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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEVEN ALVAREZ,)	Case No. EDCV 13-2038-JPR
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
vs.)	REVERSING COMMISSIONER
)	
CAROLYN W. COLVIN, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

I. PROCEEDINGS

Plaintiff seeks review of the Commissioner's final decision denying his application for supplemental security income ("SSI"). The parties consented to the jurisdiction of the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c). This matter is before the Court on the parties' Joint Stipulation, filed July 15, 2014, which the Court has taken under submission without oral argument. For the reasons stated below, the Commissioner's decision is reversed and this action is remanded for further proceedings.

1 **II. BACKGROUND**

2 Plaintiff was born on March 12, 1987. (Administrative
3 Record ("AR") 150.) He completed the 12th grade and previously
4 worked as a parking valet, courier, and construction laborer.
5 (AR 177.)

6 On November 12, 2010, Plaintiff filed an application for
7 SSI. (AR 61-62, 150-58.) Plaintiff alleged that he had been
8 unable to work since August 10, 2009 (AR 150), and listed his
9 medical conditions as "not coherent," "racing thoughts,"
10 "depressed," "anxious," "OCD," "blank look," "emotional d/o,"
11 "bi-polar," "schizophrenia," "schizoaffective," "phychosis
12 [sic]," and "obsessive eating" (AR 176). After Plaintiff's
13 application was denied, he requested a hearing before an
14 Administrative Law Judge. (AR 88-90.) A hearing was held on
15 June 11, 2012, at which Plaintiff, who was represented by
16 counsel, testified, as did his mother and a vocational expert.
17 (AR 26-60.) In a written decision issued June 21, 2012, the ALJ
18 determined that Plaintiff was not disabled. (AR 11-22.) On
19 September 9, 2013, the Appeals Council denied Plaintiff's request
20 for review. (AR 1-3.) This action followed.

21 **III. STANDARD OF REVIEW**

22 Under 42 U.S.C. § 405(g), a district court may review the
23 Commissioner's decision to deny benefits. The ALJ's findings and
24 decision should be upheld if they are free of legal error and
25 supported by substantial evidence based on the record as a whole.
26 Id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v.
27 Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence
28 means such evidence as a reasonable person might accept as

1 adequate to support a conclusion. Richardson, 402 U.S. at 401;
2 Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It
3 is more than a scintilla but less than a preponderance.
4 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
5 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
6 substantial evidence supports a finding, the reviewing court
7 "must review the administrative record as a whole, weighing both
8 the evidence that supports and the evidence that detracts from
9 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
10 720 (9th Cir. 1996). "If the evidence can reasonably support
11 either affirming or reversing," the reviewing court "may not
12 substitute its judgment" for that of the Commissioner. Id. at
13 720-21.

14 **IV. THE EVALUATION OF DISABILITY**

15 People are "disabled" for purposes of receiving Social
16 Security benefits if they are unable to engage in any substantial
17 gainful activity owing to a physical or mental impairment that is
18 expected to result in death or which has lasted, or is expected
19 to last, for a continuous period of at least 12 months. 42
20 U.S.C. § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257
21 (9th Cir. 1992).

22 A. The Five-Step Evaluation Process

23 An ALJ follows a five-step sequential evaluation process to
24 assess whether someone is disabled. 20 C.F.R. § 416.920(a)(4);
25 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as
26 amended Apr. 9, 1996). In the first step, the Commissioner must
27 determine whether the claimant is currently engaged in
28 substantial gainful activity; if so, the claimant is not disabled

1 and the claim must be denied. § 416.920(a)(4)(i). If the
2 claimant is not engaged in substantial gainful activity, the
3 second step requires the Commissioner to determine whether the
4 claimant has a "severe" impairment or combination of impairments
5 significantly limiting his ability to do basic work activities;
6 if not, a finding of not disabled is made and the claim must be
7 denied. § 416.920(a)(4)(ii). If the claimant has a "severe"
8 impairment or combination of impairments, the third step requires
9 the Commissioner to determine whether the impairment or
10 combination of impairments meets or equals an impairment in the
11 Listing of Impairments ("Listing") set forth at 20 C.F.R., Part
12 404, Subpart P, Appendix 1; if so, disability is conclusively
13 presumed and benefits are awarded. § 416.920(a)(4)(iii).

14 If the claimant's impairment or combination of impairments
15 does not meet or equal one in the Listing, the fourth step
16 requires the Commissioner to determine whether the claimant has
17 sufficient residual functional capacity ("RFC")¹ to perform his
18 past work; if so, he is not disabled and the claim must be
19 denied. § 416.920(a)(4)(iv). The claimant has the burden of
20 proving he is unable to perform past relevant work. Drouin, 966
21 F.2d at 1257. If the claimant meets that burden, a prima facie
22 case of disability is established. Id. If that happens or if
23 the claimant has no past relevant work, the Commissioner bears
24 the burden of establishing that the claimant is not disabled
25 because he can perform other substantial gainful work available

26
27 ¹RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. § 416.945; see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 in the national economy. § 416.920(a)(4)(v). That determination
2 comprises the fifth and final step in the sequential analysis.
3 § 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d at 1257.

4 B. The ALJ's Application of the Five-Step Process

5 At step one, the ALJ found that Plaintiff had not engaged in
6 substantial gainful activity since November 12, 2010, his
7 application date.² (AR 13.) At step two, he found that
8 Plaintiff had the severe impairments of "affective disorder,
9 obsessive-compulsive disorder, schizophrenia, psychotic disorder,
10 marijuana dependence, rule out dementia, and rule out induced
11 cognitive disorder." (Id.)

12 At step three, he determined that Plaintiff's impairments
13 did not meet or equal any of the impairments in the Listing. (AR
14 14-15.) At step four, the ALJ found that Plaintiff had the RFC
15 to perform

16 a full range of work at all exertional levels but with
17 the following nonexertional limitations: [he] can perform
18 simple one to two step instructions; he can have
19 occasional interaction with coworkers and supervisors; he
20 cannot have contact with the general public; and he can
21 be absent from work 5% of the time.

22 (AR 15.) The ALJ found that Plaintiff could perform his past
23 relevant work as a construction laborer as he actually performed

24
25 ²The ALJ assessed whether Plaintiff had been under a
26 disability on or after his application date rather than his
27 alleged onset date (see AR 13, 22), noting that the earliest
28 month Plaintiff could receive SSI benefits was the month
following the month in which he filed his application (AR 17
(citing § 416.335)). Plaintiff has not challenged that portion
of the ALJ's decision.

1 it and as generally performed in the regional and national
2 economy. (AR 21-22.) He therefore concluded that Plaintiff was
3 not disabled. (AR 22.)

4 **V. DISCUSSION**

5 Plaintiff contends that the ALJ erred in discounting the
6 opinions of his treating physician, Dr. Prakashandra C. Patel,
7 and an examining physician, Dr. Romualdo R. Rodriguez. (J. Stip.
8 at 2-3.) For the reasons discussed below, reversal is warranted.

9 A. Relevant Facts³

10 On March 4, 2011, Dr. Rodriguez, a "board eligible"
11 psychiatrist, performed a complete psychiatric evaluation of
12 Plaintiff and reviewed at least some of his medical records. (AR
13 367-73.) They "included records stating that the claimant is
14 'not coherent and may have bipolar disorder, schizophrenia, or is
15 schizoaffective.'" (AR 367.) Dr. Rodriguez noted that Plaintiff
16 had been psychiatrically hospitalized three times since he turned
17 21. (AR 368.) He found that Plaintiff reportedly ran errands,
18 went to the store, cooked and made snacks, did household chores,
19 and dressed and bathed himself but that "[r]ecently, someone has
20 to be with him when he is doing these things" and Plaintiff
21 "cannot leave home alone or handle his own cash or pay his own
22 bills." (AR 369.) Plaintiff had a history of marijuana and
23 methamphetamine use, but it was "not known if he [was] still
24 actually using drugs." (Id.)

25 Upon examination, Dr. Rodriguez found that Plaintiff's eye
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28 ³Because the parties are familiar with the facts, they are summarized only to the extent relevant to the disputed issues.

1 contact and interpersonal contact were poor, he was generally
2 uncooperative, and he was unable to spontaneously volunteer
3 information. (Id.) Dr. Rodriguez noted that it was "not clear
4 if [Plaintiff was] under the influence of drugs or alcohol."
5 (Id.) Plaintiff's thought processes were disorganized and "not
6 coherent," and he gave irrelevant answers to questions. (AR
7 370.) He could perform simple math problems and "serial threes
8 slowly up to 12," though he "talked to himself often," but he
9 could not spell "world" forward or backward. (AR 371.) When
10 asked the similarities between a table and a chair, Plaintiff
11 answered, "I don't know." (Id.)

12 Dr. Rodriguez diagnosed "[r]ule out schizophrenia," "[r]ule
13 out dementia," and "[r]ule out drug induced cognitive disorder."
14 (Id.) He observed,

15 [Plaintiff's] affect appeared disconnected and [he] just
16 smiled during the interview and insisted that everything
17 is "okay." His answers during the mental status exam did
18 not have anything to do with the questions and often he
19 would just ignore the question and not answer.

20 It is hard to tell if the claimant has developed
21 schizophrenia or dementia or that his psychiatric
22 condition is drug induced. Psychological testing and a
23 tox screen would prove useful to better understand what
24 his true condition is.

25 (AR 372.)

26 Dr. Rodriguez opined that Plaintiff was unable to
27 understand, remember, or carry out even simple one- or two-step
28 job instructions. (Id.) He further found that Plaintiff was

1 "moderately to severely" limited in his ability to (1) relate to
2 and interact with supervisors, coworkers, and the public; (2)
3 maintain concentration, attention, persistence, and pace; (3)
4 adapt to common workplace stresses; (4) maintain regular
5 attendance and consistently perform work activities; and (5)
6 perform work activities without special or additional
7 supervision. (AR 372-73.) Dr. Rodriguez believed that Plaintiff
8 was incapable of managing his own funds. (AR 373.)

9 On September 19, 2011, Dr. Patel completed a two-page check-
10 off form titled "Medical Opinion Re: Ability to Do Work-Related
11 Activities (Mental)."⁴ (AR 424-25.) Dr. Patel opined that
12 Plaintiff was "[s]eriously limited [in], but not precluded" from,
13 carrying out very short and simple instructions and adhering to
14 basic standards of neatness and cleanliness.⁵ (Id.) Dr. Patel
15 opined that Plaintiff was "[u]nable to meet competitive
16 standards" in the following areas: understanding and remembering
17 very short and simple instructions, maintaining regular
18 attendance, working with or around others without being
19 distracted, asking simple questions and requesting assistance,
20 getting along with coworkers, dealing with normal work stress,
21 dealing with the stress of semiskilled and skilled work,
22

23
24 ⁴Dr. Patel did not list an area of specialization, but
25 Plaintiff testified that Dr. Patel was his treating psychiatrist.
(AR 40-41, 47; see also AR 243.)

26 ⁵The form defined "seriously limited, but not precluded" as
27 "ability to function in this area is seriously limited and less
28 a substantial loss of ability to perform the work-related
activity." (AR 424.)

1 interacting with the public, and maintaining socially appropriate
2 behavior.⁶ (Id.) Dr. Patel opined that Plaintiff had “[n]o
3 useful ability to function” in the following areas: remembering
4 worklike procedures; maintaining attention for a two-hour
5 segment; sustaining an ordinary routine without special
6 supervision; making simple work-related decisions; completing a
7 normal workday and workweek; performing at a consistent pace;
8 accepting instructions and responding appropriately to criticism
9 from supervisors; responding appropriately to changes in a
10 routine work setting; being aware of normal hazards and taking
11 appropriate precautions; understanding, remembering, and carrying
12 out detailed instructions; setting realistic goals and making
13 plans independently of others; traveling in an unfamiliar place;
14 and using public transportation.⁷ (Id.)

15 In the section of the form for explaining his findings, Dr.
16 Patel wrote that Plaintiff “cannot comprehend” and “suffers from
17 schizophrenia, the type which affects his cognition/memory and
18 ability to function socially.” (AR 425.) Dr. Patel wrote that
19 Plaintiff is at times “mute” and “at times able to respond by
20 only one or two words.” (Id.) Dr. Patel opined that Plaintiff
21 “cannot retain any type of instructions given to him” and would
22 be “unable to work in any working condition.” (Id.)

24 ⁶The form defined “unable to meet competitive standards” as
25 “your patient cannot satisfactorily perform this activity
26 independently, appropriately, effectively on a sustained basis in
a regular work setting.” (AR 424.)

27 ⁷The form defined “no useful ability to function” as “an
28 extreme limitation,” meaning that “your patient cannot perform
this activity in a regular work setting.” (AR 424.)

1 The ALJ gave "some weight" to examining physician
2 Rodriguez's opinion, noting that his "assessment regarding a
3 moderate impairment in the ability to relate [to] and interact
4 with supervisors, coworkers, and the public" was consistent with
5 his objective findings. (AR 20.) The ALJ stated that he was not
6 giving "full weight" to Dr. Rodriguez's opinion because "his
7 assessment that [Plaintiff] could not understand, remember, and
8 carry out simple one or two [step] job instructions" was
9 inconsistent with Plaintiff's aunt's statements in a function
10 report that he could make a sandwich, use the microwave, and cook
11 eggs, which "show [Plaintiff's] ability to follow simple
12 instructions." (Id.; see also AR 190.)

13 The ALJ gave "some weight" to Dr. Patel's opinion, finding
14 that the record did indeed show that Plaintiff's schizophrenia
15 precluded him from interacting appropriately with the general
16 public. (AR 21.) The ALJ found, however, that it was "unclear"
17 whether Dr. Patel had a "long treating relationship" with
18 Plaintiff that would have "enabled Dr. Patel to provide a
19 longitudinal picture of [Plaintiff's] medical condition." (Id.)
20 The ALJ stated that "[d]ue to the lack of such information, [he]
21 does not give full weight to Dr. Patel's opinion." (Id.)

22 B. Applicable Law

23 Three types of physicians may offer opinions in Social
24 Security cases: (1) those who directly treated the plaintiff, (2)
25 those who examined but did not treat the plaintiff, and (3) those
26 who did not treat or examine the plaintiff. Lester, 81 F.3d at
27 830. A treating physician's opinion is generally entitled to
28 more weight than that of an examining physician, and an examining

1 physician's opinion is generally entitled to more weight than
2 that of a nonexamining physician. Id.

3 This is true because treating physicians are employed to
4 cure and have a greater opportunity to know and observe the
5 claimant. Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996).

6 If a treating physician's opinion is well supported by medically
7 acceptable clinical and laboratory diagnostic techniques and is
8 not inconsistent with the other substantial evidence in the
9 record, it should be given controlling weight. § 416.927(c)(2).

10 If a treating physician's opinion is not given controlling
11 weight, its weight is determined by length of the treatment
12 relationship, frequency of examination, nature and extent of the
13 treatment relationship, amount of evidence supporting the
14 opinion, consistency with the record as a whole, the doctor's
15 area of specialization, and other factors. § 416.927(c)(2)-(6).

16 When a treating or examining physician's opinion is not
17 contradicted by other evidence in the record, it may be rejected
18 only for "clear and convincing" reasons. See Carmickle v.

19 Comm'r, Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008)

20 (quoting Lester, 81 F.3d at 830-31). When a treating or
21 examining physician's opinion is contradicted, the ALJ must
22 provide only "specific and legitimate reasons" for discounting
23 it. Id. The weight given an examining physician's opinion,
24 moreover, depends on whether it is consistent with the record and
25 accompanied by adequate explanation, among other things.

26 § 416.927(c)(3)-(6). Furthermore, "[t]he ALJ need not accept the
27 opinion of any physician, including a treating physician, if that
28 opinion is brief, conclusory, and inadequately supported by

1 clinical findings." Thomas v. Barnhart, 278 F.3d 947, 957 (9th
2 Cir. 2002); accord Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d
3 1190, 1195 (9th Cir. 2004).

4 C. The ALJ Erred In Assessing Dr. Patel's Opinion

5 As discussed, the ALJ found that it was "unclear" whether
6 Plaintiff had a "long treatment relationship" with Dr. Patel,
7 which would have "enabled Dr. Patel to provide a longitudinal
8 picture of [Plaintiff's] medical condition." (AR 21.) The ALJ
9 concluded that Dr. Patel's opinion was not entitled to full
10 weight "[d]ue to the lack of such information." (Id.) The ALJ
11 gave no other reason for discounting Dr. Patel's opinion.
12 Plaintiff contends that reversal is appropriate because the ALJ
13 failed to support his "conclusory reasons" for rejecting Dr.
14 Patel's findings and because the ALJ should have further
15 developed the record by "contacting Dr. Patel regarding his
16 treating relationship with [P]laintiff." (J. Stip. at 7.)
17 Reversal is warranted because the ALJ failed to fulfill his duty
18 to develop the record and failed to provide a sufficient reason
19 for discounting Dr. Patel's opinion.

20 In determining disability, the ALJ has a "duty to fully and
21 fairly develop the record and to assure that the claimant's
22 interests are considered." Garcia v. Comm'r of Soc. Sec., 768
23 F.3d 925, 930 (9th Cir. 2014); see also Howard ex rel. Wolff v.
24 Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) ("In making a
25 determination of disability, the ALJ must develop the record and
26 interpret the medical evidence."). Nonetheless, it remains the
27 plaintiff's burden to produce evidence in support of his
28 disability claims. See Mayes v. Massanari, 276 F.3d 453, 459

1 (9th Cir. 2001). “[A]mbiguous evidence, or the ALJ’s own finding
2 that the record is inadequate to allow for proper evaluation of
3 the evidence, triggers the ALJ’s duty to conduct an appropriate
4 inquiry.” McLeod v. Astrue, 640 F.3d 881, 885 (9th Cir. 2011)
5 (internal quotation marks omitted); accord Tonapetyan v. Halter,
6 242 F.3d 1144, 1150 (9th Cir. 2001). “The ALJ may discharge this
7 duty in several ways, including: subpoenaing the claimant’s
8 physicians, submitting questions to the claimant’s physicians,
9 continuing the hearing, or keeping the record open after the
10 hearing to allow supplementation of the record.” Tonapetyan, 242
11 F.3d at 1150. The ALJ’s duty to develop the record is
12 heightened, moreover, when the claimant may be mentally ill and
13 thus unable to protect his own interests. Id.; see also Dervin
14 v. Astrue, 407 F. App’x 154, 156 (9th Cir. 2010).

15 Here, the ALJ specifically found that the record was
16 “unclear” and “lack[ed]” information regarding Dr. Patel’s
17 treatment relationship with Plaintiff, and that the doctor’s
18 opinion therefore could not be fully credited. The ALJ’s
19 explicit finding that the record was inadequate triggered his
20 duty to develop it. See McLeod, 640 F.3d at 885. The ALJ failed
21 to discharge that duty by gathering more evidence or leaving the
22 record open, and instead he simply rejected most of Dr. Patel’s
23 opinion. In doing so, the ALJ erred. See Smolen, 80 F.3d at
24 1288 (finding that “[i]f the ALJ thought he needed to know the
25 basis of [a physician’s] opinions in order to evaluate them, he
26 had a duty to conduct an appropriate inquiry, for example, by
27 subpoenaing the physicians or submitting further questions to
28 them” or by “continu[ing] the hearing to augment the record”);

1 Dervin, 407 F. App'x at 156 (noting that "[i]n cases of chronic
2 mental impairment . . . the ALJ is required to gather all records
3 of past treatment"); § 416.912(d) ("Before we make a
4 determination that you are not disabled, we will develop your
5 complete medical history for at least the 12 months preceding the
6 month in which you file your application").

7 The ALJ's failure to further develop the record, moreover,
8 does not appear to have been harmless. See Molina v. Astrue, 674
9 F.3d 1104, 1115 (9th Cir. 2012) (error harmless when
10 "inconsequential to the ultimate disability determination").
11 Plaintiff reported in a "Disability Report - Appeal" that he
12 first saw Dr. Patel on June 13, 2011, and that his next
13 appointment was scheduled for July 12. (AR 243.) At the June
14 11, 2012 hearing, moreover, Plaintiff and his mother both
15 testified that Plaintiff saw Dr. Patel every month. (See AR 41,
16 46-47, 51.) Thus, it appears that Dr. Patel likely saw Plaintiff
17 at least a few times before rendering his September 19, 2011
18 opinion. Moreover, the other record evidence is not inconsistent
19 with Dr. Patel's opinion, as it shows that Plaintiff was
20 involuntarily hospitalized and treated for his psychiatric
21 conditions three times: August 11 to 13, 2009 (see AR 296-346),⁸
22 November 11 to 12, 2010 (see AR 265-73), and July 25 to August 5,
23 2011 (see AR 392-98, 400-22). Plaintiff's diagnoses included
24

25 ⁸Following this hospitalization, Plaintiff was discharged to
26 Cedar House, apparently a rehabilitation facility. (See AR 296-
27 97; see also 283-84 (Aug. 27, 2009 note stating that Plaintiff
28 needed refill of medication and was living at "Cedar House
rehab".) The record does not contain any records from Cedar
House.

1 psychotic disorder (AR 296, 303, 395), rule out schizoaffective
2 disorder (AR 267), cannabis abuse (id.; see also AR 303, 401),
3 bipolar I disorder (AR 267), schizophrenia "paranoid type" (AR
4 401), and rule out "[o]ther substance induced Psychotic disorder"
5 (AR 303). Dr. Rodriguez, moreover, examined Plaintiff and found
6 limitations similar to those found by Dr. Patel, such as an
7 inability to understand, remember, or carry out simple one- or
8 two-step job instructions and moderate to severe limitations on
9 his ability to maintain concentration, attention, persistence,
10 and pace; adapt to common workplace stresses; maintain regular
11 attendance; and perform work activities without special or
12 additional supervision. (AR 372-73; compare AR 424-25 (Dr.
13 Patel's finding that Plaintiff had "[n]o useful ability to
14 function" in areas including maintaining attention for two hours,
15 sustaining ordinary routine without special supervision,
16 completing normal workweek without interruption, performing at
17 consistent pace, and responding to changes in routine work
18 setting and that he was "[u]nable to meet competitive standards"
19 in areas including understanding and remembering very short and
20 simple instructions, maintaining regular attendance, and dealing
21 with normal work stress).

22 Moreover, other than the lack of evidence regarding Dr.
23 Patel's treatment relationship with Plaintiff, the ALJ provided
24 no reason for discounting his opinion. Indeed, even if Dr. Patel
25 were an examining physician who had no treatment relationship at
26 all with Plaintiff, the ALJ still would have been obligated to
27 provide at least specific and legitimate reasons for discounting
28 his opinion, and more likely clear and convincing reasons given

1 that little in the record contradicted it. Thus, this case must
2 be remanded so that the ALJ can further develop the record and
3 reassess the opinion of treating physician Dr. Patel.

4 D. Dr. Rodriguez's Opinion

5 Plaintiff contends that the ALJ "failed to provide specific
6 and legitimate reasons, supported by substantial evidence, for
7 implicitly rejecting [Dr. Rodriguez's] opinions that [P]laintiff
8 is moderately to severely limited in his ability to maintain
9 regular attendance in the work place and perform work activities
10 on a consistent basis as well as to perform work activities
11 without special or additional supervision." (J. Stip. at 15.)
12 Indeed, it appears that the ALJ may have erred in assessing Dr.
13 Rodriguez's decision. The ALJ rejected Dr. Rodriguez's opinion
14 that Plaintiff could not understand, remember, or carry out
15 simple one- or two-step job instructions based solely on
16 Plaintiff's aunt's statements that he could make a sandwich, use
17 a microwave, and cook eggs. (AR 20; see also AR 190.) Even
18 assuming that is a legally sufficient reason, the ALJ failed to
19 give any reasons for rejecting Dr. Rodriguez's other findings,
20 such as his conclusion that Plaintiff was "moderately to
21 severely" limited in his ability to adapt to common workplace
22 stresses and perform work activities without special or
23 additional supervision. (See AR 372-73.) Because the Court
24 remands this case for further development of the record, however,
25 it need not resolve this issue. On remand, the ALJ will
26 necessarily reassess Dr. Rodriguez's opinion in light of the
27 additional evidence, which will presumably include Dr. Patel's
28 treatment notes.

1 E. Remand for Further Proceedings Is Appropriate

2 When, as here, an ALJ errs in denying benefits, the Court
3 generally has discretion to remand for further proceedings. See
4 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). When no
5 useful purpose would be served by further administrative
6 proceedings, however, or when the record has been fully
7 developed, it is appropriate under the "credit-as-true" rule to
8 direct an immediate award of benefits. Id. at 1179 (noting that
9 "the decision of whether to remand for further proceedings turns
10 upon the likely utility of such proceedings"); see also Garrison
11 v. Colvin, 759 F.3d 995, 1019-20 (9th Cir. 2014).

12 Under the credit-as-true framework, three circumstances must
13 be present before the Court may remand to the ALJ with
14 instructions to award benefits: "(1) the record has been fully
15 developed and further administrative proceedings would serve no
16 useful purpose; (2) the ALJ has failed to provide legally
17 sufficient reasons for rejecting evidence, whether claimant
18 testimony or medical opinion; and (3) if the improperly
19 discredited evidence were credited as true, the ALJ would be
20 required to find the claimant disabled on remand." Garrison, 759
21 F.3d at 1020. When, however, the ALJ's findings are so
22 "insufficient" that the Court cannot determine whether the
23 rejected testimony should be credited as true, the Court has
24 "some flexibility" in applying the credit-as-true rule. Connett
25 v. Barnhart, 340 F.3d 871, 876 (9th Cir. 2003); see also
26 Garrison, 759 F.3d at 1020 (noting that Connett established that
27 credit-as-true rule may not be dispositive in all cases). This
28 flexibility should be exercised "when the record as a whole

1 creates serious doubt as to whether the claimant is, in fact,
2 disabled within the meaning of the Social Security Act.”

3 Garrison, 759 F.3d at 1021.

4 Here, under Connett, remand for further proceedings is
5 appropriate. As discussed, the ALJ failed to fully develop the
6 record, and further administrative proceedings are required to
7 allow him to do so. After obtaining additional evidence, which
8 presumably will include Dr. Patel’s treatment notes, the ALJ must
9 reassess the medical-opinion evidence. Based on the current
10 record, the Court cannot determine whether either medical opinion
11 should be credited as true or whether Plaintiff is in fact
12 disabled. Moreover, the medical evidence indicates that
13 Plaintiff’s conditions may stem from substance abuse, in which
14 case he would not be entitled to benefits. (See, e.g., AR 372
15 (Dr. Rodriguez finding unclear whether “psychiatric condition is
16 drug induced”); AR 303 (diagnosing possible “[o]ther substance
17 induced Psychotic disorder”); see also 42 U.S.C. § 423(d)(2)(C)
18 (claimant not disabled “if alcoholism or drug addiction would
19 . . . be a contributing factor material to the Commissioner’s
20 determination that the individual is disabled”). If on remand
21 the ALJ determines that Plaintiff is disabled, he must then
22 assess whether Plaintiff would still be found disabled if he
23 stopped abusing substances. See Bustamante v. Massanari, 262
24 F.3d 949, 955 (9th Cir. 2001) (“If the ALJ finds that the
25 claimant is disabled and there is ‘medical evidence of [his or
26 her] drug addiction or alcoholism,’ then the ALJ should proceed
27 under §§ 404.1535 or 416.935 to determine if the claimant ‘would
28 still [be found] disabled if [he or she] stopped using alcohol or

1 drugs.'" (alterations in original)); § 416.935 ("If we find that
2 you are disabled and have medical evidence of your drug addiction
3 or alcoholism, we must determine whether your drug addiction or
4 alcoholism is a contributing factor material to the determination
5 of disability").

6 **VI. CONCLUSION**

7 Consistent with the foregoing, and pursuant to sentence four
8 of 42 U.S.C. § 405(g),⁹ IT IS ORDERED that judgment be entered
9 REVERSING the decision of the Commissioner, GRANTING Plaintiff's
10 request for remand, and REMANDING this action for further
11 proceedings consistent with this Memorandum Opinion. IT IS
12 FURTHER ORDERED that the Clerk serve copies of this Order and the
13 Judgment on counsel for both parties.

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17 DATED: December 22, 2014

JEAN ROSENBLUTH

JEAN ROSENBLUTH
U.S. Magistrate Judge

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27 ⁹This sentence provides: "The [district] court shall have
28 power to enter, upon the pleadings and transcript of the record,
a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."