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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 RICHARD E. STEARNS,

11 Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting
14 Commissioner of the Social Security
Administration,

15 Defendant.
16

CASE NO. 14-cv-05611 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

17 This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and
18 Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S.
19 Magistrate Judge and Consent Form, Dkt. 5; Consent to Proceed Before a United States
20 Magistrate Judge, Dkt. 6). This matter has been fully briefed (*see* Dkt. 28, 29,).

21 After considering and reviewing the record, the Court concludes the
22 Administrative Law Judge ("ALJ") erred by failing to either include or explicitly reject
23 significant and probative medical evidence that plaintiff was limited to simple repetitive
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1 tasks. This results in harmful error impacting the residual functional capacity, hypotheticals,
2 vocational expert testimony, and ultimate decision on disability.

3 BACKGROUND

4 Plaintiff, RICHARD E. STEARNS, was born in 1957 and was 50 years old on the
5 amended alleged date of disability onset of October 19, 2007 (*see* AR. 37, 307-15, 316-
6 19). Plaintiff completed approximately two years of college (AR. 104). Plaintiff has
7 work experience as a tow truck driver, tire repairer, sales merchandise delivery driver and
8 dispatcher (AR. 49).

9 According to the ALJ, plaintiff has at least the following severe impairments:
10 “from his amended onset date until May 14, 2010: Mixed personality disorder with
11 narcissistic and antisocial characteristics; mood disorder, not otherwise specified; left
12 elbow tendonitis; multilevel lumbar degenerative disc disease; alcohol abuse; hepatitis C;
13 methamphetamine and polysubstance dependence (in remission) (20 CFR 404.1520(c)).
14 From May 14, 2010, onward, the claimant has had the additional severe impairment of
15 status post hernia repair and his alcohol abuse has been in full remission.” (AR. 39-40.)

16 At the time of the hearing, plaintiff lived in a house by himself (AR. 90-91).

17 PROCEDURAL HISTORY

18 Plaintiff’s applications for disability insurance (“DIB”) benefits pursuant to 42
19 U.S.C. § 423 (Title II) and Supplemental Security Income (“SSI”) benefits pursuant to 42
20 U.S.C. § 1382(a) (Title XVI) of the Social Security Act were denied initially and
21 following reconsideration (*see* AR. 181, 182, 183). Following a hearing, unfavorable
22 Administrative Law Judge decision, and remand by the Appeals Council (*see* AR. 137-
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1 80, 184-201), plaintiff's second requested hearing was held before Administrative Law
2 Judge Mattie Harvin-Woode ("the ALJ") on August 28, 2012 (*see* AR. 72-136). On
3 September 25, 2012, the ALJ issued a written decision in which the ALJ concluded that
4 plaintiff was not disabled pursuant to the Social Security Act (*see* AR. 34-51).

5 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) Whether or
6 not the ALJ properly evaluated the medical evidence; (2) Whether or not the ALJ
7 properly evaluated plaintiff's testimony; (3) Whether or not the ALJ properly assessed
8 plaintiff's residual functional capacity; and (4) Whether or not the ALJ erred in basing
9 her step five finding on a residual functional capacity assessment that did not include all
10 of plaintiff's limitations (*see* Dkt. 28, p. 2). Because resolving the first issue is
11 dispositive, the Court will assume that upon remand, the ALJ will reevaluate the entire
12 record for purposes of reaching a decision.

14 STANDARD OF REVIEW

15 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
16 denial of social security benefits if the ALJ's findings are based on legal error or not
17 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
18 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
19 1999)).

21 DISCUSSION

22 (1) Whether or not the ALJ properly evaluated the medical evidence.

23 The ALJ must provide "clear and convincing" reasons for rejecting the
24 uncontradicted opinion of either a treating or examining physician or psychologist.

1 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citing *Embrey v. Bowen*, 849 F.2d
2 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)). But when
3 a treating or examining physician’s opinion is contradicted, that opinion can be rejected
4 “for specific and legitimate reasons that are supported by substantial evidence in the
5 record.” *Lester, supra*, 81 F.3d at 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043
6 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can
7 accomplish this by “setting out a detailed and thorough summary of the facts and
8 conflicting clinical evidence, stating his interpretation thereof, and making findings.”
9 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881
10 F.2d 747, 751 (9th Cir. 1989)).
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12 In addition, the ALJ must explain why her own interpretations, rather than those of
13 the doctors, are correct. *Reddick, supra*, 157 F.3d at 725 (citing *Embrey*, 849 F.2d at 421-
14 22). But, the Commissioner “may not reject ‘significant probative evidence’ without
15 explanation.” *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995) (quoting *Vincent v.*
16 *Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984) (quoting *Cotter v. Harris*, 642 F.2d 700,
17 706-07 (3d Cir. 1981))). The “ALJ’s written decision must state reasons for disregarding
18 [such] evidence.” *Flores, supra*, 49 F.3d at 571.
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20 Plaintiff alleges the ALJ erroneously disregarded an important limitation assessed
21 by James Parker, M.D. (AR. 545). In his December 2007 psychological evaluation, Dr.
22 Parker gave a functional assessment that plaintiff “is able to do simple repetitive tasks
23 accurately.” (AR. 544). The ALJ purported to give significant weight to this opinion
24 because Dr. Parker examined and tested plaintiff before opining on his workplace

1 restrictions. (AR. 48). Additionally, the ALJ found Dr. Parker’s opinion “largely
2 consistent with the findings regarding the claimant’s mental impairments in the record,”
3 and “the claimant’s performance during mental status examinations and his own
4 statements regarding his abilities.” (AR. 48). Despite the significant weight given to Dr.
5 Parker’s opinion, the ALJ concluded plaintiff had the residual functional capacity
6 (“RFC”) to perform “simple and detailed tasks, as well as some complex tasks.” (AR.
7 42).

8 The ALJ purported to accept and credit Dr. Parker’s opinion but omitted the
9 limitation to simple repetitive tasks from the RFC without comment. This was error.
10 While the ALJ need not discuss all the evidence, “she must explain why ‘significant
11 probative evidence has been rejected.’” *Vincent*, 739 F.2d at 1395 (quoting *Cotter*, 642
12 F.2d at 706-07). Dr. Parker’s assessment that plaintiff would be limited to simple
13 repetitive tasks was both significant and probative. Therefore, ALJ erred by failing either
14 to include the restriction or to explain its rejection.
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16 The Commissioner argues that any error is harmless because the Court can infer
17 the ALJ found greater capabilities based on the evidence of plaintiff’s ability to perform
18 repairs on his property, manage real estate transactions, and gamble. (Dkt. 29, p. 10).
19 However, according to the Ninth Circuit, when an ALJ ignores or improperly discounts
20 significant and probative evidence in the record favorable to a claimant’s position, such
21 as an opinion from an examining or treating doctor, the ALJ “thereby provide[s] an
22 incomplete residual functional capacity [RFC] determination.” *See Hill v. Astrue*, 698
23 F.3d 1153, 1161 (9th Cir. 2012). Furthermore, when the RFC is incomplete, the
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1 hypothetical question presented to the vocational expert relied on at step five necessarily
2 also is incomplete, “and therefore the ALJ’s reliance on the vocational expert’s answers
3 [is] improper.” *See id.* at 1162. The result is harmful error requiring reversal.

4 Generally, when the Social Security Administration does not determine a
5 claimant’s application properly, “the proper course, except in rare circumstances, is
6 to remand to the agency for additional investigation or explanation.” *Benecke v.*
7 *Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted). However, the Ninth
8 Circuit has put forth a “test for determining when [improperly rejected] evidence
9 should be credited and an immediate award of benefits directed.” *Harman v. Apfel*,
10 211 F.3d 1172, 1178 (9th Cir. 2000) (*quoting Smolen v. Chater*, 80 F.3d 1273, 1292
11 (9th Cir. 1996)). It is appropriate when:
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13 (1) the ALJ has failed to provide legally sufficient reasons for rejecting
14 such evidence, (2) there are no outstanding issues that must be resolved
15 before a determination of disability can be made, and (3) it is clear from
the record that the ALJ would be required to find the claimant disabled
were such evidence credited.

16 *Harman, supra*, 211 F.3d at 1178 (*quoting Smolen, supra*, 80 F.3d at 1292).

17 Here, outstanding issues must be resolved. *See Smolen, supra*, 80 F.3d at 1292.
18 Because the ALJ neither included nor explicitly rejected Dr. Parker’s limitation to simple
19 repetitive tasks, the RFC may not account for all of plaintiff’s limitations. Plaintiff’s true
20 RFC must be resolved in order to complete the disability analysis. Additional
21 proceedings are necessary to correct the ALJ’s error and determine an accurate RFC.
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1 (2) Whether or not the ALJ properly evaluated plaintiff's testimony.

2 The Court already has concluded that the ALJ erred in reviewing the medical
3 evidence and that this matter should be reversed and remanded for further consideration,
4 *see supra*, section 1. In addition, a determination of a claimant's credibility relies in part
5 on the assessment of the medical evidence. *See* 20 C.F.R. § 404.1529(c). Therefore,
6 plaintiff's credibility should be assessed anew following remand of this matter.

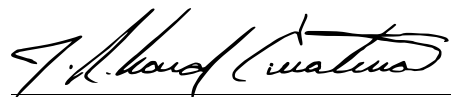
7 As for the other issues raised by plaintiff, the ALJ is directed to reevaluate the
8 record anew on remand, in light of the comments set forth above.
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10 CONCLUSION

11 Based on these reasons and the relevant record, the Court **ORDERS** that this
12 matter be **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. §
13 405(g) to the Acting Commissioner for further consideration consistent with this order.

14 **JUDGMENT** should be for plaintiff and the case should be closed.

15 Dated this 21st day of October, 2015.

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18 J. Richard Creatura
19 United States Magistrate Judge
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