buttock, and leg [AR at 228]; and had a positive straight-leg test for back and buttock
28 pain. [AR at 219.]

1 In the decision, the ALJ asserted that plaintiff did not meet or equal § 1.04 of the Listing for
2 disorders of the spine. Although the ALJ acknowledged the diagnostic evidence concerning
3 plaintiff's lumbar spine herniations, the ALJ focused on medical evidence indicating that plaintiff
4 retained adequate range of motion and had no neurological deficits. [AR at 13-14; citing AR at
5 198, 218-19, 225-27.] In doing so, the ALJ completely ignored the medical evidence indicating
6 that plaintiff had limited motion, weakness, and numbness, as well as a positive straight-leg test.
7 [See AR at 14.] The ALJ's selective consideration of the evidence in this regard constitutes error.
8 Gallant, 753 F.2d at 1456. Since the ALJ did not expressly discuss all of the relevant evidence
9 concerning plaintiff's back impairment and treatment, or how the combination of his impairments
10 and functional limitations compare to the specific requirements of § 1.04A -- and it appears that
11 plaintiff might meet at least some of these requirements -- the Court finds remand necessary for
12 the ALJ to properly consider whether plaintiff should be found disabled at step three of the
13 sequential analysis. See Dobson v. Astrue, 267 Fed.Appx. 610, 612 (9th Cir. 2008) (remanding
14 ALJ's finding that the plaintiff's impairment did not meet or equal the Listing, where the ALJ failed
15 to analyze the plaintiff's specific impairment and limitations according to the factors set forth in the
16 Listing) (citable for its persuasive value pursuant to Ninth Circuit Rule 36-3).⁹

17 18 VI.

19 **REMAND FOR FURTHER PROCEEDINGS**

20 As a general rule, remand is warranted where additional administrative proceedings could
21 remedy defects in the Commissioner's decision. See Harman v. Apfel, 211 F.3d 1172, 1179 (9th
22 Cir.), cert. denied, 531 U.S. 1038 (2000); Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984).
23 In this case, remand is appropriate in order for the ALJ to reconsider the severity of plaintiff's
24 mental impairment, the opinions of Dr. Loomis and Dr. Smith, plaintiff's RFC, plaintiff's credibility,
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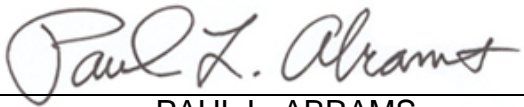
⁹ As remand is warranted for the reasons discussed herein, the Court exercises its discretion
not to address plaintiff's remaining contention of error.

1 and whether plaintiff's impairments equal § 1.04A of the Listing. The ALJ is instructed to take
2 whatever further action is deemed appropriate and consistent with this decision.

3 Accordingly, **IT IS HEREBY ORDERED** that: (1) plaintiff's request for remand is **granted**;
4 (2) the decision of the Commissioner is **reversed**; and (3) this action is **remanded** to defendant
5 for further proceedings consistent with this Memorandum Opinion.

6 **This Memorandum Opinion and Order is not intended for publication, nor is it**
7 **intended to be included in or submitted to any online service such as Westlaw or Lexis.**

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9 DATED: May 12, 2011

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12 PAUL L. ABRAMS
13 UNITED STATES MAGISTRATE JUDGE
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