

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NANCY SANCHEZ,	)	Case No.: C 11-4679-PSG
)	
Plaintiff,	)	ORDER DENYING PLAINTIFF
v.	)	NANCY SANCHEZ’S MOTION FOR
	)	SUMMARY JUDGMENT AND
MICHAEL J. ASTRUE, Commissioner of the	)	DENYING DEFENDANT MICHAEL
Social Security Administration	)	J. ASTRUE’S MOTION FOR
	)	SUMMARY JUDGMENT AND
Defendant.	)	REMANDING FOR FURTHER
	)	PROCEEDINGS
)	
	)	(Re: Docket Nos. 27, 29)

Plaintiff Nancy Sanchez (“Sanchez”) seeks review of the decision by Michael J. Astrue, Commissioner of the Social Security Administration (“Commissioner”), denying her disability insurance benefits.¹ Sanchez moves for summary judgment. The Commissioner opposes the motion and cross-moves for summary judgment. The matter was submitted without oral argument pursuant to Civ. L.R. 16-5. Having reviewed the papers and considered the arguments of counsels, the court DENIES Sanchez’s motion for summary judgment, DENIES the Commissioner’s cross-motion for summary judgment and remands the decision back to the ALJ for further consideration.

¹ The challenged decision was rendered by the Administrative Law Judge (the “ALJ”) on March 12, 2010. The ALJ’s decision became final on July 22, 2011, when the Appeals Council of the Social Security Administration denied Sanchez’s request for administrative review of the decision.

1 **I. BACKGROUND**

2 The following facts are taken from the decision by the ALJ and the accompanying
3 administrative record (“AR”). Sanchez was born July 30, 1962,² and has a 10th grade education.³
4 She has not engaged in substantial gainful activity since July 18, 2008⁴ and has very little relevant
5 past work history.⁵ From 1985 until 2009, she received \$794.59 of income.⁶ Sanchez has been
6 diagnosed with hypertension, diabetes, and chronic obstructive pulmonary disease (“COPD”).⁷
7 She also has been diagnosed with mild depression and polysubstance (i.e., alcohol and cocaine)
8 dependence that is currently in remission.⁸

9 **A. Medical Evidence**

10 Sanchez claims that she is unable to work due to lower back pain, knee pain, shortness of
11 breath, fatigue,⁹ and she alleges that she has difficulty walking, sitting, and standing because her
12 knees cannot support her and her legs become numb.¹⁰ She also complains that she tires easily and
13 cannot walk more than one block without having to sit down to catch her breath.¹¹ She believes
14 that the pain she feels during her ambulation, including knee pain, is caused by her weight.¹²
15 Though Sanchez says that she takes medications to eliminate her knee pain, she also claims that

16 _____
17 ² See AR at 72.

18 ³ See *id.* at 30, 338.

19 ⁴ See *id.* at 27.

20 ⁵ See *id.* at 30, 80, 150.

21 ⁶ See *id.* at 126, 150.

22 ⁷ See *id.* at 27.

23 ⁸ See *id.* at 338, 341-42.

24 ⁹ See *id.* at 29, 80

25 ¹⁰ See *id.* at 29, 58, 338

26 ¹¹ See *id.* at 53, 56, 57.

27 ¹² See *id.* at 91, 150, 426, 445, 480, 508.
28

1 those medications cause her to become drowsy and unable to complete her daily chores.¹³ She
2 attributes her obesity to psychotropic medication she has been taking and to her difficulty with a
3 proper diet.¹⁴ Her treating psychologist, Dr. Floyd Finney (“Finney”), notes that Sanchez eats fast
4 food two or three times a week, even though she is on a 1,500 calories in-take restriction because
5 of her diabetic condition.¹⁵

6 Despite claiming a link between her weight and her medication, Sanchez concedes that she
7 has been overweight since the 1990s, and the record shows that she began taking the psychotropic
8 medication in 2006.¹⁶ The medical record also indicates a lack of swelling, knee tenderness, or
9 edema.¹⁷ There is no x-ray or other clinical evidence regarding her knees. In the disability
10 application, to the question, “How do your illnesses, injuries, or conditions limit your ability to
11 work?” Sanchez replied, “[O]besity is [the] main problem with walking, sitting, standing and
12 laying down.”¹⁸

13 During a consultative visit in September 2008, the Social Security medical examiner Dr.
14 Jay Dhiman (“Dhiman”) observed that Sanchez, who is 5’1” tall, weighed 276 pounds,¹⁹ had a
15 “normal gait, was able to get on and off the examination table without difficulty, heel-toe walked
16 with only mild instability, and exhibited the negative straight leg raise, full range of motion, and
17 normal muscle strength, bulk and tone.”²⁰ Dhiman explained that Sanchez’s “excessive abdominal
18 tissues” pull on her back and cause lower back pain, which can limit her ability to walk.²¹ Dhiman

19 ¹³ *See id.* at 55.

20 ¹⁴ *See id.* at 30, 50, 61.

21 ¹⁵ *See id.*

22 ¹⁶ *See id.* at 30.

23 ¹⁷ *See id.* at 426, 446, 480, 502-03.

24 ¹⁸ *See id.* at 150.

25 ¹⁹ *See id.* at 30, 337.

26 ²⁰ *See id.* at 29, 340.

27 ²¹ *See id.* at 340.

1 also noted that Sanchez did not use any devices to help her with walking.²² According to Dhiman,
2 Sanchez is mildly depressed.²³ He concluded, however, that Sanchez “does not have any visual
3 communicative, or workplace environmental limitations.”²⁴

4 Dr. Steven Gerber (“Gerber”), a Disability Determination Services medical examiner, noted
5 that Sanchez’s medical records revealed only mild degenerative disc disease in the lumbar section
6 of her spine, which, along with her obesity, are the primary bases for the pain and the reduction in
7 her physical residual functional capacity (“RFC”).²⁵ Gerber concluded that Sanchez’s smoking
8 caused her hypertension, diabetes, and history of chronic obstructive pulmonary disease (“COPD”)
9 and that her mild degenerative disc disease is the result of her lumbar spine and her obesity.²⁶ He
10 also noted that references within her medical record indicate that she did have a history of
11 smoking,²⁷ even though other references indicate that she denied smoking.²⁸

12 Dr. Maria Acenas (“Acenas”), a Disability Determination Services psychiatric examiner,
13 evaluated Sanchez’s psychological condition on October 10, 2008.²⁹ Acenas found that Sanchez
14 showed signs of mild depression, but also that she was receiving the appropriate psychiatric
15 treatment and that “the likelihood of recovery is great.”³⁰ According to Acenas’ assessment,
16 Sanchez is able to “perform work activities on a consistent basis and maintain regular attendance in
17

18 ²² *See id.* at 339-40.

19 ²³ *See id.* at 340.

20 ²⁴ *See id.*

21 ²⁵ *See id.* at 29. A claimant’s RFC is what he or she can still do despite existing exertional and
22 nonexertional limitations. *See Cooper v. Sullivan*, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

23 ²⁶ *See id.* at 40-41.

24 ²⁷ *See id.* at 400, 406.

25 ²⁸ *See id.* at 338, 390.

26 ²⁹ *See id.* at 27-28, 341.

27 ³⁰ *See id.* at 27-28, 342-43.

1 the work place.”³¹ Other examining psychiatrists, Dr. E. Murillo (“Murillo”) and Dr. A. Garcias
2 (“Garcias”), also concluded that, according to her medical records, Sanchez’s mental impairment
3 was “mild to non-severe.”³²

4 During her February 2010 visit to her treating psychologist, Finney, however, she was
5 diagnosed with “[b]ipolar disorder mixed most recent depressed with psychotic features,” because
6 she exhibited symptoms of auditory hallucination.³³ Approximately one week before Finney
7 provided the above assessment, he documented that Sanchez had a “euthymic mood with
8 appropriate bright affect and coherent thought process,” that she was “goal oriented, and that she
9 had no delusion, hallucinations, or suicidal or homicidal ideations.”³⁴ Sanchez admitted to Finney
10 that she had been feeling “better and calmer.”³⁵ Her other treating psychiatrist, Dr. Gialani Akbar
11 (“Akbar”), also diagnosed her with “major depressive disorder, moderate recurrent with moderate
12 psychotic features.”³⁶

13 **B. Hearing**

14 On July 2008, Sanchez filed an application for Supplemental Security Income, alleging
15 disability beginning January 1, 2000.³⁷ The claim initially was denied on November 3, 2008, and
16 upon reconsideration on March 4, 2009.³⁸ Thereafter, Sanchez filed a written request for hearing
17 on March 30, 2009.³⁹ Sanchez appeared and testified at a hearing held February 25, 2010, in San

18 ³¹ *See id.* at 343.

19 ³² *See id.* at 359, 361.

20 ³³ *See id.* at 531, 535, 536.

21 ³⁴ *See id.* at 513-19, 525, 528.

22 ³⁵ *See id.* at 536.

23 ³⁶ *See id.* at 521.

24 ³⁶ *See id.* at 531, 535, 536.

25 ³⁷ *See id.* at 25.

26 ³⁸ *See id.*

27 ³⁹ *See id.* at 25, 85-87.

1 Jose, California. Also testifying were Gerber and Monica Pena-Duffy, Sanchez’s case manager. At
2 the hearing, Sanchez was represented by counsel.⁴⁰

3 **C. ALJ’s Findings**

4 The ALJ determined that because Sanchez’s RFC allowed for the full range of sedentary
5 work, considering Sanchez’s age, education, and work experience, Sanchez was not disabled.⁴¹
6 For the first step of the five-step disability analysis discussed more fully below, the ALJ found that
7 Sanchez had not engaged in substantial gainful activity from July 18, 2008, the application date.⁴²
8 At step two, he also found Sanchez’s mild degenerative disc disease of the lumbar spine and
9 obesity qualified as severe impairments under 20 C.F.R. § 404.1520(c), but none of her other
10 alleged impairments qualified.⁴³ At step three, the ALJ found that Sanchez’s qualifying severe
11 impairments did not meet any of the listed impairment requirements.⁴⁴ At steps four and five, he
12 determined that, although Sanchez had no past relevant work, Sanchez had the RFC to “perform
13 the full range of sedentary work as defined in” 20 C.F.R. § 404.967(a).⁴⁵ The ALJ specifically
14 found that Sanchez “is limited to lifting or carrying 20 pounds occasionally and 10 pounds
15 frequently; standing or walking 4 hours in an 8-hour workday; occasionally climbing ramps or
16 stairs, balancing, stooping, kneeling, crouching, or crawling; and never climbing ladder, ropes or
17 scaffolds. She is also limited to performing simple, repetitive tasks because of limited education
18 and lack of prior relevant work.”⁴⁶

19
20
21

⁴⁰ *See id.* at 35-71.

22 ⁴¹ *See id.*

23 ⁴² *See id.* at 27.

24 ⁴³ *See id.*

25 ⁴⁴ *See id.* at 28

26 ⁴⁵ *See id.*

27 ⁴⁶ *See id.*

1 For his RFC determination, the ALJ considered opinion evidence in accordance with the
2 requirements of 20 C.F.R. § 416.927.⁴⁷ He noted that in making his finding he “considered all
3 symptoms and the extent to which these symptoms can reasonably be accepted as consistent with
4 the objective medical evidence and other evidence, based on the requirements of 20 C.F.R. §
5 416.929.”⁴⁸ He explained that in considering Sanchez’s symptoms, he must determine whether
6 there is an impairment that can reasonably be expected to produce the claimant’s pain or other
7 symptoms.⁴⁹ He further explained that, once an underlying physical or mental impairment has
8 been identified, he was required to evaluate the intensity, persistence, and limiting effects of pain
9 or other symptoms.⁵⁰

10 The ALJ provided several grounds for his determination. Although he noted that Sanchez’s
11 complaints could be caused by her impairments, which can “reasonably be expected to cause the
12 alleged symptoms,” Sanchez’s “statement concerning the intensity, persistence and limiting effects
13 of these symptoms are not credible to the extent they are inconsistent with the above [RFC]
14 assessment.”⁵¹ The ALJ questioned Sanchez’s credibility in light of her “long history of substance
15 abuse, which she only recently overcame, her history of multiple incarcerations for check and
16 welfare fraud, and her inconsistent reports regarding the source of her obesity.”⁵² In his RFC
17 discussion, the ALJ did not elaborate upon his finding regarding Sanchez’s alleged depression,
18 COPD, knee pain, or combinations of those impairments with the impairments he found at step
19 two.

20 Sanchez requested review by the Appeals Council. The Appeals Council found that
21 Sanchez had a good reason for delay in filing the request for review, but denied review in a Notice

22 ⁴⁷ See *id.* at 29.

23 ⁴⁸ See *id.*

24 ⁴⁹ See *id.*

25 ⁵⁰ See *id.*

26 ⁵¹ See *id.*

27 ⁵² See *id.* at 30.
28

1 of Appeals Council Action dated July 22, 2011,⁵³ thus making the decision of the ALJ the final
2 decision for purpose of judicial review.

3 II. LEGAL STANDARDS

4 A. Standard for Reviewing the Commissioner's Decision

5 Pursuant to 42 U.S.C. § 405(g), this court has the authority to review the Commissioner's
6 final decision denying Sanchez benefits. The Commissioner's decision (here the underlying
7 decision of the ALJ) will be disturbed only if it is not supported by substantial evidence or if it is
8 based upon the application of improper legal standards.⁵⁴ In this context, the term "substantial
9 evidence" means "more than a scintilla but less than a preponderance – it is such relevant evidence
10 a reasonable mind might accept as adequate to support the conclusion."⁵⁵ When determining
11 whether substantial evidence exists to support the administrative record as a whole, the court must
12 consider adverse as well as supporting evidence.⁵⁶ Where evidence exists to support more than one
13 rational interpretation, the court must defer to the decision of the ALJ.⁵⁷ "If additional proceedings
14 can remedy defects in the original administrative proceedings, a social security case should be
15 remanded."⁵⁸

16 B. Standard for Determining Disability

17 Disability claims are evaluated using a five-step, sequential evaluation process. In the first
18 step, the ALJ must determine whether the claimant currently is engaged in substantial gainful
19 activity; if so, the claimant is not disabled and the claim is denied.⁵⁹ If the claimant is not currently

20 _____
21 ⁵³ *See id.* at 1-4.

22 ⁵⁴ *Moncada v. Chater*, 6 F.3d 521, 523 (9th Cir. 1995); *Drouin v. Sullivan*, 966 F.2d 1255, 1257
(9th Cir. 1992).

23 ⁵⁵ *Moncada*, 60 F.3d at 523; *Drouin*, 966 F.2d at 1257.

24 ⁵⁶ *Drouin*, 966 F.2d at 1257; *Hammock v. Bowen*, 879 F.2d 498, 501(9th Cir. 1989).

25 ⁵⁷ *Moncada*, 60 F.3d at 523; *Drouin*, 966 F.2d at 1258.

26 ⁵⁸ *Lewin v. Schweiker*, 654 F.2d 631, 635 (9th Cir. 1981).

27 ⁵⁹ *Id.*

1 engaged in substantial gainful activity, the second step requires the ALJ to determine whether the
2 claimant has a “severe” impairment or combination of impairments that significantly limits the
3 claimant’s ability to do basic work activities; if not, a finding of “not disabled” is made and the
4 claim is denied.⁶⁰

5 If the claimant has a “severe” impairment or combination of impairments, the third step
6 requires the ALJ to determine whether the impairment or combination of impairments meets or
7 equals an impairment in the Listing; if so, disability is conclusively presumed and benefits are
8 awarded.⁶¹

9 If the claimant’s impairment or combination of impairments does not meet or equal an
10 impairment in the Listing, the fourth step requires the ALJ to determine whether the claimant has
11 sufficient RFC to perform his or her past work; if so, the claimant is not disabled and the claim is
12 denied.⁶² The plaintiff has the burden of proving that he or she is unable to perform past relevant
13 work.⁶³ If the claimant meets this burden, a prima facie case of disability is established. The ALJ
14 then bears the burden of establishing that the claimant can perform other substantial gainful
15 work;⁶⁴ the determination of this issue comprises the fifth and final step in the sequential analysis.

17 III. DISCUSSION

18 Sanchez argues the following errors in the ALJ’s decision: (1) in his step four RFC
19 analysis, the ALJ failed to include all of Sanchez’s impairments—both severe and non-severe—as
20 well as testimony from a vocational expert; (2) the ALJ incorrectly dismissed the opinions of

21 _____
22 ⁶⁰ *Id.*

23 ⁶¹ *Id.*

24 ⁶² *Drouin*, 966 F.2d at 1257; *Gallant v. Heckler*, 753 F.2d 1450, 1452 (9th Cir. 1984).

25 ⁶³ *Id.*

26 ⁶⁴ There are two ways for the Commissioner to meet the burden of showing that there is work in
27 significant numbers in the national economy that claimant can do: (1) by the testimony of a
28 vocational expert or (2) by reference to the Medical-Vocational Guidelines. *See Tackett v. Apfel*,
180 F.3d 1094, 1099 (9th Cir. 1999).

1 Sanchez’s treating physicians and medical providers; and (3) the ALJ’s credibility determination is
2 not supported by the record.

3 The court first clarifies how the standards for determining “severe impairments” shift
4 between step two and the RFC determination at step four.⁶⁵ At step two, the determination focuses
5 on whether claimants have any impairment that affects their ability to work, and if they do not,
6 they are immediately categorized as “not disabled.”⁶⁶ “[S]tep two inquiry is a de minimis
7 screening device to dispose of groundless claims.”⁶⁷ At step three, claimants with severe
8 impairments that are consistent with or parallel to the listed criteria are immediately categorized as
9 “disabled.”⁶⁸ Step four and the RFC determination are applied to claimants like Sanchez—those
10 claimants who have impairments that affect their employment, but the impairments require further
11 analysis to determine whether claimants can be gainfully employed.⁶⁹

12 Even if a particular impairment does not by itself satisfy the step two severity requirement,
13 the ALJ is required to “consider the limiting effects of all [claimant’s] impairment(s), even those
14 that are not severe, in determining [claimant’s] residual functional capacity.”⁷⁰ In other words, as
15 part of the step four analysis, the ALJ must combine all of the impairments alleged by the claimant,
16 even the ones that the ALJ concluded to be non-severe at step two.⁷¹ In looking at this
17 combination, the ALJ must “explicitly account for the direct and marginal effects of the plaintiff’s”
18 alleged impairment.⁷²

19
20 ⁶⁵ 20 C.F.R. § 404.1520(a)(4).

21 ⁶⁶ *Id.* § 404.1520(c).

22 ⁶⁷ *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

23 ⁶⁸ 20 C.F.R. § 404.1520(d).

24 ⁶⁹ *See* 20 C.F.R. § 404.1520(a)-(f).

25 ⁷⁰ 20 C.F.R. § 416.945(e); *see also Reddick v. Chater*, 157 F.3d. 715, 724-25 (9th Cir. 1998).

26 ⁷¹ *See* 20 C.F.R. § 404.1545(e).

27 ⁷² *Id.*

1 Sanchez argues that the ALJ failed to include all of Sanchez’s impairments in the step four
2 RFC analysis.⁷³ She alleges that the ALJ included only “mild degenerative disc disease of the
3 lumbar spine and obesity.”⁷⁴ Sanchez asserts that the ALJ also should have included her diagnosis
4 of asthma as part of the RFC analysis.⁷⁵ Sanchez further contends that the ALJ failed to consider
5 Sanchez’s “knee pain.”⁷⁶ Regarding her mental condition, Sanchez argues that her depression did
6 not improve as the psychiatric examiner Acenas had expected it would, because she continued to
7 exhibit symptoms of mood anxiety and auditory hallucination as determined by her psychologist
8 Finney during her early 2010 visits.⁷⁷ Therefore, she argues that her depression should also be
9 included in the step four analysis.⁷⁸

10 In response, the Commissioner argues that the evidence does not support a finding that
11 Sanchez’s asthma, mental condition, or knee pain was severe, nor does Sanchez show how these
12 impairments would further limit her functioning.⁷⁹ The Commissioner contends that Sanchez
13 “fail[ed] to show how her asthma limits her in any way, and mention[ed] only her diagnosis.”⁸⁰
14 Regarding Sanchez’s complaint of knee pain, the Commissioner highlights that in Sanchez’s own
15 citations of her medical records, multiple references demonstrate examination results of “generally
16 normal” knees.⁸¹ As to Sanchez’s claim of persistent symptoms of depression, the Commissioner
17 reasons that she “incorrectly relies on a diagnosis in arguing that her depression constituted
18

19 ⁷³ Docket No. 22, at 5.

20 ⁷⁴ *Id.* at 6.

21 ⁷⁵ *Id.*

22 ⁷⁶ *See id.* at 7.

23 ⁷⁷ *See id.* at 6.

24 ⁷⁸ *See* Docket No. 29, at 3.

25 ⁷⁹ *See* Docket No. 27 at 4.

26 ⁸⁰ *See id.*

27 ⁸¹ *Id.* at 5.

28

1 impairment.”⁸² The Commissioner cites the ALJ’s findings that Sanchez’s “treatment records
2 indicated that she was generally doing well.”⁸³

3 Even if Sanchez was challenging the ALJ’s findings at step two—which she does not—the
4 court agrees with the Commissioner that substantive evidence supports the ALJ’s determination
5 that Sanchez’s claim of asthma was not severe as part of the step two analysis.⁸⁴ Sanchez cites
6 only two mentions of asthma-related symptoms reported in her medical records.⁸⁵ Both references
7 appeared to be Sanchez’s own reports of “shortness of breath with walking, wheezing sometimes,”
8 rather than actual observations from a qualified physician.⁸⁶ Evidence in the record suggests her
9 breathing difficulties are caused by her smoking habit.⁸⁷ Although Sanchez’s two citations to the
10 AR indicate that she did not have a history of smoking, other references in the record indicate that
11 she did have a history of smoking.⁸⁸ As Gerber suggested, “one’s pulmonary function would
12 improve if one stopped smoking.”⁸⁹

13 Substantial evidence also supports the ALJ’s decision to characterize her knee pain as non-
14 severe. Many of Sanchez’s purported records regarding her knee pain or falls as result of her knees
15 are her own reports of the incidents.⁹⁰ Several physicians, however, diagnosed Sanchez’s knees to

17 ⁸² *Id.* (citing *Verduzo v. Apfel*, 188 F.3d 1087, 1089 (9th Cir. 1999)).

18 ⁸³ *Id.*

19 ⁸⁴ In light of Sanchez’s shifting position on what exactly she challenges, the court does not find
20 fault with the Commissioner’s defense of ALJ’s step two analysis. In her opening brief, Sanchez
21 repeatedly questions the ALJ’s “severe impairments” findings—a clear challenge under step two.
22 But in her reply, Sanchez focuses exclusively on the ALJ’s RFC analysis—a step four challenge.

23 ⁸⁵ *See* AR at 338, 390.

24 ⁸⁶ *Id.* at 338.

25 ⁸⁷ *See id.* at 400, 406.

26 ⁸⁸ *See id.* at 338, 400, 406.

27 ⁸⁹ *See id.* at 40.

28 ⁹⁰ *See id.* at 282, 317, 426, 427, 445, 480, 493, 592.

1 be normal.⁹¹ Without more physician diagnoses to substantiate the severity of her pain, Sanchez’s
2 claim is largely subjective and not medically determinable.⁹² Based on substantial evidence in the
3 AR, the ALJ did not err in excluding Sanchez’s asthma and COPD and finding her knee pain to be
4 non-severe at the step two analysis.

5 As to Sanchez’s claims regarding depression, Sanchez cited her own reports of persisting
6 incidents of auditory hallucination and mood anxiety.⁹³ Finney’s prescription of antidepressant
7 medication substantiated Sanchez’s claim of depression, but Sanchez also conceded that her
8 condition was improving.⁹⁴ Sanchez’s own admission of her improving mental condition provides
9 evidence to support the ALJ’s ruling that her depression was non-severe for purpose of step two.

10 The problem lies at step four, where the ALJ plainly failed to explicitly account for all of
11 Sanchez’s alleged impairments. There is no real question that the ALJ addressed Sanchez’s issue
12 of “mild degenerative disc disease of the lumbar spine” and obesity, among other ambulation
13 problems.⁹⁵ But the ALJ plainly does not address Sanchez’s asthma, depression, or knee pain.⁹⁶
14 Although the ALJ claimed to have “considered all symptoms and the extent to which these
15 symptoms can be reasonably accepted,”⁹⁷ the ALJ’s decision omits any discussion as to exactly
16 how the ALJ excluded or included Sanchez’s asthma, depression, or knee pain in his RFC
17 assessment. The Commissioner points to the ALJ’s RFC finding limiting Sanchez to simple
18 repetitive tasks, but the ALJ himself attributes this limitation to Sanchez’s limited education and
19 work experience, not her depression or other non-severe impairments. As the Ninth Circuit
20 explained in *Celaya v. Halter*, 20 C.F.R. § 404.1545 requires the ALJ to provide an explicit

21 ⁹¹ *See id.* at 426, 446, 480, 502-503.

22 ⁹² *See* 20 C.F.R. § 416.908.

23 ⁹³ AR at 528.

24 ⁹⁴ *See id.* at 528, 536.

25 ⁹⁵ AR at 30.

26 ⁹⁶ *See id.* at 28-30.


27 ⁹⁷ AR at 28.

1 account regarding his evaluation of all of claimant’s medically determinable impairments, even if
2 they were determined to be non-severe in step two.⁹⁸ Even the Commissioner’s own regulation
3 acknowledges this requirement: “[i]n assessing RFC, the adjudicator must consider limitations and
4 restrictions imposed by all of an individual’s impairments, even those that are not ‘severe.’”⁹⁹ The
5 ALJ’s RFC evaluation, however, said nothing of Sanchez’s asthma, depression, or knee pain.¹⁰⁰
6 This was erroneous as a matter of law.

7 The ALJ’s legal error requires remand for a determination of how Sanchez’s other
8 medically determinable impairments affect the step four analysis.¹⁰¹ Because the court finds
9 remand is appropriate, it does not reach Sanchez’s other arguments.

10
11 **IT IS SO ORDERED.**

12
13 Dated: March 7, 2013



14 PAUL S. GREWAL
15 United States Magistrate Judge

16
17
18
19
20
21
22
23
24 _____
⁹⁸ 33 F.3d 1177, 1183 (9th Cir. 2003)

25 ⁹⁹ *Id.* at 1182 (citing SSR 96-8P (S.S.A July 2, 1996)).

26 ¹⁰⁰ AR at 28-30.

27 ¹⁰¹ *See Celaya*, 33 F.3d at 1183.
28