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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

JAVIER MANCILLA LUNA,	)	Case No. EDCV 11-00758-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security	)	
Administration,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Javier Mancilla Luna seeks judicial review of the Commissioner's final decision denying his application for Social Security Disability Insurance ("DIB") benefits. For the reasons stated below, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings.

**I. Background**

Plaintiff was born on October 21, 1965. (Administrative Record ("AR") at 20, 113.) He completed twelve years of education in Mexico and has no other educational or vocational training. (AR at 20.) Plaintiff has work experience performing door and cabinet installation and R.V.

1 assembly. (AR at 19.)

2 Plaintiff filed an application for benefits on March 7, 2008,  
3 alleging that he had been disabled since November 30, 2006, due to a  
4 spinal injury. (AR at 124.) Plaintiff's application was denied initially  
5 on May 2, 2008, and upon reconsideration on September 3, 2008. (AR at  
6 40-44, 48-52.) An administrative hearing was held on January 28, 2010,  
7 before Administrative Law Judge ("ALJ") Jesse J. Pease at which  
8 Plaintiff was represented by counsel. Plaintiff testified at the  
9 hearing, as did a vocational expert. (AR 465-484.)

10 On March 11, 2010, ALJ Pease denied Plaintiff's application for  
11 benefits. (AR at 7-21.) The ALJ found that Plaintiff had not engaged in  
12 substantial gainful activity during the period at issue. (AR at 15.) The  
13 ALJ further found that the medical evidence established that Plaintiff  
14 suffered from the severe impairment of status-post posterolateral fusion  
15 L4 to the sacrum with pedicle screws bilaterally at L4, L5 and S1 and  
16 repeat decompression laminotomy at L4-L5 bilaterally. (Id.) The ALJ  
17 concluded that Plaintiff's impairments did not meet, or were not  
18 medically equal to, one of the listed impairments in 20 C.F.R., Part  
19 404, Subpart P, Appendix 1. (Id.) The ALJ next found that Plaintiff  
20 retained the residual functional capacity to perform light work as  
21 defined in 20 C.F.R. 404.1567(b) with the following exceptions:

22 the claimant can lift and/or carry 20 pounds occasionally and  
23 10 pounds frequently; he can stand and/or walk for six hours  
24 out of an eight-hour workday with regular breaks; he can sit  
25 for six hours out of an eight-hour workday with regular  
26 breaks; he must be allowed to change positions every 30  
27 minutes for up to 10 minutes; he can perform occasional  
28 postural activities; and he understands and speaks very little

1 English.

2 (Id.)

3 The ALJ determined that Plaintiff was unable to perform his past  
4 relevant work. (AR at 19.) However, the ALJ found that there were jobs  
5 that exist in significant numbers in the national economy that  
6 Plaintiff could perform, such as garment sorter, hand packager, and  
7 bench assembly. (AR at 20-21.) The ALJ concluded, therefore, that  
8 Plaintiff was not disabled within the meaning of the Social Security  
9 Act. See 20 C.F.R. § 416.920(f).

10 On March 25, 2011, the Appeals Council denied review (AR at 1-3)  
11 and Plaintiff timely commenced this action for judicial review. On  
12 March 5, 2012, the parties filed a Joint Stipulation ("Joint Stip.")  
13 of disputed facts and issues. Plaintiff contends that (1) the ALJ's  
14 residual functional capacity assessment is not supported by  
15 substantial evidence; and (2) the ALJ failed to make a proper  
16 credibility determination. (Joint Stip. at 3.) Plaintiff seeks remand  
17 for a new administrative hearing. (Joint Stip. at 17.) The  
18 Commissioner requests that the ALJ's decision be affirmed. (Joint  
19 Stip. at 18.)

20  
21 **II. Standard of Review**

22 Under 42 U.S.C. § 405(g), a district court may review the  
23 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
24 decision must be upheld unless "the ALJ's findings are based on legal  
25 error or are not supported by substantial evidence in the record as a  
26 whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1990); *Parra*  
27 *v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence  
28 means such evidence as a reasonable person might accept as adequate to

1 support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971);  
2 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more  
3 than a scintilla, but less than a preponderance. *Robbins v. Soc. Sec.*  
4 *Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). To determine whether  
5 substantial evidence supports a finding, the reviewing court "must  
6 review the administrative record as a whole, weighing both the  
7 evidence that supports and the evidence that detracts from the  
8 Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th  
9 Cir. 1996). "If the evidence can support either affirming or reversing  
10 the ALJ's conclusion," the reviewing court "may not substitute its  
11 judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

### 12 13 **III. Discussion**

#### 14 **A. The ALJ Improperly Discredited Plaintiff's Subjective** 15 **Symptom Testimony**

16 Plaintiff contends that the ALJ improperly discredited his  
17 subjective symptom testimony. (Joint Stip. at 11.) To determine  
18 whether a claimant's testimony about subjective pain or symptoms is  
19 credible, an ALJ must engage in a two-step analysis. *Vasquez v.*  
20 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (citing *Lingenfelter v.*  
21 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)). First, the ALJ must  
22 determine whether the claimant has presented objective medical  
23 evidence of an underlying impairment which could reasonably be  
24 expected to produce the alleged pain or other symptoms. *Lingenfelter*,  
25 504 F.3d at 1036. "[O]nce the claimant produces objective medical  
26 evidence of an underlying impairment, an adjudicator may not reject a  
27 claimant's subjective complaints based solely on a lack of objective  
28 medical evidence to fully corroborate the alleged severity of pain."

1 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). To  
2 the extent that an individual's claims of functional limitations and  
3 restrictions due to alleged pain is reasonably consistent with the  
4 objective medical evidence and other evidence in the case, the  
5 claimant's allegations will be credited. SSR 96-7p, 1996 WL 374186 at  
6 \*2 (explaining 20 C.F.R. §§ 404.1529(c)(4), 416.929(c)(4)).<sup>1</sup>

7 Unless there is affirmative evidence showing that the claimant is  
8 malingering, the ALJ must provide specific, clear and convincing  
9 reasons for discrediting a claimant's complaints. *Robbins*, 466 F.3d at  
10 883. "General findings are insufficient; rather, the ALJ must identify  
11 what testimony is not credible and what evidence undermines the  
12 claimant's complaints." *Reddick*, 157 F.3d at 722 (quoting *Lester v.*  
13 *Chater*, 81 F.3d 821, 834 (9th Cir. 1996)). The ALJ must consider a  
14 claimant's work record, observations of medical providers and third  
15 parties with knowledge of claimant's limitations, aggravating factors,  
16 functional restrictions caused by symptoms, effects of medication, and  
17 the claimant's daily activities. *Smolen v. Chater*, 80 F.3d 1273, 1283-  
18 84 & n.8 (9th Cir. 1996). The ALJ may also consider an unexplained  
19 failure to seek treatment or follow a prescribed course of treatment  
20 and employ other ordinary techniques of credibility evaluation. *Id.*  
21 (citations omitted).

22 Plaintiff testified to the following at the administrative  
23 hearing: He has pain in his low back and both legs. He can stand for  
24 only 10 to 15 minutes before he has to sit; he can walk for only 25 to  
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26 <sup>1</sup> "The Secretary issues Social Security Rulings to clarify the  
27 Secretary's regulations and policy .... Although SSRs are not published  
28 in the federal register and do not have the force of law, [the Ninth  
Circuit] nevertheless give[s] deference to the Secretary's  
interpretation of its regulations." *Bunnell*, 947 F.2d at 346 n.3.

1 30 minutes before he has to rest; and he can sit for only 20 to 25  
2 minutes before he has to change positions for 5 or 10 minutes. He can  
3 lift at most 15 to 20 pounds. He has to lie down four or five times  
4 every day for 15 to 20 minutes at a time because of the pain and  
5 because his pain medication makes him sleepy. (AR at 471-475.) Here,  
6 the ALJ found that Plaintiff's medical impairments could reasonably be  
7 expected to produce the alleged symptoms. (AR at 16.) He was therefore  
8 required to provide specific, clear and convincing reasons for  
9 rejecting Plaintiff's subjective allegations of pain and functional  
10 limitations.

11       However, the ALJ did not provide any specific reasons for  
12 rejecting Plaintiff's testimony, but rather merely stated that the  
13 objective medical evidence did not support the alleged severity of  
14 Plaintiff's symptoms and limitations, without specifying what medical  
15 evidence in the record contradicts Plaintiff's subjective complaints.  
16 (AR at 16-17.) This was error. *See Burch v. Barnhart*, 400 F.3d 676,  
17 681 (9th Cir. 2005) (noting that "lack of medical evidence cannot form  
18 the sole basis for discounting pain testimony"). Although "the medical  
19 evidence is a relevant factor in determining the severity of the  
20 claimant's pain and its disabling effects," once a claimant produces  
21 objective medical evidence of an underlying impairment, an ALJ "may  
22 not reject a claimant's subjective complaints based solely on lack of  
23 objective medical evidence to fully corroborate the alleged severity  
24 of pain." *Rollins v. Massanari*, 261 F.3d 853, 856-57 (9th Cir. 2001).

25       Here, the ALJ provided no other reason for discrediting  
26 Plaintiff's testimony other than that it was not supported by the  
27 objective medical evidence. Because the sole reason given by the ALJ  
28 for failing to credit Plaintiff's testimony regarding his symptoms and

1 related limitations was not supported by substantial evidence,  
2 Plaintiff is entitled to relief on this claim.

3 **B. The ALJ Failed to Properly Assess Plaintiff's RFC**

4 Plaintiff contends that the ALJ failed to properly consider the  
5 medical evidence in assessing his RFC. (Joint Stip. at 4.) Plaintiff  
6 argues that the ALJ's assessment that he is capable of standing and/or  
7 walking and sitting for up to six hours out of an eight-hour work day  
8 is not supported by the medical evidence or by Plaintiff's testimony.  
9 (Id. at 5.)

10 A claimant's RFC is what he is capable of doing despite his  
11 physical and mental limitations. 20 C.F.R. § 404.1545(a)(1); *Cooper v.*  
12 *Sullivan*, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). "RFC is an  
13 assessment of an individual's ability to do sustained work-related  
14 physical and mental activities in a work setting on a regular and  
15 continuing basis." SSR 9608p, 1996 WL 374184, at \*1 (S.S.A. July 2,  
16 1996). An RFC assessment is ultimately an administrative finding  
17 reserved to the Commissioner, based on all of the relevant evidence,  
18 including the diagnoses, treatment, observations, and opinions of  
19 medical sources, such as treating and examining physicians. 20 C.F.R.  
20 § 404.1527(e)(2).

21 In support of the RFC assessment, the ALJ cited opinions from two  
22 of Plaintiff's treating physicians, Drs. Christopher H. Fleming, M.D.  
23 and Dr. Neil J. Halbridge, M.D. (AR at 18-19.) Both Dr. Fleming and  
24 Dr. Halbridge, who treated Plaintiff in the context of his worker's  
25 compensation claim, determined that Plaintiff was precluded from  
26 prolonged sitting, standing or walking. (Id. citing AR at 249, 268,  
27 346.) In concluding that Plaintiff was able to sit, stand and/or walk  
28 for six hours out of an eight-hour workday, the ALJ stated that

1 Plaintiff "must be allowed to change positions every 30 minutes for up  
2 to 10 minutes." (AR at 16.)

3       There is insufficient medical evidence in the record to support  
4 the ALJ's RFC assessment, which found that Plaintiff could sit, stand  
5 and/or walk for six hours out of an eight-hour work day if he were  
6 allowed to change positions for up to 10 minutes every 30 minutes.  
7 Each of the physicians who treated Plaintiff, Drs. Halbridge, Fleming  
8 and Dr. David Siambanes, D.O., concluded that Plaintiff was precluded  
9 from prolonged sitting, standing and walking. None of these medical  
10 opinions cited by the ALJ ever noted that Plaintiff would be able to  
11 walk, sit and/or stand for six hours out of an eight-hour workday if  
12 he were allowed to change positions for 10 minutes every thirty  
13 minutes.

14       Although Dr. Fleming did state in a June 5, 2007 report that  
15 Plaintiff "should avoid prolonged sitting or prolonged standing and  
16 walking for more than one hour at a time or 4 hours, in an 8-hour day  
17 without the ability to change positions" (AR at 268), he never opined  
18 that changing positions for 10 minutes every thirty minutes would  
19 enable Plaintiff to sit, stand and/or walk for six out of eight hours.  
20 In fact, Dr. Fleming specifically limited Plaintiff to sitting,  
21 standing and/or walking for no more than four hours out of an eight-  
22 hour day. (Id.)

23       Furthermore, six months later, on December 3, 2007, Dr. Fleming  
24 stated that he "agree[d] with Dr. Siambanes that preclusion against  
25 heavy work as well as prolonged sitting and prolonged standing and  
26 walking is appropriate." (AR at 249, citing AR at 232.) In addition,  
27 two years later, on November 17, 2009, Dr. Halbridge, in agreement  
28 with Dr. Fleming's December 3, 2007 report, concluded that Plaintiff



1 could not perform any "prolonged sitting or prolonged standing or  
2 prolonged walking." (AR at 346.) None of the more recent medical  
3 opinions concluded that Plaintiff would be able to sustain prolonged  
4 sitting, standing and walking if he were allowed to change positions  
5 for 10 minutes every 30 minutes.

6 Accordingly, the Court agrees with Plaintiff's contention that  
7 the ALJ improperly determined Plaintiff's RFC because the medical  
8 evidence cited by the ALJ does not support the RFC assessment.

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10 **IV. Conclusion**

11 The decision whether to remand for further proceedings is within  
12 this Court's discretion. *Harman v. Apfel*, 211 F.3d 1172, 1175-78 (9th  
13 Cir. 2000). Where no useful purpose would be served by further  
14 administrative proceedings, or where the record has been fully  
15 developed, it is appropriate to exercise this discretion to direct an  
16 immediate award of benefits. *Id.* at 1179 ("[T]he decision of whether  
17 to remand for further proceedings turns upon the likely utility of  
18 such proceedings."); *Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir.  
19 2004). However, where there are outstanding issues that must be  
20 resolved before a determination of disability can be made, and it is  
21 not clear from the record that the ALJ would be required to find the  
22 claimant disabled if all the evidence were properly evaluated, remand  
23 is appropriate. *Bunnell v. Barnhart*, 336 F.3d 1112, 1115-16 (9th Cir.  
24 2003); *see also Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003)  
25 (remanding case for reconsideration of credibility determination).

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1 Here, the ALJ failed to explain with sufficient specificity the  
2 basis for his determination that Plaintiff was not fully credible and  
3 failed to properly assess Plaintiff's RFC. Accordingly, the case is  
4 remanded for further proceedings consistent with this opinion and  
5 order.

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7 DATED: March 13, 2012

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12 Marc L. Goldman  
13 United States Magistrate Judge  
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