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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

RAYMOND RODRIGUEZ,	)	Case No. CV 11-01789 (JPR)
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security	)	
Administration,	)	
	)	
Defendant.	)	
_____	)	

**I. PROCEEDINGS**

Plaintiff seeks review of the Commissioner's final decision denying his application for Supplemental Security Income ("SSI"). Pursuant to the Court's Case Management Order, the parties filed a Joint Stipulation on October 12, 2011. The Court has taken the Joint Stipulation under submission without oral argument. For the reasons stated below, the Commissioner's decision is remanded for further proceedings.

1 **II. BACKGROUND**

2 Plaintiff was born on September 8, 1968. (Administrative Record  
3 ("AR") 20.) He has an 11th-grade education and no past relevant work  
4 experience. (AR 18-19.)

5 On December 31, 2007, Plaintiff filed an application for SSI,  
6 alleging that he had been unable to work since February 1, 2004,  
7 because of chronic low-back pain and scoliosis. (AR 144.) After  
8 Plaintiff's application was denied by the Social Security  
9 Administration, Plaintiff requested a hearing before an Administrative  
10 Law Judge ("ALJ"). (AR 102.) A hearing was held on April 1, 2009,  
11 at which time Plaintiff appeared with counsel and testified on his own  
12 behalf. (AR 28-50.) A vocational expert ("VE") also testified. (AR  
13 44-48.) The ALJ determined that Plaintiff was not disabled. (AR 14.)  
14 On January 20, 2011, the Appeals Council denied Plaintiff's request  
15 for review. (AR 1-6.) This action followed.

16 **III. STANDARD OF REVIEW**

17 Pursuant to 42 U.S.C. § 405(g), a district court may review the  
18 Commissioner's decision to deny benefits. The Commissioner's or ALJ's  
19 findings and decision should be upheld if they are free from legal  
20 error and are supported by substantial evidence based on the record as  
21 a whole. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389,  
22 401, 91 S. Ct. 1420, 1427, 28 L. Ed. 2d 842 (1971); Parra v. Astrue,  
23 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such  
24 evidence as a reasonable person might accept as adequate to support a  
25 conclusion. Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504  
26 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla but less  
27 than a preponderance. Lingenfelter, 504 F.3d at 1035 (citing Robbins  
28 v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine

1 whether substantial evidence supports a finding, the reviewing court  
2 "must review the administrative record as a whole, weighing both the  
3 evidence that supports and the evidence that detracts from the  
4 Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th  
5 Cir. 1996). "If the evidence can reasonably support either affirming  
6 or reversing," the reviewing court "may not substitute its judgment"  
7 for that of the Commissioner. Id. at 720-721.

#### 8 **IV. THE EVALUATION OF DISABILITY**

9 People are "disabled" for purposes of receiving Social Security  
10 benefits if they are unable to engage in any substantial gainful  
11 activity owing to a physical or mental impairment that is expected to  
12 result in death or which has lasted or is expected to last for a  
13 continuous period of at least twelve months. 42 U.S.C.  
14 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.  
15 1992).

#### 16 **A. THE FIVE-STEP EVALUATION PROCESS**

17 The Commissioner (or ALJ) follows a five-step sequential  
18 evaluation process in assessing whether a claimant is disabled. 20  
19 C.F.R. § 416.920(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th  
20 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the  
21 Commissioner must determine whether the claimant is currently engaged  
22 in substantial gainful activity; if so, the claimant is not disabled  
23 and the claim is denied. 20 C.F.R. § 416.920(a)(4)(i). If the  
24 claimant is not engaged in substantial gainful activity, the second  
25 step requires the Commissioner to determine whether the claimant has a  
26 "severe" impairment or combination of impairments significantly  
27 limiting her ability to do basic work activities; if not, a finding of  
28 nondisability is made and the claim is denied. 20 C.F.R.

1 § 416.920(a)(4)(ii). If the claimant has a "severe" impairment or  
2 combination of impairments, the third step requires the Commissioner  
3 to determine whether the impairment or combination of impairments  
4 meets or equals an impairment in the Listing of Impairments  
5 ("Listing") set forth at 20 C.F.R., Part 404, Subpart P, Appendix 1;  
6 if so, disability is conclusively presumed and benefits are awarded.  
7 20 C.F.R. § 416.920(a)(4)(iii). If the claimant's impairment or  
8 combination of impairments does not meet or equal an impairment in the  
9 Listing, the fourth step requires the Commissioner to determine  
10 whether the claimant has sufficient residual functional capacity  
11 ("RFC")<sup>1</sup> to perform his past work; if so, the claimant is not disabled  
12 and the claim is denied. 20 C.F.R. § 416.920(a)(4)(iv). The claimant  
13 has the burden of proving that he is unable to perform past relevant  
14 work. Drouin, 966 F.2d at 1257. If the claimant meets this burden, a  
15 prima facie case of disability is established. Id. If that happens  
16 or if the claimant has no past relevant work, the Commissioner then  
17 bears the burden of establishing that the claimant is not disabled  
18 because he can perform other substantial gainful work available in the  
19 national economy. 20 C.F.R. § 416.920(a)(4)(iv). The determination  
20 of this issue comprises the fifth and final step in the sequential  
21 analysis. 20 C.F.R. § 416.920; Lester, 81 F.3d at 828 n. 5; Drouin,  
22 966 F.2d at 1257.

23 **B. THE ALJ'S APPLICATION OF THE FIVE-STEP PROCESS**

24 At step one, the ALJ found that Plaintiff had not engaged in any  
25 substantial gainful activity since December 31, 2007, the date of the  
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27 <sup>1</sup> RFC is what a claimant can still do despite existing exertional  
28 and nonexertional limitations. 20 C.F.R. § 416.945(a); see Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 application. (AR 19.) At step two, the ALJ concluded that Plaintiff  
2 has the severe impairments of degenerative disc disease of the  
3 lumbosacral spine and scoliosis. (AR 19.) At step three, the ALJ  
4 determined that Plaintiff's impairments do not meet or equal any of  
5 the impairments in the Listing. (AR 19.) The ALJ further found that  
6 Plaintiff retained the RFC to perform a range of "sedentary work."<sup>2</sup>  
7 (AR 19); see 20 C.F.R. § 416.967(a). Specifically, the ALJ found that  
8 Plaintiff could lift and/or carry 10 pounds occasionally and less than  
9 10 pounds frequently; he could stand and walk for approximately two  
10 hours in an eight-hour workday but would need a cane for prolonged  
11 walking; he could sit for six hours in an eight-hour workday but would  
12 need to change positions every 30 minutes; he could occasionally climb  
13 ramps and stairs, balance, stoop, kneel, and crouch but could not  
14 crawl or climb ladders or ropes; he could not work at unprotected  
15 heights or around dangerous moving machinery; and was limited to  
16 simple, repetitive tasks. (AR 17, 19.) The ALJ further found that  
17 Plaintiff had mild restrictions of activities of daily living, mild  
18 difficulties in maintaining social functioning, moderate difficulties  
19 in maintaining concentration, persistence, or pace but did not have  
20 any episodes of decompensation of extended duration. (AR 18-19.) At  
21 step four, the ALJ concluded that Plaintiff did not have any past  
22 relevant work. (AR 19.) At step five, the ALJ found, based on the  
23 vocational expert's testimony and the application of the  
24 Medical-Vocational Guidelines, that jobs existed in significant

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26 <sup>2</sup> "Sedentary work" is defined as work involving "lifting no more  
27 than 10 pounds at a time and occasionally lifting or carrying articles  
28 like docket files, ledgers, and small tools." 20 C.F.R. § 416.967(a).  
Sedentary work involves sitting most of the time but may involve  
occasional walking or standing for brief periods of time. Id.

1 numbers in the national economy that Plaintiff could perform. (AR  
2 20.) Accordingly, the ALJ determined that Plaintiff was not disabled.  
3 (AR 20.)

4 **V. DISCUSSION**

5 Plaintiff contends the ALJ improperly rejected the opinion of one  
6 of his physicians at Harbor UCLA Medical Center, Dr. Valentin Antoa.  
7 (Joint Stipulation at 4-9, 13-14).

8 Generally, the opinions of treating physicians are afforded more  
9 weight than the opinions of nontreating physicians because treating  
10 physicians are employed to cure and have a greater opportunity to know  
11 and observe the claimant. Smolen v. Chater, 80 F.3d 1273, 1285 (9th  
12 Cir. 1996). The weight given a treating physician's opinion depends  
13 on whether it was supported by sufficient medical data and was  
14 consistent with other evidence in the record. See 20 C.F.R. §  
15 416.927(d)(2). If a treating physician's opinion was well-supported  
16 by medically acceptable clinical and laboratory diagnostic techniques  
17 and was not inconsistent with the other substantial evidence in the  
18 record, it should be given controlling weight and should be rejected  
19 only for "clear and convincing" reasons. See Lester, 81 F.3d at 830;  
20 20 C.F.R. § 416.927(d)(2). When a treating physician's opinion  
21 conflicts with other medical evidence, the ALJ must provide "specific  
22 and legitimate reasons" for discounting the treating opinion. Lester,  
23 81 F.3d at 830; Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007).  
24 Factors relevant to the evaluation of a treating physician's opinion  
25 include the "[l]ength of the treatment relationship and the frequency  
26 of examination" by the treating physician as well as the "nature and  
27 extent of the treatment relationship" between the patient and the  
28 physician. 20 C.F.R. § 416.927(d)(2)(i)-(ii).

1 Plaintiff began receiving treatment at Harbor UCLA Medical Center  
2 in July 2007. (AR 216, 270, 478-79, 564-66.) Notes from his initial  
3 examination reveal that Plaintiff had been suffering from chronic low-  
4 back pain since 1988, when a bullet nicked his spine. (AR 216, 270,  
5 478-79, 564-66.) Plaintiff also complained of intermittent pain and  
6 numbness in his right leg. (AR 216, 270, 564-65.) An MRI of  
7 Plaintiff's lumbar spine indicated that Plaintiff was suffering from  
8 degenerative disc disease and dextroscoliosis of the lumbar spine.  
9 (AR 219-20.) Over the next several months, Plaintiff was treated with  
10 pain medication and physical therapy. (AR 212, 214, 264, 267, 441,  
11 468, 471, 520, 567-68, 570-72, 574.)

12 On September 29, 2008, Plaintiff was evaluated by Dr. Tiberi in  
13 the adult orthopedic surgery department of Harbor UCLA Medical Center.  
14 (AR 257, 445, 464, 521, 575, 578.) Plaintiff complained that his low-  
15 back pain increased with walking. (AR 257, 445, 464.) Plaintiff was  
16 tender along the iliac spine at L4-L5 and was walking with a limp.  
17 (AR 257, 445, 464, 521, 575.) Physical therapy was prescribed. (AR  
18 257, 259, 445, 464, 466, 521, 575.)

19 On September 29, 2008, Dr. Antoa completed a residual functional  
20 capacity assessment form and a physical capacities evaluation form for  
21 Plaintiff.<sup>3</sup> (AR 439-40, 559-60.) Dr. Antoa reported that he had  
22 treated Plaintiff on one occasion for severe degenerative disc  
23 disease, low back pain, and radiculopathy. (AR 439, 559.) He  
24 recommended physical therapy and pain management, but Plaintiff's  
25 prognosis was unknown. (AR 439, 559.) With respect to Plaintiff's  
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27 <sup>3</sup> The physical capacities evaluation form was not signed or dated,  
28 but both the ALJ and the Commissioner assert that Dr. Antoa completed  
the form in September 2008. (AR 17, 438, 558; Joint Stipulation at 11.)

1 work-related limitations, Dr. Antoa opined that Plaintiff could not  
2 sit for more than one hour at a time or more than three hours in an  
3 eight-hour workday; stand for more than one hour in an eight-hour  
4 workday; walk for any period of time; lift or carry more than five  
5 pounds occasionally; use his hands for repetitive fine manipulation;  
6 push and pull leg controls repetitively with the right foot or both  
7 feet at the same time; bend, squat, or climb; crawl or reach more than  
8 occasionally; or perform any work involving unprotected heights,  
9 moving machinery, or driving automotive equipment. (AR 438, 558.)

10 The ALJ rejected Dr. Antoa's opinion because it was "not  
11 consistent with the objective findings or the record as a whole." (AR  
12 17.) This reason was not sufficient, as it does not reach the level  
13 of specificity required to reject the opinion of a treating physician.  
14 See Embrey v. Bowen, 849 F.2d 418, 421 (9th Cir. 1988) ("To say that  
15 medical opinions are not supported by sufficient objective findings or  
16 are contrary to the preponderant conclusions mandated by the objective  
17 findings does not achieve the level of specificity our prior cases  
18 have required, even when the objective factors are listed seriatim.").  
19 The ALJ had an obligation to set forth his own interpretations of the  
20 medical evidence and to explain why they, rather than Dr. Antoa's  
21 findings, were correct. Id.; see McAllister v. Sullivan, 888 F.2d  
22 599, 602 (9th Cir. 1989) (finding that rejection of treating  
23 physician's opinion on ground that it was contrary to clinical  
24 findings in record did not "specify why the ALJ felt the treating  
25 physician's opinion was flawed"); see also Reddick, 157 F.3d at 725  
26 (explaining that ALJ can meet requisite standard for rejecting  
27 treating physician's opinion deemed inconsistent with or unsupported  
28 by medical evidence "by setting out a detailed and thorough summary of



1 the facts and conflicting clinical evidence, stating his  
2 interpretation thereof, and making findings").

3 The Commissioner contends the ALJ did not err in rejecting Dr.  
4 Antoa's assessment because the consultative examiner, Ibrahim  
5 Yashruti, M.D., identified no abnormal findings on examination and  
6 concluded that Plaintiff could perform a range of light work.<sup>4</sup> (Joint  
7 Stipulation at 9-12; AR 17, 238-43.) In addition, the Commissioner  
8 asserts that Dr. Antoa's opinion should be discounted to the extent it  
9 relied on Plaintiff's subjective symptoms, as Plaintiff was found not  
10 credible by the ALJ. (Joint Stipulation at 12; AR 17-18.) The ALJ,  
11 however, did not articulate either of these reasons as a basis for  
12 rejecting Dr. Antoa's findings. Indeed, while the ALJ mentioned Dr.  
13 Yashruti's opinion, he declined to rely on it in assessing Plaintiff's  
14 RFC. (AR 17.) Likewise, while the ALJ made an adverse credibility  
15 determination, he did not assert that Dr. Antoa's opinion was premised  
16 on Plaintiff's subjective complaints. This Court may not affirm the  
17 ALJ's decision on grounds that the ALJ did not invoke in making his  
18 decision.<sup>5</sup> See Pinto v. Massanari, 249 F.3d 840, 847 (9th Cir. 2001)  
19 (citing SEC v. Chenery Corp., 332 U.S. 194, 196, 67 S. Ct. 1575, 1577,  
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21 <sup>4</sup> "Light work" is defined as work involving "lifting no more than  
22 20 pounds at a time with frequent lifting or carrying of objects  
23 weighing up to 10 pounds." 20 C.F.R. § 416.967(b). Light work may  
24 require "a good deal of walking or standing, or when it involves sitting  
most of the time with some pushing and pulling of arm or leg controls."  
Id.

25 <sup>5</sup> Immediately after making his finding that Dr. Antoa's assessment  
26 was not consistent with the record as a whole, the ALJ recounted all the  
27 reasons why he found that Plaintiff's testimony was not credible. (AR  
28 17-18.) One might reasonably infer, therefore, that the proximity of  
the two findings demonstrated that one flowed from the other. The  
Commissioner has not made this argument, however, so the Court declines  
to consider it.

1 91 L. Ed. 1995 (1947)).

2 Accordingly, the Court concludes that the ALJ erred by rejecting  
3 Dr. Antoa's opinion without providing specific, legitimate reasons for  
4 doing so.

## 5 VI. CONCLUSION

6 When there exists error in an administrative determination, "the  
7 proper course, except in rare circumstances, is to remand to the  
8 agency for additional investigation or explanation." INS v. Ventura,  
9 537 U.S. 12, 16, 123 S. Ct. 353, 355, 154 L. Ed. 2d 272 (2002)  
10 (citations and quotations omitted); Moisa v. Barnhart, 367 F.3d 882,  
11 886 (9th Cir. 2004). Remand for further proceedings is appropriate  
12 "if enhancement of the record would be useful." Benecke v. Barnhart,  
13 379 F.3d 587, 593 (9th Cir. 2004); see Harman v. Apfel, 211 F.3d 1172,  
14 1179 (9th Cir. 2000) (explaining that "the decision whether to remand  
15 for further proceedings turns upon the likely utility of such  
16 proceedings"). Remand for the payment of benefits is appropriate when  
17 no useful purpose would be served by further administrative  
18 proceedings and the record has been fully developed, Lester, 81 F.3d  
19 at 834, or when remand would unnecessarily delay the receipt of  
20 benefits, Bilby v. Schweiker, 762 F.2d 716, 719 (9th Cir. 1985).

21 Courts may "credit as true" the opinions of treating physicians  
22 when "(1) the ALJ has failed to provide legally sufficient reasons for  
23 rejecting such evidence, (2) there are no outstanding issues that must  
24 be resolved before a determination of disability can be made, and (3)  
25 it is clear from the record that the ALJ would be required to find the  
26 claimant disabled were such evidence credited." Harman, 211 F.3d at  
27 1178 (citations and quotations omitted); see Benecke, 379 F.3d at 594;  
28 Connett v. Barnhart, 340 F.3d 871, 876 (9th Cir. 2003) (recognizing

1 that courts "have some flexibility in applying the 'credit as true'"  
2 rule).

3 Here, the record is not adequately developed to credit Dr.  
4 Antoa's opinion as true. In particular, while Dr. Antoa reported that  
5 he had one visit with Plaintiff, it is not clear whether any of his  
6 examination notes are included in the record. (AR 439.) And, as  
7 noted above, the physical capacities evaluation form was neither  
8 signed nor dated by Dr. Antoa. (AR 438, 558.) Finally, Plaintiff's  
9 most recent MRI was taken after Dr. Antoa wrote his evaluation of  
10 Plaintiff. (AR 17.) Under these circumstances, the Court concludes  
11 that there are outstanding issues that must be resolved before a  
12 determination of disability can be made. Harman, 211 F.3d at 1178.

13 **ORDER**

14 Accordingly, **IT IS HEREBY ORDERED** that (1) the decision of the  
15 Commissioner is REVERSED; (2) Plaintiff's request for remand is  
16 GRANTED; and (3) this action is REMANDED for further proceedings  
17 consistent with this Memorandum Opinion.

18 **IT IS FURTHER ORDERED** that the Clerk of the Court serve copies of  
19 this Order and the Judgment herein on all parties or their counsel.

20  
21 DATED: November 22, 2011



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23 JEAN P. ROSENBLUTH  
24 U.S. Magistrate Judge  
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