

1 I. APRIL 25, 2016 ORDER

2 In its April 25, 2016 order, this court granted summary judgment for plaintiff
3 because, “as defendant concede[d], the ALJ failed to provide sufficient reasons supported by
4 substantial evidence for discrediting plaintiff’s testimony or the medical opinions of the treating
5 physicians.” Prev. Order 5. Indeed, the ALJ entirely ignored the medical opinions of the two
6 treating physicians, Dr. Campbell and Dr. Chan. See Ct. Tr. 12–17, ECF Nos. 9-3 to 9-8.

7 This court next considered the appropriate remedy and found the direct award of
8 benefits appropriate under the Ninth Circuit’s three-part “credit-as-true” rule. Prev. Order 6.
9 Under this rule, a court may remand for the award of benefits only if each of the following is true:
10 (1) the record has been fully developed and further administrative proceedings would serve no
11 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence,
12 whether claimant testimony or medical opinions; and (3) the ALJ on remand would be required to
13 find the claimant disabled if the improperly rejected or discredited evidence were credited as true.
14 *Id.* at 5–6; *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). Even if this test is satisfied, a
15 direct award of benefits is not appropriate when “an evaluation of the record as a whole creates
16 serious doubt that a claimant is, in fact, disabled.” *Garrison*, 759 F.3d at 1021; see also *Treichler*
17 *v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1108 (9th Cir. 2014).

18 Applying these standards, the court first “[found] the record ha[d] been fully
19 developed and ha[d] no factual conflicts, ambiguities, or gaps that would require further
20 administrative proceedings.” Prev. Order 6 (citing *Treichler*, 775 F.3d at 1103–04). The court
21 explained:

22 The vocational evidence establishes plaintiff is disabled under
23 [Medical-Vocational Guidelines Rule (“Grid Rule”)] 202.06¹ if he
24 is limited to light or sedentary exertional work. The medical
25 opinions of two treating physicians (Dr. Campbell and Dr. Chan),
the consultative examiner (Dr. Miller), and a state agency medical
consultant (Dr. Arnold), as well as plaintiff’s testimony, in turn,

26 ¹ Grid Rule 202.06 directs a finding of “disabled” if the claimant is over the age of fifty-
27 five, the claimant is limited to light or sedentary work, the claimant’s education of a high school
28 degree or above does not provide for direct entry into skilled work, and the claimant’s previous
work was skilled or semi-skilled and the skills of that work are not transferable to other jobs.

1 each suggest plaintiff is limited to light or sedentary exertional
2 work. The only opinion placing plaintiff above a light exertional
3 level is the initial state agency consultant, who was subsequently
4 overruled on reconsideration by the second state agency consultant.
Accordingly, plaintiff's entitlement to benefits under Grid Rule
202.06 is clear from the record.

5 *Id.*

6 The court next found the ALJ "failed to provide legally sufficient reasons for
7 rejecting plaintiff's testimony or the medical opinions of Dr. Campbell, Dr. Chan, Dr. Miller or
8 Dr. Arnold." *Id.* As to the third factor, the court found "the ALJ on remand would be required to
9 find plaintiff disabled under Grid Rule 202.06 if plaintiff's testimony and the [physicians']
10 medical opinions [were] credited as true." *Id.* Moreover, "in light of the overwhelming evidence
11 that plaintiff is disabled, and for the reasons provided in plaintiff's objections, the court [did] not
12 find the record as a whole create[d] serious doubt that plaintiff is in fact disabled." *Id.* (internal
13 citation omitted). The court rejected defendant's arguments that remand was necessary to further
14 develop the vocational aspects of the record and to allow the ALJ to re-examine the medical
15 opinion evidence and plaintiff's testimony of subjective complaints in the first instance. *Id.* at 6-
16 7. Finally, the court distinguished the facts of this case from those in *Treichler*. *Id.* at 7.

17 II. LEGAL STANDARD

18 There are four grounds upon which a court may grant a motion to amend a
19 judgment under Rule 59(e): "1) the motion is necessary to correct manifest errors of law or fact
20 upon which the judgment is based; 2) the moving party presents newly discovered or previously
21 unavailable evidence; 3) the motion is necessary to prevent manifest injustice; or 4) there is an
22 intervening change in controlling law." *Turner v. Burlington N. Santa Fe R. Co.*, 338 F.3d 1058,
23 1063 (9th Cir. 2003) (internal quotation marks, citation, and emphasis omitted). A district court
24 has "considerable discretion" when considering a motion under Rule 59(e). *Id.* However,
25 amending a judgment is an "extraordinary remedy, to be used sparingly in the interests of finality
26 and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890
27 (9th Cir. 2000) (citation omitted); *see also Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th
28 Cir. 2011). Moreover, Rule 59(e) "may not be used to relitigate old matters, or to raise arguments

1 or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping*
2 *Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008); *Arteaga v. Asset Acceptance, LLC*, 733 F. Supp. 2d
3 1218, 1236 (E.D. Cal. 2010) (motions for reconsideration should not be used to make new
4 arguments not originally raised or “to ask the court to rethink what it has already thought”).

5 Here, defendant has not submitted any new evidence to support its claim, and there
6 has not been a change in controlling law. Rather, defendant requests the court grant the motion to
7 correct manifest errors of law or fact upon which the judgment is based, and to prevent manifest
8 injustice. Mot. 1. Specifically, defendant argues that the court’s decision to remand for payment
9 of benefits constitutes a manifest error of law, and that paying a claimant benefits when he has
10 not satisfied the statutory requirements to receive those benefits is also a manifest injustice. *Id.*
11 at 10.

12 III. DISCUSSION

13 Defendant advances four arguments in support of reconsideration: First, the
14 record was not fully developed, because the ALJ stopped at step two of the Social Security
15 Administration’s five-step sequential evaluation process for determining whether an individual is
16 disabled, *see* 20 C.F.R. § 404.1520(a), and did not make any residual functional capacity (“RFC”)
17 or vocational findings, as required at the later steps of the process. Mot. 4–8. Second, it is not
18 clear plaintiff is disabled under Grid Rule 202.06, because there are ambiguities in the record as
19 to whether plaintiff can perform medium or light work. *Id.* at 6–8. Third, it is not clear plaintiff
20 is disabled under Grid Rule 202.06, because there is conflicting evidence as to whether plaintiff
21 has transferable vocational skills. *Id.* at 8–9. Specifically, while the vocational expert at the ALJ
22 hearing testified that plaintiff did not have transferable skills, the Disability Determination
23 Services (“DDS”) analyst at the reconsideration level had found he had transferable skills. *Id.*
24 Finally, given the amount of time that has passed since the ALJ’s decision, remand is appropriate
25 to further develop the record with respect to plaintiff’s current medical condition and treatment
26 records. *Id.* at 10.

27 Defendant previously raised her first two arguments in response to plaintiff’s
28 objections to the magistrate judge’s February 12, 2016 findings and recommendations, and the

1 court in its April 25, 2016 order considered and rejected those arguments. *See* Resp. to Pl.’s
2 Objections 2, ECF No. 25; Prev. Order 4, 6–7. As the court explained in its prior order,
3 “allowing the ALJ to have a mulligan” does not support remand for a “useful purpose” under the
4 first part of the credit-as-true analysis. Prev. Order 7 (quoting *Garrison*, 759 F.3d at 1021); *see*
5 *also Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (“Allowing the Commissioner to
6 decide the [RFC] again would create an unfair ‘heads we win; tails, let’s play again’ system of
7 disability benefits adjudication.”). And contrary to defendant’s assertion, in making its
8 determination to remand for payment of benefits, the court did consider the evidence defendant
9 again identifies, such as the July 2013 bone scan and plaintiff’s reports of his daily activities. *See*
10 Resp. to Pl.’s Objections 2–3; Mot. 7; Prev. Order 2–3. The court concluded the record as a
11 whole did not create serious doubt that plaintiff is in fact disabled. Prev. Order 6. Defendant’s
12 motion offers no reason for the court to change its determination other than mere disagreement
13 with that decision, an insufficient basis to grant a Rule 59(e) motion. *See Arteaga*, 733 F. Supp.
14 2d at 1237.

15 With respect to defendant’s remaining arguments—that there is conflicting
16 evidence as to whether plaintiff has transferable vocational skills, and that remand is appropriate
17 in light of the time that has passed since the ALJ’s decision—defendant has not identified any
18 reason she could not have raised these arguments before now. *See Exxon Shipping Co.*, 554 U.S.
19 at 485 n.5; *Arteaga*, 733 F. Supp. 2d at 1236. Even if the court were to consider these new
20 arguments, they are unpersuasive. Defendant relies only on a single district court decision to
21 support her third argument, and that case is factually distinguishable. Mot. 9 (citing *McAndrews*
22 *v. Colvin*, No. 13-3099, 2014 WL 5089745 (E.D. Wash. Oct. 9, 2014)). In *McAndrews*, the court
23 determined it would be inappropriate to apply the credit-as-true rule because two qualified
24 vocational experts had offered the ALJ conflicting opinions. *Id.* at *5. Here, by contrast, the only
25 evidence that conflicts with the opinion of the qualified vocational expert is the opinion at the
26 reconsideration level of the DDS Analyst, who is not a qualified vocational expert. At the
27 administrative hearing, the ALJ noted that he “like[s] to have a vocational expert” testify, because
28 “[he] [doesn’t] know the qualifications that people who make those determinations for

1 DDS [have]. . . . Sometimes they're wrong." Ct. Tr. 29. As to defendant's fourth argument,
2 defendant cites no case law supporting her position. Although certain regulations provide that the
3 Appeals Council or ALJ on remand "may" consider any issues relating to the plaintiff's claim,
4 *see, e.g.*, 20 C.F.R. § 404.984(a), the regulations cited by defendant do not direct a district court
5 to remand a case for further administrative proceedings simply because time has passed since the
6 ALJ's decision. *See* Mot. 10.

7 Having carefully considered the applicable legal standards and conducted a
8 searching review of the record, the court concludes it did not commit a manifest error of law or
9 work a manifest injustice by applying the credit-as-true rule here. *See Turner*, 338 F.3d at 1063.

10 IV. CONCLUSION

11 For the foregoing reasons, defendant has not met her burden of showing that the
12 "extraordinary remedy" of amending the judgment is warranted. *See Kona Enters., Inc.*, 229 F.3d
13 at 890. The court DENIES defendant's motion to alter or amend the court's April 25, 2016 order
14 and judgment.

15 IT IS SO ORDERED.

16 DATED: September 9, 2016.

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20 UNITED STATES DISTRICT JUDGE
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