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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

JOEL ALLEN RUTIGLIANO,	)	Case No. EDCV 17-01072-AS
	)	
Plaintiff,	)	<b>MEMORANDUM OPINION AND</b>
	)	
v.	)	<b>ORDER OF REMAND</b>
	)	
NANCY A. BERRYHILL, Acting	)	
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
_____	)	

**PROCEEDINGS**

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21  
22 On May 30, 2017, Plaintiff filed a Complaint seeking review of the  
23 denial of his application for Supplemental Security Income. (Docket  
24 Entry No. 1). The parties have consented to proceed before the  
25 undersigned United States Magistrate Judge. (Docket Entry Nos. 11-12).  
26 On October 17, 2017, Defendant filed an Answer along with the  
27 Administrative Record ("AR"). (Docket Entry Nos. 16-17). The parties  
28 filed a Joint Submission ("Joint Stip.") on February 20, 2018, setting

1 forth their respective positions regarding Plaintiff's claims. (Docket  
2 Entry No. 20).

3  
4 The Court has taken this matter under submission without oral  
5 argument. See C.D. Cal. L.R. 7-15.  
6

7  
8 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**  
9

10 On August 3, 2010, Plaintiff, formerly employed as a tester for a  
11 manufacturing company and a deliverer for a phone book company (see AR  
12 57-58, 172, 179-81), filed an application for Supplemental Security  
13 Income, alleging a disability since October 31, 2005. (AR 148-54).  
14

15  
16 On October 26, 2011 and May 7, 2012, the Administrative Law Judge,  
17 Lawrence I. Duran ("ALJ Duran"), heard testimony from Plaintiff (who was  
18 not represented by counsel), Plaintiff's mother, and vocational experts  
19 Roxanne Minkus and Corinne Porter. (See AR 31-44, 47-83). On May 17,  
20 2012, ALJ Duran issued a decision denying Plaintiff's application. (See  
21 AR 13-24). After determining that Plaintiff had severe impairments --  
22 "left ilioinguinal nerve block; status post inguinal hernia repair;  
23 nystagmus; visual acuity 20/200 in left eye; astigmatism; emmetropia;  
24 asthma; left groin pain; depressive disorder; and anxiety" (AR 15-16)<sup>1</sup>  
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<sup>1</sup> ALJ Duran found that Plaintiff's other impairments -- benign  
right choroidal nevus, seizures, and hypertension -- were nonsevere.  
(AR 15-16).

1 -- but did not have an impairment or combination of impairments that met  
2 or medically equaled the severity of one of the listed impairments (AR  
3 16-18), ALJ Duran found that Plaintiff had the residual functional  
4 capacity ("RFC")<sup>2</sup> to perform heavy work<sup>3</sup> with the following limitations:  
5

6  
7 can lift and/or carry 50 pounds frequently and 100 pounds  
8 occasionally; can stand and/or walk for 6 hours out of an 8-  
9 hour workday with regular breaks; can sit for 6 hours out of  
10 an 8-hour workday with regular breaks; unlimited pushing  
11 and/or pulling; can climb, balance, stoop, kneel, crouch,  
12 crawl, reach, handle and finger frequently; must avoid  
13 concentrated exposure to extreme heat, cold, dust, odors,  
14 fumes and pulmonary irritants; can perform simple work; can  
15 interact with co-workers, supervisors and the general public  
16 occasionally; cannot perform work that requires good visual  
17 acuity; and needs letter to be 1 inch in size, close up.  
18  
19

20 (AR 18-23).  
21

22  
23 ALJ Duran then determined that Plaintiff was not able to perform  
24 any past relevant work (AR 23), but that jobs existed in significant  
25

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26 <sup>2</sup> A Residual Functional Capacity is what a claimant can still do  
27 despite existing exertional and nonexertional limitations. See 20  
C.F.R. § 416.945(a)(1).

28 <sup>3</sup> "Heavy work involves lifting no more than 100 pounds at a time  
with frequent lifting or carrying of objects weighing up to 50 pounds."  
20 C.F.R. § 416.967(d).

1 numbers in the national economy that Plaintiff can perform, and  
2 therefore found that Plaintiff was not disabled within the meaning of  
3 the Social Security Act. (AR 23-24).  
4

5  
6 The Appeals Council denied Plaintiff's request for review of ALJ  
7 Duran's decision on August 22, 2013. (See AR 1-3, 5).  
8

9 Plaintiff filed an action in this Court seeking review of ALJ  
10 Duran's decision. On May 29, 2015, the Court issued an Order and  
11 Judgment remanding the matter to the Commissioner based on ALJ Duran's  
12 failure to fully develop the record with respect to medical records from  
13 treating sources. (See AR 416-25; see also AR 431-35 [July 23, 2015  
14 Appeals Council Order vacating ALJ Duran's decision and remanding case  
15 to administrative law judge]).  
16

17  
18 On July 25, 2016 and December 5, 2016 (on remand), another  
19 Administrative Law Judge ("the ALJ"), Mason Harrell, Jr., heard  
20 testimony from Plaintiff (who was represented by counsel), medical  
21 experts Wayne Kidder and Dr. Glassmeyer, and vocational experts Gregory  
22 Jones and Troy Scott. (See AR 333-57, 360-96). On February 6, 2017, the  
23 ALJ issued a decision denying Plaintiff's application. (See AR 312-23).  
24 After determining that Plaintiff had severe impairments -- "seizure  
25 disorder; history of left inguinal hernia reperi; congenital nystagmus;  
26 history of pulmonary embolism; valvular heart disease; mild degenerative  
27 disc disease of the lumbar spine with lower back pain; alcohol abuse;  
28

1 major depressive disorder; posttraumatic stress disorder (PTSD); and  
2 borderline intellectual functioning" (AR 314) -- but did not have an  
3 impairment or combination of impairments that met or medically equaled  
4 the severity of one of the listed impairments (AR 314-16), the ALJ  
5 found that Plaintiff had the RFC to perform medium work<sup>4</sup> with the  
6 following limitations:

7  
8 can lift, push or pull 25 pounds frequently and 50 pounds  
9 occasionally; can sit, stand or walk for 6 hours out of an 8-  
10 hour workday; can climb ramps and stairs frequently; cannot  
11 climb ropes, scaffolds or ladders; can balance occasionally;  
12 can stoop, kneel, crouch or crawl frequently; cannot read fine  
13 print (smaller than 1/8 of an inch); cannot perform jobs where  
14 distant vision is critical; must avoid exposure to fumes or  
15 gases; can be exposed to "no more air pollutants than found in  
16 an air-conditioned environment"; must avoid dangerous  
17 machinery or working at heights; limited to non-complex and  
18 routine tasks; cannot have interactions with the public; can  
19 perform tasks requiring teamwork only occasionally; and might  
20 miss work once per month.  
21  
22

23  
24 (AR 316-321).  
25  
26  
27

28 <sup>4</sup> "Medium work involves lifting no more than 50 pounds at a time  
with frequent lifting or carrying of objects weighing up to 25 pounds."  
20 C.F.R. § 416.967(c).



1 **PLAINTIFF'S CONTENTIONS**

2  
3 Plaintiff alleges that the ALJ erred in failing to properly: (1)  
4 consider the relevant medical evidence in assessing Plaintiff's RFC; (2)  
5 consider Plaintiff's subjective symptom testimony in assessing  
6 Plaintiff's RFC; and (3) determine whether there are two jobs in the  
7 national economy that Plaintiff can perform. (See Joint Stip. at 6-12,  
8 18-21, 26-28).

9  
10 **DISCUSSION**

11  
12 After consideration of the record as a whole, the Court finds that  
13 Plaintiff's second claim of error warrants a remand for further  
14 consideration. Since the Court is remanding the matter based on  
15 Plaintiff's second claim of error, the Court will not address  
16 Plaintiff's first and third claims of error.

17  
18 **A. The ALJ Did Not Properly Assess Plaintiff's Subjective Symptom**  
19 **Testimony In Determining Plaintiff's Residual Functional Capacity**  
20

21 Plaintiff asserts that the ALJ did not provide legally sufficient  
22 reasons for finding that Plaintiff's statements and testimony about his  
23 symptoms and limitations was not credible. (See Joint Stip. at 18-21).  
24 Defendant asserts that the ALJ provided valid reasons for finding  
25 Plaintiff not credible. (See Joint Stip. at 21-26).

26 //

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1           1.    Legal Standard

2  
3           Where, as here, the ALJ finds that a claimant suffers from a  
4 medically determinable physical or mental impairment that could  
5 reasonably be expected to produce his alleged symptoms, the ALJ must  
6 evaluate "the intensity and persistence of those symptoms to determine  
7 the extent to which the symptoms limit an individual's ability to  
8 perform work-related activities for an adult . . . ." Soc. Sec. Ruling  
9 ("SSR") 16-3p, 2016 WL 1119029, \*2 (Mar. 16, 2016).<sup>6</sup>

10  
11           A claimant initially must produce objective medical evidence  
12 establishing a medical impairment reasonably likely to be the cause of  
13 the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.  
14 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a  
15 claimant produces objective medical evidence of an underlying impairment  
16 that could reasonably be expected to produce the pain or other symptoms  
17 alleged, and there is no evidence of malingering, the ALJ may reject the  
18 claimant's testimony regarding the severity of his or her pain and  
19 symptoms only by articulating specific, clear and convincing reasons for  
20 doing so. Brown-Hunter v. Colvin, 798 F.3d 749, 755 (9th Cir.  
21 2015)(citing Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.  
22 2007)); see also Smolen, supra; Reddick v. Chater, 157 F.3d 715, 722  
23 (9th Cir. 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th  
24 Cir. 1997). Because the ALJ does not cite to any evidence in the record

25  
26  
27           <sup>6</sup>       SSR 16-3p, which superseded SSR 96-7p, is applicable to this  
28 case, because SSR 16-3p, which became effective on March 28, 2016, was  
in effect at the time of the ALJ's February 6, 2017 decision. 20 C.F.R.  
§ 416.929, the regulation on evaluating a claimant's symptoms, including  
pain, has not changed.



1 of malingering, the "clear and convincing" standard stated above  
2 applies.

3  
4 Generalized, conclusory findings do not suffice. See Moisa v.  
5 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004)(the ALJ's credibility  
6 findings "must be sufficiently specific to allow a reviewing court to  
7 conclude the [ALJ] rejected [the] claimant's testimony on permissible  
8 grounds and did not arbitrarily discredit the claimant's testimony")  
9 (citation and internal quotation marks omitted); Holohan v. Massanari,  
10 246 F.3d 1195, 1208 (9th Cir. 2001)(the ALJ must "specifically identify  
11 the testimony [the ALJ] finds not to be credible and must explain what  
12 evidence undermines the testimony"); Smolen, 80 F.3d at 1284 ("The ALJ  
13 must state specifically which symptom testimony is not credible and what  
14 facts in the record lead to that conclusion.").

15  
16 2. The ALJ's Credibility Finding

17  
18 Plaintiff gave the following testimony at the July 25, 2016  
19 administrative hearing (see AR 334-55):

20  
21 He is 40 years old, is not married, and does not have  
22 children. He went to school until the ninth grade, and he  
23 knows how to read, write, and do simple math. He receives  
24 public assistance (CalFresh) to buy food, and is staying at  
25 the residence of a good friend. He last used  
26 methamphetamines in December 2015, and he drinks alcohol but  
27 is trying to quit. He believes he last worked in 2005. He  
28 could no longer work, because of a duodenal hernia surgery  
(although the right side is fine, he still has severe pain in  
his left side), and because he experiences anxiety being  
around people following a house fire in 2008. (See AR 334-  
39, 349).

He has pain in his left groin when he tries to walk any  
kind of distance or when he lifts anything heavy. The pain  
in his left groin has been the same over the last few years.

1 He last experienced such pain when he went shopping seven  
2 days earlier (and he still feels pain). The fire caused  
3 damage to his lungs (including a lung embolism); he had to  
4 have a thoracentesis (the removal of fluid). Although his  
5 breathing has been stable for a couple of years, his lung  
6 issue causes shortness of breath when he is sitting down and  
7 walking. He has had a lifelong problem with both eyeballs  
8 ("certain kind of fog that rolls into [his] eyes"). His  
9 eyeball problem is getting worse; it is happening more  
10 frequently (once or twice a month) and last about 25 minutes.  
11 He also has nystagmus (his eyes shift back and forth), even  
12 though he had surgery when he was a baby. He gets dizzy when  
13 he reads small print. To read he usually uses a magnifying  
14 glass or holds papers close to his face. He has panic  
15 attacks (which cause his lips to go numb), lasting from 25  
16 minutes to 3 hours, at least once a week. When he has a  
17 panic attack outside his house, he tries to get home as fast  
18 as possible. He has a sharp, burning pain ("like a sharp  
19 spoon maybe twisting in [my] spine") caused by a herniated  
20 disc (L3). His back pain, which does not travel up or down,  
21 affects his ability to sit and to lift. He threw out his  
22 back putting on his shoes (bending). He has a tingling  
23 sensation in his right leg. He walks with a limp (he does  
24 not use an assistive device). (See AR 341-55).

25 He has had two nerve blocks in his groin -- the first  
26 one in August 2010 gave him relief; the second one did not  
27 give him relief. When his groin hurts, he has to lie down  
28 and/or take his medication (Dilantin) (which usually works)  
and he sometimes applies heat. He is taking medication for  
his anxiety. In the past he has gone to a psychologist for  
his anxiety, but has not yet gone to a clinic to which he was  
referred (to obtain his medication). He has gone two or  
three times to a spine clinic for his herniatic disc;  
physical therapy and injections have been recommended, and  
then surgery, if necessary. (See AR 337, 345, 353-54).

29 On a typical day he listens to books on the internet.  
30 He tries to do dishes, does his own laundry, buys he own food  
31 (the last time was a week earlier). It is difficult for him  
32 to buy his own food because it means going out in public: "I  
33 feel like people are looking at me, staring at me. It's just  
34 like walking on a tightrope." (His fear of going out in  
35 public started after the house fire.) (See AR 340-41).

36 He is not able to work a job packing shoes in boxes  
37 because of his groin pain (he would have to call somebody for  
38 a ride home) and his panic attacks (he would have to lock  
39 himself in a bathroom or try to make it home). He does not  
40 know whether he could get through one day. (See AR 351-52).

41 After briefly summarizing Plaintiff's testimony (see AR 317), the  
ALJ made the following findings: Plaintiff's "medically determinable

1 impairments could reasonably be expected to produce the above alleged  
2 symptoms; however, the [Plaintiff's] statements concerning the  
3 intensity, persistence and limiting effects of these symptoms are not  
4 entirely consistent with the medical evidence and other evidence in the  
5 record for the reasons explained in this decision. Accordingly, these  
6 statements have been found to affect the claimant's ability to work only  
7 to the extent they can be reasonably be accepted as consistent with the  
8 objective medical and other evidence and other evidence." (Id.).

9  
10 The ALJ discussed the objective evidence concerning Plaintiff's  
11 groin pain, back pain, respiratory issues, cardiovascular issues, vision  
12 issues, neurological issues, and mental issues, and found that (with the  
13 exceptions of Plaintiff's vision issues and inability to be in public)  
14 and found that the objective evidence did not support or corroborate  
15 Plaintiff's testimony of disabling symptoms. (AR 318-19). In  
16 particular, the ALJ found that "other evidence in the record refutes the  
17 severity of the claimant's subjective complaints," stating:

18  
19 As pertinent here, the [Plaintiff's] descriptions of his  
20 activities of daily living are not limited to the extent  
21 expected given his complaints of disabling symptoms and  
22 limitations. According to the claimant, he can manage his  
23 personal hygiene, perform household chores that include  
24 washing dishes, laundry, and cooking, and shop in stores  
25 (Hearing Testimony; Exhibit 3F, p. 4; Exhibit 25F, p. 3).  
26 Although he testified that being in public is difficult for  
27 him, the record notes that he is able to use public transport  
28 (Exhibit 38F, p. 26). He can also read, write, perform  
simple mathematical calculations, and follow audiobooks  
(Hearing Testimony). Accordingly, these examples are other  
factors considered in evaluating the intensity, persistence,  
and limiting effects of the [Plaintiff's] alleged symptoms,  
and they illustrate the claimant's greater ability to  
function in contravention to his claims. (AR 319-20).

1           3.    The ALJ's Assessment of Subjective Symptom Testimony

2           As set forth below, the ALJ failed to provide legally sufficient  
3 reasons for discrediting Plaintiff's testimony about the intensity,  
4 persistence and limiting effects of his pain and symptoms.<sup>7</sup>

5  
6           First, the ALJ's discounting of Plaintiff's testimony about his  
7 symptoms and functional limitations based on his ability to perform  
8 certain daily activities, such as managing his personal hygiene, washing  
9 dishes, doing laundry, cooking, and shopping, was not a clear and  
10 convincing reason.    See Vertigan v. Halter, 260 F.3d 1044, 1050 (9th  
11 Cir. 2001)("[T]he mere fact that a plaintiff has carried on certain  
12 daily activities . . . does not in any way detract from her credibility  
13 as to her overall disability.    One does not need to be 'utterly  
14 incapacitated' in order to be disabled."); Reddick, supra ("Only if the  
15 level of activity were inconsistent with the Claimant's claimed  
16 limitations would these activities have any bearing on Claimant's  
17 credibility.").    While a plaintiff's ability to spend a "substantial  
18 part" of his day engaged in pursuits involving the performance of  
19 physical functions that are transferable to a work setting may be  
20 sufficient to discredit him, here, there is no evidence that Plaintiff  
21 was spending a substantial part of his day engaged in these activities  
22 or that the physical demands of such tasks as managing his personal  
23

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24           <sup>7</sup>    The Court will not consider reasons for discounting  
25 Plaintiff's subjective symptom testimony (see Joint Stip. at 22, 25-26)  
26 that were not given by the ALJ in the decision.    See Connett v.  
27 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)("We are constrained to  
28 review the reasons the ALJ asserts."; citing SEC v. Chenery Corp., 332  
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 hygiene, washing dishes, doing laundry, cooking, and shopping were  
2 transferable to a work setting. See Morgan v. Comm'r of Soc. Sec.  
3 Admin., 169 F.3d 595, 600 (9th Cir. 1999). There is no indication in  
4 the record, and the ALJ did not ask Plaintiff at the administrative  
5 hearing, about the amount of time it took Plaintiff to perform each of  
6 these activities. Although Defendant contends that the ALJ's decision  
7 was supported by Plaintiff's testimony at the October 26, 2011  
8 administrative hearing (see Joint Stip. at 25, citing AR 71-72), it does  
9 not appear that the ALJ considered or relied on that testimony in his  
10 decision. Thus, Plaintiff's admitted daily activities do not constitute  
11 a legally sufficient reason to reject Plaintiff's subjective symptom  
12 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 340  
16 [Plaintiff testified that he tries to wash dishes "when [he] can], 340-  
17 41 [Plaintiff testified that he last went shopping for food a week  
18 earlier], 59-60 [Plaintiff testified at the October 26, 2011  
19 administrative hearing that he sometimes cooks meals but that at that  
20 time he was not able to cook his own meals]. Therefore, the degree to  
21 which Plaintiff could perform such daily activities may not have been  
22 inconsistent with his testimony regarding his symptoms and limitations.  
23 See Reddick, supra; see also Morgan v. Commissioner of Social Sec.  
24 Admin., 169 F.3d 595, 600 (9th Cir. 1999)("If a claimant is able to  
25 spend a substantial part of his day engaged in pursuits involving the  
26 performance of physical functions that are transferable to a work  
27 setting, a specific finding as to this fact may be sufficient to  
28 discredit a claimant's allegations.").

1           Second, although the ALJ also found that there was a lack of  
2 objective medical evidence supporting Plaintiff's testimony concerning  
3 his symptoms and limitations, this factor cannot, by itself, support an  
4 adverse finding about Plaintiff's testimony. See Trevizo v. Berryhill,  
5 862 F.3d 987, 1001 (9th Cir. 2017)(once a claimant demonstrates medical  
6 evidence of an underlying impairment, "an ALJ 'may not disregard [a  
7 claimant's testimony] solely because it is not substantiated  
8 affirmatively by objective medical evidence.'"; quoting Robbins v. Soc.  
9 Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006)); Rollins v. Massanari,  
10 261 F.3d 853, 857 (9th Cir. 2001); Tidwell v. Apfel, 161 F.3d 599, 602  
11 (9th Cir. 1998); see also SSR 16-3p, 2016 WL 1119029, \*4-\*5 ("We must  
12 consider whether an individual's statements about the intensity,  
13 persistence, and limiting effects of his or her symptoms are consistent  
14 with the medical signs and laboratory findings of record. . . .  
15 However, we will not disregard an individual's statements about the  
16 intensity, persistence, and limiting effects of symptoms solely because  
17 the objective medical evidence does not substantiate the degree of  
18 impairment related-symptoms alleged by the individual.").

19  
20           Because the Court finds that the the ALJ did not discount  
21 Plaintiff's subjective symptom testimony on legally permissible grounds,  
22 the Court is unable to defer to the ALJ's credibility determination.  
23 Cf. Flaten v. Sec'y of Health & Human Servs., 44 F.3d 1453, 1464 (9th  
24 Cir. 1995)(the court will defer to the ALJ's credibility determinations  
25 when they are appropriately supported in the record by specific findings  
26 justifying that decision)(citations omitted).

1 **B. Remand Is Warranted**

2  
3 The decision whether to remand for further proceedings or order an  
4 immediate award of benefits is within the district court's discretion.  
5 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no  
6 useful purpose would be served by further administrative proceedings,  
7 or where the record has been fully developed, it is appropriate to  
8 exercise this discretion to direct an immediate award of benefits. Id.  
9 at 1179 ("[T]he decision of whether to remand for further proceedings  
10 turns upon the likely utility of such proceedings."). However, where,  
11 as here, the circumstances of the case suggest that further  
12 administrative review could remedy the Commissioner's errors, remand is  
13 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);  
14 Harman v. Apfel, supra, 211 F.3d at 1179-81.

15  
16 Since the ALJ failed to properly assess Plaintiff's subjective  
17 symptom testimony, remand is appropriate. Because outstanding issues  
18 must be resolved before a determination of disability can be made, and  
19 "when the record as a whole creates serious doubt as to whether the  
20 [Plaintiff] is, in fact, disabled within the meaning of the Social  
21 Security Act," further administrative proceedings would serve a useful  
22 purpose and remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th  
23 Cir. 2014)(citations omitted).<sup>8</sup>

---

24  
25 <sup>8</sup> The Court has not reached any other issue raised by Plaintiff  
26 except to determine that reversal with a directive for the immediate  
27 payment of benefits would not be appropriate at this time.  
28 "[E]valuation of the record as a whole creates serious doubt that  
Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,  
1021 (2014). Accordingly, the Court declines to rule on Plaintiff's  
claims regarding the ALJ's errors in failing to properly (1) consider  
the relevant medical evidence in assessing Plaintiff's RFC (see Joint  
(continued...))

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: February 28, 2018

\_\_\_\_\_  
/s/  
ALKA SAGAR  
UNITED STATES MAGISTRATE JUDGE

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<sup>8</sup> (...continued)  
Stip. at 6-12), and (2) determine whether there are two jobs in the national economy that Plaintiff can perform (see Joint Stip. at 26-28). Because this matter is being remanded for further consideration, these issues should also be considered on remand.