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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION

JAMES TROY WILLIAMS,)	Case No. SA CV 16-02141-AS
)	
Plaintiff,)	MEMORANDUM OPINION AND
)	ORDER OF REMAND
)	
v.)	
)	
NANCY A. BERRYHILL, ¹ Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

PROCEEDINGS

On December 1, 2016, *pro se* Plaintiff, James Troy Williams, filed a Complaint seeking review of the denial of his application for Disability Insurance Benefits. (Docket Entry No. 1). The parties have consented to proceed before the undersigned United States Magistrate Judge. (Docket Entry Nos. 8-9). On April 14, 2017, Defendant filed an

¹ Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration and is substituted in for Acting Commissioner Carolyn W. Colvin in this case. See 42 U.S.C. § 205(g).

1 Answer along with the Administrative Record ("AR"). (Docket Entry Nos.
2 15-16). On July 13, 2017, Plaintiff filed a "Memorandum of Points and
3 Authorities in Support of the Plaintiff's Motion for Summary Judgment"
4 ("Plaintiff's Brief"). (Docket Entry No. 20). On August 14, 2017,
5 Defendant filed a "Memorandum in Support of Defendant's Answer"
6 ("Defendant's Brief"). (Docket Entry No. 22). On August 31, 2017,
7 Plaintiff filed a Reply Brief. (Docket Entry No. 23).
8

9
10 The Court has taken this matter under submission without oral
11 argument. See C.D. Cal. L.R. 7-15; "Order Re: Procedures in Social
12 Security Case," filed December 6, 2016 (Docket Entry No. 6).
13
14

15 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**

16
17 On June 17, 2011, Plaintiff, formerly employed as an interior
18 designer for homes and as a sales representative for a ceramic tiles
19 company (see AR 53, 104, 322, 366-77), filed an application for
20 Disability Insurance Benefits, alleging an inability to work because of
21 his disabling condition since October 1, 2009. (AR 298-99).
22

23
24 On January 31, 2013, Administrative Law Judge Keith Dietterle ("ALJ
25 Dietterle"), heard testimony from Plaintiff (who was represented by
26 counsel) and vocational expert Alan Boroskin. (See AR 50-69). On March
27 5, 2013, ALJ Dietterle issued a decision denying Plaintiff's
28 application. (See AR 133-41). After determining that Plaintiff had

1 severe impairments -- "sleep apnea, hypothyroidism, obesity, and
2 affective disorder" (AR 135) -- but did not have an impairment or
3 combination of impairments that met or medically equaled the severity of
4 one of the Listed Impairments (AR 135-36), ALJ Dietterle found that
5 Plaintiff had the residual functional capacity ("RFC")² to perform medium
6 work with the following limitations: frequent postural functions; no
7 exposure to unprotected heights and dangerous or fast-moving machinery;
8 and work involving only simple, routine tasks. (AR 136-39). ALJ
9 Dietterle then determined that Plaintiff was not able to perform any
10 past relevant work (AR 139), but that Plaintiff could perform jobs
11 existing in significant numbers in the national economy, and was
12 therefore not disabled within the meaning of the Social Security Act.
13 (AR 139-40).
14
15

16
17 Plaintiff requested that the Appeals Council review ALJ Dietterle's
18 decision. (See AR 216-17). On August 25, 2014, the Appeals Council
19 vacated ALJ Dietterle's decision and remanded the matter in order for
20 the Administrative Law Judge to do the following: (1) "Obtain additional
21 evidence concerning the claimant's musculoskeletal impairment in order to
22 complete the administrative record in accordance with the regulatory
23 standards regarding consultative examinations and existing medical
24 evidence"; (2) "Further, if necessary, obtain evidence from a medical
25 expert to clarify the nature and severity of the claimant's impairment";
26
27

28 ² A Residual Functional Capacity is what a claimant can still do despite existing exertional and nonexertional limitations. See 20 C.F.R. § 404.1545(a)(1).

1 (3) "Further evaluate the claimant's musculoskeletal disorder with
2 reference to the pertinent evidence of record, including the claimant's
3 treatment history"; and (4) "If warranted by the expanded record, obtain
4 supplemental evidence from a vocational expert to clarify the effect of
5 the assessed limitations on the claimant's occupational base[.]" (See AR
6 149-50).
7

8
9 On July 21, 2015, another Administrative Law Judge ("ALJ"), Joan
10 Ho, heard testimony from Plaintiff (who was represented by ocunsel),
11 medical expert Ronald Kendrick and vocational expert Jeanine Metildi.
12 (See AR 72-09). On September 4, 2015, the ALJ issued a decision denying
13 Plaintiff's application. (See AR 22-37). After determining that
14 Plaintiff had severe impairments -- "obesity; degenerative disc disease
15 of the cervical spine; cervical spondylosis; degenerative disc disease
16 of the lumbar spine; and major depressive disorder" (AR 25-26)³ -- but
17 did not have an impairment or combination of impairments that met or
18 medically equaled the severity of one of the Listed Impairments (AR 26-
19 27), the ALJ found that Plaintiff had the RFC to perform a range of
20 sedentary work⁴ with the following limitations: can lift and/or carry up
21
22

23
24 ³ The ALJ found that Plaintiff's hypothyroidism, low
25 testosterone, sleep apnea and upset stomach to be were nonsevere
impairments, and that Plaintiff's fibromyalgia and bipolar disorder were
not medically determinable impairments. (AR 25).

26
27 ⁴ "Sedentary work involves lifting no more than 10 pounds at a
28 time and occasionally lifting or carrying articles like docket files,
ledgers, and small tools. Although a sedentary job is defined as one
which involves sitting, a certain amount of walking and standing is
often necessary in carrying out job duties. Jobs are sedentary if
walking and standing are required occasionally and other sedentary
(continued...)

1 to 15 pounds occasionally and 10 pounds frequently; can stand and/or
2 walk 4 hours and sit for 6 hours during an 8-hour workday with normal
3 breaks; cannot climb ramps, stairs, ladders, ropes and scaffolding; can
4 bend, stoop, kneel, crouch and crawl occasionally; can reach in all
5 directions, including overhead, frequently; can use hands and fingers
6 bilaterally frequently; cannot be exposed to workplace hazards such as
7 dangerous moving machinery and unprotected heights; limited to simple,
8 routine and repetitive tasks, but can sustain attention and
9 concentration skills sufficient to carry out work-like tasks with
10 reasonable pace and persistence; and can interact with co-workers,
11 supervisors and the general public occasionally. (AR 27-34). The ALJ
12 then determined that Plaintiff was not able to perform any past relevant
13 work (AR 35), but that Plaintiff could perform jobs existing in
14 significant numbers in the national economy and was therefore not
15 disabled within the meaning of the Social Security Act. (AR 35-36).
16
17
18

19 Plaintiff requested that the Appeals Council review the ALJ's
20 decision. (See AR 17). The request was denied on October 14, 2016.
21 (See AR 1-5). The ALJ's decision then became the final decision of the
22 Commissioner, allowing this Court to review the decision. See 42 U.S.C.
23 §§ 405(g), 1383(c).
24

25 //

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⁴ (...continued)
criteria are met." 20 C.F.R. §§ 404.1567(a).

1 **PLAINTIFF'S CONTENTIONS**

2
3 Plaintiff alleges that the ALJ failed to properly: (1) assess
4 Plaintiff's credibility; (2) assess certain medical medical evidence
5 (including the opinion of one of Plaintiff's treating physicians); (3)
6 evaluate the medical expert's testimony or consider the written
7 objection to the medical expert's testimony; (4) assess the opinions of
8 several of Plaintiff's treating physicians; (5) determine Plaintiff's
9 RFC; and (6) consider Plaintiff's mental impairments. (See Plaintiff's
10 Brief at 2-23; Reply Brief at 2-7).
11
12

13 **DISCUSSION**

14
15
16 After consideration of the record as a whole, the Court finds that
17 Plaintiff's first claim of error warrants a remand for further
18 consideration. Since the Court is remanding the matter based on
19 Plaintiff's first claim of error, the Court will not address Plaintiff's
20 second through sixth claims of error.
21

22
23 **A. The ALJ Did Not Properly Assess Plaintiff's Credibility**

24
25 Plaintiff asserts that the ALJ erred in finding that Plaintiff's
26 testimony about his pain was not credible. (See Plaintiff's Brief at 2-
27 9; Reply Brief at 2-4). Defendant asserts that the ALJ properly
28

1 considered Plaintiff's testimony and found Plaintiff not fully credible.
2 (See Joint Stip. at 14-17).
3

4 Plaintiff made the following statements in a "Function Report -
5 Adult" dated July 28, 2011 (see AR 335-42):
6

7
8 He lives alone in an apartment, but he is going to move
9 in with a friend or family in September 2011 because he can no
10 longer afford it. He does not take care of anyone else or
11 pets (he had to give away a dog because he was unable to take
12 care of the dog). (See AR 335-36, 342).
13

14
15 As a result of his impairments, he no longer is able to
16 swim, dance, take long walks or hikes, work out, work, or
17 engage in social functions. His impairments affect his sleep;
18 he has difficulty falling asleep, he has bad nightmares, he
19 does not sleep well, and he feels paralyzed when he wakes up.
20 His impairments affect his abilities to bathe (he can only
21 shower, and bathing makes him feel light-headed), to care for
22 his hair (his hair has become oily and itchy), and to shave
23 (shaving causes itching and a burning sensation). Although he
24 does not need special reminders to take care of personal needs
25 and grooming, he often puts them off until later in order to
26 sleep more or feel better (which does not happen). He needs
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1 special reminders to take medicine (he forgets whether or not
2 he has already taken medicine). (See AR 336-37).
3

4 He prepares his own meals, simple things likes sandwiches
5 and frozen dinners (i.e., spaghetti, soup, rice and beans).
6 Once a day he makes semi-prepared hot food (which takes 15 to
7 20 minutes), and the rest of his meals must be ready-made.
8 His impairments have made him cook less because of his low
9 energy level. His household chores are hand-washing dishes
10 (5 minutes), laundry (5 minutes), and vaccuuming once in a
11 while (10 to 15 minutes). He cannot do outdoor work because
12 of the heat and physical exertion. He goes outside when
13 necessary, to get mail, go to doctors' appointments, and get
14 groceries, driving a car ("[q]uick trips in my immediate
15 vicinity"). He shops in stores only for groceries, every week
16 or two (30 to 40 minutes). He is able to pay bills, count
17 change, handle a saving account, and use a checkbook or money
18 orders. (See AR 337-39).
19
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21

22 He no longer does his hobbies and interests, namely,
23 swimming, biking, hiking, long walks and long car trips,
24 because he is short of breath, exhausted, has muscle fatigue
25 and is overwhelmed. He spends time with others, talking on
26 the phone once a day, and getting together with a friend once
27 a week. He does not go to any places on a regular basis, and
28

1 he does not feel well enough to attend social functions. He
2 has problems getting along with others because he does not
3 feel like his "old self" and is irritable, less patient,
4 depressed, anxious and nervous. (See AR 339-40).
5

6
7 His impairments affect his lifting, squatting, bending,
8 standing, reaching, walking, sitting, kneeling, stair-
9 climbing,, and getting along with others. His joints are
10 tight and sore all the time, he feels shortness of breath and
11 light-headed, he has hot flashes and sweats profusely, and his
12 strength "can give-out depending on [his] emotions." He can
13 walk for 10 minutes before he has to rest, and then must rest
14 for at least 3 minutes before he can resume walking. He
15 cannot finish what he starts; he falls asleep during
16 conversations and television shows. He can pay attention
17 well, and he believes he can follow follow written and spoken
18 instructions well. He usually gets along fine with authority
19 figures, and he has never been fired or laid off from a job
20 because of problems getting along with other people. He does
21 not handle stress well (ruminating thoughts make it more
22 difficult for him to sleep). He does not handle changes in
23 routine well. (See AR 340-41).
24
25

26
27 Plaintiff testified at the January 31, 2013 administrative hearing
28 as follows (see AR 52-65):

1 He has a Bachelor's degree from the Interior Designers
2 Institute. He lived by himself until he moved back in with
3 his parents about a year ago (for financial reasons). He last
4 worked in July 2008 as an interior designer kitchen and
5 project designer, which consisted of 1/3 walking, 1/3 sitting
6 and 1/3 standing and required him to lift and carry 100 pounds
7 (large tile and flooring samples). During the past 15 years
8 all of his jobs had been in interior design and had roughly
9 the same walking, sitting, standing, lifting requirements. He
10 is 6'4 1/2" tall and weighs 330 pounds (his normal weight is
11 220 pounds; he gained 80 pounds during a 9-month period in
12 2009 as a result of hypothyroidism). He has difficulty
13 sleeping and has sleep apnea (he uses a CPAP which helps but
14 is not perfect). As a result of his thyroid (metabolism)
15 problem, he goes to bed between 3 a.m. and 5 a.m. (before he
16 falls asleep he just lies in bed for 2 to 3 hours; he has
17 tried activities like reading and watching television, but
18 sometimes they just overstimulate him), and he is tired in the
19 morning because his mind is racing. He sees Dr. Molina for
20 his hypothyroidism every two weeks or at least once a month,
21 and he takes a synthetic form of Levothyroxine (and has tried
22 a natural remedy, Armour, which apparently did not work). He
23 has problems with chronic fatigue, and naps for about an hour
24 or two during the day (he sometimes has to pull his car over
25 to the side of the ride to take a nap). (See AR 52-57).

1 He has severe depression; he becomes extremely withdrawn
2 and has suicidal ideations. He sees a psychiatrist for his
3 depression. He does not have hallucinations. (See AR 59-61).
4

5 He has pain in his neck and has headaches, and sees Dr.
6 Demner for treatment. The pain travels from his neck to the
7 base of his spine. He has had to go to the emergency room
8 every three months on average. He has used a TENS unit at
9 least 4 times a week since 2003. He also has used heat, ice
10 and muscle relaxers. For pain management, he has received
11 trigger point injections and epidurals in his upper and lower
12 thoracic. The past 2 months he has had two epidurals, which
13 provided him relief for about a week. Dr. Demner has
14 recommended a spinal fusion joining the neck and the cervical
15 spine. He is considering it, but his insurance requires him
16 to go to physical therapy for 6 months to one year. (See AR
17 62-64).
18
19

20 He does not have any difficulty with dressing or bathing.
21 He has difficulty putting on his shoes, but he usually wears
22 slip-on shoes. He does minimal household chores -- making his
23 bed, cleaning the kitchen countertop, laundry, things that do
24 not require much bending. He can drive for a maximum of 20
25 minutes (he begins to feel drowsy). He can sit in a chair
26 (depending on its comfort) for about 2 hours. He can walk for
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28

1 2 blocks. He does not use any assistive device. He can lift
2 75 pounds if he is standing upright (i.e., a box on a
3 counter); he cannot lift that weight if it is on the ground
4 and he has to bend (it would cause him pain or to spasm
5 later). (See AR 57-59).
6

7
8 His circle of friends has been reduced to one or two
9 people. He goes out with his friends about once every three
10 months, and goes out to eat about once a month. He does not
11 have any hobbies, and does not belong to any clubs or social
12 organizations. He reads the news on the computer every day
13 (about 30 minutes). (See AR 60-61).
14

15
16 His energy level and sleepiness would keep him from being
17 able to do a simple job on a full-time basis. He sometimes
18 has good days, but more often has bad days. 2 times a week he
19 cannot get out of bed and get himself going. He just lies
20 down because his back hurts or because his pain and depression
21 are overwhelming. (See AR 64-65).
22

23
24 Plaintiff testified at the July 21, 2015 administrative hearing as
25 follows (see AR 75-76, 84-102):
26

27 He is single, lives with his parents in a house, is 6'4"
28 tall, and weighs 330 pounds. He drives three to four times a

1 week, usually to the grocery store. His parents drove him to
2 the hearing. (See AR 76).
3

4 He stopped working because he was laid off. When asked
5 if he would have continued to work had he not been laid off,
6 he responded, "My health was deteriorating and I was going to
7 many, many doctors at the time, so when I was laid off I
8 thought oh, great, now I can concentrate on my health. At
9 that time, he was having problems with primarily his back
10 (cervical spine and lumbar spine), and he was going to (with
11 insurance) physical therapy twice a week and to the
12 chiropractor once a week. From July 2008 to the end of 2013,
13 his back problems became much worse -- he got severe spasms,
14 shooting nerving pain (from his lower back down to his feet)
15 that would cause him to go off-balance and fall, and burning
16 sensations in his feet. From July 2008 to the end of 2013,
17 his neck pain became worse -- the nerve became more
18 compressed, and the pain became a shooting, radiating pain
19 over his head and way down his back. His neck pain affects
20 his ability to move his neck side to side or tilting. Many
21 neurosurgeons have recommended surgery on his neck, and the
22 plan is to proceed with a neck fusion (but a neurologist still
23 needs to say how many neck segments need to be fused). Prior
24 to the end of 2013, he had hypothyroidism for about a year and
25 a half. His hypothyroidism levels have been stable since
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1 2010, but he still has various symptoms, such as voice
2 hoarseness, skin problems, heavy rosacea (which he treats with
3 ointments), and constipation. Prior to the end of 2013, he
4 had fibromyalgia which has been an all-over body ache causing
5 pain between a level 6 to a level 8. (See AR 84-90).
6

7
8 Prior to the end of 2013, he could stand for 3 minutes
9 before he started feeling pain, and after standing for about
10 10 minutes he needed to sit down or change his position. Now
11 he can only stand for about 5 minutes before spasms begin and
12 he has to change position. He also needs to change position
13 if he sits for too long. He has problems with concentration;
14 noises and lights easily break his attention span. (See AR
15 90-92).
16

17
18 At the beginning of his hypothyroidism, his psychiatric
19 care was well-managed with mood stabilizers and anti-
20 depressants; he saw Dr. Bataglino at least every 2 weeks for
21 about six months. However, prior to the end of 2013, he had
22 severe depression, severe anxiety and irrational fears -- his
23 anxiety became uncontrollable, the combination of pill
24 cocktails he was taking did not continue to work (different
25 doctors changed his medications), he would talk himself out of
26 doing things like getting out of the house, and he ultimately
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28

1 isolated himself. His mental health issues have stabilized.
2 (See AR 92-93, 99-100).
3

4 With respect to daily activities from July 2008 to the
5 end of 2013, he stayed home laying flat on his back an average
6 of 4 to 5 hours a day, watching television, taking online
7 courses, talking to friends. He also would have to lie down
8 if he had sit and/or stood for an hour and a half. He was
9 able to do laundry and dishes until 2011 or 2012; since he
10 cannot bend lower than his waist, the only thing he now is
11 able to do is clean his own dish (meaning, wash it, put it on
12 the counter, and a family member puts it in the dishwasher).
13 He took one or two online courses (i.e., graphic design, real
14 estate, art history) every semester; he took the courses
15 because they forced him to focus and engage in something, and
16 he did okay (meaning, he got C grades). He also went in for
17 some classes. (See AR 93-95, 101-02).
18
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21 Although he used to use hot and cold packs for pain
22 relief, he now uses only cold packs on his lower back and neck
23 because of his skin issues. Prior to the end of 2013, he took
24 Flexeril and Naprosyn and then started taking Percocet in
25 November 2013. With the Flexeril and Naprosyn he was able to
26 get out of bed and perform basic functions. In November 2012,
27 he reported to his physican, Dr. Demner, that he had an
28

1 average pain level of 5 to 6 (but he claims that he actually
2 had an average pain level of 8 but that Dr. Demner tried to
3 minimize his condition). He now is taking Norco and muscle
4 relaxers. He has had multiple trigger-point epidurals on
5 both his cervical and lumbar spines; the relief lasted for
6 about two weeks. (See AR 95-96).
7

8
9 After briefly discussing Plaintiff's testimony at the two
10 administrative hearing as well as a consultative examiner's notation
11 (see AR 28)⁵, the ALJ addressed Plaintiff's credibility as follows:
12

13 After careful consideration of the evidence, the
14 undersigned finds that the claimant's medically determinable
15 impairments could reasonably be expected to cause some of his
16 alleged symptoms, but that his statements concerning the
17 intensity, persistence and limiting effects of these symptoms
18 are not entirely credible for the reasons explained in this
19 decision.
20

21
22 In finding the claimant's allegations not entirely
23 credible, the undersigned notes they are not fully supported
24 by or consistent with the medical evidence of record.
25

26
27 ⁵ With respect to the consultative examiner's notation, the ALJ
28 wrote, "The undersigned also notes the claimant told a consultative
examiner he spends 90 percent of his day lying in bed, getting up only
to eat and go to the bathroom (Exhibit 10-F, p. 5)."

1 (AR 28).

2
3 The ALJ proceeded to discuss the medical evidence relating to
4 Plaintiff's physical impairments. (See AR 28-29). The ALJ then
5 addressed Plaintiff's credibility regarding his mental impairments
6 as follows: "The undersigned also notes the evidence does not fully
7 support his allegations regarding his mental health issues." (AR
8 29). The ALJ proceeded to discuss the medical evidence relating to
9 Plaintiff's mental health impairments. (See AR 30).
10

11
12 The ALJ continued to address Plaintiff's credibility as follows:
13

14 In finding the claimant's allegations not entirely
15 credible, the undersigned also notes the claimant has made some
16 inconsistent statements and has provided some information
17 suggesting he was not as limited as he has alleged. He has
18 stated, for example, that he does not have any difficulty
19 taking care of his personal needs, is able to drive, sit for
20 two hours at a time, and lift up to 75 pounds as long as he
21 does not have to bend. During the July 21, 2015 hearing, the
22 claimant testified he drives three or four times a week to the
23 grocery store. He also acknowledged he stopped working because
24 he was laid off, not because of his medical problems. He also
25 testified he goes out with friends, spends time on the
26 computer, does chores such as washing his dishes, and has taken
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1 and passed an online class every semester. While the
2 claimant's ability to perform these activities does not
3 necessarily establish he was capable of obtaining and
4 maintaining employment through his date last insured, his
5 ability to perform these activities does indicate he was not as
6 limited as he has alleged and that he was not, in fact,
7 spending 90 percent of his time lying in bed.
8

9
10 (AR 30).
11

12 A claimant initially must produce objective medical evidence
13 establishing a medical impairment reasonably likely to be the cause of
14 the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.
15 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a
16 claimant produces objective medical evidence of an underlying impairment
17 that could reasonably be expected to produce the pain or other symptoms
18 alleged, and there is no evidence of malingering, the ALJ may reject the
19 claimant's testimony regarding the severity of his or her pain and
20 symptoms only by articulating specific, clear and convincing reasons for
21 doing so. Brown-Hunter v. Colvin, 798 F.3d 749, 755 (9th Cir.
22 2015)(citing Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.
23 2007)); see also Smolen, supra; Reddick v. Chater, 157 F.3d 715, 722
24 (9th Cir. 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th
25 Cir. 1997). Because the ALJ does not cite to any evidence in the record
26
27
28

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

3
4 Here, the ALJ failed to provide clear and convincing reasons for
5 finding that Plaintiff's testimony about the intensity, persistence and
6 limiting effects of his symptoms was not entirely credible.⁶
7

8
9 First, the ALJ failed to "specifically identify 'what testimony is
10 not credible and what evidence undermines [Plaintiff's] complaints.'" Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007) (quoting Lester v.
11 Chater, 81 F.3d 821, 834 (9th Cir. 1995)); see also Smolen, supra, 80
12 F.3d at 1284 ("The ALJ must state specifically what symptom testimony is
13 not credible and what facts in the record lead to that conclusion").
14
15

16
17 Second, the ALJ's determination that Plaintiff's testimony about
18 his physical impairments and mental impairments was not fully supported
19 by the medical evidence was an insufficient reason for finding Plaintiff
20 less than fully credible with respect to his testimony about the
21 severity of her physical and mental impairments. Once a claimant
22 demonstrates medical evidence of an underlying impairment, "an ALJ 'may
23

24
25 ⁶ The Court will not consider reasons for finding Plaintiff not
26 entirely credible (see Defendant's Brief at 2-5) that were not given by
27 the ALJ in the Decision. See Connett v. Barnhart, 340 F.3d 871, 874
28 (9th Cir. 2003) ("We are constrained to review the reasons the ALJ
asserts."; citing SEC v. Chenery Corp., 332 U.S. 194, 196 (1947), Pinto
v. Massanari, 249 F.3d 840, 847-48 (9th Cir. 2001)); and Garrison v.
Colvin, 759 F.3d 995, 1010 (9th Cir. 2014) ("We review only the reasons
provided by the ALJ in the disability determination and may not affirm
the ALJ on a ground upon which he did not rely.").

1 not disregard [a claimant's testimony] solely because it is not
2 substantiated affirmatively by objective medical evidence.'" Trevizo v.
3 Berryhill, 862 F.3d 987, 1001 (9th Cir. 2017)(quoting Robbins v. Soc.
4 Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006)).

5
6
7 Third, the ALJ's partial discrediting of Plaintiff's testimony
8 based on his ability to perform certain daily activities, such as taking
9 care of his personal needs, washing his dishes, driving, driving three
10 or four times a week to the grocery store, sitting for two hours at a
11 time, lifting up to 75 pounds if he does not have to bend, going out
12 with friends, spending time on the computer, and taking and passing an
13 online class every semester, was not a clear and convincing reason. See
14 Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir. 2001) ("[T]he mere
15 fact that a plaintiff has carried on certain daily activities . . . does
16 not in any way detract from her credibility as to her overall
17 disability. One does not need to be 'utterly incapacitated' in order to
18 be disabled."); Reddick, supra ("Only if the level of activity were
19 inconsistent with the Claimant's claimed limitations would these
20 activities have any bearing on Claimant's credibility.").

21
22
23
24 It is not clear whether the ALJ considered Plaintiff's testimony
25 about his limited abilities to perform such daily activities (see AR 336
26 [Plaintiff testified he had issues with bathing, caring for his hair and
27 shaving], AR 59 [Plaintiff testified he had difficulty putting on his
28 shoes and socks], AR 337 [Plaintiff testified that hand-washing his

1 dishes took him 5 minutes], AR 95 [Plaintiff testified that since
2 2011/2012, he was only able to wash his own dish and place it on the
3 counter], AR 338 [Plaintiff testified that he drove only for "[q]uick
4 trips in [his] immediate vicinity], AR 338 [Plaintiff testified that a
5 trip to the grocery store took 30 to 40 minutes], AR 58 [Plaintiff
6 testified he could not drive for more than 20 minutes], AR 76 [although
7 Plaintiff testified he drove three or four times a week to the grocery
8 store, he did not state how long each trip took him], AR 76 [Plaintiff
9 testified his parents drove him to the July 21, 2015 administrative
10 hearing], AR 58 [Plaintiff testified he was able to sit for about 2
11 hours "[d]epending on the comfort of the chair"], AR 91 [Plaintiff
12 testified that he had to adjust if he sat in a chair "for too long"], AR
13 58 [although Plaintiff testified that he could lift a maximum of 75
14 pounds if he was standing upright and did not have to bend, he did not
15 testify about the number of times he could lift that amount of weight in
16 that matter (and the ALJ did not not ask Plaintiff about his ability to
17 lift at the January 31, 2015 administrative hearing); and he testified
18 that lifting while bending would cause him a lot of pain], AR 339
19 [Plaintiff testified that he got together with a friend once a week], AR
20 60-61 [Plaintiff testified that he got together with friends once every
21 three months], AR 92 [Plaintiff testified that his mental health issues
22 caused him to "ostracize" or isolate himself], AR 61 [Plaintiff
23 testified that he reads news on the computer for about 30 minutes
24 daily], and AR 101-02 [although Plaintiff testified he took and passed
25 online courses every semester, he testified he only received Cs, and he
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1 did not testify about how much time the online courses took]. Moreover,
2 although, as noted by the ALJ, there is a statement in a January 3, 2012
3 consultative psychiatric examination report about Plaintiff spending 90
4 percent of his day lying down in bed (see AR 847-48),⁷ Plaintiff was not
5 asked about that statement or the context of that statement at either
6 administrative hearing. Therefore, the degree to which Plaintiff could
7 perform such daily activities may not have been inconsistent with his
8 testimony regarding his limitations. See Reddick, supra; see also
9 Morgan v. Commissioner of Social Sec. Admin., 169 F.3d 595, 600 (9th
10 Cir. 1999) ("If a claimant is able to spend a substantial part of his day
11 engaged in pursuits involving the performance of physical functions that
12 are transferable to a work setting, a specific finding as to this fact
13 may be sufficient to discredit a claimant's allegations.").

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17 Fourth, to the extent that the ALJ found that Plaintiff was not
18 entirely credible based on Plaintiff's testimony that he stopped working
19 because he was laid off, rather than because of his medical problems,
20 that reason was not clear and convincing. Although Plaintiff's
21 testimony was unclear, his being laid off may have been related to his
22 deteriorating health situation (see AR 84). Unlike Bruton v. Massanari,
23 268 F.3d 824, 828 (9th Cir. 2001)(finding that the ALJ's reliance, in
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26 ⁷ The statement relied on by the ALJ was the following: "When
27 asked to describe his usual daily activity, the clamant answered, 'Feel
28 like crap when waking for about two hours, however, is inconsistent from
day-to-day foggy and headache); mostly need to lie on bed staring at
ceiling because my back aches and I feel disgusting, this is 90% of my
day, interrupted by eating and bathroom trips.'" (underlining added for
emphasis).

1 part, on the claimant's false statements at the administrative hearing
2 and to a doctor that "he left his job because he was laid off, rather
3 than because he was injured"), a case relied on by Defendant (see
4 Defendant's Brief at 4), there is no indication that Plaintiff gave
5 false information about why he left his employment.
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8 **B. Remand Is Warranted**
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10 The decision whether to remand for further proceedings or order an
11 immediate award of benefits is within the district court's discretion.
12 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
13 useful purpose would be served by further administrative proceedings, or
14 where the record has been fully developed, it is appropriate to exercise
15 this discretion to direct an immediate award of benefits. Id. at 1179
16 ("[T]he decision of whether to remand for further proceedings turns upon
17 the likely utility of such proceedings."). However, where, as here, the
18 circumstances of the case suggest that further administrative review
19 could remedy the Commissioner's errors, remand is appropriate. McLeod
20 v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); Harman v. Apfel, supra,
21 211 F.3d at 1179-81.
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25 Since the ALJ failed to properly assess Plaintiff's credibility,
26 remand is appropriate. Because outstanding issues must be resolved
27 before a determination of disability can be made, and "when the record
28 as a whole creates serious doubt as to whether the [Plaintiff] is, in

1 fact, disabled within the meaning of the Social Security Act," further
2 administrative proceedings would serve a useful purpose and remedy
3 defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.
4 2014)(citations omitted).⁸

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7 **ORDER**

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9 For the foregoing reasons, the decision of the Commissioner is
10 reversed, and the matter is remanded for further proceedings pursuant to
11 Sentence 4 of 42 U.S.C. § 405(g).

12 LET JUDGMENT BE ENTERED ACCORDINGLY.

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15 DATED: October 10, 2017

16
17 _____ /s/
18 ALKA SAGAR
19 UNITED STATES MAGISTRATE JUDGE

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21 ⁸ The Court has not reached any other issue raised by Plaintiff
22 except to determine that reversal with a directive for the immediate
23 payment of benefits would not be appropriate at this time.
24 "[E]valuation of the record as a whole creates serious doubt that
25 Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,
26 1021 (2014). Accordingly, the Court declines to rule on Plaintiff's
27 claims regarding the ALJ's errors in failing to properly (1) assess
28 certain medical medical evidence (including the opinion of one of
Plaintiff's treating physicians) (see Plaintiff's Brief at 9-15; Reply
Brief at 4-5), (2) evaluate the medical expert's testimony or consider
the written objection to the medical expert's testimony (see Plaintiff's
Brief at 15-16; Reply Brief at 5), (3) assess the opinions of several of
Plaintiff's treating physicians (see Plaintiff's Brief at 16-20; Reply
Brief at 5-6), (4) determine Plaintiff's RFC (see Plaintiff's Brief at
20-22; Reply Brief at 6-7), and (5) consider Plaintiff's mental
impairments (see Plaintiff's Brief at 22-23; Reply Brief at 7). Because
this matter is being remanded for further consideration, these issues
should also be considered on remand.