

1 disability beginning October 17, 2008. In an unfavorable decision, the ALJ
2 found that Plaintiff had the severe impairments of rheumatoid arthritis,
3 psoriatic polyarthritis, morbid obesity, psoriasis, lower extremity stasis
4 dermatitis, and a history of leg edema, but concluded that Plaintiff was not
5 disabled because there were significant jobs available in the regional and
6 national economy that Plaintiff could still perform despite his impairments.
7 Administrative Record (“AR”) 19-26.

8 II.

9 ISSUES PRESENTED

10 The parties dispute whether the ALJ erred in: (1) failing to give
11 controlling weight to the opinions of Plaintiff’s treating physicians; and (2)
12 assessing Plaintiff’s credibility.¹ See Joint Stipulation (“JS”) at 7.

13 III.

14 STANDARD OF REVIEW

15 Under 42 U.S.C. § 405(g), a district court may review the
16 Commissioner’s decision to deny benefits. The ALJ’s findings and decision
17 should be upheld if they are free from legal error and are supported by
18 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);
19 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d
20 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as
21 a reasonable person might accept as adequate to support a conclusion.
22 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
23 Cir. 2007). It is more than a scintilla, but less than a preponderance.

24
25 ¹ Because the Court concludes that the ALJ failed to provide specific and
26 legitimate reasons for rejecting the opinions of Plaintiff’s treating physicians,
27 the Court does not reach the second issue and will not decide whether this
28 issue would independently warrant relief. Upon remand, the ALJ may wish to
consider Plaintiff’s other claim of error.

1 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d
2 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports
3 a finding, the reviewing court “must review the administrative record as a
4 whole, weighing both the evidence that supports and the evidence that detracts
5 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720
6 (9th Cir. 1996). “If the evidence can reasonably support either affirming or
7 reversing,” the reviewing court “may not substitute its judgment” for that of
8 the Commissioner. Id. at 720-21.

9 IV.

10 DISCUSSION

11 Plaintiff contends that the ALJ erred in failing to give controlling weight
12 to the opinions of his treating physicians, Dr. Gustavo Casillas (who in turn
13 oversees Jorge Rodriguez, a physician assistant) and rheumatologist Dr.
14 Thomas Romano. JS at 7-15. In two Multiple Impairment Questionnaires,
15 dated September 8, 2011 and December 13, 2011, Dr. Casillas and PA
16 Rodriguez provided information regarding the effect of Plaintiff’s rheumatoid
17 arthritis and other conditions on his ability to perform various work-related
18 functions. AR 323-30, 419-26. On December 27, 2011, Dr. Romano authored
19 an Arthritis Impairment Questionnaire, which provided similar information.
20 AR 391-98. Both Drs. Cassilas and Romano opined that Plaintiff would be
21 able to perform a reduced range of sedentary work based primarily upon
22 limitations in standing, sitting, and walking due to pain, swelling, and joint
23 inflammation.

24 The ALJ rejected these opinions as follows:

25 In determining the claimant’s residual functional capacity,
26 the Administrative Law Judge has considered the multiple medical
27 source statements that all advocate for some variation of a less
28 than sedentary functional capacity. The longitudinal treatment

1 record, however, as discussed above, provides no basis for such
2 extreme functional restrictions. Even considering the claimant's
3 history of morbid obesity per Social Security Ruling 02-1p (i.e.
4 height of 6 feet 4 inches and weight of approximately 405 pounds),
5 the undersigned notes that the claimant has consistently
6 demonstrated the ability to walk without supportive devices. As
7 such, these medical opinions though considered, appear to have
8 taken the claimant's subjective allegations at face value and merely
9 reiterated those allegations in the medical source statements
10 regarding claimant's ability to work. Accordingly, even though
11 they have been duly considered, in view of the overall record, they
12 are not found to be persuasive.

13 AR 24 (citations omitted).

14 An ALJ should generally give more weight to a treating physician's
15 opinion than to opinions from non-treating sources. See 20 C.F.R. §
16 404.1527(d)(2); Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1996). The ALJ
17 must give specific and legitimate reasons for rejecting a treating physician's
18 opinion in favor of a non-treating physician's contradictory opinion. Orn v.
19 Astrue, 495 F.3d 625, 632 (9th Cir. 2007); Lester, 81 F.3d at 830. However,
20 "[t]he ALJ need not accept the opinion of any physician, including a treating
21 physician, if that opinion is brief, conclusory, and inadequately supported by
22 clinical findings." Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002);
23 accord Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). The factors
24 to be considered by the adjudicator in determining the weight to give a medical
25 opinion include: "[l]ength of the treatment relationship and the frequency of
26 examination" by the treating physician; and the "nature and extent of the
27 treatment relationship" between the patient and the treating physician. Orn,
28 495 F.3d at 631-33; 20 C.F.R. §§ 404.1527(d)(2)(i)-(ii), 416.927(d)(2)(i)-(ii).

1 The Court finds that the ALJ did not provide specific and legitimate
2 reasons for rejecting the opinions of Plaintiff's treating physicians. First, the
3 ALJ's broad conclusion that the "longitudinal treatment record . . . provides
4 no basis for" the functional limitations found by Plaintiff's treating physicians
5 is not a specific, legitimate reason for rejecting those opinions. See Embrey v.
6 Bowen, 849 F.2d 418, 421 (9th Cir. 1988) ("To say that medical opinions are
7 not supported by sufficient objective findings or are contrary to the
8 preponderant conclusions mandated by the objective findings does not achieve
9 the level of specificity our prior cases have required."). "The ALJ must do
10 more than offer his conclusions. He must set forth his own interpretations and
11 explain why they, rather than the doctors', are correct." Reddick v. Chater,
12 157 F.3d 715, 725 (9th Cir. 1998).

13 In fact, contrary to the ALJ's conclusion, the opinions of Drs. Casillas
14 and Romano appear to be amply supported by the medical record. Since
15 approximately June 2009, Plaintiff has complained of joint pain, swelling, and
16 limitation of movement. Dr. Liem Ngo, Plaintiff's primary care provider from
17 June 2009 to April 2010, noted joint swelling, hand and foot pain, skin
18 plaques, leg edema, and limitation in movement of the hands and fingers. See
19 AR 218, 221-227. Based upon his examination of Plaintiff, Dr. Ngo ordered a
20 blood test in December 2009, which confirmed a positive rheumatoid factor.
21 AR 229. Subsequently, Plaintiff began obtaining treatment from Dr. Casillas
22 and PA Rodriguez, who diagnosed Plaintiff with rheumatoid arthritis. Over
23 the course of 2010 and 2011, Plaintiff generally complained of moderate pain
24 and swelling in his hands, knees, and legs. See, e.g., AR 269, 275, 281, 285,
25 372-373. Plaintiff was eventually referred to a rheumatologist. AR 251.

26 Similarly, the opinion of Plaintiff's treating rheumatologist, Dr.
27 Romano, is also supported by the treatment record. Plaintiff saw Dr. Romano
28 every six weeks from February to December 2011 for treatment related to his

1 joint pain and swelling. During his visits with Dr. Romano, Plaintiff
2 consistently complained of crepitation, joint stiffness, warmth, swelling,
3 “gelling” of the joints after periods of inactivity, deformity, and effusions.
4 Plaintiff also presented with diffuse joint aches and decreased range of motion
5 and pain in his knees. AR 339. Dr. Romano noted Plaintiff had joint
6 inflammation and dactylitis of the nails and fingers. AR 251, 254.² Dr.
7 Romano diagnosed Plaintiff with psoriatic arthritis and multiple joint pain and
8 prescribed several drugs to treat Plaintiff’s arthritis and arthritis symptoms such
9 as joint pain, inflammation, and stiffness.³ AR 251, 252, 254, 255, 332, 333,
10 334, 338, 339.

11 Rather than considering Plaintiff’s medical records as a whole, the ALJ
12 instead focused on a few select treatment notes. AR 23-24. While Plaintiff
13 occasionally experienced relief from his joint pain and swelling, as noted by
14 the ALJ, any such improvement was generally temporary. For example,
15 although Plaintiff reported significant improvement of symptoms in March and
16 April 2011, see AR 254, 284, 287, he was again experiencing worsening pain,
17 joint inflammation, and decreased range of motion in June and September
18 2011, see, e.g., AR 332-33, 338, 339. “Occasional symptom-free periods - and
19 even the sporadic ability to work - are not inconsistent with disability.” Lester,
20 81 F.3d at 833. The ALJ may not cherry-pick evidence to support the

21 ² Dactylitis, or “sausage digits,” refers to swelling of an entire finger or
22 toe and is a distinguishing indicator of psoriatic arthritis. See
23 [https://www.psoriasis.org/psoriatic-arthritis/classification-of-psoriatic-](https://www.psoriasis.org/psoriatic-arthritis/classification-of-psoriatic-arthritis)
24 [arthritis](https://www.psoriasis.org/psoriatic-arthritis/classification-of-psoriatic-arthritis).

25 ³ Psoriatic arthritis is a condition involving joint inflammation that
26 usually occurs in combination with the skin disorder psoriasis, which is a
27 chronic inflammatory condition characterized by patches of red, irritated skin
28 that are often covered by flaky white scales. See
<http://ghr.nlm.nih.gov/condition/psoriatic-arthritis>.

1 conclusion that a claimant is not disabled, but must consider the evidence as a
2 whole in making a reasoned disability determination. See Holohan v.
3 Massanari, 246 F.3d 1195, 1207 (9th Cir. 2001) (holding that ALJ erred in
4 selectively relying on some entries in the medical record while ignoring many
5 others indicating continued, severe impairment).

6 Second, the fact that Plaintiff may have the ability to walk without a
7 supportive device is also not a specific and legitimate reason for rejecting the
8 opinions of Plaintiff's treating physicians. Although the records cited by the
9 ALJ do indicate that Plaintiff had a normal gait, see AR 254, 274, 284, 333,
10 338, 349, the ALJ fails to explain how the fact that Plaintiff can walk without a
11 cane undermines the overall validity of Plaintiff's treating physicians' opinions,
12 particularly given that these opinions appear to be supported by the
13 longitudinal treatment record, as discussed above.

14 Finally, the ALJ's rejection of the treating physicians' opinions because
15 they "appear to have taken the claimant's subjective allegations at face value
16 and merely reiterated those allegations," AR 24, is similarly not a specific and
17 legitimate basis for discrediting those opinions. As noted above, the treating
18 physicians' opinions appear to be amply supported by the longitudinal
19 treatment record, including multiple physical examinations and positive
20 clinical findings. The ALJ does not specifically identify any portion of the
21 opinions of Plaintiffs' treating physicians which "merely reiterate[]" Plaintiff's
22 subjective complaints. This is an insufficient justification for rejecting the
23 treating physicians' opinions. See McAllister v. Sullivan, 888 F.2d 599, 602
24 (9th Cir. 1989) (reasons given by the ALJ for rejecting treating physician's
25 opinion were "broad and vague, failing to specify why the ALJ felt the treating
26 physician's opinion was flawed").

27 The decision whether to remand for further proceedings is within this
28 Court's discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000).

1 Where no useful purpose would be served by further administrative
2 proceedings, or where the record has been fully developed, it is appropriate to
3 exercise this discretion to direct an immediate award of benefits. *Id.* at 1179
4 (noting that “the decision of whether to remand for further proceedings turns
5 upon the likely utility of such proceedings”); see also *Benecke v. Barnhart*, 379
6 F.3d 587, 593 (9th Cir. 2004).

7 A remand is appropriate, however, where there are outstanding issues
8 that must be resolved before a determination of disability can be made and it is
9 not clear from the record that the ALJ would be required to find the claimant
10 disabled if all the evidence were properly evaluated. *Bunnell v. Barnhart*, 336
11 F.3d 1112, 1115-16 (9th Cir. 2003); see also *Connett v. Barnhart*, 340 F.3d 871,
12 876 (9th Cir. 2003). Here, remand is appropriate for the ALJ to fully and
13 properly consider the opinions of Plaintiff’s treating physicians and to
14 determine whether those opinions support a finding of disability.

15 V.

16 **CONCLUSION**

17 For the reasons stated above, the decision of the Social Security
18 Commissioner is REVERSED and the action is REMANDED for further
19 proceedings consistent with this opinion.

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21 Dated: July 10, 2014



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DOUGLAS F. McCORMICK
24 United States Magistrate Judge
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