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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MARTIN CORONA,

Plaintiff,

vs.

SECRETARY OF HEALTH & HUMAN  
SERVICES; SOCIAL SECURITY  
ADMINISTRATION,

Defendants.

CASE NO. 07cv1421 WQH (WVG)

**ORDER**

HAYES, Judge:

The matters before the Court are the Cross-Motions for Summary Judgment filed by Plaintiff Martin Corona (Doc. # 30) and the Social Security Administration (Doc. # 32), and the Report and Recommendation of the Magistrate Judge. (Doc. # 34).

**BACKGROUND**

In September of 2004, Plaintiff applied for disability benefits alleging he has been disabled since he lost an eye on February 5, 2004 and became severely depressed. (Doc. # 31, AR at 14.)<sup>1</sup> On February 1, 2007, the Administrative Law Judge (“ALJ”) found that Plaintiff was disabled as of May 1, 2006, but not before that date. *Id.* at 12. On June 11, 2007, the Appeals Council denied Plaintiff’s request for review of the decision as to the period between February 5, 2004 and May 1, 2006. *Id.* at 4. On August 3, 2007, Plaintiff filed a Complaint for Review of Final Decision of the Commissioner pursuant to 42 U.S.C. § 405 (g). (Doc. # 1).

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<sup>1</sup> Citations are to the Administrative Record and use the internal pagination which appears in the upper right hand corner of each page.

1 On December 30, 2009, Plaintiff filed a Motion for Summary Judgment. (Doc. # 30). On  
2 January 29, 2010, the Commissioner of Social Security filed a Cross-Motion for Summary  
3 Judgment. (Doc. # 32).

4 On April 19, 2010, the Magistrate Judge issued a Report and Recommendation  
5 (“R&R”) which recommends granting in part and denying in part Plaintiff’s Motion for  
6 Summary Judgment and granting in part and denying in part Defendant’s Cross Motion for  
7 Summary Judgment and remanding the case to the ALJ for further proceedings. (Doc. # 34).

8 The R&R concludes:

9 The Court has found that most of the arguments presented in Plaintiff’s Motion  
10 for Summary Judgment are unsupported by the record in this case. However, the  
11 Court has found that conflicts exist between the vocational expert’s testimony  
12 and the evidence provided by the [Dictionary of Occupational Titles].  
13 Additionally, the Court has found that evidence in the record shows that Plaintiff  
14 does not have depth perception and is unable to communicate in English.  
15 Therefore, he would be unable to perform the work of the occupations suggested  
16 by the vocational expert and found by the ALJ. Therefore, it is  
17 RECOMMENDED that the case be REMANDED to the ALJ so that he can  
18 discharge his duties pursuant to SSR 00-4p. Further, it is RECOMMENDED  
19 that Plaintiff’s Motion for Summary Judgment be GRANTED in part and  
20 DENIED in part and Defendant’s Cross-Motion for Summary Judgment be  
21 GRANTED in part and DENIED in part.

22 *Id.* at 28-29. Neither party objected to the R&R.

### 23 STANDARD OF REVIEW

24 The duties of the district court in connection with the Report and Recommendation of  
25 a Magistrate Judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C.  
26 § 636(b). The district judge must “make a de novo determination of those portions of the  
27 report ... to which objection is made,” and “may accept, reject, or modify, in whole or in part,  
28 the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b). The district  
29 court need not review de novo those portions of a Report and Recommendation to which  
30 neither party objects. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v.*  
31 *Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).

32 The ALJ’s decision denying benefits “will be disturbed only if that decision is not  
33 supported by substantial evidence or it is based upon legal error.” *Tidwell v. Apfel*, 161 F.3d  
34 599, 601 (9th Cir. 1999) (citation omitted). “Substantial evidence is more than a mere scintilla

1 but less than a preponderance.” *Id.* (citation omitted).

2 **DISCUSSION**

3 The Court has reviewed the R&R in its entirety. The Court concludes that the  
4 Magistrate Judge correctly determined that the ALJ did not err in determining that Plaintiff’s  
5 limited intellectual functioning did not impair Plaintiff’s ability to perform simple repetitive  
6 tasks. The Court concludes that the Magistrate Judge correctly determined that the ALJ did  
7 not err in consulting a vocational expert rather than referring to the Medical-Vocational  
8 Guidelines. The Court concludes that the Magistrate Judge correctly determined that the ALJ  
9 erred in relying on vocational expert testimony without establishing that the testimony was  
10 consistent with the Dictionary of Occupational Titles and that this failure constitutes reversible  
11 error.

12 IT IS HEREBY ORDERED that the Magistrate Judge’s Report and Recommendation  
13 (Doc. # 34) is adopted in its entirety. Plaintiff’s Motion for Summary Judgment (Doc. # 30)  
14 is **GRANTED IN PART and DENIED IN PART**. Defendant’s Cross Motion for Summary  
15 Judgment (Doc. # 32) is **GRANTED IN PART and DENIED IN PART**. The Court  
16 **remands in part** to the Social Security Administration for further administrative proceedings  
17 consistent with the Report and Recommendation.

18 DATED: July 26, 2010

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20 **WILLIAM Q. HAYES**  
21 United States District Judge  
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