

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

STEVEN MICHAEL GABALDON,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

No. SA CV 15-1435-DFM

MEMORANDUM OPINION AND  
ORDER

Plaintiff Steven Michael Gabaldon (“Plaintiff”) appeals from the final decision of the Administrative Law Judge (“ALJ”) denying his application for Social Security disability benefits. On appeal, the Commissioner concedes that the ALJ erred in both evaluating Plaintiff’s testimony and discounting the opinion of Plaintiff’s treating physician and the Court concludes that further administrative proceedings would serve no useful purpose. The ALJ’s decision is therefore reversed and the matter is remanded for awarding of benefits consistent with this opinion.

///

///

1 I.

2 BACKGROUND

3 Steven Michael Gabaldon (“Plaintiff”) was born on April 29, 1961.  
4 Administrative Record (“AR”) 31. He has a tenth grade education. *Id.* He  
5 previously worked as a truck driver and delivered car batteries. AR 31-32. In  
6 2008, Plaintiff suffered injuries in a workplace accident when he was hit with a  
7 500-pound door. AR 32, 816.

8 On October 12, 2009, Plaintiff filed an application for disability  
9 insurance benefits, alleging disability beginning January 8, 2008. AR 132-33.  
10 After Plaintiff’s application was denied, he requested a hearing before an  
11 Administrative Law Judge (“ALJ”). AR 90. Plaintiff was represented and  
12 testified at a hearing on September 27, 2011. AR 25-63. In addition to Plaintiff,  
13 a vocational expert and a medical expert both testified at the hearing. *Id.* The  
14 ALJ issued a written decision finding that Plaintiff was not disabled. AR 11-  
15 27. The Appeals Council denied Plaintiff’s request for review. AR 1-5.

16 Plaintiff filed an appeal in this Court. This Court remanded the case for  
17 further administrative proceedings after finding that the ALJ erred in assessing  
18 Plaintiff’s credibility and failed to provide specific and legitimate reasons  
19 supported by substantial evidence for rejecting the opinion of Plaintiff’s  
20 treating physician.

21 Following remand, a different ALJ examined the medical records and  
22 heard testimony from Plaintiff, who was represented by counsel, as well as a  
23 medical expert and a vocational expert. AR 779-837. On July 28, 2015, the  
24 ALJ determined that Plaintiff was not disabled from January 8, 2008, the  
25 alleged onset date, through the June 30, 2012, the date last insured. AR 756-  
26 78. The Appeals Council denied Plaintiff’s request for review. AR 740-44. This  
27 second appeal followed.

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**II.**

**STANDARD OF REVIEW**

Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s decision to deny benefits. The ALJ’s findings and decision should be upheld if they are free from legal error and are supported by substantial evidence based on the record as a whole. 42 U.S.C. § 405(g); Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla, but less than a preponderance. Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports a finding, the reviewing court “must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1996) (citations omitted). “If the evidence can reasonably support either affirming or reversing,” the reviewing court “may not substitute its judgment” for that of the Commissioner. Id. at 720-21 (citing Flaten v. Sec’y of Health & Human Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)).

22  
23  
24  
25  
26  
27  
28

**III.**

**THE EVALUATION OF DISABILITY**

A person is “disabled” for purposes of receiving Social Security benefits if he is unable to engage in any substantial gainful activity owing to a physical or mental impairment that is 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); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992). A claimant for disability benefits bears the burden of producing evidence to

1 demonstrate that he was disabled within the relevant time period. Johnson v.  
2 Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995).

3 **A. The Five-Step Evaluation Process**

4 The ALJ follows a five-step sequential evaluation process in assessing  
5 whether a claimant is disabled. 20 C.F.R. § 404.1520(a)(4); Lester v. Chater,  
6 81 F.3d 821, 828 n. 5 (9th Cir. 1996). In the first step, the Commissioner must  
7 determine whether the claimant is currently engaged in substantial gainful  
8 activity; if so, the claimant is not disabled and the claim must be denied. 20  
9 C.F.R. § 404.1520(a)(4)(i). If the claimant is not engaged in substantial gainful  
10 activity, the second step requires the Commissioner to determine whether the  
11 claimant has a “severe” impairment or combination of impairments  
12 significantly limiting his ability to do basic work activities; if not, a finding of  
13 not disabled is made and the claim must be denied. Id. 404.1520(a)(4)(ii). If the  
14 claimant has a “severe” impairment or combination of impairments, the third  
15 step requires the Commissioner to determine whether the impairment or  
16 combination of impairments meets or equals an impairment in the Listing of  
17 Impairments (“Listing”) set forth at 20 C.F.R., Part 404, Subpart P, Appendix  
18 1; if so, disability is conclusively presumed and benefits are awarded. Id. §  
19 404.1520(a)(4)(iii). If the claimant’s impairment or combination of  
20 impairments does not meet or equal an impairment in the Listing, the fourth  
21 step requires the Commissioner to determine whether the claimant has  
22 sufficient residual functional capacity (“RFC”) to perform her past work; if so,  
23 the claimant is not disabled and the claim must be denied. Id. §  
24 404.1520(a)(4)(iv). The claimant has the burden of proving he is unable to  
25 perform past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets  
26 that burden, a prima facie case of disability is established. Id. If that happens or  
27 if the claimant has no past relevant work, the Commissioner then bears the  
28 burden of establishing that the claimant is not disabled because he can perform

1 other substantial gainful work available in the national economy. 20 C.F.R. §  
2 404.1520(a)(4)(v). That determination comprises the fifth and final step in the  
3 sequential analysis. *Id.* § 404.1520; *Lester*, 81 F.3d at 828 n.5; *Drouin*, 966  
4 F.2d at 1257.

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

6 At step one, the ALJ found that Plaintiff had not engaged in substantial  
7 gainful activity since January 8, 2008, the alleged onset date. AR 761. At step  
8 two, the ALJ found that Plaintiff suffered from the severe impairments of  
9 degenerative disc disease of cervical and lumbar spine with disc protrusion and  
10 stenosis, chondromalacia of the right knee, labral tear and tendinosis of the  
11 right shoulder, and bilateral carpal tunnel syndrome. AR 762. The ALJ also  
12 determined that Plaintiff's eye pain and headaches were nonsevere. *Id.* At step  
13 three, the ALJ determined that Plaintiff's impairments did not meet or  
14 medically equal a listed impairment. *Id.*

15 At step four, the ALJ found that Plaintiff retained the residual functional  
16 capacity to perform less than a full range of light work with additional  
17 limitations.<sup>1</sup> AR 762-63. In making this finding, the ALJ rejected Plaintiff's  
18 treating physician's opinion that Plaintiff's limitations and medications make  
19 him unable to return to his prior occupation and restricts him from gainful  
20 employment. AR 766-69; AR 731-39. The ALJ also determined that Plaintiff  
21 could not perform any past relevant work. AR 769. At step five, the ALJ relied

---

22  
23 <sup>1</sup> The ALJ specified that Plaintiff could lift and carry 20 pounds  
24 occasionally and 10 pounds frequently; stand and walk two hours in an eight  
25 hour day with an opportunity to stretch one to three minutes per hour;  
26 occasionally climb stairs and ramps, but no ladders, ropes, or scaffolds;  
27 occasionally stoop, crouch, and kneel; no crawling; occasionally perform pedal  
28 operation bilaterally; frequently perform fine and gross manipulation with both  
upper extremities; occasionally reach at or above shoulder level with the right  
arm; and no work at unprotected heights or around moving machinery. AR  
762-63.

1 on the VE's testimony to determine that jobs exist in significant numbers in the  
2 national economy that Plaintiff could perform, specifically cashier II and  
3 assembler of electrical accessories. AR 770. Additionally, the ALJ found that  
4 Plaintiff's allegations regarding his limitations were not entirely credible. AR  
5 768-69. Accordingly, the ALJ found that Plaintiff was not disabled.

#### 6 IV.

#### 7 DISCUSSION

8 The Commissioner concedes that the ALJ's decision cannot be affirmed  
9 because (1) the ALJ did not provide sufficiently specific reasons supported by  
10 substantial evidence for discounting Plaintiff's allegations of pain and other  
11 symptoms, JS at 27-29; and (2) the ALJ's rationale for discounting Dr. Allen's  
12 treating medical source opinion was legally insufficient, *id.* at 43-44. The  
13 parties dispute whether the case should be remanded for further proceedings or  
14 for an immediate award of benefits. The Commissioner argues that additional  
15 administrative proceedings are warranted because there are still serious doubts  
16 about whether Plaintiff is disabled. *id.* at 29, 43. Plaintiff contends that Dr.  
17 Allen's opinion and Plaintiff's testimony should be credited as true and,  
18 because further administrative proceedings would serve no useful purpose, the  
19 case should be remanded for an award of benefits. *Id.* at 30-31, 44-45.

#### 20 A. Applicable Law

21 The choice whether to reverse and remand for further administrative  
22 proceedings, or to reverse and simply award benefits, is within the discretion of  
23 the court. Harman v. Apfel, 211 F.3d 1172, 1178 (9th Cir. 2000) (holding that  
24 the district court's decision whether to remand for further proceedings or  
25 payment of benefits is discretionary and is subject to review for abuse of  
26 discretion). The Ninth Circuit has observed that "the proper course, except in  
27 rare circumstances, is to remand to the agency for additional investigation or  
28 explanation." Moisa v. Barnhart, 367 F.3d 882, 886 (9th Cir. 2004) (quoting

1 INS v. Ventura, 537 U.S. 12, 16 (2002) (per curiam)).

2 Where, as here, a claimant contends that he is entitled to an award of  
3 benefits because of an ALJ’s failure to properly consider the claimant’s  
4 testimony and medical evidence, the Court applies a three-step framework for  
5 applying the credit-as-true rule and determining whether to remand for further  
6 proceedings. See Garrison v. Colvin, 759 F.3d 995, 1020 (9th Cir. 2014);  
7 Treichler v. Comm’r Soc. Sec., 775 F.3d 1090, 1103 (9th Cir. 2014).

8 First, the Court asks whether the ALJ failed to provide legally sufficient  
9 reasons for rejecting the evidence. Treichler, 775 F.3d at 1103. Second, the  
10 Court determines “whether further administrative proceedings would be  
11 useful,” asking “whether the record as a whole is free from conflicts,  
12 ambiguities, or gaps, whether all factual issues have been resolved, and  
13 whether the claimant’s entitlement to benefits is clear under the applicable  
14 legal rules.” Id. at 1103-04. This Court must “assess whether there are  
15 outstanding issues requiring resolution before considering whether to hold that  
16 the claimant’s testimony [or the physician’s opinion] is credible as a matter of  
17 law.” Id. at 1105. Third, if the Court concludes that no outstanding issues  
18 remain and further proceedings would not be useful, the Court may find the  
19 relevant testimony credible and the medical evidence true as a matter of law  
20 and then determine whether the record, taken as a whole, leaves “not the  
21 slightest uncertainty as to the outcome of the proceeding.” Id. at 1101  
22 (citations omitted); see also Garrison, 775 F.3d at 1102 (holding that district  
23 courts retain flexibility to “remand for further proceedings when the record as  
24 a whole creates serious doubt as to whether the claimant is, in fact, disabled  
25 within the meaning of the Social Security Act”). Only when all three elements  
26 are satisfied does a case raise the “rare circumstances” that allow the Court to  
27 exercise its discretion to remand for an award of benefits. Treichler, 775 F.3d  
28 at 1101.

1 **B. Analysis**

2 As noted above, the Commissioner concedes both (1) that the ALJ failed  
3 to provide sufficient reasons supported by substantial evidence for discounting  
4 Plaintiff's subjective complaints, see JS at 27 ("Defendant concedes that the  
5 ALJ did not provide sufficiently specific reasons supported by substantial  
6 evidence for discounting Plaintiff's allegations of pain and other symptoms.");  
7 and (2) that the ALJ failed to provide a legally sufficient basis for rejecting the  
8 opinion of Plaintiff's treating physician, see id. at 43 ("Defendant concedes  
9 that the ALJ's rationale for discounting Dr. Allen's treating medical source  
10 opinion was legally insufficient."). Accordingly, the Court finds that the first  
11 element of the Garrison/Treichler framework has been met.

12 Turning to the second element, the Court finds that the administrative  
13 record is detailed and complete and further administrative proceedings would  
14 not be useful. At the first administrative hearing in 2011, Plaintiff testified that  
15 he had an accident at work in 2008 which caused him to stop working due to  
16 pain associated with injuries to his head, right eye, right shoulder, neck, lower  
17 back, and right knee. AR 32-33. Plaintiff testified that he had (1) headaches  
18 three to four times a week, (2) constant pain in his right eye, (3) pain in his  
19 right shoulder approximately three times a week, (4) constant pain in his neck,  
20 (5) constant pain in his lower back, and (6) pain in his right knee three or four  
21 times a week. AR 34-37. Plaintiff testified that he has to lay down for  
22 approximately two hours twice a day due to severe back pains. AR 38-39.  
23 Plaintiff testified that he could lift and carry five to ten pounds comfortably, sit  
24 for about 20 to 30 minutes, walk for about 20 minutes, and stand for about 20  
25 to 30 minutes. AR 39-40. Plaintiff reports that his medication causes side  
26 effects such as drowsiness, nausea, and heartburn. AR 40. At the second  
27 hearing in 2014, Plaintiff testified that although he has bad pain every day, he  
28 has extreme pain four or five days a week. AR 815-16.



1 Plaintiff has consistently reported pain to his treating physicians since  
2 2008. In 2008, Plaintiff reported having two to three headaches a week,  
3 soreness in his neck, pain in the mid back region, and pain on the flexion of the  
4 spine. AR 408, 437. In 2009, Plaintiff reported back pain at six out of ten  
5 despite temporary relief from a lumbar injection. AR 485-86. Plaintiff also  
6 complained on multiple visits of severe axial back pain, knee pain, multiple  
7 days of headaches each week, and neck pain. AR 500, 503, 566, 570, 579, 583,  
8 589, 595-96, 628, 631, 635, 636. In March 2009, Plaintiff complained of  
9 headaches 2 to 3 times a week and an increase in back pain that trigger point  
10 injections did not help relieve. AR 624. In 2010, Plaintiff reported neck, back,  
11 and shoulder pain, and an increase in headaches. AR 640, 645, 648, 654, 656,  
12 622-23, 679, 688-89. On July 28, 2010, Plaintiff completed a pain  
13 questionnaire where he reiterates all the pain he has reported to his physicians  
14 and also states that the medication he takes causes side effects of drowsiness,  
15 upset stomach, and constipation. AR 219-21. The records also indicate an  
16 increase in pain severity since 2008 and several rounds of steroids and nerve  
17 blocking injection into Plaintiff's spine, AR 487, 583, 595, 640, 689, 684, 692,  
18 as well as recommendations for injections into Plaintiff's knee and shoulder,  
19 AR 645, 648. On February 8, 2010, Plaintiff's treating physician noted that an  
20 MRI showed damage in Plaintiff's right shoulder that warranted surgery. AR  
21 662.

22 On September 26, 2011, Dr. Allen completed a treating physician's  
23 statement outlining his assessment of Plaintiff's limitations based on his  
24 treatment of Plaintiff from January 18, 2008 to November 22, 2010 and his  
25 review of Plaintiff's treatment records. AR 731-39. Dr. Allen based his opinion  
26 on objective evidence including multiple x-rays, and MRIs of the neck, lumbar,  
27 and thoracic spine. AR 773. Dr. Allen opined that with normal breaks Plaintiff  
28 could walk and stand for less than one hour at a time, sit less than one hour at

1 a time, stand and walk less than two hours in an eight-hour workday, sit less  
2 than two hours in an eight-hour workday, and walk/stand frequently without  
3 assistive devices. Id. Dr. Allen also opined that Plaintiff could occasionally  
4 carry and lift less than ten pounds in an eight-hour workday. AR 734. Dr.  
5 Allen concluded that Plaintiff is unable to return to his prior occupation and  
6 that his limitations and medication would restrict him from gainful  
7 employment. AR 737.

8 The Commissioner does not identify any outstanding issues that require  
9 resolution. The Commissioner argues that the ALJ needs “an opportunity to  
10 further develop the extent of Plaintiff’s medication side effects, determine the  
11 benefit of treatment modalities and the necessity for surgical intervention,  
12 resolve conflicts in the medical opinion evidence, and determine whether  
13 Plaintiff’s limitations would permit any work.” JS at 29. But Garrison sharply  
14 criticized this type of argument for remand:

15 Although the Commissioner argues that further proceedings would  
16 serve the “useful purpose” of allowing the ALJ to revisit the  
17 medical opinion and testimony that she rejected for legally  
18 insufficient reasons, our precedent and the objectives of the credit-  
19 as-true rule foreclose the argument that remand for the purpose of  
20 allowing the ALJ to have a mulligan qualifies as remand for a  
21 “useful purpose.”

22 Garrison, 759 F.3d at 1021-22 (citations omitted). The Commissioner should  
23 not be allowed a third chance to attack Plaintiff’s credibility and Dr. Allen’s  
24 opinion. See, e.g., Moisa, 367 F.3d at 887 (“The Commissioner, having lost  
25 this appeal, should not have another opportunity to show that Moisa is not  
26 credible any more than Moisa, had he lost, should have an opportunity for  
27 remand and further proceedings to establish his credibility.”). The Court  
28 accordingly finds that the second step of the credit-as-true framework has been

1 satisfied.<sup>2</sup>

2 Turning then to the third and final element, the Court finds that crediting  
3 Plaintiff's testimony and Dr. Allen's opinion as true would require a finding  
4 that Plaintiff is disabled within the disabled within the meaning of the Social  
5 Security Act. Here, the vocational expert ("VE") at Plaintiff's second hearing  
6 testified that if an individual's standing, walking, and sitting abilities did not  
7 equal 8 hours, there would be no full-time work available for him. AR 823.  
8 The VE testified that if an individual was off task twenty percent of the time  
9 due to breaks, pain, or loss of concentration, there would also be no work  
10 available to him. AR 824. On cross-examination, the VE also concluded that  
11 there would be no work available to an individual with the limitations opined  
12 by Dr. Allen (stand/walk less than two hours and sit less than two hours in an  
13 eight-hour day). AR 829-33. Consistent with the VE's opinion, Plaintiff's  
14 credited testimony would exclude him from any job because his combined  
15 standing, walking, and sitting abilities do not equal 8 hours.

16 In sum, there is no ambiguity or need for further evaluation and no  
17 outstanding issues that must be resolved before a determination of disability  
18 can be made. It is clear from the record that the ALJ would be required to find  
19 Plaintiff disabled if Dr. Allen's opinion and Plaintiff's testimony are credited.  
20 See Moisa, 367 F.3d at 887 (holding that taken as true, Plaintiff's improperly  
21 discounted pain testimony established his inability to work and therefore the  
22

---

23 <sup>2</sup> The Commissioner's supplemental memorandum (see Dkt. 17) argues  
24 that a remand would permit the ALJ an opportunity to review other evidence  
25 that supports a finding of non-disability, such as an examining physician's  
26 opinion, the medical expert's opinion, and records showing improvement. The  
27 Court has reviewed this evidence and finds that additional administrative  
28 proceedings would not be useful because "an evaluation of the record as a  
whole" does not create "serious doubt that [the] claimant is, in fact, disabled."  
See Garrison, 759 F.3d at 1021.

1 case should be remanded for immediate payment of benefits since no further  
2 agency expertise was required). Furthermore, the Commissioner should not  
3 have a third chance to decide Plaintiff's case. See id.; Benecke, 379 F.3d at 595  
4 (holding that allowing Commissioner a second chance to decide the "central  
5 issue" in claimant's case 'create[s] an unfair 'heads we win; tails, let's play  
6 again' system of disability benefits adjudication"). Plaintiff initially filed his  
7 application for disability insurance benefits in 2009. Further delay of "the  
8 payment of benefits by requiring multiple administrative proceedings that are  
9 duplicative and unnecessary only serves to cause the applicant further  
10 damage—financial, medical, and emotional" and contradicts the goals of  
11 fairness and efficiency that the credit-as-true rule is designed to achieve.  
12 Garrison, 759 F.3d at 1019 (quoting Varney v. Sec'y of Health & Human  
13 Servs., 859 F.2d 1396, 1398-99 (9th Cir. 1988)).

14 V.

15 **CONCLUSION**

16 For the reasons stated above, the decision of the Social Security  
17 Commissioner is REVERSED and the action is REMANDED for award of  
18 benefits consistent with this opinion.

19  
20 Dated: September 29, 2016

21  
22   
23 \_\_\_\_\_  
24 DOUGLAS F. McCORMICK  
25 United States Magistrate Judge  
26  
27  
28