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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

ALBERT ARTHUR ROMERO, JR.,)	Case No. CV 17-08459-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	
v.)	ORDER OF REMAND
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

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20
21
22 On November 20, 2017, Plaintiff filed a Complaint seeking review of
23 the denial of his application for Disability Insurance Benefits.
24 (Docket Entry No. 1). The parties have consented to proceed before the
25 undersigned United States Magistrate Judge. (Docket Entry Nos. 9-10,
26 19). On April 23, 2018, Defendant filed an Answer along with the
27 Administrative Record ("AR"). (Docket Entry Nos. 13-14). On May 29,
28 2018, Plaintiff filed a Memorandum in Support of Plaintiff's Complaint

1 ("Plaintiff's Memorandum"). (Docket Entry No. 15). On July 3, 2018,
2 Defendant filed a Memorandum in Support of Answer ("Defendant's
3 Answer"). (Docket Entry No. 16). On July 13, 2018, Plaintiff filed a
4 Reply to Defendant's Answer ("Plaintiff's Reply"). (Docket Entry No.
5 17).
6

7
8 The Court has taken this matter under submission without oral
9 argument. See C.D. Cal. L.R. 7-15; Case Management Order, filed
10 December 1, 2017 (Docket Entry No. 7).
11

12 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

13
14
15 On April 1, 2014, Plaintiff, formerly employed as a tractor and
16 roller operator for a construction company (see AR 42-45, 189), filed an
17 application for Disability Insurance Benefits, alleging an inability to
18 work because of a disabling condition since April 15, 2013. (AR 168-
19 69). On or about April 5, 2016, Plaintiff amended the application to
20 request a closed period of benefits from April 15, 2013 to September 1,
21 2015. (AR 223-28). On or about April 8, 2016, Plaintiff amended his
22 alleged disability onset date from April 15, 2013 to May 19, 2013. (AR
23 233).
24

25
26 On April 7, 2016, the Administrative Law Judge ("the ALJ"), Richard
27 T. Breen, heard testimony from Plaintiff (who was represented by
28 counsel) and vocational expert Gregory Jones. (See AR 36-82). On May

1 25, 2016, the ALJ issued a decision denying Plaintiff's application.
2 (See AR 20-28). After determining that Plaintiff had severe impairments
3 -- "degenerative disc disease; fracture/sprain of left ankle; and status
4 post left knee arthroscopic surgery" (AR 22) -- but did not have an
5 impairment or combination of impairments that met or medically equaled
6 the severity of one of the listed impairments (AR 23), the ALJ found
7 that from May 19, 2013 through September 1, 2015 Plaintiff had the
8 residual functional capacity ("RFC")¹ to perform sedentary work² with the
9 following limitations: no work involving use of foot controls; no more
10 than occasional climbing ramps and stairs; no climbing ladders, ropes or
11 scaffolds; no more than occasional balancing, stooping, kneeling,
12 crouching or crawling; no work at unprotected heights, near moving
13 mechanical parts, or involving exposure to vibrations; and the use of
14 a cane for walking distances longer than two blocks. (AR 23-27). The
15 ALJ then determined that Plaintiff was not able to perform any past
16 relevant work (AR 27), but that Plaintiff could perform jobs existing in
17 significant numbers in the national economy and was therefore not
18 disabled within the meaning of the Social Security Act. (AR 27-28).
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24 ¹ A Residual Functional Capacity is what a claimant can still do
25 despite existing exertional and nonexertional limitations. See 20
26 C.F.R. § 404.1545(a)(1).

27 ² "Sedentary work involves lifting no more than 10 pounds at a
28 time and occasionally lifting or carrying articles like docket files,
ledgers, and small tools. Although a sedentary job is defined as one
which involves sitting, a certain amount of walking and standing is
often necessary in carrying out job duties. Jobs are sedentary if
walking and standing are required occasionally and other sedentary
criteria are met." 20 C.F.R. § 404.1567(a).

1 The Appeals Council denied Plaintiff's request for review of the
2 ALJ's decision on September 21, 2017. (See AR 1-5). Plaintiff now
3 seeks judicial review of the ALJ's decision which stands as the final
4 decision of the Commissioner. See 42 U.S.C. §§ 405(g), 1383(c).
5

6
7 **STANDARD OF REVIEW**
8

9 This Court reviews the Administration's decision to determine if
10 it is free of legal error and supported by substantial evidence. See
11 Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial
12 evidence" is more than a mere scintilla, but less than a preponderance.
13 Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine
14 whether substantial evidence supports a finding, "a court must consider
15 the record as a whole, weighing both evidence that supports and evidence
16 that detracts from the [Commissioner's] conclusion." Aukland v.
17 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (internal quotation
18 omitted). As a result, "[i]f the evidence can support either affirming
19 or reversing the ALJ's conclusion, [a court] may not substitute [its]
20 judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d
21 880, 882 (9th Cir. 2006).
22

23 **PLAINTIFF'S CONTENTIONS**
24

25 Plaintiff alleges that the ALJ erred in (1) finding that
26 Plaintiff's impairments did not meet Listings 1.02, 1.03, and 1.04; (2)
27 rejecting the opinions of Plaintiff's treating physicians; (3) finding
28 Plaintiff's testimony not credible; and (4) failing to present an

1 appropriate hypothetical question to the vocational expert. (See
2 Plaintiff's Memorandum at 4-16; Plaintiff's Reply at 2-6).

3
4 **DISCUSSION**

5
6 After consideration of the record as a whole, the Court finds that
7 Plaintiff's third claim of error warrants a remand for further
8 consideration. Since the Court is remanding the matter based on
9 Plaintiff's third claim of error, the Court will not address Plaintiff's
10 first, second and fourth claims.

11
12 **A. The ALJ Did Not Properly Reject Plaintiff's Symptom Testimony**

13
14 Plaintiff asserts that the ALJ did not provide legally and
15 factually sufficient reasons for finding that Plaintiff's testimony
16 about his symptoms and limitations was not credible. (See Plaintiff's
17 Memorandum at 11-15; Plaintiff's Reply at 5). Defendant asserts that
18 the ALJ provided proper reasons for finding Plaintiff not fully
19 credible. (See Defendant's Answer at 12-17).

20
21 1. Legal Standard

22
23 Where, as here, the ALJ finds that a claimant suffers from a
24 medically determinable physical or mental impairment that could
25 reasonably be expected to produce his alleged symptoms, the ALJ must
26 evaluate "the intensity and persistence of those symptoms to determine
27 the extent to which the symptoms limit an individual's ability to
28

1 perform work-related activities for an adult" Soc. Sec. Ruling
2 ("SSR") 16-3p, 2017 WL 5180304, *3.³
3

4 A claimant initially must produce objective medical evidence
5 establishing a medical impairment reasonably likely to be the cause of
6 the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.
7 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a
8 claimant produces objective medical evidence of an underlying impairment
9 that could reasonably be expected to produce the pain or other symptoms
10 alleged, and there is no evidence of malingering, the ALJ may reject the
11 claimant's testimony regarding the severity of his or her pain and
12 symptoms only by articulating specific, clear and convincing reasons for
13 doing so. Brown-Hunter v. Colvin, 798 F.3d 749, 755 (9th Cir.
14 2015)(citing Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.
15 2007)); see also Smolen, *supra*; Reddick v. Chater, 157 F.3d 715, 722
16 (9th Cir. 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th
17 Cir. 1997). Because the ALJ does not cite to any evidence in the record
18 of malingering, the "clear and convincing" standard stated above
19 applies.
20

21 Generalized, conclusory findings do not suffice. See Moisa v.
22 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004)(the ALJ's credibility
23 findings "must be sufficiently specific to allow a reviewing court to
24 conclude the [ALJ] rejected [the] claimant's testimony on permissible
25

26
27 ³ SSR 16-3p, which superseded SSR 96-7p, became effective on
28 March 28, 2016 and is applicable to this case because it was in effect
at the time of the Appeal Council's September 21, 2017 denial of
Plaintiff's request for review. The regulation on evaluating a
claimant's symptoms, including pain, has not changed. See 20 C.F.R. §
404.1529.

1 grounds and did not arbitrarily discredit the claimant's testimony")
2 (citation and internal quotation marks omitted); Holohan v. Massanari,
3 246 F.3d 1195, 1208 (9th Cir. 2001)(the ALJ must "specifically identify
4 the testimony [the ALJ] finds not to be credible and must explain what
5 evidence undermines the testimony"); Smolen, 80 F.3d at 1284 ("The ALJ
6 must state specifically which symptom testimony is not credible and what
7 facts in the record lead to that conclusion.").

8
9 2. The ALJ's Credibility Finding

10 Plaintiff made the following statements in a "Exertion
11 Questionnaire Since Your Disability Began" dated April 21, 2014:

12
13 He lives with family in a house. (See AR 198).

14
15 He is not able to carry out his normal workday because
16 of left knee pain (a doctor has requested total knee
17 replacement in 2014; he is waiting on the insurance company's
18 approval), severe lower back pain (he is waiting on the
19 insurance company's approval for surgery), and left ankle
20 pain (he is having left ankle surgery in June 2014). His
left knee and lower back pain limit him to walking for ten
minutes, and then he has to take a break. He can lift at
most two shopping bags from the market to the car and from
the car to the house (two times a week). He does not climb
stairs. (See AR 198-200).

21 On an average day he does not do much because of pain
22 in his knee, lower back, left leg, ankle and neck (moderate).
He does his own grocery shopping (once or twice a week). He
23 drives an automatic car for 45 minutes. He does not clean or
do chores in his house or living area or do yard work (he
cannot climb a ladder to wash windows or clean rain gutters).
24 Prior to becoming disabled, he was able to do yard work. (See
AR 198-200).

25
26 He is required to take a rest when his pain becomes too
severe to walk or sit. He uses a knee compression brace
daily and a cane almost daily. He takes Norco (3 times a
27 day), Somas (350 mg, 1 time at night), Ambien (10 mg, 1 time
at night), and Nexium (40 mg, 1 time a day). (See AR 200).
28

1 Plaintiff gave the following testimony at the administrative
2 hearing (see AR 38-69):
3

4 He is 5 feet 6 1/2 inches tall and weighs 180 pounds.
5 He lives with his wife and his daughters who are 28 and 17
6 years-old. He received a GED. Prior to stopping work in
7 2013, he was a tractor and roller operator for Los Angeles
8 Unified School District ("LAUSD"), using mechanical tools and
9 hand tools to repair, remove and replace asphalt at schools.
10 He stopped working because he had some "pay to work issues"
11 with Human Resources and because he was not allowed to work
because of the medication (Norco) he was taking for his knee
and back pain (he was DOT tested as an operator). In
September 2015, following a portion of time receiving
workers' compensation, he returned to work at LAUSD as a
senior tractor roller operator, which requires him to
supervise crews and work in the office but is less physical
than his former job. (See AR 38-40, 42-48, 60).

12 When he stopped working (after an earlier unsuccessful
13 left knee surgery, several injections in his left knee, an
14 earlier back injury for which he received several epidurals,
15 a second unsuccessful left knee surgery [a partial
16 replacement], and additional back epidurals), he was limping
and suffered from constant knee pain and throbbing back pain
(it "would come and go") shooting into his left buttocks and
down his leg, causing numbness in his foot. (See AR 48-50,
61-62).

17 On May 19, 2013 (approximately one month after his
18 alleged disability onset date), he was in a motorcycle
19 accident (the accident was not his fault). He was feeling
20 good that day (he had "been in a funk"), and he decided to
21 ride for the first time since he stopped working. As a
22 result of the accident, he suffered a left ankle fracture (he
wore a cast for 8 weeks) and tore ligaments or cartilage in
his right hand (he wore a cast for 6 weeks and then in June
2013 he needed to wear a wrist splint as needed; his hand has
healed). (See AR 51-54, 57-59).

23 Some time prior to the motorcycle accident, a doctor
24 requested a spinal cord stimulator for him, because he was
25 scared and skeptical of surgery (workers' compensation had
trouble approving the stimulator). At the time, although he
was taking about four Norco pills a day, he was still having
significant pain. (See AR 63-64).

26 After the motorcycle accident through 2014, he just went
27 to doctor appointments and physical therapy (initially 5 days
28 a week). He drove himself to the doctors. Sometimes he
could walk for a few minutes up to 10 minutes, but at
different times his back was inflamed, he had a cast on his
left foot, or he was on crutches. He continued to have
significant pain in his left knee and back. He was not able

1 to do any house work or shopping. He slept 1 to 2 hours a
2 night because of thoughts about the accident, pain, and
3 depression. The physical therapy was helpful for his hand
4 but not his left ankle (he experienced pain and discomfort).
5 (See AR 56-58, 62-63, 66, 68).

6 On June 3, 2014, following an MRI, he had left ankle
7 surgery. That surgery did not go well and caused him to be
8 sore. Popping the ankle made him feel a little better. The
9 doctor contemplated a left ankle replacement surgery. (See
10 AR 58, 62, 64-65).

11 In September 2014 (at which time he had significant pain
12 in his lumbar spine, had some atrophy in his left quadricep,
13 and used a cane "[p]retty much all of the time"), he had a
14 third left knee surgery (a total knee replacement). He no
15 longer limps but still has issues because his left knee is
16 loose; another surgery has been recommended but he does not
17 want it. (See AR 41, 50-51, 58, 65-67).

18 He underwent lumbar surgery a few months later. After
19 6 to 8 weeks of physical therapy, he felt well enough to
20 return to work. (See AR 67-68).

21 After briefly summarizing Plaintiff's testimony (see AR 23-24), and
22 after noting the limited value of the conclusions, observations and
23 findings made in workers' compensation reports (see AR 24), the ALJ
24 stated that "[o]verall, the medical evidence partially supports the
25 claimant's allegations (AR 24), and then proceeded to discuss the
26 medical records (see AR 24-25). After discussing the applicable
27 standards for evaluating a claimant's testimony concerning symptoms and
28 limitations (see AR 25-26), the ALJ made the following findings: "After
careful consideration of the evidence, the undersigned finds that the
claimant's medically determinable impairments could reasonably be
expected to cause the alleged symptoms; however, the claimant's
statements concerning the intensity, persistence and limiting effects
of these symptoms are not entirely supported for the reasons explained
in this decision." (AR 26).

1 After stating that "[o]verall, the medical evidence during the
2 period in question (May 19, 2013 through September 1, 2015) shows that
3 although the claimant clearly had significant debilitating orthopedic
4 conditions, he was not precluded from all work related activities," id.,
5 the ALJ stated, "Although the claimant testified he stopped working
6 because he found out he was not allowed to be on medication while at
7 work, a report dated January 15, 2015 from qualified medical evaluator
8 Andrew Rah, M.D. indicated the claimant was actually removed from his
9 position for failing a drug test, when he tested positive for alcohol
10 while on the job. (Exhibit 17F, p. 42). Id. The ALJ then discussed the
11 opinions and the weight given to the opinions of two of Plaintiff's
12 treating physicians, the consultative examiner, and the State Agency
13 medical consultants. (See AR 26-27). The ALJ finally stated: "It is
14 also noted that according to the Exertional Activities Questionnaire
15 completed by the claimant in April 2014, he was still able to drive a
16 car and go shopping despite his low back pain and left ankle/left knee
17 conditions (Exhibit 3E). The claimant also testified that he was able
18 to drive to his doctor's appointments, and attended physical therapy."
19 (AR 27).

20
21 3. The ALJ's Assessment of Subjective Symptom Testimony

22
23 As set forth below, the ALJ failed to provide legally sufficient
24 reasons for discrediting Plaintiff's testimony about the intensity,
25 persistence and limiting effects of his pain and symptoms.⁴

26
27 ⁴ The Court will not consider reasons for discounting
28 Plaintiff's subjective symptom testimony that were not given by the ALJ
in the decision (see Defendant's Answer at 14). See Connett v.
Barnhart, 340 F.3d 871, 874 (9th Cir. 2003) ("We are constrained to
(continued...)

1 First, the ALJ failed to "specifically identify 'what testimony is
2 not credible and what evidence undermines [Plaintiff's] complaints.'" Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007) (quoting Lester v.
3 Chater, 81 F.3d 821, 834 (9th Cir. 1995)); see also Smolen, 80 F.3d at
4 1284 ("The ALJ must state specifically what symptom testimony is not
5 credible and what facts in the record lead to that conclusion").
6

7
8 Second, to the extent that the ALJ partially discredited
9 Plaintiff's testimony based on an inconsistency between Plaintiff's
10 testimony and a notation in the medical record about Plaintiff's reason
11 for leaving work in April 2013, see Light v. Social Security Admin.,
12 supra ("In weighing a claimant's credibility, the ALJ may consider his
13 reputation for truthfulness, inconsistencies either in his testimony or
14 between his testimony and his conduct, his daily activities, his work
15 history, and testimony from physicians and third parties concerning the
16 nature, severity, and effect on the symptoms of which he complains.");
17 20 C.F.R. § 1529(c)(4) ("We will consider whether there are any
18 inconsistencies in the evidence and the extent to which there are any
19 conflicts between your statements and the rest of the evidence . . .
20 ."); see also Bruton v. Massanari, 268 F.3d 824, 828 (9th Cir.
21 2001)(finding that the ALJ properly disregarded the claimant's
22 testimony, in part, because the claimant "stated at the administrative
23 hearing and to at least one of his doctors that he left his job because
24

25 _____
26 ⁴ (...continued)
27 review the reasons the ALJ asserts."; citing SEC v. Chenery Corp., 332
28 U.S. 194, 196 (1947), Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir.
2001)); and Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)("We
review only the reasons provided by the ALJ in the disability
determination and may not affirm the ALJ on a ground upon which he did
not rely.").

1 he was laid off, rather than because he was injured"), such reason was
2 not clear and convincing. Contrary to the ALJ's assertion, Plaintiff
3 did not testify that he left work solely because he was not allowed to
4 be on pain medication while at work. Rather, Plaintiff testified that
5 he left work because of an undisclosed non-health-related issues with
6 Human Resources as well as because of the medication (Norco) problem.
7 (See AR 46-47). The notation by the consulative examiner that Plaintiff
8 was removed from his LAUSD position for failing a drug (alcohol) test
9 (see AR 724) may or may not have been inconsistent with Plaintiff's
10 testimony, and the ALJ did not ask Plaintiff at the hearing about that
11 notation. Moreover, any inconsistencies with respect to Plaintiff's
12 reason for leaving work in April 2013 had no bearing on the credibility
13 of Plaintiff's testimony concerning his inability to work on or after
14 May 19, 2013, the date of Plaintiff's motorcycle accident.

15
16 Third, to the extent that the ALJ partially discounted Plaintiff's
17 testimony about his symptoms and functional limitations based on his
18 ability to perform certain daily activities, such as driving, driving
19 a car to doctors' appointments, attending physical therapy and shopping,
20 such reason was not clear and convincing. See Vertigan v. Halter, 260
21 F.3d 1044, 1050 (9th Cir. 2001)("[T]he mere fact that a plaintiff has
22 carried on certain daily activities . . . does not in any way detract
23 from her credibility as to her overall disability. One does not need
24 to be 'utterly incapacitated' in order to be disabled."); Reddick, supra
25 ("Only if the level of activity were inconsistent with the Claimant's
26 claimed limitations would these activities have any bearing on
27 Claimant's credibility."). While a plaintiff's ability to spend a
28 "substantial part" of his day engaged in pursuits involving the

1 performance of physical functions that are transferable to a work
2 setting may be sufficient to discredit him, here, there is no evidence
3 that Plaintiff was spending a substantial part of his day engaged in
4 these activities or that the physical demands of such tasks as driving,
5 driving a car to doctors' appointments, attending physical therapy, and
6 shopping were transferable to a work setting. See Morgan v. Comm'r of
7 Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir. 1999). Indeed, at the
8 hearing, the ALJ did not ask Plaintiff about the amount of time it took
9 him to drive to doctors' appointments, to attend physical therapy and
10 to shop or how often he did these activities. Thus, Plaintiff's
11 admitted daily activities do not constitute a legally sufficient reason
12 to reject Plaintiff's subjective symptom testimony.

13
14 It is not clear whether the ALJ considered Plaintiff's testimony
15 about his limited abilities to perform such daily activities (see AR 199
16 [Plaintiff testified in the April 21, 2014 Exertion Questionnaire that
17 he drove an "automatic, 45 minutes" and that he did his own grocery
18 shopping "one or two times per week"], AR 56-57 [Plaintiff testified at
19 the April 7, 2016 hearing that after May 19, 2013 and into 2014 he was
20 not helping with food shopping; and that he was driving himself to
21 doctors' appointments during the week, but should not have been driving
22 because he was on medication]. Therefore, the degree to which Plaintiff
23 could perform such daily activities may not have been inconsistent with
24 his testimony regarding his symptoms and limitations. See Reddick,
25 supra; see also Morgan v. Commissioner of Social Sec. Admin., 169 F.3d
26 595, 600 (9th Cir. 1999) ("If a claimant is able to spend a substantial
27 part of his day engaged in pursuits involving the performance of
28 physical functions that are transferable to a work setting, a specific

1 finding as to this fact may be sufficient to discredit a claimant's
2 allegations.").

3
4 Fourth, to the extent that the ALJ also found that there was a lack
5 of objective medical evidence supporting Plaintiff's testimony
6 concerning his symptoms and limitations, this factor cannot, by itself,
7 support an adverse finding about Plaintiff's testimony. See Trevizo v.
8 Berryhill, 862 F.3d 987, 1001 (9th Cir. 2017)(once a claimant
9 demonstrates medical evidence of an underlying impairment, "an ALJ 'may
10 not disregard [a claimant's testimony] solely because it is not
11 substantiated affirmatively by objective medical evidence.'" ; quoting
12 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006)); Rollins
13 v. Massanari, 261 F.3d 853, 857 (9th Cir. 2001); Tidwell v. Apfel, 161
14 F.3d 599, 602 (9th Cir. 1998); see also SSR 16-3p, 2017 WL 5180304, *7
15 ("We must consider whether an individual's statements about the
16 intensity, persistence, and limiting effects of his or her symptoms are
17 consistent with the medical signs and laboratory findings of record....
18 However, we will not disregard an individual's statements about the
19 intensity, persistence, and limiting effects of symptoms solely because
20 the objective medical evidence does not substantiate the degree of
21 impairment related-symptoms alleged by the individual.").

22
23 Because the Court finds that the the ALJ did not discount
24 Plaintiff's symptom testimony on legally permissible grounds, the Court
25 is unable to defer to the ALJ's credibility determination. Cf. Flaten
26 v. Sec'y of Health & Human Servs., 44 F.3d 1453, 1464 (9th Cir.
27 1995)(the court will defer to the ALJ's credibility determinations when
28

1 they are appropriately supported in the record by specific findings
2 justifying that decision)(citations omitted).

3
4 **B. Remand Is Warranted**

5
6 The decision whether to remand for further proceedings or order an
7 immediate award of benefits is within the district court's discretion.
8 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
9 useful purpose would be served by further administrative proceedings,
10 or where the record has been fully developed, it is appropriate to
11 exercise this discretion to direct an immediate award of benefits. Id.
12 at 1179 ("[T]he decision of whether to remand for further proceedings
13 turns upon the likely utility of such proceedings."). However, where,
14 as here, the circumstances of the case suggest that further
15 administrative review could remedy the Commissioner's errors, remand is
16 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);
17 Harman v. Apfel, 211 F.3d at 1179-81.

18
19 Since the ALJ failed to properly assess Plaintiff's symptom
20 testimony, remand is appropriate. Because outstanding issues must be
21 resolved before a determination of disability can be made, and "when the
22 record as a whole creates serious doubt as to whether the [Plaintiff]
23 is, in fact, disabled within the meaning of the Social Security Act,"
24 further administrative proceedings would serve a useful purpose and
25 remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.
26 2014)(citations omitted).

ORDER

For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: November 30, 2018

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE