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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 Security<sup>1</sup> 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).

## 8

## 9 **II. BACKGROUND**

10 Plaintiff applied for benefits on September 3, 2014, alleging disability  
11 beginning June 2, 2011. (T at 60, 71).<sup>2</sup> 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 <sup>1</sup> 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.

<sup>2</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup>  
15 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir.  
8 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d  
14 599, 601-02 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir.  
2 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> 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 (9<sup>th</sup>  
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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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”) score<sup>3</sup> 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-

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18 <sup>3</sup> “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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.<sup>4</sup>

### 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*

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17 <sup>4</sup> 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 (9<sup>th</sup> 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 REVERSING the Commissioner’s decision and  
4 REMANDING for further proceedings consistent with this Decision and Order; and

5 The Clerk of the Court shall file this Decision and Order, serve copies upon  
6 counsel for the parties, and CLOSE this case, without prejudice to a timely  
7 application for attorneys’ fees.

8 DATED this 3<sup>rd</sup> day of April 2017,

9 /s/Victor E. Bianchini  
10 VICTOR E. BIANCHINI  
11 UNITED STATES MAGISTRATE JUDGE  
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