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

WILLIAM R. W.,

Plaintiff,

v.

KILOLO KIJAKAZI,¹
Acting Commissioner of Social
Security,

Defendant.

Case No. ED CV 20-01233-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff William R. W.² (“Plaintiff”) challenges the Commissioner’s denial of his application for disability insurance benefits (“DIB”). 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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¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi, the Acting Commissioner of Social Security, is hereby substituted as the defendant.

² Plaintiff’s name is partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 **II. SUMMARY OF PROCEEDINGS**

2 On May 22, 2017, Plaintiff protectively filed a Title II application for DIB
3 alleging that he had been disabled since January 1, 2017, due to manic depression,
4 neuropathy in both legs, severe lower back pain and numbness in both legs, diabetes,
5 hearing loss and Tinnitus, erectile dysfunction, and sleep apnea. (Administrative
6 Record (“AR”) 17, 225, 258.) His claims were denied initially on August 21, 2017,
7 and upon reconsideration on September 28, 2017. (AR 65-91.) On October 12, 2017,
8 Plaintiff filed a written request for hearing, and a hearing was held on March 28,
9 2019. (AR 35-64, 105-06.) Plaintiff, represented by counsel, appeared and testified,
10 along with an impartial vocational expert. (AR 35-64.) On April 17, 2019, the
11 Administrative Law Judge (“ALJ”) found that Plaintiff had not been under a
12 disability, pursuant to the Social Security Act,³ from January 1, 2017, through the
13 date of the decision. (AR 29.) The ALJ’s decision became the Commissioner’s final
14 decision when the Appeals Council denied Plaintiff’s request for review. (AR 1-6.)
15 Plaintiff filed this action on June 18, 2020. (Dkt. No. 1.)

16 The ALJ followed a five-step sequential evaluation process to assess whether
17 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
18 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
19 in substantial gainful activity since January 1, 2017, the alleged onset date. (AR 19.)
20 At **step two**, the ALJ found that Plaintiff has the severe impairments of degenerative
21 disc disease of the lumbar spine, lumbar radiculopathy, obstructive sleep apnea, mild
22 osteoarthritis of the bilateral knees, and diabetes mellitus with hyperglycemia. (AR
23 19.) At **step three**, the ALJ found that Plaintiff “does not have an impairment or
24 combination of impairments that meets or medically equals the severity of one of the
25 listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.” (AR 22.)

26 ³ Persons are “disabled” for purposes of receiving Social Security benefits if they are
27 unable to engage in any substantial gainful activity owing to a physical or mental
28 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 Before proceeding to step four, the ALJ found that Plaintiff has the residual
2 functional capacity (“RFC”) to perform light work as defined in 20 C.F.R.
3 § 404.1567(b) except he can lift, carry, push or pull up to 20 pounds occasionally and
4 up to 10 pounds frequently; can stand and/or walk for six hours in an eight-hour
5 workday but requires a sit/stand option such that he can sit up to two times per hour
6 for up to ten minutes each time while remaining on task; can sit for six hours in an
7 eight hour workday; can occasionally climb ramps or stairs, balance, stoop, kneel,
8 crouch or crawl; never climb ladders, ropes or scaffolds; and he may use an assistive
9 device for ambulation. (AR 23.) At **step four**, based on Plaintiff’s RFC and the
10 vocational expert (“VE”)’s testimony, the ALJ found that Plaintiff is unable to
11 perform any past relevant work. (AR 27-28.) At **step five**, the ALJ found that there
12 are jobs that exist in significant numbers in the national economy that Plaintiff can
13 perform. (AR 28.) Accordingly, the ALJ found that Plaintiff “has not been under a
14 disability . . . from January 1, 2017, through the date of this decision.” (AR 29.)

15 **III. STANDARD OF REVIEW**

16 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
17 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
18 supported by substantial evidence, and if the proper legal standards were applied.
19 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “Substantial evidence .
20 . . . is ‘more than a mere scintilla[,]’ . . . [which] means—and means only—‘such
21 relevant evidence as a reasonable mind might accept as adequate to support a
22 conclusion.’” *Biestek v. Berryhill*, —U.S. —, 139 S. Ct. 1148, 1154, 203 L. Ed. 2d
23 504 (2019) (citations omitted); *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).
24 An ALJ can satisfy the substantial evidence requirement “by setting out a detailed
25 and thorough summary of the facts and conflicting clinical evidence, stating his
26 interpretation thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725
27 (9th Cir. 1998) (citation omitted).

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1 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
2 specific quantum of supporting evidence. Rather, a court must consider the record
3 as a whole, weighing both evidence that supports and evidence that detracts from the
4 Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001)
5 (citations and internal quotations omitted). “‘Where evidence is susceptible to more
6 than one rational interpretation,’ the ALJ’s decision should be upheld.” *Ryan v.*
7 *Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing *Burch v. Barnhart*,
8 400 F.3d 676, 679 (9th Cir. 2005)); *see also Robbins v. Social Sec. Admin.*, 466 F.3d
9 880, 882 (9th Cir. 2006) (“If the evidence can support either affirming or reversing
10 the ALJ’s conclusion, we may not substitute our judgment for that of the ALJ.”). The
11 Court may review only “the reasons provided by the ALJ in the disability
12 determination and may not affirm the ALJ on a ground upon which he did not rely.”
13 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340
14 F.3d 871, 874 (9th Cir. 2003)).

15 **IV. DISCUSSION**

16 Plaintiff’s sole contention is that the ALJ erred in rejecting his subjective
17 symptom testimony. (JS at 5-17.) For the reasons below, the Court remands.

18 **A. The ALJ Erred in Rejecting Plaintiff’s Subjective Symptom** 19 **Testimony**

20 **1. Applicable Legal Standards**

21 Where, as here, the claimant has presented evidence of an underlying
22 impairment and the ALJ did not make a finding of malingering (see AR 24), the ALJ
23 must “evaluate the intensity and persistence of [the] individual’s symptoms . . . and
24 determine the extent to which [those] symptoms limit [his or her] . . . ability to
25 perform work-related activities.” Soc. Sec. Ruling (“SSR”) 16-3p, 2017 WL
26 5180304, at *4. In assessing the intensity and persistence of symptoms, the ALJ
27 “examine[s] the entire case record, including the objective medical evidence; an
28 individual’s statements . . . ; statements and other information provided by medical

1 sources and other persons; and any other relevant evidence in the individual's case
2 record." *Id.* at *4. The ALJ must provide "specific, clear and convincing reasons"
3 for rejecting the claimant's statements. *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th
4 Cir. 2020) (citations and internal quotation marks omitted); *Trevizo v. Berryhill*, 871
5 F.3d 664, 678 (9th Cir. 2017) (citation omitted). The ALJ must identify what
6 testimony was found not credible and explain what evidence undermines that
7 testimony. *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001). "General
8 findings are insufficient." *Lester*, 81 F.3d at 834.

9 **2. Background**

10 In a Function Report dated July 1, 2017, Plaintiff stated that his ability to work
11 was affected by his inability to concentrate for long periods of time, lower back pain
12 and leg pain with extended periods of standing and sitting, fatigue due to a sleep
13 disorder, and anxiety/depression. (AR 270.) He had no problem with personal care.
14 (AR 271.) He could prepare frozen meals, sandwiches, and quesadillas about once a
15 month, which took one or two hours. (AR 272.) He could help fold and sort laundry
16 (twice a week), take out the trash (two or three times a week), and hose off the patio
17 (once a month), although he needed help moving the laundry baskets. (AR 272.) He
18 could drive a car, but 90% of the time his wife accompanied him. (AR 273.) He
19 could shop in stores or by computer for groceries and personal items about once a
20 month for one to three hours. (AR 273.) He watched television daily, played with
21 an RC copter once a week indoors, and went fishing and camping once every six
22 months. (AR 274.) He did not go out or socialize with friends due to
23 anxiety/depression, pain, and fatigue. (AR 275.) He could walk about half or one
24 block before having to rest for one or two hours. (AR 275.)

25 In a Function Report dated September 24, 2017, Plaintiff stated that his ability
26 to work was affected by severe back spasms and pain, numbness in both legs that
27 occurred constantly throughout the day; extreme pain with stooping, bending, sitting
28 and standing for long periods of time; arthritis in both knees and hands that caused

1 swelling and stiffness; severe dizziness due to vertigo; and neuropathy in feet and
2 hands. (AR 306.) He needed help tying his shoes and putting on socks due to
3 back/leg pain, getting into and out of the bathtub, getting up from the toilet, and
4 getting into the shower. (AR 307-08.) He did not prepare any meals. (AR 308.) He
5 did not do any housework or yardwork due to severe pain, dizziness, depression and
6 anxiety. (AR 308-09.) He could drive. (AR 309.) He shopped for dog treats and
7 magazines by computer for five to ten minutes once every couple of months. (AR
8 309.) He read and watched movies daily, but had to take breaks to relieve the pain
9 from sitting too long. (AR 310.) He could walk 150 feet before needing to rest, and
10 needed to rest for hours or until the next day. (AR 311.) He could pay attention for
11 10-20 minutes. (AR 311.)

12 At the hearing on March 28, 2019, Plaintiff testified that he has low back pain
13 that radiated across his spine into his right hip and down his right leg, obstructive
14 sleep apnea, tingling and complete numbness in his calves down to his feet, and pain
15 in his knees. (AR 42-44, 47-48.) He has tendonitis in his elbow and cannot pick up
16 a glass of soda or a cup because of the pain. (AR 44.) His hands get numb when he
17 sleeps. (AR 44-45.) He has used a cane since before he was laid off from work, and
18 uses it outside and inside because of his vertigo. (AR 45, 52.) He went to physical
19 therapy and acupuncture, which provided temporary relief. (AR 46-47.) He got a
20 TENS unit two years ago, which he uses two or three times a day for 20 to 45 minutes.
21 (AR 47.) He received four injections in his knees and two in his back. (AR 48.) He
22 injects himself with insulin twice a day for his diabetes. (AR 49.) He takes Norco
23 for pain four or five times a day, which dulls the pain. (AR 49-50.) It makes him
24 feel like “jelly,” like he does not want to get up or do anything. (AR 50.) He takes
25 Baclofen, a muscle relaxant, and a topical gel on his hands (for arthritis) and back.
26 (AR 50-51.) Two or three times a month his knees hurt so bad that he cannot go up
27 and down the stairs. (AR 51-52.) He sleeps four, five or six hours per night because
28 he “keep[s] worrying about everything.” (AR 53.) He is being treated for depression

1 and anxiety, which were diagnosed by a psychiatrist. (AR 53.) He takes Paxil twice
2 a day for his mental issues. (AR 54.) Three or four times a day for 45 minutes to a
3 couple of hours he has to lie down on his back or side because of back pain. (AR 54-
4 55.) He does not shop for groceries, do errands or chores, or prepare meals. (AR
5 55.)

6 **3. The ALJ's Decision**

7 The ALJ considered Plaintiff's subjective complaints. (AR 23-24.) The ALJ
8 found that Plaintiff's statements about the intensity, persistence and limiting effects
9 of Plaintiff's symptoms were not entirely consistent with the medical evidence and
10 other evidence in the record. (AR 24.) Specifically, the ALJ discounted Plaintiff's
11 subjective complaints for four reasons: (1) Plaintiff's daily activities were
12 inconsistent with his subjective complaints; (2) Plaintiff's condition improved; (3)
13 Plaintiff failed to follow prescribed treatment; and (4) Plaintiff's subjective
14 complaints were inconsistent with the objective medical evidence. (AR 24-25.)

15 **4. Discussion**

16 **a. Activities of Daily Living**

17 The ALJ found that Plaintiff's daily activities were "somewhat inconsistent
18 with the extent of [Plaintiff's] subjective complaints about lifting, squatting, bending,
19 standing, reaching, walking, sitting, kneeling, climbing, hearing, memorizing,
20 completing tasks, concentrating, understanding, following instructions, using hands,
21 and getting along with others." (AR 24.) The ALJ noted that Plaintiff's daily
22 activities included performing personal care tasks, preparing simple meals, taking out
23 the trash, sorting and folding clothes, driving, riding in a car, shopping by using the
24 computer, watching television, and spending time with others. (AR 24.) The ALJ
25 further noted that the record indicates that Plaintiff was doing well and performing
26 activities of daily living. (AR 24, 829, 863.) On these bases, the ALJ concluded that
27 Plaintiff's daily activities were inconsistent with his subjective symptom testimony.
28 (AR 24.)

1 Generally speaking, an ALJ may use inconsistencies between a claimant's
2 testimony and his or her other statements, conduct, and daily activities as a basis for
3 discounting his or her testimony. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1148
4 (9th Cir. 2001); *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997); *see also*
5 *Burkett v. Berryhill*, 732 F. App'x 547, 552 (9th Cir. 2018) ("While transferability of
6 skills to a work setting is one way in which an ALJ may consider a claimant's daily
7 activities, an ALJ may also discount claimant testimony where reported daily
8 activities contradict the claimant's alleged extent of her limitations."); *Tommasetti v.*
9 *Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008) (holding inconsistencies between
10 symptom allegations and daily activities may act as a clear and convincing reason to
11 discount claimant's credibility). In this case, however, this was not a convincing
12 reason for discounting Plaintiff's testimony.

13 Here, the ALJ mischaracterized Plaintiff's level of daily activity by omitting
14 salient evidence from the record. The ALJ did not acknowledge evidence that
15 Plaintiff prepared meals only about once a month, took the trash out two to three
16 times per week, and folded laundry twice a week. (AR 272.) Nor did the ALJ
17 mention that by September 2017, Plaintiff needed help with personal care, no longer
18 prepared meals, no longer did chores around the house or yard, and shopped by
19 computer five to ten minutes once every couple of months. (AR 307-09.) The ALJ
20 also failed to acknowledge evidence that Plaintiff has had a TENS unit since 2017
21 that he uses three to five times per day for 45 minutes to two hours for his back pain.⁴
22 (AR 54-55.) The evidence cited by the ALJ indicating that Plaintiff was doing well
23 and performing activities of daily living is from one July 2017 psychiatric treatment
24 note that is duplicated in the record. (AR 829, 863.) The Court notes that the record
25 does indicate independence with ambulation and activities of daily living in April,
26 July and October 2017, when Plaintiff reported that acupuncture helped his back pain

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28 ⁴ The ALJ acknowledged this evidence only in a general discussion of Plaintiff's
subjective complaints, but not when evaluating such complaints. (AR 23-25.)

1 by 80%, but his pain decreased his activity level by 75% in November 2017 and his
2 pain interfered with ambulation, bathing, dressing, and grooming in February 2018.
3 (AR 645, 658, 863, 959, 1048, 1071, 1256.) Treatment notes also indicate that
4 Plaintiff's pain was alleviated by lying down. (AR 926.) To the extent the ALJ
5 discounted Plaintiff's symptom testimony because of his activities of walking,
6 fishing, and hunting, which the ALJ noted later in the decision, there, too, the ALJ
7 failed to discuss evidence indicating that Plaintiff's ability to do these activities was
8 limited and impacted by his pain. (AR 25, 274, 307, 356-57, 926.) The ALJ's
9 incomplete discussion of Plaintiff's daily activities does not constitute a clear and
10 convincing reason for discounting Plaintiff's subjective testimony. *See Rawa v.*
11 *Colvin*, 672 F. App'x 664, 666 (9th Cir. 2016) (finding that where "the ALJ omitted
12 a number of salient and dispositive facts and details when recounting [claimant's]
13 activity level," "[s]uch an inaccurate representation of the record can not constitute a
14 specific, clear, and convincing reason for rejecting" claimant's subjective symptom
15 testimony).

16 Further, the ALJ erred by failing to explain how Plaintiff's ability to do these
17 limited activities establishes that his daily activities are inconsistent with his
18 subjective testimony or that he could perform work eight hours a day, five days a
19 week. *See Ghanim v. Colvin*, 763 F.3d 1154, 1165 (9th Cir. 2014) ("[T]here is no
20 indication here that the limited activities [claimant] engaged in, often with the help
21 of a friend, [] comprised a 'substantial' portion of [claimant's] day . . ."). The ALJ
22 also failed to address how Plaintiff's limited daily activities would transfer to a
23 workplace setting. *See Orn*, 495 F.3d at 639 ("The ALJ must make specific findings
24 relating to the daily activities and their transferability to conclude that a claimant's
25 daily activities warrant an adverse credibility determination.") (internal quotation
26 marks omitted).

27 Accordingly, the record does not support the ALJ's finding that Plaintiff's
28 activities were inconsistent with her symptom testimony.

1 **b. Improved Condition**

2 The ALJ found that the record “is replete with examples of [Plaintiff’s]
3 improved condition,” showing that Plaintiff was doing well and had no problems
4 with his medications and doing activities of daily living, despite his allegations of
5 back pain and numbness of the legs that persisted since the alleged onset date. (AR
6 24, 863.) Therefore, according to the ALJ, the evidence about the duration and
7 frequency of Plaintiff’s symptoms did not support the level of his alleged symptoms.
8 (AR 24.)

9 Generally, “[i]mpairments that can be controlled effectively with medication
10 are not disabling for the purpose of determining eligibility for SSI benefits.” *Warre*
11 *v. Comm’r Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006). Here, despite
12 finding that the record was “replete with examples,” the ALJ cited one psychiatric
13 medication visit in July 2017 indicating that Plaintiff was “doing well,” and had no
14 problems with his antidepressant, sleep medication, and CPAP machine for sleep
15 apnea. (AR 24, 863.) Included in the history is a note, “Working in garden.” (AR
16 863.) A psychiatric review of symptoms indicates that he was sleeping well, eating
17 well, and doing activities of daily living and executive functions. (AR 863.)

18 The ALJ’s reliance on Plaintiff’s improved condition was not a clear and
19 convincing reason to discount Plaintiff’s subjective testimony about his back pain
20 and leg numbness. The July 2017 psychiatric treatment note does not relate to
21 Plaintiff’s back pain and leg numbness, except possibly the brief references to “doing
22 well” and Plaintiff’s activities of daily living. Further, the treatment note is from a
23 time when Plaintiff was doing limited activities of daily living. (AR 272.) What the
24 ALJ omits is a discussion of the evidence that Plaintiff’s physical improvements were
25 temporary (AR 1071, 1256); that he takes Norco for pain four or five times a day,
26 which makes him less alert and feel like “jelly” (AR 50, 1204); that Plaintiff was
27 referred to pain management and got multiple back injections for low back pain with
28 radicular features (AR 48, 1226, 1472, 1649-50); that Plaintiff needs to lie down with

1 a TENS unit multiple times per day for up to two hours at a time for back pain (AR
2 54-55); and that Plaintiff's activities of daily living were increasingly limited as
3 discussed above. Nor does the ALJ explain why, despite this evidence, she found
4 that Plaintiff's condition improved to the point of undermining his allegations about
5 the duration and frequency of his back pain and leg numbness.

6 Accordingly, the record does not support the ALJ's finding that due to
7 Plaintiff's improved condition, the duration and frequency of his back pain and leg
8 numbness did not support the level of his alleged symptoms.

9 **c. Failure to Follow Prescribed Treatment**

10 The ALJ found that Plaintiff's failure to follow prescribed treatment was
11 inconsistent with Plaintiff's symptom testimony. (AR 25.) The ALJ noted that
12 despite Plaintiff's complaints of back pain, Plaintiff was not taking his pain
13 medication as much. (AR 25, 1204.)

14 Generally speaking, failure to comply with treatment recommendations is a
15 legitimate reason for discounting a claimant's credibility. *See Tommasetti*, 533 F.3d
16 at 1039-40 (explaining ALJ may consider fact that claimant failed to follow a course
17 of treatment in making adverse credibility determination); *Fair v. Bowen*, 885 F.2d
18 597, 603 (9th Cir. 1989) (an unexplained or inadequately explained failure to follow
19 prescribed treatment "can cast doubt on the sincerity of the claimant's pain
20 testimony"). Here, however, in the one example on which the ALJ relied, Plaintiff
21 explained to his doctor that he was not taking his pain medication as much because
22 he needed to be alert and awake. (AR 1204.) He reported that his back pain was 8-
23 10/10 constantly, and he was considering a cortisone injection, which he got four
24 months later. (AR 1204, 1472.) Although the ALJ purportedly gave additional
25 examples of not following prescribed treatment, they were examples of activities of
26 daily living and objective evidence. (AR 25.) The Court's review of the record
27 identified additional examples of not following treatment recommendations. In April
28 2017, Plaintiff reported that he rarely took Norco because his daughter was a nurse

1 and wanted him to minimize it. (AR 657.) Plaintiff also testified that the Norco
2 made him feel like “jelly, you don’t want to get up, you don’t want to do anything.”
3 (AR 50.) Plaintiff appears to have had an explanation for not taking his pain
4 medication as much as he should have. In addition, Plaintiff complied with treatment
5 recommendations for acupuncture, cortisone injections, and use of a TENS unit,
6 which appear consistent with Plaintiff’s symptom testimony. (AR 47, 55, 925, 1226,
7 1472, 1650.) Given that the ALJ ignored Plaintiff’s explanation and failed to
8 articulate why Plaintiff’s reason was inadequate, the ALJ erred in relying on the
9 failure to follow prescribed treatment to discount Plaintiff’s symptom testimony.

10 Accordingly, the record does not support the ALJ’s finding that Plaintiff’s
11 failure to follow treatment recommendations was inconsistent with his symptom
12 testimony.

13 **d. Inconsistent with the Objective Medical Evidence**

14 Finally, the ALJ discounted Plaintiff’s subjective testimony because his
15 statements about the alleged intensity, persistence, and limiting effects of the
16 symptoms were inconsistent with the objective medical evidence. (AR 24.) This
17 reason cannot form the sole basis for discounting symptom testimony. *See Burch*,
18 400 F.3d at 681 (“Although lack of medical evidence cannot form the sole basis for
19 discounting pain testimony, it is a factor that the ALJ can consider in his credibility
20 analysis.”); *Light*, 119 F.3d at 792 (“[A] finding that the claimant lacks credibility
21 cannot be premised wholly on a lack of medical support for the severity of his pain.”).
22 As this is the only remaining reason the ALJ provided for discounting Plaintiff’s
23 subjective testimony, this reason alone is not sufficient.

24 Because the ALJ failed to provide specific, clear, and convincing reasons for
25 discounting Plaintiff’s subjective testimony, remand is warranted.

26 **B. Remand for Further Administrative Proceedings**

27 Plaintiff contends that the Court should reverse the ALJ’s decision and award
28 benefits, or in the alternative, remand for further proceedings. (JS at 22.) The

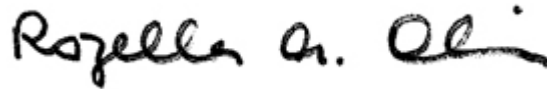
1 Commissioner contends that should the Court find reversible error, the proper
2 remedy is remand for further proceedings. (JS at 22-23.)

3 The Court finds that remand for further administrative proceedings is
4 appropriate, as further administrative review could remedy the ALJ’s errors. *See*
5 *Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (remanding for an award
6 of benefits is appropriate in rare circumstances).⁵ The Court finds that the ALJ failed
7 to provide specific, clear and convincing reasons supported by substantial evidence
8 to discount Plaintiff’s subjective testimony. On remand, the ALJ shall reassess
9 Plaintiff’s subjective testimony. The ALJ shall then reassess Plaintiff’s RFC in light
10 of the reassessment of Plaintiff’s subjective allegations and proceed through step four
11 and step five to determine what work, if any, Plaintiff is capable of performing.

12 **V. CONCLUSION**

13 IT IS ORDERED that Judgment shall be entered REVERSING the decision of
14 the Commissioner denying benefits and REMANDING the matter for further
15 proceedings consistent with this Order.

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

18 

19 DATED: August 24, 2021

20 _____
21 ROZELLA A. OLIVER
22 UNITED STATES MAGISTRATE JUDGE

23 ⁵ Before ordering remand for an award of benefits, three requirements must be met:
24 (1) the Court must conclude that the ALJ failed to provide legally sufficient reasons
25 for rejecting evidence; (2) the Court must conclude that the record has been fully
26 developed and further administrative proceedings would serve no useful purpose; and
27 (3) the Court must conclude that if the improperly discredited evidence were credited
28 as true, the ALJ would be required to find the claimant disabled on remand. *Id.*
(citations omitted). Even if all three requirements are met, the Court retains
flexibility to remand for further proceedings “when the record as a whole creates
serious doubt as to whether the claimant is, in fact, disabled within the meaning of
the Social Security Act.” *Id.* (citation omitted).

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NOTICE

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