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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL W. MUNDORFF,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

No. 2:13-CV-0178-JTR

ORDER GRANTING, IN PART,
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS

BEFORE THE COURT are Cross-Motions for Summary Judgment. ECF No. 18, 19. Attorney Dana Chris Madsen represent Michael W. Mundorff (Plaintiff); Special Assistant United States Attorney Daphne Banay represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 7. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS, in part,** Plaintiff’s Motion for Summary Judgment; **DENIES** Defendant’s Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

JURISDICTION

Plaintiff protectively filed an application for a period of disability and Disability Insurance Benefits on October 6, 2010, alleging disability since April

1 15, 2010, Tr. 147, due to degenerative joint disease and severe manic depression,
2 Tr. 167. The application was denied initially and upon reconsideration.
3 Administrative Law Judge (ALJ) R.J. Payne held a hearing on March 29, 2012, Tr.
4 36-84, and issued an unfavorable decision on April 17, 2012, Tr. 15-26. The
5 Appeals Council denied review on March 16, 2013. Tr. 1-7. The ALJ's April
6 2012 decision became the final decision of the Commissioner, which is appealable
7 to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for
8 judicial review on May 13, 2013. ECF No. 1, 5.

9 **STATEMENT OF FACTS**

10 The facts of the case are set forth in the administrative hearing transcript, the
11 ALJ's decision, and the briefs of the parties. They are only briefly summarized
12 here.

13 Plaintiff was born on February 8, 1976, and was 34 years old on the alleged
14 onset date, April 15, 2010. Tr. 163. He completed high school and completed
15 truck driving education in June 2001. Tr. 168. Plaintiff testified at the
16 administrative hearing that he stopped working in 2010 because he could no longer
17 stand very long without pain and leg numbness. Tr. 66. When asked how he spent
18 a typical day, Plaintiff replied he mostly hid from people and explained he did not
19 like to be around people. Tr. 78-79. Nevertheless, he indicated he spends two
20 hours a day at the public library playing on the internet and talking with his family.
21 Tr. 79. He stated he owned a game boy and considered himself a "gamer" and
22 liked to read books. Tr. 79-80. Plaintiff also testified he regularly attended
23 church. Tr. 81-82.

24 **ADMINISTRATIVE DECISION**

25 The ALJ found Plaintiff had not engaged in substantial gainful activity since
26 April 15, 2010, the alleged onset date. Tr. 17. At step two, the ALJ determined
27 Plaintiff had severe impairments of degenerative joint disease and major
28 depressive disorder. Tr. 17. At step three, the ALJ found Plaintiff's severe

1 impairments did not meet or medically equal a listed impairment. Tr. 17. The ALJ
2 assessed Plaintiff's RFC and determined Plaintiff could perform light exertion
3 level work except he can only occasionally balance, stoop, crouch, crawl, kneel,
4 climb ramps and stairs, but never climb ladders, ropes, or scaffolds and should
5 have no more than superficial contact with the general public. Tr. 20. At step
6 four, the ALJ determined Plaintiff was able to perform his past relevant work as a
7 delivery driver, order filler, machine operator, cashier, and customer service
8 representative. Tr. 24-26. The ALJ thus concluded Plaintiff was not under a
9 disability within the meaning of the Social Security Act at any time from April 15,
10 2010, the alleged onset date, through the date of the decision, April 17, 2012. Tr.
11 26.

12 **STANDARD OF REVIEW**

13 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the Court set
14 out the standard of review:

15 A district court's order upholding the Commissioner's denial of benefits is
16 reviewed de novo. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000). The
17 decision of the Commissioner may be reversed only if it is not supported by
18 substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d
19 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a
20 mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way,
21 substantial evidence is such relevant evidence as a reasonable mind might accept
22 as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401
23 (1971). If the evidence is susceptible to more than one rational interpretation, the
24 Court may not substitute its judgment for that of the Commissioner. *Tackett*, 180
25 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599
26 (9th Cir. 1999).

27 The ALJ is responsible for determining credibility, resolving conflicts in
28 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,

1 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,
2 although deference is owed to a reasonable construction of the applicable statutes.
3 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

4 It is the role of the trier of fact, not this Court, to resolve conflicts in
5 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
6 rational interpretation, the Court may not substitute its judgment for that of the
7 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
8 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will
9 still be set aside if the proper legal standards were not applied in weighing the
10 evidence and making the decision. *Browner v. Secretary of Health and Human*
11 *Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to
12 support the administrative findings, or if conflicting evidence exists that will
13 support a finding of either disability or non-disability, the Commissioner's
14 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th
15 Cir. 1987).

16 SEQUENTIAL EVALUATION PROCESS

17 The Commissioner has established a five-step sequential evaluation process
18 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
19 416.920(a); see *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one
20 through four, the burden of proof rests upon the claimant to establish a prima facie
21 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This
22 burden is met once a claimant establishes that a physical or mental impairment
23 prevents him from engaging in his previous occupation. 20 C.F.R. §§
24 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the
25 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that
26 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist
27 in the national economy which claimant can perform. *Batson v. Commissioner of*
28 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make

1 an adjustment to other work in the national economy, a finding of “disabled” is
2 made. 20 C.F.R. §§ 404.1520(a)(4)(i-v), 416.920(a)(4)(i-v).

3 **ISSUE**

4 The question presented is whether substantial evidence exists to support the
5 ALJ’s decision denying benefits and, if so, whether that decision is based on
6 proper legal standards.

7 Plaintiff contends the ALJ erred when assessing Plaintiff’s psychological
8 limitations by relying on the opinion of Dr. Moore, a non-treating, non-examining
9 medical source, and discounting the opinions of Drs. Charboneau and Pollack.
10 ECF No. 18 at 9. Defendant responds that the ALJ provided appropriate rationale
11 for discounting the opinions of Dr. Pollack. ECF No. 19 at 8. Defendant,
12 however, failed to address the medical report of Dr. Charboneau and does not
13 mention the testimony of Dr. Moore. ECF No. 19.

14 **DISCUSSION**

15 **A. Physical Limitations**

16 Plaintiff does not contest the ALJ’s RFC determination with respect to his
17 physical capabilities. The ALJ determined that Plaintiff had the physical RFC to
18 perform light exertion level work with some postural limitations. Tr. 20. This
19 determination by the ALJ is supported by substantial evidence and free of legal
20 error.

21 **B. Mental Limitations**

22 Plaintiff contends the ALJ erred with respect to the mental RFC
23 determination in this case. Plaintiff specifically asserts the ALJ erred by according
24 controlling weight to the medical expert regarding Plaintiff’s psychological
25 limitations. ECF No. 18 at 9-11.

26 In a disability proceeding, the courts distinguish among the opinions of three
27 types of physicians: treating physicians, physicians who examine but do not treat
28 the claimant (examining physicians) and those who neither examine nor treat the

1 claimant (nonexamining physicians). *Lester v. Chater*, 81 F.3d 821, 839 (9th Cir.
2 1996). The Ninth Circuit has held that “[t]he opinion of a nonexamining physician
3 cannot by itself constitute substantial evidence that justifies the rejection of the
4 opinion of either an examining physician or a treating physician.” *Id.* at 830;
5 *Roberts v. Shalala*, 66 F.3d 179, 184 (9th Cir. 1995). An ALJ’s decision to reject
6 the opinion of a treating or examining physician may be based in part on the
7 testimony of a nonexamining medical advisor. *Magallanes v. Bowen*, 881 F.2d
8 747, 751-755 (9th Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir.
9 1995). However, the ALJ must also have other evidence to support the decision
10 such as laboratory test results, contrary reports from examining physicians, and
11 testimony from the claimant that was inconsistent with the physician’s opinion.
12 *Magallanes*, 881 F.2d at 751-752; *Andrews*, 53 F.3d 1042-1043.

13 On December 8, 2010, Gregory J. Charboneau, Ed.D, examined Plaintiff.
14 Tr. 240-244. Dr. Charboneau noted Plaintiff was living in a shelter at the time,
15 Plaintiff’s fiancée was living at a different shelter, and the couple’s young daughter
16 was living with Plaintiff’s parents in Florida until the couple could obtain a place
17 to live together. Tr. 240. Plaintiff reported he gets up around six a.m., drinks
18 coffee, and then goes to the public library to use the computer. Tr. 242. He
19 indicated he obtains and completes job applications, visits with his fiancée daily
20 and volunteers two times a week for the Salvation Army as a bell ringer to collect
21 donations. He showers and brushes his teeth each night and goes to bed about nine
22 p.m. Tr. 242. Dr. Charboneau noted that while Plaintiff reported being previously
23 diagnosed with Severe Manic Depressive Disorder, Plaintiff did not present with
24 Manic symptoms during the clinical interview. Tr. 243. Dr. Charboneau
25 nevertheless diagnosed Major Depressive Disorder Severe without Psychotic
26 Features; Rule Out Bipolar Disorder, NOS; Rule Out Pain Disorder Associated
27 with Both Psychological Factors and a General Medical Condition, chronic,
28 Alcohol Dependence, Early Full Remission; and Cannabis Dependence, prior

1 history, and gave Plaintiff a Global Assessment of Functioning Score of 28.¹ Tr.
2 243.

3 Chart notes from Community Health Association of Spokane (CHAS)
4 indicate Plaintiff was first seen by Douglass Duncan, PA-C, on January 11, 2011,
5 with an initial impression of “moderately severe depression.” Tr. 245-246. On
6 January 20, 2011, Plaintiff denied depressive symptoms, but his fiancée reported
7 Plaintiff had recurrent suicidal ideation and depression for many years. Tr. 247.
8 Mr. Duncan indicated he did not get a sense of a mood disorder (mania or
9 hypomania) at that time. Tr. 248. On February 3, 2011, Plaintiff reported
10 experiencing depressed mood, diminished interest or pleasure, fatigue or loss of
11 energy, feelings of guilt or worthlessness, sleep disturbance and thoughts of death
12 or suicide. Tr. 250. It was noted he previously denied depressive symptoms, but,
13 on this occasion, agreed with his fiancée that he had experienced depression for
14 many years. Tr. 250. On March 21, 2011, Plaintiff presented to Mr. Duncan with
15 his fiancée to discuss his mental health. Tr. 253. It was noted that Plaintiff was
16 given medication for his reported symptoms and had “improved control” of his
17 depression. Tr. 254. On June 27, 2011, Mr. Duncan stated that Plaintiff had

19 ¹A GAF of 30-21 is characterized as: “Behavior is considerably influenced
20 by delusions or hallucinations or serious impairment in communication or
21 judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal
22 preoccupation) or inability to function in almost all areas (e.g., stays in bed all day;
23 no job, home, or friends).” Diagnostic and Statistical Manual of Mental Disorders
24 34 (4th ed. 1994). However, the DSM-V has “recommended that the GAF be
25 dropped . . . for several reasons, including its conceptual lack of clarity (i.e.,
26 including symptoms, suicide risk, and disabilities in its descriptors) and
27 questionable psychometrics in routine practice.” Diagnostic and Statistical Manual
28 of Mental Disorders, 16 (5th ed. 2013).

1 started taking Zoloft for his depressive symptoms two months prior to the visit and
2 reported the medication had been effective for him. Tr. 255. It was noted on exam
3 that there was “[n]o unusual anxiety or evidence of depression.” Tr. 256. On July
4 22, 2011, Mr. Duncan indicated “Zoloft has been effective for depression. [He]
5 feels this is [the] right dose for him.” Tr. 257. On August 12, 2011, Plaintiff was
6 diagnosed with depression, given a GAF score of 60,² and continued on the
7 treatment plan previously prescribed. Tr. 261-262. On September 14, 2011,
8 Plaintiff presented complaining of depression, irritability and anger, Tr. 264;
9 however, on September 23, 2011, Plaintiff was seen by Mr. Duncan with no
10 mention of depressive symptoms, Tr. 267. On October 3, 2011, and November 4,
11 2011, CHAS chart notes indicate diagnoses of depression and bipolar disorder. Tr.
12 270, 272. On November 11, 2011, Mr. Duncan noted Plaintiff had been taking
13 Celexa, which Plaintiff reported had helped his depressive symptoms. Tr. 274. On
14 November 18, 2011, Plaintiff reported he had been unable to contact his daughter
15 on her birthday, learned his parents were going to move to Afghanistan with his
16 children for a year, and was feeling more depressed with his medication not
17 seeming to be working. Tr. 276.

18 On March 26, 2012, Plaintiff was evaluated by Dennis R. Pollack, Ph.D. Tr.
19 280-289. Plaintiff indicated he did not think he could work because of depression
20 and hip pain. Tr. 281. He described his depression as resulting in his not wanting
21 to do anything or be around anyone. Tr. 281-282. Plaintiff reported he visits with
22 friends three to four times a month; does household chores like washing dishes,
23 sweeping and washing clothes; plays video games; uses Facebook; and reads. Tr.
24 282. Dr. Pollack indicated the results of the MMPI-2 gave Plaintiff an elevated F-

26 ²A GAF of 60-51 reflects: Moderate symptoms or moderate difficulty in
27 social, occupational, or school functioning. Diagnostic and Statistical Manual of
28 Mental Disorders 32 (4th ed. 1994).

1 scale at T, suggesting he has a high number of unusual experiences or that he was
2 exaggerating his difficulties. Tr. 284. The results, however, did not invalidate the
3 testing. Tr. 284. Personality testing revealed “an individual who is anxious, tense,
4 nervous and depressed. He worries excessively and has difficulty controlling his
5 anxiety. He tends to overreact to minor stress.” Tr. 285. Dr. Pollack diagnosed
6 Major Depressive Disorder; Pain Disorder Associated with Both Psychological
7 Factors and General Medical Condition; Alcohol Dependence, in remission;
8 Cannabis Dependence, in remission; and Rule Out Personality Disorder, and gave
9 Plaintiff a GAF score of 55, indicative of moderate symptoms. Tr. 285. On a
10 Mental Medical Source Statement form, Dr. Pollack checked boxes indicating
11 Plaintiff’s ability to perform activities within a schedule, maintain regular
12 attendance, and be punctual within customary tolerances and ability to complete a
13 normal workday and workweek without interruptions from psychologically based
14 symptoms and to perform at a consistent pace without an unreasonable number and
15 length of rest periods were markedly limited. Tr. 287.

16 Margaret Moore, Ph.D., reviewed the record and testified as a medical
17 expert at the administrative hearing held on March 29, 2012. Tr. 46-55. Dr.
18 Moore indicated the record reflected only two exams, one completed by Dr.
19 Pollack and one completed by Dr. Charboneau, as well as contacts with a social
20 worker at CHAS. Tr. 47, 49. She stated that both exams resulted in a diagnosis of
21 major depressive disorder, which Dr. Moore apparently agreed with. Tr. 47-48,
22 52. Dr. Moore opined that, overall, Plaintiff is someone who has encountered
23 some significant situational problems, such as a move to Washington State, no job,
24 no money, separation from his significant other in their respective shelter settings
25 and an attempt to get on his feet, but the efforts to get back on his feet have been
26 mostly about trying to receive entitlements, as opposed to getting work or
27 vocational rehabilitation. Tr. 48-49.

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1 With respect to Dr. Charboneau’s exam, Dr. Moore indicated the GAF score
2 of 28 given by Dr. Charboneau did not make sense, given Plaintiff’s functioning at
3 the time. Tr. 49-50. Dr. Moore stated that someone with this level of a GAF score
4 “would undoubtedly be hospitalized.” Tr. 49. As to Dr. Pollack’s examination,
5 Dr. Moore testified the content of the actual evaluation did not speak to the
6 extreme limitation ratings found by Dr. Pollack. Tr. 50. She noted Plaintiff
7 reported to Dr. Pollack that he has friends, sees his friends, is able to do his chores,
8 goes to the library, plays video games and performs activities of his own choosing
9 and persists at those which belied the marked impairments found by Dr. Pollack.
10 Tr. 50. In addition, Dr. Moore questioned Dr. Pollack’s technique on exam and
11 indicated the MMPI completed by Dr. Pollack, while not invalid, produced scores
12 that were “elevated fairly significantly.” Tr. 50-51. Dr. Moore opined Plaintiff
13 had no limitations on his activities of daily living, mild to moderate limitations in
14 social functioning, no to mild limitations on concentration, persistence and pace,
15 and no episodes of decompensation. Tr. 52-53.

16 John Arnold, Ph.D., completed a psychological/psychiatric evaluation form
17 on April 10, 2012. Tr. 298-300. Dr. Arnold diagnosed Major Depressive
18 Disorder, Recurrent Mild to Moderate and Personality Disorder NOS with Cluster
19 B Features and gave Plaintiff a GAF score of 54. Tr. 298. Plaintiff reported to Dr.
20 Arnold that the medication Zoloft helped him feel “normal over half the time.” Tr.
21 299. Dr. Arnold opined that Plaintiff is capable of understanding and carrying out
22 simple instructions, can concentrate for short periods of time, can complete simple
23 tasks without close supervision and not disrupt others, would work best in
24 positions that have minimal interaction with others, can use the bus for
25 transportation, and can recognize hazards and take appropriate precautions. *Id.*

26 The ALJ’s RFC assessment indicates Plaintiff should have no more than
27 superficial contact with the general public, but includes no further limitations
28 stemming from his mental impairments. Tr. 20. In reaching this RFC

1 determination, the ALJ accorded “significant weight” to the opinions of the non-
2 examining medical expert, Dr. Moore. Tr. 24. The ALJ further specifically
3 rejected portions of the medical reports of Dr. Charboneau and Dr. Pollack based
4 **entirely** on the testimony of Dr. Moore. Tr. 23. However, as indicated above,
5 “[t]he opinion of a nonexamining physician cannot by itself constitute substantial
6 evidence that justifies the rejection of the opinion of either an examining physician
7 or a treating physician.” *Lester*, 81 F.3d at 830. The ALJ provides no basis, other
8 than the testimony of Dr. Moore, for discounting the opinions of Drs. Charboneau³
9 and Pollack.⁴ Tr. 23. Furthermore, the ALJ’s decision fails to mention the report
10

11 ³With regard to Dr. Charboneau, the ALJ stated as follows: “Margaret
12 Moore, Ph.D., who testified at the hearing as a medical expert, called into question
13 Dr. Charboneau’s [sic] reported global assessment score, suggesting that a person
14 with a legitimate GAF score of 28 would have conditions that warrant
15 hospitalization. Dr. Moore opined that Dr. Charboneau [sic] likely based his
16 conclusion on the claimant’s subjective complaints, since this was inconsistent
17 with his findings that the claimant regularly went to the library to read email, and
18 looked for internet job searches.” Tr. 23.

19 ⁴The ALJ again relied solely upon Dr. Moore’s testimony to discount Dr.
20 Pollack’s report: “At the hearing, Dr. Moore questioned the consistency of Dr.
21 Pollack’s mental medical source statement evaluating the claimant with marked
22 impairments in his ability to sustain work when his own findings indicated that the
23 claimant demonstrated that he could do chores, perform activities on his own and
24 could choose and persist in those activities. Dr. Moore also questioned the
25 significance of the testing since Dr. Pollack failed to indicate his protocol for
26 performing his testing. Dr. Moore further noted that the claimant had significantly
27 elevated MMPI scores suggestive of strong potential for exaggeration, though they
28 did not rise to the level to be invalidated.” Tr. 23.

1 of Dr. Arnold and fails to indicate the weight accorded to Mr. Duncan. Tr. 23.
2 The ALJ erred by relying completely on the opinion of Dr. Moore, a nonexamining
3 medical professional, in assessing Plaintiff's mental RFC. Consequently, the
4 ALJ's assessment of Plaintiff's mental functioning is not supported by substantial
5 record evidence in this case.

6 The undersigned notes the medical evidence of record appears to
7 demonstrate Plaintiff's mental impairments do not result in disabling limitations.
8 However, Plaintiff's mental RFC is an administrative finding, dispositive of the
9 case, which is reserved to the Commissioner and, by delegation of authority, to the
10 ALJ. SSR 96-5p. It is thus the responsibility of the ALJ, not this Court, to make a
11 RFC determination. Accordingly, Plaintiff's mental RFC must be redetermined,
12 on remand, taking into consideration the opinions of the medical professionals
13 noted above, as well as any additional or supplemental evidence relevant to
14 Plaintiff's claim for disability benefits.

15 **CONCLUSION**

16 Having reviewed the record and the ALJ's conclusions, the undersigned
17 finds the ALJ's decision is not based upon the proper legal standards and is not
18 supported by substantial evidence in the record. The Court has the discretion to
19 remand the case for additional evidence and finding or to award benefits. *Smolen*
20 *v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). The Court may award benefits if
21 the record is fully developed and further administrative proceedings would serve
22 no useful purpose. *Id.* Remand is appropriate when additional administrative
23 proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th
24 Cir. 1989). In this case, as indicated above, further development is necessary to
25 remedy defects and for a proper determination to be made.

26 On remand, the ALJ shall reassess Plaintiff's mental RFC, taking into
27 consideration Dr. Charboneau's December 8, 2010, report, Tr. 240-244; the 2011
28 chart notes from CHAS, Tr. 245-276; Dr. Pollack's March 26, 2012, evaluation,

1 Tr. 280-289; the evaluation completed by Dr. Arnold on April 10, 2012, Tr. 298-
2 300; and any additional medical evidence relevant to Plaintiff's claim for disability
3 benefits. The ALJ shall also elicit the testimony of a medical expert at a new
4 administrative hearing to assist the ALJ in formulating a new mental RFC
5 determination. The ALJ shall present Plaintiff's new RFC assessment to a
6 vocational expert at the new hearing to determine if Plaintiff is capable of
7 performing his past relevant work or any other work existing in sufficient numbers
8 in the national economy.

9 Accordingly, **IT IS ORDERED:**

10 1. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is
11 **GRANTED, in part.**

12 2. Defendant's Motion for Summary Judgment, **ECF No. 19**, is
13 **DENIED.**

14 3. The matter is **REMANDED** to the Commissioner for additional
15 proceedings consistent with this order.

16 4. An application for attorney fees may be filed by separate motion.

17 The District Court Executive is directed to file this Order and provide a copy
18 to counsel for Plaintiff and Defendant. Judgment shall be entered in favor of
19 **PLAINTIFF** and the file shall be **CLOSED.**

20 DATED January 22, 2014.

A handwritten signature in black ink, appearing to read "M" or "Rodgers".

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE