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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

J. GUADALUPE MARTINEZ-
HIGUERA,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. ED CV 15-00705-RAO

**MEMORANDUM OPINION AND
ORDER**

I.

INTRODUCTION

J. Guadalupe Martinez-Higuera (“Plaintiff”) challenges the Commissioner’s denial of his applications for a period of disability and disability insurance benefits (“DIB”) and supplemental security income (“SSI”) following an administrative law judge’s (“ALJ”) decision that he was not under a disability as defined in the Social Security Act. Administrative Record (“AR”) . For the reasons stated below, the decision of the Commissioner is REVERSED and the action is REMANDED for further proceedings consistent with this Order.

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II.
PROCEEDINGS BELOW

On November 14, 2011, Plaintiff filed a Title II application for DIB, alleging disability beginning October 1, 2010 (his alleged onset date (“AOD”)). AR 26. Plaintiff also filed a Title XVI application for SSI on November 14, 2011, alleging the same AOD. *Id.* Plaintiff’s applications were denied initially on May 10, 2012, and upon reconsideration on November 8, 2012. *Id.* On November 21, 2012, Plaintiff filed a written request for hearing, which was held on June 24, 2013. *Id.* Represented by counsel, Plaintiff appeared and testified at the hearing with the assistance of a Spanish interpreter, as did an impartial vocational expert (“VE”). *Id.* at 26, 42. On July 15, 2013, the ALJ found that Plaintiff had not been under a disability, as defined in the Social Security Act,¹ from his AOD through the decision date. *Id.* at 34. The ALJ’s decision became the final decision of the Commissioner when the Appeals Council denied Plaintiff’s request for review. *Id.* at 1-3. Plaintiff filed the instant action in this Court on April 10, 2015. Dkt. No. 1.

The ALJ followed a five-step sequential evaluation process to assess whether Plaintiff was disabled. 20 C.F.R. §§ 404.1520, 416.920; *see also Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged in substantial gainful activity since the AOD. AR 28. At **step two**, the ALJ found that Plaintiff has the following severe impairments: questionable nerve damage to the right upper extremity; disc bulging in the cervical spine; and hypertension. *Id.* At **step three**, the ALJ found that Plaintiff “does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix
///

¹ Persons are “disabled” for purposes of receiving Social Security benefits if they are unable to engage in any substantial gainful activity owing to a physical or mental impairment expected to result in death, or which has lasted or is expected to last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 1.” *Id.* at 29 (citations omitted). At **step four**, the ALJ found that Plaintiff has the
2 residual functional capacity (“RFC”) to:

3 [P]erform a range of medium work as defined in 20 C.F.R.
4 404.1567(c) and 416.967(c) which permits lifting 50 pounds
5 occasionally and 25 pounds frequently with pushing and pulling
6 within those weight limits; standing and/or walking for 6 hours
7 and sitting for 6 hours. He can frequently climb ramps and
8 stairs and occasionally climb ladders, ropes and scaffolds; and
9 frequently balance, stoop, kneel, crouch and crawl. He has no
10 restriction with the left upper extremity for reaching, but with
11 the right upper extremity, he is limited to frequent reaching. He
12 can frequently perform gross manipulation (handling) and
13 fingering with the right upper extremity and has no limits with
14 the left upper extremity. He can frequently feel with the right
15 upper extremity.

16 *Id.* at 30. Based on his RFC and the VE’s testimony, the ALJ found that Plaintiff is
17 capable of performing past relevant work as a maintenance worker and cleaner. *Id.*
18 at 33. Accordingly, the ALJ did not proceed to **step five**, and instead, found that
19 Plaintiff had not been under a disability from his AOD through the date of the
20 ALJ’s decision. *Id.*

21 III.

22 STANDARD OF REVIEW

23 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
24 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
25 supported by substantial evidence, and if the proper legal standards were applied.
26 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’
27 means more than a mere scintilla, but less than a preponderance; it is such relevant
28 evidence as a reasonable person might accept as adequate to support a conclusion.”
Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.
Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
evidence requirement “by setting out a detailed and thorough summary of the facts

1 and conflicting clinical evidence, stating his interpretation thereof, and making
2 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

3 “[T]he Commissioner's decision cannot be affirmed simply by isolating a
4 specific quantum of supporting evidence. Rather, a court must consider the record
5 as a whole, weighing both evidence that supports and evidence that detracts from
6 the Secretary's conclusion.” *Auckland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
7 2001) (citations and internal quotations omitted). “‘Where evidence is susceptible
8 to more than one rational interpretation,’ the ALJ's decision should be upheld.”
9 *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v.*
10 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins*, 466 F.3d at 882
11 (“If the evidence can support either affirming or reversing the ALJ's conclusion, we
12 may not substitute our judgment for that of the ALJ.”). The Court may review only
13 “the reasons provided by the ALJ in the disability determination and may not affirm
14 the ALJ on a ground upon which he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630
15 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

16 IV.

17 DISCUSSION

18 Plaintiff argues that the ALJ’s decision is not supported by substantial
19 evidence that Plaintiff retains the RFC to perform medium exertion. *See*
20 Memorandum in Support of Plaintiff’s Complaint (“Pl. Memo.”) at 3-11, Dkt. No.
21 23. The Commissioner contends that this Court should uphold the ALJ’s findings
22 which were based on Plaintiff’s objective findings and upon an evaluation of his
23 symptoms. *See* Memorandum in Support of Defendant’s Answer (“Def. Memo.”)
24 at 2-6, Dkt. No. 24.

25 A. Applicable Law

26 A district court must uphold an ALJ’s RFC assessment when the ALJ has
27 applied the proper legal standard and substantial evidence in the record as a whole
28 supports the decision. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).

1 The ALJ must consider all of the medical evidence in the record and “explain in
2 [his or her] decision the weight given to . . . [the] opinions from treating sources,
3 nontreating sources, and other nonexamining sources.” 20 C.F.R.
4 §§ 404.1527(e)(2)(ii), 416.927(e)(2)(ii). In making an RFC determination, the ALJ
5 may consider those limitations for which there is support in the record and need not
6 consider properly rejected evidence or subjective complaints. *See Bayliss*, 427 F.3d
7 at 1217 (upholding ALJ’s RFC determination because “the ALJ took into account
8 those limitations for which there was record support that did not depend on
9 [claimant’s] subjective complaints”). The Court must consider the ALJ’s decision
10 in the context of “the entire record as a whole,” and if the “evidence is susceptible
11 to more than one rational interpretation, the ALJ’s decision should be upheld.”
12 *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (internal
13 quotation marks and citation omitted).

14 An ALJ does not need to adopt any specific medical source’s RFC opinion as
15 his or her own. *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) (“It is clear
16 that it is the responsibility of the ALJ, not the claimant’s physician, to determine
17 residual functional capacity.”); 20 C.F.R. §§ 404.1546(c), 416.946(c) (“[T]he
18 administrative law judge . . . is responsible for assessing your residual functional
19 capacity.”). “The ALJ need not accept the opinion of any physician, including a
20 treating physician, if that opinion is brief, conclusory, and inadequately supported
21 by clinical findings.” *See Batson*, 359 F.3d at 1195; *Thomas v. Barnhart*, 278 F.3d
22 947, 957 (9th Cir. 2002).

23 B. Relevant Facts

24 In April or May, 2010, Plaintiff fell and injured his right shoulder, elbow,
25 wrist, neck, and hand while at work. AR 31, 760. Plaintiff was seen by various
26 doctors and other sources. *Id.* at 31. A review of Plaintiff’s voluminous medical
27 records shows that Plaintiff’s primary pain complaint is pain in his right upper
28 extremity, particularly the right shoulder, elbow, wrist and hand, resulting from the

1 work injury he suffered in 2010. *See, e.g., id.* at 43, 45, 230, 243, 420, 760, 790,
2 1124. With respect to the medical records, a medical report prepared by Dr.
3 Frykman, who performed an orthopedic/neurological consultation in this matter,
4 noted that the medical records were approximately two-inches thick and required
5 two hours of professional time to review.² *Id.* at 796.

6 In the ALJ's discussion of Plaintiff's RFC, the ALJ noted that an "overview
7 of the claimant's extensive medical record (most of which are in connection with
8 his workers' compensation claim) documented his complaints of neck and right
9 upper extremity pain" stemming from Plaintiff's work injury in May 2010:

10 The record shows that the claimant has been examined or treated
11 by a multitude of physicians, but notably, his treatment to date
12 has been conservative in nature, to include medications, physical
13 therapy, and shockwave treatment to his upper extremity.

14 . . .

15 The claimant's pain complaints have been investigated with a
16 number of diagnostic studies. These include an MRI of the
17 cervical spine showing disc bulging at multiple levels (. . .). A
18 study of the right shoulder demonstrated evidence of supra and
19 infraspinatus tendinosis, acromioclavicular joint disease and
20 glenohumeral chondromalacia (. . .). MRI of the right elbow
21 demonstrated common flexor tendinosis and medical
22 epicondylitis. Also of record are EMG and nerve conduction
23 studies of the upper extremities which contain inconsistent
24 findings. For example, a study in December 2010 indicated
25 findings compatible with mild right carpal tunnel syndrome (. . .).

26
27 ² Dr. Frykman examined Plaintiff on November 20, 2012, the same date of his
28 report and medical records review. AR 787-798. Dr. Frykman's report is not
discussed in the ALJ's decision.

1 However, a later study in September 2012 was entirely normal (. .
2 .), while an electrodiagnostic evaluation completed in January
3 2013 showed evidence of right carpal tunnel syndrome (. . .).
4 Whatever the etiology of the upper extremity complaints, the
5 examination findings of record reflect that the claimant maintains
6 good functioning of his hands and upper extremity. While the
7 physical examination findings of record have included
8 tenderness, decreased sensation, slight swelling and erythema and
9 a positive Phalen's sign in the right wrist (. . .), the claimant still
10 maintains good mobility in his hands in terms of finger
11 approximation and in making a fist and has shown no joint
12 deformity or swelling; no thenar or hypothenar atrophy; intact
13 reflexes; and normal motor strength rated at 5/5/ (. . .).

14 AR 31.

15 The ALJ's decision then proceeded to discuss the opinion evidence in the
16 record.

17 The ALJ accorded no weight to the opinions of Dr. La, Plaintiff's
18 chiropractor, and Dr. Mirzaians, a chiropractor who performed a functional capacity
19 evaluation of Plaintiff. AR 32. Dr. La opined that Plaintiff was temporarily totally
20 disabled; Dr. Mirzaians opined that Plaintiff should not lift more than 21 pounds.
21 *See, e.g.,* AR 32, 264, 930.

22 The ALJ gave little weight to the opinion of Dr. Glancz, an orthopedic
23 agreed medical examiner, who opined that Plaintiff was able to return to light work
24 lifting up to 15 pounds and twisting with his right wrist. AR 32. Dr. Glancz's
25 report, dated August 13, 2012, contained a four-page summary of Plaintiff's
26 medical records that he reviewed as part of his evaluation of Plaintiff, records
27 dating from October 2010 through March 2012. *Id.* at 761-65. After examining
28 Plaintiff, Dr. Glancz concluded:

1 It is my opinion however that this claimant is not temporarily
2 disabled, and he is able to return to light work lifting up to 15
3 pounds and twisting with his right wrist until I receive the final
4 reports.

5 *Id.* at 770.

6 In a supplemental report dated March 30, 2013, Dr. Glancz noted that he had
7 received and reviewed reports from several other doctors and notes an
8 inconsistency in the findings of two separate EMG and nerve conduction studies.
9 AR 1124. Dr. Glancz opined that “[t]he only way to [] rectify the situation would
10 be to order a repeat EMG and nerve conduction study by a mutually agreeable
11 neurologist and accept his or her findings.” *Id.* Dr. Glancz concluded that he was
12 not changing his opinion as expressed in his earlier report. *Id.*

13 In giving little weight to Dr. Glancz, the ALJ found:

14 [Dr. Glancz] opined that the claimant was able to return to light
15 work lifting up to 15 pounds and twisting with his right wrist [].
16 The existence of an impairment restricting lifting to this degree is
17 given little weight as it is inconsistent with the specific clinical
18 findings in his report. In this regard, Dr. Glancz reported that the
19 claimant had normal motor control of his shoulders, forearms,
20 elbows, wrists and hands without evidence of weakness or
21 atrophy in any muscle group; that perception to pinprick, light
22 touch and vibration were without deficits; that peripheral pulses
23 were equal and of normal amplitude; that there were no
24 varicosities or skin rashes; that reflexes in the upper extremities
25 were normal; and that there was slight pain over the right
26 shoulder and elbow areas and a positive Tinel’s sign. In his later
27 examination in March 2013, Dr. Glancz did note conflicting
28 EMG and nerve conduction studies to the claimant’s upper

1 extremities of a normal study as opposed to one showing a right
2 carpal tunnel syndrome and appears to question the presence of a
3 true carpal tunnel syndrome. This diminishes the overall
4 persuasiveness of his opinion.

5 AR 33.

6 The ALJ gave the greatest weight to Dr. MacArthur, consultative orthopedic
7 examiner, who assessed Plaintiff with a medium work RFC. AR 33. Dr.
8 MacArthur's report, dated April 26, 2012, indicates that he reviewed one medical
9 record for Plaintiff, namely, an x-ray report of the lumbar spine from Desert
10 Medical Center dated September 14, 2011. AR 494. After examining Plaintiff,
11 Dr. MacArthur concluded:

12 Right arm possible mild reflex sympathetic dystrophy due to
13 slight swelling and erythema of the right hand. The claimant
14 does have hypersensitivity. He does not have change in
15 temperature or moisture and there is definitely a non-organic
16 component to this right arm pain as well based on significant
17 mismatch between active [and] passive range of motion of the
18 right shoulder. I would expect mild functional deficit from this
19 condition.

20 The claimant can lift and/or carry (including upward pulling)
21 50 pounds occasionally and 25 pounds frequently.

22 AR 498.

23 With respect to Dr. MacArthur's examination, the ALJ's decision
24 stated:

25 In April 2012, the claimant had a consultative orthopedic
26 examination with Dr. Robert MacArthur (. . .). His examination
27 found slight swelling and erythema of the right hand but with
28 essentially normal motor strength in both hands. The claimant

1 did not restrict the use of either hand during the evaluation and
2 was able to approximate his fingers, make a fist and manipulate a
3 pen without difficulty. Dr. MacArthur assessed the claimant with
4 a generally medium functional capacity.

5 AR 33. The ALJ gave Dr. MacArthur's opinion "the greatest weight, finding the
6 rationale expressed by this physician to be consistent with the treatment record, the
7 objective findings, the other opinion evidence, and the record as a whole. As such,
8 it forms the basis for the claimant's residual functional capacity." *Id.*

9 C. Analysis

10 Plaintiff contends that in determining his RFC, the ALJ erred by adopting the
11 opinion of Dr. MacArthur, the Commissioner's consultative examiner, because Dr.
12 MacArthur diagnosed Plaintiff with reflex sympathetic dystrophy and lumbar spine
13 impairment and based his determination that Plaintiff could perform medium work
14 on these diagnoses. Pl. Memo. at 6-7. Plaintiff argues, first, that Dr. MacArthur
15 did not review the objective evidence, and second, that no other physician in the
16 record diagnosed or suggested a diagnosis of reflex sympathetic dystrophy. *Id.* at 7.
17 Plaintiff also highlights that no other examining physician or source who rendered
18 an opinion on Plaintiff's functional capacity opined that Plaintiff is capable of
19 performing medium exertion. *Id.* at 9.

20 Defendant responds that Plaintiff's focus on Dr. MacArthur's diagnosis is a
21 red herring, because the ALJ based his RFC findings upon Plaintiff's objective
22 findings and an evaluation of the extent of his symptoms, and not on a specific
23 diagnosis. Def. Memo. at 2-5.

24 The Court finds that the ALJ's RFC assessment is not supported by
25 substantial evidence. As noted above, Plaintiff's chief pain complaints arise from
26 the injury to his right shoulder, arm, elbow, wrist and hand. Yet in reaching his
27 opinion of Plaintiff's functional capacity, Dr. MacArthur only reviewed one
28 medical report and that report, an x-ray of the lumbar spine -- a different area of

1 Plaintiff's body from where his chief pain complaints stem -- undercuts Dr.
2 MacArthur's assessment of Plaintiff's functional capacity. The sparseness of the
3 medical record reviewed by Dr. MacArthur stands in contrast to the more detailed
4 and seemingly thorough review of Plaintiff's medical records performed by other
5 medical sources, including Dr. Glancz.

6 Further, Dr. MacArthur's opinion is the only opinion supporting the ALJ's
7 RFC assessment. The ALJ rejected or gave little weight to the opinions of other
8 doctors or sources who opined that Plaintiff has a more restrictive RFC. While the
9 ALJ was not required to give significant weight to Dr. La's and Dr. Mirzaian's
10 opinions as chiropractors, *see* 20 C.F.R. §§ 404.1513(a) & (d); *Gomez v. Chater*, 74
11 F.3d 967, 970-71 (9th Cir. 1996), *superseded by regulation on other grounds as*
12 *stated in Boyd v. Colvin*, 524 Fed. App'x 334 (9th Cir. 2013) (opinions from "other
13 sources" given less weight than "acceptable medical sources"), the functional
14 capacity assessment of Dr. Glancz, which the ALJ gave little weight, is the result of
15 clinical findings and a more thorough review of Plaintiff's medical records. While
16 Dr. MacArthur's opinion is based on his clinical findings, it appears that Dr.
17 MacArthur did not review any of the medical records related to Plaintiff's right
18 upper extremity pain. On this record, the Court cannot find substantial evidence to
19 support the ALJ's RFC assessment.

20 D. Remand is Appropriate

21 The Court has discretion to decide whether to remand for further proceedings
22 or order an immediate award of benefits. *Harman v. Apfel*, 211 F.3d 1172, 1175-78
23 (9th Cir. 2000). Under the credit-as-true rule, the court should remand for an award
24 of benefits if three conditions are met: (1) the record is fully developed and further
25 administrative proceedings would serve no useful purpose; (2) the ALJ has failed to
26 provide legally sufficient reasons for rejecting evidence, be it claimant testimony or

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1 medical opinion; and (3) if such evidence were credited as true the ALJ would have
2 to find the claimant disabled. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir.
3 2014).

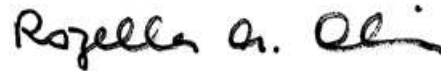
4 The Court finds that the record is not fully developed with respect to the
5 issue of Plaintiff's RFC assessment and that further administrative proceedings
6 would be useful to allow the ALJ the opportunity to develop the record.³

7 V.

8 **CONCLUSION**

9 IT IS ORDERED that Judgment shall be entered REVERSING the decision
10 of the Commissioner denying benefits, and REMANDING the matter for further
11 proceedings consistent with this Order.

12 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
13 Order and the Judgment on counsel for both parties

14 

15 DATED: December 30, 2015

16 _____
17 ROZELLA A. OLIVER
18 UNITED STATES MAGISTRATE JUDGE

19 **NOTICE**

20 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
21 LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**

22 _____
23 ³ Because the Court has determined that remand is appropriate, it need not reach the
24 issue whether Plaintiff is disabled under the Medical-Vocational Guidelines (the
25 "Grids"). However, the Court notes that the Commissioner's factual claim that
26 Plaintiff can communicate in English because "at the hearing, he appeared without
27 an interpreter" (Def. Memo. at 6) is unsupported by the record. The transcript of
28 the hearing before the ALJ shows that Plaintiff used the services of an interpreter.
AR 42 ("The oath was administered to the interpreter."). The record also contains
additional information showing that Plaintiff is non-English speaking and requires
the assistance of a Spanish interpreter. *See, e.g., id.* at 245, 256, 787.