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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

AARON SPAYD,  
  
Plaintiff,  
  
v.  
  
NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,  
  
Defendant.

Case No.: 16-CV-1353 JLS (JLB)

**ORDER: (1) ADOPTING REPORT AND RECOMMENDATION; (2) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; (3) DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND (4) REMANDING CASE TO SOCIAL SECURITY ADMINISTRATION**

(ECF Nos. 16, 18, 21)

Presently before the Court are Plaintiff's Motion for Summary Judgment, (ECF No. 16), and Defendant's Cross-Motion for Summary Judgment, (ECF No. 18). The Court referred the motions to Magistrate Judge Jill L. Burkhardt, who subsequently issued a thorough, twenty-one-page Report and Recommendation recommending that the Court

1 grant in part and deny in part Plaintiff’s Motion for Summary Judgment, deny Defendant’s  
2 Motion for Summary Judgment, and remand the matter to the Social Security  
3 Administration for further proceedings (“R. & R.”). (ECF No. 21.) Having reviewed the  
4 Parties’ motions, Judge Burkhardt’s Report and Recommendation, and the underlying  
5 Administrative Record, (ECF No. 13), the Court **ADOPTS** Judge Burkhardt’s Report and  
6 Recommendation in its entirety.

### 7 **LEGAL STANDARD**

8 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district  
9 court’s duties in connection with a magistrate judge’s Report and Recommendation. The  
10 district court must “make a de novo determination of those portions of the report to which  
11 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or  
12 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United*  
13 *States v. Raddatz*, 447 U.S. 667, 673–76 (1980); *United States v. Remsing*, 874 F.2d 614,  
14 617 (9th Cir. 1989). In the absence of timely objection, however, the Court “need only  
15 satisfy itself that there is no clear error on the face of the record in order to accept the  
16 recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing *Campbell v. U.S.*  
17 *Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974)).

### 18 **ANALYSIS**

19 In the present case, neither party objected to Judge Burkhardt’s Report and  
20 Recommendation. And the Court here finds no clear error on the face of the record. The  
21 Court agrees that the Administrative Law Judge (“ALJ”) below “failed to articulate specific  
22 and legitimate reasons to discount [both] Dr. Kistler’s opinions” and “Plaintiff’s statements  
23 concerning the limiting effects on the use of his hands as a result of his symptoms.”  
24 (R. & R. 6; *see also id.* at 15–19 (noting, in sum, that: several of Defendant’s motion-based  
25 arguments are post-hoc rationales not articulated by the ALJ; the ALJ “fail[ed] to point to  
26 any medical evidence in support of [his] conclusion” regarding Plaintiff’s alleged mental  
27 limitations, whereas Plaintiff supplied ample evidence supporting the contrary conclusion;  
28 the ALJ “discounted Plaintiff’s testimony regarding the use of his hands” without any

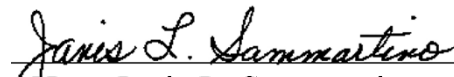
1 meaningful analysis whatsoever; and each error may affect the ultimate disability  
2 determination).<sup>1</sup> Furthermore, the Court agrees that although the ALJ’s errors were not  
3 harmless, remanding for further consideration is appropriate given that in this case  
4 “enhancement of the record would be useful.” (*Id.* at 19–20 (quoting *Benecke v. Barnhart*,  
5 379 F.3d 587, 593 (9th Cir. 2004)).)

6 **CONCLUSION**

7 Given the foregoing, the Court **ADOPTS** Judge Burkhardt’s Report and  
8 Recommendation in its entirety, (ECF No. 21); **GRANTS IN PART** and **DENIES IN**  
9 **PART** Plaintiff’s Motion for Summary Judgment, (ECF No. 16); **DENIES** Defendant’s  
10 Motion for Summary Judgment, (ECF No. 18); and **REMANDS** the case to the Social  
11 Security Administration for further proceedings. Because this concludes the litigation in  
12 this matter, the Clerk **SHALL** close the file.

13 **IT IS SO ORDERED.**

14 Dated: August 14, 2017

  
15 Hon. Janis L. Sammartino  
16 United States District Judge  
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23 <sup>1</sup> The Court also agrees that the ALJ provided specific and legitimate reasons, supported by substantial  
24 evidence in the record, to discount Dr. Recalde’s opinion. (*See* R. & R. 7–15 (explaining that ALJ properly  
25 gave no weight to Dr. Recalde’s Residual Functional Capacity (“RFC”) determination because: Dr.  
26 Recalde did not exhibit familiarity with Plaintiff either commensurate with a “treating physician” as  
27 contemplated by the Social Security Regulations or adequate to form a meaningful opinion regarding the  
28 extent of Plaintiff’s alleged disability; Dr. Recalde’s opinion was contradicted by the record and lacked  
any supporting test results; Dr. Recalde rarely (if ever) actually saw Plaintiff and did not attach all relevant  
medical documentation to his completed RFC questionnaire despite being given the opportunity to do so;  
and that the ALJ properly considered the contrary opinion of a consultative examiner, Dr. Dao, in rejecting  
Dr. Recalde’s opinion).)