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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERONICA JANENE SCHMIDT,  
Plaintiff,  
v.  
MARTIN O’MALLEY,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>  
Defendant.

Case No. 1:23-cv-01240-HBK  
ORDER GRANTING PLAINTIFF’S MOTION  
FOR SUMMARY JUDGMENT, DENYING  
DEFENDANT’S CROSS-MOTION FOR  
SUMMARY JUDGMENT, AND  
REMANDING CASE TO COMMISSIONER  
OF SOCIAL SECURITY<sup>2</sup>  
(Doc. Nos. 13, 15)

Veronica Janene Schmidt (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for disability insurance benefits under the Social Security Act. (Doc. No. 1). The matter is currently before the Court on the parties’ briefs, which were submitted without oral argument. (Doc. Nos. 13, 15). For the reasons set forth more fully below, the Court grants Plaintiff’s motion for summary judgment, denies Defendant’s cross motion for summary judgment, and remands the

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<sup>1</sup> The Court has substituted Martin O’Malley, who has been appointed the Acting Commissioner of Social Security, as the defendant in this suit. *See* Fed. R. Civ. P. 25(d).  
<sup>2</sup> Both parties have consented to the jurisdiction of a magistrate judge in accordance with 28 U.S.C. §636(c)(1). (Doc. No. 10).

1 matter to the Commissioner of Social Security for further administrative proceedings.

2 **I. JURISDICTION**

3 Plaintiff protectively filed for disability insurance benefits on February 17, 2021, alleging  
4 an onset date of July 6, 2020. (AR 197-203). At the hearing, Plaintiff amended to a closed period  
5 of disability ending November 1, 2021, the date Plaintiff returned to work. (AR 47). Benefits  
6 were denied initially (AR 63-85, 115-19), and upon reconsideration (AR 86-105, 121-26).  
7 Plaintiff appeared before an Administrative Law Judge (“ALJ”) on July 8, 2022. (AR 43-62).  
8 Plaintiff was represented by counsel, and testified at the hearing. (*Id.*). The ALJ issued an  
9 unfavorable decision (AR 12-42), and the Appeals Council denied review (AR 1-6). The matter  
10 is now before this Court pursuant to 42 U.S.C. § 1383(c)(3).

11 **II. BACKGROUND**

12 The facts of the case are set forth in the administrative hearing and transcripts, the ALJ’s  
13 decision, and the briefs of Plaintiff and Commissioner. Only the most pertinent facts are  
14 summarized here.

15 Plaintiff was 56 years old at the time of the hearing. (*See* AR 210). She completed  
16 twelfth grade. (AR 215). She lives with her husband and her mother. (AR 53). Plaintiff has  
17 work history for 38 years in child protective services as an administrative clerk. (AR 55, 58).  
18 Plaintiff left work after back surgery, returned a year later, and at the time of the hearing she was  
19 back working at her old job; however, she reported the job was going to end soon after the  
20 hearing because Plaintiff could no longer perform her job duties. (AR 48, 51). Plaintiff testified  
21 she could no longer work because of excruciating pain and an inability to take her pain and  
22 mental health medications at work in order to perform her job duties of standing, sitting down,  
23 lifting, pushing, and typing all day. (AR 48-52). She reported that since returning to work she  
24 misses roughly 50% of her scheduled work. (AR 50-51). She has difficulty sleeping and  
25 sometimes uses a cane. (AR 53, 56). Plaintiff testified that before she returned to work in  
26 November 2021, she was able to lift maybe 5 to 10 pounds due primarily to the issues with her  
27 back. (AR 56). She reported that the spinal stimulator installed during back surgery worked for  
28 two weeks, but she wants to have it removed as it is no longer working. (AR 48-49).

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### III. STANDARD OF REVIEW

A district court’s review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. “The court will uphold the ALJ’s conclusion when the evidence is susceptible to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ’s decision on account of an error that is harmless. *Id.* An error is harmless where it is “inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* (quotation and citation omitted). The party appealing the ALJ’s decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### IV. FIVE-STEP SEQUENTIAL EVALUATION PROCESS

A claimant must satisfy two conditions to be considered “disabled” within the meaning of the Social Security Act. First, the claimant must be “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be “of such severity that he is not only unable to do his previous work[,] but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” 42 U.S.C. § 423(d)(2)(A).

1 The Commissioner has established a five-step sequential analysis to determine whether a  
2 claimant satisfies the above criteria. See 20 C.F.R. § 404.1520(a)(4)(i)-(v). At step one, the  
3 Commissioner considers the claimant’s work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the  
4 claimant is engaged in “substantial gainful activity,” the Commissioner must find that the  
5 claimant is not disabled. 20 C.F.R. § 404.1520(b).

6 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step  
7 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20  
8 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers from “any impairment or combination of  
9 impairments which significantly limits [his or her] physical or mental ability to do basic work  
10 activities,” the analysis proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s  
11 impairment does not satisfy this severity threshold, however, the Commissioner must find that the  
12 claimant is not disabled. 20 C.F.R. § 404.1520(c).

13 At step three, the Commissioner compares the claimant’s impairment to severe  
14 impairments recognized by the Commissioner to be so severe as to preclude a person from  
15 engaging in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(iii). If the impairment is as  
16 severe or more severe than one of the enumerated impairments, the Commissioner must find the  
17 claimant disabled and award benefits. 20 C.F.R. § 404.1520(d).

18 If the severity of the claimant’s impairment does not meet or exceed the severity of the  
19 enumerated impairments, the Commissioner must pause to assess the claimant’s “residual  
20 functional capacity.” Residual functional capacity (RFC), defined generally as the claimant’s  
21 ability to perform physical and mental work activities on a sustained basis despite his or her  
22 limitations, 20 C.F.R. § 404.1545(a)(1), is relevant to both the fourth and fifth steps of the  
23 analysis.

24 At step four, the Commissioner considers whether, in view of the claimant’s RFC, the  
25 claimant is capable of performing work that he or she has performed in the past (past relevant  
26 work). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is capable of performing past relevant  
27 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 404.1520(f). If  
28 the claimant is incapable of performing such work, the analysis proceeds to step five.

1 At step five, the Commissioner considers whether, in view of the claimant’s RFC, the  
2 claimant is capable of performing other work in the national economy. 20 C.F.R. §  
3 404.1520(a)(4)(v). In making this determination, the Commissioner must also consider  
4 vocational factors such as the claimant’s age, education, and past work experience. 20 C.F.R. §  
5 404.1520(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must  
6 find that the claimant is not disabled. 20 C.F.R. § 404.1520(g)(1). If the claimant is not capable  
7 of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is  
8 therefore entitled to benefits. 20 C.F.R. § 404.1520(g)(1).

9 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*,  
10 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the  
11 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such  
12 work “exists in significant numbers in the national economy.” 20 C.F.R. § 404.1560(c)(2);  
13 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

#### 14 **V. ALJ’S FINDINGS**

15 At step one, the ALJ found that Plaintiff has engaged in substantial gainful activity (SGA)  
16 since July 6, 2020, the alleged onset date, and as a result Plaintiff has not been under a disability,  
17 as defined in the Social Security Act, from November 1, 2021 through the date of the decision.  
18 (AR 18). However, as noted by the ALJ, “nonetheless, the following findings still apply to all  
19 periods since July 6, 2020, the alleged onset date, through the date of [the] decision, including  
20 periods when the [Plaintiff] was engaging in SGA and not engaging in SGA.” (AR 18). At step  
21 two, the ALJ found that Plaintiff has the following severe impairment: lumbar spine degenerative  
22 disc disease. (AR 18). At step three, the ALJ found that Plaintiff does not have an impairment or  
23 combination of impairments that meets or medically equals the severity of a listed impairment.  
24 (AR 23-24). The ALJ then found that Plaintiff has the RFC to

25 occasionally and frequently lift or carry a maximum of 10 pounds in  
26 light work as defined in 20 CFR 404.1567(b) except the claimant can  
27 stand or walk at least 6 hours in an 8-hour workday and sit for at least  
28 6 hours in an 8-hour workday. The claimant can occasionally climb  
ramps, stairs, ladders, ropes, and scaffolds, frequently balance, stoop,  
kneel, and crouch, and occasionally crawl.

1 (AR 25). At step four, the ALJ found that Plaintiff capable of performing past relevant work as  
2 an administrative clerk. (AR 35). On that basis, the ALJ concluded that Plaintiff has not been  
3 under a disability, as defined in the Social Security Act, from July 6, 2020, through the date of the  
4 decision. (AR 36).

## 5 VI. ISSUES

6 Plaintiff seeks judicial review of the Commissioner’s final decision denying her disability  
7 insurance benefits under Title II of the Social Security Act. (Doc. No. 1). Plaintiff raises the  
8 following issues for this Court’s review: whether the ALJ properly considered the medical  
9 opinion of Dinesh Sharma, M.D. (Doc. No. 13 at 11-17).

## 10 VII. DISCUSSION

### 11 A. Medical Opinions

12 For claims filed on or after March 27, 2017, new regulations apply that change the  
13 framework for how an ALJ must evaluate medical opinion evidence. *Revisions to Rules*  
14 *Regarding the Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18,  
15 2017); 20 C.F.R. §§ 404.1520c, 416.920c. The new regulations provide that the ALJ will no  
16 longer “give any specific evidentiary weight...to any medical opinion(s)...” *Revisions to Rules*,  
17 2017 WL 168819, 82 Fed. Reg. 5844, at 5867-68; see 20 C.F.R. §§ 404.1520c(a), 416.920c(a).  
18 Instead, an ALJ must consider and evaluate the persuasiveness of all medical opinions or prior  
19 administrative medical findings from medical sources. 20 C.F.R. §§ 404.1520c(a) and (b),  
20 416.920c(a) and (b). The factors for evaluating the persuasiveness of medical opinions and prior  
21 administrative medical findings include supportability, consistency, relationship with the claimant  
22 (including length of the treatment, frequency of examinations, purpose of the treatment, extent of  
23 the treatment, and the existence of an examination), specialization, and “other factors that tend to  
24 support or contradict a medical opinion or prior administrative medical finding” (including, but  
25 not limited to, “evidence showing a medical source has familiarity with the other evidence in the  
26 claim or an understanding of our disability program’s policies and evidentiary requirements”). 20  
27 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5).

28 Supportability and consistency are the most important factors, and therefore the ALJ is

1 required to explain how both factors were considered. 20 C.F.R. §§ 404.1520c(b)(2),  
2 416.920c(b)(2). Supportability and consistency are explained in the regulations:

3 (1) Supportability. The more relevant the objective medical evidence  
4 and supporting explanations presented by a medical source are to  
5 support his or her medical opinion(s) or prior administrative medical  
6 finding(s), the more persuasive the medical opinions or prior  
7 administrative medical finding(s) will be.

8 (2) Consistency. The more consistent a medical opinion(s) or prior  
9 administrative medical finding(s) is with the evidence from other  
10 medical sources and nonmedical sources in the claim, the more  
11 persuasive the medical opinion(s) or prior administrative medical  
12 finding(s) will be.

13 20 C.F.R. §§ 404.1520c(c)(1)-(2), 416.920c(c)(1)-(2). The ALJ may, but is not required to,  
14 explain how the other factors were considered. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).  
15 However, when two or more medical opinions or prior administrative findings “about the same  
16 issue are both equally well-supported ... and consistent with the record ... but are not exactly the  
17 same,” the ALJ is required to explain how “the other most persuasive factors in paragraphs (c)(3)  
18 through (c)(5)” were considered. 20 C.F.R. §§ 404.1520c(b)(3), 416.920c(b)(3).

19 The Ninth Circuit has additionally held that the new regulatory framework displaces the  
20 longstanding case law requiring an ALJ to provide “specific and legitimate” or “clear and  
21 convincing” reasons for rejecting a treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32  
22 F.4th 785, 787 (9th Cir. 2022). Nonetheless, in rejecting an examining or treating doctor’s  
23 opinion as unsupported or inconsistent, an ALJ must still provide an explanation supported by  
24 substantial evidence. *Id.* at 792. This means that the ALJ “must ‘articulate ... how persuasive’  
25 [he or she] finds ‘all of the medical opinions’ from each doctor or other source ... and ‘explain  
26 how [he or she] considered the supportability and consistency factors’ in reaching these findings.”  
27 *Id.* (citing 20 C.F.R. §§ 404.1520c(b), 404.1520(b)(2)).

28 Plaintiff argues the ALJ improperly evaluated the May 2022 medical opinion of treating  
physician Dinesh Sharma, M.D.<sup>3</sup> (Doc. No. 13 at 11-17). Dr. Sharma opined that Plaintiff would

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<sup>3</sup> The ALJ found additional “statements” by Dr. Sharma unpersuasive. (AR 32-33 (citing AR 362 (advising no bending, lifting, or twisting until 3 months after surgery, and no driving until cleared), 555 (same), 640 (setting up accommodation to work from home up to 20 hours per week), 708 (general discharge summary advising to avoid bending, lifting, twisting and strenuous activity post-surgery), 1150

1 be off task 25% of a typical workday, able to maintain attention and concentration less than 1  
2 hour before requiring a break, and would be absent more than 4 days per month on average as a  
3 result of medical impairments if she tried to work full time. (AR 1107). Dr. Sharma opined that  
4 Plaintiff can rarely lift 10 pounds or less, never lift twenty pounds or more, sit, stand, and walk  
5 less than one hour in an 8-hour workday, required the option to sit/stand at-will, occasionally use  
6 bilateral upper extremities, and rarely balance, stoop, kneel, crouch, crawl, and rotate head and/or  
7 neck. (AR 1108-09). In March 2022, Dr. Sharma also opined in a treatment note that Plaintiff  
8 could not lift more than 10 pounds. (AR 1084). The ALJ found these “statements” were not  
9 persuasive.

10 Specifically, the ALJ found Dr. Sharma’s opinion was inconsistent with the “overall  
11 evidence” because he notes “diagnoses for which [he] has provided treatment” as left shoulder  
12 pain, bilateral elbow pain, and bilateral hand pain (AR 1084, 1096, 1107); however, Plaintiff  
13 “made no specific complaints at the hearing concerning the upper extremities,” and “[w]hen  
14 asked at the hearing if anything else would interfere with her working other than what she  
15 testified to, the claimant responded, ‘No.’” (AR 32, 57). Similarly, the ALJ found Dr. Sharma’s  
16 “statements concerning functional limitations that are not associated with the bilateral upper  
17 extremities, such as with sitting and standing,” “will not be analyzed and are as well [sic]  
18 unpersuasive” because Dr. Sharma’s treatment of Plaintiff “concerned” the left shoulder, bilateral  
19 elbows, and bilateral hands. (AR 32). Plaintiff argues the ALJ “failed to engage in a proper  
20 analysis of the consistency and supportability factors of Dr. Sharma’s opinion and instead  
21 summarily discredited it without due consideration – citing it as ‘inconsistent with the overall  
22 evidence’ and outside of Dr. Sharma’s realm of treatment.” (Doc. No. 13 at 13). The Court  
23 agrees.

24 As to the consistency factor, Defendant argues “the ALJ reasonably discredited Dr.

25 \_\_\_\_\_  
26 (general discharge instructions to avoid strenuous exercise, and no twisting turning, or lifting anything  
27 heavier than a fork)). As Plaintiff has not identified or challenged these “statements” in her opening brief,  
28 the Court declines to address them here. *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161  
n.2 (9th Cir. 2008) (court may decline to consider issues not raised with specificity in plaintiff’s opening  
brief); *see also Kim v. Kang*, 154 F.3d 996, 1000 (9th Cir. 1998) (the Court may not consider on appeal  
issues not “specifically and distinctly argued” in the party’s opening brief).



1 Sharma's upper extremity limitations as inconsistent with the record, particularly Plaintiff's  
2 testimony showing that only her back condition impaired her from working. Such devaluation of  
3 a medical opinion that is inconsistent with the record as a whole is proper." (Doc. No. 15 at 7-8).  
4 Plaintiff argues the ALJ also generally found Dr. Sharma's "statements are inconsistent with the  
5 overall evidence" without considering "probative evidence" from the relevant adjudicatory period  
6 including surgical intervention and the need for and ambulation device. (Doc. No. 13 at 15; AR  
7 32). When considering the medical opinion evidence, the ALJ must do more than state a  
8 conclusion; rather, the ALJ must "set forth his own interpretations and explain why they, rather  
9 than the doctors', are correct." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998); *Brown-*  
10 *Hunter*, 806 F.3d at 495 (a court "cannot substitute [the court's] conclusions for the ALJ's, or  
11 speculate as to the grounds for the ALJ's conclusions. Although the ALJ's analysis need not be  
12 extensive, the ALJ must provide some reasoning in order for [the court] to meaningfully  
13 determine whether the ALJ's conclusions were supported by substantial evidence."). "This can  
14 be done by setting out a detailed and thorough summary of the facts and conflicting clinical  
15 evidence, stating his interpretation thereof, and making findings." *Reddick*, 157 F.3d at 725. In  
16 addition, as noted above, the Ninth Circuit clarified that under the new regulations for considering  
17 medical evidence, "an ALJ cannot reject an examining or treating doctor's opinion as  
18 unsupported or inconsistent without providing an explanation supported by substantial evidence.  
19 The agency must 'articulate ... how persuasive' it finds 'all of the medical opinions' from each  
20 doctor or other source, and 'explain how [it] considered the supportability and consistency  
21 factors' in reaching these findings." *Woods*, 32 F.4th at 792 (internal citations omitted).

22 Here, the ALJ fails to reference any specific objective or clinical medical source evidence  
23 from the "overall" record that is inconsistent with the precise limitations opined by Dr. Sharma,  
24 nor does the ALJ offer any explanation as to how any of the specific limitations opined by Dr.  
25 Sharma, including limitations on attention and concentration, attendance, sitting, standing,  
26 walking, lifting, using her hands, and postural activities, are inconsistent with the longitudinal  
27 medical evidence from the relevant period. (*See* AR 32, 1107-110). Thus, while the revised  
28 regulations direct the ALJ to consider both the medical and "nonmedical" sources in evaluating

1 the consistency factor (20 C.F.R. §§ 404.1520c(c)(2)), the ALJ’s reliance on Plaintiff’s testimony  
2 that her inability to lift more than 5 to 10 pounds was “primarily due to the issues with [her]  
3 back” and her response of “No” to the question “is there anything else that you would believe  
4 would interfere with [her] continuing to work” (AR 56-57) as the sole reason to discount all of the  
5 limitations opined by Dr. Sharma because he acknowledged treating her for primarily for upper  
6 extremity complaints, does not rise to the level of substantial evidence to wholesale reject the  
7 opined limitations.

8 As to the supportability factor, Defendant argues because the limitations assessed by Dr.  
9 Sharma were based upon his diagnoses regarding Plaintiff’s shoulder and bilateral elbows and  
10 hands, “the ALJ correctly reasoned that Dr. Sharma’s opinion concerning Plaintiff’s functional  
11 limitations for areas other than her upper extremities lack supportability.” (Doc. No. 15 at 8). As  
12 an initial matter, the Court notes that the Dr. Sharma’s report lists bilateral hands and elbows and  
13 left shoulder as the conditions for which he provided treatment, but in contrast to Defendant’s  
14 conclusory statement, the report does not explicitly indicate the assessed limitations were “based  
15 upon” those diagnoses. (AR 1107). Plaintiff cites several of Dr. Sharma’s treatment records  
16 noting foot pain and Plaintiff’s history of back injury. (Doc. No. 13 at 17-19 (citing AR 416,  
17 1088, 1104)). In response, Defendant cites Dr. Sharma’s treatment records “focusing” on  
18 Plaintiff’s shoulder and elbow pain and a July 2021 examination by Dr. Sharma observing no  
19 back pain and normal motor strength; and Defendant further argues Dr. Sharma’s opinion is less  
20 probative as it was issued after the relevant adjudicatory period closed. (Doc. No. 15 at 9-10  
21 (citing AR 394 (noting recovering from back surgery and doing “fair” on left shoulder), 400  
22 (noting pain in wrists and hands, and lower spine symptoms for which she has an appointment  
23 with orthopedics), 425 (treating for shoulder impingement post shoulder surgery), 427 (same),  
24 439-50 (same), 661 (examination noting no back pain, normal motor strength in all extremities,  
25 and intact sensory exam), 1083-84 (noting history of back injury, treating complaint of bilateral  
26 hands and elbows pain), 1090 (same), 1096-98 (treating for shoulder pain)); *cf. Smith v. Bowen*,  
27 849 F.2d 1222, 1225 (9th Cir. 1988) (“medical evaluations made after the expiration of a  
28 claimant’s insured status are relevant to an evaluation of the pre-expiration condition.”).

1 Under the revised regulations, “the more relevant the objective medical evidence and  
2 supporting explanations *presented by a medical source* are to support” the medical opinion, the  
3 more persuasive the medical opinion will be. 20 C.F.R. § 416.920c(c)(1) (emphasis added).  
4 Here, the portions of Dr. Sharma’s treatment notes referenced by Defendant were not cited by the  
5 ALJ as part of a supportability analysis, nor did the ALJ find Dr. Sharma’s opinion less  
6 persuasive because it was outside of the relevant adjudicatory period. (See AR 32); *Bray v.*  
7 *Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1226 (9th Cir. 2009) (the Court “review[s] the ALJ’s  
8 decision based on the reasoning and factual findings offered by the ALJ—not *post hoc*  
9 rationalizations that attempt to intuit what the adjudicator may have been thinking.”). Regardless,  
10 as noted by Plaintiff (Doc. No. 13 at 16), the ALJ fails to offer any “meaningful analysis” of the  
11 supportability of Dr. Sharma’s treating opinion. Rather, to the extent he explicitly considers the  
12 supportability factor, the ALJ appears to rely entirely on the treatment relationship between  
13 Plaintiff and Dr. Sharma, as opposed to any discussion of the objective evidence and explanation,  
14 or lack thereof, by Dr. Sharma in support of his opinion. 20 C.F.R. § 416.920c(c)(1). While the  
15 purpose of the treatment and extent of the treatment relationship are appropriate factors for the  
16 ALJ to consider under the new regulatory framework, these cannot be the sole or determinative  
17 factors in considering medical source opinions. 20 C.F.R. §§ 404.1520c(c)(1)-(5). Rather, it is  
18 well-settled that the ALJ must explain how it considered both supportability and consistency  
19 when evaluating the persuasiveness of a medical opinion. *Woods*, 32 F.4th at 792 (“[t]he agency  
20 must ‘articulate ... how persuasive’ it finds ‘all of the medical opinions’ from each doctor or other  
21 source, 20 C.F.R. § 404.1520c(b), and “explain how [it] considered the supportability and  
22 consistency factors” in reaching these findings, *id.* § 404.1520c(b)(2).”). For all of these reasons,  
23 the ALJ’s supportability finding is not supported by substantial evidence.

24 Based on the foregoing, the ALJ’s finding that Dr. Sharma’s opinion was not persuasive is  
25 not supported by substantial evidence. On remand, the ALJ should reconsider Dr. Sharma’s  
26 medical opinions, along with all relevant medical opinion evidence.

## 27 **B. Remedy**

28 Plaintiff argues the Court should remand the case with instructions to award benefits, or in

1 the alternative, remand for further administrative proceedings. (Doc. No. 13 at 17-18). The  
2 decision whether to remand for further proceedings or reverse and award benefits is within the  
3 discretion of the district court. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). An  
4 immediate award of benefits is appropriate where “no useful purpose would be served by further  
5 administrative proceedings, or where the record has been thoroughly developed,” *Varney v. Sec’y*  
6 *of Health & Human Servs.*, 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by  
7 remand would be “unduly burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280 (9th Cir.  
8 1990); *see also Garrison*, 759 F.3d at 1021 (noting that a district court may abuse its discretion  
9 not to remand for benefits when all of these conditions are met). This policy is based on the  
10 “need to expedite disability claims.” *Varney*, 859 F.2d at 1401. But where there are outstanding  
11 issues that must be resolved before a determination can be made, and it is not clear from the  
12 record that the ALJ would be required to find a claimant disabled if all the evidence were  
13 properly evaluated, remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th  
14 Cir. 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

15 The Court finds that further administrative proceedings are appropriate. *See Treichler v.*  
16 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014) (remand for benefits is not  
17 appropriate when further administrative proceedings would serve a useful purpose). Here, the  
18 ALJ improperly considered the medical opinion evidence, which calls into question whether the  
19 assessed RFC, and resulting hypothetical propounded to the vocational expert, are supported by  
20 substantial evidence. “Where,” as here, “there is conflicting evidence, and not all essential  
21 factual issues have been resolved, a remand for an award of benefits is inappropriate.” *Treichler*,  
22 775 F.3d at 1101. On remand, the ALJ should reevaluate the medical opinion evidence. If  
23 necessary, the ALJ should order additional consultative examinations and, if appropriate, take  
24 additional testimony from medical experts. The ALJ should conduct a new sequential analysis,  
25 reassess Plaintiff’s RFC and, if necessary, take additional testimony from a vocational expert  
26 which includes all of the limitations credited by the ALJ.

27 Accordingly, it is **ORDERED**:

- 28 1. Plaintiff’s Motion for Summary Judgment (Doc. No. 13) is GRANTED.

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- 2. Defendant’s Cross Motion for Summary Judgment (Doc. No. 15) is DENIED.
- 3. Pursuant to sentence four of 42 U.S.C. § 405(g), the Court REVERSES the Commissioner’s decision and REMANDS this case back to the Commissioner of Social Security for further proceedings consistent with this Order.
- 4. An application for attorney fees may be filed by separate motion within thirty (30) days.
- 5. The Clerk shall enter judgment in favor of Plaintiff, terminate any motions and deadlines, and close this case.

Dated: September 25, 2024

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE