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

Case No. 8:16-CV-00630 (VEB)

RICHARD LAWRENCE
RODRIGUEZ,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

DECISION AND ORDER

I. INTRODUCTION

In September of 2014, Plaintiff Richard Lawrence Rodriguez applied for Disability Insurance Benefits under the Social Security Act. The Commissioner of

1 Social Security¹ denied the application. Plaintiff, represented by California Lawyers
2 Group, LLP, Michael S. Brown, Esq., of counsel, commenced this action seeking
3 judicial review of the Commissioner’s denial of benefits pursuant to 42 U.S.C. §§
4 405 (g) and 1383 (c)(3).

5 The parties consented to the jurisdiction of a United States Magistrate Judge.
6 (Docket No. 8, 9, 15). On December 12, 2016, this case was referred to the
7 undersigned pursuant to General Order 05-07. (Docket No. 23).

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9 **II. BACKGROUND**

10 Plaintiff applied for benefits on September 3, 2014, alleging disability
11 beginning June 2, 2011. (T at 60, 71).² The application was denied initially and on
12 reconsideration. Plaintiff requested a hearing before an Administrative Law Judge
13 (“ALJ”). On July 22, 2015, a hearing was held before ALJ John Wojceichowski. (T
14 at 29). Plaintiff appeared with his attorney and testified. (T at 34-52). The ALJ also
15 received testimony from David A. Rinehart, a vocational expert (T at 52-57).

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18 ¹ On January 23, 2017, Nancy Berryhill took office as Acting Social Security Commissioner. The
19 Clerk of the Court is directed to substitute Acting Commissioner Berryhill as the named defendant
20 in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

² Citations to (“T”) refer to the administrative record at Docket No. 19.

1 On October 8, 2015, the ALJ issued a written decision denying the application
2 for benefits. (T at 9-28). The ALJ's decision became the Commissioner's final
3 decision February 1, 2016, when the Appeals Council denied Plaintiff's request for
4 review. (T at 1-6).

5 On April 5, 2016, Plaintiff, acting by and through his counsel, filed this action
6 seeking judicial review of the Commissioner's decision. (Docket No. 1). The
7 Commissioner interposed an Answer on September 22, 2016. (Docket No. 18).
8 Plaintiff filed a supporting Brief on October 21, 2016. (Docket No. 21). The
9 Commissioner filed an opposing Brief on November 23, 2016. (Docket No. 22).

10 After reviewing the pleadings, the parties' Briefs, and administrative record,
11 this Court finds that the Commissioner's decision should be reversed and this case
12 remanded for further proceedings.

14 **III. DISCUSSION**

15 **A. Sequential Evaluation Process**

16 The Social Security Act ("the Act") defines disability as the "inability to
17 engage in any substantial gainful activity by reason of any medically determinable
18 physical or mental impairment which can be expected to result in death or which has
19 lasted or can be expected to last for a continuous period of not less than twelve

1 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
2 claimant shall be determined to be under a disability only if any impairments are of
3 such severity that he or she is not only unable to do previous work but cannot,
4 considering his or her age, education and work experiences, engage in any other
5 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
6 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
7 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

8 The Commissioner has established a five-step sequential evaluation process
9 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
10 one determines if the person is engaged in substantial gainful activities. If so,
11 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If not, the
12 decision maker proceeds to step two, which determines whether the claimant has a
13 medically severe impairment or combination of impairments. 20 C.F.R. §§
14 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

15 If the claimant does not have a severe impairment or combination of
16 impairments, the disability claim is denied. If the impairment is severe, the
17 evaluation proceeds to the third step, which compares the claimant’s impairment(s)
18 with a number of listed impairments acknowledged by the Commissioner to be so
19 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
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1 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
2 equals one of the listed impairments, the claimant is conclusively presumed to be
3 disabled. If the impairment is not one conclusively presumed to be disabling, the
4 evaluation proceeds to the fourth step, which determines whether the impairment
5 prevents the claimant from performing work which was performed in the past. If the
6 claimant is able to perform previous work, he or she is deemed not disabled. 20
7 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual
8 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
9 work, the fifth and final step in the process determines whether he or she is able to
10 perform other work in the national economy in view of his or her residual functional
11 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
12 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

13 The initial burden of proof rests upon the claimant to establish a *prima facie*
14 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
15 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
16 is met once the claimant establishes that a mental or physical impairment prevents
17 the performance of previous work. The burden then shifts, at step five, to the
18 Commissioner to show that (1) plaintiff can perform other substantial gainful
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1 activity and (2) a “significant number of jobs exist in the national economy” that the
2 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

3 **B. Standard of Review**

4 Congress has provided a limited scope of judicial review of a Commissioner’s
5 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,
6 made through an ALJ, when the determination is not based on legal error and is
7 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
8 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

9 “The [Commissioner’s] determination that a plaintiff is not disabled will be
10 upheld if the findings of fact are supported by substantial evidence.” *Delgado v.*
11 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
12 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
13 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
14 599, 601-02 (9th Cir. 1989). Substantial evidence “means such evidence as a
15 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
16 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). “[S]uch inferences and
17 conclusions as the [Commissioner] may reasonably draw from the evidence” will
18 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
19 the Court considers the record as a whole, not just the evidence supporting the

1 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
2 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

3 It is the role of the Commissioner, not this Court, to resolve conflicts in
4 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
5 interpretation, the Court may not substitute its judgment for that of the
6 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
7 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
8 set aside if the proper legal standards were not applied in weighing the evidence and
9 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
10 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
11 administrative findings, or if there is conflicting evidence that will support a finding
12 of either disability or non-disability, the finding of the Commissioner is conclusive.
13 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

14 **C. Commissioner’s Decision**

15 The ALJ determined that Plaintiff had not engaged in substantial gainful
16 activity since June 4, 2011 (the alleged onset date) and met the insured status
17 requirements of the Social Security Act through December 31, 2016. (T at 14). The
18 ALJ found that Plaintiff’s lumbar degenerative disc disease, posttraumatic stress
19 disorder, and depression were “severe” impairments under the Act. (Tr. 14).

1 However, the ALJ concluded that Plaintiff did not have an impairment or
2 combination of impairments that met or medically equaled one of the impairments
3 set forth in the Listings. (T at 15).

4 The ALJ determined that Plaintiff retained the residual functional capacity
5 (“RFC”) to perform light work as defined in 20 CFR § 404.1567 (b), with the
6 following limitations: he can lift/carry 20 pounds occasionally and 10 pounds
7 frequently; he can stand/walk for 4 hours in an 8-hour workday; he can occasionally
8 climb, balance, stoop, kneel, crawl, or crouch; he cannot climb ladders, ropes or
9 scaffolds; he is limited to simple, repetitive tasks with no public contact and only
10 incidental contact with co-workers and supervisors. (T at 17).

11 The ALJ found that Plaintiff could not perform his past relevant work as a
12 security guard. (T at 23). Considering Plaintiff’s age (34 on the alleged onset date),
13 education (at least high school), work experience, and residual functional capacity,
14 the ALJ determined that there were jobs that exist in significant numbers in the
15 national economy that Plaintiff can perform. (T at 23).

16 As such, the ALJ found that Plaintiff was not entitled to benefits under the
17 Social Security Act from June 2, 2011 (the alleged onset date) through October 8,
18 2015 (the date of the ALJ’s decision). (T at 24-25). As noted above, the ALJ’s
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1 decision became the Commissioner’s final decision when the Appeals Council
2 denied Plaintiff’s request for review. (T at 1-6).

3 **D. Disputed Issues**

4 Plaintiff offers two (2) main arguments in support of his claim that the
5 Commissioner’s decision should be reversed. First, he contends that the
6 hypothetical question presented to the vocational expert was flawed. Second,
7 Plaintiff challenges the ALJ’s credibility determination. This Court will address
8 both arguments in turn.

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10 **IV. ANALYSIS**

11 **A. Hypothetical Question**

12 At step five of the sequential evaluation, the burden is on the Commissioner to
13 show that (1) the claimant can perform other substantial gainful activity and (2) a
14 “significant number of jobs exist in the national economy” which the claimant can
15 perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). If a claimant cannot
16 return to his previous job, the Commissioner must identify specific jobs existing in
17 substantial numbers in the national economy that the claimant can perform. See
18 *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir.1995).

1 The Commissioner may carry this burden by “eliciting the testimony of a
2 vocational expert in response to a hypothetical that sets out all the limitations and
3 restrictions of the claimant.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995).
4 The ALJ's depiction of the claimant's disability must be accurate, detailed, and
5 supported by the medical record. *Gamer v. Secretary of Health and Human Servs.*,
6 815 F.2d 1275, 1279 (9th Cir.1987). “If the assumptions in the hypothetical are not
7 supported by the record, the opinion of the vocational expert that claimant has a
8 residual working capacity has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d
9 1450, 1456 (9th Cir. 1984).

10 In this case, the ALJ’s hypothetical to the vocational expert included
11 limitations of “no public contact, and only incidental contact with coworkers or
12 supervisors.” (T at 56). When Plaintiff’s counsel asked the vocational expert
13 whether a hypothetical claimant who was “off task 20 percent or more of the time”
14 could maintain full-time employment, the vocational expert responded in the
15 negative. (T at 56-57). At step three of the sequential evaluation, the ALJ found that
16 Plaintiff had moderate difficulties with regard to concentration, persistence, and
17 pace. (T at 16). No such limitations were included in the vocational expert
18 hypothetical.

1 Courts have reached various, fact-specific conclusions as to whether and how
2 an ALJ should translate a finding of limitations with regard to concentration,
3 persistence, or pace into the RFC determination (and then, in turn, into the
4 hypothetical presented to the vocational expert). The touchstone is the Ninth
5 Circuit’s decision in *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1173 (9th Cir.
6 2008), where the court concluded that the ALJ adequately accounted for Plaintiff’s
7 moderate limitations with regard to pace by limiting the claimant to “simple tasks.”
8 *See also Vaughn v. Colvin*, No. CV 14-6575, 2015 U.S. Dist. LEXIS 121530, at *17
9 (C.D. Cal. Sep. 11, 2015).

10 However, there is no a *per se* rule and, depending on the medical record, a
11 restriction to simple and repetitive tasks may not be sufficient to account for a
12 claimant’s limitations with regard to concentration, persistence, or pace. *See*
13 *Woodward v. Colvin*, No. ED CV 15-247, 2015 U.S. Dist. LEXIS 163171, at *21-26
14 (C.D. Cal. Dec. 4, 2015)(collecting cases). In sum, a limitation as to concentration,
15 persistence, or pace may be “translated” into a restriction to simple, routine work,
16 but only where the medical record does not establish any specific, additional
17 restrictions arising from the concentration/persistence/pace limitation. *Id.*

18 In other words, an ALJ who finds a limitation as to concentration, persistence,
19 or pace is not automatically required to include that limitation in the RFC

1 determination – or in the hypothetical presented to the vocational expert. However,
2 the mere fact that the ALJ finds a limitation to “simple, routine work” does not
3 necessarily mean he or she adequately accounted for the claimant’s limitations with
4 regard to concentration, persistence, and pace. The answer to that question depends
5 on the medical record.

6 In the present case, this Court finds that the ALJ’s RFC determination did not
7 adequately account for Plaintiff’s mental health limitations, including limitations
8 with regard to maintaining concentration, persistence, or pace.

9 The ALJ gave “great weight” to the opinion of Dr. Ijeoma Ijeaku, a
10 consultative examiner (T at 22), but did not incorporate the limitations assessed by
11 Dr. Ijeaku into the RFC determination (or provide an explanation for deciding not to
12 incorporate those limitations).

13 Dr. Ijeaku diagnosed post-traumatic stress disorder and opined that Plaintiff
14 had moderate limitation with respect to understanding, remembering, and carrying
15 out complex instructions and mild limitation as to his ability to understand,
16 remember, and carry simple instructions. (T at 518). The ALJ incorporated these
17 limitations into the RFC assessment, finding Plaintiff limited to simple, repetitive
18 tasks. (T at 17).

1 However, Dr. Ijeaku also assigned a Global Assessment of Functioning
2 (“GAF”) score³ of 45 (T at 518), which is indicative of serious impairment in social,
3 occupational or school functioning. *Haly v. Astrue*, No. EDCV 08-0672, 2009 U.S.
4 Dist. LEXIS 76881, at *12-13 (Cal. CD Aug. 27, 2009). He found that Plaintiff was
5 moderately limited with respect to maintaining concentration, attendance, and
6 persistence; moderately limited as to performing activities within a schedule and
7 maintaining regular attendance; moderately limited with regard to completing a
8 normal work day and work week without interruption from psychiatric symptoms;
9 and moderately limited as to responding appropriately to changes in a work setting.
10 (T at 519). Although the ALJ afforded “great weight” to Dr. Ijeaku’s assessment, he
11 did not incorporate (or account for) any of these limitations in the RFC
12 determination. This was error requiring remand.

13 Moreover, even assuming *arguendo* that the ALJ’s limitation to “simple,
14 routine tasks with no public contact and only incidental contact with coworkers and
15 supervisors” adequately accounted for Plaintiff’s mental health limitations, a remand
16 would still be required. This is because the ALJ’s hypothetical to the vocational
17 expert included the “social” limitations (i.e. no public contact, only incidental co-

18 ³ “A GAF score is a rough estimate of an individual's psychological, social, and occupational
19 functioning used to reflect the individual's need for treatment.” *Vargas v. Lambert*, 159 F.3d 1161,
20 1164 n.2 (9th Cir. 1998).

1 worker and supervisor contact), but did not include the limitation to simple, routine
2 tasks. (T at 56). As such, even if there was no error in the RFC determination, a
3 remand would still be necessary because the hypothetical presented to the vocational
4 expert failed to account for all the limitations contained in the RFC.

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7 **B. Credibility**

8 A claimant's subjective complaints concerning his or her limitations are an
9 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
10 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's findings with regard to the
11 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*
12 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
13 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear
14 and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General
15 findings are insufficient: rather the ALJ must identify what testimony is not credible
16 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;
17 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

18 However, subjective symptomatology by itself cannot be the basis for a
19 finding of disability. A claimant must present medical evidence or findings that the

1 existence of an underlying condition could reasonably be expected to produce the
2 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.
3 § 404.1529(b), 416.929; SSR 96-7p.

4 In this case, Plaintiff testified as follows: He graduated from high school. (T
5 at 36). He served in the United States Army, receiving an honorable discharge after
6 three years and eight months of service. (T at 36). His last employment was as a
7 security guard. (T at 37). He was terminated for insubordination and “unbalanced”
8 behavior. (T at 38). He has difficulty trusting and relating to people who have not
9 served in the military. (T at 38). He suffered trauma to his back during his service in
10 Iraq and receives treatment for a herniated disc. (T at 38-39). He visits the VA for
11 psychiatric treatment. (T at 39). He can attend to personal care needs and perform
12 basic household chores. (T at 43). His wife interacts with school officials regarding
13 their daughter, because of difficulties Plaintiff has had with such interactions. (T at
14 44). He isolates himself from others because of fear of how he will react to them. (T
15 at 44). He lashes out unpredictably and has difficulty controlling his behavior. (T at
16 45).

17 His primary physical complaints are back and knee pain, combined with
18 asthma. (T at 45-46). He can stand for about 15-20 minutes. (T at 46).

1 Lifting/carrying is limited to 35 pounds. (T at 46). He can sit for about 15 minutes
2 at a time. (T at 46).

3 He experiences auditory hallucinations every other day. (T at 47). They last
4 for 10-15 minutes at a time. (T at 49). He has a visual hallucination of a young girl
5 from Iraq on a daily basis. (T at 49).

6 The ALJ concluded that Plaintiff's statements concerning the intensity,
7 persistence, and limiting effects of the symptoms were not fully credible. (T at 19).
8 This assessment will need to be revisited on remand. The ALJ concluded that Dr.
9 Ijeaku's findings were "inconsistent with the alleged severity of [Plaintiff's]
10 impairments and functional limitations" and therefore "diminishe[d] the credibility
11 of those allegations." (T at 19). However, as noted above, Dr. Ijeaku assigned a
12 GAF score of 45 (T at 518), which is indicative of serious impairment in
13 functioning. He also found that Plaintiff was moderately limited with respect to
14 maintaining concentration, attendance, and persistence; moderately limited as to
15 performing activities within a schedule and maintaining regular attendance;
16 moderately limited with regard to completing a normal work day and work week
17 without interruption from psychiatric symptoms; and moderately limited as to
18 responding appropriately to changes in a work setting. (T at 519).

1 These findings appear to be consistent with, and supportive of, Plaintiff's
2 complaints of unpredictable mood swings, anxiety, and other mental health
3 symptoms arising from his PTSD. The ALJ afforded great weight to Dr. Ijeaku's
4 assessment, declared his findings inconsistent with Plaintiff's subjective complaints,
5 and discounted Plaintiff's credibility, without any meaningful explanation or citation
6 to the record. Indeed, the ALJ focused on some of Dr. Ijeaku's clinical findings (e.g.
7 that Plaintiff had spontaneous and fluent speech, normal thought content, fair
8 insight), without accounting for the fact that the consultative examiner's actual
9 opinion was quite consistent with Plaintiff's allegations.

10 The impact of this error can be illustrated with regard to the ALJ's
11 consideration of Plaintiff's activities of daily living. While the ALJ recognized that
12 Plaintiff's ADLs were "somewhat limited," he found that Plaintiff's ability to attend
13 to personal grooming, household chores, and provide some child care undermined
14 his claims of disabling limitations. (T at 19).

15 However, Dr. Ijeaku opined that Plaintiff would be moderately limited with
16 respect to completing a normal work day and work week without interruption from
17 psychiatric symptoms. (T at 519). This suggests that Plaintiff may be able to
18 function to a limited extent within a comfortable situation, where he can structure his
19 activities with relative freedom, but would struggle if forced to comply with the

1 demands of a competitive workplace. Individuals with chronic mental health
2 problems “commonly have their lives structured to minimize stress and reduce their
3 signs and symptoms.” *Courneya v. Colvin*, No. CV-12-5044, 2013 U.S. Dist. LEXIS
4 161332, at *13-14 (E.D.W.A. Nov. 12, 2013)(quoting 20 C.F.R. Pt. 404, Subp't P,
5 App. 1 § 12.00(D)).

6 If the ALJ had considered this possibility and addressed it in a manner
7 supported by substantial evidence, this Court would be bound to accept his
8 interpretation. However, it does not appear that the ALJ gave this any consideration.
9 This was a significant omission. *Bjornson v. Astrue*, 671 F.3d 640, 647 (7th Cir.
10 2012)(“The critical differences between activities of daily living and activities in a
11 full-time job are that a person has more flexibility in scheduling the former than the
12 latter, can get help from other persons . . . , and is not held to a minimum standard of
13 performance, as she would be by an employer. The failure to recognize these
14 differences is a recurrent, and deplorable, feature of opinions by administrative law
15 judges in social security disability cases.”)(cited with approval in *Garrison v.*
16 *Colvin*, 759 F.3d 995, 1016 (9th Cir. 2014)).

1 Accordingly, the question of Plaintiff's credibility will need to be revisited on
2 remand.⁴

3 **C. Remand**

4 In a case where the ALJ's determination is not supported by substantial
5 evidence or is tainted by legal error, the court may remand the matter for additional
6 proceedings or an immediate award of benefits. Remand for additional proceedings
7 is proper where (1) outstanding issues must be resolved, and (2) it is not clear from
8 the record before the court that a claimant is disabled. *See Benecke v. Barnhart*, 379
9 F.3d 587, 593 (9th Cir. 2004).

10 Here, this Court finds that remand for further proceedings is warranted. The
11 record contains assessments from State Agency review physicians that are
12 supportive of the ALJ's determination. (Tat 66-68, 77-82). No treating physician
13 found Plaintiff more limited than the ALJ's determination. It is not clear whether,
14 even accounting for the moderate limitations assessed by Dr. Ijeaku, Plaintiff is
15 disabled as defined under the Social Security Act. Accordingly, this Court finds that
16 a remand for further proceedings is the appropriate remedy. *See Strauss v. Comm'r*

17 ⁴ Plaintiff also challenges the ALJ's decision to discount a lay report provided by his wife. As the
18 ALJ's decision to discount that report was grounded in substantially the reasons provided for
19 discounting Plaintiff's credibility (i.e. the ALJ found the subjective claims contradicted by the
20 objective evidence and activities of daily living), the lay evidence should likewise be revisited on
remand.

1 of *Soc. Sec.*, 635 F.3d 1135, 1138 (9th Cir. 2011)(“Ultimately, a claimant is not
2 entitled to benefits under the statute unless the claimant is, in fact, disabled, no
3 matter how egregious the ALJ’s errors may be.”).

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1 **V. ORDERS**

2 IT IS THEREFORE ORDERED that:

3 Judgment be entered AFFIRMING the Commissioner’s decision; and

4 The Clerk of the Court shall file this Decision and Order, serve copies upon
5 counsel for the parties, and CLOSE this case.

6 DATED this 3rd day of April 2017,

7 /s/Victor E. Bianchini
8 VICTOR E. BIANCHINI
9 UNITED STATES MAGISTRATE JUDGE

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