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

THOMAS RANGEL, Plaintiff, v. NANCY A. BERRYHILL, Deputy Commissioner of Operations of Social Security, Defendant.

Case No. SA CV 17-01233-RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Thomas Rangel (“Plaintiff”) challenges the Commissioner’s denial of his application for a period of disability and disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is REVERSED and REMANDED.

II. PROCEEDINGS BELOW

On June 6, 2011, Plaintiff filed a Title II application for DIB alleging disability beginning August 17, 2010. (Administrative Record (“AR”) 78, 90-91, 109-10.) His application was denied initially on November 4, 2011, and upon reconsideration on April 27, 2012. (AR 111, 117.) On June 19, 2012, Plaintiff

1 filed a written request for hearing, and a hearing was held on March 13, 2013. (AR
2 38, 122.) On April 29, 2013, the Administrative Law Judge (“ALJ”) found that
3 Plaintiff had not been under a disability, pursuant to the Social Security Act,¹ since
4 August 17, 2010. (AR 31.) The ALJ’s decision became the Commissioner’s final
5 decision when the Appeals Council denied Plaintiff’s request for review. (AR 1.)

6 Plaintiff filed an action in the District Court on December 9, 2014. (*See* AR
7 1348.) On February 24, 2016, the Court reversed and remanded the matter for
8 further administrative proceedings. (AR 1352-72.)

9 Another hearing was held on March 9, 2017. (AR 1266.) On May 16, 2017,
10 the ALJ again found that Plaintiff had not been under a disability, pursuant to the
11 Social Security Act, from August 17, 2010, the alleged onset date (“AOD”) through
12 December 31, 2015, the date last insured (“DLI”). (AR 1249.) Plaintiff filed this
13 action on July 19, 2017. (Dkt. No. 1.)

14 The ALJ followed a five-step sequential evaluation process to assess whether
15 Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821,
16 828 n.5 (9th Cir. 1995). At **step one**, the ALJ found that Plaintiff had not engaged
17 in substantial gainful activity from August 17, 2010 through December 31, 2015,
18 his date last insured (“DLI”). (AR 1234.) At **step two**, the ALJ found that Plaintiff
19 had the following severe impairments: disorders of the shoulders bilaterally;
20 disorders of the spine; disorders of the knees; asthma; obesity; old healed fracture
21 deformation of the second, third, fourth, and fifth metatarsals; depression; anxiety;
22 and panic disorder. (AR 1234-35) At **step three**, the ALJ found that Plaintiff “did
23 not have an impairment or combination of impairments that met or medically
24 equaled the severity of one of the listed impairments in 20 CFR Part 404, Subpart
25 P, Appendix 1.” (AR 1235-36.)

26 ¹ Persons are “disabled” for purposes of receiving Social Security benefits if they
27 are unable to engage in any substantial gainful activity owing to a physical or
28 mental impairment expected to result in death, or which has lasted or is expected to
last for a continuous period of at least 12 months. 42 U.S.C. § 423(d)(1)(A).

1 Before proceeding to step four, the ALJ found that Plaintiff had the residual
2 functional capacity (“RFC”) to:

3 [P]erform sedentary work Specifically, the claimant has the
4 capacity for work within the following parameters: lift and/or carry 10
5 pounds occasionally, 10 pounds frequently; sit 6 hours out of an 8-
6 hour day; stand and/or walk 2 hours out of an 8-hour day; can
7 occasionally bend, stoop, twist, turn; no kneeling, crouching, or
8 crawling; no exposure to commercial vibration; occasional exposure to
9 severe cold and humidity; can occasionally climb stairs, no ladders,
10 ropes, or scaffolds; no work at unprotected heights; no balancing; no
11 overhead reaching with the left upper extremity; frequent reaching
12 with the left upper extremity in all other directions; no concentrated
13 exposure to dust, fumes, and other pulmonary irritants; is limited to
14 simple tasks of a reasoning level 3 or less; no public contact;
15 occasional contact with coworkers; no jobs requiring teamwork; no
16 fast paced work such as rapid assembly line work; occasional contact
17 with supervisors; limited to low stress jobs defined as having only
18 occasional changes in the work setting and decision making duties.

19 (AR 1238.) At **step four**, based on Plaintiff’s RFC and the vocational expert’s
20 testimony, the ALJ found that Plaintiff was unable to perform any past relevant
21 work. (AR 1247.) At step five, “considering the claimant’s age, education, work
22 experience, and residual functional capacity,” the ALJ found that “there were jobs
23 that existed in significant numbers in the national economy that the claimant could
24 have performed. (AR 1248.) Accordingly, the ALJ determined that Plaintiff has
25 not been under a disability from the AOD through the DLI. (AR 1249.)

26 **III. STANDARD OF REVIEW**

27 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
28 decision to deny benefits. A court must affirm an ALJ’s findings of fact if they are
supported by substantial evidence and if the proper legal standards were applied.
Mayes v. Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001). “‘Substantial evidence’
means more than a mere scintilla, but less than a preponderance; it is such relevant
evidence as a reasonable person might accept as adequate to support a conclusion.”

1 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*
2 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). An ALJ can satisfy the substantial
3 evidence requirement “by setting out a detailed and thorough summary of the facts
4 and conflicting clinical evidence, stating his interpretation thereof, and making
5 findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citation omitted).

6 “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
7 specific quantum of supporting evidence. Rather, a court must consider the record
8 as a whole, weighing both evidence that supports and evidence that detracts from
9 the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th Cir.
10 2001) (citations and internal quotation marks omitted). “‘Where evidence is
11 susceptible to more than one rational interpretation,’ the ALJ’s decision should be
12 upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008) (citing
13 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)); *see Robbins*, 466 F.3d at
14 882 (“If the evidence can support either affirming or reversing the ALJ’s
15 conclusion, we may not substitute our judgment for that of the ALJ.”). The Court
16 may review only “the reasons provided by the ALJ in the disability determination
17 and may not affirm the ALJ on a ground upon which he did not rely.” *Orn v.*
18 *Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d
19 871, 874 (9th Cir. 2003)).

20 **IV. DISCUSSION**

21 Plaintiff raises the following issues for review: (1) whether the ALJ
22 adequately assessed Plaintiff’s testimony regarding his pain and limitations;
23 (2) whether the ALJ properly considered the lay witness evidence; (3) whether the
24 ALJ properly considered a treating physician’s opinion; and (4) whether the ALJ
25 properly considered the full extent of Plaintiff’s mental impairment. (Joint
26 Stipulation (“JS”) 1.) For the reasons below, the Court agrees with Plaintiff
27 regarding the assessment of his testimony and remands on that ground.

28 ///

1 **A. The ALJ Failed to Properly Evaluate Plaintiff’s Subjective**
2 **Testimony**

3 The ALJ began by reciting the relevant and familiar two-step analysis that an
4 ALJ undertakes in assessing a claimant’s testimony regarding subjective pain or the
5 intensity of symptoms: (1) the ALJ must determine whether there is an underlying
6 impairment that could reasonably be expected to produce the pain or other
7 symptoms alleged; and (2) if so, the ALJ must “evaluate the intensity, persistence,
8 and limiting effects of [Plaintiff’s] symptoms to determine the extent to which they
9 limit [Plaintiff’s] functional limitations.” (AR 1239.) *See Treichler v. Comm’r of*
10 *Soc. Sec. Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (in assessing the credibility
11 of a claimant’s symptom testimony, “[f]irst, the ALJ must determine whether the
12 claimant has presented objective medical evidence of an underlying impairment
13 which could reasonably be expected to produce the pain or other symptoms
14 alleged”; if so, and if the ALJ does not find evidence of malingering, the ALJ must
15 provide “specific, clear and convincing reasons for rejecting a claimant’s testimony
16 regarding the severity of the claimant’s symptoms”).

17 After reciting this two-step analysis, the ALJ began by summarizing some,
18 but notably not all, of Plaintiff’s symptom testimony. (AR 1239.) Next, “[a]fter
19 careful consideration of the evidence,” the ALJ found that Plaintiff’s “medically
20 determinable impairments could reasonably be expected to cause the alleged
21 symptoms,” but found that Plaintiff’s “statements concerning the intensity,
22 persistence and limiting effects of these symptoms are not entirely consistent with
23 the medical evidence and other evidence in the record for the reasons explained in
24 this decision.” (*Id.*) The ALJ determined that “these statements have been found to
25 affect the claimant’s ability to work only to the extent they can reasonably be
26 accepted as consistent with the objective medical and other evidence.” (AR 1239-
27 40.) However, this determination is little more than a recitation of the ALJ’s duty
28 to consider Plaintiff’s subjective symptom testimony. *See SSR 16-3p, 2016 WL*

1 1119029, at *2 (S.S.A. Mar. 16, 2016) (“In determining whether an individual is
2 disabled, we consider all of the individual’s symptoms, including pain, and the
3 extent to which the symptoms can reasonably be accepted as consistent with the
4 objective medical and other evidence in the individual’s record.”); *see also id.* at *9
5 (“In evaluating an individual’s symptoms, it is not sufficient for our adjudicators to
6 make a single, conclusory statement that ‘the individual’s statements about his or
7 her symptoms have been considered’ or that ‘the statements about the individual’s
8 symptoms are (or are not) supported or consistent.’”).

9 The ALJ then stated that, when determining Plaintiff’s RFC, the ALJ
10 “considered as a factor the claimant’s treatment history.” (AR 1240.) The ALJ
11 proceeded to objectively summarize Plaintiff’s medical records related to his
12 treatment history. (*See* AR 1240-42.) But the ALJ made no specific findings, nor
13 did she connect these records of treatment to any of Plaintiff’s symptoms or
14 testimony. The ALJ must explain which symptoms are inconsistent with the
15 evidence of record and must explain how her evaluation of the symptoms led to that
16 conclusion. *See* 2016 WL 1119029, at *8; *Holohan v. Massanari*, 246 F.3d 1195,
17 1208 (9th Cir. 2001) (“[T]he ALJ must specifically identify the testimony she or he
18 finds not to be credible and must explain what evidence undermines the
19 testimony.”). The determination must contain specific reasons for the weight given
20 to the individual’s symptoms and must clearly articulate how the ALJ evaluated the
21 claimant’s symptoms. 2016 WL 1119029, at *9; *see Lester*, 81 F.3d at 834
22 (“General findings are insufficient.”).

23 The ALJ also “considered as a factor when determining [Plaintiff’s] residual
24 functional capacity” the statements contained in Plaintiff’s Function Report and the
25 Third Party Function Report completed by Plaintiff’s wife. (AR 1242.) The ALJ
26 observed that both Plaintiff and his wife reported that Plaintiff could drive, run
27 errands, and handle the family finances, although both reported limitations in
28 Plaintiff’s ability to perform certain routine activities secondary to his symptoms of

1 pain. (*Id.*) The ALJ determined that Plaintiff’s treatment history, continuous
2 notations of full motor strength, two specific surgeries, and primarily conservative
3 modalities “shows the claimant has the capacity for more activity than what is
4 depicted in these two reports.” (*Id.*) The ALJ therefore determined that “the
5 objective medical evidence of record does not fully support the alleged limitations.”
6 (*Id.*) However, the ALJ again fails to explain how this evidence undermines
7 Plaintiff’s statements or how the ALJ arrived at her conclusion.

8 Accordingly, the Court concludes that the ALJ did not give clear and
9 convincing reasons, supported by substantial evidence, for discounting Plaintiff’s
10 subjective symptom testimony. Remand is therefore warranted on this issue.

11 **B. The Court Declines To Address Plaintiff’s Remaining Arguments**

12 Having found that remand is warranted, the Court declines to address
13 Plaintiff’s remaining arguments. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir.
14 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline
15 to reach [plaintiff’s] alternative ground for remand.”); *see also Augustine ex rel.*
16 *Ramirez v. Astrue*, 536 F. Supp. 2d 1147, 1153 n.7 (C.D. Cal. 2008) (“[The] Court
17 need not address the other claims plaintiff raises, none of which would provide
18 plaintiff with any further relief than granted, and all of which can be addressed on
19 remand.”).

20 **C. Remand For Further Administrative Proceedings**

21 Because further administrative review could remedy the ALJ’s errors,
22 remand for further administrative proceedings, rather than an award of benefits, is
23 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)
24 (remanding for an award of benefits is appropriate in rare circumstances). Before
25 ordering remand for an award of benefits, three requirements must be met: (1) the
26 Court must conclude that the ALJ failed to provide legally sufficient reasons for
27 rejecting evidence; (2) the Court must conclude that the record has been fully
28 developed and further administrative proceedings would serve no useful purpose;

1 and (3) the Court must conclude that if the improperly discredited evidence were
2 credited as true, the ALJ would be required to find the claimant disabled on
3 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court
4 retains flexibility to remand for further proceedings “when the record as a whole
5 creates serious doubt as to whether the claimant is, in fact, disabled within the
6 meaning of the Social Security Act.” *Id.* (citation omitted).

7 Here, remand for further administrative proceedings is appropriate. The
8 Court finds that the ALJ failed to provide clear and convincing reasons supported
9 by substantial evidence to discount Plaintiff’s subjective testimony. On remand,
10 the ALJ shall reassess Plaintiff’s subjective allegations. The ALJ shall then
11 reassess Plaintiff’s RFC and proceed through step four and step five, if necessary,
12 to determine what work, if any, Plaintiff is capable of performing.

13 **V. CONCLUSION**

14 IT IS ORDERED that Judgment shall be entered REVERSING the decision
15 of the Commissioner denying benefits, and REMANDING the matter for further
16 proceedings consistent with this Order.

17 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
18 Order and the Judgment on counsel for both parties.

19
20 DATED: May 14, 2018

_____/s/
ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE

21
22
23 **NOTICE**

24 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,**
25 **LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**