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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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Daniel Zur,

No. CV-15-01821-PHX-GMS

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Plaintiff,

**ORDER**

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v.

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Commissioner of Social Security  
Administration,

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Defendant.

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Pending before the Court is the appeal of Plaintiff Daniel Zur (“Zur”), which challenges the Social Security Administration’s decision to deny benefits. (Doc. 1.) For the reasons set forth below, this Court remands the case for further administrative proceedings.

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**BACKGROUND**

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On May 30, 2013, Daniel Zur filed an application for disability insurance benefits, alleging a disability onset date of May 1, 2012. (Tr. 70, 72.) His claim was initially denied on October 23, 2013, and it was denied again upon reconsideration on March 19, 2014. (Tr. 83, 118.) Zur then filed a written request for a hearing, and he testified before ALJ Thomas Cheffins on March 19, 2015. (Tr. 11.) On April 16, 2015, the ALJ issued a decision finding Zur not disabled. (Tr. 11–20.)

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1 In evaluating whether Zur was disabled, the ALJ undertook the five-step  
2 sequential evaluation for determining disability.<sup>1</sup> (Tr. 12.) At step one, the ALJ found  
3 that Zur had not engaged in substantial gainful activity since the alleged onset date. (Tr.  
4 13.) At step two, the ALJ determined that Zur suffered from the following severe  
5 impairments: obesity, hypertension, and gout. (Tr. 13–14.) He also found that Zur  
6 suffered from nonsevere impairments, including autoimmune disorder,  
7 hyperalimentation, Crohn’s disease, back pain, acid reflux, chronic renal disease, bipolar  
8 disorder, and PTSD. (Tr. 14.) At step three, the ALJ determined that none of these  
9 impairments, either alone or in combination, met or equaled any of the Social Security  
10 Administration’s listed impairments. (*Id.*)

11 At that point, the ALJ reached step four and made a determination of Zur’s  
12 residual functional capacity (“RFC”),<sup>2</sup> concluding that Zur could “perform light work as  
13 defined in 20 CFR 404.1567(b), with no climbing ladders, ropes or scaffolds, frequent  
14 climbing ramps and stairs, and frequent crouching, kneeling and crawling.” (Tr. 14–15.)  
15 In making this finding, the ALJ found that Zur’s subjective testimony was “not entirely

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16 <sup>1</sup> The five-step sequential evaluation of disability is set out in 20 C.F.R.  
17 § 404.1520 (governing disability insurance benefits) and 20 C.F.R. § 416.920 (governing  
supplemental security income). Under the test:

18 A claimant must be found disabled if she proves: (1) that she  
19 is not presently engaged in a substantial gainful activity[,] (2)  
20 that her disability is severe, and (3) that her impairment meets  
21 or equals one of the specific impairments described in the  
22 regulations. If the impairment does not meet or equal one of  
23 the specific impairments described in the regulations, the  
24 claimant can still establish a prima facie case of disability by  
25 proving at step four that in addition to the first two  
26 requirements, she is not able to perform any work that she has  
27 done in the past. Once the claimant establishes a prima facie  
28 case, the burden of proof shifts to the agency at step five to  
demonstrate that the claimant can perform a significant  
number of other jobs in the national economy. This step-five  
determination is made on the basis of four factors: the  
claimant’s residual functional capacity, age, work experience  
and education.

27 *Hoopai v. Astrue*, 499 F.3d 1071, 1074–75 (9th Cir. 2007) (internal quotation marks and  
28 citations omitted).

<sup>2</sup> RFC is the most a claimant can do despite the limitations caused by his  
impairments. *See* S.S.R. 96–8p (July 2, 1996).

1 credible.” (Tr. 15.) The ALJ gave little to no weight to the treating physicians, Drs.  
2 Merritt, Cohen, and Quershi. (Tr. 15–20.) He also gave little weight to Dr. Geary, an  
3 examining physician. (Tr. 19.) Instead, he relied on the testimony of state agency’s  
4 reviewing physicians. (*Id.*) Likewise, the ALJ rejected the testimony of Zur’s licensed  
5 social worker/physician assistant, Ms. Monachelli. (Tr. 19.)

6 The Appeals Council declined to review the decision. (Tr. 1–5.) Zur filed the  
7 complaint underlying this action on September 9, 2015, seeking this Court’s review of  
8 the ALJ’s denial of benefits. (Doc. 1.) The matter is now fully briefed before this Court.  
9 (Doc. 14, 15, 19.)

## 10 ANALYSIS

### 11 I. Standard of Review

12 A reviewing federal court will only address the issues raised by the claimant in the  
13 appeal from the ALJ’s decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir.  
14 2001). A federal court may set aside a denial of disability benefits only if that denial is  
15 either unsupported by substantial evidence or based on legal error. *Thomas v. Barnhart*,  
16 278 F.3d 947, 954 (9th Cir. 2002). Substantial evidence is “more than a scintilla but less  
17 than a preponderance.” *Id.* (quotation omitted). “Substantial evidence is relevant  
18 evidence which, considering the record as a whole, a reasonable person might accept as  
19 adequate to support a conclusion.” *Id.* (quotation omitted).

20 The ALJ is responsible for resolving conflicts in testimony, determining  
21 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
22 Cir. 1995). “When the evidence before the ALJ is subject to more than one rational  
23 interpretation, we must defer to the ALJ’s conclusion.” *Batson v. Comm’r of Soc. Sec.*  
24 *Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004). This is so because “[t]he [ALJ] and not the  
25 reviewing court must resolve conflicts in evidence, and if the evidence can support either  
26 outcome, the court may not substitute its judgment for that of the ALJ.” *Matney v.*  
27 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992) (citations omitted).

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1 **II. Analysis**

2 **A. The ALJ Erred In Rejecting the Treating Physicians' Testimony**

3 “As a general rule, more weight should be given to the opinion of a treating source  
4 than to the opinion of doctors who do not treat the claimant.” *Lester v. Chater*, 81 F.3d  
5 821, 830 (9th Cir. 1995), *as amended* (Apr. 9, 1996). Therefore, if a treating physician’s  
6 opinion is “not contradicted by another doctor, it may be rejected only for clear and  
7 convincing reasons.” *Id.* If the treating physician’s opinion is contradicted by another  
8 doctor, the Commissioner still cannot reject the treating physician’s opinion unless he  
9 provides “specific and legitimate reasons supported by substantial evidence in the  
10 record.” *Id.* (internal quotations omitted).

11 The ALJ erred in rejecting the testimony of treating physicians Drs. Merritt,  
12 Qureshi, and Cohen without sufficiently explained reason for doing so.

13 **1. Dr. Brock Merritt**

14 Dr. Merritt was Zur’s primary care physician for over eight years. (Tr. 49.) Dr.  
15 Merritt examined Zur on four separate occasions. In May of 2012 Dr. Merritt opined that  
16 Zur “does not qualify for any physical problems for disability, but may at least partially  
17 qualify through psychiatry,” and from fall of 2013 to winter 2014, Dr. Merritt found that  
18 Zur could not maintain a full-time job due to his illnesses, specifically due to his Crohn’s  
19 disease and his bipolar disorder. (Tr. 697–98, 888–90, 1005–6, 1248–49, 1250–52.) The  
20 ALJ gave Dr. Merritt’s opinion no weight because he claimed that it was “completely  
21 unsupported by the record,” relied too heavily on the claimant’s subjective testimony and  
22 was beyond the scope of a primary care physician. (Tr. 19.) The ALJ went on to note  
23 that Dr. Merritt’s opinion was contradicted by his internal opinions as well as the state  
24 agency’s reviewing and consulting opinions, and objective test records.

25 The ALJ did not provide “specific and legitimate reasons supported by substantial  
26 evidence in the record” to justify disregarding Dr. Merritt’s testimony, and thus he  
27 committed legal error. *Lester*, 81 F.3d at 830. Early on in the opinion, the ALJ provided  
28 a list of citations to the record to support the assertion that the “[m]ental and physical

1 exam findings do not support” Zur’s allegations. (Tr. 16.) However, the ALJ failed to  
2 provide any explanation, parenthetical or otherwise, as to how the cited medical records  
3 established inconsistency between Merritt’s findings and the objective medical data. The  
4 ALJ also did not provide any explanation for declaring that Dr. Merritt’s opinions were  
5 based on the “claimant’s subjective complaints” and that his opinion was “outside the  
6 scope of his medical specialty.” (Tr. 19.) Furthermore, the ALJ did not adequately  
7 support his claim that Dr. Merritt’s opinions are internally inconsistent. The ALJ cites to  
8 Dr. Merritt’s July 2012 opinion that Zur did not qualify for disability to support this  
9 claim. (*Id.*) However, this is not, in and of itself, inconsistent with Dr. Merritt’s later  
10 assertions that Zur did qualify for disability based on physical ailments.<sup>3</sup> (*Id.*) Likewise,  
11 the ALJ failed to cite to specific examples establishing that Dr. Merritt’s opinion was  
12 contradicted by the state agency reviewing and examining physicians, and he did not  
13 provide a single example demonstrating how Zur’s daily activities contradicted Dr.  
14 Merritt’s findings. (*Id.*) The ALJ’s reasoning was too generalized “to allow the agency’s  
15 path to be reasonably discerned,” and thus he erred. *Molina v. Astrue*, 674 F.3d 1104,  
16 1121 (9th Cir. 2012).

## 17 2. Dr. Junaid Qureshi

18 Dr. Qureshi is Zur’s treating nephrologist. (Tr. 50.) He has treated Zur for three  
19 years, and Zur has seen him every couple of months during this time. (*Id.*) In September  
20 of 2014, Dr. Qureshi opined that Zur is precluded from work-related activities due to  
21 frequent urination, coupled with nausea and fatigue. (Tr. 1230.) The ALJ dismissed Dr.  
22 Qureshi’s medical opinion in the same paragraph that he dismissed Dr. Cohen’s medical  
23 opinion. (Tr. 19.) While the ALJ includes a list of citations to the record, these citations  
24 are too generalized to provide any explanation for which aspect of the medical report led

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26 <sup>3</sup> It is not apparent that claimant’s condition could not deteriorate over more than a  
27 year’s time. Thus, while Dr. Merritt’s 2012 observations might support the ALJ’s  
28 conclusion that Dr. Merritt’s 2013 observations are internally inconsistent with his 2012  
observations, it does not, absent further explanation, provide a substantial basis on which  
to reject Dr. Merritt’s opinion, although it may be relevant to determining whether the  
claimant’s alleged onset date is accurate.

1 the ALJ to dismiss Dr. Qureshi’s opinion. (Tr. 19.)

2 Generally, “even when an agency explains its decision with less than ideal clarity,  
3 we must uphold it if the agency's path may reasonably be discerned.” *Molina*, 674 F.3d  
4 at 1121 (internal citations and quotations omitted). However, the ALJ did not provide  
5 any explanation linking the exhibits he listed to his reasoning for dismissing Dr.  
6 Qureshi’s opinion, and this lack of explanation prevents this Court from finding that the  
7 ALJ’s logic can be reasonably discerned from his opinion. *Id.* (Tr. 19.) While the  
8 Commissioner offers some analysis on the opinion in her briefing, “[l]ong-standing  
9 principles of administrative law require us to review the ALJ's decision based on the  
10 reasoning and factual findings offered by the ALJ—not *post hoc* rationalizations that  
11 attempt to intuit what the adjudicator may have been thinking.” *Bray v. Comm'r of Soc.*  
12 *Sec. Admin.*, 554 F.3d 1219, 1225 (9th Cir. 2009). Therefore, the ALJ’s inadequate  
13 explanation for dismissing the findings of Dr. Qureshi constituted legal error.

### 14 3. Dr. Murray Cohen

15 Dr. Cohen treated Zur for eight years for his gastrointestinal problems. (Tr. 44.)  
16 In February of 2015, he opined that Zur’s irritable bowel syndrome as well as his kidney  
17 dysfunction would limit his ability to work. (Tr. 1379.)

18 The ALJ rejected Dr. Cohen’s opinion because he determined that it was based on  
19 the claimant’s subjective complaints, and “appeared sympathetic to the claimant.” (Tr.  
20 19.) He also stated that the opinion was not supported by “these doctors”<sup>4</sup> own objective  
21 clinical and exam findings and it was contradicted by the state agency’s examining  
22 physicians. (*Id.*) Furthermore, the ALJ stated that Dr. Cohen’s opinion was contested  
23 with the objective testing of record. (*Id.*) However, as above with both Dr. Merritt’s and  
24 Dr. Qureshi’s opinions, the ALJ failed to explain how the exhibits he listed supported his  
25 findings. The ALJ’s logic cannot be reasonably discerned from his opinion, and thus he  
26 committed error. *Molina*, 674 F.3d at 1121.

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28 <sup>4</sup> It is unclear who the ALJ was referring to, but because the paragraph rejecting  
Dr. Cohen also refers to Dr. Qureshi, the Court assumes he was referring to Dr. Cohen  
and Dr. Qureshi. (Tr. 19.)

1                                   **4.     The ALJ’s Error was Prejudicial.**

2           Once it has been determined that an ALJ made an error during the review of a  
3 claimant’s file, the next step is to determine whether the error was harmless. *See*  
4 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (applying  
5 the harmless error standard after determining that two of the ALJ’s reasons supporting his  
6 adverse credibility finding were invalid). Ninth Circuit precedents “do not quantify the  
7 degree of certainty needed to conclude that an ALJ’s error was harmless.” *Marsh v.*  
8 *Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015). The general rule is that an error is harmless  
9 where a court is can “conclude from the record that the ALJ would have reached the same  
10 result absent the error.” *Molina*, 674 F.3d at 1115.. Furthermore, “the more serious the  
11 ALJ’s error, the more difficult it should be to show the error was harmless.” *Id.*

12           The ALJ in this case either discredited or wholly rejected the opinions of the three  
13 treating physicians in Zur’s case. (Tr. 19.) Given that treating physicians are generally  
14 entitled to more weight than state agency reviewing physicians, this Court cannot  
15 “conclude from the record that the ALJ would have reached the same result absent the  
16 error.” *Molina*, 674 F.3d at 1115. Therefore, the ALJ committed prejudicial error by  
17 discrediting or entirely rejecting the opinions of Drs. Merritt, Qureshi, and Cohen.

18                                   **B.     The Commissioner Erred in Weighing the Psychological Findings**

19           The Commissioner gave little weight to examining physician Dr. Geary and no  
20 weight to licensed social worker/physician assistant, Ms. Monachelli. For the following  
21 reasons, the Court finds that the ALJ erred in rejecting Dr. Geary’s findings, but he did  
22 not err in rejecting Ms. Monachelli’s findings.

23                                   **1.     Dr. Brent Geary**

24           The general rule is that the “opinion of an examining physician is . . .entitled to  
25 greater weight than the opinion of a nonexamining physician.” *Lester v. Chater*, 81 F.3d  
26 821, 830 (9th Cir. 1995), *as amended* (Apr. 9, 1996). “As is the case with the opinion of  
27 a treating physician, the Commissioner must provide ‘clear and convincing’ reasons for  
28 rejecting the uncontradicted opinion of an examining physician.” *Id.* Furthermore, “the

1 opinion of an examining doctor, even if contradicted by another doctor, can only be  
2 rejected for specific and legitimate reasons that are supported by substantial evidence in  
3 the record,” and “generally, the more consistent an opinion is with the record as a whole,  
4 the more weight” that opinion is given. *Id.* at 830–31.

5 The ALJ in this case failed to provide an explanation for disregarding Dr. Geary’s  
6 opinion. To justify the dismissal, he stated that 1) Dr. Geary only examined Zur once and  
7 2) his opinion “found for more than mild limitations in concentration, persistence, and  
8 pace, which is otherwise unsupported by the greater objective record.” (Tr. 19.) The  
9 “opinion of an examining physician is. . .entitled to greater weight than the opinion of a  
10 nonexamining physician.” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995), *as*  
11 *amended* (Apr. 9, 1996). Although he only examined Zur once, Dr. Geary still saw him  
12 more often than the nonexamining physicians that the ALJ credited over him. Therefore,  
13 in the absence of any supportive citation to facts contradicting Dr. Geary’s opinion, this is  
14 not a legitimate reason for discrediting Dr. Geary’s findings.

15 And, in fact, the ALJ failed to cite to any aspect of the record to support the  
16 assertion that Dr. Geary’s findings were “otherwise unsupported by the greater objective  
17 record,” and instead merely cited to Dr. Geary’s findings. It is unclear from his analysis if  
18 he intended to assert that Dr. Geary’s findings were contradicted by the state agency’s  
19 reviewing physicians or not, but at any rate, this lack of specificity constitutes error. *See*  
20 *Garrison*, 759 F.3d at 1012 (“Where an ALJ does not explicitly reject a medical opinion  
21 or set forth specific, legitimate reasons for crediting one medical opinion over another, he  
22 errs.”).

23 This error was not harmless under the standard articulated in *Molina*. Dr. Geary  
24 found that Zur had more than mild limitations caused by his psychological conditions. As  
25 a physician that examined Zur, his opinion was entitled to more weight than the  
26 nonexamining physicians that contradicted him. This Court cannot “conclude from the  
27 record that the ALJ would have reached the same result absent the error,” and thus the  
28 ALJ committed harmful error in rejecting Dr. Geary’s opinion. *Molina*, 674 F.3d



1 at 1115.

2 **2. Jane H. Monachelli**

3 Social Security regulations consider physician assistants and mental health  
4 counselors as “other sources” of medical evidence. 20 C.F.R. § 404.1513(d). These  
5 sources are not entitled to the same deference as “acceptable medical sources,” such as  
6 licensed physicians or psychologists. *Molina*, 674 F.3d at 1111. Therefore, an ALJ may  
7 properly reject the findings of an “other source” of medical evidence as long as the ALJ  
8 “gives reasons germane to each witness for doing so.” *Turner v. Comm'r of Soc. Sec.*,  
9 613 F.3d 1217, 1224 (9th Cir. 2010).

10 The ALJ rejected Ms. Monachelli’s, Zur’s licensed social worker and physician  
11 assistant, testimony for several reasons, including that it was contradicted by the state  
12 agency reviewing physicians. (Tr. 19.) An ALJ may properly credit the opinion of an  
13 “acceptable medical source” over that of an “other source.” *See Molina*, 674 F.3d at  
14 1111 (upholding an ALJ’s decision to credit a licensed psychiatrist’s opinion over that of  
15 a physician’s assistant.) Therefore, the ALJ may have acted within his discretion to  
16 properly discredit the testimony of Ms. Monachelli, to the extent that, upon  
17 reexamination he still determines that her opinions are inconsistent with those opinions  
18 he appropriately credits that are held by an “acceptable medical source.”

19 **C. Rejecting Symptom testimony**

20 If an ALJ finds that a claimant is not malingering, and the claimant “provided  
21 objective medical evidence of an underlying impairment which might reasonably produce  
22 the pain or other symptoms alleged, the ALJ may ‘reject the claimant’s testimony about  
23 the severity of her symptoms only by offering specific, clear and convincing reasons for  
24 doing so.’ ” *Brown-Hunter v. Colvin*, 806 F.3d 487, 492–93 (9th Cir. 2015) (quoting  
25 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). This standard is not met by  
26 the ALJ “simply stat[ing] [his] non-credibility conclusion and then summariz[ing] the  
27 medical evidence.” *Brown-Hunter*, 806 F.3d at 494. Rather, an ALJ must identify which  
28 testimony he considers not credible, and “link that testimony to the particular parts of the

1 record supporting her non-credibility determination.” *Id.* The ALJ’s opinion “must be  
2 sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the  
3 claimant’s testimony on permissible grounds and did not arbitrarily discredit a claimant’s  
4 testimony regarding pain.” *Bunnell v. Sullivan*, 947 F.2d 341, 345–46 (9th Cir. 1991)  
5 (internal quotations and citations omitted).

6 When determining credibility, an ALJ may consider a variety of factors, including:  
7 the treatment the claimant sought and received, the type of medication he takes, the  
8 measures he’s taken to relieve his pain, and the location, duration, frequency, and  
9 intensity of his pain. 20 C.F.R. § 404.1529(c)(3). An ALJ may also consider why a  
10 claimant left his last place of employment, and “[c]ontinued receipt of unemployment  
11 benefits” after the alleged onset date “does cast doubt on a claim of disability, as it shows  
12 that an applicant holds himself out as capable of working.” *Ghanim v. Colvin*, 763 F.3d  
13 1154, 1165 (9th Cir. 2014); *see Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001),  
14 *as amended* (Nov. 9, 2001) (permitting an ALJ to consider the fact that the claimant  
15 stated the “he left his job because he was laid off, rather than because he was injured” as  
16 a relevant factor in the credibility determination). However, “it is error to reject a  
17 claimant’s testimony merely because symptoms wax and wane in the course of  
18 treatment.” *Garrison*, 759 F.3d at 1017.

### 19 **1. Specificity of Limitations**

20 In order to reject a claimant’s symptom testimony, the ALJ must “identify  
21 specifically which of [the claimant’s] statements she found not credible and why,” while  
22 also providing “sufficiently specific reasons for rejecting the testimony, supported by  
23 evidence in the case record.” *Brown-Hunter*, 806 F.3d at 493. Here, the ALJ stated that  
24 he found Zur’s complaints relating to his back pain unreliable because the objective  
25 medical evidence did not support the severity of the pain he reported. (Tr. 19.) The ALJ  
26 similarly found that Zur’s reports of gastrointestinal distress were inconsistent with his  
27 colonoscopy labs and other clinical evidence. (*Id.*) The ALJ further noted that while  
28 Zur claimed that he suffered from “frequent and/or severe diarrhea and need to use the

1 restroom,” Zur himself admitted that he only wore protective diapers occasionally and  
2 had not experienced any weight loss. (*Id.*) Finally, the ALJ noted that despite Zur’s  
3 claims that his conditions debilitated him, Zur denied “disabling symptoms and signs on  
4 exam.” (*Id.*) Therefore, the ALJ did specifically identify which aspects of Zur’s  
5 testimony he found to not be credible, and he “link[ed] that testimony to the particular  
6 parts of the record supporting [his] non-credibility determination.” *Brown-Hunter*, 806  
7 F.3d at 494.

## 8                   **2. Zur’s Non-Medical Departure and Receipt of** 9                   **Unemployment Benefits**

10            “It does not follow from the fact that a claimant tried to work for a short period of  
11 time and, because of his impairments, *failed*, that he did not then experience pain and  
12 limitations severe enough to preclude him from *maintaining* substantial gainful  
13 employment.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1038 (9th Cir. 2007). However,  
14 evidence that the claimant “left his job because he was laid off, rather than because he  
15 was injured” can be weighed by an ALJ during the credibility determination. *Bruton*, 268  
16 F.3d at 828. Accepting unemployment benefits after an alleged onset date also “cast[s]  
17 doubt on a claim of disability, as it shows that an applicant holds himself out as capable  
18 of working.” *Ghanim*, 763 F.3d at 1165.

19            Zur was fired from his last place of employment for allegedly stealing coffee. He  
20 does not allege that he quit due to his symptoms. The ALJ considered that fact, and  
21 found that the “[t]he fact that the claimant’s work ended due to nonmedical reasons  
22 suggests he could have kept working despite his impairments alleged restrictions and  
23 limitations, and is inconsistent with his disability.” (Tr. 15.) This consideration is similar  
24 to the reasoning in *Bruton*, and thus the ALJ did not err in considering Zur’s reasons for  
25 leaving his last place of employment during the credibility analysis. *Bruton*, 268 F.3d at  
26 828.

27            The ALJ also found that Zur’s receipt of unemployment benefits weighed against  
28 his credibility, because “receipt of such benefits is commensurate with being able to work  
and actively seeking work.” (Tr. 16–17.) Contrary to Zur’s protests, this is in line with

1 Ninth Circuit jurisprudence. In *Ghanim*, the Ninth Circuit held that continuing to receive  
2 unemployment benefits after an alleged onset date does cast doubt on a claim of  
3 disability. *Ghanim*, 763 F.3d at 1165. Zur alleged an onset date of May 1, 2012, but he  
4 received unemployment benefits between March 2012 and March 2013. (Tr. 11, 16.)  
5 Therefore, the ALJ's consideration of his receipt of unemployment benefits was proper.

### 6 **3. Gaps in Treatment and Improvements with Medication**

7 “[I]t is error for an ALJ to pick out a few isolated instances of improvement over a  
8 period of months or years and to treat them as a basis for concluding a claimant is  
9 capable of working.” *Garrison*, 759 F.3d at 1017. However, “evidence of ‘conservative  
10 treatment’ is sufficient to discount a claimant's testimony regarding severity of an  
11 impairment.” *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007).

12 The ALJ discredited Zur's credibility because his treatment for his conditions has  
13 been “intermittent.” (Tr. 16.) The ALJ cited the fact that he is not currently in formal  
14 mental health therapy, that he has no history of psychiatric hospitalizations since his  
15 alleged onset date, and the fact that he only spent a total of three months in formal  
16 therapy as evidence that his condition is not disabling. (Tr. 16.) He also cited to one  
17 instance in June of 2013, where Zur claimed that he did not need to follow up with his  
18 treating therapist because “things were going well.” (Tr. 16.) As outlined in *Parra*,  
19 “evidence of ‘conservative treatment’ is sufficient to discount a claimant's testimony  
20 regarding severity of an impairment.” *Parra*, 481 F.3d 751. The ALJ's opinion  
21 discredited Zur's testimony on the grounds that it appeared to be controlled through  
22 conservative means, and thus his consideration of Zur's treatment history was proper.

23 The ALJ also discredited Zur's testimony because he determined that Zur's  
24 prescribed medications improved his condition, and his symptom testimony was  
25 inconsistent with the medical record reflecting this improvement. However, Zur's GAF  
26 ratings fell from the 80's to the 50's between July 2012 and November 2013. (Tr. 16.)  
27 The ALJ supported his statement claiming that Zur improved through medication by  
28 citing to a string of moments in the record indicating improvement. (Tr. 16.) However,

1 “symptoms wax and wane in the course of treatment.” *Garrison*, 759 F.3d at 1017. It is  
2 therefore improper for an ALJ “to pick out a few isolated instances of improvement over  
3 a period of months or years and to treat them as a basis for concluding a claimant is  
4 capable of working.” *Id.* The ALJ in this case engaged in cherry picking a few instances  
5 from the record illustrating improvement to discredit Zur, and thus erred in considering  
6 Zur’s improvement with medication in his credibility assessment. However, this error  
7 “does not negate the validity of the ALJ’s ultimate conclusion that [claimant’s] testimony  
8 was not credible,” and thus it was harmless. *Batson*, 359 F.3d at 1197.

9 **D. Remand for Further Administrative Proceedings is the Appropriate**  
10 **Remedy in This Case**

11 Upon a finding that harmful error occurred, a court must then determine what  
12 remedy is appropriate. Generally, district courts should remand social security cases “to  
13 the agency for additional investigation or explanation.” *Treichler v. Comm’r of Soc. Sec.*  
14 *Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014) (internal citations and quotations omitted).  
15 However, in rare instances, the “credit-as-true rule” applies, and remand for computation  
16 of benefits is appropriate. *Id.* at 1100.

17 For the credit-as-true rule to apply, three conditions must be met. First, the district  
18 court must determine whether the “ALJ has failed to provide legally sufficient reasons for  
19 rejecting evidence, whether claimant testimony or medical opinion.” *Garrison*, 759 F.3d  
20 at 1020. Second, the court must question whether “the record has been fully developed.”  
21 *Id.* Notably, “[w]here there is conflicting evidence, and not all essential factual issues  
22 have been resolved, a remand for an award of benefits is inappropriate.” *Treichler*, 775  
23 F.3d at 1101. Finally, the court must also determine that “no outstanding issues remain  
24 and further proceedings would not be useful.” *Id.* All three of these elements must be met  
25 in order for a court to “depart from the ordinary remand rule” and remand for a  
26 computation of benefits. *Id.*

27 As detailed above, this Court finds that the ALJ made harmful errors by rejecting  
28 and/or discrediting the medical opinions of treating physicians Drs. Merritt, Qureshi, and  
Cohen as well as consulting physician Dr. Geary without sufficient explanation. The

1 only issue remaining is what form of relief is appropriate in this case.

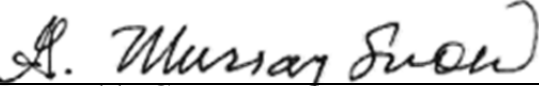
2 Application of the credit-as-true rule is only appropriate in rare instances, and “an  
3 ALJ’s failure to provide sufficiently specific reasons for rejecting the testimony of a  
4 claimant or other witness does not, without more, require the reviewing court to credit the  
5 claimant’s testimony as true.” *Treichler*, 775 F.3d at 1106. In this case, while the ALJ  
6 cited to specific medical records as justification for his conclusions, he did not adequately  
7 explain his conclusions from these medical records sufficient for this court to determine  
8 his reasoning and thus to conclude whether or not the claimant has a disability in this  
9 case. Further, as indicated by the ALJ and discussed in the preceding section, evidence in  
10 the record calls into question Zur’s testimony, and thus there are “inconsistencies between  
11 the claimant’s testimony and the medical evidence in the record” that precludes  
12 application of the credit-as-true rule in this case. *Dominguez v. Colvin*, 808 F.3d 403, 407  
13 (9th Cir. 2015) (internal citations and quotations omitted). Therefore, the appropriate  
14 remedy in this case is remand for further administrative proceedings.

15 **CONCLUSION**

16 For the foregoing reasons, this Court finds that the ALJ in this case committed  
17 prejudicial error by wholly disregarding or discrediting the testimony of the treating  
18 physicians as well as the examining physician, Dr. Geary.

19 **IT IS THEREFORE ORDERED** that this case be **REMANDED** for further  
20 administrative proceedings in accordance with this order.

21 Dated this 7th day of February, 2017.

22   
23 Honorable G. Murray Snow  
24 United States District Judge