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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Shelby Reichsfeld,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-20-01067-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff Shelby Reichsfeld’s appeal from the
16 Commissioner’s denial of her application for Social Security Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”) benefits under 42 U.S.C. §§ 401–434, 1381–
17 1383f. (Doc. 1). The appeal is fully briefed. (Docs. 17, 20, 21). The Court now rules.

18
19 **I. BACKGROUND**

20 Plaintiff is 29 years old, completed high school, and has past relevant work
21 experience as an office assistant. (Doc. 17 at 2). Plaintiff argued that the following
22 conditions rendered her disabled: “degenerative disc disease, tremors, asthma, headaches,
23 common variable hypogammaglobinemia, and obesity.” (Doc. 14-3 at 24). Plaintiff has not
24 engaged in substantial gainful activity since March 2, 2010, the alleged onset date. (*Id.*).

25 Plaintiff filed applications for SSDI and SSI benefits in February and September of
26 2016, respectively. (Docs. 17 at 2; 14-3 at 21). Those applications were denied at the initial
27 stage, (Doc. 14-3 at 21), upon reconsideration, (*Id.*), and by the Administrative Law Judge
28 (“ALJ”) after a hearing, (Docs. 17 at 2; 14-3 at 21–32). The Appeals Council denied

1 review. (Doc. 14-3 at 2–4). Plaintiff then sought review in this Court. (Doc. 1).

2 **a. The Disability Determination**

3 A claimant must show she “is under a disability” to qualify for disability insurance
4 benefits. 42 U.S.C. § 423(a)(1)(E). The claimant is disabled if she suffers from a medically
5 determinable physical or mental impairment that prevents her from engaging in any
6 “substantial gainful activity.” *Id.* § 423(d)(1)–(2). The Social Security Administration has
7 created a five-step process for an ALJ to determine whether the claimant is disabled. 20
8 C.F.R. § 404.1420(a)(1). Each step can be dispositive. *See id.* § 404.1420(a)(4). “The
9 burden of proof is on the claimant at steps one through four,” and the burden shifts to the
10 Commissioner at step five. *See Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222
11 (9th Cir. 2009).

12 At step one, the ALJ examines whether the claimant is “doing substantial gainful
13 activity.” 20 C.F.R. § 404.1520(a)(4)(i). If not, then the ALJ proceeds to step two. At step
14 two, the ALJ considers whether the claimant has a physical or mental impairment or a
15 combination of impairments that are “severe.” *Id.* § 404.1520(a)(4)(ii). If the ALJ finds
16 that there is severe impairment, then the ALJ proceeds to step three to determine whether
17 the claimant’s impairment or combination of impairments meets or medically equals an
18 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. *Id.*
19 § 404.1520(a)(4)(iii). If so, the claimant is disabled. *Id.* If not, the ALJ must assess the
20 claimant’s “residual functional capacity” (“RFC”) before proceeding to step four. *Id.*
21 § 404.1520(a)(4). The RFC is the most a claimant “can still do despite [her] limitations.”
22 *Id.* § 404.1545(a)(1). At step four, the ALJ determines whether the claimant can still do
23 “past relevant work” in light of the claimant’s RFC. *Id.* § 404.1520(a)(4)(iv). If not, the
24 ALJ proceeds to the final step and examines whether the claimant “can make an adjustment
25 to other work” considering the claimant’s RFC, age, education, and work experience. *Id.*
26 § 404.1520(a)(4)(v). If an adjustment can be made, the claimant is not disabled. *Id.*

27 **b. The ALJ’s Decision**

28 The ALJ denied Plaintiff social security benefits because she determined that

1 Plaintiff was “not disabled” and was “capable of making a successful adjustment to other
2 work that exists in significant numbers in the national economy.” (Doc. 14-3 at 32). After
3 finding that Plaintiff was not engaged in substantial gainful activity since March 2, 2010
4 at step one, the ALJ determined, at step two, that Plaintiff “has the following severe
5 impairments: degenerative disc disease, tremors, asthma, headaches, common variable
6 hypogammaglobinemia, and obesity.” (*Id.* at 24–26).

7 At step three, the ALJ concluded that Plaintiff’s impairments, singularly or in
8 combination, did not “meet[] or medically equal[] the severity of one of the listed
9 impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525
10 and 404.1526).” (*Id.* at 26). Accordingly, the ALJ conducted an RFC analysis and found
11 that Plaintiff could perform “sedentary work.” (*Id.* at 26–30). In doing so, the ALJ gave
12 “substantial weight” to the opinions of Doctors Bargan, Johnson, Hirsch, and McLean. (*Id.*
13 at 29). The ALJ further gave “limited weight” to the opinion of Doctor Solomon, and little
14 weight to the opinions of Doctor Wechsler and Nurse Practitioner (“NP”) Dundon. (*Id.* at
15 30).

16 At step four, the ALJ determined that Plaintiff had no past relevant work. (*Id.* at 30–
17 31). At step five, the ALJ concluded that Plaintiff could perform the occupations of
18 document preparer (DOT 249.587-018), call out operator (DOT 237.367-014), and
19 addresser (DOT 209.587-010), consistent with the vocational expert’s testimony. (*Id.* at
20 31–32). Thus, the ALJ determined that Plaintiff had not been under a disability from March
21 2, 2010 through the date of the ALJ’s decision. (*Id.* at 32).

22 **II. LEGAL STANDARD**

23 The ALJ’s decision to deny disability benefits may be overturned “only when the
24 ALJ’s findings are based on legal error or not supported by substantial evidence in the
25 record.” *Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030, 1035 (9th Cir. 2003).
26 “‘Substantial evidence’ means more than a mere scintilla, but less than a preponderance,
27 i.e., such relevant evidence as a reasonable mind might accept as adequate to support a
28 conclusion.” *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (citing *Young*

1 *v. Sullivan*, 911 F.2d 180, 183 (9th Cir. 1990)).

2 “The inquiry here is whether the record, read as a whole, yields such evidence as
3 would allow a reasonable mind to accept the conclusions reached by the ALJ.” *Gallant v.*
4 *Heckler*, 753 F.2d 1450, 1453 (9th Cir. 1984) (citation omitted). “Where evidence is
5 susceptible of more than one rational interpretation, it is the ALJ’s conclusion which must
6 be upheld; and in reaching his findings, the ALJ is entitled to draw inferences logically
7 flowing from the evidence.” *Id.* (citations omitted); *see Batson v. Comm’r of Soc. Sec.*
8 *Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). This is because “[t]he trier of fact and not
9 the reviewing court must resolve conflicts in the evidence, and if the evidence can support
10 either outcome, the court may not substitute its judgment for that of the ALJ.” *Matney v.*
11 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992); *see Benton*, 331 F.3d at 1035 (“If the
12 evidence can support either outcome, the Commissioner’s decision must be upheld.”).

13 The ALJ is responsible for resolving conflicts in medical testimony, determining
14 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
15 Cir. 1995). Thus, if on the whole record before the Court, substantial evidence supports the
16 ALJ’s decision, the Court must affirm it. *See Hammock v. Bowen*, 879 F.2d 498, 501 (9th
17 Cir. 1989); *see also* 42 U.S.C. § 405(g). On the other hand, the Court “may not affirm
18 simply by isolating a specific quantum of supporting evidence.” *Orn v. Astrue*, 495 F.3d
19 625, 630 (9th Cir. 2007) (quotation omitted). The Court is not charged with reviewing the
20 evidence and making its own judgment as to whether Plaintiff is or is not disabled. *See*
21 *Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). Rather, the Court’s inquiry is
22 constrained to the reasons asserted by the ALJ and the evidence relied upon in support of
23 those reasons. *See id.*

24 **III. ANALYSIS**

25 Here, Plaintiff alleges that the ALJ erred in assigning little weight to the opinions
26 of Dr. Wechsler and NP Dundon without providing specific and legitimate reasons for
27 doing so. (Doc. 17 at 10–13). Plaintiff also argues that the ALJ erred in rejecting Plaintiff’s
28 symptom testimony and in rejecting lay witness testimony. (*Id.* at 13–19). The

1 Commissioner agrees that the ALJ erred in assigning little weight to the opinions of Dr.
2 Wechsler and NP Dundon, and he requests that the Court remand this matter to the agency
3 for further proceedings. (Doc. 20 at 3). Plaintiff asserts that the appropriate action here is
4 for the Court to remand for an immediate award of benefits. (Doc. 17 at 20–21).

5 **a. The Opinions of Dr. Wechsler and NP Dundon**

6 The Court agrees with the parties that the ALJ erred in assigning little weight to the
7 opinions of Dr. Wechsler and NP Dundon without providing specific and legitimate
8 reasons for doing so. The ALJ stated that she gave little weight to the opinions of Dr.
9 Wechsler and NP Dundon because “opinions that an individual is disabled and other issues
10 reserved to the Commissioner are not medical opinions,” the opinions “merely concluded
11 disability or inability to work without explanations,” and Plaintiff ‘s daily activities indicate
12 “that [Plaintiff’s] asthma/allergies are not as severe as opined.” (Doc. 14-3 at 30).

13 As the Commissioner notes, however, Dr. Wechsler and NP Dundon opined on
14 more than whether Plaintiff was disabled and discussed Plaintiff’s inability to leave her
15 home, need for a walker and bilateral stair rails due to balance issues, illness and
16 hospitalizations, and meningitis-related symptoms. (Docs. 20 at 4; 14-10 at 178; 14-11 at
17 4; 14-20 at 30; 14-21 at 107). Further, while Plaintiff’s daily activities may indicate that
18 Plaintiff’s asthma and allergies are not as severe as stated, Dr. Wechsler and NP Dundon
19 based their medical opinions, in part, on Plaintiff’s meningitis-related symptoms, not just
20 her asthma or allergies. (*Id.*). Thus, the ALJ’s assigning little weight to the opinions of Dr.
21 Wechsler and NP Dundon was not supported by substantial evidence, so the Court will
22 vacate the ALJ’s decision on this ground.

23 **b. Plaintiff’s Symptom Testimony**

24 Plaintiff further argues that the ALJ improperly rejected Plaintiff’s symptom
25 testimony. (Doc 17 at 13–17). The ALJ determined that Plaintiff’s “medically determinable
26 impairments could reasonably be expected to cause the alleged symptoms; however,
27 [Plaintiff’s] statements concerning the intensity, persistence and limiting effects of these
28 symptoms are not entirely consistent with the medical evidence and other evidence in the

1 record.” (Doc. 14-3 at 27).

2 **1. Legal Standard**

3 The Ninth Circuit has established a two-step analysis for an ALJ to determine
4 whether to credit a Plaintiff’s subjective symptom testimony. “First, the ALJ must
5 determine whether the Plaintiff has presented objective medical evidence of an underlying
6 impairment which could reasonably be expected to produce the pain or other symptoms
7 alleged.” *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017) (quoting *Garrison v.*
8 *Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014)). If the Plaintiff presents such evidence, the
9 ALJ then evaluates the Plaintiff’s subjective complaints. *See id.* “In evaluating the
10 credibility of pain testimony after a Plaintiff produces objective medical evidence of an
11 underlying impairment, an ALJ may not reject a Plaintiff’s subjective complaints based
12 solely on a lack of medical evidence to fully corroborate the alleged severity of pain.”
13 *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). Instead, an ALJ must provide
14 “specific, clear, and convincing reasons” for doing so. *Burrell v. Colvin*, 775 F.3d 1133,
15 1138 (9th Cir. 2014).

16 In rendering a credibility determination, the ALJ may consider several factors,
17 including: “(1) ordinary techniques of credibility evaluation, such as the Plaintiff’s
18 reputation for lying, prior inconsistent statements concerning the symptoms, and other
19 testimony by the Plaintiff that appears less than candid; (2) unexplained or inadequately
20 explained failure to seek treatment or to follow a prescribed course of treatment; and (3)
21 the Plaintiff’s daily activities.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008)
22 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996)). If the ALJ relies on these
23 factors and her reliance is supported by substantial evidence, the Court “may not engage in
24 second guessing.” *Id.* (quoting *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002)).

25 **2. Discussion**

26 The ALJ determined that the medical and other evidence conflicted with Plaintiff’s
27 symptom testimony. (Doc. 14-3 at 27). The ALJ found this conflicting evidence to be
28 Plaintiff’s improvement through treatment, the objective medical evidence, and Plaintiff’s

1 daily activities. (*Id.*).

2 **A. Treatment**

3 The ALJ found that Plaintiff’s symptom testimony was not consistent with the
4 evidence of Plaintiff’s improvement through treatment. (*Id.* at 27–28). The ALJ cited
5 numerous examples to support her finding including Plaintiff doing well after her treatment
6 for meningitis related symptoms, (Docs. 14-3 at 27; 14-12 at 103; 14-15 at 188, 190, 192;
7 14-19 at 3, 5, 15, 17, 19, 29, 31, 34, 36, 44, 46, 52, 76, 85, 88; 14-20 at 58, 87, 89; 14-22
8 at 95), improvement in Plaintiff’s headaches through medication, (Docs. 14-3 at 28; 14-9
9 at 102; 14-22 at 40, 67, 88), management of Plaintiff’s asthma through medication, (Docs.
10 14-3 at 28; 14-11 at 33), and improvement in allergic reactions through the use of an EpiPen
11 and Benadryl, (Docs. 14-3 at 28; 14-9 at 56, 65).

12 Plaintiff does not contest the finding that her medical impairments improved
13 through treatments, but simply argues that they did not improve “to the extent that her
14 ability to sustain work activity was restored.” (Doc. 17 at 15). Plaintiff avers that her use
15 of an EpiPen for allergies shows the severity of her allergies, that the administration and
16 side effects of treatments inhibit the ability to work, and that her treatments were abortive,
17 not preventative. (*Id.*).

18 At most, Plaintiff’s assertions show the record is ambiguous as to improvement in
19 Plaintiff’s symptoms through treatment, and, “given that the ALJ is the ‘final arbiter with
20 respect to resolving ambiguities in the medical evidence,’” the Court defers to the ALJ’s
21 finding. *Singh v. Comm’r of Soc. Sec. Admin.*, No. CV-19-02315-PHX-MTM, 2020 WL
22 5757620, at *3 (D. Ariz. Sept. 28, 2020) (quoting *Tommasetti*, 533 F.3d at 1041). Because
23 the ALJ determined that Plaintiff’s condition improved through treatment, the Court finds
24 that the ALJ did not err in discounting Plaintiff’s symptom testimony on this basis. *See*
25 *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007) (holding that evidence of effective
26 treatment is sufficient to discount a claimant’s testimony regarding symptom severity)
27 (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)); *see also Singh.*, 2020 WL
28 5757620, at *2–3 (affirming ALJ’s discounting of plaintiff’s testimony, in part, because

1 plaintiff's conditions improved with medication).

2 **B. Objective Medical Evidence**

3 The ALJ also found that Plaintiff's "statements concerning the intensity, persistence
4 and limiting effects of [her] symptoms are not entirely consistent with the medical
5 evidence." (Doc. 14-3 at 27). The ALJ went on to discuss the medical evidence she found
6 inconsistent citing records indicating that Plaintiff's aseptic meningitis was stable, (Docs.
7 14-3 at 27; 14-22 at 95), Plaintiff's doctors consistently indicated she was in no acute
8 distress, (Docs. 14-3 at 27; 14-10 at 160, 168; 14-11 at 42, 46; 14-12 at 52, 59, 64, 105,
9 111; 14-19 at 9, 13; 14-20 at 60, 67, 73, 75, 81, 85, 93; 14-24 at 6), Plaintiff had full strength
10 in her extremities, normal reflexes, normal coordination, and normal sensation, (Docs. 14-
11 3 at 28; 14-9 at 101; 14-10 at 178, 181, 184, 187, 190, 193, 195-96; 14-11 at 51; 14-13 at
12 19-20, 23; 14-14 at 5; 14-15 at 79; 14-20 at 98, 102, 119; 14-22 at 10, 91), a nerve
13 conduction study of Plaintiff's lower extremity was normal, (Docs. 14-3 at 28; 14-22 at
14 83), Plaintiff's lungs were typically clear to auscultation bilaterally with no wheezes or
15 crackles, (Docs. 14-3 at 28; 14-11 at 46; 14-12 at 52; 14-19 at 13), and Plaintiff's hand
16 tremors were barely perceptible at times, (Docs. 14-3 at 28; 14-10 at 187, 190, 193, 196).

17 Plaintiff argues that the ALJ failed to "identify any specific records contrary to any
18 of [Plaintiff's] specific statements regarding her limitations." (Doc. 17 at 14). The ALJ,
19 however, specifically noted that the cited medical records did not support the extreme
20 limitations Plaintiff asserted with respect to her meningitis symptoms, asthma, allergies,
21 and hand tremors. (Doc. 14-3 at 28). Thus, the Court finds the ALJ sufficiently tied her
22 characterization of the medical record to Plaintiff's symptom testimony. See *Lewis v.*
23 *Comm'r of Soc. Sec. Admin.*, No. CV-20-00765-PHX-MTL, 2021 WL 791467, at *4 (D.
24 Ariz. Mar. 2, 2021) (finding that ALJ, by citing specific instances throughout a multi-year
25 period, adequately tied countervailing medical record to plaintiff's symptom testimony
26 when discounting that testimony); *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155,
27 1161 (9th Cir. 2008) ("Contradiction with the medical record is a sufficient basis for
28 rejecting the claimant's subjective testimony.").

1 inconsistent with her allegations or that suggest that they are exaggerated, irrespective of
2 whether the activities are transferable to a work setting.” *Handy v. Comm’r of Soc. Sec.*
3 *Admin.*, No. CV-19-04545-PHX-JZB, 2020 WL 5699001, at *4 (D. Ariz. Sept. 24, 2020)
4 (citing *Molina*, 674 F.3d at 1112).

5 Plaintiff additionally contends that she was not able to engage in all of the listed
6 daily activities with consistency or for long periods. (Doc. 17 at 16). Even if the evidence
7 is not clear on how long or consistently Plaintiff performed her daily activities, as long as
8 the ALJ’s determination is reasonable, it is not the Court’s role to second-guess it. *See*
9 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (holding that, even when record
10 was equivocal about how long and often plaintiff engaged in daily activities, because ALJ’s
11 interpretation was reasonable the court would not second-guess it). Here, the ALJ provided
12 a reasonable determination based on substantial evidence that Plaintiff’s daily activities
13 were incompatible with the severity of her alleged symptoms. Thus, the ALJ did not err in
14 discounting Plaintiff’s symptom testimony. *See Ghanim v. Colvin*, 763 F.3d 1154, 1165
15 (9th Cir. 2014) (“Engaging in daily activities that are incompatible with the severity of
16 symptoms alleged can support an adverse credibility determination.”); *Singh*, 2020 WL
17 5757620, at *3 (finding ALJ did not err in discounting plaintiff’s allegations of disabling
18 symptoms and limitations because they were inconsistent with her reported activities).

19 **3. Conclusion Regarding Symptom Testimony**

20 Because the ALJ provided specific and legitimate reasons for discounting Plaintiff’s
21 symptom testimony, including Plaintiff’s improvement through treatment, the objective
22 medical evidence, and Plaintiff’s daily activities, the Court will not overturn the denial of
23 disability benefits on this ground. *See Thomas*, 278 F.3d at 959 (“If the ALJ’s credibility
24 finding is supported by substantial evidence in the record, we may not engage in second-
25 guessing.”).

26 **c. Lay Witness Testimony**

27 Plaintiff additionally argues that the ALJ erred in rejecting lay witness testimony.
28 (Doc. 17 at 17–19). The testimony at issue was given by Plaintiff’s mother, fiancé, sister,

1 and friend. (*Id.* at 18). The ALJ, however, did not “reject” the testimony by these witnesses.
2 Instead, the ALJ gave “some weight to these opinions to the extent they are supported by
3 the medical evidence of record.” (Doc. 14-3 at 30). The ALJ found that, while the lay
4 witness testimony bore some weight, it was “not persuasive of warranting additional
5 limitations in the residual functional capacity.” (*Id.*).

6 “Competent lay witness testimony cannot be disregarded without comment, and in
7 order to discount competent lay witness testimony, the ALJ must give reasons that are
8 germane to each witness.” *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1007 (9th
9 Cir. 2015) (internal quotation marks and alterations omitted) (citing *Molina*, 674 F.3d at
10 1114). The ALJ, however, need not “discuss every witness’s testimony on a [sic]
11 individualized, witness-by-witness basis. Rather, if the ALJ gives germane reasons for
12 rejecting testimony by one witness, the ALJ need only point to those reasons when rejecting
13 similar testimony by a different witness.” *Molina*, 674 F.3d at 1114.

14 Here, the ALJ did not reject the lay witness testimony. To the contrary, the ALJ
15 cited the lay opinions and gave them some weight “to the extent they are supported by the
16 medical evidence of record.” (Doc. 14-3 at 30). To the extent that the ALJ rejected the
17 testimony that was not supported by the medical record, lack of record support is an
18 appropriate ground on which to reject the testimony of a lay witness. *See McGraw v. Saul*,
19 817 F. App’x 415, 417 (9th Cir. 2020) (holding it was appropriate to reject lay testimony,
20 in part, because it was inconsistent with medical evidence in the record); *Shultes v.*
21 *Berryhill*, 758 F. App’x 589, 593 (9th Cir. 2018) (same).

22 **d. Remedy**

23 Given the errors in the ALJ decision, Plaintiff asserts that the Court should credit
24 the opinions of Dr. Wechsler and NP Dundon as true and remand the case for an immediate
25 award of benefits. (Doc. 17 at 20–21). The Commissioner argues that there are ambiguities
26 and inconsistencies in the record, so an immediate award of benefits would be improper.
27 (Doc. 20 at 4–8). Instead, the Commissioner asks the Court to remand the matter for further
28 administrative proceedings. (*Id.*).

1 **1. Legal Standard**

2 “A district court may reverse the decision of the Commissioner of Social Security,
3 with or without remanding the cause for a rehearing, but the proper course, except in rare
4 circumstances, is to remand to the agency for additional investigation or explanation.”
5 *Dominguez v. Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (internal citations, quotations, and
6 alteration omitted). “Where . . . an ALJ makes a legal error, but the record is uncertain and
7 ambiguous, the proper approach is to remand the case to the agency.” *Treichler v. Comm’r*
8 *of Soc. Sec. Admin.*, 775 F.3d 1090, 1105 (9th Cir. 2014). This is known as the ordinary
9 remand rule. *Gonzales v. Thomas*, 547 U.S. 183, 185 (2006).

10 When “no useful purpose would be served by further administrative proceedings
11 and the record has been thoroughly developed,” a district court may credit the improperly
12 rejected opinions as true and remand to the agency for an immediate award of benefits. *Hill*
13 *v. Astrue*, 698 F.3d 1153, 1162 (9th Cir. 2012) (internal quotation marks omitted). The
14 Ninth Circuit has developed a three-element test to determine when a remand for an award
15 of benefits is appropriate known as the “credit-as-true rule.” *Treichler*, 775 F.3d at 1100.
16 First, a court asks whether the “ALJ has failed to provide legally sufficient reasons for
17 rejecting evidence, whether claimant testimony or medical opinion.” *Id.* at 1100–01
18 (quoting *Garrison*, 759 F.3d at 1020).

19 Second, a court reviews the record as a whole and determines whether the record
20 has been fully developed, or whether there are outstanding issues that must be resolved and
21 whether further administrative proceedings would be useful. *Id.* at 1101; *Dominguez*, 808
22 F.3d at 407. Further administrative proceedings are generally useful where a record has not
23 been fully developed, there is a need to resolve conflicts or ambiguities, or the presentation
24 of evidence “may well prove enlightening.” *Treichler*, 775 F.3d at 1101 (quoting *I.N.S.*
25 *v. Orlando Ventura*, 537 U.S. 12, 18 (2002)). “Where there is conflicting evidence, and not
26 all essential factual issues have been resolved, a remand for an award of benefits is
27 inappropriate.” *Abdullah v. Colvin*, 639 F. App’x 516, 517 (9th Cir. 2016).

28 Third, if a court concludes that no outstanding issues remain and further proceedings

1 would not be useful, a court may find the relevant testimony credible as a matter of law.
2 *Treichler*, 775 F.3d at 1101. Then, a court may determine “whether the record, taken as a
3 whole, leaves ‘not the slightest uncertainty as to the outcome of [the] proceeding.’” *Id.*
4 (quoting *N. L. R. B. v. Wyman-Gordon Co.*, 394 U.S. 759, 766 n.6 (1969)). When all three
5 elements are met, a court may then remand a case to the agency for an immediate award of
6 benefits. *Id.* Even if all three elements are met, however, it is still in a court’s discretion
7 whether to remand a case for additional evidence or simply award benefits. *Dominguez*,
8 808 F.3d at 407; *Murrieta v. Comm’r of Soc. Sec. Admin.*, No. CV-19-04865-PHX-DWL,
9 2020 WL 6883138, at *5 (D. Ariz. Nov. 24, 2020) (citing *Treichler*, 775 F.3d at 1101–02);
10 *see Connett*, 340 F.3d at 874–76; *Harris v. Comm’r of Soc. Sec. Admin.*, No. CV-19-08159-
11 PCT-DWL, 2020 WL 5939736, at *7 (D. Ariz. Oct. 7, 2020).

12 **2. Discussion**

13 Here, the parties agree that the first element has been satisfied. As discussed *supra*,
14 the ALJ failed to provide legally sufficient reasons for assigning little weight the medical
15 opinions of Dr. Wechsler and NP Dundon. *See supra* Section III.a.

16 The parties disagree, however, on whether the second element has been satisfied.
17 Plaintiff argues that the record is fully developed because the opinions of Dr. Wechsler and
18 NP Dundon clearly establish that Plaintiff is disabled. (Doc. 17 at 21). The Commissioner
19 asserts that further administrative proceedings are needed because the record “is replete
20 with evidence showing that Plaintiff’s impairments would not preclude her from
21 performing all competitive work activity.” (Doc. 20 at 6). The Court agrees with the
22 Commissioner that there are inconsistencies in the record that further administrative
23 proceedings would help resolve. These inconsistencies can be found in the opinions and
24 notes of Dr. Wechsler and NP Dundon and when comparing the opinions of Dr. Wechsler
25 and NP Dundon to other portions of the record.

26 **A. The Opinions and Notes of Dr. Wechsler and NP Dundon**

27 To begin, the medical opinions and notes of Dr. Wechsler and NP Dundon are not
28 entirely consistent with each other or themselves. For example, NP Dundon examined

1 Plaintiff on March 18, 2016 and opined that Plaintiff had “increased difficulty with balance,
2 she is dragging her left leg more and she has had multiple falls.” (Doc. 14-11 at 5). NP
3 Dundon went on to recommend that Plaintiff “use a walker to prevent falls [because
4 Plaintiff] does not have very good balance with just a cane.” (*Id.* at 6). In the same report,
5 however, NP Dundon noted that Plaintiff reported “no difficulty with gait or walking,” had
6 a normal gait and station, and could ambulate independently. (*Id.* at 5–6). Additionally, NP
7 Dundon noted that Plaintiff had “been having a lot of symptoms of headache, nausea and
8 increased weakness in the lower extremity,” but also indicated that Plaintiff had normal
9 bulk in the lower extremities and reported no headaches and normal appetite. (*Id.*).

10 Further, Plaintiff had an appointment with Dr. Wechsler on March 4, 2016 in which
11 Dr. Wechsler noted Plaintiff’s “recurrent episodes of vertigo” which included vertigo on
12 the date of the visit. (*Id.* at 50–51). However, on her March 18, 2016 visit with NP Dundon,
13 Plaintiff reported no symptoms of vertigo. (*Id.* at 5). Further, on March 4, 2016, Dr.
14 Wechsler reported that Plaintiff had normal bilateral motor strength and normal gait in her
15 neurological check, (*id.* at 51), but on March 18, 2016 Plaintiff reported multiple falls, poor
16 balance, and “dragging her left leg” when she walked, (*id.* at 5–6).

17 By citing these inconsistencies, the Court does not mean to suggest that Plaintiff did
18 not experience the symptoms of which she complained as it would be inappropriate for the
19 Court to look at certain portions of the medical record and consider only how Plaintiff
20 presented on the days of her medical appointments. *See Gerstner v. Berryhill*, 879 F.3d
21 257, 262 (7th Cir. 2018) (noting it was inappropriate for an ALJ to fixate on select portions
22 of the medical record while ignoring others). The Court only means to point out that there
23 are inconsistencies between the medical opinions and notes of Dr. Wechsler and NP
24 Dundon. Further administrative proceedings should be held to address these and other
25 inconsistencies. *See Mitchell v. Saul*, No. 19-CV-03249-JSC, 2020 WL 4226518, at *14
26 (N.D. Cal. July 23, 2020) (holding that further administrative proceedings were needed,
27 citing two inconsistencies in treating physicians’ opinions and notes, even though treating
28 physicians’ opinions were erroneously given little weight by the ALJ).

1 proceedings would help resolve, the Court cannot proceed to step three and deem the
2 opinions of Dr. Wechsler and NP Dundon to be true. See *Dominguez*, 808 F.3d at 410;
3 *Murillo v. Colvin*, No. 15-CV-01325-JSC, 2016 WL 777793, at *24 (N.D. Cal. Feb. 29,
4 2016). Rather, the Court must remand for further proceedings. See *Dominguez*, 808 F.3d
5 at 409 (holding that the erroneously weighted opinions of plaintiff's treating physician
6 could not be credited as true, in part, because they conflicted with treating physician's notes
7 and the opinions of non-examining physicians); *Bryant v. Colvin*, No. 15-CV-02982-JSC,
8 2016 WL 3405442, at *26 (N.D. Cal. June 21, 2016) (holding that the improperly weighted
9 opinions of plaintiff's treating and examining physicians could not be credited as true
10 because the entire record left open the question of plaintiff's exact disability status and
11 because of inconsistencies among physicians); *Murillo*, 2016 WL 777793, at *24 (holding
12 erroneously weighted opinions of examining physicians would not be credited as true
13 because of inconsistencies in the record).

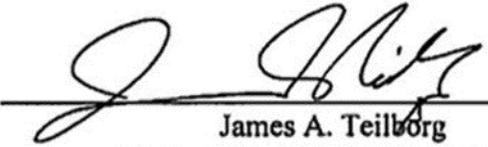
14 **IV. CONCLUSION**

15 Accordingly,

16 **IT IS ORDERED** that the ALJ decision is **VACATED** and the case is
17 **REMANDED** for further proceedings consistent with this Order.

18 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment
19 accordingly.

20 Dated this 26th day of April, 2021.

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25 James A. Teilborg
26 Senior United States District Judge
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