

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Raymond Daniel Green v. Commissioner of Social Security

Green · No. 2:24-CV-1381-DAD-DMC · Decided August 5, 2025

OPINION

(SS) Green v. Commissioner of Social Security

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 RAYMOND DANIEL GREEN, No. 2:24-CV-1381-DAD-DMC

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 COMMISSIONER OF SOCIAL

SECURITY,

15 Defendant. 16

17 18 Plaintiff, who is proceeding with retained counsel, brings this action for judicial 19 review
of a final decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). 20 Plaintiff,
who is proceeding with retained counsel, brings this action for judicial review of a final 21
decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). Pending before the 22
Court are the parties' briefs on the merits, ECF Nos. 9, 10, and 14. 23 The Court reviews the
Commissioner's final decision to determine whether it is: 24 (1) based on proper legal standards;
and (2) supported by substantial evidence in the record as a 25 whole. See *Tackett v. Apfel*, 180
F.3d 1094, 1097 (9th Cir. 1999). "Substantial evidence" is 26 more than a mere scintilla, but less
than a preponderance. See *Saelee v. Chater*, 94 F.3d 520, 521 27 (9th Cir. 1996). It is ". . . such
evidence as a reasonable mind might accept as adequate to support 28 a conclusion." *Richardson*
v. Perales, 402 U.S. 389, 402 (1971). The record as a whole, 1 including both the evidence that
supports and detracts from the Commissioner's conclusion, must 2 be considered and weighed.
See *Howard v. Heckler*, 782 F.2d 1484, 1487 (9th Cir. 1986); *Jones 3 v. Heckler*, 760 F.2d 993,
995 (9th Cir. 1985). The Court may not affirm the Commissioner's 4 decision simply by isolating
a specific quantum of supporting evidence. See *Hammock v. 5 Bowen*, 879 F.2d 498, 501 (9th Cir.
1989). If substantial evidence supports the administrative 6 findings, or if there is conflicting
evidence supporting a particular finding, the finding of the 7 Commissioner is conclusive. See
Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987). 8 Therefore, where the evidence is

susceptible to more than one rational interpretation, one of 9 which supports the Commissioner's decision, the decision must be affirmed, see *Thomas v. 10 Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002), and may be set aside only if an improper legal 11 standard was applied in weighing the evidence, see *Burkhart v. Bowen*, 856 F.2d 1335, 1338 (9th 12 Cir. 1988).

13 For the reasons discussed below, the Court recommends the matter be remanded 14 for further proceedings. 15

16 I. THE DISABILITY EVALUATION PROCESS

17 To achieve uniformity of decisions, the Commissioner employs a five-step 18 sequential evaluation process to determine whether a claimant is disabled. See 20 C.F.R. 19 §§ 404.1520 (a)-(f) and 416.920(a)-(f). The sequential evaluation proceeds as follows:

20 Step 1 Determination whether the claimant is engaged in substantial gainful activity; if so, the claimant is presumed 21 not disabled and the claim is denied; 22 Step 2 If the claimant is not engaged in substantial gainful activity, determination whether the claimant has a severe 23 impairment; if not, the claimant is presumed not disabled and the claim is denied; 24 Step 3 If the claimant has one or more severe impairments, 25 determination whether any such severe impairment meets or medically equals an impairment listed in the regulations; 26 if the claimant has such an impairment, the claimant is presumed disabled and the claim is granted; 27 28 / / /

1 Step 4 If the claimant's impairment is not listed in the regulations, determination whether the impairment prevents the 2 claimant from performing past work in light of the claimant's residual functional capacity; if not, the claimant 3 is presumed not disabled and the claim is denied;

4 Step 5 If the impairment prevents the claimant from performing past work, determination whether, in light of the claimant's 5 residual functional capacity, the claimant can engage in other types of substantial gainful work that exist in the 6 national economy; if so, the claimant is not disabled and the claim is denied. 7 See 20 C.F.R. §§ 404.1520 (a)-(f) and 416.920(a)-(f). 8 9 To qualify for benefits, the claimant must establish the inability to engage in 10 substantial gainful activity due to a medically determinable physical or mental impairment which 11 has lasted, or can be expected to last, a continuous period of not less than 12 months. See 42 12 U.S.C. § 1382c(a)(3)(A). The claimant must provide evidence of a physical or mental 13 impairment of such severity the claimant is unable to engage in the claimant's previous work and 14 cannot, considering the claimant's age, education, and work experience, engage in any other kind 15 of substantial gainful work which exists in the national economy. See *Quang Van Han v. Bower*, 16 882 F.2d 1453, 1456 (9th Cir. 1989). The claimant has the initial burden of proving the existence 17 of a disability. See *Terry v. Sullivan*, 903 F.2d 1273, 1275 (9th Cir. 1990). 18 The claimant establishes a prima facie case by showing that a physical or mental 19 impairment prevents the claimant from engaging in previous work. See *Gallant v. Heckler*, 753 20

F.2d 1450, 1452 (9th Cir. 1984); 20 C.F.R. §§ 404.1520(f) and 416.920(f). If the claimant 21 establishes a prima facie case, the burden then shifts to the Commissioner to show the claimant 22 can perform other work existing in the national economy. See *Burkhart v. Bowen*, 856 F.2d 23 1335, 1340 (9th Cir. 1988); *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986); *Hammock 24 v. Bowen*, 867 F.2d 1209, 1212-1213 (9th Cir. 1989). 25 /// 26 /// 27 /// 28 ///

1 II. THE COMMISSIONER’S FINDINGS

2 Plaintiff applied for social security benefits on June 25, 2021. See CAR 22.1 In 3 the application, Plaintiff claims disability began on April 21, 2004. See *id.* Plaintiff’s claim was 4 initially denied. Following denial of reconsideration, Plaintiff requested an administrative 5 hearing, which was held on March 17, 2023, before Administrative Law Judge (ALJ) Gregory 6 Moldafsky. In a May 30, 2023, decision, the ALJ concluded Plaintiff is not disabled based on the 7 following relevant findings: 8 1. The claimant has the following severe impairment(s):

degenerative disc disease of the lumbar spine with obesity; 9

2. The claimant does not have an impairment or combination of

10 impairments that meets or medically equals an impairment listed in the regulations; 11

3. The claimant has the following residual functional capacity: light

12 work except the claimant can sit six hour and stand and walk four hours in an eight-hour workday; he can occasionally climb ramps 13 and stairs; he can never climb ladders, ropes, and scaffolds; he can occasionally stoop, balance, kneel, and crouch; he can never crawl; 14 the claimant can tolerate occasional exposure to extreme cold; he can never work at unprotected heights; 15

4. Considering the claimant’s age, education, work experience,

16 residual functional capacity, and vocational expert testimony, the claimant can perform his past relevant work as a telemarketer and 17 trouble shooter. 18 See *id.* at 24-31. 19 After the Appeals Council declined review on August 3, 2023, this appeal followed. 20 /// 21 /// 22 /// 23 /// 24 /
// 25 /// 26 // 27 1 Citations are the to the Certified Administrative Record (CAR) lodged on July 15, 28 2024 (ECF No. 8).

1 III. DISCUSSION

2 In his opening brief, Plaintiff argues: (1) the ALJ failed to include mental 3 limitations in his residual functional capacity finding and hypothetical questions posed to the 4 vocational expert; and (2) the ALJ failed to provide, clear, convincing, and well-supported 5 reasons for discounting Plaintiff’s statements of physical dysfunction. See ECF No. 9. 6 A. Mental Limitations 7 Residual functional capacity is the most a person “can still do despite [the 8 individual’s] limitations.” 20 C.F.R. §§ 404.1545(a), 416.945(a) (2012); see also *Valencia v. 9 Heckler*, 751 F.2d 1082, 1085 (9th Cir. 1985) (residual functional capacity reflects current 10 “physical and mental capabilities”). Thus, residual functional capacity describes a person’s 11 exertional capabilities in light of his or her limitations.² An ALJ’s RFC finding must include all 12 of the limitations the ALJ has found to be supported by the evidence of record. See SSR 85-15. 13 In determining

residual functional capacity, the ALJ must assess what the plaintiff 14 can still do in light of both physical and mental limitations. See 20 C.F.R. §§ 404.1545(a), 416.945(a) (2003); see also *Valencia v. Heckler*, 751 F.2d 1082, 1085 (9th Cir. 1985) (residual 16 functional capacity reflects current “physical and mental capabilities”). Where there is a 17 colorable claim of mental impairment, the regulations require the ALJ to follow a special 18 procedure. See 20 C.F.R. §§ 404.1520a(a), 416.920a(a). The ALJ is required to record pertinent 19 findings and rate the degree of functional loss. See 20 C.F.R. §§ 404.1520a(b), 416.920a(b).

20 / / / 21 2 Exertional capabilities are the primary strength activities of sitting, standing, 22 walking, lifting, carrying, pushing, or pulling and are generally defined in terms of ability to perform sedentary, light, medium, heavy, or very heavy work. See 20 C.F.R., Part 404, Subpart 23 P, Appendix 2, § 200.00(a). “Sedentary work” involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. See 20 24 C.F.R. §§ 404.1567(a) and 416.967(a). “Light work” involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. See 20 C.F.R. §§ 25 404.1567(b) and 416.967(b). “Medium work” involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. See 20 C.F.R. §§ 26 404.1567(c) and 416.967(c). “Heavy work” involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. See 20 C.F.R. §§ 27 404.1567(d) and 416.967(d). “Very heavy work” involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. See 20 28 C.F.R. §§ 404.1567(e) and 416.967(e).

1 At Step 2, the ALJ concluded that Plaintiff’s medically determinable mental 2 impairments are not severe after evaluating the evidence relating to four broad functional areas 3 known at the “paragraph B” criteria. See CAR 24-25. The ALJ specifically noted: 4 The limitations identified in the “paragraph B” criteria are not a residual functional capacity assessment but are used to rate the severity of mental 5 impairments at steps 2 and 3 of the sequential evaluation process. The mental residual functional capacity assessment used at steps 4 and 5 of the 6 sequential evaluation process requires a more detailed assessment. The following residual functional capacity assessment reflects the degree of 7 limitation I have found in the “paragraph B” mental function analysis. 8 CAR 25. 9 In determining residual functional capacity at Step 4, the ALJ addressed Plaintiff’s 10 mental health issues, as follows: 11 As noted, the claimant is also treated for mental health symptoms. In December 2020, the claimant was assessed with adjustment disorder with 12 mixed anxiety and depressed mood and prescribed venlafaxine. (Exhibit 2F, p. 20). He reported symptoms of a depressed mood, insomnia, 13 hypersomnia, decreased energy, and decreased concentration. (Exhibit 2F, p. 21). He has also participated in psychotherapy for depression and 14 anxiety since 2021. (Exhibit 6F). Specifically, the claimant participated in therapy and is followed with therapist, Kamilah Aua, LCSW, for 15 adjustment disorder with mixed anxiety and depressed mood. (Exhibit 5F). In December 2021, the claimant reported symptoms of anxiety and 16 depression and feeling as though he is on a roller coaster. He reported attending church functions,

going to the gym, and spending time with his 17 daughter, son, and grandchildren during the holidays as helpful in decreasing his symptoms. (Exhibit 6F, p. 30). As recently as June 2022, 18 the claimant was assessed with adjustment disorder with mixed anxiety and depressed mood. (Exhibit 8F, p. 19). He is currently prescribed 19 venlafaxine (75 mg) and he testified to experiencing depressive symptoms in the context of pain. (Exhibit 8F, p. 110). In September the claimant 20 (completed a) normal mental status examination with the exception of fidgety behavior and frustration with medical issues. (Exhibit 9F, p. 68). 21 The claimant reported that he had good support network, and he noted that he had applied for security guard job. (Exhibit 9F, p. 72). Later that month 22 the claimant reported frustration and irritability because of chronic pain and financial distress. (Exhibit 9F, p. 103). The claimant reported that he 23 was visiting family out of state in October 2022. (Exhibit 9F, p. 108). The claimant reported listening to music, using Calm app, social support of 24 gathering with family and trying to stay busy with activities such as church events. (Exhibit 9F, p. 115). Mental status examination findings 25 were within normal limits in November 2022. (Exhibit 9F, p. 164). 26 * * * 27 28 / / / 1 I find the opinions of the state agency psychological consultants persuasive insofar as the claimant has mild to no limitations due to his 2 mental health symptoms as this is consistent with the medical records as whole, including the mental status examination findings showing some 3 deficits in mood and affect, but otherwise normal concentration and memory skills with no deficits noted in thought process, thought content, 4 impulse control, insight and judgment. (Exhibit 9F, p. 164). Further, this is supported by the type and degree of treatment needed, including 5 counseling and prescribed medication (venlafaxine) as well as the claimant's own description of his activities, going to the gym, spending 6 time with his daughter, son, and grandchildren during the holidays. (Exhibits 1A, 3A, 1F, 6F, 9F and hearing testimony). 7 CAR 28-30. 8 9 Plaintiff raises two arguments. First, citing *Hutton v. Astrue*, 491 Fed. Appx. 850 10 (9th Cir. 2012) (unpublished), Plaintiff contends that the ALJ erred because he did not consider 11 Plaintiff's mild mental limitations at Step 4. See ECF No. 9, pgs. 16-17. Second, Plaintiff asserts 12 that the ALJ failed to comply with Social Security Ruling (SSR) 96-8p which requires a more 13 detailed assessment of mental impairments at Step 4. See *id.* at 19. In opposition, Defendant 14 argues that Plaintiff's reliance on the Ninth Circuit's unpublished opinion in *Hutton* is misplaced 15 and that a more recent published opinion – *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir. 2022) – 16 states that a finding of mild mental limitations at Step 2 does not require express findings at Step 17 4. See ECF No. 13, pgs. 19-20. 18 1. Applicability of *Woods* 19 At the outset, the Court agrees with Plaintiff that Defendant misreads *Woods*. 20 “*Woods* primarily addresses a different question. . . and does not hold that an RFC for light work 21 will always be adequate to address mild limitations found at Step 2, but reaffirms the principles. . . 22 . that the ALJs should be affirmed where they show their work. . . .” *Diane v. Kijakazi*, 2023 WL 23 7301969 (C.D. Cal. 2023); see also *Fortunato v. O'Malley*, 2024 WL 1179966, *4, n.2 (E.D. Cal. 24 2024) (distinguishing *Woods* and holding that an ALJ failed to properly discuss a claimant's mild 25 mental impairments when formulating the RFC). 26 / / / 27 /

// 28 /// 1 This being said, the Court does not agree that the ALJ failed to consider Plaintiff's 2 mild mental impairments at Step 4 when determining Plaintiff's residual functional capacity. The 3 hearing decision reflects the opposite. Notably, at Step 4, the ALJ observed that Plaintiff was 4 diagnosed with adjustment disorder in December 2020, and prescribed medication. The ALJ also 5 outlined Plaintiff's treatment for mental impairments which included medication as well as 6 psychotherapy. By November 2022, mental status examination findings were normal. The 7 record makes clear that the ALJ considered Plaintiff's non-severe mental impairments at Step 4. 8 2. Application of SSR 96-8p 9 Plaintiff contends that the ALJ failed to follow SSR 96-8p by not including a more 10 detailed review of Plaintiff's mental non-severe mental limitations and mild mental impairments 11 at Step 4. SSR 98-6p provides as follows with respect to the psychiatric review technique 12 employed throughout the sequential evaluation process: 13 The psychiatric review technique. The psychiatric review technique described in 20 CFR 404.1520a and 416.920a and summarized on the 14 Psychiatric Review Technique Form (PRTF) requires adjudicators to assess an individual's limitations and restrictions from a mental 15 impairment(s) in categories identified in the "paragraph B" and "paragraph C" criteria of the adult mental disorders listings. The adjudicator must 16 remember that the limitations identified in the "paragraph B" and "paragraph C" criteria are not an RFC assessment but are used to rate the 17 severity of mental impairment(s) at steps 2 and 3 of the sequential evaluation process. The mental RFC assessment used at steps 4 and 5 of 18 the sequential evaluation process requires a more detailed assessment by itemizing various functions contained in the broad categories found in 19 paragraphs B and C of the adult mental disorders listings in 12.00 of the Listing of Impairments, and summarized on the PRTF. 20 SSR 96-8p. 21 22 Plaintiff argues: 23 SSR 96-8p, moreover, instructs that the RFC finding requires a "more detailed assessment by itemizing various functions contained in the 24 broad categories" summarized at the earlier steps of the decision (Tr. 25). In other words, an ALJ cannot simply ignore limitations he found credible 25 at earlier steps of the decision. Yet, there was no "more detailed" analysis by the ALJ to account for Plaintiff's mild limitations in understanding, 26 remembering, or applying information; interacting with others; concentration, persistence, and maintaining pace; and adapting and 27 managing oneself concentrating at step four (Tr. 26-31). Although he discussed some of the medical evidence related to Plaintiff's mental 28 impairments (Tr. 29), he did not provide a more detailed discussion of his 1 own credible findings that Plaintiff was mildly limited in all four areas of mental functioning. . . . 2 ECF No. 9, pg. 19. 3 4 As Defendant notes, the ALJ stated that the residual functional capacity 5 assessment at Step 4 "reflects the degree of limitations I have found in the 'paragraph B' mental 6 functional analysis" provided at Step 2. CAR 25. Citing *D.L.P. v. Kijakazi*, 2022 WL 4472064, 7 at *4-5 (N.D. Cal. 2022), Defendant acknowledges that some courts have concluded that similar 8 incorporation-by-reference language constitutes empty boilerplate where the ALJ did not discuss 9 or give a reasoned consideration in formulating residual functional capacity. See ECF No. 13, pg. 10 22. The Court finds that the ALJ's analysis in this case is not mere empty boilerplate. The ALJ

11 provided a detailed analysis at Step 2 under the applicable psychiatric review technique. At Step 12 4, the ALJ then provided further analysis of Plaintiff's mental limitations, which included a 13 discussion of medical opinion evidence, which Plaintiff does not challenge. The Court finds no 14 error in the ALJ's incorporation by reference of the severity analysis at Step 2 when coupled with 15 a more detailed analysis at Step 4. See *Frery v. Comm'r.*, 2021 WL 5401495, at *19 (E.D. Cal. 16 2021); *Jones v. Berryhill*, 2018 WL 3956479, at *3 (C.D. Cal. 2018); *Ball v. Colvin*, 2015 WL 17 2345652, at *3 (C.D. Cal. 2015). 18 B. Plaintiff's Statements 19 The Commissioner determines the weight to be given to a claimant's own 20 statements and testimony, and the court defers to the Commissioner's discretion if the 21 Commissioner used the proper process and provided proper reasons. See *Saelee v. Chater*, 94 22 F.3d 520, 522 (9th Cir. 1996). An explicit finding must be supported by specific, cogent reasons. 23 See *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). General findings are insufficient. 24 See *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). Rather, the Commissioner must identify 25 what testimony is not afforded weight and what evidence undermines the testimony. See *id.* 26 Moreover, unless there is affirmative evidence in the record of malingering, the Commissioner's 27 reasons for rejecting testimony as not credible must be "clear and convincing." See *id.*; see also 28 *Carmickle v. Commissioner*, 533 F.3d 1155, 1160 (9th Cir. 2008) (citing *Lingenfelter v. Astrue*, 1 504 F.3d 1028, 1936 (9th Cir. 2007), and *Gregor v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006)). 2 If there is objective medical evidence of an underlying impairment, the 3 Commissioner may not discredit a claimant's testimony as to the severity of symptoms merely 4 because they are unsupported by objective medical evidence. See *Bunnell v. Sullivan*, 947 F.2d 5 341, 347-48 (9th Cir. 1991) (en banc). As the Ninth Circuit explained in *Smolen v. Chater*: 6 The claimant need not produce objective medical evidence of the [symptom] itself, or the severity thereof. Nor must the claimant produce 7 objective medical evidence of the causal relationship between the medically determinable impairment and the symptom. By requiring that 8 the medical impairment "could reasonably be expected to produce" pain or another symptom, the Cotton test requires only that the causal relationship 9 be a reasonable inference, not a medically proven phenomenon. 10 80 F.3d 1273, 1282 (9th Cir. 1996) (referring to the test established in *Cotton v. Bowen*, 799 F.2d 1403 (9th Cir. 1986)). 11 12 The Commissioner may, however, consider the nature of the symptoms alleged, 13 including aggravating factors, medication, treatment, and functional restrictions. See *Bunnell*, 14 947 F.2d at 345-47. In weighing a claimant's statements and testimony, the Commissioner may 15 also consider: (1) the claimant's reputation for truthfulness, prior inconsistent statements, or other 16 inconsistent testimony; (2) unexplained or inadequately explained failure to seek treatment or to 17 follow a prescribed course of treatment; (3) the claimant's daily activities; (4) work records; and 18 (5) physician and third-party testimony about the nature, severity, and effect of symptoms. See 19 *Smolen*, 80 F.3d at 1284 (citations omitted). It is also appropriate to consider whether the 20 claimant cooperated during physical examinations or provided conflicting statements concerning 21 drug and/or alcohol use. See *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir.

2002). If the 22 claimant testifies as to symptoms greater than would normally be produced by a given 23 impairment, the ALJ may disbelieve that testimony provided specific findings are made. See 24 Carmickle, 533 F.3d at 1161 (citing Swenson v. Sullivan, 876 F.2d 683, 687 (9th Cir. 1989)). 25 Regarding reliance on a claimant's daily activities to discount testimony of 26 disabling pain, the Social Security Act does not require that disability claimants be utterly 27 incapacitated. See Fair v. Bowen, 885 F.2d 597, 602 (9th Cir. 1989). The Ninth Circuit has 28 repeatedly held that the “. . . mere fact that a plaintiff has carried out certain daily activities . . . 1 does not . . . [necessarily] detract from her credibility as to her overall disability.” See Orn v. 2 Astrue, 495 F.3d 625, 639 (9th Cir. 2007) (quoting Vertigan v. Heller, 260 F.3d 1044, 1050 (9th 3 Cir. 2001)); see also Howard v. Heckler, 782 F.2d 1484, 1488 (9th Cir. 1986) (observing that a 4 claim of pain-induced disability is not necessarily gainsaid by a capacity to engage in periodic 5 restricted travel); Gallant v. Heckler, 753 F.2d 1450, 1453 (9th Cir. 1984) (concluding that the 6 claimant was entitled to benefits based on constant leg and back pain despite the claimant's 7 ability to cook meals and wash dishes); Fair, 885 F.2d at 603 (observing that “many home 8 activities are not easily transferable to what may be the more grueling environment of the 9 workplace, where it might be impossible to periodically rest or take medication”). Daily 10 activities must be such that they show that the claimant is “. . . able to spend a substantial part of 11 his day engaged in pursuits involving the performance of physical functions that are transferable 12 to a work setting.” Fair, 885 F.2d at 603. The ALJ must make specific findings in this regard 13 before relying on daily activities to discount a claimant's pain testimony. See Burch v. Barnhart, 14 400 F.3d 676, 681 (9th Cir. 2005). 15 At Step 4, the ALJ addressed Plaintiff's subjective statements and testimony. See 16 CAR 26-29. The ALJ summarized Plaintiff's statements and testimony as follows: 17 The claimant alleges disability due a combination of his physical and mental impairments. The claimant has a history of back pain with a fusion 18 surgery in 2009 and his pain has persisted despite ongoing conservative treatment, including injections and pain medication. Mr. Green testified 19 that he might also be a candidate for additional back surgery after losing weight. He also reports knee pain, and he stated that he uses a grabber to 20 lift things. In addition, his wife assists him by tying his shoes. By written statement he indicated that he is able to sit for approximately 45 minutes 21 at a time and stand for 20 minutes before experiencing pain that increases from a level 4 to level 7 to 8 and requires pain medication. 22 (Exhibits 6E and 13E). Mr. Green further testified that he takes 2 to 4 Percocet a day to treat his pain, and he also uses a back brace and relies on 23 a grabber. The claimant testified that he is also participating in therapy for mental health symptoms of depression and anxiety. He testified that his 24 symptoms include crying spells, decreased energy and difficulties with concentration. (Hearing testimony). 25 CAR 27. 26 27 / / / 28 / / / 1 The ALJ then stated: 2 After careful consideration of the evidence, I find that the claimant's medically determinable impairments could reasonably be expected to 3 cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these 4 symptoms are not entirely

consistent with or well supported by the medical evidence and other evidence in the record for the reasons 5 explained in this decision. As noted, Mr. Green's activities include household chores, simple food preparation, reading, watching television, 6 attending and volunteering at church, reading, watching sports on television, shopping, paying bills, attending Bible study, drives, and 7 socializing by on the telephone, text message and video chat. (Exhibits 12E and 13E and hearing testimony). This level of activity, though not 8 conclusive as to any issue, is consistent with the residual functional capacity as found. 9 CAR 27. 10 11 The ALJ summarized the longitudinal objective medical evidence of record and 12 concluded as follows: 13 Overall, the record does not support limitations that prevent the claimant from working within the residual functional capacity. Mr. Green's own 14 description of his activities, coupled with the findings on examination as noted in detail above, demonstrate that he can perform functions within 15 the assessed residual functional capacity. No single factor mentioned here is alone conclusive on the issue to be determined, but when viewed in 16 combination and in conjunction with the medical history and examination findings they suggest that the claimant is not as limited as he claims. 17 Given the claimant's back pain, I find that he is limited to a reduced range of light work with postural and environmental limitations. 18 CAR 29. 19 20 Plaintiff argues two points of error. See ECF No. 9, pgs. 12-14. First, Plaintiff 21 contends that the ALJ erred with respect to Plaintiff's allegations of pain, lower extremity 22 dysfunction, and tiredness by failing to link the evidence cited to any specific portion of 23 Plaintiff's subjective statements and testimony. See *id.* at 12. Second, Plaintiff asserts that the 24 ALJ erred in relying on Plaintiff's activities of daily living, which Plaintiff alleges do not show 25 capabilities transferrable to full-time competitive work. See *id.* at 13-14. 26 /// 27 /// 28 /// 1

1. Link Between Evidence Cited and Plaintiff's Subjective Statements and 2 Testimony 3

According to Plaintiff: 4 Here, the ALJ failed to provide specific, clear, and convincing 5 reasons for discounting Plaintiff's allegations of pain, lower extremity dysfunction, and tiredness (Tr. 26-30). The ALJ discussed the objective 6 evidence in the record but provided no real analysis for why he found it did not support Plaintiff's allegations (Tr. 27-28). The ALJ discussed one 7 physical examination from Plaintiff's emergency room visit for heart abnormalities, where Plaintiff had a normal gait and normal strength (Tr. 8 28, citing Tr. 1217). However, the ALJ did not explain how that undermined the rest of the objective evidence in the record discussed 9 above. . . . 10 ECF No. 9, pg. 12. 11 Plaintiff's argument is persuasive. Here, as outlined above, the ALJ summarized 12 Plaintiff's statements and testimony, summarized the longitudinal objective medical record, and 13 then concluded that Plaintiff's subjective statements and testimony were inconsistent with the 14 record and Plaintiff's activities of daily living. The ALJ did not, however, as required under 15 applicable legal standards, indicate which specific portions of Plaintiff's testimony and statements 16 were undermined by which specific portions of the record. Though Defendant has provided 17 numerous possible connections in the answering brief,

the ALJ did not explicitly make those 18 connections. The Court can only guess as to what rationale the ALJ employed and cannot 19 substitute its own rationale, or that of the Commissioner, for analysis by the ALJ in the first 20 instance. 21 For this reason alone, the Court finds that a remand is appropriate to allow the 22 Commissioner to properly evaluate Plaintiff's subjective statements and testimony. 23

2. Reliance on Plaintiff's Activities of Daily Living 24

Plaintiff argues: 25 The ALJ also discussed Plaintiff's daily activities as a reason to discount his allegations of pain and physical dysfunction (Tr. 27). The 26 ALJ discussed that Plaintiff performed household chores, prepared simple meals, read, watched television, attended and volunteered at his church, 27 drove, and socialized by using the telephone, via text messaging and video chat (Tr. 27, citing Tr. 307-317, 318-329). The ALJ concluded that "[t]his 28 level of activity, though not conclusive as to any issue, is consistent with 1 the residual functional capacity as found" (Tr. 27). While Plaintiff acknowledged engaging in the above activities, his 2 description of those activities was not inconsistent with his allegations of physical dysfunction. Moreover, the mere fact that he was able to perform 3 such activities was not consistent with the residual functional capacity including the ability to perform full-time work at the light exertional level, 4 including lifting and carrying 20 pounds for up to one-third of the workday, stooping (bending) for up to one third of the workday and 5 walking and standing up to four hours of the work day and sitting for 6 hours of the work day (Tr. 26). . . . 6 Here, Plaintiff provided more details about his performance of these activities that the ALJ did not discuss. Plaintiff testified that 7 although he does his own laundry, he does not bend over and instead uses a grabber to retrieve clothes out of the machine (Tr. 45). Although he can 8 dress himself, his wife ties his shoes because he cannot bend over (Tr. 46). He explained that he makes himself meals four times a week, but those 9 meals include toast, breakfast shakes, or sandwiches; and it takes him 5-10 minutes to make something to eat (Tr. 273). His wife and his mother 10 helped with the housework, but he watered the lawn, which took 5-10 minutes, and otherwise, his family paid a lawn maintenance person (Tr. 11 273). He went grocery shopping once a week but only for 5-10 minutes (Tr. 274). He reached out to the pastor at his church for help with his 12 anxiety (Tr. 401). He otherwise attended church but the record shows that he could not stand in church due to pain (Tr. 807). In sum, Plaintiff's 13 activities did not bear a meaningful relationship to the activities required in full-time work, and the ALJ failed to consider Plaintiff's specific 14 testimony regarding the limited nature of his activities. 15 ECF No. 9, pgs. 13-14. 16 Again, Plaintiff's argument is persuasive. Here, the ALJ stated generally that 17 Plaintiff's activities of daily living are inconsistent with disability. In so doing, the ALJ noted 18 that Plaintiff attends church, reads, watches sports on television, shops, pays bills, attends Bible 19 study, drives, and socialized by way of telephone, text message, and video chat. The ALJ did not, 20 however, comment on the limited ability of Plaintiff to engage in these tasks or that he needed 21 assistance for many of the tasks listed. The ALJ thus failed to explain how Plaintiff's activities of 22 daily living translate to the ability to sustain full-time competitive work. 23 For this additional reason, the matter should

be remanded for a new hearing and 24 administrative decision. 25 /// 26 /// 27 /// 28 ///

1 IV. CONCLUSION

2 Based on the foregoing, the undersigned recommends that: 3 1. Plaintiff's motion for summary
judgment, ECF No. 9, be granted; 4 2. Defendant's cross-motion for summary judgment, ECF No.
13, be denied; 5 || and 6 3. The Commissioner's final decision be reversed and this matter be 7 ||
remanded for further proceedings consistent with these findings and recommendations. 8 These
findings and recommendations are submitted to the United States District 9 || Judge assigned to
the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 10 || after being
served with these findings and recommendations, any party may file written 11 | objections with
the court. Responses to objections shall be filed within 14 days after service of 12 || objections.
Failure to file objections within the specified time may waive the right to appeal. See 13 |
Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 14 15 || Dated: August 5, 2025 Ss.cqao_

16 DENNIS M. COTA

17 UNITED STATES MAGISTRATE JUDGE

18 19 20 21 22 23 24 25 26 27 28 15