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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MARIA GUADALUPE FLORES  
PATINO,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,<sup>1</sup>

Defendant.

Case No. CV 16-02970-DFM

MEMORANDUM OPINION  
AND ORDER

Maria Guadalupe Flores Patino (“Plaintiff”) appeals from the Social Security Commissioner’s final decision denying her applications for Social Security Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”). For the reasons discussed below, the Commissioner’s decision is reversed and this matter is remanded for further proceedings.

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<sup>1</sup> On January 23, 2017, Berryhill became the Acting Social Security Commissioner. Thus, she is automatically substituted as Defendant under Federal Rule of Civil Procedure 25(d).

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I.

**BACKGROUND**

Plaintiff was born in 1967. Administrative Record (“AR”) 311. On April 10, 2012, she filed applications for DIB and SSI. AR 117-18, 149, 311-25. After her applications were denied, she requested a hearing before an administrative law judge (“ALJ”). AR 189-90. A hearing was held on February 7, 2014, at which Plaintiff, who was represented by counsel, testified through an interpreter. AR 48-76. A vocational expert (“VE”) also testified. Id. On February 24, 2014, an ALJ issued a written decision denying Plaintiff’s claims for benefits. AR 149-62. Plaintiff requested review, AR 290, and on July 30, 2015, the Appeals Council granted review and remanded for resolution of several listed issues, AR 168-74.

A second hearing was held before a different ALJ on October 27, 2015. AR 31-47. Plaintiff, still represented by counsel, again testified through an interpreter, and a different VE testified. Id. In a written decision issued November 30, 2015, the ALJ denied Plaintiff’s claims for benefits. AR 15-24. After incorporating the summary of evidence set forth in the February 2014 decision, the ALJ found that Plaintiff had the following severe impairments: “status post L4-5, L5-S1 fusion in May 2013, with radiculopathy; multi-level degenerative disc disease of the cervical spine; chronic pain syndrome; and depressive disorder NOS with anxiety.” AR 18. The ALJ found that Plaintiff retained the residual functional capacity (“RFC”) to perform “light work” with “the capacity to lift and carry 15 pounds frequently and 20 pounds occasionally; no limitations in sitting, standing, or walking; occasional climbing, balancing, stooping, kneeling, crouching, and crawling; no more than frequent reaching, handling, and fingering; and performing no greater than simple routine tasks.” AR 21. Based on the VE’s testimony, the ALJ found that Plaintiff could perform her past relevant work as a small-products

1 assembler. AR 23.

2 Plaintiff requested review of the ALJ's decision. AR 85. On March 3,  
3 2016, the Appeals Council denied review. AR 1-8. This action followed.

4 **II.**

5 **DISCUSSION**

6 Plaintiff argues that the ALJ erred in discounting the opinion of her  
7 treating psychologist, Gayle K. Windman,<sup>2</sup> and in omitting from her RFC  
8 assessment the portion of orthopedic surgeon Alan Moelleken's opinion  
9 limiting her to only occasional twisting. Joint Stipulation ("JS") at 4.

10 **A. Applicable Law**

11 Three types of physicians may offer opinions in Social Security cases:  
12 those who treated the plaintiff, those who examined but did not treat the  
13 plaintiff, and those who did neither. See 20 C.F.R. §§ 404.1527(c), 416.927(c);<sup>3</sup>

14 \_\_\_\_\_  
15 <sup>2</sup> Although both the ALJ and the parties refer to the relevant opinion  
16 regarding Plaintiff's mental limitations as having been authored by psychiatrist  
17 Thomas Curtis, it was in fact authored by Dr. Windman, a psychologist in Dr.  
18 Curtis's office. See JS at 4-5 n.1 (Plaintiff stating that "[v]arious mental health  
19 professionals at Thomas Curtis, M.D. Inc. collaborated in assessing the  
20 severity of [Plaintiff's] condition as well as the corresponding treatment.  
21 Because Dr. Curtis was part of the treatment team, [Plaintiff] refers to the  
22 opinion in question as Dr. Curtis' treating opinion." (citations omitted)). The  
23 Court refers to the opinion as Dr. Windman's, not Dr. Curtis's.

24 <sup>3</sup> Social Security Regulations regarding the evaluation of opinion  
25 evidence were amended effective March 27, 2017. Where, as here, the ALJ's  
26 decision is the final decision of the Commissioner, the reviewing court  
27 generally applies the law in effect at the time of the ALJ's decision. See Lowry  
28 v. Astrue, 474 F. App'x 801, 805 n.2 (2d Cir. 2012) (applying version of  
regulation in effect at time of ALJ's decision despite subsequent amendment);  
Garrett ex rel. Moore v. Barnhart, 366 F.3d 643, 647 (8th Cir. 2004) ("We  
apply the rules that were in effect at the time the Commissioner's decision  
became final."); Spencer v. Colvin, No. 15-05925, 2016 WL 7046848, at \*9 n.4  
(W.D. Wash. Dec. 1, 2016) ("42 U.S.C. § 405 does not contain any express

1 Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995) (as amended Apr. 9, 1996).  
2 A treating physician’s opinion is generally entitled to more weight than an  
3 examining physician’s opinion, which is generally entitled to more weight than  
4 a nonexamining physician’s. Lester, 81 F.3d at 830. When a treating or  
5 examining physician’s opinion is uncontroverted by another doctor, it may be  
6 rejected only for “clear and convincing reasons.” See Carmickle v. Comm’r  
7 Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citing Lester, 81 F.3d  
8 at 830-31). Where such an opinion is contradicted, the ALJ must provide only  
9 “specific and legitimate reasons” for discounting it. Id.; see also Garrison v.  
10 Colvin, 759 F.3d 995, 1012 (9th Cir. 2014). Moreover, “[t]he ALJ need not  
11 accept the opinion of any physician, including a treating physician, if that  
12 opinion is brief, conclusory, and inadequately supported by clinical findings.”  
13 Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002); accord Tonapetyan v.  
14 Halter, 242 F.3d 1144, 1149 (9th Cir. 2001). The weight accorded to a  
15 physician’s opinion depends on whether it is consistent with the record and  
16 accompanied by adequate explanation, the nature and extent of the treatment  
17 relationship, and the doctor’s specialty, among other things. §§ 404.1527(c),  
18 416.927(c).

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22 authorization from Congress allowing the Commissioner to engage in  
23 retroactive rulemaking”); cf. Revised Medical Criteria for Determination of  
24 Disability, Musculoskeletal System and Related Criteria, 66 Fed. Reg. 58010,  
25 58011 (Nov. 19, 2001) (“With respect to claims in which we have made a final  
26 decision, and that are pending judicial review in Federal court, we expect that  
27 the court’s review of the Commissioner’s final decision would be made in  
28 accordance with the rules in effect at the time of the final decision.”).  
Accordingly, the Court applies the versions of §§ 404.1527 and 416.927 that  
were in effect from August 24, 2012 to March 26, 2017.

1 **B. Dr. Windman's Opinion**

2 Plaintiff contends that the ALJ failed to give specific and legitimate  
3 reasons for discounting the controverted opinion of her treating psychologist,  
4 Dr. Windman. JS at 4-12. For the reasons discussed below, the Court agrees.

5 **1. Relevant Facts**

6 a. Plaintiff's Mental-Health Treatment Through Dr. Curits's  
7 Office and Dr. Windman's Opinion

8 On March 2, 2011, William W. Kaiser, Ph.D., performed an initial  
9 evaluation and report as part of Plaintiff's workers'-compensation case for a  
10 work-related back injury. AR 478-93. Dr. Kaiser noted that Plaintiff was  
11 appropriately dressed and groomed. AR 482. She had "features of distraction  
12 caused by her pain when she related that the pain radiates into her legs"; her  
13 communication was "pressured" when talking about her symptoms; and she  
14 appeared disturbed, distressed, tense, and frustrated when talking about her  
15 physical pain and limitations. AR 482. She demonstrated "diminished  
16 cognitive functioning" and was "noted to be distracted and defective in  
17 concentration, attention, and short-term memory." Id. Plaintiff did not have  
18 hallucinations, paranoia, or delusions. Id. Her insight and judgment were  
19 unimpaired. Id. Psychological testing showed mild-to-moderate depression,  
20 moderate anxiety, and excessive depression. AR 482-84. Dr. Kaiser diagnosed  
21 depressive disorder with anxiety. AR 485. He recommended stress-reduction  
22 biofeedback, individual and group therapy, and medication, and he noted that  
23 psychotherapy should result in a "substantial reduction in the symptoms of  
24 emotional distress." AR 486-87.

25 Plaintiff underwent three stress-reduction biofeedback sessions in March  
26 and April 2011. AR 475-77. She attended three individual psychotherapy  
27 sessions in May and June 2011, AR 470-74, and she attended group therapy  
28 once a month from July 2011 to April 2012. AR 460-69. In treatment notes

1 from those visits, Concepcion Aguirre, Ph.D.,<sup>4</sup> checked boxes indicating that  
2 Plaintiff displayed symptoms including visible anxiety, depressed emotions,  
3 “ventilation of distress,” rapid speech, tears, “emotional dyscontrol,” fear,  
4 insecurity, worry, irritability, and loss. *Id.* In May 2011, a physician assistant  
5 refilled Plaintiff’s medication and checked boxes on the form stating that  
6 Plaintiff was defensive and emotionally withdrawn and displayed visible  
7 anxiety, depressed expressions, fear, insecurity, worry, and irritability. AR 458.

8 In July 2011, Dr. Windman completed a “permanent and stationary  
9 report” as part of Plaintiff’s workers’-compensation case. AR 560-85. Dr.  
10 Windman noted that Plaintiff had injured her back at work in October 2010,  
11 and she subsequently “developed depressive and anxious emotional  
12 complications of physical pain, disability and altered activities.” AR 560, 562.  
13 Dr. Windman noted that Plaintiff had received treatment through Dr. Curtis’s  
14 office, including individual and group therapy, stress-reduction biofeedback,  
15 and the psychotropic medications ProSom, risperidone, and bupropion.<sup>5</sup> AR  
16 562-63. Plaintiff reported that psychotherapy was “particularly helpful in  
17 allowing for the ventilation of emotional distress to decrease tension and  
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19 <sup>4</sup> The signatures on the treatment notes from Plaintiff’s biofeedback  
20 sessions and individual and group psychotherapy are illegible, but Dr.  
21 Windman noted in her opinion that Dr. Aguirre provided the treatment. AR  
22 562-63.

23 <sup>5</sup> ProSom is a benzodiazepine used for the short-term treatment of  
24 insomnia. Estazolam, MedlinePlus, <https://medlineplus.gov/druginfo/meds/a691003.html> (last updated Mar. 15, 2017). Bupropion is an  
25 antidepressant. Bupropion, MedlinePlus, <https://medlineplus.gov/druginfo/meds/a695033.html> (last updated Jan. 15, 2017). Risperidone is an atypical  
26 antipsychotic used to treat symptoms of schizophrenia and mania.  
27 Risperidone, MedlinePlus, <https://medlineplus.gov/druginfo/meds/a694015.html> (last updated Nov. 15, 2015).  
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1 pressure, to reduce isolation and depression, and to put the events of injury  
2 into better perspective in her life.” AR 562-63. She reported that biofeedback  
3 was “particularly helpful in providing better achievement in inducing a  
4 relaxation response, improved methods of coping with stress-intensified  
5 physical symptoms, assistance in attempting to overcome anxiety and panic,  
6 and a reduction in frustration, agitation and emotional irritability.” AR 563.  
7 And she reported that her medication “help[ed] relieve her symptoms of  
8 depression, anxiety, insomnia and memory problems.” Id. Dr. Windman  
9 noted, however, that “[d]espite the passage of time and the input of treatment,  
10 [Plaintiff] has remained distressed over the persistent pain and disability,  
11 particularly involving her back, neck, upper extremities and legs.” Id. Dr.  
12 Windman opined that “[n]o amount of emotional treatment could be  
13 reasonably expected to completely erase the emotional impact and  
14 complications of [Plaintiff’s] work injuries.” Id.

15       Upon examination, Dr. Windman found that Plaintiff was initially  
16 defensive and guarded but she became more communicative once rapport was  
17 established. AR 566. Plaintiff appeared “distressed and disturbed when  
18 recounting that she gets angry at her husband for no reason.” Id. Her thought  
19 process “appeared distraught, particularly when describing how she can no  
20 longer play much with her son.” AR 566. She “appeared depressed when  
21 revealing that she feels sad when she thinks about her disability” and she was  
22 “particularly tearful when she related her back pain and associated  
23 limitations.” Id. Plaintiff “exhibited visible depression in the form of depressive  
24 facial expression, particularly when revealing that she could not do the things  
25 she used to enjoy.” AR 567. She did not have hallucinations, paranoia,  
26 delusions, or psychosis. Id. She demonstrated “diminished cognitive  
27 functioning in the clinical interview situation” and had defects in recall,  
28 concentration, attention, and short-term memory. Id. She could not perform

1 simple calculations. Id. Her insight and judgment were not impaired. Id.

2 Dr. Windman administered psychological tests. The Beck Anxiety  
3 Inventory revealed mild anxiety and the Beck Hopelessness Scale revealed  
4 mild hopelessness. AR 567. The Personality Assessment Inventory showed  
5 average anxiety, “high normal” depression, and no mania, paranoia,  
6 schizophrenia, borderline personality disorder, or psychopathic tendencies. AR  
7 568-72. Dr. Windman opined, however, that Plaintiff’s psychological test  
8 results were invalid “due to excessive defensiveness and denial which distorted  
9 the clinical scale scores, underrepresenting the extent and degree of [Plaintiff’s]  
10 mental disorder.” AR 572.<sup>6</sup> Dr. Windman noted that “[n]evertheless, there was  
11 excessive anxiety and depression with fatigue, confusion, withdrawal and  
12 emotional irritability.” Id. She diagnosed depressive disorder with anxiety and  
13 noted that Plaintiff’s symptoms caused “moderate difficulty in social and  
14 occupational functioning.” AR 573. Dr. Windman further opined that Plaintiff  
15 had “moderate” impairment, which was defined as “compatible with some,  
16 but not all, useful functioning,” in the following “area[s] or aspect[s] of  
17 functioning”: (1) activities of daily living; (2) social functioning; (3)  
18 concentration, persistence, and pace; and (4) adaptation. AR 576. She  
19 recommended that Plaintiff undergo further treatment for her psychological  
20 symptoms. AR 579-80.

21 In September 2011, Dr. Curtis refilled Plaintiff’s medication and checked  
22 a box stating that Plaintiff had “depressed expressions.” AR 457. In December  
23 2011, a physician assistant refilled Plaintiff’s medications and checked boxes  
24 stating that she was defensive, emotionally withdrawn, and displayed

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26 <sup>6</sup> Plaintiff also took the Multiscore Depression Inventory, and Dr.  
27 Windman noted that Plaintiff’s score corresponded both to “severe  
28 depression” and “absent depression.” AR 572.



1 “depressed expressions,” fear, insecurity, worry, irritability, and hostility. AR  
2 456.

3 In July 2012, a physician assistant refilled Plaintiff’s medication and  
4 checked boxes indicating that Plaintiff had “visible anxiety” and “depressed  
5 expressions.” AR 527. In September 2012, Dr. Curtis refilled Plaintiff’s  
6 medication and checked boxes indicating that Plaintiff had visible anxiety and  
7 depressed expressions. AR 526.

8 b. Dr. Edward Ritvo’s Examination and Opinion

9 At the Social Security Administration’s request, in July 2012,  
10 psychiatrist Edward Ritvo examined Plaintiff and rendered an opinion as to  
11 her mental limitations. AR 511-14. He noted that Plaintiff lived in an  
12 apartment with her family, could take care of her basic needs, and had a  
13 driver’s license. AR 512. Dr. Ritvo found that Plaintiff was oriented with  
14 appropriate dress and demeanor, her mood was appropriate, her thoughts were  
15 relevant and nondelusional, and she denied hallucinations. AR 513. Plaintiff  
16 had a limited fund of knowledge but she could perform simple mathematics.  
17 Id. Dr. Ritvo opined that Plaintiff did not “present signs or symptoms that  
18 warrant the diagnosis of a major psychiatric disorder.” Id. He believed that her  
19 prognosis was fair and she had no functional impairments. AR 514.

20 **2. Discussion**

21 In her November 2015 decision, the ALJ noted that Dr. Ritvo found that  
22 Plaintiff did not have a diagnosable psychological condition, but she gave  
23 Plaintiff “the benefit of the doubt” and found that Plaintiff’s depressive  
24 disorder with anxiety was a serious impairment. AR 18-20. The ALJ rejected  
25 Dr. Windman’s opinion that Plaintiff had moderate mental limitations. AR 21-  
26 22. The ALJ concluded that, as a result of her mental impairments, Plaintiff  
27 was limited to performing “no greater than simple routine tasks.” AR 21.

28 The ALJ failed to provide specific and legitimate reasons for discounting

1 Dr. Windman's opinion. The ALJ found that Dr. Windman's opinion was  
2 "not well supported" and was "inconsistent with the weight of the medical  
3 record of minimal mental impairment per" Dr. Ritvo's opinion. AR 21-22. But  
4 the fact that Dr. Ritvo's opinion contradicted Dr. Windman's opinion triggers,  
5 rather than satisfies, the requirement of stating "specific, legitimate reasons."  
6 See Jepsen v. Colvin, No. 16-384, 2016 WL 4547153, at \*3 (C.D. Cal. Aug.  
7 31, 2016) (citing Valentine v. Commissioner, 574 F.3d 685, 692 (9th Cir.  
8 2007)). Moreover, the ALJ herself apparently did not fully credit Dr. Ritvo's  
9 findings and opinion: Dr. Ritvo found that Plaintiff had no mental conditions  
10 or limitations, but the ALJ concluded that Plaintiff suffered from depression  
11 with anxiety and was limited to simple, routine tasks. AR 18, 21.

12 And the ALJ does not discuss the other medical evidence or explain why  
13 it fails to support Dr. Windman's opinion. See Embrey v. Bowen, 849 F.2d  
14 418, 421 (9th Cir. 1988) ("To say that medical opinions are not supported by  
15 sufficient objective findings . . . does not achieve the level of specificity our  
16 prior cases have required . . ."); see also Kinzer v. Colvin, 567 F. App'x 529,  
17 530 (9th Cir. 2014) (finding insufficient ALJ's statements that treating  
18 physicians' opinions "contrasted sharply with the other evidence of record"  
19 and were "not well-supported by the other objective findings in the case  
20 record" (alterations omitted)). In fact, the evidence shows that at the time Dr.  
21 Windman rendered her opinion, Plaintiff had received treatment from Dr.  
22 Curtis's office for over a year, during which time her depression, anxiety, and  
23 other symptoms were repeatedly noted in treatment records.

24 The Commissioner correctly points out that the ALJ incorporated by  
25 reference the previous ALJ's discussion of the medical evidence. JS at 12-13;  
26 AR 18. But that summary fails to support the rejection of Dr. Windman's  
27 opinion. The previous ALJ noted that Plaintiff was "evaluated for depression  
28 and anxiety in the course of her worker's compensation claim" and that

1 treatment notes show depressed moods, visible anxiety, and  
2 diminished concentration and short-term memory; however there  
3 was no evidence of decompensation or significant cognitive  
4 deficits. She underwent psychotherapy and she was provided  
5 psychotropic drugs, which she noted [were] helpful in relieving her  
6 symptoms.

7 AR 159 (citations omitted). The previous ALJ also noted that during Dr.  
8 Windman's July 2011 examination, Plaintiff "was found to have moderate  
9 mental impairment in all aspects of functioning due to psychiatric symptoms,  
10 which were largely secondary to her physical condition" but that no evidence  
11 showed "abnormal cognitive or intellectual functioning." AR 159. The  
12 previous ALJ's discussion fails to support a finding that Dr. Windman's  
13 opinion was unsupported. See Reddick v. Chater, 157 F.3d 715, 725 (9th Cir.  
14 1998) (stating that specific and legitimate reasons can be set forth by a  
15 "detailed and thorough summary of the facts and conflicting clinical evidence,  
16 stating [the ALJ's] interpretation thereof, and making findings"). Indeed, the  
17 previous ALJ credited Dr. Windman's opinion, finding that it was "consistent  
18 with [Plaintiff's] history of pain symptoms at the hearing level." AR 159.

19 The second ALJ also discredited Dr. Windman's opinion because she  
20 "appear[ed] to have simply checked off items on a form." AR 22. But Dr.  
21 Windman did not simply "check off" items; rather, she rendered a 26-page  
22 narrative report that summarized Plaintiff's treatment history, examination  
23 findings, and results of psychological testing. See AR 560-85. And finally, the  
24 ALJ noted that Dr. Windman "apparently was referred to [Plaintiff] by her  
25 attorney." AR 22. But "[t]he purpose for which medical reports are obtained  
26 does not provide a legitimate basis for rejecting them." Lester, 81 F.3d at 832.  
27 The ALJ therefore improperly rejected Dr. Windman's report simply because  
28 Plaintiff may have been referred by her attorney.

1 Because the ALJ failed to provide specific and legitimate reasons for  
2 discounting Dr. Windman’s opinion, reversal is warranted.

3 **C. Dr. Moelleken’s Opinion**

4 Plaintiff argues that the ALJ failed to give any reasons for rejecting Dr.  
5 Moelleken’s finding that Plaintiff was limited to occasional twisting. JS at 16-  
6 18.

7 **1. Relevant Facts**

8 On April 3, 2014, Dr. Moelleken issued a supplemental report as part of  
9 Plaintiff’s workers’-compensation case. AR 758-60. Dr. Moelleken opined that  
10 Plaintiff could lift and carry 15 pounds frequently and occasionally, and she  
11 could lift and carry a maximum of 20 pounds. AR 759. Plaintiff could  
12 occasionally climb, balance, stoop, kneel, crouch, crawl, and twist, and she  
13 could frequently reach, handle, finger, feel, see, hear, and speak. AR 759-60.

14 In her November 2015 decision, the ALJ accorded “substantial weight”  
15 to Dr. Moelleken’s opinion “based on the length, nature and/or extent of the  
16 treating physician’s relationship with [Plaintiff]; supportability with medical  
17 signs and laboratory findings; consistency with the record; and area of  
18 specialization.” AR 21. Although the ALJ incorporated most of Dr.  
19 Moelleken’s findings into Plaintiff’s RFC, she omitted his finding that Plaintiff  
20 could only occasionally twist. Id.

21 **2. Discussion**

22 Plaintiff argues that the ALJ erred by failing to incorporate into the RFC  
23 Dr. Moelleken’s opinion that Plaintiff was limited to only occasional twisting.  
24 JS at 16-18. Plaintiff argues that “the ALJ does not have to adopt all of Dr.  
25 Mollekan’s opinion, but she cannot simply ignore [a] limitation and must  
26 [explain] why ‘significant, probative evidence has been rejected.’” JS at 16  
27 (quoting Vincent v. Heckler, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (per  
28 curiam)). An ALJ errs by purporting to give great weight to an examining

1 physician but then failing to include all of the physician’s opined limitations in  
2 the RFC. Betts v. Colvin, 531 F. App’x 799, 800 (9th Cir. 2013) (finding that  
3 ALJ committed reversible error by according “the greatest weight” to  
4 examining physician’s opinion but then failing to include many of opined  
5 limitations in RFC). And because the Dictionary of Occupational Titles does  
6 not specify whether the job identified by the VE involves any twisting, see  
7 DOT 706.684-022, 1991 WL 679050, it is not clear whether the ALJ’s error  
8 was harmless. Reversal is therefore warranted.

9 **D. Remand for Further Proceedings Is Appropriate**

10 The decision whether to remand for further proceedings is within this  
11 Court’s discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000)  
12 (as amended). Where no useful purpose would be served by further  
13 administrative proceedings, or where the record has been fully developed, it is  
14 appropriate to exercise this discretion to direct an immediate award of benefits.  
15 Id. at 1179 (noting that “the decision of whether to remand for further  
16 proceedings turns upon the likely utility of such proceedings”); Benecke v.  
17 Barnhart, 379 F.3d 587, 593 (9th Cir. 2004).

18 A remand is appropriate, however, where there are outstanding issues  
19 that must be resolved before a determination of disability can be made and it is  
20 not clear from the record that the ALJ would be required to find the claimant  
21 disabled if all the evidence were properly evaluated. Bunnell v. Barnhart, 336  
22 F.3d 1112, 1115-16 (9th Cir. 2003); see also Garrison v. Colvin, 759 F.3d 995,  
23 1021 (9th Cir. 2014) (explaining that courts have “flexibility to remand for  
24 further proceedings when the record as a whole creates serious doubt as to  
25 whether the claimant is, in fact, disabled within the meaning of the Social  
26 Security Act.”). Here, remand is appropriate for the ALJ to fully and properly  
27 assess Dr. Windman’s opinion and, if necessary, explain her reasoning in  
28 rejecting it, and to either state reasons for rejecting Dr. Moelleken’s limitation

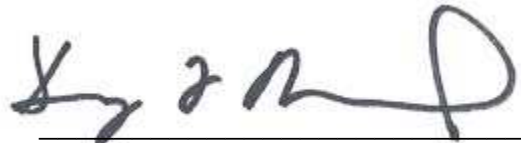
1 to occasional twisting or incorporate that limitation into the RFC. Moreover, it  
2 is not clear whether the ALJ will be required to find Plaintiff disabled after  
3 properly evaluating the medical evidence.

4 **III.**

5 **CONCLUSION**

6 For the reasons stated above, the decision of the Social Security  
7 Commissioner is REVERSED and the action is REMANDED for further  
8 proceedings.

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10 Dated: July 26, 2017



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12 DOUGLAS F. McCORMICK  
13 United States Magistrate Judge  
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