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

TIMOTHY S. GIBSON,  
Plaintiff,  
v.  
NANCY A. BERRYHILL<sup>1</sup>, *Acting  
Commissioner of Social Security*,  
Defendant.

Case No. ED CV 16-1293 JCG  
**MEMORANDUM OPINION AND  
ORDER**

Timothy S. Gibson (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his application for disability benefits. Plaintiff contends that the Administrative Law Judge (“ALJ”) erred by improperly assessing his credibility. (*See* Joint Stip. at 4, 11-17, 20.) The Court agrees with Plaintiff for the reasons discussed below.

A. The ALJ Improperly Assessed Plaintiff’s Credibility

As a rule, absent a finding of malingering, an ALJ can reject a claimant’s subjective complaints by “expressing clear and convincing reasons for doing so”

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<sup>1</sup> The Court **DIRECTS** the Clerk of Court to update the case caption to reflect Nancy A. Berryhill as the proper Defendant. *See* Fed. R. Civ. P. 25(d).

1 supported by substantial evidence. *Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030,  
2 1040 (9th Cir. 2003); *Brown-Hunter v. Colvin*, 806 F.3d 487, 489, 492-93 (9th Cir.  
3 2015).

4 Here, first, the ALJ issued a general finding that failed to (1) identify what  
5 testimony he found not credible, and (2) tie that testimony to the evidence he believed  
6 undermined Plaintiff's complaints.<sup>2</sup> (*See* AR at 26-28); *Brown-Hunter*, 806 F.3d at  
7 493 ("General findings are insufficient; rather, the ALJ must identify what testimony is  
8 not credible and what evidence undermines the claimant's complaints." (citation and  
9 internal quotation marks omitted)).

10 Second, the ALJ's statement that Plaintiff's credibility was only partially  
11 credible "for the reasons discussed herein," followed by a summary of the testimony,  
12 function reports, and medical evidence, is insufficient. (AR at 26); *see Brown-Hunter*,  
13 806 F.3d at 494 (credibility determination insufficient when ALJ "simply state[s] [his]  
14 non-credibility conclusion and then summarize[s] the medical evidence").

15 Third, the ALJ erred by making a boilerplate finding that Plaintiff's symptom  
16 statements were "not credible to the extent those statements are inconsistent with the  
17 residual functional capacity assessment herein." (AR at 28); *Laborin v. Berryhill*, 867  
18 F.3d 1151, 1152-54 (9th Cir. 2017) (ALJ errs by issuing boilerplate statement  
19 discrediting testimony to the extent it was "inconsistent with the above residual  
20 functional capacity assessment.").

21 Thus, the ALJ improperly assessed Plaintiff's credibility<sup>3</sup>.

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23 <sup>2</sup> To the extent it can be gleaned that the ALJ discounted Plaintiff's mental health complaints  
24 due to a lack of treatment records (*see* Administrative Record ("AR") at 27), or his physical  
25 complaints due to a similar lack of objective evidence, that reason cannot, by itself, support the  
26 credibility determination. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (lack of  
27 objective medical evidence supporting claimant's symptoms and limitations cannot, by itself, support  
28 a credibility finding).

<sup>3</sup> Contrary to the Commissioner's assertion, the ALJ's reference to Plaintiff's work history and  
daily activities were not reasons provided by the ALJ to support the credibility determination. (Joint  
Stip. at 18-19.) The Court agrees with Plaintiff that the ALJ simply mentioned both in his summary  
of Plaintiff's testimony. (*Id.* at 20; AR at 26-27); *Marsh v. Colvin*, 792 F.3d 1170, 1172 (9th Cir.

1           B.     Remand is Warranted

2           With error established, this Court has discretion to remand or reverse and award  
3 benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no useful  
4 purpose would be served by further proceedings, or where the record has been fully  
5 developed, it is appropriate to direct an immediate award of benefits. *Benecke v.*  
6 *Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004). But where outstanding issues must be  
7 resolved before a determination can be made, or where the record does not make clear  
8 that proper evaluation of the evidence would require a disability finding, remand is  
9 appropriate. *Id.* at 594.

10           Here, in light of the error, the ALJ shall reconsider Plaintiff’s subjective  
11 complaints and the resulting functional limitations, and either credit his testimony or  
12 provide clear and convincing reasons, supported by substantial evidence, for rejecting  
13 it. *See Benton*, 331 F.3d at 1040. Further, if the ALJ rejects Plaintiff’s allegations, he  
14 must specifically identify what testimony is not credible, and what evidence  
15 undermines his complaints. *See Brown-Hunter*, 806 F.3d at 493.

16           Finally, the Court is mindful that “the touchstone for an award of benefits is the  
17 existence of a disability, not the agency’s legal error.” *Id.* at 495. Because it is  
18 unclear, on this record, whether Plaintiff is in fact disabled, remand here is on an “open  
19 record.” *Id.*; *Burrell v. Colvin*, 775 F.3d 1133, 1141-42 (9th Cir. 2014). Given the  
20 necessity of remand, the parties may freely take up all issues raised in the Joint  
21 Stipulation, including Plaintiff’s contention that the AR was incomplete (Joint Stip. at  
22 4-7, 10-11), and any other issues relevant to resolving Plaintiff’s claim of disability,  
23 before the ALJ. Either party may address those points in the remanded, open  
24 proceeding.

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27 2015) (reviewing court may only affirm agency action on grounds invoked by agency); *Orn v. Astrue*,  
28 495 F.3d 625, 630 (9th Cir. 2007) (ALJ must make “specific findings related to [the daily] activities  
and their transferability to conclude that a claimant’s daily activities warrant an adverse credibility  
determination”).

1 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered  
2 **REVERSING** the decision of the Commissioner denying benefits and **REMANDING**  
3 the matter for further administrative action consistent with this decision.  
4

5 DATED: January 10, 2018

6   
7 Hon. Jay C. Gandhi  
8 United States Magistrate Judge

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10 **This Memorandum Opinion and Order is not intended for publication. Nor is it**  
11 **intended to be included or submitted to any online service such as**  
12 **Westlaw or Lexis.**

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