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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 THOMAS HILL,

12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN, Acting
15 Commissioner of Social Security,

16 Defendant.

Case No. CV 15-8450 ODW(JC)

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE

[DOCKET NOS. 14, 15]

17 This Report and Recommendation is submitted to the Honorable
18 Otis D. Wright, II, United States District Judge, pursuant to 28 U.S.C. § 636 and
19 General Order 05-07 of the United States District Court for the Central District of
20 California.

21 **I. SUMMARY**

22 On October 29, 2015, Thomas Hill, plaintiff (“plaintiff”) filed a Complaint
23 seeking review of the Commissioner of Social Security’s denial of plaintiff’s
24 application for benefits.

25 This matter is before the Court on the parties’ cross motions for summary
26 judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). This
27 Court has taken both motions under submission without oral argument. See Fed.
28 R. Civ. P. 78; L.R. 7-15; October 29, 2015 Case Management Order ¶ 5.

1 Based on the record as a whole and the applicable law, the decision of the
2 Commissioner should be REVERSED AND REMANDED for further proceedings
3 consistent with this Report and Recommendation.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**
5 **DECISION**

6 On November 13, 2012, plaintiff filed an application for Disability
7 Insurance Benefits alleging disability beginning on October 1, 2007 (“alleged
8 onset date”), due to limitations in his right knee, right arm, and memory.
9 (Administrative Record (“AR”) 19, 169, 192). The Administrative Law Judge
10 (“ALJ”) examined the medical record and heard testimony from plaintiff (who was
11 represented by counsel) and vocational and medical experts on March 10, 2015.
12 (AR 31-42).

13 On July 2, 2015, the ALJ determined that plaintiff was not disabled from the
14 alleged onset date through the March 31, 2010 date last insured (“period in
15 issue”). (AR 19-26). Specifically, the ALJ found that, through the date last
16 insured: (1) plaintiff suffered from the following severe impairments:
17 degenerative disc disease of the cervical spine status post right shoulder
18 arthroplasty, and degenerative joint disease of the right knee (AR 21);
19 (2) plaintiff’s impairments, considered singly or in combination, did not meet or
20 medically equal a listed impairment (AR 21-22); (3) plaintiff retained the residual
21 functional capacity to perform the full range of medium work (20 C.F.R.
22 § 404.1567(c)) (AR 22); (4) plaintiff was capable of performing his past relevant
23 work as a heavy equipment operator/operating engineer (AR 24); and
24 (5) plaintiff’s statements concerning the intensity, persistence and limiting effects
25 of his symptoms were not entirely credible (AR 23).

26 On August 28, 2015, the Appeals Council denied plaintiff’s application for
27 review. (AR 1-3).

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1 **III. APPLICABLE LEGAL STANDARDS**

2 **A. Sequential Evaluation Process**

3 To qualify for disability benefits, a claimant must show that the claimant is
4 unable “to engage in any substantial gainful activity by reason of any medically
5 determinable physical or mental impairment which can be expected to result in
6 death or which has lasted or can be expected to last for a continuous period of not
7 less than 12 months.” Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012)
8 (quoting 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted); see also
9 20 C.F.R. §§ 404.1509, 416.909.¹ The impairment must render the claimant
10 incapable of performing the work the claimant previously performed and
11 incapable of performing any other substantial gainful employment that exists in
12 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999)
13 (citing 42 U.S.C. § 423(d)(2)(A)).

14 In assessing whether a claimant is disabled, an ALJ is required to use the
15 following five-step sequential evaluation process:

- 16 (1) Is the claimant presently engaged in substantial gainful activity?
17 If so, the claimant is not disabled. If not, proceed to step two.
- 18 (2) Does the claimant have a medically determinable physical or
19 mental impairment that meets the duration requirement, and
20 that is sufficiently severe to limit the claimant’s ability to
21 work? If not, the claimant is not disabled. If so, proceed to
22 step three.
- 23 (3) Does the claimant’s impairment, or combination of
24 impairments, meet or equal an impairment listed in 20 C.F.R.

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27 ¹To meet the so-called “duration requirement” a claimant’s impairment “[must be]
28 expected to result in death, [or] must have lasted or must be *expected* to last for a continuous
period of at least 12 months.” 20 C.F.R. § 404.1509 (emphasis added).

1 Part 404, Subpart P, Appendix 1? If so, the claimant is disabled.

2 If not, proceed to step four.

3 (4) Does the claimant possess the residual functional capacity to
4 perform the claimant's past relevant work? If so, the claimant
5 is not disabled. If not, proceed to step five.

6 (5) Does the claimant's residual functional capacity, when
7 considered with the claimant's age, education, and work
8 experience, allow the claimant to adjust to other work that
9 exists in significant numbers in the national economy? If so,
10 the claimant is not disabled. If not, the claimant is disabled.

11 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th
12 Cir. 2006) (citations omitted); see also 20 C.F.R. § 404.1520(a)(4) (explaining
13 five-step sequential evaluation process).

14 The claimant has the burden of proof at steps one through four, and the
15 Commissioner has the burden of proof at step five. Burch v. Barnhart, 400 F.3d
16 676, 679 (9th Cir. 2005) (citation omitted).

17 **B. Standard of Review**

18 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of
19 benefits only if it is not supported by substantial evidence or if it is based on legal
20 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.
21 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457
22 (9th Cir. 1995)).

23 Substantial evidence is "such relevant evidence as a reasonable mind might
24 accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389,
25 401 (1971) (citations and quotations omitted). It is more than a mere scintilla but
26 less than a preponderance. Robbins, 466 F.3d at 882 (citing Young v. Sullivan,
27 911 F.2d 180, 183 (9th Cir. 1990)). To determine whether substantial evidence
28 supports a finding, a court must "consider the record as a whole, weighing both

1 evidence that supports and evidence that detracts from the [Commissioner’s]
2 conclusion.” Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)
3 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)).

4 While an ALJ’s decision need not discuss every piece of evidence or be
5 drafted with “ideal clarity,” at a minimum it must explain the ALJ’s reasoning
6 with sufficient specificity and clarity to “allow[] for meaningful review.” Brown-
7 Hunter v. Colvin, 806 F.3d 487, 492 (9th Cir. 2015) (citations and internal
8 quotation marks omitted); Howard v. Barnhart, 341 F.3d 1006, 1012 (9th Cir.
9 2003) (citations omitted); see also Craft v. Astrue, 539 F.3d 668, 673 (7th Cir.
10 2008) (ALJ must provide “accurate and logical bridge” between evidence and
11 conclusion that claimant is not disabled so reviewing court “may assess the
12 validity of the agency’s ultimate findings”) (citation and quotation marks omitted);
13 see generally 42 U.S.C.A. § 405(b)(1) (“ALJ’s unfavorable decision must, among
14 other things, “set[] forth a discussion of the evidence” and state “the reason or
15 reasons upon which it is based”).

16 An ALJ’s decision to deny benefits must be upheld if the evidence could
17 reasonably support either affirming or reversing the decision. Robbins, 466 F.3d
18 at 882 (citing Flaten, 44 F.3d at 1457). Nonetheless, a court may not affirm
19 “simply by isolating a ‘specific quantum of supporting evidence.’” Id. (citation
20 omitted). In addition, federal courts may review only the reasoning in the
21 administrative decision itself, and may affirm a denial of benefits only for the
22 reasons upon which the ALJ actually relied. Garrison v. Colvin, 759 F.3d 995,
23 1010 (9th Cir. 2014) (citation omitted).

24 Even when an ALJ’s decision contains error, it must be affirmed if the error
25 was harmless. Treichler v. Commissioner of Social Security Administration, 775
26 F.3d 1090, 1099 (9th Cir. 2014). An ALJ’s error is harmless if (1) it was
27 inconsequential to the ultimate nondisability determination; or (2) despite the

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1 error, the ALJ's path may reasonably be discerned, even if the ALJ's decision was
2 drafted with less than ideal clarity. Id. (citation and quotation marks omitted).

3 A reviewing court may not conclude that an error was harmless based on
4 independent findings gleaned from the administrative record. Brown-Hunter, 806
5 F.3d at 492 (citations omitted). When a reviewing court cannot confidently
6 conclude that an error was harmless, a remand for additional investigation or
7 explanation is generally appropriate. See Marsh v. Colvin, 792 F.3d 1170, 1173
8 (9th Cir. 2015) (citations omitted).

9 **IV. DISCUSSION**

10 Plaintiff essentially contends that a reversal or remand is warranted because
11 the ALJ materially erred in evaluating plaintiff's subjective complaints related to
12 the period in issue. (Plaintiff's Motion at 2-4). This Court agrees.

13 **A. Pertinent Law**

14 When determining disability, an ALJ is required to consider a claimant's
15 impairment-related pain and other subjective symptoms. 20 C.F.R. § 404.1529(a).
16 Accordingly, when a claimant presents "objective medical evidence of an
17 underlying impairment which might reasonably produce the pain or other
18 symptoms [the claimant] alleged," the ALJ is required to determine the extent to
19 which the claimant's statements regarding the intensity, persistence, and limiting
20 effects of his or her symptoms ("subjective statements" or "subjective
21 complaints") are consistent with the record evidence as a whole and, consequently,
22 whether any of the individual's symptom-related functional limitations and
23 restrictions are likely to reduce the claimant's capacity to perform work-related
24 activities. 20 C.F.R. § 404.1529(a), (c)(4); Social Security Ruling ("SSR") 16-3p,
25 2016 WL 1119029, at *4-*9; SSR 96-7p, 1996 WL 374186, at *1-*5.² When an
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27 ²Social Security Rulings reflect the Social Security Administration's ("SSA") official
28 interpretation of pertinent statutes, regulations, and policies. 20 C.F.R. § 402.35(b)(1). Although
(continued...)

1 individual's subjective statements are inconsistent with other evidence in the
2 record, an ALJ may give less weight to such statements and, in turn, find that the
3 individual's symptoms are less likely to reduce the claimant's capacity to perform
4 work-related activities. See SSR 16-3p, 2016 WL 1119029 at *7-*8; SSR 96-7p,
5 1996 WL 374186, at *1-*3. In such cases, when there is no affirmative finding of
6 malingering, an ALJ may "reject" or give less weight to the individual's subjective
7 statements "by providing specific, clear, and convincing reasons for doing so."
8 Brown-Hunter, 806 F.3d at 488-89.³ This requirement is very difficult to satisfy.
9 See Garrison, 759 F.3d at 1015 (citation omitted).

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12 ²(...continued)

13 they "do not carry the 'force of law,'" Social Security Rulings "are binding on all components of
14 the . . . Administration[.]" and are entitled to deference if they are "consistent with the Social
15 Security Act and regulations." 20 C.F.R. § 402.35(b)(1); Bray v. Commissioner of Social
16 Security Administration, 554 F.3d 1219, 1224 (9th Cir. 2009) (citations and quotation marks
17 omitted); see also Heckler v. Edwards, 465 U.S. 870, 873 n.3 (1984) (discussing weight and
18 function of Social Security rulings). Effective March 16, 2016, the SSA issued SSR 16-3p which
19 superseded SSR 96-7p and, in part, eliminated use of the term "credibility" from SSA
20 "sub-regulatory policy[]" in order to "clarify that subjective symptom evaluation is not an
21 examination of an individual's [overall character or truthfulness] . . . [and] more closely follow
22 [SSA] regulatory language regarding symptom evaluation." See SSR 16-3p, 2016 WL 1119029,
23 at *1-*2, *10. SSR 16-3p became effective after the ALJ issued the decision in the instant case
24 and the Appeals Council denied review. It is not clear whether SSR 16-3p applies retroactively.
25 See, e.g., Ellefson v. Colvin, 2016 WL 3769359, *3 n.2 (D. Or. July 14, 2016) (observing "no
26 binding precedent interpreting [SSR 16-3p] or whether it applies retroactively"). Nonetheless,
27 the issue of retroactivity need not be resolved here since the ALJ's evaluation of plaintiff's
28 subjective complaints in this case fails to pass muster whether SSR 16-3p or its predecessor, SSR
96-7p, governs.

³It appears to this Court, based upon its research of the origins of the requirement that
there be "specific, clear and convincing" reasons to reject or give less weight to an individual's
subjective statements absent an affirmative finding of malingering, that such standard of proof
remains applicable irrespective of whether SSR 96-7p or SSR 16-3p governs. See Burrell v.
Colvin, 775 F.3d 1133, 1137 (9th Cir. 2014) (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th
Cir. 1989), Gallant v. Heckler, 753 F.2d 1450, 1455 (9th Cir. 1984), Johnson v. Shalala, 60 F.3d
1428, 1433 (9th Cir. 1995), and Molina, 674 F.3d at 1112).

1 An ALJ's decision "must contain specific reasons" for the weight given to
2 the claimant's statements regarding the severity of symptoms/the finding on
3 credibility, be consistent with and supported by the evidence in the case record,
4 and be clearly articulated/sufficiently specific to make clear how the ALJ
5 evaluated the individual's symptoms/the weight the ALJ gave to the individual's
6 statements and the reasons for that weight. SSR 16-3p, 2016 WL 1119029, at *9;
7 SSR 96-7p, 1996 WL 374186, at *2, *4. If an ALJ's evaluation of a claimant's
8 statements is reasonable and is supported by substantial evidence, it is not the
9 court's role to second-guess it. See Thomas v. Barnhart, 278 F.3d 947, 959 (9th
10 Cir. 2002) (citation omitted).

11 **B. Analysis**

12 Here, the ALJ's evaluation of plaintiff's subjective complaints is expressed
13 in a single paragraph:

14 After careful consideration of the evidence, the undersigned
15 finds that the [plaintiff's] medically determinable impairments could
16 reasonably be expected to cause the alleged symptoms; however, the
17 [plaintiff's] statements concerning the intensity, persistence and
18 limiting effects of these symptoms are not entirely credible for the
19 reasons explained in this decision.

20 (AR 23). Such boilerplate statement, however, fails to identify any *specific*
21 subjective statement to which the ALJ gave less than full weight, much less
22 provide any clear and convincing reason based on specific evidence in the record
23 for doing so. This was legal error. See, e.g., Treichler, 775 F.3d at 1102-03 (ALJ
24 erred by making a "single general statement that 'the claimant's statements
25 concerning the intensity, persistence and limiting effects of these symptoms are
26 not credible to the extent they are inconsistent with the above residual functional
27 capacity assessment,'" without identifying "sufficiently specific reasons"
28 supported by evidence in the case record for rejecting the claimant's subjective

1 statements); SSR 16-3p, 2016 WL 1119029, at *9 (not enough for ALJ to make
2 conclusory statements that individual’s subjective complaints “have been
3 considered” or that subjective complaints “are (or are not) supported or
4 consistent,” or “simply to recite the factors described in the regulations for
5 evaluating symptoms”) (internal quotation marks omitted); SSR 96-7p, 1996 WL
6 374186, at *4 (same).

7 The ALJ also wrote “[t]he evidence does not show the [plaintiff’s]
8 impairments precluded performance of his residual functional capacity before the
9 date he was last insured.” (AR 23). Defendant asserts that this “provided [a]
10 legitimate reason for the [ALJ’s] adverse credibility finding[.]” (Defendant’s
11 Motion at 2) (citing AR 23). Defendant, however, does not cite any persuasive
12 legal authority which supports rejecting a claimant’s subjective statement on the
13 proffered basis. Moreover, for the reasons noted above, the ALJ’s conclusory
14 statement is not a sufficiently specific basis for giving less weight to any of
15 plaintiff’s specific subjective complaints. A general finding that unspecified
16 evidence in the record failed to show that unspecified impairments were more
17 limiting than the ALJ’s residual functional capacity assessment found for the
18 period in issue is not sufficient to permit the Court to conclude that the ALJ gave
19 reduced weight to any particular subjective complaint on a permissible ground.
20 See, e.g., Brown-Hunter, 806 F.3d at 494 (legal error where ALJ failed to identify
21 specific testimony she rejected and “link” the testimony to specific evidence in the
22 record supporting the ALJ’s determination) (citing Burrell, 775 F.3d at 1139).

23 To the extent the foregoing reflects that the ALJ gave less weight to
24 plaintiff’s subjective statements solely because the objective medical evidence did
25 not substantiate the alleged severity of plaintiff’s impairment-related symptoms,
26 this was error as well. See Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991)
27 (en banc) (“[O]nce the claimant produces objective medical evidence of an
28 underlying impairment, an [ALJ] may not reject a claimant’s subjective complaints

1 based solely on a lack of objective medical evidence to fully corroborate the
2 alleged severity of pain.”) (citation omitted); see also 20 C.F.R. § 404.1529(c)(2)
3 (“statements about the intensity and persistence of [claimant’s] pain or other
4 symptoms or about the effect [such] symptoms have on [claimant’s] ability to
5 work” may not be rejected “solely because the available objective medical
6 evidence does not substantiate [claimant’s] statements”); SSR 16-3p, 2016 WL
7 1119029, at *5 (“[W]e will not disregard an individual’s statements about the
8 intensity, persistence, and limiting effects of symptoms solely because the
9 objective medical evidence does not substantiate the degree of impairment-related
10 symptoms alleged by the individual”) (citing id.); SSR 96-7p, 1996 WL 374186, at
11 *6 (same).

12 Defendant says “[t]he ALJ correctly rejected Plaintiff’s testimony solely
13 because he did not provide medical evidence establishing a disability onset date
14 before the date last insured.” (Defendant’s Motion at 3, 6) (citing SSR 88-13,
15 superseded by SSR 95-5P, superseded by SSR 96-7P, superseded by SSR 16-3p;
16 Bunnell, 947 F.2d at 346).⁴ Defendant again points to no current or persuasive
17 legal authority for the cited proposition. Even so, it appears that the ALJ
18 reasonably concluded that it was not necessary to determine a specific disability
19 onset date in plaintiff’s case. As the ALJ noted, the medical expert testified at the
20 hearing that there was sufficient medical evidence in the record to establish
21 disability based on listing-level impairments for plaintiff in 2013, but not at any

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25 ⁴To the extent defendant’s argument confuses onset of claimant *symptoms* (*i.e.*, one factor
26 considered when weighing the effect a claimant’s symptoms have on the ability to work), see
27 SSR 16-3p, 2016 WL 1119029, at *6, SSR 96-7p, 1996 WL 374186, at *7, with onset of
28 *disability* (*i.e.*, the first day an individual becomes “disabled as defined in the [Social Security]
Act and [] regulations” considering *all* of the probative and relevant evidence in the record), see
SSR 83-20, 1983 WL 31249 at *1, such argument does not support affirming the ALJ’s decision.

1 time before the date last insured.⁵ (AR 21-22, 24, 35-37). Consequently, as to the
2 period in issue, the ALJ did not find plaintiff disabled at step three based on
3 satisfaction of a listing prior to the date last insured and, in turn, appropriately
4 proceeded to step four and evaluated plaintiff’s residual functional capacity based
5 on the available medical evidence which pertained to plaintiff’s impairments
6 during the period in issue – specifically, medical records of plaintiff’s treatment
7 after his January 2008 motorcycle accident (*i.e.*, Exhibit 1F [AR 241-300]), and
8 the medical expert’s opinions at the hearing (based on three pages of those
9 records) regarding plaintiff’s functional abilities during the period in issue. (AR
10 21-23, 24, 35, 38-39; Exhibit 1F at 14-16 [AR 249-51]).

11 Since the ALJ found plaintiff *not* disabled through the date last insured at
12 step four, he was not required to determine a specific disability onset date at all.
13 Cf., e.g., Barnard v. Commissioner of the Social Security Administration, 286 Fed.
14 Appx. 989, 991-92 (9th Cir. 2008) (ALJ did not err by not determining disability
15 onset date (which normally “must be done only after a claimant is found
16 disabled”) where “ALJ properly concluded that [claimant] was not disabled at the
17 last date insured . . .”) (citation omitted). The ALJ *was* required, however, to
18 consider the impact of plaintiff’s subjective symptoms, along with all the other
19 relevant evidence in the record, when assessing plaintiff’s residual functional
20 capacity during the period in issue. See 20 C.F.R. §§ 404.1529(a), (d)(4),
21 404.1545(a)(3); SSR 16-3p, 2016 WL 1119029, at *11 (“We consider the
22 individual’s symptoms when determining his or her residual functional capacity
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24 ⁵The ALJ referenced a May 29, 2015 letter in which the medical expert assertedly
25 indicated that he had reviewed additional medical evidence plaintiff had submitted after the
26 hearing, and opined that “[t]he additional evidence did not change his [hearing] testimony. . . .”
27 (AR 24) (citing Exhibit 10F). Although the medical expert’s letter (referred to as Exhibit 10F) is
28 not part of the Administrative Record submitted to the Court, for purposes of the Report and
Recommendation this Court accepts as true the ALJ’s unchallenged interpretation of the contents
thereof.

1 and the extent to which the individual’s impairment-related symptoms are
2 consistent with the evidence in the record.”) (footnote omitted); SSR 96-7p, 1996
3 WL 374186, at *3 (“[T]he impact of [a claimant’s] symptoms on the individual’s
4 ability to function must be considered along with the objective medical and other
5 evidence . . . as necessary, at each [] step of the [sequential evaluation] process.”)
6 (citation and footnote omitted). Again, the failure to do so was error.

7 Defendant also states “[t]he ALJ correctly rejected plaintiff’s testimony
8 because it cannot alone establish an onset date.” (Defendant’s Motion at 8). To
9 the extent defendant is arguing that plaintiff’s testimony on its own is insufficient
10 to establish disability during the period in issue, such argument is consistent with
11 Social Security regulations. See 20 C.F.R. § 404.1508; SSR 16-3p, 2016 WL
12 1119029, at *4 (“We will not find an individual disabled based on alleged
13 symptoms alone.”); SSR 96-7p, 1996 WL 374186, at *2 (“Under the regulations,
14 an individual’s statement(s) about his or her symptoms is not enough in itself to
15 establish the existence of a physical or mental impairment or that the individual is
16 disabled.”). However, to the extent defendant is arguing that plaintiff failed to
17 establish any severe impairment which met the duration requirement prior to the
18 date last insured, such an argument is belied by the ALJ’s express findings at step
19 two that “[t]hrough the date last insured” plaintiff had severe impairments of
20 “degenerative disc disease of the cervical spine status post right shoulder
21 arthroplasty and degenerative joint disease of the right knee.” (AR 21). By
22 thereafter proceeding to step three, the ALJ necessarily determined that such
23 impairments *both* were severe *and* met the duration requirement. See 20 C.F.R.
24 § 404.1520(a)(4)(ii); see also 20 C.F.R. § 404.1509 (“Unless your impairment is
25 expected to result in death, it must have lasted *or must be expected to last* for a
26 continuous period of at least 12 months. We call this the duration requirement.”)
27 (emphasis added).

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1 In addition, as defendant suggests, the ALJ might have been able to give
2 less weight to plaintiff's subjective complaints based on other inconsistencies
3 between plaintiff's statements and the record evidence. (Defendant's Motion at 9-
4 13). Since the ALJ did not do so in the administrative decision, however, this
5 Court may not affirm the ALJ's non-disability determination on such grounds.
6 See, e.g., Brown-Hunter, 806 F.3d at 492 ("If the ALJ fails to specify his or her
7 reasons for finding claimant testimony not credible, a reviewing court will be
8 unable to review those reasons meaningfully without improperly 'substitut[ing]
9 our conclusions for the ALJ's, or speculat[ing] as to the grounds for the ALJ's
10 conclusions.") (citation omitted).

11 Finally, this Court cannot conclude that the ALJ's errors were harmless.
12 Plaintiff was previously found disabled as of October 29, 2012 and awarded
13 supplemental security income under Title XIV purportedly "all based on
14 [plaintiff's] 2008 [motorcycle] accident." (AR 34, 50, 74-75). In addition, at the
15 hearing the ALJ stated, in pertinent part, that he accepted the medical expert's
16 testimony that plaintiff met a listing at some point in 2013 and that plaintiff's
17 "accident caused the problems that led up to [the current disability]. . . ." (AR 39-
18 40, 42). Further, plaintiff testified that after his accident in 2008 he was "in and
19 out [of consciousness]," he was unable to lift his own arms or legs, or to feed
20 himself for "four months or longer," he was discharged from the hospital directly
21 "home to bed" and had "a lot of people" caring for him, he was not able to "get up
22 and walk around on [his] own []" for four months, he had been scheduled for a
23 total knee replacement at the same time but was never able to have the surgery,
24 *and* that he essentially "can't move" and his condition "hasn't gotten better." (AR
25 40-41). In light of the foregoing, and since the administrative decision does not
26 adequately address all of plaintiff's specific subjective complaints and since the
27 the ALJ's reasons for rejecting plaintiff's subjective statements were not
28 sufficiently specific, this Court is unable to conduct a meaningful review of the

1 ALJ's evaluation of plaintiff's symptoms, and thus cannot conclude that the ALJ's
2 errors were harmless. Cf., e.g., Brown-Hunter, 806 F.3d at 492 ("error will usually
3 not be harmless" when ALJ fails to provide specific reasons for rejecting claimant
4 testimony).

5 Accordingly, a remand is warranted to permit proper consideration of
6 plaintiff's impairment-related symptoms.

7 **V. RECOMMENDATION⁶**

8 IT IS THEREFORE RECOMMENDED that the District Judge issue an
9 Order: (1) approving and accepting this Report and Recommendation;
10 (2) reversing, in part, the decision of the Commissioner of Social Security and
11 remanding this matter for further administrative action consistent with this Report
12 and Recommendation;⁷ and (3) directing that judgment be entered accordingly.

13 DATED: August 29, 2016

14 _____
/s/

15 Honorable Jacqueline Chooljian
16 UNITED STATES MAGISTRATE JUDGE
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21 ⁶The Court has not adjudicated and need not adjudicate plaintiff's other challenges to the
22 ALJ's decision, except insofar as to determine that a reversal and remand for immediate payment
23 of benefits based thereon would not be appropriate.

24 ⁷When a court reverses an administrative determination, "the proper course, except in rare
25 circumstances, is to remand to the agency for additional investigation or explanation."
26 Immigration & Naturalization Service v. Ventura, 537 U.S. 12, 16 (2002) (citations and
27 quotations omitted). Remand is proper where, as here, "additional proceedings can remedy
28 defects in the original administrative proceeding. . . ." Garrison, 759 F.3d at 1019 (citation and
internal quotation marks omitted); see also Connett v. Barnhart, 340 F.3d 871, 876 (9th Cir.
2003) (remand is an option where the ALJ stated invalid reasons for rejecting a claimant's excess
pain testimony).