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

ADOLFO QUIROZ VASQUEZ,)	NO. SA CV 17-537-FMO (E)
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
NANCY A. BERRYHILL, Acting)	UNITED STATES MAGISTRATE JUDGE
Commissioner of Social Security,)	
)	
Defendant.)	
)	

This Report and Recommendation is submitted to the Honorable Fernando M. Olguin, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

Plaintiff filed a complaint on March 24, 2017, seeking review of the Commissioner's denial of disability benefits. Plaintiff filed a motion for summary judgment on August 16, 2017. Defendant filed a motion for summary judgment on October 20, 2017. The Court has

1 taken the motions under submission without oral argument. See L.R. 7-
2 15; "Order," filed March 28, 2017.

3
4 **BACKGROUND**

5
6 Plaintiff asserts disability since December 20, 2009, based on
7 several alleged physical and mental impairments (Administrative Record
8 ["A.R."] 151, 170). Plaintiff testified at an administrative hearing
9 to symptomatology of allegedly disabling severity (A.R. 41-42, 44-52;
10 see also A.R. 58-59 (vocation expert testifying that certain of
11 Plaintiff's alleged limitations would preclude competitive work)). An
12 Administrative Law Judge ("ALJ") found that Plaintiff suffers from the
13 following severe impairments: "diabetes mellitus, degenerative disk
14 disease, affective disorder, paranoid-type schizophrenia, anxiety,
15 asthma, chronic obstructive pulmonary disease, obstructive sleep
16 apnea, obesity, and neuropathy" (A.R. 23). However, the ALJ found
17 that Plaintiff retains the residual functional capacity to perform a
18 "restricted" range of light work, including work as an assembler of
19 small parts or an assembler of electrical accessories (A.R. 25, 30-31
20 (adopting vocational expert testimony at A.R. 56-57)). The ALJ deemed
21 Plaintiff's contrary statements not fully credible (A.R. 26, 29). The
22 Appeals Council received additional evidence but denied review (A.R.
23 1-6).

24
25 **STANDARD OF REVIEW**

26
27 Under 42 U.S.C. section 405(g), this Court reviews the
28 Administration's decision to determine if: (1) the Administration's

1 findings are supported by substantial evidence; and (2) the
2 Administration used correct legal standards. See Carmickle v.
3 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,
4 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner
5 of Social Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012).
6 Substantial evidence is "such relevant evidence as a reasonable mind
7 might accept as adequate to support a conclusion." Richardson v.
8 Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted);
9 see Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

10
11 If the evidence can support either outcome, the court may
12 not substitute its judgment for that of the ALJ. But the
13 Commissioner's decision cannot be affirmed simply by
14 isolating a specific quantum of supporting evidence.
15 Rather, a court must consider the record as a whole,
16 weighing both evidence that supports and evidence that
17 detracts from the [administrative] conclusion.

18
19 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and
20 quotations omitted).

21
22 Where, as here, the Appeals Council considered additional
23 evidence but denied review, the additional evidence becomes part of
24 the record for purposes of the Court's analysis. See Brewes v.
25 Commissioner, 682 F.3d at 1163 ("[W]hen the Appeals Council considers
26 new evidence in deciding whether to review a decision of the ALJ, that
27 evidence becomes part of the administrative record, which the district
28 court must consider when reviewing the Commissioner's final decision

1 for substantial evidence"; expressly adopting Ramirez v. Shalala, 8
2 F.3d 1449, 1452 (9th Cir. 1993)); Taylor v. Commissioner, 659 F.3d
3 1228, 1231 (2011) (courts may consider evidence presented for the
4 first time to the Appeals Council "to determine whether, in light of
5 the record as a whole, the ALJ's decision was supported by substantial
6 evidence and was free of legal error"); Penny v. Sullivan, 2 F.3d 953,
7 957 n.7 (9th Cir. 1993) ("the Appeals Council considered this
8 information and it became part of the record we are required to review
9 as a whole"); see generally 20 C.F.R. §§ 404.970(b), 416.1470(b).

11 DISCUSSION

12
13 The Magistrate Judge recommends that the Court reverse the ALJ's
14 decision in part and remand the matter for further administrative
15 proceedings.

17 I. The ALJ's Residual Functional Capacity Determination and the 18 Opinions of Non-Examining Physicians

19
20 The ALJ determined:

21
22 [Plaintiff] can lift and/or carry 10 pounds frequently and
23 20 pounds occasionally; he can stand and/or walk six hours
24 out of an eight-hour day, with the use of a cane as
25 necessary, he can sit six hours out of an eight-hour day,
26 with the ability to stand and stretch, estimated to take one
27 to three minutes per hour; he can frequently stoop; he can
28 frequently climb stairs but can never climb ladders, ropes,

1 and scaffolds; he [can] never kneel, crouch, or crawl; he is
2 precluded from concentrated exposure to dust, fumes and
3 other pulmonary irritants, from work around moving and
4 dangerous machinery, and from work at unprotected heights;
5 he is limited to simple tasks with a reasoning level of
6 three or less,¹ only non-intense public contact, and no jobs
7 requiring teamwork.

8
9 (A.R. 25).

10
11 The non-examining state agency physicians reviewed a portion of
12 the medical record (including opinions from consultative examiners
13 Drs. Yu and Doan),² and opined that Plaintiff retains a light residual
14 functional capacity with fewer limitations than the ALJ found to exist
15 (A.R. 61-90). These non-examining doctors are the only medical
16 sources in the record who believed that Plaintiff has a residual
17 functional capacity equal to or greater than the capacity the ALJ
18 found to exist. As summarized below, all examining and treating

19 _____
20 ¹ This part of the ALJ's determination is problematic. A
21 limitation to simple work is inconsistent with Reasoning Level 3.
22 See Buck v. Berryhill, 869 F.3d 1040, 1051 (9th Cir. 2017)
23 (citing Zavalin v. Colvin, 778 F.3d 842, 846-48 (9th Cir. 2015)
24 (joining Tenth Circuit in holding that there is "an apparent
conflict between the residual functional capacity to perform
simple, repetitive tasks, and the demands of Level 3 Reasoning";
citations omitted).

25 ² On initial evaluation, the state agency physicians
26 reportedly gave "moderate" weight to Dr. Yu's opinion and "great"
27 weight to Dr. Doan's opinion. See A.R. 68-69. On
28 reconsideration, the state agency physicians gave "other" weight
to these opinions, deeming the opinions "without substantial
support from other evidence of record, which renders [the
opinions] less persuasive." See A.R. 83, 87.

1 physicians believe that Plaintiff has less functional capacity than
2 the ALJ believes.

3
4 **II. The Opinions of the Examining and Treating Physicians**

5
6 Consultative examiner Dr. Warren Yu prepared a Complete
7 Orthopedic Consultation dated November 16, 2013 (A.R. 291-95). Dr. Yu
8 reviewed a recent MRI of Plaintiff's lumbar spine which showed, inter
9 alia, moderate to severe spinal canal stenosis at L3-L4 and L4-L5,
10 moderate right foraminal narrowing below the exiting nerve root, mild
11 left foraminal narrowing at L3-L4, and severe left and moderate to
12 severe right foraminal narrowing with compression of the exiting left
13 L4 nerve root at L4-L5 (A.R. 291; see also A.R. 287-88 (MRI study)).
14 There is no indication that Dr. Yu reviewed any other medical records
15 (A.R. 291).³

16
17 On examination, Dr. Yu noted moderate lumbosacral tenderness,
18 limited range of motion of the lumbar spine, decreased sensation over
19 the left anterolateral thigh and anterior left leg, and trace reflexes
20 throughout the lower extremities (A.R. 292-94). Dr. Yu also noted
21 that Plaintiff walked with a slight limp on the left side (id.). Dr.
22 Yu diagnosed severe lumbar stenosis, L3 to L5, with moderate to severe
23 claudication (A.R. 294). Dr. Yu opined that Plaintiff could:

- 24 (1) lift and carry 20 pounds occasionally and 10 pounds frequently;
25 (2) push and pull without limitations; (3) walk and stand four hours

26
27 ³ A subsequent MRI of Plaintiff's cervical spine dated
28 July 17, 2014, showed multilevel disc disease, with moderate to
severe spondylosis at C4-C5 and C5-C6 (A.R. 304-05).

1 out of an eight-hour day; (4) sit six hours out of an eight-hour day;
2 (5) walk up to two blocks without an assistive device, but would
3 require a cane for longer distances for balance and support; (6)
4 squat, stoop, kneel, crawl, climb, bend, and lift occasionally; (7)
5 walk on uneven terrain, climb ladders, and work at heights
6 occasionally; and (8) use his upper extremities without limitation
7 (A.R. 294-95) (emphasis added for those limitations which are greater
8 than the ALJ found to exist). The ALJ purportedly gave "some" weight
9 to Dr. Yu's opinion (A.R. 28).

10
11 Consultative examiner Dr. Bong Doan prepared a Complete
12 Psychiatric Evaluation dated November 17, 2013 (A.R. 298-302). Dr.
13 Doan reviewed progress notes from "Los Angeles Pain Center" dated
14 May 9, 2013, and a Function Report from Plaintiff (A.R. 298; see
15 also A.R. 196-203 (Function Report); A.R. 234 ("California Pain
16 Center" treatment note for May 9, 2013); and see A.R. 234-46
17 (California Pain Center treatment notes)). Although Dr. Doan
18 mentioned Plaintiff's treatment by psychiatrists at the Central City
19 Community Health Center, Dr. Doan did not indicate that these records
20 were reviewed (A.R. 298-99). Plaintiff reported depression and
21 anxiety, social withdrawal, and difficulty sleeping, for which he was
22 prescribed Cymbalta and Lorazepam (Ativan) (A.R. 298-99). Plaintiff
23 reportedly had been clean and sober since 2009, and yet Dr. Doan
24 stated, "claimant reported drinking a 6-[pack] of beer daily" (A.R.
25 298-99).

26
27 Mental status examination was unremarkable but for the following:
28 mood "described as depressed"; affect constricted; unable to do serial

1 sevens; difficulty spelling "world" backward; and unable to analyze
2 the meaning of simple proverbs (A.R. 300-01). Dr. Doan diagnosed
3 alcohol dependence in remission and major depressive disorder,
4 recurrent, moderate (A.R. 301-02). Dr. Doan assessed a Global
5 Assessment of Functioning ("GAF") score of 50, with a "poor" prognosis
6 due to alcoholism (id.).⁴ Dr. Doan opined:

7
8 Based on the objective findings presented during this
9 interview, the claimant would have no limitations performing
10 simple and repetitive tasks and mild limitations performing
11 detailed and complex tasks. The claimant would have no
12 difficulties to be able to perform work activities on a
13 consistent basis without special or additional supervision.
14 The claimant would have moderate limitations completing a
15 normal workday or work week due to their [sic] mental
16 condition. The claimant would have no limitations accepting
17 instructions from supervisor[s] and interacting with
18 coworkers and with the public. He would have mild
19 difficulties to be able to handle the usual stresses,
20 changes and demands of gainful employment.

21
22 ⁴ Clinicians use the GAF scale to report an individual's
23 overall psychological functioning. The scale does not evaluate
24 impairments caused by physical or environmental factors.
25 See American Psychiatric Association, Diagnostic and Statistical
26 Manual of Mental Disorders ("DSM-IV-TR") 34 (4th Ed. 2000 (Text
27 Revision)). A GAF score of 41-50 denotes "Serious symptoms
28 (e.g., suicidal ideation, severe obsessional rituals, frequent
shoplifting), OR any serious impairment in social, occupational,
or school functioning (e.g., no friends, unable to keep a job)."
Id. Dr. Doan stated that Plaintiff's impairment is very likely
related to alcoholism (A.R. 302).

1 (A.R. 301) (emphasis added for a limitation that the ALJ appears to
2 not have included in the ALJ's residual functional capacity
3 assessment). The ALJ reportedly gave "some" weight to Dr. Doan's
4 opinion (A.R. 29).

5
6 The remaining opinions post-date the state agency physicians'
7 review of the record (A.R. 61-90).

8
9 Plaintiff's treating psychiatrist Dr. Robert Hampton completed an
10 "Impairment Questionnaire" dated August 6, 2014 (A.R. 306-10). Dr.
11 Hampton indicated that he first treated Plaintiff in June of 2012 and
12 had examined Plaintiff on the day Dr. Hampton completed the
13 questionnaire (A.R. 306; see also A.R. 368-76, 424-25, 545-46 (Dr.
14 Hampton's treatment notes from January through August 2015)).⁵ Dr.
15 Hampton's diagnosis was schizophrenia, paranoid type, based on
16 "prominent and persistent audio hallucinations and paranoid ideations"
17 (A.R. 306). Dr. Hampton also stated that Plaintiff had lower back
18 pain radiating down his legs, precipitated and/or aggravated by
19 Plaintiff's psychiatric symptoms (A.R. 307). Dr. Hampton prescribed
20 Zyprexa at bedtime and Lorazepam as needed for anxiety (A.R. 307,
21 314). As "other treatment," Plaintiff also reportedly had been
22 prescribed Celexa, Cymbalta, Seroquel, and Seroquel XR (A.R. 307). In
23 response to a question regarding Plaintiff's ability to work seated or
24 standing, Dr. Hampton wrote: "[Patient] is unable to work due to
25 psychiatric [symptoms]" (A.R. 308). Dr. Hampton believed that
26 Plaintiff's symptoms would likely increase because stress would lead

27
28 ⁵ There appear to be no earlier mental health treatment
notes from Dr. Hampton in the Administrative Record.

1 to more hallucinations and paranoia, and Plaintiff would likely miss
2 work more than three times per month (A.R. 309-10). Dr. Hampton
3 concluded: "This patient is permanently disabled. His psychiatric
4 [symptoms] started in early 20's" (A.R. 310).

5
6 Dr. Hampton also completed a "Mental Impairment Questionnaire"
7 dated December 24, 2014 (A.R. 315-19). Dr. Hampton most recently had
8 seen Plaintiff on December 3, 2014 (A.R. 315). Dr. Hampton recorded
9 the same diagnosis as previously and assessed a GAF of 40 (A.R. 315).⁶
10 Plaintiff then had been prescribed Zyprexa, Buspar, and Lorazepam
11 (A.R. 315). Dr. Hampton identified the following signs and symptoms
12 to support his diagnosis and assessment: persistent or generalized
13 anxiety, auditory hallucinations, difficulty thinking or
14 concentrating, intrusive recollections of a traumatic experience,
15 paranoia/suspiciousness, recurrent panic attacks, psychomotor
16 retardation, slowed speech, social withdrawal or isolation, delusions
17 of persecution, ongoing auditory hallucinations, occasional visual
18 hallucinations and sleep disturbances (A.R. 316). When asked to list
19 clinical findings supporting his diagnosis and assessment, Dr. Hampton
20 underlined "mental status examinations" and added "[patient's] ongoing
21 complaints" (A.R. 317). When asked whether Plaintiff experienced
22 episodes of decompensation or deterioration in a work or work-like
23 setting, Dr. Hampton answered, "[patient] can't work due to fear of
24

25 ⁶ A GAF of 31-40 indicates "[s]ome impairment in reality
26 testing or communication (e.g., speech is at times illogical,
27 obscure, or irrelevant) OR major impairment in several areas,
28 such as work or school, family relations, judgment, thinking, or
mood (e.g., depressed man avoids friends, neglects family, and is
unable to work. . .)." See DSM-IV-TR at 34.

1 others ([with] a few exceptions)" (A.R. 317). Dr. Hampton indicated
2 mostly "marked"⁷ limitations in understanding and memory,
3 concentration and persistence, social interactions, and adaptation
4 (A.R. 318). Dr. Hampton opined that Plaintiff would miss work more
5 than three times a month due to his impairments (A.R. 319). Dr.
6 Hampton also opined that Plaintiff's symptoms applied as far back as
7 May 1, 2013 (A.R. 319). Dr. Hampton concluded, "This patient's
8 psychiatric illness precludes any work. He is permanently totally
9 disabled" (A.R. 319). The ALJ gave "little" weight to Dr. Hampton's
10 opinions (A.R. 29).

11
12 Treating physician Dr. Rosemary Reyes of the Central City
13 Community Health Center provided a letter and completed a "Disability
14 Impairment Questionnaire" dated April 6, 2015 (A.R. 336-41). Dr.
15 Reyes first treated Plaintiff in December of 2014 and last examined
16 Plaintiff the day she completed the questionnaire (A.R. 337; see also
17 A.R. 251-84, 473-90, 539-44 (Central City Community Health Center
18 treatment notes for physical conditions)). Dr. Reyes diagnosed
19 diabetes type 2, chronic back pain, neuropathy, hypertriglycerides,
20 hypertension, psychosis, and GERD (A.R. 337). As support for her
21 diagnoses, Dr. Reyes cited laboratory findings of HgbA1c at 13.6 and
22 triglycerides at 1738 when Plaintiff was not taking medication (A.R.
23 337). Plaintiff's diabetes reportedly was uncontrolled and Plaintiff
24 had been referred to an endocrinologist (A.R. 336). Plaintiff's
25 primary symptoms were sharp, constant pain in his lower back,
26 aggravated by walking and standing, and numbness in his hands (A.R.

27
28 ⁷ "Marked" means "constantly interfering with ability"
(A.R. 318).

1 338). Plaintiff was prescribed/taking ten (10) medications at the
2 time, including Norco (A.R. 338).⁸

3
4 Dr. Reyes opined that Plaintiff could work in a seated position
5 only one hour in a workday, and could work standing and/or walking
6 less than one hour in a workday (A.R. 339). Dr. Reyes opined that it
7 was medically necessary for Plaintiff to avoid continuous sitting
8 during a workday, that Plaintiff must move from a seated position
9 every hour for 10 minutes, and that, while sitting, Plaintiff must
10 elevate both legs six inches or less twice a day for 45 minutes to one
11 hour (A.R. 339). Dr. Reyes opined that Plaintiff could lift and carry
12 up to five pounds occasionally, but could never or rarely grasp, turn
13 and twist objects, use his hands and fingers for fine manipulation, or
14 use his arms for reaching (A.R. 339-40). Dr. Reyes opined that
15 Plaintiff's symptoms would be severe enough to interfere with his
16 attention and concentration from 1/3 to 2/3 of an eight-hour day (A.R.
17 340). According to Dr. Reyes, Plaintiff would need to take breaks
18 every hour for 10 minutes (A.R. 340). Dr. Reyes opined that Plaintiff
19 would miss work more than three times a month (A.R. 341). Dr. Reyes

20
21 ⁸ The medical record includes monthly pain management
22 treatment notes from May of 2012 through May of 2013 regarding
23 Plaintiff's back pain (A.R. 234-45, 250). Plaintiff was
24 prescribed MS Contin from May of 2012 through February of 2013
25 (A.R. 236-45). Plaintiff had a lumbar spine epidural injection
26 in December of 2012 (A.R. 246). Plaintiff was prescribed Norco
27 starting in March of 2013 (A.R. 234-36). There are additional
28 pain management treatment notes from another provider from April
of 2014 through June of 2015, during which time Plaintiff was
prescribed Norco and muscle relaxers (A.R. 378-412). Plaintiff
also had a cervical spine epidural injection in October of 2014,
and another lumbar spine epidural injection in March of 2015
(A.R. 384-85, 401-02). Plaintiff had yet another lumbar spine
epidural injection in July of 2015 (A.R. 466).

1 opined that Plaintiff's symptoms and related limitations apply as far
2 back as May 1, 2013 (A.R. 341). The ALJ gave "little" weight to Dr.
3 Reyes's opinion (A.R. 28).

4
5 Treating pulmonologist Dr. John Saito completed a "Pulmonary
6 Impairment Questionnaire" dated April 9, 2015 (A.R. 330-35). Dr.
7 Saito first treated Plaintiff on May 15, 2014, and last examined
8 Plaintiff on December 6, 2014 (A.R. 330; see also A.R. 342-62, 496-501
9 (Dr. Saito's treatment notes)). Dr. Saito diagnosed asthma and
10 chronic obstructive pulmonary disease, insomnia, chronic respiratory
11 insufficiency, and periodic limb movement (A.R. 330). As clinical
12 signs and findings to support his diagnoses, Dr. Saito cited shortness
13 of breath, chest tightness, wheezing, episodic acute asthma, coughing,
14 and pulmonary hypertension (A.R. 331). Dr. Saito reported that
15 pulmonary function testing also supported his diagnoses (A.R. 331).

16
17 Dr. Saito opined that Plaintiff would be able to work in a seated
18 position three hours per workday and would be able to work standing
19 and/or walking two hours per workday (A.R. 332). Dr. Saito opined
20 that Plaintiff would need to avoid fumes, humidity, dust, perfumes,
21 and cigarette smoke (A.R. 333). Dr. Saito opined that Plaintiff would
22 experience pain, fatigue or other symptoms severe enough to interfere
23 with his attention and concentration up to 1/3 of an 8-hour day (A.R.
24 334). According to Dr. Saito, Plaintiff would need to take
25 unscheduled breaks every two or three hours and rest between six to
26 eight hours before returning to work (A.R. 334). Dr. Saito opined
27 that Plaintiff would miss work two to three times per month, and that
28 his symptoms and related limitations applied as far back as May 1,

1 2013 (A.R. 335). The ALJ gave "little" weight to Dr. Saito's opinion
2 (A.R. 28).

3
4 **III. Lack of Substantial Evidence**

5
6 None of the treating or examining opinions supports the ALJ's
7 decision. The opinions of the non-examining state agency physicians,
8 by themselves, cannot constitute substantial evidence to support the
9 decision. "The opinion of a nonexamining physician cannot by itself
10 constitute substantial evidence that justifies the rejection of the
11 opinion of either an examining physician or a treating physician."
12 Lester v. Chater, 81 F.3d 821, 831 (9th Cir. 1995) (emphasis in
13 original); see also Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007)
14 ("When [a nontreating] physician relies on the same clinical findings
15 as a treating physician, but differs only in his or her conclusions,
16 the conclusions of the [nontreating] physician are not 'substantial
17 evidence.'"); accord Revels v. Berryhill, 2017 WL 4819137, at *11 (9th
18 Cir. Oct. 26, 2017). As discussed above, the opinions of the non-
19 examining state agency physicians contradict all of the treating and
20 examining physicians' opinions. Thus, the non-examining physicians'
21 opinions cannot furnish substantial evidence to support the ALJ's
22 decision.

23
24 The ALJ's own lay opinions cannot fill the evidentiary gap. An
25 ALJ cannot properly rely on the ALJ's own lay knowledge to make
26 medical interpretations of examination results or to determine the
27 severity of medically determinable impairments. See Tackett v. Apfel,
28 180 F.3d 1094, 1102-03 (9th Cir. 1999); Balsamo v. Chater, 142 F.3d

1 75, 81 (2d Cir. 1998); Rohan v. Chater, 98 F.3d 966, 970 (7th Cir.
2 1996); Day v. Weinberger, 522 F.2d 1154, 1156 (9th Cir. 1975). Thus,
3 the ALJ's residual functional capacity assessment lacks any
4 substantial supporting evidence.

5
6 The residual functional capacity assessment was of course
7 material to the conclusion Plaintiff can work. Although the
8 vocational expert identified jobs that could be performed by a person
9 having the limitations the ALJ found to exist, the same expert
10 testified that if a person with these limitations were off task 20
11 percent of the time, there would be no jobs such a person could
12 perform (A.R. 57-58). Additionally, according to the vocational
13 expert, if the person were absent three or more days a month there
14 also would be no jobs that person could perform (A.R. 58). Further,
15 the vocational expert testified that if the person were limited to
16 standing no more than two hours per day (as Dr. Saito found), or if
17 the person needed to elevate their legs (as Dr. Reyes found), there
18 would be no jobs the person could perform (A.R. 58-59). Especially in
19 light of the vocational expert's testimony, the Court is unable to
20 deem the ALJ's errors to have been harmless. See Molina v. Astrue,
21 674 F.3d 1104, 1115 (9th Cir. 2012) (an error "is harmless where it is
22 inconsequential to the ultimate non-disability determination")
23 (citations and quotations omitted).

24
25 **IV. Remand**

26
27 Remand is appropriate because the circumstances of this case
28 suggest that further administrative review could remedy the ALJ's

1 errors. See McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011); see
2 also INS v. Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an
3 administrative determination, the proper course is remand for
4 additional agency investigation or explanation, except in rare
5 circumstances); Dominquez v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015)
6 (“Unless the district court concludes that further administrative
7 proceedings would serve no useful purpose, it may not remand with a
8 direction to provide benefits”); Treichler v. Commissioner, 775 F.3d
9 1090, 1101 n.5 (9th Cir. 2014) (remand for further administrative
10 proceedings is the proper remedy “in all but the rarest cases”);
11 Garrison v. Colvin, 759 F.3d at 1020 (court will credit-as-true
12 medical opinion evidence only where, inter alia, “the record has been
13 fully developed and further administrative proceedings would serve no
14 useful purpose”); Harman v. Apfel, 211 F.3d 1172, 1180-81 (9th Cir.),
15 cert. denied, 531 U.S. 1038 (2000) (remand for further proceedings
16 rather than for the immediate payment of benefits is appropriate
17 where, as here, there are “sufficient unanswered questions in the
18 record”). There remain significant unanswered questions in the
19 present record. Cf. Marsh v. Colvin, 792 F.3d 1170, 1173 (9th Cir.
20 2015) (remanding for further proceedings to allow the ALJ to “comment
21 on” the treating physician’s opinion).⁹

22
23 ⁹ The Court need not and does not determine whether the
24 ALJ stated legally sufficient reasons for rejecting the opinions
25 of the treating and examining physicians. However, the Court
26 observes that the ALJ cited “conservative treatment” as a reason
27 to discount a treating physician’s opinion regarding Plaintiff’s
28 physical conditions. See A.R. 28 (ALJ rejecting Dr. Reyes’s
limitations as “not supported by the documented objective
findings or the conservative treatment history”). Plaintiff’s
treatment with narcotic pain medications and epidural injections

(continued...)

1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.
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