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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ELIZABETH H.,
Plaintiff,
MARTIN J. O'MALLEY,¹
Commissioner of Social Security,
Defendant.

Case No. CV 8:23-01273 RAO

**MEMORANDUM OPINION AND
ORDER**

I. INTRODUCTION

Plaintiff Elizabeth H.² (“Plaintiff”) challenges the Commissioner’s denial of period of disability, supplemental security income (“SSI”), and disability insurance benefits (“DIB”). For the reasons stated below, the decision of the Commissioner is **REVERSED**, and the matter **REMANDED**.

II. BACKGROUND

On October 22, 2020, Plaintiff applied for period of disability, SSI, and DIB, alleging disability beginning August 16, 2018. (AR 218-27, 228-29.) Plaintiff’s

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin J. O’Malley, the Commissioner of Social Security, is hereby substituted as the defendant.

² Partially redacted in compliance with Federal Rule of Civil Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States.

1 application was denied on March 9, 2021, (AR 81-82), and upon reconsideration on
2 September 2, 2021 (AR 113-14). On October 17, 2021, Plaintiff appealed the
3 Commissioner’s decision and requested a hearing before an Administrative Law
4 Judge (“ALJ”). (AR 137-38.) The hearing took place on June 2, 2022. (*See* AR
5 35-52.)

6 On September 3, 2022, the ALJ issued an unfavorable decision. (AR 15-34.)
7 At **step one**, the ALJ found Plaintiff had not engaged in substantial gainful activity
8 since August 16, 2018. (AR 21.) At **step two**, the ALJ determined Plaintiff had
9 multiple severe impairments: chronic obstructive pulmonary disease (“COPD”),
10 cervical spine and lumbar spine disc disease, and obesity. (*Id.*) At **step three**, the
11 ALJ found Plaintiff did not have an impairment or combination of impairments that
12 medically equals the severity of the impairments listed in 20 C.F.R.
13 §§ 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926. (AR 23.)
14 Before proceeding to step four, the ALJ assessed that Plaintiff had the residual
15 functional capacity (“RFC”) for light work except she can lift and/or carry 20
16 pounds occasionally and 10 pounds frequently; she can stand and/or walk two hours
17 in an eight-hour workday and sit six hours of an eight-hour workday; occasionally
18 climb ramps, stairs, ladders, ropes, and scaffolds; can occasionally balance, stoop,
19 kneel, crouch, and crawl; must avoid concentrated exposure to dust, fumes, and
20 other pulmonary irritants. (AR 24.) At **step four**, the ALJ concluded Plaintiff
21 could perform past relevant work as a paralegal or mortgage loan officer. (AR 28.)
22 The ALJ did not reach **step five**. (*See* AR 20.)

23 On May 16, 2023, the Appeals Council denied Plaintiff’s request for review.
24 (AR 1-7.) Plaintiff initiated this action challenging the Commissioner’s decision on
25 July 14, 2023. (Dkt. No. 1.) The parties filed their respective briefs for the Court’s
26 consideration. (*See generally*, Dkt. Nos. 11 (“Pl. Brief”), 12 (“Comm’r Brief”), 13
27 (“Pl. Reply”).)

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1 **III. STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), a district court may review the Commissioner’s
3 decision to deny benefits. A court must affirm an ALJ’s findings of fact if, when
4 applied against proper legal standards, they are supported by substantial evidence.
5 *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001). “Substantial evidence
6 . . . is ‘more than a mere scintilla[,]’ . . . [which] means—and means only—‘such
7 relevant evidence as a reasonable mind might accept as adequate to support a
8 conclusion.’” *Biestek v. Berryhill*, 587 U.S. ___, 139 S.Ct. 1148, 1154, 203 L.Ed.2d
9 504 (2019) (citations omitted); *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.
10 2017). Substantial evidence is shown “by setting out a detailed and thorough
11 summary of the facts and conflicting clinical evidence, stating his interpretation
12 thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.
13 1998). “[T]he Commissioner’s decision cannot be affirmed simply by isolating a
14 specific quantum of supporting evidence. . . . Rather, a court must consider the
15 record as a whole, weighing both evidence that supports and evidence that detracts
16 from the Secretary’s conclusion.” *Aukland v. Massanari*, 257 F.3d 1033, 1035 (9th
17 Cir. 2001) (citations and internal quotation marks omitted). “However, the ALJ
18 ‘need not discuss *all* evidence presented’” to her, but “must only explain why
19 ‘significant probative evidence has been rejected.’” *Hurn v. Berryhill*, No. 17-
20 00884, 2018 WL 4026357, at *3 (W.D. Wash. Aug. 23, 2018) (citing *Vincent v.*
21 *Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984)).

22 “‘Where evidence is susceptible to more than one rational interpretation,’ the
23 ALJ’s decision should be upheld.” *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194,
24 1198 (9th Cir. 2008) (citing *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005));
25 *see Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (“If the
26 evidence can support either affirming or reversing the ALJ’s conclusion, we may
27 not substitute our judgment for that of the ALJ.”). The Court may review only “the
28 reasons provided by the ALJ in the disability determination and may not affirm the

1 ALJ on a ground upon which [s]he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630
2 (9th Cir. 2007) (citing *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003)).

3 **IV. DISCUSSION**

4 Plaintiff contends the ALJ (1) failed to provide clear and convincing reasons
5 for discounting Plaintiff’s subject symptom testimony; (2) erroneously omitted
6 mental work restrictions from Plaintiff’s RFC; and (3) failed to properly evaluate
7 the medical opinion of Dr. John Godes.

8 **a. Claim One—Subjective Testimony**

9 Plaintiff contends the ALJ failed to provide clear and convincing reasons for
10 discounting Plaintiff’s subjective symptom testimony. (Pl. Brief at 3-9; Pl. Reply at
11 2-5.) The Commissioner argues the ALJ’s reasons for discounting Plaintiff’s
12 testimony are sufficiently specific. (Comm’r Brief at 2-5.)

13 The Court agrees with Plaintiff.

14 **i. Plaintiff’s Testimony**

15 Plaintiff testified she last worked in 2018 for a few months as an auditor at
16 the credit union. (AR 40-41.) She testified she was a paralegal for three to five
17 years before that, and prior to being a paralegal, she was a loan specialist for a
18 home mortgage company for under one year. (AR 41.) Plaintiff stopped working
19 as an auditor because she was in pain, which her doctor said was caused by sitting,
20 standing, and reaching. (AR 42.) She has not applied for any job since leaving the
21 auditing job and relies on her husband for income. (*Id.*) She lives in a house with
22 her husband, mother, son, and stepdaughter. (AR 42-43.) She has a driver’s
23 license but has not driven within probably the last three years because she has
24 problems looking over her shoulder. (AR 43-44.) Plaintiff testified she does not
25 drink or take any drugs. (AR 44.) She has an associate degree. (*Id.*)

26 Plaintiff used to be able to walk for 15 minutes at a time, but in the last year,
27 can only walk five. (AR 44-45.) After five minutes of walking, she feels a
28 shooting pain from her back down her right leg. (AR 45.) She needs to rest for 15

1 to 20 minutes before walking again. (*Id.*) She can stand for a maximum of five
2 minutes before needing rest because her back starts to hurt; she needs to lay down
3 for 15 to 20 minutes before standing again. (*Id.*) She can sit for about 15 to 20
4 minutes before feeling back pain that travels to her neck. (AR 45-46.) She can
5 carry a water bottle but nothing heavy because it causes back pain. (AR 46.) She
6 has trouble concentrating when people talk to her. (*Id.*) She feels tired and sleepy
7 from her medications. (*Id.*)

8 **ii. The ALJ's Decision**

9 The ALJ discounted Plaintiff's subjective symptom testimony, taking into
10 account the lack of objective medical evidence supporting her testimony,
11 noncompliance with medication, and the statements of her son, Jacob A. Mercado.
12 (AR 1112-16); *see Williams v. Berryhill*, No. 17-03624, 2018 WL 791144, at *4
13 (C.D. Cal. Feb. 8, 2018) ("Medical opinion evidence is merely an example of
14 objective medical evidence, and thus, does not constitute a separate and distinct
15 reason for rejecting Plaintiff's subjective symptom testimony." (citing *Vigil v.*
16 *Comm'r of Soc. Sec.*, No. 16-1677, 2017 WL 4075581, at *8 (E.D. Cal. Sept. 14,
17 2017); *Petit v. Astrue*, No. 11-2001, 2012 WL 3965146, at *7 (C.D. Cal. Sept. 11,
18 2012))).

19 The ALJ determined medical evidence did not support the alleged severity of
20 her symptoms. (*See* AR 25.) Physical, neurological, respiratory, and
21 cardiovascular clinical exams between 2018 and 2021 returned normal and mild
22 results. (*Id.*) Plaintiff received injections despite these normal findings, and there
23 was at least one instance of positive exam findings of slight weakness and
24 numbness. (AR 26 (citing Exh. 10F).) The ALJ concluded Dr. B. Vaghaiwalla's
25 opinion was more persuasive than Dr. A. Khong's because Dr. Vaghaiwalla's
26 opinion is "more consistent with the record as a whole, which documents the
27 claimant's conditions (COPD, cervical spine and lumbar spine disc disease, and
28 obesity) but shows many normal exam findings, including neurological." (*Id.*)

1 (citing Exhs. 4F, 5F, 7F, 9F.) The ALJ concluded Dr. John Godes’s opinion was
2 unpersuasive because it was not consistent with the record as a whole; although Dr.
3 Godes classified Plaintiff as “less than sedentary,” Plaintiff does not need an
4 assistive device. (AR 27 (citing Exhs. 4F, 9F).)

5 The ALJ noted Plaintiff stopped taking all of her medications. (AR 26
6 (citing Exh. 9F).)

7 The ALJ discounted the statements of Mr. Mercado because Mr. Mercado
8 was “not familiar with the Social Security Administration’s precise disability
9 guidelines as evidenced by his opinion, which fails to discuss any listings, . . . , and
10 does not provide any functional limits outside of the claimant being able to walk for
11 only 15 minutes at a time.” (AR 27.) The ALJ also concluded Mr. Mercado, as
12 Plaintiff’s son, is inherently biased, and that his lack of medical or healthcare
13 qualifications discredits his observation. Lastly, the ALJ concluded Mr. Mercado’s
14 opinion is not consistent with the record as a whole. (*Id.*)

15 **iii. Applicable Law**

16 There is a two-step process for evaluating a claimant’s testimony about the
17 severity and limiting effect of the claimant’s symptoms. *Vasquez v. Astrue*, 572
18 F.3d 586, 591 (9th Cir. 2009). “First, the ALJ must determine whether the claimant
19 has presented objective medical evidence of an underlying impairment ‘which
20 could reasonably be expected to produce the pain or other symptoms alleged.’”
21 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v.*
22 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991) (en banc)). Once satisfied, the ALJ
23 must examine the entire case record, which includes the claimant’s own testimony,
24 for evidence on the intensity, persistence, and limiting effects of claimant’s
25 symptoms. *Id.* at 1035.

26 **iv. Analysis**

27 The ALJ found Plaintiff’s medically determinable impairments could
28 reasonably be expected to cause the alleged symptoms, but her statements

1 concerning the intensity, persistence, and limiting effects of these symptoms were
2 not entirely consistent with the medical evidence and other evidence of record.
3 (See AR 25.) Specifically, the ALJ found that Plaintiff’s symptoms were
4 undermined by her noncompliance to medication, an adult function report
5 submitted by her son, and lack of objective medical evidence.

6 a. Noncompliance with Medication

7 The failure to follow prescribed treatment, absent good cause, is a valid reason
8 to discount a claimant’s subjective symptom testimony. *Orn*, 495 F.3d at 638; *Fair*
9 *v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989), *superseded on other grounds by* 20
10 C.F.R. § 404.1502(a); *Peters v. Colvin*, No. 13-8907, 2015 WL 349421, at *5 (C.D.
11 Cal. Jan. 23, 2015) (citing 20 C.F.R. § 416.930(a)).

12 Here, the ALJ’s analysis of Plaintiff’s noncompliance with medication is
13 insufficient to discount her testimony because although she notes that Plaintiff
14 stopped taking all of her medications, she failed to connect the noncompliance to
15 the symptom testimony it purports to discount. *See Morgan*, 169 F.3d at 599; (*see*
16 *also* Pl. Reply at 3). The Commissioner’s argument that the ALJ’s analysis is
17 rational and should therefore stand, necessarily requires the ALJ to have written
18 that analysis. (*See* Comm’r Brief at 4-5); *Guthrie*, 2022 WL 15761380, at *1. The
19 ALJ did not do so. (*See* AR 26); *see also Holohan v. Massanari*, 246 F.3d 1195,
20 1208 (9th Cir. 2011); (Pl. Reply at 4-5) (arguing that an ALJ must consider both
21 facts favorable and those unfavorable to the credibility determination). Therefore,
22 Plaintiff’s subjective symptom testimony cannot be discounted on this basis.
23 *Garrison v. Colvin*, 759 F.3d 995, 1018 n.24 (9th Cir. 2014).

24 b. Jacob A. Mercado’s Adult Function Report

25 “Lay testimony as to a claimant’s symptoms is competent evidence that an
26 ALJ must take into account, unless he or she expressly determines to disregard such
27 testimony and gives reasons germane to each witness for doing so.” *Lewis v. Apfel*,
28 236 F.3d 503, 511 (9th Cir. 2001). A lack of support from overall medical

1 evidence is an improper basis to disregard lay testimony because “[t]he fact that lay
2 testimony and third-party function reports may offer a different perspective than
3 medical records alone is precisely why such evidence is valuable.” *Diedrich v.*
4 *Berryhill*, 874 F.3d 634, 640 (9th Cir. 2017).

5 Here, the ALJ’s analysis of Mr. Mercado’s Adult Function Report is
6 insufficient to discount Plaintiff’s testimony because every reason cited by the ALJ
7 has been held to be an invalid reason to discredit lay testimony. (*See* AR 27; *see*
8 *also* Comm’r Brief at 3-5 (excluding from his brief the ALJ’s discussion of Mr.
9 Mercado’s Report).) That Mr. Mercado may have an inherent bias as Plaintiff’s son
10 does not discredit his statements. *Smolen v. Chater*, 80 F.3d 1273, 1289 (“The fact
11 that a lay witness is a family member cannot be a ground for rejecting his or her
12 testimony.”). Nor do Mr. Mercado’s lack of medical training, the alleged lack of
13 objective medical evidence corroborating his statements, and Mr. Mercado’s
14 unfamiliarity with the Social Security Administration’s disability guidelines
15 discredit his statements. *See Bray v. Berryhill*, No. 17-1385, 2018 WL 3076919, at
16 *8 (C.D. Cal. June 19, 2018) (“Lay witnesses are not required to have medical
17 training[, which] is what makes them ‘lay’ witnesses.”); *Kelli C. v. Berryhill*, No.
18 18-02237, 2019 WL 1330890, at *6 (C.D. Cal. Mar. 25, 2019) (“A lack of support
19 from the ‘clinical or diagnostic medical evidence’ is not a proper basis for
20 disregarding lay witness’ observations.” (quoting *Diedrich*, 874 F.3d at 640));
21 *George C.L. v. Saul*, No. 20-8232, 2022 WL 836301, at *8 (N.D. Cal. Mar. 21,
22 2022) (“The ALJ erred by discounting Plaintiff’s wife’s statements simply because
23 she did not ‘establish a familiarity with Social Security Regulations,’ as that
24 explanation has no basis in the law, or in the Agency’s regulatory scheme.”).
25 Therefore, Plaintiff’s subjective symptom testimony cannot be rejected on the basis
26 of Mr. Mercado’s Adult Function Report.

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c. Objective Medical Evidence

A lack of objective medical evidence is a valid reason to discount a claimant’s subjective symptom testimony as long as it is not the only reason. *See Bunnell*, 947 F.2d at 345; *Venegas v. Astrue*, No. 08-8636, 2009 WL 4267439, at *4 (C.D. Cal. Nov. 24, 2009).

As stated above, the ALJ’s analyses of Plaintiff’s non-compliance with her medication and Mr. Mercado’s third-party function report were inadequate to discount Plaintiff’s testimony. That leaves a lack of objective medical evidence as the sole reason the ALJ could have discounted Plaintiff’s testimony. Here, assuming *arguendo* there *is* a lack of objective medical evidence substantiating Plaintiff’s testimony, the ALJ’s analysis would still be lacking because a lack of objective medical evidence alone cannot discount subjective symptom testimony. *See Bunnell*, 947 F.2d at 345. Therefore, the ALJ erred in discounting Plaintiff’s subjective symptom testimony.

b. Claim Two—Mental RFC

Plaintiff contends her mild mental deficits—understanding, remembering, or applying information; maintaining concentration, persistence, and pace; interacting with others; and adapting and managing herself— should have been included in her RFC and their omissions render the vocational expert’s testimony at step five irrelevant. (Pl. Brief at 9-11.) The Commissioner contends the ALJ’s determined RFC is supported by substantial evidence and, specifically, Plaintiff is conflating the limitations identified in the paragraph B and C analyses with those analyzed for purposes of the RFC. (*See Comm’r Brief at 5-6.*)

i. Applicable Law

An ALJ must consider the limiting effect of all of a claimant’s impairments. *George A. v. Berryhill*, No. 18-00405, 2019 WL 1875523, at *3 (C.D. Cal. Apr. 24, 2019). However, those limiting effects that do not significantly interfere with a claimant’s ability to work are not required to be included in a claimant’s RFC. *Woods*

1 *v. Kijakazi*, 32 F.4th 785, 794 (9th Cir. 2022); *Bray v. Astrue*, 554 F.3d 1219, 1228-
2 29 (9th Cir. 2009). As long as the ALJ “specifies reasons supported by substantial
3 evidence for not including the non-severe impairment in the RFC determination, the
4 ALJ has not committed legal error.” *George A.*, 2019 WL 1875523, at *3 (internal
5 brackets omitted).

6 **ii. Analysis**

7 Here, the ALJ does not include any discussion of, or reference to, Plaintiff’s
8 mental health impairments in determining her RFC. (*See* AR 24-28.) At step two,
9 the ALJ found Plaintiff had non-severe limitations in all four functional areas of
10 mental functioning set out in the Listing of Impairments, 20 C.F.R. Part 404, subpart
11 P, Appendix 1, (the “paragraph B” criteria) after considering the opinions of multiple
12 medical providers. (AR 21-23.) But the ALJ erred when she used boilerplate
13 language—that the RFC assessment reflects the degree of limitation assessed in
14 paragraph B—to make the ALJ’s step two analysis function as the ALJ’s RFC
15 determination. (AR 23.) Such boilerplate language is insufficient because it does
16 not show actual review and consideration of the record. *Uranna G. v. Saul*, No. 18-
17 2117, 2019 WL 5342537, at *4 (S.D. Cal. Oct. 21, 2019); *see Gates v. Berryhill*, No.
18 16-0049, 2017 WL 2174401, at *2-3 (C.D. Cal. May 16, 2017). Even if Plaintiff
19 were improperly conflating the step two and step three analyses, (*see* Comm’r Brief
20 at 6), the ALJ’s use of paragraph B boilerplate language to avoid providing a specific
21 analysis for the mental limitations’ exclusion in the RFC is improper. *Sylvester H.*
22 *v. Kijakazi*, No. 20-2503, 2022 WL 4466717, at *8 (C.D. Cal. Sept. 26, 2022);
23 *Koshak v. Berryhill*, No. 17-6717, 2018 WL 4519936, at *8 (C.D. Cal. Sept. 19,
24 2018).

25 **c. Claim Three—Dr. John Godes’s Medical Opinion**

26 An ALJ cannot reject an examining or treating physician’s opinion as
27 unsupported or inconsistent without providing an explanation supported by
28 substantial evidence. *Kitchen v. Kijakazi*, 82 F.4th 732, 739 (9th Cir. 2023) (citing

1 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022)). The ALJ considers several
2 factors in weighing a treating physician’s opinions and must explain specifically
3 how it considered the supportability and consistency factors. *Id.* at 739-40.
4 “Supportability concerns how ‘a medical source supports a medical opinion’ with
5 relevant evidence, while consistency concerns how ‘a medical opinion is consistent
6 with the evidence from other medical and nonmedical sources.’” *Id.* (quoting
7 *Woods*, 32 F.4th at 791-92). An ALJ “need not accept the opinion of any physician
8 . . . if that opinion is brief, conclusory, and inadequately supported by clinical
9 findings.” *Thomas*, 278 F.3d at 957.

10 **i. Dr. Godes’s Opinion**

11 Dr. Godes opined that Plaintiff is a “well-developed, obese female in no
12 acute distress.” (AR 395.) Her head appeared normocephalic and atraumatic. (AR
13 396.) Her eye movements were intact, and pupils equal, round, and reactive to light
14 and accommodation. (*Id.*) Her ears were clear with intact tympanic membranes.
15 Her septum was midline, and nasal pharynx clear. There was no posterior
16 pharyngeal erythema with respect to her mouth. (*Id.*)

17 Dr. Godes noted her neck was supple without adenopathy or jugular venous
18 distension. There was no tenderness in Plaintiff’s chest, nor evidence of kyphosis.
19 Her lungs appeared normal, although there was a decreased breath sound of
20 prolonged expiration. (*Id.*) There were no heaves, thrills, or murmurs with respect
21 to her cardiovascular system. (AR 397.) Dr. Godes recorded that Plaintiff
22 experienced tenderness of the lumbar spine in bilateral paravertebral areas, though
23 there was no muscle spasm nor evidence of scoliosis. Her straight leg raising test
24 was positive at 30 degrees, both sitting and supine with production of sciatic pain.
25 Her range of motion with respect to her back was within normal limits. (*Id.*)

26 None of Plaintiff’s extremities showed cyanosis, clubbing, edema,
27 varicosities, or stasis dermatitis. Her upper extremities were largely normal,
28 although Dr. Godes noted a somewhat decreased hand strength bilaterally because

1 of bilateral carpal tunnel syndrome. (*See* AR 397-98.) Plaintiff’s lower extremities
2 were also largely normal. (*See* AR 399 (finding her hips, ankles, and knees
3 “grossly normal bilaterally,” and no tenderness, swelling, effusion, or instability
4 bilaterally).)

5 Dr. Godes opined Plaintiff can lift and carry less than 10 pounds occasionally
6 and less than 10 pounds frequently; can stand and walk for less than two hours in an
7 eight-hour workday because of her lumbar disc disease; and can sit for six hours in
8 an eight-hour workday. She uses no assistive devices. She is limited to occasional
9 pushing and pulling in the upper extremities because of her cervical disc disease,
10 and in the lower extremities because of her lumbar disc disease. (AR 400.)
11 Plaintiff can climb, stoop, kneel, and crouch only occasionally because of her
12 lumbar disc disease with radiculopathy and marked limitation and motion of the
13 lumbar spine. Dr. Godes noted no postural, manipulative, visual, communicative
14 limitations, and recommended Plaintiff avoid exposure to irritating fumes.

15 **ii. The ALJ’s Decision**

16 The ALJ concluded Dr. Godes’s opinion—that Plaintiff was less than
17 sedentary—was unpersuasive because it was not consistent with the record as a
18 whole. (AR 27.) Although the record documents Plaintiff’s conditions of COPD,
19 cervical spine and lumbar spine disc diseases, and obesity, many exams, including a
20 neurological exam, produced normal findings. The ALJ summarized Dr. Godes’s
21 findings, reiterating Dr. Godes’s explanations for why he imposed certain
22 limitations and noting that the lack of an assistive device further undermined his
23 opinion. (*Id.*)

24 **iii. Analysis**

25 Here, the ALJ properly considered Dr. Godes’s medical opinion. (*See*
26 Comm’r Brief at 7-8.) Although she did not specifically write, “supportability,” the
27 ALJ reasonably noted that Plaintiff could stand and walk for less than two hours in
28 an eight-hour day, but that an assistive device was not needed. (*See* AR 27.) As to

1 consistency, the ALJ noted Dr. Godes's examination of Plaintiff revealed normal
2 findings and Plaintiff exhibited no postural, manipulative, visual, or communicative
3 limitations. Yet, he limited Plaintiff to less than sedentary work. (*Id.* (citing Exhs.
4 4F, 5F, 7F, 9F).) That Plaintiff can identify another reasonable interpretation of Dr.
5 Godes's opinion does not mean the ALJ erred on this issue. (*See* Pl. Brief at 13-14;
6 Pl. Reply at 5-6.) *But see Ryan*, 528 F.3d at 1198.

7 **V. REMAND FOR FURTHER ADMINISTRATIVE PROCEEDINGS**

8 The Court finds that remand for further administrative proceedings is
9 appropriate, as further administrative review could remedy the ALJ's errors. *See*
10 *Brown-Hunter*, 806 F.3d 487, 495 (9th Cir. 2015) (remanding for an award of
11 benefits is appropriate in rare circumstances). On remand, the ALJ shall reassess
12 Plaintiff's subjective symptom testimony and Mr. Mercado's Adult Function
13 Report. The ALJ shall then reassess Plaintiff's RFC and proceed through steps four
14 and five to determine what work, if any, Plaintiff is capable of performing. This
15 order does not preclude the ALJ from considering any other arguments raised by
16 Plaintiff on remand.

17 **VI. CONCLUSION**

18 IT IS ORDERED that Judgment shall be entered **REVERSING** and
19 **REMANDING** the decision of the Commissioner denying her period of disability
20 and applications for SSI and DIB.

21 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
22 Order and the Judgment on counsel for both parties.

23
24 DATED: April 29, 2024

25 _____
26 /s/
27 ROZELLA A. OLIVER
28 UNITED STATES MAGISTRATE JUDGE

NOTICE

**THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,
LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**

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