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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 J Chavez,

10 Plaintiff,

11 v.

12 Social Security Administration,

13 Defendant.
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No. CV-14-02654-PHX-DGC

ORDER

15 Plaintiff Juan Francisco Chavez, in a pro se action, seeks review under 42 U.S.C.
16 § 405(g) of the final decision of the Commissioner of Social Security which denied him
17 disability insurance benefits and supplemental security income under sections 216(i),
18 223(d), and 1614(a)(3)(A) of the Social Security Act. The matter will be remanded for
19 further proceedings.

20 **I. Background.**

21 Plaintiff is a 37 year old male who previously worked in food service and as a
22 janitorial supervisor. A.R. 33. On August 17, 2011, Plaintiff applied for disability
23 insurance benefits and supplemental security income, alleging disability beginning
24 April 15, 2009. *Id.* at 23. On May 13, 2013, he appeared with a non-attorney
25 representative and testified at a hearing before an ALJ. *Id.* at 44-104. A vocational
26 expert also testified. *Id.* On August 6, 2013, the ALJ issued a decision that Plaintiff was
27 not disabled within the meaning of the Social Security Act. *Id.* at 23. The Appeals
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1 Council denied Plaintiff's request for review of the hearing decision, making the ALJ's
2 decision the Commissioner's final decision. *Id.* at 1.

3 **II. Legal Standard.**

4 The district court reviews only those issues raised by the party challenging the
5 ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). The court
6 may set aside the Commissioner's disability determination only if the determination is
7 not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d
8 625, 630 (9th Cir. 2007). Substantial evidence is more than a scintilla, less than a
9 preponderance, and relevant evidence that a reasonable person might accept as adequate
10 to support a conclusion considering the record as a whole. *Id.* In determining whether
11 substantial evidence supports a decision, the court must consider the record as a whole
12 and may not affirm simply by isolating a "specific quantum of supporting evidence." *Id.*
13 As a general rule, "[w]here the evidence is susceptible to more than one rational
14 interpretation, one of which supports the ALJ's decision, the ALJ's conclusion must be
15 upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

16 Harmless error principles apply in the Social Security Act context. *Molina v.*
17 *Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless if there remains
18 substantial evidence supporting the ALJ's decision and the error does not affect the
19 ultimate nondisability determination. *Id.* The claimant usually bears the burden of
20 showing that an error is harmful. *Id.* at 1111.

21 **III. The ALJ's Five-Step Evaluation Process.**

22 To determine whether a claimant is disabled for purposes of the Social Security
23 Act, the ALJ follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears
24 the burden of proof on the first four steps, and the burden shifts to the Commissioner at
25 step five. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999).

26 At the first step, the ALJ determines whether the claimant is engaging in
27 substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant is not
28 disabled and the inquiry ends. *Id.* At step two, the ALJ determines whether the claimant

1 has a “severe” medically determinable physical or mental impairment.
2 § 404.1520(a)(4)(ii). If not, the claimant is not disabled and the inquiry ends. *Id.* At step
3 three, the ALJ considers whether the claimant’s impairment or combination of
4 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
5 of 20 C.F.R. Pt. 404. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to
6 be disabled. *Id.* If not, the ALJ proceeds to step four. At step four, the ALJ assesses the
7 claimant’s residual functional capacity and determines whether the claimant is still
8 capable of performing past relevant work. § 404.1520(a)(4)(iv). If so, the claimant is not
9 disabled and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step,
10 where he determines whether the claimant can perform any other work based on the
11 claimant’s residual functional capacity, age, education, and work experience.
12 § 404.1520(a)(4)(v). If the claimant cannot perform such work, he is disabled. *Id.*

13 At step one, the ALJ found that Plaintiff met the insured status requirements of the
14 Social Security Act through December 31, 2014, and that he had not engaged in
15 substantial gainful activity at any time between the alleged onset date and the date of the
16 decision. A.R. 25. At step two, the ALJ found that Plaintiff had the following severe
17 impairments: episodic diverticulitis,¹ status post colon resection, lumbosacral
18 spondylosis,² obesity, and alcohol abuse. *Id.* at 26. At step three, the ALJ determined
19 that Plaintiff did not have an impairment or combination of impairments that met or
20 medically equaled an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Pt. 404.
21 *Id.* at 28. At step four, the ALJ found that Plaintiff had the residual functional capacity to
22 perform:

23 _____
24 ¹ Diverticulitis is the inflammation of diverticula, which are “small, bulging
25 pouches that can form in the lining of [a person’s] digestive system.” *See*
26 [http://www.mayoclinic.org/diseases-conditions/diverticulitis/basics/definition/con-
20033495](http://www.mayoclinic.org/diseases-conditions/diverticulitis/basics/definition/con-20033495). The condition “can cause severe abdominal pain, fever, nausea and a marked
change in [a person’s] bowel habits.” *Id.*

27 ² Lumbosacral spondylosis may be defined as a “degenerative conditions affecting
28 the disks, vertebral bodies, and/or associated joints of the lumbar spine.” Kimberley
Middleton & David E. Fish, *Lumbar spondylosis: clinical presentation and treatment
approaches*, 2:2 *Curr. Rev. Musculoskelet. Med.* 94 (Jun. 2009).

1 [L]ight work as defined in 20 C.F.R. § 404.1567(b) except that he can
2 never climb ladders, ropes, and scaffolds, but can occasionally climb ramps
3 and stairs. He can frequently balance, stoop, and kneel, as well as
4 occasionally crouch or crawl. He should not work around extremely hot
environments or in very humid environments. Further, he should not work
around unprotected heights or moving machinery.

5 *Id.* The ALJ further found Plaintiff unable to perform any past relevant work. *Id.* At
6 step five, the ALJ found that jobs existed in significant numbers in the national economy
7 that the claimant could perform, including housekeeping, cashier, and merchandise
8 marker work. *Id.* at 34.

9 **IV. Analysis.**

10 Plaintiff argues the ALJ's disability determination was defective for five reasons:
11 the ALJ (1) exhibited bias; (2) discounted the medical opinions of Plaintiff's medical
12 sources; (3) improperly rejected the vocational expert's testimony; (4) improperly
13 discounted the testimony of Plaintiff's family, friends, and former coworkers; and
14 (5) improperly concluded that Plaintiff had a history of alcohol abuse and drug-seeking
15 behavior. Docs. 23, 25. The Court will address each argument below.

16 **A. Bias.**

17 "ALJs and other similar quasi-judicial administrative officers are presumed to be
18 unbiased. This presumption can be rebutted by a showing of conflict of interest or some
19 other specific reason for disqualification." *Rollins v. Massanari*, 261 F.3d 853, 857-58
20 (9th Cir. 2001) (quoting *Verduzco v. Apfel*, 188 F.3d 1087, 1089 (9th Cir. 1999)). "But
21 expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the
22 bounds of what imperfect men and women sometimes display, do not establish bias."
23 *Valentine v. Comm'r*, 574 F.3d 685, 690 (9th Cir. 2009) (brackets omitted). In order to
24 demonstrate bias, a claimant must "show that the ALJ's behavior, in the context of the
25 whole case, was so extreme as to display clear inability to render fair judgment." *Bayliss*
26 *v. Barnhart*, 427 F.3d 1211, 1214-15 (9th Cir. 2005).

27 Plaintiff contends that the ALJ's questions during the May 13, 2013 hearing
28 demonstrate that she was biased against Plaintiff based on his marital and relationship

1 status. Doc. 23 at 3. Specifically, he contends that the ALJ seemed “more concerned
2 with [Plaintiff’s] background and history than his medical conditions.” *Id.* The Court
3 has reviewed the transcript of the hearing (A.R. 44-104) and finds no evidence of bias.
4 The ALJ did ask Plaintiff a number of questions about his background, history, and living
5 situation. *See* A.R. 61-64. But questions of this type serve a legitimate function in a
6 disability hearing by helping the ALJ understand whether Plaintiff’s daily activities are
7 consistent with his claim of disability. The ALJ’s questions were not improper and do
8 not demonstrate bias.

9 **B. Weighing of Medical Source Evidence.**

10 Plaintiff argues that the ALJ improperly discounted the medical opinions of
11 Ahmad Qasimyar, M.D. In addition, he asks this Court to consider medical opinions and
12 records from Jugroop Brar, M.D., which he did not present to the ALJ.

13 **1. Legal Standard.**

14 The Commissioner is responsible for determining whether a claimant meets the
15 statutory definition of disability, and need not credit a physician’s conclusion that the
16 claimant is “disabled” or “unable to work.” 20 C.F.R. § 416.927(d). But the
17 Commissioner generally must defer to a physician’s medical opinion, such as statements
18 concerning the nature or severity of the claimant’s impairments, what the claimant can do
19 despite the impairments, and the claimant’s physical or mental restrictions.
20 § 416.927(a)(2).

21 In determining how much deference to give a physician’s medical opinion, the
22 Ninth Circuit distinguishes between the opinions of treating physicians, examining
23 physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821, 830 (9th
24 Cir. 1995). Generally, an ALJ should give the greatest weight to a treating physician’s
25 opinion and more weight to the opinion of an examining physician than to one of a non-
26 examining physician. *See Andrews v. Shalala*, 53 F.3d 1035, 1040-41 (9th Cir. 1995);
27 *see also* 20 C.F.R. § 404.1527(c)(2)-(6) (listing factors to be considered when evaluating
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1 opinion evidence, including length of examining or treating relationship, frequency of
2 examination, consistency with the record, and support from objective evidence).

3 If a treating or examining physician's medical opinion is not contradicted by
4 another doctor, the opinion can be rejected only for "clear and convincing" reasons.
5 *Lester*, 81 F.3d at 830. Under this standard, the ALJ may reject a treating or examining
6 physician's opinion if it is "conclusory, brief, and unsupported by the record as a whole[]
7 or by objective medical findings," *Batson v. Comm'r*, 359 F.3d 1190, 1195 (9th Cir.
8 2004), or if there are significant discrepancies between the physician's opinion and her
9 clinical records. *See Bayliss*, 427 F.3d at 1216.

10 When a treating or examining physician's opinion is contradicted by another
11 doctor, it can be rejected "for specific and legitimate reasons that are supported by
12 substantial evidence in the record." *Lester*, 81 F.3d at 830-31 (citation omitted). This
13 standard requires the ALJ to provide "a detailed and thorough summary of the facts and
14 conflicting clinical evidence, stating his interpretation thereof, and making findings."
15 *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986). Under either standard, "[t]he ALJ
16 must do more than offer his conclusions. He must set forth his own interpretations and
17 explain why they, rather than the doctors', are correct." *Embrey v. Bowen*, 849 F.2d 418,
18 421-22 (9th Cir. 1988).

19 **2. Dr. Qasimyar.**

20 Plaintiff has been a patient of Dr. Qasimyar since January 5, 2012. A.R. 1660. On
21 October 4, 2012, Dr. Qasimyar wrote a letter indicating that Plaintiff was suffering from
22 chronic abdominal pain and severe irritable bowel syndrome, and taking pain medication
23 daily to deal with his symptoms. *Id.* On April 8, 2013, Dr. Qasimyar provided a second
24 letter stating that Plaintiff's symptoms "may affect and limit his daily activities, including
25 work." *Id.* at 1714. The letter indicated that Plaintiff suffered from irritable bowel
26 syndrome, diverticulosis, hypogonadism, hypertension, chronic pain syndrome, and
27 depression, and that Plaintiff had been prescribed medication that "may cause
28 psychomotor impairment and affect his ability to drive and function at work." *Id.* The

1 letter recommended that Plaintiff “remain off work until his medical condition
2 improves.” *Id.*

3 Dr. Qasimyar’s opinion is contradicted by another doctor – the reconsideration
4 level State agency medical consultant. A.R 123-43. Therefore, the Court must determine
5 whether the ALJ offered specific and legitimate reasons for rejecting Dr. Qasimyar’s
6 opinion – that is, whether the ALJ offered “a detailed and thorough summary of the facts
7 and conflicting clinical evidence.” *Cotton*, 799 F.2d at 1408. The ALJ did not satisfy
8 this standard. Her discussion of Dr. Qasimyar’s opinion spans a total of four sentences
9 and includes no citations to the record other than citations to the opinion itself. A.R. 32.
10 It certainly does not include a detailed and thorough summary of the facts and conflicting
11 clinical evidence.

12 The ALJ purported to find Dr. Qasimyar’s opinion inconsistent with his own
13 treatment records and the record as a whole, but she did not provide a single specific
14 example of inconsistency. *Id.* The Court’s own review of the record reveals that Dr.
15 Qasimyar’s opinion letters are consistent with his treatment records. His first letter
16 reported that Plaintiff was suffering from chronic abdominal pain and severe irritable
17 bowel syndrome, and taking pain medication daily to treat his symptoms. A.R. 1660.
18 His treatment records show that he diagnosed and treated Plaintiff for these conditions on
19 nineteen occasions between January 5, 2012 and February 8, 2013.³ His records also

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21 ³ See A.R. 1806 (notes for Jan. 5, 2012, reporting abdominal pain and abdominal
22 bloating), 1804 (notes for Jan. 20, 2012, reporting abdominal pain), 1798 (notes for Feb.
23 9, 2012, reporting abdominal pain), 1796 (notes for Feb. 24, 2012, reporting abdominal
24 tenderness), 1789 (notes for Apr. 12, 2012, reporting nausea and vomiting several times
25 daily, diffuse abdominal pain, bloating, constipation, and diarrhea), 1786 (notes for Apr.
26 19, 2012, reporting abdominal pain, diarrhea, nausea, and vomiting), 1783 (notes for Apr.
27 27, 2012, reporting abdominal pain and nausea), 1780 (notes from May 15, 2013,
28 reporting irritable bowel syndrome, acid reflux symptoms, abdominal bloating and
nausea), 1771 (notes for July 20, 2012, reporting abdominal pain), 1767 (notes from Aug.
2, 2012, reporting chronic abdominal pain and irritable bowel syndrome and discussing
related symptoms), 1764 (notes from Aug. 16, 2012, reporting abdominal pain), 1761
(notes for Aug. 23, 2012, reporting abdominal pain, acid reflux symptoms, constipation,
diarrhea, nausea, and vomiting), 1754 (notes for Aug. 31, 2012, reporting abdominal
pain, nausea, acid reflux symptoms, and vomiting), 1751 (notes for Sep. 20, 2012,
reporting abdominal pain and nausea), 1748 (notes from Oct. 2, 2012, reporting
abdominal pain, constipation, and diarrhea), 1745 (notes from Oct. 5, 2012, reporting
abdominal pain), 1741 (notes from Oct. 16, 2012, reporting abdominal pain and nausea),

1 indicate that Plaintiff was taking daily pain medication for his abdominal pain.⁴ Dr.
2 Qasimyar's second letter indicated that Plaintiff suffered from irritable bowel syndrome,
3 diverticulosis, hypogonadism, hypertension, chronic pain syndrome, and depression, and
4 that Plaintiff was on prescriptions that "may cause psychomotor impairment and affect
5 his ability to drive and function at work." *Id.* at 1714. Again, this opinion is consistent
6 with the underlying treatment records.⁵

7 The ALJ also stated that Dr. Qasimyar's opinion was entitled to little weight
8 because it did not include a "function-by-function analysis of the claimant's work related
9 limitations." A.R. 32. This is not a specific and legitimate reason for discounting Dr.
10 Qasimyar's opinion. Whether or not a doctor has provided a function-by-function
11 analysis, the ALJ must consider the doctor's clinical evidence and any work related
12 limitations suggested by that evidence. Although Dr. Qasimyar's clinical records plainly
13 suggest work-related limitations,⁶ the ALJ failed to address them.

14 Finally, the ALJ discounted Dr. Qasimyar's opinion because it was not supported
15 by "objective testing." A.R. 32. This is not a specific and legitimate reason. It is not
16 specific because the ALJ did not identify what testing should have been performed. It is
17 not legitimate because Dr. Qasimyar's opinion is supported by objective evidence. *See*

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19 1739 (notes from Nov. 15, 2012, reporting mild diffuse gastrointestinal tenderness and
20 hypoactive bowel sounds), 1733 (notes for Dec. 13, 2012, reporting abdominal pain and
acid reflux symptoms), 1726 (notes from Feb. 8, 2013, reporting abdominal pain).

21 ⁴ *See, e.g.*, A.R. 1798 (noting that Plaintiff takes Norco (Acetaminophen /
22 Hydrocodone) for chronic abdominal pain).

23 ⁵ *See* A.R. 1727 (notes from Feb. 8, 2013, listing Plaintiff's current problems as
24 including irritable bowel syndrome, diverticulosis, hypogonadism, hypertension, and
25 chronic pain), 1783 (notes from Apr. 27, 2012, reporting anxiety and depression), 1727-
28 (notes from Feb. 8, 2013, listing Plaintiff's medications, including Norco); *see also*
<http://www.ncbi.nlm.nih.gov/pubmedhealth/PMHT0021841/?report=details> (Norco's
possible side effects include "[e]xtreme dizziness, drowsiness, or weakness").

26 ⁶ *See* A.R. 1726 (Plaintiff experiencing "constant" fatigue), 1733 (fatigue during
27 "the majority of the day"), 1741, 1748 (moderate abdominal pain "several times daily,"
28 with episodes of variable duration), 1754 (moderate abdominal pain "several times a
week"), 1767 (severe abdominal pain that comes on with no apparent trigger, episodes of
variable duration), 1771 ("constant" fatigue), 1780, 1786 (diarrhea three-to-four times a
day), 1789 (nausea and vomiting several times a day).

1 *supra* note 3.

2 The ALJ relied on several factors in concluding that Plaintiff was not disabled.
3 The Commissioner argues that four of these factors support the ALJ's decision to
4 discount Dr. Qasimyar's opinion. Doc. 24 at 7. The Court does not agree.

5 First, the ALJ noted that Plaintiff stated in March 2010 that he had not had a
6 gastrointestinal flare-up in six years. A.R. 30 (citing A.R. 833). This statement is not
7 inconsistent with Dr. Qasimyar's opinion that Plaintiff suffered from gastrointestinal
8 issues between January 2012 and February 2013.

9 Second, the ALJ pointed to a treatment note from one of Plaintiff's emergency
10 room visits, which states that Plaintiff was "walking all over the [emergency room]
11 without apparent discomfort." A.R. 30 (citing A.R. 1000). **But** this treatment note has
12 nothing to do with Dr. Qasimyar or his findings, nor does it support the Commissioner's
13 insinuation that Plaintiff is a malingerer. According to the treatment note, Plaintiff
14 presented to the emergency room with severe abdominal pain and hypoactive bowel
15 sounds, and was given morphine and Zofran. A.R. 1000. Sometime thereafter he was
16 able to walk around the emergency room without discomfort, and reported "some
17 intestinal cramping but not the pain he had when he arrived." *Id.* The Court finds it
18 unremarkable that Plaintiff's pain improved after receiving morphine, and sees nothing in
19 the treatment note to suggest malingering.

20 Third, the ALJ pointed to treatment notes from Dr. Sanjay Verma indicating that
21 Plaintiff's symptoms improved with use of the drug Amitiza, and noted that Plaintiff did
22 not use it consistently. A.R. 30. As the ALJ mentioned and the medical records suggest,
23 however, Amitiza was not covered by Plaintiff's insurance. *See* A.R. 29, 1685, 1687,
24 1699. The ALJ does not address the possibility that Plaintiff failed to use the drug
25 consistently because he could not afford it.

26 Fourth, the ALJ cited a treatment note from Jena Jones, PAC, which concluded
27 that Plaintiff presents "[n]o signs of Inflammatory Bowel disease" and that his symptoms
28 are likely due to "chronic narcotic-induced constipation or adhesions after surgery."

1 A.R. 31 (citing *id.* at 1708).⁷ Since the disagreement between PAC Jones and Dr.
2 Qasimyar concerns etiology, not symptomatology, it provides no basis for rejecting Dr.
3 Qasimyar’s finding that Plaintiff’s symptoms “may affect and limit his daily activities,
4 including work.” A.R. 1714.

5 Because the ALJ did not provide specific and legitimate reasons for rejecting Dr.
6 Qasimyar’s opinion, the Commissioner’s decision must be vacated and the Court must
7 determine the appropriate remedy. Where an ALJ fails to provide adequate reasons for
8 rejecting evidence of a claimant’s disability, the Court must credit that evidence as true.
9 *Lester*, 81 F.3d at 834. An action should be remanded for an immediate award of
10 benefits when the following factors are satisfied: (1) the record has been fully developed
11 and further administrative proceedings would serve no useful purpose; (2) the ALJ has
12 failed to provide legally sufficient reasons for rejecting evidence, whether claimant
13 testimony or medical opinion; and (3) the ALJ would be required to find the claimant
14 disabled if the improperly discredited evidence were credited as true. *Garrison v. Colvin*,
15 759 F.3d 995, 1020 (9th Cir. 2014) (internal citations omitted). There is “flexibility”
16 which allows “courts to remand for further proceedings when, even though all conditions
17 of the credit-as-true rule are satisfied, an evaluation of the record as a whole creates
18 serious doubt that a claimant is, in fact, disabled.” *Id.* at 1020.

19 Even if Dr. Qasimyar’s opinion is credited as true, it is unclear from the
20 administrative record whether the ALJ would be required to find Plaintiff disabled.
21 Although Plaintiff’s representative did ask about the limiting effect of Plaintiff’s
22 gastrointestinal problems during cross-examination of the vocational expert, these
23 questions were not specifically tied to Dr. Qasimyar’s opinions and treating records. *See*
24 A.R. 97-104. Thus, the Court is unable to determine from the record whether there is

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26 ⁷ Although Dr. Qasimyar’s diagnosis of severe irritable bowel syndrome is
27 contradicted by PAC Jones, it is supported by the findings of Plaintiff’s
28 gastroenterologist, Dr. James D. Panetta, A.R. 1647-53, and the opinion of
reconsideration level State agency medical consultants, *id.* at 134. To the extent the issue
is relevant on remand, the ALJ should consider the findings and opinions of each of these
doctors.

1 some work Plaintiff could perform despite his chronic abdominal pain and
2 gastrointestinal problems. The Court therefore will remand for further proceedings.

3 **3. Dr. Brar.**

4 Dr. Brar is a pulmonologist who has provided Plaintiff treatment for sleep apnea.
5 Plaintiff asks the Court to consider opinions and other materials from Dr. Brar, which
6 were presented to the Commissioner for the first time on appeal of the ALJ's decision.
7 *See* Doc. 23 at 18, 25. In addition, Plaintiff asks the Court to consider evidence from Dr.
8 Brar that has never been presented to the Commissioner. *See id.* at 19-23.

9 The Court does not have jurisdiction to consider this evidence. *See* 42 U.S.C.
10 § 405(g) (“The court shall have power to enter, upon the pleadings and transcript of the
11 record, a judgment affirming, modifying, or reversing the decision of the
12 Commissioner”). The Court may, however, “order additional evidence to be taken before
13 the Commissioner . . . upon a showing that there is new evidence which is material and
14 that there is good cause for the failure to incorporate such evidence into the record in a
15 prior proceeding.” *Id.* The Court finds that Plaintiff's evidence may be material. The
16 Court also finds that there is good cause for Plaintiff's failure to incorporate this evidence
17 into the record because it was produced after the close of the record. Therefore, the Court
18 will order the Commissioner to consider this evidence on remand.

19 **C. Testimony of Vocational Expert.**

20 Plaintiff contends that the vocational expert found Plaintiff unable to work, and
21 that the ALJ improperly rejected this testimony. Doc. 23 at 4. Plaintiff misapprehends
22 the testimony. The vocational expert did not purport to assess Plaintiff's limitations.
23 Instead, he answered hypothetical questions posed by the ALJ and Plaintiff's attorney
24 about whether a person with specified limitations would be able to find work that exists
25 in significant numbers in the national economy. A.R. 97-100. In response to the
26 hypothetical posed by the ALJ, the vocational expert testified that a person with the
27 specified limitations would be able to find such work. *Id.* at 98. In response to several of
28 the hypotheticals posed by Plaintiff's representative, the vocational expert testified that a

1 person with the specified limitations would not be able to find work. *Id.* at 100-03. The
2 ALJ concluded that Plaintiff's limitations matched those specified in her hypothetical, not
3 those specified in the hypotheticals posed by Plaintiff's representative. *Compare id.* at 97
4 (ALJ's hypothetical) *with id.* at 28 (ALJ's determination of Plaintiff's residual functional
5 capacity). Therefore, the ALJ properly considered the testimony of the vocational expert.

6 **D. Family, Friend, and Coworker Letter.**

7 "Spouses, parents and other caregivers, siblings, other relatives, friends,
8 neighbors, clergy, and employers" are competent to testify regarding "the severity of [the
9 claimant's] impairment(s) and how it affects the [claimant's] ability to function." Social
10 Security Ruling 06-03, 71 Fed. Reg. 45,593, 45,594 (Aug. 9, 2006). If the ALJ wishes to
11 discount this testimony, she must give reasons that are germane to each witness. *Dodrill*
12 *v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

13 Five individuals provided testimony on Plaintiff's behalf, including his oldest
14 sister (A.R. 297-98), two former coworkers (A.R. 299, 307-09), his ex-wife (A.R. 300-
15 04), and his parents (A.R. 305-06, 310). The ALJ assigned "little weight" to these
16 opinions "because of their conclusory nature and inconsistency with the objective
17 medical evidence of record." A.R. 32. The ALJ also concluded that the letters were
18 likely biased "given [the authors'] close relationships with the claimant." *Id.* Finally, the
19 ALJ stated that, even if she were to accept these opinions as fully credible, she would not
20 be persuaded that Plaintiff is disabled. *Id.*

21 Upon independent review of the letters, the Court agrees that some of these letters
22 are conclusory in nature, and therefore entitled to little weight. However, two letters
23 provide testimony that is not conclusory and that is consistent with the medical evidence.
24 Plaintiff's father reported that Plaintiff "is always running to the restroom, throwing up,
25 bleeding, in the hospital, or sick in bed" and that "[h]is stomach has kept him from being
26 able to do anything." A.R. 305-06. This statement is generally consistent with Dr.
27 Qasimyar's findings and provides insight into how Plaintiff's conditions affect his ability
28 to function on a day-to-day basis. Plaintiff's former coworker Dana Stanfield testifies

1 that there were “[m]any times” when Plaintiff became ill at work and had to go to the
2 restroom, and that he often had to leave work early. *Id.* at 307-08. Like the testimony of
3 Plaintiff’s father, this testimony is consistent with Dr. Qasimyar’s findings and provides
4 insight into how Plaintiff’s condition affects his day-to-day functioning.

5 The fact that these individuals have a close relationship to Plaintiff is not a
6 germane reason for discounting their statements. It will always be the case that a
7 claimant’s spouse, parents, siblings, other relatives, friends, neighbors, clergy, and
8 employers will have a close relationship to the claimant. Nonetheless, the Social Security
9 Administration has determined that testimony from these individuals should be
10 considered where it provides insight into “the severity of [the claimant’s] impairment(s)
11 and how it affects the [claimant’s] ability to function.” 71 Fed. Reg. at 45,594. The ALJ
12 is not free to second-guess this determination based on a generalized assumption that
13 familiarity breeds bias. *See generally Nat’l Ass’n of Home Builders v. Norton*, 340 F.3d
14 835, 852 (9th Cir. 2003) (agency must comply with its own rules). On remand, the ALJ
15 should address the testimony of Plaintiff’s father and Ms. Stanfield.

16 **E. Alcohol Abuse and Drug-Seeking Behavior.**

17 Plaintiff contends that the ALJ erred in finding that he had a history of alcohol
18 abuse and drug-seeking behavior. Doc. 25 at 1-3. The Court does not agree. There is
19 evidence in the record to support these conclusions. *See* A.R. 514 (reporting that Plaintiff
20 drinks 20 beers per week), 1723 (reporting that Plaintiff tested positive for non-
21 prescribed Oxycodone). The Court will not disturb the ALJ’s findings on these matters.

22 **IT IS ORDERED** that the final decision of the Commissioner of Social Security
23 is **remanded** for further proceedings consistent with this opinion. The Clerk shall enter
24 judgment accordingly and **terminate** this case.

25 Dated this 21st day of March, 2016.

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David G. Campbell
United States District Judge