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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIO PEREZ AMBRIZ,  
Plaintiff,  
v.  
CAROLYN W. COLVIN,<sup>1</sup>  
Defendant.

Case No. 12-cv-05486-JST

**ORDER DENYING CROSS-MOTIONS  
FOR SUMMARY JUDGMENT;  
GRANTING MOTION FOR REMAND  
FOR ADDITIONAL PROCEEDINGS**

Re: ECF Nos. 15, 16

In this action under 42 U.S.C. § 405(g) for judicial review of the Social Security Commissioner's denial of Plaintiff Ambriz's claim for Supplemental Security Income ("SSI"), the parties have filed cross-motions for summary judgment on the question of whether Ambriz is disabled. Alternatively, Ambriz moves for remand for additional proceedings. For the reasons set forth below, the cross-motions for summary judgment are DENIED, and the case is REMANDED for further proceedings.

**I. BACKGROUND**

**A. Ambriz's Personal, Vocational, and Medical History**

Ambriz was admitted to the John Muir Medical Center on March 22, 2009, after sustaining a gunshot wound to his forehead. AR 376-82. Ambriz was described as having brain matter on his forehead. AR 377. Ambriz underwent a right front craniotomy, cranioplasty, and craniofacial reconstruction while he was hospitalized. AR 370-72. He was discharged on April 30, 2009; his discharge diagnoses were: gunshot wound to the head, depressed skull fracture, acute depression

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<sup>1</sup> Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. ECF No. 16 at 1 n.1. Colvin is hereby substituted under Federal Rule of Civil Procedure 25(d) for Michael J. Astrue as the defendant in this action.

1 secondary to gunshot wound, severe cognitive disorder, post-gunshot wound infection and  
2 abscess, debridement, and cranioplasty performed. AR 382.

3 Ambriz was released to the care of his mother after being discharged. AR 426-27. Ambriz  
4 received rehabilitative treatment from Rehab Without Walls. AR 460-93. There, Ambriz was  
5 diagnosed with moderate to severe deficits in memory, moderate to severe deficits in funds of  
6 information, moderate deficits in attention and concentration secondary to impulsivity, and  
7 symptoms of depression and anxiety. AR 462. An evaluator determined that Ambriz could  
8 benefit from a day treatment program for Traumatic Brain Injury (“TBI”) patients. AR 468.

9 Ambriz tried to obtain care at the Brookside Community Health Center, but he had  
10 difficulty locating a facility that would offer him cognitive re-training because of insurance issues,  
11 costs, or admission criteria. AR 484-88, 79-83.

12 Ambriz did not receive treatment for his brain injury from July 2009 to May 3, 2011, but  
13 he attended several consultative examinations in connection with his claim for SSI benefits. AR  
14 429-36, 489-97, 506-09.

15 In July 2009, Ambriz was referred to a psychological evaluation by the agency responsible  
16 for developing medical evidence and making initial determinations in pending Social Security  
17 disability matters. AR 435-36. Ambriz was examined by Dr. John Prosize, a licensed  
18 psychologist. AR 436. Dr. Prosize observed that Ambriz responded in an oppositional manner to  
19 the session’s prompts, and as a result, “the inevitable deficits of a survivor of a 3/22/09 brain  
20 injury by gunshot remained entirely veiled” during the evaluation. AR 435. Dr. Prosize observed  
21 that Ambriz’s insight and judgment were poor, that he was malingering, and that his “capacity to  
22 work with supervisors and rival peers is suspect.” AR 435-36.

23 Also in July 2009, Ambriz attended a neurological evaluation with State agency examiner  
24 Dr. Carl Fieser. AR 429-34. Fieser also reported that Ambriz failed to fully cooperate at his  
25 evaluation. AR 433. Nevertheless, Dr. Fieser concluded that Ambriz has “physical deficits” as a  
26 result of the gunshot would, and that he could be expected to stand and walk a total of four hours  
27 in an eight-hour workday and to occasionally lift and carry 10 pounds frequently and 20 pounds  
28 occasionally. AR 433. In addition, Dr. Fieser opined that Ambriz would need 24-hour

1 supervision due to his cognitive deficits. AR 433.

2 A state agency medical consultant, Dr. Meek, reviewed Dr. Fieser's evaluation of Ambriz,  
3 as well as the available medical records, and he concluded that Ambriz was limited to standing or  
4 walking "at least 2 hours in an 8-hour workday," to sitting for "about 6 hours in an 8-hour  
5 workday," and to lifting or carrying 10 pounds frequently and 20 pounds occasionally. AR 453.  
6 Dr. Meek also concluded that Ambriz should never climb ladders, ropes, or scaffolds, and that he  
7 should avoid concentrated exposure to workplace hazards. AR 454-55.

8 In December 2010, Ambriz was referred to another psychological evaluation by his  
9 attorney. AR 489. The evaluation was performed by Dr. Lisa Kalich, a clinical psychologist who  
10 is board certified in forensic psychology. AR 497. Dr. Kalich reviewed Ambriz's medical  
11 records, interviewed Ambriz and his mother, and tested Ambriz. AR 489. Dr. Kalich noted that  
12 Ambriz's cooperation was not consistent during the testing and that he responded to her questions  
13 in a sarcastic manner. AR 495. Nevertheless, Dr. Kalich concluded on the basis of her interviews  
14 and testing that Ambriz suffered from post-traumatic stress disorder and depressive disorder; that  
15 he should be provisionally diagnosed with dementia due to head trauma, with a Global  
16 Assessment of Functioning ("GAF") of 45; and that he had moderate impairment in connection  
17 with daily-living activities, social functioning, concentration, and severe deficits in connection  
18 with persistence. AR 495-97.

19 Ambriz was evaluated a second time by Dr. Prorise at the request of the Administrative  
20 Law Judge ("ALJ") in March 2011. AR 14, 506-09. Dr. Prorise observed some oppositional  
21 behavior during the examination and noted that this "continuing behavioral overlay may tempt  
22 reviewers to discount Mr. Ambriz's underlying deficits as contrived." AR 508-09. Nevertheless,  
23 Dr. Prorise concluded that this behavior "did not defeat the assessment, this time." AR 508-09.  
24 Dr. Prorise assessed Ambriz's GAF at 40 and concluded that Ambriz's memory indices were in  
25 the deficient range and that his intellectual indices were in the borderline to low average range.  
26 AR 507-08. He also concluded that Ambriz seemed incapable of adapting appropriately to  
27 common workplace requirements, hazards, and changes of routine, and that the examination  
28 revealed fixed, circumscribed impairments in Ambriz's ability to carry out spoken instructions

1 with adequate concentration without unusual accommodation. AR 509.

2 **B. Procedural History**

3 Ambriz applied for SSI benefits on April 23, 2009, alleging disability beginning on the  
4 date he received the gunshot wound to his head. AR 200-05, 24-34. His application was denied  
5 on August 29, 2009, and again upon reconsideration on November 24, 2009. AR 14.

6 Ambriz filed a written request for hearing before ALJ Richard P. Laverdue, which took  
7 place on January 25, 2011. AR 14. Ambriz and his mother, Denise Charrette attended the  
8 hearing. AR 14. A vocational expert, Gerald D. Belchick, also attended the hearing at the ALJ's  
9 request, but he did not participate in the proceedings. AR 14. The ALJ ordered a supplemental  
10 consultive examination of Ambriz, which was performed by Dr. Prosis. AR 14. The ALJ issued  
11 a decision on May 3, 2011, finding that Ambriz was "not disabled." AR 11-24.

12 Ambriz appealed the ALJ's decision on June 21, 2011. AR 199. The Appeal Council  
13 denied review on August 21, 2012, making the decision of the ALJ the final decision of the  
14 Commissioner of Social Security ("the Commissioner"). AR 1-6. Ambriz then submitted  
15 additional evidence to the Appeals Council, namely a psychological report from Dr. Kalich. AR  
16 5, 513-516. The Appeals Council noted that it considered "the additional evidence" and "found  
17 that this information did not provide a basis for changing the Administrative Law Judge's  
18 decision." AR 1-2. The Appeals Council, however, incorporated the report from Dr. Kalich into  
19 Ambriz's record as Exhibit 13F. AR 4, 513-516.

20 **C. Basis for the ALJ's Decision**

21 **1. Standard for Determining Disability**

22 "Under the Social Security Act, to qualify for disability insurance benefits, a claimant must  
23 establish: (1) that she is disabled within the meaning of the Social Security Act, i.e., that she was  
24 unable to engage in any substantial gainful activity by reason of any medically determinable  
25 physical or mental impairment, 42 U.S.C. § 423(d)(1)(A); (2) that her impairment(s) lasted for a  
26 continuous period of not less than 12 months, *id.*; *see also* 20 C.F.R. § 404.1509; and (3) that her  
27 period of disability began while she was insured for disability insurance benefits, 42 U.S.C. §  
28 423(a)(1)(A)." *Thomas v. Barnhart*, 278 F.3d 947, 954-55 (9th Cir. 2002) (internal quotation

1 marks omitted).

2 “A claimant is disabled if she proves: 1) that she is not presently engaged in a substantial  
3 gainful activity; 2) that her disability is severe; and 3) that her impairment meets or equals one of  
4 the specific impairments described in the regulations. Even if the specific impairments described  
5 in the regulations do not apply, a claimant can make out a prima facie case of disability if she  
6 proves, in addition to the first two requirements, that she is not able to perform any work that she  
7 has done in the past. If the claimant makes out a prima facie case, the burden shifts to the  
8 Commissioner to establish that the claimant can perform a significant number of other jobs in the  
9 national economy. The Commissioner can meet this burden through the testimony of a vocational  
10 expert or by reference to the Medical Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2.  
11 If the Commissioner meets her burden, the claimant has failed to establish disability.” Id. (internal  
12 citations and quotation marks omitted).

13 In accordance with 20 C.R.F. § 404.1520 and 416.920, the ALJ must perform a five-step  
14 sequential evaluation process for finding disability, as follows:

15 Step 1: Is the claimant presently working in a substantially gainful activity? If so,  
16 then the claimant is “not disabled” within the meaning of the Social Security Act  
17 and is not entitled to disability insurance benefits. If the claimant is not working in  
18 a substantially gainful activity, then the claimant’s case cannot be resolved at step  
one and the evaluation proceeds to step two. See 20 C.F.R. § 404.1520(b).

19 Step 2: Is the claimant’s impairment severe? If not, then the claimant is “not  
20 disabled” and is not entitled to benefits. If the claimant’s impairment is severe,  
then the claimant’s case cannot be resolved at step two and the evaluation proceeds  
21 to step three. See 20 C.F.R. § 404.1520(c).

22 Step 3: Does the impairment “meet or equal” one of a list of specific impairments  
23 described in the regulations? If so, the claimant is “disabled” and therefore entitled  
24 to disability insurance benefits. If the claimant’s impairment neither meets nor  
equals one of the impairments listed in the regulations, then the claimant’s case  
25 cannot be resolved at step three and the evaluation proceeds to step four. See 20  
C.F.R. § 404.1520(d).

26 Step 4: Is the claimant able to do any work that he or she has done in the past? If  
27 so, then the claimant is “not disabled” and is not entitled to disability insurance  
benefits. If the claimant cannot do any work he or she did in the past, then the  
28 claimant’s case cannot be resolved at step four and the evaluation proceeds to the  
fifth and final step. See 20 C.F.R. § 404.1520(e).

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Step 5: Is the claimant able to do any other work? If not, then the claimant is “disabled” and therefore entitled to disability insurance benefits. See 20 C.F.R. § 404.1520(f)(1). If the claimant is able to do other work, then the Commissioner must establish that there are a significant number of jobs in the national economy that claimant can do. There are two ways for the Commissioner to meet the burden of showing that there is other work in “significant numbers” in the national economy that claimant can do: (1) by the testimony of a vocational expert, or (2) by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2. If the Commissioner meets this burden, the claimant is “not disabled” and therefore not entitled to disability insurance benefits. See 20 C.F.R. §§ 404.1520(f), 404.1562. If the Commissioner cannot meet this burden, then the claimant is “disabled” and therefore entitled to disability benefits.

Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006) (citations omitted).

## 2. The ALJ’s Findings

The ALJ found that Ambriz had not engaged in substantial gainful activity since his disabilities allegedly began (first step); that Ambriz had several severe impairments that affect his ability to perform basic work activities, namely a post gunshot wound to the head, intracranial injury, and residual cognitive deficits of unknown severity (second step); that none of these impairments or combination of impairments were listed in or were the medical equivalent of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (step three). AR at 16-18.

Prior to step four, the ALJ determined Ambriz’s Residual Functional Capacity (“RFC”), which measures an individual’s ability to do physical and mental work activities on a sustained basis despite limitations from his impairments, and concluded that Ambriz could “perform light [unskilled] work as defined in 20 CFR 416.967(b) with no climbing of ladders, ropes, scaffolds (due to potential balance difficulties)” and that “he can perform simple repetitive tasks.” AR 18.

At step four, the ALJ found that Ambriz did not have past relevant work. AR at 23. At step five, the final step, the ALJ considered Ambriz’s RFC, age, education, and work experience in conjunction with the Medical-Vocational Guidelines (“the grids”) in 20 CFR Part 404, Subpart P, Appendix 2. Using the grids, and without the assistance of a vocational expert, the ALJ concluded that Ambriz is “not disabled” and that Ambriz’s exertional limitations had little or no effect on his ability to perform unskilled light work. AR at 23-24. The ALJ also concluded that “there are jobs that exist in significant numbers in the national economy that the claimant can

1 perform.” Id. Based on these findings, the ALJ found Ambriz to be “not disabled” and denied  
2 Ambriz’s application for SSI benefits. AR 23.

3 **D. Jurisdiction**

4 The Court has jurisdiction over this action under 42 U.S.C. § 405(g).

5 **II. LEGAL STANDARD**

6 A district court may set aside a denial of social security benefits only if the denial is “not  
7 supported by substantial evidence or if it is based on legal error.” Merrill ex rel. Merrill v. Apfel,  
8 224 F.3d 1083, 1085 (9th Cir. 2000) (citation omitted).

9 “Substantial evidence is relevant evidence which, considering the record as a whole, a  
10 reasonable person might accept as adequate to support a conclusion.” Id. (citation and internal  
11 quotation marks omitted). “Substantial evidence means more than a scintilla but less than a  
12 preponderance.” Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002) (citation and internal  
13 quotation marks omitted). “Where the evidence is susceptible to more than one rational  
14 interpretation, one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.”  
15 Id. (citation omitted).

16 **III. DISCUSSION**

17 Ambriz moves for summary judgment on the question of whether he was disabled as a  
18 matter of law during the relevant time period, or in the alternative, for remand for additional  
19 proceedings. ECF No. 15 at 1. Ambriz contends that the ALJ erred in concluding that he was not  
20 disabled. Specifically, Ambriz argues that the ALJ erred by failing to consider the opinions of  
21 Dr. Prosis and Dr. Meek, as well as the testimony of his mother, Denise Charrette, when  
22 conducting the RFC assessment prior to step four. Ambriz further argues that the ALJ erred in  
23 relying exclusively on the Medical-Vocational Guidelines at step five in light of his non-exertional  
24 impairments, namely those identified by Dr. Prosis. Ambriz contends that these non-exertional  
25 impairments required the ALJ to solicit and evaluate the testimony of a vocational expert.

26 The Commissioner opposes Ambriz’s motion and moves for summary judgment on the  
27 question of disability. The Commissioner argues that the ALJ’s determination is adequately  
28 supported by portions of the opinions of Dr. Prosis and Dr. Meek, and that the ALJ’s RFC

1 assessment therefore is based on substantial evidence and not legally erroneous. The  
2 Commissioner further argues that the ALJ took into account the testimony of Ambriz’s mother in  
3 conducting the RFC assessment. Finally, the Commissioner contends that the ALJ did not commit  
4 error in failing to consult a vocational expert at step five, because “it is appropriate to apply the  
5 GRIDS in cases like this where the RFC capabilities are for sedentary or light work and simple  
6 repetitive tasks.” ECF 16 at 4-5.

7 **A. The ALJ Failed to Consider the Opinions of Dr. Prosise and Dr. Meek But Not**  
8 **the Testimony of Ambriz’s Mother in Connection with the RFC Assessment**

9 Prior to steps four and five, the ALJ is required to determine a claimant’s residual  
10 functional capacity (“RFC”), which is the most a claimant can still do in a work setting despite his  
11 limitations. See 20 C.F.R. § 404.1545(a). The ALJ must determine the claimant’s RFC based on  
12 “the limiting effects of all [of the claimant’s] impairment(s), even those that are not severe.” 20  
13 C.F.R. § 416.945(e).

14 When the ALJ determines a claimant’s RFC, the ALJ is not bound by expert medical  
15 opinion on the issue of disability. See Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001) (“It  
16 is clear that it is the responsibility of the ALJ, not the claimant’s physician, to determine residual  
17 functional capacity.”). The ALJ, however, has the burden of stating specific and legitimate  
18 reasons for disregarding or rejecting the opinion of an examining physician during the RFC  
19 assessment. See Hill v. Astrue, 698 F.3d 1153, 1159-60 (9th Cir. 2012) (“Even if contradicted by  
20 another doctor, the opinion of an examining doctor can be rejected only for specific and legitimate  
21 reasons that are supported by substantial evidence in the record.”) (citation and internal quotation  
22 marks omitted). A failure to state specific and legitimate reasons for rejecting the opinion of an  
23 examining physical constitutes legal error. See id. at 1160 (holding that when an ALJ fails to  
24 provide an examining doctor’s opinion “any degree of review at all, and g[ives] no reasons for  
25 doing so,” the ALJ commits legal error); see also Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir.  
26 1993) (holding that although the ALJ “is not bound by the uncontroverted opinions of the  
27 claimant’s physicians on the ultimate issue of disability . . . he cannot reject them without  
28 presenting clear and convincing reasons for doing so”) (internal quotation marks omitted).



1 Here, the ALJ concluded that Ambriz could “perform simple repetitive tasks” and perform  
2 unskilled light work “as defined in 20 CFR 416.967(b) with no climbing of ladders, ropes,  
3 scaffolds (due to potential balance difficulties).” AR at 18.

4 Ambriz argues that, in reaching this conclusion, the ALJ failed to take into account some  
5 of the opinions of Dr. Prosisie and Dr. Meek and failed consider the testimony of Ambriz’s mother,  
6 Denise Charrette, without providing any reasons for doing so. The Commissioner responds that  
7 the ALJ’s RFC assessment is supported by substantial evidence.

8 **1. Dr. Prosisie**

9 Dr. Prosisie evaluated Ambriz twice. During the first evaluation, which took place in July  
10 2009, Dr. Prosisie noted that Ambriz had appeared to have intentionally “defeated his case by  
11 responding with a less than chance level of success” to his prompts, and that the “inevitable  
12 deficits” of his “brain injury by gunshot remained entirely unveiled” as a result. AR 435.

13 The second evaluation was conducted at the ALJ’s request in March 2011. In his second  
14 report, Dr. Prosisie reiterated that “[t]he behavioral overlay in 2009 practically veiled the evidence  
15 of his brain syndrome altogether” but that

16 the claimant’s behaviors did not defeat the assessment, this time, which revealed  
17 right-hemisphere deficits consistent with the chartered TBI. The fact of the  
18 continuing behavioral overlay may tempt reviewers to discount the underlying  
19 deficits as contrived. Regardless whether the claimant relinquishes the unfortunate  
(misleading) behaviors quickly or grudgingly, over time, it need not disqualify his  
case from advancing to further consideration in the present, successive levels of  
review.

20 AR 508 (emphasis added).

21 Dr. Prosisie went on to conclude that that Ambriz “seems incapable of adapting  
22 appropriately to common workplace requirements and hazards, and changes of routine.” AR 509.  
23 This opinion (“the assessment at issue”) is favorable to Ambriz, because it demonstrates that  
24 Ambriz has significant non-exertional impairments that may affect his ability to do the full range  
25 of light unskilled work.

26 This conclusion by Dr. Prosisie is not discussed explicitly in the ALJ’s decision, however.  
27 The ALJ provides a brief summary of Dr. Prosisie’s opinions, but the summary is devoid of any  
28 discussion or review of Dr. Prosisie’s ultimate assessment of Ambriz’s ability, or lack thereof, to

1 adapt to common workplace requirements. Indeed, the ALJ concludes that the only inference that  
2 can be drawn from Dr. Prosis's opinion is that "the claimant is capable of understanding,  
3 remembering, and carrying out simple instructions." AR 21. In light of this conclusion, it is clear  
4 that the ALJ implicitly rejected the assessment at issue altogether. AR 21.

5 Importantly, the ALJ admits that "the claimant may have cognitive difficulties as a result  
6 of his injury," but he discounts any such difficulties on the ground that "[Ambriz's] willful  
7 behavior with each of the evaluators has [ ] obscured [their] abilities as to preclude any valid  
8 assessment of the extent of any limitations —precisely as concluded by Dr. Prosis in his latest  
9 evaluation." AR. 22. The statement, however, directly contradicts Dr. Prosis's conclusion that  
10 Ambriz's willful behaviors "did not defeat the assessment" during his latest evaluation of Ambriz.  
11 AR 508 (emphasis added). As such, the ALJ's reasoning for rejecting the assessment at issue does  
12 not constitute a legitimate basis for the rejection. Nguyen v. Chater, 100 F.3d 1462, 1465 (9th Cir.  
13 1996) (holding that where the justification offered by the ALJ for rejecting an examining doctor's  
14 opinion "is squarely contradicted by the record, it may not serve as a basis for the rejection of an  
15 examining physician's conclusions"); see also Regennitter v. Comm'r of Soc. Sec. Admin., 166  
16 F.3d 1294, 1299 (9th Cir. 1999) (holding that "conclusory reasons will not justify an ALJ's  
17 rejection of a medical opinion"). The ALJ therefore erred in rejecting the assessment at issue, and  
18 this error was not harmless. See Hill, 698 F.3d at 1160 (holding that when an ALJ disregards a  
19 medical opinion "based on objective medical evidence" without providing specific and legitimate  
20 reasons, the ALJ commits error that is "not harmless").

21 **2. Dr. Meek**

22 Dr. Meek evaluated Ambriz in August 2009. AR 456. Dr. Meek concluded that Ambriz is  
23 limited to at least 2 hours of standing or walking in an 8-hour workday, had occasional postural  
24 limitations, and could lift 10 pounds frequently and 20 pounds occasionally ("the opinion at  
25 issue"). AR at 453.

26 Ambriz argues that the ALJ failed to consider the opinion at issue in connection with the  
27 RFC assessment.

28 The Commissioner concedes that the ALJ's RFC assessment is "not consistent" with the

1 opinion at issue – thus implicitly admitting that the ALJ did not consider the opinion at issue – but  
2 he nevertheless argues that “the error is harmless.” ECF No. 16 at 6.

3 Upon review of the ALJ’s decision, the Court concludes that the ALJ failed to consider the  
4 opinion at issue without providing specific and legitimate reasons for doing so. This constitutes  
5 legal error that is not harmless. See Hill, 698 F.3d at 1160.

6 **3. Denise Charrette**

7 Denise Charrette, Ambriz’s mother, appeared and testified at the hearing before the ALJ.  
8 Ambriz argues that the ALJ failed to consider her testimony in connection with the RFC  
9 assessment without providing any reasons for doing so. Ambriz, however, does not identify the  
10 testimony that the ALJ allegedly failed to take into account. Because Ambriz does not identify the  
11 testimony that the ALJ allegedly failed to consider, the Court cannot conclude that the ALJ  
12 committed legal error. The ALJ’s decision contains a summary of Charrette’s testimony in  
13 connection with the RFC assessment, which indicates that the ALJ took her testimony into  
14 account. See Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir. 2001) (holding that an ALJ must take  
15 into account the testimony of a lay witness unless he expressly determines to disregard such  
16 testimony and gives reasons germane to each lay witness for doing so).

17 **B. The ALJ Erred in Relying Exclusively on the Grids at Step Five**

18 At step five, the ALJ determined that Ambriz is not disabled. The ALJ relied exclusively  
19 on the Medical-Vocational Guidelines (“the grids”) to reach this conclusion.

20 Ambriz argues that the ALJ erred in relying exclusively on the grids in making his step-  
21 five determination because the ALJ was required to solicit the testimony of a vocational expert in  
22 light of Ambriz’s non-exertional limitations, namely his inability to adapt appropriately to  
23 common workplace requirements as opined by Dr. Prosis, and his limited ability to stand or walk  
24 during an 8-hour workday as opined by Dr. Meek.

25 The Commissioner argues that the ALJ did not err in relying exclusively on the grids  
26 because “it is appropriate to apply the grids in cases like this where the RFC capabilities are for  
27 sedentary or light work and simple repetitive tasks.” ECF No 16 at 5.

28 At step five, the claimant has already established a prima facie case of disability, and the

1 burden shifts to the ALJ to demonstrate “that the claimant can perform other types of work in the  
2 national economy, given the claimant’s age, education, [ ] work experience” and RFC. Burkhardt  
3 v. Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988) (citation omitted). The ALJ can satisfy this burden  
4 “by either (1) applying the Medical-Vocational Guidelines (“grids”) in appropriate circumstances  
5 or (2) taking the testimony of a vocational expert.” Id. (citations omitted).

6 The ALJ may rely on the grids alone to show the availability of jobs for the claimant “only  
7 when the grids accurately and completely describe the claimant’s abilities and limitations.” Jones  
8 v. Heckler, 760 F.2d 993, 998 (9th Cir.1985). But, “[w]hen a claimant’s non-exertional  
9 limitations are ‘sufficiently severe’ so as to significantly limit the range of work permitted by the  
10 claimant’s exertional limitations, the grids are inapplicable. In such instances, the [ALJ] must take  
11 the testimony of a vocational expert, and identify specific jobs within the claimant’s capabilities.  
12 Thus, the grids will be inappropriate where the predicate for using the grids—the ability to  
13 perform a full range of either medium, light or sedentary activities—is not present.” Id. at 1340  
14 (internal citations and quotation marks omitted) (emphasis added).

15 The Court concludes that the ALJ erred in relying exclusively on the grids to conduct its  
16 step-five determination because the ALJ failed to satisfy his burden to show that Ambriz’s non-  
17 exertional limitations do not significantly affect Ambriz’s ability to perform the full range of  
18 unskilled light work. When presented with “evidence of a significant non-exertional limitation” at  
19 step five, an ALJ is required to consider that evidence before determining whether he can rely  
20 exclusively on the grids to make his step-five determination. See Aukland v. Massanari, 257 F.3d  
21 1033, 1037 (9th Cir. 2001). If the ALJ chooses to reject that evidence, he is required to “make  
22 findings setting forth specific, legitimate reasons for doing so that are based on substantial  
23 evidence in the record.” See id. Here, Dr. Prosis opined that Ambriz is “incapable of adapting  
24 appropriately to common workplace requirements and hazards, and changes of routine;” this  
25 opinion constitutes evidence of a significant non-exertional limitation. AR 509. A review of the  
26 ALJ’s decision reveals that the ALJ failed to consider this opinion at step five and that the ALJ  
27 failed to provide any justification for doing so. As such, the ALJ’s exclusive reliance on the grids  
28 at step five was unjustified and therefore erroneous. See id. (holding that an ALJ’s exclusive

1 “reliance on the grids” was erroneous where the ALJ “failed to set forth the requisite specific and  
2 legitimate reasons for rejecting [a medical] opinion” that “provided the ALJ with evidence of a  
3 significant non-exertional limitation”). Id. This error warrants remanding the case. See id.  
4 (remanding case and requiring the ALJ to “consider testimony from a vocational expert in  
5 determining whether [the claimant] is able to engage in any substantial activity” because “the grids  
6 do not accurately and completely describe [the claimant’s] limitations”).

7 The ALJ also erred in failing to take into account Dr. Meek’s opinion regarding Ambriz’s  
8 limited ability stand or walk during an 8-hour workday. Indeed, the ALJ’s step five analysis  
9 makes no mention of this assessment by Dr. Meek, and it also fails to provide any justification this  
10 omission.

11 **C. Remand for Additional Investigation Is Appropriate**

12 Generally, when the court finds error in an administrative determination, “the proper  
13 course, except in rare circumstances, is to remand to the agency for additional investigation or  
14 explanation.” INS v. Ventura, 537 U.S. 12, 16 (2002) (per curiam). A court, however, may credit  
15 evidence and remand for an award of benefits where “(1) the ALJ has failed to provide legally  
16 sufficient reasons for rejecting such evidence, (2) there are no outstanding issues that must be  
17 resolved before a determination of disability can be made, and (3) it is clear from the record that  
18 the ALJ would be required to find the claimant disabled were such evidence is credited.” See  
19 Smolen v. Chater, 80 F.3d 1273, 1292 (9th Cir. 1996) (citations omitted).

20 Here, remand for additional proceedings is appropriate because certain issues must be  
21 resolved before a determination of disability can be made. Specifically, the ALJ, on remand, must  
22 conduct a new RFC assessment that incorporates all of the opinions of Dr. Meek and Dr. Prorise,  
23 and he also must determine whether the testimony of a vocational expert is necessary at step five  
24 in light of all of Ambriz’s exertional and non-exertional impairments, including those identified by  
25 Dr. Prorise and Dr. Meek.

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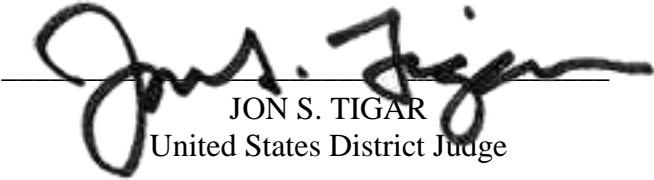
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**IV. CONCLUSION**

Both cross-motions for summary judgment are DENIED, as outstanding issues preclude a determination as to disability at this point. The case is remanded to the ALJ for additional proceedings, as described above.

**IT IS SO ORDERED.**

Dated: December 8, 2013

  
JON S. TIGAR  
United States District Judge