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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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| AUSENCIO CAMPOS, |) | Case No.: 1:14-cv-00802-BAM |
| Plaintiff, |) | ORDER REVERSING AGENCY’S DENIAL OF BENEFITS AND ORDERING REMAND |
| v. |) | |
| CAROLYN W. COLVIN, Acting |) | |
| Commissioner of Social Security, |) | |
| Defendant. |) | |

INTRODUCTION

Plaintiff Ausencio Campos (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his application for disability insurance benefits (“DIB”) pursuant to Title II of the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Barbara A. McAuliffe. Having considered the parties’ briefs, along with the entire record in this case, the Court finds that the decision of the Administrative Law Judge (“ALJ”) is not supported by substantial evidence in the record and is not based upon proper legal standards. Accordingly, the Court recommends the Commissioner’s determination be REVERSED AND REMANDED for further proceedings.

1 **FACTS AND PRIOR PROCEEDINGS**

2 On June 28, 2011, Plaintiff filed an application for disability insurance benefits, alleging
3 disability beginning on May 28, 2010. AR 184-190.¹ Plaintiff’s application was denied initially and
4 on reconsideration. AR 103-106, 109-113. Subsequently, Plaintiff requested a hearing before an ALJ.
5 ALJ Sharon L. Madsen held a hearing on November 29, 2012, and issued an order denying benefits on
6 January 18, 2013. AR 13-65. Plaintiff sought review of the ALJ’s decision, which the Appeals
7 Council denied, making the ALJ’s decision the Commissioner’s final decision. AR 1-3, 11-12. This
8 appeal followed.

9 **Hearing Testimony**

10 The ALJ held a hearing on November 29, 2012, in Fresno, California. AR 34-65. Plaintiff
11 appeared and testified. He was represented by attorney Jonathan Pena. AR 36. Impartial Vocational
12 Expert (“VE”) Judith Najarian also testified. AR 36, 55-62.

13 Plaintiff was born in 1975. At the time of the hearing, he was 5’11” tall and weighed about
14 200 pounds. AR 37-38.

15 In response to questioning by the ALJ, Plaintiff testified that he currently receives general
16 relief and food stamps. His worker’s compensation case settled for which he received a lump sum
17 with ongoing medical. AR 38. Plaintiff testified that he has a driver’s license and drives. For his
18 education, Plaintiff attended high school. He has not taken any vocational classes or received any
19 licensing or certification. AR 39.

20 In response to questions regarding his daily activities, Plaintiff testified that he does not need
21 any help with his personal care, such as showering and dressing. He does not do any household
22 chores, such as washing dishes, mopping, sweeping, making his bed or cooking. He hardly does any
23 shopping and does not have any social activities, such as church or visiting family or friends. He does
24 not have any hobbies. On a typical day, Plaintiff mostly lies on the sofa at home. He sometimes
25 watches TV and takes naps. AR 39-41.

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¹ References to the Administrative Record will be designated as “AR,” followed by the appropriate page number.

1 In response to questions about his work history, Plaintiff confirmed that he worked for Wal-
2 Mart in the past. During the first couple of years working there, Plaintiff did security, patrolling in the
3 stores and escorting people out. He mostly was outside in the parking lot. After he left security, he
4 worked inside unloading trucks. He then did maintenance, which was janitorial work like cleaning up
5 and waxing floors. He advanced to maintenance supervisor and was responsible for supervising the
6 crew. Eventually, Plaintiff worked as a greeter at the door on light duty. When doing maintenance
7 work, the heaviest amount he had to lift was about 60 or 70 pounds. When unloading trucks, the
8 heaviest amount was about 80 pounds. AR 40-43.

9 In response to questions about his medical issues, Plaintiff first testified about his back. He
10 described his back pain as constant, made worse with walking, sitting, standing and lifting. The pain
11 goes down to both legs if his lifts 10 or 15 pounds. He does not have a position that is comfortable for
12 him. However, if he lies down it eases the pain. Plaintiff further testified that after surgery his pain
13 worsened. He is not interested in another surgery. He uses a cane almost all the time to help him
14 walk. AR 43-44, 45-46.

15 Plaintiff also testified that his neck hurts. He has constant pain, and it hurts more when he sits
16 down, walks around too much or stands up. The only position that is comfortable is lying down. He
17 only takes medications for his neck. AR 45. His pain medications include Norco, cyclobenzaprine
18 and Temazepan. Although the medications help, they make him drowsy and then the pain comes
19 back. He sometimes uses heat or ice or Icy Hot. AR 46-47.

20 In response to questions about other medical issues, Plaintiff testified that his diabetes was
21 double the normal. He takes metformin for it and tries to watch his diet. Plaintiff's blood pressure is
22 high and he takes two medications for that. His cholesterol also is high and he has stomach issues
23 related to the pain medication. Additionally, Plaintiff reported that he gets knee pain, his left foot is
24 kind of numb, and he gets headaches. He does not receive any treatment for his knees. His right
25 shoulder hurts. His elbows feel like a muscle sticks out and it pops when he moves. The doctor told
26 him it was arthritis. His left foot is numb most of the time, but he has not been told what it is related
27 to. AR 47-49.

1 Plaintiff reported that he could lift and carry about 10 to 15 pounds before he starts to get pain
2 in his legs. He can sit for about half an hour before he has to stand up. He can stand for about 20
3 minutes before he has to sit down. He thinks he could walk about half a block. He has problems with
4 bending over and squatting down. He does not really climb stairs. He does not have any problems
5 lifting his arms over his head. AR 49-50.

6 In response to questions regarding his mental health, Plaintiff testified that his depression is
7 getting worse. He used to have a lot of anxiety. He gets depressed because he cannot really do
8 anything. He stays in bed mostly all the time now. He also has problems at home with his mom being
9 in and out of the hospital and his sister being in the hospital. He has anxiety when he sees something
10 he wants to do, but cannot do it. AR 50-51. He takes Abilify and Cymbalta, which help a little, and
11 he also sees a doctor. AR 52. Plaintiff can sometimes pay attention when watching television. He
12 manages his own money and does not have any problems getting along with other people. AR 51.

13 Plaintiff also answered questions from his counsel. Plaintiff testified that he experiences
14 muscle spasms in his legs, knees and elbows. He described the pain in his back to be like burning. On
15 an average day, his pain is about an eight or nine out of ten. The only thing to make the ache go away
16 is to lie down on the sofa. The ache is greater if he keeps sitting down, standing up or walking around.
17 Plaintiff reported that he will get unbalanced if he walks on grass or gravel, but he doesn't have
18 balance trouble with other uneven ground. Plaintiff complained that he aches when it rains or it is
19 cold. He sometimes can pick things up off the ground. He does not want any additional surgeries. He
20 attended physical therapy in 2010 after his surgery. The cane he uses is prescribed, and he sometimes
21 uses it inside. Plaintiff confirmed that Dr. Esposito is his treating physician. Plaintiff has been seeing
22 him every month or month and a half since May of 2009. AR 52-55.

23 Following Plaintiff's testimony, the ALJ elicited testimony from the vocational expert ("VE")
24 Judith Najarian. AR 55. The VE testified that Plaintiff's past work was classified as guard security,
25 cleaner--commercial-industrial, supervisor janitor, laborer of stores and sales attendant. AR 56-58.
26 The ALJ asked the VE hypothetical questions, contemplating a person of claimant's age, education,
27 and work background. AR 58. In her first hypothetical, the ALJ asked the VE to assume a person that
28 could lift and carry 20 pounds occasionally, 10 pounds frequently, sit, stand or walk six, with

1 occasional stooping, crouching, crawling, climbing, balancing, kneeling, no climbing ladders, ropes or
2 scaffolds and must avoid concentrated exposure to heights. AR 58-59. The VE testified that such a
3 person could perform Plaintiff's past work as a greeter or sales attendant and as security. AR 59.

4 In the second hypothetical, the ALJ asked the VE to consider the same person as in the first
5 hypothetical with the addition of a sit-stand option. The VE testified that the past jobs would be
6 eliminated, but there are others jobs with the opportunity to sit or stand, such as cashier, cashier II,
7 storage facility rental clerk, and courier. AR 59-60.

8 In a third hypothetical, the ALJ asked the VE to go down to sedentary, 10 pounds, 10 pounds,
9 sit, stand or walk two, with the same posturals. The VE testified that with occasional posturals, the
10 full range of unskilled sedentary work would be available. Examples include an order clerk,
11 surveillance monitor, and assembler. AR 60-61.

12 For the fourth hypothetical, the ALJ asked the VE to go to 10 pounds and 10 pounds, sit, stand
13 or walk 2, with occasional squatting, kneeling, bending, no crawling, climbing or stooping. The VE
14 testified that there would be no jobs. AR 60-61.

15 After the ALJ questioned the VE, Plaintiff's counsel also presented hypotheticals to the VE.
16 Counsel asked the VE to assume the same vocational factors as hypothetical one, but this individual
17 also has the sit-stand option, requires a cane at all times, and is going to require an additional four
18 breaks in 30 minute durations, unscheduled. The VE testified that this individual could not perform
19 any of Plaintiff's past relevant work or any other work. AR 61.

20 For the next hypothetical, counsel asked the VE to assume the same vocational factors as
21 hypothetical number 1, but this individual would be off-task 15 percent of the time in concentration,
22 persistence and pace. The VE testified that this person could not perform Plaintiff's past relevant
23 work or any other work. AR 61-62.

24 **Medical Record**

25 The entire medical record was reviewed by the Court. AR 280-914. The relevant medical
26 evidence, summarized here, will also be referenced below as necessary to this Court's decision.

27 On February 11, 2010, Plaintiff underwent magnetic resonance imaging of the lumbar spine,
28 which showed a large central/left paracentral disc protrusion at L4-L5, 4 mm central disc protrusion

1 eccentric to the right side at L4-L5, and a 3 mm central disc protrusion with annular tear at L3-L4. In
2 March 2010, it was noted that Plaintiff received no significant improvement with an epidural steroid
3 injection for his multilevel disc displacement. AR 395.

4 On March 23, 2011, Plaintiff was prescribed a ThermoCool Compression system, back brace,
5 front wheel walker and shower chair. AR 742.

6 On April 16, 2011, Plaintiff underwent a decompressive lumbar laminectomy and disk excision
7 at the L5-S1 level and medial facetectomy and neural foraminotomy in the left L5-S1 neural
8 foraminal foraminotomy. Dr. Michael Esposito, an orthopedic surgeon, performed the surgery. AR
9 558.

10 On April 26, 2011, ten days post microscopic lumbar laminectomy and disc excision, Plaintiff
11 reported that his bilateral leg pain was markedly improved left greater than right. On examination by
12 Dr. Esposito, Plaintiff could stand in an upright position and forward flex with his hands to his mid-
13 femurs. His straight leg raising was mildly positive at about 80 degrees for calf and foot pain on the
14 left. AR 548-551.

15 An x-ray of the lumbar spine completed on May 17, 2011 showed loss of the normal lumbar
16 lordosis suggesting mild paraspinal muscle spasm and mild multilevel degenerative changes. The
17 vertebral bodies and posterior elements demonstrated satisfactory alignment with no acute fracture or
18 dislocation. AR 735.

19 On May 24, 2011, Dr. Esposito prescribed a walking cane. AR 539.

20 On June 12, an unidentified physician opined that Plaintiff could not work due to depression,
21 insomnia and poor concentration. The physician opined that this condition, which began on June 15,
22 2012, was temporary and expected to last until December 30, 2012. AR 912-913.

23 On June 21, 2011, Plaintiff reported slow improvement of his left leg pain following his
24 lumbar laminectomy and disc excision. On examination by Dr. Esposito, Plaintiff could stand in an
25 upright position and forward flex with his hands to about his knees. He used a mild upper extremity
26 assist to come to an upright position. His extension was limited to 5 degrees with pain in the gluteal
27 region. Straight leg raising was minimally positive at 85 degrees for calf and foot pain on the left.
28 Dr. Esposito opined that this had improved since the preoperative state. Plaintiff's anti-inflammatory

1 medication was renewed and he was to attend physical therapy twice a week. Dr. Esposito also
2 prescribed Restoril for sleep. AR 522-526.

3 On March 23, 2012, Dr. Esposito completed a Physical Capacities Evaluation form. Dr.
4 Esposito opined that Plaintiff could sit, stand, and walk two hours each in an 8-hour workday, but
5 must alternate sitting and standing every 1 to 2 hours to relieve pain. He occasionally could lift 11-20
6 pounds, but never lift more than that amount. He also occasionally could bend, squat, crawl, climb,
7 kneel and stoop. Dr. Esposito restricted Plaintiff from any prolonged sitting or standing, any lifting
8 and repetitive bending. AR 752-753.

9 On July 20, 2012, Dr. Esposito opined that Plaintiff could perform no work, but also indicated
10 that Plaintiff's medical condition permitted him to perform gardening/maintenance and restricted work
11 sedentary/clerical. Dr. Esposito estimated that Plaintiff's incapacity would end or a reevaluation
12 would be required on December 31, 2012. AR 914.

13 On August 28, 2012, Plaintiff sought follow-up treatment from Dr. Esposito. Plaintiff
14 complained of persistent pain in his low back with radiating pain into both legs into the posterior
15 thighs and knees, left worse than right, worse with prolonged sitting, standing and repetitive bending.
16 On examination, Plaintiff had focal tenderness, left greater than right, over the L3-4, L4-5 and L5-S1
17 posterior spinous processes and paraspinal muscles. When standing in an upright position, Plaintiff
18 could forward flex with his hands to his knees and used a mild upper extremity assist to come to an
19 upright position. Extension was limited to 10 degrees with pain into both gluteal regions. Straight leg
20 raising was positive on the right at about 80 degrees for calf and foot pain. It was negative on the left
21 to about 85 degrees, but with backache. Dr. Esposito renewed Plaintiff's Flexeril, Norco, Relafen,
22 Prilosec and Restoril. Plaintiff did not wish to proceed with epidural steroid injections, feeling he
23 could live with his limitations as long as he could manage his symptoms with medications. Dr.
24 Esposito noted that Plaintiff had been released to sedentary work. AR 884-887.

25 On August 29, 2012, Dr. Esposito completed another Physical Capacities Evaluation form. Dr.
26 Esposito opined that Plaintiff could sit, stand and walk 2 hours each in an 8-hour workday and must
27 periodically alternate sitting and standing every 1 to 2 hours. Plaintiff occasionally could lift or carry
28 11-20 pounds, but never lift or carry more than that. He occasionally could bend, squat and kneel, but

1 never crawl, climb or stoop. Dr. Esposito restricted Plaintiff from any prolonged sitting or standing
2 and any lifting or repetitive bending. AR 888-889.

3 On September 17, 2012, Dr. Esposito completed a third Physical Capacities Evaluation form.
4 Dr. Esposito opined that Plaintiff could sit, stand and walk 2 hours each in an 8-hour workday, but
5 must alternate sitting and standing every 1 to 2 hours. He occasionally could lift 11-20 pounds, but
6 never more than that amount. He occasionally could bend, squat, kneel and stoop, but never crawl or
7 climb. Dr. Esposito restricted Plaintiff from any prolonged sitting or standing and any lifting or
8 repetitive bending. AR 910-911.

9 On November 27, 2012, Licensed Clinical Social Worker N. Gram opined that Plaintiff was
10 unable to work due to depression and auditory hallucinations, which affect his concentration, memory,
11 judgment and decision-making abilities. Social Worker Gram expected Plaintiff to be able to return to
12 work in November 2013. AR 278-279.

13 On November 28, 2012, Dr. Esposito opined that Plaintiff was not able to work and remained
14 totally disabled. Dr. Esposito identified the onset date as July 14, 2004, and expected Plaintiff could
15 return to work on February 28, 2013. AR 276-277.

16 **The ALJ's Decision**

17 Using the Social Security Administration's five-step sequential evaluation process, the ALJ
18 determined that Plaintiff did not meet the disability standard. AR 16-25. More particularly, the ALJ
19 found that Plaintiff had not engaged in any substantial gainful activity since May 28, 2010, his alleged
20 onset date. AR 18. Further, the ALJ identified degenerative disc disease of the lumbar and cervical
21 spine and status post lumbar laminectomy and disc excision as severe impairments. AR 18-10.
22 Nonetheless, the ALJ determined that the severity of Plaintiff's impairments did not meet or exceed
23 any of the listed impairments. AR 20. Based on her review of the entire record, the ALJ determined
24 that Plaintiff retained the residual functional capacity ("RFC") to perform light work. Plaintiff could
25 lift and/or carry ten pounds frequently, twenty pounds occasionally, could sit, stand and/or walk for six
26 hours out of an eight-hour workday, could occasionally stoop, crouch, crawl, climb, balance and kneel.
27 He could never climb ladders, ropes or scaffolds and must avoid concentrated exposure to heights. He
28 also required a sit-stand option. AR 20-24. The ALJ found that Plaintiff could not perform any of his

1 past relevant work, but could perform jobs that exist in significant numbers in the national economy.
2 AR 24-25. The ALJ therefore concluded that Plaintiff was not disabled under the Social Security Act.
3 AR 25.

4 SCOPE OF REVIEW

5 Congress has provided a limited scope of judicial review of the Commissioner's decision to
6 deny benefits under the Act. In reviewing findings of fact with respect to such determinations, this
7 Court must determine whether the decision of the Commissioner is supported by substantial evidence.
8 42 U.S.C. § 405(g). Substantial evidence means "more than a mere scintilla," *Richardson v. Perales*,
9 402 U.S. 389, 402 (1971), but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112,
10 1119, n. 10 (9th Cir. 1975). It is "such relevant evidence as a reasonable mind might accept as
11 adequate to support a conclusion." *Richardson*, 402 U.S. at 401. The record as a whole must be
12 considered, weighing both the evidence that supports and the evidence that detracts from the
13 Commission's conclusion. *Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). In weighing the
14 evidence and making findings, the Commissioner must apply the proper legal standards. *E.g.*,
15 *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must uphold the Commissioner's
16 determination that the claimant is not disabled if the Commissioner applied the proper legal standards,
17 and if the Commissioner's findings are supported by substantial evidence. *See Sanchez v. Sec'y of*
18 *Health and Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987).

19 REVIEW

20 In order to qualify for benefits, a claimant must establish that he or she is unable to engage in
21 substantial gainful activity due to a medically determinable physical or mental impairment which has
22 lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §
23 1382c(a)(3)(A). A claimant must show that he or she has a physical or mental impairment of such
24 severity that he or she is not only unable to do his or her previous work, but cannot, considering his or
25 her age, education, and work experience, engage in any other kind of substantial gainful work which
26 exists in the national economy. *Quang Van Han v. Bowen*, 882 F.2d 1453, 1456 (9th Cir. 1989). The
27 burden is on the claimant to establish disability. *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir.
28 1990).

1 In his opening brief, Plaintiff contends that the ALJ erred in (1) rejecting the opinion of
2 Plaintiff's treating physician; and (2) evaluating Plaintiff's credibility.

3 DISCUSSION²

4 **1. The ALJ Failed to Fully Develop the Record and Weigh the Medical Evidence**

5 Plaintiff's primary challenge is that the ALJ failed to adequately develop the record, which
6 undermines the ALJ's determination that the opinion of Plaintiff's treating physician, Dr. Esposito, is
7 inconsistent with the treatment notes and objective medical evidence. Plaintiff also contends that the
8 ALJ's reasons for rejecting Dr. Esposito's opinions are not specific and legitimate. (Doc. 14 at 9-12.)

9 The ALJ reviewed and evaluated Dr. Esposito's opinion as follows:

10 The reports of M. Esposito, M.D., were prepared in the context of the adversarial
11 workers' compensation claim system (Exhibit 15F, 17F, 22F, 25F, 27F, 37F, 38F, and
12 40F). Medical reports generated in the context of a workers' compensation claim are
13 adversarial in nature. The physicians retained by either party in the context of worker's
14 compensation cases are often biased and do not provide truly objective opinions. The
15 claimant's treating physician in the context of a workers' compensation claim often
16 serves as an advocate for the claimant and describes excessive limitations to enhance the
17 claimant's financial recovery. In addition, the definition of disability in a workers'
18 compensation case is not the same as a Social Security disability case. Workers'
19 compensation cases look only at the claimant's ability to return to the job being
20 performed at the time of the injury. Finally, whether the claimant is "disabled" is a
21 determination reserved to the Commissioner Therefore, the credibility and relevance
22 of the opinions of Dr. Esposito must be carefully assessed because of the involvement
23 with the workers' compensation claim.

24 The undersigned has read and considered the statement by the physician involved in the
25 workers' compensation case, Dr. Esposito and N. Grams, LCSW, indicating the claimant
26 was "temporarily totally disabled" (Exhibits 20 E and 29F). The undersigned finds this
27 conclusion has no probative value and rejects this evidence. The term "temporarily
28 totally disabled" is a term of art in workers' compensation law that is not determinative
under the criteria for finding of disability pursuant to the Social Security Act. Therefore,
the conclusion by a physician the claimant is "temporarily totally disabled" in the context
of a workers' compensation case is not relevant with regard to the claimant's applications
under the Social Security Act.

The undersigned has considered and gives little weight to Dr. Esposito, who filled out
physical capacities evaluations on March 23, 2012, August 29, 2012, and September 17,

2 The parties are advised that this Court has carefully reviewed and considered all of the briefs, including
arguments, points and authorities, declarations, and/or exhibits. Any omission of a reference to any specific argument or
brief is not to be construed that the Court did not consider the argument or brief.

1 20a2; and stated he had released the claimant [to] sedentary work on August 28, 2012,
2 but there was no job available to him at that time (Exhibits 29 F; 37 F, p. 3; 38F; and
3 40F). As on opinion on an issue reserved to the Commissioner, this statement that [the]
4 claimant had no job available to him is not entitled to controlling weight and is not given
5 special significance pursuant to 20 CFR 404.1527(e) and 416.927(e) and SSR 96-5. Dr.
6 Esposito primarily summarized in the treatment notes the claimant's subjective
7 complaints, diagnoses, and treatment, but he did not provide objective clinical or
8 diagnostic findings to support the functional assessment. This opinion is inconsistent
9 with the objective findings already discussed above in this decision, which show mild
10 changes. This opinion is also inconsistent with the claimant's admitted activities of daily
11 living that have already been described above in this decision. Therefore, Dr. Esposito is
12 given little weight.

13 AR 23.

14 Plaintiff argues the ALJ's finding that Dr. Esposito's treatment notes were inconsistent with his
15 opinions should have triggered her duty to develop the record. An ALJ's duty to develop the record is
16 triggered if there is ambiguous evidence or the record is inadequate for proper evaluation of evidence.
17 When such a duty is triggered, an ALJ can develop the record by (1) making a reasonable attempt to
18 obtain medical evidence from the claimant's treating sources; (2) ordering a consultative examination
19 when the medical evidence is incomplete or unclear and undermines the ability to resolve the
20 disability issue; (3) subpoenaing or submitting questions to the claimant's physicians; (4) continuing
21 the hearing; or (5) keeping the record open for more supplementation. *Tonapetyan v. Halter*, 242 F.3d
22 1144, 1150 (9th Cir. 2001); 20 C.F.R. § 404.1517.

23 In this instance, the Court finds that the ALJ's duty to develop the record was triggered when
24 she found Dr. Esposito's opinion unsupported by objective clinical or diagnostic findings, but
25 thereafter failed to either request additional information from Dr. Esposito or order a consultative
26 examination. The Court agrees with Plaintiff that the ALJ should have further developed the record in
27 this instance. The ALJ's failure is compounded, as discussed below, by the ALJ's apparent decision
28 to *not* rely upon or assign controlling weight to any other medical opinion evidence. AR 22-23. An
"ALJ's RFC determination or finding must be supported by medical evidence, particularly the opinion
of a treating or an examining physician." *Banks v. Barnhart*, 434 F.Supp.2d 800, 805 (C.D. Cal.
2006). Here, the ALJ either rejected or assigned little weight to medical opinions. AR 23. Indeed, the

1 ALJ even ignored opinions in the record rendered by state agency physicians regarding Plaintiff's
2 RFC. AR 70-73 [Dr. K. Quint]; 91-93 [Dr. M. Bayar].

3 Furthermore, as Plaintiff suggests, it is apparent that the ALJ improperly substituted her lay
4 opinion for that of the medical experts. *See generally, Tackett v. Apfel*, 180 F.3d 1094, 1102–03 (9th
5 Cir.1999) (ALJ may not substitute his own opinion instead of relying on the opinions of medical
6 professionals); *Banks*, 434 F.Supp.2d at 805 (“ALJ cannot arbitrarily substitute his own judgment for
7 competent medical evidence [], and he must not succumb to the temptation to play doctor and make
8 his own independent medical findings”). As noted, the ALJ rejected the opinion of Dr. Esposito
9 because it was inconsistent with the medical record. However, it appears from the ALJ’s decision that
10 she was the only person to interpret Dr. Esposito’s treatment records, and as a result, this finding is
11 based solely on the ALJ’s own lay interpretation of the medical evidence. “The ALJ is not allowed to
12 use his own medical judgment in lieu of that of a medical expert.” *Winters v. Barnhart*, No. C 02-
13 5171SI, 2003 WL 22384784, at *6 (N.D. Cal. Oct.15, 2003); *see also Gonzalez Perez v. Sec’y of*
14 *Health & Human Servs.*, 812 F.2d 747, 749 (1st Cir. 1987) (ALJ may not “substitute his own layman’s
15 opinion for the findings and opinion of a physician”). Because the ALJ’s assessment of Dr. Esposito’s
16 opinion lacks a medical foundation, it represents an improper substitution of the ALJ’s lay judgment
17 for that of a medical expert. For this reason, the ALJ erred in failing to direct a medical expert to
18 review all of the medical evidence or otherwise develop the record.

19 An ALJ’s decision may be set aside due to her failure to develop the record if the claimant can
20 demonstrate prejudice or unfairness as a result of the failure. *Vidal v. Harris*, 637 F.2d 710, 713 (9th
21 Cir. 1991). Here, the ALJ relied on her own view of the medical record; this improper determination
22 does not represent a fair assessment of Plaintiff’s impairments. For these reasons, the ALJ failed her
23 duty to fully develop the record and her resulting efforts to weigh the incomplete medical evidence are
24 therefore erroneous. This matter will be remanded to allow the whole record to be fully and properly
25 developed and addressed by the ALJ in evaluating the medical opinions and the resulting residual
26 functional capacity.

27 Additionally, the Court finds that the ALJ’s other purported reasons for rejecting Dr.
28 Esposito’s opinion, including assertions of advocacy on Plaintiff’s behalf, opinions rendered in the

1 workers' compensation context, disability opinions reserved to the Commissioner, and Plaintiff's daily
2 activities, are not specific and legitimate. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) ("Even if
3 the treating doctor's opinion is contradicted by another doctor, the Commissioner may not reject this
4 opinion without providing 'specific and legitimate reasons' supported by substantial evidence in the
5 record for so doing."). First, the ALJ's contention that Dr. Esposito's opinion should be "carefully
6 assessed" based on an implication that Dr. Esposito acted as a workers' compensation advocate for
7 Plaintiff and described limitations to enhance Plaintiff's financial recovery is mere conjecture.
8 Nothing in Dr. Esposito's opinions or treatment notes suggests advocacy or enhanced limitations for
9 the purpose of recovery. *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996) (source of referral
10 relevant where there is no objective medical basis for the opinion and there is evidence of actual
11 improprieties on the part of the doctor whose report the ALJ chooses to reject.)

12 Second, an "ALJ may not disregard a physician's medical opinion simply because it was
13 initially elicited in a workers' compensation proceeding, or because it was couched in the terminology
14 used in such proceedings." See *Booth v. Barnhart*, 181 F.Supp.2d 1099, 1105 (C.D. Cal. 2002) (citing
15 *Coria v. Heckler*, 750 F.2d 245, 247-48 (3d Cir. 1984)).

16 Third, an ALJ may not reject the report of a treating physician merely because a workers'
17 compensation determination may not be controlling on the ultimate issue of disability. See *Franco v.*
18 *Colvin*, No. 1:12-CV-01267-SMS, 2014 WL 790912, *18 (E.D. Cal. Feb. 26, 2014) (citing *Macri v.*
19 *Chater*, 93 F.3d 540, 543-44 (9th Cir. 1996) ("That workers' compensation determinations are not
20 controlling on the ultimate issue of disability does mean that an ALJ can ignore the report of the
21 physician making the determination.").

22 Fourth, and finally, the ALJ's reliance on Plaintiff's report of daily activities to demonstrate
23 inconsistency with Dr. Esposito's opinion is unsupported. In this instance, the ALJ cites Plaintiff's
24 admission of activities that included "taking care of his personal needs, and preparing microwave
25 meals," "walk[ing] around daily, and [picking] up trash on the lawn." AR 19. The ALJ did not
26 explain how these minimal daily activities are inconsistent with Dr. Esposito's opinion. Moreover, the
27 evidence does not demonstrate that these limited activities took up a "substantial part" of Plaintiff's
28 day or that they would be "transferable to the work setting." *Vertigan v. Halter*, 260 F.3d 1044, 1049

1 (9th Cir. 2001); *cf. Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175 (9th Cir. 2008) (upholding
2 credibility determination where ALJ found claimant’s daily activities, which included cooking, house
3 cleaning, doing laundry and helping manage finances, suggested she may still be capable of
4 performing the basic demands of competitive, remunerative, unskilled work on a sustained basis).

5 **2. Remand is Required**

6 The Court has considered Plaintiff’s request to award benefits rather than remand the case for
7 additional proceedings, but finds remand more appropriate. The circumstances of this case indicate
8 that there are outstanding issues that must be resolved before a final determination can be made.
9 Further administrative review may remedy the ALJ’s errors and thus remand is appropriate. *McLeod v.*
10 *Astrue*, 640 F.3d 881, 888 (9th Cir. 2011); *see Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003)
11 (remand is an option where the ALJ fails to state sufficient reasons for rejecting a claimant’s excess
12 symptom testimony); *see also Garrison v. Colvin*, 759 F.3d 995, (court may “remand for further
13 proceedings when, even though all conditions of the credit-as-true rule are satisfied, an evaluation of
14 the record as a whole creates serious doubt that a claimant is, in fact, disabled”).

15 Additionally, because the Court remands this case for renewed consideration of the medical
16 evidence, the Court dispenses with an exhaustive analysis of the ALJ’s credibility determination. In
17 light of the Court’s finding that the ALJ failed to properly evaluate the opinion of Dr. Esposito and
18 develop the record, and because credibility determinations are inescapably linked to conclusions
19 regarding medical evidence, 20 C.F.R. § 404.1529, the ALJ’s credibility finding is also reversed and
20 the issue remanded. The Court need not consider Plaintiff’s arguments regarding credibility in light of
21 the need for reversal on other grounds. *See Marcia v. Sullivan*, 900 F.2d 172, 177 n. 6 (9th Cir. 1990)
22 (“Because we remand for reconsideration of step three, we do not reach the other arguments raised.”);
23 *Pendley v. Heckler*, 767 F.2d 1561, 1563 (11th Cir. 1985) (per curiam) (“Because the ‘misuse of the
24 expert’s testimony alone warrants reversal,’ we do not consider the appellant’s other claims.”).

25 **CONCLUSION**

26 Based on the foregoing, the Court finds that the ALJ’s disability determination warrants
27 remand. Accordingly, the decision is **REVERSED** and the case **REMANDED** to the ALJ for further
28 proceedings. On remand, the ALJ will reweigh the medical evidence and address the deficiencies

1 identified by the Court. Additionally, although not addressed in this Order, on remand the
2 Commissioner shall reevaluate Plaintiff's subjective symptom testimony in light of reweighing the
3 medical evidence. If necessary, the Commissioner may hold further hearings and receive additional
4 evidence.

5 Accordingly, the Clerk of the Court is **DIRECTED** to enter judgment in favor of Plaintiff
6 Ausencio Campos and against Defendant Carolyn W. Colvin, Acting Commissioner of Social
7 Security.

8
9 IT IS SO ORDERED.

10
11 Dated: September 25, 2015

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE