

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DAVID A. L.,
Plaintiff,
v.
KILOLO KIJAKAJI, Acting
Commissioner of Social Security,
Defendant.

Case No. 2:22-cv-02195-GJS

**MEMORANDUM OPINION AND
ORDER**

I. PROCEDURAL HISTORY

Plaintiff David A. L.¹ (“Plaintiff”) filed a complaint seeking review of the decision of the Commissioner of Social Security denying his application for a period of disability and Disability Insurance Benefits (“DIB”). The parties filed consents to proceed before a United States Magistrate Judge (ECF Nos. 11, 12) and briefs (ECF Nos. 17 (“Pl.’s Br.”) and 18 (“Def’t’s Br.”)) addressing the disputed issue in the case. The matter is now ready for decision. For the reasons set forth below, the

¹ In the interest of privacy, this Order uses only the first name and middle and last initials of the last name of the non-governmental party in this case.

1 Court finds that this matter should be remanded.

2
3 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

4 Plaintiff filed an application for DIB on December 23, 2019, alleging
5 disability commencing on November 12, 2017. (ECF No. 15, Administrative
6 Record (“AR”) 10; *see also* AR 161-62.) Plaintiff’s application was denied at the
7 initial level of review and on reconsideration. (AR 21, 78, 90.) A hearing was held
8 before Administrative Law Judge Richard T. Breen (“the ALJ”) on December 22,
9 2020. (AR 10, 31-62.)

10 On February 1, 2021, the ALJ issued an unfavorable decision applying the
11 five-step sequential evaluation process for assessing disability. (AR 10-26); *see* 20
12 C.F.R. § 404.1520(b)-(g)(1). At step one, the ALJ determined that Plaintiff has not
13 engaged in substantial gainful activity since the alleged onset date. (AR 12.) At
14 step two, the ALJ determined that Plaintiff has the following severe impairments:
15 degenerative disc disease; bilateral knee derangement; and bilateral carpal tunnel
16 syndrome (“CTS”). (AR 12.) At step three, the ALJ determined that Plaintiff does
17 not have an impairment or combination of impairments that meets or medically
18 equals the severity of one of the impairments listed in Appendix 1 of the
19 Regulations. (AR 16); *see* 20 C.F.R. pt. 404, subpt. P, app. 1. The ALJ found that
20 Plaintiff has the residual functional capacity (“RFC”) to perform sedentary work, as
21 defined in 20 C.F.R. § 404.1567(a), as follows:

22 [H]e can sustain occasional posturals, but is precluded from the use of
23 ladders; he can occasionally sustain bilateral overhead reaching; he can
24 frequently handle and finger, bilaterally; and he must avoid concentrated
25 exposure to extreme cold, vibration, dangerous machinery, and
unprotected heights.

26 (AR 17.) At step four, the ALJ determined that Plaintiff is not able to perform his
27 past relevant work in the composite job of warehouse clerk and scheduler, and in the
28

1 composite job of warehouse clerk and bench technician. (AR 24.) At step five,
2 based on the testimony of the vocational expert (“VE”), the ALJ found that Plaintiff
3 could perform other jobs existing in significant numbers in the national economy,
4 including representative jobs such as as a lens gauger, a table worker, and an
5 addresser. (AR 25, 56-60.) Based on these findings, the ALJ found Plaintiff not
6 disabled through the date of the decision. (AR 26.)

7 The Appeals Council denied review of the ALJ’s decision on February 2,
8 2022. (AR 1-5.) This action followed.

10 III. GOVERNING STANDARD

11 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
12 determine if: (1) the Commissioner’s findings are supported by substantial
13 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*
14 *Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm’r*
15 *Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012). “Substantial evidence . . . is
16 ‘more than a mere scintilla’ . . . [i]t means – and only means – ‘such relevant
17 evidence as a reasonable mind might accept as adequate to support a conclusion.’”
18 *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citations omitted); *Gutierrez v.*
19 *Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir. 2014) (internal quotation marks
20 and citation omitted).

21 The Court will uphold the Commissioner’s decision when “the evidence is
22 susceptible to more than one rational interpretation.” *See Molina v. Astrue*, 674
23 F.3d 1104, 1110 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. §
24 404.1502(a). However, the Court may review only the reasons stated by the ALJ in
25 his decision “and may not affirm the ALJ on a ground upon which he did not rely.”
26 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The Court will not reverse the
27 Commissioner’s decision if it is based on harmless error, which exists if the error is
28

1 “inconsequential to the ultimate nondisability determination, or if despite the legal
2 error, the agency’s path may reasonably be discerned.” *Brown-Hunter v. Colvin*,
3 806 F.3d 487, 492 (9th Cir. 2015) (internal quotation marks and citations omitted).
4

5 IV. DISCUSSION

6 Plaintiff raises the following issue challenging the ALJ’s findings and
7 determination of non-disability: the ALJ’s RFC assessment of the medical opinions
8 of Worker’s Compensation physician Behnam Sam Tabibian, M.D., lacks the
9 support of substantial evidence. (Pl.’s Br. 5.) As discussed below, the Court agrees
10 with Plaintiff and finds that remand is appropriate.
11

12 A. Legal Standard

13 For claims filed on or after March 27, 2017, new regulations apply that
14 change the framework for how an ALJ must evaluate medical opinion evidence. *See*
15 *Revisions to Rules Regarding Evaluation of Medical Evidence*, 2017 WL 168819,
16 82 Fed. Reg. 5844-01 (Jan. 18, 2017); 20 C.F.R. § 404.1520c. The new regulations
17 provide the ALJ will no longer “give any specific evidentiary weight, including
18 controlling weight, to any medical opinion(s) or prior administrative medical
19 finding(s), including those from [a claimant’s] medical sources.” 20 C.F.R. §
20 404.1520c(a). Instead, an ALJ must consider and evaluate the persuasiveness of all
21 medical opinions or prior administrative medical findings. *See* 20 C.F.R. §
22 404.1520c(b). The factors for evaluating the persuasiveness of medical opinions
23 and prior administrative medical findings include supportability, consistency,
24 relationship with the claimant (including the length of the treatment, frequency of
25 examinations, purpose of the treatment relationship, extent of the treatment
26
27
28

1 relationship, and the examining relationship²), specialization, and “other factors that
2 tend to support or contradict a medical opinion or prior administrative medical
3 finding” (including, but not limited to, “evidence showing a medical source has
4 familiarity with the other evidence in the claim or an understanding of [the
5 Agency’s] disability program’s policies and evidentiary requirements”). 20 C.F.R. §
6 404.1520c(c)(1)-(5).

7 Supportability and consistency are the most important factors, and therefore,
8 the ALJ is required to explain how both factors were considered.³ See 20 C.F.R. §
9 404.1520c(b)(2). The ALJ may, but is not required to, explain how factors such as
10 the “[r]elationship with the claimant,” “[s]pecialization,” and “other factors that tend
11 to support or contradict a medical opinion or prior administrative medical finding,”
12 were considered. 20 C.F.R. § 404.1520c(b)(2). However, when the ALJ finds that
13 two or more medical opinions are equally well-supported and consistent with the

14
15
16 ² The regulations state that “[a] medical source may have a better
17 understanding of [the claimant’s] impairments if he or she examines [the claimant]
18 than if the medical source only reviews evidence in [the claimant’s] folder.” 20
19 C.F.R. § 404.1520c(c)(3)(v).

20 ³ Supportability and consistency are explained in the regulations as follows:

21 (1) Supportability. The more relevant the objective medical evidence
22 and supporting explanations presented by a medical source are to support
23 his or her medical opinion(s) or prior administrative medical finding(s),
24 the more persuasive the medical opinions or prior administrative medical
25 finding(s) will be.

26 (2) Consistency. The more consistent a medical opinion(s) or prior
27 administrative medical finding(s) is with the evidence from other
28 medical sources and nonmedical sources in the claim, the more
persuasive the medical opinion(s) or prior administrative finding(s) will
be.

20 C.F.R. § 404.1520c(c)(1)-(2).

1 record but are not “exactly the same,” he must articulate how he “considered the
2 other most persuasive factors.” 20 C.F.R. § 404.1520c(b)(3). Further, while these
3 new regulations eliminate the hierarchy between treating, examining, and non-
4 examining medical sources, the ALJ must still provide an explanation supported by
5 substantial evidence for finding a medical opinion unpersuasive. *See, e.g., Woods v.*
6 *Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022) (noting that even under the new
7 regulations, an ALJ cannot reject an examining or treating doctor’s opinion as
8 unsupported or inconsistent without providing an explanation supported by
9 substantial evidence).

10
11 **B. The Parties’ Contentions**

12 Plaintiff notes that the ALJ found that the opinion of Plaintiff’s Worker’s
13 Compensation physician, Dr. Tabibian, was “a restriction to ‘essentially . . .
14 sedentary exertion’” and was both consistent with the sedentary assessment of the
15 State agency physician on initial review and supported by clinical and objective
16 findings. (Pl.’s Br. 5 (citing AR 21, 22).) Plaintiff complains that the ALJ did not
17 include all the limitations assessed by Dr. Tabibian, including his limitations
18 assessed prior to October 1, 2019, of “no lifting/carrying; no pushing/pulling; ability
19 to sit and stand as needed to mitigate pain, avoid postural; no squatting, and no
20 standing or walking longer than fifteen minutes per hour.” (Pl.’s Br. 5 (citation
21 omitted).) He argues that because the ALJ found the opinion of Dr. Tabibian and
22 the State agency physician on initial review to be “equally supported, the ALJ was
23 required to state how he considered the treating relationship between [Plaintiff] and
24 Dr. Tabibian” using the factors set forth in 20 C.F.R. § 404.1520c(b) as described
25 above. (Pl.’s Br. 5, 6-7 (citing 20 C.F.R. § 404.1520c(b)).)

26 Plaintiff specifically observes that in Dr. Tabibian’s opinions of September
27 25, 2018, October 30, 2018, December 3, 2018, January 3, 2019, February 7, 2019,
28

1 March 21, 2019, May 2, 2019, and June 13, 2019, he noted, among other things,
2 objective findings of decreased lordosis and anterior head carriage; muscle spasm;
3 muscle guarding and tenderness to palpation of the cervical spine; restricted cervical
4 range of motion; lumbar spasm and tenderness to palpation in the lumbar paraspinal
5 muscles and the sacroiliac joints and notches; restricted lumbar range of motion;
6 bilateral positive straight leg raising; restricted range of motion of the bilateral
7 knees; patellofemoral compression; and crepitus. (Pl.’s Br. 7 (citations omitted).)
8 Between September 25, 2018, and August 29, 2019, Dr. Tabibian’s assessed
9 limitations included “no lifting/carrying; no pushing/pulling; ability to sit and stand
10 as needed to mitigate pain, avoid postural [bending, stooping, twisting, turning, and
11 crouching]; no squatting, and no standing or walking longer than fifteen minutes per
12 hour.” (Pl.’s Br. 5.) Dr. Tabibian also noted Plaintiff walked with an abnormal gait
13 with a limp and use of a cane. (Pl.’s Br. 7 (citing AR 518-22, 889-990, 916).)

14 Plaintiff observes that on October 1, 2019, Dr. Tabibian completed a
15 permanent and stationary report that “included the same limitations as his previous
16 assessments, except Dr. Tabibian changed his previous lifting/carrying limitation
17 from no lifting to no heavy lifting.” (Pl.’s Br. 7 (citing AR 1004-19).) Plaintiff
18 argues that because “the ALJ found Dr. Tabibian’s final assessment consistent with
19 the ability to lift only 10 pounds the ALJ apparently resolved the lifting restriction in
20 [Plaintiff’s] favor.” (Pl.’s Br. 7-8.) He concludes, therefore, that Dr. Tabibian’s
21 limitation of “no lifting/carrying and preclusion of walking for more than fifteen
22 minutes” was in effect from the date of injury, November 12, 2017, until the final
23 assessment on October 1, 2019, and that on October 1, 2019, Dr. Tabibian’s
24 “standing limitation and the sit/stand as needed limitations still applied.” (Pl.’s Br. 8
25 (citing AR 1004, 1018).) Plaintiff argues that the ALJ failed to include the “sit and
26 stand as needed” limitation in the RFC determination, which was not harmless error
27 because the “need to get up and stretch every once in the while [as considered by the
28

1 VE with respect to one of the ALJ’s hypotheticals] is not the same as an ‘at will’
2 sit/stand option.” (Pl.’s Br. 8; *see also* AR 60.)

3 Plaintiff submits that the Court should remand the action “for the ALJ to
4 determine whether an individual limited to sedentary work with the need to sit/stand
5 at will at his work station, and limited to standing only 15 minutes at a time can
6 perform the occupations identified at step 5,” and that the Court “should also find
7 that the date of injury until the date of the Permanent and Stationary Report of Dr.
8 Tabibian exceeded the 12-month durational requirement.” (Pl.’s Br. 9.)

9 Defendant responds that the ALJ resolved any ambiguities and conflicts in
10 Dr. Tabibian’s multiple opinions “by considering those opinions together, in a single
11 analysis, and in light of the substantial objective medical evidence in the record.”
12 (Def’t’s Br. 4.) In doing so, Defendant notes that the ALJ’s RFC determination was
13 consistent with the new regulations, “which put the emphasis on supportability and
14 consistency with the evidence.” (Def’t’s Br. 4-5). Defendant states that the ALJ
15 “duly took note” of Dr. Tabibian’s earlier preclusions “from any lifting, carrying,
16 pushing and pulling as well as the need to alternate between sitting and standing and
17 the preclusion from standing and walking more than 15 minutes per hours,” and
18 explained “that it was unclear whether those were permanent or temporary
19 restrictions, and that [Dr. Tabibian] had issued a clearer, permanent and stationary
20 report in October 2019.”⁴ (Def’t’s Br. 6 (citing AR 22, 24).)

21 According to Defendant, Dr. Tabibian’s October 2019 “restriction from heavy
22 lifting under worker’s compensation guidelines contemplated that [Plaintiff] had lost
23 ‘approximately half of [his] preinjury capacity for lifting.’” (Def’t’s Br. 6 (citing

24 _____

25
26 ⁴ The ALJ never stated that the October 2019 report was “clearer” than any of
27 Dr. Tabibian’s other reports. In fact, he merely noted that this assessment “is
28 considered a restriction to sedentary exertion, which [as with all of Dr. Tabibian’s
other reports] is supported by objective and clinical findings,” and therefore
“persuasive.” (AR 24.)

1 *Macri v. Chater*, 93 F.3d 540, 543-44 (9th Cir. 1996)).) Thus, Plaintiff’s prior work,
2 which required him to lift and carry up to 50 pounds, meant that he could still lift up
3 to 25 pounds, “whereas sedentary work required [Plaintiff] to lift up to 10 pounds.”
4 (Def’t’s Br. 7 (citing 20 C.F.R. § 404.1567(a)).)

5 Defendant also notes that with respect to Plaintiff’s need to alternate sitting
6 and standing at will, the VE testified that it “would not impact Plaintiff’s ability to
7 perform the representative sedentary occupations he identified.” (Def’t’s Br. 7
8 (citing AR 60, 1018).) Additionally, Defendant points out that Plaintiff’s assessed
9 need to avoid prolonged standing and walking for greater than 15 minutes per hour,
10 “translate[s] into a total of 2 hours of standing and walking in an 8-hour day” --
11 consistent with sedentary work, which is defined as “about 2 hours” of standing and
12 walking. (Def’t’s Br. 7 (citing AR 1018; Soc. Sec. Ruling 96-9p, 1996 WL 374185,
13 at *3).)

14
15 **C. Analysis**

16 Plaintiff’s arguments in support of his positions on his stated issue are
17 somewhat disjointed and scattered throughout his brief. As best the Court can
18 glean, Plaintiff requests this Court to find that Plaintiff’s limitations have exceeded
19 the 12-month durational requirement when computed from the date of his injury to
20 Dr. Tabibian’s October 1, 2019, report. (Pl.’s Br. 8, 9.) He seeks a remand of this
21 action “for the ALJ to determine whether an individual limited to sedentary work
22 with the need to sit/stand at will at his work station, and limited to standing only 15
23 minutes at a time can perform the occupations identified at step 5.” (Pl.’s Br. 9.)
24 He also submits that the ALJ committed error because he should have specifically
25 stated how he considered the factors described in 20 C.F.R. § 404.1520c(b)(3)
26 because the ALJ found the opinions of both Dr. Tabibian and the State agency
27 physician to be persuasive. (Pl.’s Br. 6-7.) The Court finds that remand is
28

1 warranted with respect to this latter proposition.

2 Here, the ALJ found the State agency physician opinion on reconsideration to
3 be only “partially persuasive” because it was based on treatment records in
4 evidence, and “there are updated medical records in evidence, which the State
5 Agency did not review.” (AR 23.) He found the State agency physician opinion on
6 initial review to be “more persuasive”:

7 [T]he . . . State Agency assessment [on initial review] actually included
8 more restrictions in [Plaintiff’s] functional capacity which are consistent
9 with the updated records . . . [and] therefore is more persuasive [than the
10 reconsideration review]. There is insufficient explanation to account for
11 the changes in the functional capacity assessments between [initial
12 review and reconsideration review]; and for these reasons, [the initial
13 review opinion] is more persuasive [than the reconsideration review
14 opinion], since the undersigned finds it more consistent with the record
15 as a whole.(AR 24.) The ALJ did not otherwise discuss the State agency
16 physician’s findings on initial review.^[5]

14 (AR 24.) The ALJ also found Dr. Tabibian’s reports to be persuasive because (1)
15 Dr. Tabibian relied on objective clinical testing and imaging reports in support of his
16 assessments, and (2) his restriction to sedentary exertion was “consistent with the
17 more recent assessments by the State Agency.” (AR 22.) With respect to Dr.
18 Tabibian’s October 30, 2018, evaluation and his specific limitations precluding
19 Plaintiff from any lifting, carrying, pushing, or pulling, finding a need to alternate
20 between sitting and standing, and precluding Plaintiff from being able to stand or
21 walk for more than 15 minutes in an hour,⁶ the ALJ commented only that Dr.

22
23
24 ⁵ The Court observes that -- inexplicably -- the State agency physician on
25 reconsideration in June 2020 appears *not* to have reviewed Dr. Tabibian’s records,
26 despite the fact that the physician on initial review in February 2020 reviewed at
27 least Dr. Tabibian’s September 25, 2018, March 21, 2019, and August 29, 2019,
28 reports. (*Compare* AR 83, 87 with AR 70, 71.)

⁶ The Court notes that the ALJ did not specifically discuss Dr. Tabibian’s
(cont’d . . .)

1 Tabibian “failed to indicate whether these functional limitations were permanent or
2 temporary.” (AR 22.) The ALJ went on to state:

3 Dr. Tabibian, however, has indicated he relied on objective clinical
4 testing, as well as imaging reports, in support of the assessment, [and his]
5 restriction essentially to sedentary exertion is consistent with the more
6 recent assessments by the State Agency. For these reasons, Dr.
7 Tabibian’s assessment is persuasive.

7 (AR 22.)

8 The ALJ then specifically discussed Dr. Tabibian’s January 3, 2019, report,
9 noting that Plaintiff “continued to complain of pain and radiating numbness,” and
10 “continued to have tenderness and reduced range of motion on exam.” (AR 22.) He
11 also stated that Dr. Tabibian’s “functional assessment was unchanged [and] [t]he
12 persuasiveness of this updated evaluation is the same, since it remains based on
13 objective and clinical findings, as well as consistent with the most recent
14 assessments in evidence.” (AR 22.) The ALJ then individually considered each of
15 Dr. Tabibian’s reports dated between February 7, 2019, and August 29, 2019, and
16 for each generally stated the same thing: Plaintiff’s “complaints essentially were
17 unchanged [and] [t]he functional restrictions also were unchanged. The
18 persuasiveness of this updated evaluation is the same, since it remains based on
19 objective and clinical findings, as well as consistent with the most recent
20 assessments in evidence.” (AR 22-23.)

21 Thus, between September 25, 2018, and August 29, 2019 -- notwithstanding
22 the ALJ’s comment (without stating any conclusion based on that comment), that
23 Dr. Tabibian failed to indicate “whether these functional limitations were permanent
24 or temporary” -- Plaintiff consistently exhibited the same complaints and physical
25

26
27 September 25, 2018, Initial Report, or his December 3, 2018, report, in which Dr.
28 Tabibian also noted the same restrictions. (AR 869, 876-77, 885.)

1 findings on assessment and, Dr. Tabibian’s functional assessment, whether the
2 functional limitations were considered permanent or temporary, was unchanged
3 during that time period.

4 In his October 1, 2019, report, based on his own examination and previous
5 clinical and diagnostic findings, Dr. Tabibian diagnosed Plaintiff with cervical spine
6 musculoligamentous sprain/strain; lumber spine musculoligamentous sprain/strain
7 with bilateral sacroiliac joint sprain; bilateral wrist sprain/strain with positive
8 electrodiagnostic study findings revealing moderate bilateral carpal tunnel
9 syndrome; and bilateral knee patellofemoral arthralgia. (AR 1013.) He continued to
10 find that Plaintiff was restricted to sitting and standing as needed for pain; and
11 should avoid prolonged standing and walking for greater than 15 minutes per hour.
12 (AR 1018.) However, he changed his previous no lifting, carrying, pushing, and
13 pulling limitations to “no *heavy* lifting, carrying, pushing, and pulling,” and his
14 limitations to avoid bending, stooping, twisting, turning, and crouching, and no
15 squatting, changed to avoid *repetitive* bending, stooping, twisting, turning,
16 squatting, and crouching. (AR 522, 1018 (emphasis added).)

17 By way of comparison, on February 20, 2020, on initial review, the State
18 agency physician opined that Plaintiff had the capability to perform sedentary work
19 as follows: occasionally lift and/or carry 10 pounds, and frequently lift and/or carry
20 less than 10 pounds; upward pulling with the same limits as lift and/or carry; stand
21 and/or walk with normal breaks for a total of two hours; sit with normal breaks for a
22 total of about six hours in an eight-hour workday; occasionally climb ramps/stairs;
23 never climb ladders, ropes or scaffolds; occasionally balance, stoop, kneel, crouch,
24 and crawl; limited left and right overhead reaching; limited bilateral handling and
25 fingering; and avoid concentrated exposure to vibration and hazards. (AR 74-76.)

26 In his RFC determination, the ALJ found Plaintiff can sustain occasional
27 postural activities but is precluded from the use of ladders; he can occasionally
28

1 sustain bilateral overhead reaching; he can frequently handle and finger, bilaterally;
2 and he must avoid concentrated exposure to extreme cold, vibration, dangerous
3 machinery, and unprotected heights. While the finding that Plaintiff can sustain
4 occasional postural activities was suggested by both the State agency reviewer and
5 Dr. Tabibian in his October 2019 report, other RFC findings, including occasional
6 bilateral overhead reaching and avoiding concentrated exposure to environmental
7 hazards, were suggested only by the State agency reviewer. One of the ALJ's
8 determined RFC limitations -- *frequent* handling and fingering bilaterally -- was not
9 suggested by either the State agency reviewer (who limited Plaintiff to occasional
10 handling and fingering) or Dr. Tabibian (who diagnosed moderate bilateral CTS),
11 and the ALJ also did not include Dr. Tabibian's limitations of sitting and standing at
12 will to mitigate pain, and no standing or walking longer than fifteen minutes per
13 hour.

14 Because the ALJ found the opinions of Dr. Tabibian and the State agency
15 physician on initial review to be persuasive because they were consistent with the
16 evidence of record, and because the opinions of those physicians reached different
17 conclusions, the ALJ was required to articulate how he "considered the other most
18 persuasive factors" in arriving at his RFC determination but failed to do so. 20
19 C.F.R. § 404.1520c(b)(3). For instance, the ALJ should have explained his RFC
20 limitation to *frequent* handling and fingering, despite the State agency physician
21 limiting Plaintiff to *occasional* handling and fingering, Dr. Tabibian's diagnosis of
22 moderate bilateral CTS, and the ALJ's determination that Plaintiff has the severe
23 impairment of bilateral CTS. He also should have explained why he appears to have
24 ignored Dr. Tabibian's limitations to sitting and standing at will and no standing or
25 walking longer than fifteen minutes per hour. An ALJ errs when provides an
26 incomplete RFC ignoring "significant and probative evidence." *Hill v. Astrue*, 698
27 F.3d 1153, 1161-62 (9th Cir. 2012) (further noting that the error is not harmless
28

1 when an ALJ fails to discuss significant and probative evidence favorable to a
2 claimant’s position because when the RFC is incomplete, the hypothetical question
3 presented to the VE is incomplete and, therefore, the ALJ’s reliance on the VE’s
4 answers is improper)).

5 In this case, because the VE testified that there is no light or sedentary work
6 available for an individual who is limited to lifting and carrying five pounds⁷ and
7 occasional bilateral handling and fingering, the Court is unable to conclude that the
8 ALJ’s errors in evaluating Plaintiff’s subjective complaints were “harmless” or
9 “inconsequential to the ultimate non-disability determination.” *Brown-Hunter*, 806
10 F.3d at 492.

11 12 **V. REMAND FOR FURTHER PROCEEDINGS**

13 Remand is appropriate, as the circumstances of this case suggest that further
14 administrative proceedings could remedy the ALJ’s errors. *See Dominguez v.*
15 *Colvin*, 808 F.3d 403, 407 (9th Cir. 2015) (“Unless the district court concludes that
16 further administrative proceedings would serve no useful purpose, it may not
17 remand with a direction to provide benefits.”); *Treichler v. Comm’r of Soc. Sec.*
18 *Admin.*, 775 F.3d 1090, 1101, n.5 (9th Cir. 2014) (remand for further administrative
19 proceedings is the proper remedy “in all but the rarest cases”); *Harman v. Apfel*, 211
20 F.3d 1172, 1180-81 (9th Cir. 2000) (remand for further proceedings rather than for
21 the immediate payment of benefits is appropriate where there are “sufficient
22
23

24 ⁷ Sedentary work involves lifting no more than 10 pounds. 20 C.F.R. §
25 404.1567(a). Each of three occupations suggested by the VE requires frequent
26 handling and fingering. *Dictionary of Occupational Titles* (4th ed. Rev. 1991), at
27 Nos. 716-687-030, 739.687-182, 209.587-010. Thus, if plaintiff had been found
28 limited to only occasional handling and fingering as suggested by the State agency
physician, it is reasonable to assume those three occupations would have been
precluded or severely eroded.

1 unanswered questions in the record”).

2 Having found that remand is warranted, the Court declines to address
3 Plaintiff’s remaining arguments. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir.
4 2012) (“Because we remand the case to the ALJ for the reasons stated, we decline to
5 reach [plaintiff’s] alternative ground for remand.”).

6

7

VI. CONCLUSION

8

For all the foregoing reasons, **IT IS ORDERED** that:

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

DATED: March 10, 2023



HON. GAIL J. STANDISH
UNITED STATES MAGISTRATE JUDGE