

1 WO  
2  
3  
4  
5

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 John Arriaga,

10 Plaintiff,

11 v.

12 Nancy A. Berryhill,

13 Defendant.  
14

No. CV-16-0755-TUC-LCK

**ORDER**

15 Plaintiff John Arriaga filed this action pursuant to 42 U.S.C. § 405(g) seeking  
16 judicial review of a final decision by the Commissioner of Social Security  
17 (Commissioner). (Doc. 1.) Before the Court are Arriaga's Opening Brief, Defendant's  
18 Responsive Brief, and Arriaga's Reply. (Docs. 19, 28, 31.) The parties have consented to  
19 Magistrate Judge jurisdiction. (Doc. 21.) Based on the pleadings and the administrative  
20 record submitted to the Court, the Court remands this matter for further proceedings.

21 **PROCEDURAL HISTORY**

22 Arriaga received Supplemental Security Income (SSI) as a child for ADHD,  
23 beginning in 2002. (Administrative Record (AR) 88.) When SSA reviewed his case as an  
24 adult, it determined he was not disabled as of January 13, 2014. (AR 86, 101.) Arriaga  
25 then filed an application for SSI on February 12, 2014. (AR 189.) He alleged disability  
26 from January 1, 1999. (*Id.*) On June 13, 2014, a disability hearing officer, without  
27 holding a hearing, determined that Arriaga was not disabled. (AR 87, 118-26.) Arriaga's  
28 application was denied upon initial review (AR 86-104) and on reconsideration (AR 105-

1 50). A hearing was held on January 8, 2015 (AR 47-85), after which an ALJ found that  
2 Arriaga was not disabled because he could perform work available in the national  
3 economy (AR 28-39). The Appeals Council denied Arriaga's request to review the ALJ's  
4 decision. (AR 5.)

### 5 **FACTUAL HISTORY**

6 Arriaga was born on July 20, 1994, making him 5 years of age at the onset date of  
7 his alleged disability and 19 at the date of SSA's non-disability finding. (AR 58.) Arriaga  
8 never has been employed.

9 The ALJ found, as of January 13, 2014, Arriaga had three severe impairments,  
10 borderline intellectual functioning, mood disorder, and attention deficit disorder (ADD)/  
11 attention deficit hyperactivity disorder (ADHD). (AR 30.) The ALJ determined Arriaga  
12 had the RFC to perform light work but should never climb ladders, ropes or scaffolds,  
13 and should avoid hazards. (AR 33.) He limited Arriaga to short and simple instructions  
14 and simple work-related decisions, and only occasional interaction with the public and  
15 co-workers. (*Id.*) The ALJ concluded at Step Five, based on the Medical-Vocational  
16 Guidelines, that Arriaga could perform work that exists in significant numbers in the  
17 national economy. (AR 38.)

### 18 **STANDARD OF REVIEW**

19 The Commissioner employs a five-step sequential process to evaluate SSI claims.  
20 20 C.F.R. § 416.920; *see also Heckler v. Campbell*, 461 U.S. 458, 460-462 (1983). To  
21 establish disability the claimant bears the burden of showing he (1) is not working;  
22 (2) has a severe physical or mental impairment; (3) the impairment meets or equals the  
23 requirements of a listed impairment; and (4) claimant's RFC precludes him from  
24 performing his past work. 20 C.F.R. § 416.920(a)(4). At Step Five, the burden shifts to  
25 the Commissioner to show that the claimant has the RFC to perform other work that  
26 exists in substantial numbers in the national economy. *Hoopai v. Astrue*, 499 F.3d 1071,  
27 1074 (9th Cir. 2007). If the Commissioner conclusively finds the claimant "disabled" or  
28

1 “not disabled” at any point in the five-step process, she does not proceed to the next step.  
2 20 C.F.R. § 416.920(a)(4).

3 “The ALJ is responsible for determining credibility, resolving conflicts in medical  
4 testimony, and for resolving ambiguities.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
5 Cir. 1995) (citing *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989)). The findings  
6 of the Commissioner are meant to be conclusive if supported by substantial evidence. 42  
7 U.S.C. § 405(g). Substantial evidence is “more than a mere scintilla but less than a  
8 preponderance.” *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (quoting *Matney v.*  
9 *Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)). The court may overturn the decision to  
10 deny benefits only “when the ALJ’s findings are based on legal error or are not supported  
11 by substantial evidence in the record as a whole.” *Aukland v. Massanari*, 257 F.3d 1033,  
12 1035 (9th Cir. 2001). This is so because the ALJ “and not the reviewing court must  
13 resolve conflicts in the evidence, and if the evidence can support either outcome, the  
14 court may not substitute its judgment for that of the ALJ.” *Matney*, 981 F.2d at 1019  
15 (quoting *Richardson v. Perales*, 402 U.S. 389, 400 (1971)); *Batson v. Comm’r of Soc.*  
16 *Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004). The Commissioner’s decision,  
17 however, “cannot be affirmed simply by isolating a specific quantum of supporting  
18 evidence.” *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th Cir. 1998) (citing *Hammock v.*  
19 *Bowen*, 879 F.2d 498, 501 (9th Cir. 1989)). Reviewing courts must consider the evidence  
20 that supports as well as detracts from the Commissioner’s conclusion. *Day v.*  
21 *Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975).

## 22 **DISCUSSION**

23 Arriaga argues the ALJ committed five errors: (1) he failed to consider the  
24 combined impact of all impairments; (2) he failed to provide clear and convincing  
25 reasons for rejecting Arriaga’s credibility; (3) he improperly weighed the medical opinion  
26 evidence; (4) he failed to develop the record and call a vocational expert; and (5) he  
27 cherry-picked and failed to consider properly all evidence. The allegations of Claim 5  
28 will be discussed within Claims 1, 2, and 3.

1           **Combined Impairments**

2           Arriaga argues the ALJ failed to consider the impact of all his combined  
3 impairments, severe and non-severe, at Step Two and in formulating the RFC.

4           First, Arriaga cites 20 C.F.R. § 416.923, which requires an ALJ to consider all  
5 impairments combined when determining if a claimant satisfies the severity requirement  
6 at Step Two. The ALJ found Arriaga had three severe impairments at Step Two. Because  
7 Arriaga was not denied at Step Two, he fails to articulate how the ALJ erred by not using  
8 all impairments to make a severity finding.

9           Second, as to Step Two, Arriaga also argues the ALJ failed to find that his right  
10 knee problems, flat feet, and asthma were severe. A finding of disability requires an  
11 “inability to do any substantial gainful activity by reason of any medically determinable  
12 physical or mental impairment.” 20 C.F.R. § 416.905. An impairment must last or be  
13 expected to last for 12 or more months and must be “established by medical evidence  
14 consisting of signs, symptoms, and laboratory findings, not only by your statement of  
15 symptoms.” 20 C.F.R. §§ 416.908, 416.909. An impairment is “not severe if it does not  
16 significantly limit your physical or mental ability to do basic work activities.” 20 C.F.R. §  
17 1521.

18           The medical records reveal Arriaga complained of right knee pain beginning in  
19 July 2014. (AR 514.) Arriaga was scheduled for surgery on March 2, 2015. (AR 506.) No  
20 records demonstrate knee pain lasting more than 12 months, as required for a severe  
21 impairment at Step Two. There are no medical records diagnosing flat feet or  
22 documenting any symptoms from flat feet. The only evidence of flat feet comes from  
23 Arriaga’s self-reports, which is not sufficient to establish an impairment at Step Two. The  
24 records reveal a diagnosis of mild asthma and at least periodic use of an inhaler. (AR  
25 512-14.) However, there is no evidence that asthma, flat feet, or knee pain had more than  
26 a minimal limitation on his ability to perform basic work activities. Thus, Arriaga fails to  
27 establish that the ALJ erred at Step Two.

1 Finally, Arriaga argues that the ALJ must consider all impairments when  
2 determining a claimant's RFC. The only specific argument he makes is that an RFC for  
3 light work is inconsistent with his physical impairments because it requires a good deal of  
4 walking/standing or pushing/pulling of leg controls. Arriaga argues that he has limitations  
5 as to those capabilities due to knee pain, flat feet, and asthma. There are no medical  
6 opinions in the record finding physical limitations inconsistent with the exertional  
7 requirements of light work. Thus, Arriaga has not established the ALJ erred as to the  
8 physical limitations of the RFC. To the extent Arriaga is arguing the ALJ ignored  
9 medical evidence of non-exertional limitations when determining his RFC, such as anger,  
10 psychotic symptoms, social isolation, paranoia, and learning impairments, the basis of the  
11 argument is unclear. Arriaga does not articulate what limitations (as opposed to  
12 symptoms) are supported by the record but not included in the RFC.

### 13 **Credibility**

14 Arriaga argues the ALJ failed to provide clear and convincing reasons to reject his  
15 testimony. In general, "questions of credibility and resolution of conflicts in the  
16 testimony are functions solely" for the ALJ. *Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir.  
17 2007) (quoting *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982)). However,  
18 "[w]hile an ALJ may certainly find testimony not credible and disregard it . . . [the court]  
19 cannot affirm such a determination unless it is supported by specific findings and  
20 reasoning." *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 884-85 (9th Cir. 2006); *Bunnell v.*  
21 *Sullivan*, 947 F.2d 341, 345-346 (9th Cir. 1995) (requiring specificity to ensure a  
22 reviewing court the ALJ did not arbitrarily reject a claimant's subjective testimony); SSR  
23 96-7p. "To determine whether a claimant's testimony regarding subjective pain or  
24 symptoms is credible, an ALJ must engage in a two-step analysis." *Lingenfelter v. Astrue*,  
25 504 F.3d 1028, 1035-36 (9th Cir. 2007).

26 Initially, "the ALJ must determine whether the claimant has presented objective  
27 medical evidence of an underlying impairment 'which could reasonably be expected to  
28 produce the pain or other symptoms alleged.'" *Id.* at 1036 (quoting *Bunnell*, 947 F.2d at

1 344). The ALJ found Arriaga had satisfied part one of the test by proving an impairment  
2 that could produce the symptoms alleged. (AR 34.) Next, if “there is no affirmative  
3 evidence of malingering, the ALJ can reject the claimant’s testimony about the severity  
4 of her symptoms only by offering specific, clear and convincing reasons for doing so.”  
5 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (quoting *Smolen v. Chater*, 80  
6 F.3d 1273, 1281, 1283-84 (9th Cir. 1996)). Here, the ALJ did not make a finding of  
7 malingering. Therefore, to support his discounting of Arriaga’s assertions regarding the  
8 severity of his symptoms, the ALJ had to provide clear and convincing, specific reasons.  
9 *See Garrison v. Colvin*, 759 F.3d 995, 1014-15 (9th Cir. 2014); *Vasquez v. Astrue*, 572  
10 F.3d 586, 591 (9th Cir. 2008) (quoting *Lingenfelter*, 504 F.3d at 1036).

11 The ALJ’s discussion of credibility is not optimally organized. However, he  
12 identifies several reasons to discredit Arriaga’s credibility and the Court will consider  
13 each in turn. First, the ALJ stated that record did not support disabling mental symptoms  
14 or inability to function due to learning disabilities. (AR 34.) The ALJ relied on records  
15 from when Arriaga was in high school. Arriaga graduated in 2013, two years before the  
16 ALJ issued his decision. Critically, the record reflects that Arriaga’s mental health began  
17 deteriorating in November 2013 (AR 444); therefore, the high school records do not  
18 accurately reflect his mental functioning during the relevant period from 2014 and  
19 beyond. The ALJ also relied on Arriaga taking courses at the community college,  
20 beginning in January 2014, to support his finding that he could concentrate, perform  
21 adequately, and learn new things. (AR 34, 35.) Arriaga enrolled in two “basic” or  
22 “remedial” pre-college courses with support from the office for disability services. (AR  
23 59, 482.) In March and April 2014, Arriaga told his counselor that he had no problems in  
24 college and was passing without studying. (AR 476, 478.) However, in January 2015,  
25 Arriaga reported to his psychiatric NP that he found two classes overwhelming and was  
26 going to reduce to one course. (AR 509.) In June 2015, she reported that Arriaga found it  
27 hard to concentrate and grasp the material in the classes. (AR 361.) A July 2015 letter  
28 from a rehabilitation specialist stated that Arriaga did not pass his remedial classes. (AR

1 350.) There is not substantial evidence to support the ALJ's reliance on Arriaga's college  
2 classes as reflecting concentration and a high level of functioning.

3 Second, the ALJ concluded that Arriaga was capable of learning new things  
4 because his counselor encouraged his parents to teach him to drive. (AR 35.) Arriaga has  
5 not alleged that he cannot learn anything new, therefore, this finding does not reflect on  
6 his credibility. However, there is record evidence that he has been unable to learn the  
7 skills necessary to live independently. (AR 262.) The ALJ relied on one record  
8 documenting a therapist and Arriaga's parents discussing a willingness to teach Arriaga  
9 to drive. (AR 476.) At numerous points in the record, Arriaga reports that he has not  
10 learned to drive because he is afraid he will get angry while driving and have to pull over  
11 or hurt someone. (AR 82, 398, 484.) There is not substantial evidence to support the  
12 ALJ's finding that Arriaga's impairments are not as limiting as alleged because a  
13 therapist believed him capable of learning to drive.

14 Third, the ALJ relied on record evidence that Arriaga was not fully compliant with  
15 treatment. (AR 36.) Arriaga stopped taking seizure medication and ADHD medication.  
16 (*Id.*) The cessation of these medications occurred sometime before Arriaga reached  
17 adulthood, during a period not relevant to his adult disability application. The ALJ has  
18 not identified any record evidence that Arriaga has not been compliant with medications  
19 prescribed to him as an adult. Further, as an adult, Arriaga has been prescribed Concerta  
20 to improve his concentration and focus, and there is no record evidence he was not  
21 compliant with that prescription. (AR 73, 489, 495.)

22 Fourth, the ALJ relied on improvement in Arriaga's mental health symptoms due  
23 to medication. (AR 35.) Even the ALJ acknowledges that Arriaga had at best "some  
24 improvement." (*Id.*) The record indicates that medication reduced but did not eliminate  
25 Arriaga's auditory hallucinations, he continued to see a shadow and have difficulty  
26 sleeping, felt paranoid, and continued to be depressed and angry. (AR 361-62, 484, 489,  
27 509, 528.) Arriaga's limited progress in response to medication is not a clear and  
28 convincing reason to discount his credibility. The record as a whole demonstrates that

1 Arriaga continued to experience significant mental health symptoms after numerous  
2 medication trials. *See Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir. 2014)  
3 (“Reports of ‘improvement’ in the context of mental health issues must be interpreted  
4 with an understanding of the patient’s overall well-being and the nature of her  
5 symptoms.”).

6 Fifth, the ALJ found that Arriaga’s activities of daily living are not as limited as  
7 expected based on the assertion of disability; rather, they suggest a significant degree of  
8 overall functioning. (AR 36.) The ALJ cites Arriaga’s activities such as fishing, tennis,  
9 video gaming, household help, living with a girlfriend, and socializing with family and  
10 college friends. (*Id.*) Critically, “the mere fact that a plaintiff has carried on certain daily  
11 activities . . . does not in any way detract from her credibility as to her overall disability.”  
12 *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001). However, if a claimant’s  
13 activities contradict his testimony, or the claimant spends a substantial portion of his day  
14 at activities that involve skills transferable to a work setting, those circumstances can  
15 form the basis for an adverse credibility determination. *See Orn*, 495 F.3d at 639.

16 The ALJ’s findings about Arriaga’s activities are not fully supported by the  
17 record. Although Arriaga mentions fishing and tennis, there is no indication that  
18 happened more than infrequently. (AR 247.) In contrast, numerous records indicate  
19 Arriaga lived a sedentary lifestyle. (AR 74, 244, 246, 480, 484.) Arriaga’s treating mental  
20 health provider noted that Arriaga never lived with a girlfriend, that fact had been  
21 documented in error. (AR 361.) The record as a whole, particularly the later documents,  
22 indicated Arriaga spent large amounts of time alone and rarely socialized. (AR 398:  
23 December 2013, Arriaga reported that he was “sometimes comfortable around people”  
24 but didn’t ride public transport because he didn’t want to talk to people; AR 447: January  
25 2014, Arriaga stated that he did not have a social life and rarely went anywhere without  
26 his mother; AR 472: April 2014, being around other kids made him anxious and angry;  
27 AR 485: September 2014, he had “some friends” but only messaged on Facebook and  
28



1 spent some time with younger cousins; AR 64, 66: May 2015, he made unsuccessful  
2 efforts to spend time with friends but spent a lot of time alone.)

3 During 2014 and 2015, Arriaga's typical day involved attending remedial college  
4 courses (but not doing the assigned homework), helping some around the house and with  
5 pet care, playing video games, and occasional shopping with his mother. (AR 398, 442.)  
6 The limited activities that are supported by the record neither contradict Arriaga's  
7 testimony nor equate to spending a substantial portion of his day at skills transferable to  
8 the work place. Arriaga's daily activities are not a clear and convincing reason supported  
9 by substantial evidence to discount his credibility.

10 The remaining basis for discounting Arriaga's credibility is the objective medical  
11 evidence. If the objective medical evidence fully explained a claimant's symptoms then  
12 credibility would be irrelevant. Credibility factors into the ALJ's decision only when the  
13 claimant's stated symptoms are not substantiated by the objective medical evidence. SSR  
14 96-7p. Thus, it is error for an ALJ to discount credibility solely because a claimant's  
15 symptoms are not substantiated by the medical evidence. *Id.*; *Light v. Soc. Sec. Admin.*,  
16 119 F.3d 789, 792 (9th Cir. 1997). As this is the only basis remaining for the ALJ's  
17 credibility finding (AR 36) it is insufficient to sustain it. Additionally, the ALJ did not  
18 delineate with any clarity what "objective medical evidence" was contrary to Arriaga's  
19 symptom testimony.

20 In sum, the ALJ failed to provide clear and convincing reasons supported by  
21 substantial record evidence to support his credibility finding.

### 22 **Medical Opinion**

23 Arriaga argues that evidence showed he had a limited RFC but the ALJ failed to  
24 give proper weight to the opinions of psychologist Carlos Vega, counselor Yassar  
25 Canchola, treating psychiatric nurse practitioner Linda Banzinger, and psychologist  
26 Machele Martinez. In determining a claimant's RFC, the ALJ must consider "any  
27 statements about what you can still do" from medical sources or other persons that  
28 observe the claimant's limitations. 20 C.F.R. § 416.945(a)(3).

1           Psychologist Carlos Vega examined Arriaga on September 10, 2014, at the request  
2 of his mental health treatment team. (AR 483.) Although Dr. Vega summarized Arriaga's  
3 current symptoms and conducted testing he did not evaluate what Arriaga "could still do"  
4 in a work setting. (AR 483-86.) The ALJ stated that he considered this evaluation in  
5 conjunction with the entirety of the treatment records but that the psychologist had not  
6 provided a functional assessment. (AR 36.) Arriaga relies on the following portions of  
7 Dr. Vega's report: Arriaga was "far from thinking about living independently," he was  
8 immature, a diagnosis of major depression with mood congruent psychotic symptoms,  
9 and a recommendation for more extensive psychiatric and psychological intervention.  
10 (Doc. 19 at 16.) Plaintiff fails to articulate what portion of the RFC is inconsistent with an  
11 opinion of Dr. Vega, other than a general statement that the psychologist found Arriaga's  
12 impairments severe. Plaintiff fails to establish that the ALJ erred in evaluating the report  
13 by Dr. Vega.

14           Similarly, Yassar Canchola did not offer a functional evaluation of Arriaga's work  
15 abilities; he merely restated Arriaga's current diagnosis, medications, and status. (AR  
16 505.) Plaintiff fails to point to any opinion of Canchola that the ALJ failed to properly  
17 weigh.

18           Treating nurse practitioner Linda Banzinger found Arriaga had significant  
19 functional limitations: he was markedly limited in remembering work-like procedures,  
20 understanding/remembering/carrying out detailed instructions, maintaining attention/  
21 concentration for extended periods, performing within a schedule, working in proximity  
22 with others, completing a normal work week without psychological interruption,  
23 interacting with the public, accepting criticism, getting along with coworkers,  
24 maintaining socially appropriate behavior, responding to work changes, traveling to  
25 unfamiliar places, and planning independently; and moderately limited in understanding/  
26 remembering/carrying out simple instructions, sustaining a routine without supervision,  
27 making simple work-related decisions, asking simple questions, and being aware of  
28 hazards. (AR 526-27.) She noted that his employment capabilities were limited by

1 emotional instability. (AR 528.) The ALJ stated that he gave this opinion partial weight  
2 in light of the treating relationship. (AR 37.) The ALJ did not clarify what portions of her  
3 opinion, if any, he accepted. The RFC, however, is much less restrictive than Banzinger's  
4 findings.

5 To reject the opinion of a nurse practitioner, an ALJ must provide germane  
6 reasons. *See Popa v. Berryhill*, 872 F.3d 901, 907 (9th Cir. 2017) (noting that the  
7 regulations are outdated to the extent a treating nurse practitioner is considered an "other  
8 source" not a "medical source"). The ALJ rejected the opinion of Banzinger because he  
9 concluded her findings were not supported by the treating notes that document Arriaga's  
10 daily activities, college attendance, and family and other relationships. (*Id.*) As discussed  
11 above in the section on credibility, there is not substantial record evidence to support the  
12 ALJ's conclusion that Arriaga's daily activities, college attendance, and relationships  
13 demonstrate a high level of functioning consistent with the ALJ's RFC finding. Because  
14 this was the only basis on which the ALJ relied to discount the opinion of Banzinger, he  
15 erred in rejected her opinion without a germane reason.

16 Psychologist Machele Martinez conducted an exam of Arriaga in December 2013  
17 and issued a psychological medical source statement. (AR 402.) She found Arriaga had  
18 moderate limitations in concentration, maintaining socially appropriate behavior, and  
19 accepting instruction; and mild limitations in understanding and remembering simple  
20 instructions, completing simple tasks, adjusting to change, and taking appropriate action.  
21 (*Id.*) She concluded Arriaga could maintain work attendance. (*Id.*) The ALJ did not  
22 mention Dr. Martinez's opinion in his decision. The ALJ concluded Arriaga could  
23 respond appropriately to supervisors (AR 33), which could be interpreted as a rejection of  
24 Dr. Martinez's opinion that Arriaga was moderately limited in accepting instruction.<sup>1</sup>  
25 Additionally, Dr. Martinez found moderate limitations in concentration that are not

---

26  
27 <sup>1</sup> Drs. Goldberg and Novak found Arriaga had moderate limitations in interacting  
28 with the public and coworkers. (AR 427, 463.) Based on those opinions, the ALJ  
concluded Arriaga was limited to occasional interaction with the public and coworkers.  
Thus, if the ALJ had adopted a moderate limitation in accepting instruction, that should  
have resulted in a limitation on supervision as well.

1 clearly reflected in the ALJ's decision. It was error for the ALJ to reject portions of Dr.  
2 Martinez's opinion without explanation. *See Garrison v. Colvin*, 759 F.3d 995, 1012-13  
3 (9th Cir. 2014).

## 4 CONCLUSION

5 A federal court may affirm, modify, reverse, or remand a social security case. 42  
6 U.S.C. § 405(g). The Court found that the ALJ erred in rejecting the testimony of nurse  
7 practitioner Banzinger without a germane reason, in rejecting the opinion of examining  
8 psychologist Machel Martinez without explanation, and in discounting Arriaga's  
9 credibility without clear and convincing reasons supported by substantial evidence. When  
10 a court finds that an administrative decision is flawed, the remedy should generally be  
11 remand for "additional investigation or explanation." *INS v. Ventura*, 537 U.S. 12, 16  
12 (2006) (quoting *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)); *see also*  
13 *Moisa v. Barnhart*, 367 F.3d 882, 886 (9th Cir. 2004).

14 Although Arriaga requests a remand for an award of benefits, he fails to set forth  
15 the basis for such a remand. He does not articulate how the current record establishes that  
16 he is disabled. To the contrary, he argues that the ALJ was required to further develop the  
17 record and obtain the testimony of a vocational expert. The Court agrees that further  
18 development upon remand is required.

19 Because the Court is remanding the matter for further development, it need not  
20 rule on Arriaga's claim that the ALJ erred in not further developing the record and  
21 obtaining the testimony of a vocational expert. At the hearing, the ALJ noted that the  
22 record he was looking at was a "different animal" than had been reviewed in the earlier  
23 administrative proceedings. (AR 84.) The Court agrees. Arriaga began experiencing  
24 significant anger and depression in November 2013. (AR 444.) He first reported auditory  
25 and visual hallucinations in July 2014. (AR 464.) The state agency examiners, to whom  
26 the ALJ gave great weight, conducted their reviews in January and April 2014. (AR 412-  
27 28, 463.) Therefore, these reviewers had not seen the scope of Arriaga's 2014 mental  
28 health records documenting his developing symptoms including psychosis. The ALJ

1 rejected the only opinion on Arriaga's functional abilities by a mental health professional  
2 (psychiatric nurse practitioner Banzinger) that had examined Arriaga in the 18 months  
3 prior to the ALJ's decision. Instead, the ALJ based the RFC entirely on the stale opinions  
4 of non-examining physicians. After the ALJ reconsiders the opinions of Banzinger and  
5 Martinez, he may need to obtain a current functional review by a consulting examiner.  
6 Additionally, the testimony of a vocational expert may be necessary after the ALJ re-  
7 determines Arriaga's non-exertional limitations.

8 Accordingly,

9 **IT IS ORDERED** that this case is remanded to the ALJ for a new hearing and  
10 further proceedings, pursuant to sentence four of 42 U.S.C. § 405(g). The Clerk of Court  
11 should enter judgment and close this case.

12 Dated this 26th day of March, 2018.

13  
14  
15   
16 Honorable Lynette C. Kimmins  
17 United States Magistrate Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28